

NOTICE OF PUBLIC MEETING  
THE FREEPORT CITY COUNCIL  
MONDAY, FEBRUARY 4TH, 2013, 6:00 P.M.  
FREEPORT MUNICIPAL COURT ROOM  
FREEPORT POLICE DEPARTMENT, 430 NORTH BRAZOSPORT BLVD.  
FREEPORT, TEXAS

AGENDA  
FORMAL SESSION

1. Call to order.
2. Invocation.
3. Pledge of Allegiance.
4. Consideration of approving the January 7th, 2013 Council Minutes. Pg. 112-114
5. Attending citizens and their business.
6. Consideration of approving Resolution No. 2013-2408 supporting creation of the Lone Star Coastal National Recreation Area. Pg. 115-116
7. Consideration of approving Ordinance No. 2013-2033 amending the budget for the fiscal year 2012-2013. Pg. 117-122
8. Consideration of approving and authorizing the City Manager to sign a Notice to Proceed for the DWI Selective Traffic Enforcement Program between Houston-Galveston Area Council and the City of Freeport. Pg. 123-142
9. Consideration of rescheduling February 18<sup>th</sup>, 2013 Council Meeting to February 19<sup>th</sup>, 2013 due to President's Day holiday.
10. Consideration of approving the appraised value and closing, abandoning and selling 0.142 acres of East Brazos Street right-of-way, out T. F. McKinney Labor No. 6, Abstract 87 and S. F. Austin 1/3 League, Abstract 28, 200 Block, East Brazos right-of- way. Pg. 143-156
11. Consideration of approving Ordinance No. 2013-2031 abandoning and closing an unused portion of the right-of-way located within the corporate limits of the City of Freeport, in Brazoria County, Texas described as that portion of East Brazos opposite Lots 1 through 4, Block 16 of the Freeport Townsite. Pg. 157-161
12. Consideration and possible action regarding ratification of Police Chief severance agreement.

**Executive Session:**

**Section 551.074, Government Code**

Deliberation concerning the appointment, employment, evaluation, reassignment, duties, discipline or dismissal of a public officer or employee or to hear a complaint or charge against an officer or employee, to wit:

- City Manager

**Section 551.071, Government Code**

Consultation with attorney concerning pending or contemplated litigation; a settlement offer; or a matter in which the duty of the attorney requires it.

- Police Chief Ty Morrow

**Adjourn**

Items not necessary discussed in the order they appear on the agenda. The Council at its discretion may take action on any or all of the items as listed. This notice is posted pursuant to the Texas Open Meeting Act. (Chapter 551, Government Code).

In compliance with the Americans with Disabilities Act, the City of Freeport will provide for reasonable accommodations for persons attending City Council Meetings.

Request should be received 48 hours prior to the meeting. Please contact the City Secretary office at 979-233-3526.

I, Delia Munoz City Secretary for the City of Freeport, Texas certify that this agenda was posted on the official bulletin board/glass door of City Hall, facing the rear parking lot of the building, with 24 hours a day public access, 200 West 2nd Street, Freeport Texas, February 1, 2013 at or before 5:00 p.m.

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Delia Munoz - City Secretary  
City of Freeport, Texas

State of Texas

County of Brazoria

City of Freeport, Texas

BE IT REMEMBERED, that the City Council of the City of Freeport met on Monday, January 7<sup>th</sup>, 2013 at 6:00 p.m. at the Freeport Municipal Court Room, 430 North Brazosport Boulevard, for the purpose of considering the following agenda items:

City Council: Norma M. Garcia  
Michelle Kent  
Fred Bolton  
Sandra Loeza  
Sandra Barbree

Staff: Jeff Pynes, City Manager  
Gilbert Arispe, Asst. City Manager  
Wallace Shaw, City Attorney  
Delia Munoz, City Secretary  
Nat Hickey, Property Manager  
Brian Davis, Fire Chief  
Ty Morrow, Police Chief  
Bob Welch, Finance Director

Visitors: Jerry Meeks                      Shane Vandergriff  
Richard Rangel                      Lance Adams  
Manning Rollerson                      Lila Lloyd  
Shannon Daughtry

Call to Order .

Mayor Norma Garcia called the meeting to order at 6:00 p.m.

Invocation.

Mr. Wallace Shaw offered the invocation.

Pledge of Allegiance.

Shane Vandergriff led the Pledge of Allegiance.

Consideration of approving the December 17, 2012 Council Minutes.

On a motion by Councilwoman Kent, seconded by Councilwoman Loeza, with all present voting "aye", Council unanimously approved the December 17<sup>th</sup>, 2012 Council Minutes.

Attending citizens and their business.

Councilman Bolton stated that he personally objected to people stating to the local newspaper their opinion on what's good for Freeport Urban Renewal projects when they didn't even live in Freeport, pay taxes and didn't invest in the City.

Manning Rollerson stated that the Freeport Apartments, Azalea Courts and Villa Brazos on North Ave. J. were deplorable. The apartments looked good on the outside but had mold inside the apartments.

Consideration of approving Resolution No. 2013-2406 approving submission of the Houston Galveston Area Council grant application for the Radio Interoperability Upgrade for 2014.

On a motion by Councilwoman Kent, seconded by Councilwoman Barbree, with all present voting "aye", Council unanimously approved Chief Ty Morrow's recommendation to approve Resolution No. 2013-2406 approving submission of the Houston Galveston Area Council grant application for the Radio Interoperability Upgrade for 2014.

Consideration of approving a Freeport Industrial District Agreement between the City of Freeport and Phillips 66 Company, Gulf Chemical & Metallurgical Corporation, Rhodia Incorporated, Chemical Specialties Incorporated, SI Group dba: Schenetady International, Shintech, Incorporated, Freeport Landholdings LLC, Top Coat Incorporate.

On a motion by Councilman Bolton, seconded by Councilwoman Kent, with all present voting "aye", Council unanimously approved Freeport Industrial District Agreement between the City of Freeport and Phillips 66 Company, Gulf Chemical & Metallurgical Corporation, Rhodia Incorporated, Chemical Specialties Incorporated, SI Group dba: Schenetady International, Shintech, Incorporated, Freeport Landholdings LLC, Top Coat Incorporate.

Consideration of approving an amendment to the current Freeport Industrial District agreement between the City of Freeport and DSM Nutritional Products, Incorporated, and Nalco Energy Services, LP.

On a motion by Councilwoman Kent, seconded by Councilwoman Barbree, with all present voting "aye", Council unanimously approved an amendment to the current Freeport Industrial District agreement between the City of Freeport and DSM Nutritional Products, Incorporated, and Nalco Energy Services, LP.

Consideration of approving and authorizing Veolia Water to add Liquid Ammonia to the Slaughter Road Water System at a cost of \$21,100 required by the State for the alternative disinfection.

On a motion by Councilwoman Kent, seconded by Councilwoman Barbree, with all present voting "aye", Council unanimously approved and authorized Veolia to add Liquid Ammonia to the Slaughter Road Water System at a cost of \$21,100 required by the State for the alternative disinfection.

Consideration of approving and authorizing Veolia Water to repair a pump for the Central Lift Station Pump # 3 by HAHN Equipment costing \$19,181.88.

On a motion by Councilman Bolton, seconded by Councilwoman Kent, with all present voting "aye", Council unanimously approved and authorized Veolia Water to repair a pump for the Central Lift Station Pump # 3 by HAHN Equipment costing \$19,181.88.

Consideration of cancelling the January 21<sup>st</sup> 2013 Council Meeting due to Martin Luther King, Jr. holiday.

On a motion by Councilwoman Kent, seconded by Councilwoman Barbree, with all present voting "aye", Council unanimously approved cancelling the January 21<sup>st</sup>, Council Meeting and setting the next council meeting to January 28<sup>th</sup>, 2013 due to the Martin Luther King Jr. holiday.

Discuss and action on any item discussed in Executive Session.

No action

Mayor Garcia closed the formal session and opened the Executive Session at 6:24 p.m.

Executive Session:

Section 551.071, Government Code

Consultation with City Attorney concerning pending or contemplated litigation settlement offers or other matter in which his duty to the City Council under the Texas Disciplinary Rules of Professional Conduct of the State Bar of Texas clearly conflicts with Chapter 551, Government Code.

Section 551.074, Government Code

Deliberations concerning the duties of a public officer or employee.

- City Manager  
(no action)

Mayor Garcia closed the Executive Session at 7:15 p.m. and reconvened the formal session to adjourn.

Adjourn

On a motion by Councilwoman Kent, seconded by Councilman Bolton, with all present voting "aye", Council adjourned at 7:15 p.m.

RESOLUTION NO. 2013-2408

**A RESOLUTION OF THE CITY OF FREEPORT, SUPPORTING CREATION OF THE  
LONE STAR COASTAL NATIONAL RECREATION AREA**

WHEREAS, the creation of the Lone Star Coastal National Recreation Area (LSCNRA) has been proposed to meet the regional goals of non-structural flood mitigation for the Upper and Middle Texas coast;

WHEREAS, the specific boundaries of the LSCNRA will be established by action of the Partners but are expected to include portions of coastal Matagorda, Brazoria, Chambers and Galveston Counties:

WHEREAS, the LSCNRA is conceived to capture the economic benefits of the outstanding natural resources of the coastal counties;

WHEREAS, the LSCNRA will enhance the recreational use and protection of the nationally significant coastal resources of the region;

WHEREAS, the LSCNRA is to be designated as a unit of the National Park System in order to realize the unique and substantial benefits that flow from that designation;

WHEREAS, the LSCNRA is to be structured and operated as a networked partnership between local, state and federal governments, as well as non-governmental organizations and private landowners and corporations;

WHEREAS, the LSCNRA must be established by an act of Congress;

WHEREAS, the City Council has determined that their participation in the LSCNRA will benefit its residents, and that the use of any property owned by them for limited purposes of the LSCNRA will serve public interests; and

**NOW THEREFORE, BE IT RESOLVED THAT:**

Section 1. The above recitations are found to be true and correct and are incorporated herein.

Section 2. That City of Freeport agrees to become a member of the partnership formed to implement the proposed LSCNRA and agrees to allow some or all of the properties that they own within the boundaries of the proposed LSCNRA to be considered for use to achieve the recreation, conservation, and flood mitigation goals of the proposed LSCNRA.

Section 3. City of Freeport further permits its name to be included in any legislation or supporting documents for the creation of the LSCNRA, or in documents where the members of the partnership are set forth, with the understanding that the LSCNRA will be implemented pursuant to a partnership agreement and management plan later adopted by the partners, and with the further understanding that any party may withdraw from the LSCNRA at any time, including after it is established.

RESOLVED AND ADOPTED THIS \_\_\_ DAY OF \_\_\_\_, 201\_\_.

**CITY OF FREEPORT**

\_\_\_\_\_  
[Presiding officer]

ATTEST:

\_\_\_\_\_  
City/Org/Board Secretary

AN ORDINANCE OF THE CITY OF FREEPORT, TEXAS, CONTAINING A PREAMBLE; CONTAINING FINDINGS OF FACTS; AMENDING THE BUDGET FOR THE FISCAL YEAR 2012-2013; CONTAINING SAVINGS CLAUSES; CONTAINING A SEVERANCE CLAUSE; AND PROVIDING THAT THIS ORDINANCE SHALL TAKE EFFECT AND BE IN FORCE FROM AND AFTER ITS PASSAGE AND ADOPTION.

WHEREAS, pursuant to the provisions of Subsection (a) of Section 102.007 of Chapter 102 of the Local Government Code and the provisions of Article 9 of the Home Rule Charter of the City of Freeport (hereinafter sometimes "the City"), the budget for the 2012-2013 fiscal year of the City was finally approved by the City Council, being the governing body thereof, by its Ordinance No. 2012-2023, read, passed and adopted on the 17th day of September, 2012, (hereinafter sometimes "the Budget"); and,

WHEREAS, Subsection (b) of Section 102.009 of the Local Government Code provides that, after final approval of the budget, the governing body of a municipality may spend municipal funds only in strict compliance with the budget, except in an emergency, but Section 102.010 of said Code provides that the provisions of Chapter 102 thereof do not prevent the governing body of such municipality from making changes in the budget for municipal purposes; and

WHEREAS, Subsection (c) of Section 102.009 of said Code provides that the governing body of a municipality may authorize an expenditure as an amendment to the original budget only in the case of grave public necessity to meet an unusual and unforeseen condition that could not have been included in the original budget through the use of reasonably diligent thought and attention; and,

WHEREAS, Section 9.16 of the City's Home Rule Charter provides that the budget may be amended and appropriations altered in accordance therewith in cases of public necessity, the actual fact of which shall have been declared by the City Council; and,



WHEREAS, the adoption of this ordinance and the amendment of the Budget is necessary for and in the best interest of the health, safety and general welfare of the inhabitants of the City.

