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 Marketing 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/Almeda 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
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
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
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

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

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

END OF CONSENT AGENDA
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
NON-AGENDA

2MIN

3MIN

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


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 route 50


PREVIOUS

1MIN

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
February 9, 2011

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
Mayor

AP:JC:jsk

Attachments

cc: Mr. David Hawes, Executive Director, Five Corners Improvement District
February 9, 2012

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
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.

<table>
<thead>
<tr>
<th>Name</th>
</tr>
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<tbody>
<tr>
<td>Dana V. Perry-Drexler</td>
</tr>
</tbody>
</table>

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
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.

<table>
<thead>
<tr>
<th>Names</th>
<th>Position</th>
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<tbody>
<tr>
<td>Lawrence A. Rousseau</td>
<td>05</td>
</tr>
</tbody>
</table>

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
TO: Mayor via City Secretary

REQUEST FOR COUNCIL ACTION

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.

<table>
<thead>
<tr>
<th>Category #</th>
<th>Page 1 of 1</th>
<th>Agenda Item</th>
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<tbody>
<tr>
<td>4</td>
<td></td>
<td>6</td>
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</tbody>
</table>

FROM (Department or other point of origin):
Terry Garrison
Fire Chief
Fire

DIRECTOR'S SIGNATURE

For additional information contact:
Beda Kent Phone: (832) 394-6748
Neil Depascal Phone: (832) 394-6755

Origination Date
January 18, 2012

Council District(s) affected
D

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.
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
February 9, 2012

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

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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.

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

Thank you,

[Signature]

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

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

Origination Date February 14, 2012

Agenda Date FEB 29 2012

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

DIRECTOR'S SIGNATURE

Ray DuRousseau Phone: (832) 393-8726
Neil Depascal Phone: (832) 394-6755

For additional information contact:

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

$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

REQUIRED AUTHORIZATION

Finance Department:

Other Authorization: 

Other Authorization: 

Signature: 

Signature: 

Signature: 

Signature: 
REQUEST FOR COUNCIL ACTION

TO: Mayor via City Secretary

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

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

DIRECTOR’S SIGNATURE

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

Orignation Date
February 22, 2012

Agenda Date
FEB 29 2012

Council District(s) affected
All

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

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 Tonorefll 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 Tonorefll 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
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

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

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

DIRECTOR'S SIGNATURE

For additional information contact:
Ray DuRousseau Phone: (832) 393-8726
Joseph A. Fenninger Phone: (713) 308-1708

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

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.
# EQUIPMENT USAGE SUMMARY

<table>
<thead>
<tr>
<th>DESCRIPTION/REQUISITION NO.</th>
<th>QTY</th>
<th>DEPARTMENT FLEET USAGE</th>
<th>EQUIPMENT REPLACEMENT</th>
</tr>
</thead>
<tbody>
<tr>
<td>PR 10133548/All Wheel Drive, Full Size Sedan, Patrol Vehicle</td>
<td>3</td>
<td>Houston Police Department These vehicles will be used citywide by the Department's police officers to respond to accidents, crimes and emergency incidents.</td>
<td>Shop No.</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>34557</td>
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<td>33817</td>
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<td>33116</td>
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<tr>
<td>PR 10139444/Utility Vehicle 4-WD</td>
<td>1</td>
<td>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.</td>
<td>Shop No.</td>
</tr>
<tr>
<td></td>
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<td></td>
<td>33567</td>
</tr>
<tr>
<td>PR 10139446/2-WD Crew Cab Truck</td>
<td>2</td>
<td>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.</td>
<td>Shop No.</td>
</tr>
<tr>
<td></td>
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<td>31906</td>
</tr>
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<td>33565</td>
</tr>
</tbody>
</table>

Buyer: Lena Farris
REQUEST FOR COUNCIL ACTION

TO: Mayor via City Secretary

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

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

DIRECTOR’S SIGNATURE

For additional information contact:
David Guernsey Phone: (832) 395-3640
Ray DuRousseau Phone: (832) 393-8726

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

$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.

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

Name Type of Service Amount Percentage
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:
REQUEST FOR COUNCIL ACTION

TO: Mayor via City Secretary

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.

FROM (Department or other point of origin):
Alfred J. Moran, Jr., Director
Administration & Regulatory Affairs Department

DIRECTOR'S SIGNATURE

For additional information contact:
Tina Paez
Christopher Newport
Phone: (713) 837-9630
Phone: (713) 837-9533

Origination Date
February 23, 2012

Agenda Date
FEB 29 2012

Council District(s) affected
All

Date and Identification of prior authorizing Council Action:

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

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 taxi 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:
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.
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.
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-eleventh of a mile or less plus $1.80 each additional mile and $0.3020 for each additional one-sixth-twelfth of a mile or less.

(2) **Nighttime metered travel.** For nighttime trips, the metered travel fee shall be $3.503.75 for the first one-eleventh of a mile or less plus $1.80 each additional mile and $0.2030 for each additional one-sixth-twelfth 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:

<table>
<thead>
<tr>
<th>Zone</th>
<th>Daytime Trip Flat Rate</th>
<th>Nighttime Trip Flat Rate</th>
</tr>
</thead>
<tbody>
<tr>
<td>I</td>
<td>$36.50 $45.00</td>
<td>$37.50 $46.00</td>
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<td>II</td>
<td>43.00 52.50</td>
<td>44.00 53.50</td>
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<tr>
<td>III</td>
<td>49.50 60.00</td>
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<td>VII</td>
<td>71.50 87.50</td>
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<td>VIII</td>
<td>86.50 104.50</td>
<td>86.50 105.50</td>
</tr>
<tr>
<td>IX</td>
<td>27.50 34.00</td>
<td>28.50 35.00</td>
</tr>
<tr>
<td>X</td>
<td>33.50 41.00</td>
<td>34.50 42.00</td>
</tr>
</tbody>
</table>

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:

<table>
<thead>
<tr>
<th>Zone</th>
<th>Daytime Trip Flat Rate</th>
<th>Nighttime Trip Flat Rate</th>
</tr>
</thead>
<tbody>
<tr>
<td>I</td>
<td>$26.00 32.00</td>
<td>$27.00 33.00</td>
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<tr>
<td>II</td>
<td>21.50 26.00</td>
<td>22.50 27.00</td>
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<tr>
<td>III</td>
<td>31.50 38.50</td>
<td>32.50 39.50</td>
</tr>
<tr>
<td>IV</td>
<td>44.00 54.50</td>
<td>45.00  55.50</td>
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<tr>
<td>V</td>
<td>50.00 61.50</td>
<td>51.00 62.50</td>
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<td>VI</td>
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<td>VII</td>
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<td>66.00 81.50</td>
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<td>VIII</td>
<td>58.00 71.00</td>
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<td>IX</td>
<td>30.00–37.50</td>
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<tr>
<td>X</td>
<td>70.00 86.00</td>
<td>71.00 87.00</td>
</tr>
<tr>
<td>XI</td>
<td>65.00 79.50</td>
<td>66.00 80.50</td>
</tr>
</tbody>
</table>

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 $20.00²4.00 per hour may be charged for waiting time, provided the clock on the taximeter is set and regulated at a rate not to exceed $20.00²4.00 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-eleven-hundredths 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:

<table>
<thead>
<tr>
<th>Zone</th>
<th>Daytime Trip Flat Rate</th>
<th>Nighttime Trip Flat Rate</th>
</tr>
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<tbody>
<tr>
<td>I</td>
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<td>III</td>
<td>$51.00</td>
<td>$52.00</td>
</tr>
<tr>
<td>IV</td>
<td>$56.00</td>
<td>$56.00</td>
</tr>
<tr>
<td>V</td>
<td>$62.00</td>
<td>$63.00</td>
</tr>
<tr>
<td>VI</td>
<td>$69.00</td>
<td>$70.00</td>
</tr>
<tr>
<td>VII</td>
<td>$74.50</td>
<td>$75.50</td>
</tr>
<tr>
<td>VIII</td>
<td>$88.50</td>
<td>$89.50</td>
</tr>
<tr>
<td>IX</td>
<td>$28.50</td>
<td>$29.50</td>
</tr>
<tr>
<td>X</td>
<td>$35.00</td>
<td>$36.00</td>
</tr>
</tbody>
</table>

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:

<table>
<thead>
<tr>
<th>Zone</th>
<th>Daytime Trip Flat Rate</th>
<th>Nighttime Trip Flat Rate</th>
</tr>
</thead>
<tbody>
<tr>
<td>I</td>
<td>$27.00</td>
<td>$28.00</td>
</tr>
<tr>
<td>II</td>
<td>$22.00</td>
<td>$23.00</td>
</tr>
<tr>
<td>III</td>
<td>$33.00</td>
<td>$34.00</td>
</tr>
<tr>
<td>IV</td>
<td>$46.00</td>
<td>$47.00</td>
</tr>
<tr>
<td>V</td>
<td>$52.00</td>
<td>$53.00</td>
</tr>
<tr>
<td>VI</td>
<td>$59.50</td>
<td>$60.50</td>
</tr>
<tr>
<td>VII</td>
<td>$68.50</td>
<td>$69.50</td>
</tr>
<tr>
<td>VIII</td>
<td>$60.50</td>
<td>$61.50</td>
</tr>
<tr>
<td>IX</td>
<td>$31.50</td>
<td>$32.50</td>
</tr>
<tr>
<td>X</td>
<td>$73.00</td>
<td>$74.00</td>
</tr>
<tr>
<td>XI</td>
<td>$67.50</td>
<td>$68.50</td>
</tr>
</tbody>
</table>

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:

<table>
<thead>
<tr>
<th>Average Gasoline Price Per Gallon</th>
<th>Surcharge - Per Trip</th>
</tr>
</thead>
<tbody>
<tr>
<td>$3.00 or less</td>
<td>None</td>
</tr>
<tr>
<td>$3.01 to $3.50</td>
<td>$0.50</td>
</tr>
<tr>
<td>$3.51 to $4.00</td>
<td>$1.00</td>
</tr>
<tr>
<td>Each additional increment of $0.50</td>
<td>Additional $0.50</td>
</tr>
</tbody>
</table>

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) **Taxi Rate Review.**

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

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

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

A review of the taxi rates may also be initiated by taxi 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 taxi 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 taxi 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).
REQUEST FOR COUNCIL ACTION

TC: Mayor via City Secretary

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.

FROM (Department or other point of origin):
Finance Department and Office of the City Controller

DIRECTOR'S SIGNATURE: [Signature]

For additional information contact:
Jennifer Olenick
Shawnell Holman

Origination Date: 2/22/2012
Agenda Date: FEB 9 2012

Council District Affected: All

Date and identification of prior authorizing Council action:

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.

Amount of Funding: Not Applicable
Finance Budget:

Source of Funding: [ ] General Fund [ ] Grant Fund [ ] Other (Specify) [X] 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

Finance Director: [Signature]

Other Authorization: [Signature]

Other Authorization:
TO: Mayor via City Secretary

REQUEST FOR COUNCIL ACTION

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.

FROM (Department or other point of origin):
Neal Racklef, Interim Director
Housing and Community Development Department

DIRECTOR'S SIGNATURE:

For additional information contact: Melody Barr
Phone: 713-868-8329

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

SOURCE OF FUNDING
[ ] General Fund [X] 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. ("HVL") 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 HVL are located on 712 Main Street, Houston, Texas 77002.

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

HVL 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. HVL was established by the Houston Bar Association with the assistance of Gulf Coast Legal Foundation. Today, HVL has a staff of 22 full-time employees and over 1,500 volunteer attorneys to provide free legal services to traditionally disenfranchised communities. HVL has twenty years experience working with persons living with HIV/AIDS in the Houston area. HVL'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. HVL 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:
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.

<table>
<thead>
<tr>
<th>Category</th>
<th>Pre-Contract Services</th>
<th>Annual Contract Amount</th>
<th>Total Contract Amount</th>
<th>Percent</th>
</tr>
</thead>
<tbody>
<tr>
<td>Supportive Services</td>
<td>$14,500.00</td>
<td>$160,500.00</td>
<td>$175,000.00</td>
<td>100.00%</td>
</tr>
<tr>
<td>Total</td>
<td>$14,500.00</td>
<td>$160,500.00</td>
<td>$175,000.00</td>
<td>100.00%</td>
</tr>
</tbody>
</table>

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
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.

FROM (Department or other point of origin): Houston Parks and Recreation Department

DIRECTOR’S SIGNATURE: Joe Turner, Director

Origation Date: February 6, 2012

Agenda Date: FEB 29 2012

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

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 mathemetic 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:
REQUEST FOR COUNCIL ACTION

TO: Mayor via City Secretary

SUBJECT: Ordinance consenting to the creation of the Bridgeland Management District

FROM (Department or other point of origin): Planning and Development

DIRECTOR'S SIGNATURE: [Signature]

For additional information contact: Nicole B. Smothers
Phone: 713-837-7856

Council District affected: ETJ

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

RECOMMENDATION: (Summary)
Approval of an ordinance consenting to the creation of the Bridgeland Management District

Amount and Source of Funding:

Finance Budget:

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:
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 Izzar, Sr. Assistant City Attorney
    Anna Russell, City Secretary

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**REQUIRED AUTHORIZATION**

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

TO: Mayor via City Secretary

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).

FROM: (Department or other point of origin):
Andrew F. Icken
Chief Development Officer

DIRECTOR'S SIGNATURE: [Signature]

For additional information contact:
Ralph De Leon
Phone: (713) 837-9573

Origination Date:
2/23/12

Council Districts affected:
F, J

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:
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

PROFILE
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
Contact Number: (713) 595-1216

NARRATIVE
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:
- Revised construction plans on the Bellaire Access management project to include a complete reconstruction of Bellaire Boulevard from Mary Bates to Roberdale, 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.

