

AGENDA - COUNCIL MEETING - TUESDAY - FEBRUARY 28, 2012 - 1:30 P. M.
COUNCIL CHAMBER - SECOND FLOOR - CITY HALL
901 BAGBY - HOUSTON, TEXAS

PRAYER AND PLEDGE OF ALLEGIANCE - Council Member Laster

1:30 P. M. - ROLL CALL

ADOPT MINUTES OF PREVIOUS MEETING

2:00 P. M. - PUBLIC SPEAKERS - Pursuant to City Council Rule 8, City Council will hear from members of the public; the names and subject matters of persons who had requested to speak at the time of posting of this Agenda are attached; the names and subject matters of persons who subsequently request to speak may be obtained in the City Secretary's Office

5:00 P. M. - RECESS

RECONVENE

WEDNESDAY - FEBRUARY 29, 2012 - 9:00 A. M.

DESCRIPTIONS OR CAPTIONS OF AGENDA ITEMS WILL BE READ BY THE
CITY SECRETARY PRIOR TO COMMENCEMENT

MAYOR'S REPORT

CONSENT AGENDA NUMBERS 1 through 39

MISCELLANEOUS - NUMBERS 1 through 5

1. REQUEST from Mayor for confirmation of the appointment of the following individuals to the **BOARD OF DIRECTORS OF TAX INCREMENT REINVESTMENT ZONE NUMBER TWENTY-THREE** (also known as the Harrisburg Zone):

- Position One - **MS. KAREN S. NIEMEIER**, for a term to expire 12/31/2014
- Position Two - **MR. FRANK M. K. LIU**, for a term to expire 12/31/2013
- Position Three - **MR. JERRY MICHAEL ACOSTA**, for a term to expire 12/31/2014
- Position Four - **MS. GLORIA E. MORENO**, for a term to expire 12/31/2013
- Position Five - **MR. ERNEST H. COCKRELL**, for a term to expire 12/31/2014
- Position Six - **MR. RICK A. GARCIA**, for a term to expire 12/31/2013
- Position Seven - **MR. BOLIVAR FRAGA**, for a term to expire 12/31/2014

MISCELLANEOUS - continued

2. REQUEST from Mayor for confirmation of the appointment or reappointment of the following individuals to the **BOARD OF DIRECTORS OF THE FIVE CORNERS IMPROVEMENT DISTRICT (formerly Harris County Improvement District No. 10-B)**:
 - Position One - **MS. SONIA OCHOA-GONZALES**, for a term to expire 06/01/2015
 - Position Two - **MR. HOMER L. CLARK**, for a term to expire 06/01/2013
 - Position Three - **MS. RITA T. FORETICH**, for a term to expire 06/01/2015
 - Position Four - **MR. LANCE GILLIAM**, for a term to expire 06/01/2013
 - Position Five - **MS. MELVA D. THORNTON**, for a term to expire 06/01/2015
 - Position Six - **MS. MARTINA E. CARTWRIGHT**, for a term to expire 06/01/2013
 - Position Seven - **MR. VERNON N. SMITH**, for a term to expire 06/01/2015
 - Position Eight - **MR. NINA K. SPRINGER**, for a term to expire 06/01/2013
 - Position Nine - **MR. DULA ABDU**, for a term to expire 06/01/2015

3. REQUEST from Mayor for confirmation of the appointment or reappointment of the following individuals to the **BOARD OF DIRECTORS OF THE BRAYS OAKS MANAGEMENT DISTRICT (Harris County Improvement District No. 5)** , for terms to expire June 1, 2015:
 - Position Seven - **MR. ADAM J. WEISS**, appointment
 - Position Eight - **MS. ELAINE GASKAMP**, reappointment
 - Position Nine - **MR. CARY P. YATES**, reappointment
 - Position Ten - **MR. GREG J. GLENN**, reappointment
 - Position Eleven - **MR. GEORGE O. NWANGUMA**, reappointment

4. REQUEST from Mayor for confirmation of the appointment of **MS. DANA V. PERRY-DREXLER** to serve as Associate Municipal Court Judge, for a two-year term

5. REQUEST from Mayor for confirmation of the appointment of **MR. LAWRENCE A. ROUSSEAU** to serve as Municipal Court Judge, for a two-year term

PURCHASING AND TABULATION OF BIDS - NUMBERS 6 through 10

6. **METRO FIRE APPARATUS SPECIALISTS, INC** for Purchase of Replacement Components and Repair Services for one fire engine for the Houston Fire Department - \$158,823.16 Fleet Management Fund

7. ORDINANCE appropriating \$51,218.00 out of Equipment Acquisition Consolidated Fund for the Purchase of Utility Vehicles for the Houston Fire Department

- a. **CALDWELL AUTOMOTIVE PARTNERS, LLC d/b/a Caldwell Country Chevrolet** for Purchase of Utility Vehicles through the Houston-Galveston Area Council for the Houston Fire Department \$51,218.00

8. **MARCO OPHTHALMIC, INC** for Purchase of Tonometer Systems for the Houston Department of Health and Human Services - \$41,500.00 - General Fund

9. ORDINANCE appropriating \$93,622.68 out of Equipment Acquisition Consolidated Fund for the Purchase of Police Vehicles for the Houston Police Department

- a. **PHILPOTT MOTORS LTD. d/b/a Philpott Ford** for Purchase of Police Vehicles through the Houston-Galveston Area Council for the Houston Police Department - \$93,608.00 - Special Revenue Fund - \$187,230.68 Total

10. **GODWIN PUMPS OF AMERICA, INC** for Purchase of Trailer-Mounted Submersible Pumps through the Houston-Galveston Area Council for the Department of Public Works & Engineering \$862,738.37 - Enterprise Fund

ORDINANCES - NUMBERS 11 through 39

11. ORDINANCE authorizing the administration and regulatory affairs department to conduct a pilot program involving the installation and use of credit card devices with Integrated Global Positioning Satellite Systems in taxicabs and authorizing the regulation thereof
 - a. ORDINANCE amending Article II, Chapter 46 of the City Code of Ordinances, relating to Taxicab Rates
12. ORDINANCE supplementing the City of Houston, Texas Master Ordinance No. 2004-299; supplementing and amending Ordinance No. 2004-300, Ordinance No. 2008-252 and Ordinance No. 2010-215 as it relates to the City of Houston, Texas, Combined Utility System First Lien Revenue Refunding Bonds, Series 2004B-6, authorizing the substitution of a credit facility authorizing a Paying Agent/Registrar Agreement; a Tender Agent Agreement, a Remarketing Agreement, a Co-Bond Counsel Agreement, and other necessary agreements or documents related to the bonds; and declaring an emergency
13. ORDINANCE approving and authorizing contract between the City of Houston and **HOUSTON VOLUNTEER LAWYERS PROGRAM, INC**, to provide \$175,000.00 in Housing Opportunities for Persons With Aids Funds for Legal Supportive Services
14. ORDINANCE approving and authorizing the submission of an application for grant assistance to the **GOVERNOR'S OFFICE CRIMINAL JUSTICE DIVISION** to support the Career Exploration through STEM Innovation Program Coordinated by the Houston Parks and Recreation Department's After-School Achievement Program; declaring the City's eligibility for such grant; authorizing the Director of the Parks and Recreation Department to act as the City's representative in the application process, to accept such grant funds, if awarded, and to apply for and accept all subsequent awards, if any, pertaining to the program - **DISTRICT D - ADAMS**
15. ORDINANCE consenting to the creation of the **BRIDGELAND MANAGEMENT DISTRICT** in the extraterritorial jurisdiction of the City and the inclusion of certain land within the district
16. ORDINANCE relating to the Fiscal Affairs of the **SOUTHWEST HOUSTON REDEVELOPMENT AUTHORITY ON BEHALF OF REINVESTMENT ZONE NUMBER TWENTY, CITY OF HOUSTON, TEXAS (SOUTHWEST HOUSTON ZONE)**; approving the Fiscal Year 2012 Operating Budget for the authority and the Fiscal Years 2012-2016 Capital Improvement Projects Budget for the Zone - **DISTRICTS F - HOANG and J - LASTER**
- a. ORDINANCE approving and authorizing a construction management agreement between the City of Houston and the **SOUTHWEST HOUSTON REDEVELOPMENT AUTHORITY** for the Bellaire Boulevard Access Management and Widening Project - **DISTRICTS F - HOANG and J - LASTER**
17. ORDINANCE appropriating \$9,224,282.00 out of Tax Increment Funds for Reinvestment Zone Number One, City of Houston, Texas (Lamar Terrace Zone), Reinvestment Zone Number Two, City of Houston, Texas (Midtown Zone), Reinvestment Zone Number Three, City of Houston, Texas (Main Street/Market Square Zone), Reinvestment Zone Number Four, City of Houston, Texas (Village Enclaves Zone), Reinvestment Zone Number Five, City of Houston, Texas (Memorial Heights Zone), Reinvestment Zone Number Seven, City of Houston, Texas (Old Spanish Trail/Alameda Corridors Zone), Reinvestment Zone Number Eight, City of Houston, Texas (Gulfgate Zone), Reinvestment Zone Number Nine, City of Houston, Texas (South Post Oak Zone), Reinvestment Zone Number Twelve, City of Houston, Texas (City Park Zone), and Reinvestment Zone Number Thirteen, City of Houston, Texas (Old Sixth Ward Zone) for Affordable Housing, payments to Houston Independent School District, and payments to certain redevelopment authorities as provided herein

ORDINANCES - continued

18. ORDINANCE approving and authorizing Second Amendment to lease agreement between **RMC 2004 PORTFOLIO I, LP**; and related entities as Landlord, and the City of Houston, Texas, as tenant, for space at 50 Briar Hollow West, Suite 290, Houston, Texas, for use by the Human Resources Department's Employee Assistance Program - 6 years with 2 five-year renewal options - \$216,860.04 - Initial Base Term - Internal Service Fund - **DISTRICT G - PENNINGTON**
19. ORDINANCE approving and authorizing a memorandum of understanding between the City of Houston and the **HOUSTON INDEPENDENT SCHOOL DISTRICT** for the storage, use and maintenance of mobile solar generators - **DISTRICTS C - COHEN and G - PENNINGTON**
20. ORDINANCE approving and authorizing contract between the City of Houston and **AIR-TRANSPORT IT SERVICES, INC** for Software Support, Maintenance and Upgrades for the Houston Airport System; providing a maximum contract amount; setting a deadline for the delivery of all insurance and other required documents to the City - 2 years - \$161,985.22 - Enterprise Fund - **DISTRICTS B - DAVIS; E - SULLIVAN and I - RODRIGUEZ**
21. ORDINANCE appropriating \$421,807.00 out of DARLEP Fund Fund Balance for the purpose of paying obligations under the Compromise and Settlement Agreement between the City of Houston and **AMERICAN TRAFFIC SOLUTIONS, INC** (approved by Ordinance No. 2012-0098)
22. ORDINANCE amending Ordinance No. 2011-0997 to increase the maximum contract amount of an Interlocal Agreement between the City of Houston and **SAM HOUSTON STATE UNIVERSITY REGIONAL CRIME LAB** for Laboratory Testing Services in DUI/DWI Cases for the Houston Police Department
23. ORDINANCE amending Ordinance No. 2008-0099 (Passed on February 6, 2008) to increase the maximum contract amount for contract between the City of Houston and **TEXAS CORRECTIONAL INDUSTRIES DARRINGTON TIRE RETREADING FACILITY** for Tire retreading and repair services for the Fleet Management Department - \$114,697.63 Fleet Management Fund
24. ORDINANCE calling public hearings at which interested persons will be given the opportunity to be heard on: proposed amendments to the Strategic Partnership Agreements between the City of Houston and **HARRIS COUNTY UTILITY DISTRICT NO. 6, FORT BEND COUNTY MUNICIPAL UTILITY DISTRICT NO. 50, WEST HARRIS COUNTY MUNICIPAL UTILITY DISTRICT NO. 9,** and **LAKE FOREST UTILITY DISTRICT**, and on proposals for the City of Houston to annex for limited purposes certain territory located within such districts in Harris and Fort Bend Counties; proposed Strategic Partnership Agreements between the City of Houston and **FORT BEND COUNTY MUNICIPAL UTILITY DISTRICT NO. 34, HARRIS COUNTY MUNICIPAL UTILITY DISTRICT NO. 119, HARRIS COUNTY MUNICIPAL UTILITY DISTRICT NO. 162, HARRIS COUNTY MUNICIPAL UTILITY DISTRICT NO. 168, MONTGOMERY COUNTY MUNICIPAL UTILITY DISTRICT NO. 89,** and **WEST HARRIS COUNTY MUNICIPAL UTILITY DISTRICT NO. 16** and on proposals for the City of Houston to annex for limited purposes certain territory located within such districts in Harris, Fort Bend and Montgomery Counties; proposed amendments to the Strategic Partnership Agreements between the City of Houston and **FORT BEND COUNTY MUNICIPAL UTILITY DISTRICT NO. 146, KLEINWOOD MUNICIPAL UTILITY DISTRICT, HARRIS COUNTY MUNICIPAL UTILITY DISTRICT NO. 150,** and **FORT BEND COUNTY MUNICIPAL UTILITY DISTRICT NO. 35** and on proposals for the City of Houston to annex for limited purposes certain territory located within and in the vicinity of such districts in Harris and Fort Bend Counties; proposed Strategic Partnership Agreements between the City of Houston and **BISSONNET MUNICIPAL UTILITY DISTRICT, CASTLEWOOD MUNICIPAL UTILITY DISTRICT, NORTHWEST HARRIS COUNTY MUNICIPAL UTILITY DISTRICT NO. 6,** and **NORTHWEST HARRIS COUNTY MUNICIPAL UTILITY DISTRICT NO. 36,** and on proposals for the City of Houston to annex for limited purposes certain territory located within and in the vicinity of such districts in Harris and Fort Bend Counties; proposals for the City of Houston to impose the City of Houston's sales and use tax in such territory; providing for the publication of notice of such hearings - **HEARING DATES - WEDNESDAY - 9:00 A.M. - APRIL 4 and 11, 2012**

ORDINANCES - continued

25. ORDINANCE amending the Assessment Roll for Permanent Improvements to portions of Knox Street, Paul Quinn Road and Wilburforce Street (Ordinance No. 88-0654) to change Item No. 35 from a front-foot rate of \$14.05 per foot to a side-abutting rate of \$7.03 per foot
DISTRICT B - DAVIS
26. ORDINANCE approving and authorizing third amendment to Professional Construction Management and Inspection Services Agreement between the City of Houston and **OMEGA ENGINEERS, INC** for Emergency Repairs of water service connection breaks (approved by Ordinance No. 2011-0142, as amended); providing maximum contract amount \$2,550,000.00 - Enterprise Fund
27. ORDINANCE appropriating \$690,000.00 out of Street & Traffic Control and Storm Drainage DDSRF Fund; and approving and authorizing Professional Engineering Services Contract between the City of Houston and **OTHON, INC** for negotiated work orders for Design of New and Rehabilitation of Existing Pump Stations, and Flood Warning Systems; providing funding for CIP Cost Recovery relating to construction of facilities financed by the Street & Traffic Control and Storm Drainage DDSRF Fund
28. ORDINANCE appropriating \$500,000.00 out of Metro Projects Construction Fund and approving and authorizing Professional Engineering Services Contract between the City of Houston and **NEDU ENGINEERING SERVICES, INC** for Safe Sidewalk Program; providing funding for contingencies relating to construction of facilities financed by the Metro Projects Construction Fund - **DISTRICTS C - COHEN; D - ADAMS; E - SULLIVAN; H - GONZALEZ and I - RODRIGUEZ**
29. ORDINANCE appropriating \$500,000.00 out of Metro Projects Construction Fund and approving and authorizing Professional Engineering Services Contract between the City of Houston and **REYNOLDS, SMITH AND HILLS, INC** for City Wide Overlay Project; providing funding for contingencies relating to construction of facilities financed by the Metro Projects Construction Fund
30. ORDINANCE appropriating \$880,900.00 out of Water & Sewer System Consolidated Construction Fund and approving and authorizing Professional Engineering Services Contract between the City of Houston and **FREESE AND NICHOLS, INC** for Bar Screen/Odor Control and Grit Removal Systems Renewal/Replacement for Sims Bayou South Wastewater Treatment Plant; providing funding for CIP Cost Recovery relating to construction of facilities financed by the Water & Sewer System Consolidated Construction Fund - **DISTRICT I - RODRIGUEZ**
31. ORDINANCE appropriating \$1,155,000.00 out of Street & Traffic Control and Storm Drainage DDSRF Fund; awarding contract to **TOTAL CONTRACTING LIMITED** for FY2012 Local Drainage Project Negotiated Construction Work Orders; setting a deadline for the bidder's execution of the contract and delivery of all bonds, insurance, and other required contract documents to the City; holding the bidder in default if it fails to meet the deadlines; providing funding for engineering and testing, CIP Cost Recovery and contingencies relating to construction of facilities financed by the Street & Traffic Control and Storm Drainage DDSRF Fund
32. ORDINANCE appropriating \$517,837.00 out of Water & Sewer System Consolidated Construction Fund; awarding a contract to **ENVIROWASTE SERVICES GROUP, INC** for Sanitary Sewer Cleaning and Television Inspection in Support of Rehabilitation; setting a deadline for the bidder's execution of the contract and delivery of all bonds, insurance, and other required contract documents to the City; holding the bidder in default if it fails to meet the deadlines; providing funding for engineering and testing, and contingencies relating to construction of facilities financed by the Water & Sewer System Consolidated Construction Fund

ORDINANCES - continued

33. ORDINANCE appropriating \$6,054,000.00 out of Water & Sewer System Consolidated Construction Fund; awarding a contract to **INDUSTRIAL TX CORP.** for Groundwater Treatment Plants Improvements Package 1; Jersey Village, District 123, Acres Homes and Sims Bayou; setting a deadline for the bidder's execution of the contract and delivery of all bonds, insurance, and other required contract documents to the City; holding the bidder in default if it fails to meet the deadlines; providing funding for engineering testing, CIP Cost Recovery, and contingencies relating to construction of facilities financed by the Water & Sewer System Consolidated Construction Fund - **DISTRICT B - DAVIS; F - HOANG and K - GREEN**
34. ORDINANCE No. 2012-0132, passed second reading February 22, 2012
ORDINANCE granting to **ADAM H. BELMONT d/b/a BETO'S HYDRO & SANITATION, A Texas Sole Proprietorship**, the right, privilege and franchise to collect, haul and transport solid waste and industrial waste from commercial properties located within the City of Houston, Texas, pursuant to Chapter 39, Code of Ordinances, Houston, Texas; providing for related terms and conditions - **THIRD AND FINAL READING**
35. ORDINANCE No. 2012-0133, passed second reading February 22, 2012
ORDINANCE granting to **C.R. MCCASKILL ENTERPRISES, INC dba TIDELAND GREASE TRAP SERVICE, A Texas Corporation**, the right, privilege and franchise to collect, haul and transport solid waste and industrial waste from commercial properties located within the City of Houston, Texas, pursuant to Chapter 39, Code of Ordinances, Houston, Texas; providing for related terms and conditions - **THIRD AND FINAL READING**
36. ORDINANCE No. 2012-0134, passed second reading February 22, 2012
ORDINANCE granting to **JERRY BRUMFIELD d/b/a BRUMFIELD SANITATION SERVICE, A Texas Sole Proprietorship**, the right, privilege and franchise to collect, haul and transport solid waste and industrial waste from commercial properties located within the City of Houston, Texas, pursuant to Chapter 39, Code of Ordinances, Houston, Texas; providing for related terms and conditions - **THIRD AND FINAL READING**
37. ORDINANCE No. 2012-0135, passed second reading February 22, 2012
ORDINANCE granting to **SONYA CARR BERTRAN d/b/a ANITA'S VACUUM SERVICE, A Texas Sole Proprietorship**, the right, privilege and franchise to collect, haul and transport solid waste and industrial waste from commercial properties located within the City of Houston, Texas, pursuant to Chapter 39, Code of Ordinances, Houston, Texas; providing for related terms and conditions - **THIRD AND FINAL READING**
38. ORDINANCE No. 2012-0136, passed second reading February 22, 2012
ORDINANCE granting to **CIMA SERVICES, L.P., A Texas Limited Partnership**, the right, privilege and franchise to collect, haul and transport solid waste and industrial waste from commercial properties located within the City of Houston, Texas, pursuant to Chapter 39, Code of Ordinances, Houston, Texas; providing for related terms and conditions
THIRD AND FINAL READING
39. ORDINANCE No. 2012-0137, passed second reading February 22, 2012
ORDINANCE granting to **WASTE PARTNERS OF TEXAS, INC d/b/a JACKPOT SANITATION SERVICES, A Texas Corporation**, the right, privilege and franchise to collect, haul and transport solid waste and industrial waste from commercial properties located within the City of Houston, Texas, pursuant to Chapter 39, Code of Ordinances, Houston, Texas; providing for related terms and conditions - **THIRD AND FINAL READING**

CONSIDERATION OF MATTERS REMOVED FROM THE CONSENT AGENDA

NON CONSENT AGENDA - NUMBER 40

MISCELLANEOUS

40. REVIEW on the record and make determination relative to the appeal from the decision of the General Appeals Board, filed by Richard V. Rothfelder, Attorney at Law, on behalf of Garrett Operators, Inc. regarding the interpretation of the Sign Code for a sign located at 2600 South Loop West - **DISTRICT K - GREEN**

MATTERS HELD - NUMBERS 41 through 47

41. RECOMMENDATION from Purchasing Agent to **AMEND MOTION #2007-588, 6/13/07, as amended by Motion #2011-406, TO INCREASE** spending authority from \$9,000,000.00 to \$10,080,000.00 for Chemical, Liquid Polymer Flocculent for the Department of Public Works, awarded in part to **POLYDYNE, INC** - Enterprise Fund
TAGGED BY COUNCIL MEMBER ADAMS
This was Item 7 on Agenda of February 22, 2012
42. ORDINANCE amending Exhibits "A" of City of Houston Ordinance No. 90-1292 (As amended by City of Houston Ordinance No. 2011-0490), to amend the Master Classification Ordinance to add three new job classifications and changing one job classification title; providing a repealer; providing for severability - **TAGGED BY COUNCIL MEMBER ADAMS**
This was Item 9 on Agenda of February 22, 2012
43. ORDINANCE enlarging the boundaries of **REINVESTMENT ZONE NUMBER THIRTEEN, CITY OF HOUSTON, TEXAS, (OLD SIXTH WARD ZONE)** - **DISTRICT H - GONZALEZ**
TAGGED BY COUNCIL MEMBER BROWN
This was Item 10 on Agenda of February 22, 2012
- a. ORDINANCE approving the third amendment to the **PROJECT PLAN AND REINVESTMENT ZONE FINANCING PLAN FOR REINVESTMENT ZONE NUMBER THIRTEEN, CITY OF HOUSTON, TEXAS, (OLD SIXTH WARD ZONE)**; authorizing the City Secretary to distribute such plans - **DISTRICT H - GONZALEZ** - **TAGGED BY COUNCIL MEMBER BROWN**
This was Item 10A on Agenda of February 22, 2012
44. ORDINANCE adopting a three-year Annexation Plan in accordance with Section 43.052 of the Texas Local Government Code - **TAGGED BY COUNCIL MEMBER BROWN**
This was Item 12 on Agenda of February 22, 2012
45. ORDINANCE approving and authorizing Master Contractor Agreement between the City of Houston and **ALTURA HOMES DFW, LP, AS CONTRACTOR**, and providing \$3,508,560.00 of Community Development Block Grant (Disaster Recovery) Funds for the reconstruction of up to forty single family homes; approving revised Hurricane Ike/Dolly Housing Assistance Guidelines; approving and authorizing the form of reconstruction agreements for each of the Single Family Home Reconstruction Projects; authorizing the Director of the Housing and Community Development Department to select, pursuant to the guidelines, eligible properties to be reconstructed - **TAGGED BY COUNCIL MEMBER BROWN**
This was Item 18 on Agenda of February 22, 2012

MATTERS HELD - continued

46. ORDINANCE appropriating \$1,500,000.00 out of Airports Improvement Fund and approving and authorizing contract between the City and **NETVERSANT SOLUTIONS, LLC** for Telecommunication Services for the Houston Airport System; providing a maximum contract amount - 3 Years with two one-year options - \$10,489,626.92 - Enterprise Fund

TAGGED BY COUNCIL MEMBER BROWN

This was Item 20 on Agenda of February 22, 2012

47. ORDINANCE approving and authorizing first amendment to contract (Approved by Ordinance No. 2007-0972) between the City of Houston and **BL TECHNOLOGY, INC** for Security System Installation and Repair Services for the General Services Department - **DISTRICT A - BROWN**

POSTPONED BY MOTION #2012-114, 2/22/12

This was Item 41 on Agenda of February 22, 2012

MATTERS TO BE PRESENTED BY COUNCIL MEMBERS - Council Member Hoang first

ALL ORDINANCES ARE TO BE CONSIDERED ON AN EMERGENCY BASIS AND TO BE PASSED ON ONE READING UNLESS OTHERWISE NOTED, ARTICLE VII, SECTION 7, CITY CHARTER

NOTE - WHENEVER ANY AGENDA ITEM, WHETHER OR NOT ON THE CONSENT AGENDA, IS NOT READY FOR COUNCIL ACTION AT THE TIME IT IS REACHED ON THE AGENDA, THAT ITEM SHALL BE PLACED AT THE END OF THE AGENDA FOR ACTION BY COUNCIL WHEN ALL OTHER AGENDA ITEMS HAVE BEEN CONSIDERED

CITY COUNCIL RESERVES THE RIGHT TO TAKE UP AGENDA ITEMS OUT OF THE ORDER IN WHICH THEY ARE POSTED IN THIS AGENDA. ALSO, AN ITEM THAT HAS BEEN TAGGED UNDER CITY COUNCIL RULE 4 (HOUSTON CITY CODE §2-2) OR DELAYED TO ANOTHER DAY MAY BE NEVERTHELESS CONSIDERED LATER AT THE SAME CITY COUNCIL MEETING

**CITY COUNCIL CHAMBER - CITY HALL - 2nd FLOOR - TUESDAY
FEBRUARY 28, 2012 2:00PM**

NON-AGENDA

2MIN

2MIN

2MIN

3MIN

3MIN

3MIN

MS. KATHLEEN GUNTER – 7315 Banyan – 77028 – 832-882-9775 – Abandoned apartment complex in Northeast Houston

MS. SIMANAL FOSTER – 7522 Elbert – 77028 – 713-634-8377 – Reinstate my job in Public Works & Eng.

MR. JOSEPH OMO OMUARI – 3939 NW Frwy. 210 – 77022 – 832-696-9204 – Funding the minority small Business Administration appropriately

MS. EMMA TREADWELL – 419 Dowling – 77004 – 832-541-7401 – Metro bus rout 50

MS. YOLANDA BROUSSARD – 11835 Murr Way – 77048 – 713-731-9188 – Attorney General opinion, Tax Refund, Tax exemption – Invitation J. H. Roberts

PREVIOUS

1MIN

1MIN

1MIN

PRESIDENT JOSEPH CHARLES - Post Office Box 524373 - 77052-4373 – 713-928-2871 – 25/P/O – Raid - Police Brutality – Leased – Ste. – Break in – Assassination Attempts W/Management



ANNISE D. PARKER
MAYOR

OFFICE OF THE MAYOR
CITY OF HOUSTON
TEXAS

1
FEB 29 2012

REVISED

February 17, 2012

Revised

COPY TO EACH MEMBER OF COUNCIL:

CITY SECRETARY: 2-20-12
date

COUNCIL MEMBER: _____

The Honorable City Council
City of Houston, Texas

Dear Council Members:

Pursuant to City of Houston, Texas Ordinance No. 2011-900, City of Houston, Texas Resolution No. 90-203, and Texas Tax Code Chapter 311, I am nominating the following individuals for appointment to the Board of Directors of Tax Increment Reinvestment Zone Number Twenty-Three (also known as the Harrisburg Zone), subject to City Council confirmation:

- Ms. Karen S. Niemeier, appointment to Position One, for a term to expire December 31, 2014;
- Mr. Frank M. K. Liu, appointment to Position Two, for a term to expire December 31, 2013;
- Mr. Jerry Michael Acosta, appointment to Position Three, for a term to expire December 31, 2014;
- Ms. Gloria E. Moreno, appointment to Position Four, to serve as Chair, for a term to expire December 31, 2013;
- Mr. Ernest H. Cockrell, appointment to Position Five, for a term to expire December 31, 2014;
- Mr. Rick A. Garcia, appointment to Position Six, for a term to expire December 31, 2013; and
- Mr. Bolivar Fraga, appointment to Position Seven, for a term to expire December 31, 2014.

Résumés are attached for your review.

Sincerely,

Annise D. Parker
Mayor



Attachments

cc: Mr. Ralph De Leon, Division Manager, Finance and Economic Development
Department



ANNISE D. PARKER
MAYOR

OFFICE OF THE MAYOR
CITY OF HOUSTON
TEXAS

2
FEB 29 2012

February 9, 2011

COPY TO EACH MEMBER OF COUNCIL:

CITY SECRETARY: 2-10-12
date

COUNCIL MEMBER: _____

The Honorable City Council
City of Houston

Dear Council Members:

Pursuant to Chapter 3860, Texas Special District Local Laws Code, and House Bill No. 4795, 81st Legislature, Regular Session, 2009, I am nominating the following individuals for appointment or reappointment to the Board of Directors of the Five Corners Improvement District (formerly Harris County Improvement District No. 10-B), as recommended by the District's Board of Directors, subject to Council confirmation:

Ms. Sonia Ochoa-Gonzales, reappointment to Position One, for a term to expire June 1, 2015;
Mr. Homer L. Clark, reappointment to Position Two, for a term to expire June 1, 2013;
Ms. Rita T. Foretich, reappointment to Position Three, for a term to expire June 1, 2015;
Mr. Lance Gilliam, reappointment to Position Four, for a term to expire June 1, 2013;
Ms. Melva D. Thornton, reappointment to Position Five, for a term to expire June 1, 2015;
Ms. Martina E. Cartwright, appointment to Position Six, for a term to expire June 1, 2013;
Mr. Vernon N. Smith, appointment to Position Seven, for a term to expire June 1, 2015;
Mr. Nina K. Springer, appointment to Position Eight, for a term to expire June 1, 2013;
Mr. Dula Abdu, appointment to Position Nine, for a term to expire June 1, 2015; and

The résumés of the nominees are attached for your review.

Sincerely,

Annise D. Parker

Annise D. Parker
Mayor

AP:JC:jsk

Attachments

cc: Mr. David Hawes, Executive Director, Five Corners Improvement District

RECEIVED

FEB 10 2012

CITY SECRETARY



ANNISE D. PARKER
MAYOR

OFFICE OF THE MAYOR
CITY OF HOUSTON
TEXAS

3
FEB 29 2012

COPY TO EACH MEMBER OF COUNCIL:

CITY SECRETARY: 2-10-12
date

February 9, 2012

COUNCIL MEMBER: _____

The Honorable City Council
City of Houston

Dear Council Members:

Pursuant to Chapter 3834 of the Texas Special District Local Laws Code, I am nominating the following individuals for appointment or reappointment to the Board of Directors of the Brays Oaks Management District (Harris County Improvement District No. 5), as recommended by the District Board of Directors, subject to Council confirmation.

Mr. Adam J. Weiss, appointment to Position Seven, for a term to expire June 1, 2015;
Ms. Elaine Gaskamp, reappointment to Position Eight, for a term to expire June 1, 2015;
Mr. Cary P. Yates, reappointment to Position Nine, for a term to expire June 1, 2015;
Mr. Greg J. Glenn, reappointment to Position Ten, for a term to expire June 1, 2015; and
Mr. George O. Nwanguma, reappointment to Position Eleven, for a term to expire June 1, 2015.

Résumés are attached for your review.

Sincerely,

Annise D. Parker
Mayor

AP:JC:jsk

Attachments

cc: Mr. David W. Hawes, Executive Director, Brays Oaks Management District
Mr. Camm "Trey" C. Lary, III, Legal Counsel, Brays Oaks Management District

RECEIVED
FEB 10 2012
CITY SECRETARY



ANNISE D. PARKER
MAYOR

OFFICE OF THE MAYOR
CITY OF HOUSTON
TEXAS

4

FEB 29 2012

COPY TO EACH MEMBER OF COUNCIL:

CITY SECRETARY: 2-9-12
date

COUNCIL MEMBER: _____

February 8, 2012

The Honorable City Council
Houston, Texas

Re: Appointment Associate Judge of Municipal Courts

Dear Council Members:

I appoint the following individual to serve as Associate Judge of Municipal Courts for a two-year term, subject to and beginning immediately upon Council confirmation.

Name
Dana V. Perry-Drexler

Résumé is attached for your review.

Sincerely,

Annise D. Parker
Mayor

AP:JC:jsk

Attachment .

cc: The Honorable Barbara E. Hartle, Presiding Judge of Municipal Courts
Ms. Marta Crinejo, Agenda Director, Mayor's Office

RECEIVED
FEB - 9 2012
CITY SECRETARY



ANNISE D. PARKER
MAYOR

OFFICE OF THE MAYOR
CITY OF HOUSTON
TEXAS

5
FEB 29 2012

COPY TO EACH MEMBER OF COUNCIL:

CITY SECRETARY: 2-9-12
date

COUNCIL MEMBER: _____

February 8, 2012

The Honorable City Council
Houston, Texas

Re: Appointment of Municipal Court Judge

Dear Council Members:

I appoint the following individual as Municipal Court Judge, subject to Council confirmation. The Judge shall serve two-year term beginning immediately upon Council confirmation.

Names	Position
Lawrence A. Rousseau	05

Résumé is attached for your review.

Sincerely,

Annise D. Parker
Mayor

AP:JC:jsk

Attachment

cc: The Honorable Barbara E. Hartle, Presiding Judge of Municipal Courts
Ms. Marta Crinejo, Agenda Director, Mayor's Office

RECEIVED
FEB - 9 2012
CITY SECRETARY

REQUEST FOR COUNCIL ACTION

TO: Mayor via City Secretary

RCA# 9295

Subject: Approve a Motion for the sole source purchase from Metro Fire Apparatus Specialists, Inc. for the purchase of replacement components and repair services for one fire engine.

Category #
4

Page 1 of 1

Agenda Item
6

FROM (Department or other point of origin):

Terry Garrison
Fire Chief
Fire

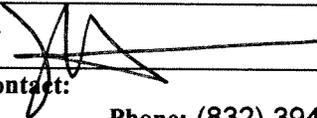
Origination Date

January 18, 2012

Agenda Date

FEB 29 2012

DIRECTOR'S SIGNATURE



Council District(s) affected

D

For additional information contact:

Beda Kent **B** Phone: (832) 394-6748
Neil Depascal Phone: (832) 394-6755

Date and Identification of prior authorizing Council Action:

RECOMMENDATION: (Summary)

Approve a Motion for the sole source purchase from Metro Fire Apparatus Specialists, Inc. in the amount of \$158,823.16 for the purchase of replacement components and repair services for one fire engine for the Houston Fire Department.

\$158,823.16
Fleet Management Fund (Fund 1005)

Finance Budget

SPECIFIC EXPLANATION:

The Fire Chief recommends City Council approve a Motion for the sole source purchase of replacement components and repair services for one fire engine from Metro Fire Apparatus Specialists, Inc. It is also recommended that authorization be given to issue a purchase order. The cost for this purchase is \$158,823.16.

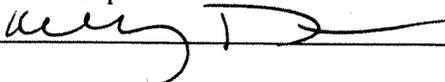
This purchase consists of a replacement cab, repair and replacement of front suspension, repair pump module, and pump test for a 2011 Crimson fire engine. The fire engine will be returned to front line service once repairs and final inspection is complete. It is expected to serve another eight years in front line service and two additional years in reserve status.

This purchase was not an FY12 budget item and is an unforeseen expense due to a collision that took place in October of 2011. This original unit was purchased from CDBG funds to service the community from Fire Station 25 as Engine 25 and will be returned to Station 25 once in service.

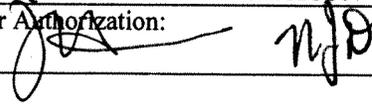
Metro Fire Apparatus Specialist is the sole source distributor in the state of Texas for fire truck chassis' built by Spartan Chassis, Inc., that is equipped with fire truck bodies built by Crimson Fire, Inc.

REQUIRED AUTHORIZATION

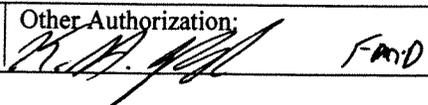
Finance Department:



Other Authorization:



Other Authorization:





SPARTAN CHASSIS, INC.
A SPARTAN MOTORS COMPANY

February 9, 2012

City of Houston Fire Department
Mr. Rick Brandt
600 Jefferson St.
Suite 7th Floor
Houston, TX 77002

Dear Mr. Brandt:

This letter is to confirm that Metro Fire Apparatus Specialist, Inc., is the sole source distributor in the state of Texas for fire truck chassis' built by Spartan Chassis, Inc., that are equipped with fire truck bodies built by Crimson Fire, Inc.

In compliance with the State of Texas law, Metro Fire Apparatus Specialists, Inc., is licensed by the state of Texas, Department of Transportation, as an authorized licensed franchised dealer for Spartan Chassis Inc., and for Crimson Fire, Inc.

Spartan Chassis, Inc. and Crimson Fire, Inc. are both subsidiaries of and are both 100% owned by Spartan Motors, Inc.

Should you have any questions regarding the above please do not hesitate to contact me at 517.543.3814.

Thank you,

Michael W. Bowman
Director of Emergency Rescue Chassis Sales
Spartan Chassis, Inc.
mike.bowman@spartanchassis.com



SPARTAN CHASSIS, INC.

A SPARTAN MOTORS COMPANY

February 9, 2012

City of Houston Fire Department
Mr. Rick Brandt
600 Jefferson St.
Suite 7th Floor
Houston, TX 77002

Dear Mr. Brandt:

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In compliance with the State of Texas law, Metro Fire Apparatus Specialists, Inc., is licensed by the state of Texas, Department of Transportation, as an authorized licensed franchised dealer for Spartan Chassis Inc., and for Crimson Fire, Inc.

Spartan Chassis, Inc. and Crimson Fire, Inc. are both subsidiaries of and are both 100% owned by Spartan Motors, Inc.

Should you have any questions regarding the above please do not hesitate to contact me at 517.543.3814.

Thank you,

Michael W. Bowman
Director of Emergency Rescue Chassis Sales
Spartan Chassis, Inc.
mike.bowman@spartanchassis.com

REQUEST FOR COUNCIL ACTION

RCA# 9316

TO: Mayor via City Secretary

Subject: Purchase of Utility Vehicles Through the Houston-Galveston Area Council for the Houston Fire Department
S38-E24210-H

Category #
1 & 4

Page 1 of 1

Agenda Item

7+7A

FROM (Department or other point of origin):
Calvin D. Wells
City Purchasing Agent
Administration & Regulatory Affairs Department

Origination Date
February 14, 2012

Agenda Date
FEB 29 2012

DIRECTOR'S SIGNATURE
Calvin D. Wells

Council District(s) affected
All

For additional information contact:
Ray DuRousseau Phone: (832) 393-8726
Neil Depascal Phone: (832) 394-6755

Date and Identification of prior authorizing Council Action:

RECOMMENDATION: (Summary)
Approve an ordinance authorizing the appropriation of \$51,218.00 out of the Equipment Acquisition Consolidated Fund (Fund 1800) and approve the purchase of utility vehicles through the Houston Galveston Area Council (H-GAC) in the amount of \$51,218.00 for the Houston Fire Department.

Award Amount: \$51,218.00

Finance Budget

\$51,218.00 - Equipment Acquisition Consolidated Fund (Fund 1800)

SPECIFIC EXPLANATION:

The Chief of the Houston Fire Department and the City Purchasing Agent recommend that City Council approve an ordinance authorizing the appropriation of \$51,218.00 out of the Equipment Acquisition Consolidated Fund (Fund 1800). It is further recommended that City Council approve the purchase of two utility vehicles through the Interlocal Agreement for Cooperative Purchasing with H-GAC for the Houston Fire Department in the amount of \$51,218.00 and that authorization be given to issue a purchase order to the H-GAC contractor, Caldwell Automotive Partners, LLC, d/b/a Caldwell Country Chevrolet. These new utility vehicles will be used citywide by the Department to deliver Emergency Medical Services and Fire Suppression Service to the citizens of Houston. The funding for these vehicles is included in the adopted FY12 Equipment Acquisition Plan.

These new vehicles will come with a full warranty of three years/36,000 miles and their life expectancy is seven years or 100,000 miles. These new vehicles will replace Shop No. 29531, a 12-year-old unit with 150,903 miles and Shop No. 31845, an 11-year-old unit with 160,060 miles. The units that will be replaced have reached their life expectancy and will be sent to auction for disposition.

Buyer: Lena Farris
PR Nos. 10143558

B

REQUIRED AUTHORIZATION

Finance Department:

Other Authorization: *[Signature]*

Other Authorization:

7+7A

REQUEST FOR COUNCIL ACTION

TO: Mayor via City Secretary

RCA# 9318

Subject: Sole Source Purchase of Tonometer Systems for the Houston Department of Health and Human Services
S45-E24214

Category #
4

Page 1 of 1

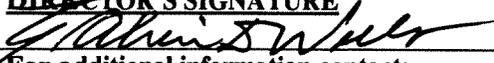
Agenda Item

8

FROM (Department or other point of origin):
Calvin D. Wells
City Purchasing Agent
Administration & Regulatory Affairs Department

Origination Date
February 22, 2012

Agenda Date
FEB 29 2012

DIRECTOR'S SIGNATURE


Council District(s) affected
All

Wells

For additional information contact:
Kathy Barton Phone: (832) 393-5045
Ray DuRousseau Phone: (832) 393-8726

Date and Identification of prior authorizing Council Action:

RECOMMENDATION: (Summary)
Approve the sole source purchase of Tonometer Systems from Marco Ophthalmic, Inc. in the total amount of \$41,500.00 for the Houston Department of Health and Human Services.

Award Amount: \$41,500.00

Finance Budget

\$41,500.00 - General Fund (1000)

SPECIFIC EXPLANATION:

Background:

The Houston Department of Health and Human Services has been partnered with the See to Succeed Outreach Program since 2011 to improve vision and vision-related health, education and social factors by performing annual vision exams and providing eyewear. In 2011, 420 eye exams and 361 pairs of eyewear were provided to school children from nineteen schools in the Houston area. It is estimated that at least 10,000 school children in the Houston area have learning issues because they cannot read well due to poor vision that is correctable with eyeglasses.

Recommendation:

The Director of the Houston Department of Health and Human Services (HDHHS) and the City Purchasing Agent recommend that City Council approve the sole source purchase of two additional Tonorell tonometer systems from Marco Ophthalmic, Inc. in the total amount of \$41,500.00 for the HDHHS. The systems will be added to HDHHS' equipment inventory for the See to Succeed Outreach Program to continue the vision service collaborative that gives children from disadvantaged families a quality eye examination and a quality pair of eye glasses at no cost.

Marco Ophthalmic, Inc. is the sole distributor for Nidek products in the USA, which includes the Tonorell tonometer system.

In October 2011 a purchase order in the amount of \$33,876.00 was issued to Marco Ophthalmic, Inc. With the issuance of this purchase order, the aggregate total expenditure to Marco Ophthalmic, Inc. will be over \$50,000.00; thus requiring City Council approval.

The scope of work requires the contractor to furnish and deliver two tonometer systems. The units will come with a standard one year warranty and the life expectancy is eight years.

The recommendation is made pursuant to Chapter 252, Section 252.022 (a) (7) (A) of the Texas Local Government Code for exempt procurements.

Buyer: Sandy Yen
PR# 10144299

REQUIRED AUTHORIZATION

Finance Department:

Other Authorization:

Other Authorization:



June 29, 2011

Ms. Michele Austin
City of Houston

Dear Ms. Austin,

This letter is to inform you that Marco Ophthalmic, Inc. is Nidek's exclusive distributor for many of our products in the United States.

These products include, but are not limited to:

RT-3100 (Automated Refractor)

- Seamless connectivity with TonorefII, CP-770 and EMR
- Built-In Clear and Safe Illumination (White LED)
- Smooth, Quiet Lens Selections for Faster Examinations
- Build-In High Speed line Printer with Automatic Paper Cutting

TonorefII (Auto Ref / Kerato / Tonometer)

- Only 3 in 1 combo available in the USA.
- Pupil Zone Imaging Method
- SLD (Super Luminescent Diode)

CP-770 (Chart Projector)

- Brighter and clearer chart display with white LED
- Seamless connectivity with RT-3100

EyeCare Card / Reader / Writer (IC-Card / RW)

- Compatible to RT-3100 and TonorefII

Nidek Co. LTD and Nidek Inc., does not authorize any other companies besides Marco Ophthalmic, Inc., to sell and service this equipment within the United States.

Let me know if you have any other questions.

Sincerely,

Ippei Shiohata
Assistant Manager of Sales and Marketing
Nidek Inc.

REQUEST FOR COUNCIL ACTION

TO: Mayor via City Secretary

RCA# 9303

Subject: Purchase of Police Vehicles Through the Houston-Galveston Area Council for the Houston Police Department
S38-E24199-H

Category #
1 & 4

Page 1 of 2

Agenda Item

909A

FROM (Department or other point of origin):

Calvin D. Wells
City Purchasing Agent
Administration & Regulatory Affairs Department

Origination Date

February 13, 2012

Agenda Date

FEB 29 2012

DIRECTOR'S SIGNATURE

Calvin D. Wells

Council District(s) affected
All

For additional information contact:

Ray DuRousseau Phone: (832) 393-8726
Joseph A. Fenninger *JA 2/21/12* Phone: (713) 308-1708

Date and Identification of prior authorizing Council Action:

RECOMMENDATION: (Summary)

Approve an ordinance authorizing the appropriation of \$93,622.68 out of the Equipment Acquisition Consolidated Fund (Fund 1800) and approve the purchase of police vehicles through the Houston-Galveston Area Council (H-GAC) in the amount of \$187,230.68 for the Houston Police Department.

Award Amount: \$187,230.68

Finance Budget
[Signature]

\$ 93,622.68 - Equipment Acquisition Consolidated Fund (Fund 1800)
\$ 93,608.00 - Supplemental Environmental Project Fund (Fund 2404)
\$187,230.68 - Total Funding

SPECIFIC EXPLANATION:

The Chief of the Houston Police Department and the City Purchasing Agent recommend that City Council approve an ordinance authorizing the appropriation of \$93,622.68 out of the Equipment Acquisition Consolidated Fund (Fund 1800). It is further recommended that City Council approve the purchase of six police vehicles through the Interlocal Agreement for Cooperative Purchasing with H-GAC in the amount of \$187,230.68 for the Houston Police Department, and that authorization be given to issue a purchase order to the H-GAC contractor, Philpott Motors Ltd., d/b/a Philpott Ford. These police vehicles will be used citywide by the Department for patrol activities, to respond to emergency incidents and to access environmental crime scenes that are often in remote off-road areas. The funding for these vehicles is included in the adopted FY12 Equipment Acquisition Plan.

These new police vehicles will meet the EPA's current emission standards for low emission vehicles. They will come with a full three-year or 36,000-mile warranty and the life expectancy is four years or 100,000 miles. See the Equipment Usage Summary on Page 2 of 2 for vehicle usage and replacement details. These new police vehicles will replace units that have reached their useful life and will be sent to auction for disposition.

REQUIRED AUTHORIZATION

Finance Department:

Other Authorization: *[Signature]* 2/21/12

Other Authorization:

Date:
2/13/2012

Subject: Purchase of Police Vehicles Through the Houston-Galveston
Area Council for the Houston Police Department
S38-E24199-H

Originator's
Initials
LF

Page 2 of 2

EQUIPMENT USAGE SUMMARY

DESCRIPTION/ REQUISITION NO.	QTY	DEPARTMENT FLEET USAGE	EQUIPMENT REPLACEMENT		
			Shop No.	Age-Yrs.	Mileage
PR 10133548// All Wheel Drive, Full Size Sedan, Patrol Vehicle	3	Houston Police Department These vehicles will be used citywide by the Department's police officers to respond to accidents, crimes and emergency incidents.	34557	7	105,266
			33817	8	100,158
			33116	9	93,899
PR 10139444/ Utility Vehicle 4- WD	1	Houston Police Department This vehicle will be used citywide by the Department's police officers to respond to emergency incidents and to access environmental crime scenes that are often in remote off road areas.	33567	9	120,949
PR 10139446/ 2-WD Crew Cab Truck	2	Houston Police Department These vehicles will be used citywide by the Department's police officers to respond to emergency incidents and to access environmental crime scenes that are often in remote off-road areas.	31906	11	154,794
			33565	9	124,245

Buyer: Lena Farris

REQUEST FOR COUNCIL ACTION

TO: Mayor via City Secretary

RCA# 9244

Subject: Purchase of Trailer-Mounted Submersible Pumps through the Houston Galveston Area Council for the Public Works and Engineering Department
N24128E

Category #
4

Page 1 of 1

Agenda Item

10

FROM (Department or other point of origin):

Calvin D. Wells
City Purchasing Agent
Administration & Regulatory Affairs Department

Origination Date

January 24, 2012

Agenda Date

FEB 29 2012

DIRECTOR'S SIGNATURE

Calvin D. Wells

Council District(s) affected
All

For additional information contact:

David Guernsey Phone: (832) 395-3640
Ray DuRousseau Phone: (832) 393-8726

Date and Identification of prior authorizing Council Action:

RECOMMENDATION: (Summary)

Approve the purchase of trailer-mounted submersible pumps through the Houston Galveston Area Council (H-GAC) in the amount of \$862,738.37 for the Public Works and Engineering Department.

Awarded Amount: \$862,738.37

Finance Budget

\$862,738.37 - PWE-Combined Utility System General Purpose Fund (Fund 8305)

SPECIFIC EXPLANATION:

The Director of the Public Works and Engineering Department and the City Purchasing Agent recommend that City Council approve the purchase of trailer-mounted submersible pumps through the Interlocal Agreement for Cooperative Purchasing with H-GAC in the amount of \$862,738.37 for the Public Works and Engineering Department, and that authorization be given to issue purchase orders to the H-GAC contractor, Godwin Pumps of America, Inc. These trailer-mounted submersible pumps will be used by the Department's maintenance personnel to transfer water and wastewater from various water treatment facilities, storage tanks, wet wells and clarifiers throughout the City.

This purchase will consist of 19 various sizes and types of trailer-mounted submersible pumps, ranging in size from 4" to 12" and ranging in horsepower from 12 hp to 228 hp. The pumps will come with a full one-year warranty and the life expectancy is 10-15 years. The new trailer-mounted submersible pumps are additions to the existing fleet inventory that are eighteen years old and are operated daily. The new pumps will support the existing pumps to extend their service life until replacements become available. The supplier shall have 120 calendar days to deliver the pumps to the City after receipt of the purchase order.

M/WBE Subcontractor:

This procurement was issued as a goal-oriented contract with a 3% M/WBE participation level. Godwin Pumps of America, Inc. has designated the below-named company as its certified M/WBE subcontractor:

<u>Name</u>	<u>Type of Service</u>	<u>Amount</u>	<u>Percentage</u>
K. T. D. Hot Shot	Delivery Services	\$25,882.15	3%

This contract will be monitored by the Mayor's Office of Business Opportunity.

Buyer: Art Lopez

REQUIRED AUTHORIZATION

Finance Department:

Other Authorization:

Other Authorization:

NOX

7

REQUEST FOR COUNCIL ACTION

TO: Mayor via City Secretary

RCA#

Subject: Approve an Ordinance to Authorize a Voluntary Pilot Program for GPS/Credit Card Technology in Houston Taxicabs; Approve an Ordinance Amending Chapter 46 of the Houston Code of Ordinances Related to Vehicles for Hire, to Authorize a Rate Increase for Taxicab Service within the City Limits.

Category #

Page 1 of 3

Agenda Item

11 + 11A

FROM (Department or other point of origin):

Alfred J. Moran, Jr., Director
Administration & Regulatory Affairs Department

Origination Date

February 23, 2012

Agenda Date

FEB 29 2012

DIRECTOR'S SIGNATURE

Council District(s) affected

All

For additional information contact:

Tina Paez Phone: (713) 837-9630
Christopher Newport Phone: (713) 837-9533

Date and Identification of prior authorizing Council Action:

Ord. No. 2005-940, passed 08/2005; Ord. No. 2006-668, passed 06/2006

RECOMMENDATION: (Summary)

Approve an Ordinance to Authorize a Voluntary Pilot Program for GPS/Credit Card Technology in Houston Taxicabs; Approve an Ordinance amending Chapter 46 of the Houston Code of Ordinances related to Vehicles for Hire, to authorize a rate increase for taxicab service within the city limits.

Amount of Funding: N/A

Finance Budget

SOURCE OF FUNDING: N/A

SPECIFIC EXPLANATION:

The Director of the Administration & Regulatory Affairs Department (ARA) recommends that City Council approve an ordinance to authorize the implementation of a voluntary pilot program for GPS/Credit Card Technology in Houston taxicabs and to approve an ordinance amending Chapter 46 of the Houston Code of Ordinances to authorize a rate increase for taxicab service within the city limits. The proposed rate change translates to an increase of \$1.87, or approximately 13%, for the average, non-airport taxicab trip in Houston.

The City of Houston regulates vehicles-for-hire for the health and safety of the riding public. Over the past year, as the City has amended its regulations to provide a regulatory framework for green vehicles and more urban transportation options, many members of the City Council encouraged ARA to also re-evaluate the regulation of the more traditional vehicle-for-hire industry – taxicabs.

Over the past six months, ARA conducted multiple surveys and reviews regarding national and international best practices in taxicab regulation. A recurring theme is the emergence of a central goal in regulation – improving customer service through technology and driver training. In improving customer service, taxicab operator and driver revenues increase, and the industry improves overall.

As a result of this research and the City of Houston's desire to implement taxicab regulation best practices in Houston, ARA has developed a multi-phase approach for Houston's taxicab best practices initiative. The first phase includes a proposal for a pilot program for the installation of GPS/Credit Card systems in Houston taxicabs to allow the City of Houston to gather and analyze relevant taxicab trip data to better understand taxicab supply and demand throughout the city. The initial phase also includes an approximate 13% taxicab rate increase for the average, non-airport, six-mile trip to A) cover incremental industry costs, and (B) to allow operators and drivers to earn a reasonable rate of return while allowing substantial cost recovery.

Proposed Voluntary Pilot Program for GPS/Credit Card Technology

Heavily contested issues such as the number of permits that should be made available or the appropriate permit distribution methodology cannot be addressed fully in the absence of demand data. While the City has very good information regarding the number of trips originating at Houston's airports – a record number in 2011 – it does not have information for non-airport trips. ARA's research indicates that this data is critical to the analysis of the various economic regulation models that exist.

In addition to this regulatory benefit, the proposed equipment substantially improves service to the riding public. Based on ARA's research, cities such as New York, Los Angeles, Philadelphia, Boston, and others have implemented mandatory

REQUIRED AUTHORIZATION

Finance Department:

Other Authorization:

Other Authorization:

Date: 2/23/12	Subject: Approve an Ordinance Amending Chapter 46 of the Houston Code of Ordinances Related to Vehicles for Hire, to Authorize a Rate Increase for Taxicab Service within the City Limits	Originator's Initials TP	Page 2 of 3
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integrated credit card/GPS systems in their taxicab fleets. The anecdotal reports from those installations indicate substantial customer service improvements; dramatic increases in credit card usage; increases in the number of customers choosing taxicab services over other modes of public transportation; and increased revenues to drivers and operators. The equipment also enhances the safety of both the drivers and the passengers as neither has to deal in cash. Finally, the equipment reduces the incidence of fraud and the potential for credit card information "skimming," two significant issues that exist with the credit card swiping equipment currently in use.

The recommended ordinance would establish a Voluntary Pilot Program to allow any company that desires to invest in such equipment to do so and sets minimum performance standards for the equipment. The proposed Pilot Program does not prescribe specific equipment nor does it mandate installation of any equipment.

Proposed Taxicab Meter Rate Increase

As part of its regulatory function, the City regulates the rates charged to the consumer for certain transportation services, including taxicab trips within the city boundaries. The City last reviewed and increased taxicab meter rates in 2005.

On January 18, 2012, the City received a formal request from the taxicab industry ("Industry") for a rate review and proposed increase. ARA completed its review and summarized the relevant findings in the 2012 Taxicab Rate Study, which was presented and distributed to City Council's Housing, Sustainable Growth and Development Committee on February 16, 2012.

In performing this study, ARA reviewed changes in the components of the Consumer Price Index for those items directly related to the taxicab industry such as fuel, insurance, vehicle maintenance and repair, fee increases, etc. The data reviewed indicates that regional taxicab-related cost indices, hereafter referred to as the Houston Taxicab Cost Index or TCI, increased by 27.31% since the date of the last review. ARA presented these findings to the industry at an industry-wide Stakeholder Meeting held on February 3, 2012.

As a result of the feedback from that meeting and the concerns raised about implementing the full increase resulting from the cost data, and in the spirit of compromise, ARA is recommending adoption of the industry's counter-proposal, which results in an increase to the average five- to six-mile trip of approximately 13%. To implement this increase, ARA recommends the following proposed rate structure:

- Increase the proposed flag rate by \$0.25, from \$2.50 to \$2.75
- Increase the mileage charge by \$0.40, from \$1.80 to \$2.20 per mile
- Eliminate the fuel cost recovery fee and the fuel surcharge because the proposed TCI rates cover the increase in the cost of fuel since 2006

ARA further recommends adopting the Houston TCI as the primary method for reviewing and adjusting taxicab meter rates. Such a mechanism already exists for the annual adjustment of non-consent tow rates in Section 8-123 of the Code of Ordinances. In addition, ARA recommends an annual review of taxicab meter rates using the recommended TCI. Regular review ensures the City meets its obligation to provide for a just and reasonable rate of return by responding to changes in cost conditions with rate increases that are small and easy to manage by the City, operators and consumers. Providing a standard, streamlined approach that is easily applied, understandable, and economical, allows staff to track inflation and cost of operating increases on a regular basis, preventing future dramatic rate changes.

ARA recommends annual review with a minimum threshold for change and an automatic change every three years. The recommended ordinance provides a mechanism to administratively adjust meter rates if the TCI increases by between 5% and 10%. If the TCI increases by more than 10%, any meter rate adjustment would require Council approval.

Date: 2/23/12	Subject: Approve an Ordinance Amending Chapter 46 of the Houston Code of Ordinances Related to Vehicles for Hire, to Authorize a Rate Increase for Taxicab Service within the City Limits	Originator's Initials TP	Page 3 of 3
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As with non-consent tow rates, the industry could request, and pay for, a complete Taxicab Rate Study, or one could be initiated by ARA at any time. The industry did not express opposition to the adoption of the TCI, and supported the recommendation for standardized, automatic rate reviews.

Recommendation:

ARA recommends City Council approval of the voluntary pilot program for GPS/Credit Card technology as well as the recommended rate increase and amendment to Chapter 46 of the Code of Ordinances. These recommendations were presented to the Housing, Sustainable Growth and Development Committee on February 16, 2012.

11A
FEB 29 2012

Sec. 46-16. Definitions.

Taxicab cost index (TCI) means a weighted combination of selected consumer price indices and employment statistics as published by the United States Department of Labor used to measure the change in the costs of operating a taxicab.

Sec. 46-31. Rates prescribed.

(a) All taxicab permittees and drivers shall comply with and abide by the rates established in this section:

- (1) *Daytime metered travel.* For daytime trips, the metered travel fee shall be ~~\$2.50~~ 75 for the first one-~~eleveth~~ sixth of a mile or less plus ~~\$1.80 each additional mile and \$0.30~~ 20 for each additional one-~~sixth~~ eleveth of a mile or less.
- (2) *Nighttime metered travel.* For nighttime trips, the metered travel fee shall be ~~\$3.50~~ 3.75 for the first one-~~eleveth~~ sixth of a mile or less plus ~~\$1.80 each additional mile and \$0.20~~ 30 for each additional one-~~eleveth~~ sixth of a mile or less.
- (3) *IAH flat rates.* Alternative flat rates shall be imposed for trips between George Bush Intercontinental Airport/Houston (IAH) and its geographic zones I through X, as follows:

Zone	Daytime Trip Flat Rate		Nighttime Trip Flat Rate	
I	36.50	<u>45.00</u>	37.50	<u>46.00</u>
II	43.00	<u>52.50</u>	44.00	<u>53.50</u>
III	49.50	<u>60.00</u>	50.50	<u>61.00</u>
IV	53.50	<u>65.00</u>	54.50	<u>66.00</u>
V	60.00	<u>73.00</u>	61.00	<u>74.00</u>
VI	66.50	<u>81.00</u>	67.50	<u>82.00</u>
VII	71.50	<u>87.50</u>	72.50	<u>88.50</u>
VIII	85.50	<u>104.50</u>	86.50	<u>105.50</u>
IX	27.50	<u>34.00</u>	28.50	<u>35.00</u>
X	33.50	<u>41.00</u>	34.50	<u>42.00</u>

Provided that the lesser of the applicable flat rate or the actual metered rate shall be charged. A copy of the zone

map for IAH taxicab rates is on file for public inspection in the office of the city secretary. The centers of the streets and geographic features noted thereon as boundary lines shall determine boundaries between adjacent zones. The foregoing rates are inclusive of airport use fees, which may be additionally imposed on metered fares but not on flat rate fares.

- (4) *HOU flat rates.* Alternative flat rates shall be imposed for trips between *William P. Hobby Airport (HOU)* and its geographic zones I through XI, as follows:

Zone	Daytime Trip Flat Rate	Nighttime Trip Flat Rate
I	\$26.00 <u>32.00</u>	\$27.00 <u>33.00</u>
II	21.50 <u>26.00</u>	22.50 <u>27.00</u>
III	31.50 <u>38.50</u>	32.50 <u>39.50</u>
IV	44.00 <u>54.50</u>	45.00 <u>55.50</u>
V	50.00 <u>61.50</u>	51.00 <u>62.50</u>
VI	57.00 <u>70.00</u>	58.00 <u>71.00</u>
VII	65.00 <u>80.50</u>	66.00 <u>81.50</u>
VIII	58.00 <u>71.00</u>	59.00 <u>72.00</u>
IX	30.00 <u>37.50</u>	31.00 <u>38.50</u>
X	70.00 <u>86.00</u>	71.00 <u>87.00</u>
XI	65.00 <u>79.50</u>	66.00 <u>80.50</u>

Provided that the lesser of the applicable flat rate or the actual metered rate shall be charged. A copy of the zone map for HOU taxicab rates is on file for public inspection in the office of the city secretary. The centers of the streets and geographic features noted thereon as boundary lines shall determine boundaries between adjacent zones. The foregoing rates are inclusive of airport use fees, which may be additionally imposed on metered fares but not on flat rate fares.

- (5) *Waiting time.* An amount not to exceed ~~\$20.00~~24.00 per hour may be charged for waiting time, provided the clock on the taximeter is set and regulated at a rate not to exceed ~~\$20.00~~24.00 per hour.

