

JOINT PARTICIPATION INTERLOCAL AGREEMENT

This Joint Participation Interlocal Agreement (“Agreement”) is entered into by and between **Harris County** (“County”) and **City of Tomball** (“City”) pursuant to the Interlocal Cooperation Act, Tex. Gov’t Code Ch. 791.001, *et seq.* County and City may each be referred to herein individually as a “Party” or collectively as the “Parties”.

RECITALS

WHEREAS, it is of mutual benefit to both Parties to construct improvements to Nabors Parkway between Highway 249 and Holderrieth Road of which improvements include removal and replacement of the City’s gas line (“Project”) located in Harris County Precinct 4 as generally illustrated on Exhibit A attached hereto and incorporated herein by reference;

WHEREAS, both Parties desire to cooperate in accordance with the terms of this Agreement to jointly accomplish the construction of the Project; and

WHEREAS, both Parties agree that all funds used under this Agreement shall be from current fiscal funds.

NOW THEREFORE, in consideration of the mutual promises, obligations, and benefits herein set forth, the Parties agree as follows:

TERMS

Section 1. Responsibilities of the Parties

A. County’s Responsibilities

- (i) The County will provide or cause to be provided, engineering services and related support services necessary to prepare plans, specifications, and estimates (“PS&E”) for the construction of the Project.
- (ii) The County will fully fund the development of the PS&E and construction cost associated with the removal and replacement of the City’s gas line.
- (iii) The County shall be responsible for obtaining all necessary permits and jurisdictional approvals for construction of the project.
- (iv) Upon completion of the PS&E the County will submit the PS&E to the City for review and approval.
- (v) Upon approval by the City of the PS&E, the County will advertise for and receive bids for construction of the Project, in a manner similar to that of other County projects.
- (vi) Upon receipt of bids for the construction of the Project the County shall determine the lowest and best bidder and provide the bids to the City with its recommendation for award of the construction contract to such lowest and best bidder, as determined by the Harris County Commissioners Court.

- (vii) Upon award of a contract for construction of the Project, the County will:
 - (a) Review all certifications of the contractor and subcontractor(s) to assure that they have all the certifications required by the City;
 - (b) Provide no interruption in service to the gas line for the months of January, February, and December during construction;
 - (c) Coordinate with Tomball Public Works and the contractor at least 72 hours prior to construction of the gas line;
 - (d) Manage and inspect the construction of the Project in a manner similar to that of other County construction projects; and
 - (e) Through its contractor, construct the Project in accordance with the PS&E approved by the City. The County may make minor changes in the PS&E through change(s) in contract ("CIC") that the County deems to be necessary or desirable during the construction of the Project, so long as the original scope and intent of the Project is maintained.
- (viii) Upon completion of the construction of the Project, the County shall provide an opportunity for the City to participate in a final walk-through and preparation of a punch list in regards to the construction of the Project.

B. City's Responsibilities

- (i) City will review the PS&E provided by the County and provide its approval within ten (10) business days. Should the City desire to make changes to such PS&E, the Parties agree to meet and resolve all issues within ten (10) business days of the City's receipt of the PS&E in order to finalize an agreed upon PS&E for the Project. If the City does not provide a response on the PS&E provided by the County within ten (10) business days from its receipt of the PS&E, then the PS&E submitted to the City by the County will be deemed approved.
- (ii) Upon receipt of the bids and award recommendation from the County for construction of the Project, the City will:
 - (a) Review the bids and provide concurrence for award of the construction contract to such lowest and best bidder within five (5) business days from receipt of the recommendation from the County. If the City does not provide a response on the construction contract award recommendation within five (5) business days from its receipt of the recommendation from the County, then the recommendation submitted to the City will be deemed approved; and
 - (b) Review all certifications of the contractor and subcontractor(s) to assure that they have all the certifications required.
- (iii) Upon completion of the construction of the Project, the City shall continue to assume full responsibility for the ongoing maintenance and repairs of the Project located within the County's Right-of-Way.