PROJECT
Capital Projects:
<table>
<thead>
<tr>
<th>Total Plan</th>
<th>Cumulative Expenses (to 6/30/11)</th>
<th>Variance</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>$92,560,953</td>
<td>$32,537,802</td>
</tr>
<tr>
<td>Sharpstown Center Area Public Improvements</td>
<td>$20,000,000</td>
<td>-</td>
</tr>
<tr>
<td>Area Public Improvements</td>
<td>$20,410,000</td>
<td>$8,326,663</td>
</tr>
<tr>
<td>Westchase Section Improvements (Halliburton)</td>
<td>$10,150,953</td>
<td>$12,152,184</td>
</tr>
<tr>
<td>Municipal Services Agreement - HPD Dist. 18</td>
<td>$5,250,000</td>
<td>$1,636,000</td>
</tr>
<tr>
<td>Total Capital Projects</td>
<td>$55,810,953</td>
<td>$22,114,847</td>
</tr>
<tr>
<td>Affordable Housing</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>Education Facilities</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>Financing Costs</td>
<td>$35,000,000</td>
<td>$8,232,019</td>
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<tr>
<td>Administration Costs</td>
<td>$1,670,000</td>
<td>$2,109,851</td>
</tr>
<tr>
<td>Creation Costs</td>
<td>$80,000</td>
<td>$81,085</td>
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PLAN
Additional Financial Data
<table>
<thead>
<tr>
<th>FY2011 Budget</th>
<th>FY2011 Estimate</th>
<th>FY2012 Budget</th>
</tr>
</thead>
<tbody>
<tr>
<td>Debt Service</td>
<td>$1,778,369</td>
<td>$1,476,980</td>
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<tr>
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Page 1 of 1
December 2011
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<td>FY2012 Budget</td>
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<td><strong>$ 152,220</strong></td>
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<td>Capital Expenditures (See CIP Schedule)</td>
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<td><strong>TIRZ Capital Expenditures</strong></td>
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<td><strong>$ 621,167</strong></td>
<td><strong>$ 26,208,227</strong></td>
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<tr>
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<td>$ -</td>
<td>$ -</td>
<td>$ -</td>
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<tr>
<td>Interest</td>
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<td>$ -</td>
<td>$ -</td>
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<td><strong>Developer / Project Reimbursements</strong></td>
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<td>Bond Debt Service</td>
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<td>Interest</td>
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<td>Interest</td>
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<td>Other Debt Items</td>
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<td>FY2012 Budget</td>
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<tr>
<td>-----------------------------------------------------</td>
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<td>Payment/transfer to ISD - educational facilities</td>
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<td>Administration Fees:</td>
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<tr>
<td>City</td>
<td>$ 216,309</td>
<td>$ 213,773</td>
<td>$ 229,560</td>
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<td>County</td>
<td>$ -</td>
<td>$ -</td>
<td>$ -</td>
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<tr>
<td>ISD</td>
<td>$ -</td>
<td>$ -</td>
<td>$ -</td>
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<tr>
<td>Affordable Housing:</td>
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<tr>
<td>City</td>
<td>$ -</td>
<td>$ -</td>
<td>$ -</td>
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<td>ISD to City of Houston</td>
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<td>Transfer to Harris County</td>
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<td>Municipal Services (Payable to COH)</td>
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<td><strong>Total Budget</strong></td>
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<td>RESTRICTED Funds - Affordable Housing</td>
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<td>$ -</td>
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<td>RESTRICTED Funds - Bond Debt Service *</td>
<td>$ 2,653,111</td>
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<td>$ 3,113,429</td>
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<td>$ 29,996,040</td>
<td>$ 29,843,650</td>
<td>$ 36,556,713</td>
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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

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

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<td>F, J</td>
<td>T-2001</td>
<td>Bellaire Access Management Mobility Improvements</td>
<td>$1,318,166</td>
<td>$442,768</td>
<td>$25,108,227</td>
<td>$-</td>
<td>$-</td>
<td>$-</td>
<td>$-</td>
<td>$-</td>
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<td></td>
<td>T-2002</td>
<td>Fondren Access Management Mobility Improvements</td>
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<td>$-</td>
<td>$-</td>
<td>$2,568,154</td>
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<td>$-</td>
<td>$-</td>
<td>$-</td>
<td>$-</td>
<td>$-</td>
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<td>Bellaire Drainage Hwy 59 to Fondren</td>
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<td>$-</td>
<td>$-</td>
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<td>1,105,787</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>8,089,154</td>
<td>33,403,168</td>
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CITY OF HOUSTON - TIRZ PROGRAM
Economic Development Division

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December 2011
### 2012 - 2016 CAPITAL IMPROVEMENT PLAN
**TIRZ No. 20 - SW Houston Redevelopment Authority**
**CIP by Sources of Funds**

<table>
<thead>
<tr>
<th>Source of Funds</th>
<th>Through 2010</th>
<th>Projected 2011</th>
<th>2012</th>
<th>2013</th>
<th>2014</th>
<th>2015</th>
<th>2016</th>
<th>FY12 - FY16 Total</th>
<th>Cumulative Total (To Date)</th>
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<td>1,106,787</td>
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<td>17,094,941</td>
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<tr>
<td>Proceeds from bank loan</td>
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<td>Developer Advance/Reimbursement</td>
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<td><strong>Project Total</strong></td>
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<td></td>
<td></td>
<td>6,089,154</td>
<td>33,403,168</td>
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</tbody>
</table>
**Project:** Bellaire Access Management Mobility Improvements

**Description:** Multiple median closures and modifications on Bellaire from Mary Bates to Beltway 8 and addition of westbound lane. Includes modifications to seven existing signals and installation of one new signal.

**Justification:** Funding for mobility improvement along Bellaire. One of key mobility improvements identified to rectify mobility limitations along the Bellaire Corridor.

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<th>Project Allocation</th>
<th>Projected Expenses thru 6/30/10</th>
<th>2011 Budget</th>
<th>2011 Estimate</th>
<th>2012</th>
<th>2013</th>
<th>2014</th>
<th>2015</th>
<th>2016</th>
<th>FY12 - FY16 Total</th>
<th>Cumulative Total (To Date)</th>
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<td>$1,611,711</td>
<td>$25,108,227</td>
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<td>82,481</td>
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<tr>
<td>5 Equipment</td>
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<td>6 Close-Out</td>
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<td>$25,108,227</td>
<td>$26,869,161</td>
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</tr>
</tbody>
</table>

**Source of Funds**

- TIRZ Increment Revenue
- TIRZ Increment Bond Funds: 1,318,166
- Proceeds from Bank Loan
- Grant Funds

**Total Funds:** $1,318,166 $12,041,000 $442,768 $25,108,227

**CITY OF HOUSTON**
**TIRZ PROGRAM**

**December 2011**

Page 7 of 10
**Project:** Fondren Access Management Mobility Improvements

**Description:** Multiple median closures and modifications on Fondren from Hwy 59 to Westpark. Includes improvements to Clarewood, Harwin and Westpark Intersections.

**Justification:** Intersection and other improvements to improve mobility along Fondren Blvd.

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<th>Operating and Maintenance Costs: ($ Thousands)</th>
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**Source of Funds**

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<th>Source of Funds</th>
<th>Projected Expenses thru 6/30/10</th>
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### FY2012 - 2016 CAPITAL IMPROVEMENT PLAN

TIRZ No. 20 - Southwest Houston

#### Project: Hike and Bike Paths

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<th>Key Map:</th>
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<tr>
<td>F, J</td>
<td>29 D, 530 A, E, J, K, G</td>
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<tr>
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<td>F, J</td>
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<th>Description:</th>
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<tr>
<td>On street bike paths along Harwin; Briarpark Drive and Sam Houston Parkway; Marinette: Bellaire Blvd to Bellerive; along HCFCFD Flood Control Ditch from Sandspoint to Sharpcrest</td>
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<th>Justification:</th>
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<tr>
<td>Provide connection points between existing on street and off street hike and bike trail system developed by the City of Houston and TxDOT using CMAC funding</td>
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#### Operating and Maintenance Costs: ($ Thousands)

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#### Fiscal Year Planned Expenditures

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| Total Allocations | $     | $500,000 | $     | $     | $     | $     | $     | $     | $     |

| Source of Funds   |                                  |             |               |      |      |      |      |      |                   |

| TIRZ increment Revenue |                                  |             |               |      |      |      |      |      |                   |
| TIRZ increment Bond Funds |                                  |             |               |      |      |      |      |      |                   |
| Grant Funds         |                                  |             |               |      |      |      |      |      |                   |

| Total Funds         | $     | $500,000 | $     | $     | $     | $     | $     | $     | $     |
**Project:** Bellaire Drainage Hwy 59 to Fondren

**City Council District:** F, J  
**Key Map:** 530 C, D, G, H  
**Served:** F, J  
**Neighborhood:** 25, 26, 29

**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.

**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.

### Operating and Maintenance Costs: ($ Thousands)

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### Fiscal Year Planned Expenditures

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<td>Total Allocations</td>
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<td>178,399</td>
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### Source of Funds

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REQUEST FOR COUNCIL ACTION

TO: Mayor via City Secretary

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.

FROM: [Department or other point of origin]:
Andrew F. Icken
Chief Development Officer

DIRECTOR'S SIGNATURE:

For additional information contact:
Ralph De Leon
Phone: (713) 837-9573

ORGANIZATION:

CATEGORY #

Page

1 of 1

Agenda Item#

RCA #

Origination Date

Agenda Date

FEB 29 2012

Council Districts affected:
F, J

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)
[X] 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

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.

FROM: (Department or other point of origin):
Andrew F. Icken
Chief Development Officer

DIRECTOR'S SIGNATURE:

For additional information contact:
Ralph De Leon
Phone: (713) 837-9573


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:
[ X] General Fund
[ ] Grant Fund
[ ] Enterprise Fund
[ ] 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:
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<th>Total HISD Payments Received (1)</th>
<th>Affordable Housing Transfer to Fund 2409</th>
<th>ISD &amp; CCD Admin. Transfer to General Fund</th>
<th>Payment Amount to ISDs for Educational Facilities (3)</th>
<th>ISD and CCD Increment due to the Redevelopment Authorities</th>
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<tr>
<td>1</td>
<td>Lane Terrace East and West 7512</td>
<td>$422,687.00</td>
<td>$422,687.00</td>
<td>$-</td>
<td>$-</td>
<td>$-</td>
<td>$281,791.00</td>
<td>$-</td>
<td>Special Pay Instruction #1</td>
</tr>
<tr>
<td>2</td>
<td>Midtown Original 7550</td>
<td>$2,328,868.00</td>
<td>$2,328,868.00</td>
<td>N/A</td>
<td>-</td>
<td>$-</td>
<td>$1,552,579.00</td>
<td>$776,289.00</td>
<td>Special Pay Instruction #1 and Midtown RA</td>
</tr>
<tr>
<td>3</td>
<td>Market Square Original 7551</td>
<td>$1,829,091.00</td>
<td>$1,829,091.00</td>
<td>N/A</td>
<td>-</td>
<td>$-</td>
<td>$1,829,091.00</td>
<td>$-</td>
<td>Special Pay Instruction #1</td>
</tr>
<tr>
<td></td>
<td>Annexed</td>
<td>$270,780.00</td>
<td>$270,780.00</td>
<td>N/A</td>
<td>-</td>
<td>$-</td>
<td>$270,780.00</td>
<td>$-</td>
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<tr>
<td>4</td>
<td>Village Endure Original 7552</td>
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<td>$1,026,529.00</td>
<td>-</td>
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<td>$2,053,058.00</td>
<td>$-</td>
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<tr>
<td></td>
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<td>$225,686.00</td>
<td>$225,686.00</td>
<td>$78,623.00</td>
<td>-</td>
<td>$-</td>
<td>$157,264.00</td>
<td>$-</td>
<td>Special Pay Instruction #1</td>
</tr>
<tr>
<td>5</td>
<td>Memorial Heights Original 7553</td>
<td>$344,852.00</td>
<td>$344,852.00</td>
<td>N/A</td>
<td>-</td>
<td>$-</td>
<td>$344,852.00</td>
<td>$-</td>
<td>Special Pay Instruction #1</td>
</tr>
<tr>
<td></td>
<td>Annexed</td>
<td>$327,554.00</td>
<td>$327,554.00</td>
<td>N/A</td>
<td>-</td>
<td>$-</td>
<td>$327,554.00</td>
<td>$-</td>
<td>Special Pay Instruction #1</td>
</tr>
<tr>
<td>6</td>
<td>OST/Almeda Original 7555</td>
<td>$616,302.00</td>
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<td>N/A</td>
<td>-</td>
<td>$-</td>
<td>$616,302.00</td>
<td>$-</td>
<td>Special Pay Instruction #1</td>
</tr>
<tr>
<td></td>
<td>Annexed</td>
<td>$288,748.00</td>
<td>$288,748.00</td>
<td>N/A</td>
<td>-</td>
<td>$-</td>
<td>$288,748.00</td>
<td>$-</td>
<td>Special Pay Instruction #1</td>
</tr>
<tr>
<td>7</td>
<td>Gulfgate Original 7556</td>
<td>$130,043.00</td>
<td>$130,043.00</td>
<td>N/A</td>
<td>-</td>
<td>$-</td>
<td>$130,043.00</td>
<td>$-</td>
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<tr>
<td></td>
<td>Annexed</td>
<td>$203,384.00</td>
<td>$203,384.00</td>
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<td>-</td>
<td>$-</td>
<td>$203,384.00</td>
<td>$-</td>
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<tr>
<td>8</td>
<td>South Post Oak Original 7557</td>
<td>$130,043.00</td>
<td>$130,043.00</td>
<td>N/A</td>
<td>-</td>
<td>$-</td>
<td>$130,043.00</td>
<td>$-</td>
<td>Special Pay Instruction #1</td>
</tr>
<tr>
<td></td>
<td>Annexed</td>
<td>$156,329.00</td>
<td>$156,329.00</td>
<td>N/A</td>
<td>-</td>
<td>$-</td>
<td>$156,329.00</td>
<td>$-</td>
<td>Special Pay Instruction #1 and South Post Oak RA</td>
</tr>
<tr>
<td>9</td>
<td>City Park Original 7560</td>
<td>$113,139.00</td>
<td>$113,139.00</td>
<td>$37,713.00</td>
<td>-</td>
<td>$-</td>
<td>$75,426.00</td>
<td>$-</td>
<td>Special Pay Instruction #1</td>
</tr>
<tr>
<td>10</td>
<td>Old Sixth Ward Original 7561</td>
<td>$113,139.00</td>
<td>$113,139.00</td>
<td>$37,713.00</td>
<td>-</td>
<td>$-</td>
<td>$75,426.00</td>
<td>$-</td>
<td>Special Pay Instruction #1</td>
</tr>
<tr>
<td></td>
<td>Annexed</td>
<td>$113,139.00</td>
<td>$113,139.00</td>
<td>$37,713.00</td>
<td>-</td>
<td>$-</td>
<td>$75,426.00</td>
<td>$-</td>
<td>Special Pay Instruction #1</td>
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<td>$9,224,282.00</td>
<td>$9,224,282.00</td>
<td>$1,208,138.00</td>
<td>-</td>
<td>$-</td>
<td>$7,175,860.00</td>
<td>$844,584.00</td>
<td></td>
</tr>
</tbody>
</table>

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

**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.

FROM (Department or other point of origin):
General Services Department

DIRECTOR'S SIGNATURE: Scott Minnix

For additional information contact:
Jacquelyn L. Nisby  Phone: 832-393-8023

Origination Date: 2/23/12  
Agenda Date: FEB 29 2012

Council District affected: G

Date and identification of prior authorizing Council action:
Ordinance No. 2007-0005; 01/03/07
Ordinance No. 2008-1060; 12/03/08

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:

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:

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

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:
Humberto Bautista, P.E.  
Assistant Director

Human Resources Department:
Omar Reid  
Director
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.