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

SECTION ONE (1): FINDINGS OF FACT

In connection with the amendment and revision of the Budget, the City Council of the City makes the following findings:

(1) The amendments and revisions set forth in the Budget were the result of numerous public workshop meetings called and conducted in the manner required by the Texas Open Meetings Act, codified as Chapter 551, Government Code.

(2) A public hearing was held on the Budget on September 7, 2010, and conducted in the manner required by Section 102.006 of the Local Government Code and the City's Home Rule Charter.

(3) Notice of such public hearing was published in the Brazosport Facts, a newspaper of general circulation in and the official newspaper of the City in the manner and time required by Chapter 102 of said Code and the City's Home Rule Charter.

(4) A grave public necessity exists and to meet an unusual and unforeseen conditions that could not have been included in the original budget through the use of reasonably diligent thought and attention and the Budget must be amended and revised with respect of the new or additional expenditures set forth in Exhibit "A" attached hereto and made a part hereof, such unusual and unforeseen conditions also being set forth in said Exhibit "A".

(5) The proposed changes are set forth in Exhibit "A" attached hereto and made a part hereof.

(6) All of the changes set forth in Exhibit "A" are for municipal purposes.

(7) The several amounts stated in Exhibit "A" as the amended or revised expenditures are hereby appropriated to and for the objects and purposes therein named.

(8) The contingent appropriations, as amended and revised in said Exhibit "A", do not exceed three (3%) percent of the total amended and revised budget appropriations reflected therein.

(9) The amended and revised expenditures of the general fund and the debt service fund contained in the Budget, as amended by said Exhibit "A", do not exceed the resources of each fund.

as amended and revised.

SECTION ONE (2):

The existing budget of the City of Freeport, Texas, for the fiscal year 2012-2013 is hereby amended and revised as reflected in said Exhibit "A".

SECTION THREE (3):

As required by Subsections (c) and (d) of Section 102.009 of the Local Government Code, upon the passage and adoption of this ordinance, the amended and revised budget adopted hereby shall be filed with the City Secretary of the City to be maintained in the official records of the City, and a certified copy of this ordinance, with Exhibit "A" attached thereto, shall be filed by the City Secretary with the County Clerk of Brazoria County, Texas, and the State Comptroller of Public Accounts for the State of Texas.

SECTION FOUR (4):

nothing contained in this ordinance shall cause any rights heretofore vested to be altered, affected or impaired in any way and all such rights may be hereafter enforced as if this ordinance had not been adopted.

SECTION FIVE (5):

In the event any section or provision of this ordinance is found to be unconstitutional, void or inoperative by the final judgment of a court of competent jurisdiction, such defective provision, if any, is hereby declared to be severable from the remaining sections and provisions of this ordinance and such remaining sections and provisions shall remain in full force and effect.

SECTION SIX (6):

This ordinance shall take effect and be in force from and after its

passage and adoption.

READ, PASSED AND ADOPTED this \_\_\_\_\_ day of February, 2013.

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Norma Moreno Garcia, Mayor,  
City of Freeport, Texas

ATTEST:

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Delia Muñoz, City Secretary,  
City of Freeport, Texas

APPROVED AS TO FORM ONLY:

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Wallace Shaw, City Attorney,  
City of Freeport, Texas

# Council

## MEMORANDUM

To: Mayor and Council

From: Bob Welch

Re: Request for Amendment of Budgeted Funds #1

Date: February 4, 2013

We are requesting the following amendments to the 2012-2013 Budget:

BUDGET AMENDMENTS	ACCT#	ACCOUNT DESCRIPTION	BUDGET AMENDMENTS	
			DEBITS	CREDITS
1 CDBG PROJECT MOVE PRIOR YEAR BUDGETED FUNDS TO CURRENT YEAR CENTRAL LIFT STATION- CDBG PROJECT	14-575-821	CDBG PROJECT	94,304	
2 MUSEUM FUNDRAISER MOVE PRIOR YEAR MUSEUM DONATIONS TO THE CURRENT YEAR	10-578-483	MUSEUM FUNDRAISER	11,957	
3 CDBG PROJECT BUDGET ADJUSTMENT TO INCREASE FUNDING FOR THE CENTRAL LIFT STATION-CDBG PROJECT	14-575-821	CDBG PROJECT	107,675	
4 NARCOTICS K-9 POLICE-SEIZURES RECORD FUNDS RECEIVED FROM THE BRAZORIA COUNTY SHERIF'S DEPARTMENT	10-525-620 10-362-525	NARCOTICS K-9 POLICE-SEIZURES	7,090	7,090
5 NARCOTICS K-9 GRANT REVENUE RECORD FUNDS RECEIVED FROM THE TARGET GRANT-POLICE DEPT	10-525-620 10-360-400	NARCOTICS K-9 GRANT REVENUE	3,000	3,000
6 FEDERAL NARCOTICS EXPENSE MOVE PRIOR YEARS FUNDS RECEIVED TO THE CURRENT YEAR BUDGET	10-525-619	FEDERAL NARCOTICS EXPENSE	35,000	
7 VEOLIA OTHER TRANSFER FROM GENERAL FUND BUDGET ADJUSTMENT TO ADD LIQUID AMMONIA TO SLAUGHTER ROAD WATER SYSTEM	56-565-498 56-710-010	VEOLIA OTHER TRANSFER FROM GENERAL FUND	21,100	21,100
8 VEOLIA OTHER TRANSFER FROM GENERAL FUND BUDGET ADJUSTMENT TO REPAIR A PUMP AT THE CENTRAL LIFT STATION	56-565-498 56-710-010	VEOLIA OTHER TRANSFER FROM GENERAL FUND	19,182	19,182

9	<b>GRANT REVENUE</b> <i>RECORD FUNDS RECEIVED FROM THE POLICE CONSOLE GRANT</i>	10-360-400	GRANT REVENUE	34,398
10	<b>DONATION-MUSEUM CHILDREN'S EXHIBIT</b> <i>RECORD DONATION FROM LPL FINANCIAL TO THE MUSEUM CHILDREN'S EXHIBIT</i>	10-360-801	MUSEUM DONATION CHILDREN'S EXHIBIT	10,000
11	<b>DONATION-MUSEUM CHILDREN'S EXHIBIT</b> <i>RECORD DONATION FROM BASF TO THE MUSEUM CHILDREN'S EXHIBIT</i>	10-360-801	MUSEUM DONATION CHILDREN'S EXHIBIT	2,500

**SUMMARY EFFECT ON GOVERNMENTAL FUNDS:**

BUDGET ADJUSTMENTS	ACCT#	CURRENT BUDGET	BUDGET AMEND	AMENDED BUDGET
CDBG PROJECT	10-360-910	0	201,979	201,979
MUSEUM FUNDRAISER	10-578-483	0	11,957	11,957
NARCOTICS K-9	10-360-920	6,000	10,090	16,090
FEDERAL NARCOTICS EXPENSE	10-361-525	0	35,000	35,000
VEOLIA OTHER	10-525-543	143,207	40,282	183,489
TRANSFER FROM GENERAL FUND	14-575-821	-218,000	-40,282	-258,282
POLICE SEIZURES	10-362-525	0	-7,090	-7,090
DONATION-MUSEUM CHILDREN'S EXH	10-360-801	0	-12,500	-12,500
GRANT REVENUE	10-360-400	0	-37,398	-37,398
		<b>-68,793</b>	<b>202,038</b>	<b>133,245</b>
<b>Net effect on Fund Balance:</b>			<b>DECREASE</b>	<b>\$202,038</b>



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**Houston-Galveston Area Council**

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January 8, 2013

Jeff Pynes  
City Manager, City of Freeport  
200 West Second Street  
Freeport, TX 77541

Dear Mr. Pynes:

Enclosed are three originals of a Notice to Proceed for the DWI Selective Traffic Enforcement Program between H-GAC and City of Freeport. Please sign and return two originals to me, keep one for your files.

I am also sending you an original of the fully executed Agreement for your files. If you have any technical questions please contact Jeff Kaufman at 832-681-2533. Should you have any questions concerning the enclosed information, feel free to contact me at 713-993-4584.

Sincerely,

Aquina Grover  
Senior Financial Analyst

/ag  
Enclosures





Houston-Galveston Area Council  
P.O. Box 22777 · 3555 Timmons · Houston, Texas 77227-2777

**NOTICE TO PROCEED**

To: Jeff Pynes  
City Manager, City of Freeport  
200 West Second Street  
Freeport, TX 77541

Project DWI Selective Traffic Enforcement Program

Contract No. \_\_\_\_\_

Type of Contract Professional Services

Amount of Contract \$8,635.93 (7,099 fed; 1,536.93 match)

You are hereby notified to commence work on the referenced contract on December 1, 20 12 and shall fully complete all of the work of said contract on or before September 30, 20 13.

Dated this 8<sup>th</sup> day of January 20 13.

By 

Title Director of Transportation Planning

**ACCEPTANCE OF NOTICE**

Receipt of the foregoing Notice to Proceed is hereby acknowledged by

\_\_\_\_\_  
(Company/Entity Name)

this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_.

By \_\_\_\_\_

Title \_\_\_\_\_

## 1. COMPENSATION

The Contractor shall be reimbursed by H-GAC for authorized costs in accordance with 48 CFR, Ch 1, Part 31 incurred in performance of the work set out in this contract as specifically described in Attachment A. Detailed records must be maintained to show actual time devoted and costs incurred.

The Contractor will submit a final invoice within 30 days after the completion of work. Invoices submitted after this time will not be honored unless prior arrangements are made and approved in writing by H-GAC.

- A. **Maximum Compensation.** The total reimbursement under this contract shall not exceed **Seven Thousand, Ninety-Nine Dollars (\$7,099)**.
- B. **Travel Expenses and Subsistence.** The Contractor shall be paid the actual cost incurred by personnel working on this project for travel expenses and subsistence that are certified as being correct and necessary for and directly associated with performance of this Contract. In-state travel shall be reimbursed at rates established by the State Comptrollers Office: (<http://www.cpa.state.tx.us/>). Transportation costs shall be reimbursed for Coach or comparable airfare or for private automobile, whichever is less. Out-of-state travel shall be reimbursed not to exceed current Federal Per Diem rates as allowed by 41 CFR Part 301-7 and Chapter 301 Federal Travel Regulations; Maximum Per Diem rates; Final Rule. Rental vehicle expenses shall be reimbursed at actual cost of compact car or smaller, unless approved by H-GAC in advance. (Note: Itemized receipt(s) for food is necessary)
- C. **Method of Payment.** H-GAC will reimburse the Contractor for services rendered on the basis of allowable costs up to the amount specified in Section 1, Part A above. Reimbursement shall be made monthly within forty-five (45) days after the receipt of the Contractor's invoice and support documentation, except as stipulated in paragraph E below. An invoice must arrive each month whether or not any expenses have occurred. In addition to documentation for travel and equipment each invoice must be accompanied by a progress report as described in Section 6, Activity Reports, below.
- D. **Billings.** The Contractor shall submit a Request for Reimbursement reflecting the overtime worked within seven (7) days of an enforcement period. The Request for Reimbursement shall include the following set of reports, where applicable, reflecting the enforcement activities conducted as part of the Regional DWI Task Force grant:
- i. Agency Enforcement Summary Sheet (which will serve as the Agency's Request for Reimbursement)
  - ii. Officers' Shift Reports
  - iii. Official Overtime Slips from law enforcement agency
  - iv. Copies of violations identified during enforcement period
  - v. List of public events attended where DWI and the DWI Task Force were discussed
  - vi. Documentation of any court time or administrative license revocation (ALR) hearing time associated with an arrest made during any enforcement period during the term of this agreement.
- E. **Matching Fund Certification.** The Contractor shall record and report benefits and taxes that have been paid on the overtime pay accrued by participating staff during the enforcement period, as well as the number of miles driven by participating staff in the vehicle used for the enforcement activities. The rates for these items are as follows:



- i. Retirement Match: 14.0 percent of wages
- ii. Social Security Tax: 6.2 percent of wages
- iii. Medicare Tax: 1.45 percent of wages
- iv. Workers' Compensation: 0.0 percent of wages
- v. Vehicle Mileage Rate: \$0.555 per mile

These rates may be subject to change based on legislative or local governmental action. H-GAC must be notified of any change in the above-listed rates made by the Contractor.