- (9) *Fuel cost recovery fee:*

- a. The Department of Administration and Regulatory Affairs may establish a fuel surcharge to be added to

~~taxicab rates if it finds that fuel surcharge is warranted. When the average price per gallon of regular unleaded gasoline exceeds \$2.00, all taxicab permittees and drivers shall comply with and abide by the rates established by this section, except as follows:~~

1. ~~Daytime metered travel.~~ For daytime trips, the metered travel fee shall be \$2.50 for the first two-elevenths of a mile or less plus \$1.87 each additional mile and \$0.17 for each additional one-eleventh of a mile or less.
2. ~~Nighttime metered travel.~~ For nighttime trips, the metered travel fee shall be \$3.50 for the first two-elevenths of a mile or less plus \$1.87 each additional mile and \$0.17 for each additional one-eleventh of a mile or less.
3. ~~IAH flat rates.~~ Alternative flat rates shall be imposed for trips between George Bush Intercontinental Airport/Houston (IAH) and its geographic zones I through X, as follows:

Zone	Daytime Trip Flat Rate	Nighttime Trip Flat Rate
I	\$38.00	\$39.00
II	\$44.50	\$45.50
III	\$51.00	\$52.00
IV	\$55.00	\$56.00
V	\$62.00	\$63.00
VI	\$69.00	\$70.00
VII	\$74.50	\$75.50
VIII	\$88.50	\$89.50
IX	\$28.50	\$29.50
X	\$35.00	\$36.00

~~Provided that the lesser of the applicable flat rate or the actual metered rate shall be charged. The foregoing rates are inclusive of airport use fees, which may be additionally imposed on metered fares and flat rate fares for trips originating from IAH.~~

4. ~~HOU flat rates.~~ Alternative flat rates shall be imposed for trips between William P. Hobby

~~Airport (HOU) and its geographic zones I through XI, as follows:~~

Zone	Daytime Trip Flat Rate	Nighttime Trip Flat Rate
I	\$27.00	\$28.00
II	\$22.00	\$23.00
III	\$33.00	\$34.00
IV	\$46.00	\$47.00
V	\$52.00	\$53.00
VI	\$59.50	\$60.50
VII	\$68.50	\$69.50
VIII	\$60.50	\$61.50
IX	\$31.50	\$32.50
X	\$73.00	\$74.00
XI	\$67.50	\$68.50

~~Provided that the lesser of the applicable flat rate or the actual metered rate shall be charged. The foregoing rates are inclusive of airport use fees, which may be additionally imposed on metered fares and flat rate fares for trips originating from HOU.~~

- b. ~~ARA may establish a fuel surcharge to be added to taxicab rates if the department finds that a fuel surcharge is warranted. For trips longer than two miles in distance, a per trip fuel surcharge shall be added to the rates established by this section when the average price per gallon of regular unleaded gasoline exceeds \$3.00. The per trip fuel surcharge shall be as follows:~~

Average Gasoline Price Per Gallon	Surcharge Per Trip
\$3.00 or less	None
\$3.01 to \$3.50	\$0.50
\$3.51 to \$4.00	\$1.00
Each additional increment of \$0.50	Additional \$0.50

- c. ~~Beginning July 1, 2006, when required, a fuel cost recovery fee or a fuel surcharge shall become effective on the first day of the first month of each calendar quarter, i.e., January 1, April 1, July 1, and~~

October 1, and shall remain in effect for the remainder of the quarter.

- d. ~~The average price per gallon of regular unleaded gasoline shall be based on American Automobile Association (AAA) Daily Fuel Gauge Report for Houston, Texas.~~
- e. ~~The average price per gallon shall be calculated for a three-month period ending not more than 14 days prior to the beginning of a calendar quarter.~~

(9) An alternate flat rate of \$6.00 shall be imposed for trips entirely within the central business district.

(10) Taxicab Rate Review.

On or about November 15 of each year, the director shall conduct a review of the TCI to determine if taxicab rates need to be adjusted.

The TCI data shall be weighted as indicated in the table below:

<u>Fuel</u>	<u>22.0%</u>	<u>CPI — Gasoline (All Types) — Houston-Galveston-Brazoria, TX</u>
<u>Repairs and Maintenance</u>	<u>7.0%</u>	<u>CPI — Motor Vehicle Maintenance - US City Average</u>
<u>Parts and Equipment</u>	<u>7.0%</u>	<u>CPI — Motor Vehicle Parts and Equipment — US City Average</u>
<u>Insurance</u>	<u>6.0%</u>	<u>CPI - Motor Vehicle Insurance - US City Average</u>
<u>Depreciation/Return on Investment</u>	<u>4.0%</u>	<u>CPI — Used Cars and Trucks - City Size A</u>
<u>Driver/Operator Returns — Part I</u>	<u>25.0%</u>	<u>Average Hourly Earnings - Transit and ground transportation - National</u>
<u>Driver/Operator Returns — Part II</u>	<u>25.0%</u>	<u>CPI — All Items - Houston - Galveston - Brazoria, TX</u>
<u>Fees and Miscellaneous</u>	<u>4.0%</u>	<u>CPI — All Items - Houston - Galveston - Brazoria, TX</u>
<u>Total</u>	<u>100.0%</u>	

A review of the taxicab rates may also be initiated by taxicab owners and operators by making a request in writing to the director. Upon receipt of a request for a rate review, the director shall prepare an estimate of the administrative cost of the rate review. If the taxicab owner or operator determines to proceed with the rate review, the owner or operator shall submit a cashier's check to the director for the full amount determined by the director. The rate review shall be conducted in accordance with the procedures established for that purpose by the director. Without limitation, the director may select a representative group of taxicab owners and

operators and request that they provide verified financial data and vehicle-operating data regarding their operating costs and return on investment for use as a basis in conducting the review. Following receipt and review of the information, the director shall make a recommendation to city council whether a rate adjustment is justified, and, if so, the amount of the recommended rate adjustment. If a rate adjustment is recommended to city council, then city council shall conduct a hearing before adopting any adjustment to the taxicab rate.

(11) Annual Automatic Rate Adjustment.

Except for years in which a rate adjustment adopted by city council under item (10) of this subsection will take effect, the director shall make an automatic rate adjustment if:

- a) the TCI has changed by more than 5% since the last rate adjustment; or
- b) the last rate adjustment was at least three years ago

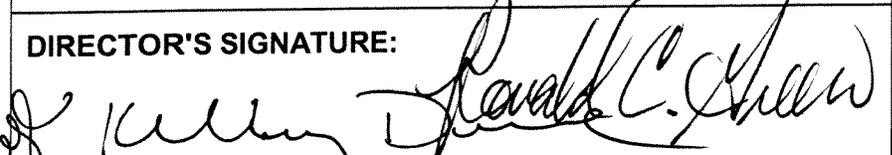
provided however, an increase in the TCI resulting in a rate adjustment of 10% or more of the current taxicab rates shall require the approval of city council.

The TCI shall be computed annually and shall be based upon the not seasonally adjusted data for the month of October, available on or about November 15, rounded to the nearest \$.05. Automatic adjustments to the rates shall be calculated by applying the percentage change in the TCI to the current six mile fare. The new rates shall be effective February 1 of each year. Written notice of the automatically adjusted rates shall be provided by regular mail to taxi permittees not later than the 30th day before the rates go into effect.

This subsection does not apply to the flat rate in subsection (9).

<p>SUBJECT: An Ordinance supplementing the City of Houston, Texas, Master Ordinance; supplementing and amending prior Ordinances as it relates to City of Houston, Texas, Combined Utility System First Lien Revenue Refunding Bonds, Series 2004B-6; authorizing the substitution of a credit facility and related documents.</p>	<p>Category #</p>	<p>Page 1 of <u>1</u></p>	<p>Agenda Item# 12</p>
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<p>FROM (Department or other point of origin): Finance Department and Office of the City Controller</p>	<p>Origination Date: 2/22/2012</p>	<p>Agenda Date FEB 29 2012</p>
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<p>DIRECTOR'S SIGNATURE: </p>	<p>Council District Affected: All</p>
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<p>For additional information contact: Jennifer Olenick Phone: 713-837-9899 Shawnell Holman Phone: 832-393-3513</p>	<p>Date and identification of prior authorizing Council action:</p>
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RECOMMENDATION: (Summary)
Approved an Ordinance supplementing the City of Houston, Texas, Master Ordinance; supplementing and amending prior Ordinances as it relates to City of Houston, Texas, Combined Utility System First Lien Revenue Refunding Bonds, Series 2004B-6; authorizing the substitution of a credit facility and related documents.

<p>Amount of Funding: Not Applicable</p>	<p>Finance Budget:</p>
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Source of Funding: General Fund Grant Fund Other (Specify) Enterprise Fund

SPECIFIC EXPLANATION:

On April 8, 2008 the Combined Utility System ("CUS") converted the Series 2004B Bonds, which were originally issued as auction rate securities, into variable rate demand bonds ("VRDBs"). VRDBs are long term bonds that are remarketed weekly at short term interest rates. The VRDBs have provided a cost-effective method of financing a portion of the CUS Capital Improvement Program ("CIP"). In order to be marketable, the VRDBs require a liquidity facility provided by a highly rated bank.

In 2008, the CUS entered into a letter of credit with several banks each assigned a percentage of the liability. This letter of credit expired on April 6, 2010. The City then subsequently entered into letters of credit for each subseries of the Series 2004B Bonds. Currently, the letter of credit for the CUS Series 2004B-6 Bonds is scheduled to expire on April 6th 2012. The Finance Working Group recommends entering into a new liquidity agreement with Sumitomo Mitsui Banking Corporation to provide the letter of credit for the entire amount of \$78.325 million. The letter of credit will be for a proposed term of 3 years. Recommended as co-bond counsel are Fulbright & Jaworski L.L.P and Burney & Foreman.

Recommendation:

The Finance Working Group recommends approval of this item.

REQUIRED AUTHORIZATION

<p>Finance Director:</p>	<p>Other Authorization:</p>	<p>Other Authorization:</p>
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TO: Mayor via City Secretary REQUEST FOR COUNCIL ACTION

12-HVLP

SUBJECT: An Ordinance authorizing the execution of a contract between the City of Houston and Houston Volunteer Lawyers Program, Inc. for a HOPWA Supportive Services Program.	Category 1,2	Page 1 of 2	Agenda Item # # 23
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FROM (Department or other point of origin): Neal Rackleff, Interim Director Housing and Community Development Department	Origination Date 2/7/2012	Agenda Date FEB 29 2012
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DIRECTOR'S SIGNATURE: 	Council District(s) affected: 1
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For additional information contact: Melody Barr Phone: 713-868-8329	Date and identification of prior authorizing Council action: N/A
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RECOMMENDATION: (Summary)
Approval of an ordinance authorizing the execution of a contract between the City of Houston and the Houston Volunteer Lawyers Program, Inc. for Legal and Supportive Services under the Housing Opportunities for Persons with AIDS ("HOPWA") Act.

Amount of Funding: \$175,000.00	Finance Budget:
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SOURCE OF FUNDING General Fund Grant Fund Enterprise Fund

 Other (Specify) HOPWA Grant Fund (5000)

SPECIFIC EXPLANATION:
The Housing and Community Development Department ("HCDD") recommends approval of a contract between the City of Houston and Houston Volunteer Lawyers Program, Inc. ("HVLP") for the administration of a Housing Opportunities for Persons with AIDS ("HOPWA") grant funding Legal and Supportive Services for persons living with HIV/AIDS and their families. The Administrative Offices for HVLP are located on 712 Main Street, Houston, Texas 77002.

HCDD recently finished conducting a Request for Proposals ("RFP") for fiscal year 2012 HOPWA contracts. HVLP is one of the agencies that successfully completed the RFP and was awarded a conditional commitment of HOPWA funds, pending City Council approval. HVLP has received HOPWA funding through the City of Houston for various contracts since 2008.

HVLP is a nonprofit 501(c)(3) corporation founded in 1981 to provide quality pro bono legal representation to poor and indigent individuals who would otherwise lack the economic resources or legal knowledge to obtain counsel. HVLP was established by the Houston Bar Association with the assistance of Gulf Coast Legal Foundation. Today, HVLP has a staff of 22 full-time employees and over 1,500 volunteer attorneys to provide free legal services to traditionally disenfranchised communities. HVLP has twenty years experience working with persons living with HIV/AIDS in the Houston area. HVLP's AIDS Unit has been recognized locally, statewide and nationally, and was recently one of only three programs featured in the American Bar Association's video, "Pro Bono in the AIDS Epidemic." In recent years, the AIDS Unit has assisted an average of 250 clients living with HIV/AIDS per year with legal issues related to their health status.

The mission of the AIDS Legal Project is to improve the quality of life of people living with HIV/AIDS by educating and representing clients in legal matters integral to living with their disease. The AIDS Legal Project works to help clients maintain a decent standard of living through maintenance of housing, employment, and assistance in maintaining public and disability benefits. HVLP overcomes traditional barriers to legal services by concentrating on those geographic areas and populations lacking easy access to legal assistance.

REQUIRED AUTHORIZATION

Finance Director:	Other Authorization:	Other Authorization:
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NA

Date: 2/7/2012	Subject: An Ordinance authorizing the execution of a contract between the City of Houston and Houston Volunteer Lawyers Program, Inc. for a HOPWA Supportive Services Program.	Originator's Initials <i>DK</i>	Page <u>2</u> of <u>2</u>
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In its fourth contract with the City of Houston's HOPWA Program, HVLP is proposing to provide comprehensive legal assistance to a minimum of one-hundred and seventy-five (175), unduplicated households, who meet the eligibility standards set forth at 24 CFR §574.3. Furthermore, HVLP will conduct a minimum of thirty (30) legal advice clinics at Houston-area AIDS service organizations and HOPWA-funded housing facilities. Clients will receive counsel and advice on a range of civil matters related to housing and their health status, including estate planning, family law, public benefits, disability, employment and discrimination. Estate planning will include assisting clients with Last Wills and Testament, Power of Attorney, Directives to Physicians and other documents to ensure that the client's requests are carried out if and when disability, incapacity, or death occurs. Those clients requiring more extensive civil legal representation will be referred to a volunteer or staff attorney who will assist the client with reaching a resolution to his or her issue.

This agreement will provide up to \$175,000.00 for this anticipated one-year contract, which is inclusive of \$14,500.00 in pre-contract services. The contract's performance period will begin on January 1, 2012 and end on December 31, 2012, with pre-contract services from January 1, 2012 – January 31, 2012. Through this agreement, Houston Volunteer Lawyers Program will provide legal supportive services to one-hundred and seventy-five (175), unduplicated households affected by HIV/AIDS and who meet the eligibility standards under the HOPWA program.

Total Funds and Sources:	\$175,000.00 (HOPWA)
Number of Persons to be Served:	175 households (annually)
Category of Persons:	HIV/AIDS/Low-income

This contract will provide funding for the following HOPWA activities during the 12-month period.

Category	Pre-Contract Services	Annual Contract Amount	Total Contract Amount	Percent
Supportive Services	\$14,500.00	\$160,500.00	\$175,000.00	100.00%
Total	\$14,500.00	\$160,500.00	\$175,000.00	100.00%

Therefore, HCDD is requesting approval of this ordinance, which will provide up to \$175,000.00 in HOPWA funds for a supportive services project for low-income persons living with HIV/AIDS and their families.

NR:BB:MNB:AB

c: City Attorney
City Secretary
Mayor's Office
Legal Department
Finance Department

R

REQUEST FOR COUNCIL ACTION

TO: Mayor via City Secretary

Subject: Approval of an Ordinance allowing the Parks and Recreation Department to apply for and receive a Juvenile Justice and Delinquency Prevention grant from the Criminal Justice Division of the Governor's Office.

Category #

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1 of 1

Agenda Item:
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FROM (Department or other point of origin):

Houston Parks and Recreation Department

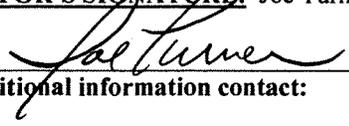
Origination Date:

February 6, 2012

Agenda Date:

FEB 29 2012

DIRECTOR'S SIGNATURE: Joe Turner, Director

WJS


Council Districts Affected:
D

For additional information contact: Luci Correa 832-395-7057
Twonda Thompson 832-395-7244

Date and identification of prior authorizing Council Action:
N/A

RECOMMENDATION (summary):

The Houston Parks and Recreation Department (HPARD) recommends City Council approve an Ordinance authorizing the Director to apply for and receive a grant from the Governor's Office Criminal Justice Division to support a science, technology, engineering, and math (STEM) education program called "Career Exploration through STEM Innovation" to be administered by HPARD's After-School Achievement Program.

Amount and Source of Funding:

\$125,000 Juvenile Justice and Delinquency Prevention Grant
No City of Houston funding

Finance Budget:

SPECIFIC EXPLANATION:

The Parks and Recreation Department (HPARD) recommends City Council approve an Ordinance authorizing the Director to apply for and receive a reimbursable grant from the Office of the Governor Criminal Justice Division (CJD) for juvenile justice and delinquency prevention. Funding is limited to \$125,000. No matching funds are required. CJD requires an Ordinance passed by City Council to be eligible to apply for and receive funds. The Houston-Galveston Area Council will prioritize and recommend projects to the CJD.

CJD grant funding is requested to provide an after-school program called "Career Exploration through STEM Innovation." The program curriculum will focus on STEM (science, technology, engineering, and math) activities such as robotics, science exploration, Brainetics mathematic memory system, and computer literacy. "Career Exploration through STEM Innovation" is a partnership between the Houston Parks and Recreation Department, Houston Public Library, Houston Independent School District, and Texas Southern University (TSU). The TSU College of Science and Technology Center for STEM Education and Outreach (C-SEO) provides campus-based STEM program coordination, community training, and public outreach.

James Ryan and Ezekiel Cullen Middle Schools and Jack Yates High School are targeted for the program because of their proximity to TSU. Additionally these schools have the ability to incorporate high-quality, comprehensive activities from ASAP's four component areas: academic enhancement, skill development, recreational/cultural enrichment, and community involvement. Activities include career exploration, job readiness, internship development and supervision, tutorials, homework assistance, test preparation skills, college exposure/preparatory skills, leadership skill development, team building, conflict management, financial literacy, job readiness, recreation, sports, arts, dance, creative writing, and community involvement such as volunteerism and community service.

The grant program will be administered through the Houston Parks and Recreation Department's After-School Achievement Program. The City of Houston established ASAP in 1998 to fund after-school programming which engages students in structured, supervised activities after-school to reduce juvenile crime and victimization during these dangerous hours. ASAP provides funding to schools and non-profit agencies that offer after-school programming at their sites. If awarded, the grant start date is September 1, 2012 for use in the 2012 - 2013 school-year.

REQUIRED AUTHORIZATION

Finance Director:

Other Authorization:

Other Authorization:

SUBJECT: Ordinance consenting to the creation of the Bridgeland Management District		Category #	Page 1 of 2	Agenda Item # 15
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FROM (Department or other point of origin): Planning and Development	Origination Date February 10, 2012	Agenda Date FEB 29 2012
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DIRECTOR'S SIGNATURE: <i>Maureen H. Hafreck</i>	Council District affected: ETJ
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For additional information contact: Nicole B. Smothers Phone: 713-837-7856	Date and identification of prior authorizing Council action: N/A
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RECOMMENDATION: (Summary)
Approval of an ordinance consenting to the creation of the Bridgeland Management District

Amount and Source of Funding:	Finance Budget:
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SPECIFIC EXPLANATION:

Management/Improvement districts are special districts created by the Texas legislature. Generally, these districts are empowered to promote, develop, encourage and maintain employment, commerce, transportation, housing, tourism, recreation, arts, entertainment, economic development, safety and public welfare. Typically, management districts are given the power to finance their operations by issuing bonds or other obligations, payable in whole or in part from ad valorem taxes, assessments, impact fees or other funds of the District to provide improvements and services. Further, districts may levy a tax only after holding an election within the district.

A management district is intended to supplement, not supplant, existing public services. Creation of these districts does not release Harris County or the City of Houston from its obligations to provide services to the areas; nor does it require additional services from the City. The City assumes no liability for the debts, obligations or liabilities of the district.

The Planning and Development Department recommends City Council consent to the creation of the following district:

The Bridgeland Management District: Authorized by the 82nd Legislature in 2011, the Bridgeland Management District is located entirely in the ETJ of the City of Houston and entirely in Harris County. The District's Attorney has submitted a request for consent to the creation of the District, as authorized by the Texas Legislature last year. Following city consent to the creation of the district, the District will pursue an improvement plan that will include projects such as the construction of access roads to and from the Grand Parkway, security and public safety, aesthetic bridge improvements (crossing regional detention ponds within the district), and decorative street lighting. As the district develops, projects will include the creation of walking trails and sidewalks so that area residents can walk from their neighborhoods to the detention corridor and then to town center in an effort to promote a pedestrian friendly community.

For this district, the Planning Department recommends the City provide its consent under the following conditions:

copy

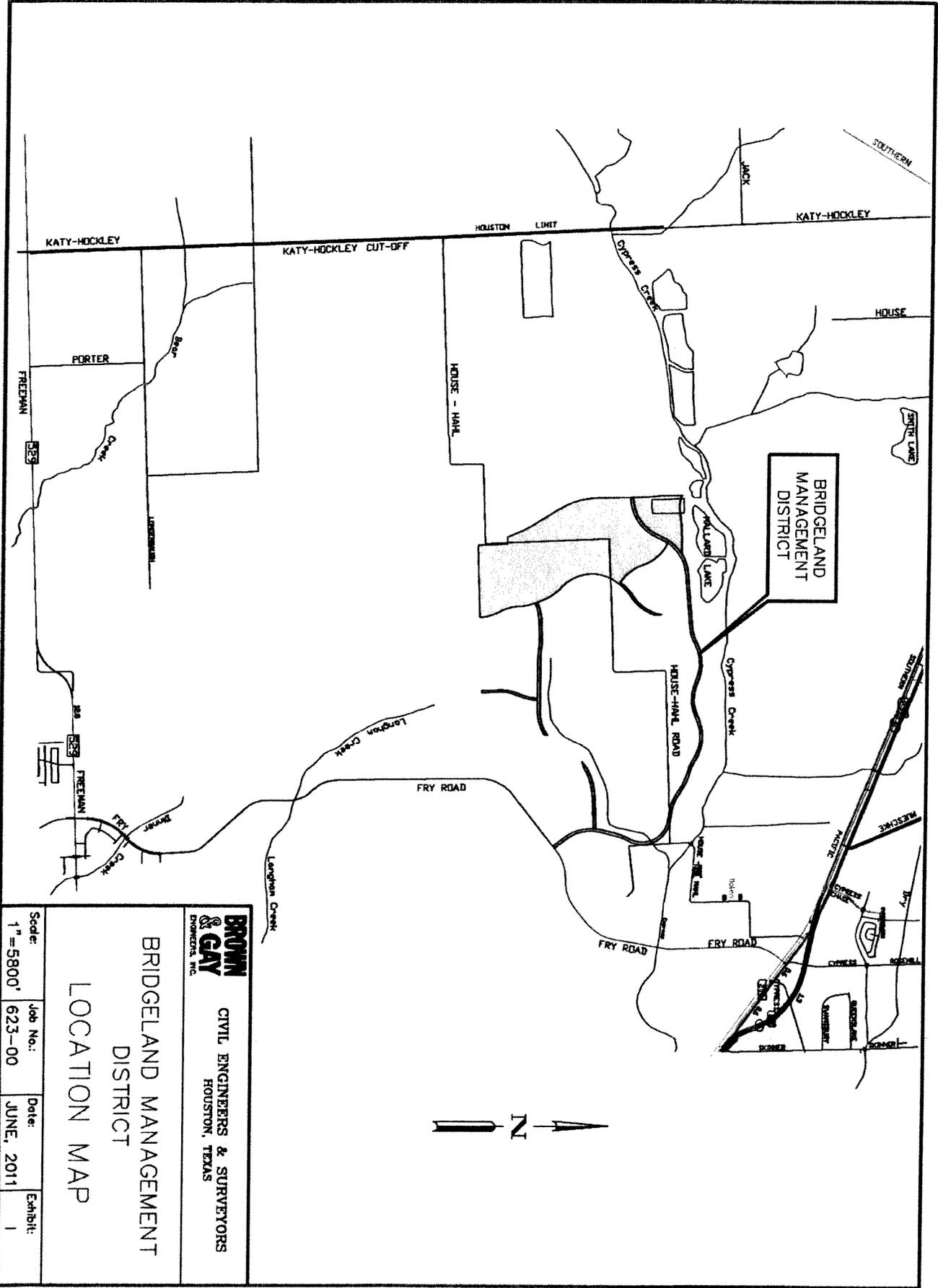
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1. Bonds will be issued by the District only for the purposes provided in the legislation creating the District. The District must obtain the approval of the City Council of the City of Houston of the issuance of bonds for any improvement project. In lieu of approval of an individual bond issue by the City Council of the City of Houston, the District may obtain approval from the governing body of the City of Houston of a capital improvements budget for a period of not to exceed ten years setting forth the projects for which the District proposes to issue its bonds. In the event the District obtains approval of a capital improvements budget, it may issue bonds to finance any capital improvements specified in the budget without further approval from the City of Houston. No land will be added or annexed to the District until the City of Houston has given its written consent by Ordinance of the City Council to such addition or annexation.
2. The district must obtain approval from the Department of Planning and Development and the Department of Public Works of the City of Houston of the plans and specifications of any improvement project that involves the use of the rights-of-way of streets, roads, highways or the use of land owned by the City of Houston.
3. The City Council of Houston may, by a vote of not less than two-thirds (2/3rds) of the entire membership, adopt an ordinance dissolving the District. Upon the adoption of such an ordinance, the District shall be dissolved, and, in accordance with Sections 375.263 and 43.075, Local Government Code, the City of Houston shall (1) succeed to the property and assets of the District, and (2) assume all debts, obligations and liabilities of the District.

CC: Marta Crinejo, Agenda Director
 David Feldman, City Attorney
 Deborah McAbee, Sr. Assistant City Attorney
 Omar Izfar, Sr. Assistant City Attorney
 Anna Russell, City Secretary

REQUIRED AUTHORIZATION

Finance Director:	Other Authorization:	Other Authorization:
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BROWN & GAY
 ENGINEERS, INC.

CIVIL ENGINEERS & SURVEYORS
 HOUSTON, TEXAS

BRIDGELAND MANAGEMENT
 DISTRICT

LOCATION MAP

Scale:	Job No.:	Date:	Exhibit:
1" = 5800'	623-00	JUNE, 2011	1

REQUEST FOR COUNCIL ACTION

TO: Mayor via City Secretary

RCA #

SUBJECT: Ordinance approving the Fiscal Year 2012 Operating Budget for Southwest Houston Redevelopment Authority and the Fiscal Years 2012-2016 Capital Improvement (CIP) Budget for Reinvestment Zone Number Twenty (Southwest Houston Zone).

Category #

Page
1 of 1

Agenda Item#

16

FROM: (Department or other point of origin):

Andrew F. Icken
Chief Development Officer

Origination Date

2 | 23 | 12

Agenda Date

FEB 29 2012

DIRECTOR'S SIGNATURE:



Council Districts affected:

F, J

For additional information contact:

Ralph De Leon

Phone: (713) 837-9573

Date and identification of prior authorizing Council Action:

Ord. 2010-574, 07/14/10

RECOMMENDATION: (Summary)

City Council adopt an ordinance approving the Fiscal Year 2012 Operating Budget for Southwest Houston Redevelopment Authority and the Fiscal Years 2012-2016 CIP Budget for Reinvestment Zone Number Twenty (Southwest Houston Zone).

Amount of Funding: No Funding Required

SOURCE OF FUNDING:

General Fund Grant Fund Enterprise Fund
 Other (Specify)

SPECIFIC EXPLANATION:

The Administration has undertaken a comprehensive review of proposed FY12 TIRZ budgets. The Administration recommends approval of the FY12 Operating Budget for the Southwest Houston Redevelopment Authority and the FY12-FY16 CIP Budget for Reinvestment Zone Number Twenty (Southwest Houston Zone).

- Total Operating Budget for FY12 is \$28,808,094, which includes \$675,560 for required fund transfers and \$28,132,534 for Project Costs.
- The FY12-FY16 CIP Budget for the Zone totals \$ 33,403,168, and consists of provisions for the design and construction of Bellaire Boulevard, and drainage, reconstruction and access improvements on Fondren.
- The FY12 Operating Budget includes \$26,208,227 for capital expenditures and \$140,220 for administration and overhead. The redevelopment authority must advise the Finance Director of any budget amendments. Adjustments to the Project Costs in the budget of the lesser of \$400,000 or 5% or more require City Council approval.
- The budget includes a municipal services cost payment in FY12 of \$446,000 to support city-issued debt used to construct the Fondren Police Station.

Attachments: FY12 Operating Budget and FY12-FY16 CIP Budget.

cc: Marta Crinejo, Agenda Director
Anna Russell, City Secretary
David Feldman, City Attorney
Deborah McAbee, Senior Assistant City Attorney

REQUIRED AUTHORIZATION

Other Authorization:

Other Authorization:

Other Authorization:

16

CITY OF HOUSTON
 ECONOMIC DEVELOPMENT DIVISION
 FISCAL YEAR 2012 BUDGET SUMMARY

Fund Summary
 Fund Name: SW Houston Redevelopment Authority
 TIRZ: 20
 Fund Number: 7568/64

P R O J E C T I N G	Base Year:	1999
	Base Year Taxable Value:	\$ 766,295,210
	Projected Taxable Value (TY2011):	\$ 1,487,889,647
	Current Taxable Value (TY2010):	\$ 1,652,744,092
	Acres:	3,167.41 acres
	Administrator (Contact):	Bill Calderon Hawes Hill Calderon (713) 595-1216
	Contact Number:	

N A R R A T I V E	Zone Purpose:
	1) Address Mobility deficiencies along the Bellaire/Fondren commercial corridors with necessary capital improvements, 2) provide resources for the redevelopment of the Sharpstown Mall and Bellaire/Fondren commercial corridors to expand the tax base and increase output of sales tax revenues to the City General Fund, and 3) reimburse Westchase Section 3 Partners (Halliburton) for improvements made to their property to render it developable.
	Accomplishments in FY11 (Projects Underway):
	In Fiscal Year 2011, the Southwest Houston TIRZ:
	<ul style="list-style-type: none"> · Revised construction plans on the Bellaire Access management project to include a complete reconstruction of Bellaire Boulevard from Mary Bates to Rogerdale, including all lanes of traffic. New components include replacement of an aged large transmission water line, new sanitary sewer line. Final city approval expected in January 2012, with the project bid in February/March 2012. Contract is expected to be let Spring of 2012. · Completed a drainage study of the Fondren / East Zone area to enable improvements to be constructed during access management project on Fondren, with multiple project options. · Negotiated relocation of gas line with Center Point Energy at their cost to accommodate the expanded Access Management project.

P R O J E C T P L A N		Cumulative Expenses (to		
		Total Plan	6/30/11)	Variance
	Capital Projects:			
	Sharpstown Center Area Public Improvements	\$ 20,000,000	\$ -	\$ 20,000,000
	Area Public Improvements	20,410,000	8,326,663	12,083,337
	Westchase Section Improvements (Halliburton)	10,150,953	12,152,184	(2,001,231)
	Municipal Services Agreement - HPD Dist. 18	5,250,000	1,636,000	3,614,000
	Total Capital Projects	\$ 55,810,953	\$ 22,114,847	\$ 33,696,106
	Affordable Housing	-		-
	Education Facilities	-		-
	Financing Costs	35,000,000	8,232,019	26,767,981
	Administration Costs	1,670,000	2,109,851	(439,851)
	Creation Costs	80,000	81,085	(1,085)
	Total Project Plan	\$ 92,560,953	\$ 32,537,802	\$ 60,023,151

D E B T	Additional Financial Data	FY2011 Budget	FY2011 Estimate	FY2012 Budget
		Debt Service		
	Principal	\$ 1,778,369	\$ 1,476,980	\$ 1,772,087
	Interest	\$ 555,000	\$ 555,000	\$ 825,000
		\$ 1,223,369	\$ 921,980	\$ 947,087
		Balance as of 6/30/10	Projected Balance as of 6/30/11	Projected Balance as of 6/30/12
	Year End Outstanding (Principal)			
	Bond Debt	\$ 25,350,000	\$ 24,795,000	\$ 23,970,000
	Bank Loan (Amegy Bank LOC)	-	-	\$ 5,000,000
	Developer Agreement	-	-	-
	Other	-	-	-

CITY OF HOUSTON
 ECONOMIC DEVELOPMENT DIVISION
 FISCAL YEAR 2012 BUDGET DETAIL

Fund Summary
 Fund Name: SW Houston Redevelopment Authority
 TIRZ: 20
 Fund Number: 7568/64

TIRZ Budget Line Items	FY2011 Budget	FY2011 Estimate	FY2012 Budget
RESOURCES			
RESTRICTED Funds - Capital Projects	\$ 12,873,179	\$ 12,759,091	\$ 12,766,280
RESTRICTED Funds - Affordable Housing	\$ -	\$ -	\$ -
RESTRICTED Funds - Bond Debt Service	\$ 2,653,111	\$ 2,499,869	\$ 2,666,975
UNRESTRICTED Funds	\$ 9,970,695	\$ 10,211,469	\$ 11,393,272
Beginning Fund Balance	\$ 25,496,985	\$ 25,470,429	\$ 26,826,527
City tax revenue	\$ 4,326,181	\$ 4,275,463	\$ 4,591,195
ISD tax revenue	\$ -	\$ -	\$ -
County tax revenue	\$ -	\$ -	\$ -
Community College tax revenue	\$ -	\$ -	\$ -
Incremental property tax revenue	\$ 4,326,181	\$ 4,275,463	\$ 4,591,195
COH TIRZ Interest	\$ -	\$ -	\$ -
Miscellaneous revenue	\$ -	\$ -	\$ -
Interest Income	\$ 132,874	\$ 97,758	\$ 138,991
Other Interest Income	\$ 132,874	\$ 97,758	\$ 138,991
	\$ -	\$ -	\$ -
Developer Advances	\$ -	\$ -	\$ -
CMAC Grant (T-2003 Hike and Bike Paths)	\$ 40,000		\$ -
Grant Proceeds	\$ 40,000	\$ -	\$ -
Series 2009*	\$ -	\$ -	\$ -
Bond proceeds	\$ -	\$ -	\$ -
	\$ -	\$ -	\$ 5,000,000
Proceeds from bank loan	\$ -	\$ -	\$ 5,000,000
TOTAL AVAILABLE RESOURCES	\$ 29,996,040	\$ 29,843,650	\$ 36,556,713

CITY OF HOUSTON
 ECONOMIC DEVELOPMENT DIVISION
 FISCAL YEAR 2012 BUDGET DETAIL

Fund Summary
 Fund Name: SW Houston Redevelopment Authority
 TIRZ: 20
 Fund Number: 7568/64

TIRZ Budget Line Items	FY2011 Budget	FY2011 Estimate	FY2012 Budget
EXPENDITURES			
Accounting	\$ 7,800	\$ 7,800	\$ 7,800
Administration Consultant	\$ 84,000	\$ 82,000	\$ 84,000
Administration Salaries & Benefits	\$ -	\$ -	\$ -
Auditor	\$ 13,400	\$ 13,900	\$ 13,400
Bond Services/Trustee--Cash Management fees	\$ 60	\$ 5,015	\$ 60
Financial Advisor	\$ 6,500	\$ 5,615	\$ 6,500
Insurance	\$ 9,200	\$ 9,964	\$ 9,200
Office Expenses	\$ 6,900	\$ 7,470	\$ 6,900
Property Accountant Consultant	\$ 12,360	\$ 12,355	\$ 12,360
TIRZ Administration and Overhead	\$ 140,220	\$ 144,119	\$ 140,220
Consultant (Market Study Analysis)	\$ 200,000	\$ -	\$ -
Legal ***	\$ 12,000	\$ 115,084	\$ 12,000
Construction Audit	\$ -	\$ -	\$ -
Program and Project Consultants	\$ 212,000	\$ 115,084	\$ 12,000
Management consulting services	\$ 352,220	\$ 259,203	\$ 152,220
Capital Expenditures (See CIP Schedule)	\$ 13,391,000	\$ 621,167	\$ 26,208,227
TIRZ Capital Expenditures	\$ 13,391,000	\$ 621,167	\$ 26,208,227
Principal	\$ -	\$ -	\$ -
Interest	\$ -	\$ -	\$ -
Developer / Project Reimbursements	\$ -	\$ -	\$ -
Bond Debt Service			
Principal - Infrastructure (Series 2003)	\$ 555,000	\$ 555,000	\$ 575,000
Interest	\$ 444,869	\$ 444,869	\$ 422,268
Principal - Infrastructure (Series 2009) **	\$ -	\$ -	\$ 250,000
Interest	\$ 778,500	\$ 477,111	\$ 479,819
Loan debt service			
Principal	\$ -	\$ -	\$ -
Interest	\$ -	\$ -	\$ -
Line of Credit (B of A; paid off with 2009 bonds)			
Principal	\$ -	\$ -	\$ -
Interest	\$ -	\$ -	\$ -
Other Debt Items			
Cost of Issuance	\$ -	\$ -	\$ 45,000
System debt service	\$ 1,778,369	\$ 1,476,980	\$ 1,772,087
TOTAL PROJECT COSTS	\$ 15,521,589	\$ 2,357,350	\$ 28,132,534

CITY OF HOUSTON
 ECONOMIC DEVELOPMENT DIVISION
 FISCAL YEAR 2012 BUDGET DETAIL

Fund Summary
 Fund Name: SW Houston Redevelopment Authority
 TIRZ: 20
 Fund Number: 7568/64

TIRZ Budget Line Items	FY2011 Budget	FY2011 Estimate	FY2012 Budget
Payment/transfer to ISD - educational facilities			
Administration Fees:			
City	\$ 216,309	\$ 213,773	\$ 229,560
County	\$ -	\$ -	\$ -
ISD	\$ -	\$ -	\$ -
Affordable Housing:			
City	\$ -	\$ -	\$ -
ISD to City of Houston	\$ -	\$ -	\$ -
Transfer to Harris County	\$ -	\$ -	\$ -
Municipal Services (Payable to COH)	\$ 446,000	\$ 446,000	\$ 446,000
Total Transfers	\$ 662,309	\$ 659,773	\$ 675,560
Total Budget	\$ 16,183,898	\$ 3,017,123	\$ 28,808,094
RESTRICTED Funds - Capital Projects	\$ 832,179	\$ 12,766,280	\$ -
RESTRICTED Funds - Affordable Housing	\$ -	\$ -	\$ -
RESTRICTED Funds - Bond Debt Service *	\$ 2,653,111	\$ 2,666,975	\$ 3,113,429
UNRESTRICTED Funds	\$ 10,326,852	\$ 11,393,272	\$ 4,635,190
Total Ending Fund Balance	\$ 13,812,142	\$ 26,826,527	\$ 7,748,619
Total Budget & Ending Fund Balance	\$ 29,996,040	\$ 29,843,650	\$ 36,556,713

Notes:

The TY10/FY11 Estimate for incremental property tax revenue and transfers from the City of Houston, all ISDs, Harris County, and Community Colleges is based on the Harris County Tax Office collections report dated April 2011.

The TY11/FY12 Budget for incremental property tax revenue and transfers is based on the TY10 Harris County Tax Office collections report dated April 2011 and the Harris County Appraisal District's tax year 2011 projections by property use category.

- * FY10 includes \$1.5M funding to the Bond Debt Service Reserve.
- ** Bond Series 2009 first Principal payment occurs in FY12 (9/1/2011)
- *** Includes \$300K of Sharpstown Mall legal expenses; 95% (\$285K) is expected to be reimbursed from insurance

2012 - 2016 CAPITAL IMPROVEMENT PLAN
 TIRZ No. 20 - SW Houston Redevelopment Authority
 CIP by Project

CITY OF HOUSTON - TIRZ PROGRAM
 Economic Development Division

Council District	CIP No.	Project	Fiscal Year Planned Appropriations								Cumulative Total (To Date)	
			Through 2010	Projected 2011	2012	2013	2014	2015	2016	FY12 - FY16 Total		
F, J	T-2001	Bellaire Access Management Mobility Improvements	\$ 1,318,166	\$ 442,768	\$ 25,108,227	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	26,869,161
F, J	T-2002	Fondren Access Management Mobility Improvements	\$ -	\$ -	\$ 350,000	\$ 1,105,787	\$ -	\$ -	\$ -	\$ -	\$ 2,589,154	4,044,941
F, J	T-2003	Hike and Bike Paths	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	-
F, J	T-2005	Bellaire Drainage Hwy 59 to Fondren	\$ -	\$ 178,399	\$ 750,000	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 3,500,000	4,428,399
Totals			1,318,166	621,167	26,208,227	1,105,787	-	-	-	6,089,154	4,250,000	35,342,501

2012 - 2016 CAPITAL IMPROVEMENT PLAN
 TIRZ No. 20 - SW Houston Redevelopment Authority
 CIP by Sources of Funds

CITY OF HOUSTON - TIRZ PROGRAM
 Economic Development Division

Source of Funds	Fiscal Year Planned Appropriations										Cumulative Total (To Date)	
	Through 2010	Projected 2011	2012	2013	2014	2015	2016	FY12 - FY16 Total				
TIRZ No. 20												
TIRZ funds	-	178,399	9,900,000	1,105,787	-	-	6,089,154	17,094,941	17,273,340			
Revenue bond proceeds	1,318,166	442,768	11,308,227	-	-	-	-	11,308,227	13,069,161			
Proceeds from bank loan	-	-	5,000,000	-	-	-	-	5,000,000	5,000,000			
Developer Advance/Reimbursement	-	-	-	-	-	-	-	-	-			
City of Houston	-	-	-	-	-	-	-	-	-			
Grants	-	-	-	-	-	-	-	-	-			
Other	-	-	-	-	-	-	-	-	-			
Project Total	1,318,166	621,167	26,208,227	1,105,787	-	-	6,089,154	33,403,168	35,342,501			

Project: Hike and Bike Paths		City Council District	Key Map: 9 D, 530 A, E, J, K, G	WBS.:	T-2003		
Description:		Location: F, J	Geo. Ref.:				
Justification:		Served: F, J	Neighborhood: 25, 26, 29				
Operating and Maintenance Costs: (\$ Thousands)							
		2012	2013	2014	2015	2016	Total
	Personnel	-	-	-	-	-	\$ -
	Supplies	-	-	-	-	-	\$ -
	Svcs. & Chgs.	-	-	-	-	-	\$ -
	Capital Outlay	-	-	-	-	-	\$ -
	Total	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
	FTEs	-	-	-	-	-	-

Fiscal Year Planned Expenditures

Project Allocation	Projected Expenses thru 6/30/10	2011 Budget	2011 Estimate	2012	2013	2014	2015	2016	FY12 - FY16 Total	Cumulative Total (To Date)
Phase										
1 Planning	-	-	-	-	-	-	-	-	\$ -	\$ -
2 Acquisition	-	-	-	-	-	-	-	-	\$ -	\$ -
3 Design	-	100,000	-	-	-	-	-	-	\$ -	\$ -
4 Construction	-	400,000	-	-	-	-	-	-	\$ -	\$ -
5 Equipment	-	-	-	-	-	-	-	-	\$ -	\$ -
6 Close-Out	-	-	-	-	-	-	-	-	\$ -	\$ -
7 Other	-	-	-	-	-	-	-	-	\$ -	\$ -
Other Sub-Total:	-	-	-	-	-	-	-	-	\$ -	\$ -
Total Allocations	\$ -	\$ 500,000	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -

Source of Funds	2012	2013	2014	2015	2016	FY12 - FY16 Total	Cumulative Total (To Date)
TIRZ Increment Revenue	-	-	-	-	-	\$ -	\$ -
TIRZ Increment Bond Funds	460,000	-	-	-	-	\$ 460,000	\$ 460,000
Grant Funds	-	-	-	-	-	\$ -	\$ -
Total Funds	\$ 460,000	\$ -	\$ -	\$ -	\$ -	\$ 460,000	\$ 460,000

Project: Bellaire Drainage Hwy 59 to Fondren		City Council District: 530 C, D, G, H	Key Map:	WBS.:	T-2005		
Description:	Drainage in the vicinity of Sharpstown Mall is recommended to be improved from the existing line sizes to larger diameter sizes to relieve short term flooding. Work may be done in concert with the access management project described in T-2002.	Location: F, J	Geo. Ref.:				
Justification:	Recent and future planned development activities as well as age of existing infrastructure validate need for replacement of existing infrastructure to conform to latest drainage requirements	Served: F, J	Neighborhood: 25, 26, 29				
Operating and Maintenance Costs: (\$ Thousands)							
		2012	2013	2014	2015	2016	Total
	Personnel	-	-	-	-	-	\$ -
	Supplies	-	-	-	-	-	\$ -
	Svcs. & Chgs.	-	-	-	-	-	\$ -
	Capital Outlay	-	-	-	-	-	\$ -
	Total	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
	FTEs						

Fiscal Year Planned Expenditures

Project Allocation	Projected Expenses thru 6/30/10	2011 Budget	2011 Estimate	2012	2013	2014	2015	2016	FY12 - FY16 Total	Cumulative Total (To Date)
Phase										
1 Planning	-	-	178,399	-	-	-	-	-	\$ -	\$ 178,399
2 Acquisition	-	-	-	-	-	-	-	-	\$ -	\$ -
3 Design	-	750,000	-	750,000	-	-	-	-	\$ 750,000	\$ 750,000
4 Construction	-	-	-	-	-	-	-	3,500,000	\$ 3,500,000	\$ 3,500,000
5 Equipment	-	-	-	-	-	-	-	-	\$ -	\$ -
6 Close-Out	-	-	-	-	-	-	-	-	\$ -	\$ -
7 Other	-	-	-	-	-	-	-	-	\$ -	\$ -
Other Sub-Total:									\$ -	\$ -
Total Allocations	\$ -	\$ 750,000	\$ 178,399	\$ 750,000	\$ -	\$ -	\$ -	\$ 3,500,000	\$ 4,250,000	\$ 4,428,399

Source of Funds	2012	2013	2014	2015	2016	FY12 - FY16 Total	Cumulative Total (To Date)
TIRZ Increment Revenue	750,000	-	-	-	-	\$ 750,000	\$ 750,000
TIRZ Increment Bond Funds	-	-	-	-	3,500,000	\$ 3,500,000	\$ 4,250,000
Grant Funds	-	-	-	-	-	\$ -	\$ -
City of Houston	-	-	-	-	-	\$ -	\$ -
Total Funds	\$ 750,000	\$ 178,399	\$ -	\$ -	\$ 3,500,000	\$ 4,428,399	\$ 4,428,399

R

REQUEST FOR COUNCIL ACTION

TO: Mayor via City Secretary

RCA #

SUBJECT: Ordinance Approving and Authorizing a Construction Agreement between the Southwest Houston Redevelopment Authority and the City of Houston, as Construction Manager, for the purposes of having the Construction Manager construct certain improvements in the Bellaire Corridor.

Category #

Page 1 of 1

Agenda Item#

16A

FROM: (Department or other point of origin):

Andrew F. Icken
Chief Development Officer

Origination Date

Agenda Date

FEB 29 2012

DIRECTOR'S SIGNATURE:

Council Districts affected:
F, J

For additional information contact:

Ralph De Leon

Phone: (713) 837-9573

Date and identification of prior authorizing Council Action:

Ord. 1999-1330, 12/15/99; Ord. 2000-0310, 4/19/00; Ord. 2009-0111, 02/18/09; Res. 2000-0008, 2/23/00

RECOMMENDATION: (Summary)

Adopt an Ordinance Approving and Authorizing a Construction Agreement between the Southwest Houston Redevelopment Authority and the City of Houston.

Amount of Funding: No Funding Required

SOURCE OF FUNDING:

General Fund Grant Fund Enterprise Fund
 Other (Specify) N/A

SPECIFIC EXPLANATION:

The City of Houston ("City") created Tax Increment Reinvestment Zone Number Twenty ("Zone") by Ordinance No. 1999-1330 adopted on December 15, 1999, to facilitate the revitalization of the Southwest Houston area. The City approved a Project Plan and Reinvestment Zone Financing Plan by Ordinance No. 2000-0310 on April 19, 2000, which was subsequently amended by Ordinance No. 2009-0111 on February 18, 2009. By Resolution 2000-0008, approved on February 23, 2000, the City approved the creation of the Southwest Houston Redevelopment Authority (SWRA) to assist in implementing the Plans. Both the original and amended Plans include provisions for public improvements including improvements on streets, sidewalks, and underground water and wastewater line replacements.

Both the City and SWRA desire to begin the construction of the aforementioned improvements in the Bellaire Corridor area. The SWRA shall provide the City with the final design, project manual, and bid package for the construction of each project improvement. The City shall conduct the bidding process and award each construction contract in strict conformance to the bid package and all applicable law. The City shall execute each construction contract with the lowest responsible bidder. The SWRA shall submit a single payment to the City equal to the total estimated construction costs, as determined by the bids received, including for the City to manage the Project construction. It is estimated that the payment will be \$25,058,227.

The Administration recommends that City Council approve a Construction Agreement between the Southwest Houston Redevelopment Authority and the City of Houston, for the purposes of constructing certain improvements in the Bellaire Corridor.

cc: Marta Crinejo, Agenda Director
Anna Russell, City Secretary
David Feldman, City Attorney
Deborah McAbee, Senior Assistant City Attorney

REQUIRED AUTHORIZATION

Other Authorization:

Other Authorization:

Other Authorization:

REQUEST FOR COUNCIL ACTION

TO: Mayor via City Secretary

RCA #

SUBJECT:) An ordinance appropriating \$9,224,282.00 in tax increment revenue payments made by Houston Independent School District (HISD), and authorizing the transfer of tax increment revenue from various Tax Increment Funds pursuant to Tri-Party & Interlocal Agreements.

Category #

Page 1 of 1

Agenda Item#

17

FROM: (Department or other point of origin):

Andrew F. Icken
Chief Development Officer

Origination Date

2/23/12

Agenda Date

FEB 29 2012

DIRECTOR'S SIGNATURE:



Council Districts affected:

For additional information contact:

Ralph De Leon

Phone: (713) 837-9573

Date and identification of prior authorizing Council Action: Ord. No. 1997-0119, 1/29/97, Ord. No. 197-0565, 5/21/97, Ord. No. 1999-0914, 8/18/99, Ord. No. 1999-0913, 8/18/99, Ord. No. 2003-0911, 10/1/03

RECOMMENDATION: (Summary)

City Council approve an ordinance appropriating \$9,224,282.00 in tax revenue payments made by HISD, and authorizing the transfer of tax increment revenues from the various Tax Increment Funds pursuant to Tri-Party and Interlocal Agreements.

Amount of Funding: \$9,224,282.00

SOURCE OF FUNDING:

[] General Fund

[] Grant Fund

[] Enterprise Fund

[X] Other (Specify) \$9,224,282.00 from various TIRZ funds (See Attached HISD Analysis)

SPECIFIC EXPLANATION:

The appropriation of \$9,224,282.00 results from tax increment payments received in the City's Fiscal Year 2012 from HISD for transfer to the various TIRZs in which HISD participate.

As set forth in the attached spreadsheets \$1,205,138.00 will be transferred to the City's Affordable Housing Fund; \$7,175,060.00 will be paid to HISD for Educational Facilities Project Costs; and \$844,084.00 will be paid to various Zone Redevelopment Authorities for approved project costs.

cc: Marta Crinejo, Agenda Director
Anna Russell, City Secretary
David Feldman, City Attorney
Deborah McAbee, Senior Assistant City Attorney

REQUIRED AUTHORIZATION

Other Authorization:

Other Authorization:

Other Authorization:

TIRZ: SCHOOL DISTRICT INCREMENT TAX YEAR 2010
"PASS THROUGH FUNDING HISD"

#	TIRZ	Fund #	Total Pass Through Funds Tax Year 2010	Total HISD Payments Received (1)	Affordable Housing Transfer to Fund 2409	ISD & CCD Admin. Transfer to General Fund	Payment Amount to ISDs for Educational Facilities (3)	ISD and CCD Increment due to the Redevelopment Authorities	Payee
1	Lamar Terrace East and West	7512	\$ 422,687.00	\$ 422,687.00	\$ 140,896.00	\$ -	\$ 281,791.00	\$ -	Special Pay Instruction #1
2	Midtown	7550	\$ 2,328,868.00	\$ 2,328,868.00	N/A	\$ -	\$ 1,552,579.00	\$ 776,289.00	Special Pay Instruction #1 and Midtown RA
3	Market Square	7551	\$ 1,829,091.00	\$ 1,829,091.00	N/A	\$ -	\$ 1,829,091.00	\$ -	Special Pay Instruction #1
4	Village Enclave	7552	\$ 3,079,587.00	\$ 3,079,587.00	\$ 1,026,529.00	\$ -	\$ 2,053,058.00	\$ -	Special Pay Instruction #1
5	Memorial Heights	7553	\$ 2,843,718.00	\$ 2,843,718.00	\$ 947,906.00	\$ -	\$ 1,895,812.00	\$ -	Special Pay Instruction #1
7	OST/Almeda	7555	\$ 616,302.00	\$ 616,302.00	N/A	\$ -	\$ 616,302.00	\$ -	Special Pay Instruction #1
8	Guilgate	7556	\$ 288,748.00	\$ 288,748.00	N/A	\$ -	\$ 288,748.00	\$ -	Special Pay Instruction #1
9	South Post Oak	7557	\$ 130,043.00	\$ 130,043.00	N/A	\$ -	\$ 130,043.00	\$ -	Special Pay Instruction #1
12	CityPark	7560	\$ 203,384.00	\$ 203,384.00	N/A	\$ -	\$ 135,589.00	\$ 67,795.00	Special Pay Instruction #1 and South Post Oak RA
13	Old Sixth Ward	7561	\$ 113,139.00	\$ 113,139.00	\$ 37,713.00	\$ -	\$ 156,329.00	\$ -	Special Pay Instruction #1
	Total		\$ 9,224,282.00	\$ 9,224,282.00	\$ 1,206,138.00	\$ -	\$ 7,175,060.00	\$ 844,084.00	

The following sets forth several requested appropriations: a) recently deposited tax increments received by the City from Houston ISD; b) transfers into Fund 2409 for the one-third affordable housing set-aside; c) payment amounts to ISDs for educational facilities; d) payments to the various redevelopment authorities for affordable housing.

Special Pay Instructions #1
Payment to Houston Independent School District for
Educational TEA Pass Through funds

\$ -
\$ 7,175,060.00
<u>\$ 7,175,060.00</u>

- Notes:
- 1) ISD = Houston Independent School District
 - 2) There is no administrative fees to COH.
 - 3) Educational Facilities revenues are set-aside per the Houston ISD and in which the increment is paid to the ISDs for construction of educational facilities inside or outside the zones.
 - 4) All Houston ISD payment minus set-aside for affordable housing is returned for payments for Westside High School.
 - 5) The RA receives affordable housing increments in the "Pass Through payment from HISD".

TO: Mayor via City Secretary

REQUEST FOR COUNCIL ACTION

SUBJECT: Second Amendment to Lease Agreement with RMC 2004 Portfolio I, LP, and related entities, Landlord, for space at 50 Briar Hollow West, Suite 290, for the Employee Assistance Program of the Human Resources Department	Page 1 of 1	Agenda Item 18
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FROM (Department or other point of origin): General Services Department	Origination Date 2/23/12	Agenda Date FEB 29 2012
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DIRECTOR'S SIGNATURE: <i>11/17/11</i> Scott Minnix <i>Scott Minnix</i>	Council District affected: G
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For additional information contact: Jacquelyn L. Nisby <i>JLN</i> Phone: 832-393-8023	Date and identification of prior authorizing Council action: Ordinance No. 2007-0005; 01/03/07 Ordinance No. 2008-1060; 12/03/08
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RECOMMENDATION: Approve and authorize Second Amendment to Lease Agreement with RMC 2004 Portfolio I, LP, and related entities, (Landlord), for space at 50 Briar Hollow West, Suite 290, for the Employee Assistance Program of the Human Resources Department.

Amount and Source of Funding: Health Benefits Fund (9000): \$216,860.04 Initial Base Term	Finance Budget:
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SPECIFIC EXPLANATION: The General Services Department recommends approval of a Second Amendment to Lease Agreement with RMC 2004 Portfolio I, LP, and related entities, (Landlord), for 2,416 square feet of space at 50 Briar Hollow West, Suite 290, for the Employee Assistance Program (EAP) of the Human Resources Department. EAP has utilized this lease space since 2008. The current monthly rental is \$2,895.17 (\$1.19 psf per month/\$14.38 psf per year) and the lease term will expire on April 30, 2012. The City successfully negotiated the same monthly rental rate for the first two years by agreeing to an early renewal term with the Landlord.

The proposed Second Amendment will extend the lease term for a six-year base term with two five-year renewal options at the current market rate. The new lease term will commence on May 1, 2012 and expire on April 30, 2018. The base rental rates are as follows:

Month	Monthly Payment
Months 1 - 24	\$2,895.17/month (\$14.38 psf per year/\$1.19 psf per month)
Months 25 - 48	\$3,020.00/month (\$15.00 psf per year/\$1.25 psf per month)
Months 49 - 60	\$3,070.33/month (\$15.25 psf per year/\$1.27 psf per month)
Months 61 - 72	\$3,171.00/month (\$15.75 psf per year/\$1.31psf per month)

All other terms and conditions of the amended lease remain the same.

SM:BB:JLN:RB:npb

xc: Marty Stein, Jacquelyn L. Nisby, Anna Russell and Gerri Walker

REQUIRED AUTHORIZATION

CUIC ID# 25 RB 124

General Services Department: <i>Humberto Bautista</i> Humberto Bautista, P.E. Assistant Director	Human Resources Department: <i>Omar Reid</i> Omar Reid Director
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TO: Mayor via City Secretary

REQUEST FOR COUNCIL ACTION

SUBJECT: Memorandum of Understanding between the City of Houston and the Houston Independent School District (HISD) for the storage, use, and maintenance of mobile solar generators.	Page 1 of 1	Agenda Item <i>19</i>
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FROM (Department or other point of origin): General Services Department	Origination Date <i>2/23/12</i>	Agenda Date FEB 29 2012
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DIRECTOR'S SIGNATURE: <i>SM</i> Scott Minnix <i>2/23/12</i>	Council District(s) affected: C,G	
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For additional information contact: Jacquelyn L. Nisby <i>JLN</i> Phone: 832-393-8023	Date and identification of prior authorizing Council action:	
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RECOMMENDATION: Approve Memorandum of Understanding (MOU) between the City of Houston and HISD for the storage, use, and maintenance of mobile solar generators.

Amount and Source of Funding: N/A	Finance Budget:
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SPECIFIC EXPLANATION: On April 27, 2010, the City of Houston was awarded an American Recovery and Reinvestment Act (ARRA) grant from the State Energy Conservation Office (SECO) in the amount of \$1,352,525.00 to be used for energy efficiency, renewable energy, and/or other energy initiatives. The City will use the grant to fund emergency solar generators called SPACE (Solar Powered Adaptive Containers for Everyone) units to be used in an emergency to refrigerate medicine and provide the community with electricity to charge medical equipment, cell phones, computers and other devices. The units will be strategically located throughout the City.

These SPACE units are resistant to vandalism; allow citizens, including the disabled, to be in a covered area, while their medical devices are being recharged; can be used as first aid stations or cooling locations during festivals or other highly visible events; and can assist in promoting the benefits and effectiveness of solar energy which can be used for educational and outreach activities.

The City and HISD desire to enter into an MOU to locate the SPACE units at the following three HISD sites:

- | | | |
|-----------------------------|--|------------|
| 1. Waltrip High School | 1900 West 34 th Street (452P) | District C |
| 2. Wilson Elementary School | 2100 Yupon (492R) | District C |
| 3. Westside High School | 14201 Briar Forest (488J) | District G |

The initial term of the MOU is one-year with 29 one-year automatic renewal options. HISD is responsible for maintenance and any damage to the units. The City maintains the right to use the units in case of an emergency by providing 24-hour advance notice to HISD.

Therefore, the General Services Department recommends approval of the MOU between the City and HISD for the storage, use, and maintenance of mobile solar generators to be used as an emergency source of refrigeration and electricity.

SM:HB:JLN:hb

c: Marta Crinejo; Jacquelyn L. Nisby; Calvin Curtis; Laura Spanjian

REQUIRED AUTHORIZATION	CUIC # 25MSCL101
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General Services Department: <i>Humberto Bautista</i> Humberto Bautista, P.E. Assistant Director		
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REQUEST FOR COUNCIL ACTION

TO: Mayor via City Secretary

RCA# 9286

Subject: Approve an Ordinance Awarding a Sole Source Contract for Software Support, Maintenance and Upgrades for the Houston Airport System.
S23-E24143

Category #
4

Page 1 of 1

Agenda Item

20

FROM (Department or other point of origin):
Calvin D. Wells
City Purchasing Agent
Administration & Regulatory Affairs Department

Origination Date
February 09, 2012

Agenda Date
FEB 29 2012

DIRECTOR'S SIGNATURE
Calvin D. Wells

Council District(s) affected
B, E, I

For additional information contact:
Dallas Evans Phone: (281) 230-8001
Douglas Moore Phone: (832) 393-8724

Date and Identification of prior authorizing Council Action:

RECOMMENDATION: (Summary)
Approve an ordinance awarding a sole source contract to Air-Transport IT Services, Inc. in an amount not to exceed \$161,985.22 for software support, maintenance and upgrades for the Houston Airport System.

Maximum Contract Amount: \$161,985.22

Finance Budget

\$161,985.22 - HAS Revenue Fund (8001)

SPECIFIC EXPLANATION:

The Director of the Houston Airport System (HAS) and the City Purchasing Agent recommend that City Council approve an ordinance awarding a two-year sole source contract to Air-Transport IT Services, Inc. in an amount not to exceed \$161,985.22 for software support, maintenance and upgrades for HAS. The HAS Director and/or the City Purchasing Agent may terminate this contract at anytime upon 30-days written notice to the contractor.

PROPworks is the current finance operating system that is used for billing tenants who lease from HAS. The scope of work requires the contractor to provide all labor, materials, equipment and supervision necessary to furnish all software, maintenance and system upgrades and enhancement services to support the existing PROPworks system.

Air-Transport IT Services, Inc. retains proprietary and owns all intellectual property rights to the PROPworks licensed software. Additionally, Air-Transport IT Services, Inc. is the sole authorized provider of software implementation, maintenance and support services for the PROPworks system.

This sole source recommendation is made pursuant to Chapter 252, Section 252.022 (a) (7) (A) of the Texas Local Government Code for exempt procurements.

Pay or Play Program:

The proposed contract requires compliance with the City's 'Pay or Play' ordinance regarding health benefits for employees of City Contractors. In this case, the contractor provides health benefits to eligible employees in compliance with City policy.

Attachments: M/WBE zero-percentage goal document approved by the Mayor's Office of Business Opportunity.

Buyer: Roy Breaux

Estimated Spending Authority

Department	FY12	Out Years	Total
Houston Airport System	\$119,000.00	\$42,985.22	\$161,985.22

REQUIRED AUTHORIZATION

Finance Department:

Other Authorization:

Other Authorization:

NO

DM



SOLE SOURCE LETTER

November 3, 2011

City of Houston

This letter was prepared at your request in connection with the PROPworks® Application Support and Maintenance Agreement to be effective from January 1, 2012 through December 31, 2013, between AirIT and the Houston Airport Systems (City of Houston).

Licensing and Support

AirIT licenses its PROPworks® Agreement and Revenue software product to all airport clients in North America under the same terms and conditions. AirIT retains proprietary and intellectual property rights to the licensed software and as such, AirIT is the sole authorized provider of software maintenance and support. Annual maintenance and support fees are based on 20% of the software license fee, with a typical increase of 1.5% applied to each annual renewal.

Consulting Services

The AirIT hourly rates for consultant services are consistent for pricing implementation and upgrade services for our seaport and airport clients. These prices are quoted in the current Maintenance and Support Agreement that AirIT and the City are party to.

AIRIT HEREBY CONFIRMS THAT CONSULTING FEES CHARGED ARE AT THE SAME RATE CHARGED TO ALL AIRIT AIRPORT CUSTOMERS LOCATED WITHIN THE 48 CONTIGUOUS US STATES FOR SIMILAR PRODUCTS AND SERVICES UNDER ESSENTIALLY THE SAME TERMS AND CONDITIONS. AIRIT ALSO CONFIRMS THAT IT IS THE SOLE SUPPLIER OF SERVICE, MAINTENANCE AND SUPPORT FOR THE WARRANTED VERSIONS OF ITS BUSINESS SYSTEMS AND THAT SUPPORT SERVICES ARE CHARGED ON THE SAME FEE CALCULATION BASIS TO ALL U.S. CLIENTS.

Please note that customizations and reports provided by third parties are not supported by AirIT, and third parties are not permitted to offer service and support of the systems as provided by AirIT unless specific releases have been granted, or in a sub-contracted role.