FROM (Department or other point of origin): General Services Department

Origation Date: 2/23/12

DIRECTOR'S SIGNATURE: Scott Minnix

2/23/12

Council District(s) affected: C, G

For additional information contact:
Jacquelyn L. Nisby
Phone: 832-393-8023

Date and identification of prior authorizing Council action:

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:

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 34th 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

General Services Department:

Humberto Bautista, P.E.
Assistant Director
REQUEST FOR COUNCIL ACTION

TO: Mayor via City Secretary

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

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

DIRECTOR'S SIGNATURE

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

Origination Date  Agenda Date
February 09, 2012  FEB 29 2012

Council District(s) affected
B, E, I

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

$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: MWBE zero-percentage goal document approved by the Mayor’s Office of Business Opportunity.

Buyer: Roy Breaux

Estimated Spending Authority

<table>
<thead>
<tr>
<th>Department</th>
<th>FY12</th>
<th>Out Years</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Houston Airport System</td>
<td>$119,000.00</td>
<td>$42,985.22</td>
<td>$161,985.22</td>
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</tbody>
</table>

REQUIRED AUTHORIZATION

Finance Department:  Other Authorization:  Other Authorization:
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,

[Signature]

Erin M. Bockelman
Vice President – Business Systems

Corporate Office
5600 Hazeltine National Ave, Suite 210
Orlando, FL 32822
Main: Local 407-370-4664
Fax 407-370-4837
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.

<table>
<thead>
<tr>
<th>Page 1 of 1</th>
<th>Agenda Item # 21</th>
</tr>
</thead>
</table>

FROM: (Department or other point of origin):
Houston Police Department

Origination Date: 

FROM: (Department or other point of origin):
Houston Police Department

Agenda Date: 

FEB 29 2012

DIRECTOR'S SIGNATURE: 

Charles A. McClelland, Jr. Chief of Police

Council District affected: 
All

For additional information contact: 
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

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: 

Other Authorization: 

FIN 7506

2012
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

FROM: (Department or other point of origin):
Houston Police Department

DIRECTOR'S SIGNATURE:
Charles A. McClelland, Jr., Chief of Police

Origination Date: 2/23/12
Agenda Date: FEB 29 2012

Council District affected:
All

For additional information contact:
Joseph A. Fenninger
Phone: 713-308-1770

Date and identification of prior authorizing Council action: November 16, 2011; Ordinance #2011-0997

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:

2/23/12
REQUEST FOR COUNCIL ACTION

TO: Mayor via City Secretary

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

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

DIRECTOR’S SIGNATURE:

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

Douglas Moore
Phone: (832) 393-8724

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

Director’s Signature:

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

Douglas Moore
Phone: (832) 393-8724

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

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

FROM (Department or other point of origin): Planning and Development

DIRECTOR’S SIGNATURE: [Signature]

FOR ADDITIONAL INFORMATION CONTACT: Margaret Wallace
Phone: 713-837-7826

COUNCIL DISTRICT affected:

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

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

**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 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
- 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:
TO: Mayor via City Secretary

REQUEST FOR COUNCIL ACTION

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

From: (Department or Other Point of Origin)
Department of Public Works and Engineering

Director's Signature:
Daniel W. Krueger, P.E.

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

Origination Date

Agenda Date
FEB 29 2012

Council District affected:
B

Date and identification of prior authorizing Council action:

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:

<table>
<thead>
<tr>
<th>Before Correction</th>
<th>After Correction</th>
</tr>
</thead>
<tbody>
<tr>
<td>City Tax No. 151-032-00-099-3</td>
<td>Account No. 016-278-003-0099</td>
</tr>
<tr>
<td>Tract 42A, Block 3C</td>
<td>Tract 42A, Block 3C</td>
</tr>
<tr>
<td>Highland Heights Subdivision</td>
<td>Highland Heights Subdivision</td>
</tr>
<tr>
<td>111.65 feet @ $14.05 = $1,568.68</td>
<td>111.65 feet @ $7.03 = $784.90</td>
</tr>
</tbody>
</table>

FINANCE DEPARTMENT: Other Authorization:
Daniel R. Menendez, P.E., Deputy Director
Engineering and Construction Division

REQUIRED AUTHORIZATION: CUIC ID #20DDH741
REQUEST FOR COUNCIL ACTION

TO: Mayor via City Secretary

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

FROM (Department or other point of origin):
Department of Public Works and Engineering

DIRECTOR'S SIGNATURE: Daniel W. Krueger, P.E.

For additional information contact:
A. James Millage
Senior Assistant Director  Phone: (713) 641-9566

Origination Date 2/23/12  Agenda Date FEB 29 2012

Council District affected: All

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

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.

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.

OTHER AUTHORIZATION:

Finance Department:

Other Authorization:

Other Authorization:

Jun Chang, P.E., D.WRE, Deputy Director
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 Contact 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.

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

cc: Marta Crinejo
    Carl Smitha, P.E.
    Craig Foster
REQUEST FOR COUNCIL ACTION

TO: Mayor via City Secretary

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

FROM (Department or other point of origin):
Department of Public Works and Engineering

Origination Date

Council District affected:
All

DIRECTOR'S SIGNATURE:
Daniel W. Krueger, P.E., Director

Date and identification of prior authorizing Council action:

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

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. W.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

Finance Department

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

CUIC # 20RRA08 A
**MWBE INFORMATION:** The MWBE goal for this project is set at 24%. The Consultant has proposed the following firms to achieve this goal.

<table>
<thead>
<tr>
<th>Name of Firms</th>
<th>Work Description</th>
<th>Amount</th>
<th>% of Contract</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Associated testing</td>
<td>Environmental Services</td>
<td>$4,500.00</td>
<td>0.75%</td>
</tr>
<tr>
<td>Laboratories, Inc.</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>2. Geotest Engineering, Inc.</td>
<td>Geotechnical Investigation</td>
<td>$21,000.00</td>
<td>3.50%</td>
</tr>
<tr>
<td>3. JAG Engineering, Inc.</td>
<td>Surveying</td>
<td>$30,000.00</td>
<td>5.00%</td>
</tr>
<tr>
<td>4. Shrader Engineering, Inc.</td>
<td>Electrical/Instrumentation</td>
<td>$90,000.00</td>
<td>15.00%</td>
</tr>
<tr>
<td></td>
<td>Engineering</td>
<td></td>
<td></td>
</tr>
<tr>
<td>TOTAL</td>
<td></td>
<td>$145,500.00</td>
<td>24.25%</td>
</tr>
</tbody>
</table>
REQUEST FOR COUNCIL ACTION

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

From: (Department or other point of origin): Department of Public Works and Engineering

Origination Date: 2/23/12

Director's Signature: Daniel W. Krueger, P.E.

Council District affected: C, D, E, H, I

For additional information contact: Ravi Kalyatodi, P.E., OPM Phone: (832) 395-2326 Senior Assistant Director

Date and identification of prior authorizing Council action:

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

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

Finance Department: Other Authorization:

Other Authorization:

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

<table>
<thead>
<tr>
<th>Name of Firm</th>
<th>Work Description</th>
<th>Amount</th>
<th>% of Total Contract</th>
</tr>
</thead>
<tbody>
<tr>
<td>Rahaman and Associates, Inc., DBA Western Group Consultants</td>
<td>Topographic Survey</td>
<td>$50,000.00</td>
<td>11.50%</td>
</tr>
<tr>
<td>B &amp; E Reprographics, Inc.</td>
<td>Reproduction Services</td>
<td>$6,000.00</td>
<td>1.38%</td>
</tr>
<tr>
<td>Apex Consulting Group, Inc.</td>
<td>Civil Engineering Services and Inspections</td>
<td>$20,000.00</td>
<td>4.60%</td>
</tr>
<tr>
<td>Accessible Design Solutions</td>
<td>Accessibility Plan Review</td>
<td>$4,000.00</td>
<td>0.92%</td>
</tr>
<tr>
<td>GC Engineering, Inc.</td>
<td>Engineering Design Support</td>
<td>$25,000.00</td>
<td>5.75%</td>
</tr>
<tr>
<td><strong>TOTAL</strong></td>
<td></td>
<td><strong>$105,000.00</strong></td>
<td><strong>24.15%</strong></td>
</tr>
<tr>
<td>District</td>
<td>Location</td>
<td>Limits</td>
<td>Length</td>
</tr>
<tr>
<td>----------</td>
<td>----------</td>
<td>--------</td>
<td>--------</td>
</tr>
<tr>
<td>C</td>
<td>Bethlehem</td>
<td>Happy Hollow to Candlelight</td>
<td>1,600.00</td>
</tr>
<tr>
<td>C</td>
<td>Pinery Woods</td>
<td>Du Barry Ln to Lamonte</td>
<td>2,100.00</td>
</tr>
<tr>
<td>C</td>
<td>Nicholson</td>
<td>123 Street to Helms School (21st)</td>
<td>1,022.00</td>
</tr>
<tr>
<td>C</td>
<td>Dickinson</td>
<td>Shover to Jackson Hill</td>
<td>1,000.00</td>
</tr>
<tr>
<td>H</td>
<td>Main St</td>
<td>North Main to Dally St</td>
<td>1,970.00</td>
</tr>
<tr>
<td>H</td>
<td>Cortlandt St</td>
<td>39th Street to N. Main St</td>
<td>1,520.00</td>
</tr>
<tr>
<td>H</td>
<td>Shyres</td>
<td>Fulton to End</td>
<td>1,260.00</td>
</tr>
</tbody>
</table>

Total linear feet: 10,462.00

Estimated Design Fee (Basic Services Only) = 10,462 x 4.75 = $49,694.50
<table>
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<tr>
<th>District</th>
<th>Location</th>
<th>Limits</th>
<th>Length</th>
<th>Condition</th>
<th>Key Map</th>
<th>Component</th>
<th>Design WBS No.</th>
</tr>
</thead>
<tbody>
<tr>
<td>D</td>
<td>Mallow Street</td>
<td>Cullen to Noel</td>
<td>3,520.00</td>
<td>New</td>
<td>573D</td>
<td>School</td>
<td>N-00610A-0121-3</td>
</tr>
<tr>
<td>D</td>
<td>Wilmington</td>
<td>Cullen to Merle</td>
<td>5,025.00</td>
<td>New</td>
<td>573D</td>
<td>School</td>
<td>N-00610A-0121-3</td>
</tr>
<tr>
<td>D</td>
<td>Wichita (northside)</td>
<td>St. Joe to Gelano</td>
<td>1,069.00</td>
<td>New</td>
<td>530C</td>
<td>School</td>
<td>N-00610A-0121-3</td>
</tr>
<tr>
<td>D</td>
<td>Fairlawn</td>
<td>Barberry Dr to Dulcimer</td>
<td>2,450.00</td>
<td>New</td>
<td>573B-C</td>
<td>School</td>
<td>N-00610A-0121-3</td>
</tr>
<tr>
<td>D</td>
<td>Barberry</td>
<td>Buffum to Dulcimer</td>
<td>1,010.00</td>
<td>New</td>
<td>573B</td>
<td>School</td>
<td>N-00610A-0121-3</td>
</tr>
<tr>
<td>D</td>
<td>Wilmington</td>
<td>Buffum to Rosehaven to Chesterfield to Ashville</td>
<td>1,030.00</td>
<td>New</td>
<td>573C</td>
<td>School</td>
<td>N-00610A-0121-3</td>
</tr>
<tr>
<td>D</td>
<td>Rockingham</td>
<td>Scott to Ashville</td>
<td>1,030.00</td>
<td>New</td>
<td>573C</td>
<td>School</td>
<td>N-00610A-0121-3</td>
</tr>
<tr>
<td>D</td>
<td>Dawson</td>
<td>Scott to Ashville</td>
<td>1,040.00</td>
<td>New</td>
<td>573C</td>
<td>School</td>
<td>N-00610A-0121-3</td>
</tr>
<tr>
<td>D</td>
<td>Bloomfield</td>
<td>Buffum to Dulcimer</td>
<td>2,184.00</td>
<td>New</td>
<td>573B</td>
<td>School</td>
<td>N-00610A-0121-3</td>
</tr>
<tr>
<td>D</td>
<td>Chesterfield</td>
<td>Tangerine to Barberry</td>
<td>2,110.00</td>
<td>New</td>
<td>573B</td>
<td>School</td>
<td>N-00610A-0121-3</td>
</tr>
<tr>
<td>D</td>
<td>Sierra</td>
<td>Dulcrist St to Sunbeam</td>
<td>1,505.00</td>
<td>New</td>
<td>573B</td>
<td>School</td>
<td>N-00610A-0121-3</td>
</tr>
<tr>
<td>D</td>
<td>Sunbeam</td>
<td>Dead End (Near Buffum) to Rosehaven Rd</td>
<td>1,495.00</td>
<td>New</td>
<td>573B</td>
<td>School</td>
<td>N-00610A-0121-3</td>
</tr>
<tr>
<td>D</td>
<td>Peck</td>
<td>Barberry Dr to Bloomfield</td>
<td>690.00</td>
<td>New</td>
<td>573B</td>
<td>School</td>
<td>N-00610A-0121-3</td>
</tr>
<tr>
<td>D</td>
<td>Dulcimer</td>
<td>Bar to Barberry</td>
<td>2,270.00</td>
<td>New</td>
<td>573B</td>
<td>School</td>
<td>N-00610A-0121-3</td>
</tr>
<tr>
<td>D</td>
<td>Sierra</td>
<td>Tangerine to Sparrow</td>
<td>1,550.00</td>
<td>New</td>
<td>573B</td>
<td>School</td>
<td>N-00610A-0121-3</td>
</tr>
<tr>
<td>D</td>
<td>Fairlawn</td>
<td>Tangerine to Barberry</td>
<td>2,225.00</td>
<td>New</td>
<td>573B</td>
<td>School</td>
<td>N-00610A-0121-3</td>
</tr>
<tr>
<td>D</td>
<td>Buffum</td>
<td>Wilmington to Barberry</td>
<td>1,720.00</td>
<td>New</td>
<td>573B</td>
<td>School</td>
<td>N-00610A-0121-3</td>
</tr>
<tr>
<td>D</td>
<td>Gardenburg</td>
<td>Cullen to Dunie</td>
<td>1,320.00</td>
<td>New</td>
<td>533Z</td>
<td>School</td>
<td>N-00610A-0121-3</td>
</tr>
<tr>
<td>D</td>
<td>Calhoun</td>
<td>Griggs to Kingsbury</td>
<td>1,300.00</td>
<td>New</td>
<td>534J</td>
<td>Thoroughfare</td>
<td>N-00610A-0121-3</td>
</tr>
</tbody>
</table>