## 2. CONTRACTOR PERSONNEL

The Contractor agrees to assign qualified staff members including a Project Manager who shall be responsible for the task administration and work performance. The Project Manager shall be Marisol Gamboa. In the event the Project Manager becomes no longer available to this project, a substitution of like personnel with similar qualifications can only be made after obtaining prior written approval of H-GAC.

## 3. INSPECTION OF WORK

H-GAC shall have the right to review and inspect the progress of the work described herein at all times.

## 4. PROPRIETARY RIGHTS

Contractor agrees not to release data or information about the results of the project to any person outside of H-GAC without first obtaining written authorization to release such information from H-GAC. Contractor shall be permitted to list H-GAC as a client for marketing purposes.

## 5. INSURANCE

H-GAC acknowledges that Contractor is governed by the Texas Tort Claims Act, which sets forth certain limitations and restrictions on the types of liability and the types of insurance coverage that can be required of Contractor. The Contractor represents to H-GAC that it either has adequate General Liability and Property insurance policies in place or sufficient resources to self-insure for all claims for which it may be responsible under the Texas Tort Claims Act. The Contractor further represents to H-GAC that it either has workers' compensation insurance in the amount required by statute or is entitled to self-insure for workers compensation coverage under Texas law and has elected to do so.

## 6. ACTIVITY REPORTS

The Contractor shall submit to H-GAC activity reports as described in Section One, Parts C and D above. The reports shall reflect enforcement activities accomplished during the previous enforcement period. These reports will include, but not be limited to the list of items required under Section One, Part D.

## 7. DISADVANTAGED BUSINESS ENTERPRISES

- (1) **Policy.** It is the policy of the Department of Transportation (DOT) that disadvantaged business enterprises as defined in 49 CFR Part 26 shall have the maximum opportunity to participate in the performance of contracts financed in whole or part with Federal funds under this Agreement. Consequently, the DBE requirements of 49 CFR Part 26 apply to this Agreement.
- (2) **DBE Obligation.** The Contractor agrees to ensure that disadvantaged business enterprises as defined in 49 CFR Part 26 have the maximum opportunity to participate in the performance of contracts and subcontracts financed in whole or in part with Federal funds provided under this Agreement. In this regard the Contractor shall take all necessary and reasonable steps in accordance with 49 CFR Part 26 to ensure that disadvantaged business enterprises have the maximum opportunity to compete for and perform contracts. The Contractor shall not discriminate on the basis of race, creed, color, national origin, age, or sex in the award and performance of DOT-assisted contracts.

H-GAC has established a goal of 22% DBE participation in its FTA third party contracting opportunities. There, any contract issued under this Agreement will carry a 22% DBE participation goal.

## 8. TITLE VI ASSURANCE

During the performance of this Contract, the Contractor, for itself, its assignees and successors in interest (hereinafter referred to as the "Contractor") agrees as follows:

- (a) **Compliance with Regulations.** The Contractor shall comply with the regulations relative to nondiscrimination in Federally-assisted programs of the Department of Transportation (hereinafter, "DOT") Title 49, Code of Federal Regulations, Part 21, as they may be amended from time to time (hereinafter referred to as the "Regulations"), which are herein incorporated by reference and made a part of this Contract.
- (b) **Nondiscrimination.** The Contractor, with regard to the work performed by it during the Contract, shall not discriminate on the grounds of race, color, religion, sex, age, or national origin in the selection and retention of subcontractors, including procurement of materials and leases of equipment. The Contractor shall not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the Regulation including employment practices when the Contract covers a program set forth in Appendix B of the Regulations.
- (c) **Solicitation for Subcontracts, including Procurement of Materials and Equipment.** In all solicitations either by competitive bidding or negotiation made by the Contractor for work to be performed under the subcontract, including procurement of materials or leases of equipment, each potential subcontractor or supplier shall be notified by the Contractor of the Contractor's obligations under this Contract and the Regulations relative to nondiscrimination on the grounds of race, color, religion, age, sex, or national origin.
- (d) **Information and Reports.** The Contractor shall provide all information and reports required by the Regulations or directives issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by H-GAC or the Department of Transportation (DOT) to be pertinent to ascertain compliance with such regulations, orders, and instructions. Where any information is required of a Contractor and is in the exclusive possession of another who fails or refuses to furnish this information, the Contractor shall so certify to H-GAC or the Department of Transportation, as appropriate and shall set forth what efforts it has made to obtain the information.

- (e) Sanctions for Noncompliance. In the event of the Contractor's noncompliance with the nondiscrimination provisions of this Contract, the District shall impose such contract sanctions as it or the Department of Transportation may determine to be appropriate, including, but not limited to:
- (1) Withholding of payments to the Contractor under the Contract until the Contractor complies, and/or
  - (2) Cancellation, termination, or suspension of the Contract, in whole or in part.
- (f) Incorporation of Provisions. The Contractor shall include the provisions of paragraphs (a) through (f) in every subcontract, including procurement of materials and leases of equipment, unless exempt by the Regulations, or directives issued pursuant hereto. The Contractor shall take such action with respect to any subcontract or procurement as H-GAC may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, however, that in the event a Contractor becomes involved in or is threatened with litigation with a subcontractor or supplier as a result of such direction, the Contractor may request H-GAC to enter into such litigation to protect the interests of H-GAC and, in addition, the Contractor may request the United States to enter into such litigation to protect the interests of the United States.

## 9. COMPLIANCE WITH LAWS

The Contractor shall comply with all Federal, State and local laws, statutes, ordinances, rules and regulations, and the orders and decrees of any courts or administrative bodies or tribunals in any matter affecting the performance of this Agreement, including without limitation, workers' compensation laws, minimum and maximum salary and wage statutes and regulations, and licensing laws and regulations. When required, the Contractor shall furnish H-GAC with satisfactory proof of its compliance therewith.

## 10. ENERGY POLICY

Contracts shall recognize mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (P.L. 94-163).

## 11. CLEAN AIR ACT AND FEDERAL WATER POLLUTION CONTROL ACT REQUIREMENTS

Contractor agrees to comply with all applicable standards, orders, or requirements issued under Section 306 of the Clean Air Act (42 USC 1857 (h)), Section 508 of the Clean Water Act (33 USC 1368), Executive Order 11738, and Environmental Protection Agency regulations (40 CFR, Part 15) which prohibit the use under nonexempt federal contracts, grants or loans, of facilities included on the EPA list for Violating Facilities.

## 12. DEBARRED BIDDERS

Contractor, including any of its officers or holders of a controlling interest, is obligated to inform H-GAC whether or not it is or has been on any debarred bidders' list maintained by the United States Government. Should the Contractor be included on such a list during the performance of this project, it shall so inform H-GAC.

### **13. DRUG-FREE WORKPLACE**

The Contractor agrees that if the Contractor is a recipient of more than \$25,000 in federal assistance through an H-GAC subcontract, the Contractor shall provide a "drug-free" workplace in accordance with the Drug-free Workplace Act (DFWA), March 18, 1989. For purposes of this Section, "drug-free" means a worksite at which employees are prohibited from engaging in the unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance. The Contractor shall:

1. Publish a policy statement prohibiting the manufacture, distribution, dispensation, possession, or use of a controlled substance and notify employees of the consequences for violating this prohibition;
2. Establish a drug-free awareness program;
3. Provide each employee with a copy of its policy statement; and
4. Notify employees that, as a condition of employment, the employee must adhere to the terms of the statement and must notify the employer of any criminal drug offense within five days of conviction.

**ATTACHMENT A - SCOPE OF SERVICES  
REGIONAL DWI TASK FORCE  
RESPONSIBILITIES OF PARTICIPATING AGENCIES:**

The following are a list of expectations for officers and agencies interested in participating in the Regional DWI Task Force. This list is based on TxDOT's requirements for Selective Traffic Enforcement Program (STEP) Grants:

- A. H-GAC will serve as the administrator of the STEP Grant. H-GAC will be responsible for the following activities in the grant's administration:
  - 1. Setting up pre-Task Force meetings with participating agencies to discuss participation, protocols, and operational specifics;
  - 2. Setting up post-Task Force meetings to debrief enforcement activities;
  - 3. Determining how many officers will be participating on an enforcement weekend;
  - 4. Collecting requests for reimbursement, along with associated backup documentation;
  - 5. Submitting requests for reimbursement to TxDOT;
  - 6. Reimbursing agencies for work performed upon receipt of funds from TxDOT;
  - 7. Report on Task Force performance to TxDOT and to Task Force members.
  
- B. Task Force activities will occur during the following periods:
  - 1. Christmas/New Years – December 21, 2012 – January 1, 2013 (Two weekends)
  - 2. Spring Break/Rodeo/St. Patrick's Day – March 8-17, 2013 (Two weekends)
  - 3. Memorial Day – May 24-28, 2013
  - 4. July 4<sup>th</sup> – July 3-7, 2013
  - 5. Labor Day – August 30-September 3, 2013
  
- C. Participating agencies will be expected to assist H-GAC in carrying out all performance measures established in the grant, including fulfilling the law enforcement objectives by implementing the Operational Plan contained in this Grant Agreement.
  
- D. Participating agencies will be expected to submit all required reports to H-GAC fully completed with the most current information, and within the required times, as defined in the agency's Agreement with H-GAC and as required by TxDOT. This includes reporting to H-GAC on progress, achievements, and problems in post-operational Performance Reports and attaching necessary source documentation to support all costs claimed in Requests for Reimbursement (RFR).

- E. Participating agencies will be expected to attend H-GAC and TxDOT grant management training, when required.
- F. Participating agencies will be expected to attend meetings according to the following:
  - 1. H-GAC will arrange for Task Force meetings in order to meet with participating agencies prior to an enforcement event to discuss procedures, protocols, and operational specifics relating to the event (e.g. enforcement area determination, intake facility locations, etc.)
  - 2. H-GAC will arrange for Task Force meetings to meet with participating agencies to present status of activities and to discuss problems and the schedule for the following enforcement event's work.
  - 3. H-GAC's project director or other appropriate qualified persons will be available to represent participating agencies at meetings requested by the TxDOT.
- G. Participating agencies will be expected to support grant enforcement efforts with public information and education (PI&E) activities. Salaries being claimed for PI&E activities must be included in the budget.
- H. Participating agencies must maintain verification that all expenses, including wages or salaries, for which reimbursement is requested is for work exclusively related to this project.
- I. Participating agencies, to comply with TxDOT matching fund requirements, will supply the following information (if applicable) associated with the time worked by agency personnel:
  - 1. Retirement match paid by agency
  - 2. Workers Compensation insurance
  - 3. Social Security Tax
  - 4. Medicare Tax
  - 5. Health Insurance
  - 6. Vehicle Mileage for shift
  - 7. Indirect Costs
  - 8. Administrative License Revocation or Court Hearings
- J. Participating agencies will be expected to provide information about any cases either contested in court or brought to an Administrative License Revocation (ALR) hearing, including the amount of time an officer spent in court or in a hearing and value of that associated time.
- K. Participating agencies will be expected to ensure that this grant will in no way supplant (replace) funds from other sources. Supplanting refers to the use of federal funds to support personnel or any activity already supported by local or state funds, or other sources of agency revenue.

- L. Participating agencies will be expected to ensure that each officer working on the STEP project will complete an officer's daily report form. The form should include at a minimum: name, date, badge or identification number, mileage (including starting and ending mileage), hours worked, type of citation issued or arrest made, officer and supervisor signatures. Each officer will need to complete an overtime slip from his or her agency as well.
- M. Participating agencies will be required to identify a supervising officer for each shift being worked by the agency.
- N. Participating agencies will be expected to ensure that no officer above the rank of Lieutenant (or equivalent title) will be reimbursed for enforcement duty, unless the participating agency received specific written authorization from both H-GAC and TxDOT, through eGrants system messaging, prior to incurring costs.
- O. Participating agencies must submit a summary reimbursement request form to H-GAC within seven days of the end of the enforcement weekend for reimbursement. With this reimbursement request form shall be attached all of the agency's daily report forms, copies of overtime slips, and copies of any arrest activity during the shift. The reimbursement submission must be certified by the agency's financial officer. Failure to submit this information in a timely manner will hold up reimbursements for all participating agencies.
- P. Participating agencies may work additional STEP enforcement hours on holidays or special events not covered under the Operational Plan. However, additional work must be approved in writing by H-GAC and TxDOT, through eGrants system messaging, prior to enforcement. Additional hours must be reported in the Performance Report for the time period for which the additional hours were worked.
- Q. An enforcement shift shall be no longer than eight (8) hours. Shift length will be determined prior to the shift. However, if an officer makes a STEP-related arrest during the shift, but does not complete the arrest before the shift is scheduled to end, the officer can continue working under the grant to complete that arrest.
- R. Participating agencies with a traffic unit will utilize traffic personnel for this grant primarily, unless such personnel are unavailable for assignment.
- S. Participating agencies should have a safety belt use policy. If a participating agency does not have a safety belt use policy in place, a policy should be implemented, and a copy maintained for verification during the grant year.
- T. Officers working DWI enforcement must be trained in the National Highway Traffic Safety Administration/International Association of Chiefs of Police Standardized Field Sobriety Testing (SFST). In the case of a first year subgrantee, the officers must be

trained, or scheduled to be SFST trained, by the end of the grant year. For second or subsequent year grants, all officers working DWI enforcement must be SFST trained.