I appreciate the opportunity to continue to be of service to the City of Houston.

If you need further assistance, please call me at 407-370-4664.

Sincerely,

A handwritten signature in cursive script that reads "Erin M. Bockelman".

Erin M. Bockelman
Vice President – Business Systems

TO: Mayor via City Secretary

REQUEST FOR COUNCIL ACTION

SUBJECT: Approve an Ordinance appropriating \$421,807 out of the DARLEP Fund fund balance (Fund 2212) for the purpose of settling the Compromise and Settlement Agreement between the City of Houston and American Traffic Solutions, Inc.	Page 1 of 1	Agenda Item # 21
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FROM: (Department or other point of origin): Houston Police Department	Origination Date:	Agenda Date: FEB 29 2012
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DIRECTOR'S SIGNATURE:  Charles A. McClelland, Jr. Chief of Police	Council District affected: All
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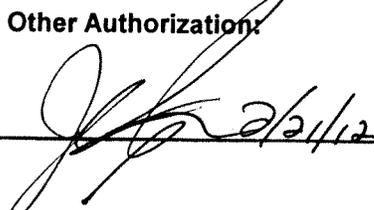
For additional information contact: <i>JAF 2/21/12</i> Joseph A. Fenninger, CFO and Deputy Director Phone: 713-308-1708	Date and identification of prior authorizing Council action: February 8, 2012, Ordinance #'s 2012-0098 and 2012-0099
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RECOMMENDATION: (Summary) Approve an Ordinance appropriating \$421,807 out of the DARLEP Fund fund balance (Fund 2212) for the purpose of settling a Compromise and Settlement Agreement between the City of Houston and American Traffic Solutions, Inc.

Amount and Source of Funding: \$421,807 from Fund 2212 - DARLEP

SPECIFIC EXPLANATION:
It is recommended that City Council approve an ordinance to appropriate \$421,807 out of the DARLEP Fund fund balance (Fund 2212). This funding is for the purpose of settling the Compromise and Settlement Agreement between the City of Houston and American Traffic Solutions, Inc. (ATS) that was approved by City Council on February 8, 2012. The City also appropriated \$1,889,000 from DARLEP funds (Ordinance 2012-0099) on the same date for partial payment of the \$2,310,807.00 required by the settlement agreement. This initial payment was made on February 17, 2012.

Escrowed funds, in the amount of \$1,085,385.88, were withdrawn from the registry of the Court and deposited on Friday, February 17, 2012. The agreement stipulates that the sum of \$421,807 be paid to ATS within thirty (30) days of the release of funds.

REQUIRED AUTHORIZATION		
Finance:	Other Authorization:  <i>JAF 2/21/12</i>	Other Authorization:

TO: Mayor via City Secretary

REQUEST FOR COUNCIL ACTION

SUBJECT: Ordinance amending Ordinance No. 2011-0997 authorizing an increase in the maximum contract amount from \$65,000 to \$100,000 for an interlocal agreement between the City of Houston and the Sam Houston State University Regional Crime Lab for laboratory testing services in DUI/ DWI cases	Page 1 of 1	Agenda Item # 22
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FROM: (Department or other point of origin): Houston Police Department	Origination Date: 2/23/12	Agenda Date: FEB 29 2012
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DIRECTOR'S SIGNATURE: Charles A. McClelland, Jr., Chief of Police	Council District affected: All
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For additional information contact: Joseph A. Fenninger Phone: 713-308-1770 JAF 2/16/12 Phone:	Date and identification of prior authorizing Council action: November 16, 2011; Ordinance #2011-0997
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RECOMMENDATION: (Summary) Adopt an ordinance amending Ordinance No. 2011-0997 to increase in the maximum contract amount for an interlocal agreement between the Sam Houston State University Regional Crime Lab and the City of Houston for laboratory testing services on blood and/or urine for cases involving Driving Under the Influence and/or Driving While Intoxicated from \$65,000 to \$100,000.

Amount and Source of Funding: \$35,000 Increase to Maximum Contract Amount

SPECIFIC EXPLANATION:

The Houston Police Department recommends that City Council approve an Ordinance increasing the maximum contract amount for an existing interlocal agreement between the City of Houston and Sam Houston State University for the Sam Houston State University Regional Crime Laboratory (SHSURCL) for Driving Under the Influence/ Driving While Intoxicated (DUI/DWI) testing services. This amendment will increase spending authority from the original contract amount of \$65,000 approved by City Council in November to an amount not to exceed \$100,000. The funds for toxicology testing under this agreement are in the Houston Police Department's budget.

Due to lengthy turnaround times, the HPD Forensic Services Command is discontinuing the use of the Dallas County - Southwestern Institute of Forensic Sciences (SWIFS) for outsourced toxicology testing and has replaced the SWIFS services with services from SHSURCL creating the need to increase the approved contract amount. Funds previously appropriated for the contract with SWIFS will instead be used for the increased appropriation for SHSURCL.

As a reminder, under this agreement the Forensic Services Command submits an agreed upon number of blood and/or urine samples to the SHSURCL for forensic toxicology testing of DUI/DWI cases at \$300 per case. SHSU provides the test results to HPD within 60 days of submission and notifies the submitting officer within the 60 day period if additional analysis is required beyond the 60 day limit. HPD may designate a maximum of two cases per month as priority cases with test results due from SHSU within 30 days. The SHSURCL will also provide expert witness testimony and consulting services if necessary based on a fee schedule provided in the agreement.

REQUIRED AUTHORIZATION

Finance:	Other Authorization: 	Other Authorization:
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REQUEST FOR COUNCIL ACTION

TO: Mayor via City Secretary

RCA# 9236

Subject: Approve an Amending Ordinance to Increase the Maximum Contract Amount for Contract No. 4600008565 for Tire Retreading and Repair Services for the Fleet Management Department / S39-L22721-A1

Category #
4

Page 1 of 1

Agenda Item

23

FROM (Department or other point of origin):
Calvin D. Wells
City Purchasing Agent
Administration & Regulatory Affairs Department

Origination Date
February 08, 2012

Agenda Date
FEB 29 2012

DIRECTOR'S SIGNATURE
Calvin D. Wells

Council District(s) affected
All

For additional information contact:
Kim Burley Phone: (832) 393-6920
Douglas Moore Phone: (832) 393-8724

Date and Identification of prior authorizing Council Action:
Ord. 2008-0099, 2/6/08

RECOMMENDATION: (Summary)

Approve an amending ordinance to increase the maximum contract amount from \$1,638,537.50 to \$1,753,235.13 for the contract between the City of Houston and Texas Correctional Industries Darrington Tire Retreading Facility for tire retreading and repair services for the Fleet Management Department.

Maximum Contract Amount Increased by: \$114,697.63

Finance Budget

\$114,697.63 - Fleet Management Fund (1005)

SPECIFIC EXPLANATION:

The City Purchasing Agent recommends that City Council approve an amending ordinance to increase the maximum contract amount from \$1,638,537.50 to \$1,753,235.13 for the contract between the City of Houston and Texas Correctional Industries Darrington Tire Retreading Facility for tire retreading and repair services for the Fleet Management Department.

The contract was awarded on February 6, 2008 by Ordinance No. 2008-0099 for a three-year term, with two one-year options in the original amount of \$1,638,537.50. Expenditures as of November 10, 2011 totaled \$1,370,567.25. The necessary spending authority is required largely due to increased usage and the adding of an additional size tire to the contract. The additional funds requested shall sustain the department through the end of the contract term.

The scope of work requires the contractor to provide all labor, materials, equipment, tools, supervision, training, and transportation necessary for tire retreading and repair services. Services include, but are not limited to, spot reinforcement and section repairs, repairing nail holes, and retreading tires used on garbage trucks and tractor trailers.

Texas Correctional Industries (TCI), a division of Texas Department of Criminal Justice, provides tire retreading and repair services in accordance with Texas Specification No. 060-75-1 and recommended standards set by the International Tire Retread Association (ITRA). Services are provided by TCI on a for-profit basis through a work program. Profits are used to pay the salaries of instructors, purchase supplies, materials and new equipment, reduce department costs, and for equipment maintenance. Work program participants are not paid to work on this contract.

Section 497.025 (c) of the Texas Government Code authorizes municipalities to contract directly with Texas Correctional Industries.

Buyer: Greg Hubbard

REQUIRED AUTHORIZATION

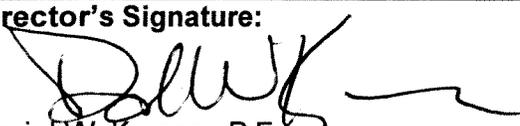
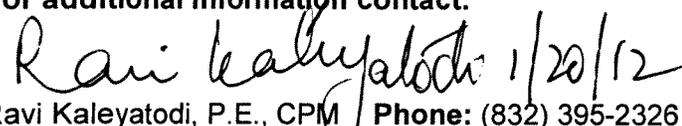
Finance Department:

Other Authorization:

Other Authorization:

SUBJECT: Ordinance calling Hearings for Proposed Strategic Partnership Agreements with certain utility districts in the Houston area		Category #	Page 1 of 1	Agenda Item # 24
FROM (Department or other point of origin): Planning and Development		Origination Date February 21, 2012		Agenda Date February 29, 2012
DIRECTOR'S SIGNATURE: <i>Margaret Wallace</i>		Council District affected:		
For additional information contact: Margaret Wallace Phone: 713-837-7826		Date and identification of prior authorizing Council action:		
RECOMMENDATION: (Summary) It is recommended that City Council pass the Ordinance calling Hearings on proposed Strategic Partnership Agreements with certain utility districts in the Houston area.				
Amount and Source of Funding: N/A			Finance Budget:	
SPECIFIC EXPLANATION: In 1999, the State Legislature gave the City of Houston the right to enter into Strategic Partnership Agreements with utility districts. Such agreements allow the City to annex all or part of these districts for limited purposes. The City can then levy a sales tax and provide specified, limited services to the area. The City cannot levy a property tax in areas annexed for limited purposes. The hearings called by this ordinance are for agreements, or amendments to existing agreements, with the following Utility Districts: New Agreements: Bissonnet MUD Castlewood MUD Fort Bend MUD No. 34 Harris County MUD No. 119 Harris County MUD No. 162 Harris County MUD No. 168 Montgomery County MUD No. 89 Northwest Harris County MUD No. 6 Northwest Harris County MUD No. 36 West Harris County MUD No. 16 Amendments to existing Agreements: Fort Bend MUD No. 35 (Amendment 1) Fort Bend MUD No. 50 (Amendment 3) Fort Bend MUD No. 146 (Amendment 1) Harris County MUD No. 150 (Amendment 1) Harris County UD No. 6 (Amendment 1) Kleinwood MUD (Amendment 1) Lake Forest UD (Amendment 1) West Harris County MUD No. 9 (Amendment 1) In each of these Districts the sales taxes collected in the areas will be divided evenly between the City and the District. The City is only annexing commercial property and undeveloped land. There is no population located in these territories proposed to be annexed for limited purposes. The hearings will be held on April 4, 2012 and April 11, 2012 in City Council chambers. cc: Marta Crinejo David Feldman Sameera Mahendru Kelly Dowe				
REQUIRED AUTHORIZATION				
Finance Director:		Other Authorization:	Other Authorization:	

[Handwritten mark]

SUBJECT: Amendment to the Assessment Roll for the Permanent Improvement of portions of Knox Street, Paul Quinn Road, and Wilburforce Street in the City of Houston, Texas known as Topping Project No. 268		Page 1 of 1	Agenda Item # 25
From: (Department or Other Point of Origin) Department of Public Works and Engineering		Origination Date	Agenda Date FEB 29 2012
Director's Signature:  Daniel W. Krueger, P.E.		Council District affected: B 	
For additional information contact:  Ravi Kaleyatodi, P.E., CPM Phone: (832) 395-2326 Senior Assistant Director		Date and identification of prior authorizing Council action: Ordinance No. 1988-0654 Dated: 04/27/1988	

Recommendation: Adopt an ordinance amending Ordinance No. 1988-0654 to correct the assessment roll for this project.

Amount and Source of Funding: N/A

DESCRIPTION/SCOPE: This project consisted of several residential streets of which Knox Street from West Tidwell Road to Wilburforce Street was permanently improved. The previous asphalt topped street was replaced with asphaltic concrete pavement with curb and gutter along with sidewalks.

LOCATION: This portion of the project area is generally bounded by West Montgomery to the north, Pinemont to the south, Wheatley to the west and North Shepherd to the east. This project is located in Key Map Grids 452C and 412Y.

HISTORY: By Ordinance No. 1988-0654 dated April 27, 1988; City Council closed the Hearing on Benefits and levied the assessments.

ACTION RECOMMENDED: It is recommended that Item No. 35 be corrected to reflect a side-abutting rate (1/2 of the rate set by City Council). Tract 42A improvements do not front Knox Street and should not have been assessed the full rate. Item No. 35 before and after corrections:

Before Correction:

City Tax No. 151-032-00-099-3
Tract 42A, Block 3C
Highland Heights Subdivision
111.65 feet @ \$14.05 = \$1,568.68

After Correction:

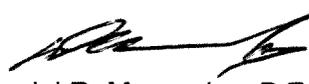
Account No. 016-278-003-0099
Tract 42A, Block 3C
Highland Heights Subdivision
111.65 feet @ \$7.03 = \$784.90


DWK:DRM:RK:MS:DDH

Z:\design\A-NP-DIV\AAA Neighborhood Section Reporting\DDH\assessment\RCA TP 268.docx

REQUIRED AUTHORIZATION

CUIC ID #20DDH741

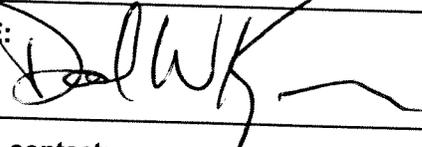
Finance Department:	Other Authorization:	Other Authorization:  Daniel R. Menendez, P.E., Deputy Director Engineering and Construction Division
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TO: Mayor via City Secretary

REQUEST FOR COUNCIL ACTION

SUBJECT: Approve a Third Amendment with Omega Engineers, Inc. to Increase the Allocation for Professional Construction Management and Inspection Services Agreement for the Public Works & Engineering Department	Category	Page 1 of 2	Agenda Item # 26
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FROM (Department or other point of origin): Department of Public Works and Engineering	Origination Date 2 23 12	Agenda Date FEB 29 2012
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DIRECTOR'S SIGNATURE: Daniel W. Krueger, P.E. 	Council District affected: All
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For additional information contact: A. James Millage Senior Assistant Director Phone: (713) 641-9566	Date and identification of prior authorizing Council action: Ordinance 2011-0412, 06/01/11; Ordinance 2011-0689, 08/10/11; and Ordinance 2011-0839, 09/28/11
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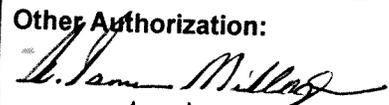
RECOMMENDATION: (Summary)
Approve a Third Amendment with Omega Engineers, Inc. to increase the allocation for Construction Management and Inspection Services Agreement to increase the spending authority from \$2,000,000 to \$4,550,000.00, and to approve supplemental allocations.

Amount and Source of Funding:
\$2,550,000.00 from the Water and Sewer System Operating Fund No. 8300. 2/8/12 

SPECIFIC EXPLANATION: The Director of Public Works & Engineering Department recommends that City Council approve a Third Contract Amendment authorizing the allocation of \$2,550,000.00 from the Water & Sewer System Operating Fund (8300), for construction management and inspection services to Omega Engineers, Inc. to address emergency construction inspection services performed for emergency repairs to water line breaks.

The Utility Maintenance Branch is responsible for maintaining approximately 7,500 miles of water lines throughout the 650 square miles of the City of Houston. In the summer of 2011, the City of Houston encountered a large number of water line breaks as a result of high temperatures since June 2011. Utility Maintenance Branch expeditiously responded to the crisis and drastically reduced the number of water line breaks. Omega Engineers, Inc. provided construction inspection and water valve turning services for contractors hired to perform emergency repairs to water line breaks under emergency purchase order (EPO) projects.

On June 1, 2011, City Council awarded a work order contract by Ordinance 2011-0412, for a three year term in the amount of \$12,000.00. A First Amendment to increase the initial allocation from \$12,000.00 to \$612,000.00 was approved by City Council by Ordinance 2011-0689 on August 10, 2011. City Council approved a Second Contract Amendment on September 28, 2011, approved by Ordinance Number 2011-0839. The amendment allocated an additional \$1,388,000.00 for continued emergency inspection support, which increased the spending authority to \$2,000,000.00.

REQUIRED AUTHORIZATION			CUIC#20AJM266
Finance Department:	Other Authorization:  02/09/12	Other Authorization:  Jun Chang, P.E., D.WRE, Deputy Director	M

Date	Subject Approve a Third Amendment with Omega Engineers, Inc. to Increase the Allocation for Professional Construction Management and Inspection Services Agreement for the Public Works & Engineering Department	Originator's Initials	Page <u>2</u> of <u>2</u>
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This amendment will allow UMB to prepare for the potential breaks in the upcoming season. The amendment delegates to the Director of the Public Works & Engineering Department authority to approve up to \$2,000,000.00 in supplemental allocations, which will allow for uninterrupted construction inspection services and management and valve operations to support the ongoing emergency repairs to water line breaks throughout the City.

The scope of work requires the contractor to provide all supervision, labor, tools and transportation necessary to perform services citywide for water line repairs. All other terms and conditions shall remain as originally approved by City Council.

PAY OR PLAY PROGRAM: The proposed contract requires compliance with the City's 'Pay or Play' ordinance regarding health benefits for employees of City contractors. In this case, the contractor provides health benefits to eligible employees in compliance with City policy.

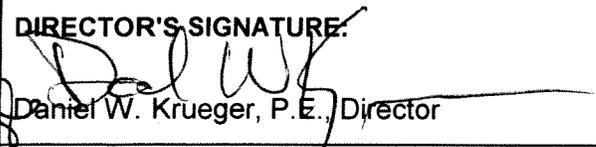
M/WDBE PARTICIPATION: The MBE goal established for this contract is 24%. The original Contract and subsequent additional allocations total \$2,000,000.00. The service provider has been paid \$1,736,799.36 (86.92%) to date. Of this amount, \$589,383.00 (33.93%) has been paid to MBE subcontractors to date. Assuming approval of the requested additional allocation, the maximum contract value will increase to \$4,550,000.00.

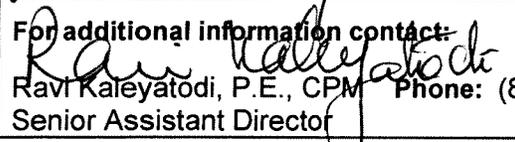
<u>Name of Firms</u>	<u>Work Description</u>	<u>Amount</u>	<u>% of Contract</u>
1. Prior MBE Commitment		\$589,383.00	13%
2. Texas American Engineering, LLC	Inspection Services	\$455,000.00	10%
3. Access Data Supply, Inc.	Administrative Services	<u>\$637,000.00</u>	<u>14%</u>
	TOTAL	\$1,681,383.00	37%

DWK:JC
 cc: Marta Crinejo
 Carl Smitha, P.E.
 Craig Foster

SUBJECT: Professional Engineering Services Contract between the City and Othon, Inc., for Negotiated Work Orders for Design of New and Rehabilitation of Existing Pump Stations, and Flood Warning Systems WBS No. M-000241-0006-3	Page 1 of 2	Agenda Item # 27
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FROM (Department or other point of origin): Department of Public Works and Engineering	Origination Date	Agenda Date FEB 29 2012
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DIRECTOR'S SIGNATURE:  Daniel W. Krueger, P.E., Director	Council District affected: All R.A.
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For additional information contact:  12/19/11 Ravi Kaleyatodi, P.E., CPM Phone: (832) 395-2326 Senior Assistant Director	Date and identification of prior authorizing Council action:
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RECOMMENDATION: (Summary)
 Approve a Professional Engineering Services Contract with Othon, Inc., and appropriate funds.

Amount and Source of Funding:
 \$690,000.00 from Street & Traffic Control and Storm Drainage DDSRF, Fund No. 4042. *M.P. 1/11/2012*

PROJECT NOTICE/JUSTIFICATION: This contract is necessary for safety enhancements, improved functionality, and advanced warning system to alert the traveling public.

DESCRIPTION/SCOPE: This project is part of the Storm Drainage Capital Improvement Plan (CIP) and is required to provide professional engineering services to perform engineering design, construction of new and rehabilitation of existing City storm water facilities, including storm water pump stations, and flood warning systems at various locations citywide.

LOCATION: The project location and limits will be established by the work order.

SCOPE OF CONTRACT AND FEE: Under the scope of the contract, the Consultant will perform Engineering Design Services and Additional Services as defined by the work order. The Engineering Design Services and Additional Services fees will be negotiated on a reimbursable basis with a not-to-exceed agreed upon amount based on the scope of the work order.

The total cost of this project is \$690,000.00 to be appropriated as follows: \$600,000.00 for contract services and \$90,000.00 for CIP Cost Recovery.

PAY OR PLAY PROGRAM: The proposed contract requires compliance with the City's 'Pay or Play' ordinance regarding health benefits for employees of City contractors. In this case, the contractor provides health benefits to eligible employees in compliance with City policy.

REQUIRED AUTHORIZATION CUIC # 20RRA08 A

Finance Department	Other Authorization:	Other Authorization:  Daniel R. Menendez, P.E., Deputy Director Engineering and Construction Division
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Date	SUBJECT: Professional Engineering Services Contract between the City and Othon, Inc., for Negotiated Work Orders for Design of New and Rehabilitation of Existing Pump Stations, and Flood Warning Systems. WBS No. M-000241-0006-3	Originator's Initials RA	Page 2 of 2
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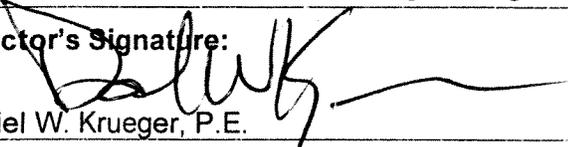
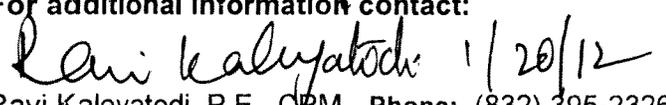
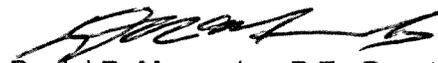
M/WBE INFORMATION: The M/WBE goal for this project is set at 24%. The Consultant has proposed the following firms to achieve this goal.

<u>Name of Firms</u>	<u>Work Description</u>	<u>Amount</u>	<u>% of Contract</u>
1. Associated testing Laboratories, Inc.	Environmental Services	\$ 4,500.00	0.75%
2. Geotest Engineering, Inc.	Geotechnical Investigation	\$ 21,000.00	3.50%
3. JAG Engineering, Inc.	Surveying	\$ 30,000.00	5.00%
4. Shrader Engineering, Inc.	Electrical/Instrumentation Engineering	\$ 90,000.00	15.00%
TOTAL		\$145,500.00	24.25%


 DWK:DRM:RK:DPS:RRA:klw

Z:\design\A-sw-div\WPDATA\00 - STM ENGR PROJECTS\Storm Water Pump Station (M-0241-6) - D12_C12\Revised RCA with new Funding Source\RCA Othon ESC 12-16-2011.doc

c: File No. M-000241-0006 -3 (RCA 1.2)

SUBJECT: Professional Engineering Services Contract between the City of Houston and Nedu Engineering Services, Inc. for Safe Sidewalk Program. WBS No. N-00610A-0121-3		Page 1 of 2	Agenda Item # 28
From: (Department or other point of origin): Department of Public Works and Engineering	Origination Date 2/23/12	Agenda Date FEB 29 2012	
Director's Signature:  Daniel W. Krueger, P.E.	Council District affected: C, D, E, H, I <i>SH</i>		
For additional information contact: <i>Crugg</i>  Ravi Kaleyatodi, P.E., OPM Phone: (832) 395-2326 Senior Assistant Director	Date and identification of prior authorizing Council action: 1/20/12		
Recommendation: (Summary) An ordinance approving a Professional Engineering Services Contract with Nedu Engineering Services, Inc. and appropriate funds.			
Amount and Source of Funding: \$500,000.00 from Metro Projects Construction – Dedicated Drainage and Street Renewal Fund 4040 <i>U.P. 2/1/2012</i>			
PROJECT NOTICE/JUSTIFICATION: This program is part of a continuing effort by the City to construct sidewalks throughout the City of Houston. The project provides for the design of approximately 67,060 linear feet of sidewalks for people with disabilities, in neighborhoods adjacent to schools, and along major thoroughfares.			
SCOPE OF CONTRACT AND FEE: Under the terms of the Contract, the Consultant will perform Phase I Preliminary Design, Phase II Final Design, Phase III Construction Services, and Additional Services. The consultant will prepare layouts and drawings, conduct feasibility analysis, develop detailed cost estimates for construction, and prepare final plans and specifications for construction. The Basic Services Fee for this project is computed by lump sum per foot of sidewalk designed. Negotiations with the Consultant have resulted in an estimated total Basic Design Fee of \$82,818.48 for Phase I; \$200,675.56 for Phase II Final Design and \$35,038.59 for Phase III Construction Phase Services. The total Additional Services Fee is \$116,250.00. The Additional Services include surveying, tree protection, Texas Department of Licensing and Regulation Services, Quality Control Analysis, Reproduction Services and Engineering Design Support.			
The total cost of the project is \$500,000.00 to be appropriated as follows: \$434,782.63 for contract services and \$65,217.37 for CIP Cost Recovery.			
LOCATION: This project is located throughout the City and is located in various Key Map Grids.			
PAY OR PLAY PROGRAM: The proposed contract requires compliance with the City's 'Pay or Play' ordinance regarding health benefits for employees of City contractors. In this case, the contractor provides health benefits to eligible employees in compliance with City policy.			
REQUIRED AUTHORIZATION		CUIC ID #20SIK46A	
Finance Department:	Other Authorization:	Other Authorization:  Daniel R. Menendez, P.E., Deputy Director Engineering and Construction Division	

MDT

M/WBE INFORMATION: The M/WBE goal established for this project is 24%. The Consultant proposes the following plan to meet the M/WBE goal:

<u>Name of Firm</u>	<u>Work Description</u>	<u>Amount</u>	<u>% of Total Contract</u>
Rahaman and Associates, Inc., DBA Western Group Consultants	Topographic Survey	\$ 50,000.00	11.50%
B & E Reprographics, Inc.	Reproduction Services	\$ 6,000.00	1.38%
Apex Consulting Group, Inc.	Civil Engineering Services and Inspections	\$ 20,000.00	4.60%
Accessible Design Solutions	Accessibility Plan Review	\$ 4,000.00	0.92%
GC Engineering, Inc.	Engineering Design Support	\$ 25,000.00	5.75%
TOTAL		\$ 105,000.00	24.15%

SK

DWK:DRM:RK:MS:SK:as

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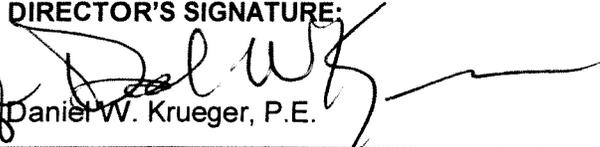
c: File No. N-00610A-0121-3 (1.2 RCA)

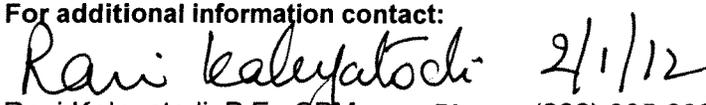
TO: Mayor via City Secretary

REQUEST FOR COUNCIL ACTION

SUBJECT: Professional Engineering Services Contract between the City and Reynolds, Smith and Hills, Inc. for City Wide Overlay Project. WBS No. N-001037-0054-3	Page 1 of 2	Agenda Item # 29
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FROM: (Department or other point of origin): Department of Public Works and Engineering	Origination Date: 2/23/12	Agenda Date: FEB 29 2012
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DIRECTOR'S SIGNATURE:  Daniel W. Krueger, P.E.	Council District affected: All RA
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For additional information contact:  Ravi Kaleyatodi, P.E., CPM Phone: (832) 395-2326 Senior Assistant Director	Date and identification of prior authorizing Council action:
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RECOMMENDATION: (Summary)
An ordinance approving a Professional Engineering Services Contract with Reynolds, Smith and Hills, Inc. and appropriate funds.

Amount and Source of Funding: \$500,000.00 from the Metro Projects Construction - Dedicated Drainage and Street Renewal Fund 4040.
M.P. 2/6/2012

DESCRIPTION/SCOPE: This project is part of the City Wide Overlay Program and consists of designing the resurfacing of streets with an asphalt overlay. The work focuses on streets which have deteriorated to a point that an overlay and possible repair are required to improve and maintain a safe road surface. The Consultant will also be responsible for evaluating the candidate streets for compliance with the current Americans with Disabilities Act (ADA) requirements.

LOCATION: The project area is located throughout the City of Houston.

SCOPE OF CONTRACT AND FEE: Under the terms of the Contract, the Consultant will perform Final Design Services consisting of the development of construction drawings and bid packages for the award of an overlay / rehabilitation contract. Negotiations with the Consultant have resulted in a Basic Services Fee of \$322,704.00. The Contract also includes certain Additional Services in the amount of \$102,296.00 to be paid on a reimbursable basis. These Additional Services are currently anticipated to include Pavement Condition Evaluation, ADA Compliance Assessment, Pavement Striping and Marking, and Reproduction Services.

The total cost of this project is \$500,000.00 to be appropriated as follows: \$425,000.00 for Contract Services and \$75,000.00 for CIP Cost Recovery.

PAY OR PLAY PROGRAM: The proposed contract requires compliance with the City's 'Pay or Play' ordinance regarding health benefits for employees of City contractors. In this case, the contractor provides benefits for some employees but will pay into the Contractor Responsibility Fund for others, in compliance with City Policy.

REQUIRED AUTHORIZATION CUIC ID #20RA19A

Finance Department	Other Authorization:	Other Authorization:  Daniel R. Menendez, P.E., Deputy Director Engineering and Construction Division
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Date	Subject: Professional Engineering Services Contract between the City and Reynolds, Smith and Hills, Inc. for City Wide Overlay Project. WBS No. N-001037-0054-3	Originator's Initials <i>RA</i>	Page 2 of 2
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M/WBE PARTICIPATION: The M/WBE goal for the project is 24%. The Consultant proposes the following firms to achieve this goal.

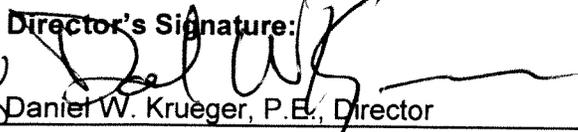
<u>Name of Firms</u>	<u>Work Description</u>	<u>Amount</u>	<u>% of Contract</u>
Landtech, Inc.	Land Surveying	\$ 74,796.00	17.60%
Accessibility Check	ADA Compliance	\$ 27,500.00	6.47%
TOTAL		\$102,296.00	24.07

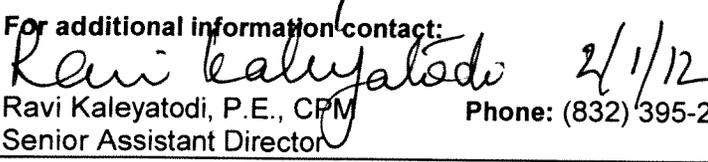
DWK:DRM:RK:MS:MW:RA
 DWK:DRM:RK:MS:MW:RA
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ec: File 1.2

SUBJECT: Professional Engineering Services Contract between the City and Freese and Nichols, Inc. for Bar Screen/Odor Control and Grit Removal Systems Renewal/Replacement for Sims Bayou South Wastewater Treatment Plant. WBS No. R-000265-0092-3.	Page 1 of 2	Agenda Item # 30
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FROM (Department or other point of origin): Department of Public Works and Engineering	Origination Date 2/23/12	Agenda Date FEB 29 2012
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Director's Signature:  Daniel W. Krueger, P.E., Director	Council District affected: 1 MR
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For additional information contact:  Ravi Kaleyatodi, P.E., CPM Senior Assistant Director Phone: (832) 395-2326	Date and identification of prior authorizing Council action:
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RECOMMENDATION: (Summary)

An ordinance approving a Professional Engineering Services Contract with Freese and Nichols, Inc. and appropriate funds.

Amount and Source of Funding: \$880,900.00 Water and Sewer System Consolidated Construction Fund No. 8500.
M.P. 2/6/2012

PROJECT NOTICE/JUSTIFICATION: This project is part of the City's program to make improvements to Sims Bayou South Wastewater Treatment Plant.

DESCRIPTION/SCOPE: This project consists of evaluation and design services to preliminary treatment system including manual bar screen, three self-cleaning mechanical bar screens, washing conveyor and the platform, odor control system, sluice gates, electrical actuators, valves, structural evaluation of foundations, air lift pumps, evaluation of different types of grit removal system, and cost associated with each system.

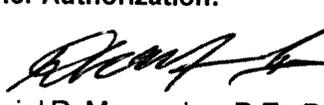
LOCATION: The project area is located at 3005 Galveston Road, Key Map Grid 535L.

SCOPE OF CONTRACT AND FEE: Under the scope of the Contract, the Consultant will perform Phase I - Preliminary Design, Phase II - Final Design, Phase III - Construction Phase Services and Additional Services. Basic Services Fee for Phase I is based on cost of time and materials with not-to-exceed agreed upon amount. The Basic Services fees for Phase II and Phase III will be negotiated on a lump sum amount after the completion of Phase I. The negotiated maximum for Phase I Basic Services is \$161,454.00. The total Basic Services appropriation is \$610,350.00.

The Contract also includes certain Additional Services to be paid either as lump sum or on a reimbursable basis. The Additional Services include, geotechnical investigation, surveying, reproduction services, storm water pollution prevention and hydraulic evaluation and analysis. The total Additional Services appropriation is \$155,650.00.

The total cost of this project is \$880,900.00 to be appropriated as follows: \$766,000.00 for Contract services and \$114,900.00 for CIP Cost Recovery.

REQUIRED AUTHORIZATION CUIC ID #20IMR78

Finance Department:	Other Authorization:  Jun Chang, P.E., DWRE, Deputy Director Public Utilities Division	Other Authorization:  Daniel R. Menendez, P.E., Deputy Director Engineering and Construction Division
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PAY OR PLAY PROGRAM:

The proposed contract requires compliance with the City's 'Pay or Play' ordinance regarding health benefits for employees of City contractors. In this case, the Consultant provides health benefits to eligible employees in compliance with City policy.

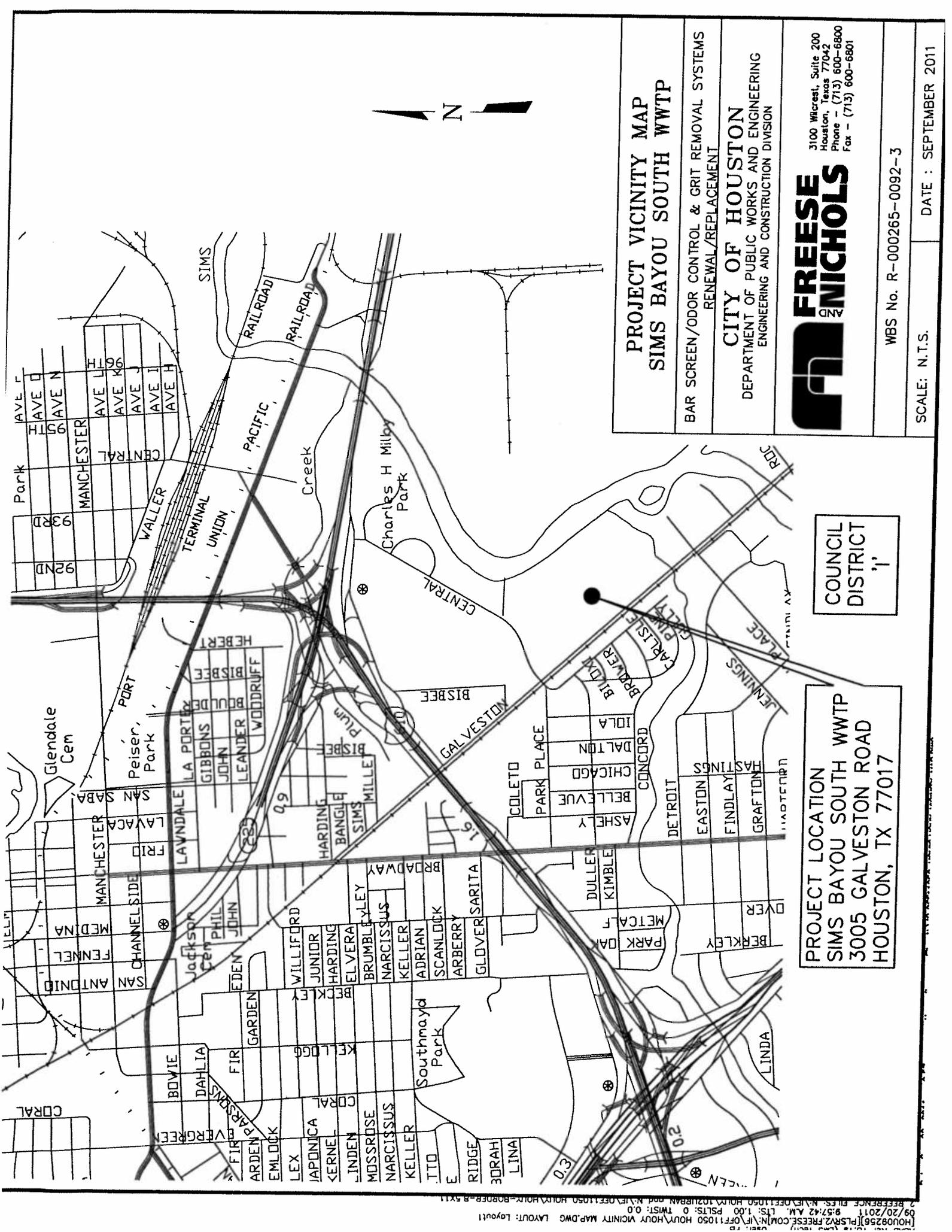
M/WBE INFORMATION: The M/WBE goal for the project is set at 24.0%. The Consultant has proposed the following firms to achieve this goal.

<u>Name of Firms</u>	<u>Work Description</u>	<u>Amount</u>	<u>% of Total Contract</u>
1. KIT Professionals, Inc.	Engineering Support Services	\$ 35,000.00	4.57%
2. Kalluri Group, Inc.	Engineering Support Services	\$ 86,000.00	11.22%
3. Amani Engineering, Inc.	Surveying Services/Sub-surface Utility Engineering	\$ 30,000.00	3.92%
4. Gupta & Associates, Inc.	Engineering Support Services	\$ 20,000.00	2.61%
5. B & E Reprographics, Inc.	Reproduction Services	\$ 10,000.00	1.31%
6. DAE & Associates Ltd., DBA Geotech Engineering and Testing	Geotechnical Services	\$ <u>9,740.00</u>	<u>1.27%</u>
TOTAL		\$190,740.00	24.90%



DWK:DRM:RK:EN:IMR:pa

c: File No. R-000265-0092-3



COUNCIL DISTRICT '1'

PROJECT LOCATION
 SIMS BAYOU SOUTH WWTP
 3005 GALVESTON ROAD
 HOUSTON, TX 77017

PROJECT VICINITY MAP
SIMS BAYOU SOUTH WWTP

BAR SCREEN/ODOR CONTROL & GRIT REMOVAL SYSTEMS
 RENEWAL/REPLACEMENT

CITY OF HOUSTON
 DEPARTMENT OF PUBLIC WORKS AND ENGINEERING
 ENGINEERING AND CONSTRUCTION DIVISION

FREESSE & NICHOLS
 3100 Wilcrest, Suite 200
 Houston, Texas 77042
 Phone - (713) 600-6800
 Fax - (713) 600-6801

WBS No. R-000265-0092-3

SCALE: N.T.S. DATE: SEPTEMBER 2011

[H090256] [PLSRV2.FREESSE.COM] [V:\OFF11050 HOUR\HOUR VICINITY MAP.DWG] LAYOUT: Layout1
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TO: Mayor via City Secretary

REQUEST FOR COUNCIL ACTION

SUBJECT: Contract Award for FY2012 Local Drainage Project Negotiated Construction Work Orders WBS No. M-000126-0074-4	Page 1 of 2	Agenda Item # 31
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FROM: (Department or other point of origin): Department of Public Works and Engineering	Origination Date: 2/23/12	Agenda Date: FEB 29 2012
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DIRECTOR'S SIGNATURE:  Daniel W. Krueger, P.E., Director	Council District affected: All BF
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For additional information contact: <i>WSP</i> Ravi Kaleyatodi, P.E., CPM Phone: (832) 395-2326 Senior Assistant Director	Date and identification of prior authorizing Council action: 1/3/12
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RECOMMENDATION: (Summary)

Accept low bid, award Construction Contract and appropriate funds.

Amount and Source of Funding:

\$1,155,000.00 from Street & Traffic Control and Storm Drainage DDSRF, Fund No. 4042 *M.P. 1/12/2012*

PROJECT NOTICE/JUSTIFICATION: This program is required to investigate and resolve existing localized storm water drainage problems reported by citizens.

DESCRIPTION/SCOPE: This program provides professional engineering services and construction to address necessary local storm water drainage system improvements citywide. It also addresses certain large-scale storm water drainage system repairs. The Contract duration for this project is 365 calendar days.

LOCATION: Citywide. Work locations will be anywhere within the City of Houston and its jurisdictional limits and will be established by each work order.

BIDS: Bids were received on October 27, 2011. The five (5) bids are as follows:

<u>Bidder</u>	<u>Adjustment Factor</u>
1. Total Contracting Limited	1.190
2. T. Construction, LLC	1.280
3. Boyer, Inc.	1.295
4. ISI Contracting, Inc.	1.400
5. Metro City Construction, L.P.	1.740

Contract bids are based on an Adjustment Factor rather than a monetary amount. The Contract will not exceed \$1,000,000.00. Estimated work order prices will be calculated by multiplying the unit quantity of each item in the work order by the unit price and the Adjustment Factor.

REQUIRED AUTHORIZATION CUIC# 20BTE02

Finance Department	Other Authorization:	Other Authorization:  Daniel R. Menendez, P.E., Deputy Director Engineering and Construction Division
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Date	Subject: Contract Award for FY2012 Local Drainage Project Negotiated Construction Work Orders WBS No. M-000126-0074-4	Originator's Initials BE	Page 2 of 2
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AWARD: It is recommended that this construction Contract be awarded to Total Contracting Limited with a low bid of 1.190 Adjustment factor and that Addendum Number 1 be made a part of this Contract.

PROJECT COST: The total cost of this project is \$ 1,155,000.00 to be appropriated as follows:

- Bid Amount \$1,000,000.00
- Contingencies \$50,000.00
- Engineering and Testing Services \$35,000.00
- CIP Cost Recovery \$70,000.00

Engineering and Testing Services will be provided by Geoscience Engineering & Testing, Inc. under a previously approved contract.

PAY OR PLAY PROGRAM: The proposed contract requires compliance with the City's 'Pay or Play' ordinance regarding health benefits for employees of City contractors. In this case, the contractor provides health benefits to eligible employees in compliance with City policy.

M/SBE PARTICIPATION: The low bidder has submitted the following proposed program to satisfy the 9% MBE goal and 7% SBE goal for this project.

<u>MBE - Name of Firms</u>	<u>Work Description</u>	<u>Amount</u>	<u>% of Contract</u>
1. Professional Traffic Control	Sign, Striping/Marking	\$ 90,000.00	9.00%
TOTAL		\$ 90,000.00	9.00%

<u>SBE - Name of Firms</u>	<u>Work Description</u>	<u>Amount</u>	<u>% of Contract</u>
1. Bedo Construction Products, Inc.	Construction Supplies	\$ 70,000.00	7.00%
TOTAL		\$ 70,000.00	7.00%


 DWK:DRM:RK:DPS:CH:BTE:klw
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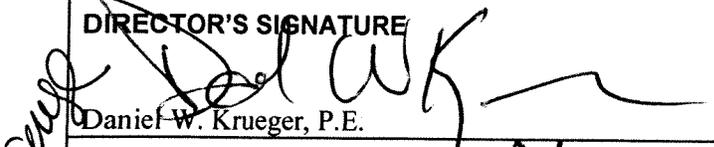
c: File No. M-000126-0074-4

TO: Mayor via City Secretary

REQUEST FOR COUNCIL ACTION

SUBJECT: Contract Award for Sanitary Sewer Cleaning and Television Inspection In Support of Rehabilitation WBS# R-000266-0179-4	Page 1 of 2	Agenda Item # 32
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FROM (Department or other point of origin): Department of Public Works and Engineering	Origination Date	Agenda Date FEB 29 2012
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DIRECTOR'S SIGNATURE  Daniel W. Krueger, P.E.	Council District affected: All
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For additional information contact: Jason Iken, P.E. Senior Assistant Director Phone: (832) 395-4989	Date and identification of prior authorizing Council action: N/A
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RECOMMENDATION: (Summary)
Accept low bid, award construction contract, and appropriate funds.

Amount and Source of Funding: \$517,837.00 from Water and Sewer System Consolidated Construction Fund No. 8500. This project is eligible for low interest funding through the State Revolving Fund (SRF), Tier II. *M.F. 2/1/2012*

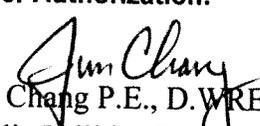
SPECIFIC EXPLANATION: This project is part of the Neighborhood Sewer Rehabilitation Program and is required to renew/replace various deteriorated neighborhood collection systems throughout the City.

DESCRIPTION/SCOPE: This project consists of sanitary sewer cleaning and television inspection in support of rehabilitation. The contract duration for this project is 365 calendar days.

LOCATION: The project area is generally bounded by the City Limits.

BIDS: Four (4) bids were received on December 1, 2011 for this project as follows:

Bidder	Bid Amount
1. Envirowaste Services Group, Inc.	\$488,415.74
2. CleanServe, Inc.	\$499,736.30
3. Pipeline Video Inspection, LLC	\$545,630.45
4. Specialized Maintenance Services, Inc.	\$836,293.40

File/Project No. WW 4277-69	REQUIRED AUTHORIZATION	CUIC# 20JAI420 <i>M</i>
Finance Department	Other Authorization:	Other Authorization:  Jun Chang P.E., D. WRE, Deputy Director Public Utilities Division

Date	Subject: Contract Award for Sanitary Sewer Cleaning and Television Inspection In Support of Rehabilitation WBS# R-000266-0179-4	Originator's Initials	Page 2 of 2
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AWARD: It is recommended that this construction contract be awarded to Envirowaste Services Group, Inc., with a low bid of \$488,415.74.

PROJECT COST: The total cost of this project is \$517,837.00 to be appropriated as follows:

- Bid Amount \$488,415.74
- Contingencies \$24,421.26
- Engineering Testing Services \$5,000.00

Engineering Testing Services will be provided by Geoscience Engineering & Testing, Inc. under a previously approved contract.

PAY OR PLAY PROGRAM: The proposed contract requires compliance with the City's Pay or Play ordinance regarding health benefits for employees of City contractors. In this case, the contractor provides health benefits to eligible employees in compliance with City policy.

M/WSBE PARTICIPATION: No City M/WSBE participation goal has been established for this project.

All known rights-of-way and easements required for this project have been acquired.

JDK
DWK:JC:JI:DR:mb

File No. WW 4277-69

TO: Mayor via City Secretary

REQUEST FOR COUNCIL ACTION

SUBJECT: Contract Award for Groundwater Treatment Plants Improvements Package - 1; Jersey Village, District 123, Acres Homes and Sims Bayou. WBS No. S-001000-0031-4.

Page 1 of 2

Agenda Item # 33

FROM: (Department or other point of origin):

Department of Public Works and Engineering

Origination Date:

2/23/12

Agenda Date:

FEB 29 2012

DIRECTOR'S SIGNATURE:

Daniel W. Krueger, P.E., Director

Council District affected:

B,F,K

For additional information contact:

Ravi Kaleyatodi, P.E., CPM Phone: (832) 395-2326 Senior Assistant Director

Date and identification of prior authorizing Council action:

RECOMMENDATION: (Summary)

Accept low bid, award construction contract and appropriate funds.

Amount and Source of Funding:

\$6,054,000.00 from Water and Sewer System Consolidated Construction Fund No. 8500.

M.P. 1/27/2012

PROJECT NOTICE/JUSTIFICATION: This project is part of the City's improvements of various groundwater treatment plants and is required to meet the Texas Commission on Environmental Quality regulations. Also, this project will improve the operability, maintainability and reliability of the plants.

DESCRIPTION/SCOPE: This project consists of various improvements including chemical feed equipment, pumps, piping and valves, flow meters, electric valve actuator, motor control center and building, rehabilitation of metering station, electrical improvements and SCADA upgrades. The contract duration for this project is 390 calendar days. This project was designed by Lockwood, Andrews & Newnam, Inc.

LOCATION: The project sites are as follows:

- 1. Jersey Village Pump Station at 7207 Fairview, Key Map Grid 409N.
- 2. District 123 Pump Station at 10003 S. Kirkwood, Key Map Grid 529S.
- 3. Sims Bayou Pump Station at 13840 Croquet, Key Map Grid 571P.
- 4. Acres Homes Pump Station at 1810 Dolly Wright St., Key Map Grid 412S.

Council District
Harris County
F
K
B

BIDS: Bids were received on December 1, 2011. The two (2) bids are as follows:

Bidder	Bid Amount
1. Industrial TX Corp.	\$5,387,380.00
2. LEM Construction Co., Inc.	\$5,410,155.00

REQUIRED AUTHORIZATION

CUIC ID# 20RS108

Finance Department

Other Authorization:

Jun Chang, P.E., D.WRE Deputy Director Public Utilities Division

Other Authorization:

Daniel R. Menendez, P.E. Deputy Director Engineering and Construction Division

Date	Subject: Contract Award for Groundwater Treatment Plants Improvements Package – 1; Jersey Village, District 123, Acres Homes and Sims Bayou. WBS No. S-001000-0031-4	Originator's Initials <i>PH</i>	Page 2 of 2
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AWARD: It is recommended that this construction contract be awarded to Industrial TX Corp. with a low bid of \$5,387,380.00 and that addendum No. 1,2,3,4 and 5 be made a part of this contract.

PROJECT COST: The total cost of this project is \$6,054,000.00 to be appropriated as follows:

•	Bid Amount	\$5,387,380.00
•	Contingencies	\$269,369.00
•	Engineering and Testing Services	\$20,000.00
•	CIP Cost Recovery	\$377,251.00

Engineering and Testing Services will be provided by Terracon Consultants, Inc. under a previously approved contract.

PAY OR PLAY PROGRAM: The proposed contract requires compliance with the City's 'Pay or Play' ordinance regarding health benefits for employees of City contractors. In this case, the contractor provides health benefits to eligible employees in compliance with City Policy.

MBE/SBE PARTICIPATION: The low bidder has submitted the following proposed program to satisfy the 12% MBE goal and 6% SBE goal for this project.

<u>MBE - Name of Firms</u>	<u>Work Description</u>	<u>Amount</u>	<u>% of Contract</u>
1. Escalante Construction, Inc.	Concrete Construction	\$245,000.00	4.5%
2. Energy Electric Supply, Inc.	Electrical Equipment	\$322,000.00	6.0%
3. Aviles Painting Contractor	Painting	\$68,000.00	1.3%
4. C & B Rebar Construction, Inc.	Rebar Installation	<u>\$12,000.00</u>	<u>0.2%</u>
		Total \$647,000.00	12.0%

<u>SBE - Name of Firms</u>	<u>Work Description</u>	<u>Amount</u>	<u>% of Contract</u>
5. Automation Nation, Inc.	Computer System Design	\$20,000.00	0.4%
6. Teague Industrial Sales & Services, DBA Teague Industrial Sales & Services	Pipeline Products	<u>\$303,243.00</u>	<u>5.6%</u>
		Total \$323,243.00	6.0%

All known rights-of-way, easements and/or right-of-entry required for the project have been acquired.

PH
 DWK:DRM:RK:HH:SD:RS:jN
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 File No. S-001000-0031-4 (3.7)



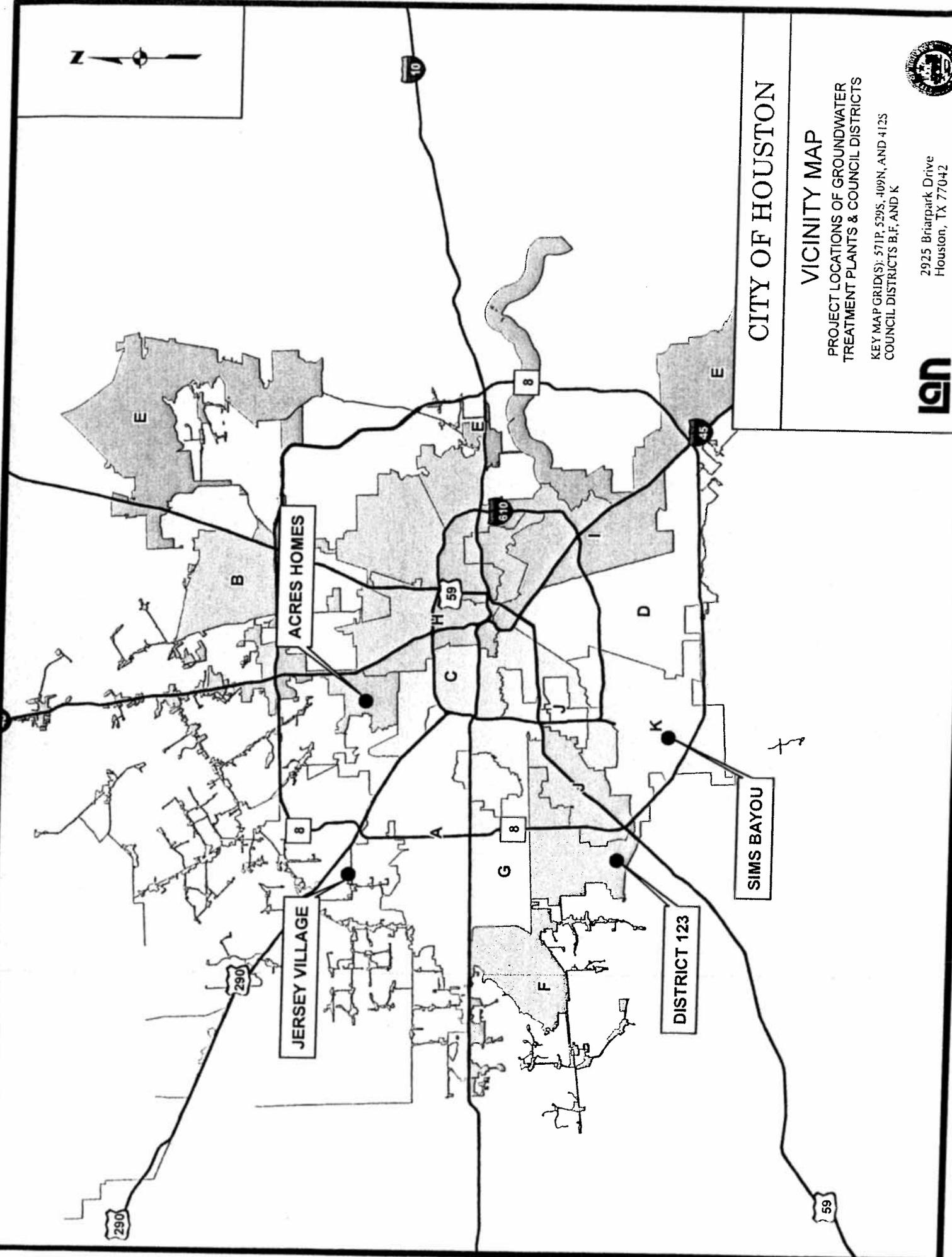
2925 Briarpark Drive
Houston, TX 77042



CITY OF HOUSTON

VICINITY MAP

PROJECT LOCATIONS OF GROUNDWATER
TREATMENT PLANTS & COUNCIL DISTRICTS
KEY MAP GRID(S): 571P, 529S, 409N, AND 412S
COUNCIL DISTRICTS B, F, AND K



REQUEST FOR COUNCIL ACTION

TO: Mayor via City Secretary

RCA #

SUBJECT: Ordinances granting Commercial Solid Waste Operator Franchises
34-39

Category #

Page 1 of 1

Agenda Item#

~~32 to 37 - 29 to 34~~

FROM: (Department or other point of origin):

Alfred J. Moran, Director
Administration & Regulatory Affairs

Origination Date
01/23/2012

Agenda Date

~~FEB 15 2012~~

DIRECTOR'S SIGNATURE:

Council Districts affected:

FFR 29 2012

ALL

For additional information contact:

Juan Olguin 550 72
Naelah Yahya

Phone: (713) 837- 9623

Phone: (713) 837- 9889

Date and identification of prior authorizing Council Action: Ord. # 2002-526 - June 19, 2002; Ord. # 2002-1166-December 18, 2002.

RECOMMENDATION: (Summary)

Approve ordinances granting Commercial Solid Waste Operator Franchises

Amount of Funding:
REVENUE

FIN Budget:

SOURCE OF FUNDING:

General Fund Grant Fund Enterprise Fund Other (Specify)

SPECIFIC EXPLANATION:

It is recommended that City Council approve ordinances granting Commercial Solid Waste Operator Franchises to the following solid waste operators pursuant to Article VI, Chapter 39. The proposed Franchisees are:

1. Adam H. Belmont D/B/A Beto's Hydro & Sanitation
2. C.R. McCaskill Enterprises, Inc. D/B/A Tideland Grease Trap Service
3. Jerry Brumfield D/B/A Brumfield Sanitation Service
4. Sonya Carr Bertran D/B/A Anita's Vacuum Service
5. CIMA, L.P
6. Waste Partners of Texas, Inc. D/B/A Jackpot Sanitation Services

The proposed ordinances grant the Franchisees the right to use the City's public ways for the purpose of collecting, hauling or transporting solid or industrial waste from commercial properties located within the City of Houston. In consideration for this grant, each Franchisee agrees to pay to the City an annual Franchise Fee equal to 4% of their annual gross revenue, payable quarterly. To verify Franchisee compliance with the franchise, the City has the right to inspect, and the company has the duty to maintain, required customer records during regular business hours. The franchise contains the City's standard release and indemnification, default and termination, liquidated damages and force majeure provisions. The proposed franchise terms expire on December 31, 2013.

The Pay or Play Program does not apply to the solid waste franchises.

REQUIRED AUTHORIZATION

Finance Director:



CITY OF HOUSTON
Legal Department

Interoffice
Correspondence

40
FEB 29 2012

To: Anna Russell
City Secretary

From: David M. Feldman
City Attorney

Date: February 15, 2012

Subject: Notice of Appeal from decision of
General Appeals Board, Garrett
Operators, Inc., sign located at
2600 South Loop West.

Dear Ms. Russell:

You have forwarded correspondence to this office over the signature of Mr. Richard V. Rothfelder, Attorney at Law, on behalf of his client, Garrett Operators, Inc., giving notice of appeal pursuant to Section 4604(e)(1) of the Sign Code from a decision of the General Appeals Board regarding an interpretation of the Sign Code. In your correspondence you ask for the Legal Department to determine if the appeal is timely and may be granted.

With regard to the question of the timeliness of the appeal to City Council, please be advised that Section 4604(e)(1) of the Sign Code requires that notice of appeal be given in writing to the City Secretary within ten days of the decision of the General Appeals Board. The decision of the Board was rendered on September 22, 2011, and the notice of appeal was received by your office on September 27, 2011. Therefore, the appeal would appear to be timely.

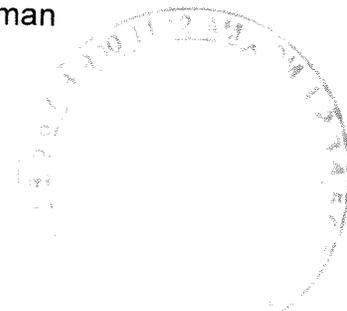
Although Section 4604(e)(2) of the Sign Code requires the transcript to be filed within sixty days of the September 22, 2011 decision, preparation of the transcript was delayed through no fault of either party and with the approval of both parties.

Therefore, it would appear the appeal is proper for consideration by City Council.

Very Truly Yours,

David M. Feldman
City Attorney

cc: **Via certified mail, rrr**
Mr. Richard V. Rothfelder
ROTHFELDER & FALICK, L.L.P.





CITY OF HOUSTON

City Secretary

Interoffice

Correspondence

To: Mr. Daniel Feldman
City Attorney

From: Anna Russell
City Secretary

Date: September 28, 2011

Attn:

Subject: Notice of Appeal

Dear Mr. Feldman:

The attached is copy of correspondence from Mr. Richard Rothfelder, 1201 Louisiana, Suite 550, Houston, Texas, 77002, giving notice of appeal of Garrett Operators, Inc. of the decision of the General Appeals Board regarding a sign located at 2600 South Loop West, is sent to you to advise if the appeal is timely and may be granted.

Yours Truly,

Anna Russell
City Secretary

AR/jg

cc: Mr. Richard Rothfelder
Rothfelder & Falick, L.L.P.
Houston, Texas 77002

11/14/11
Transcript received
See attached
ARussell

ROTHFELDER & FALICK, L.L.P.

ATTORNEYS AT LAW

RICHARD L. ROTHFELDER
rrothfelder@swbell.net
BOARD CERTIFIED - CIVIL TRIAL LAW

1201 LOUISIANA
SUITE 550
HOUSTON, TEXAS 77002

TELEPHONE: 713-220-2288
FACSIMILE: 713-658-8211
WWW.ROTHFELDERFALICK.COM

September 26, 2011

Ms. Anna Russell
City Secretary
City of Houston
P.O. Box 1562
Houston, TX 77251

Via Certified Mail, RRR, #7009 1680 0001 7224 2670

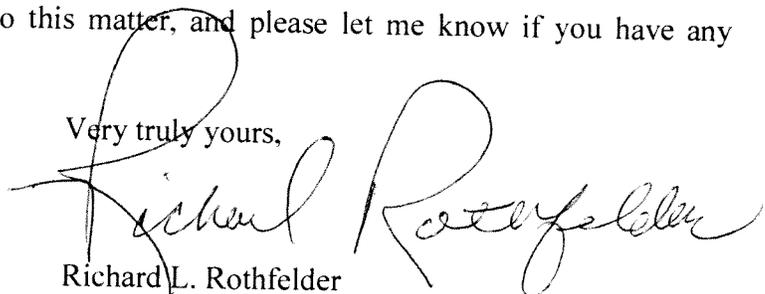
RE: Notice of Appeal of Garrett Operators, Inc. of September 22, 2011 Decision of General Appeals Board regarding Sign located at 2600 South Loop West; Our File No. 1818-1.

Dear Ms. Russell:

Pursuant to Section 4604(e)(1), on behalf of my client, Garrett Operators, Inc., I am hereby serving notice of appeal of the decision rendered by the General Appeals Board on September 22, 2011 upholding the Houston Sign Administration's ruling on the sign located at 2600 South Loop West, Houston, Texas. Attached is my presentation to the General Appeals Board appealing the Sign Administration's decision, which in turn is reflected in the July 29, 2011 letter of Katherine Tipton, a copy of which is attached as Exhibit 9. The transcript of the General Appeals Board hearing, as well as the administrative rulings of the General Appeals Board and Garrett Operators, Inc.'s exceptions thereto, will be provided within sixty days of the September 22, 2011 decision, pursuant to Section 4604(e)(2) of the Houston Sign Code.

Thank you for your attention to this matter, and please let me know if you have any question.