Total Linear feet: 34,508.00

Estimated Design Fee (Basic Services Only) = 34,508 x 4.75 = $163,913.00
<table>
<thead>
<tr>
<th>District</th>
<th>Location</th>
<th>Limits</th>
<th>Length</th>
<th>Condition</th>
<th>Key Map</th>
<th>Component</th>
<th>Design WESNO</th>
</tr>
</thead>
<tbody>
<tr>
<td>E</td>
<td>Brook Shadow Parkway</td>
<td>Clover Valley Drive to Lake Houston</td>
<td>7,710.00</td>
<td>New</td>
<td>297X,Y,U</td>
<td>School</td>
<td>N-00610A-0121-3</td>
</tr>
<tr>
<td>E</td>
<td>Indianapolis St</td>
<td>Cimarron to Uvalde Rd</td>
<td>1,350.00</td>
<td>New</td>
<td>497A</td>
<td>School</td>
<td>N-00610A-0121-3</td>
</tr>
<tr>
<td>E</td>
<td>Indianapolis St</td>
<td>Beresford to Cimarron</td>
<td>1,010.00</td>
<td>New</td>
<td>497A</td>
<td>School</td>
<td>N-00610A-0121-3</td>
</tr>
<tr>
<td>E</td>
<td>Sandy Forks (North side)</td>
<td>Woodbridge to Maple Park</td>
<td>2,450.00</td>
<td>New</td>
<td>297W</td>
<td>School</td>
<td>N-00610A-0121-3</td>
</tr>
<tr>
<td>E</td>
<td>Joliet St</td>
<td>Uvalde Rd to Beresford St</td>
<td>2,480.00</td>
<td>New</td>
<td>497A</td>
<td>School</td>
<td>N-00610A-0121-3</td>
</tr>
<tr>
<td>E</td>
<td>Freeport Blvd</td>
<td>Alderson to Texarkana St</td>
<td>1,400.00</td>
<td>New</td>
<td>497B</td>
<td>School</td>
<td>N-00610A-0121-3</td>
</tr>
<tr>
<td>I</td>
<td>Parson</td>
<td>School gate (Near Coral St.) to Evergreen</td>
<td>1,100.00</td>
<td>New</td>
<td>535E</td>
<td>School</td>
<td>N-00610A-0121-3</td>
</tr>
<tr>
<td>I</td>
<td>Kingsway Drive</td>
<td>At corner of new sidewalk to Winterhaven Dr</td>
<td>1,440.00</td>
<td>New</td>
<td>535S</td>
<td>School</td>
<td>N-00610A-0121-3</td>
</tr>
<tr>
<td>I</td>
<td>Garden (7706)</td>
<td>Berky to Fir</td>
<td>549.50</td>
<td>New</td>
<td>535F</td>
<td>School</td>
<td>N-00610A-0121-3</td>
</tr>
<tr>
<td>I</td>
<td>Channelside</td>
<td>Lavaca to Broadway</td>
<td>1700.00</td>
<td>New</td>
<td>535B</td>
<td>School</td>
<td>N-00610A-0121-3</td>
</tr>
<tr>
<td>I</td>
<td>Lawson</td>
<td>Sunnyland to Dasmue St</td>
<td>900.00</td>
<td>New</td>
<td>534C</td>
<td>School</td>
<td>N-00610A-0121-3</td>
</tr>
</tbody>
</table>

| TotalLinear feet | 22,089.50 |

Estimated Design Fee (Basic Services Only) = 22,089.50 x 4.75 = $104,925.13
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

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: All

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)
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.

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 Stripping 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
Finance Department Other Authorization: Other Authorization:

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

REV 3/06
**MWBE PARTICIPATION:** The MWBE goal for the project is 24%. The Consultant proposes the following firms to achieve this goal.

<table>
<thead>
<tr>
<th>Name of Firms</th>
<th>Work Description</th>
<th>Amount</th>
<th>% of Contract</th>
</tr>
</thead>
<tbody>
<tr>
<td>Landtech, Inc.</td>
<td>Land Surveying</td>
<td>$ 74,796.00</td>
<td>17.60%</td>
</tr>
<tr>
<td>Accessibility Check</td>
<td>ADA Compliance</td>
<td>$ 27,500.00</td>
<td>6.47%</td>
</tr>
<tr>
<td><strong>TOTAL</strong></td>
<td></td>
<td><strong>$102,296.00</strong></td>
<td><strong>24.07%</strong></td>
</tr>
</tbody>
</table>
REQUEST FOR COUNCIL ACTION

TO: Mayor via City Secretary

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.

FROM (Department or other point of origin):
Department of Public Works and Engineering

Director's Signature: Daniel W. Krueger, P.E., Director

Origination Date: 2/23/12

Agenda Date: FEB 29 2012

Council District affected: 1

For additional information contact:
Ravi Kaleyatodi, P.E., CPM
Senior Assistant Director

Phone: (832) 395-2326

Date and identification of prior authorizing Council action:

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.

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.

RECOMMENDED AUTHORIZATION

CUIC ID #20IMR78

Finance Department: Other Authorization: Other Authorization: 

Jun Chang, P.E., D.EWRE, Deputy Director Daniel R. Menendez, P.E., Deputy Director Public Utilities Division Engineering and Construction Division

REV 11/06
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.

<table>
<thead>
<tr>
<th>Name of Firms</th>
<th>Work Description</th>
<th>Amount</th>
<th>% of Total Contract</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. KJT Professionals, Inc.</td>
<td>Engineering Support Services</td>
<td>$35,000.00</td>
<td>4.57%</td>
</tr>
<tr>
<td>2. Kalluri Group, Inc.</td>
<td>Engineering Support Services</td>
<td>$86,000.00</td>
<td>11.22%</td>
</tr>
<tr>
<td>3. Amani Engineering, Inc.</td>
<td>Surveying Services/Sub-surface</td>
<td>$30,000.00</td>
<td>3.92%</td>
</tr>
<tr>
<td>5. B &amp; E Reprographics, Inc.</td>
<td>Engineering Support Services</td>
<td>$20,000.00</td>
<td>2.61%</td>
</tr>
<tr>
<td>6. DAE &amp; Associates Ltd., DBA</td>
<td>Reproduction Services</td>
<td>$10,000.00</td>
<td>1.31%</td>
</tr>
<tr>
<td></td>
<td>Geotechnical Services</td>
<td>$9,740.00</td>
<td>1.27%</td>
</tr>
<tr>
<td><strong>TOTAL</strong></td>
<td></td>
<td><strong>$190,740.00</strong></td>
<td><strong>24.90%</strong></td>
</tr>
</tbody>
</table>

DWK:DRM:RK:EN:IMR:pa

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

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: All BZ

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:
$1,155,000.00 from Street & Traffic Control and Storm Drainage DDSRF, Fund No. 4042

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:

<table>
<thead>
<tr>
<th>Bidder</th>
<th>Adjustment Factor</th>
</tr>
</thead>
<tbody>
<tr>
<td>Total Contracting Limited</td>
<td>1.190</td>
</tr>
<tr>
<td>T. Construction, LLC</td>
<td>1.280</td>
</tr>
<tr>
<td>Boyer, Inc.</td>
<td>1.295</td>
</tr>
<tr>
<td>ISI Contracting, Inc.</td>
<td>1.400</td>
</tr>
<tr>
<td>Metro City Construction, L.P.</td>
<td>1.740</td>
</tr>
</tbody>
</table>

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.

REQUIED AUTHORIZATION  

CUIC# 20BTE02

Finance Department

Other Authorization:

Other Authorization:

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

<table>
<thead>
<tr>
<th>MBE - Name of Firms</th>
<th>Work Description</th>
<th>Amount</th>
<th>% of Contract</th>
</tr>
</thead>
<tbody>
<tr>
<td>Professional Traffic Control</td>
<td>Sign, Striping/Marking</td>
<td>$90,000.00</td>
<td>9.00%</td>
</tr>
</tbody>
</table>

**TOTAL** $90,000.00 9.00%

<table>
<thead>
<tr>
<th>SBE - Name of Firms</th>
<th>Work Description</th>
<th>Amount</th>
<th>% of Contract</th>
</tr>
</thead>
<tbody>
<tr>
<td>Bedo Construction Products, Inc.</td>
<td>Construction Supplies</td>
<td>$70,000.00</td>
<td>7.00%</td>
</tr>
</tbody>
</table>

**TOTAL** $70,000.00 7.00%
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

FROM (Department or other point of origin):
Department of Public Works and Engineering

DIRECTOR’S SIGNATURE
Daniel W. Krueger, P.E.

For additional information contact:
Jason Iken, P.E.
Senior Assistant Director
Phone: (832) 395-4989

Origination Date
Agenda Date
FEB 29 2012

Council District affected:
All

Date and Identification of prior authorizing Council action:
N/A

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.

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:

<table>
<thead>
<tr>
<th>Bidder</th>
<th>Bid Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Enviwaste Services Group, Inc.</td>
<td>$488,415.74</td>
</tr>
<tr>
<td>2. CleanServe, Inc.</td>
<td>$499,736.30</td>
</tr>
<tr>
<td>3. Pipeline Video Inspection, LLC</td>
<td>$545,630.45</td>
</tr>
<tr>
<td>4. Specialized Maintenance Services, Inc.</td>
<td>$836,293.40</td>
</tr>
</tbody>
</table>

File/Project No. WW 4277-69

REQUIRED AUTHORIZATION

Finance Department

Other Authorization:

Other Authorization:

Jun Chang P.E., D.WRE, Deputy Director
Public Utilities Division
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/W/BE PARTICIPATION: No City M/W/BE participation goal has been established for this project.

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

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.

FROM: (Department or other point of origin):
Department of Public Works and Engineering

DIRECTOR’S SIGNATURE:
Daniel W. Krueger, P.E., Director

Origination Date: 2/23/12
Agenda Date: FEB 29 2012

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.

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
1. Industrial TX Corp.
2. LEM Construction Co., Inc.

Bid Amount
$5,387,380.00
$5,410,155.00

REQUIRED AUTHORIZATION

Finance Department

Jun Chang, P.E., DWRE
Deputy Director
Public Utilities Division

Other Authorization:

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

CUIC ID# 20RS108
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.

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

<table>
<thead>
<tr>
<th>SBE - Name of Firms</th>
<th>Work Description</th>
<th>Amount</th>
<th>% of Contract</th>
</tr>
</thead>
<tbody>
<tr>
<td>5. Automation Nation, Inc.</td>
<td>Computer System Design</td>
<td>$20,000.00</td>
<td>0.4%</td>
</tr>
<tr>
<td>6. Teague Industrial Sales &amp; Services, DBA Teague Industrial Sales &amp; Services</td>
<td>Pipeline Products</td>
<td>$303,243.00</td>
<td>5.6%</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td></td>
<td>$323,243.00</td>
<td>6.0%</td>
</tr>
</tbody>
</table>

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

TO: Mayor via City Secretary

SUBJECT: Ordinances granting Commercial Solid Waste Operator Franchises

FROM: (Department or other point of origin):
Alfred J. Moran, Director
Administration & Regulatory Affairs

DIRECTOR'S SIGNATURE: [Signature]

For additional information contact:
Juan Olguin Phone: (713) 837-9623
Naelah Yahya Phone: (713) 837-9889

Category # 34-39
Page 1 of 1 Agenda Item # 29-34
Origination Date 01/23/2012 Agenda Date FEB 15 2012
Council Districts affected: ALL

Date and identification of prior authorizing

RECOMMENDATION: (Summary)

Approve ordinances granting Commercial Solid Waste Operator Franchises

Amount of Funding: REVENUE

SOURCE OF FUNDING: [ ] General Fund [ ] Grant Fund [ ] Enterprise Fund [ ] Other (Specify)

FIN Budget:

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:

F&A 011.A Rev. 5/11/98
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.
To: Mr. Daniel Feldman  
   City Attorney  

From: Anna Russell  
   City Secretary  

Date: September 28, 2011  

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  
No attached
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,

[Signature]

Richard L. Rothfelder

RLR:mr
Enclosures
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...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
June 21, 1993

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

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 1980-1983 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 Rothselder
    Gilbert Douglas
    J. Hal Caton
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.

October 1, 1997

JIMMIE SCHINDEWOLF, P.E.
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 713-525-3398.

Sincerely,

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

cc: Gilbert Douglas
    Jimmie Schindewolf

MLE:OS:0
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,

[Signature]

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
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 Teletypewriter to 713-218-5838.
(Four pages including this page.)

RE: Garrett Operators, Inc., Off-Premise Sign at 2600 South Loop West; Permit ID #3928 (Expanding 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. 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.

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

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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.
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. 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, and asked Garrett to write this letter instead. We hope the following discussion is useful to you.

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These include signs owned by the Abundant Life Cathedral (77072), America’s Best Value Inns at two locations (77090), Angel’s Auto Center (77429), Cagnostic 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).

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.  

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.

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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. 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.6

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.
February 6, 2008

Dorrell & Farris, L.P.
Attorneys and Counselors at Law
3303 Louisiana, Suite 150
Houston, Texas 77006-6816

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

Dear Mr. Dorrell:


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: Tony Lawrence Jr., Van Johnson, Anna 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: Anne D. Parker

EXHIBIT

7
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 Luyck
Deputy Manager
Sign Administration
Planning and Development Services Division
Public Works and Engineering Department

Cc. Larry Schenk, Legal Dept
    Andy Iven, Deputy Director
    Glen Langem, Assistant Director
June 22, 2011

Ms. Katherine Tipton, Division Manager
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 Luyux ("Luyux"), 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:
(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 television 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,

[Signature]

G. Thomas Cox  
tcox@garrotoil.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**

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<th>APPLICANT'S NAME</th>
<th>Garrett Operators, Inc.</th>
<th>LIC. NO.</th>
<th>N/A</th>
<th>DATE</th>
<th>06-21-11</th>
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**ADDRESS**

2205 St. Lawrence, Gonzales, TX

**ZIP** 78629

**PHONE** 713-320-929

**SIGN LOCATION**

2600 S. Loop West, Houston, TX

**ZIP** 77054

**STATE BUSINESS ENTERPRISE**

Operate outdoor advertising sign

**SITE INSPECTION**

☐ CONSTRUCTION PERMIT ☑ OPERATING PERMIT ☐

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**FOR OFFICE USE ONLY**

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**OPERATING PERMIT RENEWAL TO BE SENT TO:**

**SIGN OWNER**

Garrett Operators, Inc.