- U. Participating agencies should have a procedure in place for contacting and using drug recognition experts (DREs) when necessary.
- V. Participating agencies will be expected to follow its own policies and procedures, as well as to enforce and comply with all federal, state, and local laws and regulations.
- W. This grant is a multi-agency effort, requiring all participants to make a diligent effort to patrol and apprehend offenders. Failure of an officer to do so may result in the overall non-achievement of goals, jeopardizing the future ability of being awarded similar grants in the future. If it is deemed that an officer is not producing results, that officer may be denied future shifts during the grant period.



**HOUSTON-GALVESTON AREA COUNCIL  
GENERAL PROVISIONS  
INTERGOVERNMENTAL AGREEMENT**

This Intergovernmental Agreement is made and entered into this 1st day of November, 2012, by and between the Houston-Galveston Area Council, hereinafter referred to as H-GAC, having its principal place of business at 3555 Timmons Lane, Suite 120, Houston, Texas 77027 and The City of Freeport, hereinafter referred to as the Contractor, having its principal place of business at 200 West Second Street, Freeport, Texas 77541.

**WITNESSETH:**

**WHEREAS**, H-GAC hereby engages the Contractor to perform certain services in accordance with the specifications of the Agreement; and

**WHEREAS**, the Contractor has agreed to perform such services in accordance with the specifications of the Agreement;

**NOW, THEREFORE**, H-GAC and the Contractor do hereby agree as follows:

**ARTICLE 1 LEGAL AUTHORITY**

The Contractor warrants and assures H-GAC that it possesses adequate legal authority to enter into this Agreement. The Contractor's governing body, where applicable, has authorized the signatory official(s) to enter into this Agreement and bind the Contractor to the terms of this Agreement and any subsequent amendments hereto.

**ARTICLE 2 APPLICABLE LAWS**

The Contractor agrees to conduct all activities under this Agreement in accordance with all applicable rules, regulations, directives, standards, ordinances and laws in effect or promulgated during the term of this Agreement. Such standards and laws shall include, to the extent applicable, the Uniform Grant and Contract Management Standards ("UGMS") promulgated by the State of Texas and the state and federal statutes referenced therein.

**ARTICLE 3 INDEPENDENT CONTRACTOR**

The execution of this Agreement and the rendering of services prescribed by this Agreement do not change the independent status of H-GAC or the Contractor. No provision of this Agreement or act of H-GAC in performance of the Agreement shall be construed as making the Contractor the agent, servant or employee of H-GAC, the State of Texas or the United States Government. Employees of the Contractor are subject to the exclusive control and supervision of the Contractor. The Contractor is solely responsible for employee payrolls and claims arising therefrom. The Contractor shall notify H-GAC of the threat of lawsuit or of any actual suit filed against the Contractor pertaining to this Agreement or which would adversely affect the contractor's ability to perform services under this Agreement.

**ARTICLE 4 WHOLE AGREEMENT**

The General Provisions, Special Provisions and Attachments, as provided herein, constitute the complete agreement between the parties hereto, and supersede any and all oral and written agreements between the parties relating to matters herein. Except as otherwise provided herein, this Agreement cannot be modified without written consent of the parties.

**ARTICLE 5 SCOPE OF SERVICES**

The services to be performed by the Contractor are outlined in the Special Provisions of this Agreement.

**ARTICLE 6 PERFORMANCE PERIOD**

This Agreement shall be performed during the period which begins **December 1, 2012** and ends **September 30, 2013**. The work under this Agreement shall begin immediately following a formal Notice to Proceed.

**ARTICLE 7 REPORTING REQUIREMENTS**

Reporting requirements are set forth in the Special Provisions of this Agreement. If the Contractor fails to submit to H-GAC in a timely and satisfactory manner any report required by this Agreement, or otherwise fails to satisfactorily render performances hereunder, H-GAC may withhold payments otherwise due and owing the Contractor hereunder. If H-GAC withholds such payments, it shall notify the Contractor of its decision and the reasons therefor. Payments withheld pursuant to this Article may be held by H-GAC until such time as the delinquent obligations for which funds are withheld are fulfilled by the Contractor. The Contractor's failure to timely submit any report may also be considered cause for termination of this Agreement.

**ARTICLE 8 PAYMENTS**

The Contractor agrees that payments are predicated upon properly documented and verified proof of performance delivered and costs incurred by the Contractor in accordance with the terms of this Agreement and shall be paid in accordance with the Compensation Schedule in the Special Provisions.

**ARTICLE 9 NON FUNDING CLAUSE**

Each payment obligation of H-GAC created by this Agreement is conditioned upon the availability of state or federal funds appropriated or allocated for the payment of such obligations. H-GAC shall not be otherwise obligated or liable for any future payments due or for any damages as a result of interruption of payment or termination under this Article.

**ARTICLE 10 INSURANCE**

The Contractor shall maintain insurance coverage for work performed or services rendered under this Agreement as specified in the Special Provisions.

**ARTICLE 11 REPAYMENTS**

The Contractor understands and agrees that it shall be liable to repay and shall repay upon demand to H-GAC any amounts determined by H-GAC, its independent auditors, or any agency of state or federal government to have been paid in violation of the terms of this Agreement.

**ARTICLE 12 SUBCONTRACTS**

Except as may be set forth in the Special Provisions, the Contractor agrees not to subcontract, assign, transfer, convey, sublet or otherwise dispose of this Agreement or any right, title, obligation or interest it may have therein to any third party without prior written approval of H-GAC.

The Contractor acknowledges that H-GAC is not liable to any subcontractor(s) of the Contractor.

The Contractor shall ensure that the performance rendered under all subcontracts shall result in compliance with all the terms and provisions of this Agreement as if the performance rendered was rendered by the Contractor.

**ARTICLE 13 AUDIT**

As a recipient of state or federal assistance through this Agreement, the Contractor acknowledges that it is subject to the Single Audit Act of 1996, P.L. 98-502, (hereinafter referred to as "Audit Act"), OMB Circular No. A-133, and the State of Texas Single Audit Circular incorporated in UGMS.

The Contractor shall have an audit made in accordance with the Single Audit, requirements of the most recently adopted UGMS and OMB Circular A-133 for any of its fiscal years in which Contractor expends more than \$500,000 in state or federal financial assistance.

The Contractor will provide H-GAC a copy of the single audit, including management letter and reporting package required by federal and state rules within 30 days after receipt of the auditor's report, or nine months after the end of the audit period.

H-GAC reserves the right to conduct or cause to be conducted an independent audit of all funds received under this Agreement which may be performed by the local government audit staff, a certified public accountant firm, or other auditors as designated by the H-GAC. Such audit will be conducted in accordance with State law, regulations, and policy, and generally accepted auditing standards and established procedures and guidelines of the reviewing or audit agency(ies).

The Contractor understands and agrees that the Contractor shall be liable to the H-GAC for any costs disallowed or overpayment as a result of audit or inspection of records kept by the Contractor on work performed under this Agreement.

**ARTICLE 14 EXAMINATION OF RECORDS**

The Contractor shall maintain during the course of the work, complete and accurate records of all of the Contractor's costs and documentation of items which are chargeable to H-GAC under this Agreement. H-GAC, through its staff or designated public accounting firm, the State of Texas and the United State Government, shall have the right at any reasonable time to inspect, copy and audit those records on or off the premises by authorized representatives of its own or any public accounting firm selected by it. The right of access to records is not limited to the required retention period, but shall last as long as the records are retained. Failure to provide access to records may be cause for termination of the Agreement. The records to be thus maintained and retained by the Contractor shall include (without limitation): (1) personnel and payroll records, including social security numbers and labor classifications, accounting for total time distribution of the Contractor's employees working full or part time on the work, as well as cancelled payroll checks, signed receipts for payroll payments in cash, or other evidence of disbursement of payroll payments; (2) invoices for purchases, receiving and issuing documents, and all other unit inventory records for the Contractor's stocks or capital

items; and (3) paid invoices and cancelled checks for materials purchased and for subcontractors' and any other third parties' charges.

The Contractor further agrees to include in all its subcontracts permitted pursuant to Article 12 hereof, a provision to the effect that the subcontractor agrees that H-GAC and its duly authorized representatives shall, until the expiration of four (4) years after final payment under the subcontract or until all audit findings have been resolved, have access to and the right to examine and copy any directly pertinent books, documents, papers, invoices and records of such subcontractor involving transactions relating to the subcontract.

#### **ARTICLE 15 RETENTION OF RECORDS**

The Contractor shall maintain all records pertinent to this Agreement, including but not limited to those records enumerated in Article 14, and all other financial, statistical, property, participant records, and supporting documentation for a period of no less than four (4) calendar years from the later of the date of acceptance of the final contract closeout or the date of the final audit required under Article 13 of this Agreement. If any litigation, claim, negotiation, audit or other action involving the records has been started before the expiration of the retention period, the records shall be retained until completion of the action and resolution of all issues which arise from it, or until the end of the regular four (4) year period, whichever is later.

#### **ARTICLE 16 CHANGES AND AMENDMENTS**

Any alterations, additions, or deletions to the terms of this Agreement which are required by changes in federal law or regulations are automatically incorporated into this Agreement without written amendment hereto, and shall become effective on the date designated by such law or regulation; provided if the Contractor may not legally comply with such change, the contractor may terminate its participation herein as authorized by Article 17.

H-GAC may, from time to time, require changes in the scope of the services of the Contractor to be performed hereunder. Such changes that are mutually agreed upon by and between H-GAC and the Contractor in writing shall be incorporated into this Agreement.

#### **ARTICLE 17 TERMINATION PROCEDURES**

The Contractor acknowledges that this Agreement may be terminated under the following circumstances:

##### **A. Convenience**

H-GAC may terminate this Agreement in whole or in part without cause at any time by written notice by certified mail to the Contractor whenever for any reason H-GAC determines that such termination is in the best interest of H-GAC. Upon receipt of notice of termination, all services hereunder of the Contractor and its employees and subcontractors shall cease to the extent specified in the notice of termination. In the event of termination in whole, the Contractor shall prepare a final invoice within 30 day days of such termination reflecting the services actually performed which have not appeared on any prior invoice, such invoice shall be satisfactory to the Executive Director or his designee. H-GAC agrees to pay the Contractor, in accordance with the terms of the Agreement, for services actually performed and accruing to the benefit of H-GAC, less payment of any compensation previously paid.

The Contractor may cancel or terminate this Agreement upon thirty (30) days written notice by certified mail to H-GAC. The Contractor may not give notice of cancellation after it has received notice of default from H-GAC. In the event of such termination prior to completion of the Agreement provided for herein, H-GAC

agrees to pay services herein specified on a prorated basis for work actually performed and invoiced in accordance with the terms of this Agreement, less payment of any compensation previously paid.

**B. Default**

H-GAC may, by written notice of default to the Contractor, terminate the whole or any part of the Agreement in any one of the following circumstances:

- (1) If the Contractor fails to perform the services herein specified within the time specified herein or any extension thereof; or
- (2) If the Contractor fails to perform any of the other provisions of this Agreement for any reason whatsoever, or so fails to make progress or otherwise violates the Agreement that completion of the services herein specified within the agreement term is significantly endangered, and in either of these two instances does not cure such failure within a period of ten (10) days (or such longer period of time as may be authorized by H-GAC in writing) after receiving written notice by certified mail of default from H-GAC.

In the event of such termination, all services of the Contractor and its employees and subcontractors shall cease and the Contractor shall prepare a final invoice reflecting the services actually performed pursuant to the Agreement which have not appeared on any prior invoice. Such invoice must be satisfactory to the Executive Director of H-GAC or his designee. H-GAC agrees to pay the Contractor, in accordance with the terms of this Agreement, for services actually performed and accruing to the benefit of H-GAC as reflected on said invoice, less payment of any compensation previously paid and less any costs or damages incurred by H-GAC as a result of such default, including incremental costs that H-GAC will incur to have the Agreement completed by a person other than the contractor.

**ARTICLE 18 SEVERABILITY**

All parties agree that should any provision of this Agreement be determined to be invalid or unenforceable, such determination shall not affect any other term of this Agreement, which shall continue in full force and effect.