Section 2. Term and Termination

- A. This Agreement shall commence upon final execution by all the Parties (the “Effective Date”) and shall remain in full force and effect until the completion of construction of the Project (“Term”).
- B. This Agreement may be terminated by the County before award of the construction contract and at any time by mutual written consent of the Parties, or as otherwise provided under this Agreement.

Section 3. Limitation of Appropriation

- A. The City understands and agrees, said understanding and agreement also being the absolute essence of this Agreement, that the County is not appropriating any funds under this Agreement.

Section 4. Miscellaneous

- A. Non-Assignability. The County and the City bind themselves and their successors, executors, administrators, and assigns to the other Party of this Agreement and to the successors, executors, administrators, and assigns of such other Party, in respect to all covenants of this Agreement. Neither the County nor the City shall assign, sublet, or transfer its interest in this Agreement without the prior written consent of the other Party
- B. Notice. Any notice required to be given under this Agreement (“Notice”) shall be in writing and shall be duly served when it shall have been (a) personally delivered to the address below, (b) deposited, enclosed in a wrapper with the proper postage prepaid thereon, and duly registered or certified, return receipt requested, in a United States Post Office, addressed to County or the City at the following addresses:

City: City of Tomball
c/o David Esquivel, P.E.
City Manager
401 Market Street
Tomball, Texas 77375
Email: desquivel@tomballtx.gov

County: Harris County Engineering Department
1111 Fannin Street, 11th Floor
Houston, Texas 77002
Attention: Interagency Agreement Coordinator

Any Notice given by mail hereunder is deemed given upon deposit in the United States Mail and any Notice delivered in person shall be effective upon receipt.

Each Party shall have the right to change its respective address by giving at least fifteen (15) days’ written notice of such change to the other Party.

Other communications, except for Notices required under this Agreement, may be sent by electronic means or in the same manner as Notices described herein.

- C. Independent Parties. It is expressly understood and agreed by the Parties that nothing contained in this Agreement shall be construed to constitute or create a joint venture, partnership, association or other affiliation or like relationship between the Parties, it being specifically agreed that their relationship is and shall remain that of independent parties to a contractual relationship as set forth in this Agreement. The County is an independent contractor and neither it, nor its employees or agents shall be considered to be an employee, agent, partner, or representative of the City for any purpose. The City, nor its employees, officers, or agents shall be considered to be employees, agents, partners or representatives of the County for any purposes. Neither Party has the authority to bind the other Party.
- D. No Third Party Beneficiaries. This Agreement shall be for the sole and exclusive benefit of the Parties and their legal successors and assigns. The County is not obligated or liable to any party other than the City for the performance of this Agreement. Nothing in the Agreement is intended or shall be deemed or construed to create any additional rights or remedies upon any third party. Further, nothing contained in the Agreement shall be construed to or operate in any manner whatsoever to confer or create rights or remedies upon any third party, increase the rights or remedies of any third party, or the duties or responsibilities of County with respect to any third party.
- E. Waiver of Breach. No waiver or waivers of any breach or default (or any breaches or defaults) by either Party hereto of any term, covenant, condition, or liability hereunder, or the performance by either Party of any obligation hereunder, shall be deemed or construed to be a waiver of subsequent breaches or defaults of any kind, under and circumstances.
- F. No Personal Liability; No Waiver of Immunity.
- (1) Nothing in the Agreement is construed as creating any personal liability on the part of any officer, director, employee, or agent of any public body that may be a Party to the Agreement, and the Parties expressly agree that the execution of the Agreement does not create any personal liability on the part of any officer, director, employee, or agent of the County.
 - (2) The Parties agree that no provision of this Agreement extends the County's liability beyond the liability provided in the Texas Constitution and the laws of the State of Texas.
 - (3) Neither the execution of this Agreement nor any other conduct of either Party relating to this Agreement shall be considered a waiver by the County of any right, defense, or immunity on behalf of itself, its employees or agents under the Texas Constitution or the laws of the State of Texas.
- G. Applicable Law and Venue. This Agreement shall be governed by the laws of the State of Texas and the forum for any action under or related to the Agreement is exclusively in a state or federal court of competent jurisdiction in Texas. The exclusive venue for any action under or related to the Agreement is in a state or federal court of competent jurisdiction in Houston, Harris County, Texas.
- H. No Binding Arbitration; Right to Jury Trial. The County does not agree to binding arbitration, nor does the County waive its right to a jury trial.
- I. Contract Construction.
- (1) This Agreement shall not be construed against or in favor of any Party hereto based upon the fact that the Party did or did not author this Agreement.