**PHONE** 713-320-929

**ADDRESS**

2205 St. Lawrence, Gonzales, TX

**ZIP** 78629

**AFFIDAVIT FOR OWNER OR LESSEE OF PREMISES**

I hereby certify that the above information is true and correct and further that the sign does not violate any applicable deed restrictions or other restrictions on the premises and that it conform to the restrictions and requirements of the City's Sign Ordinance by being erected or maintained in compliance with the Sign Ordinance, Chapter 48, Building Code, City of Houston and other applicable laws.

(Handwritten Signature)

(Typed Signature)

Sworn to and subscribed before me by said ____________ on ____________, 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 does not violate any applicable deed restrictions or other restrictions on the premises and that it conform to the restrictions and requirements of the City's Sign Ordinance by being erected or maintained in compliance with the Sign Ordinance, Chapter 48, Building Code, City of Houston and other applicable laws.

(Handwritten Signature)

(Typed Signature)

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

Notary Public in and for Harris County Texas

SEAL

P&O 057 Rev 1/04
PAY TO THE ORDER OF City of Houston Sign Administration

Five Hundred Sixty-Two Dollars and 40 Cents

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

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

LOG #93049566

Ms. Katherine Tipton, Division Manager
Sign Administration
City of Houston
1002 Washington Avenue, Fourth Floor
Houston, Texas 77002
Mr. G. Thomas Cox  
GARRETT OPERATORS, INC.  
2205 St. Lawrence Street  
Gonzales, TX 78629
July 29, 2011

Mr. G. Thomas Cox
Gillett Enterprises Inc.
2025 S. Lawrence Street
Houston, TX 77092

RE: Original Application for Sign Permit No. 1400 for South Loop West, Houston, Texas 77084, dated 11/2/2011

Dear Mr. Cox,

Electronic signs are prohibited by Houston’s Sign Code which states:

"Electronic and off-premise high technology signs are prohibited. This provision shall include the construction, reconstruction, upgrading or conversion of an existing off-premise sign to an electronic or off-premise high technology sign. Such signs are prohibited."

Houston Sign Code § 40-1.2 (10b). Accordingly, your application is denied and I am returning your check in the amount of $552.50.

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

Respectfully,

[Signature]

[Redacted]

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

Li.N. 08-04-11  
Ferreiras

8-4
8-9
8-19
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 77006
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

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
Prepared ten (10) copies

Revised April 16, 2010
ROTHFELDER & FALICK, L.L.P.
ATTORNEYS AT LAW

1201 LOUISIANA
SUITE 550
HOUSTON, TEXAS 77002

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
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 4804

(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 a Sign Advisory Council consisting of ten members to serve on an ad hoc basis as the Mayor shall determine.
ISSUANCE OF LOCAL PERMITS

§ 245.002

The date of this Act, or 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 article which is specifically required by uniformly applicable regulations adopted by a state agency before the effective date of this Act.

Sec. 5. Effect on Coastal Zone Management Act of 1972 (16 U.S.C. Section 451 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 city, 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


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 Talley (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 W.L. 281377zel Zoning And Planning ☐ 376

245.002. Uniformity of Requirements

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

advised requirements in effect at the time:

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§ 245.002

LAND USE REGULATION
Title 7

(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.

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Section 4803

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.
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;
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.

**FREeways** 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
adjoins 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 conformity 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 4629, the following provisions shall apply to all existing and new changeable message and high technology signs:

(1) Blinking, rotating, moving, flashing, glaring, strobe, oscillating, or spotlight lights are prohibited.
Section 4611

(2) Lights or colored elements creating a continuously moving, shimmering, or optimistic effect, or the use of rotating or moving parts in association with such lights or colored elements, are prohibited.

(3) A changable 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 4511 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 330 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 1200 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.

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.

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 located over the collector street 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 located in front of the sign 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 300 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—of 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.
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. Succinctly 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. Rothfielder
Attorney for Garrett Operators, Inc.

RLR:mr
Enclosures

cc: (w/o enclosures)

The Honorable Annise D. Parker
Mayor, City of Houston
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November 10, 2011  
Page 5

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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 1/2 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 1/2 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

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. Solomon 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 Assistant City Attorney, Chief Business Litigation Division
DEPARTMENT REPRESENTATIVE:

Ms. Katye Tipton, Division Manager

ALSO PRESENT:

Ms. Lisa Lorton, Sign Administrator
Ms. Cantrece Addison, Court Reporter
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PROCEEDING

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

Okay. The representative of the City.

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

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

(Witness sworn.)

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

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

(Witness sworn.)

MR. MACK: Ms. Hope.

MS. HAMMILL-REH: Thank you, Sir.

I think this is a very simple case. Garrett Operators has applied on June 21st, 2011, to convert their trivision sign to LED lights; and on July 29th, 2011, the Sign Administration, Ms. Tipton, sent a
letter denying the application to convert the sign, because the Houston Sign Code Section 4612(b)2 prohibits an off-premise sign from being converted to electronic.

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

KATYE TIPTON,

having first been duly sworn, testified as followed:

DIRECT EXAMINATION

BY MS. HAMMILL-REH

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

A. That is.

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

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

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

A. Yes, it is.

Q. And did you deny the application?
A. I did.
Q. And what was the reason?
A. The reason for the denial was based on Houston Sign Code Section 4612(b)2.
Q. Okay. And is that -- Exhibit 3, the third page, is that the sign code provision that you're referencing?
A. That is correct.
Q. Okay. And this is sign code January -- that was effective January 11th, 2011; is that correct?
A. That is correct.
Q. So it was effective on the date that you received the application?
A. That's correct.
Q. Can you read Section 4612(b)2 for me, please?
A. It says, "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."

MR. MACK: I'm sorry, was that E or J?
MS. HAMMILL-REH: I'm sorry?
MR. MACK: You said E?
MS. HAMMILL-REH: B2. It's the last page of
the exhibit. Did you find it?

MR. MACK: Yes, thank you.

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

A. No, I did not.

Q. -- to convert the sign to LED?

A. No.

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

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

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

MR. MACK: We'll take your word.

MS. HAMMILL-REH: "Garrett Operators' counsel
sent a letter to Lucyx describing the proposed
installation and asserting that the sign code does not
require a permit for the installation."

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

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

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

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

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

MS. HAMMILL-REH: This is the opinion of the
Court of Appeals, which came out fairly recently, May 12,
2011. So to our way of thinking, this is a very simple
issue. The Sign Administration has received an
application in 2011; and 2011, the sign code does not permit an off-premise electronic LED sign and the application should be denied.

MR. MACK: Questions from the Board?

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

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

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

MS. TIPTON: Right.

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

MS. TIPTON: That's correct.

MR. MACK: What was the previous litigation about?

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

MR. MACK: Give me the short version.

MS. HAMMILL-REH: The previous litigation, Garrett Operators contended that its operating permit -- which I also have a copy of -- an electronic -- an electrical permit that was issued for a nearby building,
that these could be used to convert the sign to LED.

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

MR. MACK: Was the electronic ever installed?

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

MR. SILVA: Is the sign permitted now?

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

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

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

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

MS. TIPTON: Right.

MR. MACK: Any other questions?

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

MS. HAMMILL-REH: Yes, there has been a change in the ordinance between then and now. The ordinance -- the City sign code always prohibited it; but it was made absolutely clear again, because there had been
a change -- it's long story; but there had been a change
in state law.

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

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

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

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

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

But that does not allow this type of
change and that was what the argument was about in the
trial court where we prevailed, as well as in the Court of
MR. MACK: Tell me what a trivision sign is.

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

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

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

MR. MACK: Thank you. Any other questions?

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

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

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

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

MS. TIPTON: The LED is considered high technology.

MS. DAVIDSON: Oh, okay. Electronic or high
technology? Okay.

MR. MACK: I take it there are lights on this sign already, right? This is not a issue of lights, just switching to LED? Okay.

Any other questions?

MR. BUCK: I'm just curious, why go LED?

What's the reason for it? What's the reason for LED?

MS. TIPTON: Back when they changed the sign code, there were many studies about...

MR. BUCK: Is there a safety issue?

MS. TIPTON: Traffic safety. And as I understand it, that's primarily the reason for the -- on the interstates; and it would be a safety hazard.

MR. BUCK: Too much of a distraction.

MR. MACK: Any other questions?

Mr. Rothfelder.

MR. ROTHFELDER: Thank you.

Good evening. Nice to be back. Thanks for having me and my client, as it's my privilege to represent Tommy Cox of Garrett Operators.

And believe it or not, we have some agreement between the City and my client; and that this is indeed a simple case. But I put a little bit different spin on it, because I think it's simple in that state law requires this Board to overturn the decision that my
friend Katye Tipton made, because she applied the law that
was passed subsequent to the relevant period of time.

Let me explain what I mean. I've passed
out a presentation and an outline, and I'd just marshal
through what I think are the relevant and undisputed
facts, including that this sign has actually been there
for about 32 years.

It was originally built in 1979, and
Exhibit 1 in the packet of what I've handed out is a
picture of that sign. It was built as a sign that
utilized LED illumination; and it was used for off-premise
advertising, because Allison Walker Interests was a
developer that was not located on the site. And the sign
displayed LED light illumination.

My client, Tommy Cox, actually acquired
the sign from Allison Walker Interests in 1984; and then
he used it -- as indicated in Exhibit 2, he continued to
use it as an automatic changing sign.

I don't know if anybody remembers this
Budweiser sign, but it was a sign where the cap of the
beer bottle would pop off and the foam of the beer was
animated.

Now, you might remember back in 1993,
Mr. Cox and I came before this General Appeals Board,
because at that time, a dispute arose as to whether that
sign could be operated for on-premise use or off-premise use.

And Mr. Cox came forward and I represented him before the General Appeals Board asking for permission to operate the sign for off-premise advertising; and indeed, the General Appeals Board in June 1993, agreed and allowed that billboard to be operated for off-premise advertising.

At that time, you might remember that Ollie Schiller was the Sign Administrator, about three predecessor to Katye.

And Exhibit 3 is the letter in the packet that confirms that the billboard, that that sign was indeed permitted after the General Appeals Board ruled that it was proper and legal for off-premise advertising.

Exhibit 4 is an exchange of letters to show that the sign was -- again, as Ms. Tipton just pointed out -- legally permitted to be used as a trivision display.

Pictures of the sign being used as a trivision display are Exhibit 5, and we just talked about that. It's an automatic changing sign through electronic purposes that has three sets of slacks that will change, in this case, not more than every five minutes. So it's legal.
It's not a prohibited spectacular sign that changes more frequently than every five minutes. Instead, automatic changing electronic trivision display operated for well over a decade, completely legal and permit.

Now, in January 2008, my client Tommy Cox actually transferred ownership of the billboard by that time to the Applicant here, Garrett Operators.

In January 2008, were those discussions that Hope was referring to. He went to Susan Lucyx, my friend Susan Lucyx, the former Sign Administrator, and asked for permission to change the lighting on the sign.

It was already permitted as an automatic changing trivision sign, but he wanted to put the LED illumination back on it again.

It had LED illumination on it when it was originally constructed, and he asked for permission in January 2008 to convert it to an LED illuminated display -- still electronically automatic changing message.

And you'll see in the packet, Exhibit 6 is the follow-up letter that this previous lawyer for Mr. Cox that Hope is referring to wrote to Susan Lucyx; and Susan denied the permission by her letter, that's February 6th, 2008. It's in the packet as Exhibit 7.
So there was an exchange. There was an inquiry. There were meetings. There was correspondence confirming it. Now, Mr. Cox position was that no permit was required to convert the sign from trivision automatic changing to LED illuminated.

That's why a permit application wasn't submitted, and I'll get to why a permit application wasn't required under the sign code at the time litigation.

Litigation did ensue. After Ms. Lucyx letter, the previous lawyer once again for Garrett, Cox, filed a lawsuit saying that no permit is required. The City of Houston should have allowed the conversion from this trivision to the LED illumination, because at that time, there's no requirement in the sign code to get a permit to do so.

That litigation resulted in a dismissal in favor of the City that was affirmed in favor of the City by the appeal court, like Hope said, on a technical ground.

Namely, the trial appellate court said that Cox hadn't exhausted his administrative remedies or received a final judgment. Those are terms in the law that basically said, "The General Appeals Board didn't decide whether a permit was required or not; and until you go through your administrative remedies to decide whether
a permit is required or not, you can't come into the court system and ask us to do so."

That's why we're here three years later, is asking the General Appeals Board whether that permit is required to convert an automatic change in trivision to an LED illuminated sign. Katyie, indeed, did deny this application that was submitted.

The application, after I got engaged, is in the packet; and Hope passed it out too. We attached it with the transmittal letter, Exhibit 8 in the packet; and the letter points out that the law that was in effect in January 2008 when those initial inquiries were made should apply.

Katyie denied the application, as you can see it's Exhibit 9 in the packet, based on the sign code in effect today that had been amended a year after these January 2008 inquiries were made. That resulted in today's appeal; and I have in the packet the August 17th, 2011 appeal which was timely filed.

Now, the permit for LED illumination was not required in 2008, the relevant day. Or if there was a permit required, it should have been issued. First and foremost, the provisions of the sign code in January 2008 are the relevant provisions that this Board needs to look at.
That's when, as we could see from the exchange of exhibits back in January and February 2008, Exhibits 6 and 7, that the inquiry was first made about converting the signing to LED illumination. We contend that no permit was even required, so we didn't submit an application.

State law, specifically Section 245.002 of the Local Government Code, requires that in this case, any permit applications or whether a permit application is even required in this particular case, needs to be determined by the ordinance that was in effect when the application was either originally submitted or when there was a consideration as to whether an application was even required.

Now, I've put in your packet as Exhibit 14, the state law that takes precedence over the municipal law, Section 245.002 of the Local Government Code; and I'm quoting now -- it's in my summary; but it's in your packet as Exhibit 1H4, "Each regulatory agency shall consider the approval, disapproval or conditional approval of an application for a permit solely on the basis of any ordinance or other properly adopted requirements in effect at the time the original application for the permit is filed for review for any purpose."

Now, Hope anticipated my argument. So
she emphasized that there was no permit application submitted in 2008; and again, that's correct. But remember the posture that this comes before the General Appeals Board.

Our position is at this relevant time, January 2008, no permit was required. No application was necessary to be submitted. So the inquiry under state law is whether at that time under the Houston Sign Code, a permit was required or not, which takes us to our next point.

The Houston Sign Code in January 2008, did not require a permit to convert a trivision automatic changing electronic sign to one that had LED illumination.