**ARTICLE 19 COPYRIGHTS**

The state or federal awarding agency and H-GAC reserve a royalty-free, nonexclusive, and irrevocable license to reproduce, publish or otherwise use, and to authorize others to use, for state or federal government or H-GAC purposes:

- (a) The copyright of all maps, data, reports, research or other work developed under this Agreement; and
- (b) Any copyrights or rights of use to copyrighted material which the Contractor purchases with funding under this Agreement. All such data and material shall be furnished to H-GAC on request.

**ARTICLE 20 OWNERSHIP OF MATERIALS**

Except as may be specified in the Special Provisions, all data, reports, research, etc., developed by the Contractor as a part of its work under this Agreement shall become the property of the H-GAC upon completion of this Agreement, or in the event of termination or cancellation hereof, at the time of payment under ARTICLE 8 for work performed. All such data and material shall be furnished to H-GAC on request.

**ARTICLE 21 FORCE MAJEURE**

To the extent that either party to this Agreement shall be wholly or partially prevented from the performance within the term specified of any obligation or duty placed on such party by reason of or through strikes, stoppage of labor, riot, fire, flood, acts of war, insurrection, accident, order of any court, act of God, or specific cause reasonably beyond the party's control and not attributable to its neglect or nonfeasance, in such event, the time for the performance of such obligation or duty shall be suspended until such disability to perform is removed. Determination of force majeure shall rest solely with the H-GAC.

**ARTICLE 22 NON-DISCRIMINATION AND EQUAL OPPORTUNITY**

The Contractor agrees to comply with all federal statutes relating to nondiscrimination. These include but are not limited to: (a) Title VI of the Civil Rights Act of 1964 (P.L. 88-352) which prohibits discrimination on the basis of race, color or national origin; (b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§ 1681-1683, and 1685-1686), which prohibits discrimination on the basis of sex; (c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794), which prohibits discrimination on the basis of handicaps and the Americans with Disabilities Act of 1990; (d) the Age Discrimination Act of 1974, as amended (42 U.S.C. §§ 6101-6107), which prohibits discrimination on the basis of age; (e) the Drug Abuse Office and Treatment Act of 1972 (P.L. 92-255), as amended, relating to nondiscrimination on the basis of drug abuse; (f) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91-616), as amended, relating to the nondiscrimination on the basis of alcohol abuse or alcoholism; (g) §§ 523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. 290 dd-3 and 290 ee-3), as amended, relating to confidentiality of alcohol and drug abuse patient records; (h) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. § 3601 et seq.), as amended, relating to nondiscrimination in the sale, rental or financing of housing; (i) any other nondiscrimination provisions in any specific statute(s) applicable to any Federal funding for this Agreement; and (j) the requirements of any other nondiscrimination statute(s) which may apply to this Agreement.

**ARTICLE 23 CONFLICT OF INTEREST**

No officer, member or employee of the Contractor or subcontractors, no member of the governing body of the Contractor, and no other public officials of the Contractor who exercise any functions or responsibilities in the review or approval of this Agreement, shall participate in any decision relating to this Agreement which affects his or her personal interest, or shall have any personal or pecuniary interest, direct or indirect, in this Agreement.

**ARTICLE 24 POLITICAL ACTIVITY; LOBBYING**

No funds provided under this Agreement may be used in any way to attempt to influence in any manner a member of Congress to favor or oppose any legislation or appropriation by Congress, or for lobbying with state or local legislators. The Contractor, if a recipient of federal assistance exceeding \$100,000 through an H-GAC subcontract, will comply with section 319, Public Law 101-121 (31 U.S.C. 1352).

**ARTICLE 25 SECTARIAN INVOLVEMENT PROHIBITED**

The Contractor shall ensure that no funds under this Agreement are used, either directly or indirectly, in the support of any religious or anti-religious activity, worship, or instruction.

**ARTICLE 26 CRIMINAL PROVISIONS AND SANCTIONS**

The Contractor agrees that it will perform the Agreement activities in conformance with safeguards against fraud and abuse as set forth by the H-GAC, the State of Texas, and the acts and regulations of the funding entity. The Contractor agrees to promptly notify H-GAC of suspected fraud, abuse or other criminal activity through the filing of a written report within twenty-four (24) hours of knowledge thereof and to notify H-GAC of any accident or incident requiring medical attention arising from its activities under this Agreement within twenty-four (24) hours of such occurrence.

Theft or willful damage to property on loan to the Contractor from H-GAC, if any, shall be reported to local law enforcement agencies and H-GAC within two (2) hours of discovery of any such act.

The Contractor further agrees to cooperate fully with H-GAC, local law enforcement agencies, the State of Texas, the Federal Bureau of Investigation and any other duly authorized investigative unit in carrying out a full investigation of all such incidents.

#### **ARTICLE 27 TITLES NOT RESTRICTIVE**

The titles assigned to the various Articles of this Agreement are for convenience only. Titles shall not be considered restrictive of the subject matter of any Article, or part of this Agreement.

#### **ARTICLE 28 ACKNOWLEDGEMENT OF FUNDING SOURCE**

The Contractor shall give credit to Federal Transit Administration (FTA), Federal Highway Administration (FHWA), Texas Department of Transportation (TxDOT), National Highway Traffic Safety Administration (NHTSA) and H-GAC as the funding source for this Agreement in all oral presentations, written documents, publicity, and advertisements regarding any of the Contractor's activities which arise from this Agreement.

#### **ARTICLE 29 DISPUTES**

Any and all disputes concerning questions of fact or of law arising under this Agreement which are not disposed of by agreement shall be decided by the Executive Director of H-GAC or his designee, who shall reduce his decision to writing and provide notice thereof to the Contractor. The decision of the Executive Director or his designee shall be final and conclusive unless, within thirty (30) days from the date of receipt of such copy, the Contractor requests a rehearing from the Executive Director of H-GAC. In connection with any rehearing under this Article, the Contractor shall be afforded an opportunity to be heard and offer evidence in support of its position. The decision of the Executive Director after any such rehearing shall be final and conclusive. The Contractor may, if it elects to do so, appeal the final and conclusive decision of the Executive Director to a court of competent jurisdiction. Pending final decision of a dispute hereunder, the Contractor shall proceed diligently with the performance of the Agreement and in accordance with H-GAC's final decision.

#### **ARTICLE 30 GOVERNING LAW; VENUE**

This Agreement shall be governed by the laws of the State of Texas. Venue and jurisdiction of any suit or cause of action arising under or in connection with the Agreement shall lie exclusively in Harris County, Texas, unless the laws of the State of Texas specifically establish venue in some other county.

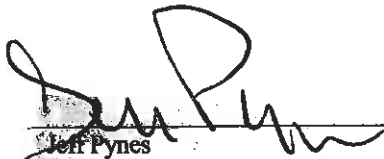
#### **ARTICLE 31 ORDER OF PRIORITY**

In the case of any conflict between the General Provision, the Special Provisions, and Attachments to this Agreement, the following order of priority shall be utilized: Special Provision, General Provisions, and Attachments.

H-GAC and the Contractor have executed the Agreement as of the date first written above.

  
\_\_\_\_\_  
Jack Steele, Executive Director  
Houston-Galveston Area Council

12-19-12  
\_\_\_\_\_  
Date

  
\_\_\_\_\_  
Jeff Pynes  
City Manager

10/29/12  
\_\_\_\_\_  
Date



## SPECIAL PROVISIONS

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January 29, 2013

Mr. Jeff Pynes  
City Manager  
City of Freeport  
200 West 2<sup>nd</sup> Street  
Freeport, TX 77541

RE: 200 Block, East Brazos Right-of-Way, Tract XXII

Dear Mr. Pynes,

I have been managing the property at 430 East 2<sup>nd</sup> street that is owned by Briarwood Holdings, LLC and is adjacent to the subject R-O-W that is owned by the city of Freeport. We are in negotiations with I.C.S. General Contractors to lease the building, but they will need the property on the West side of the building to utilize the property efficiently. They plan to employ up to 40 people in their operations once the renovations to building are completed.

Briarwood Holdings, LLC is ready to purchase the subject property and will pay the appraised value of \$5,816.00 in cash and will enter into a real estate contract upon approval of the sale by the city of Freeport. Briarwood Holdings, LLC will want to purchase title insurance at their expense upon transfer of title by special warranty deed from the city of Freeport.

Please let me know if you have any questions or need additional information to complete the first step since we are on the agenda of the council meeting scheduled for February 4<sup>th</sup>, 2013 and we do not want to delay this process.

Sincerely,

  
Greg Flaniken

RECEIVED

JAN 30 2013

PROPERTY MGMT

Pg. 143

*Residential \* Commercial \* Sales & Leasing \* Property Management*



PROPERTY MANAGEMENT

Jeff Pynes  
Chief Executive Officer  
City Manager  
January 27, 2013

Gilbert Arispe

re: 200 Block, East Brazos Right-of-Way, Tract XXII

Please place the following item on the February 3, 2013, City Council agenda:

Discuss / consider closing, abandoning and selling 0.142 acres of East Brazos Street right-of-way, out of T. F. McKinney Labor No. 6, Abstract 87 and S.F. Austin 1/3 League, Abstract 28, 200 Block, East Brazos right-of-way.

Freeport Waterfront LLP has requested to purchase of the above referenced property.

Attached find the following documnts:

- a. Survey and field notes
- b. Appraisal

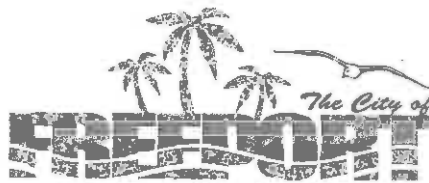
Appraised value of property for sale as follows:

a. Appraised value	\$5,600.00
b. Deed preparation	185.00
c. Filing fee	31.00
	<b><u>\$5,816.00</u></b>

  
N C Hickey  
Property

Attach

/s



WHERE FUN HAPPENS

www.freeport.tx.us



THIS PLAT WAS PREPARED FOR THE EXCLUSIVE USE OF THE PERSONS, OR ENTITY NAMED IN THE CERTIFICATION HEREON, SAID CERTIFICATION DOES NOT EXTEND TO ANY UNNAMED PERSON WITHOUT AN EXPRESS RECERTIFICATION BY THE SURVEYOR NAMING SAID PERSON.