- (2) The headings in this Agreement are for convenience or reference only and shall not control or affect the meaning or construction of this Agreement.
 - (3) When terms are used in the singular or plural, the meaning shall apply to both.
 - (4) When either the male or female gender is used, the meaning shall apply to both.
- J. Recitals. The recitals set forth in this Agreement are, by this reference, incorporated into and deemed a part of this Agreement.
- K. Entire Agreement; Modifications. This Agreement contains the entire agreement between the Parties relating to the rights herein granted and the obligations herein assumed. This Agreement supersedes and replaces any prior agreement between the Parties pertaining to the rights granted and the obligations assumed herein. This Agreement shall be subject to change or modification only by a subsequent written modification approved and signed by the governing bodies of each Party.
- L. Severability. The provisions of this Agreement are severable, and if any provision or part of this Agreement or the application thereof to any person, entity, or circumstance shall ever be held by any court of competent jurisdiction to be invalid or unconstitutional for any reason, the remainder of this Agreement and the application of such provision or part of this Agreement to other persons, entities, or circumstances shall not be affected thereby.
- M. Survival of Terms. Any provision of this Agreement that, by its plain meaning, is intended to survive the expiration or earlier termination of this Agreement shall survive such expiration or earlier termination. If an ambiguity exists as to survival, the provision shall be deemed to survive.
- N. Multiple Counterparts/Execution. This Agreement may be executed in several counterparts. Each counterpart is deemed an original and all counterparts together constitute one and the same instrument. In addition, each Party warrants that the undersigned is a duly authorized representative with the power to execute the Agreement.
- O. Warranty. By execution of this Agreement, the City warrants that the duties accorded to the City in this Agreement are within the powers and authority of the City.

[EXECUTION PAGE FOLLOWS]

HARRIS COUNTY

By: _____
Lina Hidalgo
County Judge

CITY OF TOMBALL

By:  _____
David Esquivel
City Manager

APPROVED AS TO FORM:

CHRISTIAN D. MENEFEE
County Attorney

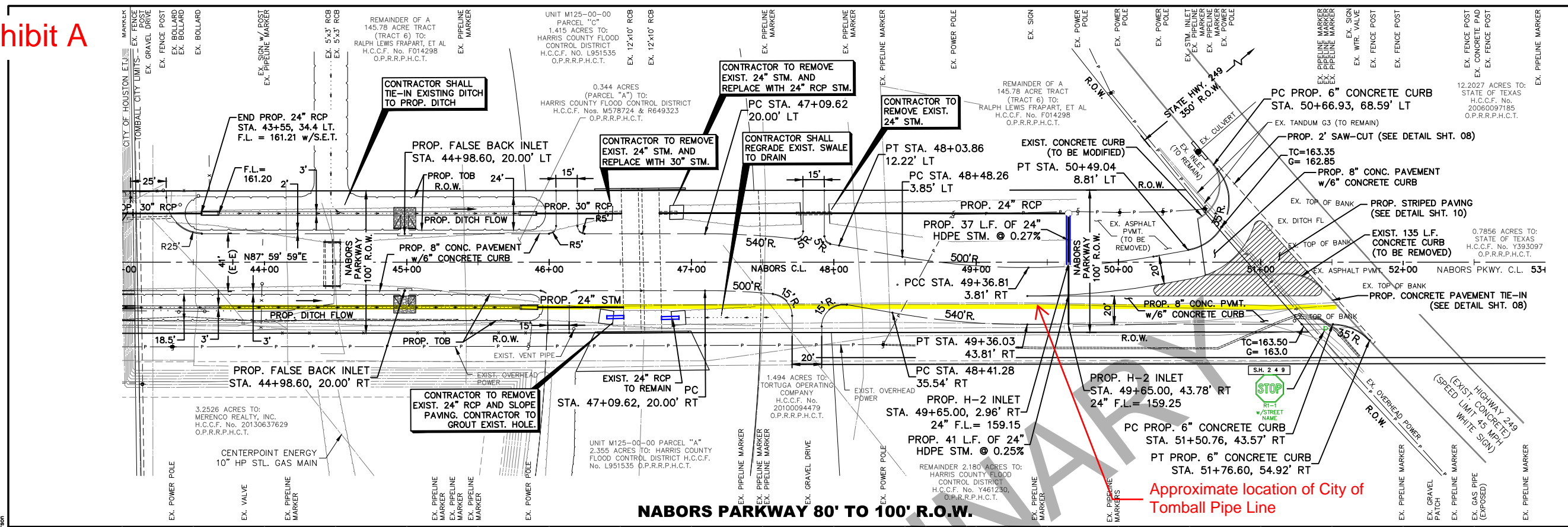
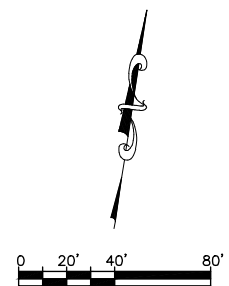
ATTEST

By:  _____
Asst. Secretary

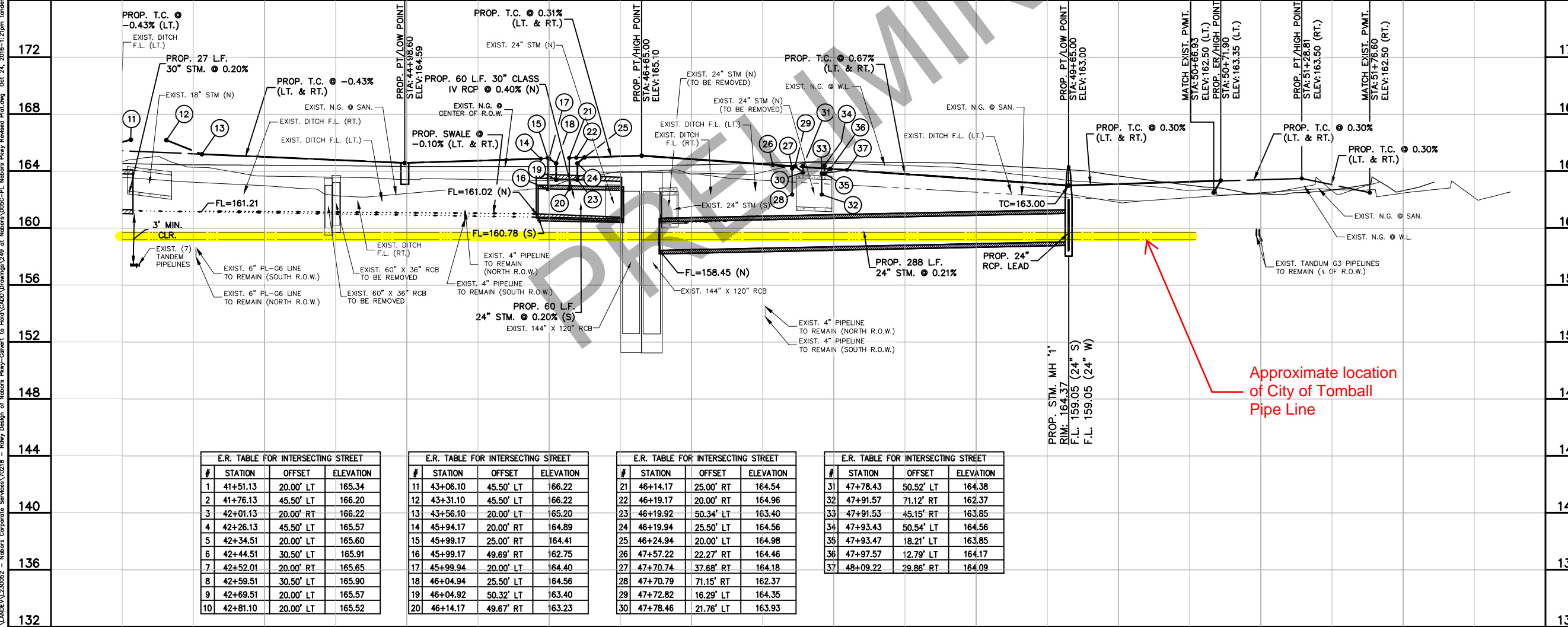
By:  _____
An Le
Assistant County Attorney
CAO File No.: 22GEN2143

No.	Date	Issue/Revision	App.

BENCHMARK:
 ELEVATIONS SHOWN HEREON BASED ON HARRIS COUNTY FLOODPLAIN REFERENCE MARK NO. 120070, BEING AN ALUMINUM ROD STAMPED "120070" AT THE INTERSECTION OF SH249 AND BOUDREAU, WEST ALONG BOUDREAU 0.25 MILES TO BOUDREAU ESTATES, WEST ALONG BOUDREAU ESTATES 0.65 MILES TO FOUNTAIN BLEU, NORTH ALONG FOUNTAIN BLEU 0.3 MILES TO DEAD END, NORTH ALONG DIRT ROAD TO CREEK AND BENCHMARK ON THE RIGHT.
 ELEV. = 153.30, N.A.V.D. 1988, 2001 ADJUSTMENT.
TEMPORARY BENCHMARK:
 BOX OUT ON TOP OF HEADWALL AS SHOWN HEREON.
 ELEV. = 164.34



NABORS PARKWAY 80' TO 100' R.O.W.

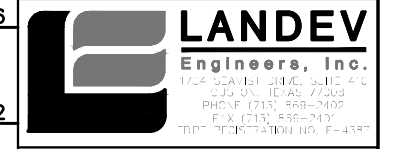


Date
 Approved for AT&T Texas/SWBT underground conduit facilities only. Signature Valid for one year.
 TO ARRANGE FOR LINES TO BE TURNED OFF OR MOVED, CALL CENTERPOINT ENERGY AT 713-207-2222

NOTICE:
 For your safety, you are required by Texas Law to call 811 at least 48 hours before you dig so that underground line can be marked. This Verification does not fulfill your obligation to call 811.
VERIFICATION OF PRIVATE UTILITY LINES

Date
 CenterPoint Energy/Natural Gas Facilities Verification ONLY. (This Signature verifies that you have shown CNR Natural Gas lines correctly - not to be used for conflict verification) (Gas service lines are not shown.) Signature Valid for six months.

Date
 CenterPoint Energy/UNDERGROUND Electrical Facilities Verification ONLY. (This Signature verifies existing underground facilities - not to be used for conflict verification.) Signature Valid for six months.



HARRIS COUNTY IMPROVEMENT DISTRICT NO. 17

NABORS PARKWAY PAVING & DRAINAGE

PLAN AND PROFILE NABORS PARKWAY STA. 43+08.17 TO END

CITY OF TOMBALL ENGINEERING & PLANNING DEPARTMENT

APPROVED BY COT:
 ENGINEERING & PLANNING DEPARTMENT EFFECTIVE SEPTEMBER 1, 2010

E.R. TABLE FOR INTERSECTING STREET

#	STATION	OFFSET	ELEVATION
1	41+51.13	20.00' LT	165.34
2	41+76.13	45.50' LT	166.20
3	42+01.13	20.00' RT	166.22
4	42+26.13	45.50' RT	165.57
5	42+34.51	20.00' LT	165.60
6	42+44.51	30.50' LT	165.91
7	42+52.01	20.00' RT	165.65
8	42+59.51	30.50' LT	165.90
9	42+69.51	20.00' LT	165.57
10	42+81.10	20.00' LT	165.52

E.R. TABLE FOR INTERSECTING STREET

#	STATION	OFFSET	ELEVATION
11	43+06.10	45.50' LT	166.22
12	43+31.10	45.50' LT	166.22
13	43+56.10	20.00' LT	165.20
14	45+94.17	45.50' RT	164.89
15	45+99.17	25.00' RT	164.41
16	45+99.17	49.69' RT	162.75
17	45+99.94	20.00' LT	164.40
18	46+04.94	25.50' LT	164.56
19	46+04.92	50.32' LT	163.40
20	46+14.17	49.67' RT	163.23

E.R. TABLE FOR INTERSECTING STREET

#	STATION	OFFSET	ELEVATION
21	46+14.17	25.00' RT	164.54
22	46+19.17	20.00' RT	164.96
23	46+19.92	50.34' LT	163.40
24	46+19.94	25.50' LT	164.56
25	46+24.94	20.00' LT	164.98
26	47+57.22	22.27' RT	164.46
27	47+70.74	37.68' RT	164.18
28	47+70.79	71.15' RT	162.37
29	47+72.82	16.29' LT	164.35
30	47+78.46	21.76' LT	163.93

E.R. TABLE FOR INTERSECTING STREET

#	STATION	OFFSET	ELEVATION
31	47+78.43	50.52' LT	164.38
32	47+91.57	71.12' RT	162.37
33	47+91.53	45.15' RT	163.85
34	47+93.43	50.54' LT	164.56
35	47+93.47	18.21' LT	163.85
36	47+97.57	12.79' LT	164.17
37	48+09.22	29.86' RT	164.09

LANDEV ENGINEERS, INC. 1724 SCARLETT DRIVE, SUITE 400 HOUSTON, TEXAS 77058 PHONE (713) 858-2400 FAX (713) 858-2401 TDD (713) 858-2402

ORDER OF COMMISSIONERS COURT

The Commissioners Court of Harris County, Texas, met in regular session at its regular term at the Harris County Administration Building in the County of Houston, Texas, on _____, with all members present except _____.

A quorum was present. Among other business, the following was transacted:

ORDER AUTHORIZING EXECUTION OF A JOINT PARTICIPATION INTERLOCAL AGREEMENT BETWEEN HARRIS COUNTY AND CITY OF TOMBALL TO CONSTRUCT IMPROVEMENTS TO NABORS PARKWAY BETWEEN HIGHWAY 249 AND HOLDERRIETH ROAD AND ALL RELATED APPURTENANCES IN HARRIS COUNTY PRECINCT 4

Commissioner _____ introduced an order and moved that Commissioners Court adopt the order. Commissioner _____ seconded the motion for adoption of the order. The motion, carrying with it the adoption of the order, prevailed by the following vote:

	Yes	No	Abstain
Judge Lina Hidalgo	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Comm. Rodney Ellis	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Comm. Adrian Garcia	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Comm. Tom S. Ramsey, P.E.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Comm. R. Jack Cagle	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

The County Judge thereupon announced that the motion had duly and lawfully carried and that the order had been duly and lawfully adopted. The order thus adopted follows:

IT IS ORDERED THAT:

1. The Harris County Judge is authorized to execute on behalf of Harris County the attached Joint Participation Interlocal Agreement between Harris County and City of Tomball to construct improvements to Nabors Parkway between Highway 249 and Holderrieth Road and all related appurtenances in Harris County Precinct 4.
2. All Harris County officials and employees are authorized to do any and all things necessary or convenient to accomplish the purposes of this order.