Now, how do we know that? We know that the sign code at that time was legally operated as a trivision. Indeed, we just heard that it's legally permitted as a trivision as we sat here today.

At that time, there was no prohibition. There was no regulation on so-called changeable message, electronic or high technology signs. Those words didn't exist in the sign code in January 2008. They were added by amendments a year later in 2009.

In part, I think, because the City knew that Cox had already submitted an application; and as an
afterthought, they wanted to bolster their position, albeit, in a belated manner.

I've attached, for example, as Exhibit 16, the definitions that are contained in the provisions of the 2009 amended code.

This Exhibit, 16, 17, 18 and 19 are from the City's Sign Code, specifically the Houston Sign Code compiled by the City of Houston legal department; and the red portion show the amendments that were made in 2009.

And as you can see, Exhibit 16 contains definitions, including changeable message sign added in 2009, high-technology sign added in 2009.

Also on Page 5, you have electronic sign, which was extended in 2009 amendment to off-premise signs like this.

Exhibit 17 was, as you can see at the bottom, the new provisions added by the 2009 amendments on changeable message and high-technology signs; and last -- certainly not least -- the most important part is Exhibit 18. That's the provision that Katye's relying upon, Section 4612(b)2.

That's what she cited in her decision to deny the request to convert this automatic change in trivision sign to LED; and you can see the words that were added in the 2009 amendment, "electronic and off-premise
high technology." Those weren't in the codes originally.

And the provision that says, "electronic or off-premise high technology signs" the business about converting to electronic or high technology signs was also specifically added by the amendment made by the City counsel over a year after the relevant periods of time compelled by state law.

Now, the relevant regulation in 2008 by contrast is found on Exhibit 19, the last page in your packet; and it's Section 4608J of the Houston Sign Code.

And that provision provided in 2008 that there was no requirement to obtain a permit from the City of Houston for a mere change of ornamental features, electronic, electrical wire or advertising display.

You can see under Subsection J there on Page 19, there was some substantial changes made by the City counsel in its 2009 amendments to that provision as well.

Originally, the City counsel said, "No sign permit is required for the change of any of the ornamental features, electrical wire devices or the advertising display of a sign previously permitted."

And as you can see, they came in and deleted the electrical wiring; and most importantly, they have this provision that says this, "That it does not
apply to converting existing signs to electronic signs, high technology signs or changeable message signs," brand new a year after the relevant period of time.

Indeed, the 2009 amendments that the City counsel made to the Houston Sign Code is conclusive evidence that prior to those amendments, the things that we're talking about tonight were not prohibited.

If in 2009 the City counsel felt that it was important to amend the sign code to clarify that the conversion of existing signs to electronic signs, high-technology signs, or changeable message signs was prohibited, if that had already been prohibited, there wouldn't have been a need to amend the sign code in 2009 to do so; but it did.

And it also amended Section 4612(b)2, the provision that Katye relied upon, that for the first time was amended to prohibit electronic or off-premise high technology signs; and there was no such prohibition before that.

So the law that should be applied by the General Appeals Board is that under Exhibit 19, 4608J, when you look at the section without the red amendments that are inapplicable, because they were passed subsequent to the relevant period of time.

And at that time, I'm quoting, "No sign
permit is required for the change of any of the ornamental features, the electrical wiring devices, or the advertising display of a sign previously permitted."

Well, one thing we can agree upon, was the sign was previously permitted. We can agree that LED illumination, where you change the advertisement, albeit simply by the means of illumination through LED as opposed to trivision, that's a change of the advertising display. No permit required.

Electrical wiring devices is something that would be involved in the LED illumination. No permit required. Ornamental features, changing from an automatic changing electronic to LED display, ornamental features. All of these things don't require a permit in the relevant period of time of 2008.

So in conclusion, since state law compels application of the version of the sign code that provided no permit was required to convert an automatic changing, electronic trivision sign to LED illumination, permission should have been given; and the General Appeals Board should reverse and overrule the July 29th, 2009 decision of Ms. Tipton, that instead, used a subsequent and incorrect version that was amended by the City counsel a year after the relevant period compelled by state law.

For those reasons, we're asking that the
General Appeals Board overrule that July 29th, 2011 decision; and rule either that no permit is required to convert this sign to LED illumination, or if one is required, that it should be granted.

MR. MACK: Okay. Questions from the Board?

MR. BUCK: Just so I'm clear on this, this item came up first in 2008; and in 2008, it was not -- there were no code verbage that prohibited it; is that correct?

MR. ROTHFELDER: That's our position. I'm sure Ms. Hammel-Reh would probably argue otherwise; but yes, I showed you the provision that we argued, particularly 4608J, that did not require a permit to change the electrical wiring, ornamental features or advertising display.

MR. BUCK: Let me rephrase this. In -- go ahead.

MS. HAMMILL-REH: That's correct. They were prohibited.

MR. BUCK: They were prohibited in 2008?

MS. HAMMILL-REH: Correct.

MR. BUCK: Okay.

MS. HAMMILL-REH: And I do think that the question for the Board is really this: Can someone make an informal inquiry of the Sign Administration and years
later submit an application and the Sign Administration
must evaluate that application based on old law at the
time that the conversations first took place?

I would submit that that's never been
the law. In order to come under Section 245 of the Texas
Local Government Code, it says this, "The 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 a
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 the Regulatory Agency."

In other words, in order to come under
the Vested Rights Statute, which is what Section 245 is
called, you must submit an application. There was no
application submitted in 2008.

So all of arguments about the 2008 law
that Mr. Rothfelder has just made about their
interpretation of the 2008 law, is not applicable to an
application that was submitted to the Sign Administration
on June 21st, 2011.

There was no original application to
relate back to in 2008; and the Court of Appeals has
already held in a long discussion in their opinion --
which I'll be happy to give you all -- I have it tabbed,
that this was simply an informal inquiry. It does not
rise to the level of an application, which is what is
required, among other things, to trigger 245.

MR. BUCK: Exhibit 6, Mr. Rothfelder's
Exhibit 6 --

MR. ROTHFELDER: Down at the bottom.

MR. BUCK: -- it says, "The City no longer
issues permits for off-premise signs. Houston Sign Code
Section 4605(a)."

MS. HAMMILL-REH: Wait, wait. Let me find
6. "The City no longer" -- this was a letter from
Mr. Durrell --

MR. BUCK: Was that part of the sign
ordinance as it states here? Because it says, "No longer
issues permits for off-premise signs," then that tells
me --

MS. DAVIDSON: Which page are you on,
please? Page 1?

MR. BUCK: It's not a page number, Leslie.
It's Exhibit 6 in the packet. It's at the bottom, the
footnote at the bottom.

MS. DAVIDSON: Okay.
MR. BUCK: If the sign code says, they're no longer issuing permits for off-premise signs, then what would the application be for if there's not a permit going to be issued? I have to ask these things. Okay.

MS. HAMMILL-REH: It's my understanding that the application was to convert the sign. So this is referring to new off-premise signs, I believe.

MR. SILVA: Are we saying that this is a sign conversion? They're saying it is not a sign conversion, I think.

MR. POURTEAU: Well, part of the thing is, I would ask you to use your common sense. What their argument is, is that this trivision sign had a motor on it, and it switched from one advertisement to another to another; but there's a fundamental difference between a trivision sign and an LED and LED technology.

If you don't believe that, when you go home tonight, you try to get your wife to watch Dancing With the Stars on a trivision sign. It is completely different technology.

It is not merely ornamental. It is not merely lighting. It's different in concept. It's different in technology. It's different, different, different.

MR. SILVA: That's why I'm asking her, this
is a conversion of the existing sign, what they want to
do. It's not just changing it. It's a conversion; is
that correct?

MS. TIPTON: Yes.

MR. MACK: Mr. Campbell.

MR. CAMPBELL: One question. I realize there
seems to be a contention whether or not there was a
requirement in 2008 or not to -- or whether it was illegal
to convert to the -- what is it called -- other LED type
sign -- assuming it wasn't okay. If they wanted to
convert it and there was no provision of law against that,
would they have had to make a request to the City to do
so?

MS. HAMMILL-REH: Yes. That's -- yes, well --

MS. TIPTON: Yes. Subsection 4605, Permit
Required, "No person shall erect, reconstruct, alter,
relocate or use a sign without the sign code application
area without first having secured a written permit from
the Sign Administrator to do so."

MR. POURTEAU: That was the underline issue
in the lawsuit between Garrett and the City.

MR. MACK: And so that's the document that
was in place in 2008?

MR. CAMPBELL: They submitted a letter in
2008 with a request. I thought that's what he presented in his exhibit. You're calling it informal. I'm trying to get a definition of what makes it informal.

MS. HAMMILL-REH: The Court of Appeals called it informal. In their judgment, in their opinion, they called this an informal request. It didn't rise to the level of an application.

So the Court of Appeals, in their judgment, in their opinion -- which was just issued in May of this year -- they held, the conversations -- the letters, that this constituted an informal.

And actually, they go a little bit further than that. They say, "This was an informal inquiry based on a hypothetical set of facts," because there was no actual application submitted for the Sign Administration to rule on one way or the other.

They didn't have that opportunity, because nothing was submitted in 2008.

MR. ROTHFELDER: Again, to the extent that what happened in January and February of 2008 is important, it's important because of the application of the state law that compels that form of the Houston Sign Code at that time applies.

Mr. Campbell is right. There was a request made in January 2008 to convert the trivision sign
to LED illumination, and you have it in the packet.

That's the January 22, 2008 letter. It's Exhibit 6. It
was a request that was denied by Susan Lucyx's February 6,
2008 letter, and it's in your packet as Exhibit 7.

Now, again, we didn't submit an
application, because our whole argument is that an
application is not required, because the law, the Houston
Sign Code, specifically 4608(j) in 2008 -- that's Exhibit
19 -- didn't require a sign permit to change the
ornamental feature, electrical wiring or devices of the
advertising sign of a sign previously permitted.

So you didn't have to go through and ask for
a permit. You didn't have to submit an application; but
indeed, there was an inquiry made in writing, a request by
that exchange of letters; and it resulted in a formal
denial.

And, in fact, I want to hand around -- I
didn't bring extra copies; but please take a look at the
Sign Administration's law. This is the screen printed off
of the Houston Sign Administration, where it shows the
relevant dates; and I want to direct your attention to
come down to letter dated 2-6-08, "Denial of sign permit
to Garrett Operators."

That, of course, refers to Exhibit No.
7, the February 6th, 2008 letter Susan Lucyx; and you can
see that the City, at least on their computer, treats this
as a denial of sign permit to Garrett Operators -- coming
right off their own computer.

MS. DAVIDSON: Mr. Rothfelder, why did you
not fill out a form for an application?

MR. ROTHFELDER: Because, Leslie, our
position at that time then and as it is now, is that an
application would be inappropriate, because our legal
position is that a permit is not required.

So by submitting an application, we
would be conceding that a permit was required; and we
don't think that it is.

MS. DAVIDSON: Why did you make -- if the way
you interpreted the Sign Code on Exhibit 19, why did you
even contact Ms. Lucyx?

MR. ROTHFELDER: Out of courtesy.

MS. DAVIDSON: Is there LED lighting on the
sign now?

MR. ROTHFELDER: No. It's still a trivision
display.

MS. DAVIDSON: Well, why did you wait this
long to...

MR. ROTHFELDER: Because as Hope pointed out,
the Court of Appeals affirmed a dismissal of the case on
the grounds that Garrett -- Mr. Cox failed to exhaust his
administrative remedies; and therefore, the matter was not ripe for civil court litigation.

The Court didn't rule on the merits. It ruled that before the civil courts can consider this issue, Garrett had to go through and exhaust its administrative remedies by having the General Appeals Boards to determine whether a permit was required or not; and if one was required, whether it should be issued or not.

So that's why, after I got involved, I said, "Let's go ahead and submit the permit application, because the only way we're going to get an administrative review by the General Appeals Board is the anticipated denial of the application, which we can appeal to the General Appeals Board. Then we can do what the Court of Appeals said and exhaust our administrative remedies; and if we lose, we can go to civil court."

MS. DAVIDSON: I realize that he was with a different law firm then, so we don't know the reason why he didn't just go ahead and do the same thing you're doing now and cleared up the problem back then before this ruling -- when was it in January that it came out?

MR. POURTEAU: May.

MS. HAMMILL-REH: May 12th. That's the document that has a little orange tabs on it -- May 12th,
2011.

MS. DAVIDSON: It just seems kind of strange
timing that in May, they really put it in black and white;
and then, you know, you submit the application in -- was
it June?


MS. DAVIDSON: Just seems a little --

MR. ROTHFELDER: No. I got hired right after
Garrett lost the Court of Appeals; and I looked at the
opinion and said, "Well, okay. Here's what you got to
do. You got to comply with what the Court of Appeals
say. You got to go and exhaust your administrative
remedies; and the way you do that is, you have the General
Appeals Board consider. And the only way the General
Appeals Board considers it, is if you submit an
application that's denied; and then you appeal the
denial."

MR. MACK: Are there LED signs in Houston?

MR. ROTHFELDER: Sure. But they are limited
to on premise. I mean, you'll see them all around town.
They are these automatic changing LED illuminated changing
signs, but they're limited to on premise. There's no
off-premise LEDs.

MS. DAVIDSON: So this would be the only
one?
MR. ROTHFELDER: Yes. But I did want to point out -- Katye, with all due respect -- the safety and traffic distraction issues. I dispute that. There are hundreds of LED illuminated on-premise signs; and the City council, in its wisdom, determined that there was no safety issue. There was no traffic distraction, because they allowed them and they regulate them; but they limit them to on premise.

So the City council didn't think there was a traffic distraction or a safety issue.

MR. BUCK: Just so I'm clear about this on-premise, off-premise, I have a -- put up a sign for a business. That's an on-premise sign, right?

MS. HAMMILL-REH: If you're advertising your business -- if this is where the business is and you're advertising on your sign about your business, that's on premise.

MR. BUCK: But a general sign like we're talking about here where anyone can come in and lease it, I guess?

MS. HAMMILL-REH: You're advertising something --

MR. BUCK: That's what I thought.

MS. HAMMILL-REH: Yes. Off premise would be advertising something that's not on -- the premise where
the -- on the property where the sign is.

MR. BUCK. Okay.

MR. CAMPBELL: One other question for
definition purposes: In the original 4608(j) before it
was changed, it had there, "This provision shall not apply
to easel or spectacular signs." Is there a formal
definition for what spectacular sign is?

MR. ROTHFELDER: It's in the packet under
my -- if you take a look at Exhibit 15 of my packet,
there's a definition down at the bottom of spectacular
sign.