Very truly yours,



Richard L. Rothfelder

RLR:mr
Enclosures

RECEIVED

SEP 27 2011

SECRETARY

GARRETT OPERATORS' PRESENTATION TO
GENERAL APPEALS BOARD

September 22, 2011

- I. Factual Background
- A. Sign originally built in 1979 for off-premise advertising and digital automatic changing illumination (Exhibit 1)
 - B. Sign acquired by Cox in 1984 as resolution of dispute with Allison Walker Interests, real estate developer
 - C. Cox used as animated neon off-premise display (Exhibit 2)
 - D. Dispute with City of Houston arose regarding on-premise vs. off-premise use of sign, resulting in General Appeals Board decision in June 1993 that sign properly permitted for off-premise advertising (Exhibit 3)
 - E. In October 1997, permission granted by Houston to operate the sign as an automatic changing "tri-vision" display (Exhibit 4)
 - 1. Operated as a tri-vision from 1997 through 2007 (Exhibit 5)
 - F. In January 2008, Garrett (by this time Cox had transferred sign) inquired about using the sign once again as a digital or LED display (Exhibit 6)
 - 1. In February 2008, City denied the request (Exhibit 7)
 - G. Houston Sign Code amended in 2009 to prohibit LED illumination for off-premise signs
 - H. Litigation between Cox and Houston ensued, resulting in dismissal on grounds that Cox had not secured a "final decision" or "exhausted his administrative remedies" by appealing the determination of whether a permit was required to convert the sign to LED illumination
 - I. Garrett submitted application for LED illumination under protest in June 2011, arguing it was authorized under the 2008 Code (Exhibit 8)
 - J. LED request was denied by letter dated July 29, 2011, on grounds that under the 2009 amendment to Section 4612(b)(2), "electronic and off-premise high technology signs are prohibited" (Exhibit 9)
 - 1. Letter was contained in a certified mail envelope actually postmarked August 2, 2011 (Exhibit 10)
 - 2. But it was not actually received by Cox until August 16, 2011 (Exhibit 11)
 - K. City's denial of LED permission immediately appealed on August 17, 2011 (Exhibit 12)
- II. Timeliness of Appeal
- A. Section 4604(1) (Exhibit 13) requires appeals to the General Appeals Board of adverse Sign Administrator decisions within 10 business days
 - B. Decision was received on August 16th (Exhibit 11), and it was appealed the next day, on August 17th (Exhibit 12)
 - 1. Even though letter conveying decision is dated July 29th (Exhibit 9), it was in an envelope that was postmarked and not mailed until August 2nd (Exhibit 10)

- C. Especially given the discrepancies in the mailing date, coupled with delays in retrieving certified mail, Section 4604(1) means the appeal must be filed within 10 days after receipt of the decision
 - 1. Otherwise, appeals could effectively be precluded by dating the letter, postponing its mailing, and extending the time for retrieval of certified mail
 - 2. Therefore, this appeal is timely

- III. Permit for LED illumination not required, or if required, should be granted to Cox/Garrett
 - A. The provisions of the Houston Sign Code in effect in January 2008, when Cox inquired about using the sign once again as a digital or LED display (Exhibit 6), govern in this case
 - 1. Section 245.002 of the Texas Local Government Code (Exhibit 14) requires permit applications to be granted or denied, or in this case not be necessary, based upon the ordinance in force when the request for the LED display is initially submitted: “(a) each regulatory agency shall consider the approval, disapproval, or conditional approval of an application for a permit solely on the basis of any...ordinances...or other properly adopted requirements in effect at the time (1) the original application for the permit is filed for review for any purpose...”
 - B. The Houston Sign Code in January 2008 did not require a permit to convert the sign to an LED display
 - 1. The sign was already legally operated as an automatic changing tri-face display (Exhibit 4 and 5)
 - 2. Not a “spectacular sign” under Section 4603, because the message did not change more often than once every five minutes (Exhibit 15)
 - 3. Not prohibited or even regulated as a changeable message, electronic, or high technology sign under Section 4602 (Exhibit 16), Section 4611 (Exhibit 17), or Section 4602(b)(2) (Exhibit 18), because those provisions were added to the Sign Code and did not become effective until over a year later in 2009
 - C. Converting the automatic changing message from tri-face technology to LED illumination is a mere “change of ornamental features, electrical wiring or advertising display” under Section 4608 (Exhibit 19)
 - 1. In 2008, “no sign permit [was] required for the change of any of the ornamental features, electrical wiring or devices, or the advertising display of a sign previously permitted” under Section 4608
 - 2. Since sign was previously permitted as a tri-vision display (Exhibits 4 and 5), changing the ornamental features, electrical wiring or devices, or the advertising display of the sign for LED illumination did not require a permit
 - D. The 2009 changes to the Houston Sign Code confirm the City Council subsequently, after Cox initially inquired with the Sign Administration in January 2008, prohibited LED illuminated off-premise signs
 - 1. Section 4612(b)(2) (Exhibit 18) was amended to prohibit “electronic or off-premise high technology signs”

2. Section 4608 was amended to eliminate the previous exemption for obtaining a permit to change the “electrical wiring or devices,” and to specifically exclude “converting existing signs to electronic signs, high technology signs, or changeable message signs.” (Exhibit 19)
 3. City Council would not have been required to make these changes if Houston Sign Code already contained in January 2008 a prohibition on automatic changing tri-vision to LED illuminated off-premise signs
- E. Since the Houston Sign Code did not contain such a prohibition on LED illuminated off-premise signs in January 2008, and Section 245.002 of the Local Government Code (Exhibit 14) requires application of that version of the Code, Garrett is permitted to convert the sign to LED illumination
1. The July 29, 2011 decision of the Sign Administration denying Garrett’s request was incorrectly based upon the 2009 amendment to Section 4612(b)(2) (Exhibit 9)
- IV. Conclusion - The General Appeals Board should overturn the January 29, 2011 (Exhibit 9) decision of the Sign Administration, and rule that Garrett either does not need a permit to convert the sign to an LED illumination, or if one is required, that the permit should be issued

Allison Walker Interests

EXHIBIT
1

tabbles

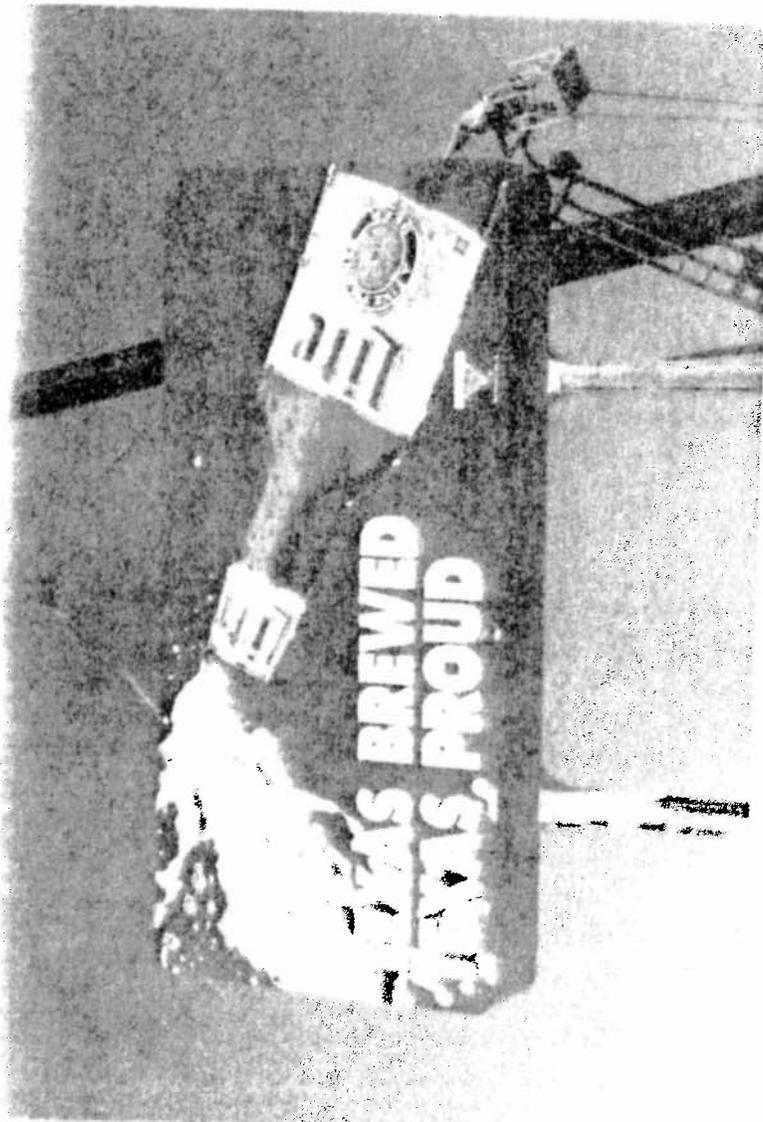


EXHIBIT
2
tabbies



Bob Lanler, Mayor

CITY OF HOUSTON

Post Office Box 1562 Houston, Texas 77251-156

CITY COUNCIL MEMBERS: Helen Huey Ernest McGowan, Sr Vince Ryan Alfred J. Calloway Frank O. Mancuso John G. Goodner Christin Harlan
Dale M. Gortzynski Ben T. Reyes Grace Guzman Saenz Eleanor Tinsley Jim Greenwood Sheila Jackson Lee Judson W. Robinson, III CITY CONTROLLER: George Greank

June 21, 1993

Mr. Tommy Cox
MBB Operators
One Greenway Plaza, Suite 500
Houston, Texas 77046

COPY

Dear Mr. Cox:

Enclosed are the operating permits for the sign located at 2600 South Loop West. Please note that the permit reflects reformation of the permits for 1980-1985 to reclassify the sign as an off-premise sign. The permits, one for each face of the sign, will expire in June, 1995.

As you may be aware, permits are not required to change the message on the face of a sign unless there is electrical work involved, then electrical permits are required. However, this particular sign is not constructed in the same manner as most billboards. Therefore, I would like to request that you notify me if a change is needed and based on the extent of the work a determination of the need for a minimum construction permit (\$45.00) will be made. This would also be helpful to me in fielding inquiries concerning the status of the sign.

One final note, since this is the only sign that you own and it is located on a Federally funded highway, the provisions of HB 1330 do not impact your sign.

If you in need of additional information, please feel free to contact me.

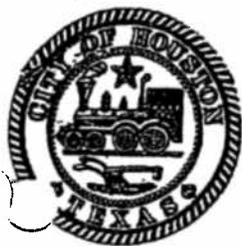
Very truly yours,

Ollie Schiller
Acting Manager, Sign Administration
Department of Public Works and Engineering

Enclosures

CC: Richard Rothfelder
Gilbert Douglas
J. Hal Caton





CITY OF HOUSTON

Post Office Box 1562 Houston, Texas 77251-1562

Bob Lanier, Mayor

CITY COUNCIL MEMBERS: Helen Huey Michael J. Yarbrough Martha J. Wong Jew Don Boney, Jr. Rob Todd Ray F. Driscoll John Kelley Felix Frogg
John E. Castillo Gracie Guzman Saenz Joe Roach Orlando Sanchez Chris Bell Judson W. Robinson III CITY CONTROLLER: Lloyd E. Keller

Chief of Staff
Office of the Mayor

JIMMIE SCHINDEWOLF, P.E.

Director of Public
Works & Engineering

October 1, 1997

Mr. Thomas Cox
President
Garrett Operators, Inc.
3700 Buffalo Speedway, Suite 800
Houston, Texas 77098

Re: Appeal of the Sign Administrator's decision to deny a construction permit for the installation of a Tri-Vision face on the off-premise sign located at 2600 South Loop West

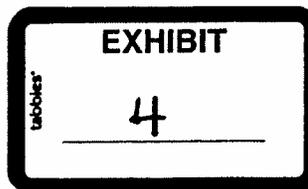
Dear Mr. Cox:

A review of the above referenced appeal has been completed. After careful consideration of the information provided in your appeal, the memorandum from the Director, Office of Real Estate Services of the Federal Highway Administration (FHWA) dated July 17, 1995 and consultation with the City Legal Department; I am reversing the decision and will issue the construction permit under the conditions discussed below.

The sign is located at 2600 South Loop West, a federal aid primary. It is considered conforming and in compliance with applicable state and local regulations; with the exception of Section 4619 of the Houston Sign Code which the City has refrained from enforcing pending resolution of the on-going litigation. Therefore, it would meet the criteria specified in the above referenced memorandum from FHWA.

The following sets forth the conditions under which the construction permit would be issued:

- Formal withdrawal of the appeal.
- A condition would be placed on the permit that would result in revocation if the City prevailed in the litigation or the condition would be lifted if the plaintiffs prevailed.
- A statement of understanding that the message cannot change more frequently than every five minutes would be required on the drawings submitted for approval and will placed on the face of the permit.
- Resubmit the permit application and construction drawings.

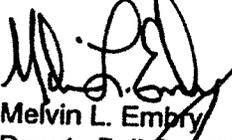


Mr. Thomas Cox
Garrett Operators
October 1, 1997
Page 2 of 2

Provided the conditions discussed above are acceptable, the permit would be issued. No further action will be taken until a response is received indicating if you will accept the terms previously stated. If you choose not to accept this proposal, the appeal will be scheduled.

If you need additional information, please call Ollie Schiller, Deputy Assistant Director, Sign Administration at 713-525-2398.

Sincerely,



Melvin L. Embry
Deputy Building Official
Department of Public Works and Engineering

cc: Gilbert Douglas
Jimmie Schindewolf



MLE:OS:o

GARRETT OPERATORS, INC.
3700 Buffalo Speedway, Suite 800
Houston, Texas 77098

Thursday, October 16, 1997

Mr. Melvin L. Embry
Deputy Building Official
Dept. of Public Works and Engineering
City Of Houston
Post Office Box 1562
Houston, Texas 77251

Re: Sign Administration permit for sign at 2600 South Loop West

Dear Mr. Embry:

I am in receipt of your letter of October 1, 1997, whereas you have reversed your earlier decision and will issue the construction permit for the above-mentioned signage.

The sign is located at 2600 South Loop West, a federal aid primary. It is conforming and in compliance with applicable Federal, State, and local regulations with the exception of the C.O.H. Section 4619 of the Sign Code which the City is refrained from enforcing pending on-going litigation. It does meet the criteria specified from the U.S. Department of Transportation Federal Highway Administration dated July 17, 1996.

We also understand that you have set forth further conditions that would need to be followed before the permit is issued:

- This is our formal withdrawal of the appeal based on your letter.
- Revocation if the City prevails on litigation and it impacts our particular site and regulations as set out in the Sign Code.
- Message change frequency as part of the permit
- Resubmit the permit application and construction drawings

Page two...City of Houston Sign Administration

We plan on resubmitting our permit application on this matter and will coordinate our efforts through Ollie Schiller, Deputy Asst. Director of the Sign Administration.

Regards,



Tommy Cox
President
Garrett Operators, Inc.
713-623-6669 Direct Voice

Cc. Ollie Schiller by facsimile 713-754-0696 *not a fax #*

Signpermit. 10-16-97

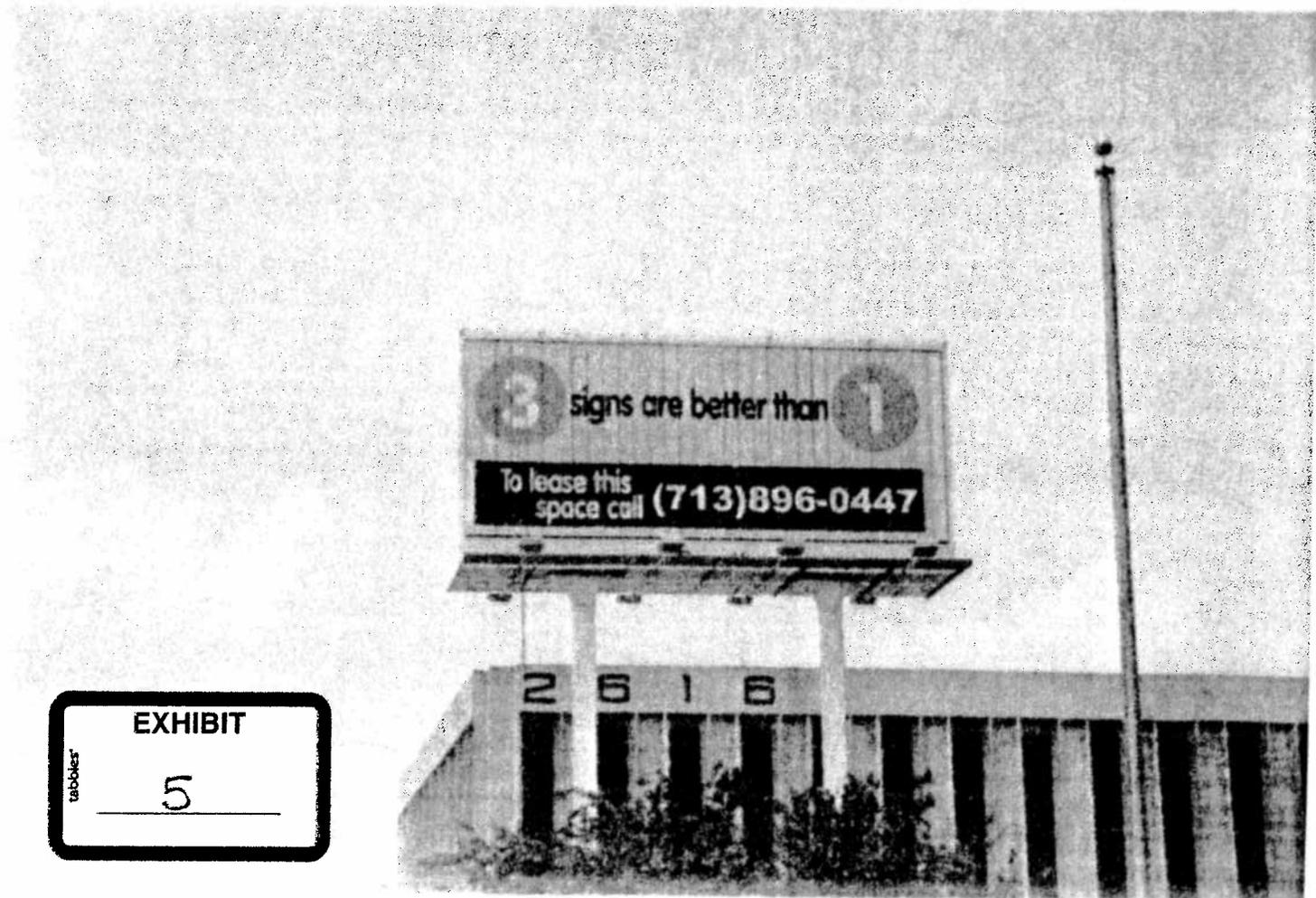
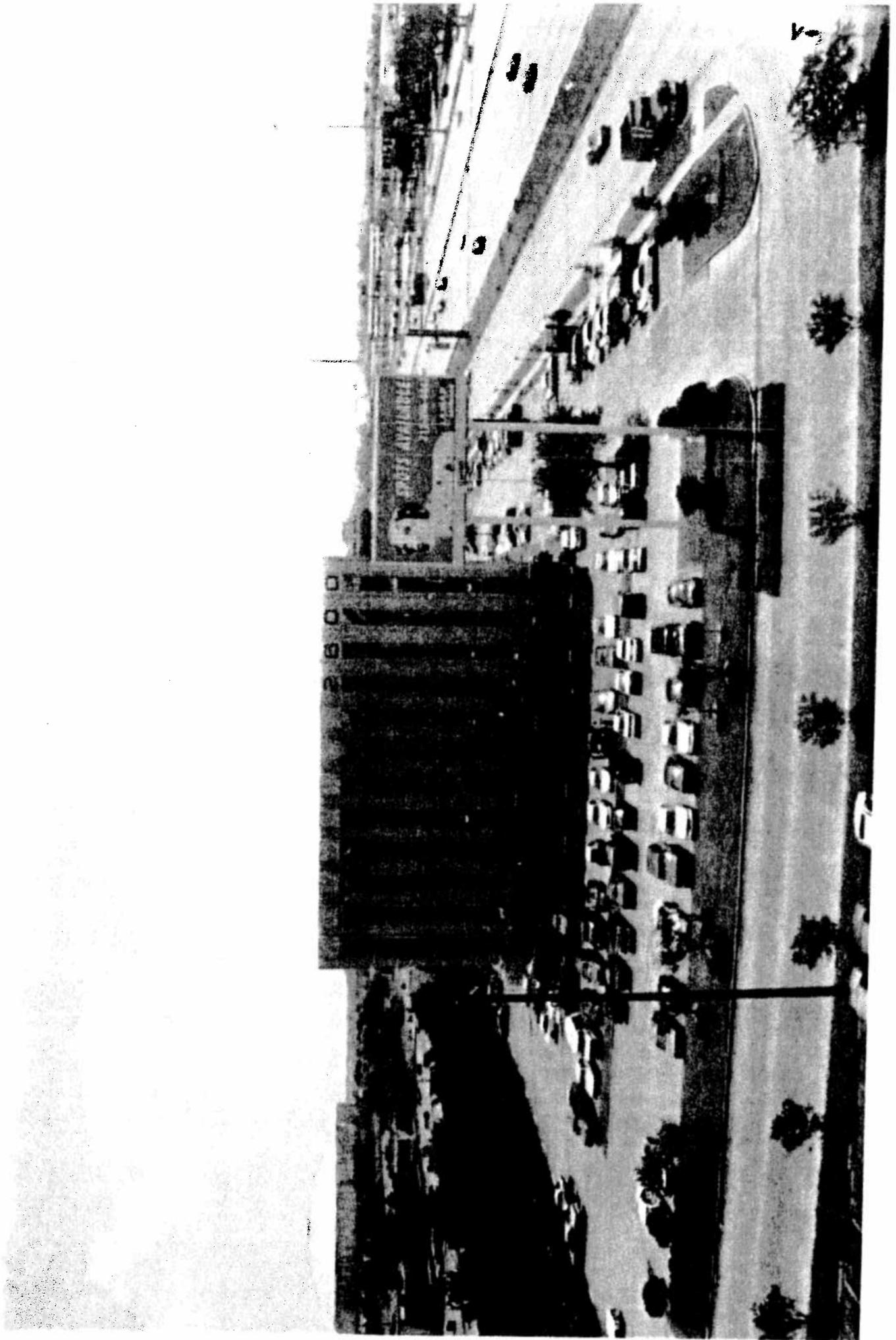
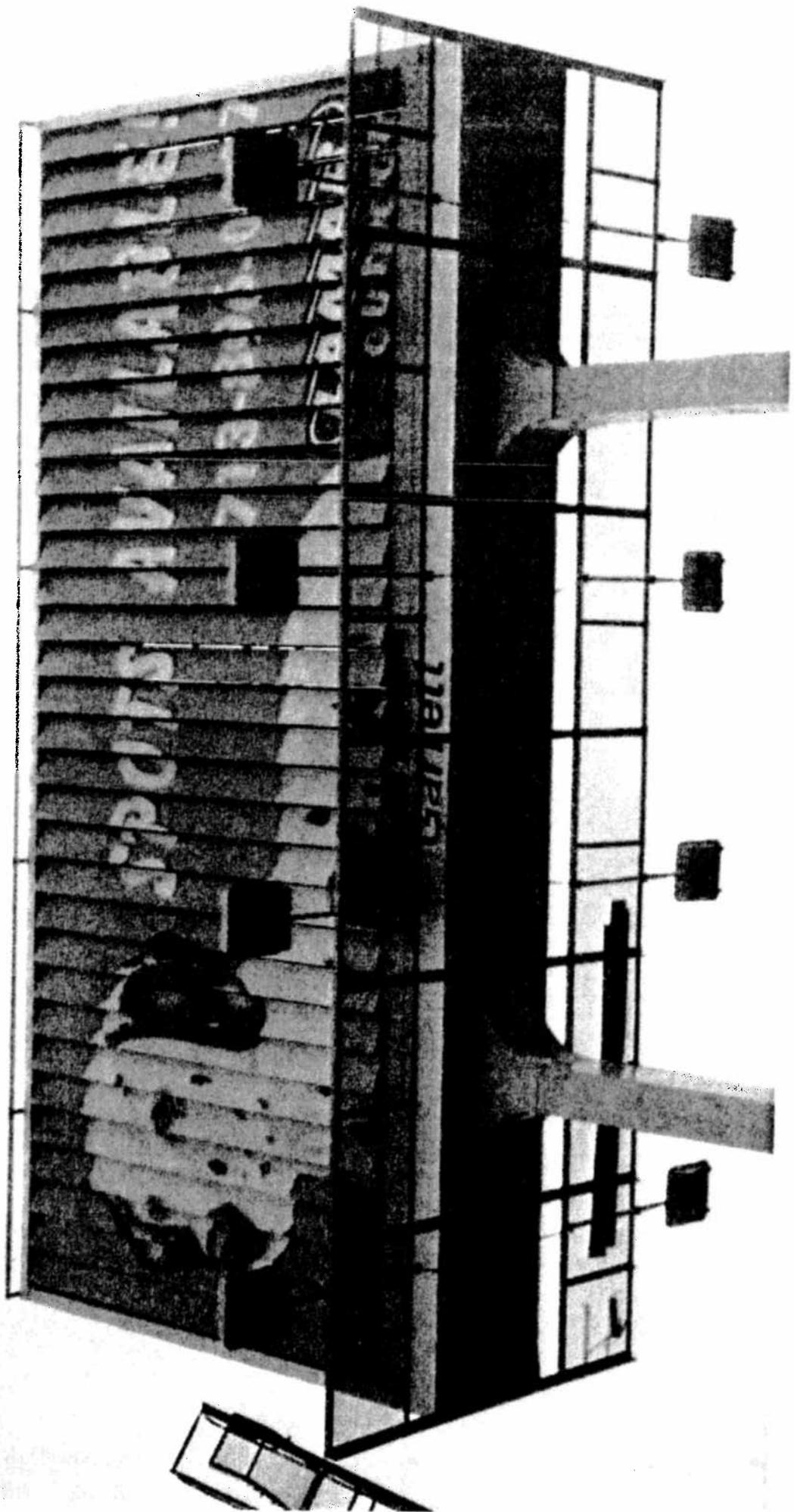


EXHIBIT
5

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DORRELL & FARRIS, L.P.

Attorneys and Counselors at Law
3303 LOUISIANA, SUITE 150
HOUSTON, TEXAS 77006-6616
713-807-1188
FAX 713-807-1110

Jeffrey L. Dorrell
jldorrell@df-law.com

David J. Farris
djfarris@df-law.com

January 22, 2008

Ms. Susan Lucyx
Division Manager/Sign Administration
2636 South Loop West, Suite 675
P.O. Box 61167
Houston, Texas 77208

Sent by Telecopier to 713-218-5838.
(Four pages including this page.)

RE: Garrett Operators, Inc., Off-Premise Sign at 2600 South Loop West; Permit ID #3928 (Expiring May 2010); Project Number 97119144.

Dear Ms. Lucyx:

This letter is written at your specific request. The subject sign has been operating since before **May 8, 1980**.¹ This office represents Garrett in the matter of Garrett's plans to change the sign's display mechanism from the current tri-vision to an LED (light-emitting diode) display.²

On **January 15, 2008**, Tommy Cox, CEO of Garrett, and I appeared at your office to meet with you. We were advised that you were not available, and we met instead with Mr. Mark Jimenez. We explained that Garrett planned to modify the display in the sign to an LED display. Mr. Jimenez said:

It is illegal in the City of Houston for sign owners to use an LED display on a sign.

While we do not believe this is a correct statement of the law, we took this to mean that the City of Houston intends to act to prevent Garrett from installing the LED display, for which Garrett has already paid **\$250,000.00**. Since this is obviously a matter of some importance to Garrett, I asked Mr. Jimenez to point out

¹ The City no longer issues permits for off-premise signs. Houston Sign Code, § 4605(a); 4612(b). The Sign Code's "Effective Date" as applied to the subject sign is May 8, 1980. Houston Sign Code, § 4602.

² We have become involved because of certain indications that the City of Houston intends to prevent Garrett from installing an LED display, but you have this firm's full permission to contact Tommy Cox directly at any time to discuss the sign's operation or permitting.

EXHIBIT

6

tabbles

Ms. Susan Lucyx
January 22, 2008
Page 2

which section of the City's Sign Code made LED displays illegal. Mr. Jimenez was unable to do this, but offered to consult you for additional information.

When we did not hear from Mr. Jimenez again, my office contacted Maria Vrana at the General Appeals Board to request an appeal form to challenge the City's position. Ms. Vrana was very courteous, but told me that she could not provide us an appeal form until we first spoke to you. I described our unsuccessful attempt to meet with you, and Ms. Vrana referred me to your immediate superior, Al Largent. I explained to Mr. Largent Garrett's imminent plans to install an LED display in the sign. Mr. Largent advised that an appeal would be premature (as there had not yet been an adverse action by the City for us to appeal), and suggested that Garrett instead file an Application for Sign Permit. I relayed this to Mr. Cox.

On January 16, 2008, I understand that Mr. Cox met with you. Mr. Cox explained Garrett's plans to install an LED display in Garrett's sign, and you echoed Mr. Jimenez's opinion from the previous day that Garrett's planned change to an LED display was "illegal." Mr. Cox pointed out that the City of Houston has already allowed at least 40 signs with LED displays of various models that are currently operating at various locations in the City's jurisdictional area.³ Your response was that these LED displays were all used in *on-premise* signs. Mr. Cox pointed out that the Houston Sign Code does not distinguish between on-premise and off-premise signs with regard to whether LED displays are permitted. I understand that you then responded, "Well, we are likely to change the Sign Code," and expressed the concern that if the City lets Garrett install an LED display in its off-premise sign, "then everyone will want to do it." You also advised that the City was awaiting a ruling from the Texas Department of Transportation regarding certain aspects of LED displays. You said that a new application from Garrett as Mr. Largent had suggested was unnecessary,⁴ and asked Garrett to write this letter instead. We hope the following discussion is useful to you.

³ These include signs owned by the Abundant Life Cathedral (77072), America's Best Value Inns at two locations (77090), Angel's Auto Center (77429), Cognetic Networks, Inc. (77057), Crowne Plaza Hotel (77074), Family Dollar Stores at four locations (77026, 77093, 77020, and 77039), Ken's Ace Hardware (77090), Newton B. Schwartz at two locations (77098), the Oak Creek Home Center (77388), Spring Woods United Methodist Church (77090), the Family Faith Lutheran Church (77095), and the Triple Crown Sports Bar (77077).

⁴ This appears to be a correct interpretation of the law. An application for a renewal permit may be made "not more than 60 days prior to the conclusion of each three-year period." Houston Sign Code § 4605(e).

Ms. Susan Lucyx
January 22, 2008
Page 3

We believe the City's position regarding Garrett's imminent installation of an LED display is mistaken for three reasons. First, Garrett's rights and responsibilities regarding the subject sign are determined by the law as it now exists, not by (i) the law as it may possibly be changed or interpreted at some unspecified future time, or (ii) a City official's invention or enforcement of some subjective standard that is not knowable by reference to the controlling ordinance (such as whether Garrett's exercise of its lawful rights will make "everyone else" want to do so). The Sign Code presently provides:

No sign permit is required for the change of any of the ornamental features, electrical wiring or devices, or the advertising display of a sign previously permitted.⁵

Houston Sign Code, § 4608(j). Because Garrett already holds a valid permit for the sign, Garrett's proposed change of the advertising display and electrical wiring and its installation of a new LED display device does not require any new permit from the City.

Second, the "ruling" you have indicated the City is awaiting from the Texas Department of Transportation regarding certain aspects of LED displays would not appear to have any regulatory impact on Garrett's sign—no matter what the ruling is. The pertinent section of the Department's booklet titled "Control of Outdoor Advertising Signs" that mentions LED screens is prefaced by this:

The following standards apply to signs controlled by the State. To be eligible for a permit, new signs must conform to the following standards. Existing signs that are legally in place, but do not meet the standards, are classified as legal nonconforming signs.

"Control of Outdoor Advertising Signs," p. 9 [emphasis in original]. Furthermore, the booklet contains this qualifying preamble:

This booklet is offered for general information and illustrative purposes only. It is not a document of law nor a statement of TxDOT policy, and may not be relied upon as such.

⁵ This provision does not apply to a Spectacular Sign. Houston Sign Code § 4608(j). However, the subject sign is *not* a Spectacular Sign, as that term is defined by § 4602. The subject sign was once a "Spectacular Sign," but was modified 15 years ago to comply with the City's prohibition of advertising that changes more often than once every five minutes.

Ms. Susan Lucyx
January 22, 2008
Page 4

Third, nothing in the Sign Code prevents the owner of a permitted and validly operating sign from installing an LED display. There is no distinction in the Code between the permissibility of LED displays in on-premise and off-premise signs. In fact, the Sign Code does not mention LED displays at all. Furthermore, the 40 LED signs the City has already approved and allowed do *not* appear to be limited to on-premise signs, as the Sign Code defines that term.⁶ While we have not done an exhaustive survey, one example is the LED sign owned by attorney Newton B. Schwartz on the northbound side of the Southwest Freeway near Shepherd. In addition to advertising the Schwartz law practice, several other messages appear directing persons to locations other than Mr. Schwartz's law office.⁷

For these reasons, we believe that Garrett requires no permit or other special permission to proceed with the installation of new wiring and a different message display in its validly permitted, existing sign at 2600 South Loop West, and we intend to proceed with such installation immediately. If the City believes there is anything in the law as presently constituted that prevents this, please advise my office as soon as possible.

Yours very truly,

/s/

Jeffrey L. Dorrell

JLD:jef

⁶ An off-premise sign is one of two primary classifications of signs under the Houston Sign Code, on-premise and off-premise. Houston Sign Code § 4603. Off-premise signs are those that "advertise a business, person, activity, goods, products, or services not usually located on the premises where the sign is installed and maintained, or that directs persons to any location not on the premises." *Id.*

⁷ For example, the sign displays a message giving the toll-free number 866-LAW-2400 for people who have been injured by the diabetes drug Avandia. The automated attendant answering this number says that the caller has reached the law offices of a firm that is not "usually located" in the law office of Newton B. Schwartz, and offers various other legal services regarding a variety of drug-related injuries.



CITY OF HOUSTON

Public Works and Engineering Department

Bill White

Mayor

Michael S. Marcotte, P.E., DEE
Director

Mailing Address:
Sign Administration
P.O. Box 81167
Houston, Texas 77208-1167

2636 South Loop West #675
Houston, Texas 77054
T- 713-218-6820
F- 713-218-5836
www.houstontx.gov

Postmarked
2-15-08

February 6, 2008.

Dorrell & Farris, L.P.
Attorneys and Counselors at Law
3303 Louisiana, Suite 150
Houston, Texas 77006-6616

RE: Garrett Operators, Inc., Sign Located at 2600 South Loop West

Dear Mr. Dorrell::

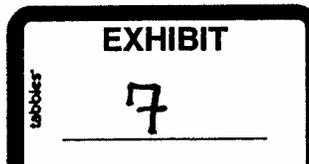
I am in receipt of your fax letter dated January 23, 2008, and a copy of your subsequent correspondence dated February 4, 2008, directed to Mr. Al Largent.

Both items of correspondence are on behalf of your client, Garrett Operators, Inc., and concern a three-faced, off-premise sign owned by your client at 2600 South Loop West; Operating Permit No. 3928.

Specifically, your letter references your client's intentions to reconstruct the current sign structure without applying for a sign permit. In support of your client's position, you assert no sign permit is required for such reconstruction, citing a portion of Section 4608(j) of the Sign Code. Section 4608(j), contained in Section 4608, Miscellaneous Sign Provisions, reads in its entirety as follows:

"(j) Change of Ornamental Features, Electrical Wiring or Advertising Display. No sign permit is required for the change of any of the ornamental features, electrical wiring or devices, or the advertising display of a sign previously permitted. This provision shall not apply to spectacular signs with respect to advertising display, nor shall it release a person from complying with all other applicable permitting requirements of the City, including those of the Construction Code."

Council Members: Toni Lawrence Jarvis Johnson Anne Catterback Wanda Adams Mike Sullivan M.J. Khan, P.E. Pam Holm Adrian Garcia
James G. Rodriguez Peter Brown Sue Lovell Ronald C. Green Jolanda "Jo" Jones Melissa Noriega Controller: Annise D. Parker

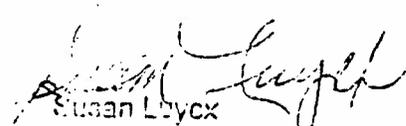


Page 2
Garrett Operators

Your reliance on only the first sentence of Section 4608(j) is in error. Section 4608(j) in this instance must be read in its entirety and in conjunction with Section 4603, Spectacular Sign; Section 4605(e), Existing Signs—Operating Permits, paragraph (3); Section 4612(b), Prohibition of New Off-premise Signs; and Section 4619(b), Declared Nonconformity. What your client is proposing is to totally remove the three existing faces of the sign, not for maintenance operations or for changing the letters, symbols or other matters (i.e., not to merely change the advertising copy), but rather to reconstruct the existing sign by installing a new LED sign cabinet to create essentially a new sign. Your continued reference to your client's expenditure of \$250,000 to implement these changes on its face belies your argument that such extensive reconstruction falls under Section 4608(j). Therefore, although your client has yet to formalize his intentions with this office, and based solely on the information currently available to us, your client's proposal contravenes and would be in direct violation of the City's Sign Code.

Let us know if there are any further questions.

Sincerely,



Susan Loyck
Line on Manager
Sign Administration
Planning and Development Services Division
Public Works and Engineering Department

cc: Larry Schenk, Legal Dept
Andy Ickert, Deputy Director
Allen Largent, Assistant Director

GARRETT OPERATORS, INC.

2205 ST. LAWRENCE ST.
GONZALES, TX 78629
OPERATIONS@GARRETTOIL.COM
713.320.9292

13106 VILLA PARK DRIVE
AUSTIN, TEXAS 78729
COXGARRETT@GMAIL.COM
512.619.2977

June 22, 2011

Ms. Katherine Tipton, Division Manager Via Certified Mail, RRR #7008 2810 0000 1601 3937
Sign Administration
City of Houston
1002 Washington Avenue, Fourth Floor
Houston, Texas 77002

RE: Application for Sign Permit submitted on behalf of Garrett Operators, Inc. and its owners, George Thomas Cox and Garrett Cox.

Dear Ms. Tipton:

Please find enclosed an Application for Sign Permit ("Application") submitted on behalf of Garrett Operators, Inc. ("Garrett"). We have enclosed our check in the amount of \$562.40 in payment of the fees associated with our request (\$492.40 for construction/reconstruction permit of two 544 s.f. sign faces + \$70.00 for electrical inspection). This Application is submitted without waiver of any remedies or rights available to Garrett or its owners, George Thomas Cox and Garrett Cox (collectively referred to as "Cox"). The Application is further submitted in follow-up to communications between Cox and Susan Luycx ("Luycx"), your predecessor, which occurred in early 2008.

Pursuant to the Application, and as previously requested in January 2008, Garrett seeks to change the electrical wiring and devices in its tri-vision off-premise outdoor advertising sign ("Sign") erected in 1978 at 2600 South Loop West in Houston, Harris County, Texas. We are aware that the City's current sign regulations prohibit electronic signs pursuant to Section 4612(b)(2) of the Sign Code as amended by Ordinance No. 2008-1223, effective December 30, 2008. However, the current regulations have no relevance to Garrett's Application. Section 245.002(a) of the Texas Local Government Code provides as follows:

(a) Each regulatory agency shall consider the approval, disapproval, or conditional approval of an application for a permit solely on the basis of any orders, regulations, ordinances, rules, expiration dates, or other properly adopted requirements in effect at the time:

EXHIBIT

8

(1) The original application for the permit is filed for review for any purpose, including review for administrative completeness...

Accordingly, Garrett's Application is submitted under the sign regulations in effect at the time the communications between Garrett and the City occurred in early 2008, which resulted in Garrett's inability to change the Sign's ornamental features or electrical wiring or devices. More specifically, the Application is submitted and should be considered under Chapter 46, the Houston Sign Code, adopted as Exhibit D-Second Revised, to Ordinance No. 2002-399, passed and approved by the City Council on the 15th day of May, 2002. We believe Garrett should be permitted to change the ornamental features or electrical wiring or devices on the Sign for the following reasons.

First, Garrett's Sign already existed in 2008 as an automatically changing message trivision structure. The only change Garrett sought to make to the Sign in early 2008 was to change the structure's lighting. The applicable regulations in effect in early 2008 did not require a permit for the change of any of the ornamental features or electrical wiring or devices under Section 4608(j). Therefore, Garrett's request should not have been denied by the City.

Second, we are aware the applicable regulations prohibited "spectacular signs" except for those having frontage on a major freeway or thoroughfare used to display the date, time, temperature, and stock market quotations. However, Garrett's Sign was not a "spectacular sign" under the definitions contained in the regulations in effect in early 2008, as the advertising message did not change more often than once every five minutes. Therefore, the prohibition regarding spectacular signs is inapplicable to Garrett's request, and the request should not have been denied.

In addition, we note the City Council revised the sign regulations after the communications between Garrett and the City occurred in early 2008, to add definitions for "changeable message sign" and "high technology sign", and to revise the definition of "electronic sign" to include only *off-premise* signs. Furthermore, Section 4608(j) was amended to prohibit Garrett and other sign owners/operators from converting existing signs to electronic signs, high technology signs, or changeable message signs without first obtaining a permit. As noted previously, these changes were all made to Houston's sign regulations *after* Garrett conveyed its intent to modify its Sign in early 2008, and are not applicable to Garrett's request. Based on the foregoing, the City should not have prevented Garrett from changing the ornamental features or electrical wiring or devices, and the Application should be granted.

A permit is not required from the Texas Department of Transportation ("TxDOT") under these circumstances. With the passage of 43 Tex. Adm. Code § 21.163, which became effective on 06/01/08 (subsequent to Garrett's initial attempts to convert the Sign by changing the ornamental features or electrical wiring or devices in early 2008), TxDOT amended its administrative rules regarding LEDs. The new regulation generally requires the issuance of permits by TxDOT for "electronic signs" if certain spacing criteria are met and only with the

Ms. Katherine Tipton
June 22, 2011
Page 3

city's written approval. Prior to the amendment on 06/01/08, TxDOT did not require permits for LED signs in certified cities like Houston, under 43 Tex. Adm. Code § 21.151(a). This regulation provides, "(w)here a political subdivision of the state exercises control over outdoor advertising signs, a permit issued by that political subdivision shall be accepted in lieu of a permit issued by the department...". Since Houston's sign regulations effective in early 2008 did not require a permit, TxDOT could not require one either.

In conclusion, we believe Garrett's Application must be reviewed under the sign regulations in effect in early 2008, and further assert the Application should be granted. It remains Garrett's position that, under the applicable regulations, a permit to perform the work planned was not required by the Sign Code. Garrett continues to maintain that position in *Garrett Operators, Inc. and George Thomas Cox v. City of Houston*, Cause No. 01-09-00946-CV, now pending rehearing in the Fourteenth Court of Appeals. By submitting this application, Garrett does not waive its contention that no permit was required or its right to continue to prosecute the above-referenced appeal.

Please do not hesitate to contact me should you have any questions or require any further information.

Very truly yours,



G. Thomas Cox
tcox@garrettoil.com
713.320.9292 cell

Enclosures

CITY OF HOUSTON

Sign Administration

Re: Permit #3928 (Original Permit #345496-R)

APPLICATION FOR SIGN PERMIT

Print or Type Application

APPLICANT'S NAME Garrett Operators, Inc. LIC. NO. N/A DATE 06-21-11
 ADDRESS 2205 St. Lawrence, Gonzales, TX ZIP 78629 PHONE 713-320-929
 SIGN LOCATION 2600 S. Loop West, Houston, TX ZIP 77054 CALL & MAIL & FAX
 STATE BUSINESS ENTERPRISE: Operate outdoor advertising sign

SITE INSPECTION CONSTRUCTION PERMIT A B C D E OPERATING PERMIT A B C D E

	SIGN TYPE _____ MESSAGE _____ VALUE \$ _____	FOR OFFICE USE ONLY
A	ON <input type="checkbox"/> ELEC <input checked="" type="checkbox"/> FACES <u>2</u> OFF <input checked="" type="checkbox"/> NON ELEC <input type="checkbox"/> POLES <u>2</u> WIDTH <u>34</u> FT _____ IN HEIGHT <u>16</u> FT _____ IN MAX. HT. <u>61</u> FT _____ IN COMMENTS <u>See attached.</u>	PROJECT # _____ FCC CODE _____ TAG # _____
B	SIGN TYPE _____ MESSAGE _____ VALUE \$ _____ ON <input type="checkbox"/> ELEC <input type="checkbox"/> FACES _____ OFF <input type="checkbox"/> NON ELEC <input type="checkbox"/> POLES _____ WIDTH _____ FT _____ IN HEIGHT _____ FT _____ IN MAX. HT. _____ FT _____ IN COMMENTS _____	PROJECT # _____ FCC CODE _____ TAG # _____
C	SIGN TYPE _____ MESSAGE _____ VALUE \$ _____ ON <input type="checkbox"/> ELEC <input type="checkbox"/> FACES _____ OFF <input type="checkbox"/> NON ELEC <input type="checkbox"/> POLES _____ WIDTH _____ FT _____ IN HEIGHT _____ FT _____ IN MAX. HT. _____ FT _____ IN COMMENTS _____	PROJECT # _____ FCC CODE _____ TAG # _____
D	SIGN TYPE _____ MESSAGE _____ VALUE \$ _____ ON <input type="checkbox"/> ELEC <input type="checkbox"/> FACES _____ OFF <input type="checkbox"/> NON ELEC <input type="checkbox"/> POLES _____ WIDTH _____ FT _____ IN HEIGHT _____ FT _____ IN MAX. HT. _____ FT _____ IN COMMENTS _____	PROJECT # _____ FCC CODE _____ TAG # _____
E	SIGN TYPE _____ MESSAGE _____ VALUE \$ _____ ON <input type="checkbox"/> ELEC <input type="checkbox"/> FACES _____ OFF <input type="checkbox"/> NON ELEC <input type="checkbox"/> POLES _____ WIDTH _____ FT _____ IN HEIGHT _____ FT _____ IN MAX. HT. _____ FT _____ IN COMMENTS _____	PROJECT # _____ FCC CODE _____ TAG # _____

OPERATING PERMIT RENEWAL TO BE SENT TO:

SIGN OWNER Garrett Operators, Inc. PHONE 713-320-92
 ADDRESS 2205 St. Lawrence, Gonzales, TX ZIP 78629

AFFIDAVIT FOR OWNER OR LESSEE OF PREMISE
 I hereby certify that the above information is true and correct and further that the sign is being erected and or maintained at the above location with the permission of the owner and authorized lessee (if any) of the premises; that the sign does not violate any applicable deed restrictions or other restrictions on the premises; and that having read the restrictions and requirements of the City's Sign Ordinance; that the sign is being erected or maintained in compliance with the Sign Ordinance, Chapter 48, Building Code, City of Houston and other applicable laws.

[Signature]
 (Signature)
President
 (Title)

Sworn to and subscribed before me by said _____ on _____ 20____, to certify which witness my hand and seal of office.

Notary Public in and for Harris County Texas

SEAL

AFFIDAVIT FOR SIGN COMPANY OR SIGN OWNER (COMPLETE ONLY IF SIGN OWNER IS DIFFERENT FROM ABOVE)
 I hereby certify that the above information is true and correct and further that the sign is being erected and or maintained at the above location with the permission of the owner and authorized lessee (if any) of the premises; that the sign does not violate any applicable deed restrictions or other restrictions on the premises; and that having read the restrictions and requirements of the City's Sign Ordinance; that the sign is being erected or maintained in compliance with the Sign Ordinance, Chapter 48, Building Code, City of Houston and other applicable laws.

 (Signature)

 (Title)

Sworn to and subscribed before me by said _____ on _____ 20____, to certify which witness my hand and seal of office.

Notary Public in and for Harris County Texas

SEAL



G. THOMAS COX
 2205 SAINT LAWRENCE ST
 GONZALES, TX 78629-4402

NORTHERN TRUST, NA
 HOUSTON, TX 77024
 35-1193/1130

6/22/2011

PAY TO THE ORDER OF City of Houston Sign Administration

\$ 562.40

Five Hundred Sixty-Two Dollars and 40 Cents*****

DOLLAR

City of Houston Sign Administr
 P.O. Box 61167
 Houston, Texas 77028-1167

LOG #93049566

MEMO

713-218-5820
 #3928/345496-R Application for Sign Permit

⑈008419⑈ ⑆113011931⑆

⑈2840052490⑈

7008 2810 0000 1601 3937

PLACE STICKER AT TOP OF ENVELOPE TO THE RIGHT OF THE RETURN ADDRESS. FOLD AT DOTTED LINE.

CERTIFIED MAIL™



7008 2810 0000 1601 3937

7008 2810 0000 1601 3937

U.S. Postal Service™
CERTIFIED MAIL™ RECEIPT
 (Domestic Mail Only; No Insurance Coverage Provided)

For delivery information visit our website at www.usps.com.

OFFICIAL USE

Postage	\$
Certified Fee	
Return Receipt Fee (Endorsement Required)	
Restricted Delivery Fee (Endorsement Required)	
Total Postage & Fees	\$

Postmark Here

Sent To
COH SIGN ADMIN
 Street, Apt. No.,
 or PO Box No. **1002 WASHINGTON AVE - FOURTH FL**
 City, State, ZIP+4
HOUSTON TX 77002

PS Form 3800, August 2006 See Reverse for Instructions

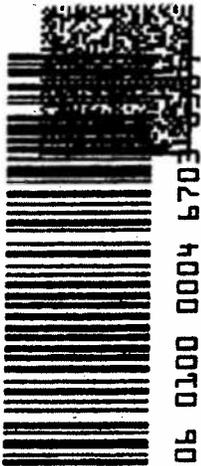
**Ms. Katherine Tipton, Division Manager
 Sign Administration
 City of Houston
 1002 Washington Avenue, Fourth Floor
 Houston, Texas 77002**



CITY OF HOUSTON

Public Works & En
Sign Administration
P.O. Box 61167
Houston, Texas 772

CERTIFIED MAIL



7006 0100 0004 6703



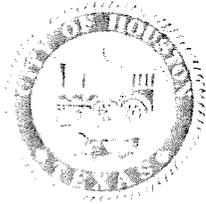
02 1M \$ 05.59⁰⁰
000 4271739 AUG 02 2011
MAILED FROM ZIP CODE 77002

*L.N. 08-04-11
KRM/gab/raes*

Mr. G. Thomas Cox
GARRETT OPERATORS, INC.
2205 St. Lawrence Street
Gonzales, TX 78629

*8-4
8-9
8-19*

7862934402 R005



CITY OF HOUSTON

Public Works and Engineering Department

Annise D. Parker

Mayor

Daniel W. Krueger, P.E., Director
P.O. Box 1562
Houston, Texas 77251-1562
T: 832-394-0337
F: 832-394-3901
www.houston.tx.gov

July 29, 2011

CERTIFIED MAIL 7006 0100 0004 6703 8389
RETURN RECEIPT REQUESTED

Mr. G. Thomas Cox
GARRETT OPERATORS, INC.
2005 St. Lawrence Street
Gonzales, TX 78629

RE: Original Application for Sign Permit at 2600 W. South Loop West, Houston, Texas 77064, dated 06/21/2011

Dear Mr. Cox:

Electronic signs are prohibited by Houston's Sign Code which states

"Electronic and off-premise high technology signs are prohibited. This prohibition shall include the construction, reconstruction, upgrading, or conversion of an existing off-premise sign to an electronic or off-premise high technology sign, such that no electronic or off-premise high technology signs are permitted.

Houston Sign Code § 461.200(2). Accordingly, your application is denied and I am returning your check in the amount of \$362.50.

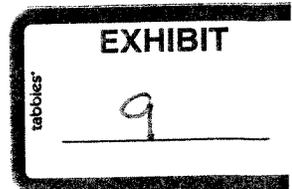
If we can be further assistance, please do not hesitate to contact me.

Respectfully,

Madeline Tolson, Division Mgr
PWE-DE-Sign Administration
CITY OF HOUSTON
1002 Washington Ave
Houston, Texas 77002
832-394-8890

BT st

cc: Mark L. Loosen, P.E., CFM, PTOE
Young Building Official
Hope Hammar-Reh, Senior Assistant City Attorney
Larry Scherle, Senior Assistant City Attorney

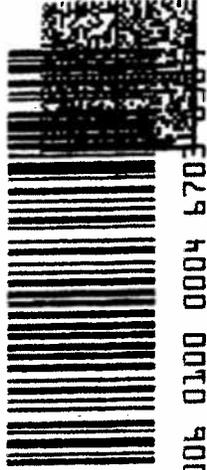




CITY OF HOUSTON

Public Works & En
Sign Administration
P.O. Box 61167
Houston, Texas 772

CERTIFIED MAIL



7006 0100 0004 6703 6501



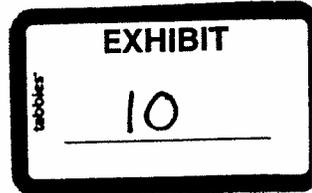
0.2 IM \$ 05.59⁰
0004271739 AUG 02 2011
MAILED FROM ZIP CODE 77092

Mr. G. Thomas Cox
GARRETT OPERATORS, INC.
2205 St. Lawrence Street
Gonzales, TX 78629

*L.N. 08-04-11
Remy Bbas*

*8-4
8-9
8-19*

7662984402 R005



United States Postal Service®
Sorry We Missed You! We'll Deliver for You Today's Date: 8-9-11 Sender's Name: City of Houston

Available for Pick-up After: _____ Date: _____ Time: _____

Post Office (see back)

Letter For Delivery: (Enter total number of letters delivered by service type) _____
 For Notice Left: (Check applicable form) _____

Large envelope, magazine, catalog, etc. Insured Mail _____

Parcel Certified Mail™ _____

Restricted Delivery Return Receipt for Merchandise _____

Portable Mail Firm Bill _____

Other Registered Mail™ _____

Article Requiring Payment: _____ Amount Due: _____

Postage Due COD Customs

Final Notice: Article will be returned to sender on 8-19-11

Article Number(s): 7006 0100 0004 6703 8389

Customer Name and Address: City of Houston
2205 St Lawrence

Delivered By and Date: _____

PS Form 3849, May 2008 usps.com Delivery Notice/Reminder/Receipt

We will redeliver OR you or your agent can pick up your mail at the Post Office. (Bring this form and proper ID. If your agent will pick up, sign below in item 2, and enter agent name here):

1. Check all that apply in section 3:
 a. Sign in section 2 below;
 b. Leave this notice where the carrier can see it.

2. Sign Here to authorize redelivery or to authorize an agent to sign for you:

3. Redeliver (Enter day of week): _____

(Allow at least two delivery days for redelivery, or go to usps.com/redelivery or call your Post Office to arrange redelivery.)

Leave item at my address

(Specify where to leave. Example: "porch," "side door" This option is not available if box is checked on the front requiring your signature at time of delivery.)

Refused

GONZALES TXPOSTMAST
 920 N ST JOSEPH ST STE 105
 GONZALES TX 78629-9998
 M-F 8AM-4PM SAT 9-12
 PHONE: (830) 672-2629

Delivery Section

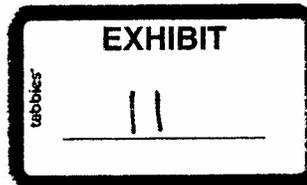
Signature: _____
 X

Printed Name: _____

Delivery Address: _____

USPS 

PS Form 3849, May 2008 (Reverse) 5293 0315 9314 1804



REQUEST FOR APPEAL OF DECISION OR INTERPRETATION

Date August 17, 2011

TO: CITY OF HOUSTON

GENERAL APPEALS BOARD

3300 MAIN STREET, HOUSTON, TEXAS, 77002

FROM:

APPLICANT Richard L. Rothfelder, Rothfelder & Falick, L.L.P.
ADDRESS 1201 Louisiana St., Suite 550, Houston, TX 77002
TELEPHONE (713) 220-2288

REPRESENTING:

FIRM Mr. George Thomas Cox, Garrett Operators,
BUSINESS ADDRESS 2205 St. Lawrence St.
CITY Gonzales, TX 78629
SIGNATURE OF APPLICANT *Richard Rothfelder*

REFERENCE:

SECTION	<u>4612(b)(2)</u>	PAGE	<u> </u>
	<u>4608(j)</u>		<u> </u>
	<u> </u>		<u> </u>
	<u> </u>		<u> </u>

LIST OTHER CHAPTERS AND SECTIONS OF BUILDING CODE AFFECTED BY REQUEST:

REQUEST: (*)

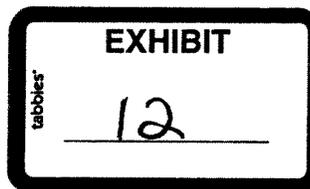
Reverse July 29, 2011 decision of Katherine Tipton of Houston Sign Administration, attached as Exhibit 1.

DESCRIBE FULLY AND REASONS OR PURPOSE: (*)

Houston Sign Administration misconstrues and wrongly interprets Houston Sign Code and State law, including Section 4612(b)(2) and 4608(j), as explained more fully in attached August 17, 2011 letter.

(*) use reverse side if necessary

Revised April 16, 2010



Prepare ten (10) copies

ROTHFELDER & FALICK, L.L.P.

ATTORNEYS AT LAW

RICHARD L. ROTHFELDER
rrothfelder@swbell.net
BOARD CERTIFIED - CIVIL TRIAL LAW

1201 LOUISIANA
SUITE 550
HOUSTON, TEXAS 77002

TELEPHONE: 713-220-
FACSIMILE: 713-658-
WWW.ROTHFELDERFALICK

August 17, 2011

Ms. Katherine Tipton, Division Manager
Sign Administration
City of Houston
1002 Washington Avenue, Fourth Floor
Houston, Texas 77002

**Via Certified Mail, RRR,
#7009 1680 0001 7224 3042
and Email**

**RE: Application for Sign Permit submitted on behalf of Garrett Operators, Inc.,
and its owners, George Thomas Cox and Garrett Cox; Our File No. 1818-1.**

Dear Katy:

The law firm of Rothfelder and Falick represents Garrett Operators, Inc., and its owners, George Thomas Cox and Garrett Cox ("Garrett"). As such, your July 29, 2011 letter addressed to G. Thomas Cox has been referred to us for handling and this response.

Your letter, which is dated July 29, 2011, was contained in an envelope that was actually mailed on August 2, 2011, as indicated by the letter and envelope attached as Exhibits 1 and 2, respectively. The letter was actually received and read by Mr. Cox on August 16, 2011, less than ten business days ago. Therefore, this letter and notice of appeal to the General Appeals Board is timely under Houston Sign Code Section 4604(e)(1).

Your letter denies the permit application ("Application") requested by Mr. Cox in his June 22, 2011 letter, a copy of which along with the Application, are attached as Exhibit 3. In support of your denial, you cite the version of Houston Sign Code Section 4612(b)(2) that was amended by Ordinance No. 2008-1223, effective December 30, 2008. Garrett hereby appeals your decision to the General Appeals Board on the grounds that the decision misconstrues or wrongly interprets the Houston Sign Code.

As explained in more detail in Mr. Cox's letter attached as Exhibit 3, Garrett is only seeking to change the electrical wiring and devices on its tri-vision off-premise outdoor advertising sign ("Sign") erected in 1978. The version of Section 4612(b)(2) cited in your letter is inapplicable, as Garrett's Application is governed by the sign regulations in effect at the time Garrett originally inquired with the Houston Sign Administration in early 2008. Thus, Section 245.002(a) of the Texas Local Government Code requires the Application to be considered

“solely on the basis of any...ordinances...in effect at the time...the original application for the permit [was] filed for review for any purpose.”

Accordingly, Garrett’s Application is submitted under the sign regulations in effect at the time the communications between Garrett and the City occurred in early 2008, which resulted in Garrett’s inability to change the Sign’s ornamental features or electrical wiring or devices. More specifically, the Application was submitted and should be considered under Chapter 46, the Houston Sign Code, adopted as Exhibit D-Second Revised, to Ordinance No. 2002-399, passed and approved by the City Council on the 15th day of May, 2002. We believe Garrett should be permitted to change the ornamental features or electrical wiring or devices on the Sign for the following reasons.

First, Garrett’s Sign already existed in 2008 as an automatically changing message tri-vision structure. The only change Garrett sought to make to the Sign in early 2008 was to change the structure’s lighting. The applicable regulations in effect in early 2008 did not require a permit for the change of any of the ornamental features or electrical wiring or devices under Section 4608(j). Therefore, Garrett’s request should not have been denied by the City.

Second, we are aware the applicable regulations prohibited “spectacular signs” except for those having frontage on a major freeway or thoroughfare used to display the date, time, temperature, and stock market quotations. However, Garrett’s Sign was not a “spectacular sign” under the definitions contained in the regulations in effect in early 2008, as the advertising message did not change more often than once every five minutes. Therefore, the prohibition regarding spectacular signs is inapplicable to Garrett’s request, and the request should not have been denied.

In addition, we note the City Council revised the sign regulations after the communications between Garrett and the City occurred in early 2008, to add definitions for “changeable message sign” and “high technology sign”, and to revise the definition of “electronic sign” to include only *off-premise* signs. Furthermore, Section 4608(j) was amended to prohibit Garrett and other sign owners/operators from converting existing signs to electronic signs, high technology signs, or changeable message signs without first obtaining a permit. As noted previously, these changes were all made to Houston’s sign regulations *after* Garrett conveyed its intent to modify its Sign in early 2008, and are not applicable to Garrett’s request. Based on the foregoing, the City should not have prevented Garrett from changing the ornamental features or electrical wiring or devices, and the Application should be granted.

A permit is not required from the Texas Department of Transportation (“TxDOT”) under these circumstances. With the passage of 43 Tex. Adm. Code § 21.163, which became effective on June 1, 2008 (subsequent to Garrett’s initial attempts to convert the Sign by changing the ornamental features or electrical wiring or devices in early 2008), TxDOT amended its administrative rules regarding LEDs. The new regulation generally requires the issuance of permits by TxDOT for “electronic signs” if certain spacing criteria are met and only with the

Ms. Katherine Tipton
August 17, 2011
Page 3

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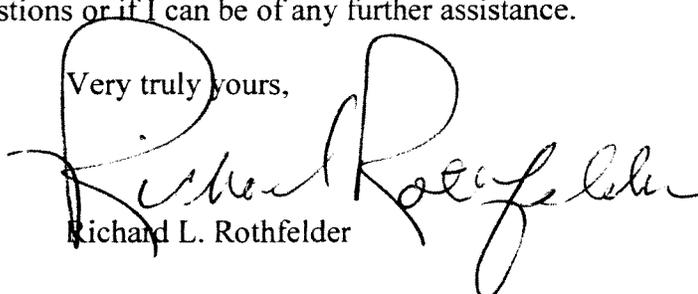
In conclusion, we believe Garrett's Application must be reviewed under the sign regulations in effect in early 2008, and further assert the Application should be granted. It also remains Garrett's position that, under the applicable regulations, a permit to perform the work planned was not required by the Sign Code.

In addition to the foregoing, I also noticed you stated in your letter that you were returning to our clients their check in the amount of \$562.50. The check was not enclosed with your letter.

By copy of this letter to Robert Buck and Maria Vrana with the General Appeals Board, I am asking them to contact me regarding the dates available for the hearing before General Appeals Board, so that we can schedule at a mutually convenient time. I am also providing with the hardcopy of this letter an original and ten copies of the Petition to the General Appeals Board.

Please let me know if you have any questions or if I can be of any further assistance.

Very truly yours,


Richard L. Rothfelder

RLR:mr
Enclosures

cc: Robert Buck
Maria Vrana
City of Houston
General Appeals Board
3300 Main St.
Houston, TX 77002

**Via Certified Mail, RRR, #7009 1680 0001 7224 3035
and Email**

Section 4604

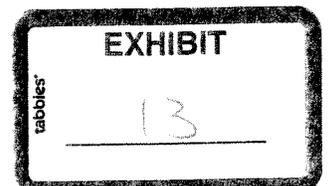
- (1) Any person wishing to appeal a decision of the Sign Administrator on the grounds that the decision misconstrues or wrongly interprets this chapter may, within ten business days after the decision, appeal the same to the General Appeals Board, pursuant to its rules and regulations, and thence to the City Council. Either party in the appeal to the General Appeals Board, whether the original appealing party or the Sign Administrator, may appeal the decision of the General Appeals Board to the City Council by giving notice of appeal in writing to the City Secretary within ten days following the decision of the General Appeals Board appealed from, and provided further, that the appealing party shall comply with the Sign Administrator's decision pending appeal unless the Sign Administrator shall direct otherwise. Rule 12 of the City Council's Rules of Procedure (Section 2-2 of the City Code) shall be applicable.

- (2) An appellant who has complied with Rule 12 shall file with the City Secretary, within 60 days following the decision appealed from, a record consisting of the written transcript of the hearing before the General Appeals Board, along with the written exceptions, if any, of each party to the proceedings to the facts and administrative rulings and decisions made by the General Appeals Board. An extension of time for the preparation of the record, not to exceed 30 additional days from the last date for filing the record, may be obtained by filing a statement with the City Secretary not later than 15 days after the last date for filing the record. Such statement shall reasonably explain the need therefor and shall be executed and verified under oath by the appellant, the appellant's legal representative or the certified court reporter responsible for preparation of the transcript. Failure to comply with the provisions of this subsection shall render appellant's notice of appeal void and of no effect and the decision of the General Appeals Board shall thereupon become final and not appealable to the City Council.

- (3) This subsection (e) shall not apply and no appeal shall be granted hereunder regarding any matter under this chapter for which a citation to Municipal Court has been issued by the Sign Administrator.

(f) Sign Advisory Council

There is hereby ~~created~~ authorized a Sign Advisory Council consisting of ten members, to serve on an ad hoc basis as the Mayor shall determine.



ISSUANCE OF LOCAL PERMITS
Ch. 245

§ 245.002

effective date of this Act, or in any litigation pending in a court on the effective date of this Act, involving an interpretation of Subchapter I, Chapter 481, Government Code, as it existed before its repeal by the 75th Legislature.

Sec. 4. Construction of Act. Nothing in this Act shall be construed to apply to a condition or provision of an ordinance, rule, or regulation that is enacted by a regulatory agency, as that term is defined by Section 245.001, Local Government Code, as added by Section 2 of this Act, which is specifically required by uniformly applicable regulations adopted by a state agency on the effective date of this Act.

Sec. 5. Effect on Coastal Zone Management Act. Nothing in this Act shall be construed to:

- (1) limit or otherwise affect the authority of a municipality, a county, another political subdivision, the state, or an agency of the state, with respect to the implementation or enforcement of an ordinance, a rule, or a statutory standard of a program, plan, or ordinance that was adopted under the federal Coastal Zone

Management Act of 1972 (16 U.S.C. Section 1451 et seq.) or its subsequent amendments or Subtitle E, Title 2, Natural Resources Code; or

"(2) apply to a permit, order, rule, regulation, or other action issued, adopted, or undertaken by a municipality, a county, another political subdivision, the state, or an agency of the state in connection with the federal Coastal Zone Management Act of 1972 (16 U.S.C. Section 1451 et seq.) or its subsequent amendments or Subtitle E, Title 2, Natural Resources Code."

Acts 2005, 79th Leg., ch. 6, in subd. (1), inserted "contract or other agreement for construction related to, or provision of, service from a water or wastewater utility owned, operated, or controlled by a regulatory agency,"

Section 3 of Acts 2005, 79th Leg., ch. 6 provides:

"The change in law made by this Act to Subdivision (1), Section 245.001, Local Government Code, is subject to the applicability provision of Section 245.003, Local Government Code."

Research References

TX Jur. 3d Zoning XII Ref., Divisional References.

Treatises and Practice Aids

Brooks, 36A Tex. Prac. Series § 43.2A, Permits.

Notes of Decisions

residences in the future was addressed in other provisions of statute that were not applicable to this case. *Hartsell v. Town of Talty* (App. 5 Dist. 2004) 130 S.W.3d 325, clarified on denial of rehearing, review denied. *Zoning And Planning* ⇨ 376

2. Permits

Property owner's planned development district (PDD) applications were not "permits" such that city could table third application until after sector plan was revised and then deny application for failure to comply with revised plan; existing zoning did not entitle owner to develop his property free from all subsequent regulatory changes. *Weatherford v. City of San Marcos* (App. 3 Dist. 2004) 2004 WL 2813777. *Zoning And Planning* ⇨ 376

§ 245.002. Uniformity of Requirements

(a) Each regulatory agency shall consider the approval, disapproval, or conditional approval of an application for a permit solely on the basis of any orders, regulations, ordinances, rules, expiration dates, or other properly adopted requirements in effect at the time:

EXHIBIT

14

(1) the original application for the permit is filed for review for any purpose, including review for administrative completeness; or

(2) a plan for development of real property or plat application is filed with a regulatory agency.

(a-1) Rights to which a permit applicant is entitled under this chapter accrue on the filing of an original application or plan for development or plat application that gives the regulatory agency fair notice of the project and the nature of the permit sought. An application or plan is considered filed on the date the applicant delivers the application or plan to the regulatory agency or deposits the application or plan with the United States Postal Service by certified mail addressed to the regulatory agency. A certified mail receipt obtained by the applicant at the time of deposit is prima facie evidence of the date the application or plan was deposited with the United States Postal Service.

(b) If a series of permits is required for a project, the orders, regulations, ordinances, rules, expiration dates, or other properly adopted requirements in effect at the time the original application for the first permit in that series is filed shall be the sole basis for consideration of all subsequent permits required for the completion of the project. All permits required for the project are considered to be a single series of permits. Preliminary plans and related subdivision plats, site plans, and all other development permits for land covered by the preliminary plans or subdivision plats are considered collectively to be one series of permits for a project.

(c) After an application for a project is filed, a regulatory agency may not shorten the duration of any permit required for the project.

(d) Notwithstanding any provision of this chapter to the contrary, a permit holder may take advantage of recorded subdivision plat notes, recorded restrictive covenants required by a regulatory agency, or a change to the laws, rules, regulations, or ordinances of a regulatory agency that enhance or protect the project, including changes that lengthen the effective life of the permit after the date the application for the permit was made, without forfeiting any rights under this chapter.

(e) A regulatory agency may provide that a permit application expires on or after the 45th day after the date the application is filed if:

(1) the applicant fails to provide documents or other information necessary to comply with the agency's technical requirements relating to the form and content of the permit application;

(2) the agency provides to the applicant not later than the 10th business day after the date the application is filed written notice of the failure that specifies the necessary documents or other information and the date the application will expire if the documents or other information is not provided and

(3) the applicant fails to provide the specified documents or other information within the time provided in the notice.

Section 4603

roof or mansard of a building. Such signs shall be classified as wall signs.

ELECTRICAL SIGN shall mean any sign containing electrical wiring or utilizing electric current, but not including signs illuminated by an exterior light source.

FENCE SIGN shall mean any sign affixed to or painted upon a fence. A fence sign shall be classified as a ground sign, but shall not be required to comply with the structural requirements of Section 4609.

FLAG SIGN shall mean any flag except the flags of the United States, Texas or any other governmental entity, used for advertising, that contains or displays any written message, business name, pictorial representation, logo, corporate symbol, silhouette or other visual representation identifying or advertising a particular business, good, service or merchandise sold or available for sale on the premises where the flag is erected, displayed or maintained.

MESSAGE BOARD SIGN shall mean any sign or portion of a sign containing a sign face designed to allow the removal or replacement of individual letters, words or symbols on the sign face for the purpose of changing an advertising message.

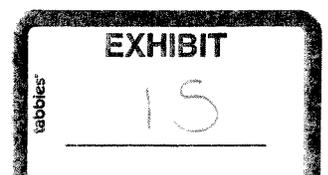
MULTI-TENANT SIGN shall mean an on-premise sign displaying commercial advertising for two or more distinct commercial businesses or commercial service entities upon a single sign structure.

PORTABLE SIGN shall mean any sign designed or constructed to be easily moved from one location to another, including signs mounted upon or designed to be mounted upon a trailer, bench, wheeled carrier or other nonmotorized mobile structure; a portable sign that has its wheels removed shall still be considered a portable sign hereunder. For the purposes of this chapter, trailer signs and signs on benches are portable signs.

PROVISIONAL SIGN shall mean a sign of light weight material to be used until permanent signage can be fabricated and erected.

SPECTACULAR SIGN shall mean a sign that has one or more of the following as elements in its physical structure:

- (1) Automatically changing message advertising that changes more often than once every five minutes ~~(not~~



Section 4603

~~including date, time, temperature, weather and stock market information);~~

- (2) Blinking, rotating, moving, chasing, flashing, glaring, strobe, scintillating or spot lights, or similar devices;
- (3) Lights or colored elements creating a continuously moving, shimmering or prismatic effect; or
- (4) Rotating or moving parts.

(d) The various classifications established in this section shall also constitute definitions for purposes of the interpretation of this chapter.

SECTION 4602--DEFINITIONS

In this chapter, the following terms shall have the meanings herein ascribed to them, unless the context of their usage clearly indicates another meaning:

ADVERTISING shall mean to seek the attraction of or to direct the attention of the public to any goods, services or merchandise whatsoever.

BUSINESS PURPOSES shall mean the erection or use of any property, building or structure, permanent or temporary, for the primary purpose of conducting in said building or structure or on said property a legitimate commercial enterprise in compliance with all ordinances and regulations of the city governing such activity; a business purpose shall not include any property, building or structure erected or used for the primary purpose of securing a permit to erect a sign.

CABINET shall mean that portion of a sign structure containing the advertising display.

CANDELA shall mean a unit of luminous intensity equal to 1/60 of the luminous intensity per square centimeter of a blackbody radiating at the temperature of solidification of platinum (2,046°K). Also called *candle*.

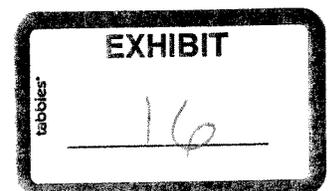
CHANGEABLE MESSAGE SIGN shall mean any on-premise sign that is capable of changing its message, copy or appearance by electronic processes, and shall include but not be limited to those on-premise signs employing changeable message light emitting diode technology, commonly referred to as LED signs.

CITY CODE shall mean the Code of Ordinances of the City of Houston, Texas, as amended.

CURB LINE shall mean an imaginary line drawn along the edge of the pavement on either side of a public street.

COMMERCIAL OR INDUSTRIAL ACTIVITY shall mean property that is devoted to use for commercial or industrial purposes and not for residential purposes. "Commercial or industrial activity" shall not include the following:

- (1) Signs;



Section 4602

pursuant to Section 6 of former Article 970 (a), Texas Revised Civil Statutes Annotated or Section 43.052 of the Local Government Code, as applicable.

ELECTRONIC SIGN shall mean any off-premise sign that is capable of changing its message, copy or appearance by electronic or mechanical processes, and shall include but not be limited to those signs employing changeable message light emitting diode technology, commonly referred to as LED signs.

FEDERAL PRIMARY SYSTEM shall mean the Interstate and Freeway Primary System and the Nonfreeway Primary System.

FREEWAY shall mean any state highway or federal highway or county highway within the sign code application area to or from which access is denied or controlled, in whole or in part, from or to abutting land or intersecting streets, roads, highways, alleys or other public or private ways.

FRONTAGE shall mean that portion of any tract of land that abuts a public street right-of-way.

GENERAL RIGHT-OF-WAY shall mean a right-of-way that is not classified as a predominantly residential right-of-way or scenic or historical right-of-way or district and that is owned, leased or otherwise legally controlled by the person placing a sign thereon.

HIGH TECHNOLOGY SIGN shall mean any sign that utilizes electronic processes, such as light emitting diode (LED) technology, rather than mechanical or other means, to display a fixed and unchangeable message.

HIGHWAY shall mean any state highway, federal highway, or county highway that does not constitute a freeway.

INSTITUTION OF HIGHER EDUCATION shall mean a private or independent institution of higher education, as defined in Section 61.003(15) of the Texas Education Code, located on a single campus comprising an area in excess of twenty acres and located within the corporate limits of the city. In determining the size of the campus, areas containing dedicated streets shall be included as part of the campus.

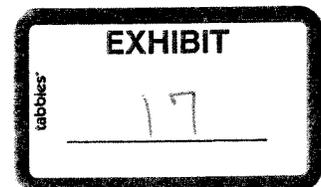
Section 4611

definition of an area that may be designated as a special employment district.

3. A plat or map of the proposed district prepared by a registered surveyor or engineer showing the boundaries of the proposed special employment district.
 4. A plan for the removal and elimination of all existing on-premise ground signs that do not comply with the provisions of this chapter.
 5. A landscaping plan for the installation of trees, shrubs and plants in the right-of-way within the special employment district (reviewed by a landscape architect licensed by the State of Texas.)
- b. The City Council shall call a public hearing on the question of the designation of an area as a special employment district within 30 days of the filing of a petition in the Office of the City Secretary that complies with the provisions of Section 4611(f)(4)a.
- c. Any designation of a special employment district shall be conditioned on the continuing compliance of the property owners within the special employment district with the requirements that:
1. All existing on-premise ground signs not in conformance with the requirements of this chapter be removed; and
 2. That the trees, plants and shrubs are installed and maintained in the right-of-way in compliance with the landscaping plan.
- d. In the event that the property owners in the special employment district shall fail to comply with the requirements of the City Council to maintain the designation of the special employment district, the Sign Administrator shall notify the City Council of such facts in writing. Upon notice and hearing, the City Council shall revoke and cancel a special employment district designation, and the property owners shall bring all signs into compliance with the provisions of this code other than this subsection within a period of six months from the date of such revocation.

(g) Identifying Number Required. Each business premises containing one or more on-premise ground signs shall have an identifying number posted and maintained on at least one on-premise ground sign structure. For purposes of this subsection, the term "identifying number" shall mean the address number for that business premises assigned by the building official, or where no such has been assigned by the building official, any number, letter or number and letter combination that is distinct from any other number, letter or number and letter combination used on the same premises. All numbers that are to be posted and maintained on an on-premise ground sign shall be:

- (1) Permanently affixed to the outside of the sign;
- (2) Of a color that is in contrast to the background; and
- (3) At least 3 inches in height.



(h) Changeable Message and High Technology Signs. Save and except for signs erected pursuant to the provisions of Section 4620, the following provisions shall apply to all existing and new changeable message and high technology signs:

- (1) Blinking, rotating, moving, chasing, flashing, glaring, strobe, scintillating, or spot lights are prohibited.

Section 4611

- (2) Lights or colored elements creating a continuously moving, shimmering, or prismatic effect, or the use of rotating or moving parts in association with such lights or colored elements, are prohibited.
- (3) A changeable message sign may not change the message more often than every five minutes and must change the message within one second or less; a high technology sign may not change the message without a new permit.
- (4) Brightness limits shall be set at a maximum of 6500 nits between sunrise and sunset, and at a maximum of 1250 nits between sunset and sunrise, and each sign shall be fitted with a qualified light sensing device to automatically adjust the brightness in accordance with these standards.

(i) Additional On-Premise Sign Provisions. Beginning September 1, 2009, and save except for signs erected pursuant to the provisions of Section 4620, the following additional provisions shall apply to new on-premise signs for which an initial permit is requested after said date: provided, however, that in the event of a conflict between these provisions and other provisions of this chapter (except for Section 4620), the more stringent provisions shall control.

- (1) Definitions and references. In this subsection, the following terms shall have the meanings herein ascribed to them, unless the context of their usage clearly indicates another meaning:
 - a. All references in this Code to the size and height limitations contained in Table 4609 of this Code shall be interpreted to refer to the new size and height limitations contained in Table 4611.
 - b. BUSINESS shall mean any entity that uses an on-premise sign.
 - c. SCHOOL shall mean a public or private elementary, secondary, or high school.
- (2) Additional restrictions for ground signs.
 - a. For any business to which the multi-tenant standards of Category B and Category C of Table 4611 of this Code could apply that instead applies for a permit to utilize a single business ground sign, the single business ground sign shall be permitted and constructed in accordance with the size and height limitations for the next smaller category of right-of-way, that is, a single business Category C sign shall be permitted and constructed to the Category B standards of Table 4611, and a single business Category B sign shall be permitted and constructed to the Category A standards of Table 4611. This provision shall not apply to any new ground sign that is more than 350 feet from another ground sign at the same location.
 - b. All permanent signs other than wall signs and marquee signs will be counted as ground signs, including flag and fence signs.
- (3) Additional restrictions for roof signs. Roof signs are prohibited.
- (4) Additional restrictions for wall signs.
 - a. The area of wall signs shall not exceed in the aggregate 25 percent of the area of the wall on which they are mounted or painted, or 1000 square feet, whichever is smaller.

Section 4611

- b. Wall signs may be attached only to buildings devoted exclusively to business purposes; wall signs attached to buildings or other structures not used exclusively in the furtherance of the primary business purpose shall be treated as ground signs. For the purposes of this provision, wall signs on parking garages located on the premises of the business shall be considered for business purposes.
 - c. No wall sign may extend above the supporting exterior wall unless mounted on a mansard or facade, and in any event no wall sign may extend more than ten feet above the roof line of the supporting wall.
 - d. In the central business district the maximum height of a wall sign shall not exceed 42-1/2 feet.
- (5) Additional restrictions for projecting signs.
- a. No projecting sign shall extend above the roof line of the supporting exterior wall.
 - b. In the central business district the maximum height of a projecting sign shall not exceed 42-1/2 feet.
- (6) Additional restrictions for changeable message signs.
- a. Only one changeable message sign shall be permitted per business.
 - b. Save and except for a changeable message sign located at a school, no changeable message sign shall be located on a local street.
 - c. Save and except for a changeable message sign located at a school, no changeable message sign located on or facing a collector street shall be permitted within 150 feet of the property line of a single family residence.
 - d. For a changeable message sign located on or facing a collector street, that portion of the sign where the changeable message is located shall not exceed in height those standards for Category A signs contained in Table 4611.
 - e. That portion of the face of a changeable message sign devoted to changing the message shall be limited in area to fifty percent of the total area of the sign face allowable under Table 4611, not to exceed 100 square feet.
 - f. The height of a changeable message wall sign shall not exceed thirty-five feet or the roof line of the supporting exterior wall, whichever is shorter.
 - g. An existing sign may only be converted into a changeable message sign in conformance with the standards for a new changeable message sign.

SECTION 4612--OFF-PREMISE SIGNS

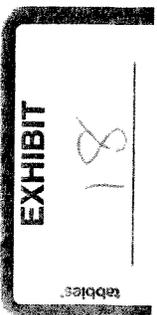
(a) **Off-premise Sign Provisions** . The provisions of this section shall apply only to "off-premise signs," as that term is defined in Section 4603(a), within the sign code application area.

(b) **Prohibition of New Off-premise Signs** .

- (1) From and after the effective date, no new construction permits shall be issued for off-premise signs within the sign code application area. This prohibition shall apply to all classifications of signs, types of signs, and special function signs, and all other signs used as off-premise signs, including portable signs, with the exception that off-premise signs that advertise the sale or rental of real property or direct persons to the location of real property for sale or rental, which signs shall be limited to 40 square feet in area, shall continue to be permitted for a single three-year term.
- (2) ~~Off-premise~~ Electronic and off-premise high technology signs are prohibited. This prohibition shall include the construction, reconstruction, upgrading, or conversion of an existing off-premise sign to an ~~off-premise electronic or off-premise high technology~~ sign, such that no ~~off-premise electronic or off-premise high technology~~ signs are permitted.

(c) **General Location** .

- (1) All off-premise signs shall be located within 800 feet of a commercial or industrial activity.
- (2) No off-premise sign shall be located in a predominantly residential area.
- (3) No off-premise sign shall be erected, constructed or established such that the face of the structure may be viewed from a scenic or historical right-of-way or district.
- (4) All off-premise signs other than those located on the Interstate and Freeway Primary System shall be subject to the following spacing requirements from other off-premise signs on the same side of the public right-of-way (see Table 4612):
 - a. No off-premise sign having a face area in excess of 300 square feet shall be located within 400 feet of another off-premise sign.
 - b. No off-premise sign having a face area of from 100 to 300 square feet shall be located within 200 feet of another off-premise sign.
 - c. No off-premise sign having a face area up to 100 feet shall be located within 100 feet of another off-premise sign.
- (5) The spacing provisions stated in this section relating to the location of off-premise signs shall not apply to the following signs:
 - a. Signs lawfully erected and lawfully existing on the effective date that are on the Federal Primary System and subject to regulation under the provisions of Chapter 391 of the Texas Transportation Code, including all amendments (the Texas Act), or are subject to regulation under the Federal Highway Beautification Act, 23 U.S.C.A. Section 131, et seq., including all amendments (the Federal Act). Location and spacing of signs subject to the Texas Act or the Federal Act shall be regulated by the City only to the extent required by and in accordance with the directives of the appropriate state or federal agencies regulating such signs. Signs governed by the Texas Act or the Federal Act with respect to location and spacing shall be subject to the remaining provisions of this chapter, unless specifically excluded therefrom by the Texas Act or



Section 4608

(4) No sign shall obstruct the free use of any window above the first story.

(h) **Signs Employing Motion Picture Machines** . No sign shall employ a stereopticon or motion picture machine.

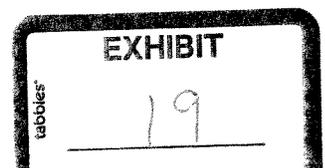
(i) **Signs Not to Create Easements** . No permit for a sign extending beyond private property onto a public street, public sidewalk or public alley shall constitute a permanent easement, and every such permit shall be revocable at any time by action of the City Council, and the City shall not be liable for any damages to the owner by reason of such revocation.

(j) **Change of Ornamental Features, ~~Electrical Wiring or Advertising Display~~** . No sign permit is required for the change of any of the ornamental features, ~~electrical wiring or devices,~~ or the advertising display of a sign previously permitted. This provision shall not apply to signs under new ownership, to spectacular signs with respect to advertising display, or to converting existing signs to electronic signs, high technology signs, or changeable message signs, nor shall it release a person from complying with all other applicable permitting requirements of the City, including those of the Construction Code.

(k) **Signs Obscuring or Interfering with View** . Signs may not be located or illuminated in such a manner as to obscure or otherwise interfere with the effectiveness of an official traffic sign, signal or device, or so as to obstruct or interfere with the view of a driver of approaching, emerging or intersecting traffic, or so as to prevent any traveler on any street from obtaining a clear view of approaching vehicles for a distance of 250 feet along the street.

(l) **Proper Shielding of Lighted Signs--Interference with Drivers of Motor Vehicles** . Signs containing lights that are not effectively shielded so as to prevent beams or rays of light from being directed at any portion of the traveled way from which the sign is primarily viewed and that are of such intensity or brilliance as to cause glare or to impair the vision of the driver of any motor vehicle, or that otherwise interfere with any driver's operation of a motor vehicle, are prohibited.

(m) **Spectacular Signs** . Spectacular signs are prohibited, ~~except that a sign located upon a premises having frontage on a major thoroughfare or a freeway may have moving or intermittent lights that are only used to give date, time and temperature information, brief weather reports, or stock market quotations.~~



ROTHFELDER & FALICK, L.L.P.
ATTORNEYS AT LAW

RICHARD L. ROTHFELDER
rrothfelder@swbell.net
BOARD CERTIFIED - CIVIL TRIAL LAW

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November 10, 2011

RECEIVED

NOV 14 2011

CITY SECRETARY

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WWW.ROTHFELDERFALICK.COM

Ms. Anna Russell
City Secretary
City of Houston
P.O. Box 1562
Houston, TX 77251

Via Certified Mail, RRR, #7009 1680 0001 7224 3493

RE: Appeal of Garrett Operators, Inc. of September 22, 2011 Decision of General Appeals Board regarding Sign located at 2600 South Loop West; Our File No. 1818-1.

Dear Ms. Russell:

As a follow up to my September 26, 2011 letter, I am providing the transcript to the General Appeals Board hearing of September 22, 2011, upholding the Houston Sign Administration's July 29, 2011 ruling on the sign located at 2600 South Loop West. I am also providing the September 30, 2011 letter from Reginald Mack, Co-Chairman of the General Appeals Board, confirming his decision.

Garrett Operators, Inc. excepts to the decision of the General Appeals Board. Garrett Operators, Inc.'s arguments are detailed in my presentation to the General Appeals Board, a copy of which was enclosed with my September 26, 2011 letter and attached as an exhibit to the enclosed transcript. Succintly stated, these factual and legal arguments include the following :

- I. Factual Background
 - A. Sign originally built in 1979 for off-premise advertising and digital automatic changing illumination (Exhibit 1)
 - B. In October 1997, permission granted by Houston to operate the sign as an automatic changing "tri-vision" display (Exhibit 4)
 - C. In January 2008, Garrett inquired about using the sign once again as a digital or LED display (Exhibit 6)
 - D. Houston Sign Code amended in 2009 to prohibit LED illumination for off-premise signs
 - E. Garrett submitted application for LED illumination under protest in June 2011, arguing it was authorized under the 2008 Code (Exhibit 8)

- F. LED request was denied by letter dated July 29, 2011, on ground that under the 2009 amendment to Section 4612(b)(2), "electronic and off-premise high technology signs are prohibited" (Exhibit 9)
- II. Permit for LED illumination not required, or if required, should be granted to Cox/Garrett
- A. The provisions of the Houston Sign Code in effect in January 2008, when Cox inquired about using the sign once again as a digital or LED display (Exhibit 6), govern in this case
 - 1. Section 245.002 of the Texas Local Government Code (Exhibit 14) requires permit applications to be granted or denied, or in this case not be necessary, based upon the ordinance in force when the request for the LED display is initially submitted: "(a) each regulatory agency shall consider the approval, disapproval, or conditional approval of an application for a permit solely on the basis of any...ordinances...or other properly adopted requirements in effect at the time (1) the original application for the permit is filed for review for any purpose..."
 - B. The Houston Sign Code in January 2008 did not require a permit to convert the sign to an LED display
 - 1. The sign was already legally operated as an automatic changing tri-face display (Exhibit 4 and 5)
 - 2. Not prohibited or even regulated as a changeable message, electronic, or high technology sign under Section 4602 (Exhibit 16), Section 4611 (Exhibit 17), or Section 4602(b)(2) (Exhibit 18), because those provisions were added to the Sign Code and did not become effective until over a year later in 2009
 - C. Converting the automatic changing message from tri-face technology to LED illumination is a mere "change of ornamental features, electrical wiring or advertising display" under Section 4608, which did not require a permit in 2008 (Exhibit 19)
 - D. The 2009 changes to the Houston Sign Code confirm the City Council subsequently, after Cox initially inquired with the Sign Administration in January 2008, prohibited LED illuminated off-premise signs
 - 1. Section 4612(b)(2) (Exhibit 18) was amended to prohibit "electronic or off-premise high technology signs"
 - 2. Section 4608 was amended to eliminate the previous exemption for obtaining a permit to change the "electrical wiring or devices," and to specifically exclude "converting existing signs to electronic signs, high technology signs, or changeable message signs." (Exhibit 19)
 - E. Since the Houston Sign Code did not contain such a prohibition on LED illuminated off-premise signs in January 2008, and Section 245.002 of the

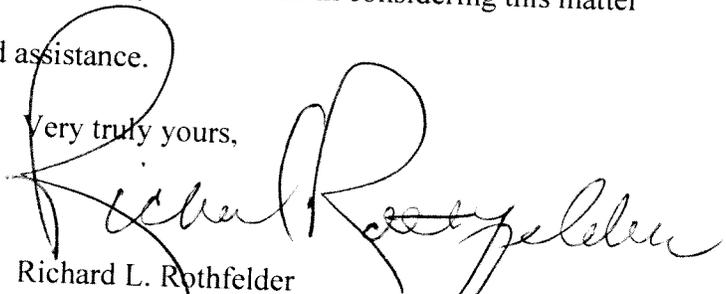
Local Government Code (Exhibit 14) requires application of that version of the Code, Garrett is permitted to convert the sign to LED illumination

In conclusion, the July 29, 2011 decision of the Sign Administration denying Garrett Operators, Inc.'s request was incorrectly based upon the 2009 Amendment to Section 4612(b)(2) of the Houston Sign Code. As such, the General Appeals Board should have overturned the decision at the September 22, 2011 hearing. It failed to do so, and Garrett Operators, Inc. hereby excepts to such error. Therefore, the City Council should overturn the decision of the General Appeals Board, and rule that Garrett Operators, Inc. either does not need a permit to convert the sign to an LED illumination, or if one is required, that the permit should be issued.

Please let me know if you have any question or if I can be of any further assistance. Please notify me when this matter is scheduled to appear on the City Council agenda, and if any additional information or documentation is required by the Council in considering this matter

Thank you for your cooperation and assistance.

Very truly yours,



Richard L. Rothfelder
Attorney for Garrett Operators, Inc.

RLR:mr
Enclosures

cc: (w/o enclosures)

The Honorable Annise D. Parker
Mayor, City of Houston
P.O. Box 1562
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Via First Class Mail

Ms. Anna Russell
November 10, 2011
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November 10, 2011
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September 30, 2011

Rothfelder & Falick, L.L.P.
Richard Rothfelder
1201 Louisiana Street Suite 550
Houston, TX 77002

Via Certified Mail # 7008 0150 0003 3382 3937

Re: Request for an appeal regarding the decision of Sign Administration and the Interpretation of the Houston Sign Code for denial of sign permit at 2600 ½ South Loop West.

Dear Mr. Rothfelder:

On September 22, 2011, the General Appeals Board of the City of Houston held a hearing regarding your request for an appeal relative to the decision of the Houston Sign Administration for denial of sign permit at 2600 ½ South Loop West, Houston, Texas.

Based upon the testimony presented at the hearing, the General Appeals Board found that the decision of the Sign Administration should be upheld.

Any interested person aggrieved by a decision of the General Appeals Board may appeal to the City Council, provided that written notice to the City Council for such appeal is delivered to the City Secretary within 10 days following the decision of the Board.

Pursuant to Rule 12 of the City Council's Rules of Procedure (Section 2-2 of the City Code), a party appealing a decision of the General Appeals Board to City Council shall submit the complete court reporter-certified record to the city secretary within 60 days of the decision of Board. Failure to submit the requested or required records within the required time period shall constitute an untimely appeal to City Council and a waiver by the appealing party to an appeal before City Council.

SIGNED on the 30TH day of SEPTEMBER, 2011

Reginald Mack, Co-Chairman
General Appeals Board
Of the City of Houston

Cc: Building Official
Evelyn Njuguna
Katherine Tipton

Council Members: Brenda Stardig Jarvis Johnson Anne Clutterbuck Wanda Adams Mike Sullivan Al Hoang Oliver Pennington Edward Gonzalez
James G. Rodriguez Stephen C. Costello Sue Lovell Melissa Noriega C.O. "Brad" Bradford Jolanda "Jo" Jones Controller: Ronald C. Green

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MEETING OF THE GENERAL APPEALS BOARD:

DATE: 09-22-2011

PLACE: 1002 Washington, Room 4A
Houston, Texas 77002

THE BOARD:

Mr. Reginal Mack, Co-Chairman

Mr. Robert Buck, Building Official's
Representative

Mr. Richard Galvan, Fire Marshall

Ms. Evelyn Njuguna, City Attorney's
Representative

Mr. Scott Stelter, Building Inspections

Mr. Soloman Silva

Ms. Leslie Davidson

Mr. Richard Campbell

CITY OF HOUSTON LEGAL DEPARTMENT:

Ms. Hope E. Hammill-Reh, Senior Assistant
City Attorney

Mr. Bertrand L. Pourteau, II, Senior Assitant
City Attorney, Chief Business Litigation
Division

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DEPARTMENT REPRESENTATIVE:

Ms. Katye Tipton, Division Manager

ALSO PRESENT:

Ms. Lisa Lorton, Sign Administrator

Ms. Cantrece Addison, Court Reporter

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P R O C E E D I N G

1
2 MR. MACK: This is Richard Rothfelder's
3 request for an appeal regarding the decision of the Sign
4 Administration and the interpretation of the Houston Sign
5 Code for denial of sign permit of 2600 1/2 South Loop
6 West.

7 Okay. The representative of the City.

8 MS. HAMMILL-REH: My name is Hope Hammill-Reh
9 with the City of Houston. Please call me Hope. This is
10 my section chief Randy Pourteau.

11 And I wonder if we can get Ms. Tipton
12 sworn?

13 (Witness sworn.)

14 MR. MACK: That's right, lawyers do that
15 stuff. Anybody else need to testify who needs to be
16 sworn?

17 MR. ROTHFELDER: My client, Tommy Cox is
18 going to testify.

19 (Witness sworn.)

20 MR. MACK: Ms. Hope.

21 MS. HAMMILL-REH: Thank you, Sir.

22 I think this is a very simple case.
23 Garrett Operators has applied on June 21st, 2011, to
24 convert their trivision sign to LED lights; and on July
25 29th, 2011, the Sign Administration, Ms. Tipton, sent a

1 letter denying the application to convert the sign,
2 because the Houston Sign Code Section 4612(b)2 prohibits
3 an off-premise sign from being converted to electronic.

4 There are no electronic off-premise
5 signs located in the City. So I have the -- three
6 exhibits that I've handed out to you all, I'm going to ask
7 Ms. Tipton to identify them.

8 KATYE TIPTON,
9 having first been duly sworn, testified as followed:

10 DIRECT EXAMINATION

11 BY MS. HAMMILL-REH

12 Q. The first exhibit, can you identify what this is?
13 Is that an application that you received on or about June
14 21st, 2011?

15 A. That is.

16 MS. HAMMILL-REH: You want to mark that as
17 Exhibit 1? We're going to do 1, 2, 3

18 (Exhibits 1 through 3 were marked and entered
19 into evidence.)

20 Q. (BY MS. HAMMILL-REH) And Exhibit 2, which is the
21 letter dated July 29th, 2011, is that a letter that you
22 sent in response to Exhibit 1, the application of Garrett
23 Operators?

24 A. Yes, it is.

25 Q. And did you deny the application?

1 A. I did.

2 Q. And what was the reason?

3 A. The reason for the denial was based on Houston
4 Sign Code Section 4612(b)2.

5 Q. Okay. And is that -- Exhibit 3, the third page,
6 is that the sign code provision that you're referencing?

7 A. That is correct.

8 Q. Okay. And this is sign code January -- that was
9 effective January 11th, 2011; is that correct?

10 A. That is correct.

11 Q. So it was effective on the date that you received
12 the application?

13 A. That's correct.

14 Q. Can you read Section 4612(b)2 for me, please?

15 A. It says, "Electronic and off-premise high
16 technology signs are prohibited. This prohibition shall
17 include the construction, reconstruction, upgrading, or
18 conversion of an existing off-premise sign to an
19 electronic or off-premise high technology sign, such that
20 no electronic or off-premise high technology signs are
21 permitted."

22 MR. MACK: I'm sorry, was that E or J?

23 MS. HAMMILL-REH: I'm sorry?

24 MR. MACK: You said E?

25 MS. HAMMILL-REH: B2. It's the last page of

1 the exhibit. Did you find it?

2 MR. MACK: Yes, thank you.

3 Q. (BY MS. HAMMILL-REH) Okay. And in your opinion,
4 this was a -- you did not receive an application prior to
5 this date, did you --

6 A. No, I did not.

7 Q. -- to convert the sign to LED?

8 A. No.

9 MS. HAMMILL-REH: I know that part of Garrett
10 Operators argument I see from looking at their documents,
11 is that this application should relate back to a
12 conversation or some series of conversations that were
13 held in January 2008 with Susan Lucyx who was the prior
14 Sign Administrator, but Garrett does not allege that it
15 submitted an application back in 2008.

16 And in fact, there's been litigation
17 already over Garrett's desire -- Mr. Cox's desire to
18 change the sign to LED lights; and the City won in that
19 litigation.

20 And Mr. Cox's prior attorney took that
21 up on appeal; and the Appellate decision -- part of the
22 Appellate decision I'm reading from is Page to 2. I have
23 a copy for you if you'd like.

24 MR. MACK: We'll take your word.

25 MS. HAMMILL-REH: "Garrett Operators' counsel

1 sent a letter to Lucyx describing the proposed
2 installation and asserting that the sign code does not
3 require a permit for the installation."

4 In other words, in 2008, Garrett did not
5 submit an application to convert the sign to LED lights,
6 because their position was that they did not have to. So
7 their new argument before this Board that this 2011
8 application relates back, for some reason, to 2008. There
9 was never an application submitted in 2008.

10 And what the Court of Appeals had said
11 about the conversations that took place with Susan Lucyx
12 regarding this matter in 2008, was that the conversation
13 was a response to an informal inquiry based on a
14 hypothetical set of facts.

15 In other words, nothing had been
16 presented to the Sign Administration asking to convert the
17 sign to LEDs. So to our way of thinking --

18 MS. HAMMILL-REH: We'd like to have this
19 marked as Exhibit 4, please.

20 (Exhibit No. 4 was marked and entered into
21 evidence.)

22 MS. HAMMILL-REH: This is the opinion of the
23 Court of Appeals, which came out fairly recently, May 12,
24 2011. So to our way of thinking, this is a very simple
25 issue. The Sign Administration has received an

1 application in 2011; and 2011, the sign code does not
2 permit an off-premise electronic LED sign and the
3 application should be denied.

4 MR. MACK: Questions from the Board?

5 MR. SILVA: Are you saying that regardless of
6 what was before, they cannot convert it to an LED? That's
7 what you're saying, right?

8 MS. TIPTON: I'm saying that, according to
9 his application in June of this year, what he's asking for
10 on his application is not -- is not permitted in the sign
11 code.

12 MR. SILVA: That is, converting to an LED?

13 MS. TIPTON: Right.

14 MR. SILVA: And that's what the application
15 states?

16 MS. TIPTON: That's correct.

17 MR. MACK: What was the previous litigation
18 about?

19 MS. HAMMILL-REH: The previous litigation
20 was --

21 MR. MACK: Give me the short version.

22 MS. HAMMILL-REH: The previous litigation,
23 Garrett Operators contended that its operating permit --
24 which I also have a copy of -- an electronic -- an
25 electrical permit that was issued for a nearby building,

1 that these could be used to convert the sign to LED.

2 So in other words, no application was
3 ever made to the Sign Administration to go through the
4 proper process to convert. So that was what the
5 litigation was about in 2008.

6 MR. MACK: Was the electronic ever installed?

7 MS. HAMMILL-REH: I believe -- Mr. Cox would
8 know better about that.

9 MR. SILVA: Is the sign permitted now?

10 MS. TIPTON: The sign is -- I believe the
11 permit is valid, the off-premise permit is valid.

12 MS. SILVA: Is it legal, now as it stands?

13 MS. TIPTON: If it has not been converted, it
14 is legal. It's legal as a trivision.

15 MR. SILVA: It can remain but not converted
16 to LED, the sign, is what you're telling us?

17 MS. TIPTON: Right.

18 MR. MACK: Any other questions?

19 MR. CAMPBELL: Your reference to a permit not
20 being submitted in 2008, was there a change in the
21 ordinance between now?

22 MS. HAMMILL-REH: Yes, there has been a
23 change in the ordinance between then and now. The
24 ordinance -- the City sign code always prohibited it; but
25 it was made absolutely clear again, because there had been

1 a change -- it's long story; but there had been a change
2 in state law.

3 So the sign code was a mandate to take
4 into account the change in state law; and when that sign
5 code was amended, it included the provisions that were
6 read here that are -- have been submitted as Exhibit 2.

7 MR. MACK: So in essence, the previous
8 litigation was primarily the difference between, "I had
9 the right to go put the lights on, and I didn't do it
10 then?" Or maybe they did do it -- but some kind of way it
11 became a legal matter.

12 Just the fact they wanted to put lights
13 on the sign or make it an LED sign and it did or did not
14 happen?

15 MS. HAMMILL-REH: I don't know about the
16 lights. I know that they wanted to -- I understood that
17 they wanted to change the cabinet and that that requires a
18 permit.

19 All of this requires permitting to go
20 through the Sign Administration and that -- other than the
21 operating permit, which it had an operating permit for a
22 trivision sign.

23 But that does not allow this type of
24 change and that was what the argument was about in the
25 trial court where we prevailed, as well as in the Court of

1 Appeal where we also prevailed.

2 MR. MACK: Tell me what a trivision sign is.

3 MR. POURTEAU: I think maybe I can answer
4 your question. It's like a venetian blind. When you pull
5 the string, it flips over like that.

6 But a trivision sign has got three
7 different heads on it and it's got a mechanical deal on it
8 where it flips advertising Budweiser and suddenly it's
9 advertising ABC and then a third thing.

10 MS. HAMMELL-REH: They have slacks that
11 rotate in sequence to display different messages. So you
12 can have three different messages.

13 MR. MACK: Thank you. Any other questions?

14 MS. DAVIDSON: And that's not considered
15 electronic?

16 MR. POURTEAU: No. It's not an LED sign.

17 MS. HAMMILL-REH: It's not an LED sign, which
18 is different.

19 MS. DAVIDSON: It seem like your ordinance
20 said both electronic and off-premise high technology
21 signs. Electronic -- I guess the LED is considered
22 electronic; but the trivision is not?

23 MS. TIPTON: The LED is considered high
24 technology.

25 MS. DAVIDSON: Oh, okay. Electronic or high

1 technology? Okay.

2 MR. MACK: I take it there are lights on this
3 sign already, right? This is not a issue of lights, just
4 switching to LED? Okay.

5 Any other questions?

6 MR. BUCK: I'm just curious, why go LED?
7 What's the reason for it? What's the reason for LED?

8 MS. TIPTON: Back when they changed the sign
9 code, there were many studies about...

10 MR. BUCK: Is there a safety issue?

11 MS. TIPTON: Traffic safety. And as I
12 understand it, that's primarily the reason for the -- on
13 the interstates; and it would be a safety hazard.

14 MR. BUCK: Too much of a distraction.

15 MR. MACK: Any other questions?

16 Mr. Rothfelder.

17 MR. ROTHFELDER: Thank you.

18 Good evening. Nice to be back. Thanks
19 for having me and my client, as it's my privilege to
20 represent Tommy Cox of Garrett Operators.

21 And believe it or not, we have some
22 agreement between the City and my client; and that this is
23 indeed a simple case. But I put a little bit different
24 spin on it, because I think it's simple in that state law
25 requires this Board to overturn the decision that my

1 friend Katy Tipton made, because she applied the law that
2 was passed subsequent to the relevant period of time.

3 Let me explain what I mean. I've passed
4 out a presentation and an outline, and I'd just marshal
5 through what I think are the relevant and undisputed
6 facts, including that this sign has actually been there
7 for about 32 years.

8 It was originally built in 1979, and
9 Exhibit 1 in the packet of what I've handed out is a
10 picture of that sign. It was built as a sign that
11 utilized LED illumination; and it was used for off-premise
12 advertising, because Allison Walker Interests was a
13 developer that was not located on the site. And the sign
14 displayed LED light illumination.

15 My client, Tommy Cox, actually acquired
16 the sign from Allison Walker Interests in 1984; and then
17 he used it -- as indicated in Exhibit 2, he continued to
18 use it as an automatic changing sign.

19 I don't know if anybody remembers this
20 Budweiser sign, but it was a sign where the cap of the
21 beer bottle would pop off and the foam of the beer was
22 animated.

23 Now, you might remember back in 1993,
24 Mr. Cox and I came before this General Appeals Board,
25 because at that time, a dispute arose as to whether that

1 sign could be operated for on-premise use or off-premise
2 use.

3 And Mr. Cox came forward and I
4 represented him before the General Appeals Board asking
5 for permission to operate the sign for off-premise
6 advertising; and indeed, the General Appeals Board in June
7 1993, agreed and allowed that billboard to be operated for
8 off-premise advertising.

9 At that time, you might remember that
10 Ollie Schiller was the Sign Administrator, about three
11 predecessor to Katye.

12 And Exhibit 3 is the letter in the
13 packet that confirms that the billboard, that that sign
14 was indeed permitted after the General Appeals Board ruled
15 that it was proper and legal for off-premise advertising.

16 Exhibit 4 is an exchange of letters to
17 show that the sign was -- again, as Ms. Tipton just
18 pointed out -- legally permitted to be used as a trivision
19 display.

20 Pictures of the sign being used as a
21 trivision display are Exhibit 5, and we just talked about
22 that. It's an automatic changing sign through electronic
23 purposes that has three sets of slacks that will change,
24 in this case, not more than every five minutes. So it's
25 legal.

1 It's not a prohibited spectacular sign
2 that changes more frequently than every five minutes.
3 Instead, automatic changing electronic trivision display
4 operated for well over a decade, completely legal and
5 permit.

6 Now, in January 2008, my client Tommy
7 Cox actually transferred ownership of the billboard by
8 that time to the Applicant here, Garrett Operators.

9 In January 2008, were those discussions
10 that Hope was referring to. He went to Susan Lucyx, my
11 friend Susan Lucyx, the former Sign Administrator, and
12 asked for permission to change the lighting on the sign.

13 It was already permitted as an automatic
14 changing trivision sign, but he wanted to put the LED
15 illumination back on it again.

16 It had LED illumination on it when it
17 was originally constructed, and he asked for permission in
18 January 2008 to convert it to an LED illuminated
19 display -- still electronically automatic changing
20 message.

21 And you'll see in the packet, Exhibit 6
22 is the follow-up letter that this previous lawyer for
23 Mr. Cox that Hope is referring to wrote to Susan Lucyx;
24 and Susan denied the permission by her letter, that's
25 February 6th, 2008. It's in the packet as Exhibit 7.

1 So there was an exchange. There was an
2 inquiry. There were meetings. There was correspondence
3 confirming it. Now, Mr. Cox position was that no permit
4 was required to convert the sign from trivision automatic
5 changing to LED illuminated.

6 That's why a permit application wasn't
7 submitted, and I'll get to why a permit application wasn't
8 required under the sign code at the time litigation.

9 Litigation did ensue. After Ms. Lucyx
10 letter, the previous lawyer once again for Garrett, Cox,
11 filed a lawsuit saying that no permit is required. The
12 City of Houston should have allowed the conversion from
13 this trivision to the LED illumination, because at that
14 time, there's no requirement in the sign code to get a
15 permit to do so.

16 That litigation resulted in a dismissal
17 in favor of the City that was affirmed in favor of the
18 City by the appeal court, like Hope said, on a technical
19 ground.

20 Namely, the trial appellate court said
21 that Cox hadn't exhausted his administrative remedies or
22 received a final judgment. Those are terms in the law
23 that basically said, "The General Appeals Board didn't
24 decide whether a permit was required or not; and until you
25 go through your administrative remedies to decide whether

1 a permit is required or not, you can't come into the court
2 system and ask us to do so."

3 That's why we're here three years later,
4 is asking the General Appeals Board whether that permit is
5 required to convert an automatic change in trivision to an
6 LED illuminated sign. Katy, indeed, did deny this
7 application that was submitted.

8 The application, after I got engaged, is
9 in the packet; and Hope passed it out too. We attached it
10 with the transmittal letter, Exhibit 8 in the packet; and
11 the letter points out that the law that was in effect in
12 January 2008 when those initial inquiries were made should
13 apply.

14 Katy denied the application, as you can
15 see it's Exhibit 9 in the packet, based on the sign code
16 in effect today that had been amended a year after these
17 January 2008 inquiries were made. That resulted in
18 today's appeal; and I have in the packet the August 17th,
19 2011 appeal which was timely filed.

20 Now, the permit for LED illumination was
21 not required in 2008, the relevant day. Or if there was a
22 permit required, it should have been issued. First and
23 foremost, the provisions of the sign code in January 2008
24 are the relevant provisions that this Board needs to look
25 at.

1 That's when, as we could see from the
2 exchange of exhibits back in January and February 2008,
3 Exhibits 6 and 7, that the inquiry was first made about
4 converting the signing to LED illumination. We contend
5 that no permit was even required, so we didn't submit an
6 application.

7 State law, specifically Section 245.002
8 of the Local Government Code, requires that in this case,
9 any permit applications or whether a permit application is
10 even required in this particular case, needs to be
11 determined by the ordinance that was in effect when the
12 application was either originally submitted or when there
13 was a consideration as to whether an application was even
14 required.

15 Now, I've put in your packet as Exhibit
16 14, the state law that takes precedence over the municipal
17 law, Section 245.002 of the Local Government Code; and I'm
18 quoting now -- it's in my summary; but it's in your packet
19 as Exhibit 1H4, "Each regulatory agency shall consider the
20 approval, disapproval or conditional approval of an
21 application for of a permit solely on the basis of any
22 ordinance or other properly adopted requirements in effect
23 at the time the original application for the permit is
24 filed for review for any purpose."

25 Now, Hope anticipated my argument. So

1 she emphasized that there was no permit application
2 submitted in 2008; and again, that's correct. But
3 remember the posture that this comes before the General
4 Appeals Board.

5 Our position is at this relevant time,
6 January 2008, no permit was required. No application was
7 necessary to be submitted. So the inquiry under state law
8 is whether at that time under the Houston Sign Code, a
9 permit was required or not, which takes us to our next
10 point.

11 The Houston Sign Code in January 2008,
12 did not require a permit to convert a trivision automatic
13 changing electronic sign to one that had LED
14 illumination.

15 Now, how do we know that? We know that
16 the sign code at that time was legally operated as a
17 trivision. Indeed, we just heard that it's legally
18 permitted as a trivision as we sat here today.

19 At that time, there was no prohibition.
20 There was no regulation on so-called changeable message,
21 electronic or high technology signs. Those words didn't
22 exist in the sign code in January 2008. They were added
23 by amendments a year later in 2009.

24 In part, I think, because the City knew
25 that Cox had already submitted an application; and as an

1 afterthought, they wanted to bolster their position,
2 albeit, in a belated manner.

3 I've attached, for example, as Exhibit
4 16, the definitions that are contained in the provisions
5 of the 2009 amended code.

6 This Exhibit, 16, 17, 18 and 19 are from
7 the City's Sign Code, specifically the Houston Sign Code
8 compiled by the City of Houston legal department; and the
9 red portion show the amendments that were made in 2009.

10 And as you can see, Exhibit 16 contains
11 definitions, including changeable message sign added in
12 2009, high-technology sign added in 2009.

13 Also on Page 5, you have electronic
14 sign, which was extended in 2009 amendment to off-premise
15 signs like this.

16 Exhibit 17 was, as you can see at the
17 bottom, the new provisions added by the 2009 amendments on
18 changeable message and high-technology signs; and last --
19 certainly not least -- the most important part is Exhibit
20 18. That's the provision that Katye's relying upon,
21 Section 4612(b)2.

22 That's what she cited in her decision to
23 deny the request to convert this automatic change in
24 trivision sign to LED; and you can see the words that were
25 added in the 2009 amendment, "electronic and off-premise

1 high technology." Those weren't in the codes originally.

2 And the provision that says, "electronic
3 or off-premise high technology signs" the business about
4 converting to electronic or high technology signs was also
5 specifically added by the amendment made by the City
6 counsel over a year after the relevant periods of time
7 compelled by state law.

8 Now, the relevant regulation in 2008 by
9 contrast is found on Exhibit 19, the last page in your
10 packet; and it's Section 4608J of the Houston Sign Code.

11 And that provision provided in 2008 that
12 there was no requirement to obtain a permit from the City
13 of Houston for a mere change of ornamental features,
14 electronic, electrical wire or advertising display.

15 You can see under Subsection J there on
16 Page 19, there was some substantial changes made by the
17 City counsel in its 2009 amendments to that provision as
18 well.

19 Originally, the City counsel said, "No
20 sign permit is required for the change of any of the
21 ornamental features, electrical wire devices or the
22 advertising display of a sign previously permitted."

23 And as you can see, they came in and
24 deleted the electrical wiring; and most importantly, they
25 have this provision that says this, "That it does not

1 apply to converting existing signs to electronic signs,
2 high technology signs or changeable message signs," brand
3 new a year after the relevant period of time.

4 Indeed, the 2009 amendments that the
5 City counsel made to the Houston Sign Code is conclusive
6 evidence that prior to those amendments, the things that
7 we're talking about tonight were not prohibited.

8 If in 2009 the City counsel felt that it
9 was important to amend the sign code to clarify that the
10 conversion of existing signs to electronic signs, high-
11 technology signs, or changeable message signs was
12 prohibited, if that had already been prohibited, there
13 wouldn't have been a need to amend the sign code in 2009
14 to do so; but it did.

15 And it also amended Section 4612(b)2,
16 the provision that Katye relied upon, that for the first
17 time was amended to prohibit electronic or off-premise
18 high technology signs; and there was no such prohibition
19 before that.

20 So the law that should be applied by the
21 General Appeals Board is that under Exhibit 19, 4608J,
22 when you look at the section without the red amendments
23 that are inapplicable, because they were passed subsequent
24 to the relevant period of time.

25 And at that time, I'm quoting, "No sign

1 permit is required for the change of any of the ornamental
2 features, the electrical wiring devices, or the
3 advertising display of a sign previously permitted."

4 Well, one thing we can agree upon, was
5 the sign was previously permitted. We can agree that LED
6 illumination, where you change the advertisement, albeit
7 simply by the means of illumination through LED as opposed
8 to trivision, that's a change of the advertising display.
9 No permit required.

10 Electrical wiring devices is something
11 that would be involved in the LED illumination. No permit
12 required. Ornamental features, changing from an automatic
13 changing electronic to LED display, ornamental features.
14 All of these things don't require a permit in the relevant
15 period of time of 2008.

16 So in conclusion, since state law
17 compels application of the version of the sign code that
18 provided no permit was required to convert an automatic
19 changing, electronic trivision sign to LED illumination,
20 permission should have been given; and the General Appeals
21 Board should reverse and overrule the July 29th, 2009
22 decision of Ms. Tipton, that instead, used a subsequent
23 and incorrect version that was amended by the City counsel
24 a year after the relevant period compelled by state law.

25 For those reasons, we're asking that the

1 General Appeals Board overrule that July 29th, 2011
2 decision; and rule either that no permit is required to
3 convert this sign to LED illumination, or if one is
4 required, that it should be granted.

5 MR. MACK: Okay. Questions from the Board?

6 MR. BUCK: Just so I'm clear on this, this
7 item came up first in 2008; and in 2008, it was not --
8 there were no code verbage that prohibited it; is that
9 correct?

10 MR. ROTHFELDER: That's our position. I'm
11 sure Ms. Hammel-Reh would probably argue otherwise; but
12 yes, I showed you the provision that we argued,
13 particularly 4608J, that did not require a permit to
14 change the electrical wiring, ornamental features or
15 advertising display.

16 MR. BUCK: Let me rephrase this. In -- go
17 ahead.

18 MS. HAMMILL-REH: That's correct. They were
19 prohibited.

20 MR. BUCK: They were prohibited in 2008?

21 MS. HAMMILL-REH: Correct.

22 MR. BUCK: Okay.

23 MS. HAMMILL-REH: And I do think that the
24 question for the Board is really this: Can someone make
25 an informal inquiry of the Sign Administration and years

1 later submit an application and the Sign Administration
2 must evaluate that application based on old law at the
3 time that the conversations first took place?

4 I would submit that that's never been
5 the law. In order to come under Section 245 of the Texas
6 Local Government Code, it says this, "The Regulatory
7 Agency shall consider the approval, disapproval or
8 conditional approval of an application for a permit solely
9 on the basis of any orders, regulations, ordinances rules,
10 expiration dates or other properly adopted requirements in
11 effect at the time, 1. The original application for a
12 permit is filed for review for any purpose, including
13 review for administrative completeness. Or 2. A plan for
14 development of real property or plat application is filed
15 with the Regulatory Agency."

16 In other words, in order to come under
17 the Vested Rights Statute, which is what Section 245 is
18 called, you must submit an application. There was no
19 application submitted in 2008.

20 So all of arguments about the 2008 law
21 that Mr. Rothfelder has just made about their
22 interpretation of the 2008 law, is not applicable to an
23 application that was submitted to the Sign Administration
24 on June 21st, 2011.

25 There was no original application to

1 relate back to in 2008; and the Court of Appeals has
2 already held in a long discussion in their opinion --
3 which I'll be happy to give you all -- I have it tabbed,
4 that this was simply an informal inquiry. It does not
5 rise to the level of an application, which is what is
6 required, among other things, to trigger 245.

7 MR. BUCK: Exhibit 6, Mr. Rothfelder's
8 Exhibit 6 --

9 MR. ROTHFELDER: Down at the bottom.

10 MR. BUCK: -- it says, "The City no longer
11 issues permits for off-premise signs. Houston Sign Code
12 Section 4605(a)."

13 MS. HAMMILL-REH: Wait, wait. Let me find
14 6. "The City no longer" -- this was a letter from
15 Mr. Durrell --

16 MR. BUCK: Was that part of the sign
17 ordinance as it states here? Because it says, "No longer
18 issues permits for off-premise signs," then that tells
19 me --

20 MS. DAVIDSON: Which page are you on,
21 please? Page 1?

22 MR. BUCK: It's not a page number, Leslie.
23 It's Exhibit 6 in the packet. It's at the bottom, the
24 footnote at the bottom.

25 MS. DAVIDSON: Okay.

1 MR. BUCK: If the sign code says, they're no
2 longer issuing permits for off-premise signs, then what
3 would the application be for if there's not a permit going
4 to be issued? I have to ask these things. Okay.

5 MS. HAMMILL-REH: It's my understanding that
6 the application was to convert the sign. So this is
7 referring to new off-premise signs, I believe.

8 MR. SILVA: Are we saying that this is a sign
9 conversion? They're saying it is not a sign conversion, I
10 think.

11 MR. POURTEAU: Well, part of the thing is, I
12 would ask you to use your common sense. What their
13 argument is, is that this trivision sign had a motor on
14 it, and it switched from one advertisement to another to
15 another; but there's a fundamental difference between a
16 trivision sign and an LED and LED technology.

17 If you don't believe that, when you go
18 home tonight, you try to get your wife to watch Dancing
19 With the Stars on a trivision sign. It is completely
20 different technology.

21 It is not merely ornamental. It is not
22 merely lighting. It's different in concept. It's
23 different in technology. It's different, different,
24 different.

25 MR. SILVA: That's why I'm asking her, this

1 is a conversion of the existing sign, what they want to
2 do. It's not just changing it. It's a conversion; is
3 that correct?

4 MS. TIPTON: Yes.

5 MR. MACK: Mr. Campbell.

6 MR. CAMPBELL: One question. I realize there
7 seems to be a contention whether or not there was a
8 requirement in 2008 or not to -- or whether it was illegal
9 to convert to the -- what is it called -- other LED type
10 sign -- assuming it wasn't okay. If they wanted to
11 convert it and there was no provision of law against that,
12 would they have had to make a request to the City to do
13 so?

14 MS. HAMMILL-REH: Yes. That's -- yes,
15 well --

16 MS. TIPTON: Yes. Subsection 4605, Permit
17 Required, "No person shall erect, reconstruct, alter,
18 relocate or use a sign without the sign code application
19 area without first having secured a written permit from
20 the Sign Administrator to do so."

21 MR. POURTEAU: That was the underline issue
22 in the lawsuit between Garrett and the City.

23 MR. MACK: And so that's the document that
24 was in place in 2008?

25 MR. CAMPBELL: They submitted a letter in

1 2008 with a request. I thought that's what he presented
2 in his exhibit. You're calling it informal. I'm trying
3 to get a definition of what makes it informal.

4 MS. HAMMILL-REH: The Court of Appeals called
5 it informal. In their judgment, in their opinion, they
6 called this an informal request. It didn't rise to the
7 level of an application.

8 So the Court of Appeals, in their
9 judgment, in their opinion -- which was just issued in May
10 of this year -- they held, the conversations -- the
11 letters, that this constituted an informal.

12 And actually, they go a little bit
13 further than that. They say, "This was an informal
14 inquiry based on a hypothetical set of facts," because
15 there was no actual application submitted for the Sign
16 Administration to rule on one way or the other.

17 They didn't have that opportunity,
18 because nothing was submitted in 2008.

19 MR. ROTHFELDER: Again, to the extent that
20 what happened in January and February of 2008 is
21 important, it's important because of the application of
22 the state law that compels that form of the Houston Sign
23 Code at that time applies.

24 Mr. Campbell is right. There was a
25 request made in January 2008 to convert the trivision sign

1 to LED illumination, and you have it in the packet.
2 That's the January 22, 2008 letter. It's Exhibit 6. It
3 was a request that was denied by Susan Lucyx's February 6,
4 2008 letter, and it's in your packet as Exhibit 7.

5 Now, again, we didn't submit an
6 application, because our whole argument is that an
7 application is not required, because the law, the Houston
8 Sign Code, specifically 4608(j) in 2008 -- that's Exhibit
9 19 -- didn't require a sign permit to change the
10 ornamental feature, electrical wiring or devices of the
11 advertising sign of a sign previously permitted.

12 So you didn't to go through and ask for
13 a permit. You didn't have to submit an application; but
14 indeed, there was an inquiry made in writing, a request by
15 that exchange of letters; and it resulted in a formal
16 denial.

17 And, in fact, I want to hand around -- I
18 didn't bring extra copies; but please take a look at the
19 Sign Administration's law. This is the screen printed off
20 of the Houston Sign Administration, where it shows the
21 relevant dates; and I want to direct your attention to
22 come down to letter dated 2-6-08, "Denial of sign permit
23 to Garrett Operators."

24 That, of course, refers to Exhibit No.
25 7, the February 6th, 2008 letter Susan Lucyx; and you can

1 see that the City, at least on their computer, treats this
2 as a denial of sign permit to Garrett Operators -- coming
3 right off their own computer.

4 MS. DAVIDSON: Mr. Rothfelder, why did you
5 not fill out a form for an application?

6 MR. ROTHFELDER: Because, Leslie, our
7 position at that time then and as it is now, is that an
8 application would be inappropriate, because our legal
9 position is that a permit is not required.

10 So by submitting an application, we
11 would be conceding that a permit was required; and we
12 don't think that it is.

13 MS. DAVIDSON: Why did you make -- if the way
14 you interpreted the Sign Code on Exhibit 19, why did you
15 even contact Ms. Lucyx?

16 MR. ROTHFELDER: Out of courtesy.

17 MS. DAVIDSON: Is there LED lighting on the
18 sign now?

19 MR. ROTHFELDER: No. It's still a trivision
20 display.

21 MS. DAVIDSON: Well, why did you wait this
22 long to...

23 MR. ROTHFELDER: Because as Hope pointed out,
24 the Court of Appeals affirmed a dismissal of the case on
25 the grounds that Garrett -- Mr. Cox failed to exhaust his

1 administrative remedies; and therefore, the matter was not
2 ripe for civil court litigation.

3 The Court didn't rule on the merits. It
4 ruled that before the civil courts can consider this
5 issue, Garrett had to go through and exhaust its
6 administrative remedies by having the General Appeals
7 Boards to determine whether a permit was required or not;
8 and if one was required, whether it should be issued or
9 not.

10 So that's why, after I got involved, I
11 said, "Let's go ahead and submit the permit application,
12 because the only way we're going to get an administrative
13 review by the General Appeals Board is the anticipated
14 denial of the application, which we can appeal to the
15 General Appeals Board. Then we can do what the Court of
16 Appeals said and exhaust our administrative remedies; and
17 if we lose, we can go to civil court."

18 MS. DAVIDSON: I realize that he was with a
19 different law firm then, so we don't know the reason why
20 he didn't just go ahead and do the same thing you're doing
21 now and cleared up the problem back then before this
22 ruling -- when was it in January that it came out?

23 MR. POURTEAU: May.

24 MS. HAMMILL-REH: May 12th. That's the
25 document that has a little orange tabs on it -- May 12th,

1 2011.

2 MS. DAVIDSON: It just seems kind of strange
3 timing that in May, they really put it in black and white;
4 and then, you know, you submit the application in -- was
5 it June?

6 MS. HAMMILL-REH: Correct, June 21st, 2011.

7 MS. DAVIDSON: Just seems a little --

8 MR. ROTHFELDER: No. I got hired right after
9 Garrett lost the Court of Appeals; and I looked at the
10 opinion and said, "Well, okay. Here's what you got to
11 do. You got to comply with what the Court of Appeals
12 say. You got to go and exhaust your administrative
13 remedies; and the way you do that is, you have the General
14 Appeals Board consider. And the only way the General
15 Appeals Board considers it, is if you submit an
16 application that's denied; and then you appeal the
17 denial."

18 MR. MACK: Are there LED signs in Houston?

19 MR. ROTHFELDER: Sure. But they are limited
20 to on premise. I mean, you'll see them all around town.
21 They are these automatic changing LED illuminated changing
22 signs, but they're limited to on premise. There's no
23 off-premise LEDs.

24 MS. DAVIDSON: So this would be the only
25 one?

1 MR. ROTHFELDER: Yes. But I did want to
2 point out -- Katye, with all due respect -- the safety and
3 traffic distraction issues. I dispute that. There are
4 hundreds of LED illuminated on-premise signs; and the City
5 council, in its wisdom, determined that there was no
6 safety issue. There was no traffic distraction, because
7 they allowed them and they regulate them; but they limit
8 them to on premise.

9 So the City council didn't think
10 there was a traffic distraction or a safety issue.

11 MR. BUCK: Just so I'm clear about this
12 on-premise, off-premise, I have a -- put up a sign for a
13 business. That's an on-premise sign, right?

14 MS. HAMMILL-REH: If you're advertising your
15 business -- if this is where the business is and you're
16 advertising on your sign about your business, that's on
17 premise.

18 MR. BUCK: But a general sign like we're
19 talking about here where anyone can come in and lease it,
20 I guess?

21 MS. HAMMILL-REH: You're advertising
22 something --

23 MR. BUCK: That's what I thought.

24 MS. HAMMILL-REH: Yes. Off premise would be
25 advertising something that's not on -- the premise where

1 the -- on the property where the sign is.

2 MR. BUCK. Okay.

3 MR. CAMPBELL: One other question for
4 definition purposes: In the original 4608(j) before it
5 was changed, it had there, "This provision shall not apply
6 to easel or spectacular signs." Is there a formal
7 definition for what spectacular sign is?

8 MR. ROTHFELDER: It's in the packet under
9 my -- if you take a look at Exhibit 15 of my packet,
10 there's a definition down at the bottom of spectacular
11 sign.

12 In general, a spectacular sign is an
13 automatic changing message sign -- whether it has LED
14 illumination that causes the message to change or whether
15 it's a trivision technology that causes the message to
16 change.

17 But as you can see, the important thing
18 that makes one of these automatic changing message signs
19 become spectacular, is if that message changes more
20 frequently than once every five minutes. That's the key.
21 You can have a --

22 MR. SILVA: That's not allowed.

23 MR. ROTHFELDER: Yeah. It's not allowed; and
24 spectacular signs, indeed, are prohibited. So if an
25 automatic changing message sign changes more frequently

1 than every five minutes, it's spectacular, and spectacular
2 is prohibited; but if the change is every five minutes one
3 second, it doesn't meet the definition of spectacular, and
4 it's legal.

5 Like this sign, it's an automatic
6 changing message sign, trivision technology that changes
7 less frequently than once every five minutes. So it's not
8 spectacular; and instead, it's legal.

9 MS. HAMMILL-REH: Actually, if you read your
10 Exhibit 15, it says that, "A spectacular sign shall mean a
11 sign that has one or more of the following elements" --
12 "following as elements in its physical structure: 1.
13 Automatically changing message that changes more often
14 than once every five minutes; 2. Blinking, rotating,
15 moving, chasing, flashing, glaring, strobe, scintillating,
16 or spot lights or similiar devices; 3. Lights or colored
17 elements creating a continuously moving, shimmering or
18 prismatic effect; or, 4. Rotating or moving parts."

19 So that is an expanded definition of
20 spectacular sign.

21 MS. DAVIDSON: Well, why is a trivision not
22 considered spectacular if it has moving parts?

23 MS. HAMMILL-REH: That's a good question.

24 MR. BUCK: That's what I was getting ready
25 to ask. Moving parts, that would be classified as a

1 spectacular sign.

2 MR. ROTHFELDER: It's not. We know from --

3 MR. SILVA: Well, wait a minute.

4 MR. ROTHFELDER: We know, because Katye
5 Tipton just told us that this sign, the automatic changing
6 message is a trivision display is legal; and we know from
7 her predecessor, Susan Lucyx, in Exhibit 4 that I
8 supplied to you -- actually, it was Melvin Embry.

9 In the correspondence exchange in
10 October 1997 between previous Sign Administrator Melvin
11 Embry and Tommy Cox, they agreed at that time back in
12 1997, that this trivision display, as long as it did not
13 change more frequently than every five minutes, was
14 legal.

15 So that it, indeed, has retained its
16 permit and retained its legal status for the last 15 years
17 in that form.

18 MS. HAMMILL-REH: If I may add a little bit
19 of background on this Exhibit 4? It's dated October 1st,
20 1997. This is not our exhibit. It's Mr. Rothfelder's.

21 On Paragraph 2, it talks about where the
22 sign is located; and it says this: "It is considered
23 conforming and in compliance with applicable Federal,
24 State and local regulations with the exception of Section
25 4619 of the Houston Sign Code, which the City has

1 refrained from enforcing pending resolution of the
2 on-going litigation."

3 So at the time this was entered into,
4 this sign, there was a question about whether it was in
5 compliance; and because there was litigation -- other sign
6 litigation that was pending, that this was an agreement
7 that was entered into between Garrett Operators and the
8 then building official Mr. Embry, to allow the sign to
9 stay up; but that was during the pending litigation, which
10 has since concluded.

11 MR. MACK: Are there other tri -- what you
12 call it -- signs in the City?

13 MS. HAMMILL-REH: No.

14 MR. COX: The block from mine is the Reliant
15 Center. It has a trivision right next to an LED. Also, I
16 think Sam Houston.

17 MS. HAMMILL-REH: But I believe those are on
18 premise. Those are on-premise signs.

19 MR. COX: Actually, they advertise anything
20 and everything; and years ago, I asked the City, the Site
21 Administrator at the time when they put in and they said;
22 "That's County-owned property and the County can do
23 anything they want to."

24 And that was also the same thing they
25 told me with the Sam Houston Raceway, that the County owns

1 that property. So anything they want to do with the sign
2 is fine.

3 And also goes to -- there's LED signs in
4 front of Minute Maid Park that advertise companies other
5 than the baseball deal, that it belongs to the County or
6 the City. The George R. Brown also have LED, and they
7 advertise things that are not necessarily on premise,
8 also.

9 MS. HAMMILL-REH: The City is a governmental
10 entity; and we do not typically tell other governmental
11 entities how to do --

12 MR. COX: I'm not trying to --

13 MS. HAMMILL-REH: -- their business.

14 MR. COX: I'm not trying to tell you anything
15 other than that. He just asked, "Are there other
16 trivisions out there?"

17 MS. HAMMILL-REH: Those would be --

18 MR. BUCK: In 2008, was it illegal to have
19 the type of sign that they want to have?

20 MR. ROTHFELDER: No.

21 MR. BUCK: Let me rephrase it. Was it
22 against the Sign Code in 2008 to have a LED sign like
23 they're proposing? Was it against the Sign Code --
24 prohibited by the Sign Code in 2008?

25 MR. POURTEAU: I think converting it to

1 that --

2 MR. ROTHFELDER: No, it wasn't.

3 MR. POURTEAU: Converting to that was
4 prohibited unless it was merely ornamental or electronic
5 or the advertisements such as changing the paper on the
6 billboard, that was authorized. Converting it to an LED
7 sign was not authorized.

8 MR. SILVA: And then it would require a
9 permit?

10 MS. LORTON: The electrical (inaudible) bulb
11 to bulb, wire to wire; but when you went from one
12 component to another component, that's what triggered and
13 made --

14 MR. CAMPBELL: What specific reference in the
15 previous code is the City using to say that it was illegal
16 to change at that time?

17 MR. POURTEAU: Well, it's partially in the
18 building code as well. You need a code from the
19 building -- a building permit to make those kinds of
20 changes to this sort of structure.

21 MS. HAMMILL-REH: From a practical
22 standpoint, you have a big heavy sign cabinet. LEDs, I'm
23 sure Mr. Cox will tell you, weighs more than the
24 trivision.

25 So if you're putting something up there,

1 you have to take the wind, the bending factor into
2 account. You have to take the weight into account.

3 So there are structural issues that have
4 to be considered, which is why you would apply to the Sign
5 Administration to determine the types of permits that you
6 need in order -- electrical permit, construction permit in
7 order to change the cabinet out.

8 MR. COX: That's not correct.

9 MR. CAMPBELL: You're saying the nature of
10 the change fell into the Building Code requirement for
11 submitting a permit?

12 MS. HAMMILL-REH: It's under the Sign Code.

13 MR. CAMPBELL: I understand or --

14 MS. LORTON: It has to meet the structural
15 requirement of the current code. When you go -- back in
16 1970, those wind restraints are going to be different than
17 today's wind restraints and today's Building Code.

18 So you have to submit an application
19 with engineering proving that your existing structure can
20 handle the weight and handle what it is that you're trying
21 to do, because it wasn't considered just merely
22 electrical. It's a -- it was a change. I mean, it was an
23 upgrade alteration.

24 MR. ROTHFELDER: If I can answer Robert's
25 question directly, 'cause he has two questions: Number 1,

1 "In 2008, was maintenance of an automatic changing LED
2 sign allowed or not; and Number 2, was converting the type
3 of automatic changing trivision sign to LED illumination
4 allowed or not in 2008?"

5 I think it was really two parts, and
6 I've got the answers to both. The first answer is,
7 you just look at Exhibit 18. That shows us that the law
8 that was in effect in 2008 prohibited certain things.
9 Specifically, 4612(b)2 prohibited off-premise signs, any
10 new off-premise signs.

11 But the thing that instead was added in
12 2009 was this red addition of electronic and off-premise
13 high technology signs. They weren't defined. They
14 weren't in the Sign Code at the relevant period in 2008.

15 Instead, the only thing that dealt with
16 automatic changing message signs in 2008 was a spectacular
17 sign, and I've got that provision before you too.

18 MR. BUCK: Mr. Rothfelder?

19 MR. ROTHFELDER: Yes.

20 MR. BUCK: This 4612(b)2 of the underline
21 red, that is what was inserted in this, when? In 2009?

22 MR. ROTHFELDER: Correct.

23 MR. BUCK: Prior to 2009, this red, "All
24 premise signs are prohibited"?

25 MR. ROTHFELDER: Correct.

1 MR. BUCK: "This prohibition shall include
2 the construction, reconstruction, upgrading or conversion
3 of an existing off-premise" --

4 MR. ROTHFELDER: Correct. "Of an" --

5 MR. BUCK: -- "sign to an off-premise sign,
6 such that no signs are permitted." Did I read that
7 correctly?

8 MR. ROTHFELDER: That's no off-premise
9 signs.

10 MR. BUCK: Doesn't that say right there that
11 the signs are prohibited?

12 MR. ROTHFELDER: You can't get new ones, but
13 the existing billboards out there, the existing
14 off-premise signs are grandfathered in and continue to
15 be --

16 MR. BUCK: It says, "contruction,
17 reconstruction, upgrading or conversion." Isn't that
18 conversion?

19 MR. ROTHFELDER: It's already an off-premise
20 sign.

21 MR. BUCK: No. I'm saying, "Signs are
22 prohibited. Prohibition shall include the construction,
23 reconstruction, upgrading or conversion of an existing
24 off-premise sign."

25 Am I interpreting this incorrectly

1 here? I don't think so.

2 MR. ROTHFELDER: It's already an existing
3 off-premise sign -- completely permitted, legal and
4 grandfathered. The thing that was changed is, in 2009,
5 the thing that we want to do to is convert the lighting
6 system from external lighting on the TriFace to internal
7 lighting through LED illumination. That's in electronic
8 or high definition, which they didn't have then; but they
9 do now.

10 MR. BUCK: I'm still having trouble with
11 this, because like this says in 2008 -- what the Sign Code
12 said in 2008, "Off-premise signs are prohibited. This
13 prohibition shall include the construction,
14 reconstruction, upgrading or conversion of an existing
15 off-premise sign." That's what it says.

16 It says you can't do it. That's the way
17 I'm interpreting this. This is my interpretation of
18 this. So if I'm interpreting this incorrectly, can
19 somebody interpret it?

20 MR. ROTHFELDER: You're reading it
21 correctly.

22 (Laughter.)

23 MR. ROTHFELDER: You're misinterpreting that
24 is the -- encompasses what we want to do.

25 MR. BUCK: Says this is prohibited. I mean,

1 that's pretty cut and dry to me. I'm just --

2 MS. LORTON: Still operating in, I guess,
3 current condition as a trivision.

4 MR. MACK: Mr. Cox, did you have anything
5 else you want to add?

6 MR. COX: A couple of things: I look at this
7 as simple just upgraded technology. And unlike Ms. Reh
8 says, the LED sign is only 6 inches. The sign for the
9 trivision is a foot and a half, and it has a lot of
10 mechanical and very heavy. Whereas the LED sign is not.

11 MS. HAMMILL-REH: Well, I will note that in
12 the application, which is our Exhibit 1, there were no
13 drawings attached to it.

14 MR. COX: Actually, we gave you engineering
15 drawings and wind levels and all those things.

16 MS. HAMMILL-REH: Attached to this
17 application?

18 MS. COX: Oh, I'm sorry, you're talking about
19 the June.

20 MS. HAMMILL-REH: The June 21st, 2011
21 application for sign permit talks about converting but
22 doesn't have any drawings or engineer's specification. So
23 we don't actually have anything that talks -- that
24 confirms -- I don't doubt you at all. I just like to read
25 it, and there's nothing here that confirms that.

1 MR. COX: Well, this sign has gone through at
2 least four hurricanes. It is probably the --

3 MS. HAMMILL-REH: But it hasn't --

4 MR. COX: -- the grandfather of all -- the
5 mother of all signs.

6 MS. HAMMILL-REH: It hasn't gone through them
7 as an LED sign with the weight out there.

8 MR. COX: And that particular weight is less
9 than the trivision weight.

10 MS. HAMMILL-REH: We've also -- I have handed
11 out to all of you for your review, the judgment of the
12 Court of Appeals that's got the little tabs on it. If you
13 like to take a moment to read it -- and also Section
14 245.002, which we're having marked as Exhibit A.

15 And that's the provision that talks
16 about you must have a permit to relate back to in order to
17 come under the Vested Right Statue.

18 (Exhibit No. 5 was marked and entered into
19 evidence.)

20 MR. MACK: Any further questions from the
21 Board? Is there a motion?

22 MS. DAVIDSON: I'd like to make a motion that
23 Garrett Operators application for the LED sign renovation
24 be denied, because it's against the law now.

25 MR. MACK: Is there a second?

1 MR. BUCK: I'll second.

2 MR. MACK: Moved and second, denied. All
3 those in favor? Those opposed? The application has been
4 denied. Thank you.

5 (Hearing concluded at 6:31 p.m.)
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1 REPORTER'S CERTIFICATE
2 MEETING OF THE GENERAL APPEALS BOARD
3 TAKEN ON 09-22-2011
4

5 I, CANTRECE A. ADDISON, the undersigned Certified
6 Shorthand Reporter, in and for the State of Texas, certify
7 that the facts stated in the forgoing pages are a true and
8 correct transcription of all testimonies given by the
9 witnesses in the above-styled and numbered General Appeals
10 Board Hearing that was reported by me.

11 I further certify that I am neither attorney or
12 counsel for, related to, nor employed by any parties to
13 the action in which this testimony is taken and, further,
14 that I am not a relative or employee of any counsel
15 employed by the parties hereto or financially interested
16 in the action.

17 SUBSCRIBED AND SWORN TO under my hand and seal of
18 office on this the 3rd day of October, 2011.

19 **Cantrece A. Addison**

Digitally signed by Cantrece A. Addison
DN: cn=Cantrece A. Addison, o, ou,
email=cantreceaddison@sbcglobal.net, c=US
Date: 2011.11.01 14:54:52 -05'00'

20 -----
21 CANTRECE A. ADDISON, TEXAS CSR #8236

22 Expiration Date: 12/31/2012

23 Advanced Court Reporting Services

24 6725 South Fry Road, #700-345

25 23 Katy, Texas 77494

Firm Registration No. 567



G. THOMAS COX
 2206 SAINT LAWRENCE ST
 GONZALES, TX 78629-4402

NORTHERN TRUST, NA
 HOUSTON, TX 77024
 35-1193/1130

8/22/2011

PAY TO THE ORDER OF City of Houston Sign Administration

Five Hundred Sixty-Two Dollars and 40 Cents*****

\$ 562.40

DOLLARS

City of Houston Sign Administr
 P.O. Box 61167
 Houston, Texas 77028-1167

LOG #93049566

713-218-6820
 #3928/345496-R Application for Sign Permit

⑈008419⑈ ⑆113011931⑆

⑈2840052490⑈

7008 2810 0000 1601 3937
 PLACE STICKER AT TOP OF ENVELOPE TO THE RIGHT OF THE RETURN ADDRESS (GLD AT SORTED UNIT)
CERTIFIED MAIL



7008 2810 0000 1601 3937
 7008 2810 0000 1601 3937

U.S. Postal Service™
CERTIFIED MAIL™ RECEIPT
 (Domestic Mail Only; No Insurance Coverage Provided)

For delivery information visit our website at www.usps.com.

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Restricted Delivery Fee (Endorsement Required)		
Total Postage & Fees	\$	

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COH SIGN ADMIN
 Street, Apt. No.
 or PO Box No. **1002 WASHINGTON AVE - FOURTH FL**
 City, State, ZIP+4
HOUSTON TX 77002

PS Form 3800, August 2006 See Reverse for Instructions

Ms. Katherine Tipton, Division Manager
Sign Administration
City of Houston
1002 Washington Avenue, Fourth Floor
Houston, Texas 77002



CITY OF HOUSTON
Public Works and Engineering Department

Annise D. Parker
Mayor

Daniel W. Krueger, P. E. Director
P.O. Box 1562
Houston, Texas 77251-1562
T. 832-394-8890
F. 832-394-8901
www.houstontx.gov

July 29, 2011

CERTIFIED MAIL 7006 0100 0004 6703 8389
RETURN RECEIPT REQUESTED

Mr. G. Thomas Cox
GARRETT OPERATORS, INC.
2205 St. Lawrence Street
Gonzales, TX 78629

RE: Original Application for Sign Permit at 2600 1/2 South Loop West, Houston, Texas 77054, dated 06/21/2011

Dear Mr. Cox:

Electronic signs are prohibited by Houston's Sign Code which states:

"Electronic and off-premise high technology signs are prohibited. This prohibition shall include the construction, reconstruction, upgrading, or conversion of an existing off-premise sign to an electronic or off-premise high technology sign, such that no electronic or off-premise high technology signs are permitted."

Houston Sign Code § 4612(b)(2). Accordingly, your application is denied and I am returning your check in the amount of \$562.50.

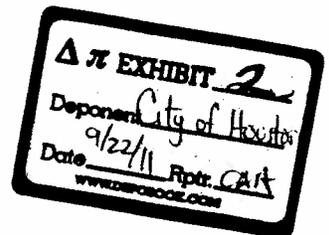
If we can be further assistance, please do not hesitate to contact me.

Respectfully,

Katherine Tipton, Division Mgr.
PWE-CE-Sign Administration
CITY OF HOUSTON
1002 Washington Ave.
Houston, Texas 77002
832-394-8890

KT:st

cc: Mark L. Loethen, P.E., CFM, PTOE
Acting Building Official
Hope Hammill-Reh, Senior Assistant City Attorney
Larry Schenk, Senior Assistant City Attorney



Council Members: Brenda Stardig Jarvis Johnson Anne Clutterbuck Wanda Adams Mike Sullivan Al Hoang Oliver Pennington Edward Gonzalez
James G. Rodriguez Stephen C. Costello Sue Lovell Melissa Noriega C.O. "Brad" Bradford Jolanda "Jo" Jones Controller: Ronald C. Green



**CITY OF HOUSTON
BUILDING CODE
CHAPTER 46**

HOUSTON SIGN CODE

NOTE: ALTHOUGH THIS SIGN CODE
CONSTITUTES CHAPTER 46 OF THE CITY OF
HOUSTON BUILDING CODE (BASED UPON THE
2003 INTERNATIONAL BUILDING CODE), IT IS
SEPARATELY PUBLISHED.

Current through Ordinance No. 2010-19
Effective January 11, 2011
Compiled by the City of Houston Legal Department

Δ π EXHIBIT <u>3</u>
Department <u>City of Houston</u>
Date <u>9/22/11</u> Rptr. <u>CAH</u>
<small>WWW.IPOBOOK.COM</small>

(i) **Signs Not to Create Easements.** No permit for a sign extending beyond private property onto a public street, public sidewalk or public alley shall constitute a permanent easement, and every such permit shall be revocable at any time by action of the City Council, and the City shall not be liable for any damages to the owner by reason of such revocation.



(j) **Change of Ornamental Features or Advertising Display.** No sign permit is required for the change of any of the ornamental features or the advertising display of a sign previously permitted. This provision shall not apply to signs under new ownership, to spectacular signs with respect to advertising display, or to converting existing signs to electronic signs, high technology signs, or changeable message signs, nor shall it release a person from complying with all other applicable permitting requirements of the City, including those of the Construction Code.

(k) **Signs Obscuring or Interfering with View.** Signs may not be located or illuminated in such a manner as to obscure or otherwise interfere with the effectiveness of an official traffic sign, signal or device, or so as to obstruct or interfere with the view of a driver of approaching, emerging or intersecting traffic, or so as to prevent any traveler on any street from obtaining a clear view of approaching vehicles for a distance of 250 feet along the street.

(l) **Proper Shielding of Lighted Signs--Interference with Drivers of Motor Vehicles.** Signs containing lights that are not effectively shielded so as to prevent beams or rays of light from being directed at any portion of the traveled way from which the sign is primarily viewed and that are of such intensity or brilliance as to cause glare or to impair the vision of the driver of any motor vehicle, or that otherwise interfere with any driver's operation of a motor vehicle, are prohibited.

(m) **Spectacular Signs.** Spectacular signs are prohibited.

(n) **Visibility Triangle.** Within the area of a visibility triangle, no part of the face of a sign shall be lower than a height of 8 feet above grade level of the nearest street.

(o) **Flag Signs.** Flag signs shall conform to the applicable requirements of Section 4609, including the height requirements of Table 4609. Flag signs shall be counted as ground signs for the purposes of Section 4611(b), notwithstanding their method of attachment, display or installation upon the building or premises where they are located. All flag signs must be permitted; however, one flag sign per frontage, with a maximum of two per business, shall be exempted from the total allowable on-premise sign limitations of Section 4611(b), and such signs shall be exempted from the requirement of operating permits only. Provided, however, all flag signs shall comply with the height requirements set forth in Table 4609 and the structural requirements set forth in Section 4609.

SECTION 4612--OFF-PREMISE SIGNS

(a) Off-premise Sign Provisions. The provisions of this section shall apply only to "off-premise signs," as that term is defined in Section 4603(a), within the sign code application area.

(b) Prohibition of New Off-premise Signs.

(1) From and after the effective date, no new construction permits shall be issued for off-premise signs within the sign code application area. This prohibition shall apply to all classifications of signs, types of signs, and special function signs, and all other signs used as off-premise signs, including portable signs, with the exception that off-premise signs that advertise the sale or rental of real property or direct persons to the location of real property for sale or rental, which signs shall be limited to 40 square feet in area, shall continue to be permitted for a single three-year term.



(2) Electronic and off-premise high technology signs are prohibited. This prohibition shall include the construction, reconstruction, upgrading, or conversion of an existing off-premise sign to an electronic or off-premise high technology sign, such that no electronic or off-premise high technology signs are permitted.

(c) General Location.

- (1)** All off-premise signs shall be located within 800 feet of a commercial or industrial activity.
- (2)** No off-premise sign shall be located in a predominantly residential area.
- (3)** No off-premise sign shall be erected, constructed or established such that the face of the structure may be viewed from a scenic or historical right-of-way or district.
- (4)** All off-premise signs other than those located on the Interstate and Freeway Primary System shall be subject to the following spacing requirements from other off-premise signs on the same side of the public right-of-way (see Table 4612):
 - a.** No off-premise sign having a face area in excess of 300 square feet shall be located within 400 feet of another off-premise sign.



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JUDGMENT

Court of Appeals

First District of Texas

NO. 01-09-00946-CV

GARRETT OPERATORS, INC. AND GEORGE THOMAS COX, Appellants

v.

THE CITY OF HOUSTON, Appellee

Appeal from the County Civil Court at Law No. 4 of Harris County County. (Tr. Ct. No. 930539).

This case is an appeal from the final judgment signed by the trial court on September 22, 2009. After submitting the case on the appellate record and the arguments properly raised by the parties, the Court holds that the trial court's judgment contains no reversible error. Accordingly, the Court **affirms** the trial court's judgment.

The Court **orders** that the appellants, Garrett Operators, Inc. and George Thomas Cox, jointly and severally, pay all appellate costs.

The Court **orders** that this decision be certified below for observance.

Judgment rendered May 12, 2011.

Panel consists of Justices Jennings, Higley, and Brown. Opinion delivered by Justice Higley.



Opinion issued May 12, 2011



In The
Court of Appeals
For The
First District of Texas

NO. 01-09-00946-CV

GARRETT OPERATORS, INC. AND GEORGE THOMAS COX, Appellants
V.
THE CITY OF HOUSTON, Appellee

On Appeal from the County Civil Court at Law No. 4
Harris County, Texas
Trial Court Case No. 930539

OPINION

Appellants Garrett Operators, Inc. and George Thomas Cox appeal the trial court's grant of appellee City of Houston's plea to the jurisdiction on all of appellants' claims and of the City of Houston's objections to appellants' discovery requests and deposition notice. In five issues, appellants argue the trial court erred

by (1) dismissing Garrett Operators' inverse condemnation claim; (2) dismissing Garrett Operators' declaratory judgment action; (3) dismissing Garrett Operators' and Cox's section 1983 claims; (4) dismissing Garrett Operators' and Cox's due course of law claims; (5) quashing Garrett Operators' deposition of the City; and (6) sustaining the City of Houston's objections to 39 of Garrett Operators' requests for production.

We affirm.

Background

Garrett Operators holds a lease on a small parcel of land located in Houston, Texas. The only significant structure on this parcel of land is an advertising billboard. George Thomas Cox is the sole owner of Garrett Operators.

Cox met with Susan Luycx, division manager of the Houston Sign Administration, in January 2008 to discuss Cox's plans to install an LED display on his billboard. According to Cox's affidavit, Luycx informed Cox that it was "illegal in the City of Houston for sign owners to use an LED display on a sign." Cox told Luycx that the Sign Code did not mention LED lighting, to which Luycx responded that "we are likely to change the sign code."

Subsequently, Garrett Operators' counsel sent a letter to Luycx describing the proposed installation and asserting that the Sign Code does not require a permit for the installation. Luycx responded, stating that "although your client has yet to



formalize his intentions with this office, and based solely on the information currently available to us, your client's proposal contravenes and would be in direct violation of the City's Sign Code."

On July 12, 2008, Garrett Operators attempted to install the LED display on his billboard. Before work began, however, Luycx appeared and issued a stop order on the work. The basis given for the stop order was "No permits on file. No permits on site. Permits are required to change structure of sign. (L.E.D. boards were being added.)"

On December 5, 2008, Garrett Operators and Cox filed suit against the City of Houston in a Harris County civil court at law. They asserted claims for inverse condemnation, declaratory judgment, violation of section 1983 of title 42 of the United States Code, and violation of their state constitutional due course of law rights. On December 10, 2008, the City of Houston enacted an ordinance that amended the Houston Sign Code to explicitly prohibit "off-premise electronic signs," a category into which Garrett Operators' sign falls. Plaintiffs subsequently amended their petition, including in their declaratory judgment action a claim that the 2008 amendments to the Sign Code did not apply to them.

The City of Houston filed a plea to the jurisdiction arguing, among other things, the inverse condemnation claim was not ripe and that the other claims were outside the legislatively prescribed subject-matter jurisdiction of the court. The

trial court granted the plea to the jurisdiction on each of Plaintiffs' claims, dismissing the suit. Prior to that, however, the trial court quashed a deposition notice and sustained the City of Houston's objections to certain discovery requests.

Plea to the Jurisdiction

In their first four issues, Garrett Operators and Cox argue that the trial court erred by granting the City of Houston's plea to the jurisdiction on all of their claims.

A. Standard of Review and Applicable Law

A plea to the jurisdiction challenges the trial court's subject-matter jurisdiction. *Tex. Dep't of Parks & Wildlife v. Miranda*, 133 S.W.3d 217, 225–26 (Tex. 2004). Because subject-matter jurisdiction is a question of law, we review de novo a trial court's ruling on a plea to the jurisdiction. *State v. Holland*, 221 S.W.3d 639, 642 (Tex. 2007).

The plaintiff bears the initial burden of alleging facts that affirmatively demonstrate that the trial court has subject-matter jurisdiction over a case. *Tex. Ass'n of Bus. v. Tex. Air Control Bd.*, 852 S.W.2d 440, 446 (Tex. 1993). When a plea to the jurisdiction challenges the sufficiency of plaintiff's pleadings to confer jurisdiction, we determine whether the pleader has alleged facts that affirmatively demonstrate the court's jurisdiction to hear the cause. *See Miranda*, 133 S.W.3d at 226. We construe the pleadings liberally in favor of the plaintiff and look to the

pleader's intent. *Id.* If the pleadings affirmatively negate the existence of jurisdiction, then a plea to the jurisdiction may be granted without allowing the plaintiff an opportunity to amend its petition. *Id.* at 227. Otherwise, if the pleadings do not affirmatively demonstrate the trial court's jurisdiction, the plaintiff should be afforded the opportunity to amend its petition. *Id.* at 226–27.

B. Analysis

Garrett Operators brought four causes of action against the City of Houston: (1) an inverse condemnation claim; (2) a declaratory judgment action; (3) a federal section 1983 claim; and (4) a state due course of law claim. Cox joined the federal section 1983 and state due course of law claims but not the inverse condemnation claim or the declaratory-judgment actions.

1. Inverse Condemnation Claim

Garrett Operators brought an inverse condemnation claim based on a regulatory taking under the Texas Constitution. *See* TEX. CONST. art I, § 17. County civil courts at law in Harris County have exclusive jurisdiction over eminent domain proceedings, including claims for inverse condemnation. TEX. GOV'T CODE ANN. § 25.1032(c) (Vernon 2004).

The City of Houston argued in its plea to the jurisdiction that Garrett Operators failed to allege any element of a regulatory takings claim. The City of

Houston also argued that the trial court lacks subject-matter jurisdiction because Garrett Operators' inverse condemnation claim is not ripe.

We first address the City of Houston's ripeness claim. The City of Houston argues that Garrett Operators' inverse condemnation claim is not ripe due to Garrett Operators' alleged failure to obtain a final decision. Ripeness is a threshold issue that implicates subject-matter jurisdiction. *Patterson v. Planned Parenthood of Houston & SE Tex., Inc.*, 971 S.W.2d 439, 442 (Tex. 1998). While the jurisdictional issue of standing focuses on who may bring an action, ripeness focuses on when that action may be brought. *Waco Indep. Sch. Dist. v. Gibson*, 22 S.W.3d 849, 851 (Tex. 2000).

The City of Houston relies on the Texas Supreme Court's opinion in *Mayhew* in support of its ripeness claim. See *Mayhew v. Town of Sunnyvale*, 964 S.W.2d 922 (Tex. 1998). In *Mayhew*, the Texas Supreme Court held, "in order for a regulatory takings claim to be ripe, there must be a final decision regarding the application of the regulations to the property at issue." *Id.* at 929. In that case, the takings claim concerned zoning restrictions. *Id.* at 926. The court held, for zoning takings claims, "futile variance requests or re-applications are not required." *Id.* at 929. The City of Houston argues that, because Garrett Operators did not appeal "the issuance of the Stop Order to the City's General Appeals Board and then to City Council," it has failed to exhaust its administrative remedies.

The requirement of a final decision and the question of exhaustion of administrative remedies, however, are distinct and separate inquiries. *Maguire Oil Co. v. City of Houston*, 243 S.W.3d 714, 718–19 (Tex. App.—Houston [14th Dist.] 2007, pet. denied). The requirement of a final decision, in context of an inverse condemnation case, concerns whether the governmental entity charged with implementing the regulation that allegedly caused the taking has fixed some legal relationship between the parties. *Texas-New Mexico Power Co. v. Tex. Indust. Energy Consumers*, 806 S.W.2d 230, 232 (Tex. 1991). In contrast, exhaustion of administrative remedies concerns whether an agency has exclusive jurisdiction in making an initial determination on the matter in question and whether the plaintiff has exhausted all required administrative remedies before filing a claim in the trial court. *See In re Entergy Corp.*, 142 S.W.3d 316, 321–22 (Tex. 2004).

We determine first, then, whether there is a final decision by the City of Houston. While there is no single rule that controls all questions of finality, at the very least, a decision by an agency is final if it is (1) definitive; (2) promulgated in a formal manner; and (3) one with which the agency expects compliance. *Texas-New Mexico Power Co.*, 806 S.W.2d at 232. Otherwise, “[a]dministrative orders are generally final and appealable if ‘they impose an obligation, deny a right or fix some legal relationship as a consummation of the administrative process.’” *Id.*

(quoting *Sierra Club v. United States Nuclear Regulatory Comm'n*, 862 F.2d 222, 224 (9th Cir. 1988)).

To determine whether there has been a final decision, we must compare the complaints presented by Garrett Operators to actions taken by the City of Houston to determine whether the City of Houston has made a final decision concerning Garrett Operators' complaints. The arguments underlying both Garrett Operators' inverse condemnation claim and declaratory judgment action are (1) the Sign Code permitted installation of the LED display on its billboard; (2) a permit was not required for the installation; and (3) if it is not allowed to install the LED display, the restriction constitutes a regulatory taking for which it has not been paid.

Cox met with Luycx, division manager of the Houston Sign Administration, in January 2008 to discuss Cox's plans to install the LED display. According to Cox's affidavit, Luycx informed Cox that it was "illegal in the City of Houston for sign owners to use an LED display on a sign." Cox told Luycx that the Sign Code did not mention LED lighting, to which Luycx responded that "we are likely to change the sign code."

Subsequently, Garrett Operators' counsel sent a letter to Luycx describing the proposed installation and asserting that the Sign Code does not require a permit for the installation. Luycx responded, stating that "although your client has yet to formalize his intentions with this office, and based solely on the information

currently available to us, your client's proposal contravenes and would be in direct violation of the City's Sign Code."

On July 12, 2008, Garrett Operators attempted to install the LED display on his sign. Before work began, however, Luycx appeared and issued a stop order on the work. The basis given for the stop order was "No permits on file. No permits on site. Permits are required to change structure of sign. (L.E.D. boards were being added.)"

We do not consider Cox's meeting with Luycx to be a "final decision." Nothing was promulgated in a formal manner and there is no indication that the agency expected compliance after the conversation. *See Texas-New Mexico Power Co.*, 806 S.W.2d at 232. Similarly, there is no indication that the conversation fixed a legal relationship between the parties. *See id.*

The subsequent letter from Luycx explicitly stated that Garrett Operators had not "formalize[d] his intentions with" the Sign Administration and that it was basing its decision only on the facts as they had been presented in an earlier letter. We interpret this language as specifically excluding a final decision by the Sign Administration. It was, instead, responding to an informal inquiry based on a hypothetical set of facts.

On, July 12, 2008, however, Luycx appeared and issued a stop order preventing Garrett Operators from installing the LED display. The reason given



was that Garrett Operators had not obtained a permit. This is a final decision for the question of whether Garrett Operators was required to obtain a permit to install the LED display. The stop order is (1) definitive; (2) promulgated in a formal manner; and (3) one with which the Sign Administration expects compliance. *See id.* It is not a final decision, however, for the question of whether an LED display could be installed at all—that is, whether the LED display could be installed upon proper application for a permit. Accordingly, nothing in the record reflects that there has been a final decision regarding whether an LED display could be installed at all.

We do not need to address whether Garrett Operators was required to exhaust his administrative remedies before bringing suit on the stop order because, even without such a requirement, Garrett Operators cannot maintain a takings claim based on the argument that he has suffered a regulatory taking simply because he is not allowed to take a certain action without a permit. *See Tahoe-Sierra Pres. Council, Inc. v. Tahoe Reg'l Planning Agency*, 535 U.S. 302, 337, 122 S. Ct. 1465, 1486 (2002) (excluding “normal delays associated with processing permits” from takings claims). When a plaintiff does not allege a valid inverse condemnation claim, governmental immunity applies, and the trial court should grant a plea to the jurisdiction. *TCI West End, Inc. v. City of Dallas*, 274 S.W.3d 913, 916 (Tex. App.—Dallas 2008, no pet.). We hold, viewing the facts asserted

by Garrett Operators in its petition in the light most favorable to it, Garrett Operators cannot maintain a takings claim against the City of Houston based on the claim that the City of Houston prohibited installation of an LED display without a permit.¹

We overrule appellants' first issue.

2. Plaintiffs' other causes of action

Garrett Operators seeks a declaratory judgment that nothing in the Sign Code, as it existed at the time that Garrett Operators sought to install the LED display and at the time that Garrett Operators brought suit, "allowed the City to interfere with Garrett's upgrading its existing, lawfully-permitted, off-premise Sign with LED lighting." In conjunction, Garrett Operators also seeks a declaration from the trial court that the amendments to the Sign Code that were approved after suit was filed do not retroactively apply to Garrett or in any other way affect his claimed then-existing right to install the LED display.

Appellants' primary argument for why the county court has jurisdiction over their remaining causes of action is their claim that Harris County civil courts at law have jurisdiction over claims that are inherently intertwined in an eminent domain

¹ To be clear, we make no determination in this holding on Garrett Operators' claim in its declaratory judgment action that it was not required to obtain a permit. Garrett Operators' inverse condemnation was pleaded in the alternative to the declaratory judgment action and, accordingly, presumes that he was required to obtain a permit. We hold only that this alternative takings claim cannot be maintained.

proceeding, citing *Taub v. Aquila SW Pipeline Corp.*, 93 S.W.3d 451, 458 (Tex. App.—Houston [14th Dist.] 2002, no pet.). Because we have affirmed the dismissal of Garrett Operators' takings claim, this argument is no longer available to Appellants.

In *West*, the owner of a beauty shop brought a declaratory judgment action in a county court at law asserting that a certain statutory act requiring special compensation applied to the City of Beaumont's intended condemnation of a portion of her property. *City of Beaumont v. West*, 484 S.W.2d 789, 790–91 (Tex. App.—Beaumont 1972, writ ref'd n.r.e.). As a part of her suit, the trial court granted her injunction prohibiting the City of Beaumont from bringing a condemnation proceeding until after her declaratory judgment action had been resolved. *Id.* at 790. The Beaumont Court of Appeals noted that the county court at law would have had jurisdiction over the condemnation proceeding. *Id.* at 792. The court held, however, that this "potential jurisdiction" was not sufficient to confer jurisdiction on the county court at law for the declaratory judgment action. *Id.* at 792–93.

We agree with the analysis in *West*. Accordingly, we hold that, because the trial court properly dismissed Garrett Operators' inverse condemnation claim for lack of subject-matter jurisdiction, the county court at law's jurisdiction could not

be invoked over the remaining claims by being “inherently intertwined” with the inverse condemnation claim.

The Declaratory Judgment Act does not itself confer jurisdiction. *Tex. Natural Res. Conservation Comm’n v. IT-Davy*, 74 S.W.3d 849, 855 (Tex. 2002). Garrett Operators argues that the Texas legislature has expressly allowed disputes over statutory construction of city regulations to be resolved in a declaratory judgment action. See TEX. LOC. GOV’T CODE ANN. §§ 245.002(a), .006(a) (Vernon 2005). Assuming without deciding that this is a correct interpretation of the relevant statutes, this still does not confer jurisdiction on the county court at law. County courts at law are courts of limited jurisdiction. *United Servs. Auto. Ass’n v. Brite*, 215 S.W.3d 400, 401 (Tex. 2007). Declaratory judgment actions are not generally within the jurisdiction of Harris County civil courts at law, absent some proof that the subject matter of the declaratory judgment action is one within the court’s jurisdictional limits. See *Medina v. Benkiser*, 262 S.W.3d 25, 28 (Tex. App.—Houston [1st Dist.] 2008, no pet.) (affirming dismissal when petition did not demonstrate declaratory judgment action was within county court’s jurisdiction); *West*, 484 S.W.2d at 793 (same). That proof is lacking here.

Appellants brought a section 1983 claim against the City of Houston, asserting that they had been damaged in the amount of \$5,000,000. This claim alone is well outside the county court’s jurisdictional limits based on the amount in

controversy. *See* TEX. GOV'T CODE ANN. § 25.0003(c)(1) (Vernon Supp. 2011) (providing jurisdictional limits for statutory county courts at law based on amount in controversy).

Finally, Appellants brought a due course of law claim, asserting \$69,000,000 in damages. The trial court ruled that monetary damages are not available for this claim, and Appellants concede this point on appeal. Appellants argue, however, that they did plead a request for injunctive relief and claim that this is a permissible remedy under their claim. Assuming without deciding that Appellants' request for injunctive relief included relief for their due course of law claim, this still does not confer jurisdiction on the county court. The statute conferring jurisdiction on statutory county courts at law based on amount in controversy has both a minimum and maximum limit. *Id.* This cause of action suffers from the same problem as Garrett Operators' declaratory judgment action: the claim is outside the county court's jurisdictional limits based on amount in controversy—because there is no amount in controversy—and no other statutory provision confers jurisdiction for due course of law claims on Harris County civil courts at law. *See Medina*, 262 S.W.3d at 28; *West*, 484 S.W.2d at 793.

We overrule Appellants' second, third, and fourth issues.²

² Plaintiffs correctly acknowledge that their last issue on appeal, concerning the trial court's rulings on certain discovery related matters, can only be reached if the trial

Conclusion

We affirm the judgment of the trial court.

Laura C. Higley
Justice

Panel consists of Justices Jennings, Higley, and Brown.

court had jurisdiction over any of their claims. Because we have held that the trial court lacked jurisdiction over any of Plaintiffs' claims, we overrule their last issue.

Westlaw.

V. T.C.A., Local Government Code § 245.002

▷

Effective: April 27, 2005

Vernon's Texas Statutes and Codes Annotated Currentness
 Local Government Code (Refs & Annos)
 Title 7. Regulation of Land Use, Structures, Businesses, and Related Activities
 ◀ Subtitle C. Regulatory Authority Applying to More Than One Type of Local Government
 ◀ Chapter 245. Issuance of Local Permits (Refs & Annos)
 → § 245.002. Uniformity of Requirements

(a) Each regulatory agency shall consider the approval, disapproval, or conditional approval of an application for a permit solely on the basis of any orders, regulations, ordinances, rules, expiration dates, or other properly adopted requirements in effect at the time:



(1) the original application for the permit is filed for review for any purpose, including review for administrative completeness; or

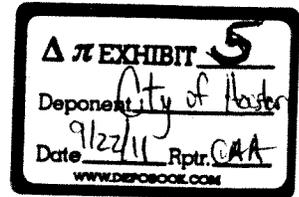
(2) a plan for development of real property or plat application is filed with a regulatory agency.

(a-1) Rights to which a permit applicant is entitled under this chapter accrue on the filing of an original application or plan for development or plat application that gives the regulatory agency fair notice of the project and the nature of the permit sought. An application or plan is considered filed on the date the applicant delivers the application or plan to the regulatory agency or deposits the application or plan with the United States Postal Service by certified mail addressed to the regulatory agency. A certified mail receipt obtained by the applicant at the time of deposit is prima facie evidence of the date the application or plan was deposited with the United States Postal Service.

(b) If a series of permits is required for a project, the orders, regulations, ordinances, rules, expiration dates, or other properly adopted requirements in effect at the time the original application for the first permit in that series is filed shall be the sole basis for consideration of all subsequent permits required for the completion of the project. All permits required for the project are considered to be a single series of permits. Preliminary plans and related subdivision plats, site plans, and all other development permits for land covered by the preliminary plans or subdivision plats are considered collectively to be one series of permits for a project.

(c) After an application for a project is filed, a regulatory agency may not shorten the duration of any permit required for the project.

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(d) Notwithstanding any provision of this chapter to the contrary, a permit holder may take advantage of recorded subdivision plat notes, recorded restrictive covenants required by a regulatory agency, or a change to the laws, rules, regulations, or ordinances of a regulatory agency that enhance or protect the project, including changes that lengthen the effective life of the permit after the date the application for the permit was made, without forfeiting any rights under this chapter.

(e) A regulatory agency may provide that a permit application expires on or after the 45th day after the date the application is filed if:

(1) the applicant fails to provide documents or other information necessary to comply with the agency's technical requirements relating to the form and content of the permit application;

(2) the agency provides to the applicant not later than the 10th business day after the date the application is filed written notice of the failure that specifies the necessary documents or other information and the date the application will expire if the documents or other information is not provided; and

(3) the applicant fails to provide the specified documents or other information within the time provided in the notice.

(f) This chapter does not prohibit a regulatory agency from requiring compliance with technical requirements relating to the form and content of an application in effect at the time the application was filed even though the application is filed after the date an applicant accrues rights under Subsection (a-1).

(g) Notwithstanding Section 245.003, the change in law made to Subsection (a) and the addition of Subsections (a-1), (e), and (f) by S.B. No. 848, Acts of the 79th Legislature, Regular Session, 2005, apply only to a project commenced on or after the effective date of that Act.

CREDIT(S)

Added by Acts 1999, 76th Leg., ch. 73, § 2, eff. May 11, 1999. Amended by Acts 2005, 79th Leg., ch. 6, § 2, eff. April 27, 2005.

HISTORICAL AND STATUTORY NOTES

2005 Main Volume

Acts 2005, 79th Leg., ch. 6, in subsec. (a), designated subd. (1), and as designated, inserted "for review for any purpose, including review for administrative completeness; or", added subd. (2), and made other nonsubstantive changes; added subsecs. (a-1), (e), (f), and (g).

GARRETT OPERATORS' PRESENTATION TO
GENERAL APPEALS BOARD
September 22, 2011

- I. Factual Background
 - A. Sign originally built in 1979 for off-premise advertising and digital automatic changing illumination (Exhibit 1)
 - B. Sign acquired by Cox in 1984 as resolution of dispute with Allison Walker Interests, real estate developer
 - C. Cox used as animated neon off-premise display (Exhibit 2)
 - D. Dispute with City of Houston arose regarding on-premise vs. off-premise use of sign, resulting in General Appeals Board decision in June 1993 that sign properly permitted for off-premise advertising (Exhibit 3)
 - E. In October 1997, permission granted by Houston to operate the sign as an automatic changing "tri-vision" display (Exhibit 4)
 - 1. Operated as a tri-vision from 1997 through 2007 (Exhibit 5)
 - F. In January 2008, Garrett (by this time Cox had transferred sign) inquired about using the sign once again as a digital or LED display (Exhibit 6)
 - 1. In February 2008, City denied the request (Exhibit 7)
 - G. Houston Sign Code amended in 2009 to prohibit LED illumination for off-premise signs
 - H. Litigation between Cox and Houston ensued, resulting in dismissal on grounds that Cox had not secured a "final decision" or "exhausted his administrative remedies" by appealing the determination of whether a permit was required to convert the sign to LED illumination
 - I. Garrett submitted application for LED illumination under protest in June 2011, arguing it was authorized under the 2008 Code (Exhibit 8)
 - J. LED request was denied by letter dated July 29, 2011, on grounds that under the 2009 amendment to Section 4612(b)(2), "electronic and off-premise high technology signs are prohibited" (Exhibit 9)
 - 1. Letter was contained in a certified mail envelope actually postmarked August 2, 2011 (Exhibit 10)
 - 2. But it was not actually received by Cox until August 16, 2011 (Exhibit 11)
 - K. City's denial of LED permission immediately appealed on August 17, 2011 (Exhibit 12)
- II. Timeliness of Appeal
 - A. Section 4604(1) (Exhibit 13) requires appeals to the General Appeals Board of adverse Sign Administrator decisions within 10 business days
 - B. Decision was received on August 16th (Exhibit 11), and it was appealed the next day, on August 17th (Exhibit 12)
 - 1. Even though letter conveying decision is dated July 29th (Exhibit 9), it was in an envelope that was postmarked and not mailed until August 2nd (Exhibit 10)

- C. Especially given the discrepancies in the mailing date, coupled with delays in retrieving certified mail, Section 4604(1) means the appeal must be filed within 10 days after receipt of the decision
 - 1. Otherwise, appeals could effectively be precluded by dating the letter, postponing its mailing, and extending the time for retrieval of certified mail
 - 2. Therefore, this appeal is timely

- III. Permit for LED illumination not required, or if required, should be granted to Cox/Garrett
 - A. The provisions of the Houston Sign Code in effect in January 2008, when Cox inquired about using the sign once again as a digital or LED display (Exhibit 6), govern in this case
 - 1. Section 245.002 of the Texas Local Government Code (Exhibit 14) requires permit applications to be granted or denied, or in this case not be necessary, based upon the ordinance in force when the request for the LED display is initially submitted: “(a) each regulatory agency shall consider the approval, disapproval, or conditional approval of an application for a permit solely on the basis of any...ordinances...or other properly adopted requirements in effect at the time (1) the original application for the permit is filed for review for any purpose...”
 - B. The Houston Sign Code in January 2008 did not require a permit to convert the sign to an LED display
 - 1. The sign was already legally operated as an automatic changing tri-face display (Exhibit 4 and 5)
 - 2. Not a “spectacular sign” under Section 4603, because the message did not change more often than once every five minutes (Exhibit 15)
 - 3. Not prohibited or even regulated as a changeable message, electronic, or high technology sign under Section 4602 (Exhibit 16), Section 4611 (Exhibit 17), or Section 4602(b)(2) (Exhibit 18), because those provisions were added to the Sign Code and did not become effective until over a year later in 2009
 - C. Converting the automatic changing message from tri-face technology to LED illumination is a mere “change of ornamental features, electrical wiring or advertising display” under Section 4608 (Exhibit 19)
 - 1. In 2008, “no sign permit [was] required for the change of any of the ornamental features, electrical wiring or devices, or the advertising display of a sign previously permitted” under Section 4608
 - 2. Since sign was previously permitted as a tri-vision display (Exhibits 4 and 5), changing the ornamental features, electrical wiring or devices, or the advertising display of the sign for LED illumination did not require a permit
 - D. The 2009 changes to the Houston Sign Code confirm the City Council subsequently, after Cox initially inquired with the Sign Administration in January 2008, prohibited LED illuminated off-premise signs
 - 1. Section 4612(b)(2) (Exhibit 18) was amended to prohibit “electronic or off-premise high technology signs”

2. Section 4608 was amended to eliminate the previous exemption for obtaining a permit to change the “electrical wiring or devices,” and to specifically exclude “converting existing signs to electronic signs, high technology signs, or changeable message signs.” (Exhibit 19)
 3. City Council would not have been required to make these changes if Houston Sign Code already contained in January 2008 a prohibition on automatic changing tri-vision to LED illuminated off-premise signs
- E. Since the Houston Sign Code did not contain such a prohibition on LED illuminated off-premise signs in January 2008, and Section 245.002 of the Local Government Code (Exhibit 14) requires application of that version of the Code, Garrett is permitted to convert the sign to LED illumination
1. The July 29, 2011 decision of the Sign Administration denying Garrett’s request was incorrectly based upon the 2009 amendment to Section 4612(b)(2) (Exhibit 9)
- IV. Conclusion - The General Appeals Board should overturn the January 29, 2011 (Exhibit 9) decision of the Sign Administration, and rule that Garrett either does not need a permit to convert the sign to an LED illumination, or if one is required, that the permit should be issued

Allison Walker Interests

EXHIBIT
1

tabbles

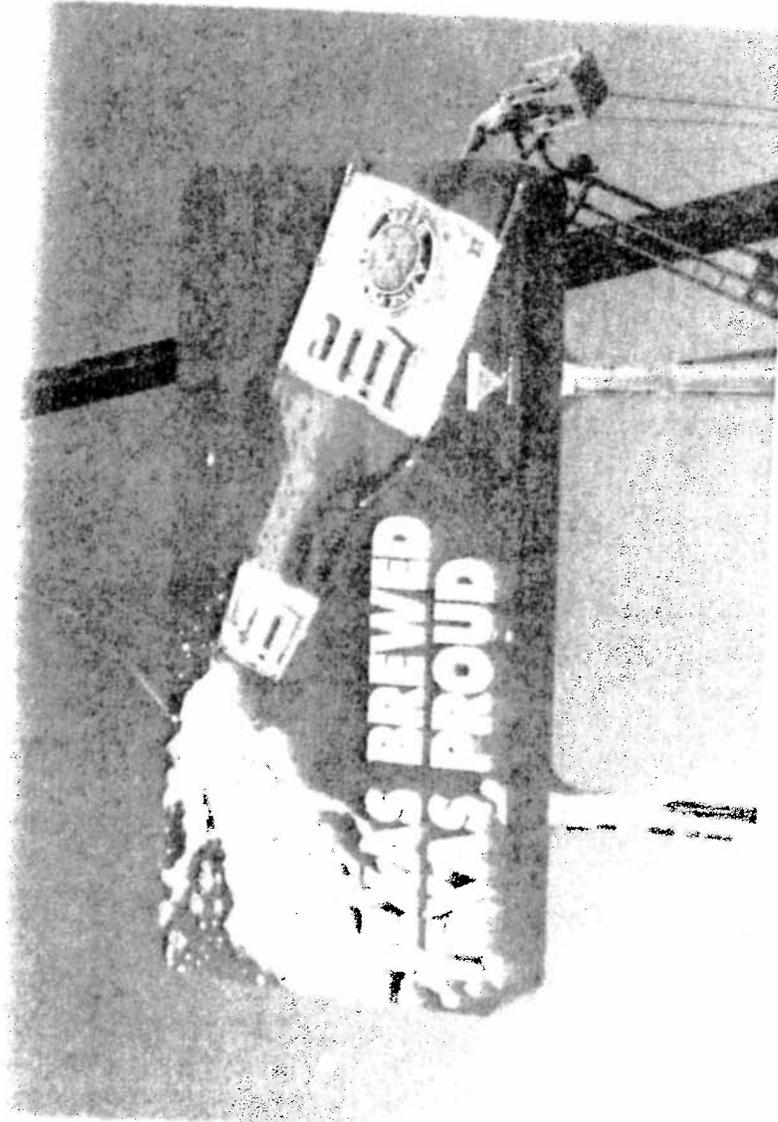


EXHIBIT
2

tabbles



CITY OF HOUSTON

Bob Lanier, Mayor

Post Office Box 1562 Houston, Texas 77251-15

CITY COUNCIL MEMBERS: Helen Huey Ernest McGowan, Sr Vince Ryan Alfred J. Calloway Frank O. Mancuso John G. Goodner Christi Hark
Dale M. Galczynski Ben T. Reyes Grace Guzman Soenz Eleanor Tinsley Jim Greenwood Sheila Jackson Lee Judson W. Robinson, III CITY CONTROLLER: George Grear

June 21, 1993

Mr. Tommy Cox
MBB Operators
One Greenway Plaza, Suite 500
Houston, Texas 77046

COPY

Dear Mr. Cox:

Enclosed are the operating permits for the sign located at 2600 South Loop West. Please note that the permit reflects reformation of the permits for 1980-1985 to reclassify the sign as an off-premise sign. The permits, one for each face of the sign, will expire in June, 1995.

As you may be aware, permits are not required to change the message on the face of a sign unless there is electrical work involved, then electrical permits are required. However, this particular sign is not constructed in the same manner as most billboards. Therefore, I would like to request that you notify me if a change is needed and based on the extent of the work a determination of the need for a minimum construction permit (\$45.00) will be made. This would also be helpful to me in fielding inquiries concerning the status of the sign.

One final note, since this is the only sign that you own and it is located on a Federally funded highway, the provisions of HB 1330 do not impact your sign.

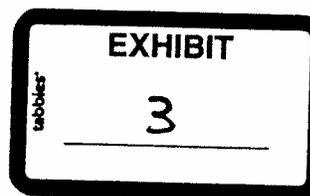
If you in need of additional information, please feel free to contact me.

Very truly yours,

Ollie Schiller
Acting Manager, Sign Administration
Department of Public Works and Engineering

Enclosures

CC: Richard Rothfelder
Gilbert Douglas
J. Hal Caton





CITY OF HOUSTON

Post Office Box 1562 Houston, Texas 77251-1562

Bob Lanier, Mayor

CITY COUNCIL MEMBERS: Helen Huey Michael J. Yarbrough Martha J. Wong Jew Don Boney, Jr. Rob Todd Ray F. Driscoll John Kelley Felix Fragc
John E. Castillo Gracie Guzman Saenz Joe Roach Orlando Sanchez Chris Bell Judson W. Robinson III CITY CONTROLLER: Lloyd E. Kelley

Chief of Staff
Office of the Mayor

JIMMIE SCHINDEWOLF, P.E.

Director of Public
Works & Engineering

October 1, 1997

Mr. Thomas Cox
President
Garrett Operators, Inc.
3700 Buffalo Speedway, Suite 800
Houston, Texas 77098

Re: Appeal of the Sign Administrator's decision to deny a construction permit for the installation of a Tri-Vision face on the off-premise sign located at 2600 South Loop West

Dear Mr. Cox:

A review of the above referenced appeal has been completed. After careful consideration of the information provided in your appeal, the memorandum from the Director, Office of Real Estate Services of the Federal Highway Administration (FHWA) dated July 17, 1995 and consultation with the City Legal Department; I am reversing the decision and will issue the construction permit under the conditions discussed below.

The sign is located at 2600 South Loop West, a federal aid primary. It is considered conforming and in compliance with applicable state and local regulations; with the exception of Section 4619 of the Houston Sign Code which the City has refrained from enforcing pending resolution of the on-going litigation. Therefore, it would meet the criteria specified in the above referenced memorandum from FHWA.

The following sets forth the conditions under which the construction permit would be issued:

- Formal withdrawal of the appeal.
- A condition would be placed on the permit that would result in revocation if the City prevailed in the litigation or the condition would be lifted if the plaintiffs prevailed.
- A statement of understanding that the message cannot change more frequently than every five minutes would be required on the drawings submitted for approval and will placed on the face of the permit.
- Resubmit the permit application and construction drawings.

EXHIBIT

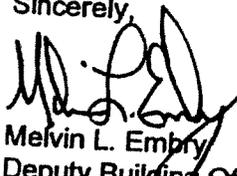
4

Mr. Thomas Cox
Garrett Operators
October 1, 1997
Page 2 of 2

Provided the conditions discussed above are acceptable, the permit would be issued. No further action will be taken until a response is received indicating if you will accept the terms previously stated. If you choose not to accept this proposal, the appeal will be scheduled.

If you need additional information, please call Ollie Schiller, Deputy Assistant Director, Sign Administration at 713-525-2398.

Sincerely,



Melvin L. Embry
Deputy Building Official
Department of Public Works and Engineering

cc: Gilbert Douglas
Jimmie Schindewolf



MLE:OS:o

**GARRETT OPERATORS, INC.
3700 Buffalo Speedway, Suite 800
Houston, Texas 77098**

Thursday, October 16, 1997

Mr. Melvin L. Embry
Deputy Building Official
Dept. of Public Works and Engineering
City Of Houston
Post Office Box 1562
Houston, Texas 77251

Re: Sign Administration permit for sign at 2600 South Loop West

Dear Mr. Embry:

I am in receipt of your letter of October 1, 1997, whereas you have reversed your earlier decision and will issue the construction permit for the above-mentioned signage.

The sign is located at 2600 South Loop West, a federal aid primary. It is conforming and in compliance with applicable Federal, State, and local regulations with the exception of the C.O.H. Section 4619 of the Sign Code which the City is refrained from enforcing pending on-going litigation. It does meet the criteria specified from the U.S. Department of Transportation Federal Highway Administration dated July 17, 1996.

We also understand that you have set forth further conditions that would need to be followed before the permit is issued:

- This is our formal withdrawal of the appeal based on your letter.
- Revocation if the City prevails on litigation and it impacts our particular site and regulations as set out in the Sign Code.
- Message change frequency as part of the permit
- Resubmit the permit application and construction drawings

Page two...City of Houston Sign Administration

We plan on resubmitting our permit application on this matter and will coordinate our efforts through Ollie Schiller, Deputy Asst. Director of the Sign Administration.

Regards,



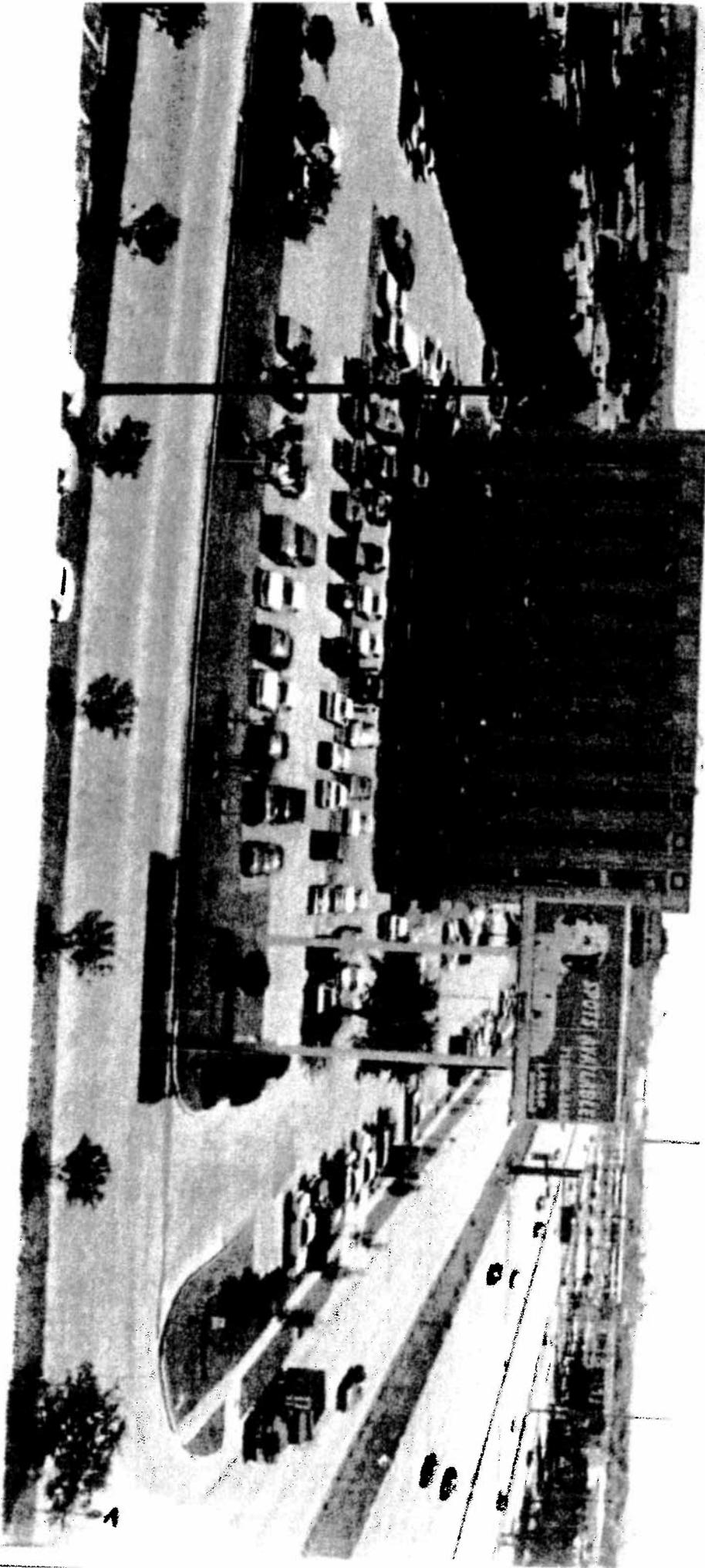
Tommy Cox
President
Garrett Operators, Inc.
713-623-6669 Direct Voice

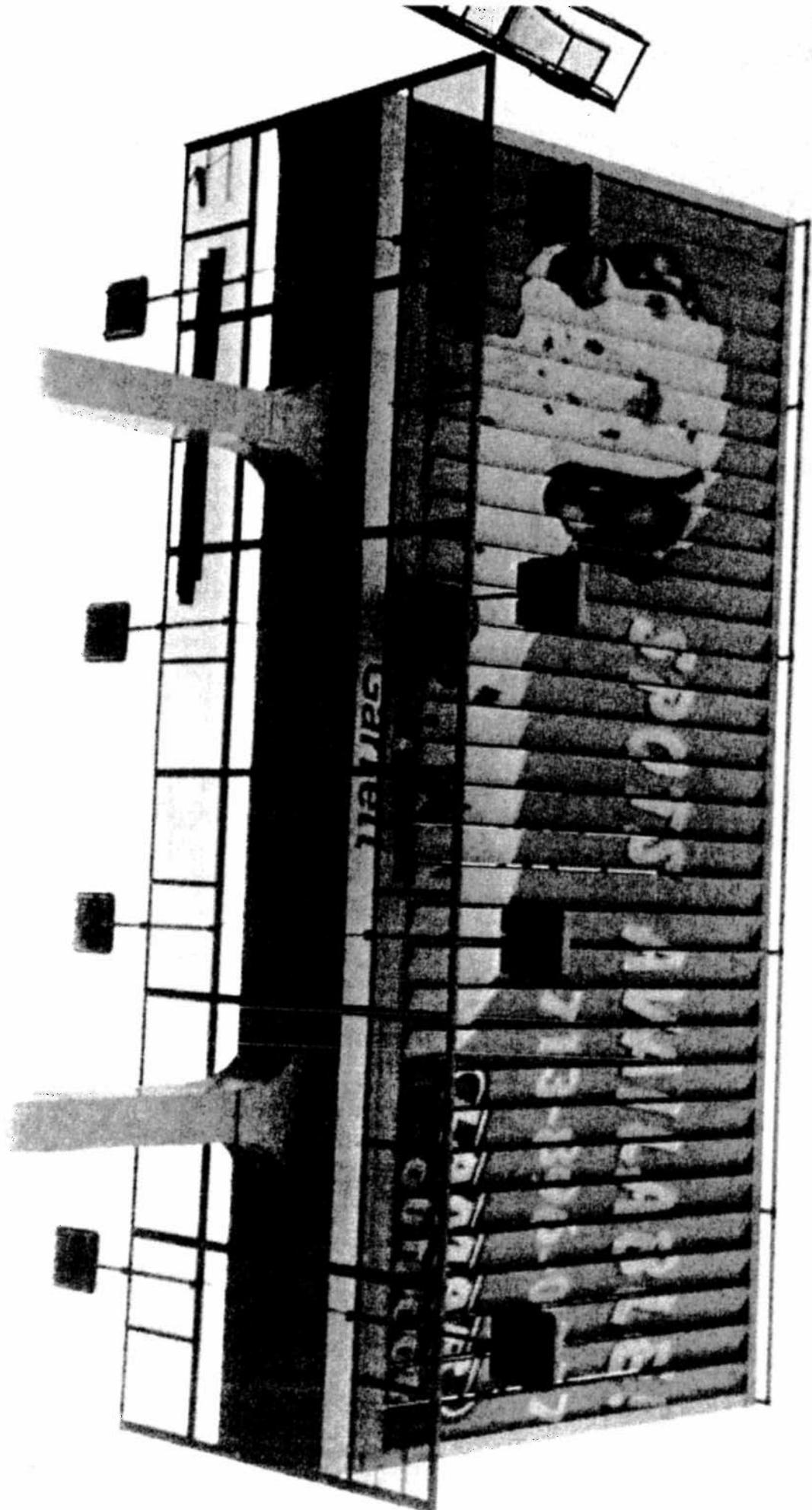
Cc. Ollie Schiller by facsimile 713-754-0696 *not a fax #*

Signpermit. 10-16-97



EXHIBIT
5





DORRELL & FARRIS, L.P.

Attorneys and Counselors at Law
3303 LOUISIANA, SUITE 150
HOUSTON, TEXAS 77006-6616
713-807-1188
FAX 713-807-1110

Jeffrey L. Dorrell
jldorrell@df-law.com

David J. Farris
djfarris@df-law.com

January 22, 2008

Ms. Susan Lucyx
Division Manager/Sign Administration
2636 South Loop West, Suite 675
P.O. Box 61167
Houston, Texas 77208

Sent by Telecopier to 713-218-5838.
(Four pages including this page.)

RE: Garrett Operators, Inc., Off-Premise Sign at 2600 South Loop West; Permit ID #3928 (Expiring May 2010); Project Number 97119144.

Dear Ms. Lucyx:

This letter is written at your specific request. The subject sign has been operating since before **May 8, 1980**.¹ This office represents Garrett in the matter of Garrett's plans to change the sign's display mechanism from the current tri-vision to an LED (light-emitting diode) display.²

On **January 15, 2008**, Tommy Cox, CEO of Garrett, and I appeared at your office to meet with you. We were advised that you were not available, and we met instead with Mr. Mark Jimenez. We explained that Garrett planned to modify the display in the sign to an LED display. Mr. Jimenez said:

It is illegal in the City of Houston for sign owners to use an LED display on a sign.

While we do not believe this is a correct statement of the law, we took this to mean that the City of Houston intends to act to prevent Garrett from installing the LED display, for which Garrett has already paid **\$250,000.00**. Since this is obviously a matter of some importance to Garrett, I asked Mr. Jimenez to point out

¹ The City no longer issues permits for off-premise signs. Houston Sign Code, § 4605(a); 4612(b). The Sign Code's "Effective Date" as applied to the subject sign is May 8, 1980. Houston Sign Code, § 4602.

² We have become involved because of certain indications that the City of Houston intends to prevent Garrett from installing an LED display, but you have this firm's full permission to contact Tommy Cox directly at any time to discuss the sign's operation or permitting.

EXHIBIT

6

tabbles

Ms. Susan Lucyx
January 22, 2008
Page 2

which section of the City's Sign Code made LED displays illegal. Mr. Jimenez was unable to do this, but offered to consult you for additional information.

When we did not hear from Mr. Jimenez again, my office contacted Maria Vrana at the General Appeals Board to request an appeal form to challenge the City's position. Ms. Vrana was very courteous, but told me that she could not provide us an appeal form until we first spoke to you. I described our unsuccessful attempt to meet with you, and Ms. Vrana referred me to your immediate superior, Al Largent. I explained to Mr. Largent Garrett's imminent plans to install an LED display in the sign. Mr. Largent advised that an appeal would be premature (as there had not yet been an adverse action by the City for us to appeal), and suggested that Garrett instead file an Application for Sign Permit. I relayed this to Mr. Cox.

On January 16, 2008, I understand that Mr. Cox met with you. Mr. Cox explained Garrett's plans to install an LED display in Garrett's sign, and you echoed Mr. Jimenez's opinion from the previous day that Garrett's planned change to an LED display was "illegal." Mr. Cox pointed out that the City of Houston has already allowed at least 40 signs with LED displays of various models that are currently operating at various locations in the City's jurisdictional area.³ Your response was that these LED displays were all used in *on-premise* signs. Mr. Cox pointed out that the Houston Sign Code does not distinguish between on-premise and off-premise signs with regard to whether LED displays are permitted. I understand that you then responded, "Well, we are likely to change the Sign Code," and expressed the concern that if the City lets Garrett install an LED display in its off-premise sign, "then everyone will want to do it." You also advised that the City was awaiting a ruling from the Texas Department of Transportation regarding certain aspects of LED displays. You said that a new application from Garrett as Mr. Largent had suggested was unnecessary,⁴ and asked Garrett to write this letter instead. We hope the following discussion is useful to you.

³ These include signs owned by the Abundant Life Cathedral (77072), America's Best Value Inns at two locations (77090), Angel's Auto Center (77429), Cognetic Networks, Inc. (77057), Crowne Plaza Hotel (77074), Family Dollar Stores at four locations (77026, 77093, 77020, and 77039), Ken's Ace Hardware (77090), Newton B. Schwartz at two locations (77098), the Oak Creek Home Center (77388), Spring Woods United Methodist Church (77090), the Family Faith Lutheran Church (77095), and the Triple Crown Sports Bar (77077).

⁴ This appears to be a correct interpretation of the law. An application for a renewal permit may be made "not more than 60 days prior to the conclusion of each three-year period." Houston Sign Code § 4605(e).

Ms. Susan Lucyx
January 22, 2008
Page 3

We believe the City's position regarding Garrett's imminent installation of an LED display is mistaken for three reasons. First, Garrett's rights and responsibilities regarding the subject sign are determined by the law as it now exists, not by (i) the law as it may possibly be changed or interpreted at some unspecified future time, or (ii) a City official's invention or enforcement of some subjective standard that is not knowable by reference to the controlling ordinance (such as whether Garrett's exercise of its lawful rights will make "everyone else" want to do so). The Sign Code presently provides:

No sign permit is required for the change of any of the ornamental features, electrical wiring or devices, or the advertising display of a sign previously permitted.⁵

Houston Sign Code, § 4608(j). Because Garrett already holds a valid permit for the sign, Garrett's proposed change of the advertising display and electrical wiring and its installation of a new LED display device does not require any new permit from the City.

Second, the "ruling" you have indicated the City is awaiting from the Texas Department of Transportation regarding certain aspects of LED displays would not appear to have any regulatory impact on Garrett's sign—no matter what the ruling is. The pertinent section of the Department's booklet titled "Control of Outdoor Advertising Signs" that mentions LED screens is prefaced by this:

The following standards apply to signs controlled by the State. To be eligible for a permit, new signs must conform to the following standards. Existing signs that are legally in place, but do not meet the standards, are classified as legal nonconforming signs.

"Control of Outdoor Advertising Signs," p. 9 [emphasis in original]. Furthermore, the booklet contains this qualifying preamble:

This booklet is offered for general information and illustrative purposes only. It is not a document of law nor a statement of TxDOT policy, and may not be relied upon as such.

⁵ This provision does not apply to a Spectacular Sign. Houston Sign Code § 4608(j). However, the subject sign is *not* a Spectacular Sign, as that term is defined by § 4602. The subject sign was once a "Spectacular Sign," but was modified 15 years ago to comply with the City's prohibition of advertising that changes more often than once every five minutes.

Ms. Susan Lucyx
January 22, 2008
Page 4

Third, nothing in the Sign Code prevents the owner of a permitted and validly operating sign from installing an LED display. There is no distinction in the Code between the permissibility of LED displays in on-premise and off-premise signs. In fact, the Sign Code does not mention LED displays at all. Furthermore, the 40 LED signs the City has already approved and allowed do *not* appear to be limited to on-premise signs, as the Sign Code defines that term.⁶ While we have not done an exhaustive survey, one example is the LED sign owned by attorney Newton B. Schwartz on the northbound side of the Southwest Freeway near Shepherd. In addition to advertising the Schwartz law practice, several other messages appear directing persons to locations other than Mr. Schwartz's law office.⁷

For these reasons, we believe that Garrett requires no permit or other special permission to proceed with the installation of new wiring and a different message display in its validly permitted, existing sign at 2600 South Loop West, and we intend to proceed with such installation immediately. If the City believes there is anything in the law as presently constituted that prevents this, please advise my office as soon as possible.

Yours very truly,

/s/

Jeffrey L. Dorrell

JLD:jef

⁶ An off-premise sign is one of two primary classifications of signs under the Houston Sign Code, on-premise and off-premise. Houston Sign Code § 4603. Off-premise signs are those that "advertise a business, person, activity, goods, products, or services not usually located on the premises where the sign is installed and maintained, or that directs persons to any location not on the premises." *Id.*

⁷ For example, the sign displays a message giving the toll-free number 866-LAW-2400 for people who have been injured by the diabetes drug Avandia. The automated attendant answering this number says that the caller has reached the law offices of a firm that is not "usually located" in the law office of Newton B. Schwartz, and offers various other legal services regarding a variety of drug-related injuries.



CITY OF HOUSTON
Public Works and Engineering Department

Bill White

Mayor

Michael S. Marcotte, P.E., DEE
Director

Mailing Address:
Sign Administration
P.O. Box 61167
Houston, Texas 77208-1167

2636 South Loop West #675
Houston, Texas 77054
T- 713-218-5820
F- 713-218-5838
www.houston.tx.gov

*Postmarked
2-15-08*

February 6, 2008.

Dorrell & Farris, L.P.
Attorneys and Counselors at Law
3303 Louisiana, Suite 150
Houston, Texas 77006-8816

RE: Garrett Operators, Inc., Sign Located at 2600 South Loop West

Dear Mr. Dorrell::

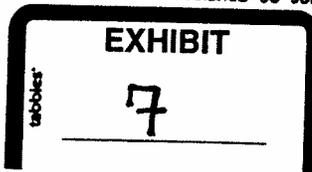
I am in receipt of your fax letter dated January 23, 2008, and a copy of your subsequent correspondence dated February 4, 2008, directed to Mr. Al Largent.

Both items of correspondence are on behalf of your client, Garrett Operators, Inc., and concern a three-faced, off-premise sign owned by your client at 2600 South Loop West; Operating Permit No. 3928.

Specifically, your letter references your client's intentions to reconstruct the current sign structure without applying for a sign permit. In support of your client's position, you assert no sign permit is required for such reconstruction, citing a portion of Section 4608(j) of the Sign Code. Section 4608(j), contained in Section 4608, Miscellaneous Sign Provisions, reads in its entirety as follows:

"(j) Change of Ornamental Features, Electrical Wiring or Advertising Display. No sign permit is required for the change of any of the ornamental features, electrical wiring or devices, or the advertising display of a sign previously permitted. This provision shall not apply to spectacular signs with respect to advertising display, nor shall it release a person from complying with all other applicable permitting requirements of the City, including those of the Construction Code."

Council Members: Toni Lawrence Jarvis Johnson Anne Clutterbuck Wanda Adams Mike Sullivan M.J. Khan, P.E. Pam Holm Adrian Garcia
James G. Rodriguez Peter Brown Sue Lovell Ronald C. Green Jolanda "Jo" Jones Melissa Noriega Controller: Annise D. Parker

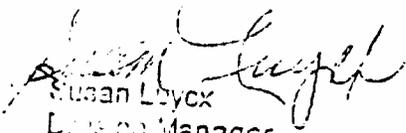


Page 2
Garrett Operators

Your reliance on only the first sentence of Section 4608(j) is in error. Section 4608(j) in this instance must be read in its entirety and in conjunction with Section 4603, Spectacular Sign; Section 4605(e), Existing Signs—Operating Permits, paragraph (3); Section 4612(b), Prohibition of New Off-premise Signs; and Section 4619(b), Declared Nonconformity. What your client is proposing is to totally remove the three existing faces of the sign, not for maintenance operations or for changing the letters, symbols or other matters (i.e., not to merely change the advertising copy), but rather to reconstruct the existing sign by installing a new LED sign cabinet to create essentially a new sign. Your continued reference to your client's expenditure of \$250,000 to implement these changes on its face belies your argument that such extensive reconstruction falls under Section 4608(j). Therefore, although your client has yet to formalize his intentions with this office, and based solely on the information currently available to us, your client's proposal contravenes and would be in direct violation of the City's Sign Code.

Let me know if there are any further questions.

Sincerely,



Susan Loyck
Liaison Manager
Sign Administration
Planning and Development Services Division
Public Works and Engineering Department

cc: Larry Schenk, Legal Dept
Andy Icker, Deputy Director
Allen Largent, Assistant Director

GARRETT OPERATORS, INC.

2205 ST. LAWRENCE ST.
GONZALES, TX 78629
OPERATIONS@GARRETOIL.COM
713.320.9292

13106 VILLA PARK DRIVE
AUSTIN, TEXAS 78729
COXGARRETT@GMAIL.COM
512.619.2977

June 22, 2011

Ms. Katherine Tipton, Division Manager Via Certified Mail, RRR #7008 2810 0000 1601 3937
Sign Administration
City of Houston
1002 Washington Avenue, Fourth Floor
Houston, Texas 77002

RE: Application for Sign Permit submitted on behalf of Garrett Operators, Inc. and its owners, George Thomas Cox and Garrett Cox.

Dear Ms. Tipton:

Please find enclosed an Application for Sign Permit ("Application") submitted on behalf of Garrett Operators, Inc. ("Garrett"). We have enclosed our check in the amount of \$562.40 in payment of the fees associated with our request (\$492.40 for construction/reconstruction permit of two 544 s.f. sign faces + \$70.00 for electrical inspection). This Application is submitted without waiver of any remedies or rights available to Garrett or its owners, George Thomas Cox and Garrett Cox (collectively referred to as "Cox"). The Application is further submitted in follow-up to communications between Cox and Susan Luycx ("Luycx"), your predecessor, which occurred in early 2008.

Pursuant to the Application, and as previously requested in January 2008, Garrett seeks to change the electrical wiring and devices in its tri-vision off-premise outdoor advertising sign ("Sign") erected in 1978 at 2600 South Loop West in Houston, Harris County, Texas. We are aware that the City's current sign regulations prohibit electronic signs pursuant to Section 4612(b)(2) of the Sign Code as amended by Ordinance No. 2008-1223, effective December 30, 2008. However, the current regulations have no relevance to Garrett's Application. Section 245.002(a) of the Texas Local Government Code provides as follows:

(a) Each regulatory agency shall consider the approval, disapproval, or conditional approval of an application for a permit solely on the basis of any orders, regulations, ordinances, rules, expiration dates, or other properly adopted requirements in effect at the time:

EXHIBIT

tabbles
8

(1) The original application for the permit is filed for review for any purpose, including review for administrative completeness...

Accordingly, Garrett's Application is submitted under the sign regulations in effect at the time the communications between Garrett and the City occurred in early 2008, which resulted in Garrett's inability to change the Sign's ornamental features or electrical wiring or devices. More specifically, the Application is submitted and should be considered under Chapter 46, the Houston Sign Code, adopted as Exhibit D-Second Revised, to Ordinance No. 2002-399, passed and approved by the City Council on the 15th day of May, 2002. We believe Garrett should be permitted to change the ornamental features or electrical wiring or devices on the Sign for the following reasons.

First, Garrett's Sign already existed in 2008 as an automatically changing message trivision structure. The only change Garrett sought to make to the Sign in early 2008 was to change the structure's lighting. The applicable regulations in effect in early 2008 did not require a permit for the change of any of the ornamental features or electrical wiring or devices under Section 4608(j). Therefore, Garrett's request should not have been denied by the City.

Second, we are aware the applicable regulations prohibited "spectacular signs" except for those having frontage on a major freeway or thoroughfare used to display the date, time, temperature, and stock market quotations. However, Garrett's Sign was not a "spectacular sign" under the definitions contained in the regulations in effect in early 2008, as the advertising message did not change more often than once every five minutes. Therefore, the prohibition regarding spectacular signs is inapplicable to Garrett's request, and the request should not have been denied.

In addition, we note the City Council revised the sign regulations after the communications between Garrett and the City occurred in early 2008, to add definitions for "changeable message sign" and "high technology sign", and to revise the definition of "electronic sign" to include only *off-premise* signs. Furthermore, Section 4608(j) was amended to prohibit Garrett and other sign owners/operators from converting existing signs to electronic signs, high technology signs, or changeable message signs without first obtaining a permit. As noted previously, these changes were all made to Houston's sign regulations *after* Garrett conveyed its intent to modify its Sign in early 2008, and are not applicable to Garrett's request. Based on the foregoing, the City should not have prevented Garrett from changing the ornamental features or electrical wiring or devices, and the Application should be granted.

A permit is not required from the Texas Department of Transportation ("TxDOT") under these circumstances. With the passage of 43 Tex. Adm. Code § 21.163, which became effective on 06/01/08 (subsequent to Garrett's initial attempts to convert the Sign by changing the ornamental features or electrical wiring or devices in early 2008), TxDOT amended its administrative rules regarding LEDs. The new regulation generally requires the issuance of permits by TxDOT for "electronic signs" if certain spacing criteria are met and only with the

Ms. Katherine Tipton
June 22, 2011
Page 3

city's written approval. Prior to the amendment on 06/01/08, TxDOT did not require permits for LED signs in certified cities like Houston, under 43 Tex. Adm. Code § 21.151(a). This regulation provides, "(w)here a political subdivision of the state exercises control over outdoor advertising signs, a permit issued by that political subdivision shall be accepted in lieu of a permit issued by the department...". Since Houston's sign regulations effective in early 2008 did not require a permit, TxDOT could not require one either.

In conclusion, we believe Garrett's Application must be reviewed under the sign regulations in effect in early 2008, and further assert the Application should be granted. It remains Garrett's position that, under the applicable regulations, a permit to perform the work planned was not required by the Sign Code. Garrett continues to maintain that position in *Garrett Operators, Inc. and George Thomas Cox v. City of Houston*, Cause No. 01-09-00946-CV, now pending rehearing in the Fourteenth Court of Appeals. By submitting this application, Garrett does not waive its contention that no permit was required or its right to continue to prosecute the above-referenced appeal.

Please do not hesitate to contact me should you have any questions or require any further information.

Very truly yours,



G. Thomas Cox
tcox@garrettoil.com
713.320.9292 cell

Enclosures

CITY OF HOUSTON

Sign Administration

APPLICATION FOR SIGN PERMIT

Re: Permit #3928 (Original Permit #345496-R)
Print or Type Application

APPLICANT'S NAME Garrett Operators, Inc. LIC. NO. N/A DATE 06-21-11
ADDRESS 2205 St. Lawrence, Gonzales, TX ZIP 78629 PHONE 713-320-922
SIGN LOCATION 2600 S. Loop West, Houston, TX ZIP 77054 CALL MAIL FAX
STATE BUSINESS ENTERPRISE: Operate outdoor advertising sign

SITE INSPECTION CONSTRUCTION PERMIT A B C D E OPERATING PERMIT A B C D E

	SIGN TYPE _____ MESSAGE _____ ON <input type="checkbox"/> ELEC <input checked="" type="checkbox"/> FACES _____ VALUE \$ _____ OFF <input checked="" type="checkbox"/> NON ELEC <input type="checkbox"/> POLES _____ 2 _____ WIDTH _____ FT _____ IN HEIGHT _____ FT _____ IN MAX. HT _____ FT _____ IN	FOR OFFICE USE ONLY PROJECT # _____ FCC CODE _____ TAG # _____
A	COMMENTS <u>See attached.</u>	
B	SIGN TYPE _____ MESSAGE _____ ON <input type="checkbox"/> ELEC <input type="checkbox"/> FACES _____ VALUE \$ _____ OFF <input type="checkbox"/> NON ELEC <input type="checkbox"/> POLES _____ WIDTH _____ FT _____ IN HEIGHT _____ FT _____ IN MAX. HT _____ FT _____ IN	PROJECT # _____ FCC CODE _____ TAG # _____
C	SIGN TYPE _____ MESSAGE _____ ON <input type="checkbox"/> ELEC <input type="checkbox"/> FACES _____ VALUE \$ _____ OFF <input type="checkbox"/> NON ELEC <input type="checkbox"/> POLES _____ WIDTH _____ FT _____ IN HEIGHT _____ FT _____ IN MAX. HT _____ FT _____ IN	PROJECT # _____ FCC CODE _____ TAG # _____
D	SIGN TYPE _____ MESSAGE _____ ON <input type="checkbox"/> ELEC <input type="checkbox"/> FACES _____ VALUE \$ _____ OFF <input type="checkbox"/> NON ELEC <input type="checkbox"/> POLES _____ WIDTH _____ FT _____ IN HEIGHT _____ FT _____ IN MAX. HT _____ FT _____ IN	PROJECT # _____ FCC CODE _____ TAG # _____
E	SIGN TYPE _____ MESSAGE _____ ON <input type="checkbox"/> ELEC <input type="checkbox"/> FACES _____ VALUE \$ _____ OFF <input type="checkbox"/> NON ELEC <input type="checkbox"/> POLES _____ WIDTH _____ FT _____ IN HEIGHT _____ FT _____ IN MAX. HT _____ FT _____ IN	PROJECT # _____ FCC CODE _____ TAG # _____

OPERATING PERMIT RENEWAL TO BE SENT TO:

SIGN OWNER Garrett Operators, Inc. PHONE 713-320-922
ADDRESS 2205 St. Lawrence, Gonzales, TX ZIP 78629

AFFIDAVIT FOR OWNER OR LESSEE OF PREMISE
I hereby certify that the above information is true and correct and further that the sign is being erected and or maintained at the above location with the permission of the owner and authorized lessee (if any) of the premises; that the sign does not violate any applicable deed restrictions or other restrictions on the premises; and that having read the restrictions and requirements of the City's Sign Ordinance; that the sign is being erected or maintained in compliance with the Sign Ordinance, Chapter 48, Building Code, City of Houston and other applicable laws.

[Signature]
President
(Title)

Sworn to and subscribed before me by said _____ on _____ 20____, to certify which witness my hand and seal of office.

Notary Public in and for Harris County Texas

SEAL

AFFIDAVIT FOR SIGN COMPANY OR SIGN OWNER (COMPLETE ONLY IF SIGN OWNER IS DIFFERENT FROM ABOVE)
I hereby certify that the above information is true and correct and further that the sign is being erected and or maintained at the above location with the permission of the owner and authorized lessee (if any) of the premises; that the sign does not violate any applicable deed restrictions or other restrictions on the premises; and that having read the restrictions and requirements of the City's Sign Ordinance; that the sign is being erected or maintained in compliance with the Sign Ordinance, Chapter 48, Building Code, City of Houston and other applicable laws.

(Signature)

(Title)

Sworn to and subscribed before me by said _____ on _____ 20____, to certify which witness my hand and seal of office.

Notary Public in and for Harris County Texas

SEAL



G. THOMAS COX
 2205 SAINT LAWRENCE ST
 GONZALES, TX 78629-4402

NORTHERN TRUST, NA
 HOUSTON, TX 77024
 35-1183/1130

6/22/201

PAY TO THE ORDER OF City of Houston Sign Administration

\$ 562.40

Five Hundred Sixty-Two Dollars and 40 Cents*****

City of Houston Sign Administr
 P.O. Box 61167
 Houston, Texas 77028-1167

LOG #93049566

MEMO 713-218-5820
 #3928/345496-R Application for Sign Permit

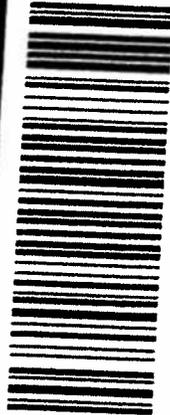
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7008 2810 0000 1601 3937

PLACE STICKER AT TOP OF ENVELOPE TO THE RIGHT OF THE RETURN ADDRESS. FOLD AT DOTTED LINE

CERTIFIED MAIL



7008 2810 0000 1601 3937
 7008 2810 0000 1601 3937

U.S. Postal Service™
CERTIFIED MAIL™ RECEIPT
 (Domestic Mail Only; No Insurance Coverage Provided)

For delivery information visit our website at www.usps.com.

OFFICIAL USE

Postage	\$
Certified Fee	
Return Receipt Fee (Endorsement Required)	
Restricted Delivery Fee (Endorsement Required)	
Total Postage & Fees	\$

Postmark Here

Sent To
COH SIGN ADMIN
 Street, Apt. No.,
 or PO Box No. **1002 WASHINGTON AVE - FOURTH FL**
 City, State, ZIP+4
HOUSTON TX 77002

PS Form 3800, August 2006

See Reverse for Instructions

Ms. Katherine Tipton, Division Manager
Sign Administration
City of Houston
1002 Washington Avenue, Fourth Floor
Houston, Texas 77002



CITY OF HOUSTON

Public Works & En
Sign Administration
P.O. Box 61167
Houston, Texas 772

CERTIFIED MAIL™



7006 0100 0004 6703 6501



02 1M \$ 05.59⁰
0004271739 AUG02 2011
MAILED FROM ZIP CODE 77002

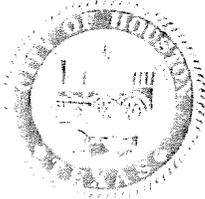
Mr. G. Thomas Cox
GARRETT OPERATORS, INC.
2205 St. Lawrence Street
Gonzales, TX 78629

*L.N. 08-04-11
KRM/gab/005*

*8-4
8-9
8-19*

7862934402 RC05





CITY OF HOUSTON
Public Works and Engineering Department

Annise D. Parker
Mayor

Daniel W. Krueger, P.E., Director
P.O. Box 1862
Houston, Texas 77251-1862
T: 332-394-0800
F: 332-394-8907
www.houston.tx.gov

July 29, 2011

CERTIFIED MAIL 7006 0100 0004 6703 8389
RETURN RECEIPT REQUESTED

Mr. G. Thomas Cox
GARRETT OPERATORS, INC.
2105 St. Lawrence Street
Gonzales, TX 78629

RE: Original Application for Sign Permit at 2600 1/2 South Loop West, Houston, Texas 77064, dated 06/21/2011

Dear Mr. Cox:

Electronic signs are prohibited by Houston's Sign Code which states:

"Electronic and off-premise high technology signs are prohibited. This prohibition shall include the construction, reconstruction, upgrading, or conversion of an existing off-premise sign to an electronic or off-premise high technology sign, such that no electronic or off-premise high technology signs are permitted."

Houston Sign Code § 46.12(b)(2). Accordingly, your application is denied and I am returning your check in the amount of \$562.50.

If we can be further assistance, please do not hesitate to contact me.

Respectfully,

Katherine Tipton, Division Mgr
PWE-DE-Sign Administration
CITY OF HOUSTON
1002 Washington Ave
Houston, Texas 77002
332 394-8890

RT st

cc: Mark L. Loamen, P.E., CFM, PTOE
Acting Building Official
Thode Hammill-Rahn, Senior Assistant City Attorney
Larry Schenck, Senior Assistant City Attorney

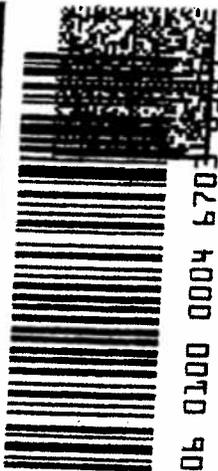
EXHIBIT
tabbles
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CITY OF HOUSTON

Public Works & En
Sign Administration
P.O. Box 61167
Houston, Texas 772

CERTIFIED MAIL



7006 0100 0004 6703



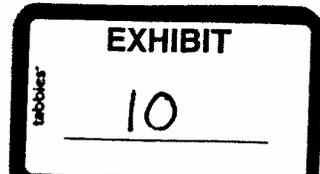
02 1M \$ 05.590
0004271739 AUG 02 2011
MAILED FROM ZIP CODE 77002

Mr. G. Thomas Cox
GARRETT OPERATORS, INC.
2205 St. Lawrence Street
Gonzales, TX 78629

L.N. 08-04-11
RMG/RLB

8-4
8-9
8-19

7862934402 RC05



United States Postal Service®

Sorry We Missed You We'll Deliver for You

Today's Date **8-9-11**

Sender's Name **City of Houston**

<input type="checkbox"/> Post Office (See back)	Available for Pick-up After	Date:	Time:
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<input checked="" type="checkbox"/> Letter <input type="checkbox"/> Large envelope, magazine, catalog, etc. <input type="checkbox"/> Parcel <input type="checkbox"/> Restricted Delivery <input type="checkbox"/> Perishable Item <input type="checkbox"/> Other	For Delivery: (Enter total number of items delivered by service type) For Notice Left: (Check applicable item) <input type="checkbox"/> Express Mail™ <input checked="" type="checkbox"/> Certified Mail™ <input type="checkbox"/> Firm Mail™ <input type="checkbox"/> Registered Mail™	<input type="checkbox"/> Insured Mail <input type="checkbox"/> Return Receipt for Merchandise <input type="checkbox"/> Delivery Confirmation™ <input type="checkbox"/> Signature Confirmation™	<input type="checkbox"/> If checked, you or your agent must be present at time of delivery to sign for item. Article Number(s) 7006 0100 0004 6703 8389
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Article Requiring Payment:	Amount Due	Customer Name and Address
<input type="checkbox"/> Postage Due <input type="checkbox"/> COD <input type="checkbox"/> Customs	\$	CAH 2205 St Lawrence
<input checked="" type="checkbox"/> Final Notice: Article will be returned to sender on	8-19-11	Delivered By and Date

PS Form 3848, May 2008 **025-5013** Delivery Notice/Reminder/Receipt

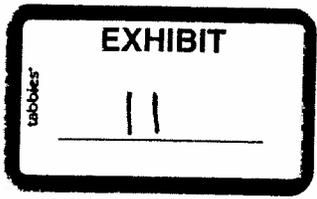
We will redeliver OR you or your agent can pick up your mail at the Post Office. (Bring this form and proper ID. If your agent will pick up, sign below in item 2, and enter agent name here):

1. <input checked="" type="checkbox"/> Check all that apply in section 3; <input checked="" type="checkbox"/> Sign in section 2 below; <input checked="" type="checkbox"/> Leave this notice where the carrier can see it.	GONZALES TXPOSTMAST 920 N ST JOSEPH ST STE 105 GONZALES TX 78629-9998 M-F 8AM-4PM SAT 9-12 PHONE: (830) 672-2629
--	---

2. Sign Here to authorize redelivery or to authorize an agent to sign for you:	Delivery Section	
3. <input type="checkbox"/> Redeliver (Enter day of week):	Signature	
<input type="checkbox"/> Show at least two delivery days for redelivery, or go to usps.com/redelivery or call your Post Office in strange redelivery.)	X	
<input type="checkbox"/> Leave item at my address	Printed Name	
(Specify where to leave. Example: porch, side door. This option is not available if box is checked on the front requiring your signature at time of delivery.)	Delivery Address	
<input type="checkbox"/> Refused	USPS	
		

PS Form 3849, May 2008 (Reverse)

5293 0315 9314 1804



REQUEST FOR APPEAL OF DECISION OR INTERPRETATION

Date August 17, 2011

TO: CITY OF HOUSTON

GENERAL APPEALS BOARD

3300 MAIN STREET, HOUSTON, TEXAS, 77002

FROM:

APPLICANT

Richard L. Rothfelder, Rothfelder & Falick, L

ADDRESS

1201 Louisiana St., Suite 550, Houston, TX 771

TELEPHONE

(713) 220-2288

REPRESENTING:

FIRM

Mr. George Thomas Cox, Garrett Operators,

BUSINESS ADDRESS

2205 St. Lawrence St.

CITY

Gonzales, TX 78629

SIGNATURE OF APPLICANT

Richard Rothfelder

REFERENCE:

SECTION

4612(b)(2)

PAGE

4608(j)

LIST OTHER CHAPTERS AND SECTIONS OF BUILDING CODE AFFECTED BY REQUEST:

REQUEST: (*)

Reverse July 29, 2011 decision of Katherine Tipton of Houston Sign Administration, attached as Exhibit 1.
DESCRIBE FULLY AND REASONS OR PURPOSE: (*)
Houston Sign Administration misconstrues and wrongly interprets Houston Sign Code and State law, including Section 4612(b)(2) and 4608(j), as explained more fully in attached August 17, 2011 letter.

(*) use reverse side if necessary

Revised April 16, 2010



Prepare ten (10) copies

ROTHFELDER & FALICK, L.L.P.

ATTORNEYS AT LAW

RICHARD L. ROTHFELDER
rrothfelder@swbell.net
BOARD CERTIFIED - CIVIL TRIAL LAW

1201 LOUISIANA
SUITE 550
HOUSTON, TEXAS 77002

TELEPHONE: 713-2
FACSIMILE: 713-6
WWW.ROTHFELDERFALI

August 17, 2011

Ms. Katherine Tipton, Division Manager
Sign Administration
City of Houston
1002 Washington Avenue, Fourth Floor
Houston, Texas 77002

**Via Certified Mail, RRR,
#7009 1680 0001 7224 3042
and Email**

**RE: Application for Sign Permit submitted on behalf of Garrett Operators, Inc.,
and its owners, George Thomas Cox and Garrett Cox; Our File No. 1818-1.**

Dear Katy:

The law firm of Rothfelder and Falick represents Garrett Operators, Inc., and its owners, George Thomas Cox and Garrett Cox ("Garrett"). As such, your July 29, 2011 letter addressed to G. Thomas Cox has been referred to us for handling and this response.

Your letter, which is dated July 29, 2011, was contained in an envelope that was actually mailed on August 2, 2011, as indicated by the letter and envelope attached as Exhibits 1 and 2, respectively. The letter was actually received and read by Mr. Cox on August 16, 2011, less than ten business days ago. Therefore, this letter and notice of appeal to the General Appeals Board is timely under Houston Sign Code Section 4604(e)(1).

Your letter denies the permit application ("Application") requested by Mr. Cox in his June 22, 2011 letter, a copy of which along with the Application, are attached as Exhibit 3. In support of your denial, you cite the version of Houston Sign Code Section 4612(b)(2) that was amended by Ordinance No. 2008-1223, effective December 30, 2008. Garrett hereby appeals your decision to the General Appeals Board on the grounds that the decision misconstrues or wrongly interprets the Houston Sign Code.

As explained in more detail in Mr. Cox's letter attached as Exhibit 3, Garrett is only seeking to change the electrical wiring and devices on its tri-vision off-premise outdoor advertising sign ("Sign") erected in 1978. The version of Section 4612(b)(2) cited in your letter is inapplicable, as Garrett's Application is governed by the sign regulations in effect at the time Garrett originally inquired with the Houston Sign Administration in early 2008. Thus, Section 245.002(a) of the Texas Local Government Code requires the Application to be considered

“solely on the basis of any...ordinances...in effect at the time...the original application for the permit [was] filed for review for any purpose.”

Accordingly, Garrett's Application is submitted under the sign regulations in effect at the time the communications between Garrett and the City occurred in early 2008, which resulted in Garrett's inability to change the Sign's ornamental features or electrical wiring or devices. More specifically, the Application was submitted and should be considered under Chapter 46, the Houston Sign Code, adopted as Exhibit D-Second Revised, to Ordinance No. 2002-399, passed and approved by the City Council on the 15th day of May, 2002. We believe Garrett should be permitted to change the ornamental features or electrical wiring or devices on the Sign for the following reasons.

First, Garrett's Sign already existed in 2008 as an automatically changing message tri-vision structure. The only change Garrett sought to make to the Sign in early 2008 was to change the structure's lighting. The applicable regulations in effect in early 2008 did not require a permit for the change of any of the ornamental features or electrical wiring or devices under Section 4608(j). Therefore, Garrett's request should not have been denied by the City.

Second, we are aware the applicable regulations prohibited “spectacular signs” except for those having frontage on a major freeway or thoroughfare used to display the date, time, temperature, and stock market quotations. However, Garrett's Sign was not a “spectacular sign” under the definitions contained in the regulations in effect in early 2008, as the advertising message did not change more often than once every five minutes. Therefore, the prohibition regarding spectacular signs is inapplicable to Garrett's request, and the request should not have been denied.

In addition, we note the City Council revised the sign regulations after the communications between Garrett and the City occurred in early 2008, to add definitions for “changeable message sign” and “high technology sign”, and to revise the definition of “electronic sign” to include only *off-premise* signs. Furthermore, Section 4608(j) was amended to prohibit Garrett and other sign owners/operators from converting existing signs to electronic signs, high technology signs, or changeable message signs without first obtaining a permit. As noted previously, these changes were all made to Houston's sign regulations *after* Garrett conveyed its intent to modify its Sign in early 2008, and are not applicable to Garrett's request. Based on the foregoing, the City should not have prevented Garrett from changing the ornamental features or electrical wiring or devices, and the Application should be granted.

A permit is not required from the Texas Department of Transportation (“TxDOT”) under these circumstances. With the passage of 43 Tex. Adm. Code § 21.163, which became effective on June 1, 2008 (subsequent to Garrett's initial attempts to convert the Sign by changing the ornamental features or electrical wiring or devices in early 2008), TxDOT amended its administrative rules regarding LEDs. The new regulation generally requires the issuance of permits by TxDOT for “electronic signs” if certain spacing criteria are met and only with the

city's written approval. Prior to the amendment on June 1, 2008, TxDOT did not require permits for LED signs in certified cities like Houston, under 43 Tex. Adm. Code § 21.151(a). This regulation provides, "(w)here a political subdivision of the state exercises control over outdoor advertising signs, a permit issued by that political subdivision shall be accepted in lieu of a permit issued by the department..." Since Houston's sign regulations effective in early 2008 did not require a permit, TxDOT could not require one either.

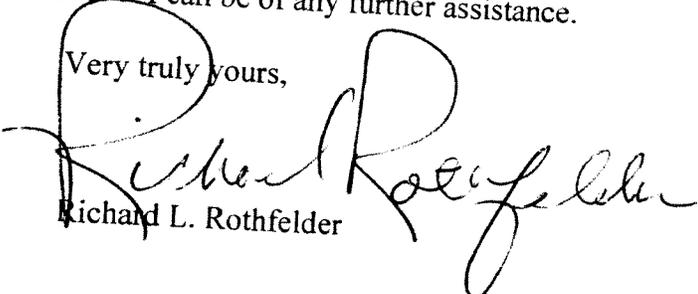
In conclusion, we believe Garrett's Application must be reviewed under the sign regulations in effect in early 2008, and further assert the Application should be granted. It also remains Garrett's position that, under the applicable regulations, a permit to perform the work planned was not required by the Sign Code.

In addition to the foregoing, I also noticed you stated in your letter that you were returning to our clients their check in the amount of \$562.50. The check was not enclosed with your letter.

By copy of this letter to Robert Buck and Maria Vrana with the General Appeals Board, I am asking them to contact me regarding the dates available for the hearing before General Appeals Board, so that we can schedule at a mutually convenient time. I am also providing with the hardcopy of this letter an original and ten copies of the Petition to the General Appeals Board.

Please let me know if you have any questions or if I can be of any further assistance.

Very truly yours,


Richard L. Rothfelder

RLR:mr
Enclosures

cc: Robert Buck
Maria Vrana
City of Houston
General Appeals Board
3300 Main St.
Houston, TX 77002

**Via Certified Mail, RRR, #7009 1680 0001 7224 3035
and Email**

Section 4604

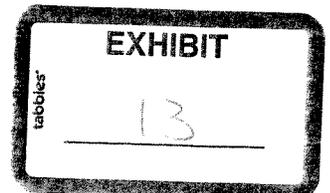
- (1) Any person wishing to appeal a decision of the Sign Administrator on the grounds that the decision misconstrues or wrongly interprets this chapter may, within ten business days after the decision, appeal the same to the General Appeals Board, pursuant to its rules and regulations, and thence to the City Council. Either party in the appeal to the General Appeals Board, whether the original appealing party or the Sign Administrator, may appeal the decision of the General Appeals Board to the City Council by giving notice of appeal in writing to the City Secretary within ten days following the decision of the General Appeals Board appealed from, and provided further, that the appealing party shall comply with the Sign Administrator's decision pending appeal unless the Sign Administrator shall direct otherwise. Rule 12 of the City Council's Rules of Procedure (Section 2-2 of the City Code) shall be applicable.

- (2) An appellant who has complied with Rule 12 shall file with the City Secretary, within 60 days following the decision appealed from, a record consisting of the written transcript of the hearing before the General Appeals Board, along with the written exceptions, if any, of each party to the proceedings to the facts and administrative rulings and decisions made by the General Appeals Board. An extension of time for the preparation of the record, not to exceed 30 additional days from the last date for filing the record, may be obtained by filing a statement with the City Secretary not later than 15 days after the last date for filing the record. Such statement shall reasonably explain the need therefor and shall be executed and verified under oath by the appellant, the appellant's legal representative or the certified court reporter responsible for preparation of the transcript. Failure to comply with the provisions of this subsection shall render appellant's notice of appeal void and of no effect and the decision of the General Appeals Board shall thereupon become final and not appealable to the City Council.

- (3) This subsection (e) shall not apply and no appeal shall be granted hereunder regarding any matter under this chapter for which a citation to Municipal Court has been issued by the Sign Administrator.

(f) Sign Advisory Council

There is hereby ~~created~~ authorized a Sign Advisory Council consisting of ten members, to serve on an ad hoc basis as the Mayor shall determine.



ISSUANCE OF LOCAL PERMITS
CH 245

§ 245.002

PERMITS

... date of this Act, or in any litigation pending in a court on the effective date of this Act, involving an interpretation of Subchapter I, Chapter 481, Government Code, as it existed before its repeal by the 75th Legislature.

Sec. 4. Construction of Act. Nothing in this Act shall be construed to apply to a condition or provision of an ordinance, rule, or regulation that is enacted by a regulatory agency, as that term is defined by Section 245.001, Local Government Code, as added by Section 2 of this Act, which is specifically required by uniformly applicable regulations adopted by a state agency after the effective date of this Act.

Sec. 5. Effect on Coastal Zone Management Act. Nothing in this Act shall be construed to:

- (1) limit or otherwise affect the authority of a municipality, a county, another political subdivision, the state, or an agency of the state, with respect to the implementation or enforcement of an ordinance, a rule, or a statutory standard of a program, plan, or ordinance that was adopted under the federal Coastal Zone

Management Act of 1972 (16 U.S.C. Section 1451 et seq.) or its subsequent amendments or Subtitle E, Title 2, Natural Resources Code; or

"(2) apply to a permit, order, rule, regulation, or other action issued, adopted, or undertaken by a municipality, a county, another political subdivision, the state, or an agency of the state in connection with the federal Coastal Zone Management Act of 1972 (16 U.S.C. Section 1451 et seq.) or its subsequent amendments or Subtitle E, Title 2, Natural Resources Code."

Acts 2005, 79th Leg., ch. 6, in subd. (1), inserted "contract or other agreement for construction related to, or provision of, service from a water or wastewater utility owned, operated, or controlled by a regulatory agency,".

Section 3 of Acts 2005, 79th Leg., ch. 6 provides:

"The change in law made by this Act to Subdivision (1), Section 245.001, Local Government Code, is subject to the applicability provision of Section 245.003, Local Government Code."

Research References

TX Jur. 3d Zoning XII Ref., Divisional References.

Treatises and Practice Aids

Brooks, 36A Tex. Prac. Series § 43.2A, Permits.

Notes of Decisions

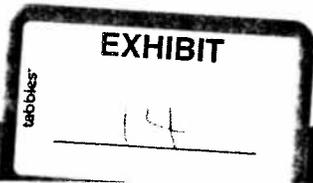
residences in the future was addressed in other provisions of statute that were not applicable to this case. *Hartsell v. Town of Talty* (App. 5 Dist. 2004) 130 S.W.3d 325, clarified on denial of rehearing, review denied. *Zoning And Planning* ⇨ 376

2. Permits

Property owner's planned development district (PDD) applications were not "permits" such that city could table third application until after sector plan was revised and then deny application for failure to comply with revised plan; existing zoning did not entitle owner to develop his property free from all subsequent regulatory changes. *Weatherford v. City of San Marcos* (App. 3 Dist. 2004) 2004 WL 2813777. *Zoning And Planning* ⇨ 376

§ 245.002. Uniformity of Requirements

(1) Each regulatory agency shall consider the approval, disapproval, or conditional approval of an application for a permit solely on the basis of any regulations, ordinances, rules, expiration dates, or other properly adopted requirements in effect at the time:



(1) the original application for the permit is filed for review for any purpose, including review for administrative completeness; or

(2) a plan for development of real property or plat application is filed with a regulatory agency.

(a-1) Rights to which a permit applicant is entitled under this chapter accrue on the filing of an original application or plan for development or plat application that gives the regulatory agency fair notice of the project and the nature of the permit sought. An application or plan is considered filed on the date the applicant delivers the application or plan to the regulatory agency or deposits the application or plan with the United States Postal Service by certified mail addressed to the regulatory agency. A certified mail receipt obtained by the applicant at the time of deposit is prima facie evidence of the date the application or plan was deposited with the United States Postal Service.

(b) If a series of permits is required for a project, the orders, regulations, ordinances, rules, expiration dates, or other properly adopted requirements in effect at the time the original application for the first permit in that series is filed shall be the sole basis for consideration of all subsequent permits required for the completion of the project. All permits required for the project are considered to be a single series of permits. Preliminary plans and related subdivision plats, site plans, and all other development permits for land covered by the preliminary plans or subdivision plats are considered collectively to be one series of permits for a project.

(c) After an application for a project is filed, a regulatory agency may not shorten the duration of any permit required for the project.

(d) Notwithstanding any provision of this chapter to the contrary, a permit holder may take advantage of recorded subdivision plat notes, recorded restrictive covenants required by a regulatory agency, or a change to the laws, rules, regulations, or ordinances of a regulatory agency that enhance or protect the project, including changes that lengthen the effective life of the permit after the date the application for the permit was made, without forfeiting any rights under this chapter.

(e) A regulatory agency may provide that a permit application expires on or after the 45th day after the date the application is filed if:

(1) the applicant fails to provide documents or other information necessary to comply with the agency's technical requirements relating to the form and content of the permit application;

(2) the agency provides to the applicant not later than the 10th business day after the date the application is filed written notice of the failure that specifies the necessary documents or other information and the date the application will expire if the documents or other information is not provided, and

(3) the applicant fails to provide the specified documents or other information within the time provided in the notice.

Section 4603

roof or mansard of a building. Such signs shall be classified as wall signs.

ELECTRICAL SIGN shall mean any sign containing electrical wiring or utilizing electric current, but not including signs illuminated by an exterior light source.

FENCE SIGN shall mean any sign affixed to or painted upon a fence. A fence sign shall be classified as a ground sign, but shall not be required to comply with the structural requirements of Section 4609.

FLAG SIGN shall mean any flag except the flags of the United States, Texas or any other governmental entity, used for advertising, that contains or displays any written message, business name, pictorial representation, logo, corporate symbol, silhouette or other visual representation identifying or advertising a particular business, good, service or merchandise sold or available for sale on the premises where the flag is erected, displayed or maintained.

MESSAGE BOARD SIGN shall mean any sign or portion of a sign containing a sign face designed to allow the removal or replacement of individual letters, words or symbols on the sign face for the purpose of changing an advertising message.

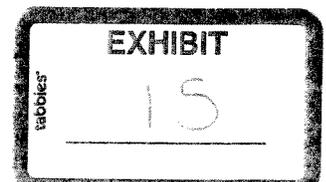
MULTI-TENANT SIGN shall mean an on-premise sign displaying commercial advertising for two or more distinct commercial businesses or commercial service entities upon a single sign structure.

PORTABLE SIGN shall mean any sign designed or constructed to be easily moved from one location to another, including signs mounted upon or designed to be mounted upon a trailer, bench, wheeled carrier or other nonmotorized mobile structure; a portable sign that has its wheels removed shall still be considered a portable sign hereunder. For the purposes of this chapter, trailer signs and signs on benches are portable signs.

PROVISIONAL SIGN shall mean a sign of light weight material to be used until permanent signage can be fabricated and erected.

SPECTACULAR SIGN shall mean a sign that has one or more of the following as elements in its physical structure:

- (1) Automatically changing message advertising that changes more often than once every five minutes ~~(not~~



Section 4603

~~including date, time, temperature, weather and stock market information);~~

- (2) Blinking, rotating, moving, chasing, flashing, glaring, strobe, scintillating or spot lights, or similar devices;
- (3) Lights or colored elements creating a continuously moving, shimmering or prismatic effect; or
- (4) Rotating or moving parts.

(d) The various classifications established in this section shall also constitute definitions for purposes of the interpretation of this chapter.

SECTION 4602--DEFINITIONS

In this chapter, the following terms shall have the meanings herein ascribed to them, unless the context of their usage clearly indicates another meaning:

ADVERTISING shall mean to seek the attraction of or to direct the attention of the public to any goods, services or merchandise whatsoever.

BUSINESS PURPOSES shall mean the erection or use of any property, building or structure, permanent or temporary, for the primary purpose of conducting in said building or structure or on said property a legitimate commercial enterprise in compliance with all ordinances and regulations of the city governing such activity; a business purpose shall not include any property, building or structure erected or used for the primary purpose of securing a permit to erect a sign.

CABINET shall mean that portion of a sign structure containing the advertising display.

CANDELA shall mean a unit of luminous intensity equal to 1/60 of the luminous intensity per square centimeter of a blackbody radiating at the temperature of solidification of platinum (2,046°K). Also called candle.

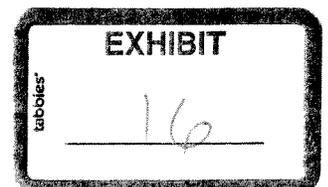
CHANGEABLE MESSAGE SIGN shall mean any on-premise sign that is capable of changing its message, copy or appearance by electronic processes, and shall include but not be limited to those on-premise signs employing changeable message light emitting diode technology, commonly referred to as LED signs.

CITY CODE shall mean the Code of Ordinances of the City of Houston, Texas, as amended.

CURB LINE shall mean an imaginary line drawn along the edge of the pavement on either side of a public street.

COMMERCIAL OR INDUSTRIAL ACTIVITY shall mean property that is devoted to use for commercial or industrial purposes and not for residential purposes. "Commercial or industrial activity" shall not include the following:

- (1) Signs;



Section 4602

pursuant to Section 6 of former Article 970 (a), Texas Revised Civil Statutes Annotated or Section 43.052 of the Local Government Code, as applicable.

ELECTRONIC SIGN shall mean any off-premise sign that is capable of changing its message, copy or appearance by electronic or mechanical processes, and shall include but not be limited to those signs employing changeable message light emitting diode technology, commonly referred to as LED signs.

FEDERAL PRIMARY SYSTEM shall mean the Interstate and Freeway Primary System and the Nonfreeway Primary System.

FREEWAY shall mean any state highway or federal highway or county highway within the sign code application area to or from which access is denied or controlled, in whole or in part, from or to abutting land or intersecting streets, roads, highways, alleys or other public or private ways.

FRONTAGE shall mean that portion of any tract of land that abuts a public street right-of-way.

GENERAL RIGHT-OF-WAY shall mean a right-of-way that is not classified as a predominantly residential right-of-way or scenic or historical right-of-way or district and that is owned, leased or otherwise legally controlled by the person placing a sign thereon.

HIGH TECHNOLOGY SIGN shall mean any sign that utilizes electronic processes, such as light emitting diode (LED) technology, rather than mechanical or other means, to display a fixed and unchangeable message.

HIGHWAY shall mean any state highway, federal highway, or county highway that does not constitute a freeway.

INSTITUTION OF HIGHER EDUCATION shall mean a private or independent institution of higher education, as defined in Section 61.003(15) of the Texas Education Code, located on a single campus comprising an area in excess of twenty acres and located within the corporate limits of the city. In determining the size of the campus, areas containing dedicated streets shall be included as part of the campus.

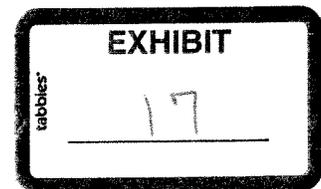
Section 4611

definition of an area that may be designated as a special employment district.

3. A plat or map of the proposed district prepared by a registered surveyor or engineer showing the boundaries of the proposed special employment district.
 4. A plan for the removal and elimination of all existing on-premise ground signs that do not comply with the provisions of this chapter.
 5. A landscaping plan for the installation of trees, shrubs and plants in the right-of-way within the special employment district (reviewed by a landscape architect licensed by the State of Texas.)
- b. The City Council shall call a public hearing on the question of the designation of an area as a special employment district within 30 days of the filing of a petition in the Office of the City Secretary that complies with the provisions of Section 4611(f)(4)a.
- c. Any designation of a special employment district shall be conditioned on the continuing compliance of the property owners within the special employment district with the requirements that:
1. All existing on-premise ground signs not in conformance with the requirements of this chapter be removed; and
 2. That the trees, plants and shrubs are installed and maintained in the right-of-way in compliance with the landscaping plan.
- d. In the event that the property owners in the special employment district shall fail to comply with the requirements of the City Council to maintain the designation of the special employment district, the Sign Administrator shall notify the City Council of such facts in writing. Upon notice and hearing, the City Council shall revoke and cancel a special employment district designation, and the property owners shall bring all signs into compliance with the provisions of this code other than this subsection within a period of six months from the date of such revocation.

(g) Identifying Number Required. Each business premises containing one or more on-premise ground signs shall have an identifying number posted and maintained on at least one on-premise ground sign structure. For purposes of this subsection, the term "identifying number" shall mean the address number for that business premises assigned by the building official, or where no such has been assigned by the building official, any number, letter or number and letter combination that is distinct from any other number, letter or number and letter combination used on the same premises. All numbers that are to be posted and maintained on an on-premise ground sign shall be:

- (1) Permanently affixed to the outside of the sign;
- (2) Of a color that is in contrast to the background; and
- (3) At least 3 inches in height.



(h) Changeable Message and High Technology Signs. Save and except for signs erected pursuant to the provisions of Section 4620, the following provisions shall apply to all existing and new changeable message and high technology signs:

- (1) Blinking, rotating, moving, chasing, flashing, glaring, strobe, scintillating, or spot lights are prohibited.

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- (2) Lights or colored elements creating a continuously moving, shimmering, or prismatic effect, or the use of rotating or moving parts in association with such lights or colored elements, are prohibited.
 - (3) A changeable message sign may not change the message more often than every five minutes and must change the message within one second or less; a high technology sign may not change the message without a new permit.
 - (4) Brightness limits shall be set at a maximum of 6500 nits between sunrise and sunset, and at a maximum of 1250 nits between sunset and sunrise, and each sign shall be fitted with a qualified light sensing device to automatically adjust the brightness in accordance with these standards.
- (i) Additional On-Premise Sign Provisions.** Beginning September 1, 2009, and save except for signs erected pursuant to the provisions of Section 4620, the following additional provisions shall apply to new on-premise signs for which an initial permit is requested after said date; provided, however, that in the event of a conflict between these provisions and other provisions of this chapter (except for Section 4620), the more stringent provisions shall control.
- (1) **Definitions and references.** In this subsection, the following terms shall have the meanings herein ascribed to them, unless the context of their usage clearly indicates another meaning.
 - a. All references in this Code to the size and height limitations contained in Table 4609 of this Code shall be interpreted to refer to the new size and height limitations contained in Table 4611.
 - b. BUSINESS shall mean any entity that uses an on-premise sign.
 - c. SCHOOL shall mean a public or private elementary, secondary, or high school.
 - (2) **Additional restrictions for ground signs.**
 - a. For any business to which the multi-tenant standards of Category B and Category C of Table 4611 of this Code could apply that instead applies for a permit to utilize a single business ground sign, the single business ground sign shall be permitted and constructed in accordance with the size and height limitations for the next smaller category of right-of-way; that is, a single business Category C sign shall be permitted and constructed to the Category B standards of Table 4611, and a single business Category B sign shall be permitted and constructed to the Category A standards of Table 4611. This provision shall not apply to any new ground sign that is more than 350 feet from another ground sign at the same location.
 - b. All permanent signs other than wall signs and marquee signs will be counted as ground signs, including flag and fence signs.
 - (3) **Additional restrictions for roof signs.** Roof signs are prohibited.
 - (4) **Additional restrictions for wall signs.**
 - a. The area of wall signs shall not exceed in the aggregate 25 percent of the area of the wall on which they are mounted or painted, or 1000 square feet, whichever is smaller.

Section 4611

- b. Wall signs may be attached only to buildings devoted exclusively to business purposes; wall signs attached to buildings or other structures not used exclusively in the furtherance of the primary business purpose shall be treated as ground signs. For the purposes of this provision, wall signs on parking garages located on the premises of the business shall be considered for business purposes.
- c. No wall sign may extend above the supporting exterior wall unless mounted on a mansard or facade, and in any event no wall sign may extend more than ten feet above the roof line of the supporting wall.
- d. In the central business district the maximum height of a wall sign shall not exceed 42-1/2 feet.

(5) Additional restrictions for projecting signs.

- a. No projecting sign shall extend above the roof line of the supporting exterior wall.
- b. In the central business district the maximum height of a projecting sign shall not exceed 42-1/2 feet.

(6) Additional restrictions for changeable message signs.

- a. Only one changeable message sign shall be permitted per business.
- b. Save and except for a changeable message sign located at a school, no changeable message sign shall be located on a local street.
- c. Save and except for a changeable message sign located at a school, no changeable message sign located on or facing a collector street shall be permitted within 150 feet of the property line of a single family residence.
- d. For a changeable message sign located on or facing a collector street, that portion of the sign where the changeable message is located shall not exceed in height those standards for Category A signs contained in Table 4611.
- e. That portion of the face of a changeable message sign devoted to changing the message shall be limited in area to fifty percent of the total area of the sign face allowable under Table 4611, not to exceed 100 square feet.
- f. The height of a changeable message wall sign shall not exceed thirty-five feet or the roof line of the supporting exterior wall, whichever is shorter.
- g. An existing sign may only be converted into a changeable message sign in conformance with the standards for a new changeable message sign.

SECTION 4612--OFF-PREMISE SIGNS

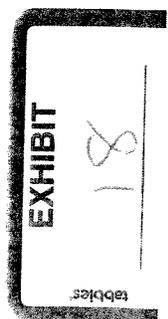
(a) **Off-premise Sign Provisions** . The provisions of this section shall apply only to "off-premise signs," as that term is defined in Section 4603(a), within the sign code application area.

(b) **Prohibition of New Off-premise Signs** .

- (1) From and after the effective date, no new construction permits shall be issued for off-premise signs within the sign code application area. This prohibition shall apply to all classifications of signs, types of signs, and special function signs, and all other signs used as off-premise signs, including portable signs, with the exception that off-premise signs that advertise the sale or rental of real property or direct persons to the location of real property for sale or rental, which signs shall be limited to 40 square feet in area, shall continue to be permitted for a single three-year term.
- (2) ~~Off-premise electronic and off-premise high technology signs~~ are prohibited. This prohibition shall include the construction, reconstruction, upgrading, or conversion of an existing off-premise sign to an ~~off-premise electronic or off-premise high technology sign~~, such that no ~~off-premise electronic or off-premise high technology signs~~ are permitted.

(c) **General Location** .

- (1) All off-premise signs shall be located within 800 feet of a commercial or industrial activity.
- (2) No off-premise sign shall be located in a predominantly residential area.
- (3) No off-premise sign shall be erected, constructed or established such that the face of the structure may be viewed from a scenic or historical right-of-way or district.
- (4) All off-premise signs other than those located on the Interstate and Freeway Primary System shall be subject to the following spacing requirements from other off-premise signs on the same side of the public right-of-way (see Table 4612):
 - a. No off-premise sign having a face area in excess of 300 square feet shall be located within 400 feet of another off-premise sign.
 - b. No off-premise sign having a face area of from 100 to 300 square feet shall be located within 200 feet of another off-premise sign.
 - c. No off-premise sign having a face area up to 100 feet shall be located within 100 feet of another off-premise sign.
- (5) The spacing provisions stated in this section relating to the location of off-premise signs shall not apply to the following signs:
 - a. Signs lawfully erected and lawfully existing on the effective date that are on the Federal Primary System and subject to regulation under the provisions of Chapter 391 of the Texas Transportation Code, including all amendments (the Texas Act), or are subject to regulation under the Federal Highway Beautification Act, 23 U.S.C.A. Section 131, et seq., including all amendments (the Federal Act). Location and spacing of signs subject to the Texas Act or the Federal Act shall be regulated by the City only to the extent required by and in accordance with the directives of the appropriate state or federal agencies regulating such signs. Signs governed by the Texas Act or the Federal Act with respect to location and spacing shall be subject to the remaining provisions of this chapter, unless specifically excluded therefrom by the Texas Act or



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(4) No sign shall obstruct the free use of any window above the first story.

(h) **Signs Employing Motion Picture Machines** . No sign shall employ a stereopticon or motion picture machine.

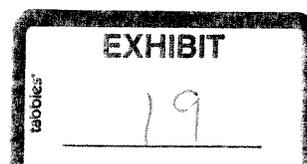
(i) **Signs Not to Create Easements** . No permit for a sign extending beyond private property onto a public street, public sidewalk or public alley shall constitute a permanent easement, and every such permit shall be revocable at any time by action of the City Council, and the City shall not be liable for any damages to the owner by reason of such revocation.

(j) **Change of Ornamental Features, ~~Electrical Wiring or Advertising Display~~** . No sign permit is required for the change of any of the ornamental features, ~~electrical wiring or devices,~~ or the advertising display of a sign previously permitted. This provision shall not apply to signs under new ownership, to spectacular signs with respect to advertising display, or to converting existing signs to electronic signs, high technology signs, or changeable message signs, nor shall it release a person from complying with all other applicable permitting requirements of the City, including those of the Construction Code.

(k) **Signs Obscuring or Interfering with View** . Signs may not be located or illuminated in such a manner as to obscure or otherwise interfere with the effectiveness of an official traffic sign, signal or device, or so as to obstruct or interfere with the view of a driver of approaching, emerging or intersecting traffic, or so as to prevent any traveler on any street from obtaining a clear view of approaching vehicles for a distance of 250 feet along the street.

(l) **Proper Shielding of Lighted Signs--Interference with Drivers of Motor Vehicles** . Signs containing lights that are not effectively shielded so as to prevent beams or rays of light from being directed at any portion of the traveled way from which the sign is primarily viewed and that are of such intensity or brilliance as to cause glare or to impair the vision of the driver of any motor vehicle, or that otherwise interfere with any driver's operation of a motor vehicle, are prohibited.

(m) **Spectacular Signs** . Spectacular signs are prohibited, ~~except that a sign located upon a premises having frontage on a major thoroughfare or a freeway may have moving or intermittent lights that are only used to give date, time and temperature information, brief weather reports, or stock market quotations.~~



REQUEST FOR COUNCIL ACTION

RCA# 9306

TO: Mayor via City Secretary

Subject: Amend Council Motion 2007-0588, Passed June 13, 2007, for Chemical, Liquid Polymer Flocculent for the Public Works & Engineering Department
S12-S20880A2

Category #
4

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Agenda Item

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FROM (Department or other point of origin):

Calvin D. Wells
City Purchasing Agent
Administration & Regulatory Affairs Department

Origination Date

January 31, 2012

Agenda Date

~~FEB 22 2012~~
FEB 29 2012

DIRECTOR'S SIGNATURE

Calvin D. Wells

Council District(s) affected

All

For additional information contact:

David Guernsey Phone: (832) 395-3640
Ray DuRousseau Phone: (832) 393-8726

Date and Identification of prior authorizing Council Action:

CM 07-0588, 6/13/2007; CM 11-0406, 5/18/2011

RECOMMENDATION: (Summary)

Amend Council Motion 2007-0588, as amended by CM 2011-0406, to increase the spending authority from \$9,000,000.00 to \$10,080,000.00 for chemical, liquid polymer flocculent for the Public Works & Engineering Department.

Spending Authority Increased By: \$1,080,000.00

F & A Budget

\$1,080,000.00 - Water & Sewer System Operating Fund (8300)

SPECIFIC EXPLANATION:

The Director of the Department of Public Works & Engineering and the City Purchasing Agent recommend that City Council approve an amendment to Council Motion 2007-0588, as amended by CM 2011-0406, to increase the spending authority for chemical, liquid polymer flocculent awarded to Polydyne, Inc., from \$9,000,000.00 to \$10,080,000.00. This award consisted of liquid polymer flocculents and related antifoam chemicals, which are utilized on a daily basis by the Department's Drinking Water Operations Branch (DWOB) to aid in potable water sludge treatment and is necessary to comply with the regulations promulgated by the Texas Commission on Environmental Quality and the Environmental Protection Agency.

This award began June 13, 2007 for a 36-month period, with two option years to extend, in an amount not to exceed \$7,200,000.00 and was subsequently amended by CM 2011-0406, passed May 18, 2011, to increase the spending authority awarded to Polydyne, Inc. from \$7,200,000.00 to \$9,000,000.00. Expenditures as of January 30, 2012 totaled \$8,178,161.05. The Department determined the spending authority will be exhausted prior to the end of the awarded term due to the DWOB feeding five to six times its normal polymer dosage to treat the "poor" quality raw water influent from the Trinity River and maintain compliance with Federal and State potable drinking water standards. In addition, the DWOB switched its primary coagulant from Aluminum Sulfate to Ferric Sulfate, which requires additional polymer dosages to enhance potable water clarity. The additional spending authority is needed to sustain the Department until a new award is made, which is anticipated within 120 days. All other terms and conditions shall remain as originally approved by City Council.

The solicitation was issued with a 11% M/WBE participation goal. The supplier is currently achieving 1.7%. The supplier anticipated subcontracting the antifoam chemicals related to liquid polymer flocculants to a certified M/WBE; however, the City elected not to purchase antifoam chemicals from the supplier. The Department's Contract Compliance Section and the Office of Business Opportunity met with the supplier to help them identify alternative subcontractors and opportunities for M/WBE firms and will continue to monitor this contract to ensure maximum M/WBE participation.

Buyer: Martin L. King

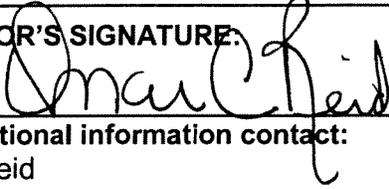
REQUIRED AUTHORIZATION

F&A Director:

Other Authorization:

Other Authorization:

NDT

SUBJECT: Revisions to the Master Classification Ordinance for City Employees		Category # 3	Page 1 of 1	Agenda Item # 42 17
FROM (Department or other point of origin): Human Resources Department		Origination Date February 10, 2012	Agenda Date FEB 22 2012 FEB 29 2012	
DIRECTOR'S SIGNATURE: 		Council District affected: ALL		
For additional information contact: Omar Reid Phone: (713) 837-9330		Date and identification of prior authorizing Council action: Rev. to Ord. 90-1292 as amended by Ord. 2011-0490		
RECOMMENDATION: (Summary) Approve the proposed revisions to the Master Classification Ordinance by adding three job classifications and changing one job title.				
Amount & Source of Funding: None			Budget:	
SPECIFIC EXPLANATION: The Human Resources Department recommends the following revisions to the civilian Master Classification Listing. These revisions can be found on Exhibit A of the ordinance.				
A. Add job classifications				
<u>Proposed Job Title</u> Physician Assistant		<u>Proposed Pay Grade</u> 26		
At the request of the Health & Human Services Department, this specialized position is needed to provide diagnostic, therapeutic and preventive medical care in health centers under the supervision of a Physician.				
<u>Proposed Job Title</u> Human Service Program Manager		<u>Proposed Pay Grade</u> 25		
At the request of the Health & Human Services Department, this classification is needed to develop, oversee, coordinate and monitor various Human Service programs and activities throughout the City of Houston.				
<u>Proposed Job Title</u> Abatement Specialist		<u>Proposed Pay Grade</u> 14		
At the request of the Department of Neighborhoods, this classification is needed to perform, coordinate and schedule field activities in the abatement of nuisance and dangerous building violations.				
B. Change job title				
<u>Current Job Title</u> Program Manager		<u>Proposed Job Title</u> Human Service Program Coordinator		
At the request of the Health & Human Services Department, this revision is needed to better reflect the responsibilities and duties of the classification.				
REQUIRED AUTHORIZATION				
Finance Director: 		Other Authorization:		Other Authorization:

REQUEST FOR COUNCIL ACTION

TO: Mayor via City Secretary

SUBJECT: Ordinance enlarging the boundaries of Reinvestment Zone Number Thirteen (Old Sixth Ward Zone).

Category #

Page
1 of 1

RCA #
Agenda Item#

43 78

FROM: (Department or other point of origin):

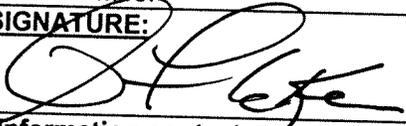
Andrew F. Icken
Chief Development Officer

Origination Date

Agenda Date

~~FEB 22 2012~~

DIRECTOR'S SIGNATURE:



Council Districts affected:

H

FEB 29 2012

For additional information contact:

Ralph De Leon Phone: (713) 837-9573

Date and identification of prior authorizing Council Action:

Ord. No. 1998-1256, 12/22/98, Ord. No. 1999-0794, 07/28/99, Ord. No. 1999-0827, 08/11/99, Res. No. 2000-0040, 08/16/00, Ord. No. 2010-0819, 10/26/10

RECOMMENDATION: (Summary) Approve an ordinance enlarging the boundaries of Reinvestment Zone Number Thirteen (Old Sixth Ward Zone).

Amount of Funding: No Funding Required

Finance Budget:

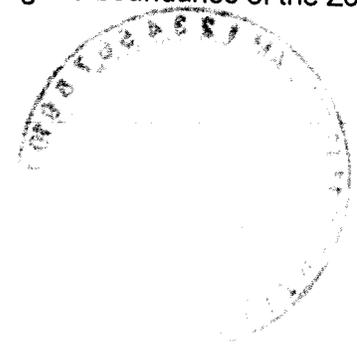
SOURCE OF FUNDING: General Fund Grant Fund Enterprise Fund Other (Specify) N/A

SPECIFIC EXPLANATION:

Reinvestment Zone Number Thirteen (Old Sixth Ward Zone) was created by City Council ("City") by Ordinance No. 1998-1256, adopted on December 22, 1998, to facilitate the revitalization of the Old Sixth Ward area. On July 28, 1999, the City approved a Project Plan and Reinvestment Zone Financing Plan by Ordinance No. 1999-0794, and which was subsequently amended by Ordinance No. 1999-0827 on August 11, 1999, and again by Ordinance 2010-0819, on October 26, 2010 (collectively, the "Plans"). By Resolution 2000-0040, adopted on August 16, 2000, the City approved the creation of the Old Sixth Ward Redevelopment Authority ("Authority"). The Authority was created to assist the City in implementing the Plans.

It is recommended that approximately 100.54 acres be annexed into the Zone. The proposed annexation consists of vacant land, large tracts of underutilized commercial and industrial properties, areas of inadequate sidewalk and street layout, faulty lot layout in relation to accessibility and usefulness, and conditions that endanger life and property. The proposed enlargement of the Zone resulting from the annexation would allow the Zone to facilitate the design, construction public roadways and streets, water, wastewater, and storm water drainage facilities, pedestrian improvements and right-of-way acquisition.

Accordingly, the Administration recommends that City Council approve enlarging the boundaries of the Zone.



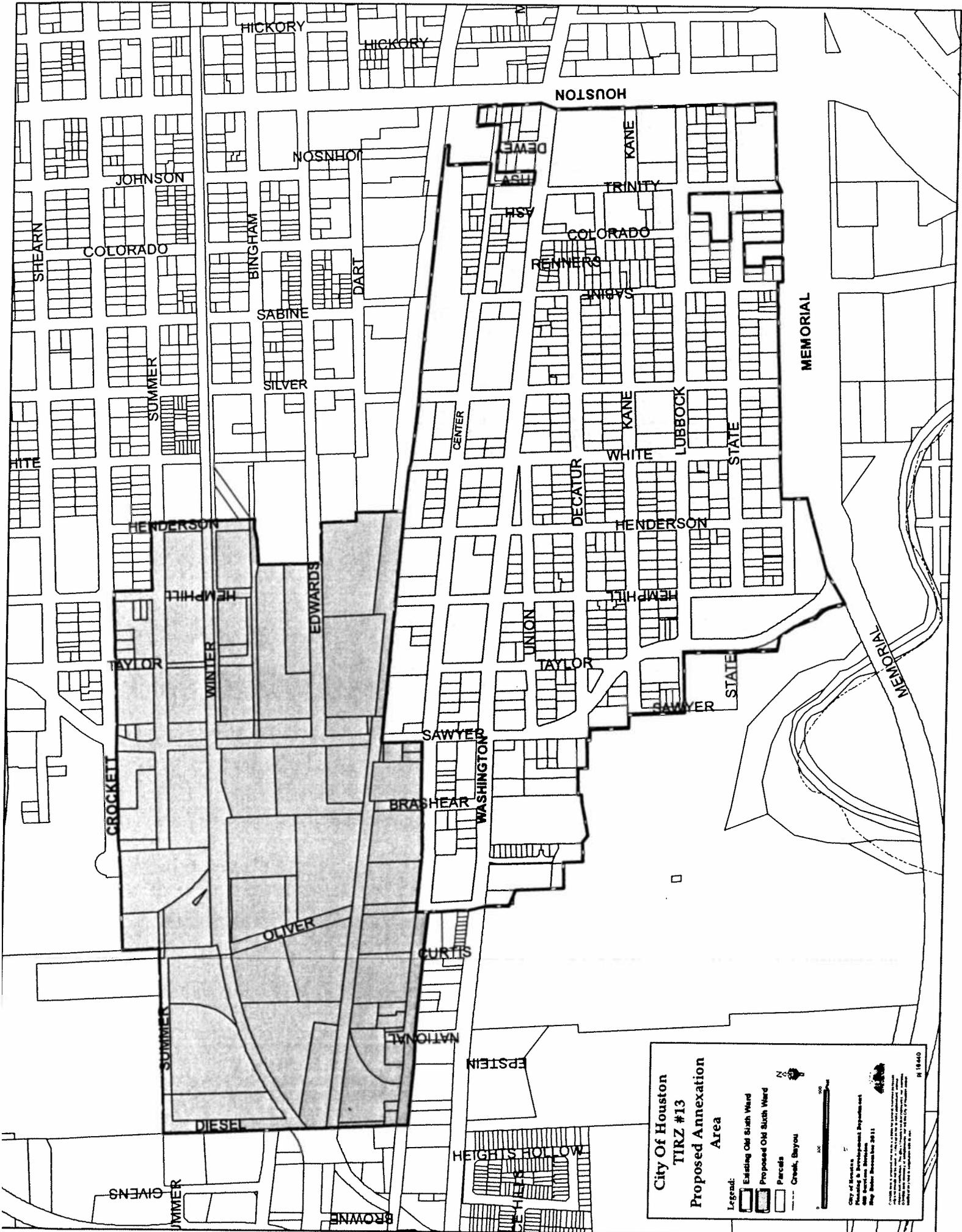
cc: Marta Crinejo, Agenda Director
Anna Russell, City Secretary
Dave Feldman, City Attorney
Deborah McAbee, Senior Assistant City Attorney

REQUIRED AUTHORIZATION

Finance Director:

Other Authorization:

Other Authorization:



City of Houston
TIRZ #13
Proposed Annexation Area

Legend:

- Existing Old Sixth Ward
- Proposed Old Sixth Ward
- Parcels
- Creek, Bayou

Scale: 0 100 200 Feet

City of Houston
 Planning & Development Department
 May 2011

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PL 13-040

REQUEST FOR COUNCIL ACTION

TO: Mayor via City Secretary

RCA #

SUBJECT: Ordinance approving a third amended Project Plan and Reinvestment Zone Financing Plan for Reinvestment Zone Number Thirteen (Old Sixth Ward Zone)

Category #

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1 of 1

Agenda Item#

43A *DA*

FROM: (Department or other point of origin):

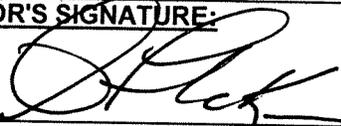
Andrew F. Icken
Chief Development Officer

Origination Date

Agenda Date

~~FEB 28 2012~~

DIRECTOR'S SIGNATURE:



Council Districts affected:

H

FEB 29 2012

For additional information contact:

Ralph De Leon Phone: (713) 837-9573

Date and identification of prior authorizing Council Action: Ord. No. 1998-1256, 12/22/98, Ord. No. 1999-0794, 07/28/99, Ord. No. 1999-0827, 08/11/99, Res. No. 2000-0040, 08/16/00, Ord. No. 2010-0819, 10/26/10

RECOMMENDATION: (Summary)

That City Council adopt an ordinance approving the Third Amended Project Plan and Reinvestment Zone Financing Plan for Reinvestment Zone Number Thirteen (Old Sixth Ward Zone).

Amount of Funding: No Funding Required

Finance Budget:

SOURCE OF FUNDING: General Fund Grant Fund Enterprise Fund N/A

SPECIFIC EXPLANATION:

Reinvestment Zone Number Thirteen ("Zone") was created by City Council ("City") by Ordinance No. 1998-1256, adopted on December 22, 1998, to facilitate the revitalization of the Old Sixth Ward area. On July 28, 1999, the City approved a Project Plan and Reinvestment Zone Financing Plan by Ordinance No. 1999-0794, and which was subsequently amended by Ordinance No. 1999-0827 on August 11, 1999, and again by Ordinance 2010-0819, on October 26, 2010 (collectively, the "Plans"). By Resolution 2000-0040, adopted on August 16, 2000, the City approved the creation of the Old Sixth Ward Redevelopment Authority ("Authority"). The Authority was created to assist the City in implementing the Plans. At a public meeting held on January 19, 2012, the Board of Directors of both the Zone and the Authority approved a Third Amendment to the Project Plan and Reinvestment Zone Financing Plan ("Amended Plan") and forwarded it to the City for consideration.

The proposed Amended Plan restates the goals and objectives included in the Plans, including the design and construction of public streets and utility systems, parks, the redevelopment of cultural and public facilities, historic preservation, and affordable housing. The primary purpose of the Amended Plan is to continue funding of ongoing projects in the original and the 100 acres of territory recently annexed into the Zone. Overall, the non-educational project costs in the Zone will increase by approximately \$42 million from previous Plans. Projected revenues are sufficient to support the projects in the Amended Plan. The proposed Amended Plan will enable the City and the Zone to address distressed infrastructure, obsolete platting, construct mobility improvements, and address conditions that endanger life and property, and other quality of life issues in the Old Sixth Ward area.

To support the Old Sixth Ward Zone's and City's efforts in this regard, the Administration recommends that City Council approve the Third Amended Plan for the Zone.

cc: Marta Crinejo, Agenda Director
 Anna Russell, City Secretary
 David Feldman, City Attorney
 Deborah McAbee, Senior Assistant City Attorney

REQUIRED AUTHORIZATION

Finance Director:

Other Authorization:

Other Authorization:

**TAX INCREMENT REINVESTMENT ZONE NUMBER THIRTEEN
CITY OF HOUSTON**

OLD SIXTH WARD ZONE

**Third Amendment
Project Plan and Reinvestment Zone Financing Plan**

Amended January 19, 2012

REINVESTMENT ZONE NUMBER THIRTEEN, CITY OF HOUSTON, TEXAS
OLD SIXTH WARD ZONE

Part D – Amending the Project Plan and Reinvestment Zone Financing Plan

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TAX INCREMENT REINVESTMENT ZONE NUMBER THIRTEEN
OLD SIXTH WARD ZONE
PART D – AMENDING THE PROJECT PLAN AND
REINVESTMENT ZONE FINANCING PLAN

Amended January 19, 2012

Introduction:

Reinvestment Zone Number Thirteen, City of Houston, Texas, also known as the Old Sixth Ward Tax Increment Reinvestment Zone (“Zone”) was created by Ordinance No. 1998-1256 adopted December 29, 1998 as requested by the Old Sixth Ward Neighborhood Association and petitioners in an area located west of downtown Houston, north of Memorial Drive and on approximately 150 acres of land known as the historic Old Sixth Ward neighborhood. The purposes of the Zone were to advance historic preservation, facilitate physical improvements to the historic Dow School, encourage affordable and market-rate housing projects, and encourage development and redevelopment in the area.

Section One:

The Part A and Part B Plan: The City Council adopted a Project Plan and Reinvestment Zone Financing Plan by Ordinance No. 1999-0794, on July 28, 1999 (the “Part A Plan”). The Part A Plan was subsequently amended by Ordinance No. 1999-0827 on September 11, 1999 (the “Part B Plan”). Together the Part A and Part B Plans (the “Plans”) provided mechanisms needed to assist in the repositioning of the Old Sixth Ward from a blighted and deteriorated neighborhood into a viable residential community. Proposed public improvements included in the Plans addressed existing conditions consisting of substandard and deteriorating structures; inadequate and deteriorated streets, utilities, and sidewalks; faulty and obsolete lot layouts; safety issues; and school improvements.

The Part C Plan: Approved by Ordinance 2010-0819, adopted by City Council on October 13, 2010, the Part C Plan increased Non-Educational project costs from prior Plans. Specifically the Part C Plan provided additional funding for the design and construction of public roadways and utility systems, parks, land acquisition, historic preservation, cultural and public facilities improvements, environmental remediation, streetscape improvements and public art.

The Zone and the City now desire to amend the Plans as further described herein, (the “Part D Plan”).

Section Two:

The Part D Plan: The Part D Plan will remedy recent and historic negative trends along the Washington Avenue Corridor and within the Old Sixth Ward area by creating a viable and attractive environment for investment and redevelopment. Improvements have been identified that will enhance the community by attracting new businesses and residents to the area.

The Part D Plan provides for the enhancement of and improvements to the approximately 100 acres of land recently added to the Zone and includes the areas covered in the Part A, Part B, and Part C Plans. In addition, pursuant to Chapter 311 of the Texas Tax Code, as amended, if the zone finds that there are benefits to the zone in implementing projects in areas outside the boundaries of the Zone, the Zone may expend projects costs on those projects.

Public improvements proposed in this Part D Plan are in relationship to the original goals of the Zone and are as follows:

Proposed Goals for Improvements in the Zone:

Goal 1: The reinforcement of retail developments along the Washington Avenue corridor.

The retention and expansion of retail and commercial developments along Washington Avenue is of key importance to the successful redevelopment of the area. The provision of base level retail functionality is essential to the continued expansion of residential projects in the area. In particular, it is envisioned to develop historic Washington Avenue into a key arterial/town center with an emphasis on parking, lighting, street trees, landscaping, wide sidewalks, public art and adequate pedestrian amenities.

Goal 2: The creation of pedestrian-friendly, safe environments through the reconstruction of the pedestrian realm with ample lighting and streetscape amenities.

Streetscape/pedestrian level enhancements are required to create an environment that will help stimulate investment in retail, residential, and commercial developments. Enhanced streetscapes components will include: sidewalks, lighting, signage, street trees, landscaping, benches and other pedestrian amenities. Construction of sidewalk systems including ADA compliant ramps and other treatments will improve pedestrian safety, enhance the visual environment and provide connectivity both within the community and to adjacent districts. Attention will be placed on the leveraging of Zone monies with sister agencies.

Goal 3: Improvements to public streets and public utility systems to create an environment that will stimulate private investment in retail, residential, and multi-family developments.

Reconstruction (major and minor) of key streets and utility systems will be taken to enhance the level of service in the area, improve functionality, replace aged facilities, and increase aesthetics. All roadway improvements will be integrated with street reconstruction projects of the City of Houston, and others as needed, and where possible, will add elements not included in those projects.

Goal 4: Redevelopment and upgrades to public green space, parks, and other appropriate recreational facilities.

Development of parks, public open green space, and related amenities including access and egress improvements, land acquisition, dedication of public easements, parking, and the construction of enhancements. All improvements will be integrated with adjacent land uses and provided with upgrades focused on connectivity, pedestrian safety, and the visual environment.

Goal 5: Cultural and Public Facilities, Affordable Housing and Historic Preservation.

Increasing public and cultural facilities, historic preservation initiatives, and affordable housing for Old Sixth Ward residents emerged as important public policy goals since the implementation of the Part A Plan. Zone funds will be leveraged with funds from private, public, and non-profit developers to integrate affordable housing and historic preservation initiatives into ongoing and proposed redevelopment projects in the Old Sixth Ward. As such, the acquisition and rehabilitation of historic structures and historic landmarks for the purposes of preservation and restoration is anticipated. These projects, along with improved infrastructure, will enhance the quality of life for existing and new residents and businesses.

A. PROJECT PLAN

Existing Uses of Land (Texas Tax Code §311.011(b)(1)): Map 1 attached hereto depicts the existing land and proposed uses in the Original and Annexed Areas of the Zone. The existing and proposed land uses include multi-family residential, commercial, office, public and institutional, transportation and utility, park and open spaces, and undeveloped land uses.

Proposed Changes of Zoning Ordinances, Master Plan of Municipality, Building Codes, and Other Municipal Ordinances (Texas Tax Code §311.011(b)(2)): All construction will be performed in conformance with the City's existing rules and regulations. There are no proposed changes to any City ordinance, master plan, or building code.

Estimated Non-Project Costs (Texas Tax Code §311.011(b)(3)): No other Non-Project Costs are known at this time.

Method of Relocating Persons to be Displaced, if any, as a Result of Implementing the Plan (Texas Tax Code §311.011(b)(4)): It is not anticipated that any residents will be displaced by any of the projects to be undertaken in the Zone.

B. REINVESTMENT ZONE FINANCING PLAN

Estimated Project Costs (Texas Tax Code §311.011(c)(1)): Exhibit 1 (attached) details the proposed public improvement and administrative project costs. The dollar amounts are approximate and may be amended from time to time by City Council. The financing costs are a function of project financing needs and will vary with market conditions from the estimates shown on Exhibit 1.

Proposed Kind, Number, and Location of all Proposed Public Works or Public Improvements to be Financed in the Zone (Texas Tax Code §311.011(c)(2)): These details are described throughout the Plan.

Economic Feasibility Study and Finding of Feasibility (Texas Tax Code §311.011(c)(3)): Economic feasibility studies have been completed that demonstrate the economic potential of the Zone including the Apartment Market Study for a Low-Income Housing Tax Credit Development for the Texas Department of Housing and Community Affairs, by Patrick

O'Conner and Associated, Inc. in 1998. In addition, Exhibits 2 thru 5 constitute incremental revenue estimates for the TIRZ. The incremental revenue estimates are projected to be sufficient to cover the costs of the proposed redevelopment and infrastructure improvements in the Zone. The Plan estimates total project costs of \$67,565,970. The Zone and the City find and determine that the Part A Plan, Part B Plan, Part C Plan, and Part D Plan are economically feasible.

Estimated Amount of Bond Indebtedness; Estimated Time When Related Costs or Monetary Obligations Incurred (Texas Tax Code §311.011(c)(4), §311.011(c)(5)): Notes have been issued by the Zone. On October 22, 2008, by Ordinance No. 2008-941, City Council approved an Agreement for Financing Public Infrastructure Improvements by and among the City of Houston, Reinvestment Zone Number Thirteen, and the Old Sixth Ward Redevelopment Authority. Subsequently on August 26, 2008, by Ordinance 2009-793, City Council approved a First Amended and Restated Agreement for Financing Public Infrastructure Improvements. Additional bonds or notes may be issued. The value and timing of these future bond or note issuances will correlate to the debt capacity as derived from the revenue schedules attached hereto, and by actual market conditions for the issuance and sale of such bonds or notes. The Zone will explore other financing methods as well, including developer agreement financing and collaboration with other entities for grant funding and partnerships.

Methods and Sources of Financing Project Costs and Percentage of Increment from Taxing Units Anticipated to Contribute Tax Increment to the Zone (Texas Tax Code §311.011(c)(6)): Methods and sources of financing include the issuance of notes and bonds, as well as collaboration with developers and other entities for grant funding and partnerships. TY 1999 was the base year for the TIRZ, and TY 2028 is the scheduled termination date. As outlined in Exhibits 2 thru 5, at least \$31,692,074 million of increment is estimated to be generated by the TIRZ for use in funding project costs. This figure is calculated using an estimated collection rate of 95% and a City contribution of \$0.63875/\$100 of assessed valuation in the Original and Annexed Areas, a Houston Independent School District contribution of \$1.15670/\$100 of assessed valuation in the Original Area.

Current Total Appraised Value of Taxable Real Property (Texas Tax Code §311.011(c)(7)): The current projected appraised value of taxable real property in the Zone, as of April 15, 2011, is \$143,153,271.

Estimated Captured Appraised Value of Zone During Each Year of Existence (Texas Tax Code §311.011(c)(8)): The estimated captured appraised value for the remaining duration of the Zone is set forth in Exhibit 2.

Zone Duration (Texas Tax Code §311.011(c)(9)): When the Zone was initially created by City Council on December 29, 1998, pursuant to Ordinance 1998-1256, the Zone was scheduled to take effect on January 1, 1999, and scheduled to terminate operation on December 31, 2028.

Affordable Housing (Texas Tax Code §311.011(f)): the Zone was created by petition of property owners constituting more than 50% of the assessed value of property in the Zone. One-third of tax increment revenues of the Zone are dedicated to the provision of affordable housing, which may be provided inside or outside the Zone as authorized by Chapter 311, Texas Tax Code. An estimated \$10,564,025 will be used for affordable housing over the remaining life of the Zone.

Exhibits

Map 1 - Map of Proposed and Existing Land Uses in Zone

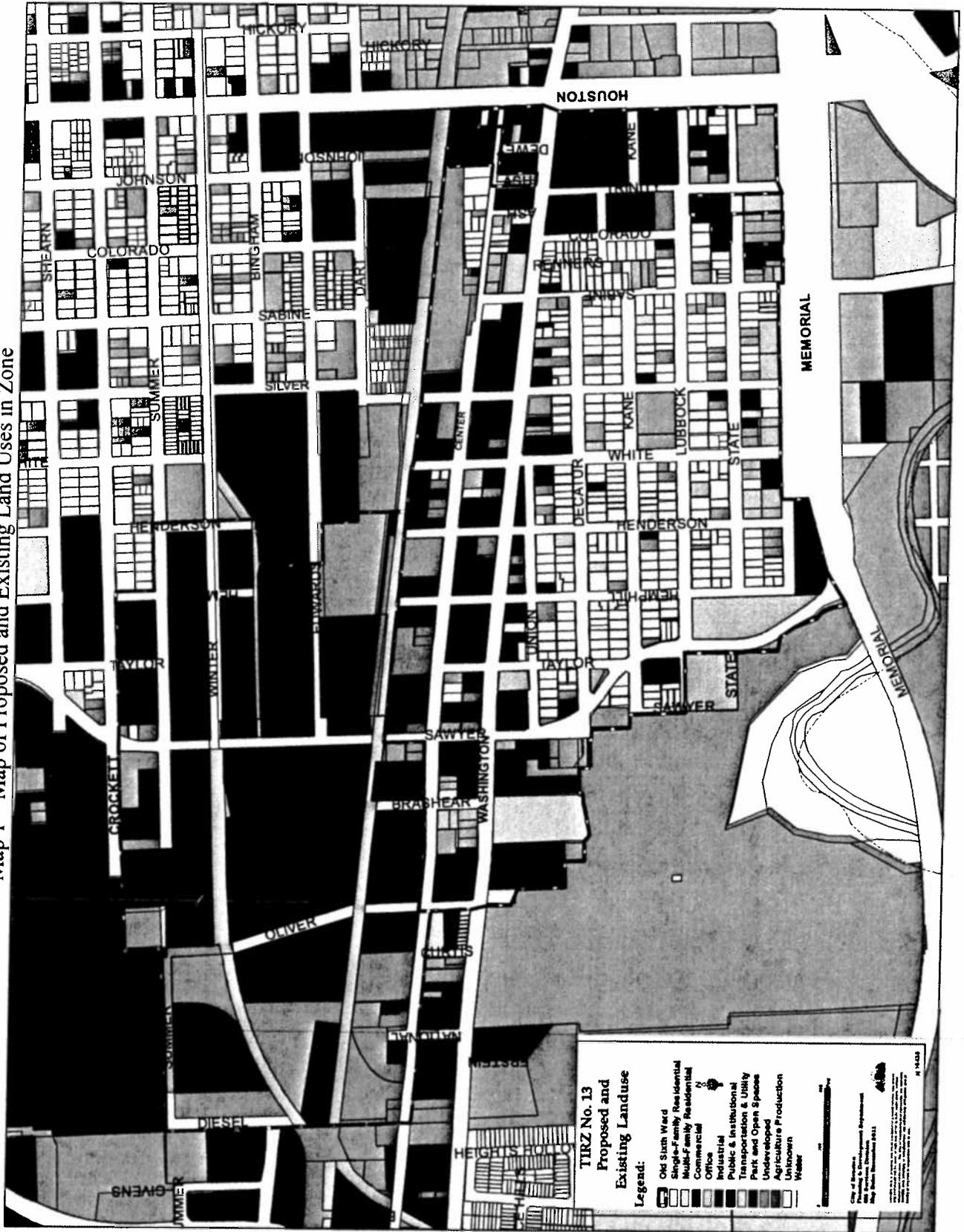


Exhibit I – Parts A, B, C, and D Plan Project Costs

Project Cost Amendments: The following table includes the approved project cost for the Part A, Part B, Part C and the changes made to those budgets through this Part D amendment:

	Estimated Costs 1989 Plan	Estimated Costs 1989 Plan (Amended)	Estimated Costs 2010 Plan	Estimated Costs 2012 Plan	Total	Costs Through 06/30/11	Remaining Costs
Infrastructure Improvements:							
Public Utilities:							
Reconstruction of infrastructure							
Public utilities	\$ 2,400,000	\$ 2,400,000	\$ -	\$ -	\$ 2,400,000	\$ 1,870,332	\$ 529,668
Total Public Utilities	\$ 2,400,000	\$ 2,400,000	\$ 3,000,000	\$ 10,000,000	\$ 13,000,000	\$ -	\$ 13,000,000
Roadway and Sidewalk Improvements:							
Construction of historically appropriate brick sidewalks							
Streetscape improvements on Washington Avenue	\$ 240,000	\$ 240,000	\$ -	\$ -	\$ 240,000	\$ 64,000	\$ 176,000
Street signs and street lights	\$ 650,000	\$ 650,000	\$ -	\$ -	\$ 650,000	\$ -	\$ 650,000
Roadway and streetscape replacement and enhancements	\$ 22,000	\$ 22,000	\$ -	\$ -	\$ 22,000	\$ -	\$ 22,000
Total Roadway and Sidewalk Improvements	\$ 912,000	\$ 912,000	\$ 6,000,000	\$ 15,000,000	\$ 21,000,000	\$ -	\$ 21,000,000
Total Infrastructure Improvements	\$ 3,312,000	\$ 3,312,000	\$ 9,000,000	\$ 25,000,000	\$ 37,312,000	\$ 1,934,332	\$ 35,377,668
Other Project Cost:							
Historic Preservation:							
Historic Preservation including Land Acquisition	\$ 1,000,000	\$ 1,000,000	\$ 2,000,000	\$ 3,000,000	\$ 6,000,000	\$ 1,561,278	\$ 4,438,722
Total Historic Preservation	\$ 1,000,000	\$ 1,000,000	\$ 2,000,000	\$ 3,000,000	\$ 6,000,000	\$ 1,561,278	\$ 4,438,722
Parks and Recreational Facilities:							
Neighborhood parkland purchase and development							
Parks, plazas and hike and bike Trails	\$ 134,000	\$ 134,000	\$ -	\$ -	\$ 134,000	\$ -	\$ 134,000
Total Parks and Recreational Facilities	\$ 134,000	\$ 134,000	\$ 3,000,000	\$ 3,000,000	\$ 6,000,000	\$ -	\$ 6,000,000
Mitigation and Remediation:							
Environmental testing and fill removal for Washington Courtyards	\$ 100,000	\$ 100,000	\$ -	\$ -	\$ 100,000	\$ -	\$ 100,000
Total Historic Preservation	\$ 100,000	\$ 100,000	\$ -	\$ -	\$ 100,000	\$ -	\$ 100,000
Total TIRZ Creation	\$ 60,000	\$ 60,000	\$ -	\$ -	\$ 60,000	\$ -	\$ 60,000
TIRZ Management	\$ 60,000	\$ 60,000	\$ -	\$ -	\$ 60,000	\$ -	\$ 60,000
TIRZ Administration and Management	\$ 500,000	\$ 500,000	\$ 1,339,973	\$ -	\$ 1,339,973	\$ 450,300	\$ 889,673
Total TIRZ Management	\$ 500,000	\$ 500,000	\$ 1,339,973	\$ -	\$ 1,339,973	\$ 450,300	\$ 889,673
Total Affordable Housing	\$ 5,517,419	\$ 6,865,965	\$ 11,765,306	\$ 11,765,306	\$ 11,765,306	\$ 1,988,300	\$ 9,777,006
Educational Project Costs	\$ 5,517,419	\$ 6,865,965	\$ 11,765,306	\$ 11,765,306	\$ 11,765,306	\$ 1,988,300	\$ 9,777,006
Dow School							
Educational Facilities	\$ 428,000	\$ 428,000	\$ -	\$ -	\$ 428,000	\$ 428,000	\$ -
Total Educational Project Costs	\$ 3,007,000	\$ 4,854,691	\$ -	\$ -	\$ 4,426,691	\$ 645,788	\$ 3,780,903
PROJECT PLAN TOTAL	\$ 13,630,419	\$ 16,826,656	\$ 27,105,279	\$ 42,765,306	\$ 67,565,970	\$ 7,007,998	\$ 60,557,972

Exhibit 2 –Net Revenue All Jurisdictions

Tax Year (1)	Increment Revenue			Total Increment Revenue	Net Revenue (Total Increment Revenue Less Transfers)
	City	HISD			
2011	\$ 660,259	\$ 291,001	\$	\$ 951,261	\$ 462,665
2012	\$ 724,190	\$ 301,551	\$	\$ 1,025,740	\$ 505,007
2013	\$ 791,317	\$ 312,100	\$	\$ 1,103,416	\$ 549,321
2014	\$ 861,800	\$ 322,649	\$	\$ 1,184,449	\$ 595,704
2015	\$ 935,808	\$ 333,198	\$	\$ 1,269,005	\$ 644,260
2016	\$ 1,013,516	\$ 343,747	\$	\$ 1,357,263	\$ 695,099
2017	\$ 1,095,109	\$ 354,296	\$	\$ 1,449,405	\$ 748,333
2018	\$ 1,180,782	\$ 364,845	\$	\$ 1,545,627	\$ 804,083
2019	\$ 1,270,739	\$ 375,394	\$	\$ 1,646,133	\$ 862,475
2020	\$ 1,365,193	\$ 385,943	\$	\$ 1,751,136	\$ 923,640
2021	\$ 1,464,370	\$ 396,492	\$	\$ 1,860,863	\$ 987,718
2022	\$ 1,568,506	\$ 407,042	\$	\$ 1,975,548	\$ 1,054,853
2023	\$ 1,677,849	\$ 417,591	\$	\$ 2,095,440	\$ 1,125,200
2024	\$ 1,792,659	\$ 428,140	\$	\$ 2,220,799	\$ 1,198,918
2025	\$ 1,913,210	\$ 438,689	\$	\$ 2,351,899	\$ 1,276,176
2026	\$ 2,039,788	\$ 449,238	\$	\$ 2,489,026	\$ 1,357,150
2027	\$ 2,172,695	\$ 459,787	\$	\$ 2,632,482	\$ 1,442,028
2028	\$ 2,312,247	\$ 470,336	\$	\$ 2,782,583	\$ 1,531,004
	\$ 24,840,036	\$ 6,852,039	\$	\$ 31,692,074	\$ 16,763,632

Notes:

(1) The Old Sixth Ward Zone is scheduled to terminate in Tax Year 2028

Exhibit 2A - Transfer Schedule All Jurisdictions

Tax Year (1)	Increment Revenue			Transfers										Net Revenue (Total Increment Revenue less Total Transfers)
	City	HISD	Total	Affordable Housing			HISD Educational	Admin Fees		Total Transfers				
				COH	HISD	Total		COH	HISD		Total			
2011	\$ 660,259	\$ 291,001	\$ 951,261	\$ 220,086	\$ 97,000	\$ 317,087	\$ 113,496	\$ 33,013	\$ 25,000	\$ 58,013	\$ 488,595	\$ 462,665		
2012	\$ 724,190	\$ 301,551	\$ 1,025,740	\$ 241,397	\$ 100,517	\$ 341,913	\$ 117,610	\$ 36,209	\$ 25,000	\$ 61,209	\$ 520,733	\$ 505,007		
2013	\$ 791,317	\$ 312,100	\$ 1,103,416	\$ 263,772	\$ 104,033	\$ 367,805	\$ 121,724	\$ 39,566	\$ 25,000	\$ 64,566	\$ 554,096	\$ 549,321		
2014	\$ 861,800	\$ 322,649	\$ 1,184,449	\$ 287,267	\$ 107,550	\$ 394,816	\$ 125,839	\$ 43,090	\$ 25,000	\$ 68,090	\$ 588,745	\$ 595,704		
2015	\$ 935,808	\$ 333,198	\$ 1,269,005	\$ 311,936	\$ 111,066	\$ 423,002	\$ 129,953	\$ 46,790	\$ 25,000	\$ 71,790	\$ 624,745	\$ 644,260		
2016	\$ 1,013,516	\$ 343,747	\$ 1,357,263	\$ 337,839	\$ 114,582	\$ 452,421	\$ 134,067	\$ 50,676	\$ 25,000	\$ 75,676	\$ 662,164	\$ 695,099		
2017	\$ 1,095,109	\$ 354,296	\$ 1,449,405	\$ 365,036	\$ 118,099	\$ 483,135	\$ 138,182	\$ 54,755	\$ 25,000	\$ 79,755	\$ 701,072	\$ 748,333		
2018	\$ 1,180,782	\$ 364,845	\$ 1,545,627	\$ 393,594	\$ 121,615	\$ 515,209	\$ 142,296	\$ 59,039	\$ 25,000	\$ 84,039	\$ 741,544	\$ 804,083		
2019	\$ 1,270,739	\$ 375,394	\$ 1,646,133	\$ 423,580	\$ 125,131	\$ 548,711	\$ 146,410	\$ 63,537	\$ 25,000	\$ 88,537	\$ 783,658	\$ 862,475		
2020	\$ 1,365,193	\$ 385,943	\$ 1,751,136	\$ 455,064	\$ 128,648	\$ 583,712	\$ 150,525	\$ 68,260	\$ 25,000	\$ 93,260	\$ 827,496	\$ 923,640		
2021	\$ 1,464,370	\$ 396,492	\$ 1,860,863	\$ 488,123	\$ 132,164	\$ 620,288	\$ 154,639	\$ 73,219	\$ 25,000	\$ 98,219	\$ 873,145	\$ 987,718		
2022	\$ 1,568,506	\$ 407,042	\$ 1,975,548	\$ 522,835	\$ 135,681	\$ 658,516	\$ 158,753	\$ 78,425	\$ 25,000	\$ 103,425	\$ 920,695	\$ 1,054,853		
2023	\$ 1,677,849	\$ 417,591	\$ 2,095,440	\$ 559,283	\$ 139,197	\$ 698,480	\$ 162,868	\$ 83,892	\$ 25,000	\$ 108,892	\$ 970,240	\$ 1,125,200		
2024	\$ 1,792,659	\$ 428,140	\$ 2,220,799	\$ 597,553	\$ 142,713	\$ 740,266	\$ 166,982	\$ 89,633	\$ 25,000	\$ 114,633	\$ 1,021,881	\$ 1,198,918		
2025	\$ 1,913,210	\$ 438,689	\$ 2,351,899	\$ 637,737	\$ 146,230	\$ 783,966	\$ 171,096	\$ 95,660	\$ 25,000	\$ 120,660	\$ 1,075,723	\$ 1,276,176		
2026	\$ 2,039,788	\$ 449,238	\$ 2,489,026	\$ 679,929	\$ 149,746	\$ 829,675	\$ 175,211	\$ 101,989	\$ 25,000	\$ 126,989	\$ 1,131,875	\$ 1,357,150		
2027	\$ 2,172,695	\$ 459,787	\$ 2,632,482	\$ 724,232	\$ 153,262	\$ 877,494	\$ 179,325	\$ 108,635	\$ 25,000	\$ 133,635	\$ 1,190,454	\$ 1,442,028		
2028	\$ 2,312,247	\$ 470,336	\$ 2,782,583	\$ 770,749	\$ 156,779	\$ 927,528	\$ 183,439	\$ 115,612	\$ 25,000	\$ 140,612	\$ 1,251,579	\$ 1,531,004		
	\$ 24,840,036	\$ 6,852,039	\$ 31,692,074	\$ 8,280,012	\$ 2,284,013	\$ 10,564,025	\$ 2,672,416	\$ 1,242,002	\$ 450,000	\$ 1,692,002	\$ 14,928,442	\$ 16,763,632		

Notes:

(1) the Old Sixth Ward Zone is scheduled to terminate in Tax Year 2028

Exhibit 5 – Revenue Schedule Annexed Area – City of Houston

Tax Year(1)	Base Value (2)	Projected Value (3)	Captured Appraised Value	Collection Rate (4)	Tax Rate	Increment Revenue
2011	\$ 67,556,007	\$ 67,556,007	\$ -	95.00%	0.63875	\$ -
2012	\$ 67,556,007	\$ 70,933,807	\$ 3,377,800	95.00%	0.63875	\$ 20,497
2013	\$ 67,556,007	\$ 74,480,498	\$ 6,924,491	95.00%	0.63875	\$ 42,019
2014	\$ 67,556,007	\$ 78,204,523	\$ 10,648,516	95.00%	0.63875	\$ 64,617
2015	\$ 67,556,007	\$ 82,114,749	\$ 14,558,742	95.00%	0.63875	\$ 88,344
2016	\$ 67,556,007	\$ 86,220,486	\$ 18,664,479	95.00%	0.63875	\$ 113,258
2017	\$ 67,556,007	\$ 90,531,510	\$ 22,975,503	95.00%	0.63875	\$ 139,418
2018	\$ 67,556,007	\$ 95,058,086	\$ 27,502,079	95.00%	0.63875	\$ 166,886
2019	\$ 67,556,007	\$ 99,810,990	\$ 32,254,983	95.00%	0.63875	\$ 195,727
2020	\$ 67,556,007	\$ 104,801,540	\$ 37,245,533	95.00%	0.63875	\$ 226,011
2021	\$ 67,556,007	\$ 110,041,617	\$ 42,485,610	95.00%	0.63875	\$ 257,808
2022	\$ 67,556,007	\$ 115,543,698	\$ 47,987,691	95.00%	0.63875	\$ 291,195
2023	\$ 67,556,007	\$ 121,320,883	\$ 53,764,876	95.00%	0.63875	\$ 326,252
2024	\$ 67,556,007	\$ 127,386,927	\$ 59,830,920	95.00%	0.63875	\$ 363,061
2025	\$ 67,556,007	\$ 133,756,273	\$ 66,200,266	95.00%	0.63875	\$ 401,711
2026	\$ 67,556,007	\$ 140,444,087	\$ 72,888,080	95.00%	0.63875	\$ 442,294
2027	\$ 67,556,007	\$ 147,466,291	\$ 79,910,284	95.00%	0.63875	\$ 484,906
2028	\$ 67,556,007	\$ 154,839,606	\$ 87,283,599	95.00%	0.63875	\$ 529,648
		\$ 1,598,205,679	\$ 517,309,567			\$ 3,139,099

Notes:

- (1) Old Sixth Ward Reinvestment Zone Number 13 is scheduled to terminate in Tax Year 2028
- (2) Base Year is Tax Year 2011. The Base Value is an accumulation of the appraised value for all property in the proposed Annexed Area.
- (3) Projected Growth for Tax Year 2012 to Tax Year 2028 is an incremental increase of 5% each year
- (4) Collection Rate is estimated at 95%

TO: Mayor via City Secretary REQUEST FOR COUNCIL ACTION

SUBJECT: Ordinance Adopting an Annexation Plan for the City of Houston, 2012-2014		Category #	Page 1 of 1	Agenda Item 4#4
FROM (Department or other point of origin): Planning and Development Department		Origination Date February 15, 2012		Agenda Date FEB 22 2012
DIRECTOR'S SIGNATURE: <i>Margaret Wallace</i>		Council District affected: All		FEB 29 2012
For additional information contact: Margaret Wallace Phone: 713-837-7826		Date and identification of prior authorizing Council action:		
RECOMMENDATION: (Summary) It is recommended that the City Council pass an ordinance adopting an annexation plan for the City of Houston for the years 2012 through 2014				
Amount and Source of Funding:			Finance Budget:	
SPECIFIC EXPLANATION: Section 43.052 of the Texas Local Government Code requires that a municipality identify areas the municipality intends to annex during the following three years in an annexation plan. Through adoption of the plan, the City makes public its intent regarding annexation of property within the next three years. This proposed plan makes the following declarations: <ul style="list-style-type: none">• The City of Houston does not propose to annex any territory for general purposes other than what is indicated below, except that it will consider the annexation of territory if requested by property owners.• The City will continue to consider Strategic Partnership Agreements (SPAs) with utility districts within the City's ETJ.• The City intends to consider the full purpose annexation of territory located within the Navigation District, as defined by the City of Houston Ordinance dated April 18, 1913 (B3, P327), and territory generally identified as the Jacintoport Industrial District, more fully described in Exhibit A of the Annexation Plan, save and except those properties covered by Industrial District contracts. The City will pursue annexation of territory currently covered by Industrial District contracts at the time the contract expires unless the contract is renewed by City Council. State law does not require the City to include these areas on our Annexation Plan. cc: Marta Crinejo David Feldman, City Attorney Andy Icken, Chief Development Officer Sameera Mahendru, Assistant City Attorney Anna Russell, City Secretary				
REQUIRED AUTHORIZATION				
Finance Director:	Other Authorization:		Other Authorization:	

Handwritten initials

City of Houston Annexation Plan

2012 – 2014

Introduction

In the State of Texas, the Local Government Code defines a city's rights and responsibilities regarding properties within its boundaries and the area immediately surrounding its boundaries (called extraterritorial jurisdiction). This Code is where cities are given authority to change their boundaries either by annexation or disannexation.

Houston's extraterritorial jurisdiction (EJT) is essentially a five-mile band around the City's general-purpose boundaries, with the exception of instances when that band intersects another municipality or its ETJ. Within its ETJ, Houston has limited regulatory authority. Two notable examples are the imposition of Chapter 42 of the Code of Ordinances, a chapter relating to the development and subdivision of land, and the City's authority to consent to the creation and expansion of other governmental entities such as municipal utility districts (often referred to as MUDs).

Annexation is the other key authority a city has within its ETJ. Recent sessions of the Legislature have modified and expanded the manner in which Houston may annex property. The different types include:

General Purpose annexation: This type of annexation is the most commonly known. All of Houston's historically significant annexations have occurred in this manner. For general-purpose annexation, a city must meet a strenuous public notification requirement. Upon annexation, all affected property becomes part of the general-purpose boundaries and is effectively subject to all regulations, taxes and services provided by the City. Residents within this property are residents of the City of Houston and have all the rights and responsibilities afforded thereby. Property considered for general-purpose annexation must be included in a City's annexation plan at least three years prior to the annexation. One instance where the three-year requirement is waived is if the property owner requests annexation.

Limited Purpose annexation: This type of annexation, authorized in the 1999 Legislature, may be conducted as part of a Strategic Partnership Agreement (SPA) with a utility district. It carries less stringent public notice requirements. The annexation typically includes commercial property only. Property (ad valorem) taxes are not levied on properties included in this type of annexation, but the City may levy a sales tax on retail sales conducted in the area. Properties annexed as part of a SPA do not carry the three-year requirement.

The SPA identifies which regulations and services, if any, are imposed in the area annexed. It also identifies the amount of sales tax to be levied and how much, if any, will be shared with the district. Finally, the SPA identifies the length of the agreement and the City's options for when and if the City might make the property subject to general-purpose annexation.

The Annexation Plan

For the years 2012–2014, the City of Houston proposes to annex for general purposes territory located within the Navigation District, as defined by the City of Houston Ordinance dated April 13, 1913 (B3, P327), and territory generally identified as the Jacintoport Industrial District, more fully described in Exhibit A of this document, save and except those properties that have entered into valid and binding Industrial District agreements.

In addition, the City will consider the annexation of territory if requested by property owners and will continue to consider SPAs with utility districts within the City's ETJ.

Exhibit A

Industrial District Tract

Property Description

1. BEGINNING at the intersection of an easterly City of Houston full-purpose city limit line as defined in Ordinance 1956-3351, with a southerly City of Houston city limit line as defined in the same Ordinance, such point also being a point near the intersection of Cain Circle and Missouri Pacific Railroad;
2. THENCE in an easterly direction along that southerly city limit line to its intersection with an easterly City of Houston city limit line as defined in that same Ordinance;
3. THENCE in a northerly direction along that easterly city limit line to its intersection with a generally northeasterly and then southeasterly City of Houston city limit line as defined in that same Ordinance, such line also being the meanders of the westerly bank of Greens Bayou;
4. THENCE in a northwesterly direction along that southeasterly city limit line to its intersection with a southerly City of Houston city limit line as defined in that same Ordinance;
5. THENCE in an easterly direction along that southerly city limit line to its intersection with an easterly City of Houston city limit line as defined in that same Ordinance;
6. THENCE in a northerly direction along that easterly city limit line to its intersection with a southerly City of Houston limited-purpose city limit line as defined in Ordinance 2005-0234;
7. THENCE in an easterly direction along that southerly city limit line to its intersection with a westerly City of Houston city limit line as defined in the same Ordinance;
8. THENCE in an southerly direction along that westerly city limit line to its intersection with a generally southerly City of Houston city limit line as defined in the same Ordinance;
9. THENCE in an easterly and then northeasterly direction along that southerly city limit line to its intersection with the southerly right-of-way line of Interstate Highway 10 (the East Freeway);
10. THENCE in a generally easterly direction along that southerly right-of-way line to its intersection with the northeasterly right-of-way line of Texas State Highway Beltway 8 (Sam Houston Parkway);
11. THENCE in a southeasterly direction along that northeasterly right-of-way line to its intersection with the southeasterly right-of-way line of Market Street;
12. THENCE in a northeasterly and then generally easterly direction along that southeasterly right-of-way line to its intersection with the southwesterly right-of-way line of De Zavalla Road;
13. THENCE in a generally southeasterly direction along that southwesterly right-of-way to its intersection with the northerly boundary line of 2500 feet buffer zone of ship channel;

Exhibit A
Industrial District Tract
Property Description

14. THENCE in a generally westerly direction along that northerly boundary line to its intersection with an easterly City of Houston city limit line as defined in Ordinance 1956-3351;
15. THENCE in a northerly direction along that easterly city limit line to its intersection with a southerly City of Houston city limit line as defined in that same Ordinance, such point also being the POINT OF BEGINNING.

Date: 1/6/12	Subject: Approve an Ordinance to provide \$3,508,560 in Hurricane Ike Community Development Block Grant-Disaster Recovery funds, as well as associated delegation of authority and approval of a standardized package of forms, for the reconstruction of up to 40 qualified homes by Altura Homes DFW, LP.	Originators Initials 	Page 2 of 2
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Background:

On September 13, 2008, the President of the United States declared Hurricane Ike a "major disaster." As a result, the City of Houston was awarded CDBG-DR funds to repair and/or reconstruct severely damaged homes owned by eligible low-to-moderate income families. HCDD plans to repair and/or reconstruct 242 homes (including the homes approved through this ordinance). HCDD is on pace to complete Round I construction by the end of this year. The Federal funds are allocated to the City through the State of Texas General Land Office.

This Request for Proposal (RFP) was advertised in accordance with the requirements of the State of Texas bid laws. Thirty Five (35) prospective proposers downloaded the solicitation document from SPD's e-bidding website. Proposals were received from ILCOR, Joshua Dade Contractors, Burghli Homes, DSW Homes, General Contractor Services, Inc., Altura Homes DFW, LP, SWMJ Construction, Inc., and Baylor Asset Management. The proposals were evaluated based upon the following criteria:

- Price / Fee
- Expertise / Experience / Qualifications / Personnel
- Work Quality
- Financial Statements / Bonding Capacity
- Housing Unit Production Capacity / Proposed Operations / Equipment List / Assets
- Permits, Registrations & Certifications

Altura Homes DFW, LP received the highest overall score.

M/WBE Subcontracting:

NAME	TYPE OF WORK	DOLLAR AMOUNT	PERCENTAGE
Vault Construction	Concrete	\$303,330.00	9.6
Carter Land Surveying	Surveying	\$18,450.00	.6
	Total:	\$321,780.00	10.2

The Mayor's Office of Business Opportunity will monitor this award.

Pay of Play Program:

The proposed contractor is required to comply with the City's "Pay of Play" ordinance regarding health benefits for employees of City contractors. In this case, the contractor provides health benefits to eligible employees in compliance with City policy.

Buyer: Derrick McClendon

Estimated Spending Authority

Department	FY12	Out Years	Total
Housing & Community Development	\$0.00	\$3,508,560.00	\$3,508,560.00

City Secretary
 Mayor's Office
 Legal Department
 Finance Department

REQUEST FOR COUNCIL ACTION

TO: Mayor via City Secretary

Subject: Approve an Ordinance to Appropriate Funds and Approve Awarding a Contract to the Best Respondent for Telecommunication Services for the Houston Airport System/S33-T23908

Category #
4

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RCA# 9184

of 2 Agenda Item

46

FROM (Department or other point of origin):

Calvin D. Wells
City Purchasing Agent
Administration & Regulatory Affairs Department

Origination Date

February 08, 2012

Agenda Date

FEB 29 2012
~~FEB 29 2012~~

DIRECTOR'S SIGNATURE

Calvin D. Wells
For additional information contact:
Dallas Evans Phone: (281) 230-8001
Douglas Moore Phone: (832) 393-8724

Council District(s) affected
B, E, I

Date and Identification of prior authorizing Council Action:

RECOMMENDATION: (Summary)

Adopt ordinance 1) approve an ordinance appropriating \$1,500,000.00 from the HAS Airport Improvement Fund; and 2) approve the awarding of a contract to NetVersant Solutions, LLC, in the amount of \$11,989,626.92 for telecommunication services for the Houston Airport System.

Maximum Contract Amount: \$11,989,626.92

Finance Budget

\$ 1,500,000.00 - HAS Airport Improvement Fund (8011) - WBS#A-000138-0025-3-01
\$10,489,626.92 - HAS Revenue Fund (8001)

\$11,989,626.92 - Total Contract Award

SPECIFIC EXPLANATION:

The Director of the Houston Airport System and City Purchasing Agent recommends that City Council 1) approve an ordinance appropriating \$1,500,000.00 from the HAS Airport Improvement Fund; and 2) approve the awarding of a three-year contract, with two one-year options to NetVersant Solutions, LLC, in a amount not to exceed \$11,989,626.92 for telecommunication services for the Houston Airport System (HAS). The HAS Director and/or City Purchasing Agent may terminate this contract at any time upon 30-days written notice to the contractor.

The scope of work requires the contractor to provide all personnel, management, supervision, labor, materials, equipment, transportation, and incidentals necessary to operate and maintain the telecommunication equipment and services at the Bush Intercontinental, William P. Hobby and Ellington Airports. The telecommunications services includes basic PBX maintenance, Moves, Adds, and Changes (MACs) and routine installation activities to support AVAYA CS1000 PBX system, multiple fiber and carrier remote units, telephone instruments, software updates, Infortel Select Call Accounting Application, NICE Inform IP Recording System software, Call Pilot Centralized Voice Mail and AVAYA Call Center Software Server and ancillary equipment for the operation of the telephone system.

This Request for Proposal (RFP) was advertised in accordance with the requirements of the State of Texas bid laws. One-hundred thirty prospective proposers downloaded the solicitation document from SPD's e-bidding website and as a result, proposals were received from Affiliated Communication, Inc., NetVersant, Shared Technologies, Inc., and Verizon Business Network Services, Inc, on behalf of Verizon Select Services, Inc. The evaluation committee consisted of five evaluators from the HAS. The proposals were evaluated based upon the following criteria:

REQUIRED AUTHORIZATION

Finance Department:

Other Authorization:

Other Authorization: *MA*

Date: 2/8/2012	Subject: Approve an Ordinance to Appropriate Funds and Approve Awarding a Contract to the Best Respondent for Telecommunication Services for the Houston Airport System/S33-T23908	Originator's Initials CJ	Page 2 of 2
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- Proposed Strategy and Operational Plan
- Expertise/Experience/Qualifications
- Conformance to RFP Requirements
- Financial Strength of Offeror
- Cost
- M/WBE Participation

Verizon Business Network Services, Inc, on behalf of Verizon Select Services, Inc. was determined as the highest-ranked respondent. However, due to internal business-related reasons, Verizon Select Services, Inc. declined an invitation to participate in final negotiations with HAS. As a result, HAS engaged in discussions with the second highest-ranked vendor, NetVersant Solutions, LLC.

M/WBE Subcontracting:

This RFP was issued as a goal-oriented contract with a 20% M/WBE participation level. NetVersant Solutions, LLC has designated the below-named company as its certified M/WBE subcontractor.

Subcontractor	Type of Work	Percentage	Amount
Precision Task Group, Inc.	Professional Services	35%	\$4,195,850.77

The Mayor's Office of Business Opportunity will monitor this contract.

Pay or Play Program:

The proposed contract requires compliance with the City's 'Pay or Play' ordinance regarding health benefits for employees of City contractors. In this case, the contractor provides health benefits to eligible employees in compliance with City policy.

Buyer: Conley Jackson

Estimated Spending Authority

Department	FY12	Out Years	Total Amount
Houston Airport System	\$669,412.60	\$11,320,214.32	\$11,989,626.92



47
FEB 29 2012

MOTION NO. 2012 0114

MOTION by Council Member Brown that the following item be postponed for one week:

Item 41 - Ordinance approving and authorizing first amendment to contract (Approved by Ordinance No. 2007-0972) between the City of Houston and BL Technology, Inc. for Security System Installation and Repair Services for the General Services Department

Seconded by Council Member Bradford and carried.

Mayor Parker, Council Members Brown, Davis, Cohen, Adams, Pennington, Gonzalez, Rodriguez, Laster, Green, Costello, Burks, Noriega, Bradford and Christie voting aye
Nays none
Council Member Sullivan absent

Council Member Hoang out of the City on City business

PASSED AND ADOPTED this 22nd day of February 2012.

Pursuant to Article VI, Section 6 of the City Charter, the effective date of the foregoing motion is February 28, 2012.

City Secretary

Revised R
RCA

REQUEST FOR COUNCIL ACTION

RCA# 9211

TO: Mayor via City Secretary

Subject: Ordinance Authorizing a First Amendment to Contract No. 4600008051 for Security System Installation and Repair Services for the General Services Department S23-L22376-A1

Category #
4

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Agenda Item

<i>47</i>	<i>##</i>
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FROM (Department or other point of origin):

Calvin D. Wells
City Purchasing Agent
Administration & Regulatory Affairs Department

Origination Date

January 25, 2012

Agenda Date

~~FEB 22 2012~~

FEB 29 2012

DIRECTOR'S SIGNATURE

CWS

Council District(s) affected
All

For additional information contact:

Jacquelyn L. Nisby Phone: (832) 393-8023
Douglas Moore Phone: (832) 393-8724

Date and Identification of prior authorizing Council Action:

Ordinance No. 2007-0972; Passed 8-29-2007

RECOMMENDATION: (Summary)

Approve an amending ordinance authorizing a first amendment to the contract between the City of Houston and BL Technology, Inc. to extend the contract term from September 13, 2012 to September 12, 2014 for security system installation and repair services for the General Services Department.

No Additional Funding Required

Finance Budget

SPECIFIC EXPLANATION:

The City Purchasing Agent recommends that City Council approve an amending ordinance authorizing a first amendment to the Contract between the City of Houston and BL Technology, Inc. to extend the contract term from September 13, 2012 to September 12, 2014 for security system installation and repair services for the General Services Department. The City Purchasing Agent may terminate this contract anytime upon 30-days written notice to the contractor.

This contract was awarded on August 29, 2007 by Ordinance No. 2007-0972 for a five year term in the amount of \$16,259,339.00. Expenditures as of January 18, 2012 totaled \$7,968,958.52. The first amendment will extend the contract term for two additional years. In consideration for the two-year contract extension, the contractor has agreed to freeze year five pricing through September 12, 2014.

This is a work-order contract to perform labor on a wide variety of security system installations and repairs citywide. The General Services Department (GSD) oversees the installation and maintenance of security systems in 225 City facilities, which entails projects ranging from simple repairs to major upgrades that are part of the Capital Improvement Plan. GSD will continue to achieve time and dollar savings by utilizing a competitively bid contract when specialized labor is required for these projects, and expenditures will continue to be made only as needed for specific tasks, using a funding source appropriate for each project. Any appropriations of bond funds will continue to require further Council approval.

This contract was awarded with an 11% MWBE participation goal and BL Technology, Inc. is currently achieving 20.2% which is over the required M/WBE goal. The Mayor's Office of Business Opportunity will continue to monitor this contract to ensure maximum M/WBE participation.

Buyer: Roy Breaux

REQUIRED AUTHORIZATION

Finance Department:

Other Authorization:

Other Authorization:

MT