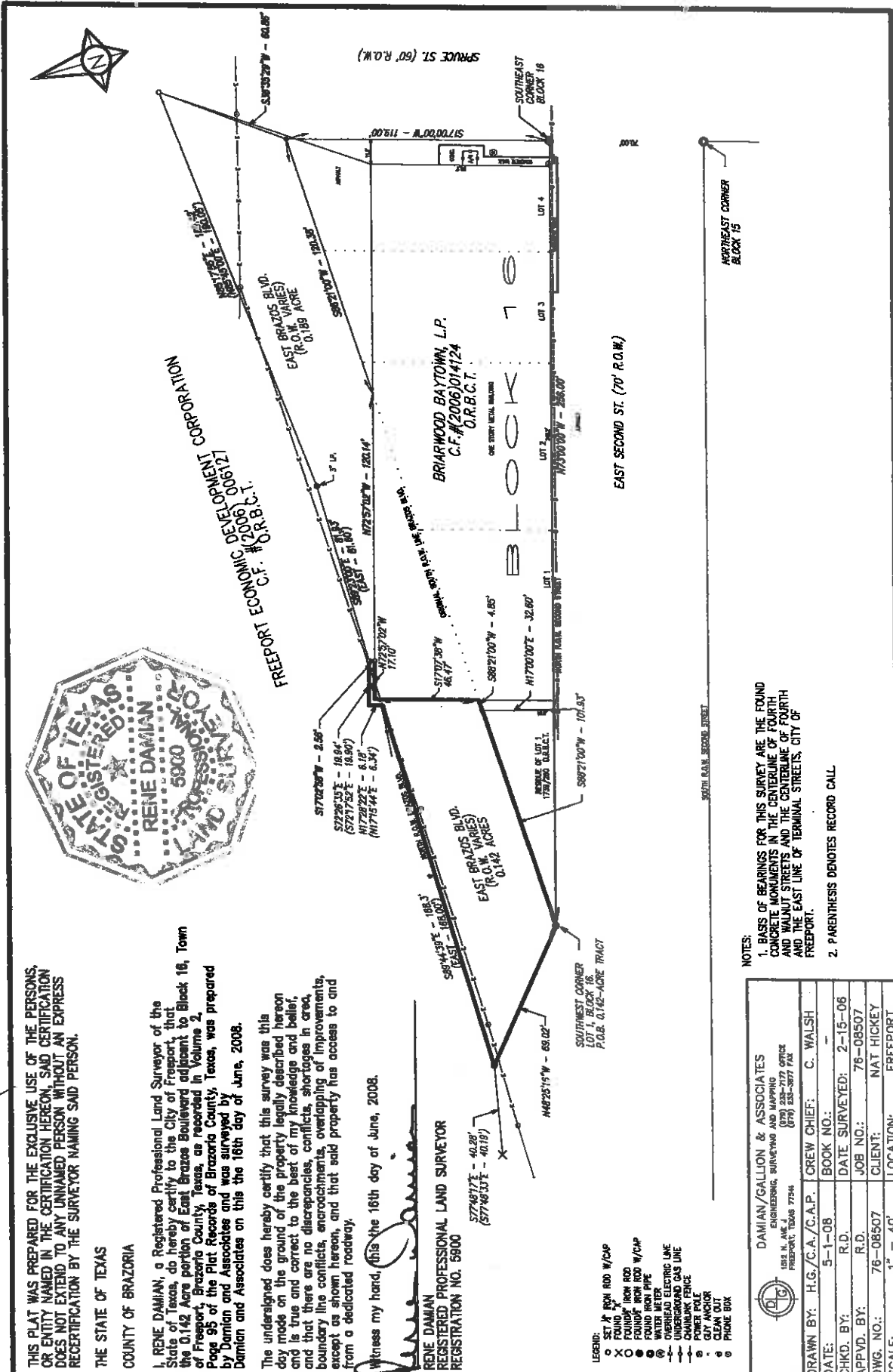
THE STATE OF TEXAS  
COUNTY OF BRAZORIA

I, RENE DAMIAN, a Registered Professional Land Surveyor of the State of Texas, do hereby certify to the City of Freeport, that the 0.142 Acre portion of East Brazos Boulevard adjacent to Block 16, Town of Freeport, Brazoria County, Texas, as recorded in Volume 2, Page 95 of the Plat Records of Brazoria County, Texas, was prepared by Damian and Associates and was surveyed by  
Damian and Associates on this the 16th day of June, 2008.

The undersigned does hereby certify that this survey was this day made on the ground of the property legally described hereon and is true and correct to the best of my knowledge and belief, and that there are no discrepancies, conflicts, shortages in area, boundary line conflicts, encroachments, overlapping of improvements, except as shown hereon, and that said property has access to and from a dedicated roadway.

Witness my hand, this the 16th day of June, 2008.

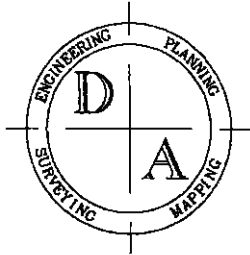
RENE DAMIAN  
REGISTERED PROFESSIONAL LAND SURVEYOR  
REGISTRATION NO. 5800



- LEGEND:
- SET #1 IRON ROD W/CAP
  - FOUND IRON ROD
  - FOUND IRON ROD W/CAP
  - FOUND IRON PIPE
  - WATER METER
  - OVERHEAD ELECTRIC LINE
  - UNDERGROUND GAS LINE
  - CHAINLINK FENCE
  - GUY ANCHOR
  - CLEAN OUT
  - PHONE BOX

DAMIAN/GALLION & ASSOCIATES ENGINEERING, SURVEYING AND MAPPING 1815 N. W. 10TH STREET, SUITE 100 FREEPORT, TEXAS 77541 (409) 333-3077 FAX	
DRAWN BY:	H.G./C.A./C.A.P. GREW CHIEF: C. WALSH
DATE:	5-1-08 BOOK NO.:
CHKD. BY:	R.D. DATE SURVEYED: 2-15-06
APPVD. BY:	R.D. JOB NO.: 76-08507
DWG. NO.:	76-08507 CLIENT: NAT HICKEY
SCALE:	1" = 40' LOCATION: FREEPORT

NOTES:  
1. BASIS OF BEARINGS FOR THIS SURVEY ARE THE FOUND CONCRETE MONUMENTS IN THE CENTERLINE OF FOURTH AND WALNUT STREETS AND THE CENTERLINE OF FOURTH AND THE EAST LINE OF TERMINAL STREETS, CITY OF FREEPORT.  
2. PARENTHESIS DENOTES RECORD CALL



**DAMIAN & ASSOCIATES, INC.**  
ENGINEERING, PLANNING, SURVEYING AND MAPPING  
1512 N. AVENUE J  
FREEPORT, TX 77541  
BUSINESS (979) 233-7177  
FAX (979) 233-3877

**0.142-ACRE (EAST BRAZOS BOULEVARD. TRACT)**

OUT OF THE T.F. MCKINNEY LABOR NO. 6, ABSTRACT NO. A-87  
AND  
OUT OF THE S.F. AUSTIN 1/3 LEAGUE, ABSTRACT NO. A-28  
CITY OF FREEPORT,  
COUNTY OF BRAZORIA, TEXAS  
JUNE 13, 2008

BEING a 0.142-acre portion of East Brazos Boulevard adjoining the Briarwood Baytown, L.P. Tract, out of Block 16 of the Town of Freeport, as recorded in Clerk File #(2006) 014124 of the Official Records of Brazoria County, Texas to the East, the Freeport Economic Development Corporation (FEDC) Tract as recorded in Clerk File #(2006) 006127 of the Official Records of Brazoria County, Texas to the North, the Midge Blakely Tract, out of Block 16 of the Town of Freeport, as recorded in Volume 1739 Page 260 of the Deed Records of Brazoria County, Texas to the South, and the East Second right-of-way to the West, and being described by metes and bounds as follows:

Beginning at a found ½" iron rod on the southerly right-of-way line of East Brazos Boulevard, said iron rod being the west corner of the triangular shaped Block 16 of the Town of Freeport, Brazoria County, Texas as recorded in Volume 2, Page 95 of the Plat Records of Brazoria County, Texas, and said iron rod being the POINT OF BEGINNING of this tract;

THENCE North 48 degrees 25 minutes 16 seconds West, a distance of 69.02 feet to a found ½" iron rod on the northerly right-of-way line of East Brazos Boulevard, and being on the southerly property line of said FEDC tract, to a point for corner;

THENCE South 89 degrees 44 minutes 39 seconds East, following the northerly right-of-way of East Brazos Boulevard being coincident with the southerly property line of the FEDC tract, a distance of 168.30 feet to a found ½" iron rod with cap;

THENCE North 17 degrees 28 minutes 22 seconds East, a distance of 6.18 feet to a found ½" iron rod with cap;

THENCE South 72 degrees 26 minutes 35 seconds East, a distance of 19.94 feet to a found ½" iron rod with cap on the northerly right-of-way of East Brazos Boulevard;

THENCE South 17 degrees 02 minutes 58 seconds West, a distance of 2.58 feet to a found ½" iron rod with cap on the northerly property line of said Briarwood Baytown, L.P. tract;

THENCE North 72 degrees 57 minutes 02 West, following the northerly property line of said Briarwood Baytown, L.P. tract, a distance of 17.10 feet to a point for corner;

THENCE South 17 degrees 07 minutes 38 seconds West, following the westerly property line of said Briarwood Baytown, L.P. tract a distance of 46.47 feet to a point for corner on the southerly right-of-way of East Brazos Boulevard;

0.142-ACRE TRACT (EAST BRAZOS BOULEVARD)

JUNE 13, 2008

PAGE 2

THENCE South 88 degrees 21 minutes 00 seconds West, following the southerly right-of-way of East Brazos Boulevard, a distance of 4.85 feet to a found ½" iron rod with cap, being the northerly corner of said Midge Blakely tract;

CONTINUING South 88 degrees 21 minutes 00 seconds West, following the southerly right-of-way of East Brazos Boulevard being coincident with the northerly property line of the Midge Blakely tract, a distance of 101.93 feet to the POINT OF BEGINNING, said tract containing 0.142-acres more or less as shown on the accompanying plat.



RENE DAMIAN  
REGISTERED PROFESSIONAL LAND SURVEYOR  
REGISTRATION NO. 5900



**APPRAISAL OF REAL PROPERTY**

**LOCATED AT:**

E. Brazos River Road @ Poplar  
East Brazos Blvd. right-of-way, Tract XXII  
Freeport, Tx 77541

**FOR:**

City of Freeport  
200 West 2nd Street  
Freeport, Tx 77541

**AS OF:**

January 24, 2013

**BY:**

Joseph A. Fischer

Joseph A. Fischer & Co., Inc.  
54 White Oak Ct.  
Lake Jackson, Texas 77566

LAND APPRAISAL REPORT

Summary Appraisal Report

File No. 9102

Borrower N/A
Property Address E. Brazos River Road @ Poplar
City Freeport County Brazoria State Tx Zip Code 77541
Legal Description East Brazos Blvd. right-of-way, Tract XXII
Sale Price \$ N/A Date of Sale N/A Loan Term N/A yrs. Property Rights Appraised Fee Leasehold De Minimis PUD
Actual Real Estate Taxes \$ N/A (yr) Loan charges to be paid by seller \$ N/A Other sales concessions N/A
Lender/Client City of Freeport Address 200 West 2nd Street, Freeport, Tx 77541
Occupant N/A Appraiser Joseph A. Fischer Instructions to Appraiser

Location Urban Suburban Rural
Built Up Over 75% 25% to 75% Under 25%
Growth Rate Fully Dev. Rapid Steady Slow
Property Values Increasing Stable Declining
Demand/Supply Shortage In Balance Oversupply
Marketing Time Under 3 Mos. 4-6 Mos. Over 6 Mos.
Present Land Use 80% 1 Family 3% 2-4 Family 2% Apts. 0% Condo 6% Commercial
Change in Present Land Use Not Likely Likely (\*) Taking Place (\*)
Predominant Occupancy Owner Tenant 10% Vacant
Single Family Price Range \$ 10,000 to \$ 150,000 Predominant Value \$ 40,000
Single Family Age 55 yrs. to 75 yrs. Predominant Age 65 yrs.

Table with 4 columns: Good, Avg, Fair, Poor. Rows include Employment Stability, Convenience to Employment, Convenience to Shopping, Convenience to Schools, Adequacy of Public Transportation, Recreational Facilities, Adequacy of Utilities, Property Compatibility, Protection from Detrimental Conditions, Police and Fire Protection, General Appearance of Properties, Appeal to Market.

Comments including those factors, favorable or unfavorable, affecting marketability (e.g. public parks, schools, view, noise): Freeport is one of four small towns (population 13,000) making up the "Brazosport" area 60 miles south of Houston. The subject neighborhood is just east of the former central business district. Surrounding land use a mixture of retail, offices, light industrial and residential. Employment centers, shopping and all levels of public schools are within ten miles.

Dimensions Approx 69' x 168' x 46' x 107' = 6,186 Sq. Ft. or Acres
Zoning classification W-4 Present Improvements do do not conform to zoning regulations
Highest and best use Present use Other (specify)
Elec. Gas Water San. Sewer Underground Elect. & Tel.
OFF SITE IMPROVEMENTS: Street Access, Surface, Maintenance, Storm Sewer, Sidewalk, Curb/Gutter, Street Lights
Topo: See comments
Size: Typical for area
Shape: Irregular
View: Residential/Commercial/Industrial
Drainage: Appears adequate
Is the property located in a HUD identified Special Flood Hazard Area? No Yes

Comments (favorable or unfavorable including any apparent adverse easements, encroachments, or other adverse conditions): The site is an undeveloped street right-of-way. It is zoned W-4 Waterfront Residential. The site is adjacent to the bank of the river protection levee. The property is irregularly shaped and comes to a point on W. 2nd Street. Access is via Poplar Street which is shell road at this point. The highest and best use of the tract would be as additional yard area for an adjacent property.

The undersigned has reviewed three recent sales of properties most similar and proximate to subject and has considered these in the market analysis. The description includes a dollar adjustment reflecting market reaction to those items of significant variation between the subject and comparable properties. If a significant item in the comparable property is superior to or more favorable than the subject property, a minus (-) adjustment is made thus reducing the indicated value of subject; if a significant item in the comparable is inferior to or less favorable than the subject property, a plus (+) adjustment is made thus increasing the indicated value of the subject.

Table with columns: ITEM, SUBJECT PROPERTY, COMPARABLE NO. 1, COMPARABLE NO. 2, COMPARABLE NO. 3. Rows include Address, Proximity to Subject, Sales Price, Price SF, Data Source, Date of Sale and Time Adjustment, Location, Site/View, Shape, Sales or Financing Concessions, Net Adj. (Total), Indicated Value of Subject.

Comments on Market Data: Sales 1 and 2 are in close proximity to the subject property, but are west of Pine Street placing them within the original central business district of the City. As such, they have superior locations. Sales 3 and 4 are farther away, but each has a comparable location. Neither is on a major thoroughfare and both are surrounded by a mix of residential and commercial properties as is the the subject property. The subject tract is zoned residential, but that could be changed to a more appropriate commercial use. Overall, the locations and potential uses of Sales 3 and 4 are considered comparable to the subject site.

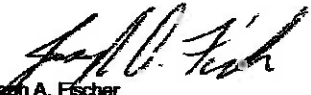
Final Reconciliation: The indicated values range is \$0.83 PSF to \$1.26 PSF. The median indicated value is \$0.96 PSF and the average value is \$1.00 PSF. The most reliance is given to Sales 3 and 4 since they have the most comparable locations. Hence, the indicated value for the subject tract is \$0.90 PSF, or 6,186 SF @ \$0.90 PSF = \$5,567, rounded to \$5,600.

I ESTIMATE THE MARKET VALUE AS DEFINED BY SUBJECT PROPERTY AS OF January 24 2013 to be \$ 5,600
Appraiser(s) Joseph A. Fischer
Review Appraiser (if applicable) Did Did Not Physically Inspect Property





**FIRREA / USPAP ADDENDUM**

<b>Lender/Client</b>	City of Freeport	<b>File No.</b>	9102
<b>Property Address</b>	E. Brazos River Road @ Poplar		
<b>City</b>	Freeport	<b>County</b>	Brazoria
<b>State</b>	Tx	<b>Zip Code</b>	77541
<b>Lender</b>	City of Freeport		
<b>Purpose</b>	The purpose of this appraisal is to estimate market value for a possible sale.		
<b>Scope of Work</b>	A field review of the subject property was made January 24, 2013 for the purpose of gathering information relevant to the property's value. The field review was limited to readily observable components only. Physical characteristics of the lot was obtained from a survey plat. Research for comparable sales included the appraiser's files and M.L.S. The compiled data was analyzed using the traditional direct sale comparison approach to value. Since the property is vacant land, the cost and income approaches were not applicable.		
<b>Intended Use / Intended User</b>	Intended Use: Possible sale.		
<b>Intended User(s)</b>	City of Freeport.		
<b>History of Property</b>	Current listing information: None.		
<b>Prior sale</b>	Research did not reveal a sale of the subject property or prior sale of any comparable within the past three years.		
<b>Exposure Time / Marketing Time</b>	See comments below.		
<b>Personal (non-rec'd) Transfers</b>	None.		
<b>Additional Comments</b>	<p><b>Exposure Time/Marketing Time -</b></p> <p>The period of time necessary to sell a property is referred to as the marketing time and occurs after the effective date of the appraisal. Exposure time occurs prior to the effective date of the appraisal and is the estimated time the subject property would have been exposed to the market prior to the hypothetical sale of the property on the effective date. Reasonable exposure time for the subject property is the same as the typical marketing time for the defined subject neighborhood on page 1 unless otherwise noted and assumes the property is properly priced and marketed in a professional manner.</p> <p>A look back time frame is used to research market conditions, comparable sales, rents, etc. Value is estimated by establishing the trend of the past and forecasting how, or if, that trend will continue in the immediate future. In this case, the market was researched for comparables over the past five years which goes back to the beginning of the 2008-2009 recession.</p>		
<b>Certification Supplement</b>	<ol style="list-style-type: none"> <li>1. This appraisal assignment was not based on a requested minimum valuation, a specific valuation, or an approval of a loan.</li> <li>2. My compensation is not contingent upon the reporting of a predetermined value or direction in value that favors the cause of the client, the amount of the value estimate, the attainment of a stipulated result or the occurrence of a subsequent event.</li> <li>3. I have performed no services, as an appraiser or in any other capacity, regarding the property that is the subject of this report within the three year period immediately preceding acceptance of this assignment.</li> </ol>		
<b>Appraiser:</b>	 Joseph A. Fischer		
<b>Signed Date:</b>	January 27, 2013		
<b>Certification or License #:</b>	1320173-G		
<b>Certification or License State:</b>	Tx	<b>Expires:</b>	03/31/2013
<b>Effective Date of Appraisal:</b>	January 24, 2013		
<b>Supervisory Appraiser:</b>	_____		
<b>Signed Date:</b>	_____		
<b>Certification or License #:</b>	_____		
<b>Certification or License State:</b>	_____	<b>Expires:</b>	_____
<b>Inspection of Subject:</b>	<input type="checkbox"/> Did Not <input type="checkbox"/> Exterior Only <input type="checkbox"/> Interior and Exterior		

**DEFINITION OF MARKET VALUE:** The most probable price which a property should bring in a competitive and open market under all conditions requisite to a fair sale, the buyer and seller, each acting prudently, knowledgeably and assuming the price is not affected by undue stimulus. Implicit in this definition is the consummation of a sale as of a specified date and the passing of title from seller to buyer under conditions whereby: (1) buyer and seller are typically motivated; (2) both parties are well informed or well advised, and each acting in what he considers his own best interest; (3) a reasonable time is allowed for exposure in the open market; (4) payment is made in terms of cash in U.S. dollars or in terms of financial arrangements comparable thereto; and (5) the price represents the normal consideration for the property sold unaffected by special or creative financing or sales concessions\* granted by anyone associated with the sale.

\* Adjustments to the comparables must be made for special or creative financing or sales concessions. No adjustments are necessary for those costs which are normally paid by sellers as a result of tradition or law in a market area; these costs are readily identifiable since the seller pays these costs in virtually all sales transactions. Special or creative financing adjustments can be made to the comparable property by comparisons to financing terms offered by a third party institutional lender that is not already involved in the property or transaction. Any adjustment should not be calculated on a mechanical dollar for dollar cost of the financing or concession but the dollar amount of any adjustment should approximate the market's reaction to the financing or concessions based on the appraiser's judgement.

## STATEMENT OF LIMITING CONDITIONS AND APPRAISER'S CERTIFICATION

**CONTINGENT AND LIMITING CONDITIONS:** The appraiser's certification that appears in the appraisal report is subject to the following conditions:

1. The appraiser will not be responsible for matters of a legal nature that affect either the property being appraised or the title to it. The appraiser assumes that the title is good and marketable and, therefore, will not render any opinions about the title. The property is appraised on the basis of it being under responsible ownership.
2. The appraiser has provided a sketch in the appraisal report to show approximate dimensions of the improvements and the sketch is included only to assist the reader of the report in visualizing the property and understanding the appraiser's determination of its size.
3. The appraiser has examined the available flood maps that are provided by the Federal Emergency Management Agency (or other data sources) and has noted in the appraisal report whether the subject site is located in an identified Special Flood Hazard Area. Because the appraiser is not a surveyor, he or she makes no guarantees, express or implied, regarding this determination.
4. The appraiser will not give testimony or appear in court because he or she made an appraisal of the property in question, unless specific arrangements to do so have been made beforehand.
5. The appraiser has estimated the value of the land in the cost approach at its highest and best use and the improvements at their contributory value. These separate valuations of the land and improvements must not be used in conjunction with any other appraisal and are invalid if they are so used.
6. The appraiser has noted in the appraisal report any adverse conditions (such as, needed repairs, depreciation, the presence of hazardous wastes, toxic substances, etc.) observed during the inspection of the subject property or that he or she became aware of during the normal research involved in performing the appraisal. Unless otherwise stated in the appraisal report, the appraiser has no knowledge of any hidden or unapparent conditions of the property or adverse environmental conditions (including the presence of hazardous wastes, toxic substances, etc.) that would make the property more or less valuable, and has assumed that there are no such conditions and makes no guarantees or warranties, express or implied, regarding the condition of the property. The appraiser will not be responsible for any such conditions that do exist or for any engineering or testing that might be required to discover whether such conditions exist. Because the appraiser is not an expert in the field of environmental hazards, the appraisal report must not be considered as an environmental assessment of the property.
7. The appraiser obtained the information, estimates, and opinions that were expressed in the appraisal report from sources that he or she considers to be reliable and believes them to be true and correct. The appraiser does not assume responsibility for the accuracy of such items that were furnished by other parties.
8. The appraiser will not disclose the contents of the appraisal report except as provided for in the Uniform Standards of Professional Appraisal Practice.
9. The appraiser has based his or her appraisal report and valuation conclusion for an appraisal that is subject to satisfactory completion, repairs, or alterations on the assumption that completion of the improvements will be performed in a workmanlike manner.
10. The appraiser must provide his or her prior written consent before the lender/client specified in the appraisal report can distribute the appraisal report (including conclusions about the property value, the appraiser's identity and professional designations, and references to any professional appraisal organizations or the firm with which the appraiser is associated) to anyone other than the borrower; the mortgagee or its successors and assigns; the mortgage insurer; consultants; professional appraisal organizations; any state or federally approved financial institution; or any department, agency, or instrumentality of the United States or any state or the District of Columbia; except that the lender/client may distribute the property description section of the report only to data collection or reporting service(s) without having to obtain the appraiser's prior written consent. The appraiser's written consent and approval must also be obtained before the appraisal can be conveyed by anyone to the public through advertising, public relations, news, sales, or other media.

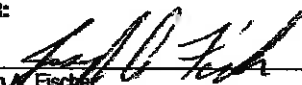
**APPRAISER'S CERTIFICATION:** The Appraiser certifies and agrees that:

1. I have researched the subject market area and have selected a minimum of three recent sales of properties most similar and proximate to the subject property for consideration in the sales comparison analysis and have made a dollar adjustment when appropriate to reflect the market reaction to those items of significant variation. If a significant item in a comparable property is superior to, or more favorable than, the subject property, I have made a negative adjustment to reduce the adjusted sales price of the comparable and, if a significant item in a comparable property is inferior to, or less favorable than the subject property, I have made a positive adjustment to increase the adjusted sales price of the comparable.
2. I have taken into consideration the factors that have an impact on value in my development of the estimate of market value in the appraisal report. I have not knowingly withheld any significant information from the appraisal report and I believe, to the best of my knowledge, that all statements and information in the appraisal report are true and correct.
3. I stated in the appraisal report only my own personal, unbiased, and professional analysis, opinions, and conclusions, which are subject only to the contingent and limiting conditions specified in this form.
4. I have no present or prospective interest in the property that is the subject to this report, and I have no present or prospective personal interest or bias with respect to the participants in the transaction. I did not base, either partially or completely, my analysis and/or the estimate of market value in the appraisal report on the race, color, religion, sex, handicap, familial status, or national origin of either the prospective owners or occupants of the subject property or of the present owners or occupants of the properties in the vicinity of the subject property.
5. I have no present or contemplated future interest in the subject property, and neither my current or future employment nor my compensation for performing this appraisal is contingent on the appraised value of the property.
6. I was not required to report a predetermined value or direction in value that favors the cause of the client or any related party, the amount of the value estimate, the attainment of a specific result, or the occurrence of a subsequent event in order to receive my compensation and/or employment for performing the appraisal. I did not base the appraisal report on a requested minimum valuation, a specific valuation, or the need to approve a specific mortgage loan.
7. I performed this appraisal in conformity with the Uniform Standards of Professional Appraisal Practice that were adopted and promulgated by the Appraisal Standards Board of The Appraisal Foundation and that were in place as of the effective date of this appraisal, with the exception of the departure provision of those Standards, which does not apply. I acknowledge that an estimate of a reasonable time for exposure in the open market is a condition in the definition of market value and the estimate I developed is consistent with the marketing time noted in the neighborhood section of this report, unless I have otherwise stated in the reconciliation section.
8. I have personally inspected the interior and exterior areas of the subject property and the exterior of all properties listed as comparables in the appraisal report. I further certify that I have noted any apparent or known adverse conditions in the subject improvements, on the subject site, or on any site within the immediate vicinity of the subject property of which I am aware and have made adjustments for these adverse conditions in my analysis of the property value to the extent that I had market evidence to support them. I have also commented about the effect of the adverse conditions on the marketability of the subject property.
9. I personally prepared all conclusions and opinions about the real estate that were set forth in the appraisal report. If I relied on significant professional assistance from any individual or individuals in the performance of the appraisal or the preparation of the appraisal report, I have named such individual(s) and disclosed the specific tasks performed by them in the reconciliation section of this appraisal report. I certify that any individual so named is qualified to perform the tasks. I have not authorized anyone to make a change to any item in the report; therefore, if an unauthorized change is made to the appraisal report, I will take no responsibility for it.

**SUPERVISORY APPRAISER'S CERTIFICATION:** If a supervisory appraiser signed the appraisal report, he or she certifies and agrees that: I directly supervise the appraiser who prepared the appraisal report, have reviewed the appraisal report, agree with the statements and conclusions of the appraiser, agree to be bound by the appraiser's certifications numbered 4 through 7 above, and am taking full responsibility for the appraisal and the appraisal report.

**ADDRESS OF PROPERTY APPRAISED:** E. Brazos River Road @ Poplar, Freeport, Tx 77541

**APPRAISER:**

Signature:   
 Name: Joseph M. Fischer  
 Date Signed: January 27, 2013  
 State Certification #: 1320173-G  
 or State License #: \_\_\_\_\_  
 State: Tx  
 Expiration Date of Certification or License: 03/31/2013

**SUPERVISORY APPRAISER (only if required):**

Signature: \_\_\_\_\_  
 Name: \_\_\_\_\_  
 Date Signed: \_\_\_\_\_  
 State Certification #: \_\_\_\_\_  
 or State License #: \_\_\_\_\_  
 State: \_\_\_\_\_  
 Expiration Date of Certification or License: \_\_\_\_\_

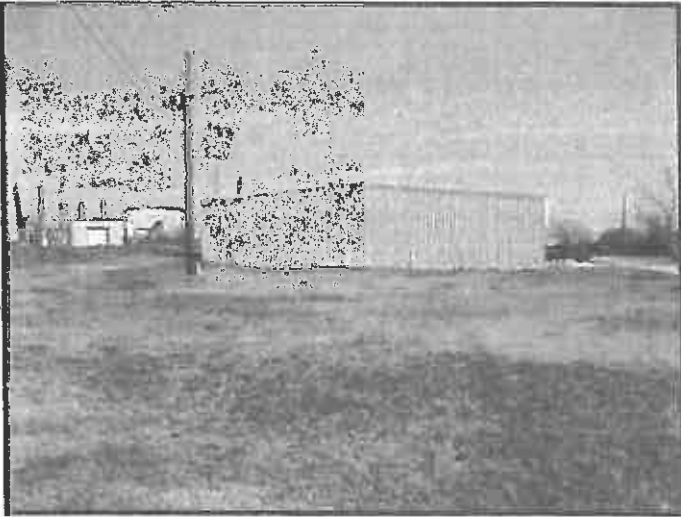
Did  Did Not Inspect Property

### Subject Photo Page

Lender/Client	City of Freeport			
Property Address	E. Brazos River Road @ Poplar			
City	Freeport	County	Brazoria	State Tx Zip Code 77541
Lender	City of Freeport			

#### Subject Front

E. Brazos River @ Poplar  
Sales Price N/A  
Gross Living Area  
Total Rooms  
Total Bedrooms  
Total Bathrooms  
Location Urban  
View 6,186 SF  
Site  
Quality  
Age



#### Subject Street



### Comparable Sales Map

Lender/Client	City of Freeport						
Property Address	E. Brazos River Road @ Poplar						
City	Freeport	County	Brazoria	State	Tx	Zip Code	77541
Lender	City of Freeport						



### Comparable Sales Map

Lender/Client	City of Freeport		
Property Address	E. Brazos River Road @ Poplar		
City	Freeport	County	Brazoria
Lender	City of Freeport	State	Tx
		Zip Code	77541

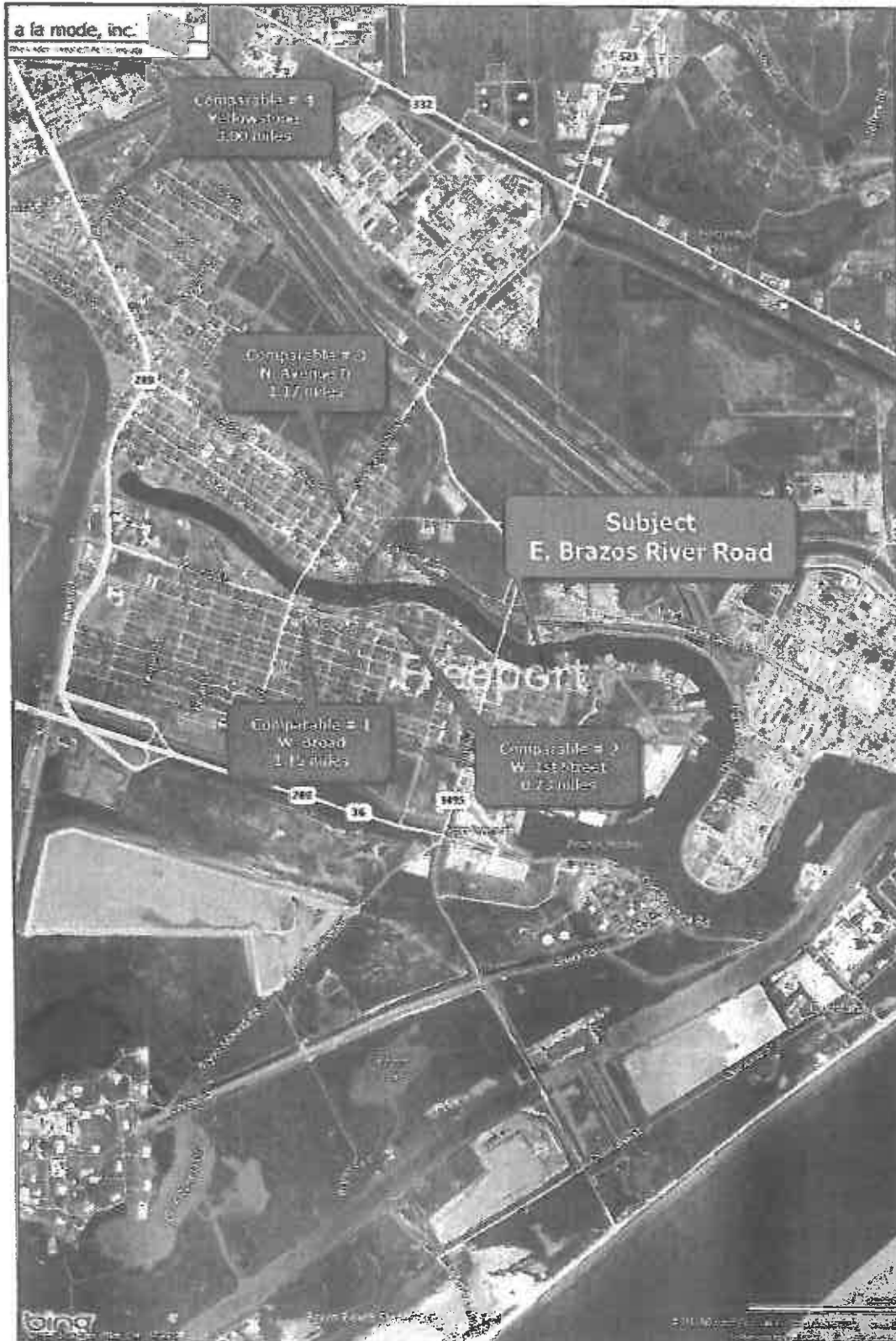


Fig. 156

ORDINANCE NO. 2013-2031

AN ORDINANCE OF THE CITY OF FREEPORT, TEXAS, ABANDONING CLOSING AN UNUSED PORTION OF THE RIGHTS-OF-WAY FOR THAT PORTION OF THE PUBLIC STREET SHOWN ON THE PLAT OF THE FREEPORT TOWNSITE AS EAST BRAZOS OPPOSITE LOTS 1 THROUGH 4, BLOCK, BLOCK 16, AND AUTHORIZING THE MAYOR AND CITY SECRETARY TO EXECUTE AND ATTEST, RESPECTIVELY, AND THE MAYOR TO ACKNOWLEDGE AND DELIVER TO BRIARWOOD HOLDINGS, LLC, THE SOLE ABUTTING PROPERTY OWNER, SUCH ABANDONED AND CLOSED RIGHT-OF-WAY FOR THE FAIR MARKET VALUE THEREOF DETERMINED BY THE APPRAISAL ATTACHED HERETO; CONTAINING A SEVERANCE CLAUSE; AND PROVIDING THAT THIS ORDINANCE SHALL TAKE EFFECT AND BE IN FORCE FROM AND AFTER ITS PASSAGE AND ADOPTION.

WHEREAS, BRIARWOOD HOLDINGS, LLC, a Texas Limited Liability Company ("the Applicant"), is the sole owner of all property abutting upon the hereinafter described right-of-way within the incorporated limits of the City of Freeport, in Brazoria County, Texas ("the City"); and,

WHEREAS, the Applicant has petitioned the City Council of the City to close and abandon such right-of-way and convey the same to the Applicant; and,

WHEREAS, the abandoning of such right-of-way would be in the public interest and would benefit the public by allowing the improvement of the real property included in such right-of-way, placing such property on the tax roll of the City and eliminating the obligation of the City to maintain the same; and,

WHEREAS, an appraisal of such right-of-way has been obtained in order to determine the fair market value thereof, a copy of such appraisal being attached hereto and incorporated herein by reference.

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



First, the City Council of the City finds and declares that the findings of fact and conclusions of law set forth in the preamble to this ordinance are true and correct.

Second, the public street right-of-way located within the corporate limits of the City of Freeport, in Brazoria County, Texas, described as that portion of East Brazos opposite Lots 1 through 4, Block 16, of the Freeport Townsite, according to the map or plat thereof recorded in Volume 2, page 95 of the Plat Records of said county, is hereby closed and abandoned.

Third, upon the payment by the Applicant to the City the fair market value therefor indicated by the above mentioned appraisal, the Mayor and City Secretary are hereby authorized to execute and attest, respectively, and the Mayor to acknowledge and deliver to the Applicant, a Special Warranty Deed conveying such closed and abandoned right-of-way to the Applicant; but reserving all necessary easements for utility lines, cables, poles and mains presently in use or that may, in the sole discretion of the City, be required in the future. Provided, however, with the consent of the City Manager and the appropriate officials of all affected utility companies furnishing public utilities within the City, the easement reserved herein may be released by the Mayor, or in his absence, the Mayor Pro-Temp, if all lines, cables, poles and mains then existing are relocated to another duly established easement at the expense of the Applicant.

Fourth, in the event any section or provision of this ordinance is found to be unconstitutional, void or inoperative by the final judgment of a court of competent jurisdiction, such defective provision, if any, is hereby declared to be severable from the remaining sections and provisions of this ordinance and such remaining sections and provisions shall remain in full force and effect.

Fifth, this ordinance shall take effect and be in force from and after its passage and adoption.


READ, PASSED AND ADOPTED this \_\_\_\_\_ day of \_\_\_\_\_, 2012.

\_\_\_\_\_  
Norma Moreno Garcia, Mayor,  
City of Freeport, Texas

ATTEST:

\_\_\_\_\_  
Delia Munoz, City Secretary  
City of Freeport, Texas

APPROVED AS TO FORM ONLY:

  
\_\_\_\_\_  
Wallace Shaw, City Attorney  
City of Freeport, Texas

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SPECIAL WARRANTY DEED

That the CITY OF FREEPORT, a municipal corporation located in Brazoria County, Texas, hereinafter called GRANTOR, for the valuable consideration hereinafter specified, has GRANTED, SOLD and CONVEYED and by these presents does GRANT, SELL and CONVEY unto BRIARWOOD HOLDINGS, LLC, a Texas Limited Liability Company, hereinafter called GRANTEE, the following described real property lying and situated in the County of Brazoria and State of Texas, to-wit:

The public street right-of-way located within the corporate limits of the City of Freeport, in Brazoria County, Texas, described as that portion of East Brazos opposite Lots 1 through 4, Block 16, of the Freeport Townsite, according to the map or plat thereof recorded in Volume 2, page 95 of the Plat Records of said county.

This conveyance is made and accepted subject to any and all valid and subsisting easements, restrictions, rights-of-way, conditions, exceptions, covenants and other encumbrances properly of record affecting the title to the above described property; and the easement hereinafter reserved.

TO HAVE AND TO HOLD the above described premises, together with all and singular, the rights and appurtenances thereto in anywise belonging, unto Grantee, its successors and assigns, forever; SAVE AND EXCEPT, there is hereby reserved unto Grantor, its successors and assigns, forever, all necessary easements for utility lines, cables, poles and mains presently in use or that may, in the sole discretion of the Grantee, be required in the future; provided, however, with the consent of the City Manager and the appropriate officials of all affected utility companies furnishing public utilities within the City of Freeport.

Grantor does hereby bind itself, its successors and assigns, to Warrant and Forever Defend all and singular the said premises unto Grantee, its successors and assigns, against every person whomsoever lawfully claiming or to claim the same, or any part thereof, by, through and under Grantor but not otherwise.

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