In general, a spectacular sign is an
automatic changing message sign -- whether it has LED
illumination that causes the message to change or whether
it's a trivision technology that causes the message to
change.

But as you can see, the important thing
that makes one of these automatic changing message signs
become spectacular, is if that message changes more
frequently than once every five minutes. That's the key.
You can have a --

MR. SILVA: That's not allowed.

MR. ROTHFELDER: Yeah. It's not allowed; and
spectacular signs, indeed, are prohibited. So if an
automatic changing message sign changes more frequently
than every five minutes, it's spectacular, and spectacular
is prohibited; but if the change is every five minutes one
second, it doesn't meet the definition of spectacular, and
it's legal.

Like this sign, it's an automatic
changing message sign, trivision technology that changes
less frequently than once every five minutes. So it's not
spectacular; and instead, it's legal.

MS. HAMMILL-REH: Actually, if you read your
Exhibit 15, it says that, "A spectacular sign shall mean a
sign that has one or more of the following elements" --
"following as elements in its physical structure: 1.
Automatically changing message that changes more often
than once every five minutes; 2. Blinking, rotating,
moving, chasing, flashing, glaring, strobe, scintillating,
or spot lights or similiar devices; 3. Lights or colored
elements creating a continuously moving, shimmering or
prismatic effect; or, 4. Rotating or moving parts."

So that is an expanded definition of
spectacular sign.

MS. DAVIDSON: Well, why is a trivision not
considered spectacular if it has moving parts?

MS. HAMMILL-REH: That's a good question.

MR. BUCK: That's what I was getting ready
to ask. Moving parts, that would be classified as a
spectacular sign.

MR. ROTHFELDER: It's not. We know from --

MR. SILVA: Well, wait a minute.

MR. ROTHFELDER: We know, because Katye Tipton just told us that this sign, the automatic changing message is a trivision display is legal; and we know from her predecessor, Susan Lucyx, in Exhibit 4 that I supplied to you -- actually, it was Melvin Embry.

In the correspondence exchange in October 1997 between previous Sign Administrator Melvin Embry and Tommy Cox, they agreed at that time back in 1997, that this trivision display, as long as it did not change more frequently than every five minutes, was legal.

So that it, indeed, has retained its permit and retained its legal status for the last 15 years in that form.

MS. HAMMILL-REH: If I may add a little bit of background on this Exhibit 4? It's dated October 1st, 1997. This is not our exhibit. It's Mr. Rothfelder's.

On Paragraph 2, it talks about where the sign is located; and it says this: "It is considered conforming and in compliance with applicable Federal, 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."

So at the time this was entered into,
this sign, there was a question about whether it was in
compliance; and because there was litigation -- other sign
litigation that was pending, that this was an agreement
that was entered into between Garrett Operators and the
then building official Mr. Embry, to allow the sign to
stay up; but that was during the pending litigation, which
has since concluded.

MR. MACK: Are there other tri -- what you
call it -- signs in the City?

MS. HAMMILL-REH: No.

MR. COX: The block from mine is the Reliant
Center. It has a trivision right next to an LED. Also, I
think Sam Houston.

MS. HAMMILL-REH: But I believe those are on
premise. Those are on-premise signs.

MR. COX: Actually, they advertise anything
and everything; and years ago, I asked the City, the Site
Administrator at the time when they put in and they said;
"That's County-owned property and the County can do
anything they want to."

And that was also the same thing they
told me with the Sam Houston Raceway, that the County owns
that property. So anything they want to do with the sign is fine.

And also goes to -- there's LED signs in front of Minute Maid Park that advertise companies other than the baseball deal, that it belongs to the County or the City. The George R. Brown also have LED, and they advertise things that are not necessarily on premise, also.

MS. HAMMILL-REH: The City is a governmental entity; and we do not typically tell other governmental entities how to do --

MR. COX: I'm not trying to --

MS. HAMMILL-REH: -- their business.

MR. COX: I'm not trying to tell you anything other than that. He just asked, "Are there other trivisions out there?"

MS. HAMMILL-REH: Those would be --

MR. BUCK: In 2008, was it illegal to have the type of sign that they want to have?

MR. ROTHFELDER: No.

MR. BUCK: Let me rephrase it. Was it against the Sign Code in 2008 to have a LED sign like they're proposing? Was it against the Sign Code --

prohibited by the Sign Code in 2008?

MR. POURTEAU: I think converting it to
that --

MR. ROTHFELDER: No, it wasn't.

MR. POURTEAU: Converting to that was prohibited unless it was merely ornamental or electronic or the advertisements such as changing the paper on the billboard, that was authorized. Converting it to an LED sign was not authorized.

MR. SILVA: And then it would require a permit?

MS. LORTON: The electrical (inaudible) bulb to bulb, wire to wire; but when you went from one component to another component, that's what triggered and made --

MR. CAMPBELL: What specific reference in the previous code is the City using to say that it was illegal to change at that time?

MR. POURTEAU: Well, it's partially in the building code as well. You need a code from the building -- a building permit to make those kinds of changes to this sort of structure.

MS. HAMMILL-REH: From a practical standpoint, you have a big heavy sign cabinet. LEDs, I'm sure Mr. Cox will tell you, weighs more than the trivision.

So if you're putting something up there,
you have to take the wind, the bending factor into account. You have to take the weight into account.

So there are structural issues that have to be considered, which is why you would apply to the Sign Administration to determine the types of permits that you need in order -- electrical permit, construction permit in order to change the cabinet out.

MR. COX: That's not correct.

MR. CAMPBELL: You're saying the nature of the change fell into the Building Code requirement for submitting a permit?

MS. HAMMILL-REH: It's under the Sign Code.

MR. CAMPBELL: I understand or --

MS. LORTON: It has to meet the structural requirement of the current code. When you go -- back in 1970, those wind restraints are going to be different than today's wind restraints and today's Building Code.

So you have to submit an application with engineering proving that your existing structure can handle the weight and handle what it is that you're trying to do, because it wasn't considered just merely electrical. It's a -- it was a change. I mean, it was an upgrade alteration.

MR. ROTHFELDER: If I can answer Robert's question directly, 'cause he has two questions: Number 1,
"In 2008, was maintenance of an automatic changing LED sign allowed or not; and Number 2, was converting the type of automatic changing trivision sign to LED illumination allowed or not in 2008?"

I think it was really two parts, and I've got the answers to both. The first answer is, you just look at Exhibit 18. That shows us that the law that was in effect in 2008 prohibited certain things. Specifically, 4612(b)2 prohibited off-premise signs, any new off-premise signs.

But the thing that instead was added in 2009 was this red addition of electronic and off-premise high technology signs. They weren't defined. They weren't in the Sign Code at the relevant period in 2008.

Instead, the only thing that dealt with automatic changing message signs in 2008 was a spectacular sign, and I've got that provision before you too.

MR. BUCK: Mr. Rothfelder?
MR. ROTHFELDER: Yes.
MR. BUCK: This 4612(b)2 of the underline red, that is what was inserted in this, when? In 2009?
MR. ROTHFELDER: Correct.
MR. BUCK: Prior to 2009, this red, "All premise signs are prohibited"?
MR. ROTHFELDER: Correct.
MR. BUCK: "This prohibition shall include 
the construction, reconstruction, upgrading or conversion 
of an existing off-premise" --

MR. ROTHFELDER: Correct. "Of an" --

MR. BUCK: -- "sign to an off-premise sign, 
such that no signs are permitted." Did I read that 
correctly?

MR. ROTHFELDER: That's no off-premise 
signs.

MR. BUCK: Doesn't that say right there that 
the signs are prohibited?

MR. ROTHFELDER: You can't get new ones, but 
the existing billboards out there, the existing 
off-premise signs are grandfathered in and continue to 
be --

MR. BUCK: It says, "constraction, 
reconstruction, upgrading or conversion." Isn't that 
conversion?

MR. ROTHFELDER: It's already an off-premise 
sign.

MR. BUCK: No. I'm saying, "Signs are 
prohibited. Prohibition shall include the construction, 
reconstruction, upgrading or conversion of an existing 
off-premise sign."

Am I interpreting this incorrectly
here? I don't think so.

MR. ROTHFELDER: It's already an existing off-premise sign -- completely permitted, legal and grandfathered. The thing that was changed is, in 2009, the thing that we want to do to is convert the lighting system from external lighting on the TriFace to internal lighting through LED illumination. That's in electronic or high definition, which they didn't have then; but they do now.

MR. BUCK: I'm still having trouble with this, because like this says in 2008 -- what the Sign Code said in 2008, "Off-premise signs are prohibited. This prohibition shall include the construction, reconstruction, upgrading or conversion of an existing off-premise sign." That's what it says.

It says you can't do it. That's the way I'm interpreting this. This is my interpretation of this. So if I'm interpreting this incorrectly, can somebody interpret it?

MR. ROTHFELDER: You're reading it correctly.

(Laughter.)

MR. ROTHFELDER: You're misinterpreting that is the -- encompasses what we want to do.

MR. BUCK: Says this is prohibited. I mean,
that's pretty cut and dry to me. I'm just --

MS. LORTON: Still operating in, I guess, current condition as a trivision.

MR. MACK: Mr. Cox, did you have anything else you want to add?

MR. COX: A couple of things: I look at this as simple just upgraded technology. And unlike Ms. Reh says, the LED sign is only 6 inches. The sign for the trivision is a foot and a half, and it has a lot of mechanical and very heavy. Whereas the LED sign is not.

MS. HAMMILL-REH: Well, I will note that in the application, which is our Exhibit 1, there were no drawings attached to it.

MR. COX: Actually, we gave you engineering drawings and wind levels and all those things.

MS. HAMMILL-REH: Attached to this application?

MS. COX: Oh, I'm sorry, you're talking about the June.

MS. HAMMILL-REH: The June 21st, 2011 application for sign permit talks about converting but doesn't have any drawings or engineer's specification. So we don't actually have anything that talks -- that confirms -- I don't doubt you at all. I just like to read it, and there's nothing here that confirms that.
MR. COX: Well, this sign has gone through at least four hurricanes. It is probably the --

MS. HAMMILL-REH: But it hasn't --

MR. COX: -- the grandfather of all -- the mother of all signs.

MS. HAMMILL-REH: It hasn't gone through them as an LED sign with the weight out there.

MR. COX: And that particular weight is less than the trivision weight.

MS. HAMMILL-REH: We've also -- I have handed out to all of you for your review, the judgment of the Court of Appeals that's got the little tabs on it. If you like to take a moment to read it -- and also Section 245.002, which we're having marked as Exhibit A.

And that's the provision that talks about you must have a permit to relate back to in order to come under the Vested Right Statue.

(Exhibit No. 5 was marked and entered into evidence.)

MR. MACK: Any further questions from the Board? Is there a motion?

MS. DAVIDSON: I'd like to make a motion that Garrett Operators application for the LED sign renovation be denied, because it's against the law now.

MR. MACK: Is there a second?
MR. BUCK: I'll second.

MR. MACK: Moved and second, denied. All
those in favor? Those opposed? The application has been
denied. Thank you.

(Hearing concluded at 6:31 p.m.)
REPORTER'S CERTIFICATE
MEETING OF THE GENERAL APPEALS BOARD
TAKEN ON 09-22-2011

I, CANTRECE A. ADDISON, the undersigned Certified Shorthand Reporter, in and for the State of Texas, certify that the facts stated in the foregoing pages are a true and correct transcription of all testimonies given by the witnesses in the above-styled and numbered General Appeals Board Hearing that was reported by me.

I further certify that I am neither attorney or counsel for, related to, nor employed by any parties to the action in which this testimony is taken and, further, that I am not a relative or employee of any counsel employed by the parties hereto or financially interested in the action.

SUBSCRIBED AND SWORN TO under my hand and seal of office on this the 3rd day of October, 2011.

Cantrece A. Addison
CANTRECE A. ADDISON, TEXAS CSR #8236
Expiration Date: 12/31/2012

Advanced Court Reporting Services
6725 South Fry Road, #700-345
23 Katy, Texas 77494
Firm Registration No. 567
Re: Permit #3928 (Original Permit #345496-R)

ADDRESS 2205 St. Lawrence, Gonzales, TX ZIP 78629
SIGN LOCATION 2600 S. Loop West, Houston, TX ZIP 77054

STATE BUSINESS ENTERPRISE: Operate outdoor advertising sign

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OPERATING PERMIT RENEWAL TO BE SENT TO:

SIGN OWNER Garrett Operators, Inc.

ADDRESS 2205 St. Lawrence, Gonzales, TX ZIP 78629

APPLICANT FOR OWNER OR LESSEE OF PREMISES

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 premises owner and that the sign does not violate any applicable state or local regulations or restrictions or requirements of the City's Sign Ordinance and that the sign is being erected or maintained in compliance with the Sign Ordinance, Chapter 99, Building Code, City of Houston and other applicable laws.

Signature

Notary Public in and for Harris County, Texas

APPLICANT 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 state or local regulations or restrictions or requirements on the premises and that having read the regulations and requirements of the City's Sign Ordinance the sign is being erected or maintained in compliance with the Sign Ordinance, Chapter 99, Building Code, City of Houston and other applicable laws.

Signature

Notary Public in and for Harris County, Texas

P&D 087 Rev 1994

EXHIBIT 1

Deponent City of Houston

Date 06/21/11

Rpt No. CA

www.cadocus.com
PAY TO THE ORDER OF  City of Houston Sign Administration
Five Hundred Sixty-Two Dollars and 40 Cents
DOLLARS

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

713-218-6820
#3928/348496-R Application for Sign Permit

LOG #93049568

Ms. Katherine Tipton, Division Manager
Sign Administration
City of Houston
1002 Washington Avenue, Fourth Floor
Houston, Texas 77002
July 29, 2011

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

RE: Original Application for Sign Permit at 2600 ½ 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  
832-394-8990

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
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
(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.
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.

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**


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.

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 Luycox, 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, Luycox informed Cox that it was "illegal in the City of Houston for sign owners to use an LED display on a sign." Cox told Luycox that the Sign Code did not mention LED lighting, to which Luycox responded that "we are likely to change the sign code."

Subsequently, Garrett Operators' counsel sent a letter to Luycox describing the proposed installation and asserting that the Sign Code does not require a permit for the installation. Luycox 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, Luycox 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 chance structure of sign. (L.E.D. boards were being added.)”

We do not consider Cox’s meeting with Luycox 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 Luycox 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, Luycox 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

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\(^1\) 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

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.
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.
(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)


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).
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
June 21, 1993

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

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
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.
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:0
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
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 Telexcopier 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 trivision 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

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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.
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. 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, and asked Garrett to write this letter instead. We hope the following discussion is useful to you.

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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.
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.\footnote{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.” \textit{id}.} 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.\footnote{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.}

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
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:


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: Tani 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 Jojanka "Jo" Jones Melissa Noriega Controller: Annette 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 matter (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 4606(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,

[Signature]
Susan Loyck
Deputy City Manager
San Administration
Planning and Development Services Division
Public Works and Engineering Department

Cc: Larry Schenk, Legal Dept
    Andy Tooken, Deputy Director
    Allen Langert, Assistant Director
June 22, 2011

Ms. Katherine Tipton, Division Manager
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 Luyckx ("Luyckx"), 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:
(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 threevision 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
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
Re: Permit #3928 (Original Permit #345496-R)

APPLICATION FOR SIGN PERMIT

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 □ D0 □  OPERATING PERMIT □ D0 □ D0

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OPERATING PERMIT RENEWAL TO BE SENT TO:
SIGN OWNER: Garrett Operators, Inc.  PHONE: 713-320-929
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 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 the sign is being erected, maintained, and operated in compliance with the City's Sign Ordinance; that the sign is being erected and maintained in compliance with the Sign Ordinance, Chapter 49, Building Code, City of Houston, and other applicable laws.

(Signature)
President
(SEAL)

Sworn to and subscribed before me by said on 22 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 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 the sign is being erected, maintained, and operated in compliance with the City's Sign Ordinance; that the sign is being erected and maintained in compliance with the Sign Ordinance, Chapter 49, Building Code, City of Houston, and other applicable laws.

(Signature)
(SEAL)

Sworn to and subscribed before me by said on 22 to certify which witness my hand and seal of office.

Notary Public in and for Harris County Texas

SEAL
PAY TO THE ORDER OF  City of Houston Sign Administration

Five Hundred Sixty-Two Dollars and 40 Cents

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

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

LOG #93049586

Ms. Katherine Tipton, Division Manager
Sign Administration
City of Houston
1002 Washington Avenue, Fourth Floor
Houston, Texas 77002
Mr. G. Thomas Cox  
GARRET OPERATORS, INC.  
2205 St. Lawrence Street  
Gonzales, TX 78629
July 29, 2011

CERTIFIED MAIL 7005 0400 0004 3703 0309
RETURN RECEIPT REQUESTED

G. Thomas Cox
Cox & Cox, Attorneys at Law
2405 St. Lawrence Street
Houston, TX 77003

RE: Original Application for Sign Permit at 2300 West Fuqua Road West, Houston, Texas 77084, 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 § 460-2.12. Accordingly, your application is denied and I am returning your check in the amount of $982.50.

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

Respectfully,

[Signature]

[Address]

[City, State ZIP Code]

[Phone]

[Email]

[City, State ZIP Code]

[Phone]

[Email]

Mark L. Loaman, P.E., CMM, PTOE
Senior Building Official

[Signature]

[Address]

[City, State ZIP Code]

[Phone]

[Email]
We will re-deliver 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. a. Check all that apply in section 2:
   b. Sign in section 2 below:
   c. Leave this notice where the carrier can see it.

2. Sign here to authorize re-delivery OR to authorize an agent to sign for you.

   Signature
   X

Printed Name

Delivery Address

USPS

5293 0315 9314 1804

EXHIBIT

11
REQUEST FOR APPEAL OF DECISION OR INTERPRETATION  

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 77023  
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:  

REFERENCE:  
SECTION 4612(b)(2)  
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  
Prepare ten (10) copies  

Revised April 16, 2010
Ms. Katherine Tipton, Division Manager
Sign Administration
City of Houston
1002 Washington Avenue, Fourth Floor
Houston, Texas 77002


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

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,

[Signature]

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 a Sign Advisory Council consisting of ten members, to serve on an ad hoc basis as the Mayor shall determine.
ISSUANCE OF LOCAL PERMITS

§ 245.002

The date of this Act, or in any litigation pending in any 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 in the effective date of this Act.

Sec. 5. Effect on Coastal Zone Management. Nothing in this Act shall be construed to limit or otherwise affect the authority of the state, a county, another political subdivision of 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 is 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 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


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 2831777. 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:

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§ 245.002

LAND USE REGULATIONS

Title

(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.

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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.
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, flashing, glaring, strobe, scintillating, orograd
    lights are prohibited.
Section 4611

1. 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.

2. 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.

3. Brightness limits shall be set at a maximum of 3500 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.

4. (i) Additional On-Premise Sign Provisions. Beginning September 1, 2009, and save except for signs erected pursuant to the provisions of Section 4520, 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 4520), 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 250 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.
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. If 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.
REQUEST FOR COUNCIL ACTION

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-S208880A2

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

For additional information contact:
David Guernsey
Phone: (832) 395-3640
Ray DuRousseau
Phone: (832) 393-8726

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.

Date and Identification of prior authorizing Council Action:

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% MWBE participation goal. The supplier is currently achieving 1.7%. The supplier anticipated subcontracting the antifoam chemicals related to liquid polymer flocculants to a certified MWBE; 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 MWBE firms and will continue to monitor this contract to ensure maximum MWBE participation.

Buyer: Martin L. King

REQUIRED AUTHORIZATION

F&A Director: NDT
Other Authorization:
Other Authorization:
TO: Mayor via City Secretary

REQUEST FOR COUNCIL ACTION

SUBJECT:
Revisions to the Master Classification Ordinance for City Employees

FROM (Department or other point of origin):
Human Resources Department

DIRECTOR'S SIGNATURE:

For additional information contact:
Omar Reid
Phone: (713) 837-9330

ORIGINATION DATE
February 10, 2012

AGENDA DATE
FEB 29 2012

COUNCIL DISTRICT AFFECTED: ALL

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.

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

**Proposed Job Title**
Physician Assistant

**Proposed Pay Grade**
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.

**Proposed Job Title**
Human Service Program Manager

**Proposed Pay Grade**
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.

**Proposed Job Title**
Abatement Specialist

**Proposed Pay Grade**
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

**Current Job Title**
Program Manager

**Proposed Job Title**
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).

FROM: (Department or other point of origin):
Andrew F. Icken
Chief Development Officer

DIRECTOR’S SIGNATURE:

For additional information contact:
Ralph De Leon  Phone: (713) 837-9573

Date and identification of prior authorizing Council Action:

Council Districts affected: H

RECOMMENDATION: (Summary) Approve an ordinance enlarging the boundaries of Reinvestment Zone Number Thirteen (Old Sixth Ward Zone).

Amount of Funding: No Funding Required

SOURCE OF FUNDING: [ ] General Fund [ ] Grant Fund [ ] Enterprise Fund [ ] Other (Specify) [X] 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: 

Finance 08/29/08
REQUEST FOR COUNCIL ACTION

TO: Mayor via City Secretary

SUBJECT: Ordinance approving a third amended Project Plan and Reinvestment Zone Financing Plan for Reinvestment Zone Number Thirteen (Old Sixth Ward Zone)

FROM: (Department or other point of origin):
Andrew F. Icken
Chief Development Officer

DIRECTOR'S SIGNATURE: [Signature]

For additional information contact:
Ralph De Leon
Phone: (713) 837-9573

Recruitment Date: FEB 29 2012

Council Districts affected: H

Date and identification of prior authorizing Council Action:

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

SOURCE OF FUNDING: [ ] General Fund [ ] Grant Fund [ ] Enterprise Fund [X] 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 plating, 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

REQUlRED AUTHORIZATION

Finance Director: Other Authorization: Other Authorization:

Finance 08/29/08
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
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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'Connor and Associates, 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
### Exhibit 1 – 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:

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<td>$6,665,965</td>
<td>$11,765,306</td>
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<td>$1,988,300</td>
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### Exhibit 2 – Net Revenue All Jurisdictions

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<th>Tax Year (1)</th>
<th>Increment Revenue</th>
<th>Total Increment Revenue</th>
<th>Net Revenue (Total Increment Revenue Less Transfers)</th>
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<tbody>
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|                | $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
<table>
<thead>
<tr>
<th>Tax Year</th>
<th>City Revenue</th>
<th>Affordable Housing</th>
<th>HSD</th>
<th>Total Transfers</th>
<th>Educational Transfers</th>
<th>HSD Transfers</th>
<th>Admin Fees</th>
<th>Total</th>
<th>Net Revenue</th>
<th>Increment Revenue</th>
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<td>$113,469</td>
<td>$33,605</td>
<td>$50,616</td>
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<td>$670,860</td>
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<tr>
<td>2012</td>
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<td>$981,751</td>
<td>$220,386</td>
<td>$97,000</td>
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<td>$670,860</td>
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<tr>
<td>2013</td>
<td>$861,809</td>
<td>$328,384</td>
<td>$164,769</td>
<td>$100,517</td>
<td>$241,913</td>
<td>$117,610</td>
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<tr>
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**Notes:**
1. The Old South Ward zone is scheduled to terminate in Tax Year 2022.
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<th>Projected Value (3)</th>
<th>Captured Appraised Value</th>
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Total: $ 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

FROM (Department or other point of origin): Planning and Development Department

DIRECTOR'S SIGNATURE: ____________________________  Council District affected: All
Madlene A. Harche

For additional information contact: Margaret Wallace  Date and identification of prior authorizing
Phone: 713-837-7826  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:

- 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

REQUICKED AUTHORIZATION

Finance Director: Other Authorization: Other Authorization:
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 (ETJ) 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 it’s 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 long 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.
REQUEST FOR COUNCIL ACTION

TO: Mayor via City Secretary
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.

FROM: Neal Rackleff, Interim Director
Housing and Community Development Department

DIRECTOR'S SIGNATURE:

For additional information contact:
Chris Butler Phone: (713) 865-4196
Derrick McClendon Phone: (713) 868-8369

Origination Date: January 6, 2012
Agenda Date: FEB 29, 2012
Council District(s) affected: B, D, H, I & K
Date and identification of prior authorizing
Council action: June 8, 2011 Ordinance No. 2011-0442

RECOMMENDATION:
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.

Amount: $3,508,560.00

SOURCE OF FUNDING:
[ ] General Fund [ X ] Grant Fund [ ] Enterprise Fund [ ] Other

5030–CDBG–DR (32000060-2010)

SPECIFIC EXPLANATION:
The Housing and Community Development Department (HCDD) recommends City Council approve an ordinance:

1. Providing $3,508,560 in Hurricane Ike Community Development Block Grant-Disaster Recovery (CDBG-DR) funds for the reconstruction of up to 40 homes damaged by Hurricane Ike. Through a Master Contractor Agreement detailing general terms and conditions, and individual agreements for each approved property, homes will be reconstructed by Altura Homes DFW, LP, the contractor selected as the "best respondent" to a Request for Proposals issued by HCDD. The funding, includes:

<table>
<thead>
<tr>
<th>Amount</th>
<th>Activity</th>
</tr>
</thead>
<tbody>
<tr>
<td>$3,189,600</td>
<td>Demolition Construction Costs (including labor and materials)</td>
</tr>
<tr>
<td>$318,960</td>
<td>Contingency reserve for unforeseen changes within the scope of work.</td>
</tr>
<tr>
<td>$3,508,560</td>
<td>Total</td>
</tr>
</tbody>
</table>

The scope of work for the reconstructed homes will require the contractor to provide all labor, materials, permits, drawings/plans supervision, transportation, equipment and incidentals necessary to demolish, clean/remove debris and reconstruct the single-family dwellings in accordance with the Housing Quality Standards.

2. Delegating authority to the HCDD Director, or designee, to select and approve eligible properties for reconstruction in accordance with applicable State approved program guidelines.

3. Approving the use of a standardized package of forms/instruments (including a tri-party agreement between the City, homeowner and Altura Homes, a promissory note, etc) for each of aforementioned eligible properties.

REQUIRED AUTHORIZATION

Finance Director: Other Authorization:

Other Authorization:
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:

<table>
<thead>
<tr>
<th>NAME</th>
<th>TYPE OF WORK</th>
<th>DOLLAR AMOUNT</th>
<th>PERCENTAGE</th>
</tr>
</thead>
<tbody>
<tr>
<td>Vault Construction</td>
<td>Concrete</td>
<td>$303,330.00</td>
<td>9.6</td>
</tr>
<tr>
<td>Carter Land Surveying</td>
<td>Surveying</td>
<td>$18,450.00</td>
<td>6</td>
</tr>
<tr>
<td>Total:</td>
<td></td>
<td>$321,780.00</td>
<td>10.2</td>
</tr>
</tbody>
</table>

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

<table>
<thead>
<tr>
<th>Department</th>
<th>FY12</th>
<th>Out Years</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Housing &amp; Community Development</td>
<td>$0.00</td>
<td>$3,508,560.00</td>
<td>$3,508,560.00</td>
</tr>
</tbody>
</table>

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

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

Director's Signature

For additional information contact:
Dallas Evans
Phone: (281) 230-8001

Douglas Moore
Phone: (832) 393-8724

Origination Date
February 08, 2012

Agenda Date
February 29, 2012

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 telecommunication 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:
• Proposed Strategy and Operational Plan
• Expertise/Experience/Qualifications
• Conformance to RFP Requirements
• Financial Strength of Offeror
• Cost
• MWBE 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.

**MWBE Subcontracting:**
This RFP was issued as a goal-oriented contract with a 20% MWBE participation level. NetVersant Solutions, LLC has designated the below-named company as its certified MWBE subcontractor.

<table>
<thead>
<tr>
<th>Subcontractor</th>
<th>Type of Work</th>
<th>Percentage</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Precision Task Group, Inc.</td>
<td>Professional Services</td>
<td>35%</td>
<td>$4,195,850.77</td>
</tr>
</tbody>
</table>

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

<table>
<thead>
<tr>
<th>Department</th>
<th>FY12</th>
<th>Out Years</th>
<th>Total Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Houston Airport System</td>
<td>$669,412.60</td>
<td>$11,320,214.32</td>
<td>$11,989,626.92</td>
</tr>
</tbody>
</table>
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
REQUEST FOR COUNCIL ACTION

TO: Mayor via City Secretary

REQUEST FOR COUNCIL ACTION

Subject: Ordinance Authorizing a First Amendment to Contract No. 46000008051 for Security System Installation and Repair Services for the General Services Department S23-L22376-A1

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

DIR OR'S SIGNATURE
Calvin D. Wells

For additional information contact:
Jacquelyn L. Nisby
Douglas Moore

Phone: (832) 393-8023
Phone: (832) 393-8724

Origination Date
January 25, 2012

Agenda Date
FEB 2-2-2012

Council District(s) affected
All

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

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 MWBE goal. The Mayor's Office of Business Opportunity will continue to monitor this contract to ensure maximum MWBE participation.

Buyer: Roy Breaux

REQUIRED AUTHORIZATION

Finance Department: Other Authorization: Other Authorization: