

LOUIS R. RIGBY
Mayor
JOHN ZEMANEK
Councilmember At Large A
DOTTIE KAMINSKI
Councilmember At Large B
DANNY EARP
Mayor Pro-Tem
Councilmember District 1



CHUCK ENGELKEN
Councilmember District 2
DARYL LEONARD
Councilmember District 3
KRISTIN MARTIN
Councilmember District 4
JAY MARTIN
Councilmember District 5
MIKE CLAUSEN
Councilmember District 6

CITY COUNCIL MEETING AGENDA

Notice is hereby given of a Regular Meeting of the La Porte City Council to be held February 27, 2017, beginning at 6:00 PM in the City Hall Council Chambers, 604 W. Fairmont Parkway, La Porte, Texas, for the purpose of considering the following agenda items. All agenda items are subject to action.

- 1. CALL TO ORDER**
- 2. INVOCATION** – The invocation will be given by Clark Askins, Assistant City Attorney.
- 3. PLEDGE OF ALLEGIANCE** – The Pledge of Allegiance will be led by Councilmember Danny Earp.
- 4. PUBLIC COMMENTS** (Limited to five minutes per person.)
- 5. CONSENT AGENDA** *(All consent agenda items are considered routine by City Council and will be enacted by one motion. There will be no separate discussion of these items unless a Councilmember requests an item be removed and considered separately.)*
 - (a)** Consider approval or other action regarding minutes of the meeting held on February 13, 2017 - P. Fogarty
 - (b)** Consider approval or other action regarding an Interlocal Agreement for Joint Elections between the City of La Porte; La Porte Independent School District and San Jacinto College District - P. Fogarty
 - (c)** Consider approval or other action regarding the sale of 12-feet of Lot 27, Block 80, Town of La Porte, Harris County, Texas to Bayway Homes to facilitate the construction of a single family home - T. Leach
 - (d)** Consider approval or other action authorizing the City Manager to execute a concession agreement between the City of La Porte and Linda Darnell Witt as the Concessionaire for Sylvan Beach Fishing Pier - R. Epting
 - (e)** Consider approval or other action regarding a Municipal Water Service Agreement between the City of La Porte; City of Deer Park and the owner of the facility at 9515 Spencer Highway - B. Sterling

6. PUBLIC HEARINGS AND ASSOCIATED ORDINANCES

- (a) “Public hearing to receive comments regarding recommendation by the Planning and Zoning Commission to approve an amendment to the Future Land Use Map Component of the La Porte Comprehensive Plan for a 40-acre tract of land known as Tracts 1 and 1L, Johnson Hunter Survey, Abstract 35, generally located on State Highway 146 north of Wharton Weems Blvd; consider approval or other action regarding an Ordinance amending the City's Future Land Use Map Component of the La Porte Comprehensive Plan for a 40-acre tract of land known as Tracts 1 and 1L, Johnson Hunter Survey, Abstract 35, generally located on State Highway 146 north of Wharton Weems Blvd., by changing use classification to “Commercial,” “Mid to High-Density Residential” and “Mixed Use” - I. Clowes
- (b) Public hearing to receive comments regarding recommendation by the Planning and Zoning Commission to approve SCUP # 16-91000004 to allow construction of an entertainment, commercial and residential mixed-use development center on State Highway 146 north of Wharton Weems Blvd.; consider approval or other action regarding an Ordinance amending the Code of Ordinances of the City of La Porte, Chapter 106, by approving SCUP#16-91000004, for the purpose of constructing an entertainment, commercial and residential mixed-use development center on State Highway 146 north of Wharton Weems Blvd. - I. Clowes
- (c) Public hearing to receive comments regarding recommendation by the Planning and Zoning Commission to approve a zone change request for changing the zoning classification of tracts 30A and 31A, Strang Subdivision from Business Industrial District (BI) to Light Industrial District (LI); consider approval or other action regarding an Ordinance to approve zone change request #16-92000004), changing the zoning classification of tracts 30A and 31A, Strang Subdivision from Business Industrial District (BI) to Light Industrial District (LI) - I. Clowes
- (d) Public hearing to receive comments regarding recommendation by the Planning and Zoning Commission to approve a zone change request for changing the zoning classification of tracts 17-1A and 18A, Strang Subdivision from Business Industrial (BI) to Light Industrial (LI); consider approval or other action regarding an Ordinance to approve zone change request #16-92000005, changing the zoning classification of tracts 17-1A and 18A, Strang Subdivision from Business Industrial (BI) to Light Industrial (LI) - I. Clowes
- (e) Public hearing to receive comments regarding recommendation by the Planning and Zoning Commission to approve a zone change request for changing the zoning classification of tracts 30 and 31 and 17A and 18, Strang Subdivision from Business Industrial District (BI) to Light Industrial District (LI); consider approval or other action regarding an Ordinance to approve zone change request #16-92000006, changing the zoning classification of tracts 30 and 31 and 17A and 18, Strang Subdivision from Business Industrial District (BI) to Light Industrial District (LI) - I. Clowes

7. AUTHORIZATIONS

- (a) Consider approval or other action authorizing the City Manager to execute an agreement between the City of La Porte and La Porte Boy's Baseball Association - R. Epting

8. DISCUSSION AND POSSIBLE ACTION

- (a) Discussion and possible action regarding Ballard Exploration Company request for a Geophysical Mineral and Testing Permit - B. Sterling
- (b) Discussion and possible action regarding amendments to the Port Crossing Development Agreement - C. Alexander
- (c) Discussion and possible action regarding extending the deadline for 'go live' date for ONE Solution core finance functions to April 15, 2017 - T. Leach

9. ADMINISTRATIVE REPORTS

- Fiscal Affairs Committee Meeting, Monday, March 13, 2017
- City Council Meeting, Monday, March 13, 2017
- Planning and Zoning Commission Meeting, Thursday, March 16, 2017
- City Council Meeting, Monday, March 27, 2017

10. COUNCIL COMMENTS regarding matters appearing on the agenda; recognition of community members, city employees, and upcoming events; inquiry of staff regarding specific factual information or existing policies – Council members Earp, Clausen, J. Martin, K. Martin, Kaminski, Zemanek, Leonard, Engelken and Mayor Rigby.

11. EXECUTIVE SESSION

The City Council reserves the right to meet in closed session on any agenda item should the need arise and if applicable pursuant to authorization by Title 5, Chapter 551, of the Texas Government Code, in accordance with the authority contained in:

Texas Government Code, Section 551.074 - Personnel Matter: Deliberation concerning the appointment, employment, evaluation, reassignment, duties, discipline, or dismissal of a public officer or employee, unless the officer or employee requests a public hearing: Patrice Fogarty, City Secretary.

Texas Government Code, Section 551.071 (1) (A) - Pending or Contemplated Litigation: Meet with City Attorney and City Manager to discuss performance issues under contract with SunGard.

12. RECONVENE into regular session and consider action, if any, on item(s) discussed in executive session.

13. ADJOURN

The City Council reserves the right to meet in closed session on any agenda item should the need arise and if applicable pursuant to authorization by Title 5, Chapter 551, of the Texas Government Code (the Texas open meetings laws).

In compliance with the Americans with Disabilities Act, the City of La Porte will provide for reasonable accommodations for persons attending public meetings. To better serve attendees, requests should be received 24 hours prior to the meeting. Please contact Patrice Fogarty, City Secretary, at 281.470.5019.

CERTIFICATION

I certify that a copy of the February 27, 2017 , agenda of items to be considered by the City Council was posted on the City Hall bulletin board on February 21, 2017.

Patrice Fogarty



Council Agenda Item February 27, 2017

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MINUTES OF THE REGULAR MEETING OF THE CITY COUNCIL OF THE CITY OF LA PORTE FEBRUARY 13, 2017

The City Council of the City of La Porte met in a regular meeting on **Monday, February 13, 2017**, at the City Hall Council Chambers, 604 West Fairmont Parkway, La Porte, Texas, at **6:00 p.m.** to consider the following items of business:

- 1. CALL TO ORDER** – Mayor Rigby called the meeting to order at 6:00 p.m. Members of Council present: Councilmembers Engelken, J. Martin, K. Martin, Earp, Zemanek, Clausen, and Kaminski. Absent: Councilmember Leonard. Also present were City Secretary Patrice Fogarty, City Manager Corby Alexander, and Assistant City Attorney Clark Askins.
- 2. INVOCATION** – The invocation was given by Dee Spears, Fairmont Park Church.
- 3. PLEDGE OF ALLEGIANCE** – The Pledge of Allegiance was led by Councilmember Chuck Engelken.
- 4. PRESENTATIONS, PROCLAMATIONS, and RECOGNITIONS**

(a) Recognition – Employees of the Fourth Quarter and Year for 2016 – Sgt. Bennie Boles and Officer Justin Weaver – City of La Porte Police Department – Mayor Rigby

Mayor Rigby recognized Sgt. Bennie Boles and Officer Justin Weaver as Employees of the Fourth Quarter and Year for 2016.

(b) Recognition – Manager of the Year – Megan Mainer – City of La Porte Parks and Recreation Department (Recreation Superintendent) – Mayor Rigby

Mayor Rigby recognized Megan Mainer as Manager of the Year.

- 5. PUBLIC COMMENTS** (Limited to five minutes per person.)

Courtney Dodge, 201 S. Virginia St., addressed Council by stating someone who sits on council has lied about her husband. She stated this individual and a certain officer are in cahoots together, and filed falsified documentation that her husband threatened him. She stated she feels like she and her husband have no civil rights. She stated that her husband told this individual to let him live his life and this individual live his, and now her husband is in a psych facility. She stated she is making a stand for her family's civil rights, and nobody is going to stop her. She stated she is sick and tired of being treated like a rabid animal in this town and she doesn't know what she's done or her husband has done and it has got to stop. She then stated, "Okay? Y'all need to get it together, because it is about to get

really nasty.” Councilman Zemanek asked if this is a threat. As she was walking away, Ms. Dodge replied, “No, it’s not a threat.”

There were no additional public comments.

6. CONSENT AGENDA *(All consent agenda items are considered routine by City Council and will be enacted by one motion. There will be no separate discussion of these items unless a Councilmember requests an item be removed and considered separately.)*

- (a) Consider approval or other action regarding minutes of meeting held on January 23, 2017 – P. Fogarty
- (b) Consider approval or other action regarding a Memorandum of Agreement with Shady River Homeowners Association of a community cooperation project providing for playground replacement equipment for a total City contribution of \$5,000.00 – T. Leach
- (c) Consider approval or other action regarding a Resolution authorizing the City of La Porte to partner with Texas Department of Transportation to commence improvements at the La Porte Municipal Airport – T. Leach
- (d) Consider approval or other action regarding a Resolution authorizing the resale of tax delinquent properties located at Lots 1-3, Block 17 Sylvan Beach – S. Wolny
- (e) Consider approval or other action regarding the 2016 City of La Porte Police Department Racial Profiling Report – K. Adcox

Regarding Item D, Councilmember Zemanek questioned the process for moving forward with the resale of tax delinquent properties, that sometimes they go to an auction and sometimes they go through a situation like this today. City Manager Corby Alexander informed him that when properties initially go delinquent, the initial process is the delinquent tax attorney files suit to collect payment, goes to court, and wins a judgment. After that judgment is secured, the properties are then auctioned off at a monthly public auction conducted by the Constable’s Office. The properties the City is dealing with now didn’t sell at the initial auction; so, he believes the City holds on to them for six months and makes them available, provided someone comes in with either the total taxes and fees or the adjudged amount, whichever is less. That’s all prescribed by law.

Councilmember Zemanek stated he is looking at the Foreclosure Summary Statement, and it says that the judgement is against Creed Corporation. But in November 1, 1995, title of that property changed to La Porte First Corporation. Who is that? Finance Director Michael Dolby responded the delinquent tax attorney will have to answer that question. Councilmember Zemanek asked why Creed Corporation is listed as who the judgment is against in this case when there is another title holder in between the time of 1987 and the time of the sale in 2015. Mr. Dolby stated they would have to talk to the delinquent tax attorney to get answers to the title questions. He stated we do know, however, that it was struck-off after the auction, and it did revert back to us as the trustee and now someone has come in and put a bid on the property. All of the proper title transfers have occurred in order for the sale to go forward. Councilmember Zemanek stated that the title transferred from La Porte First to the City of La Porte and not Creed Corporation to the City of La Porte. City Manager Alexander stated that typically when the tax attorney files suit, they are required to notify anyone who has an ownership interest in the property before they go to court. He further stated if the documents Council has received in the packet are unclear, the summary form can be easily revised since it is a City-produced form.

Councilmember Zemanek stated the bidder is Knox Askins, Trustee; and the person who prepared the resolution is Clark Askins. Is that a conflict of interest? Should someone else have prepared the resolution? Assistant City Attorney Clark Askins stated there is no conflict; Knox Askins was acting as a trustee for a buyer and was not the buyer, not acting in the role of city attorney. Councilmember Zemanek asked City Manager Alexander what his thoughts are on this. City Manager Alexander stated there is nothing different than if it was Joe Citizen. If a councilmember has any misgivings, though, we can run it by a third party attorney. Councilmember Zemanek stated it just does not pass the sniff test. He also asked how someone finds out about these properties. Shelley Wolny stated there is a link to the properties listed, and it will be sent to him.

When recognized by the Mayor to speak, Councilmember Earp stated that his question had been answered regarding whether Knox Askins was purchasing the property.

Councilmember J. Martin made a motion to approve all Consent Agenda Items, with an amendment to the minutes of the 1/23/17 Council Meeting, and an amendment to current Consent Item B, in the Memorandum of Agreement with Shady River Homeowners Association, by replacing the word "fencing" with the word "improvements." Councilmember Clausen seconded the motion. **MOTION PASSED UNANIMOUSLY 8/0. Councilmember Leonard was absent.**

7. REPORTS

(a) Receive report for ONESolution – M. Dolby

Finance Director Michael Dolby presented a summary and advised the go-live date of January 30, 2017, was not met and informed Council that staff is hopeful to go live mid to early spring.

Paul Tovey, representative of SunGard, spoke and provided additional information.

Councilmember Earp asked when the implementation will be completed. Mr. Tovey responded by April 15, 2017.

Senior System Administrator Ruston Royall spoke and provided an indepth update on the project.

Councilmembers provided numerous comments regarding the poor performance of SunGard/ONESolution to get the City up and running. Councilmember Engelken stated he does not have confidence SunGard/ONESolution can be finished, and that he feels it has been a complete failure.

Mayor Rigby requested staff place an action item on this same subject on the February 27, 2017, Council meeting agenda to explore the City's legal options and SunGard/ONESolution's poor performance and possible breach of contract.

(b) Continue public hearing to receive comments on the recommendation of the Dangerous Building Inspection Board for condemnation of dangerous/substandard building located at 211 N. Forrest; consider approval or other action regarding an Ordinance for condemnation of dangerous/substandard building located at 211 N. Forrest – M. Collier

The public hearing was continued from January 9, 2017, and re-opened at 7:08 p.m.

Deputy Building Official Mike Collier presented a summary and recommended 211 N. Forrest be removed from the dangerous/substandard building list. Mr. Collier advised he will address the numerous code issues with the property owner.

The public hearing closed at 7:10 p.m.

Councilmember K. Martin made a motion to follow Staff's recommendation and remove 211 N. Forrest from the dangerous/substandard building list. Councilmember Kaminski seconded the motion. **MOTION PASSED UNANIMOUSLY 8/0. Councilmember Leonard was absent.**

8. ADMINISTRATIVE REPORTS

City Manager Corby Alexander reported that Public Works and Parks and Recreation successfully delivered roughly 33,000 trash bags to La Porte homes.

9. COUNCIL COMMENTS regarding matters appearing on the agenda; recognition of community members, city employees, and upcoming events; inquiry of staff regarding specific factual information.

Councilmember Engelken commented it was nice to deliver trash bags to the residents of La Porte; congratulated Sgt. Bennie Boles and Officer Justin Weaver as Employees of the Fourth Quarter and Year for 2016; congratulated Megan Mainer as Manager of the Year, and commented he hopes the fields at Pecan Park will be ready for the season.

Councilmember Earp congratulated Sgt. Bennie Boles and Officer Justin Weaver as Employees of the Fourth Quarter and Year for 2016 and Megan Mainer as Manager of the Year;

Councilmember Clausen congratulated Sgt. Bennie Boles and Officer Justin Weaver as Employees of the Fourth Quarter and Year for 2016 and congratulated Megan Mainer as Manager of the Year;

Councilmember J. Martin congratulated Sgt. Bennie Boles and Officer Justin Weaver as Employees of the Fourth Quarter and Year for 2016 and congratulated Megan Mainer as Manager of the Year;

Councilmember K. Martin congratulated Sgt. Bennie Boles and Officer Justin Weaver as Employees of the Fourth Quarter and Year for 2016; congratulated Megan Mainer as Manager of the Year; and wished everyone a Happy Valentine's Day;

Councilmember Kaminski congratulated Sgt. Bennie Boles and Officer Justin Weaver as Employees of the Fourth Quarter and Year for 2016; congratulated Megan Mainer as Manager of the Year; commented the trash bag delivery was praised; and the Soul Food Cook-off was a success;

Councilmember Zemanek congratulated Sgt. Bennie Boles and Officer Justin Weaver as Employees of the Fourth Quarter and Year for 2016; and congratulated Megan Mainer as Manager of the Year; and

Mayor Rigby congratulated Sgt. Bennie Boles and Officer Justin Weaver as Employees of the Fourth Quarter and Year for 2016; and congratulated Megan Mainer as Manager of the Year.

10. ADJOURN - There being no further business, Councilmember Engelken made a motion to adjourn the meeting at 7:14 p.m. Councilmember Clausen seconded the motion. **MOTION PASSED UNANIMOUSLY 8/0. Councilmember Leonard was absent.**

Patrice Fogarty, City Secretary

Passed and approved on February 27, 2017.

Mayor Louis R. Rigby

REQUEST FOR CITY COUNCIL AGENDA ITEM

Agenda Date Requested: <u>February 13, 2017</u>
Requested By: <u>Patrice Fogarty, City Secretary</u>
Department: <u>City Secretary</u>
Report: <u> </u> Resolution: <u> </u> Ordinance: <u> </u>

<u>Budget</u>
Source of Funds: _____
Account Number: _____
Amount Budgeted: _____
Amount Requested: _____
Budgeted Item: YES <u> </u> NO <u> </u>

Exhibits: Joint Election Agreement - May 6, 2017, election

SUMMARY & RECOMMENDATION

On January 9, 2017, City Council ordered a general election to be held on May 6, 2017. Historically, the City of La Porte has participated in joint elections with La Porte Independent School District and San Jacinto College. The Texas Election Code requires the terms of the joint election to be set out in a joint election agreement.

For Council consideration is an Interlocal Agreement for Joint Elections, which shall be entered into by the three entities, City of La Porte, La Porte Independent School District and San Jacinto College, for the purpose of establishing the procedures, division of responsibilities, and sharing of costs for elections held by the parties and taking place on the May uniform election date, and any runoff elections stemming from the May uniform election date.

Exhibit A to the agreement outlines the polling locations for early voting and Election Day. City Hall and the Instructional Technology Center are the polling places for all precincts for early voting. Precincts 1-6 will vote at one of these locations on Election Day. Precinct 7 votes at College Park Elementary for LPISD and San Jacinto College only. The agreement includes branch early voting.

Action Required by Council:

Consider approval or other action of an Interlocal Agreement for Joint Elections for the 2017 May uniform election date.

Approved for City Council Agenda

Corby D. Alexander, City Manager

Date

INTERLOCAL AGREEMENT FOR JOINT ELECTIONS

STATE OF TEXAS §
 §
COUNTY OF HARRIS §

This Agreement is made and entered into by and among the CITY OF LA PORTE, TEXAS (hereinafter "LA PORTE"); the LA PORTE INDEPENDENT SCHOOL DISTRICT (hereinafter "LPISD"); and the SAN JACINTO COMMUNITY COLLEGE DISTRICT (hereinafter "COLLEGE").

WITNESSETH:

1. **Agreement.** This Agreement is made and entered into by LA PORTE, LPISD, and COLLEGE (together the "parties") under the authority of the Texas Interlocal Cooperation Act, codified as Chapter 791, Texas Government Code, and Chapter 271, "Joint Elections," of the Texas Election Code. The purpose of this Agreement is to establish the procedures, division of responsibilities, and sharing of costs for elections held by the parties and taking place on the May uniform election date, and any runoff elections stemming from the May uniform election date.

2. **Precincts.** A joint election of the parties shall be conducted at the seven (7) election precincts described on Exhibit "A" attached hereto and incorporated by reference herein. On the May uniform election date, LA PORTE shall conduct elections for itself, LPISD, and COLLEGE, at Precincts 1 through 6, and for LPISD and COLLEGE at Precinct 7.

3. **Joint Early Voting.** The main early voting polling place for the May uniform election date shall be located at La Porte City Hall. Early voting shall be conducted jointly at the main early voting place, the La Porte City Hall and at the Instructional Technology Center (ITC Building); and the City Secretary of the City of La Porte is hereby appointed as the early voting clerk for the joint early voting. In addition to the early voting clerk for the joint early voting, the regular early voting clerk for each political subdivision participating in the joint early voting may receive applications for early voting ballots to be voted by mail in accordance with Title 7 of the Texas Election Code, and shall not later than the next business day fax or email or courier the applications to the early voting clerk for the joint early voting for processing. The remaining procedures for conducting the political subdivision's early voting by mail shall be completed by the early voting clerk for the joint early voting.

4. **Administration of Election by LA PORTE.** Each party to this agreement shall conduct its own candidate filings, drawings for places on its ballot, posting and publication of election notices, receipt of campaign finance reporting, and any other actions required of the entity by the Texas Election Code, except as herein provided. LA PORTE shall assume responsibility for the conduct and administration of the joint election on the May uniform election date on behalf of all of the parties to this Agreement, including to: 1) arrange for printing of ballots; 2) provide election equipment (including specifically, eSlates, electronic voting booths, disabled access units, judge's booth controllers, mobile ballot boxes, ePoll Books and electronic counting machines); 3) appoint, train and compensate judges and clerks; 4) conduct early voting at the main early voting polling place, and any branch polling place(s) established by the participating parties; 5) serve as the Central Counting Station to receive all ballots cast in elections held by any of the parties to this Agreement; and 6) arrange for all other matters necessary for the conduct of its own election and the other parties to this Agreement.

The Presiding Judge of the Central Counting Station shall prepare the unofficial canvass reports after all precincts have been counted, and shall deliver a copy of the unofficial canvass reports to LA PORTE, LPISD and COLLEGE as soon as possible after all returns have been tabulated. The Presiding Judge

shall work cooperatively with the participating parties and ensure that the unofficial canvass reports are delivered promptly and in advance of the meeting designated by each party to officially canvass the results of the election. LA PORTE, LPISD and COLLEGE shall each be responsible for the official canvass of their respective elections.

LA PORTE shall arrange and schedule the logic and accuracy testing for the election equipment prior to its use in the election as required by Chapter 127 of the Texas Election Code and shall be responsible for publishing the required public notice of the date, time, and place of the logic and accuracy testing.

The costs and expenses incurred by LA PORTE in administering the joint election, including the cost of operating the Central Counting Station for processing and tabulating ballots of all parties holding an election, shall be allocated among the parties to this Agreement participating in the Joint Election, on a prorata basis, as provided in Paragraph 8 of this Agreement.

5. Cancellation of Election. If any party to this agreement cancels its election due to unopposed candidates, pursuant to Section 2.051, et seq., Texas Election Code, that party shall not be responsible for any duties established under Paragraph 4 of this Agreement, and shall have no further obligations under this Agreement after the date of cancellation of the general election, but shall make available jointly-owned election equipment and continue to provide its physical facilities for election-day and early voting polling place activities as provided in this Agreement. Non-canceling parties shall continue to perform their respective obligations under this Agreement.

If LA PORTE is not holding an election on the May uniform election date, and LPISD and COLLEGE are holding an election on the May uniform election date taking place in **even numbered years**, LPISD shall arrange all matters necessary for the conduct and administration of the election for both LPISD and COLLEGE for that territory that is within the jurisdictional boundaries of LPISD.

If LA PORTE is not holding an election on the May uniform election date, and LPISD and COLLEGE are holding an election on the May uniform election date taking place in **odd numbered years**, COLLEGE shall arrange all matters necessary for the conduct and administration of the election for both LPISD and COLLEGE for that territory that is within the jurisdictional boundaries of COLLEGE.

If COLLEGE is not holding an election on the May uniform election date, and LA PORTE and LPISD are holding an election on the May uniform election date, LA PORTE shall arrange all matters necessary for the conduct and administration of the election for both LPISD and LA PORTE.

If LPISD is not holding an election on the May uniform election date, and LA PORTE and COLLEGE are holding an election on the May uniform election date, LA PORTE shall arrange all matters necessary for the conduct and administration of the election for LA PORTE and COLLEGE for that territory within the city limits of the city of La Porte. COLLEGE may contract for election services with other area cities within COLLEGE's boundaries outside of the City of La Porte's boundaries.

6. Runoff Elections. If LA PORTE is not required to hold a runoff election, but LPISD and/or COLLEGE is required to hold a runoff election as a result of said general election, LA PORTE shall be relieved of the obligation to administer the runoff election for LPISD and/or COLLEGE, and shall make available the jointly-owned election equipment and continue to provide its physical facilities for election-day and early voting polling place activities as provided in this Agreement. LPISD shall arrange all matters necessary for the conduct and administration of the runoff for both LPISD and COLLEGE for that territory that is within the jurisdictional boundaries of LPISD in **even-numbered years**, and COLLEGE shall arrange all matters necessary for the conduct and administration of the runoff for both LPISD and COLLEGE for that territory that is within the jurisdictional boundaries of COLLEGE in **odd-numbered years**.

If LA PORTE and any other party to this Agreement is required to hold a runoff election, LA PORTE will conduct the runoff election for the parties and shall be responsible for all duties established under Paragraph 4 of this Agreement.

7. Sharing of Expenses. Common expenses of the May joint election shall be prorated among the parties incurring and benefiting from such expenditures. Expenses shall include all necessary disbursements, such as ballot printing, programming support and supplies, judges and clerks. In each case in which it is responsible for the conduct and administration of the election, LA PORTE shall invoice LPISD and COLLEGE, as applicable, for their prorata portions of such joint expenses, which invoice shall be due and payable within thirty (30) days of receipt thereof. Under the terms of the Texas Election Code, no charge shall be incurred for use of public buildings in the conduct of an election. The parties may meet following each election, beginning with the 2017 May election, to review the administration and expenses of the joint elections.

8. Ownership of Equipment. It is understood and agreed that in consideration for the two years of capital reimbursement payments already made by LPISD to LA PORTE, LPISD has a forty percent ownership interest in the election equipment referenced in Paragraph 4 of this Agreement (with the exception of the e-PollBooks in which LPISD has a fifty percent ownership interest), and as such, LPISD shall have an absolute right to access and use said portion of owned equipment in all general and special elections ordered by LPISD, and any required run-off elections, without regard to their date, during the term of this Agreement and continuing even after the expiration of this Agreement.

It is understood and agreed that in consideration for the capital reimbursement payment already made by COLLEGE to LA PORTE, COLLEGE has a twenty percent ownership interest in the election equipment referenced in Paragraph 4 of this Agreement (with the exception of the e-PollBooks in which COLLEGE has no ownership interest), and as such, COLLEGE shall have an absolute right to access and use said portion of owned equipment in all general and special elections ordered by COLLEGE, and any required run-off elections, without regard to their date, during the term of this Agreement and continuing even after the expiration of this Agreement.

9. Election Records. LA PORTE shall be responsible for the safekeeping of election records. Records of the election shall be retained and disposed of in accordance with the provisions of Section 66.058 of the Texas Election Code. If records of the election are involved in any pending election contest, investigation, litigation, or open records request, LA PORTE shall maintain the records until final resolution or until final judgment, whichever is applicable. It is the responsibility of LPISD and/or COLLEGE to bring to the attention of LA PORTE any notice of pending election contest, investigation, litigation or open records request which may be filed with either entity.

10. Recounts. A recount may be obtained as provided by Title 13 of the Texas Election Code. It is understood and agreed that the entity requiring the recount shall be responsible for the supervision of the recount and shall appoint all personnel for the recount. The parties agree to work cooperatively with one another, promptly making available all election records, equipment, and supplies requested by the entity conducting the recount. All costs of the recount shall be borne by the entity requiring the recount.

11. Effective Date. This Agreement shall be effective upon passage by all parties hereto for the May 2017, general election of officers, and any necessary runoff elections stemming from the May 2017, general election. Said Agreement is for a one-year term expiring December 31, 2017, and shall automatically renew thereafter on a year-to-year basis unless amended on or before December 31st of the applicable year. This Agreement supersedes any other Agreement existing or in conflict herewith.

12. Approval of Agreement. This Agreement has been approved by the respective governing boards of the parties hereto. Payments hereunder shall be from current revenues available to the paying party.

WITNESS OUR HANDS, effective January 1, 2017.

CITY OF LA PORTE, TEXAS

By: _____
Louis R. Rigby, Mayor

ATTEST:

Patrice Fogarty, City Secretary

SAN JACINTO COMMUNITY COLLEGE DISTRICT

By: _____
Brenda Hellyer, Ed. D
Chancellor

ATTEST:

Secretary

**LA PORTE INDEPENDENT
SCHOOL DISTRICT**

By: _____
President, Board of Trustees

ATTEST:

Secretary

EXHIBIT "A"

JOINT ELECTION PRECINCTS

Early Voting – All Precincts #1 - #7

City Hall, City of La Porte
604 W. Fairmont Parkway
La Porte, TX

Instructional Technology Center (ITC Building)
9832 Spencer Hwy.
La Porte, Texas 77571

Election Day Precincts #1, #2, #3, and #6:

Instructional Technology Building (ITC Building)
9832 Spencer Highway
La Porte, TX

Election Day Precincts #4 and #5:

La Porte City Hall
604 West Fairmont Parkway
La Porte, TX

Election Day Precinct #7 (LPISD & COLLEGE only):

College Park Elementary School
4315 Luella
Deer Park, TX

REQUEST FOR CITY COUNCIL AGENDA ITEM

Agenda Date Requested: February 27, 2017

Requested By: Traci E. Leach

Department: Administration

Report: ____ **Resolution:** ____ **Ordinance:** ____

Appropriation:

Source of Funds: N/A

Account Number: N/A

Amount Budgeted: N/A

Amount Requested: N/A

Budgeted Item: N/A

Exhibits: Location Map

Exhibits: Special Warranty Deed

SUMMARY & RECOMMENDATION

Bayway Homes would like to purchase 12' feet of property from the City to construct a single family home on the 300 block of N. 4th Street (across from the Jennie Riley Center). Bayway owns the lot between 309 N. 4th Street and the parking lot for Jennie Riley Center. The lot is an irregular size and does not currently meet the minimum lot size for single family home construction.

Bayway would like to purchase 12' of land from the City to meet the minimum standard of 60' lot. The requested 12' strip of property is currently vacant property, as the parking lot does not extend to the southern property line. As no additional expansion is contemplated for the parking lot, the City does not have any objection to this proposed property acquisition.

An appraisal was conducted and the purchase price for the 1,500 square feet is \$2,625.

Section 272.001(b)(1) of the Local Government Code provides an exemption to the auction requirement for sale of property owned by the City. This property meets the definition of "narrow strips of land, or land that because of its shape, lack of access to public roads, or small area cannot be used independently under its current zoning or under applicable subdivision or other development control ordinances."

Staff recommends the sale of the 12' strip of land to Bayway Homes to facilitate the construction of a single family home.

Action Required by Council:

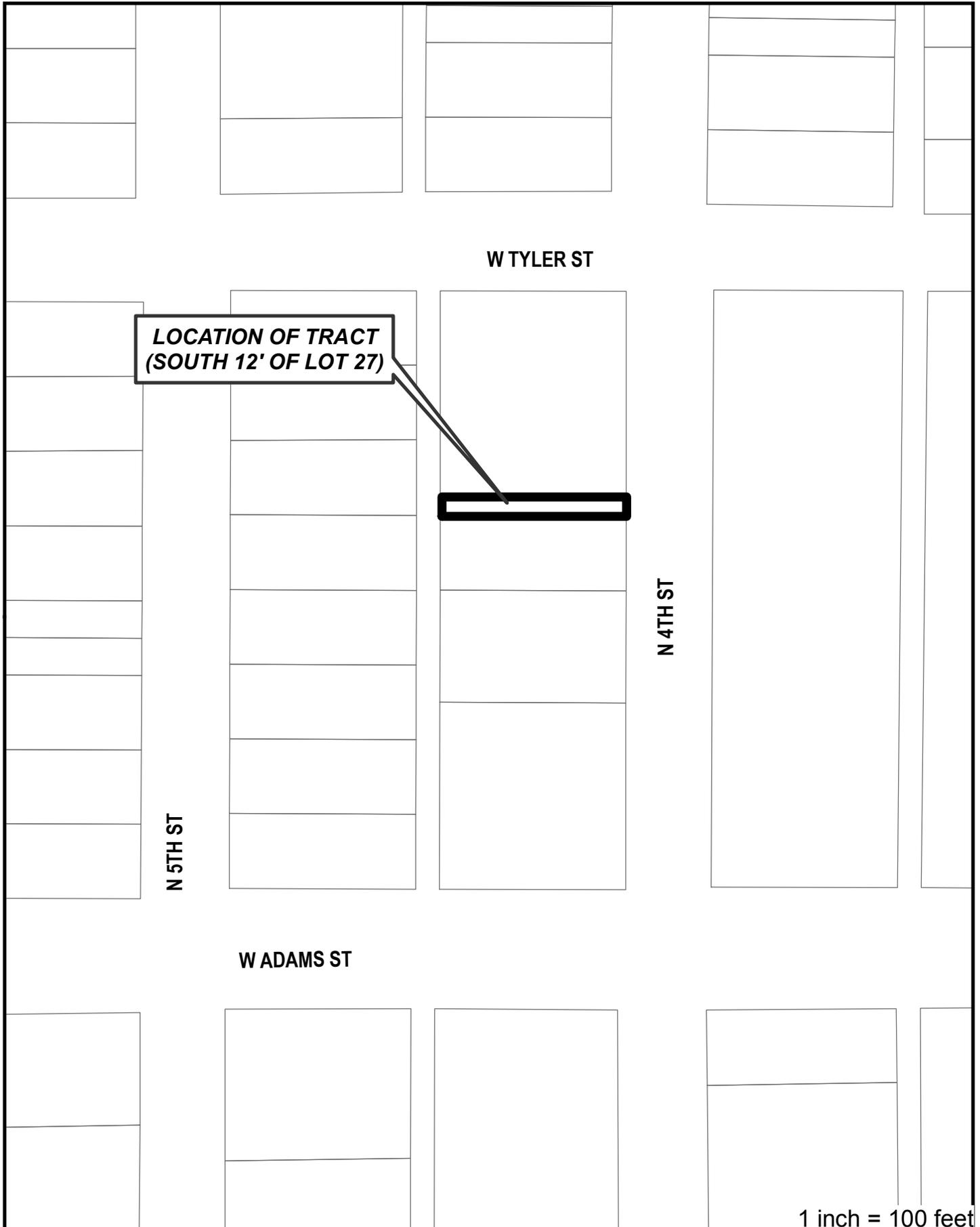
Consider approval or other action to sell a 12' strip of land to Bayway Homes to facilitate the construction of a single family home.

Approved for City Council Agenda

Corby D. Alexander, City Manager

Date

EXHIBIT "B" TO DEED



SPECIAL WARRANTY DEED

NOTICE OF CONFIDENTIALITY RIGHTS: IF YOU ARE A NATURAL PERSON, YOU MAY REMOVE OR STRIKE ANY OF THE FOLLOWING INFORMATION FROM THIS INSTRUMENT BEFORE IT IS FILED FOR RECORD IN THE PUBLIC RECORDS: YOUR SOCIAL SECURITY NUMBER OR YOUR DRIVER'S LICENSE NUMBER.

Date: _____, 2017

Grantor: City of La Porte, Texas, a municipal corporation

Mailing Address: 604 West Fairmont Parkway, La Porte, TX 77571

Grantee: Bayway Homes, Incorporated, a Texas corporation

Mailing Address: P.O. Box 1244, Friendswood, TX 77549-1244

Consideration: Ten and No/100 Dollars (\$10.00) cash and other good and valuable considerations

Property (including any improvements):

A 1,500 square foot tract of land out of Lot 27, Block 80, Town of La Porte, a subdivision in Harris County, Texas, according to the map or plat thereof recorded in the Map Records of Harris County, Texas, said 1,500 square foot tract of land being more particularly described by metes and bounds on Exhibit A attached hereto and incorporated by reference herein and made a part hereof for all purposes, and as more generally illustrated on the diagram on Exhibit B attached hereto and incorporated by reference herein and made a part hereof for all purposes.

Reservations from and Exception to Conveyance and Warranty: This conveyance is made subject to all and singular the restrictions, conditions, oil, gas, and other mineral reservations, easements, and covenants, if any, applicable to and enforceable against the above described property as reflected by the records of the county clerk of the aforesaid county.

Grantor for the consideration and subject to the reservations from and exceptions to conveyance and warranty, grants, sells and conveys to Grantee the property, together with all and singular the rights and appurtenances thereto in any wise belonging, to have and to hold it to Grantee, Grantee's heirs, executors, administrators, successors or assigns forever. Grantor binds Grantor and Grantor's heirs, executors, administrators and successors to warrant and forever defend all and singular the property to

Grantee and Grantee's heirs, executors, administrators, successors and assigns against every person whomsoever lawfully claiming or to claim the same or any part thereof, except as to the reservations from and exceptions to conveyance and warranty when the claim is by, through or under Grantees, but not otherwise.

Attest:

City of La Porte, Texas

Patrice Fogarty
City Secretary

By: _____
Corby D. Alexander
City Manager

Approved:

Clark T. Askins
Assistant City Attorney

STATE OF TEXAS §
 §
COUNTY OF HARRIS §

This instrument was acknowledged before me on the ____ day of _____, 2017, by Corby D. Alexander, City Manager of the City of La Porte, a municipal corporation.

Notary Public, State of Texas

AFTER RECORDING RETURN TO:

PREPARED IN THE LAW OFFICE OF:

ASKINS & ASKINS, P.C.
P.O. Box 1218
La Porte, TX 77572-1218

ASKINS & ASKINS, P.C.
P.O. Box 1218
La Porte, TX 77572-1218

EXHIBIT "A" to DEED

Being a 1,500 square foot tract of land out of Lot 27, Block 80, Town of La Porte, more particularly described by metes and bounds as follows:

BEGINNING at the southeast corner of Lot 27, Block 80, Town of La Porte, said point also being located on the westernmost line of the North 4th Street Right-of-Way (60' wide);

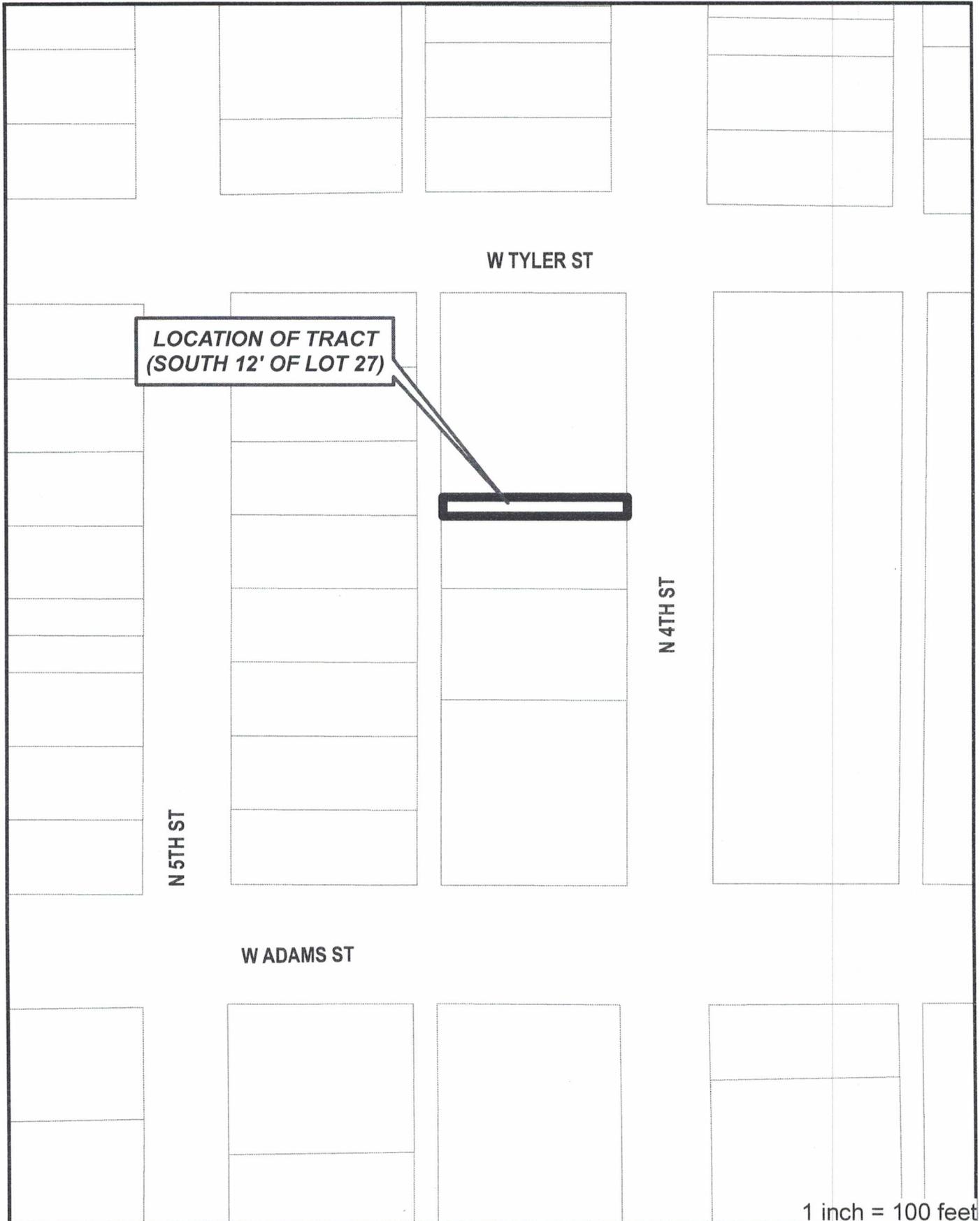
THENCE in a westerly direction along the south line of Lot 27, Block 80, Town of La Porte, a distance of 125 feet to a point marking the southwest corner of Lot 27, Block 80, Town of La Porte, said point also being located on the east line of the 16 foot wide alley in Block 80, Town of La Porte;

THENCE in a northerly direction along the west line of Lot 27 and the east line of the alley in Block 80, Town of La Porte, a distance of 12 feet to a point for corner;

THENCE in an easterly direction along a line 12 feet north of and parallel to the south line of Lot 27, Block 80, Town of La Porte, a distance of 125 feet to its intersection with the west line of the North 4th Street Right-of-Way;

THENCE in a southerly direction along the west line of the North 4th Street Right-of-Way, same being the east line of Lot 27, Block 80, Town of La Porte to POINT of BEGINNING of the herein-described 1,500 square foot tract of land.

EXHIBIT "B" TO DEED



1 inch = 100 feet

REQUEST FOR CITY COUNCIL AGENDA ITEM

Agenda Date Requested: <u>February 27, 2017</u>
Requested By: <u>Rosalyn Epting</u>
Department: <u>Parks & Recreation</u>

<u>Appropriation</u>	
Source of Funds: <u>N/A</u>	
Acct Number: _____	
Amount Budgeted: _____	
Amount Requested: _____	
Budgeted Item: YES NO	

Report: X Resolution: Ordinance:

Exhibits: Redlined Proposed Agreement

Exhibits: Final Version of Proposed Agreement

Exhibits: _____

SUMMARY & RECOMMENDATION

The agreement for the Concessionaire at Sylvan Beach Fishing Pier needs to be renewed. The new agreement is very similar to the old one with only a few changes. Proposed changes are shown on the attached agreement in red.

Highlights of the proposed changes are:

1. The term of the agreement was changed to forty-four (44) months. Originally the term was one (1) year with an option to renew for a total of three (3) additional one year terms. The term has been changed to forty-four (44) months because it will allow the agreement to coincide with the Concession Agreement between Harris County and the Concessionaire for the Bait House.
2. The new agreement states free use of the pier to the public for Sylvan Beach Day and four (4) additional dates to be determined. The original agreement requested free use during Sylvan Beach Day, Bay Day, and three (3) additional dates to be determined.
3. Tickets for the pier will be sold at the Bait House. The original agreement had tickets sales at the entrance to the pier.
4. The address for Harris County was updated.

Staff recommends that the agreement be approved as presented.

Action Required by Council:

Consider approval or other action authorizing the City Manager to execute an agreement between the City of La Porte and Linda Darnell Witt as the Concessionaire for Sylvan Beach Fishing Pier.

Approved for City Council Agenda

Corby D. Alexander, City Manager

Date

CONCESSION AGREEMENT

THE STATE OF TEXAS §
§
COUNTY OF HARRIS §

This Agreement made and entered into by and between the City of La Porte, Texas a body corporate and politic under the laws of the State of Texas, hereinafter referred to as the "City", and Linda Darnell Witt, hereinafter referred to as the "Concessionaire".

W I T N E S S E T H

WHEREAS, the Concessionaire desires to assist the City in providing a fishing pier to be made available for the enjoyment and benefit of the public at Sylvan Beach Park, and

WHEREAS, The Concessionaire has requested the City to use said pier for the purposes hereinabove described, to be used by the general public, and

WHEREAS, The City desires to provide quality recreational opportunities for the general public, and desires to permit the Concessionaire to use the said pier according to the rules, covenants, and conditions hereinafter stated,

NOW, THEREFORE, KNOW ALL MEN BY THESE PRESENTS:

That in consideration of the mutual covenants and agreements to both parties, it is agreed as follows:

I.

Subject to the terms and provisions herein set forth, the City has granted and by these presents grants to the Concessionaire, the right and privilege to operate the 1,100 foot fishing pier at Sylvan Beach Park, said fishing pier being more particularly described on Exhibit "A" attached hereto. The term of the contract shall be for forty-four (44) months beginning February 27, 2017, and ending (unless sooner ended in accordance with the provisions hereof) October 31, 2020, in accordance with that Concession Agreement between Harris County and Concessionaire for the Bait House.

Deleted: one (1) year
Deleted: August 1, 2010
Deleted: with the option for the City to renew for a total of three (3) additional one year periods,

II.

The Concessionaire and employees shall operate the fishing pier concession in

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Sylvan Beach Park in its entirety and the Concessionaire shall make no sale, exchange or assignment of rights under this Agreement, either in whole or in part, without the prior written approval of the City Council of the City of La Porte.

III.

As consideration for this concession, the Concessionaire shall pay, without demand, a monthly concession fee in an amount equal to two-thirds (2/3) of the gross user fees collected for the use of the pier. Gross User fee is defined as the total gate receipts less any federal, state, and/or local taxes. The concession fee will be due and payable on or before the 10th day of each month for the preceding month's activity. The Concessionaire agrees to maintain documentation, on forms to be developed and provided by the City and adhere to guidelines established by the City, of daily use and payments received. The Concessionaire agrees to furnish to the City any and all reports which City may require covering all receipts and income of the concession, and agrees that her books and other records may be examined by the City or City Auditor or any other officer of the City at any reasonable time. The Concessionaire agrees to keep and maintain said records and books in La Porte. The Concessionaire may, on a daily basis, report and deposit with the City all admission revenues generated by the pier operation. The City shall remit to the Concessionaire the amount due to the Concessionaire pursuant to this agreement on a monthly basis.

IV.

The Concessionaire shall operate and manage the fishing pier. Admission rates will be set through negotiation with the City and shall be reasonable and equal to those charged by concessionaires in comparable facilities. The Concessionaire agrees to conform to the rates as set. The Concessionaire shall post a schedule of such fees, rates, and prices at all times in a conspicuous place on the premises.

V.

During the term of this Agreement, Concessionaire's and City's obligations hereunder, in addition to others specified herein, shall be as follows:

- (a) The Concessionaire will abide by all applicable federal, state, and municipal laws, ordinances, rules and regulations. Concessionaire must obtain, at her own expense, all licenses and permits required for the operation of said fishing pier and make the same accessible at all times to city, county, state, and federal officers. Concessionaire agrees to pay all federal and state permit and lease fees. The City agrees to pay required state permit and lease fees from the Concessionaire's share of collected receipts according to the following formula:

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15% of total permit fee for each of the months of **June, July, August, & September** of each year of the agreement.

5% of total permit fee for each of the months of **October, January, February, March, April, & May** for the term of the agreement.

The payment schedule specified above shall begin in the month following the date this agreement is executed and continue until the agreement is terminated.

- (b) The Concessionaire will pay all applicable local, state, and federal taxes incident to the operation of said fishing pier.
- (c) The Concessionaire will place no vending machine in the area of the fishing pier without the prior written approval of the City Parks & Recreation Director or his designated representative.
- (d) The Concessionaire will abide by such opening and closing hours of the fishing pier as the Commissioners Court of Harris County and the City may, from time to time, prescribe and will post such hours of opening and closing at the fishing pier.
- (e) The Concessionaire agrees to open the pier to the public, at no charge, on ~~Sylvan Beach Day and four (4) other dates to be determined by the City and/or Harris County, and coordinated with the Concessionaire.~~
- (f) The Concessionaire will sell no beer, wine, liquor, or other such alcoholic beverages on the fishing pier.
- (g) The Concessionaire will keep the fishing pier and the entrance thereto in a neat, clean, and sanitary condition.
- (h) The Concessionaire will be responsible for all routine or minor maintenance of the pier. The City will be responsible for all major repairs to the pier. For purposes of this Agreement, a Major Repair shall be defined as: any purchase of materials and labor in excess of \$200.00 for any particular event, including normal wear and tear, requiring repair of the pier.
- (i) The Concessionaire will not permit on the pier, or in the immediate vicinity of the pier, any disorderly conduct or practice in violation of any federal, state, or municipal laws, rules, regulations, or

Deleted: the following dates: (a)

Deleted: ; (b) Bay Day;

Deleted: (c) three (3)

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ordinances; of a sort likely to bring discredit upon the City or its governing body.

- (j) The Concessionaire will treat the public with courtesy and respect at all times. Complaints will be investigated by the Parks & Recreation Director or his designated representative and, if found to be just, be resolved to the satisfaction of said Director.
- (k) The Concessionaire will neither place, nor cause to be placed, any sign, projection, advertisement, or device of any kind whatsoever on the fishing pier or on the streets adjacent thereto without prior written consent of the City.
- (l) The Concessionaire will be responsible for all costs and expenses incidental to operating the fishing pier.
- (m) The City will provide electrical and water utilities to the pier, and shall be responsible for maintenance and repair of electrical systems for the pier. The City will be responsible for payment of water utility costs. The Concessionaire will be responsible for payment of electrical utility costs.
- (n) ~~The Concessionaire will be responsible for selling all pier tickets from the bait house. Additionally, the Concessionaire will be responsible for providing any barricades required to limit access to the pier and to direct patrons to the facility for ticket sales or other purpose.~~
- (o) The City will be responsible for providing trash receptacles for the pier and entrance to the pier; the Concessionaire will be responsible for providing plastic liners for the receptacles.
- (p) It is expressly the Concessionaire's responsibility and duty to remove and properly dispose of the trash and garbage resulting from the public use of the fishing pier and seeing to it that the same is put in suitable closed containers. Containers shall be picked up and hauled away at least twice a week.

Deleted: The City will be responsible for providing a facility for ticket sales at the entrance to the pier. Said facility shall be of a design mutually approved by the City and the Concessionaire.

Deleted: The Concessionaire will be responsible for maintenance and repair of said facility for the duration of this Agreement.

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VI.

The Concessionaire shall permit the City's officers, employees, and agents to enter into and upon the fishing pier for the purpose of inspecting and examining the condition thereof.

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VII.

The Concessionaire shall not by virtue hereof be deemed to have become a tenant of the City, nor to have been given or accorded as against the City the possession of any part of said fishing pier, but to such of the pier as the Concessionaire is hereunder entitled to use, the Concessionaire shall be deemed merely to be a licensee permitted to enter therein solely for the purpose of exercising therein the rights and privileges hereby granted.

VIII.

The Concessionaire shall keep and maintain during the term hereof, a comprehensive general liability policy, with the City and Harris County named as additional insured, with limits of liability of not less than one million dollars (\$1,000,000.00) combined single limit bodily injury and property damage per occurrence. The Concessionaire shall annually furnish the City with a certificate of insurance evidencing such coverage. The City and Harris County are to receive at least thirty (30) days prior written notice of cancellation of said policies. Such insurance shall include contractual liability insuring the indemnity agreements contained herein. Failure to maintain insurance will result in automatic and immediate termination of this Agreement.

IX.

To the fullest extent permitted by applicable law, Concessionaire shall and does hereby agree to indemnify, protect, hold harmless and defend the City of La Porte and Harris County, Texas, and their respective heirs, legal representatives, partners, agents, employees, directors, shareholders, subsidiaries, and affiliated companies if Indemnities and of any of their respective partners, (herein collectively called the "Indemnitees") from and against all claims, demands, damages, injuries, losses, liens, causes of action, suit, judgements, liabilities, costs, and expenses, including court costs and attorney's fees, of any nature, kind or description (including without limitation, claims for injuries or death of any person, or damages to or loss of any property) of any person or entity (including but not limited to employees, agents, and subcontractors of Concessionaire, and their dependents, and personal representatives, or other third parties), directly or indirectly arising out of, caused by, in connection with, or resulting from (in whole or in part), (a) the presence or activity of Concessionaire, its employees, agents, and representatives, (including subcontractors on Indemnitee's premises, (b) the condition of the Indemnitee's premises, the adjoining land, or any of the driveways, streets, or alleys used in connection with the services of the Concessionaire, (c) the use of any equipment by Concessionaire on Indemnitee's premises, whether belonging to Concessionaire, Indemnitee, or otherwise, or the condition of said equipment, or (d) any act or omission of Concessionaire, any Subcontractor, any of their respective employees, agents, servants, officers, directors, partners, or anyone directly or indirectly employed by Concessionaire

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THE CONCESSIONAIRE: Ms. Linda Darnell Witt
422 South Blackwell Street
La_Porte, Texas 77571

HARRIS COUNTY: Harris County Commissioners Court
Harris County Administration Building
1001 Preston, 9th Floor
Houston, Texas 77002
Attention: Clerk of Commissioners Court

Deleted: The Honorable Sylvia Garcia,¶
Commissioner, Precinct 2¶
Harris County Commissioner's Court¶
7330 Spencer Highway¶
Pasadena, Texas 77505

XI.

The Concessionaire shall not allow any liens or any other encumbrances to attach to the leased premises.

XII.

Whenever the terms of this Agreement conflict with the terms of the Agreement with the City and Harris County, Texas, dated April 12, 1994 (attached hereto), amended and extended, the parties agree that the terms of the Harris County Agreement control, to the extent of such conflict only. Otherwise, this Agreement is to be construed in relationship with the Harris County Agreement insofar as possible.

XIII.

The provisions of this Agreement which assign certain rights to the City, shall be construed to also be shared by Harris County inasmuch as they are in accordance with the terms of the Agreement between the City and Harris County, Texas, dated April 12, 1994.

The foregoing does not apply to Section X, which allows the City unilaterally to terminate this Agreement without cause, and also does not apply to Section III, which governs payment. The City's and Harris County's rights and obligations regarding payment are more specifically set forth in the Agreement between the City and Harris County dated April 12, 1994.

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XIV.

This instrument contains the entire Agreement between the parties related to the rights herein granted and obligations herein assumed. Any oral or written representations or notifications concerning this instrument shall be of no force or effect excepting a

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subsequent modification in writing signed by both parties hereto.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement in multiple copies on this the ____ day of _____, 2017, to become effective as provided above.

"CITY"
CITY OF LA PORTE, TEXAS

BY:
Corby D. Alexander, City Manager

ATTEST:

Patrice Fogarty, City Secretary

APPROVED AS TO FORM:

Clark T. Askins, Assistant City Attorney

"CONCESSIONAIRE"

BY:
Linda D. Witt, Concessionaire

ATTEST:

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Deleted: A municipal corporation

Deleted: - Ron Bottoms

Deleted: Martha Gillett

Deleted: KNOX

Deleted: W. ASKINS

Deleted: arnell

Deleted: TITLE: - Concessionaire

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CONCESSION AGREEMENT

EXHIBIT "A"

The 1,100 foot pier referred to in this agreement shall be the pier located on the following described premises situated in Harris County, Texas, to-wit:

A 20 feet wide strip of land 10 feet on both sides of the herein described centerline out of the Sylvan Beach Park on Galveston Bay in the City of La Porte, Texas, out of the Johnson Hunter Survey, Abstract 35, Harris County, Texas, and being more particularly described as follows:

Beginning at a set P.K. Nail marking the intersection of the centerline of an existing wooden fishing pier and a wooden bulkhead.

Thence, in a Northwesterly direction, along the centerline of said wooden fishing pier extended, a distance of 49.41 feet to a set P.K. Nail on the southeast side of an existing parking lot for the POINT OF TERMINUS.

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CONCESSION AGREEMENT

**THE STATE OF TEXAS §
 §
COUNTY OF HARRIS §**

This Agreement made and entered into by and between the City of La Porte, Texas a body corporate and politic under the laws of the State of Texas, hereinafter referred to as the "City", and Linda Darnell Witt, hereinafter referred to as the "Concessionaire".

W I T N E S S E T H

WHEREAS, the Concessionaire desires to assist the City in providing a fishing pier to be made available for the enjoyment and benefit of the public at Sylvan Beach Park, and

WHEREAS, The Concessionaire has requested the City to use said pier for the purposes hereinabove described, to be used by the general public, and

WHEREAS, The City desires to provide quality recreational opportunities for the general public, and desires to permit the Concessionaire to use the said pier according to the rules, covenants, and conditions hereinafter stated,

NOW, THEREFORE, KNOW ALL MEN BY THESE PRESENTS:

That in consideration of the mutual covenants and agreements to both parties, it is agreed as follows:

I.

Subject to the terms and provisions herein set forth, the City has granted and by these presents grants to the Concessionaire, the right and privilege to operate the 1,100 foot fishing pier at Sylvan Beach Park, said fishing pier being more particularly described on Exhibit "A" attached hereto. The term of the contract shall be for forty-four (44) months beginning February 27, 2017, and ending (unless sooner ended in accordance with the provisions hereof) October 31, 2020, in accordance with that Concession Agreement between Harris County and Concessionaire for the Bait House.

II.

The Concessionaire and employees shall operate the fishing pier concession in

Sylvan Beach Park in its entirety and the Concessionaire shall make no sale, exchange or assignment of rights under this Agreement, either in whole or in part, without the prior written approval of the City Council of the City of La Porte.

III.

As consideration for this concession, the Concessionaire shall pay, without demand, a monthly concession fee in an amount equal to two-thirds (2/3) of the gross user fees collected for the use of the pier. Gross User fee is defined as the total gate receipts less any federal, state, and/or local taxes. The concession fee will be due and payable on or before the 10th day of each month for the preceding month's activity. The Concessionaire agrees to maintain documentation, on forms to be developed and provided by the City and adhere to guidelines established by the City, of daily use and payments received. The Concessionaire agrees to furnish to the City any and all reports which City may require covering all receipts and income of the concession, and agrees that her books and other records may be examined by the City or City Auditor or any other officer of the City at any reasonable time. The Concessionaire agrees to keep and maintain said records and books in La Porte. The Concessionaire may, on a daily basis, report and deposit with the City all admission revenues generated by the pier operation. The City shall remit to the Concessionaire the amount due to the Concessionaire pursuant to this agreement on a monthly basis.

IV.

The Concessionaire shall operate and manage the fishing pier. Admission rates will be set through negotiation with the City and shall be reasonable and equal to those charged by concessionaires in comparable facilities. The Concessionaire agrees to conform to the rates as set. The Concessionaire shall post a schedule of such fees, rates, and prices at all times in a conspicuous place on the premises.

V.

During the term of this Agreement, Concessionaire's and City's obligations hereunder, in addition to others specified herein, shall be as follows:

- (a) The Concessionaire will abide by all applicable federal, state, and municipal laws, ordinances, rules and regulations. Concessionaire must obtain, at her own expense, all licenses and permits required for the operation of said fishing pier and make the same accessible at all times to city, county, state, and federal officers. Concessionaire agrees to pay all federal and state permit and lease fees. The City agrees to pay required state permit and lease fees from the Concessionaire's share of collected receipts according to the following formula:

15% of total permit fee for each of the months of **June, July, August, & September** of each year of the agreement.

5% of total permit fee for each of the months of **October, January, February, March, April, & May** for the term of the agreement.

The payment schedule specified above shall begin in the month following the date this agreement is executed and continue until the agreement is terminated.

- (b) The Concessionaire will pay all applicable local, state, and federal taxes incident to the operation of said fishing pier.
- (c) The Concessionaire will place no vending machine in the area of the fishing pier without the prior written approval of the City Parks & Recreation Director or his designated representative.
- (d) The Concessionaire will abide by such opening and closing hours of the fishing pier as the Commissioners Court of Harris County and the City may, from time to time, prescribe and will post such hours of opening and closing at the fishing pier.
- (e) The Concessionaire agrees to open the pier to the public, at no charge, on Sylvan Beach Day and four (4) other dates to be determined by the City and/or Harris County, and coordinated with the Concessionaire.
- (f) The Concessionaire will sell no beer, wine, liquor, or other such alcoholic beverages on the fishing pier.
- (g) The Concessionaire will keep the fishing pier and the entrance thereto in a neat, clean, and sanitary condition.
- (h) The Concessionaire will be responsible for all routine or minor maintenance of the pier. The City will be responsible for all major repairs to the pier. For purposes of this Agreement, a Major Repair shall be defined as: any purchase of materials and labor in excess of \$200.00 for any particular event, including normal wear and tear, requiring repair of the pier.
- (i) The Concessionaire will not permit on the pier, or in the immediate vicinity of the pier, any disorderly conduct or practice in violation of any federal, state, or municipal laws, rules, regulations, or

ordinances; of a sort likely to bring discredit upon the City or its governing body.

- (j) The Concessionaire will treat the public with courtesy and respect at all times. Complaints will be investigated by the Parks & Recreation Director or his designated representative and, if found to be just, be resolved to the satisfaction of said Director.
- (k) The Concessionaire will neither place, nor cause to be placed, any sign, projection, advertisement, or device of any kind whatsoever on the fishing pier or on the streets adjacent thereto without prior written consent of the City.
- (l) The Concessionaire will be responsible for all costs and expenses incidental to operating the fishing pier.
- (m) The City will provide electrical and water utilities to the pier, and shall be responsible for maintenance and repair of electrical systems for the pier. The City will be responsible for payment of water utility costs. The Concessionaire will be responsible for payment of electrical utility costs.
- (n) The Concessionaire will be responsible for selling all pier tickets from the bait house. Additionally the Concessionaire will be responsible for providing any barricades required to limit access to the pier and to direct patrons to the facility for ticket sales or other purpose.
- (o) The City will be responsible for providing trash receptacles for the pier and entrance to the pier; the Concessionaire will be responsible for providing plastic liners for the receptacles.
- (p) It is expressly the Concessionaire's responsibility and duty to remove and properly dispose of the trash and garbage resulting from the public use of the fishing pier and seeing to it that the same is put in suitable closed containers. Containers shall be picked up and hauled away at least twice a week.

VI.

The Concessionaire shall permit the City's officers, employees, and agents to enter into and upon the fishing pier for the purpose of inspecting and examining the condition thereof.

VII.

The Concessionaire shall not by virtue hereof be deemed to have become a tenant of the City, nor to have been given or accorded as against the City the possession of any part of said fishing pier, but to such of the pier as the Concessionaire is hereunder entitled to use, the Concessionaire shall be deemed merely to be a licensee permitted to enter therein solely for the purpose of exercising therein the rights and privileges hereby granted.

VIII.

The Concessionaire shall keep and maintain during the term hereof, a comprehensive general liability policy, with the City and Harris County named as additional insured, with limits of liability of not less than one million dollars (\$1,000,000.00) combined single limit bodily injury and property damage per occurrence. The Concessionaire shall annually furnish the City with a certificate of insurance evidencing such coverage. The City and Harris County are to receive at least thirty (30) days prior written notice of cancellation of said policies. Such insurance shall include contractual liability insuring the indemnity agreements contained herein. Failure to maintain insurance will result in automatic and immediate termination of this Agreement.

IX.

To the fullest extent permitted by applicable law, Concessionaire shall and does hereby agree to indemnify, protect, hold harmless and defend the City of La Porte and Harris County, Texas, and their respective heirs, legal representatives, partners, agents, employees, directors, shareholders, subsidiaries, and affiliated companies if Indemnities and of any of their respective partners, (herein collectively called the "Indemnitees") from and against all claims, demands, damages, injuries, losses, liens, causes of action, suit, judgements, liabilities, costs, and expenses, including court costs and attorney's fees, of any nature, kind or description (including without limitation, claims for injuries or death of any person, or damages to or loss of any property) of any person or entity (including but not limited to employees, agents, and subcontractors of Concessionaire, and their dependents, and personal representatives, or other third parties), directly or indirectly arising out of, caused by, in connection with, or resulting from (in whole or in part), (a) the presence or activity of Concessionaire, its employees, agents, and representatives, (including subcontractors on Indemnitee's premises, (b) the condition of the Indemnitee's premises, the adjoining land, or any of the driveways, streets, or alleys used in connection with the services of the Concessionaire, (c) the use of any equipment by Concessionaire on Indemnitee's premises, whether belonging to Concessionaire, Indemnitee, or otherwise, or the condition of said equipment, or (d) any act or omission of Concessionaire, any Subcontractor, any of their respective employees, agents, servants, officers, directors, partners, or anyone directly or indirectly employed by Concessionaire

THE CONCESSIONAIRE: Ms. Linda Darnell Witt
422 South Blackwell Street
La Porte, Texas 77571

HARRIS COUNTY: Harris County Commissioners Court
Harris County Administration Building
1001 Preston, 9th Floor
Houston, Texas 77002
Attention: Clerk of Commissioners Court

XI.

The Concessionaire shall not allow any liens or any other encumbrances to attach to the leased premises.

XII.

Whenever the terms of this Agreement conflict with the terms of the Agreement with the City and Harris County, Texas, dated April 12, 1994 (attached hereto), amended and extended, the parties agree that the terms of the Harris County Agreement control, to the extent of such conflict only. Otherwise, this Agreement is to be construed in relationship with the Harris County Agreement insofar as possible.

XIII.

The provisions of this Agreement which assign certain rights to the City, shall be construed to also be shared by Harris County inasmuch as they are in accordance with the terms of the Agreement between the City and Harris County, Texas, dated April 12, 1994.

The foregoing does not apply to Section X, which allows the City unilaterally to terminate this Agreement without cause, and also does not apply to Section III, which governs payment. The City's and Harris County's rights and obligations regarding payment are more specifically set forth in the Agreement between the City and Harris County dated April 12, 1994.

XIV.

This instrument contains the entire Agreement between the parties related to the rights herein granted and obligations herein assumed. Any oral or written representations or notifications concerning this instrument shall be of no force or effect excepting a

subsequent modification in writing signed by both parties hereto.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement in multiple copies on this the ____ day of _____, 2017 to become effective as provided above.

"CITY"
CITY OF LA PORTE, TEXAS

BY: _____
Corby D. Alexander, City Manager

ATTEST:

Patrice Fogarty, City Secretary

APPROVED AS TO FORM:

Clark T. Askins, Assistant City Attorney

"CONCESSIONAIRE"

BY: _____
Linda D. Witt, Concessionaire

ATTEST:

CONCESSION AGREEMENT

EXHIBIT "A"

The 1,100 foot pier referred to in this agreement shall be the pier located on the following described premises situated in Harris County, Texas, to-wit:

A 20 feet wide strip of land 10 feet on both sides of the herein described centerline out of the Sylvan Beach Park on Galveston Bay in the City of La Porte, Texas, out of the Johnson Hunter Survey, Abstract 35, Harris County, Texas, and being more particularly described as follows:

Beginning at a set P.K. Nail marking the intersection of the centerline of an existing wooden fishing pier and a wooden bulkhead.

Thence, in a Northwesterly direction, along the centerline of said wooden fishing pier extended, a distance of 49.41 feet to a set P.K. Nail on the southeast side of an existing parking lot for the POINT OF TERMINUS.

REQUEST FOR CITY COUNCIL AGENDA ITEM

Agenda Date Requested: <u>February 27, 2017</u>	<u>Appropriation</u>
Requested By: <u>Brian Sterling</u>	Source of Funds: _____
Department: <u>Planning & Development</u>	Account Number: _____
Report: <input checked="" type="radio"/> Resolution: <input type="radio"/> Ordinance: <input type="radio"/>	Amount Budgeted: _____
Other: <input type="radio"/> _____	Amount Requested: _____
Attachments :	Budgeted Item: <input checked="" type="radio"/> YES <input type="radio"/> NO

- 1. Draft Municipal Water Service Agreement**
- 2. Previous Agenda Item for MWSA (1-25-10)**
- 3. Area Map**

SUMMARY & RECOMMENDATIONS

Mr. Richard Kimes, owner of 9515 Spencer Highway in Deer Park has requested water service from the City of La Porte through a Municipal Water Service Agreement. The City of Deer Park's water distribution system does not currently extend to serve the subject site.

The site has previously received water service from La Porte under a Municipal Water Service Agreement between the owner, the City of Deer Park and the City La Porte. Council last approved renewal of the agreement in 2010. However, the agreement expired in 2015. At the time the last agreement expired.

Staff has reviewed the owner's request and has determined that the City has the ability and capacity to provide service to the subject site under the same terms as the previous agreement.

Under the previous agreement, the City billed the owner at one and one-half (1-1/2) times its prevailing commercial water rate and retained the right to interrupt or terminate water service to the facility at any time the water main or the owner's service line experienced a failure. Additionally, the property owner assumed all liability for any damage to the Spencer Highway roadway resulting from loss of water and/or repairs conducted by the owner on his service line. The previous agreement also contained provisions allowing the City to terminate its water service to the site in the event that the City of Deer Park's potable water facilities become available within two-hundred (200) yards of the owner's site. The term of the agreement was three (3) years with an option for an additional two (2) year extension.

The new Municipal Water Service Agreement has been drafted for the term of one (1) year from the date of passage and approval of the agreement to allow sufficient time for the City of Deer Park to construct a water main extension to provide service to the subject property.

Action Required of Council:

Consider approval or other action regarding a Municipal Water Service Agreement between the cities of La Porte and Deer Park, and the owner of the facility at 9515 Spencer Highway.

Approved for City Council Agenda

Corby D. Alexander, City Manager

Date

MUNICIPAL WATER SERVICE AGREEMENT

This agreement witnesseth that the City of **Deer Park** and the City of **La Porte**, both situated in Harris County, Texas, have constructed and agreed by and between themselves as follows:

The City of **La Porte** agrees to furnish water from its existing municipal water distribution system to provide water to 9515 Spencer Highway, in Deer Park, Texas. (Mailing address is 9515 Spencer Highway, La Porte, Texas)

The term of this agreement shall be one (1) year unless either City shall notify the other party to terminate in writing at least thirty (30) days before the end of the initial one (1) year period.

The City of **La Porte** shall be paid by the owner of 9515 Spencer Highway, the amount of one and one-half (1-1/2) times the prevailing commercial water rate of the City of **La Porte**.

The City of **La Porte** shall not be responsible for any repairs to the service line providing water to the property at 9515 Spencer Highway. The service line is defined as the water line from the La Porte water main on the south side of Spencer Highway to the owner's property and building. The property owner shall be solely responsible for any and all repairs necessary to the service line providing water to the above-referenced location. Additionally, the property owner shall be liable and responsible for any and all damage to the roadway or for water loss caused by the property owner's repairs to service line, providing water to 9515 Spencer Highway.

The City of **La Porte** shall have the right to interrupt or terminate service at any time the water main or service line is leaking until the line is repaired.

The owner of the property at 9515 Spencer Highway shall execute this agreement to signify his acceptance of all the terms, conditions and liabilities herein prescribed.

IN WITNESS WHEREOF, the City of **Deer Park** and the City of **La Porte** have caused this agreement to be signed by the respective City Managers, the said agreement having been authorized by action of the Mayor and City Council of **Deer Park** taken on the _____ day of _____, 2017 and by action of the Mayor and City Council of **La Porte** taken on the _____ day of _____, 2017.

By: Jay Stokes
City Manager of Deer Park

By: Corby D. Alexander
City Manager of La Porte

AGREED TO AND ACCEPTED BY:

By: Property Owner
9515 Spencer Highway
La Porte, Texas 77571
(In Deer Park, Texas)

REQUEST FOR CITY COUNCIL AGENDA ITEM

Agenda Date Requested: <u>January 25, 2010</u>
Requested By: <u>Tim Tietjens</u>
Department: <u>Planning</u>
Report: <input type="checkbox"/> Resolution: <input type="checkbox"/> Ordinance: <input checked="" type="checkbox"/>

<u>Appropriation</u>
Source of Funds: <u> N/A </u>
Account Number: <u> N/A </u>
Amount Budgeted: <u> N/A </u>
Amount Requested: <u> N/A </u>
Budgeted Item: <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO

Exhibits:

- Ordinance
- Municipal Water Service Agreement
- Area Map

SUMMARY & RECOMMENDATION

The owner of 9515 Spencer Highway in Deer Park city limits has requested water service from the City of La Porte under the terms of a previous Municipal Water Service Agreement (MWSA) for the facility which expired in November of 2009.

At its January 11, 2010 meeting, Council considered the owner's request as a workshop item and indicated its support for a new agreement between the cities of Deer Park, La Porte and the owner of the subject property. The City Council of Deer Park has since met to consider the agreement and approved it at its January 19th meeting.

Under the agreement, the City will bill the owner at one and one-half (1-1/2) times its prevailing commercial water rate and will retain the right to interrupt or terminate water service to the facility at any time the water main or the owner's service line experiences a failure. Additionally, the property owner assumes all liability associated with any damage to the Spencer Highway roadway resulting from the loss of water and/or repairs conducted by the owner on the service line. The agreement also contains provisions allowing the City to terminate its water service to the site in the event that the City of Deer Park's potable water facilities become available within two-hundred (200) yards of the owner's site. The term of the new MWSA will consist of three (3) years with an option for an additional two (2) year extension.

Action Required by Council:

Consider approval of an ordinance authorizing the City Manager to execute a Municipal Water Service Agreement between the Cities of La Porte and Deer Park and the owner of the property at 9515 Spencer Highway.

Approved for City Council Agenda



Ron Bottoms, City Manager



Date

ORDINANCE NO. 2010- 3213

AN ORDINANCE APPROVING AND AUTHORIZING A MUNICIPAL WATER SERVICE AGREEMENT BETWEEN THE CITY OF LA PORTE, THE CITY OF DEER PARK AND GENE L. ZIGLER, FINDING COMPLIANCE WITH THE OPEN MEETINGS LAW, AND PROVIDING AN EFFECTIVE DATE HEREOF.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF LA PORTE:

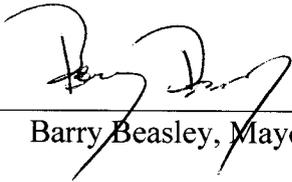
Section 1. The City Council hereby approves and authorizes the contract, agreement, or other undertaking described in the title of this ordinance, in substantially the form as shown in the document which is attached hereto and incorporated herein by the reference. The City Manager is hereby authorized to execute such document and all related documents on behalf of the City of La Porte. The City Secretary is hereby authorized to attest to all such signatures and to affix the seal of the City to all such documents.

Section 2. The City Council officially finds, determines, recites, and declares that a sufficient written notice of the date, hour, place and subject of this meeting of the City Council was posted at a place convenient to the public at the City Hall of the City for the time required by law preceding this meeting, as required by the Open Meetings Law, Chapter 551, Texas Government Code; and that this meeting has been open to the public as required by law at all times during which this ordinance and the subject matter thereof has been discussed, considered and formally acted upon. The City Council further ratifies, approves and confirms such written notice and the contents and posting thereof.

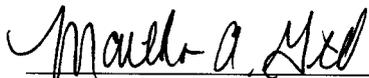
Section 3. This Ordinance shall be effective from and after its passage and approval, and it is so ordered.

PASSED AND APPROVED, this 25th day of January, 2010.

CITY OF LA PORTE

By: 
Barry Beasley, Mayor

ATTEST:


Martha A. Gillett, City Secretary

APPROVED:


Knox W. Askins, City Attorney

MUNICIPAL WATER SERVICE AGREEMENT

This agreement witnesseth that the City of **Deer Park** and the City of **La Porte**, both situated in Harris County, Texas, have constructed and agreed by and between themselves as follows:

The City of **La Porte** agrees to furnish water from its existing municipal water distribution system to provide water to 9515 Spencer Highway, in Deer Park, Texas. (Mailing address is 9515 Spencer Highway, La Porte, Texas)

The initial term of this agreement shall be three (3) years with an additional two (2) year option term which shall be automatically extended unless either City shall notify the other party to terminate in writing at least thirty (30) days before the end of the initial three (3) year period.

The City of **La Porte** shall be paid by the owner of 9515 Spencer Highway, the amount of one and one-half (1-1/2) times the prevailing commercial water rate of the City of **La Porte**.

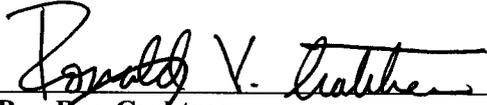
The City of **La Porte** shall not be responsible for any repairs to the service line providing water to the property at 9515 Spencer Highway. The service line is defined as the water line from the La Porte water main on the south side of Spencer Highway to the owner's property and building. The property owner shall be solely responsible for any and all repairs necessary to the service line providing water to the above-referenced location. Additionally, the property owner shall be liable and responsible for any and all damage to the roadway or for water loss caused by the property owner's repairs to service line, providing water to 9515 Spencer Highway.

The City of **La Porte** shall have the right to interrupt or terminate service at any time the water main or service line is leaking until the line is repaired.

If water service from the City of **Deer Park** shall become available to within 200 yards of 9515 Spencer Highway anytime during the term of this agreement, the City of **La Porte** shall terminate water service to said property at the end of sixty (60) days from the availability of a City of Deer Park supplied potable water source.

The owner of the property at 9515 Spencer Highway shall execute this agreement to signify his acceptance of all the terms, conditions and liabilities herein prescribed.

IN WITNESS WHEREOF, the City of **Deer Park** and the City of **La Porte** have caused this agreement to be signed by the respective City Managers, the said agreement having been authorized by action of the Mayor and City Council of **Deer Park** taken on the 19 day of January, 2010 and by action of the Mayor and City Council of **La Porte** taken on the 25th day of January, 2010.

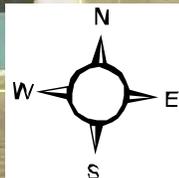

By: **Ron Crabtree**
City Manager of Deer Park


By: **Ron Bottoms**
City Manager of La Porte

AGREED TO AND ACCEPTED BY:


By: **Property Owner**
9515 Spencer Highway
La Porte, Texas 77571
(In Deer Park, Texas)

AREA MAP



DEER PARK

**NEAREST DEER PARK WATER MAIN
(ALONG UNDERWOOD RD.)**



UNDERWOOD RD

SPENCER HWY

ANDRICKS RD

MONTGOMERY LN

CATLETT LN

HILLSDALE

Legend

-  9515 SPENCER HWY
-  CITY LIMITS

1 inch = 300 feet



**Council Agenda Item
February 27, 2017**

5. **CONSENT AGENDA** *(All consent agenda items are considered routine by City Council and will be enacted by one motion. There will be no separate discussion of these items unless a Councilmember requests an item be removed and considered separately.)*
- (a) Consider approval or other action regarding minutes of the meeting held on February 13, 2017 - P. Fogarty
 - (b) Consider approval or other action regarding an Interlocal Agreement for Joint Elections between the City of La Porte; La Porte Independent School District and San Jacinto College District - P. Fogarty
 - (c) Consider approval or other action regarding the sale of 12-feet of Lot 27, Block 80, Town of La Porte, Harris County, Texas to Bayway Homes to facilitate the construction of a single family home - T. Leach
 - (d) Consider approval or other action authorizing the City Manager to execute a concession agreement between the City of La Porte and Linda Darnell Witt as the Concessionaire for Sylvan Beach Fishing Pier - R. Epting
 - (e) Consider approval or other action regarding a Municipal Water Service Agreement between the City of La Porte; City of Deer Park and the owner of the facility at 9515 Spencer Highway - B. Sterling

REQUEST FOR CITY COUNCIL AGENDA ITEM

Agenda Date Requested: February 27, 2017 Appropriation
Requested By: Ian Clowes Source of Funds: _____
Department: Planning & Development Account Number: _____
Report: Resolution: Ordinance: Amount Budgeted: _____
Other: _____ Amount Requested: _____
Budgeted Item: YES NO

Attachments :

- 1. Ordinance**
- 2. P&Z Recommendation Letter**
- 3. Existing vs. Proposed Future Land Use Map**

SUMMARY & RECOMMENDATIONS

This item is a request for consideration to amend the City's Future Land Use Plan in conjunction with a request by David Miles, Western Spherical Developers, LLC for the development of the La Porte Town Center. This is a proposed entertainment, retail/service, and residential mixed-use development located on State Highway 146 north of Wharton Weems Boulevard on a 40 acre tract of land known as Tracts 1 and 1L, Johnson Hunter Survey, Abstract 35.

The City's Future Land Use Plan (FLUP) identifies the subject property as "Low Density Residential," "Commercial," "Mixed Use," and "Mid to High Density Residential" land uses. In order to accommodate the proposed development, the FLUP would need to be amended to remove the "Low Density Residential," and to reconfigure the existing "Commercial" use (for proposed hotel, entertainment center, and retail and restaurant pad sites), "Mixed Use" use (for the proposed live-work units), and "Mid-to High-Density Residential" (for the proposed townhome units). The subject site is zoned PUD, Planned Unit Development, which allows for the uses proposed in the development.

The Planning and Zoning Commission reviewed this request at the January 31, 2017, meeting and voted to unanimously recommend approval of the proposed modifications to the Future Land Use Plan.

Action Required of Council:

1. Conduct public hearing.
 2. Consider approval or other action on a recommendation by the Planning and Zoning Commission to approve an Ordinance amending the City's Future Land Use Plan for a 40 acre tract of land known as Tracts 1 and 1L, Johnson Hunter Survey, Abstract 35, generally located on State Highway 146 north of Wharton Weems Boulevard and as depicted in the attached exhibit.
-

Approved for City Council Agenda

Corby D. Alexander, City Manager

Date

ORDINANCE NO. _____

AN ORDINANCE ADOPTING AN UPDATE TO THE FUTURE LAND USE MAP COMPONENT OF THE COMPREHENSIVE PLAN OF THE CITY OF LA PORTE, TEXAS UPON RECOMMENDATION OF THE PLANNING AND ZONING COMMISSION OF THE CITY OF LA PORTE, TEXAS; FINDING COMPLIANCE WITH THE OPEN MEETINGS LAW; AND PROVIDING AN EFFECTIVE DATE HEREOF.

WHEREAS, Section 211.004 of the Texas Local Government Code provides that zoning regulations must be adopted in accordance with a Comprehensive Plan;

WHEREAS, Section 213.003 of the Texas Local Government Code provides that a municipality may amend a Comprehensive Plan by ordinance, after public hearing and review by the municipality's planning commission or department; and

WHEREAS, Section 213.003 of the Texas Local Government Code also provides that a municipality may establish, in its charter or by ordinance, procedures for adopting and amending a Comprehensive Plan; and

WHEREAS, Chapter 106, "Zoning" Article I, Section 106-3, and Article II, Section 106-65 of the Code of Ordinances of the City of La Porte, delegates to the Planning and Zoning Commission the duty to review and make recommendations relevant to modifications of the Comprehensive Plan and Zoning Ordinance; and

WHEREAS, the City of La Porte has a Comprehensive Plan, which Plan was adopted by the City Council of the City of La Porte, Texas in 1986, and which Plan has been the subject of multiple amendments since its adoption;

WHEREAS, pursuant to mandate of Chapter 106, "Zoning" of the Code of Ordinances of the City of La Porte, the Planning and Zoning Commission of the City of La Porte has reviewed all elements of the Comprehensive Plan, and as duly approved by the City Council of the City of La Porte, to consider possible amendments thereto; and

WHEREAS, at the La Porte Planning and Zoning Commission meeting which occurred on January 31, 2017, the La Porte Planning and Zoning Commission reviewed the Future Land Use Map component of the Comprehensive Plan for the purpose of considering proposed amendments thereto, to change the designation for that 40 acre tract of land generally located on the east side State Highway 146, north of Wharton Weems Boulevard, and identified as follows: Tracts I and IL, Johnson Hunter Survey, Abstract 35, Town of La Porte, Harris County, Texas, from its present designation of "Low Density Residential", "Commercial", "Mixed Use", and "Mid- to High-Density Residential", to only "Commercial", "Mixed Use", and "Mid- to High-Density Residential", and at the conclusion of such review the La Porte Planning and Zoning Commission voted to recommend to the La Porte City Council such amendments be made to the Future Land Use Plan component of the Comprehensive Plan;

NOW, THEREFORE, BE IT RESOLVED BY

THE CITY COUNCIL OF THE CITY OF LA PORTE, TEXAS, THAT:

Section 1 That an amendment to the Future Land Use Map component of the Comprehensive Plan of the City of La Porte, Texas, which is incorporated to this ordinance by reference herein and attached hereto as Exhibit A, be and is hereby authorized, approved, and adopted by the City Council of the City of La Porte, Texas, after duly noticed public hearing held at its February 27, 2017 meeting, pursuant to the recommendations of the Planning and Zoning Commission of the City of La Porte, Texas.

Section 2 The City Secretary of the City of La Porte or her designated representative shall be required to make this amendment to the Comprehensive Plan available to the public and duly mark and note the updated reference on the Future Land Use Plan component of the Comprehensive Plan of the City of La Porte, Texas.

Section 3 The City Council officially finds, determines, recites and declares that a sufficient written notice of the date, hour, place and subject to this meeting of the City Council was posted at a place convenient to the public at the City Hall of the City for the time required by law preceding this meeting, as required by the Open Meetings Law, Chapter 551, Texas Government Code; and that this meeting has been open to the public as required by law at all times during which this ordinance and the subject matter thereof has been discussed, considered and formally acted upon.

The City Council further ratifies, approves and confirms such written notice and the contents and posting thereof.

Section 4 This Ordinance shall be in effect from and after its passage and approval.
Passed and approved this the 27th day of FEBRUARY, 2017.

CITY OF LA PORTE, TEXAS

By: _____

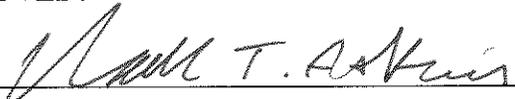
Louis R. Rigby, Mayor

ATTEST:

By: _____

Patrice Fogarty, City Secretary

APPROVED:

By: 

Clark Askins, Assistant City Attorney



February 7, 2017

Honorable Mayor Rigby and City Council
City of La Porte

RE: Amendment to the City's Future Land Use Map Request

Dear Mayor Rigby and City Council:

The La Porte Planning and Zoning Commission held a meeting on January 31, 2017 meeting on a request to amend the City's Future Land Use Plan as adopted in the Comprehensive Plan for the approximately 40 acre tract of land located on the east side of Highway 146 north of Wharton Weems Boulevard and legally described as Tracts 1 and 1L, Johnson Hunter Survey, Abstract 35. The Future Land Use Plan amendment would modify certain tracts by removing the "Low Density Residential" use and reconfiguring the "Commercial," "Mixed Use," and "Mid- to High-Density Residential" uses.

The Commission voted 6-0 to recommend approval of the proposed amendment to the City's Future Land Use Map.

Respectfully submitted,

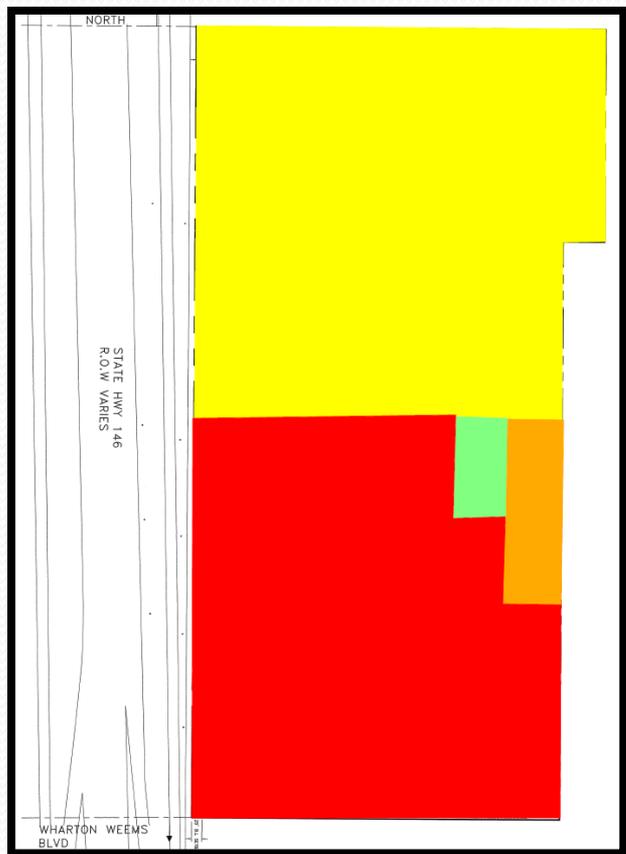
Hal Lawler
Chairman, Planning and Zoning Commission

cc: Ian Clowes, City Planner
Department File



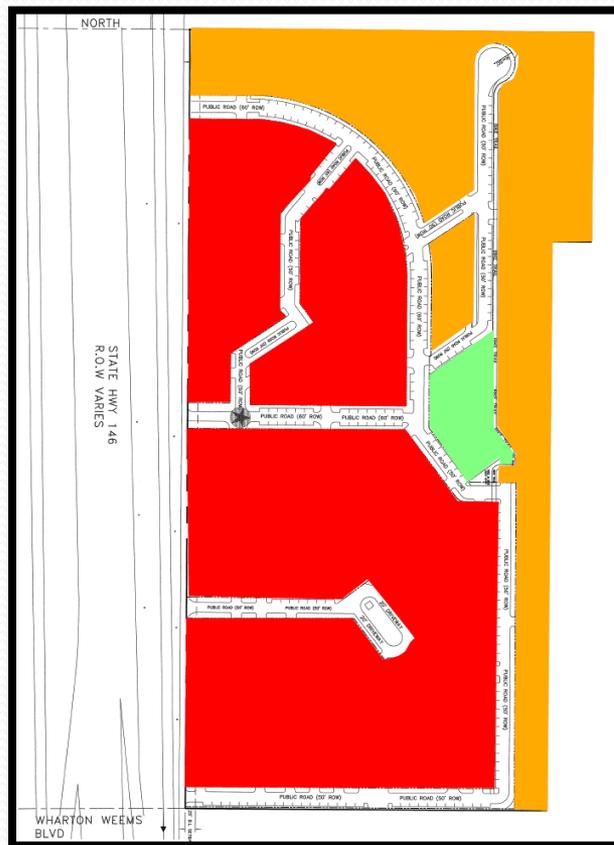
Zoned: PUD, Planned Unit Development

Existing:



-  Commercial
-  Mid-High Density Residential
-  Mixed Use
-  Low Density Residential

Proposed:



REQUEST FOR CITY COUNCIL AGENDA ITEM

Agenda Date Requested: February 27, 2017

Requested By: Jan Clowes

Department: Planning and Development

Report: X **Resolution:** **Ordinance:** X

Exhibits:

**Ordinance and SCUP
P&Z Recommendation Letter
Applicant Information and Request
La Porte Town Center General Plan
Area/Zoning Map
Land Use Map**

Appropriation:

Source of Funds: N/A

Account Number: N/A

Amount Budgeted: N/A

Amount Requested: N/A

Budgeted Item: N/A

SUMMARY & RECOMMENDATION

The applicant, David Miles of Western Spherical Developers, LLC, is seeking approval of a Special Conditional Use Permit (SCUP) to allow construction of an entertainment, commercial and residential mixed use development on a 40 acre tract described as Tracts 1 and 1L, Johnson Hunter Survey, Abstract 35, La Porte, Harris County, Texas. The proposed development, being called the La Porte Town Center, includes a mix of land uses. The applicant received approval for a 20 acre SCUP on this same site for the same uses back in January of 2016. That SCUP has since expired due to inactivity. The applicant has now returned with an expanded SCUP which will include the original 20 acres with the addition of 20 acres to the north.

The following is a breakdown of land uses outlined by the applicant in the attached project description letter:

- 62,000 square foot entertainment center
- 20,000 square foot conference, theater and museum
- 90,000 square foot retail cluster
- 50,000 square feet of office space
- 30,000 square foot Portrait of a Warrior Memorial Art Gallery
- 14 brownstone townhomes
- 12 live-work units
- 72 townhome units
- 14 brownstone units
- 114 room hotel
- 2 acres of park and water features

The site is zoned Planned Unit Development (PUD) and is currently undeveloped. Development within the PUD district requires approval of a SCUP as consideration for the proposed use of the site. The property is located on the east side of State Highway 146 north of Wharton Weems. The city's Future Land Use Plan currently identifies this site as "Low Density Residential" uses. There is an agenda item on this Council agenda for modification to the Future Land Use Plan.

The proposed SCUP outlines land uses permitted with reference to the La Porte Town Center General Plan, which was approved by the Planning and Zoning Commission at the January 31, 2017, special meeting. There are uses permitted in the GC, General Commercial, District that have been excluded from this proposed development, which generally are those more intense commercial uses.

The Planning and Zoning Commission conducted a public hearing at the January 19, 2017, meeting concerning this request. The Commission voted to table the item in order to allow for more time to review the proposal. A special meeting of the Planning and Zoning Commission was held on January 31, 2017 to discuss the tabled item. At that meeting, the commission voted to unanimously recommend approval of the proposed SCUP subject to the following conditions:

1. A site development plan shall be submitted in accordance with applicable requirements of the City of La Porte's Development Ordinance and shall comply with all provisions of Chapter 106, "Zoning" of the City's Code of Ordinances and all other department reviews and applicable laws and ordinances of the City of La Porte and the State of Texas.
2. All buildings shall meet or exceed the Design Standards outlined in Article IX, Chapter 106 of the Code of Ordinances.
3. Land uses permitted in accordance with the La Porte Town Center General Plan, as may be amended from time-to-time. Any modifications to the approved General Plan require approval by the Planning and Zoning Commission in accordance with the city's Development Ordinance.
4. Land uses permitted in the commercial area (all areas excluding residential land uses) shall be in accordance with the uses permitted in Chapter 106, Zoning, of the city's Code of Ordinances Use Chart under GC (General Commercial) at the effective date of this SCUP, excluding the following uses:
 - a. Automobile repair and maintenance (811111-811198);
 - b. Construction, Mining and Forestry Machinery and Equipment Rental and Leasing (532412);
 - c. Office Machinery and Equipment Rental and Leasing (532420);
 - d. Other Commercial and Industrial Machinery and Equipment Rental and Leasing (532490);
 - e. Transit and Ground Passenger Transportation (485111-485999);
 - f. Motor Vehicle Parts and Dealers (441110-441228);
 - g. Furniture and Related Product Manufacturing (337110-337122);
 - h. Construction of Buildings (236115-236118);
 - i. Contractors (238110-238390).
5. The commercial area shall be developed in accordance with the requirements for the General Commercial zone district. However, if the developer desires to subdivide the commercial area, then setbacks shall be as follows: external property line adjacent to Highway 146 – 25 feet; external property line adjacent to north and south public right-of-way – 10 feet; internal property lines – 0 feet.
6. The residential land uses identified in the General Plan as "Townhouse" shall be constructed in accordance with the requirements outlined in Section 106-333 of the Code of Ordinances and applicable building code requirements and shall be limited to townhouse development only – not multifamily apartments or condominiums. The townhouse development may exceed the (12) twelve unit maximum for attached units and front setbacks for the townhouse development shall be permitted at a minimum of 5 feet from the front property line.
7. Additionally, the "Live-Work" units are permitted and shall comply with applicable setbacks that would be required for buildings in the Main Street Overlay District. If an attached garage is provided, then the rear setback for the building shall be 5 feet.

8. The perimeter boundaries of the property along the north and south property lines shall include the installation of an 8-foot high solid masonry fence intended to mitigate the impact of development on future residential development, as identified in the city's Future Land Use Plan. Additionally, shade trees shall be planted at 20' on center along the fence line. If land uses on the adjacent properties are modified in the future allowing for similar uses, then such fence and landscaping shall not be required. The northern fence shall be included and constructed as part of the first set of construction plans approved by the city, while the southern fence shall be constructed prior to the completion of the final phase of development. If at any time the property to the south of the proposed development is developed for single family residential, the southern boundary fence must be constructed at that time regardless of which phase of development the project is in.
9. In lieu of a fence along the eastern boundary of the project, the developer shall be required to plant shade trees, at a minimum 3" caliper and 20' on center. In addition to the shade trees, shrubs shall be planted at no less than 5 gallon in size with a minimum spacing of 3' on center. These plantings are required along the entire length of the eastern boundary and shall be in place prior to the completion of Phase II of the development.
10. The applicant shall install the segment of the city's Hike and Bike Trail through the development area as identified in the city's Comprehensive Plan. The construction of the trail shall be in accordance with all applicable requirements and specifications required by the City Engineer. Additionally, following construction of the Hike and Bike Trail, the developer shall dedicate to the City of La Porte a permanent public trail easement 20' on center for the Hike and Bike Trail.
11. The developer shall provide internal connection between the city's Hike and Bike Trail to the development.
12. The developer shall work with staff at the time of site plan review to minimize the amount of parking stalls along the Highway 146 frontage. This should be accommodated by relocating buildings in a manner that places parking on the side of the building or internal to the development. If this is not possible, the developer may install planter islands at 1 per 10 spaces for both rows of parking along a drive aisle parallel to Highway 146. Additionally, hedges shall be planted at 3-foot on center in two rows of plantings. Such hedge row shall be installed with a variety of plant material to provide visual diversity of plant materials.
13. For the commercial portion of the development, parking shall be calculated based on the aggregate amount of parking required and proposed; joint parking is allowed. Additionally the applicant may include on-street parking, only where permitted by the city, toward the amount of parking provided for the development.
14. Parking is not permitted within any alley right-of-way.
15. The developer will be required to replat the subject property in accordance with the requirements of the city's code requirements.
16. All public streets internal to the development site shall be constructed in accordance with the city's Public Improvement Criteria Manual and shall be dedicated to the city. Regardless of phasing of the development, any dedication of public improvements identified as part of the plat must be accepted by the city prior to the recordation of the Final Plat. Should the developer desire to construct such public streets at a later time, then a development agreement shall be required between the city and developer that provides a financial guarantee, as approved by the city, that will ensure that said public roads will be installed and a date for which those improvements must be made.
17. Parking on any public street shall only be permitted on one side of the street and shall be signed by the developer in accordance with applicable sign requirements.
18. Access to any public right-of-way is subject to the requirements of Section 106-835, Figure 10-3 and will be reviewed at the time of Site Development Plan. TXDOT right-of-way access permits shall be presented prior to permit issuance for all driveways requested on Highway 146. Maximum driveway widths shall be provided in compliance with city code requirements.

19. The developer will be required to submit for approval by the City Engineer, a drainage report indicating how the proposed development will accommodate the requirements for storm water detention in accordance with the city's Public Improvement Criteria Manual, or if discharging in a TXDOT or Harris County system, approval by such authority.
20. Because Highway 146 has been identified as a significant corridor in the community, the developer shall work with the Planning and Zoning Commission at the time of site plan review on a landscape theme along the Highway 146 frontage. Such theme shall be above and beyond the requirements outlined in Section 106-800 of the city's Code of Ordinances.
21. All necessary documentation for building permit review must be submitted in conjunction with the city's building permit application process.
22. A traffic impact analysis, performed by a licensed engineer agreed to by both the City and the applicant, shall be required. If any mitigation is required by the study, the applicant will be responsible for their proportion of the impact. All contributions would be subject to reimbursement through the TIRZ, pursuant to approval by the TIRZ Board.
23. If extension of any public water or sanitary sewer line is required as part of this development, the applicant will be required to execute a utility extension agreement with the city and install such improvements at the cost of the developer.
24. Any substantive modifications to this Special Conditional Use Permit will require an amendment to this SCUP in accordance with Chapter 106, "Zoning" of the City's Code of Ordinances.
25. The hours of operation for the family entertainment center shall be 10:00 a.m. to 12:00 a.m. Sunday through Thursday and 10:00 a.m. to 2:00 a.m. on Friday and Saturday. There may be up to two days in a calendar month where the family entertainment center may remain open from 10:00 a.m. to 2:00 a.m. during the week in order to accommodate special performances. The operator of the family entertainment center will be responsible for informing the city in writing at least one (1) week before such event.
26. The residential townhouses are required to be platted as part of the first phase of the development. A minimum of seven (7) townhouse units are required to be available for development as part of the initial phase of development.
27. A photometric plan will be required at the time of site plan submittal that will identify site lighting and the lumens proposed across the site. Lighting will need to be in compliance with the requirements of Section 106-310, Footnote A, of the city's Code of Ordinances.
28. No development permits shall be issued for any work within the 40 acre project prior to the applicant obtaining construction permits and commencing construction of the required drainage interconnect under Wharton Weems Blvd. This interconnect is meant to connect two existing detention basins and is vital to the entire project's overall drainage system.

Action Required by Council:

1. Conduct public hearing.
2. Consider approval or other action on a recommendation by the Planning and Zoning Commission to approve an ordinance approving Special Conditional Use Permit Request #16-91000004, to allow construction of an entertainment, commercial and residential mixed use development on a 40 acre tract described as Tracts 1 and 1L, Johnson Hunter Survey, Abstract 35.

Approved for City Council Agenda

Corby D. Alexander, City Manager

Date

ORDINANCE NO. _____

AN ORDINANCE AMENDING THE CODE OF ORDINANCES OF THE CITY OF LA PORTE, CHAPTER 106, MORE COMMONLY REFERRED TO AS THE ZONING ORDINANCE OF THE CITY OF LA PORTE, BY GRANTING SPECIAL CONDITIONAL USE PERMIT NO. 16-91000004 FOR THAT CERTAIN PARCEL OF LAND HEREIN DESCRIBED, FOR THE PURPOSE OF CONSTRUCTING A ENTERTAINMENT, COMMERCIAL AND MIXED-USE DEVELOPMENT CENTER ON STATE HIGHWAY 146 NORTH OF WHARTON WEEMS BOULEVARD; MAKING CERTAIN FINDINGS OF FACT RELATED TO THE SUBJECT; CONTAINING A SEVERABILITY CLAUSE; FINDING COMPLIANCE WITH THE OPEN MEETINGS LAW; AND PROVIDING AN EFFECTIVE DATE HEREOF;

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF LA PORTE, TEXAS:

Section 1. Chapter 106 “Zoning” of the Code of Ordinances is hereby amended by granting Special Conditional Use Permit #16-91000004, attached hereto as Exhibit A and incorporated by reference for all purposes, to allow for the construction of an entertainment, commercial and residential mixed-use development center on property located on State Highway 146 north of Wharton Weems Boulevard, said facility to be located on a 40 acre tract legally described as Tract 1 and Tract 1L, Johnson Hunter Survey, Abstract 35, City of La Porte, Harris County, Texas, within a Planned Unit Development (PUD) zoning district.

Section 2. All ordinances or parts of ordinances inconsistent with the terms of this ordinance are hereby repealed; provided, however, that such repeal shall be only to the extent of such inconsistency and in all other respects this ordinance shall be cumulative of other ordinances regulating and governing the subject matter covered by this ordinance.

Section 3. Should any section or part of this ordinance be held unconstitutional, illegal, or invalid, or the application to any person or circumstance for any reasons thereof ineffective or inapplicable, such unconstitutionality, illegality, invalidity, or ineffectiveness of such section or part shall in no way affect, impair or invalidate the remaining portions thereof; but as to such remaining portion or portions, the same shall be and remain in full force and effect and to this end the provisions of this ordinance are declared to be severable.

Section 4. The City Council officially finds, determines, recites and declares that a sufficient written notice of the date, hour, place and subject of this meeting of the City Council is posted at a place convenient to the public at the City Hall of the city for the time required by law preceding this meeting, as required by Chapter 551, Tx. Gov’t Code; and that this meeting has been open to the public as required by law at all times during which this ordinance and the subject matter thereof has been discussed, considered and formally acted upon. The City Council further ratifies, approves and confirms such written notice and the contents and posting thereof.

Section 5. The City Council of the City of La Porte hereby finds that public notice was properly mailed to all owners of all properties located within two hundred feet (200’) of the properties under consideration.

Section 6. The City Council of the City of La Porte hereby finds, determines, and declares that all prerequisites of law have been satisfied and hereby determines and declares that the amendments to the City of La Porte Zoning Classification contained in this Ordinance as amendments thereto are desirable and in furtherance of the goals and objectives stated in the City of La Porte's Comprehensive Plan.

Section 7. This ordinance shall be effective after its passage and approval.

PASSED AND APPROVED this the _____ day of FEBRUARY, 2017.

CITY OF LA PORTE, TEXAS

By: _____

Louis R. Rigby, Mayor

ATTEST:

Patrice Fogarty, City Secretary

APPROVED:



Clark Askins, Assistant City Attorney

City of La Porte
Special Conditional Use Permit #16-91000004

This permit is issued to: Western Spherical Developers, LLC
Owner or Agent

907 S. Friendswood Drive, Suite 303; Friendswood, TX 77546
Address

For Development of: La Porte Town Center Mixed Use Development
Development Name

Vacant 40 acre parcel; located on State Highway 146 north of Wharton Weems Boulevard
Address

Legal Description: Tracts 1 and 1L, Abstract 35, Johnson Hunter Survey

Zoning: PUD, Planned Unit Development

Use: Entertainment, Hotel and Conference Center, Commercial and Medium-Density Residential

Permit Conditions:

This Special Conditional Use Permit (SCUP) is applicable for the subject property, a copy of which shall be maintained in the files of the City's Planning and Development Department upon approval. Project development shall be in accordance with the following conditions:

1. A site development plan shall be submitted in accordance with applicable requirements of the City of La Porte's Development Ordinance and shall comply with all provisions of Chapter 106, "Zoning" of the City's Code of Ordinances and all other department reviews and applicable laws and ordinances of the City of La Porte and the State of Texas.
2. All buildings shall meet or exceed the Design Standards outlined in Article IX, Chapter 106 of the Code of Ordinances.
3. Land uses permitted in accordance with the La Porte Town Center General Plan, as may be amended from time-to-time. Any modifications to the approved General Plan require approval by the Planning and Zoning Commission in accordance with the city's Development Ordinance.
4. Land uses permitted in the commercial area (all areas excluding residential land uses) shall be in accordance with the uses permitted in Chapter 106, Zoning, of the city's Code of Ordinances Use Chart under GC (General Commercial) at the effective date of this SCUP, excluding the following uses:
 - a. Automobile repair and maintenance (811111-811198);
 - b. Construction, Mining and Forestry Machinery and Equipment Rental and Leasing (532412);
 - c. Office Machinery and Equipment Rental and Leasing (532420);
 - d. Other Commercial and Industrial Machinery and Equipment Rental and Leasing (532490);
 - e. Transit and Ground Passenger Transportation (485111-485999);

- f. Motor Vehicle Parts and Dealers (441110-441228);
 - g. Furniture and Related Product Manufacturing (337110-337122);
 - h. Construction of Buildings (236115-236118);
 - i. Contractors (238110-238390).
5. The commercial area shall be developed in accordance with the requirements for the General Commercial zone district. However, if the developer desires to subdivide the commercial area, then setbacks shall be as follows: external property line adjacent to Highway 146 – 25 feet; external property line adjacent to north and south public right-of-way – 10 feet; internal property lines – 0 feet.
 - ~~6.~~ The residential land uses identified in the General Plan as “Townhouse” shall be constructed in accordance with the requirements outlined in Section 106-333 of the Code of Ordinances and applicable building code requirements and shall be limited to townhouse development only – not multifamily apartments or condominiums. The townhouse development may exceed the (12) twelve unit maximum for attached units and front setbacks for the townhouse development shall be permitted at a minimum of 5 feet from the front property line.
 7. Additionally, the “Live-Work” units are permitted and shall comply with applicable setbacks that would be required for buildings in the Main Street Overlay District. If an attached garage is provided, then the rear setback for the building shall be 5 feet.
 8. The perimeter boundaries of the property along the north and south property lines shall include the installation of an 8-foot high solid masonry fence intended to mitigate the impact of development on future residential development, as identified in the city’s Future Land Use Plan. Additionally, shade trees shall be planted at 20’ on center along the fence line. If land uses on the adjacent properties are modified in the future allowing for similar uses, then such fence and landscaping shall not be required. The northern fence shall be included and constructed as part of the first set of construction plans approved by the city, while the southern fence shall be constructed prior to the completion of the final phase of development. If at any time the property to the south of the proposed development is developed for single family residential, the southern boundary fence must be constructed at that time regardless of which phase of development the project is in.
 9. In lieu of a fence along the eastern boundary of the project, the developer shall be required to plant shade trees, at a minimum 3” caliper and 20’ on center. In addition to the shade trees, shrubs shall be planted at no less than 5 gallon in size with a minimum spacing of 3’ on center. These plantings are required along the entire length of the eastern boundary and shall be in place prior to the completion of Phase II of the development.
 10. The applicant shall install the segment of the city’s Hike and Bike Trail through the development area as identified in the city’s Comprehensive Plan. The construction of the trail shall be in accordance with all applicable requirements and specifications required by the City Engineer. Additionally, following construction of the Hike and Bike Trail, the developer shall dedicate to the City of La Porte a permanent public trail easement 20’ on center for the Hike and Bike Trail.
 11. The developer shall provide internal connection between the city’s Hike and Bike Trail to the development.
 12. The developer shall work with staff at the time of site plan review to minimize the amount of parking stalls along the Highway 146 frontage. This should be accommodated by relocating buildings in a manner that places parking on the side of the building or internal to the development. If this is not possible, the developer may install planter islands at 1 per 10 spaces for both rows of parking along a drive aisle parallel to Highway 146. Additionally, hedges shall be planted at 3-foot on center in two rows of plantings. Such hedge row shall be installed with a variety of plant material to provide visual diversity of plant materials.
 13. For the commercial portion of the development, parking shall be calculated based on the aggregate amount of parking required and proposed; joint parking is allowed. Additionally the applicant may

- include on-street parking, only where permitted by the city, toward the amount of parking provided for the development.
14. Parking is not permitted within any alley right-of-way.
 15. The developer will be required to replat the subject property in accordance with the requirements of the city's code requirements.
 16. All public streets internal to the development site shall be constructed in accordance with the city's Public Improvement Criteria Manual and shall be dedicated to the city. Regardless of phasing of the development, any dedication of public improvements identified as part of the plat must be accepted by the city prior to the recordation of the Final Plat. Should the developer desire to construct such public streets at a later time, then a development agreement shall be required between the city and developer that provides a financial guarantee, as approved by the city, that will ensure that said public roads will be installed and a date for which those improvements must be made.
 17. Parking on any public street shall only be permitted on one side of the street and shall be signed by the developer in accordance with applicable sign requirements.
 18. Access to any public right-of-way is subject to the requirements of Section 106-835, Figure 10-3 and will be reviewed at the time of Site Development Plan. TXDOT right-of-way access permits shall be presented prior to permit issuance for all driveways requested on Highway 146. Maximum driveway widths shall be provided in compliance with city code requirements.
 19. The developer will be required to submit for approval by the City Engineer, a drainage report indicating how the proposed development will accommodate the requirements for storm water detention in accordance with the city's Public Improvement Criteria Manual, or if discharging in a TXDOT or Harris County system, approval by such authority.
 20. Because Highway 146 has been identified as a significant corridor in the community, the developer shall work with the Planning and Zoning Commission at the time of site plan review on a landscape theme along the Highway 146 frontage. Such theme shall be above and beyond the requirements outlined in Section 106-800 of the city's Code of Ordinances.
 21. All necessary documentation for building permit review must be submitted in conjunction with the city's building permit application process.
 22. A traffic impact analysis, performed by a licensed engineer agreed to by both the City and the applicant, shall be required. If any mitigation is required by the study, the applicant will be responsible for their proportion of the impact. All contributions would be subject to reimbursement through the TIRZ, pursuant to approval by the TIRZ Board.
 23. If extension of any public water or sanitary sewer line is required as part of this development, the applicant will be required to execute a utility extension agreement with the city and install such improvements at the cost of the developer.
 24. Any substantive modifications to this Special Conditional Use Permit will require an amendment to this SCUP in accordance with Chapter 106, "Zoning" of the City's Code of Ordinances.
 25. The hours of operation for the family entertainment center shall be 10:00 a.m. to 12:00 a.m. Sunday through Thursday and 10:00 a.m. to 2:00 a.m. on Friday and Saturday. There may be up to two days in a calendar month where the family entertainment center may remain open from 10:00 a.m. to 2:00 a.m. during the week in order to accommodate special performances. The operator of the family entertainment center will be responsible for informing the city in writing at least one (1) week before such event.
 26. The residential townhouses are required to be platted as part of the first phase of the development. A minimum of seven (7) townhouse units are required to be available for development as part of the initial phase of development.
 27. A photometric plan will be required at the time of site plan submittal that will identify site lighting and the lumens proposed across the site. Lighting will need to be in compliance with the requirements of Section 106-310, Footnote A, of the city's Code of Ordinances.

28. No development permits shall be issued for any work within the 40 acre project prior to the applicant obtaining construction permits and commencing construction of the required drainage interconnect under Wharton Weems Blvd. This interconnect is meant to connect two existing detention basins and is vital to the entire project's overall drainage system.

Failure to start construction of the building within 12 months after issuance or as scheduled under the terms of a special conditional use permit shall void the permit as approved, except upon an extension of time granted after application to the Planning and Zoning Commission.

If contract or agreement is terminated after completion of any stage and there is ample evidence that further development is not contemplated, the ordinance establishing such special conditional use permit may be rescinded by the City Council, upon its own motion or upon the recommendation of the Planning and Zoning Commission of the City of La Porte, and the previous zoning of the entire tract shall be in full effect on the portion which is undeveloped.

Validation Date: _____

Director of Planning and Development

City Secretary



February 7, 2017

Honorable Mayor Rigby and City Council
City of La Porte

RE: Special Conditional Use Permit Request #16-91000004

Dear Mayor Rigby and City Council:

The La Porte Planning and Zoning Commission held a special meeting on January 31, 2017 to hear a Special Conditional Use Permit request by Western Spherical Developers LLC (on behalf of the Bayforest Ranch LTD and Dr. Malladi S. Reddy, owners) for a Special Conditional Use Permit to allow for development of the La Porte Town Center mixed use development. The subject site is a 40 acre parcel of land located on Highway 146 just north of Wharton Weems Boulevard and is also known as Tract 1 and Tract 1L, Johnson Hunter Survey, Abstract No. 35. The subject site is zoned Planned Unit Development (PUD) and Section 106-659 of the Code of Ordinances requires a Special Conditional Use Permit for development within a PUD district. Following the meeting the Planning and Zoning Commission voted to recommend acceptance of the proposed SCUP.

The Commission voted 6-0 to recommend approval of the proposed SCUP including the list of stated conditions.

Respectfully submitted,

Hal Lawler
Chairman, Planning and Zoning Commission

cc: Ian Clowes, City Planner
Department File



Special Conditional Use Permit Application

Planning and Development Department

604 West Fairmont Parkway

La Porte, Texas 77571

281-470-5057

OVERVIEW

Approval of a Special Conditional Use Permit (SCUP) is required under the following circumstances:

1. To consider approval of certain uses identified as "Conditional Uses" in the city's Commercial and Industrial Use table (Section 106-310 of City of La Porte Code of Ordinances) and Residential Use table (Section 106-331).
2. When developing property in a Planned Unit Development (PUD) zone district, consideration of a SCUP is required in accordance with Section 106-659 of the Code of Ordinances.

SCUP requests are reviewed by the Planning and Zoning Commission as a public hearing. The Commission consists of residents of the community appointed by City Council. The Commission meets on the third Thursday of every month, as necessary. The Commission will forward a recommendation to the City Council for final consideration.

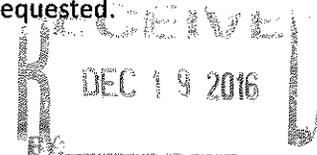
SUBMITTAL REQUIREMENTS

The following application package must be submitted to the Planning and Development Department at least three (3) weeks prior to the desired hearing date.

- Completed **application form**.
- Application fee** of \$400; nonrefundable.
- Site plan, conceptual site plan or general plan**, drawn to scale and dimensioned to show the location of proposed improvements for the development.
- Project description/justification letter** that thoroughly explains what is being requested and why such SCUP should be approved by the Planning and Zoning Commission and City Council.
- Affidavit of posting** fully executed that ensures the applicant will post the required public hearing sign on the property for at least 10 days prior to the Planning and Zoning Commission meeting date. Such sign will be provided by the Planning and Development Department.

PROCESS

- Upon receipt of a complete application package by the Planning and Development Department, the SCUP request will be scheduled for the next available Planning and Zoning Commission meeting date as a public hearing.
- The Planning and Development Department will provide the applicant with a Notice of Public Hearing sign that must be posted on the property where the SCUP is being requested. The sign must be posted on the property visible and within 20 feet from the abutting street for a minimum of 10 days before the scheduled public hearing.
- The Planning and Development Department will publish notice of the public hearing in the Bay Area Observer and at City Hall in conformance with legal requirements. Additionally, the city will send notice of the public hearing to all property owners within 200 feet of the subject property where the SCUP is being requested.





Special Conditional Use Permit Application

Planning and Development Department

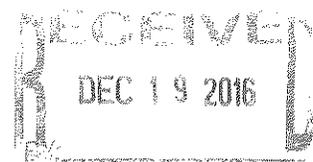
- The Planning and Zoning Commission public hearing will be held in the City Council Chamber at City Hall (604 W. Fairmont Parkway). At the meeting, the Planning and Zoning Commission will conduct a public hearing and provide a recommendation to the City Council on the proposed SCUP. If additional information is requested by the Commission, the public hearing may be continued to a future meeting date.
- The Commission and City Council may impose special conditions on an SCUP in an attempt to ensure compatibility of the proposed development with surrounding properties and the community as a whole.
- The Commission is tasked to review the proposed SCUP and offer a recommendation to the City Council for approval, denial, or approval with conditions.
- Following the Commission's public hearing, their recommendation on the proposed SCUP is then forwarded to City Council for consideration.
- For the City Council public hearing, the Planning and Development Department will publish notice of the public hearing in the Bay Area Observer and post notice at City Hall in conformance with legal requirements.
- The City Council public hearing will be held in the City Council Chamber at City Hall (604 W. Fairmont Parkway). At the meeting, the City Council will conduct a public hearing and render a decision on the proposed SCUP. However, if additional information is requested by the City Council, the public hearing may be continued to a future meeting date.
- The following is an excerpt from the City of La Porte's Code of Ordinances pertaining to SCUP requests.

CODE REQUIREMENTS

Conditional Use Permits

Sec. 106-216. - General conditions for all conditional uses in all zoning districts.

- (a) A special conditional use permit may be granted by the city council for the construction of a building and/or the establishment of a use as described in this or any other section, upon a tract of land in single ownership or under unified control.
- (b) Upon application for a special conditional use permit and submission of a general plan, major development site plan, minor development site plan, or preliminary plat (as the case may be), the city planning and zoning commission shall conduct a public hearing, duly advertised and with proper notice being given to all parties affected, as provided in [section 106-171](#) (Amendment procedures). The general site plan, major development site plan, minor development site plan, or preliminary plat shall be drawn to scale and shall show the arrangement of the project in detail, including parking facilities, location of buildings, building uses to be permitted, means of ingress and egress, and other pertinent information, together with the information required by the development ordinance of the city.
- (c) After public hearing and upon recommendation of the city planning and zoning commission, the city council may modify the final planned unit development plan and issue a special conditional use permit containing such requirements and safeguards as are necessary to protect adjoining property.
- (d) Failure to begin construction within one year after issuance or as scheduled under the terms of a special conditional use permit shall void the permit as approved, except upon an extension of time granted after application to the planning and zoning commission.





Special Conditional Use Permit Application

Planning and Development Department

(e) If construction is terminated after the completion of any stage and there is ample evidence that further development is not contemplated, the division establishing such special conditional use permit may be rescinded by the city council, upon its own motion or upon the recommendation of the planning and zoning commission of the city, and the previous zoning of the entire tract shall be in full effect on the portion which is undeveloped.

(f) Every special conditional use permit granted as provided herein shall be considered as an amendment to the zoning ordinance as applicable to such property.

Sec. 106-217. - Conditions for approval.

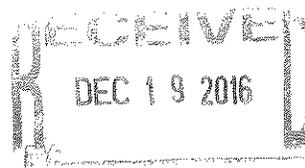
A special conditional use permit shall be issued only if all of the following conditions have been found:

- (1) That the specific use will be compatible with and not injurious to the use and enjoyment of other property, nor significantly diminish or impair property values within the immediate vicinity.
- (2) That the conditions placed on such use as specified in each district have been met by the applicant.
- (3) That the applicant has agreed to meet any additional conditions imposed, based on specific site constraints, and necessary to protect the public interest and welfare of the community.

Sec. 106-218. - Amendments.

The procedure for amendments for a special conditional use permit shall be the same as for a new application.

Please note that requirements for notification of the public hearing are subject to the provisions of Section 106-171 of the Code of Ordinances.





Special Conditional Use Permit Application

Planning and Development Department

PROJECT INFORMATION

Address where SCUP is being requested: Not assigned at this time

Legal description where SCUP is being requested: Tract 1L, Abstract 35 J Hunter & Tr 1 Abstract 35 J Hunter

HCAD Parcel Number where SCUP is being requested: 0402780010034 & 0402780010007

Zoning District: PUD Residential Lot area: 20 acres & 19.45

A request for approval of a Special Conditional Use Permit is hereby made to the City of La Porte. Parcel #0402780010034 / 0402780010007

Description of Request: PUD residential to PUD Conditional Use Permit

Attached hereto is a Project Description Letter describing the project and outlining the reasons why such SCUP should be approved.

PROPERTY OWNER(S) INFORMATION

Name: BayForest Ranch, LTD / Dr. Malladi S. Reddy

Company (if applicable): BayForest Ranch, LTD / 92 Fairmont Lakes, Inc.

Address: 5325 Katy Freeway, Ste 1, Houston, TX 77007 / 2398 Baycrest Drive, Houston, TX 77058

City: Houston State: Tx Zip: 77007 / 77058

Phone: 832-489-6077 / 281-468-5190 Email: judith@mbafundingcorp.com/Dr. Reddy email is unavailable

AUTHORIZED AGENT (if other than owner)

Name: David Miles

Company (if applicable): Western Spherical Developers, LLC

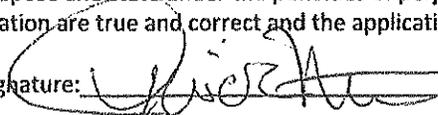
Address: 907 S. Friendswood Dr, Ste 303

City: Friendswood State: TX Zip: 77546

Phone: 936-675-0054 Email: dcmiles@sphericaldev.com

OWNER(S) & AGENT CERTIFICATION

I hereby depose and state under the penalties of perjury that all statements, proposals and/or plans submitted with/or contained in this application are true and correct and the application is complete to the best of my knowledge and belief.

Agent's Signature: 

Date: 12/18/2016

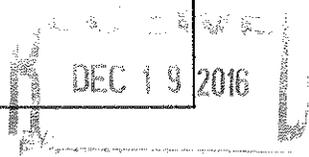
Owner(s)' Signature(s): _____

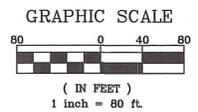
Date: _____

STAFF USE ONLY:

Case Number: _____

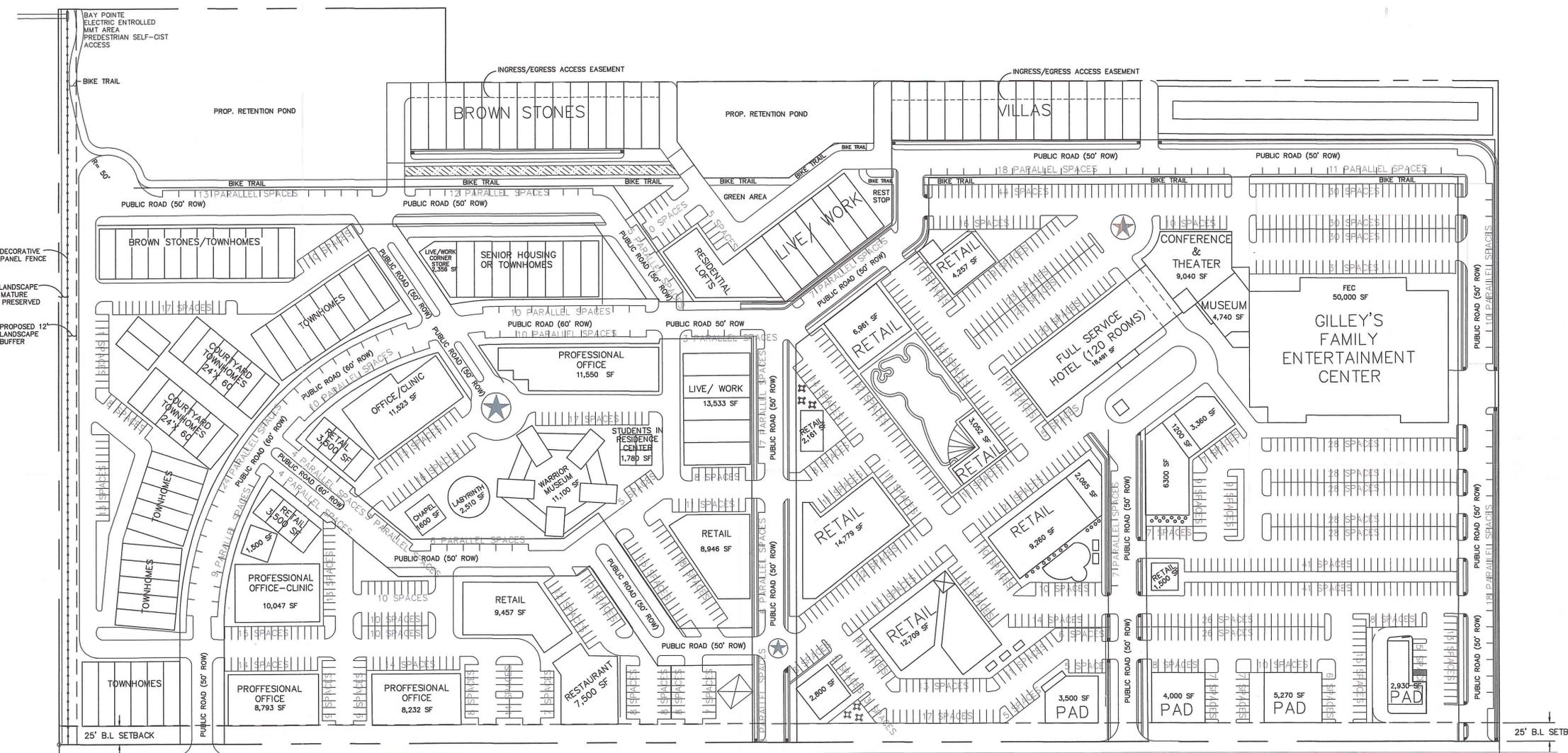
Date Application Received: _____





PARKING TABULATION

1. TOWNHOMES:
REQUIRED = 96 UNITS X 2 = 192 SPACES
PROVIDED = 192 SPACES
 2. LIVE/WORK:
REQUIRED = 11 UNITS X 2 = 22 SPACES
PROVIDED = 22 SPACES
 3. OFFICE(S):
REQUIRED = 51,000 SF X 0.003 = 153 SPACES
PROVIDED = 153 SPACES
 4. RETAIL:
REQUIRED = 94,500 SF X 0.004 = 378 SPACES
PROVIDED = 378 SPACES
 5. RESTAURANT:
REQUIRED = 26,000 SF X 0.008 = 208 SPACES
PROVIDED = 265 SPACES
 6. EVENT:
REQUIRED = 30,800 SF X 0.004 = 123 SPACES
PROVIDED = 152 SPACES
 7. ENTERTAINMENT:
REQUIRED = 68,350 SF X 0.005 = 342 SPACES
PROVIDED = 395 SPACES
- TOTAL REQUIRED SPACES = 1,418 SPACES
TOTAL PROVIDED SPACES = 1,557 SPACES



FAIRMONT PARKWAY
0.7 MI NORTH

STATE HWY 146
R.O.W VARIES

WHARTON WEEMS BLVD
0.4 MI SOUTH

APP.	REVISIONS	DATE
▲		
▲		
▲		

Everest Design Group, llc
 Planning, Engineering, Construction Management
 TBPE FIRM NO. F-9440
 907 S. Friendswood Drive, Suite 200
 Friendswood, Texas 77546
 P: 281-993-3770 FAX: 281-648-2294

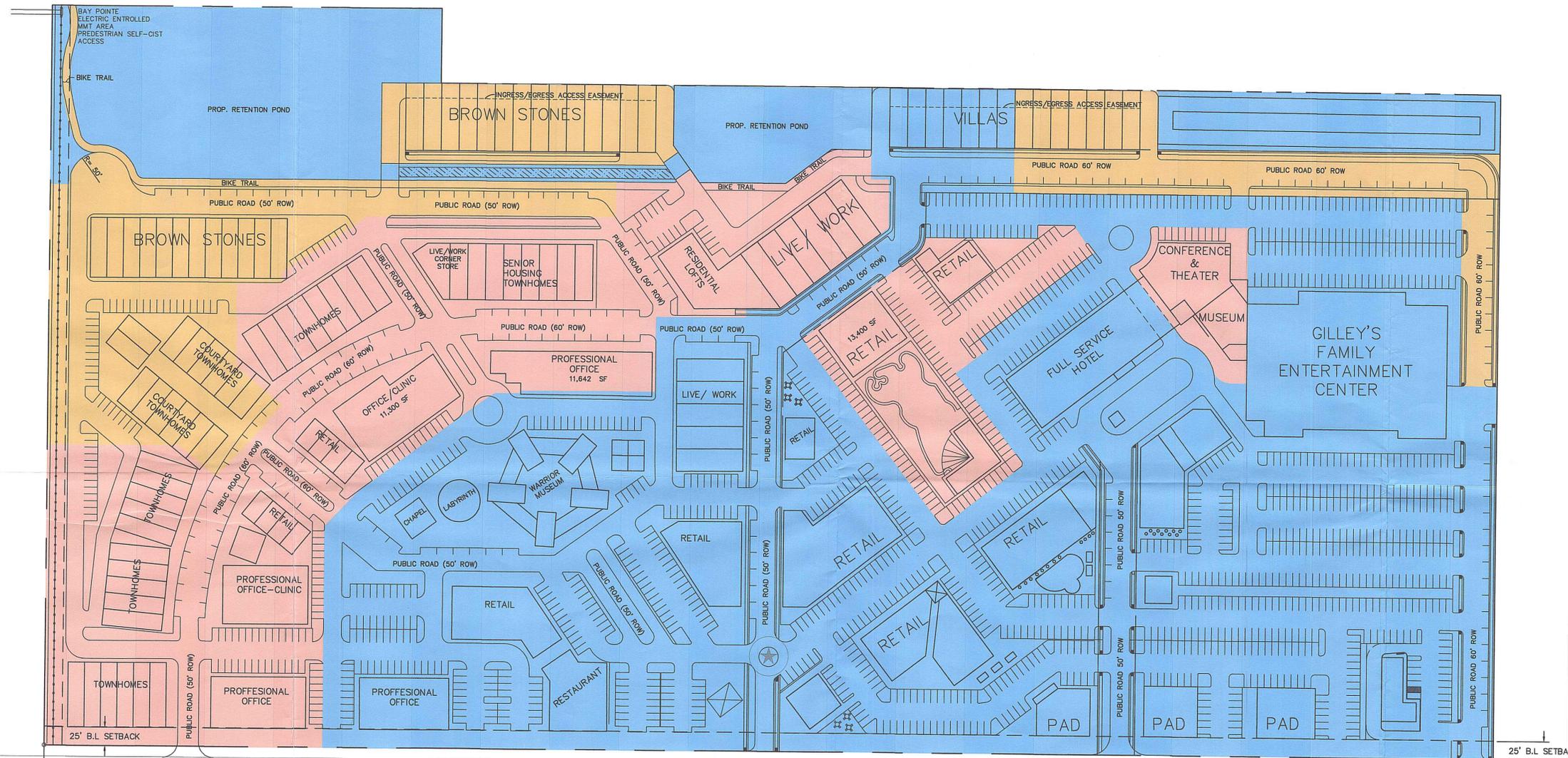
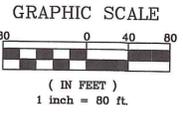
PROJECT: LA PORTE TOWN CENTER
STATE HWY 146, LA PORTE, TX 77571

OVERALL LAND USE PLAN

CITY OF LA PORTE, TEXAS

PROJECT NO:	
DRAWING SCALE	
HORZ: AS SHOWN	
VERT:	

RECEIVED
DEC 19 2016



LEGEND

- PHASE I
- PHASE II
- PHASE III

APP.	REVISIONS	DATE
▲		
▲		

Everest Design Group, llc
 Planning, Engineering, Construction Management
 TBPE FIRM NO. F-9440
 907 S. Friendswood Drive, Suite 200
 Friendswood, Texas 77546
 P: 281-993-3770 FAX: 281-648-2294

PROJECT: **LA PORTE TOWN CENTER**
 STATE HWY 146, LA PORTE, TX 77571

PHASING PLAN

CITY OF LA PORTE, TEXAS

PROJECT NO:	
DRAWING SCALE	
HORZ: AS SHOWN	
VERT:	

FAIRMONT PARKWAY
0.7 MI NORTH

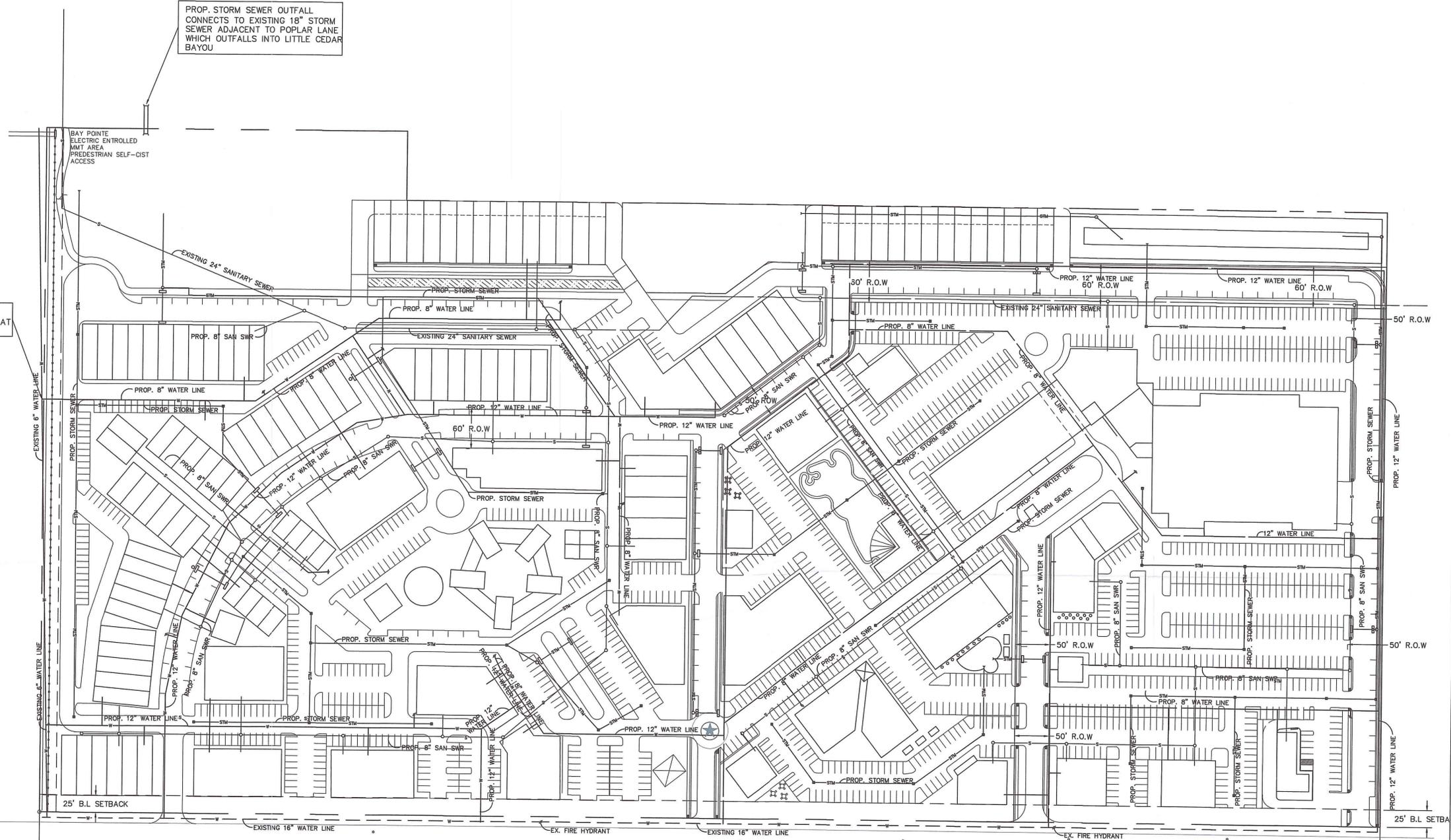
STATE HWY 146
R.O.W VARIES

WHARTON WEEMS BLVD
0.4 MI SOUTH

RECEIVED
DEC 19 2006

PROP. STORM SEWER OUTFALL
CONNECTS TO EXISTING 18" STORM
SEWER ADJACENT TO POPLAR LANE
WHICH OUTFALLS INTO LITTLE CEDAR
BAYOU

PROP. 8" WATER LINE WILL
CONNECT TO EX. 6" WATER LINE AT
POPLAR LANE



FAIRMONT
PARKWAY
0.7 MI
NORTH

STATE HWY 146
R.O.W VARIES

WHARTON WEEMS
BLVD
0.4 MI
SOUTH

APP.	REVISIONS	DATE
▲		
▲		
▲		

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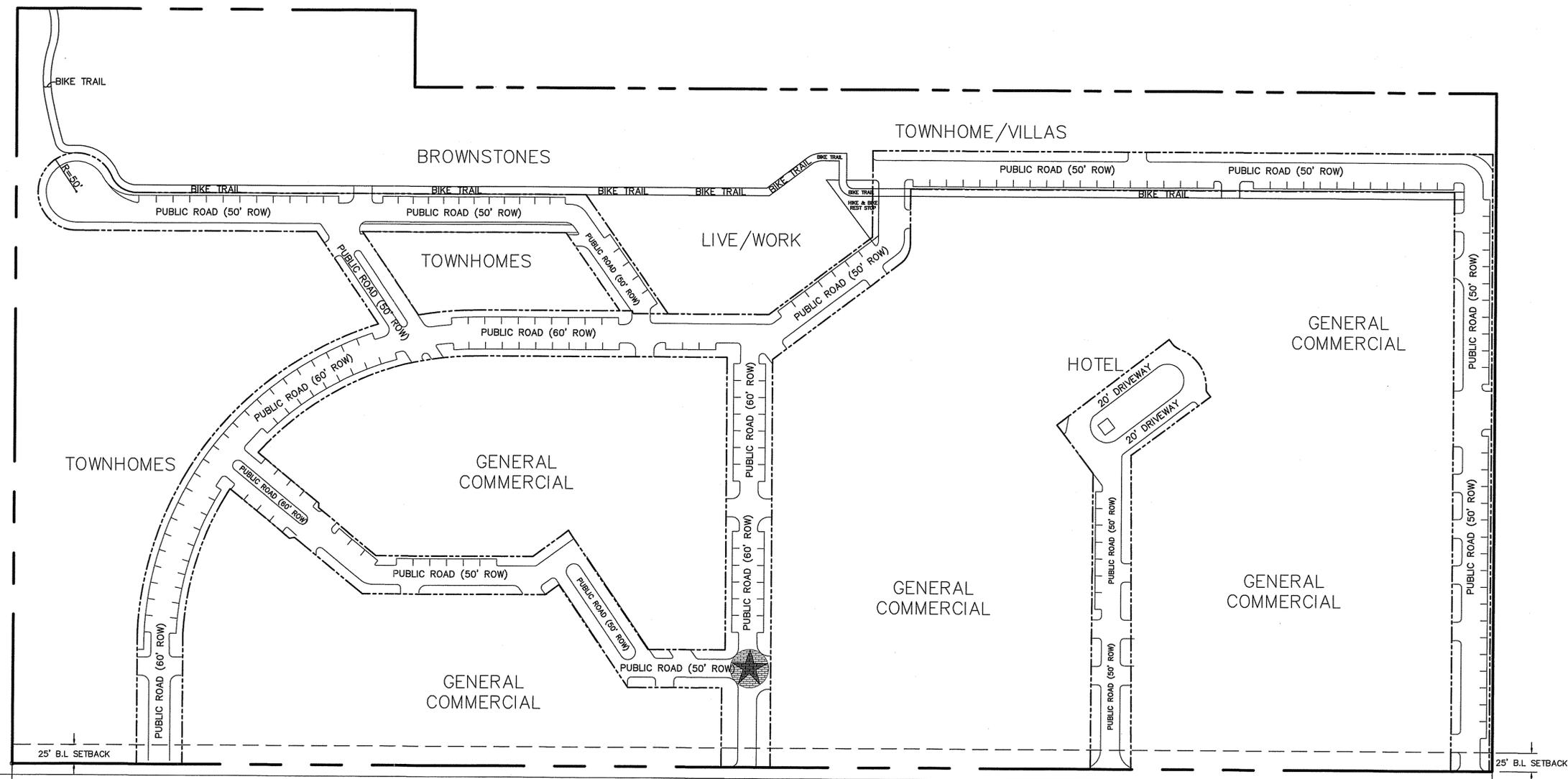
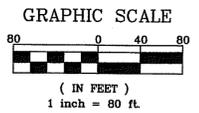
PROJECT: **LA PORTE TOWN CENTER**
 STATE HWY 146, LA PORTE, TX 77571

**OVERALL
 UTILITY PLAN**

CITY OF LA PORTE, TEXAS

PROJECT NO:	
DRAWING SCALE	
HORZ: AS SHOWN	
VERT:	

RECEIVED
 DEC 19 2016



FAIRMONT
PARKWAY
0.7 MI
NORTH

STATE HWY 146
R.O.W VARIES

WHARTON WEEEMS
BLVD
0.4 MI
SOUTH

APP.	REVISIONS	DATE
▲		
▲		
▲		

Everest Design Group, llc
 Planning, Engineering, Construction
 Management
 TBPE FIRM NO. F-9440
 907 S. Friendswood Drive, Suite 200
 Friendswood, Texas 77546
 P: 281-993-3770 FAX: 281-648-2294

PROJECT: LA PORTE TOWN CENTER
 STATE HWY 146, LA PORTE, TX 77571

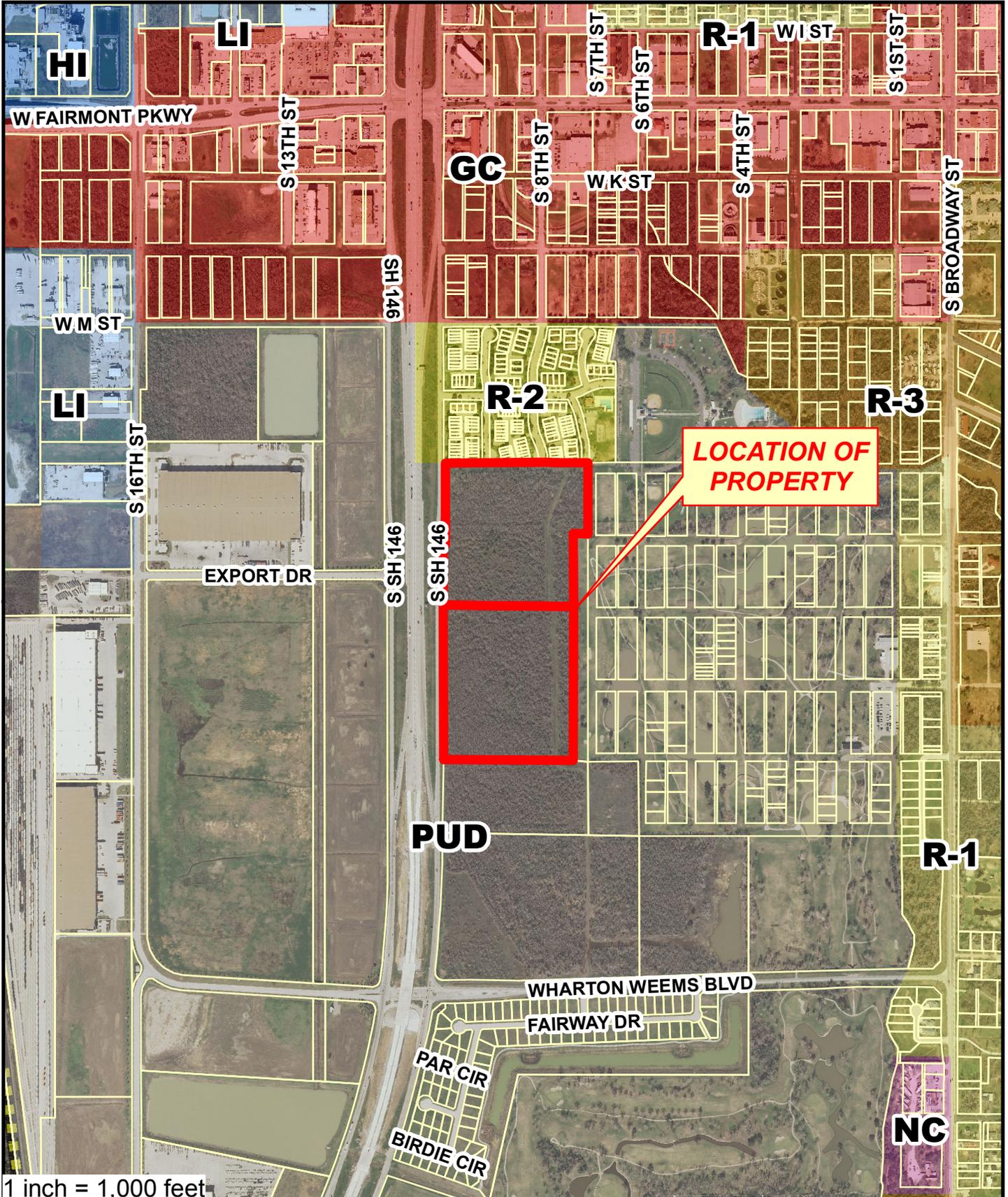
R.O.W EXHIBIT B
 WITH LABELING

CITY OF LA PORTE, TEXAS

PROJECT NO:	
DRAWING SCALE	
HORZ: AS SHOWN	
VERT:	

AREA/ZONING MAP

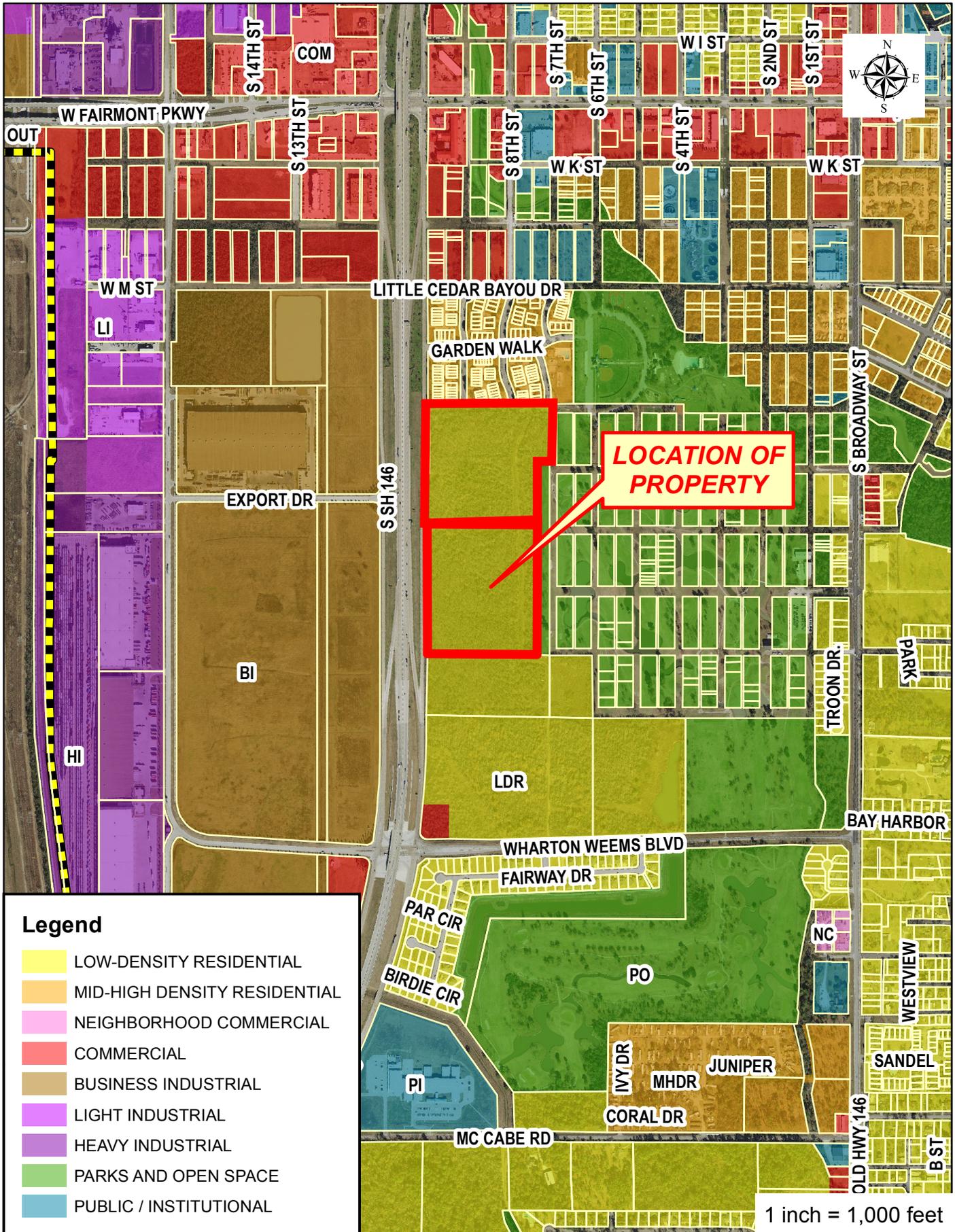
SCUP REQ. #16-9100004



1 inch = 1,000 feet

LAND USE MAP

SCUP REQ. #16-91000004



Legend

- LOW-DENSITY RESIDENTIAL
- MID-HIGH DENSITY RESIDENTIAL
- NEIGHBORHOOD COMMERCIAL
- COMMERCIAL
- BUSINESS INDUSTRIAL
- LIGHT INDUSTRIAL
- HEAVY INDUSTRIAL
- PARKS AND OPEN SPACE
- PUBLIC / INSTITUTIONAL

1 inch = 1,000 feet

REQUEST FOR CITY COUNCIL AGENDA ITEM

Agenda Date Requested: February 27, 2017 Appropriation
Requested By: Ian Clowes Source of Funds: _____
Department: Planning & Development Account Number: _____
Report: Resolution: Ordinance: Amount Budgeted: _____
Other: _____ Amount Requested: _____
Budgeted Item: YES NO

Attachments :

- 1. Ordinance**
- 2. P&Z Recommendation Letter**
- 3. Applicant Information**
- 4. Zoning Map**

SUMMARY & RECOMMENDATIONS

The applicant, Justin Bennett of DCT La Porte LLC, owns an 8.3 acre tract of land north of SH 225 and is requesting consideration of the proposed zone change from Business Industrial (BI) to Light Industrial (LI). This will allow for their existing warehouse/logistics use on site to be in conformance with their zoning designation. The legal description of the subject property Tracts 30A and 31A, Strang Subdivision, Harris County, Texas. The subject site is located on the north side of SH 225 east of Independence Pkwy. The tract has an existing warehouse/logistics facility on site.

The Planning and Zoning Commission conducted a public hearing concerning this request at the January 19, 2017, meeting. There were no responses received from surrounding property owners. After conducting a public hearing on the matter, the Commission voted to recommend approval of the proposed zone change.

The Commission found that the proposed zone change is consistent with the development pattern on the north side of SH 225, most of which is outside of the city limits and part of the Battleground Industrial District.

The subject site is currently zoned Business Industrial (BI) and the City's adopted Future Land Use Map identifies it as Light Industrial use. The rezoning of the subject property to LI would bring this property into conformance with the Future Land Use Plan.

Action Required of Council:

1. Conduct public hearing.
2. Consider approval or other action on a recommendation by the Planning and Zoning Commission to approve an ordinance for zone change request #16-92000004, for the rezoning of an 8.3 acre tract located on the north side of SH 225 east of Independence Pkwy., described as Tracts 30A and 31A, Strang Subdivision from Business Industrial (BI) to Light Industrial (LI).

Approved for City Council Agenda

Corby D. Alexander, City Manager

Date

ORDINANCE NO. _____

AN ORDINANCE AMENDING CHAPTER 106 "ZONING" OF THE CODE OF ORDINANCES OF THE CITY OF LA PORTE BY CHANGING THE ZONING CLASSIFICATION OF TRACTS 30A AND 31A, STRANG SUBDIVISION FROM BUSINESS INDUSTRIAL DISTRICT (BI) TO LIGHT INDUSTRIAL DISTRICT (LI); MAKING CERTAIN FINDINGS OF FACT RELATED TO THE SUBJECT; FINDING COMPLIANCE WITH THE OPEN MEETINGS LAW; AND PROVIDING AN EFFECTIVE DATE HEREOF;

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF LA PORTE, TEXAS:

Section 1: Chapter 106 "Zoning" of the Code of Ordinances is hereby amended by changing the zoning classification of the following described property, to wit: Tracts 30A and 31A, Strang Subdivision, Harris County, Texas, from Business Industrial District (BI) to Light Industrial District (LI).

Section 2: All ordinances or parts of ordinances inconsistent with the terms of this ordinance are hereby repealed; provided, however, that such repeal shall be only to the extent of such inconsistency and in all other respects this ordinance shall be cumulative of other ordinances regulating and governing the subject matter covered by this ordinance.

Section 3. Should any section or part of this ordinance be held unconstitutional, illegal, or invalid, or the application to any person or circumstance for any reasons thereof ineffective or inapplicable, such unconstitutionality, illegality, invalidity, or ineffectiveness of such section or part shall in no way affect, impair or invalidate the remaining portions thereof; but as to such remaining portion or portions, the same shall be and remain in full force and effect and to this end the provisions of this ordinance are declared to be severable.

Section 4. The City Council officially finds, determines, recites and declares that a sufficient written notice of the date, hour, place and subject of this meeting of the City Council is posted at a place convenient to the public at the City Hall of the city for the time required by law preceding this meeting, as required by Chapter 551, Tx. Gov't Code; and that this meeting has been open to the public as required by law at all times during which this ordinance and the subject matter thereof has been discussed, considered and formally acted upon. The City Council further ratifies, approves and confirms such written notice and the contents and posting thereof.

Section 5. The City Council of the City of La Porte hereby finds that public notice was properly mailed to all owners of all properties located within two hundred feet (200') of the properties under consideration in compliance with code provisions.

Section 6: It is directed that the Official Zoning Map of the City of La Porte, Texas be changed to reflect the zoning classification established by this ordinance.

Section 7. The City Council of the City of La Porte hereby finds, determines, and declares that all prerequisites of law have been satisfied and hereby determines and declares that the amendments to the City of La Porte Zoning Map and Classification contained in this Ordinance as amendments thereto are desirable and in furtherance of the goals and objectives stated in the City of La Porte's Comprehensive Plan.

Section 8. This Ordinance shall be effective upon its passage and approval.

PASSED AND APPROVED this the _____ day of February, 2017.

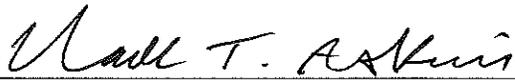
CITY OF LA PORTE, TEXAS

By: _____
Louis R. Rigby, Mayor

ATTEST:

Patrice Fogarty, City Secretary

APPROVED:



Clark T. Askins, Assistant City Attorney



February 7, 2017

Honorable Mayor Rigby and City Council
City of La Porte

RE: Rezone Request #16-92000004

Dear Mayor Rigby and City Council:

The La Porte Planning and Zoning Commission held a public hearing at the January 19, 2017 meeting on a zone change request by Justin Bennett of DCT La Porte LLC for a zone change of Tracts 30A and 31A, Strang Subdivision from Business Industrial (BI) to Light Industrial (LI). The proposed zone change would bring the existing Warehouse/Logistics use into conformance with their zoning designation, as the current use is not permitted in the BI zoning district.

The Commission voted 8-0 to recommend approval of the proposed zone change.

Respectfully submitted,

Hal Lawler
Chairman, Planning and Zoning Commission

cc: Ian Clowes, City Planner
Department File



Zone Change Application

Planning and Development Department

604 West Fairmont Parkway

La Porte, Texas 77571

281-470-5057

OVERVIEW

Zoning protects the rights of property owners while promoting the general welfare of the community. The purpose of zoning is to locate particular land uses where they are most appropriate. A property owner may submit an application requesting consideration of a zone change or modification to the zone district that their property is located. Requests for a rezoning are reviewed in accordance with the provisions of Section 106-171 of the City of La Porte Code of Ordinances and the city's Comprehensive Plan. Rezoning requests are reviewed by the Planning and Zoning Commission as a public hearing. The Commission consists of residents of the community appointed by City Council. The Commission meets on the third Thursday of every month, as necessary. The Commission will forward a recommendation to the City Council for final consideration.

SUBMITTAL REQUIREMENTS

The following application package must be submitted to the Planning and Development Department at least three (3) weeks prior to the desired hearing date.

- Completed **application form**.
- Application fee** of \$400; nonrefundable. *(sent to Paula Bradstreet)*
- Site plan, conceptual site plan or general plan**, drawn to scale and dimensioned to depict the development being proposed.
- Project description/justification letter** that thoroughly explains what is being requested and why such SCUP should be approved by the Planning and Zoning Commission and City Council.
- Affidavit of posting** fully executed that ensures the applicant will post the required public hearing sign on the property for at least 10 days prior to the Planning and Zoning Commission meeting date. Such sign will be provided by the Planning and Development Department.

PROCESS

- Upon receipt of a complete application package by the Planning and Development Department, the zone change request will be scheduled for the next available Planning and Zoning Commission meeting date as a public hearing.
- The Planning and Development Department will provide the applicant with a Notice of Public Hearing sign that must be posted on the property where the zone change is being requested. The sign must be posted on the property visible and within 20 feet from the abutting street for a minimum of 10 days before the scheduled public hearing.
- The Planning and Development Department will publish notice of the public hearing in the Bay Area Observer and at City Hall in conformance with legal requirements. Additionally, the city will send notice of the public hearing to all property owners within 200 feet of the subject property where the zone change is being requested.



Zone Change Application

Planning and Development Department

- The Planning and Zoning Commission public hearing will be held in the City Council Chamber at City Hall (604 W. Fairmont Parkway). At the meeting, the Planning and Zoning Commission will conduct a public hearing and provide a recommendation to the City Council on the proposed rezoning. If additional information is requested by the Commission, the public hearing may be continued to a future meeting date.
- The Commission is tasked to review the proposed zone change and offer a recommendation to the City Council for approval, denial, or approval with conditions.
- Following the Commission's public hearing, their recommendation on the proposed rezoning is then forwarded to City Council for consideration.
- For the City Council public hearing, the Planning and Development Department will publish notice of the public hearing in the Bay Area Observer and post notice at City Hall in conformance with legal requirements.
- The City Council public hearing will be held in the City Council Chamber at City Hall (604 W. Fairmont Parkway). At the meeting, the City Council will conduct a public hearing and render a decision on the proposed zone change. However, if additional information is requested by the City Council, the public hearing may be continued to a future meeting date.
- The following is an excerpt from the City of La Porte's Code of Ordinances pertaining to zone change requests.

CODE REQUIREMENTS

Rezoning Requests

Sec. 106-171. - Amendment procedures.

The city council may from time to time, on its own motion, the motion of the planning and zoning commission, or on petition, amend, supplement, change, modify or repeal the regulations, restrictions, and boundaries herein established.

- (1) *Public hearing before the city planning and zoning commission.* Before taking any action on any proposed amendment, supplement, change, or modification, the city council shall submit the same to the city planning and zoning commission which shall make a preliminary report and hold a public hearing thereon before submitting its final report to the city council.
- (2) *Notice of public hearing before city planning and zoning commission.*
 - a. Written notice of all public hearings before the city planning and zoning commission on proposed changes in classification shall be sent to owners of real property lying within 200 feet of the property on which the change in classification is proposed as well as the La Porte Independent School District, such notice to be given not less than ten days before the date set for hearing, to all owners who have rendered their said property for city taxes as the ownership appears on the last approved city tax roll. Such notice may be served by depositing the same, properly addressed and postage paid, in the city post office. At least 15 days notice of the time and place of such hearing shall be published once in a newspaper of general circulation in the city.
 - b. Requirements for public notice by sign posting:
 1. Public notice for procedures requiring public notice by sign posting shall be provided by the city at least 15 days before the public hearing.
 2. The applicant shall place public notice sign on the property within 20 feet of the abutting street.
 3. The sign shall be clearly visible, readable, and not to create hazard to traffic on the public right-of-way abutting the property.
 4. Public notice sign shall include the date, time, place, and purpose of public hearing.
 5. The applicant must return the sign to the city within ten days after the appeal period for the public hearing has ended.
 6. The erection of this sign shall not require a permit from the city.



Zone Change Application

Planning and Development Department

- (3) *Publication of notice.* In the event a public hearing shall be held by the city planning and zoning commission in regard to a change of this chapter not involving particular property but involving a change in the chapter generally, notice of such hearing shall be given by publication once in a newspaper of general circulation in the city stating the time and place of such hearing, which time shall not be earlier than 15 days from the day of such publication.
- (4) *Submission of findings and recommendations to city council.* The city planning and zoning commission shall forward its written findings of fact and recommendations to city council within 15 days of the close of the hearings.
- (5) *Public hearing before city council.*
 - a. Upon receipt of the written recommendations from the planning and zoning commission, a public hearing shall be held by the city council before adopting any proposed amendment, supplement, change, modification or repeal of the regulations, restrictions, and boundaries herein established.
 - b. Notice of such hearing shall be given by publication once in a newspaper of general circulation on the city stating the time and place of such hearing, which time shall not be earlier than 15 days from the day of such publication.
- (6) *Council actions.* The city council shall act upon such motion or petition within 30 days from the date the final report of the city planning and zoning commission was submitted to the city council.
- (7) *Protests.*
 - a. In case of a protest against any such amendment, supplement, change, or repeal of the regulations, restrictions, and boundaries herein established, a written protest filed with the enforcement officer and signed by the owners of 20 percent or more of either:
 1. The area of lots or land covered by the proposed change; or
 2. The area of lots or land immediately adjoining the area covered by the proposed change and extending 200 feet from that area.

Such amendment, supplement, change, modification, or repeal shall not become effective except by the favorable vote of three-fourths of all the members of the city council.
 3. Streets and alleys shall be included when computing the area of land from which a protest may be filed.
- (8) *Vote to overrule.* The affirmative vote of at least three-fourths of the city council is required to overrule a recommendation of the city planning and zoning commission that a proposed change to this chapter or boundary be denied.



Zone Change Application

Planning and Development Department

PROJECT INFORMATION

Address where zone change is being requested: 9701 Highway 225, LaPorte, Texas 77571

Legal description where zone change is being requested: TRS 30A & 31A-1 Strang

HCAD Parcel Number where zone change is being requested: 0642230000167

Zoning District: Business Industrial Lot area: 360,586 square-feet

A request for approval of a zone change is hereby made to the City of La Porte.

Description of Request: Zoning Change from Business Industrial to Light Industrial

Attached hereto is a Project Description Letter describing the project and outlining the reasons why such SCUP should be approved.

PROPERTY OWNER(S) INFORMATION

Name: _____

Company (if applicable): DCT LaPorte LLC; Attention: Justin E. Bennett

Address: 518 17th Street, 8th Floor

City: Denver State: CO Zip: 80202

Phone: (713) 502-2704 Email: jbennett@dctindustrial.com

AUTHORIZED AGENT (If other than owner)

Name: _____

Company (if applicable): _____

Address: _____

City: _____ State: _____ Zip: _____

Phone: _____ Email: _____

OWNER(S) & AGENT CERTIFICATION

I hereby depose and state under the penalties of perjury that all statements, proposals and/or plans submitted with/or contained in this application are true and correct and the application is complete to the best of my knowledge and belief.

Agent's Signature: _____ Date: _____

Owner(s)' Signature(s):  Date: 12/5/2016

STAFF USE ONLY:

Case Number: _____

Date Application Received: _____



AFFIDAVIT OF POSTING
PLANNING AND ZONING COMMISSION PUBLIC HEARING

STATE OF TEXAS

COUNTY OF HARRIS

CITY OF LA PORTE

The undersigned hereby duly swears on oath and says:

1. A public hearing sign was provided to me by the City of La Porte's Planning and Development Department. I hereby attest that said sign will be posted on the following described property, which is subject to the application:
ADDRESS: 9701 Highway 225, LaPorte Texas 77571
LEGAL DESCRIPTION: TRS 30A & 31A-1 Strang
2. In accordance with the provisions of Section 106-194 of the city's Code of Ordinances, I hereby attest that said sign will be posted on the described property for no less than fifteen (15) days prior to the scheduled public hearing; starting at least on the following date: December 19, 2016.
3. Said sign shall be placed on the property within 20 feet of the abutting street.
4. Said sign shall remain legible and visible for the entire fifteen (15) day posting period. If sign is damaged or missing, I hereby attest that I will contact the City of La Porte for a replacement sign.

[Signature]
Applicant's Signature

Justin E. Bennett
Applicant's Printed Name

Subscribed and sworn before me this 5th day of December, 2016, by
Justin E Bennett (Print Applicant's Name).

[Signature]
Notary Public

My commission expires: 03/13/2018



(Seal)



DCT Industrial Trust | 10796 Kempwood Drive | Houston, TX 77043

December 6, 2016

City of LaPorte
Attention: Planning and Zoning Commission
604 West Fairmount Parkway
LaPorte, Texas 77571

Re: **Zoning Change Application**
9701 and 9705 State Highway 225
LaPorte, Texas 77571

Dear Ladies and Gentlemen:

DCT LaPorte, LLC (“**DCT**”) owns those certain warehouse facilities at 9701 and 9705 State Highway 225 in LaPorte, Texas (collectively, “**DCT Facilities**”) and Exel Logistics Dist. Corp (“**Exel**”) owns that certain land tract located at 9701 State Highway 225 in LaPorte, Texas (“**Exel Land**”).

The DCT Facilities and the Exel Land are located North of Highway 225 between Independence Parkway and Miller Cut Off Road adjacent to the Battleground Industrial District. The facilities and the land are currently zoned Business Industrial.

Based on conversations with City of LaPorte (“**City**”) planning staff, we understand that the current use within the DCT Facilities has been “grandfathered” prior to current City Zoning Codes, which would permit the existing uses within Business Industrial; however, such existing uses would not be permitted within an area zoned Business Industrial pursuant to the City Zoning Code, as amended.

DCT hereby requests a zoning change from Business Industrial to Light Industrial to accommodate the current use within the DCT Facilities, which are occupied by Exel, Inc., to comply with the City Zone Code, as amended.

DCT, as authorized agent of Exel, hereby requests a zoning change from Business Industrial to Light Industrial to accommodate the future use of the Exel Land. DCT and Exel are currently negotiating a build-to-suit transaction whereby DCT will purchase the Exel Land and construct a new warehouse facility on the Exel Land to be occupied by Exel, Inc.

Our zoning change request to Light Industrial is consistent with the existing uses that are adjacent to the DCT Facilities and the Exel Land. The adjacent owners are Braskem,

Lubrizol, Clean Harbours and Akzo Nobel. Such uses are heavier manufacturing and petrochemical/refining operations located within the Battleground Industrial District.

Additionally, State Highway 225 serves as a High Frequency Truck Route, which supports the desire to mitigate heavier truck traffic within the City. Both the DCT Facilities and the Exel Land are located along a High Frequency Truck Route. In this regard, the requested zoning change is accretive to City's goals of encouraging development while confining industrial uses to zoned areas and reducing heavier truck traffic off designated truck routes.

We look forward to working with the City, and would greatly appreciate your favorable consideration of our Zoning Change Application.

Please contact me if you have any questions regarding this matter.

Very Truly Yours,

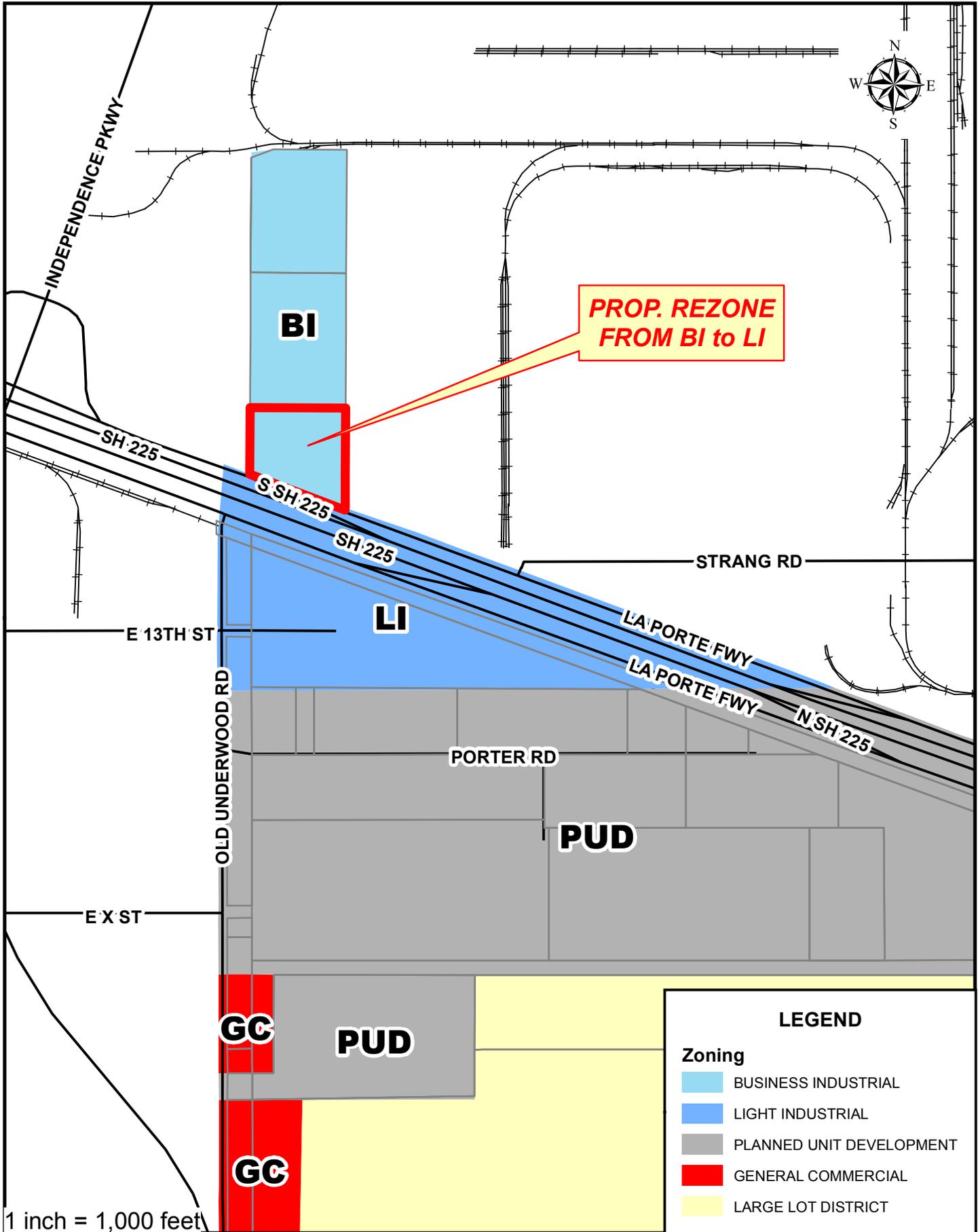
A handwritten signature in black ink, appearing to read "Justin E. Bennett" with a stylized flourish at the end.

Justin E. Bennett
Senior Vice President

cc: Steve Hess, Exel, Inc. dba DHL Supply Chain
Bonnie Roberts, Exel, Inc. dba DHL Supply Chain
David Lawrence, DCT Industrial Trust

ZONING MAP

ZONE CHANGE #16-92000004



REQUEST FOR CITY COUNCIL AGENDA ITEM

Agenda Date Requested: February 27, 2017 Appropriation
Requested By: Ian Clowes Source of Funds: _____
Department: Planning & Development Account Number: _____
Report: Resolution: Ordinance: Amount Budgeted: _____
Other: _____ Amount Requested: _____
Budgeted Item: YES NO

Attachments :

- 1. Ordinance**
- 2. P&Z Recommendation Letter**
- 3. Applicant Information**
- 4. Zoning Map**

SUMMARY & RECOMMENDATIONS

The applicant, Justin Bennett of DCT La Porte LLC, owns a 12 acre tract of land north of SH 225 and is requesting consideration of the proposed zone change from Business Industrial (BI) to Light Industrial (LI). This will allow for their existing warehouse/logistics use on site to be in conformance with their zoning designation. The legal description of the subject property Tracts 17-1A and 18A, Strang Subdivision, Harris County, Texas. The subject site is located on the north side of SH 225 east of Independence Pkwy. The tract has an existing warehouse/logistics facility on site.

The Planning and Zoning Commission conducted a public hearing concerning this request at the January 19, 2017, meeting. There were no responses received from surrounding property owners. After conducting a public hearing on the matter, the Commission voted to recommend approval of the proposed zone change.

The Commission found that the proposed zone change is consistent with the development pattern on the north side of SH 225, most of which is outside of the city limits and part of the Battleground Industrial District.

The subject site is currently zoned Business Industrial (BI) and the City's adopted Future Land Use Map identifies it as Light Industrial use. The rezoning of the subject property to LI would bring this property into conformance with the Future Land Use Plan.

Action Required of Council:

1. Conduct public hearing.
2. Consider approval or other action on a recommendation by the Planning and Zoning Commission to approve an ordinance for zone change request #16-92000005, for the rezoning of a 12 acre tract located on the north side of SH 225 east of Independence Pkwy., described as Tracts 17-1A and 18A, Strang Subdivision from Business Industrial (BI) to Light Industrial (LI).

Approved for City Council Agenda

Corby D. Alexander, City Manager

Date

ORDINANCE NO. _____

AN ORDINANCE AMENDING CHAPTER 106 "ZONING" OF THE CODE OF ORDINANCES OF THE CITY OF LA PORTE BY CHANGING THE ZONING CLASSIFICATION OF TRACTS 17-1A AND 18A, STRANG SUBDIVISION FROM BUSINESS INDUSTRIAL DISTRICT (BI) TO LIGHT INDUSTRIAL DISTRICT (LI); MAKING CERTAIN FINDINGS OF FACT RELATED TO THE SUBJECT; FINDING COMPLIANCE WITH THE OPEN MEETINGS LAW; AND PROVIDING AN EFFECTIVE DATE HEREOF;

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF LA PORTE, TEXAS:

Section 1: Chapter 106 "Zoning" of the Code of Ordinances is hereby amended by changing the zoning classification of the following described property, to wit: Tracts 17-1A and 18A, Strang Subdivision, Harris County, Texas, from Business Industrial District (BI) to Light Industrial District (LI).

Section 2: All ordinances or parts of ordinances inconsistent with the terms of this ordinance are hereby repealed; provided, however, that such repeal shall be only to the extent of such inconsistency and in all other respects this ordinance shall be cumulative of other ordinances regulating and governing the subject matter covered by this ordinance.

Section 3. Should any section or part of this ordinance be held unconstitutional, illegal, or invalid, or the application to any person or circumstance for any reasons thereof ineffective or inapplicable, such unconstitutionality, illegality, invalidity, or ineffectiveness of such section or part shall in no way affect, impair or invalidate the remaining portions thereof; but as to such remaining portion or portions, the same shall be and remain in full force and effect and to this end the provisions of this ordinance are declared to be severable.

Section 4. The City Council officially finds, determines, recites and declares that a sufficient written notice of the date, hour, place and subject of this meeting of the City Council is posted at a place convenient to the public at the City Hall of the city for the time required by law preceding this meeting, as required by Chapter 551, Tx. Gov't Code; and that this meeting has been open to the public as required by law at all times during which this ordinance and the subject matter thereof has been discussed, considered and formally acted upon. The City Council further ratifies, approves and confirms such written notice and the contents and posting thereof.

Section 5. The City Council of the City of La Porte hereby finds that public notice was properly mailed to all owners of all properties located within two hundred feet (200') of the properties under consideration in compliance with code provisions.

Section 6: It is directed that the Official Zoning Map of the City of La Porte, Texas be changed to reflect the zoning classification established by this ordinance.

Section 7. The City Council of the City of La Porte hereby finds, determines, and declares that all prerequisites of law have been satisfied and hereby determines and declares that the amendments to the City of La Porte Zoning Map and Classification contained in this Ordinance as amendments thereto are desirable and in furtherance of the goals and objectives stated in the City of La Porte's Comprehensive Plan.

Section 8. This Ordinance shall be effective upon its passage and approval.

PASSED AND APPROVED this the _____ day of February, 2017.

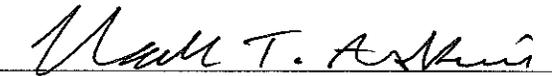
CITY OF LA PORTE, TEXAS

By: _____
Louis R. Rigby, Mayor

ATTEST:

Patrice Fogarty, City Secretary

APPROVED:



Clark T. Askins, Assistant City Attorney



February 7, 2017

Honorable Mayor Rigby and City Council
City of La Porte

RE: Rezone Request #16-92000005

Dear Mayor Rigby and City Council:

The La Porte Planning and Zoning Commission held a public hearing at the January 19, 2017 meeting on a zone change request by Justin Bennett of DCT La Porte LLC for a zone change of Tracts 17-1A and 18A, Strang Subdivision from Business Industrial (BI) to Light Industrial (LI). The proposed zone change would bring the existing Warehouse/Logistics use into conformance with their zoning designation, as the current use is not permitted in the BI zoning district.

The Commission voted 8-0 to recommend approval of the proposed zone change.

Respectfully submitted,

Hal Lawler
Chairman, Planning and Zoning Commission

cc: Ian Clowes, City Planner
Department File



Zone Change Application

Planning and Development Department

604 West Fairmont Parkway

La Porte, Texas 77571

281-470-5057

OVERVIEW

Zoning protects the rights of property owners while promoting the general welfare of the community. The purpose of zoning is to locate particular land uses where they are most appropriate. A property owner may submit an application requesting consideration of a zone change or modification to the zone district that their property is located. Requests for a rezoning are reviewed in accordance with the provisions of Section 106-171 of the City of La Porte Code of Ordinances and the city's Comprehensive Plan. Rezoning requests are reviewed by the Planning and Zoning Commission as a public hearing. The Commission consists of residents of the community appointed by City Council. The Commission meets on the third Thursday of every month, as necessary. The Commission will forward a recommendation to the City Council for final consideration.

SUBMITTAL REQUIREMENTS

The following application package must be submitted to the Planning and Development Department at least three (3) weeks prior to the desired hearing date.

- Completed application form.
- Application fee of \$400; nonrefundable. *(sent to Paula Bradstreet)*
- Site plan, conceptual site plan or general plan, drawn to scale and dimensioned to depict the development being proposed.
- Project description/justification letter that thoroughly explains what is being requested and why such SCUP should be approved by the Planning and Zoning Commission and City Council.
- Affidavit of posting fully executed that ensures the applicant will post the required public hearing sign on the property for at least 10 days prior to the Planning and Zoning Commission meeting date. Such sign will be provided by the Planning and Development Department.

PROCESS

- Upon receipt of a complete application package by the Planning and Development Department, the zone change request will be scheduled for the next available Planning and Zoning Commission meeting date as a public hearing.
- The Planning and Development Department will provide the applicant with a Notice of Public Hearing sign that must be posted on the property where the zone change is being requested. The sign must be posted on the property visible and within 20 feet from the abutting street for a minimum of 10 days before the scheduled public hearing.
- The Planning and Development Department will publish notice of the public hearing in the Bay Area Observer and at City Hall in conformance with legal requirements. Additionally, the city will send notice of the public hearing to all property owners within 200 feet of the subject property where the zone change is being requested.



Zone Change Application

Planning and Development Department

- The Planning and Zoning Commission public hearing will be held in the City Council Chamber at City Hall (604 W. Fairmont Parkway). At the meeting, the Planning and Zoning Commission will conduct a public hearing and provide a recommendation to the City Council on the proposed rezoning. If additional information is requested by the Commission, the public hearing may be continued to a future meeting date.
- The Commission is tasked to review the proposed zone change and offer a recommendation to the City Council for approval, denial, or approval with conditions.
- Following the Commission's public hearing, their recommendation on the proposed rezoning is then forwarded to City Council for consideration.
- For the City Council public hearing, the Planning and Development Department will publish notice of the public hearing in the Bay Area Observer and post notice at City Hall in conformance with legal requirements.
- The City Council public hearing will be held in the City Council Chamber at City Hall (604 W. Fairmont Parkway). At the meeting, the City Council will conduct a public hearing and render a decision on the proposed zone change. However, if additional information is requested by the City Council, the public hearing may be continued to a future meeting date.
- The following is an excerpt from the City of La Porte's Code of Ordinances pertaining to zone change requests.

CODE REQUIREMENTS

Rezoning Requests

Sec. 106-171. - Amendment procedures.

The city council may from time to time, on its own motion, the motion of the planning and zoning commission, or on petition, amend, supplement, change, modify or repeal the regulations, restrictions, and boundaries herein established.

- (1) *Public hearing before the city planning and zoning commission.* Before taking any action on any proposed amendment, supplement, change, or modification, the city council shall submit the same to the city planning and zoning commission which shall make a preliminary report and hold a public hearing thereon before submitting its final report to the city council.
- (2) *Notice of public hearing before city planning and zoning commission.*
 - a. Written notice of all public hearings before the city planning and zoning commission on proposed changes in classification shall be sent to owners of real property lying within 200 feet of the property on which the change in classification is proposed as well as the La Porte Independent School District, such notice to be given not less than ten days before the date set for hearing, to all owners who have rendered their said property for city taxes as the ownership appears on the last approved city tax roll. Such notice may be served by depositing the same, properly addressed and postage paid, in the city post office. At least 15 days notice of the time and place of such hearing shall be published once in a newspaper of general circulation in the city.
 - b. Requirements for public notice by sign posting:
 1. Public notice for procedures requiring public notice by sign posting shall be provided by the city at least 15 days before the public hearing.
 2. The applicant shall place public notice sign on the property within 20 feet of the abutting street.
 3. The sign shall be clearly visible, readable, and not to create hazard to traffic on the public right-of-way abutting the property.
 4. Public notice sign shall include the date, time, place, and purpose of public hearing.
 5. The applicant must return the sign to the city within ten days after the appeal period for the public hearing has ended.
 6. The erection of this sign shall not require a permit from the city.



Zone Change Application

Planning and Development Department

- (3) *Publication of notice.* In the event a public hearing shall be held by the city planning and zoning commission in regard to a change of this chapter not involving particular property but involving a change in the chapter generally, notice of such hearing shall be given by publication once in a newspaper of general circulation in the city stating the time and place of such hearing, which time shall not be earlier than 15 days from the day of such publication.
- (4) *Submission of findings and recommendations to city council.* The city planning and zoning commission shall forward its written findings of fact and recommendations to city council within 15 days of the close of the hearings.
- (5) *Public hearing before city council.*
 - a. Upon receipt of the written recommendations from the planning and zoning commission, a public hearing shall be held by the city council before adopting any proposed amendment, supplement, change, modification or repeal of the regulations, restrictions, and boundaries herein established.
 - b. Notice of such hearing shall be given by publication once in a newspaper of general circulation on the city stating the time and place of such hearing, which time shall not be earlier than 15 days from the day of such publication.
- (6) *Council actions.* The city council shall act upon such motion or petition within 30 days from the date the final report of the city planning and zoning commission was submitted to the city council.
- (7) *Protests.*
 - a. In case of a protest against any such amendment, supplement, change, or repeal of the regulations, restrictions, and boundaries herein established, a written protest filed with the enforcement officer and signed by the owners of 20 percent or more of either:
 1. The area of lots or land covered by the proposed change; or
 2. The area of lots or land immediately adjoining the area covered by the proposed change and extending 200 feet from that area.

Such amendment, supplement, change, modification, or repeal shall not become effective except by the favorable vote of three-fourths of all the members of the city council.
 3. Streets and alleys shall be included when computing the area of land from which a protest may be filed.
- (8) *Vote to overrule.* The affirmative vote of at least three-fourths of the city council is required to overrule a recommendation of the city planning and zoning commission that a proposed change to this chapter or boundary be denied.



Zone Change Application

Planning and Development Department

PROJECT INFORMATION

Address where zone change is being requested: 9705 Highway 225, LaPorte, Texas 77571

Legal description where zone change is being requested: TRS 17A-1 & 18A Strang

HCAD Parcel Number where zone change is being requested: 0642240000030

Zoning District: Business Industrial Lot area: 522,020 square-feet

A request for approval of a zone change is hereby made to the City of La Porte.

Description of Request: Zoning Change from Business Industrial to Light Industrial

Attached hereto is a Project Description Letter describing the project and outlining the reasons why such SCUP should be approved.

PROPERTY OWNER(S) INFORMATION

Name: _____

Company (if applicable): DCT LaPorte LLC; Attention: Justin E. Bennett

Address: 518 17th Street, 8th Floor

City: Denver State: CO Zip: 80202

Phone: (713) 502-2704 Email: jbennett@dctindustrial.com

AUTHORIZED AGENT (If other than owner)

Name: _____

Company (if applicable): _____

Address: _____

City: _____ State: _____ Zip: _____

Phone: _____ Email: _____

OWNER(S) & AGENT CERTIFICATION

I hereby depose and state under the penalties of perjury that all statements, proposals and/or plans submitted with/or contained in this application are true and correct and the application is complete to the best of my knowledge and belief.

Agent's Signature: _____ Date: _____

Owner(s)' Signature(s):  Date: 12/5/2016

STAFF USE ONLY:

Case Number: _____

Date Application Received: _____



AFFIDAVIT OF POSTING
PLANNING AND ZONING COMMISSION PUBLIC HEARING

STATE OF TEXAS

COUNTY OF HARRIS

CITY OF LA PORTE

The undersigned hereby duly swears on oath and says:

1. A public hearing sign was provided to me by the City of La Porte's Planning and Development Department. I hereby attest that said sign will be posted on the following described property, which is subject to the application:

ADDRESS: 9705 Highway 225, LaPorte Texas 77571

LEGAL DESCRIPTION: TRS 17A-1 & 18A Strang

2. In accordance with the provisions of Section 106-194 of the city's Code of Ordinances, I hereby attest that said sign will be posted on the described property for no less than fifteen (15) days prior to the scheduled public hearing; starting at least on the following date: December 19, 2016.
3. Said sign shall be placed on the property within 20 feet of the abutting street.
4. Said sign shall remain legible and visible for the entire fifteen (15) day posting period. If sign is damaged or missing, I hereby attest that I will contact the City of La Porte for a replacement sign.

[Signature]
Applicant's Signature

Justin E. Bennett
Applicant's Printed Name

Subscribed and sworn before me this 5th day of December, 2016 by
Justin E. Bennett (Print Applicant's Name).

[Signature]
Notary Public

(Seal)

My commission expires: 03/13/2018





DCT Industrial Trust | 10796 Kempwood Drive | Houston, TX 77043

December 6, 2016

City of LaPorte
Attention: Planning and Zoning Commission
604 West Fairmount Parkway
LaPorte, Texas 77571

Re: **Zoning Change Application**
9701 and 9705 State Highway 225
LaPorte, Texas 77571

Dear Ladies and Gentlemen:

DCT LaPorte, LLC (“**DCT**”) owns those certain warehouse facilities at 9701 and 9705 State Highway 225 in LaPorte, Texas (collectively, “**DCT Facilities**”) and Exel Logistics Dist. Corp (“**Exel**”) owns that certain land tract located at 9701 State Highway 225 in LaPorte, Texas (“**Exel Land**”).

The DCT Facilities and the Exel Land are located North of Highway 225 between Independence Parkway and Miller Cut Off Road adjacent to the Battleground Industrial District. The facilities and the land are currently zoned Business Industrial.

Based on conversations with City of LaPorte (“**City**”) planning staff, we understand that the current use within the DCT Facilities has been “grandfathered” prior to current City Zoning Codes, which would permit the existing uses within Business Industrial; however, such existing uses would not be permitted within an area zoned Business Industrial pursuant to the City Zoning Code, as amended.

DCT hereby requests a zoning change from Business Industrial to Light Industrial to accommodate the current use within the DCT Facilities, which are occupied by Exel, Inc., to comply with the City Zone Code, as amended.

DCT, as authorized agent of Exel, hereby requests a zoning change from Business Industrial to Light Industrial to accommodate the future use of the Exel Land. DCT and Exel are currently negotiating a build-to-suit transaction whereby DCT will purchase the Exel Land and construct a new warehouse facility on the Exel Land to be occupied by Exel, Inc.

Our zoning change request to Light Industrial is consistent with the existing uses that are adjacent to the DCT Facilities and the Exel Land. The adjacent owners are Braskem,

Lubrizol, Clean Harbours and Akzo Nobel. Such uses are heavier manufacturing and petrochemical/refining operations located within the Battleground Industrial District.

Additionally, State Highway 225 serves as a High Frequency Truck Route, which supports the desire to mitigate heavier truck traffic within the City. Both the DCT Facilities and the Exel Land are located along a High Frequency Truck Route. In this regard, the requested zoning change is accretive to City's goals of encouraging development while confining industrial uses to zoned areas and reducing heavier truck traffic off designated truck routes.

We look forward to working with the City, and would greatly appreciate your favorable consideration of our Zoning Change Application.

Please contact me if you have any questions regarding this matter.

Very Truly Yours,

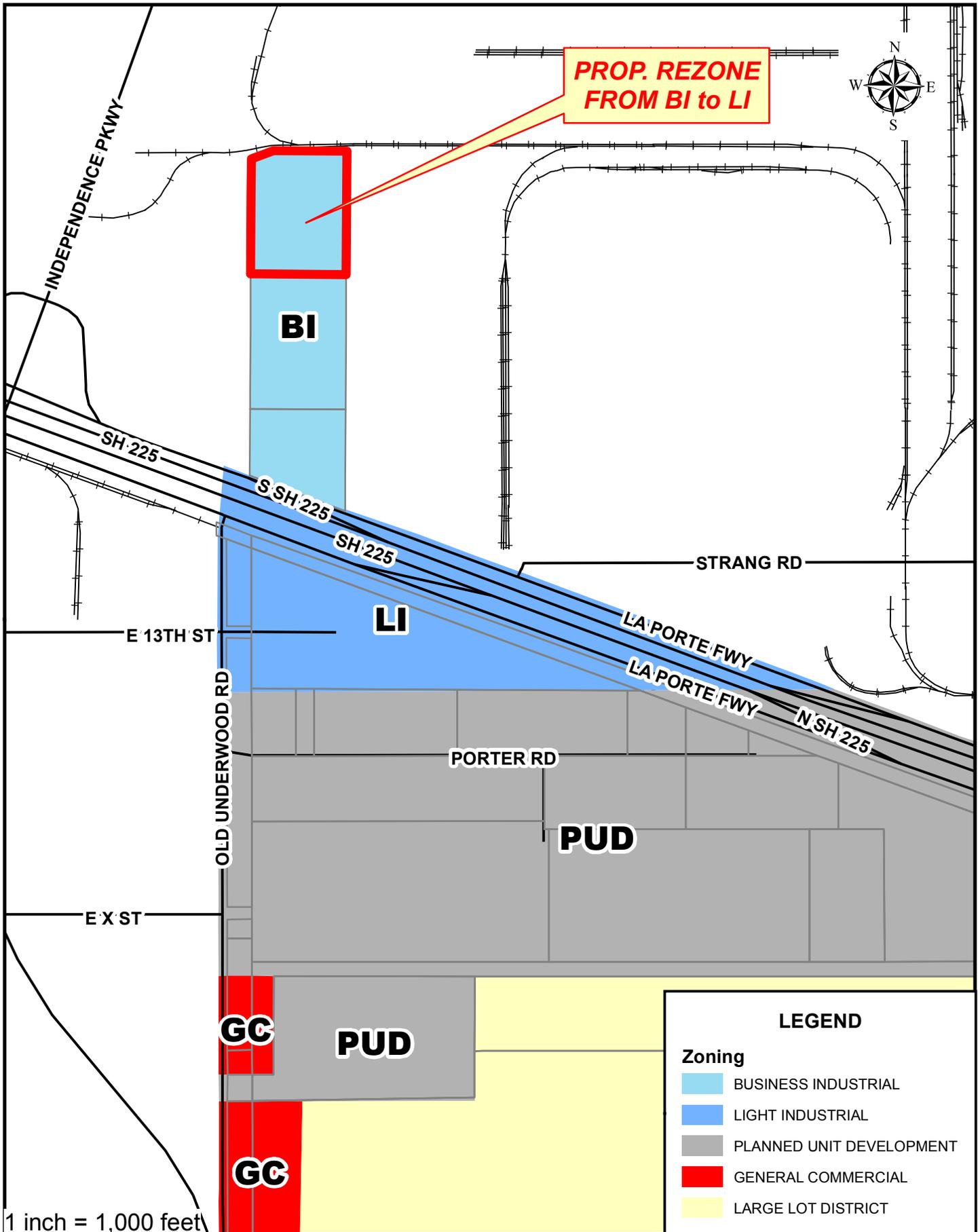
A handwritten signature in black ink, appearing to read "Justin E. Bennett". The signature is stylized with a large initial "J" and a long horizontal stroke extending to the right.

Justin E. Bennett
Senior Vice President

cc: Steve Hess, Exel, Inc. dba DHL Supply Chain
Bonnie Roberts, Exel, Inc. dba DHL Supply Chain
David Lawrence, DCT Industrial Trust

ZONING MAP

ZONE CHANGE #16-9200005



1 inch = 1,000 feet

REQUEST FOR CITY COUNCIL AGENDA ITEM

Agenda Date Requested: February 27, 2017 Appropriation
Requested By: Ian Clowes Source of Funds: _____
Department: Planning & Development Account Number: _____
Report: Resolution: Ordinance: Amount Budgeted: _____
Other: _____ Amount Requested: _____
Budgeted Item: YES NO

Attachments :

1. Ordinance
2. P&Z Recommendation Letter
3. Applicant Information
4. Zoning Map

SUMMARY & RECOMMENDATIONS

The applicant, Steve Hess of Exel Logistics Dist. Corp., owns a 13.2 acre tract of land north of SH 225 and is requesting consideration of the proposed zone change from Business Industrial (BI) to Light Industrial (LI). This will allow for the construction of an additional warehouse/logistics facility on site. The proposed use is currently not a permitted use within the BI zoning district but is permitted in LI. The legal description of the subject property Tracts 30 and 31 and Tracts 17A and 18, Strang Subdivision, Harris County, Texas. The subject site is located on the north side of SH 225 east of Independence Pkwy. The tract is currently undeveloped.

The Planning and Zoning Commission conducted a public hearing concerning this request at the January 19, 2017, meeting. There were no responses received from surrounding property owners. After conducting a public hearing on the matter, the Commission voted to recommend approval of the proposed zone change.

The Commission found that the proposed zone change is consistent with the development pattern on the north side of SH 225, most of which is outside of the city limits and part of the Battleground Industrial District.

The subject site is currently zoned Business Industrial (BI) and the City's adopted Future Land Use Map identifies it as Light Industrial use. The rezoning of the subject property to LI would bring this property into conformance with the Future Land Use Plan.

Action Required of Council:

1. Conduct public hearing.
2. Consider approval or other action on a recommendation by the Planning and Zoning Commission to approve an ordinance for zone change request #16-92000006, for the rezoning of a 13.2 acre tract located on the north side of SH 225 east of Independence Pkwy., described as Tracts 30 and 31 and Tracts 17A and 18, Strang Subdivision from Business Industrial (BI) to Light Industrial (LI).

Approved for City Council Agenda

Corby D. Alexander, City Manager

Date

ORDINANCE NO. _____

AN ORDINANCE AMENDING CHAPTER 106 "ZONING" OF THE CODE OF ORDINANCES OF THE CITY OF LA PORTE BY CHANGING THE ZONING CLASSIFICATION OF TRACTS 30 AND 31 AND 17A AND 18, STRANG SUBDIVISION, FROM BUSINESS INDUSTRIAL DISTRICT (BI) TO LIGHT INDUSTRIAL DISTRICT (LI); MAKING CERTAIN FINDINGS OF FACT RELATED TO THE SUBJECT; FINDING COMPLIANCE WITH THE OPEN MEETINGS LAW; AND PROVIDING AN EFFECTIVE DATE HEREOF;

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF LA PORTE, TEXAS:

Section 1: Chapter 106 "Zoning" of the Code of Ordinances is hereby amended by changing the zoning classification of the following described property, to wit: Tracts 30 and 31 and 17A and 18, Strang Subdivision, Harris County, Texas, from Business Industrial District (BI) to Light Industrial District (LI).

Section 2: All ordinances or parts of ordinances inconsistent with the terms of this ordinance are hereby repealed; provided, however, that such repeal shall be only to the extent of such inconsistency and in all other respects this ordinance shall be cumulative of other ordinances regulating and governing the subject matter covered by this ordinance.

Section 3. Should any section or part of this ordinance be held unconstitutional, illegal, or invalid, or the application to any person or circumstance for any reasons thereof ineffective or inapplicable, such unconstitutionality, illegality, invalidity, or ineffectiveness of such section or part shall in no way affect, impair or invalidate the remaining portions thereof; but as to such remaining portion or portions, the same shall be and remain in full force and effect and to this end the provisions of this ordinance are declared to be severable.

Section 4. The City Council officially finds, determines, recites and declares that a sufficient written notice of the date, hour, place and subject of this meeting of the City Council is posted at a place convenient to the public at the City Hall of the city for the time required by law preceding this meeting, as required by Chapter 551, Tx. Gov't Code; and that this meeting has been open to the public as required by law at all times during which this ordinance and the subject matter thereof has been discussed, considered and formally acted upon. The City Council further ratifies, approves and confirms such written notice and the contents and posting thereof.

Section 5. The City Council of the City of La Porte hereby finds that public notice was properly mailed to all owners of all properties located within two hundred feet (200') of the properties under consideration in compliance with code provisions.

Section 6: It is directed that the Official Zoning Map of the City of La Porte, Texas be changed to reflect the zoning classification established by this ordinance.

Section 7. The City Council of the City of La Porte hereby finds, determines, and declares that all prerequisites of law have been satisfied and hereby determines and declares that the amendments to the City of La Porte Zoning Map and Classification contained in this Ordinance as amendments thereto are desirable and in furtherance of the goals and objectives stated in the City of La Porte's Comprehensive Plan.

Section 8. This Ordinance shall be effective upon its passage and approval.

PASSED AND APPROVED this the _____ day of February, 2017.

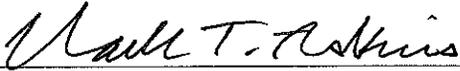
CITY OF LA PORTE, TEXAS

By: _____
Louis R. Rigby, Mayor

ATTEST:

Patrice Fogarty, City Secretary

APPROVED:



Clark T. Askins, Assistant City Attorney



February 7, 2017

Honorable Mayor Rigby and City Council
City of La Porte

RE: Rezone Request #16-92000006

Dear Mayor Rigby and City Council:

The La Porte Planning and Zoning Commission held a public hearing at the January 19, 2017 meeting on a zone change request by Steve Hess of Exel Logistics Dist. Corp. for a zone change of Tracts 30 and 31 and Tracts 17A and 18, Perry Strang Subdivision from Business Industrial (BI) to Light Industrial (LI). The proposed zone change will allow for the construction of a new warehouse/logistics facility on a currently undeveloped property. The proposed facility is not currently a permitted use within the BI zoning district.

The Commission voted 8-0 to recommend approval of the proposed zone change.

Respectfully submitted,

Hal Lawler
Chairman, Planning and Zoning Commission

cc: Ian Clowes, City Planner
Department File



Zone Change Application

Planning and Development Department

604 West Fairmont Parkway

La Porte, Texas 77571

281-470-5057

OVERVIEW

Zoning protects the rights of property owners while promoting the general welfare of the community. The purpose of zoning is to locate particular land uses where they are most appropriate. A property owner may submit an application requesting consideration of a zone change or modification to the zone district that their property is located. Requests for a rezoning are reviewed in accordance with the provisions of Section 106-171 of the City of La Porte Code of Ordinances and the city's Comprehensive Plan. Rezoning requests are reviewed by the Planning and Zoning Commission as a public hearing. The Commission consists of residents of the community appointed by City Council. The Commission meets on the third Thursday of every month, as necessary. The Commission will forward a recommendation to the City Council for final consideration.

SUBMITTAL REQUIREMENTS

The following application package must be submitted to the Planning and Development Department at least three (3) weeks prior to the desired hearing date.

- Completed **application form**.
- Application fee** of \$400; nonrefundable.
- Site plan, conceptual site plan or general plan**, drawn to scale and dimensioned to depict the development being proposed.
- Project description/justification letter** that thoroughly explains what is being requested and why such SCUP should be approved by the Planning and Zoning Commission and City Council.
- Affidavit of posting** fully executed that ensures the applicant will post the required public hearing sign on the property for at least 10 days prior to the Planning and Zoning Commission meeting date. Such sign will be provided by the Planning and Development Department.

PROCESS

- Upon receipt of a complete application package by the Planning and Development Department, the zone change request will be scheduled for the next available Planning and Zoning Commission meeting date as a public hearing.
- The Planning and Development Department will provide the applicant with a Notice of Public Hearing sign that must be posted on the property where the zone change is being requested. The sign must be posted on the property visible and within 20 feet from the abutting street for a minimum of 10 days before the scheduled public hearing.
- The Planning and Development Department will publish notice of the public hearing in the Bay Area Observer and at City Hall in conformance with legal requirements. Additionally, the city will send notice of the public hearing to all property owners within 200 feet of the subject property where the zone change is being requested.



Zone Change Application

Planning and Development Department

- The Planning and Zoning Commission public hearing will be held in the City Council Chamber at City Hall (604 W. Fairmont Parkway). At the meeting, the Planning and Zoning Commission will conduct a public hearing and provide a recommendation to the City Council on the proposed rezoning. If additional information is requested by the Commission, the public hearing may be continued to a future meeting date.
- The Commission is tasked to review the proposed zone change and offer a recommendation to the City Council for approval, denial, or approval with conditions.
- Following the Commission's public hearing, their recommendation on the proposed rezoning is then forwarded to City Council for consideration.
- For the City Council public hearing, the Planning and Development Department will publish notice of the public hearing in the Bay Area Observer and post notice at City Hall in conformance with legal requirements.
- The City Council public hearing will be held in the City Council Chamber at City Hall (604 W. Fairmont Parkway). At the meeting, the City Council will conduct a public hearing and render a decision on the proposed zone change. However, if additional information is requested by the City Council, the public hearing may be continued to a future meeting date.
- The following is an excerpt from the City of La Porte's Code of Ordinances pertaining to zone change requests.

CODE REQUIREMENTS

Rezoning Requests

Sec. 106-171. - Amendment procedures.

The city council may from time to time, on its own motion, the motion of the planning and zoning commission, or on petition, amend, supplement, change, modify or repeal the regulations, restrictions, and boundaries herein established.

- (1) *Public hearing before the city planning and zoning commission.* Before taking any action on any proposed amendment, supplement, change, or modification, the city council shall submit the same to the city planning and zoning commission which shall make a preliminary report and hold a public hearing thereon before submitting its final report to the city council.
- (2) *Notice of public hearing before city planning and zoning commission.*
 - a. Written notice of all public hearings before the city planning and zoning commission on proposed changes in classification shall be sent to owners of real property lying within 200 feet of the property on which the change in classification is proposed as well as the La Porte Independent School District, such notice to be given not less than ten days before the date set for hearing, to all owners who have rendered their said property for city taxes as the ownership appears on the last approved city tax roll. Such notice may be served by depositing the same, properly addressed and postage paid, in the city post office. At least 15 days notice of the time and place of such hearing shall be published once in a newspaper of general circulation in the city.
 - b. Requirements for public notice by sign posting:
 1. Public notice for procedures requiring public notice by sign posting shall be provided by the city at least 15 days before the public hearing.
 2. The applicant shall place public notice sign on the property within 20 feet of the abutting street.
 3. The sign shall be clearly visible, readable, and not to create hazard to traffic on the public right-of-way abutting the property.
 4. Public notice sign shall include the date, time, place, and purpose of public hearing.
 5. The applicant must return the sign to the city within ten days after the appeal period for the public hearing has ended.
 6. The erection of this sign shall not require a permit from the city.



Zone Change Application

Planning and Development Department

- (3) *Publication of notice.* In the event a public hearing shall be held by the city planning and zoning commission in regard to a change of this chapter not involving particular property but involving a change in the chapter generally, notice of such hearing shall be given by publication once in a newspaper of general circulation in the city stating the time and place of such hearing, which time shall not be earlier than 15 days from the day of such publication.
- (4) *Submission of findings and recommendations to city council.* The city planning and zoning commission shall forward its written findings of fact and recommendations to city council within 15 days of the close of the hearings.
- (5) *Public hearing before city council.*
 - a. Upon receipt of the written recommendations from the planning and zoning commission, a public hearing shall be held by the city council before adopting any proposed amendment, supplement, change, modification or repeal of the regulations, restrictions, and boundaries herein established.
 - b. Notice of such hearing shall be given by publication once in a newspaper of general circulation on the city stating the time and place of such hearing, which time shall not be earlier than 15 days from the day of such publication.
- (6) *Council actions.* The city council shall act upon such motion or petition within 30 days from the date the final report of the city planning and zoning commission was submitted to the city council.
- (7) *Protests.*
 - a. In case of a protest against any such amendment, supplement, change, or repeal of the regulations, restrictions, and boundaries herein established, a written protest filed with the enforcement officer and signed by the owners of 20 percent or more of either:
 1. The area of lots or land covered by the proposed change; or
 2. The area of lots or land immediately adjoining the area covered by the proposed change and extending 200 feet from that area.

Such amendment, supplement, change, modification, or repeal shall not become effective except by the favorable vote of three-fourths of all the members of the city council.
 3. Streets and alleys shall be included when computing the area of land from which a protest may be filed.
- (8) *Vote to overrule.* The affirmative vote of at least three-fourths of the city council is required to overrule a recommendation of the city planning and zoning commission that a proposed change to this chapter or boundary be denied.



Zone Change Application

Planning and Development Department

PROJECT INFORMATION

Address where zone change is being requested: 9701 State Highway 225, LaPorte, Texas 77571

Legal description where zone change is being requested: TRS 30 & 31 & TRS 17A & 18 Perry Strang

HCAD Parcel Number where zone change is being requested: 0642230000021

Zoning District: Business Industrial Lot area: 576,001 square-feet

A request for approval of a zone change is hereby made to the City of La Porte.

Description of Request: Zoning Change from Business Industrial to Light Industrial

Attached hereto is a Project Description Letter describing the project and outlining the reasons why such SCUP should be approved.

PROPERTY OWNER(S) INFORMATION

Name: _____

Company (if applicable): Exel Logistics Dist. Corp.; Attention: Steve Hess

Address: 570 Polaris Parkway

City: Westerville State: OH Zip: 43082

Phone: (614) 865-8500 Email: steve.hess@dhl.com

AUTHORIZED AGENT (If other than owner)

Name: Justin E. Bennett

Company (if applicable): DCT Industrial Trust, Inc.

Address: 10796 Kempwood Drive

City: Houston State: TX Zip: 77043

Phone: (713) 502-2704 Email: jbennett@dctindustrial.com

OWNER(S) & AGENT CERTIFICATION

I hereby depose and state under the penalties of perjury that all statements, proposals and/or plans submitted with/or contained in this application are true and correct and the application is complete to the best of my knowledge and belief.

Agent's Signature: [Signature] Date: 12/5/2016

Owner(s)' Signature(s): [Signature] E.V.P. Date: 12/2/16

STAFF USE ONLY:

Case Number:

Date Application Received:



Zone Change Application

Planning and Development Department

AFFIDAVIT OF POSTING

PLANNING AND ZONING COMMISSION PUBLIC HEARING

STATE OF TEXAS

COUNTY OF HARRIS

CITY OF LA PORTE

The undersigned hereby duly swears on oath and says:

1. A public hearing sign was provided to me by the City of La Porte's Planning and Development Department. I hereby attest that said sign will be posted on the following described property, which is subject to the application:

ADDRESS: 9701 State Highway 225, LaPorte Texas 77571

LEGAL DESCRIPTION: TRS 30 & 31 & TRS 17A & 18 Perry Strang

2. In accordance with the provisions of Section 106-194 of the city's Code of Ordinances, I hereby attest that said sign will be posted on the described property for no less than fifteen (15) days prior to the scheduled public hearing; starting at least on the following date: December 19, 2016.
3. Said sign shall be placed on the property within 20 feet of the abutting street.
4. Said sign shall remain legible and visible for the entire fifteen (15) day posting period. If sign is damaged or missing, I hereby attest that I will contact the City of La Porte for a replacement sign.

Marvin I. Larger
Applicant's Signature

MARVIN I. LARGER
Applicant's Printed Name

Subscribed and sworn before me this 2nd day of December, 2016 by MARVIN I. LARGER (Print Applicant's Name).



SHERRY CASTLE
Notary Public, State of Ohio (Seal)
My Commission Expires 02-06-2017

Sherry Castle
Notary Public

My commission expires: 02-06-2017



DCT Industrial Trust | 10796 Kempwood Drive | Houston, TX 77043

December 6, 2016

City of LaPorte
Attention: Planning and Zoning Commission
604 West Fairmount Parkway
LaPorte, Texas 77571

Re: **Zoning Change Application**
9701 and 9705 State Highway 225
LaPorte, Texas 77571

Dear Ladies and Gentlemen:

DCT LaPorte, LLC (“**DCT**”) owns those certain warehouse facilities at 9701 and 9705 State Highway 225 in LaPorte, Texas (collectively, “**DCT Facilities**”) and Exel Logistics Dist. Corp (“**Exel**”) owns that certain land tract located at 9701 State Highway 225 in LaPorte, Texas (“**Exel Land**”).

The DCT Facilities and the Exel Land are located North of Highway 225 between Independence Parkway and Miller Cut Off Road adjacent to the Battleground Industrial District. The facilities and the land are currently zoned Business Industrial.

Based on conversations with City of LaPorte (“**City**”) planning staff, we understand that the current use within the DCT Facilities has been “grandfathered” prior to current City Zoning Codes, which would permit the existing uses within Business Industrial; however, such existing uses would not be permitted within an area zoned Business Industrial pursuant to the City Zoning Code, as amended.

DCT hereby requests a zoning change from Business Industrial to Light Industrial to accommodate the current use within the DCT Facilities, which are occupied by Exel, Inc., to comply with the City Zone Code, as amended.

DCT, as authorized agent of Exel, hereby requests a zoning change from Business Industrial to Light Industrial to accommodate the future use of the Exel Land. DCT and Exel are currently negotiating a build-to-suit transaction whereby DCT will purchase the Exel Land and construct a new warehouse facility on the Exel Land to be occupied by Exel, Inc.

Our zoning change request to Light Industrial is consistent with the existing uses that are adjacent to the DCT Facilities and the Exel Land. The adjacent owners are Braskem,

Lubrizol, Clean Harbours and Akzo Nobel. Such uses are heavier manufacturing and petrochemical/refining operations located within the Battleground Industrial District.

Additionally, State Highway 225 serves as a High Frequency Truck Route, which supports the desire to mitigate heavier truck traffic within the City. Both the DCT Facilities and the Exel Land are located along a High Frequency Truck Route. In this regard, the requested zoning change is accretive to City's goals of encouraging development while confining industrial uses to zoned areas and reducing heavier truck traffic off designated truck routes.

We look forward to working with the City, and would greatly appreciate your favorable consideration of our Zoning Change Application.

Please contact me if you have any questions regarding this matter.

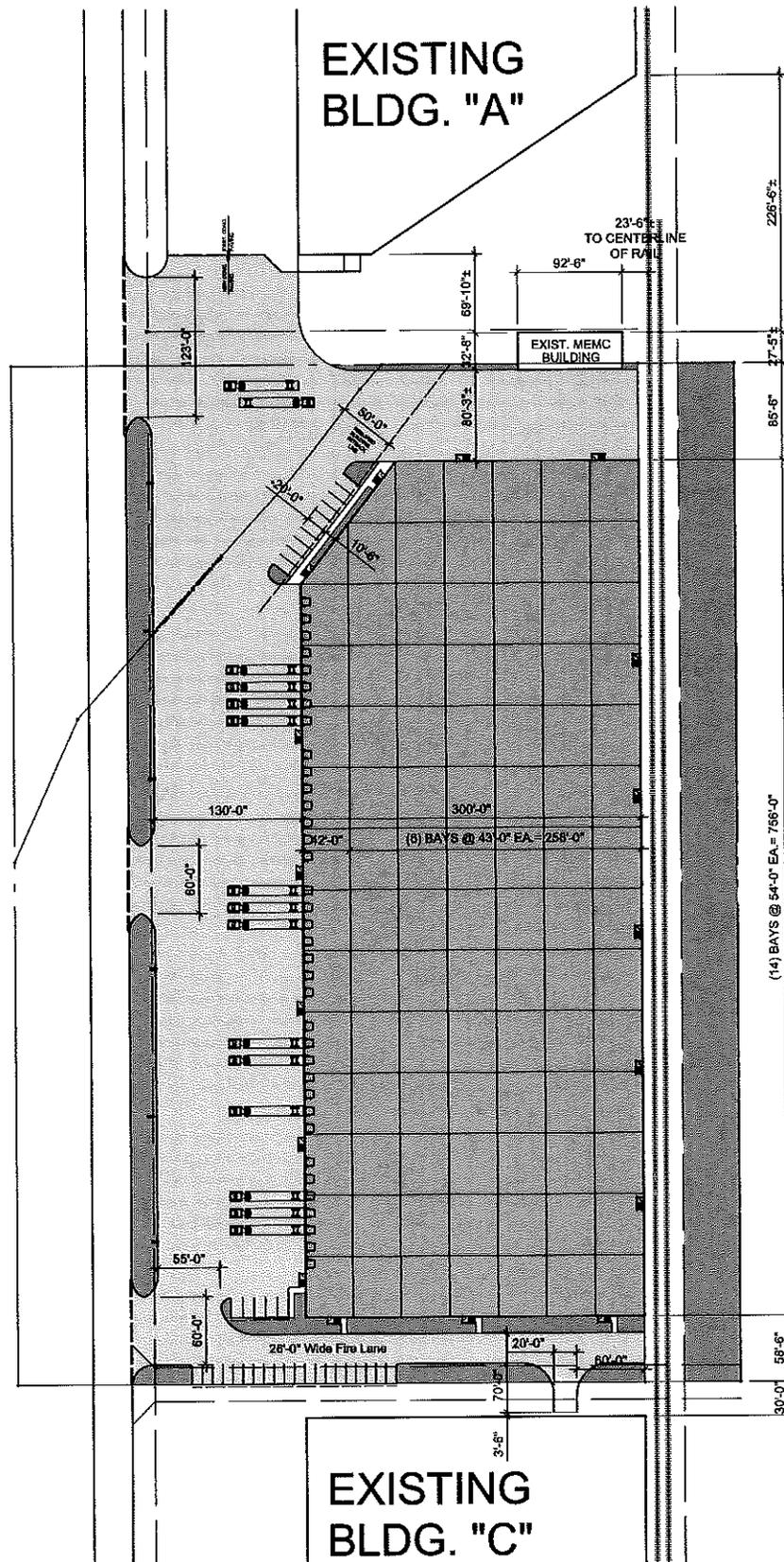
Very Truly Yours,

A handwritten signature in black ink, appearing to read "Justin E. Bennett". The signature is stylized and somewhat cursive.

Justin E. Bennett
Senior Vice President

cc: Steve Hess, Exel, Inc. dba DHL Supply Chain
Bonnie Roberts, Exel, Inc. dba DHL Supply Chain
David Lawrence, DCT Industrial Trust

**PROPOSED
BLDG. "B"
222,210 S.F.**



TERRY L. KENNEDY, AIA

NOT FOR REGULATORY
APPROVAL, PERMITTING,
OR CONSTRUCTION

ARCHITECT



MUNSON
KENNEDY
PARTNERSHIP



SITE PLAN - STUDY No. 9

0" 50' 100' 200'

© 2012 MUNSON KENNEDY PARTNERSHIP

EXEL, INC. - LaPORTE FACILITY

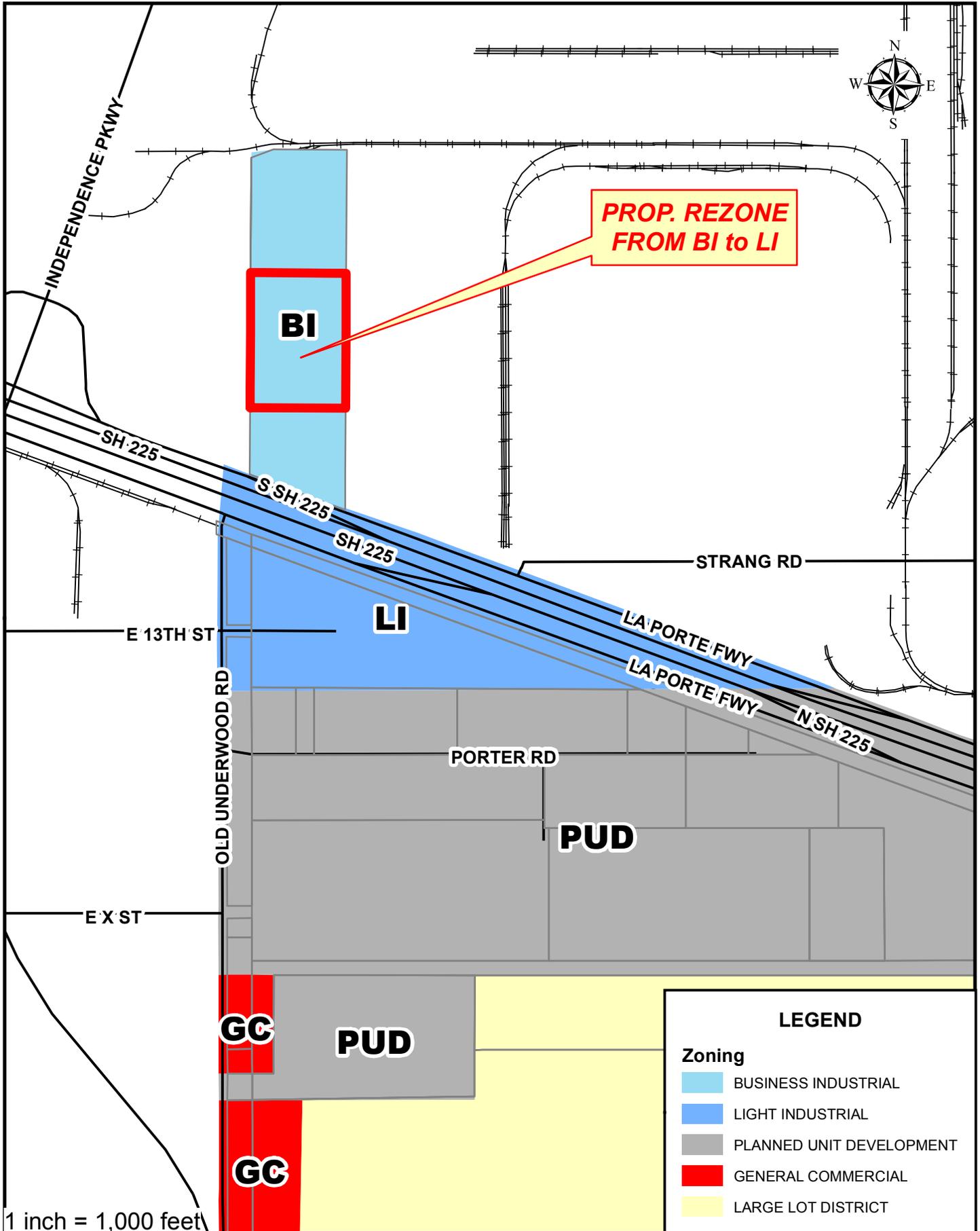
9700 BLOCK OF HIGHWAY 225 LaPORTE, TEXAS

Marketing\Cadence McShane\Exel - LaPorte
02/15/12

ps_Prelim_Alt9.dwg

ZONING MAP

ZONE CHANGE #16-92000006



13. Outfield signage was previously limited to no more than five (5) signs per field, now signs are allowed on the fence between the foul poles. Also, 2 signs may be added to the backstops above the cross bar.
14. LPBBA is required to maintain a written policy on criminal background checks, and everyone must be checked on an annual basis.
15. The agreement term is one (1) year.
16. All checks require two (2) signatures.
17. LPBBA will furnish the City a logon into the registration system to match deposits with registrations.
18. If the City requests paper documents, it must be provided within three (3) working days.
19. Funds obtained by LPBBA will be used for League purposes only and the by-laws shall be amended to state that as well.

Staff recommends that Council discuss the changes, give input on additional changes, and hear any requests from LPBBA.

Action Required by Council:

Consider approval or other action authorizing the City Manager to execute an agreement between the City of La Porte and La Porte Boy's Baseball Association.

Approved for City Council Agenda

Corby D. Alexander, City Manager

Date

**AGREEMENT BETWEEN THE CITY OF LA PORTE, TEXAS
AND THE LA PORTE BOY'S BASEBALL ASSOCIATION
REGARDING THE USE OF DESIGNATED YOUTH BASEBALL FACILITIES**

BECAUSE, the City of La Porte, Texas (the "City") is the owner and operator of various youth baseball facilities as part of the parks and recreational facilities of the community; and

Because, the La Porte Boy's Baseball Association (the "Association") has provided the organization of youth baseball teams, conducted instructional league and tournament play for the youth of La Porte for many years, and has contributed funds in past years, which funds have been matched by the City, toward the construction of various amenities and facilities at the various youth baseball facilities owned by the City; and

Because, the City wishes to recognize and commend the Association for its contributions to youth recreation and health in the community, its support, and funding that has been provided by the Association;

NOW THEREFORE, KNOW ALL MEN BY THESE PRESENTS: That in consideration of the mutual covenants, agreements and benefits to both parties, it is agreed as follows:

I.

The City will provide limited use of the youth baseball facilities as described in "Exhibit A" which is attached and herein as if set out herein verbatim, and included as a part of this Agreement, to the Association for conduct of its league games, practice games, league/team practices, tournament games, and league playoff games from the first week in February through the last weekend in December for each year that this Agreement is in effect. Use is limited to recreational league play only (non-select, non-competitive, except for Fall Sunday Select League) Monday through Sunday, from 7:00am until 11:00pm each day for Pecan Park. The Association shall have exclusive right and responsibility for scheduling, organizing and conducting youth baseball league games, practice games, league/team practices, tournament games, and league playoff games at the youth baseball facilities listed in Exhibit A. The City reserves the right to close the fields for field maintenance purposes, for inclement weather, or other reasonable cause. For rainouts, the City will make the decision to close fields. The fields at Fairmont Park are now designated primarily for practice use. Any scheduled tournament games to be held at Fairmont Park will require the written permission of the Director of Parks & Recreation or his/her designee, and such approval shall not be unreasonably withheld. The number of tournaments eligible to be subcontracted by the Association to third party entities for Pecan Park will be limited to ten (10) per calendar year, in addition to Association tournaments. All non-league play tournaments will provide a tournament schedule and team rosters that will be turned into the City to be matched with all deposits from said tournament. Any non-league play tournaments will provide a current certificate of insurance with the same requirements as outlined for the Association in Section VIII of this Agreement. Ten (10) percent of all non-league play tournament entry fees will be paid to the City by the Association within two (2) weeks of the completion of the tournament. If additional field maintenance is required during tournaments, the

Association will pay the City \$30 per field, per time the fields are prepared. The Association will schedule no more than four tournaments annually that utilize the practice fields at Fairmont Park. No tournament games at Fairmont Park may be scheduled to begin before 7:00am, nor after 8:00pm on Saturday; or begin before 9:00am, nor after 6:00pm on Sunday.

II.

The City will assume limited responsibility for maintenance of all structures located on City property at Pecan Park and Fairmont Park as set forth in this Agreement. Except for routine marking, raking, light dragging, watering and other field preparation as set out herein, the City will assume responsibility for maintenance and repair of fencing, parking lots, sidewalks, turf areas, and major field maintenance at the youth baseball facilities listed in Exhibit A. The Association will be responsible for routine marking, raking, light dragging, watering and other field preparation as necessary, of the youth baseball facilities as listed in Exhibit A. The City will manage all operations related to facility and grounds maintenance at the baseball facilities designated in Exhibit A. In exchange for grounds maintenance to be undertaken by City under this paragraph, the Association will pay the City \$500.00 per month, payable on the 1st of the month, February-October. In connection with payment of this fee, the Association will have the opportunity to give input on the field maintenance. The Association will continue to purchase red dirt at a minimum of five (5) loads annually, if needed.

The City has also provided an open air pavilion containing restroom, storage, and concession facilities, a maintenance storage area, a satellite storage building, and two batting cages at Pecan Park, as listed in Exhibit A. The open air pavilion containing restroom, storage, and concession facilities, the Maintenance facility for City use with designated storage area for the Association, the satellite storage building, and any permanent attachments to said facilities, are the property of the City. The concession facility at Fairmont Park will no longer be in operation as a full-time concession booth. It will be available for tournament or practice use by the Association for portable food and drink service only. Except as set out herein in Paragraph 3 below, the City agrees to maintain utility service to the concession/restroom, and storage structure's various components including, electrical, plumbing, roofing, and other systems that contribute to their safe and efficient operation. The restroom portion of the facility is a shared facility for various uses at Pecan Park and Fairmont Park and is the property of the City. The City will provide daily weekday custodial services for the restroom facility and provide necessary supplies for the restroom facility. Unless specifically marked, parking spaces at Pecan and Fairmont Parks are not reserved and are available on a first-come, first-served basis.

III.

The Association agrees to operate the concession facility exclusively and to provide materials, equipment, supplies, and personnel necessary for operation. Further, the Association is responsible for furnishing equipment for the batting cages and concession stands at the youth baseball facilities, including but not limited to the following: pitching machines, microwaves, refrigerators, ice machines, freezers and all other electrical appliances. The Association is responsible for maintenance

of all furnished equipment in the concession stand and batting cages and ~~turf~~ maintenance inside and around the batting cages. The Association agrees to clean the restroom facilities at its expense, in addition to the City's regular cleaning schedule on an as needed basis, during the Association's use of the facilities particularly including tournament use, to assure that the restrooms are clean and operable. The Association agrees to clean the concession portion of the facility at its expense. All revenues produced by batting cages and concession operations shall belong to the Association. The Association is responsible for meeting all applicable laws, ordinances, and codes regarding the following: sales tax, safety, and any other issue relative to concession operations, batting cage operations, and conduct of all its activities at the youth baseball facilities. Alcoholic beverage use, sales, or possession is prohibited by Ordinance at youth baseball facilities located on City property. The Association agrees to the following concession operations processes:

- A Point of Sale system will be used to maintain all inventory and sales.
- A Point of Sale System will be used for all mobile sales.
- Concessions workers making \$600 or more a year will receive a 1099, unless they are hired through a staffing company.
- Deposits will be made the next business day,
- All monies will be kept in the safe until deposited.
- City staff will spot check all concessions deposits and/or inventory monthly, at a minimum.

When dealing with umpires, the Association agrees to use a third party vendor/umpire association. The Association will then file the appropriate 1099 and any other required IRS filings. Payments to vendor shall reconcile to game schedules.

In addition to the four overflow tournament events at the Fairmont Park Practice Fields as specified herein, the Association may schedule annually up to a maximum of eight (8) additional days for "Sunday Only" use of the Fairmont Park fields for overflow league games if needed. Association must provide the dates of the days to be used for the overflow league games to the City at least thirty (30) day prior to commencement of the league. Rainout days will be allowed provided that notice is given of the rainouts as they occur. The Association agrees to provide all field preparation necessary to conduct said league games. Further, the Association agrees to remove all litter and trash associated with the league games and deposit them off-site. The Association agrees to clean and stock restrooms at its expense for the league games. The City agrees to provide its standard level of maintenance for the league games, any maintenance over and above those responsibilities identified herein, will be the responsibility of the Association for the league games.

IV.

The Association is granted the right to solicit advertising boards for the outfield fencing at the ten baseball fields at Pecan Park. Per the architect's recommendation, signs placed on the fencing are limited to no larger than one fence panel in length (10 feet). Signs will be limited on the outfield fencing to the area between the foul poles. Two (2) sponsorship signs are allowed backstops above the top cross bar, facing the viewers. They will be no larger than 4 x 6 and they cannot obstruct the view. The City reserves the right to review and approve potential advertisers and sign content prior to installation. No advertising boards/signs shall be placed where visible from Canada Road, on Fields #1, #8, #9 and #10. All revenues generated by the advertising boards shall be the property of the

Association.

V.

Batting cages shall not be open for use by the general public by the Association under any circumstances, unless the City gives its prior written permission, which permission shall not be unreasonably withheld. In any event, if the Association receives permission to open said batting cages to the public, such use shall be under the strict supervision of the Association. All provisions herein relating to insurance and indemnity to the City by the Association shall be applicable. Use of other baseball facilities by the public will be limited to the following conditions: (a) During the period not covered by this Agreement, the public shall have the right to use the various youth baseball facilities for pickup games at any time during park operating hours, except when the City is conducting maintenance or construction at the various facilities; and (b) During the period covered by this Agreement, the public shall have the right to play pickup youth baseball or other field sports games at the youth baseball facilities listed in Exhibit A, at any time during park operating hours when no practice game, league game, tournament game, or playoff game is scheduled; or the fields have not been **Specially Prepared** for such games (**Special Preparation** shall include marking, dragging, watering, painting, or other activity which would be disrupted or spoiled by indiscriminate use of the facilities by the public).

VI.

The Association shall indemnify and hold harmless the City, its officers, directors, agents, and employees from and against any and all claims, damages, losses, expenses, and liabilities, including attorney's fees which may be asserted against or incurred by the City arising, directly or indirectly, from any activities conducted or services performed by the Association under this agreement, or from any event occurring on the premises owned by the City during any period in which activities are being performed, conducted, or sponsored on the premises by the Association.

VII.

The City shall indemnify and hold harmless the Association, its officers, directors, agents, and employees from and against any and all claims, damages, losses, expenses, and liabilities, including attorney's fees which may be asserted against or incurred by the Association arising, directly or indirectly from any activities conducted or services performed by the City pursuant to this agreement, or from any event occurring on the premises owned by the City during any period in which activities are being performed, conducted, or sponsored on the premises by the City.

VIII.

The Association shall keep and maintain during the term of this agreement, a comprehensive general liability policy, with the City named as **Additional Named Insured**, with limits of liability of not less than One Million Dollars (\$1,000,000.00) combined single limit bodily injury and property damage per occurrence, with a minimum deductible of One Thousand (\$1,000.00) per occurrence. Thirty (30) days prior notice of policy cancellation shall be provided to the City. Effective policy must not exclude

participants in the Association's scheduled or unscheduled activities at the facilities. Other policy exclusions are permissible, provided that they do not contradict the terms of this Agreement. The Association shall furnish the City with a ***Certificate of Insurance*** evidencing such coverage. Such insurance shall include contractual liability insuring the indemnity agreements contained in this Agreement.

IX.

The Association shall maintain a written policy on criminal background checks by March 1, 2017. All board members, coaches, employees, and volunteers shall be background checked on an annual basis.

X.

The Association shall not assign, transfer, convey, sublet or otherwise dispose of the Agreement, or any part, to any person, partnership, company, corporation, club or association without prior written consent of the City of La Porte.

XI.

This instrument contains the entire Agreement between the parties relating to the rights granted in the Agreement and the obligations assumed as a part of the Agreement. Any representations or modifications concerning this Agreement shall have no force or effect unless modified in writing, and signed by each party to the Agreement.

XII.

This Agreement shall be in force for a period of one (1) year, beginning with the date of its execution by both parties. During the term of this agreement, the Association and the City may enter into separate agreements regarding future capital improvement projects or other boy's baseball facilities that may be contemplated in the City.

XIII.

The Association shall maintain a favorable financial position during the term of this Agreement. The Association will provide an official annual report on the Association's fiscal condition to the City, comprised of a combined expense statement/balance sheet as approved by the City's Controller and mutually agreed to by the City and the Association along with supporting documentation. The City reserves the right to review the internal financial control structure of the Association and to perform other audit steps as necessary to protect its interests. The Annual Report on the Association's Fiscal Condition will be due to the City sixty (60) days after the end of each fiscal year. Failure to provide requested financial information within the prescribed time limit will prompt a formal notification from the City to the Association of that the agreement is in Danger of Default and a request for satisfaction of the requirement within an additional fifteen (15) days from the date of official

notification. If the requirement for financial statement submission is not met by that time, or arrangements to submit not made to the City's satisfaction within that time, the agreement will be considered in Default. During the terms of this agreement, all checks written by the Association will be required to have two (2) signatures. Also, the Association will furnish the City a logon into the registration system so that deposits can be matched to the registrations. Should any questions arise, the City will request paper documents that will be provided to the City within three (3) business days. The City will spot check Association accounting at a minimum of once a month. Note that all expenditures of Association funds will be used only for League purposes and in accordance therewith, Association by-laws, shall be amended to so state.

XIV.

If any section, sentence, phrase, clause, or any part of any section, sentence, phrase, or clause, of this Agreement shall, for any reason, not be legally or factually valid, such invalidity shall not affect the remaining portions of this Agreement.

IN TESTIMONY WHEREOF, this instrument has been renewed and executed in duplicate, each to have the effect of an original as follows:

- (A) It has been executed on behalf of the City on the _____th day of February, 2017 by its City Manager and attested by its City Secretary; and
- (B) It has been executed on behalf the Association on the _____th day of February, 2017 by its President and attested by its Secretary, authorizing such execution.

CITY OF LA PORTE, TEXAS

By: _____
Corby D. Alexander, City Manager

ATTEST:

Patrice Fogarty, City Secretary

LA PORTE BOY'S BASEBALL
ASSOCIATION

By: _____
Heath Patterson, President

ATTEST:

Association Secretary

APPROVED AS TO FORM:

Clark T. Askins, Assistant City Attorney

EXHIBIT "A"

The youth baseball facilities designated herein are located at Fairmont Park, 3544 Farrington Street, and Pecan Park, 3600 Canada Road, in La Porte, Texas, and are identified as follows:

PECAN PARK FACILITIES

- Field #1** is the northernmost baseball field at the park, located on the northeast corner of the park; bounded on the north by the Pecan Plantation Mobile Home Park, on the east by Canada Road, and on the west, by Field #2.
- Field #2** is located immediately west of Field #1, east of Field #3, and to the northeast of the Maintenance Facility.
- Field #3** is located immediately west of Field #2, north of Field #4, and to the northwest of the Maintenance Facility.
- Field #4** is located immediately south of Field #3, north of Field #5, and to the southwest of the Maintenance Facility.
- Field #5** is located immediately south of Field #4, north of Field #6, and directly west of the Pavilion.
- Field #6** is located immediately south of Field #5, north of Field #7, and to the southwest of the Pavilion.
- Field #7** is located immediately south of Field #6, directly west of Field #8, in the southwest corner of the park.
- Field #8** is located immediately east of Field #7, and south of Field #9, and directly west of Canada Road.
- Field #9** is located north of Field #8, and southwest of Field #10, southeast of the Pavilion, and directly west of Canada Road.
- Field #10** is located directly east of Canada Road, northeast of Field #9, and south of Field #1, southeast of the Pavilion, and directly west of Canada Road.
- Pavilion/Concession /Restrooms** are located northwest of Field #10, southwest of Field #9.
- Facility Maintenance Storage Area** is located southwest of Field #2, southeast of Field #3, and northeast of Field #4.

Satellite Storage Building

is located diagonally between and north of Fields #7 & #8, and to the southeast of Field #6.

Batting Cages

are located directly east of Field #8, directly east of Canada Road, on the southeast corner of the park.

FAIRMONT PARK PRACTICE FACILITIES

Field #1

is the southernmost baseball field at the park, located on the southwest corner of the park; bounded on the west by Harris County Flood Control District ditch; on the south by the vehicle parking lot off Farrington; on the east by Field #2; and on the north by Field #3.

Field #2

is located immediately east of Field #1, and southeast of the Concession/Restroom building.

Field #3

is located immediately north of Field #1, and northwest of the Concession/Restroom building.

Field #4

is located immediately east of Field #3, and northeast of the Concession/Restroom building.

Concession/Restroom Building

is located in the center of the cloverleaf formed by Fields #1 -4.

Storage Area

is located east of the Concession/Restroom building, outside the cloverleaf formed by Fields #1-4.

AGREEMENT BETWEEN THE CITY OF LA PORTE, TEXAS
AND THE LA PORTE BOY'S BASEBALL ASSOCIATION
REGARDING THE USE OF DESIGNATED YOUTH BASEBALL FACILITIES

Deleted: AMENDED

BECAUSE, the City of La Porte, Texas (the "City") is the owner and operator of various youth baseball facilities as part of the parks and recreational facilities of the community; and

Because, the La Porte Boy's Baseball Association (the "Association") has provided the organization of youth baseball teams, conducted instructional league and tournament play for the youth of La Porte for many years, and has contributed funds in past years, which funds have been matched by the City, toward the construction of various amenities and facilities at the various youth baseball facilities owned by the City; and

Because, the City wishes to recognize and commend the Association for its contributions to youth recreation and health in the community, its support, and funding that has been provided by the Association;

NOW THEREFORE, KNOW ALL MEN BY THESE PRESENTS: That in consideration of the mutual covenants, agreements and benefits to both parties, it is agreed as follows:

I.

The City will provide limited use of the youth baseball facilities as described in "Exhibit A" which is attached and herein as if set out herein verbatim, and included as a part of this Agreement, to the Association for conduct of its league games, practice games, league/team practices, tournament games, and league playoff games from the first week in February through the last weekend in December for each year that this Agreement is in effect. Use is limited to recreational league play only (non-select, non-competitive, except for Fall Sunday Select League) Monday through Sunday, from 7:00am until 11:00pm each day for Pecan Park. The Association shall have exclusive right and responsibility for scheduling, organizing and conducting youth baseball league games, practice games, league/team practices, tournament games, and league playoff games at the youth baseball facilities listed in Exhibit A. The City reserves the right to close the fields for field maintenance purposes, for inclement weather, or other reasonable cause. For rainouts, the City will make the decision to close fields. The fields at Fairmont Park are now designated primarily for practice use. Any scheduled tournament games to be held at Fairmont Park will require the written permission of the Director of Parks & Recreation or his/her designee, and such approval shall not be unreasonably withheld. The number of tournaments eligible to be subcontracted by the Association to third party entities for Pecan Park will be limited to ten (10) per calendar year, in addition to Association tournaments. All non-league play tournaments will provide a tournament schedule and team rosters that will be turned into the City to be matched with all deposits from said tournament. Any non-league play tournaments will provide a current certificate of insurance with the same requirements as outlined for the Association in Section VIII of this Agreement. Ten (10) percent of all non-league play tournament entry fees will be paid to the City by the Association within two (2) weeks of the completion of the tournament. If additional field maintenance is required during tournaments, the

Deleted: , and 7:00am until 9:00pm for practice at Fairmont Park

Association will pay the City \$30 per field, per time the fields are prepared. The Association will schedule no more than four tournaments annually that utilize the practice fields at Fairmont Park. No tournament games at Fairmont Park may be scheduled to begin before 7:00am, nor after 8:00pm on Saturday; or begin before 9:00am, nor after 6:00pm on Sunday.

II.

The City will assume limited responsibility for maintenance of all structures located on City property at Pecan Park and Fairmont Park as set forth in this Agreement. Except for routine marking, raking, light dragging, watering and other field preparation as set out herein, the City will assume responsibility for maintenance and repair of fencing, parking lots, sidewalks, turf areas, and major field maintenance at the youth baseball facilities listed in Exhibit A. The Association will be responsible for routine marking, raking, light dragging, watering and other field preparation as necessary, of the youth baseball facilities as listed in Exhibit A. The City will manage all operations related to facility and grounds maintenance at the baseball facilities designated in Exhibit A. In exchange for grounds maintenance to be undertaken by City under this paragraph, the Association will pay the City \$500.00 per month, payable on the 1st of the month, February-October. In connection with payment of this fee, the Association will have the opportunity to give input on the field maintenance. The Association will continue to purchase red dirt at a minimum of five (5) loads annually, if needed.

The City has also provided an open air pavilion containing restroom, storage, and concession facilities, a maintenance storage area, a satellite storage building, and two batting cages at Pecan Park, as listed in Exhibit A. The open air pavilion containing restroom, storage, and concession facilities, the Maintenance facility for City use with designated storage area for the Association, the satellite storage building, and any permanent attachments to said facilities, are the property of the City. The concession facility at Fairmont Park will no longer be in operation as a full-time concession booth. It will be available for tournament or practice use by the Association for portable food and drink service only. Except as set out herein in Paragraph 3 below, the City agrees to maintain utility service to the concession/restroom, and storage structure's various components including, electrical, plumbing, roofing, and other systems that contribute to their safe and efficient operation. The restroom portion of the facility is a shared facility for various uses at Pecan Park and Fairmont Park and is the property of the City. The City will provide daily weekday custodial services for the restroom facility and provide necessary supplies for the restroom facility. Unless specifically marked, parking spaces at Pecan and Fairmont Parks are not reserved and are available on a first-come, first-served basis.

III.

The Association agrees to operate the concession facility exclusively and to provide materials, equipment, supplies, and personnel necessary for operation. Further, the Association is responsible for furnishing equipment for the batting cages and concession stands at the youth baseball facilities, including but not limited to the following: pitching machines, microwaves, refrigerators, ice machines, freezers, and all other electrical appliances. The Association is responsible for maintenance

Deleted: , air conditioners

of all furnished equipment in the concession stand and batting cages and turf-maintenance inside and around the batting cages. The Association agrees to clean the restroom facilities at its expense, in addition to the City's regular cleaning schedule on an as needed basis, during the Association's use of the facilities particularly including tournament use, to assure that the restrooms are clean and operable. The Association agrees to clean the concession portion of the facility at its expense. All revenues produced by batting cages and concession operations shall belong to the Association. The Association is responsible for meeting all applicable laws, ordinances, and codes regarding the following: sales tax, safety, and any other issue relative to concession operations, batting cage operations, and conduct of all its activities at the youth baseball facilities. Alcoholic beverage use, sales, or possession is prohibited by Ordinance at youth baseball facilities located on City property.

The Association agrees to the following concession operations processes:

- A Point of Sale system will be used to maintain all inventory and sales.
- A Point of Sale System will be used for all mobile sales.
- Concessions workers making \$600 or more a year will receive a 1099, unless they are hired through a staffing company.
- Deposits will be made the next business day.
- All monies will be kept in the safe until deposited.
- City staff will spot check all concessions deposits and/or inventory monthly, at a minimum.

When dealing with umpires, the Association agrees to use a third party vendor/umpire association. The Association will then file the appropriate 1099 and any other required IRS filings. Payments to vendor shall reconcile to game schedules.

In addition to the four overflow tournament events at the Fairmont Park Practice Fields as specified herein, the Association may schedule annually up to a maximum of eight (8) additional days for "Sunday Only" use of the Fairmont Park fields for overflow league games if needed. Association must provide the dates of the days to be used for the overflow league games to the City at least thirty (30) day prior to commencement of the league. Rainout days will be allowed provided that notice is given of the rainouts as they occur. The Association agrees to provide all field preparation necessary to conduct said league games. Further, the Association agrees to remove all litter and trash associated with the league games and deposit them off-site. The Association agrees to clean and stock restrooms at its expense for the league games. The City agrees to provide its standard level of maintenance for the league games, any maintenance over and above those responsibilities identified herein, will be the responsibility of the Association for the league games.

IV.

The Association is granted the right to solicit advertising boards for the outfield fencing at the ten baseball fields at Pecan Park. Per the architect's recommendation, signs placed on the fencing are limited to no larger than one fence panel in length (10 feet). Signs will be limited on the outfield fencing to the area between the foul poles. Two (2) sponsorship signs are allowed backstops above the top cross bar, facing the viewers. They will be no larger than 4 x 6 and they cannot obstruct the view. The City reserves the right to review and approve potential advertisers and sign content prior to installation. No advertising boards/signs shall be placed where visible from Canada Road, on Fields #1, #8, #9 and #10. All revenues generated by the advertising boards shall be the property of the

Deleted: , and no more than five signs per field.

Association.

V.

Batting cages shall not be open for use by the general public by the Association under any circumstances, unless the City gives its prior written permission, which permission shall not be unreasonably withheld. In any event, if the Association receives permission to open said batting cages to the public, such use shall be under the strict supervision of the Association. All provisions herein relating to insurance and indemnity to the City by the Association shall be applicable. Use of other baseball facilities by the public will be limited to the following conditions: (a) During the period not covered by this Agreement, the public shall have the right to use the various youth baseball facilities for pickup games at any time during park operating hours, except when the City is conducting maintenance or construction at the various facilities; and (b) During the period covered by this Agreement, the public shall have the right to play pickup youth baseball or other field sports games at the youth baseball facilities listed in Exhibit A, at any time during park operating hours when no practice game, league game, tournament game, or playoff game is scheduled; or the fields have not been **Specially Prepared** for such games (**Special Preparation** shall include marking, dragging, watering, painting, or other activity which would be disrupted or spoiled by indiscriminate use of the facilities by the public).

VI.

The Association shall indemnify and hold harmless the City, its officers, directors, agents, and employees from and against any and all claims, damages, losses, expenses, and liabilities, including attorney's fees which may be asserted against or incurred by the City arising, directly or indirectly, from any activities conducted or services performed by the Association under this agreement, or from any event occurring on the premises owned by the City during any period in which activities are being performed, conducted, or sponsored on the premises by the Association.

VII.

The City shall indemnify and hold harmless the Association, its officers, directors, agents, and employees from and against any and all claims, damages, losses, expenses, and liabilities, including attorney's fees which may be asserted against or incurred by the Association arising, directly or indirectly from any activities conducted or services performed by the City pursuant to this agreement, or from any event occurring on the premises owned by the City during any period in which activities are being performed, conducted, or sponsored on the premises by the City.

VIII.

The Association shall keep and maintain during the term of this agreement, a comprehensive general liability policy, with the City named as **Additional Named Insured**, with limits of liability of not less than One Million Dollars (\$1,000,000.00) combined single limit bodily injury and property damage per occurrence, with a minimum deductible of One Thousand (\$1,000.00) per occurrence. Thirty (30) days prior notice of policy cancellation shall be provided to the City. Effective policy must not exclude

participants in the Association's scheduled or unscheduled activities at the facilities. Other policy exclusions are permissible, provided that they do not contradict the terms of this Agreement. The Association shall furnish the City with a **Certificate of Insurance** evidencing such coverage. Such insurance shall include contractual liability insuring the indemnity agreements contained in this Agreement.

IX.

The Association shall maintain a written policy on criminal background checks by March 1, 2017. All board members, coaches, employees, and volunteers shall be background checked on an annual basis.

X.

The Association shall not assign, transfer, convey, sublet or otherwise dispose of the Agreement, or any part, to any person, partnership, company, corporation, club or association without prior written consent of the City of La Porte.

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XI.

This instrument contains the entire Agreement between the parties relating to the rights granted in the Agreement and the obligations assumed as a part of the Agreement. Any representations or modifications concerning this Agreement shall have no force or effect unless modified in writing, and signed by each party to the Agreement.

XII.

This Agreement shall be in force for a period of one (1) year, beginning with the date of its execution by both parties. During the term of this agreement, the Association and the City may enter into separate agreements regarding future capital improvement projects or other boy's baseball facilities that may be contemplated in the City.

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Deleted: At the end of the term of the agreement, both the City and the Association have the option to continue the agreement for an additional five (5) year term. Such option shall be executed in writing by the President of the Association and the City Manager or his designee. Should either party choose not to exercise their option, the agreement shall be considered to be at an end.

XIII.

The Association shall maintain a favorable financial position during the term of this Agreement. The Association will provide an official annual report on the Association's fiscal condition to the City, comprised of a combined expense statement/balance sheet as approved by the City's Controller and mutually agreed to by the City and the Association along with supporting documentation. The City reserves the right to review the internal financial control structure of the Association and to perform other audit steps as necessary to protect its interests. The Annual Report on the Association's Fiscal Condition will be due to the City sixty (60) days after the end of each fiscal year. Failure to provide requested financial information within the prescribed time limit will prompt a formal notification from the City to the Association of that the agreement is in Danger of Default and a request for satisfaction of the requirement within an additional fifteen (15) days from the date of official

notification. If the requirement for financial statement submission is not met by that time, or arrangements to submit not made to the City's satisfaction within that time, the agreement will be considered in Default. During the terms of this agreement, all checks written by the Association will be required to have two (2) signatures. Also, the Association will furnish the City a logon into the registration system so that deposits can be matched to the registrations. Should any questions arise, the City will request paper documents that will be provided to the City within three (3) business days. The City will spot check Association accounting at a minimum of once a month. Note that all expenditures of Association funds will be used only for League purposes and in accordance therewith, Association by-laws, shall be amended to so state.

XIV,

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If any section, sentence, phrase, clause, or any part of any section, sentence, phrase, or clause, of this Agreement shall, for any reason, not be legally or factually valid, such invalidity shall not affect the remaining portions of this Agreement.

IN TESTIMONY WHEREOF, this instrument has been renewed and executed in duplicate, each to have the effect of an original as follows:

(A) It has been executed on behalf of the City on the _____th day of ~~February, 2017~~ by its City Manager and attested by its City Secretary; and

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(B) It has been executed on behalf the Association on the _____th day of ~~February, 2017~~ by its President and attested by its Secretary, authorizing such execution.

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CITY OF LA PORTE, ~~TEXAS~~

By: _____
Corby D. Alexander, City Manager

ATTEST:

Patrice Fogarty, City Secretary

LA PORTE BOY'S BASEBALL
ASSOCIATION

By: _____
~~Heath Patterson~~, President

Deleted: Dean Bieber

ATTEST:

Association Secretary

APPROVED AS TO FORM:

Clark T. Askins, Assistant City Attorney

EXHIBIT "A"

The youth baseball facilities designated herein are located at Fairmont Park, 3544 Farrington Street, and Pecan Park, 3600 Canada Road, in La Porte, Texas, and are identified as follows:

PECAN PARK FACILITIES

- Field #1** is the northernmost baseball field at the park, located on the northeast corner of the park; bounded on the north by the Pecan Plantation Mobile Home Park, on the east by Canada Road, and on the west, by Field #2.
- Field #2** is located immediately west of Field #1, east of Field #3, and to the northeast of the Maintenance Facility.
- Field #3** is located immediately west of Field #2, north of Field #4, and to the northwest of the Maintenance Facility.
- Field #4** is located immediately south of Field #3, north of Field #5, and to the southwest of the Maintenance Facility.
- Field #5** is located immediately south of Field #4, north of Field #6, and directly west of the Pavilion.
- Field #6** is located immediately south of Field #5, north of Field #7, and to the southwest of the Pavilion.
- Field #7** is located immediately south of Field #6, directly west of Field #8, in the southwest corner of the park.
- Field #8** is located immediately east of Field #7, and south of Field #9, and directly west of Canada Road.
- Field #9** is located north of Field #8, and southwest of Field #10, southeast of the Pavilion, and directly west of Canada Road.
- Field #10** is located directly east of Canada Road, northeast of Field #9, and south of Field #1, southeast of the Pavilion, and directly west of Canada Road.
- Pavilion/Concession /Restrooms** are located northwest of Field #10, southwest of Field #9.
- Facility Maintenance Storage Area** is located southwest of Field #2, southeast of Field #3, and northeast of Field #4.

Satellite Storage Building

is located diagonally between and north of Fields #7 & #8, and to the southeast of Field #6.

Batting Cages

are located directly east of Field #8, directly east of Canada Road, on the southeast corner of the park.

FAIRMONT PARK PRACTICE FACILITIES

Field #1

is the southernmost baseball field at the park, located on the southwest corner of the park; bounded on the west by Harris County Flood Control District ditch; on the south by the vehicle parking lot off Farrington; on the east by Field #2; and on the north by Field #3.

Field #2

is located immediately east of Field #1, and southeast of the Concession/Restroom building.

Field #3

is located immediately north of Field #1, and northwest of the Concession/Restroom building.

Field #4

is located immediately east of Field #3, and northeast of the Concession/Restroom building.

Concession/Restroom Building

is located in the center of the cloverleaf formed by Fields #1 -4.

Storage Area

is located east of the Concession/Restroom building, outside the cloverleaf formed by Fields #1-4.

REQUEST FOR CITY COUNCIL AGENDA ITEM

Agenda Date Requested: <u>February 27, 2017</u>	<u>Appropriation</u>
Requested By: <u>Brian Sterling</u>	Source of Funds: _____
Department: <u>Planning & Development</u>	Account Number: _____
Report: <input checked="" type="radio"/> Resolution: <input type="radio"/> Ordinance: <input type="radio"/>	Amount Budgeted: _____
Other: <input type="radio"/> _____	Amount Requested: _____
	Budgeted Item: <input checked="" type="radio"/> YES <input type="radio"/> NO

Attachments :

- 1. Letter from Ballard Exploration Company, Inc.**
- 2. Letter from Vibra-Tech, Inc.**
- 3. Letter from Harris County**
- 4. Photos from Ballard Exploration**
- 5. Chapter 102, Art. II-"Natural Resources"**

SUMMARY & RECOMMENDATIONS

Ballard Exploration Company, Inc. has filed an application with the City for a Geophysical Mineral Exploration and Testing Permit as defined in Chapter 102, Article II – “Geophysical Mineral Exploration and Testing” of the City’s Code of Ordinances (see Exhibit 1).

The company desires to conduct a seismic survey within the northwest portion of the City (Underwood Rd. and Old Underwood Rd. from N. “H” St. to SH 225) and has provided a description of the methods to be utilized in a letter to the City (see Exhibit 2 – attached). No request is being made at this time, to extract any potential underground natural resources; only to conduct testing to help define a subsurface anomaly north of SH 225. Ballard Exploration Company’s application adheres to all regulations set forth in Chapter 102 – Natural Resources of the City’s Code of Ordinances.

Action Required of Council:

Provide Staff with direction regarding Ballard Exploration Company’s request for a Geophysical Mineral and Testing Permit as described above.

Approved for City Council Agenda

Corby D. Alexander, City Manager

Date

Ballard Exploration Company, Inc.

1021 Main, Suite 2310
Houston, Texas 77002

(713) 651-0181

Fax (713) 651-9201

15 Jul 2016

APPLICATION FOR GEOPHYSICAL PERMIT

Applicant: Ballard Exploration Co. Inc.
1021 Main St Suite 2310
Houston, TX 77002

Proposed Geophysical Method: A 2-Dimensional (One single line) seismic line utilizing seismic detectors placed on the surface and Vibroseis, truck mounted seismic wave generators, as the energy source.

Purpose of Exploration: To help define a subsurface anomaly North of Hwy 225.
There is no planned drilling of oil or gas well in La Porte City limits.

Location: The far west side of the City (see attached map) utilizing Old Underwood Road and Underwood Street. Both streets are maintained by Harris County and permission to utilize the streets will be obtained from the County. The location is a commercial area and away from neighborhoods.

Vibroseis points will be 300 feet from any water well. Attached is an aerial showing the proposed Vibroseis points and their distance from known wells.
Testing will be conducted during day light hours on week days, from 9am to 4pm.
Police escorts will be utilized for traffic control.
All other City of La Porte permit requirements will be met.

Two pictures of the Vibroseis equipment being utilized in a City environment and in a neighborhood are included with this application as well as a picture depicting the placement of the seismic detectors (geophones).

Vibro-Tech Inc, a ground particle movement specialist, will be utilized to monitor all phases of the Vibroseis activity.

Submitted by: George Henderson
Geophysical Project Manager
Cell: 713-857-9336

September 28, 2016

vibrattechinc.com

Mr. George Henderson
Ballard Exploration Co. Inc.
1021 Main St. Suite 2310
Houston, TX 77002

4818 E. Ben White Blvd
Suite 202
Austin, TX 78741

Phone 512.442.6464
Fax 512.442.6552

Dear Mr. Henderson:

Please find the following discussion regarding the vibroseis seismic exploration activities to be conducted in City of La Porte, Texas. The map attached to this letter illustrates the vibe points (VP) proposed for the Monument 2D survey within the right of way (R.O.W) of Underwood and Old Underwood roads.

The vibration response characteristics of domestic water wells, pipelines, and other underground structures; and thus the potential for damage to such structures; must be considered totally different from residential structures located above ground. Structures above ground are relatively free to respond in a manner different from the ground upon which they are founded. They can amplify, attenuate, or otherwise change characteristics.

This is not the case for water lines, water drainage systems, buried pipelines, and/or similar below-grade structures. Such structures are totally constrained by the surrounding soil or rock, and therefore must move in exactly the same manner as the surrounding material during a vibration episode. The vibroseis system does not involve excavation nor is any deformation of the subsurface caused by the typical vibrations produced. Any known subsurface structures are marked and vibroseis trucks are instructed not to operate directly on them.

Vibra-Tech has worked in the geophysical exploration industry for decades, helping to assure that seismic activities do not impact the community and/or critical infrastructure. It is standard procedure to operate vibroseis equipment on city streets in urban areas where city utilities are often located underground. Significant damage to a concrete or asphalt road would be necessary to permanently displace such infrastructure. This does not typically occur, and we are not aware of this type of damage ever occurring under normal operations. The seismic operating procedures that are proposed on this program are consistent with best practices and industry standards.

Respectfully submitted,

VIBRA-TECH, INC.



Geoffrey Rigsby
Southwest Regional Manager



MONUMENT 2D

DRAWN GPY	DATE 07 19 2016	PROPOSED 2D LOCATION WITHIN THE R.O.W.
APPROVED	DATE	OF OLD UNDERWOOD RD. AND UNDERWOOD
SCALE 1" = 800'	SHEET 1 of 1	PROJECT NO.



LEGEND

These standard symbols will be found in the drawing.

-  VP POINT
-  GEOPHONE POINT
-  WATER WELL
-  R = 300' BUFFER

HARRIS COUNTY

Public Review Group
Engineering Department

10555 Northwest Frwy., Suite 132
Houston, Texas 77092
(713) 956-3000

December 14, 2016

Ballard Exploration Co. Inc.
1021 Main Street Suite 2310
Houston, Texas 77002

SUBJECT: Harris County Project # 1611170047, Ballard Exploration Co.
Inc.

To whom it may concern:

The Ballard Exploration Company, Inc.'s proposed seismic program utilizing Old Underwood Rd. and Underwood St. in the City of La Porte, Texas and Independence Parkway will not require a permit.

Sincerely,



Brandon Leaks
ROW Notification Coordinator
Public Review Group, Engineering Department
Harris County



Photo 5 - Vibs in Town















Chapter 102 - NATURAL RESOURCES

ARTICLE I. - IN GENERAL

Secs. 102-1—102-30. - Reserved.

ARTICLE II. - GEOPHYSICAL MINERAL EXPLORATION AND TESTING

FOOTNOTE(S):

--- (1) ---

Cross reference— Businesses, ch. 22. [\(Back\)](#)

DIVISION 1. - GENERALLY

Sec. 102-31. - Penalties for violations of article.

It shall be unlawful and an offense for any person to violate or neglect to comply with any provision of this article, irrespective of whether or not the verbiage of each subsection of this article contains the specific language that such violation or neglect is unlawful and is an offense. Any person who shall violate any of the provisions of this article, or any of the provisions of a drilling and operating permit issued pursuant to this article, or any condition of the bond filed by the permittee pursuant to this section, or who shall neglect to comply with the terms of this section, shall be deemed guilty of a misdemeanor and shall, upon conviction, be fined in amounts established by the city and listed in appendix B of this Code. The violation of each separate provision of this section, and of the permit, and of the bond, shall be considered separate offenses. Each day's violation of each separate provision of this article shall be considered a separate offense. In addition to such penalties, it is further provided that the city council at any regular or special session or meeting may, provided ten days' notice has been given to the permittee that revocation is to be considered at such meeting, revoke or suspend any permit issued under this article and under which drilling or producing operations are being conducted if the permittee has violated any provision of the permit, the bond, or this article. If the permit is revoked, the permittee may make application to the city council for a reissuance of such permit, and the action of the city council thereon shall be final.

(Ord. No. 1659, § 3, 8-14-89)

Secs. 102-32—102-50. - Reserved.

DIVISION 2. - PERMIT

Sec. 102-51. - Required.

No person shall use or discharge in any manner any explosive including, but not limited to, dynamite and nitroglycerin, nor conduct any other method of geophysical mineral testing by the use of vibrating machines, or otherwise within the city, without first having obtained a permit therefor.

(Ord. No. 1659, § 1(16-28(1)), 8-14-89)

Sec. 102-52. - Application.

Application for a permit under this article shall be made with the city secretary. Such application shall contain the name of the applicant, address of the applicant, the geophysical methods of mineral exploration to be used, the purpose therefor, the location and use with a map attached designating the points of use. Such application shall be accompanied by a permit fee in an amount established by the city and listed in appendix A of this Code. On receipt of such application by the city secretary, the application shall be referred to the city manager for a report as to the compliance of such application with the provisions of this article. Such report and the application shall then be submitted to the city council. No permit shall be issued except by the approval of the city council.

(Ord. No. 1659-A, § 1(16-28(2)), 1-8-90)

Sec. 102-53. - Insurance and bond requirements.

- (a) On approval of the permit, but before the issuance of the permit, the applicant shall provide the city secretary with an insurance certificate showing insurance coverage of the applicant for general liability coverage in amounts not less than:
- (1) Bodily injuries: \$1,000,000.00 per person and \$3,000,000.00 per accident; and
 - (2) Property damage: \$1,000,000.00.
- (b) Such insurance coverage shall be provided by a good and solvent insurance company authorized to do business in the state. In addition, the applicant shall provide a cash bond in the amount of \$5,000.00. Such cash bond shall be for the benefit of the city and all persons concerned, conditioned that the permittee will comply with the terms and conditions of this article. The bond shall become effective on or before the date the bond is filed with the city secretary and remain in force and effect and on deposit for at least a period of six months after the exploration ends.

(Ord. No. 1659, § 1(16-28(3)), 8-14-89)

Sec. 102-54. - Duration.

All permits issued under this article shall expire 60 days from the date of its issuance.

(Ord. No. 1659, § 1(16-28(4)), 8-14-89)

Sec. 102-55. - Terms.

The terms of the permit shall be as follows:

- (1) The permittee shall observe a 300-foot distance from any dwelling or water well.
- (2) The written agreement shall cover any water well damage effective for 90 days after completion of the work.
- (3) At least one city police officer (off-duty) shall be employed to accompany the work crew while testing on the city rights-of-way, and the permittee shall provide 24 hours' notice to the chief of police.
- (4) The permittee shall obtain written permission from citizens to enter their property.

(Ord. No. 1659, § 1(16-28(5)), 8-14-89)

Secs. 102-56—102-75. - Reserved.

DIVISION 3. - REGULATIONS

Sec. 102-76. - Explosives.

Explosives may be used with the prior and express written consent of the city council.

(Ord. No. 1659, § 1(16-29), 8-14-89; Ord. No. 1659-A, § 1, 1-8-90)

Sec. 102-77. - Notice of time and place of use of testing methods.

No geophysical method of mineral exploration shall be used under this permit without the permittee having first, on the date of such proposed use, notified the city secretary and city manager of the proposed time and location of the planned use. If the city secretary is not available, notice shall be given to the chief of police, in addition to the city manager, and if he is not available, then to any police personnel of the city. No testing shall be conducted on Sunday, nor between the hours of 8:00 p.m. and 6:00 a.m. local time. Notice shall also be given of the name of the person in charge of the testing for the permittee for the day on which notice is given. In addition, written notice of such testing to the occupants of all dwellings located within 2,000 feet of the test site at least 24 hours prior to the testing.

(Ord. No. 1659, § 1(16-30), 8-14-89)

Secs. 102-78—102-110. - Reserved.

ARTICLE III. - OIL AND GAS

FOOTNOTE(S):

--- (2) ---

Cross reference— Business, ch. 22. [\(Back\)](#)

State Law reference— Oil and gas generally, V.T.C.A., Natural Resources Code § 81.001 et seq. [\(Back\)](#)

DIVISION 1. - GENERALLY

Sec. 102-111. - Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning. All technical or oil and gas industry words and phrases used in this article and not specifically defined in this section shall have that meaning customarily attributable thereto by prudent operators in the oil and gas industry.

Actual drilling means when the drilling rig, whose purpose it is to drill the bore hole into the production horizon, first inserts the drill bit into the ground.

Block means block of land only and shall not be misconstrued to mean drilling block.

Lease means any tract of land subject to an oil, gas and mineral lease or other oil and gas development contract, or any unit composed of several tracts and leases but operated as one lease, and any tract of land in which the minerals are owned by an operator or someone holding under it or him, but which, due to the fee royalty ownership is developed and operated as a separate tract.

New well permittee means the person to whom is issued a permit for the drilling and operation of a new well under this section, and his or its administrators, executors, heirs, successors and assigns.

Old well permittee means the person to whom is issued a permit for the redrilling, working-over, recompletion and reoperation of an old or existing well under this section, and his or its administrators, executors, heirs, successors and assigns.

Permittee means both an old well permittee and a new well permittee.

Well means any holes, bores to any sand, any formation, strata or depth for the purpose of producing and recovering any oil or gas, salt water injection, gas injection or enhanced recovery injection project.

Well location means the surface location of a well.

(Ord. No. 1659, § 1(16-1), 8-14-89)

Cross reference— Definitions generally, § 1-2.

Sec. 102-112. - Violation of applicable laws or regulations.

Any violation of the laws of the state or any rules, regulations, or requirements of any state or federal regulatory body having jurisdiction in reference to drilling, completing, equipping, operating, producing, maintaining, spacing or abandoning an oil or gas well or related appurtenances, equipment, or facilities, or in reference to firewalls, fire protection, blowout protection, safety protection, or convenience of persons or property, shall also be a violation of this article, and shall be punishable in accordance with the provisions of this article.

(Ord. No. 1659, § 1(16-27), 8-14-89)

Sec. 102-113. - Penalties for violations of article.

It shall be unlawful and an offense for any person to violate or neglect to comply with any provision of this article, irrespective of whether or not the verbiage of each subsection of this article contains the specific language that such violation or neglect is unlawful and is an offense. Any person who shall violate any of the provisions of this article, or any of the provisions of a drilling and operating permit issued pursuant hereto, or any condition of the bond filed by the permittee pursuant to this section, or who shall neglect to comply with the terms of this article, shall be deemed guilty of a misdemeanor and shall, upon conviction, be fined in amounts established by the city and listed in appendix B of this Code. The violation of each separate provision of this section, the permit, and the bond shall be considered a separate offense. Each day's violation of each separate provision of this article shall be considered a separate offense. In addition to such penalties, it is further provided that the city council, at any regular or special session or meeting, may, provided ten days' notice has been given to the permittee that revocation is to be considered at such meeting, revoke or suspend any permit issued under this article and under which drilling or producing operations are being conducted if the permittee has violated any provision of the permit, the bond or this article. If the permit is revoked, the permittee may make application to the city council for a reissuance of such permit, and the action of the city council thereon shall be final.

(Ord. No. 1659, § 3, 8-14-89)

Secs. 102-114—102-135. - Reserved.

DIVISION 2. - ADMINISTRATION

FOOTNOTE(S):

--- (3) ---

Cross reference— Administration, ch. 2. [\(Back\)](#)

Sec. 102-136. - Appointment of planning director as oil and gas inspector.

The city council hereby appoints the planning director of the city to enforce the provisions of this article.

(Ord. No. 1659, § 1(16-9), 8-14-89)

Secs. 102-137—102-155. - Reserved.

DIVISION 3. - PERMIT

Sec. 102-156. - Required.

- (a) *New well permit.* It shall be unlawful and an offense for any person acting either for himself or acting as agent, employee or independent contractor for any other person, to commence to drill, or to operate, any new well within the city limits, or to work upon or assist in any way in the development or operation of any such new well, without a new well permit for the drilling and operation of such new well having first been issued by the authority of the city council, in accordance with the terms of this article.
- (b) *Old well permit.* It shall be unlawful and an offense for any person acting either for himself or acting as agent, employee or independent contractor for any other person, to commence to deepen, to repair or to recomplete any well, old or existing, within the city limits or to work upon or assist in any way in the development or operation of any such well, without an old well permit having first been issued by the proper authority of the city council in accordance with the terms of this article.

(Code 1970, § 16-12; Ord. No. 1659, § 1(16-2), 8-14-89)

Sec. 102-157. - Application and filing fee.

Every application for a permit to drill and operate a well shall be in writing, signed by the applicant, and duly filed with the city secretary, accompanied by a permit fee in an amount established by the city and listed in appendix A of this Code. The application shall be for a single well and shall include full information including the following:

- (1) The date of the application.
- (2) Name and address of the applicant.
- (3) Proposed site of the well, including:
 - a. Name of the fee owner.
 - b. Name of the lease owner.
 - c. Legal description of the lease.
 - d. Map showing location of the well on the lease.
- (4) Type of drilling rig to be used.
- (5) The proposed depth of the well.
- (6) A statement that it is understood and agreed that for any legal action or undertaking, venue for all suits shall lie in the county under any provision of this article.

(Code 1970, § 16-13; Ord. No. 1659, § 1(16-5), 8-14-89)

Sec. 102-158. - Permittee's insurance and bond.

If a permit is issued by the city council under the terms of this article for the drilling and operation of a well, no actual drilling operations or site preparation work shall be commenced until the permittee shall file with the city secretary a bond and a certificate of insurance, as follows:

- (1) The bond shall be a cash bond in the principal sum of such number of dollars as has been determined by the city council, but not to be less than \$5,000.00. Such cash bond shall be for the benefit of the city and all persons concerned, conditioned that the permittee will comply with the terms and conditions of this article in the drilling and operation of the well. Such bond shall become effective on or before the date the same is filed with the city secretary and remain in force and effect and on deposit for at least a period of six months subsequent to the expiration of the term of the permit issued, and in addition the bond will be conditioned that the permittee will promptly pay off fines, penalties and other assessments imposed upon the permittee by reason of his breach of any of the terms, provisions and conditions of this article, and that the permittee will promptly restore the streets and sidewalks and other public property of the city, which may be disturbed or damaged in the operations, to their former condition. The permittee will promptly clear all premises of all litter, trash, waste and other substances used, allowed or occurring in the drilling or producing operations, and will, after abandonment, grade, level and restore such property to the same surface condition, as nearly as possible, as existed when operations for the drilling of the wells were first commenced. The permittee will indemnify and hold the city harmless from any and all liability growing out of or attributable to the granting of such permit, including the payment of any expenses incurred by the city for any legal action which may be filed by either party hereto by reason of seeking or recovery of damages to the city. If at any time, the city council shall deem any permittee's bond to be insufficient for any reason, it may require the permittee to make an additional cash bond. If after completion of a well, the permittee has complied with all of the provisions of this article, such as removing the derrick, clearing the premises, etc., he may apply to the city council to have the cash bond reduced to a sum of not less than \$1,000.00 for the remainder of the time the well produces without reworking, and be given a refund of the amount of reduction. During reworking operations, the amount of the bond shall be increased to the original amount.
- (2) In addition to the bond required in subsection (1) of this section, the permittee shall carry a policy of standard comprehensive public liability insurance, including contractual liability covering bodily injuries and property damage, naming the permittee and the city, issued by an insurance company authorized to do business within the state, such policy in the aggregate shall provide for the following minimum coverages:
 - a. Bodily injuries: \$1,000,000.00, one person and \$3,000,000.00, one accident; and
 - b. Property damage: \$1,000,000.00.
- (3) The permittee shall file with the city secretary certificates of such insurance coverage as stated in subsection (2) of this section, and shall obtain the written approval thereof by the city secretary, who shall act thereon within ten days from the date of such filing. Such insurance policy shall not be cancelled without written notice to the city secretary at least ten days prior to the effective date of such cancellation. If the insurance policy is cancelled, the permit granted shall terminate, and the permittee's rights to operate under the permit shall cease until the permittee files additional insurance as provided in this section.

(Code 1970, § 16-14; Ord. No. 1659, § 1(16-8), 8-14-89)

Sec. 102-159. - Issuance or refusal.

- (a) The city council, within 30 days after the filing of the application for a permit to drill and operate a well, shall determine whether or not the application complies in all respects with the provisions of this article, and if it does, the city council shall then fix the amount of the principal of the bond and insurance provided for in section 102-158, and after such determination shall issue a permit for the drilling and operation of the well applied for. Each permit issued under this article shall:
 - (1) By reference have incorporated therein all the provisions of this article with the same force and effect as if this article were copied verbatim in the permit.
 - (2) Specify the well location with particularity to lot number, block number and correct legal description.

- (3) Contain and specify that the term of such permit shall be for a period of 180 days from the date of the permit and as long thereafter as the permittee is engaged in drilling operations with no cessations of such operations for more than 90 days, or oil or gas is produced in commercial quantities from the well drilled pursuant to such permit, provided that if at any time after discovery of oil or gas the production thereof in commercial quantities shall cease, the term shall not terminate if the permittee commences additional reworking operations within 90 days thereafter, and if they result in the production of oil or gas, so long thereafter as oil or gas is produced from such well.
- (4) Contain and specify such conditions as are authorized by this article.
- (5) Contain and specify that no actual operations shall be commenced until the permittee shall file and have approved an indemnity bond in the designated principal amount as so determined by the city council and conditioned as specified in section 102-158
- (b) Such permit, in duplicate originals, shall be signed by the city manager, and prior to delivery to the permittee shall be signed by the permittee (with one original to be retained by the city and one by the permittee). When so signed, the permit shall constitute the permittee's drilling and operating license and the contractual obligation of the permittee to comply with the terms of such permit, such bond and this article.
- (c) If the permit for the well is refused, or if the applicant notifies the city in writing that he does not elect to accept the permit as tendered and wishes to withdraw his application, or if the bond of the applicant is not approved and the applicant notifies the city in writing that he wishes to withdraw his application, then, upon the happening of such events, the cash deposit provided for to be filed with the application shall be returned to the applicant, except that there shall be retained therefrom by the city a processing fee in an amount established by the city and listed in appendix A of this Code.

(Code 1970, § 16-17; Ord. No. 1659, § 1(16-6), 8-14-89)

Sec. 102-160. - Termination.

The permit shall terminate without any action on the part of the city unless actual drilling of the well shall have commenced within 180 days from the date of issuance. The cessation for a like period of the drilling operations, or the cessation of the production of oil or gas from the well after production shall have commenced, shall cancel the permit, and the well shall be considered as abandoned for all purposes of this article. It shall be unlawful thereafter to continue the operation or drilling of such well without the issuance of another permit.

(Code 1970, § 16-21; Ord. No. 1659, § 1(16-7), 8-14-89)

Secs. 102-161—102-180. - Reserved.

DIVISION 4. - DRILLING AND OPERATING REGULATIONS

Sec. 102-181. - Well location.

- (a) *Subdivisions.* No drilling for gas and oil wells in recorded subdivisions shall be allowed. This subsection shall apply only to acreage which has been subdivided into home sites the size of which are one acre or less and the plat has been filed for record in the office of the county clerk.
- (b) *Residences; commercial buildings; schools; city-owned buildings; water wells.* No well shall be drilled and no permit shall be issued for any well to be drilled at any location which is nearer than 750 feet of any residence or commercial building without the applicant having first secured the written permission of the owner. No well shall be drilled and no permit shall be issued for any well to be drilled at any location which is nearer than 750 feet of any school campus within the La Porte

Independent School District. No drilling and no permit shall be issued to any well nearer than 750 feet to city-owned buildings or water wells without written permission from the city.

(Ord. No. 1659, § 1(16-4), 8-14-89)

Sec. 102-182. - Streets and alleys.

No well shall be drilled and no permit shall be issued for any well to be drilled at any location which is within any of the streets or alleys of the city. No street or alley shall be blocked or encumbered or closed in any drilling or production operation except by special permit by order of the city council, and then only temporarily.

(Code 1970, § 16-1; Ord. No. 1659, § 1(16-3), 8-14-89)

Sec. 102-183. - Deeper drilling.

If the city is satisfied that the well may be deepened with the same degree of safety as existed with the original well, a permit may be issued, in an amount established by the city and listed in appendix A of this Code, to the permittee, authorizing the deepening and operation of the well to such specified depth as applied for. In any deeper drilling or any deeper completion or any deeper production operations, the permittee shall comply with all other provisions contained in this article and applicable to the drilling, completion and operation of a well.

(Ord. No. 1659, § 1(16-10), 8-14-89)

Sec. 102-184. - Derrick and rig.

- (a) It shall be unlawful and an offense for any person to use or operate in connection with the drilling or reworking of any well within the city limits, any wooden derrick, and all engines shall be equipped with adequate mufflers approved by the city council; or to permit any drilling rig or derrick to remain on the premises or drilling site for a period longer than 60 days after completion or abandonment of the well. At all times from the start of erection of a derrick, mast or gin-pole, until the well is abandoned and plugged or completed as a producer and enclosed with a fence as provided in this division, the permittee shall keep a watchman on duty on the premises at all times; provided, however, that it shall not be necessary to keep an extra watchman on duty on the premises when other workers of the permittee are on the premises.
- (b) No electric lighting generator shall be placed or remain nearer than 150 feet to any producing well or oil tank.
- (c) Any rubbish or debris which may constitute a fire hazard shall be removed to a distance of at least 100 feet from the vicinity of the wells, tanks and pump stations. All waste shall be disposed of in such manner as to avoid creating a fire hazard or polluting fresh water streams or underground strata. All waste disposal plans shall be approved by the planning director.
- (d) No open flame or arc welding shall be allowed inside the derrick substructure of a well prior to installation of the well head.
- (e) All temporary oil and gas flow lines laid upon or across a public road or highway must be buried to the depth required by permits issued under section 102-262.
- (f) An electric powered rig shall be utilized when available.

(Ord. No. 1659, § 1(16-11), 8-14-89)

Sec. 102-185. - Pits.

Either earthen or steel slush pits shall be permitted in connection with the drilling operation. If a steel pit is used, the pit and its contents shall be removed from the premises and the drilling site within 60 days after completion of the well. If an earthen slush pit is used, the slush pit shall be filled and leveled within

60 days after completion of the well. All drilling mud must be removed from the earthen pit prior to backfilling.

(Ord. No. 1659, § 1(16-12), 8-14-89)

Sec. 102-186. - Casing.

All casing, including surface protection and production strings, shall be new seamless steel, or equivalent quality oil well casing. Each joint and length of each particular casing string shall have, prior to setting, unconditionally passed a hydraulic test to ensure physical integrity at design working pressure.

(Ord. No. 1659, § 1(16-13), 8-14-89)

Sec. 102-187. - Setting and cementing casing.

No well shall be drilled within the city limits without properly setting surface casing to a depth as approved by the state department of water resources. The surface casing must be driven or cemented by the pump and plug method. All other casing strings must be cemented by the pump and plug method with sufficient cement to completely fill all of annular space behind the casing string to the surface. No well shall be drilled within the city limits without properly setting surface casing a depth sufficient to protect producing fresh water sands.

(Ord. No. 1659, § 1(16-14), 8-14-89)

Sec. 102-188. - Valves and blowout preventers.

No well shall be drilled within the city limits without equipping the intermediate protective casing with at least one master valve and one fluid-operated ram type blowout preventer with mechanical operating backup; and without properly equipping the production casing during completion operations and workover operations with at least one master valve and at least one fluid-operated ram type blowout preventer. Each blowout preventer shall test 5,000 pounds, and its mechanical operation shall be tested daily. All control equipment shall be in good working condition and order at all times.

(Ord. No. 1659, § 1(16-15), 8-14-89)

Sec. 102-189. - Drilling fluid.

No well shall be drilled within the city limits without using mud as the drilling fluid after the setting of surface casing as provided in section 102-187. The weight of the mud laden drilling fluid shall be at all times maintained at such weight as will provide a hydrostatic head of not less than 500 pounds per square inch in excess of the formation encountered by the well. In reworking a well, a drilling fluid shall be at all times maintained at such weight as will provide a hydrostatic head of not less than 500 pounds per square inch in excess of the pressure, of the formation penetrated by the well and open for production.

(Ord. No. 1659, § 1(16-16), 8-14-89)

Sec. 102-190. - Drill stem tests.

It shall be unlawful and an offense for any person in connection with the drilling or reworking operations of any well within the city limits to take and to complete any drill stem test except during daylight hours, and then only if the well effluent during the test is produced through an adequate oil and gas separator to storage tanks, and the effluent remaining in the drill pipe at the time the tool is closed is flushed to the surface by circulating drilling fluid down the annulus and up the drill pipe.

(Ord. No. 1659, § 1(16-17), 8-14-89)

Sec. 102-191. - Bradenhead.

Each well drilled within the city limits shall be equipped with a bradenhead with a working pressure of not less than 3,000 pounds per square inch. Bradenheads shall be cast iron steel premanufactured and

welded to the well casing. The bradenhead installed on the surface casing shall be set above the ground level and shall be equipped with fittings having a working pressure rating of not less than 3,000 pounds per square inch. The bradenhead pressure shall be checked at least once each calendar month, and, if pressure is found to exist, proper remedial measures shall be taken immediately to eliminate the source and the existence of the pressure.

(Ord. No. 1659, § 1(16-18), 8-14-89)

Sec. 102-192. - Christmas tree and well head connections.

The Christmas tree and all well head connections on each well drilled within the city limits shall have at least a minimum working pressure of 3,000 pounds per square inch, and on all wells completed below a depth of 7,000 feet, the Christmas tree and well head connections shall have at least a minimum working pressure of 3,000 pounds per square inch and a minimum test pressure of at least 5,000 pounds per square inch. All piping and fittings connecting the well head to an oil and gas separator shall have at least the same working pressure as specified for Christmas tree and well head connections in this section. All wells shall be equipped with an automatic closing safety valve located adjacent to the wing valve in addition to the regular control valves.

(Ord. No. 1659, § 1(16-19), 8-14-89)

Sec. 102-193. - Premises to be kept clean and sanitary.

The premises shall be kept in a clean and sanitary condition, free from rubbish of every character, to the satisfaction of the city at all times drilling operations or reworking are being conducted, and as long thereafter as oil and/or gas is being produced therefrom. Any spill, oil or salt water must be reported immediately to the city and cleanup commenced promptly.

(Ord. No. 1659, § 1(16-20), 8-14-89)

Sec. 102-194. - Mufflers required.

Motive power for all operations after completion of drilling operations shall be electricity or properly muffled gas, gasoline, or diesel engines. Such mufflers are to be approved by the chief building official prior to their use.

(Ord. No. 1659, § 1(16-21), 8-14-89)

Sec. 102-195. - Storage tanks and separators.

It shall be unlawful and an offense for any person to use, construct or operate in connection with any producing well within the city limits, any crude oil well storage tanks except to the extent of two steel tanks for oil storage, not exceeding 500 barrels capacity each and so constructed and maintained as to be vaportight, with pressure release valves set below tank design pressure, and each surrounded with an earthen firewall at such distance from the tank as will, under any circumstances, hold and retain at least 1½ times the maximum capacity of such tank. A permittee shall operate a conventional steel separator, and such other steel tanks and appurtenances as are necessary for separating oil and gas with each of such facilities to be so constructed and maintained as to be vaportight. Each oil and gas separator shall be equipped with both a regulation pressure relief safety valve and a bursting head.

(Ord. No. 1659, § 1(16-22), 8-14-89)

Sec. 102-196. - Fence.

Any person who completes any well as a producer shall have the obligation to enclose the well, together with its surface facilities and storage tanks, by a substantial smooth net wire fence sufficiently high and properly built so as to ordinarily keep persons and animals out of the enclosure with all gates thereto to be kept locked when the permittee or his employees are not within the enclosure. It is provided,

however, that in noncongested areas the city, at its discretion, may waive the requirement of any fence, or may designate the type of fence to be erected.

(Ord. No. 1659, § 1(16-23), 8-14-89)

Sec. 102-197. - Venting and flaring of gas.

No person engaged in drilling or operating any well shall permit gas to escape or be vented into the air unless the gas is flared and burned as permitted by the state railroad commission.

(Ord. No. 1659, § 1(16-24), 8-14-89)

Sec. 102-198. - Abandonment and plugging.

Whenever any well is abandoned it shall be the obligation of the permittee and the operator of the well to plug the well in accordance with regulations of the state railroad commission. No surface or conductor string of casing may be pulled or removed from a well. During initial abandonment operations it will be the obligation of the permittee or the operator of the well to flood the well with mud-laden fluid weighing not less than ten pounds per gallon or sufficient mud weight to yield a hydrostatic pressure 500 pounds above the maximum formation pressure encountered by the well. The well will be kept filled to the top with the mud-laden fluid at all times, and the mud-laden fluid of the above specifications will be left in the well bore below and between cement plugs.

(Ord. No. 1659, § 1(16-25), 8-14-89)

Sec. 102-199. - Disposal of salt water.

The permittee shall make adequate provisions for the disposal of all salt water or other impurities which he may bring to the surface, and disposal to be made in such manner as to not contaminate the underground water strata or to injure surface vegetation. The disposal process shall be approved by the city, prior to disposal for the protection of public health, safety and well-being.

(Ord. No. 1659, § 1(16-26), 8-14-89)

Sec. 102-200. - Use of explosives.

Explosives may be used with the prior express written consent of the city council.

(Ord. No. 1659, § 1(16-29), 8-14-89; Ord. No. 1659-A, § 1, 1-8-90)

Secs. 102-201—102-230. - Reserved.

ARTICLE IV. - PIPELINE TRANSPORTATION

FOOTNOTE(S):

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Editor's note— Ordinance No. 2004-2755, § 1, adopted July 12, 2004, repealed the former Art. IV, §§ 102-231—102-237, 102-261—102-265, and enacted a new Art. IV as set out herein. The former Art. IV pertained to similar subject matter and derived from Ord. No. 915, § 1(18-A-1)—(18-A-12), 3-6-72.

Cross reference— Businesses, ch. 22. [\(Back\)](#)

State Law reference— Transportation of gas and gas pipeline facilities, safety standards, preemption, Vernon's Ann. Civ. St. art. 6053-1. [\(Back\)](#)

Sec. 102-231. - Declaration of policy.

The city council declares that the policy of the city in the manner of granting to any person the privilege to construct, operate and maintain any pipe or pipeline within the jurisdiction of the city for the purpose of thereby transporting oil, gas, brine or any other liquid or gaseous substance whatsoever shall be stated in this article. The provision of this article shall be administered by the director of planning or his designee.

(Ord. No. 2004-2755, § 1, 7-12-04)

Sec. 102-232. - Definition of terms.

All terms used herein shall be taken in their ordinary signification except the following:

City shall mean the City of La Porte now incorporated and as hereafter expanded by annexation or consolidation.

Commodity shall mean any liquid or gaseous substance or other product capable of being transported through a pipeline and which is, or may become, flammable, toxic or otherwise hazardous to human, animal or plant health and/or life.

Director shall mean the director of planning or his designee.

Operational boundary shall mean the prime property and location of the offices and operational facilities of a person within the city. The term is not intended to extend to rights-of-way, easements, licenses or privileges owned or utilized by a person incidental to a pipeline and which radiate or depart from such primary property, offices and operational facilities.

Permittee shall mean the person to whom a permit is issued under the provisions of this ordinance.

Person shall mean an individual, corporation, partnership, association or any other entity, however organized.

Pipeline shall mean any pipeline or part thereof, including pipe, valves and any appurtenances thereto, which is used for the transportation of a commodity into, across, under or over the city. "Pipeline" shall include any pipe, valve, appurtenance or portion of any pipeline crossing the operational boundary of any industry operating, in whole or part, in the city. "Pipeline" shall not include any pipeline, pipe, valve or appurtenance when located entirely on, within or under a person's operational boundary.

Relocation shall mean the horizontal or vertical movement of a pipeline.

Reposition shall mean the movement of a pipeline when such movement is necessary for the public construction or public improvement: construction, maintenance and improvement of streets, water lines, sanitary sewer lines, storm sewers, ditches and public utilities.

(Ord. No. 2004-2755, § 1, 7-12-04)

Cross reference— Definitions generally, § 1-2.

Sec. 102-233. - Exemption.

This article shall not extend to:

- (1) Any person now or hereafter providing natural gas service for residential and business use only within the city pursuant to a franchise from the city as a gas distribution utility;
- (2) Raw or potable water pipelines, valves and appurtenances; or
- (3) City, county or state agencies for storm drainage or sanitary sewer service pipelines, valves and appurtenances, except industrial wastes transported by pipeline to treatment facilities outside the corporate city limits.

(Ord. No. 2004-2755, § 1, 7-12-04)

Sec. 102-234. - Permit required.

No person shall commence the construction, relocation or reposition of a pipeline within the city without a permit being obtained from the city for such pipeline under the terms of this chapter.

(Ord. No. 2004-2755, § 1, 7-12-04)

Sec. 102-235. - Application for permit

A person desiring a permit shall submit a written application to the director and concurrently therewith shall pay a non-refundable fee to the city. The application form, which can be obtained from the director, shall be submitted to the director, in duplicate, with the following information contained thereon:

- (1) The name, business address and telephone number of the pipeline owner and operator;
- (2) The names, titles and telephone numbers of the following persons:
 - a. The person submitting the information;
 - b. The principal contact for submittal of information; and
 - c. The 24-hour emergency contact (and an alternate 24-hour contact), who
 1. Can initiate appropriate actions to respond to a pipeline emergency;
 2. Has access to information on the location of the closest shutoff valve to any specific point in the city or its jurisdiction; and
 3. Can furnish the common name of the material then being carried by the pipeline.
- (3) The origin point and destination of the pipeline being constructed, adjusted, relocated, replaced, repositioned or repaired.
- (4) A description of the commodity(s) to be transported through the pipeline. A copy of the material safety data sheets for the commodity(s) shall be included with the submittal if the owner or operator is required by federal or state law to have material safety data sheets available;
- (5) The maximum allowable operating pressure on the pipeline as determined according to the U.S. Department of Transportation and State Railroad Commission procedures or the maximum design strength for unregulated pipelines, if applicable;
- (6) The normal operating pressure range of the pipeline;
- (7) The maximum allowable temperature under which the substance or product may be pumped or otherwise caused or permitted to flow through any and all of the particular portions of the pipeline, if applicable;
- (8) Engineering plans, drawings, maps with summarized specifications showing the horizontal pipeline location, the pipeline covering depths and location of shutoff valves within the corporate limits and ETJ of the city. The location of shutoff valves must be known in order for emergency responders to clear the area for access to the valves. To the extent that information can be reasonably obtained, drawings shall show the location of other pipelines and utilities that will be crossed or paralleled within five feet;
- (9) A summary description of the time, location, manner, means and methods of the proposed construction, including but not limited to the following:
 - a. Detailed cross section/profile drawings for all public way crossings if requested by the Director;
 - b. A plan accurately showing the location, course and alignment of the proposed pipeline, including valve locations (existing and proposed), and all public ways in which the proposed pipeline shall be laid, provided that the degree of accuracy shall not be required

to exceed the accuracy which can be practicably achieved by using United States Geological Survey (USGS) maps.

- (10) A statement that the pipeline will comply with the applicable standards required by this article as well as all applicable federal, state and local laws and regulations; and
- (11) A statement that the permittee shall, at any time in the future, where such pipeline or portion thereof crosses or is laid within, under or across any street, road or utility right-of-way, drainage way or public way existing or projected at the time the permit is issued, reposition such pipeline (which shall include lowering or raising the pipeline, as well as casing it, if required) at the permittee's sole expense, when the city reasonably requires such action incidental to public construction or public improvement: Construction, maintenance and improvement of streets, water lines, sanitary sewer lines, storm sewers, ditches and public utilities. The city shall give the permittee prior written notice of the need for repositioning location, and such notice shall be mailed certified mail, return receipt requested, to the permittee as designated in the application. The permittee shall have six months to complete such repositioning.
- (12) A statement that the permittee shall notify the director at least 48 hours prior to performing any scheduled repairs or maintenance on the pipeline. For unscheduled emergency repairs or maintenance, taken to protect the public health, safety or welfare, the permittee shall notify the city police department dispatcher as soon as practical but no later than one hour after commencing repairs or maintenance.

The director expressly reserves the right to require the submission of additional information if the director reasonably deems the information necessary to meet the requirements of this article. Such supplemental information shall be submitted by the permittee to the director within ten days, excluding weekends and city holidays, of the permittee's receipt of the director's written request. While awaiting the requested information, the period in which the city must process the application shall be suspended.

(Ord. No. 2004-2755, § 1, 7-12-04)

Sec. 102-236. - City council consideration.

- (a) Within 60 days from the date on which the official application is received at the official address for the director, the director shall advise the applicant whether, based on the director's professional judgment, the contemplated construction, relocation, replacement or reposition is in compliance with this article. If the director does not deem the contemplated construction to be in compliance with this article, the director shall notify the applicant, in writing, of any deficiencies found.
- (b) After the notice described in subsection (a) of this section is given to the applicant, the director, based upon the assessment of the director and other city personnel, shall report to the city council upon his examination of such application and plans, including such changes in the plans as the applicant may have made upon his suggestion, with his recommendation as to the granting or denying of the permit application, based upon compliance or noncompliance with this article, at the next regularly scheduled city council meeting for which adequate notice may be given. The director shall in such report and recommendation state whether the proposed course or alignment of the pipeline and depth at which it is proposed to be laid thorough undeveloped or unplatted areas is, to the extent economically feasible, consistent with the probable future development of such areas, location and opening of future streets, and laying of water, sanitary sewer, storm sewer lines, ditches and public utilities incident to such probable future development.
- (c) After the report and recommendation is made to the city council, the city council shall consider approval or denial of the permit.

(Ord. No. 2004-2755, § 1, 7-12-04)

Sec. 102-237. - Permits.

Upon approval, permits shall be executed in duplicate originals by the director. One duplicate original shall be delivered to the permittee and the other shall be retained by the city. A copy of the permit shall be conspicuously displayed at each point where the pipeline construction, relocation or repositioning intersects any public street, right-of-way, easement or public property within the corporate limits of the city.

(Ord. No. 2004-2755, § 1, 7-12-04)

Sec. 102-238. - Permit transference.

Permits may be transferred after prior written notice to the director, on a form provided by the director, which notice shall set forth the full name and address of the transferee, the full name and address of the transferee's registered agent or owner (if an unincorporated entity) and an agreement that the transferee shall be bound by all provisions of the application and permit as originally acted upon and granted by the city. The transfer application shall be signed by an authorized officer, owner or representative of both the transferor and transferee and shall be accompanied by a non-refundable transfer fee.

(Ord. No. 2004-2755, § 1, 7-12-04)

Sec. 102-239. - Permit fees.

- (a) Every permit requested under the terms and conditions of this article, with the exception of those permits necessitated due to a repositioning of a pipeline at the request or required by the city or another governmental entity, shall provide for the payment by the applicant to the city of a non-refundable application fee of \$1,000.00 per pipeline.
- (b) Every permit granted under the terms and conditions of this article shall provide for the payment of an annual fee thereafter in the amount of \$800.00 per pipeline per year, payable annually in advance on or before July 1 of each year.
- (c) Every permit transfer shall be accompanied by a non-refundable transfer fee of \$300.00.

(Ord. No. 2004-2755, § 1, 7-12-04)

Sec. 102-240. - Permit expiration.

- (a) If construction, relocation or reposition of the pipeline does not commence within one year from the date of the permit, the permit shall be void unless the permittee makes written application for an extension. The city council may grant an extension for one additional year only.
- (b) Pipelines abandoned after the date of this article shall have their permit voided and shall not thereafter be subject to the terms of this article except as follows:
 - (1) The owner or operator shall report to the director, in writing, the abandonment of a pipeline that has been permitted in accordance with this article.
 - (2) All known abandoned pipelines shall be purged, disconnected from all sources or suppliers of gas, hazardous liquids and chemicals and shall be capped or sealed at each end within the city limits.

(Ord. No. 2004-2755, § 1, 7-12-04)

Sec. 102-241. - Construction requirements.

All pipelines shall be constructed in accordance with the following guidelines:

- (1) All pipelines shall be constructed in accordance with the latest applicable minimum standards, if applicable, established by the United States Department of Transportation, Texas Railroad Commission, or any other entity having regulatory authority over pipeline safety and construction matters.

- (2) All pipelines shall be buried to specified depths, as follows:
 - a. Pipelines which run under or within 20 feet of any street or streets and/or any proposed street which has been designated on the master plan for the city or the official city map of the city, shall be buried to a depth of at least six feet measured between the top of the pipeline and the natural surface of the ground.
 - b. Pipelines which run under any ditch and/or drainage area or structure shall be buried to a depth of at least five feet measured between the top of the pipeline and the ultimate channel or structure depth. Permittee is responsible for determining the ultimate depths from the appropriate agency and reporting said information with permit application.
 - c. Pipelines for areas not mentioned in a. or b. above shall be buried to a minimum depth of four feet measured between the top of the pipeline and the natural surface of the ground.

Provided further, if at any particular point or points the director determines that a greater or lesser depth be required, such permit shall not be granted except upon agreement by the permittee to comply with such depth requirement.

- (3) All pipelines shall cross public streets, public properties and public rights-of-way as closely as possible to a right (90°) angle.
- (4) All public streets, roads and ways in existence at the time of construction of a pipeline shall be bored under and shall not be cut for the purpose of constructing, relocating or repositioning a pipeline.
- (5) All pipeline related excavations in any public right-of-way shall be backfilled in a manner satisfactory to the city; and if after once refilling such excavation the earth within the excavated area settles so as to leave a depression, the permittee shall be required to make further necessary fills as ordered by the city. All areas shall be graded and maintained so as to provide drainage of the area.
- (6) The permittee shall be required to repair all portions of any street across or along and under which pipelines are laid and place the same in as good a state of repair and condition as they were at the time the construction, repair or removal was commenced, such repairs to be to the satisfaction of the city.
- (7) Upon completion of the pipeline, the permittee shall provide the director with three as-built (or record) drawings of the pipeline, showing the route, distances and shut-off valve locations. These drawings shall be submitted in digital format acceptable to the city.

(Ord. No. 2004-2755, § 1, 7-12-04)

Sec. 102-242. - Pipeline location.

- (a) Where feasible, a new pipeline shall be located within existing pipeline corridors. The feasibility of locating new pipelines in established corridors in the city shall be considered from the perspective of the pipeline owner or operator, taking into consideration the following:
 - (1) The availability and cost of corridor space;
 - (2) The availability and cost of right-of-way to and from the corridor;
 - (3) Technical, environmental, safety, efficiency and cost issues related to building, operating and maintaining both the portion of the pipeline that would be located in the corridor and the lengths of pipeline required to gain access to and from routing through a corridor;
 - (4) Any delays in right-of-way acquisition or pipeline construction that may result from routing through a corridor;
 - (5) The availability of an alternative right-of-way to the owner or operator; and

- (6) All other matters that a prudent pipeline owner or operator would consider in selecting the route for a new pipeline.

Provided that the owner or operator has considered in good faith the use of existing corridors within the city, the determination of the owner or operator as to the feasibility shall be determinative, unless there is clear and convincing evidence that contradicts the conclusion of the owner or operator.

- (b) When it is not feasible for a new pipeline to be located within an existing corridor, the pipeline should, to the extent practical:
 - (1) Follow property boundaries of fee parcels or existing easements to avoid unnecessary fragmentation of land and avoid diagonal routes that would create slivers of land between public ways, except if following:
 - a. Manmade or topographical features is in the public interest;
 - b. Boundary lines or existing easements is impractical under the circumstances;
 - c. Boundary lines or existing easements poses safety concerns; or
 - d. Boundary lines or existing easements would not be feasible.
 - (2) Avoid areas of unique recreational or aesthetic importance, environmentally sensitive areas and areas of historical or cultural significance, unless appropriate mitigation measures are undertaken to the satisfaction of the director; and
 - (3) Avoid conflict with existing or planned urban developments as well as the location of planned future streets and laying of planned water, sanitary sewer and storm sewer lines, structures and ditches incident to such future development.

(Ord. No. 2004-2755, § 1, 7-12-04)

Sec. 102-243. - Liability.

A condition of granting any permit shall require the permittee to save the city harmless from liability for injury or damage to any person or person's property caused by the construction, relocation, repositioning, maintenance, operation, repair or removal of any part or all of such pipeline within any public right-of-way or easement; and shall require the permittee to pay to the city all damages caused to the city by construction relocation, repositioning, maintenance, operation, repair or removal of such pipeline or any part thereof.

- (1) Except in an emergency, the permittee shall notify the director 48 hours before commencing at any time excavation in any portion of any said unpaved or unimproved street, and not wholly close any street, but shall at all times maintain a route of travel along and within such roadway area, to the extent such travel was allowed prior to the excavation.
- (2) In the event of an emergency, it being evident that immediate action is necessary for the protection of the public and to minimize property damage and loss of investment, permittee may, at its own responsibility and risk make necessary emergency repairs, notifying the city police dispatch of this action as soon as practical, but not later than one hour after commencing repairs or maintenance.

(Ord. No. 2004-2755, § 1, 7-12-04)

Sec. 102-244. - Insurance and bonding requirements.

- (a) Under this article, a permittee must furnish, prior to any construction, repair, adjustment, relocation, reposition or replacement, and shall further maintain at all times during the life of the permit, commercial general liability insurance for bodily injury and property damage, including explosion, collapse and underground hazard, coverage in the minimum combined single limit amount of \$1,000,000.00 as it pertains to all pipelines or other facilities owned by the permittee in the public

way in the jurisdiction. Such policy shall name the city, its officers, agents and employees as additional insureds.

- (b) A certificate of insurance specifying the coverage required in subsection (b) of this section with an insurance company having acceptable insurance rating shall be furnished to the director prior to the issuance of any permit. Such certificates of insurance shall provide that at least 30 days prior written notice for the termination or modification of the required insurance shall be given to the city.
- (c) In lieu of liability insurance, a permit applicant shall furnish evidence of financial responsibility which demonstrates the applicant's qualifications as a self-insurer. Such evidence may take the form of the most recent corporate financial report which is acceptable to the city council as giving assurance of the applicant's financial ability to comply with the requirements of this section.

(Ord. No. 2004-2755, § 1, 7-12-04)

Sec. 102-245. - Pipeline permit updates.

It shall be the responsibility of the permittee to provide, in writing, updated information on the following aspects of each permit:

- (1) Name and mailing address of the pipeline owner.
- (2) Name and telephone number of two officers or persons available on a 24-hour basis who can furnish or obtain immediately, information as to the pressure at the point or points of input nearest to the city and the common name of the commodity carried by the pipeline.
- (3) A description of the commodity(s) being transported through the pipeline. A copy of the material safety data sheets for the commodity(s) shall be included with the update if the owner or operator is required by federal or state law to have material safety data sheets available.

This information will be provided with the annual update or upon transference or any change in ownership.

(Ord. No. 2004-2755, § 1, 7-12-04)

Sec. 102-246. - Pipeline signs.

Every pipeline, new or existing, within the corporate limits of the city shall bear at all times, in plain, indelible lettering, signs denoting the ownership of said pipeline, permanently affixed in the pipeline right-of-way where said pipeline rights-of-way cross public streets, public properties or public rights-of-way.

(Ord. No. 2004-2755, § 1, 7-12-04)

Sec. 102-247. - Penalties.

Any violation of any section, subsection or part of this article shall be deemed a misdemeanor and such violation thereof during all or any portion of any day shall be a separate offense and misdemeanor; and upon final conviction, every person, firm, association, corporation or partnership guilty of such violation shall be fined in a sum not more than \$2,000.00 per each day of violation.

(Ord. No. 2004-2755, § 1, 7-12-04)

REQUEST FOR CITY COUNCIL AGENDA ITEM

Agenda Date Requested: February 27, 2017 Appropriation
Requested By: Corby Alexander Source of Funds: _____
Department: Administration Account Number: _____
Report: Resolution: Ordinance: Amount Budgeted: _____
Other: _____ Amount Requested: _____
Budgeted Item: YES NO

Attachments :

- 1. Port Crossing Development Agreement**
- 2. Site Plan**
- 3. Proposed view from Hwy 146**

SUMMARY & RECOMMENDATIONS

The Port Crossing development is located on approximately 300 acres fronting the west side of Highway 146 and is bisected by Wharton Weems Blvd. This development is located in and participates in the City's Tax Increment Re-investment Zone. As such, there is a development agreement in place with the owner/developer, Liberty Property Trust. This agreement includes a stipulation that exterior storage would not be permitted at the complex.

However, Liberty Property Trust has identified a need to allow exterior storage for certain tenants. In particular, Liberty has tenants east of Powell Road and west of the large drainage channel (please see the enclosed site plan), that would need exterior storage. While the entire complex is a Planned Unit Development, the underlying land use is Business Industrial (BI). According to the zoning code, exterior storage is permitted in BI zoned areas.

Staff has spent time negotiating possible options with Liberty to accommodate their needs. Staff respectfully requests that Council consider the following amendments to the development agreement with the Liberty Property Trust.

Agreement will be amended to allow exterior storage in those parts of the complex with BI as an underlying use provided that:

- No hazardous chemicals be stored outside
- Developer will install screen fencing, at least 8 feet tall, surrounding that areas for exterior storage
- Developer will install a landscape buffer surrounding the screen fencing
- Height of any exterior storage items must be below the top of the screen fencing
- Liberty will agree to begin construction of the two buildings fronting Hwy 146 within 24 months of the date of the revised agreement (noted on site plan with a red outline).
- All building(s) included in the site plan and proposed along Hwy 146 frontage are to begin construction within 36 months.
- Should the developer fail to construct any building fronting Hwy 146 in the prescribe timeline, the City will required masonry fence to provide additional screening along the eastern boundary of the BI portion of the complex.

Should Council agree, in concept, with the proposed changes, staff will work with legal for actual language to amend the development agreement. Council would then have another opportunity to

review final language prior to actually amending the agreement.

Action Required of Council:

Consider approval or other action regarding amendments to the Port Crossing Development agreement to allow exterior storage on a portion of the development.

Approved for City Council Agenda

Corby D. Alexander, City Manager

Date

AMENDED DEVELOPMENT AGREEMENT

This DEVELOPMENT AGREEMENT ("Agreement") is entered into between Port Crossing Land, LP; a Texas limited partnership ("Owner-Developer"); their Successors and Assigns, including the "Other Owners" (hereafter defined) and the CITY OF LA PORTE, TEXAS, a Texas Municipal Corporation ("City") on the 24th day of August, 2015.

Recitals

This agreement amends the previous version of this agreement approved by the City Council on September 11, 2006.

Owner-Developer is developing an approximately 300-acre tract in the City of La Porte, as the Port Crossing, which is referred to as the Tract and defined hereinafter in Article I. Owner-Developer and the Other Owners are developing the Tract, presently zoned PUD, for retail, commercial, and business park with some industrial uses. Owner-Developer and the Other Owners shall construct municipal utilities, including streets, a water distribution system, wastewater collection system, and the storm drainage/detention system that will connect with the existing City of La Porte and other regional systems in accordance with development regulations and policies of the City, Harris County, and Harris County Flood Control District.

Powell Road Logistics, L.P. ("Powell Road Logistics"), a Texas limited partnership, National Property Holdings, L.P., a Texas limited partnership, Del Piso Investments, LLLP, a Arizona limited liability partnership and FLPCW, LP, a Texas limited partnership, (collectively, the "Other Owners"), the owners of certain tracts of land also containing a total of approximately 63 acres out of the Tract are joining in this Agreement for the purpose of confirming their agreement to develop their respective portions of the Tract pursuant to the provisions of this Agreement.

The City has required, and Owner-Developer and the Other Owners have agreed, that the Tract will be developed in accordance with the General Plan approved by the City (as defined below and attached hereto).

AGREEMENT

NOW THEREFORE, in consideration of the mutual promises, obligations, and benefits contained herein, the City and Owner-Developer agree as follows:

ARTICLE I. DEFINITIONS AND EXHIBITS

1.1 Definitions. Unless the context indicates otherwise, the following words as used in this Contract shall have the following meanings:

City means the City of La Porte, Texas.

General Plan means the plan for the physical development and use of the Tract as defined herein and approved by the City on 24TH day of Aug., 2015, and as it may be amended from time to time..

Owner-Developer means *Port Crossing Land, LP* or *their* assigns or succeeding developers (or their designated agent or agents).

Tract means the approximately 300 acres of land to be developed by Owner-Developer as described in Exhibit A.

1.2 Exhibits. The following exhibits attached to this Contract are a part of the Contract as though fully incorporated herein:

Exhibit A - Special Conditional Use Permit #15-91000004 (“SCUP”), as it may amended from time to time.

Exhibit B - General Plan

Exhibit C - Land Use Exceptions

Exhibit D - Recorded Declaration of Restrictive Covenants for Port Crossing applicable to all construction and uses.

Exhibit E- Traffic Control Plan

ARTICLE II. GENERAL PLAN AND LAND USE

2.1 General Plan and Land Use. Owner-Developer and Other Owners shall develop their respective portions of the entire Tract in accordance with the General Plan, SCUP and this Agreement approved by the City. The General Plan is attached as Exhibit B and additional Land Use Restrictions are provided for in paragraph 2.3. The Owner-Developer and Other Owners shall only be responsible for compliance with the General Plan, SCUP and this Agreement with respect to their respective portions of the entire Tract.

2.2 Amendments. The City acknowledges and Developer represents that Developer’s intent is to develop the Tract as a predominantly commercial PUD development, with some industrial components consistent with City’s Land Use Plan subject to certain exceptions listed below. Developer or Developer’s successors shall provide appropriate amenities and support facilities as set forth on the General Plan, which is attached to this Agreement. City acknowledges that Developer intends to develop the Tract in phases, and that all development shall be consistent with the Special Conditional Use Permit (SCUP), the General Plan, and this Agreement. Should Developer determine that the General Plan needs to be amended, Developer shall submit an application for amendment of the Special Conditional Use Permit, which said application shall be processed consistent with this Agreement, the current General Plan, and the Zoning Ordinance of the City of La Porte, as the same may be amended from time to time. Amendments

to the General Plan, the Special Conditional Use Permit, and/or this Agreement shall be in writing.

2.3 Additional Land Use Restrictions. Owner/Developer agrees to conform all development and improvements to the Tract to the City's Code of Ordinances and established policies, and further agrees that land uses shall be further restricted according to Exhibit C, except for the permitted uses authorized by Exhibit "C".

ARTICLE III. RESTRICTIVE COVENANTS

3.1 Development of Restrictive Covenants. Owner-Developer has developed a Draft Declaration of Restrictive Covenants for Port Crossing, which are attached to this Agreement as Exhibit "D". These protective covenants and deed restrictions will apply to and be binding upon the Tract, and shall be in form substantially similar to Exhibit "D". The covenants and deed restrictions have been approved by the City and have been recorded concurrently with each recorded plat.

ARTICLE IV. TERMINATION

4.1 Term. This Agreement shall have a term commencing on the date first written above, and continuing until the date in which all portions of the Tract have been platted and developed (with construction of all streets and utilities on the Tract as reflected by the Plat completed or installed and financed by the Owner-Developer.

Failure of Owner-Developer to begin construction in accordance with the Special Conditional Use Permit as scheduled under the terms of the Special Conditional Use Permit, shall terminate this Agreement. Owner-Developer may, before the expiration of one year, request an extension of time from the Planning and Zoning Commission, in the event that construction has not started in accordance with the Special Conditional Use Permit.

ARTICLE V. OPEN SPACE/TRAIL, BUFFERING AND BEAUTIFICATION

5.1 Open Space/Pedestrian System. The Owner-Developer shall provide common open space as shown in the General Plan, including any required public sidewalks within the rights-of-way noted on the Plat on at least one side of each street, together with landscaping adjacent to such sidewalks pursuant to the landscape plan approved by the City.

In coordination with the Owner-Developer and the Harris County Flood Control District, the City will accept the drainage and detention facilities as public domain with right of entry. Maintenance of said facilities will rest solely with the Owner-Developer and the property owner's association governing the Tract.

5.2 Buffering and Beautification. The Owner-Developer shall implement a uniform and/or compatible landscape plan for all phases of the entire project that will address landscaping provisions not only adjacent to Wharton Weems Blvd. and Powell Road, but also within the building setbacks and landscape easements or reserves throughout. A Landscape Buffer (a

minimum of 50' wide) shall be provided along the west side of Powell Road and shall include landscaping materials compatible with the Declaration of Restrictive Covenants. A landscape buffer, a minimum of 50' wide, will also be provided along State Highway 146. Landscape reserves shall also be included adjacent to all roadways, including the east side of Powell; but rather than screen, shall be landscaped compatible with the ultimate use of that adjacent property. A row of standard automobile parking stalls is permitted within the Landscape Buffer subject to the following criteria:

- i. Shrubs are required in the Landscape Buffer within 10' of any parking area adjacent to the right-of-way and shall be spaced at three feet on center. At maturity, shrubs in a required Landscape Buffer should form a continual evergreen hedge or row of 36 inch in height.
- ii. A planter at the ratio of one for every ten parking spaces is required.
- iii. Planters (minimum 135 square feet) shall not abut on more than two sides of required perimeter landscape area. Each required planter shall have one shade tree. Trees shall be dispersed throughout the parking lot to maximize the shading effect on the parking spaces. These trees are exclusive of trees planted around the perimeter of the parking lot.

5.3 Signage. The Owner-Developer shall comply with the sign standards policy, as part of the recorded Declaration of Restrictive Covenants (Exhibit "D") consistent with the City's Code of Ordinances as guidance to insure effective and uniform signage is employed throughout the project. This policy will include uniform and/or compatible project identification monuments, business signage, street and other traffic directional devices conforming to the Tract's traffic control plan and deed restrictions.

5.4 Ownership and Maintenance. Ownership of the landscape buffers, reserves and easements will be held by fee ownership of adjoining property or by the Property Owners Association (POA), subject to conditions of the deed restrictions and landscape plan. The maintenance of the buffers, reserves and easements will be the responsibility of the contiguous property owners pursuant to provisions of the deed restrictions, enforced by the POA.

ARTICLE VI. SCHEDULE

6.1 Schedule. The Owner-Developer or Other Owners, as applicable, shall establish a specific schedule for the development of and construction improvements on the Tract with the end user(s). However, in lieu of and as the basis of that detailed schedule, the following work program is anticipated:

- Initiation of a complete engineering study, including drainage and preliminary infrastructure design.
- Detailed engineering design for Phase One, being all or a substantial part of the area identified herein as Section One. This would include a rail connection to the main line and a minimum spur connection to the first building anticipated, water and sanitary sewer service, initial drainage, and detention to accommodate Phase One;

- Construction of Wharton Weems Blvd., Powell Road, and Export Drive shall be completed in accordance with the Traffic Study recommendations or as needed for development purposes;
- Initiation of procedure to abandon and relocate a portion of Powell Road, south of the projection of Wharton Weems Blvd. within one (1) year of SCUP approval;
- Platting, site plan, and detailed engineering plan review by the City of La Porte and others;
- Initiation of construction pursuant to item 6.1 above, identified as Phase One; and
- Continuation of remainder of development as rapidly as market demands.

ARTICLE VII. FIRE PROTECTION, HAZARDOUS MATERIALS & SAFETY

7.1 Hazardous Materials. The Owner-Developer agrees no hazardous materials as identified in state and federal standards (NEPA) as well as City Fire Code, shall be stored on site. Compliance will be enforced by the POA in concert with the City.

ARTICLE VIII. TRAFFIC CONTROL PLAN

8.1.1 Traffic Control Plan. The Owner-Developer has established a Traffic Control Plan (shown on the attached Exhibit "E") for the entire project to regulate to the extent practical project-generated vehicular traffic. In Section One, based on the target market use, the Traffic Control Plan will include designated truck routes to and from the site, segregation of automobile traffic, limitation of access from public streets (driveways) and utilization of common cross easements between tracts for internal circulation.

8.2 Truck Traffic. This controlled traffic will ultimately be directed to State Highway 146 via Powell Road to Wharton Weems Blvd., to standards approved by Harris County as shown on Exhibit "B" - General Plan. Project driveways will be constructed to induce proper directional movement to preempt to the extent practical northbound traffic on Powell Road. This will be complemented by traffic signage as appropriate. In addition, Owner-Developer shall employ routing plans, driver instruction, and other controls as necessary to obtain compliance of carriers, employees, and regular contractors or service vendors.

8.3 Driveway Access. The Owner-Developer shall establish driveway access controls that shall be controlled through restrictive covenants, architectural controls and City Site Plan review. This will include conditions and design standards consistent as to size, but fewer in number as established in TxDOT Driveway Manual, Harris County, Texas, and the City Zoning Code (106-835) pursuant to specific site plan review. Unless otherwise approved during review of preliminary plats and the Plat, driveways along SH146 entering this Tract shall be limited to a total of eighteen (18), but in all cases, each individual reserve with frontage on SH146 shall have at least one opening. Provision shall be made, where practical, for internal cross-access easements to maximize ingress, egress and circulation to minimize congestion on public rights-of-way and to encourage traffic to be directed to Wharton Weems Blvd. interchange.

8.4 Transportation Issues The Developer shall continue to work with the City, Harris County and other public and private sector interests to implement the timely study and/or construction of transportation components.

ARTICLE IX. SITE RAIL TRAFFIC

9.1 Site Rail Traffic. The Other Owners and/or Rail Logix, LP (“Rail Logix”), a Texas limited partnership, an affiliate of one of the partners of Owner-Developer, as applicable, will continue to work with City and such parties’ rail consultants, as evidence of the commitment to the City to improve rail efficiency in the area, reduce conflicts at Fairmont Parkway, and potentially decrease current rail impacts. On-site rail facilities and operations shall be controlled by Rail Logix in order to maximize rail efficiency and minimize peak hour conflicts with vehicular traffic at Fairmont Parkway. Owner – Developer, Other Owners and Rail Logix agree and acknowledge that the rail yard as depicted on the General Plan shall be limited to a maximum of 22 rail lines and that no rail lines or sidings will extend to the east side of Powell Road.

ARTICLE X. UTILITIES, DRAINAGE

10.1 Utilities, Drainage. The Owner-Developer shall design and construct adequate water, wastewater, and drainage facilities to serve each phase of this project in accordance with City requirements and as further defined by this Agreement. As to water and sanitary sewer, this would include a water system that would deliver 4-6,000 gallons per minute necessary for sprinklered fire protection with a loop connection to the 16” main on the east side of S.H. 146 and a gravity wastewater disposal system that flows into a 60” trunk line on “K” street south of Fairmont Parkway.

The Developer will provide a drainage study for the Tract. The study and design of drainage improvements shall meet the requirements and approval of the City and Harris County Flood Control District. Owner-Developer’s representative agrees to meet with City, prior to design of public utilities, to discuss design criteria standards and policies. City shall approve all construction plans and specifications for public improvements in accordance with the applicable Public Improvement Criteria Manual.

ARTICLE XI. BUILDING LINES

11.1 Building Lines. The Owner-Developer shall establish building lines appropriate to the use, but not less than those prescribed in the City Code of Ordinances in effect on September 11, 2006. Within the industrial Land Uses area west of Powell Road there will be a landscaped 50-foot buffer and building line along Powell Road. Similarly, along State Highway 146, a 50-foot landscape buffer and building line shall be maintained. These respective 50- foot landscape buffers shall be kept free from all other uses with the exception of signage, drainage and detention improvements, and approved drives, parking and entrances. Owner-Developer agrees that other building lines will be either equal to or greater than that required by the zoning ordinance in effect on September 11, 2006, for the land use shown and shall be based on site use and orientation of the improvements or as shown on the General Plan.

ARTICLE XII. MISCELLANEOUS

12.1 Sale of Tract; Assignability. Any contract by Owner-Developer to sell the entirety or any portion of the Tract to a person or entity intending to develop the tract or such portion thereof (a "Successor Developer," whether one or more) and any instrument of conveyance for the entirety or any portion of the Tract to such Successor Developer shall recite and incorporate this recorded Contract and exhibits hereto and provide that this Contract be binding on such Successor Developer.

12.2 Force Majeure. If by reason of force majeure any party hereto shall be rendered unable wholly or in part to carry out its obligations under this Agreement, then if such party shall give notice and full particulars of such force majeure in writing to the party within a reasonable time after occurrence of the event or cause relied on, the obligation of the party giving such notice, so far as it is affected by such force majeure, shall be suspended during the continuance of inability then claimed, but for no longer period; and any such party shall endeavor to remove or overcome such inability with all reasonable dispatch. The term "Force Majeure" as employed herein shall mean acts of God, strikes, lockouts or other industrial disturbances, acts of public enemy, orders of any kind of the Government of the United States, or any civil or military authority, insurrection, riots, epidemics, landslides, lightning, earthquake, fires, hurricanes, storms, floods, washouts, arrests, restraining of government and people, civil disturbances, explosions, or partial or entire failure of water supply resulting in an inability to provide water necessary for operation of the water and sewer systems hereunder. Force Majeure may not be claimed by Owner-Developer under any set of circumstances prior to commencement of construction on the Tract.

12.3 Law Governing. This Contract shall be governed by the laws of the State of Texas and no lawsuit shall be prosecuted on this Contract except in a federal or state court of competent jurisdiction.

12.4 No Additional Waiver Implied. No waiver or waivers of any breach or default by any party hereto of any term, covenant, condition, or liability hereunder, or the performance by any party of any duty or obligation hereunder, shall be deemed or construed to be a waiver of subsequent breaches or defaults of any kind, under any circumstances.

12.5 Addresses and Notice. Unless otherwise provided in this Contract, any notice, communication, request, reply, or advice (herein severally and collectively, for convenience, called "Notice") herein provided or permitted to be given, made or accepted by any party to the other (except bills), must be in writing and may be given or be served by depositing the same in the United States mail postpaid and registered or certified and addressed to the party to be notified. Notice deposited in the mail in the manner hereinabove described shall be conclusively deemed to be effective, unless otherwise stated in this Contract, from and after the expiration of three (3) days after it's deposited. Notice given in any such other than the manner shall be effective when received by the party to be notified. For the purpose of notice, addresses of the parties shall, until changed as hereinafter provided, be as follows:

If to the City, to:

If to Owner/Developer, to:

City of La Porte
Attn: City Manager
604 West Fairmont Parkway
La Porte, Texas 77571

Port Crossing Land, LP
Michael Plank
3330 S. Sam Houston Pkwy. E.
Houston, TX 77047

and

Port Crossing Land, LP
Michael Luecht
One Pierce Place, Suite 450
Itasca, IL 60143

The parties shall have the right from time to time and at any time to change their respective addresses and each shall have the right to specify any other address by at least fifteen (15) days written notice to the other.

12.6 Merger and Modifications. This Contract, including the exhibits that are attached hereto and incorporated herein for all purposes, embodies the entire agreement between the parties relative to the subject matter thereof. This Contract shall be subject to change or modification only with the mutual written consent of the parties.

12.7 Benefits of Contract. This Contract is for the benefit of the City and Owner-Developer and shall not be construed to confer any benefit on any other person except as expressly provided for herein.

12.8 Attorney's Fees. In the event of any litigation between the parties with respect to this Agreement, the prevailing party shall be entitled to recover its reasonable attorney's fees and court costs from the losing party.

12.9 Government Immunity Preserved. The Owner-Developer and the City agree that the City does not, by entering in to this Contract or performing any act hereunder or by failing to take any action hereunder, waive any governmental immunity that the City, its officers, employees, or representatives, have under any law.

12.10 One-Party Breach. Any breach of this agreement by one party identified and referred to herein as Owner-Developer shall not be or constitute a breach of this agreement by the other party of Owner-Developer.

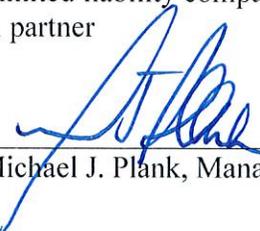
12.11 Covenant Running With the Land. The obligations imposed on Owner Developers herein shall not impose personal liability on them, but shall constitute a covenant running with the land, and as such shall be binding on the present owners of the Tract as well as subsequent owners thereof.

(This space intentionally left blank)

OWNER-DEVELOPER:

Port Crossing Land, LP,
a Texas limited partnership

By: Port Crossing Land GP, LLC
a Texas limited liability company
its general partner

By: 
Michael J. Plank, Managing Partner

Date: 8-27-15

OTHER OWNERS:

DEL PISO INVESTMENTS, LLLP, an Arizona limited
liability limited partnership

By: Harl Avenue Investments, L.L.C., an Arizona
limited liability company, its general partner

By: 

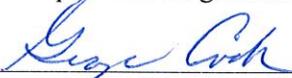
By: 

Date: 9-3-15

FLPCW, LP

a Texas limited partnership

By: FLP Candle GP, Inc.,
a Texas corporation its general partner

By: 
George Cook, President

Date: 9-8-2015

National Property Holdings, L.P.,

a Texas limited partnership

By: National Property Holdings GP, LLC,
a Texas limited liability company
its general partner

By: 
Michael J. Plank, President

Date: 8-27-15

Powell Road Logistics, L.P.,

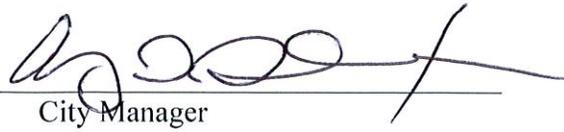
a Texas limited partnership

By: Powell Road Logistics GP, LLC
a Texas limited liability company,
its general partner

By: 
Michael J. Plank, President

Date: 8-27-15

CITY OF LA PORTE, TEXAS

By: 
City Manager

Date: Aug 24, 2015

ATTEST:


Patrice Fogarty, City Secretary

APPROVED:


Clark Askins, Assistant City Attorney

EXHIBIT A

City of La Porte
Special Conditional Use Permit #15-9100004

This permit is issued to: Port Crossing, L.P.; Port Crossing A3, L.P.; Port Crossing A4, L.P.; Port Crossing B5, L.P.
Owner or Agent

3330 S. Sam Houston Parkway E.; Houston, Texas 77047
Address

For Development of: Port Crossing Business Park; Approximately 300 acre mixed use development (formerly Texas Import Export).
Development Name

Legal Description: 300 acres of land out of the George B. McKinstry League, A 47; William Harris Survey, A-30; Johnson Hunter Survey, A-35; and more particularly described in the Development Agreement, as further described in "Attachment 1" of this document

Zoning: PUD, Planned Unit Development

Permit Conditions:

This Special Conditional Use Permit is applicable for the subject property. A copy of which shall be maintained in the files of the City's Planning and Development Department upon approval. Project development shall be in accordance with the following conditions:

1. This Special Conditional Use Permit-(SCUP) would be applicable to specific development anticipated or proposed by the General Plan.
2. Uses are as described in the Land Use Exceptions (Exhibit C of the Amended Development Agreement).
3. This SCUP outlines in general terms the proposed Planned Unit Development. The developer recognizes and understands that any future construction or development of the private or public improvements anticipated by this SCUP and the General Plan shall require further submittal and approval of plats, site plans, construction drawings, and building plans, etc. In addition, this SCUP supersedes SCUP #06-006.
4. This SCUP, the General Plan, Restrictive Covenants, and Land Use Exceptions are exhibits to and are a part of the Amended Development Agreement.
5. Submittals for site plan approval shall be in accordance with this SCUP, General Plan, Development Agreement, Restrictive Covenants, and Land Use Exceptions approved by the City of La Porte. For uses not authorized by this SCUP, approval pursuant to Section 106-216 & 106-217 of the City of La Porte Code of Ordinances, as it now exists or may be amended from time to time, shall be required.
6. The business park identification and entry features shall remain and be maintained as constructed unless approved by the City Council.
7. Truck parking on any lot fronting State Highway 146 will be prohibited on the east side of any structure.
8. Truck stops as defined in Chapter 106 of the La Porte Code of Ordinances shall be prohibited within any part of the 300 acre Port Crossing business park. Any gas station that provides any two (2) of the following: truck parking, more than one diesel dispenser for every ten (10)

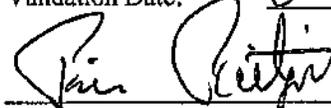
EXHIBIT A

- gasoline dispensers, or has a canopy over the dispensers that is greater than sixteen (16) feet in height shall also be deemed a truck stop.
9. Within reserves E, J1, and L fronting State Highway 146, warehouses are prohibited if the warehouse has a 36 foot clear or higher space; has more than 250,000 feet of storage area; has truck docks on more than two sides or any facing Highway 146; or contains any trailer storage other than necessary for loading and unloading operations. Additionally, each building located thereon must have grade-level store-front entries with windows facing Highway 146. Where warehouses exceed 200,000 square feet in size, building articulation will be required in accordance with Section 106-928 (b)(1) a and b of the La Porte Code of Ordinances. Additionally in the event of truck-bay parking on the north or south side any allowed building screening shall be required to screen such trucks. Screening may consist of a masonry wall or landscaping, or a combination thereof, at a sufficient height to screen such trucks.
 10. The Developer shall comply with all other applicable laws and ordinances of the City of La Porte and the State of Texas. To the extent there is a conflict between those laws and ordinances and this SCUP, the SCUP controls.
 11. This SCUP is binding on all owners of property included in the Legal description and their successors and assigns.

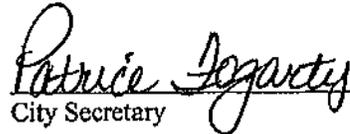
If contract or agreement is terminated after completion of any stage and there is ample evidence that further development has been abandoned, the ordinance establishing such special conditional use permit may be rescinded by the City Council, upon its own motion or upon the recommendation of the Planning and Zoning Commission of the City of La Porte, and the previous zoning of the entire tract shall be in full effect on the portion which is undeveloped.

Validation Date:

8-24-15



Director of Planning and Development



City Secretary

SITE METES AND BOUNDS

Being an approximate 293.8036 acre tract in the Town of LaPorte,, Texas recorded in Volume _____, Page _____, Harris County Deed Records, out of the W. F. Harris Survey A-30, the George B. McKinstry Survey A-47, and the Johnson- Hunter Survey A-35, Harris County, Texas, and being more particularly described by metes and bounds as follows:

BEGINNING at a point at the northeast corner of formerly dedicated Block 1170 on the southern boundary of "M" Street on the western right of way boundary of SH 146 marked by a T.M.P;

THENCE southerly 5,750.52 feet along the western right-of-way boundary of SH 146 to the northern boundary of McCabe Road;

THENCE westerly along the northern right-of-way of McCabe Road 1,400' to the western boundary of the Union Pacific Railroad right-of-way (Save and except the area of the existing Powell Road and/or the proposed re-located Powell Road);

THENCE northerly 4,328.52 feet along the eastern boundary of the Union Pacific Railroad right-of-way to a point 326.66 feet 86° 59' 35" west of the northeast corner of the George B. McKinstry Survey (Save and except a 6.3192 acre tract, described as follows:

OUT TRACT

Being a 6.3192 acre tract of land out of a portion of Blocks 1203 and 1204, in the Town of LaPorte, recorded in Volume 60, Pages 112, Harris County Deed Records, out of the George B. McKinstry Survey, A-47, and the Johnson Hunter Survey, A-35, Harris County, Texas, and being more particularly described by metes and bounds as follows:

BEGINNING at a point 255.37 feet North of the Northerly right-of-way of the formerly dedicated West Q Street;

THENCE South 02° 56' 39" East along the Westerly right-of-way of Powell Road (60 feet wide), including that portion of the formerly dedicated West Q Street lying within, a distance of 300.00 feet to a 5/8 inch iron rod set for corner;

THENCE South 86° 59' 35" West, to the Southern Pacific Railroad right-of-way including that portion of formerly dedicated 17th Street lying within, a distance of 917.25 feet to a 5/8 iron rod set for corner;

THENCE North 03° 03' 22" West, along the eastern boundary of the Southern Pacific Railroad right-of-way, a distance of 300.00 feet to a 5/8 inch iron rod found for corner;

THENCE North 86° 59' 35" East, a distance of 917.84 feet to the Point of Beginning.

EXHIBIT A

-2-

THENCE easterly to the northeast corner of the McKinstry Survey;

THENCE north $02^{\circ} 56' 39''$ a distance of 20 feet to a $5/8$ inch IR;

THENCE easterly $86^{\circ} 59' 35''$ 652.0 feet to the eastern boundary of Powell Road (Save and except the 60-foot area included in the right-of-way of said Powell Road);

THENCE northerly along the eastern boundary of Powell Road right-of-way 385.0 feet to a $5/8$ " IP;

THENCE $N85^{\circ} 59' 35''$ 765.50 feet to a point marked by a $5/8$ " IP;

THENCE $N 02^{\circ} 56' 39''$ a distance of 740.00 feet to the southern boundary of West "M" Street to a $5/8$ " IP;

THENCE $N 86^{\circ} 59' 35''$ along the southern boundary of West "M" Street to a 1" IR on the western boundary of SH 146 right-of-way, the point of beginning, a distance of 823.28 feet.

**METES AND BOUNDS DESCRIPTION
5.000 ACRES (217,800 SQUARE FEET)**

Being 5.000 acres (217,800 square feet) of land situated in the William P. Harris Survey, Abstract 30, Harris County, Texas, and being out of that certain 235.2619 acre tract of land conveyed to S/C Management #1, LTD. by instrument recorded under File Number H489088 and Film Code 138-26-2084 of the Harris County Official Public Records of Real Property; said 5.000 acres (217,800 square feet) of land being more particularly described by metes and bounds as follows (all bearings are referenced to the monumented south line of said 235.2619 acre tract, same being the north right-of-way line of McCabe Road, based on 80 feet in width and recorded in Volume 872, Page 345 and in Volume 872, Page 348 of the Harris County Deed Records):

COMMENCING at a Texas Department of Transportation 4"x4" concrete monument found for the southeast corner of said 235.2619 acre tract and being the intersection of the north right-of-way line of said McCabe Road with the west right-of-way line of State Highway 146, varying in width;

THENCE S 86-03-24 N 865.56 feet, with the south line of said 235.2619 acre tract, to a 5/8 inch iron rod found for the intersection of the north right-of-way line of said McCabe Road with the west right-of-way line of a proposed extension of Powell Road (16th Street); based on 60 feet in width, and being the PLACE OF BEGINNING and the southeast corner of the herein described tract of land;

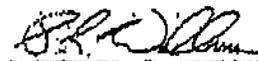
THENCE N 95-05-24 N 465.47 feet, with the north right-of-way line of said McCabe Road, to a 5/8 inch iron rod found for the southwest corner of said 235.2619 acre tract and being the southwest corner of this tract and also being the southeast corner of an unrecorded 60-foot wide road easement;

THENCE N 10-04-16 W (called N 10-01-47 W) 443.47 feet, with the west line of said 235.2619 acre tract, same being the east line of said unrecorded 60-foot wide road easement, to a 5/8 inch iron rod with cap set for the northwest corner of this tract;

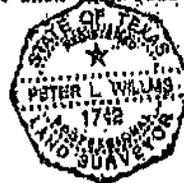
THENCE N 86-05-24 S 521.50 feet to a 5/8 inch iron rod with cap set for the northeast corner of this tract and being in the west right-of-way line of said proposed extension of Powell Road;

THENCE S 02-56-39 E 440.97 feet to the PLACE OF BEGINNING and containing 5.000 acres (217,800 square feet) of land.

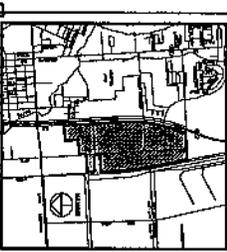
The area stated in acres is compatible with the allowable precision of closure for this survey. The area stated in square feet is a calculated value only. All 5/8 inch iron rods with caps are marked "Texas Land Surveying".



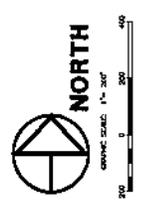
Peter L. Williams
Registered Professional Land Surveyor
Texas Registration No., 1742



Texas Land Surveying, Inc.
P.O. Box 5825 Pasadena, Texas 77508
(281) 427-8280
Job No. 381-0018 March 27, 2000

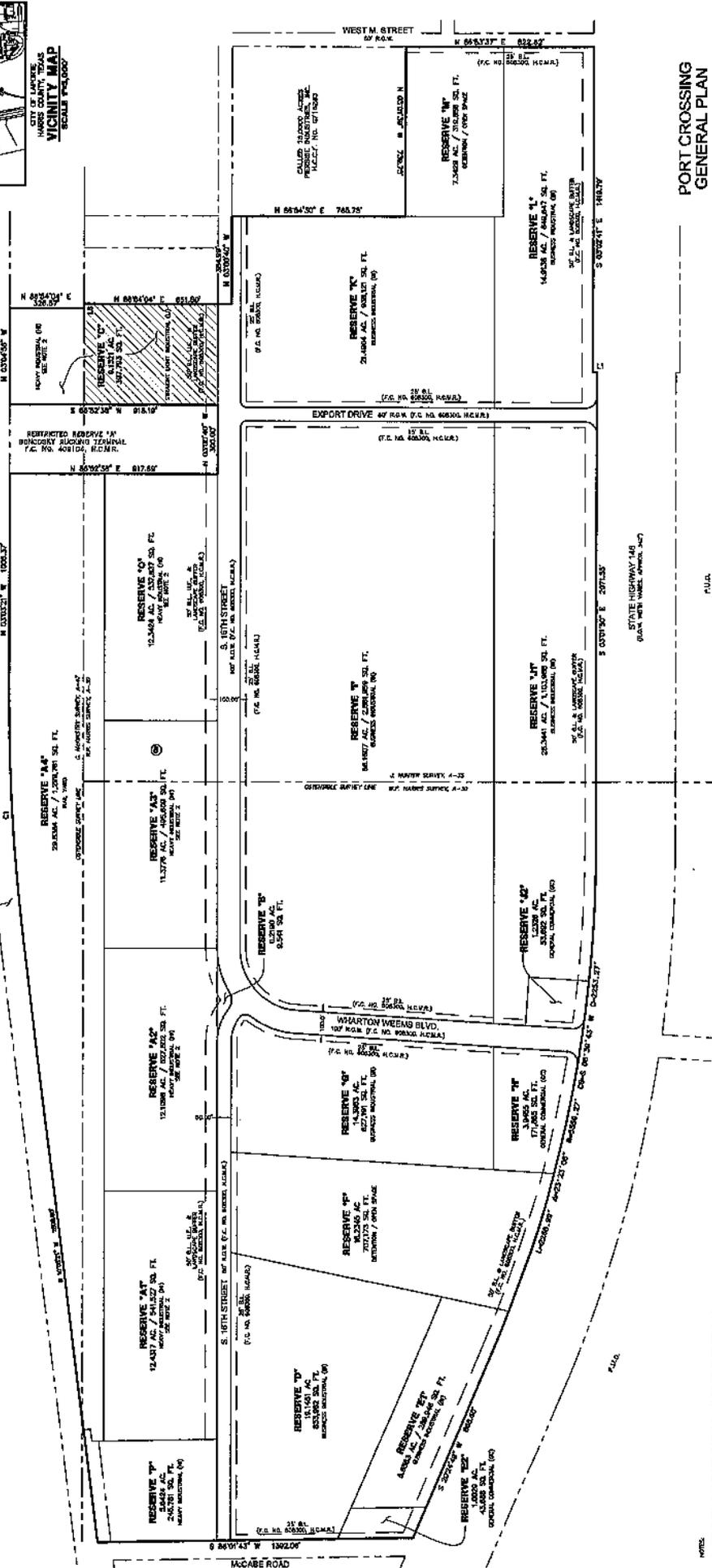


CITY OF LARVINE
HARRIS COUNTY, TEXAS
VICINITY MAP
SCALE 1"=1000'



BAYPORT INDUSTRIAL PARK

100' WIDE SOUTHWEST CORNER
ADJACENT TO THE EAST
SIDE OF STATE HIGHWAY 149
(100' WIDE CORNER, H.C. 248)



**PORT CROSSING
GENERAL PLAN**

THE 202 ± ACRES OF LAND OUT OF THE
GEORGE W. HARRIS SURVEY, ABSTRACT NO. 47
WILLIAM P. HARRIS SURVEY, ABSTRACT NO. 30
JOHNSON HUNTER SURVEY, ABSTRACT NO. 35
CITY OF LARVINE, HARRIS COUNTY, TEXAS
4/16/2005 10 RESERVES

ARREST 2015
Surveyor
Whitmore Land Services, Inc.
2000 West Loop West, Suite 200
Houston, Texas 77027
Phone: 713-866-1111
Fax: 713-866-1112
Professional Development Commission
License No. 100000000



- NOTES:
1. THE GENERAL PLAN OF PORT CROSSING IS ALSO SUBJECT TO THE TERMS AND CONDITIONS OF THE GENERAL PLAN OF THE CITY OF LARVINE, HARRIS COUNTY, TEXAS, AND THE GENERAL PLAN OF THE CITY OF LARVINE, HARRIS COUNTY, TEXAS, AND THE GENERAL PLAN OF THE CITY OF LARVINE, HARRIS COUNTY, TEXAS.
 2. ALL LOTS ARE TO BE DEVELOPED IN ACCORDANCE WITH THE CITY OF LARVINE ZONING ORDINANCE, THE CITY OF LARVINE, HARRIS COUNTY, TEXAS, AND THE GENERAL PLAN OF THE CITY OF LARVINE, HARRIS COUNTY, TEXAS.
 3. THE CITY OF LARVINE, HARRIS COUNTY, TEXAS, IS THE GRANTEE OF THE PORT CROSSING GENERAL PLAN AND THE GRANTEE OF THE PORT CROSSING GENERAL PLAN.
 4. THE CITY OF LARVINE, HARRIS COUNTY, TEXAS, IS THE GRANTEE OF THE PORT CROSSING GENERAL PLAN AND THE GRANTEE OF THE PORT CROSSING GENERAL PLAN.

THIS IS TO CERTIFY THAT THE PLANNING AND ZONING COMMISSION OF THE CITY OF LARVINE, HARRIS COUNTY, TEXAS, HAS REVIEWED AND APPROVED THE GENERAL PLAN IN ACCORDANCE WITH THE ORDINANCES OF THE CITY OF LARVINE.

M. JAMES, CHAIRMAN
Planning and Zoning Commission

06/07/2005

Exhibit C

Land Use Exceptions¹

In reserves where the General Plan indicates “GC” uses, all uses permitted in the City of La Porte Zoning Ordinance Use Chart effective on September 11, 2006, under GC (indicated with a “P”) are permitted here with the exception of:

- Building Construction – General Contractors and Special Trade Contractors (152-161, 171-179)
- Automotive Repair Services (751-754)
- Outdoor Sales as a Primary or Accessory Use
- Outdoor Storage as a Primary or Accessory Use
- Residential Uses

In reserves where the General Plan indicates “BI” uses, all uses permitted in the City of La Porte Zoning Ordinance Use Chart effective on September 11, 2006, under BI (indicated with a “P”) are permitted here with the exception of:

- Building Construction – General Contractors and Special Trade Contractors (152-161, 171-179)
- Automotive Repair Services (751-754)
- Outdoor Sales as a Primary or Accessory Use
- Outdoor Storage as a Primary or Accessory Use, including any storage of Shipping Containers
- General Contractors, Heavy Construction (161, 162, 1541)
- Off Premises Signs

In reserves where the General Plan indicates “LI” uses, all uses permitted in the City of La Porte Zoning Ordinance Use Chart effective on September 11, 2006, under LI (indicated with a “P”) are permitted here with the exception of:

- Building Construction – General Contractors and Special Trade Contractors (152-161, 171-179)
- Automotive Repair Services (751-754)
- Outdoor Sales as a Primary or Accessory Use
- Outdoor Storage as a Primary or Accessory Use, including any storage of Shipping Containers
- General Contractors, Heavy Construction (161, 162, 1541)
- Manufacturing of Chemicals and Allied Products (282-285)

¹ Attached to and incorporated into this exhibit is the use chart for the City of La Porte Zoning Ordinance as of September 11, 2006. To the extent that the zoning ordinance for the City of La Porte has been or is amended, after the date Special Conditional Use Permit #SCU06-006 was first adopted, to modify, eliminate or replace the permitted uses or the districts described in this exhibit, this exhibit controls unaffected by any change.

Off Premises Signs

An additional permitted use shall be SIC Manual Major Group 30 (Rubber and Misc. Plastics Products)

In Reserve "A4" labeled "Rail Yard" on the General Plan, all uses permitted in the City of La Porte Zoning Ordinance Use Chart effective on September 11, 2006, under LI (indicated with a "P") are permitted here with the exception of:

Building Construction – General Contractors and Special Trade Contractors (152-161, 171-179)

Automotive Repair Services (751-754)

Outdoor Sales as a Primary or Accessory Use

Outdoor Storage as a Primary or Accessory Use, including any storage of Shipping Containers

General Contractors, Heavy Construction (161, 162, 1541)

Manufacturing of Chemicals and Allied Products (282-285)

Off Premises Signs

An additional permitted use shall be SIC Manual Major Group 30 (Rubber and Misc. Plastics Products)

Additional permitted uses are certain HI uses permitted in the City of La Porte Zoning Ordinance associated with rail services such as:

A rail yard with a maximum of 22 rail lines is permitted.

Rail service to and distribution from warehouses proposed;

Rail service to light manufacturing not otherwise exempted herein.

Sec. 106-479. Special regulations and procedures.

Refer to articles IV, V, VI and VII of this chapter.

Secs. 106-480—106-495. Reserved.

Subdivision IV. GC General Commercial District

Sec. 106-496. Purpose.

The purpose of the GC general commercial district is to provide for low intensity, retail or service outlets which deal directly with the customer for whom the goods or services are furnished. The uses allowed in this district are to provide goods and services on a community market scale and located in areas which are well served by collector or arterial street facilities.

Sec. 106-497. Permitted, accessory, and special conditional uses.

Refer to Table A, commercial uses, section 106-441.

Sec. 106-498. Density/intensity regulations.

Refer to Table B, commercial area requirements, section 106-443.

Sec. 106-499. Special regulations and procedures.

Refer to articles IV, V, VI and VII of this chapter.

Secs. 106-500—106-520. Reserved.

DIVISION 4. INDUSTRIAL DISTRICT REGULATIONS

Subdivision I. Generally

Sec. 106-521. Table A, industrial uses.

(a) *Table A, industrial uses.*

P (ABC) — Permitted uses (subject to designated criteria established in section 106-523).

P — Permitted uses.

A — Accessory uses (subject to requirements of section 106-741).

C — Conditional uses (subject to requirements of sections 106-216 through 106-218 and designated criteria established in section 106-523).

ZONING

§ 106-521

* — Not allowed.

Uses (SIC Code #)	Zones		
	BI	LI	HI
All uses permitted or accessory in the GC zone, except residential	P	P	P
All uses conditional in the GC zone, except residential	C	C	C
<i>Nonmanufacturing Industries:</i>			
Adult oriented business	*	*	P(G)
Air transportation (451—458)	P	P	P
General contractors, heavy construction (161, 162, 1541)	P	P	P
Highway transportation terminal and service facilities (417)	P	P	P
Motor freight transportation and warehousing (421, 423)	*	P	P
Farm product warehousing and storage (4221)	*	P	P
Public warehousing (4222—4226)	P	P	P
Railroad transportation (401)	*	*	P
Shipping container, or fabricated plate work (3443)			
Storage inside	P(ACDE)	P(ACDE)	P
Storage outside (refer to Section 106-444(b))	*	*	P(ACDE)
<i>Wholesale trade:</i>			
Durable goods—light (502, 504, 507, 5082, 5087, 5094)	P	P	P
Durable goods—medium (501)	P	P	P
Durable goods—heavy (503, 5051, 5082—5085, 5088)	*	C	P
Durable goods—heavy (5052, 5093)	*	*	P
<i>Wholesale trade:</i>			
Nondurable goods—light (511—514, 518)	P	P	P

<i>Uses (SIC Code #)</i>	<i>Zones</i>		
	<i>BI</i>	<i>LI</i>	<i>HI</i>
Nondurable goods—medium (5172, 5191—5199)	C	P	P
Nondurable goods—heavy (515, 516, 5171)	*	*	P
<i>Manufacturing Industries:</i>			
Chemicals and allied products (282—285)	*	P(ACDE)	P
Electrical and electronic equipment and supplies			
Light (361—365, 367)	P(ACDE)	P(ACDE)	P
Medium (361, 366, 369)	P(ACDE)	P(ACDE)	P
Fabricated metal products and machinery			
Light (341—345, 358, 3592)	P(ACDE)	P(ACDE)	P
Medium (3493, 3498, 351—353, 356)	*	P(ACDE)	P
Heavy (346, 347, 354, 355, 357)	*	P(ACDE)	P
Heavy (348)	*	*	P
Food and kindred products			
Light (202, 205, 2065—2067)	P(ACDE)	P(ACDE)	P
Medium (2086, 2087, 2092—2099)	C	P(ACDE)	P
Heavy (201, 203, 204, 2062, 2063, 207, 2082—2085)	*	C	P
Leather and leather products (311—319)	C	P(ACDE)	P
Welding shops (7692)	P(ACDE)	P(ACDE)	P
Lumber products, furniture and fixtures			
Light (251—259)	P(ACDE)	P(ACDE)	P
Medium (243—245)	C	P(ACDE)	P
Heavy (249)	*	C	P
Measuring, analyzing and controlling instruments (381—387)	P(ACDE)	P(ACDE)	P
Miscellaneous manufacturing (391—396)	P(ACDE)	P(ACDE)	P
Machine shops (3599)	P(ACDE)	P(ACDE)	P
Miscellaneous manufacturing industries (3991—3995)	*	P(ACDE)	P
Off-premises freestanding signs		See article VII of this chapter	

ZONING

§ 106-521

Uses (SIC Code #)	Zones		
	BI	LI	HI
On-premises freestanding signs	See article VII of this chapter		
Paper and allied products (265—267)	*	*	P
Printing and publishing (271—279)	P(ACDE)	P(ACDE)	P
Rubber and miscellaneous plastics (301, 302, 304, 306, 307)	*	C	P
Stone, clay, glass and concrete (321—325, 3261, 327—329)	*	C	P
Tank truck cleaning	*	*	P
Textile mill, and finished products			
Light (224, 225, 231—239)	P(ACDE)	P(ACDE)	P
Medium (222, 223, 226, 229)	*	P(ACDE)	P
Tobacco manufacturers (211—214)	*	P(ACDE)	P
Loading berths at the front or sides of buildings adjacent to R.O.W.	C	C	C
Industrial PUD (refer to section 106-636)	C	C	C
Facilities in excess of height restrictions imposed in section 106-522	*	*	C
Unlisted uses, similar to uses listed above	C	C	C

(b) *Interpretation and enforcement.* Property uses, except as provided for by section 106-521(a), Table A, are prohibited and constitute a violation of this chapter.

(c) *Footnotes.* All permitted uses in industrial zones must meet the following minimum performance standards. If requested by the enforcement officer, all applications for building permits must include a certification from a registered engineer that verifies compliance with these performance standards. Where applicable, all permitted uses in industrial zones must meet and be in compliance with the appropriate federal, state, or local regulations.

A. *Lighting and glare.* Any lighting used shall be arranged so as to deflect light away from any adjoining residential zone or from public streets. Direct or sky-reflected glare, where from floodlights or from high temperature processes such as combustion or welding shall not be directed onto any adjoining property. The source of lights shall be hooded or controlled in some manner so as not to light adjacent property. Bare incandescent light bulbs shall not be permitted in view of adjacent property or public right-of-way. Any light or combination of lights which cast light on a public street shall not exceed one footcandle (meter reading) as measured from the centerline of such street. Any light or combination of lights which casts light on residential property shall not exceed 0.4 footcandles (meter reading) as measured from such property.

- B. *Radiation and electrical emissions.* No activities shall be permitted that emit dangerous radioactivity beyond enclosed areas. There shall be no electrical disturbance adversely affecting the operation at any point of any equipment other than that of the creator of such disturbance.
- C. *Smoke.* The emission of smoke by any use shall be in compliance with and regulated by the appropriate federal, state or local agency.
- D. *Dust or other particulate matter.* The emission of dust, fly ash or other particulate matter by any use shall be in compliance with and regulated by the appropriate federal, state or local agency.
- E. *Odors.* The emission of odor by any use shall be in compliance with and regulated by the appropriate federal, state or local agency.
- F. *Explosives.* No activities involving the storage, utilization, or manufacture of materials or products such as TNT or dynamite which could decompose by detonation shall be permitted except such as are specifically licensed by the city council.
- G. *Noise.* All noise shall be muffled so as not to be objectionable due to intermittence, beat frequency or shrillness and as measured at any property line, shall not exceed the following intensity in relation to sound frequency:

<i>Octave Band Frequency</i>	<i>Maximum Sound Levels — Decibels</i>	
	<i>Lot Line</i>	<i>H Residential District Boundary</i>
<i>Cycles per Second</i>		
20 to 75	78	63
75 to 150	74	59
150 to 300	68	55
300 to 600	61	51
600 to 1,200	55	45
1,200 to 2,400	49	38
2,400 to 4,800	43	31
Above 4,800	41	25
Impact noise	80	55

Between the hours of 10:00 p.m. and 6:00 a.m. the permissible sound levels beyond residential district boundaries (both Column II and Impact) shall be six decibels less than shown above.

In distances where it is determined that a proposed land use may generate a level of noise that will impact on surrounding land uses, the planning and zoning commission

and city council may require that efforts to reduce the potential noise impact be undertaken. These efforts may include screening, landscaping and site planning techniques.

(Ord. No. 1501U, § A(art. B), 9-23-96; Ord. No. 1501-AA, § 6, 3-23-98; Ord. No. 1501-BB, § 5, 9-15-98; Ord. No. 1501-II, § 5, 3-27-00)

Cross reference—Sexually oriented businesses, § 90-31 et seq.

Sec. 106-522. Table B, industrial area requirements.

(a) *Table B, industrial area requirements.*

<i>Uses</i>	<i>⁴Minimum Landscaping Requirements (percent)</i>	<i>Maximum Lot Coverage (percent)</i>	<i>Minimum Yard Setbacks F.R.S. 1, 3, 5 (feet)</i>	<i>Adjacent to Residential Minimum Yard Setback F.R.S. 2, 5 (feet)</i>	<i>Maximum Height (feet)</i>
BI business-industrial park; all permitted or conditional	6	50	50-40-30	50-40-30	45
L1 light industrial district; all permitted or conditional	6	70	20-10-10	30-50-50	45
H1 heavy industrial district; all permitted or conditional	6	30	50-50-30	100-150-150	45 ⁶
Loading docks	N/A	N/A	130-130-130	Same as principal use plus 130 ft.	N/A
Outside storage	N/A	N/A	20-10-5	Same as principal use	Section 106-444(b)
Shipping containers	6	N/A	50-50-30	100-150-150	36 ^{7,8}
On- and off-premises free-standing signs			See article VII of this chapter		
Freestanding on-premises signs located in controlled access highway corridors			See article VII of this chapter		

(b) *Footnotes.*

1. A minimum landscape setback of 20 feet will be required adjacent to all designated conservation areas. Buildings, parking areas, loading docks, outside storage, and refuse containers will not be allowed in such setback areas. These areas are to be landscaped with trees, shrubs, and ground cover, with a planting plan required to be submitted and approved by the enforcement officer. Required landscaping must be maintained by the property owner and/or occupant.
2. No buildings, parking areas, loading docks, outside storage, or refuse containers will be allowed in such setback areas. These areas are to be landscaped with trees, shrubs and ground cover, with a planting plan required to be submitted and approved by the enforcement officer.



DECLARATION OF
PROTECTIVE COVENANTS AND EASEMENTS

PORT CROSSING

TABLE OF CONTENTS

<u>Article</u>	<u>Page Number</u>
1. PERMITTED AND PROHIBITED USES	2
2. ARCHITECTURAL CONTROL.....	2
3. CONSTRUCTION-RELATED RESTRICTIONS.....	4
4. MAINTENANCE OF PROPERTY	8
5. INSURANCE, INDEMNITY AND CASUALTY LOSS.....	8
6. ENVIRONMENTAL REMEDIATION	10
7. ENFORCEMENT	10
8. COVENANT FOR MAINTENANCE ASSESSMENTS	11
9. PROPERTY OWNERS' ASSOCIATION.....	14
10. SEVERABILITY	14
11. ADDITIONAL RESTRICTIONS	15
12. TERM	15
13. AMENDMENTS	15
14. MISCELLANEOUS	16

DECLARATION OF
PROTECTIVE COVENANTS AND EASEMENTS

THE STATE OF TEXAS §
 §
COUNTY OF HARRIS §

KNOW ALL MEN BY THESE PRESENTS:

THAT, PORT CROSSING LAND, LP, a Texas limited partnership (hereinafter called the "Developer"), being the owner of certain tracts of land containing a total of approximately 231 acres in Harris County, Texas, being more particularly described in Exhibit A attached hereto and made a part hereof for all purposes (said tracts of land being hereinafter referred to as the "Port Crossing" or "Subject Property") and any portion thereof platted as a separate tract or conveyed to third parties or developed by Developer or an affiliated entity being hereinafter referred to as a "Tract", for the purpose of adopting a uniform plan for the benefit of the present and future owners of any portion of the Port Crossing, does hereby adopt and establish restrictions, covenants and easements as hereinafter provided for the Subject Property.

Powell Road Logistics, L.P., a Texas limited partnership, National Property Holdings, L.P., a Texas limited partnership, Del Piso Investments, LLLP, a Arizona limited liability limited partnership and FLPCW, LP, a Texas limited partnership, the owners (collectively, the "Other Owners") of certain tracts of land also containing a total of approximately 63 acres, Harris County, Texas, being more particularly described in Exhibit B attached hereto and made a part hereof for all purposes (said tracts of land also comprising part of the "Port Crossing" or "Subject Property") are joining in this "Declaration" (hereafter defined) for the purpose of adopting and establishing the restrictions, covenants, and easements as hereinafter provided for the portion of the Subject Property owned by the Other Owners. Port Crossing, when platted and following the realignment of certain roads, will comprise approximately 300 acres.

Developer contemplates developing Port Crossing in a manner which will include public streets, a water distribution system, a sanitary sewer system, and drainage/detention facilities within the Subject Property and Developer reserves the right to create such public streets and utility-related facilities. Any portions of the Subject Property reserved or restricted or conveyed to the "Association" (hereafter defined) for private streets, utility facilities, and landscaping shall not be subject to "Assessment" (hereafter defined). Additionally, any portion of the Subject Property dedicated for utility facilities (excluding, however, any portion of a Tract) or conveyed to governmental authorities shall not be subject to the restrictions contained in this Declaration, except for the prohibited uses described in Article 1.

Developer, for itself, and its successors and assigns, and the Other Owners (as to the portion of the Subject Property owned by each of the Other Owners, respectively) hereby declare that the Port Crossing and each part thereof shall be owned, held, transferred, conveyed, sold, leased, rented, hypothecated, encumbered, used, occupied, maintained and improved subject to the covenants, conditions, restrictions, limitations, reservations, easements, equitable servitude and other provisions set forth in this Declaration Of Protective Covenants And Easements ("Declaration"). The Tracts and Private Facilities within the Subject Property shall be subject to the jurisdiction of the "Association" (hereafter defined). The covenants, conditions, restrictions, limitations, reservations, easements and equitable servitudes shall run with, inure to the benefit of, and shall be binding upon, all of the Subject Property, and each Tract and any common area therein, and shall be binding upon and inure to the benefit of (a) the Developer, its successors and assigns, (b) the Association and its successors and assigns, and (c) all persons or entities (the "Owner(s)") having or hereafter acquiring any right, title, or interest in or to any portion of the Subject Property and their heirs, legal representatives, successors and assigns, other than for security purposes.

1.

PERMITTED AND PROHIBITED USES

No Tract or portion of the Subject Property shall be used for any purposes, except for office, research and/or development, retail (subject to the further limitations herein contained), commercial, commercial processing, servicing, light industrial, manufacturing, retail sales of industrial products by manufacturers thereof or by manufacturer's representatives, warehousing or distribution purposes and services ancillary to such uses, or any combination of such uses, and heavy industrial if approved by Developer in writing. No use shall be permitted which (1) is offensive by reason of odor, fumes, dust, smoke, noise, vibrations, radiation, radio interference or pollution, (2) is hazardous by reason of excessive danger of fire or explosion, (3) otherwise constitutes a nuisance, (4) is dangerous or unsafe, (5) would injure the reputation of the Subject Property, or (6) is in violation of any city, county, state or federal law, regulation or ordinance.

The following uses shall not be permitted in or on any portion of the Subject Property: (1) any distilling, refining, smelting, meat, poultry or fish processing plant, agricultural or mining operation; (2) any mobile home park, trailer park, labor camp, or stockyard (except this provision shall not prohibit the temporary use of construction trailers during periods of construction, reconstruction or maintenance); (3) junk yard, scrap metal yard or waste material business, sales in bulk of junk, automobile wrecking yard, salvage yard, asphalt plant, any storage, dumping, disposal, incineration or reduction of hazardous waste, garbage or refuse, bus station, any fire or bankruptcy sale or auction house operation, or as an airport. (4) any mortuary or funeral home; (5) school, church or governmental office (other than a research or development or business office that does not have customers); (6) any drilling, refining, quarrying or mining operations of any kind, (7) any establishment whose primary business is the sale or rental or display of sexual materials or drug related paraphernalia or whose primary business is providing any adult only or sexually oriented service or product including, but not limited to, massage parlors, topless establishments, any "adult" bookstore or "adult" movie theater; (8) any flea market, bowling alley, nightclub, bar, lounge, tavern, theater, amusement park or video arcade; provided, however, that this prohibition shall not prohibit placement of video machines that are incidental to the conduct of a permitted business at the Subject Property; and (9) any gaming facility or operation including, but not limited to, off-track or sports betting parlor, table games such as blackjack, poker, slot machines, video poker, blackjack, keno machines or similar devices or bingo hall. Notwithstanding the foregoing, this prohibition shall not apply to any government-sponsored gaming activities or charitable gaming activities so long as such governmental or charitable activities are incidental to the business being conducted by the occupant of that portion of the Subject Property and do not occur regularly.

The use of any portion of the Subject Property by any Owner shall be subject to all laws, regulations, codes and ordinances of all applicable governing authorities, including, without limitation, any zoning ordinances. In the event of any conflict between the terms of this Declaration and the terms of any such law, code, regulation or ordinance, then the provisions of this Declaration or any law, code, regulation or ordinance which is stricter shall govern.

2.

ARCHITECTURAL CONTROL

A. Plan for Development. The plan for the development of the Subject Property contemplates the centralization of architectural control to enhance, insure and protect the attractiveness, beauty and desirability of the Subject Property as a whole. It is accordingly covenanted and agreed that (i) no building, structure or any appurtenances thereto of every type or kind, including, without limitation, patios, patio covers, awnings, painting of any exterior surfaces of any visible structure, additions, sidewalks, walkways, sprinkler pipes, drives, driveways, parking areas, fences, roofs, screening, walls, retaining walls, stairs, decks, fixtures, poles, exterior tanks, solar energy equipment, exterior air conditioning fixtures and equipment, exterior lighting, radio, conventional or cable or television antenna or dish, microwave television antenna and/or landscaping (collectively herein referred to as the "Improvements") shall be commenced, erected, constructed, placed, or maintained upon any portion of

the Subject Property and/or (ii) any exterior modification, renovation, expansion, restoration or repair (if different from the original exterior construction) change or alteration be made to any Improvement shall be commenced, erected, constructed, placed, or maintained upon any portion of the Subject Property until in the case of (i) or (ii), above, the plans and specifications therefor ("Plans") showing the nature, color, kind, shape, height, materials and location of the same (including site landscaping, drainage and grading plans and utility layout) have been submitted to and approved in writing as to harmony and external design and location and relationship to surrounding structures and topography by Developer until the "Transfer Date" (hereafter defined) and thereafter by the "Board" (hereafter defined). The drainage plans shall cause the Subject Property to be drained in a manner so that no standing water remains for any extended period of time following any precipitation and the Subject Property does not become a breeding ground for mosquitoes. All references in this Article 2 and in Article 3 hereafter made to the Board shall refer to the Developer prior to the Transfer Date and thereafter to the Board. In the event that the Board fails or refuses to approve or disapprove such design or location within thirty (30) days after the Plans have been submitted to it, it will be deemed that the Board has approved such Plans. In the event of damage or destruction of any Improvement, approval shall be granted by the Board for the restoration of Improvements if the Improvement is to be restored in substantial accordance with the original approved Plans. If the Improvements will not be restored in accordance with the original approved Plans, then the Plans for such restoration shall be subject to approval in the same manner as the original Improvements to the Tract. All decisions of the Board shall be final, conclusive and binding and there shall be no review of any action of the Board.

B. No Representation or Warranty; Limitation of Liability. No approval of Plans shall ever be construed as representing or implying that such Plans will, if followed, result in a properly constructed structure complying with all applicable legal requirements or built in a good and workmanlike manner or be deemed approval of the Improvement from the standpoint of safety, whether structural or otherwise. Neither the Developer, the Association, nor any members of the Board shall be liable in damages to anyone submitting Plans for approval, or to any Owner or occupant of any part of the Subject Property affected by this Declaration, by reason of or in connection with the approval or disapproval or failure to approve any Plans submitted. Every person who submits Plans for approval agrees, by submission of such Plans, and every Owner or occupant of any portion of the Subject Property involved herein agrees, by acquiring title thereto or any interest therein, that such person will not bring any action or suit against the Developer, the Association, or any of the members of the Board to recover any such damages.

C. Inspection of Improvements. The Board or its duly authorized representative, as well as the City of LaPorte ("City"), shall have the right, but not the obligation, to inspect any Improvements to a Tract prior to or after completion of any Improvements.

D. Notice of Completion. Promptly upon completion of any Improvements, Owner shall deliver a notice of completion ("Notice of Completion") to the Board and the City and, for all purposes hereunder, the date of receipt of such Notice of Completion by the Board shall be deemed to be the date of completion of such Improvements, provided that the Improvements are, in fact, completed as of the date of receipt of the Notice of Completion.

E. Notice of Non-Compliance. If, as a result of inspections or otherwise, the Board and/or the City finds that any Improvement has been constructed or undertaken without obtaining the approval of the Board and/or the City, or has been completed other than in substantial conformity with the Plans furnished by the Owner to and approved by the Board and/or the City, as applicable, or has not been completed within a reasonable period of time (as agreed upon by the Board and/or the City, or, if no agreement, as determined by the Board and/or the City, in its sole good faith discretion) after the date of approval by the Board and/or the City (as determined by the Board and/or the City), subject to delays due to "Force Majeure" (hereafter defined) causes, the Board and/or the City shall notify the Owner and the City or the Board, as applicable, in writing of the noncompliance, which notice (the "Notice of Noncompliance") shall be given, in any event, within sixty (60) days after the Board and the City receive a Notice of Completion from the Owner. The Notice of Noncompliance shall specify the particulars of the noncompliance and shall require the Owner to take such action as may be reasonably necessary to remedy the noncompliance. The Notice of Noncompliance may be filed in the public records and the cost of preparing and filing the same and the release thereof shall be paid by such Owner.

F. No Waiver or Estoppel. No action or failure to act by the Board shall constitute a waiver or estoppel with respect to future action by the Board.

G. Variances. The Board may authorize variances from compliance with any of the provisions of this Declaration, including restrictions upon height, size, floor area or placement of structures within set-back lines established by this Declaration, on a plat (or plats) of the Subject Property, parking requirements, or similar restrictions, when circumstances such as topography, natural obstructions, hardship, aesthetic or environmental considerations may require or when such variance would result in a more common beneficial and/or efficient use and not detract from the overall development plan for the Subject Property as determined by the Board. Such variances must be evidenced in writing and shall become effective when signed by a majority of the members of the Board. The granting of a variance in one instance shall not require the Board to grant a similar variance for another portion of the Subject Property. If any such variance is granted, no violation of the provisions of this Declaration shall be deemed to have occurred with respect to the matter for which the variance was granted; **PROVIDED, HOWEVER, THAT THE GRANTING OF A VARIANCE SHALL NOT OPERATE TO WAIVE ANY OF THE PROVISIONS OF THIS DECLARATION FOR ANY PURPOSE EXCEPT AS TO THE PARTICULAR TRACT AND PARTICULAR PROVISION HEREOF COVERED BY THE VARIANCE, NOR SHALL THE GRANTING OF A VARIANCE AFFECT IN ANY WAY THE OWNER'S OBLIGATION TO COMPLY WITH ALL GOVERNMENTAL LAWS AND REGULATIONS AFFECTING THE PROPERTY CONCERNED, INCLUDING, BUT NOT LIMITED TO ZONING ORDINANCES OR REQUIREMENTS IMPOSED BY ANY GOVERNMENTAL AUTHORITY HAVING JURISDICTION. THE OWNERS ACKNOWLEDGE THAT ONLY THE CITY SHALL BE AUTHORIZED TO GRANT VARIANCES AND SPECIAL EXCEPTIONS TO THE CITY ZONING ORDINANCE AND GOVERNMENTAL LAND USE RESTRICTIONS THROUGH THE ZONING BOARD OF ADJUSTMENT. THE BOARD AGREES TO INFORM THE CITY IN WRITING ("VARIANCE NOTICE") PRIOR TO THE GRANTING OF ANY VARIANCE REQUEST OF THE ISSUE UNDER CONSIDERATION AND THE PROPOSED ACTION BY THE BOARD SO THAT THE CITY CAN VERIFY THAT THE PROPOSED VARIANCE, IF GRANTED, WOULD NOT VIOLATE ANY ZONING ORDINANCES, LAND RESTRICTIONS OR REGULATIONS, INCLUDING, WITHOUT LIMITATION, THAT CERTAIN DEVELOPMENT AGREEMENT DATED ON OR ABOUT THE DATE HEREOF BETWEEN DEVELOPER AND THE CITY, AND JOINED IN BY THE OTHER OWNERS.** If the City objects to the granting of the variance, the City shall notify the Board (through its representative designated in the Variance Notice) within ten (10) business days following the City's receipt of the Variance Notice. If the City fails or refuses to approve or disapprove the variance request within such ten (10) day period, the City will be deemed to approve such variance request.

3.

CONSTRUCTION-RELATED RESTRICTIONS

A. Exterior Materials. Each of the Improvements to be located on any portion of the Subject Property shall be constructed with exterior materials of brick, masonry, stone, marble, or permanently finished (in a manner approved in writing by the Board in their discretion) concrete and/or glass, or of an equivalent, permanent, architecturally-finished material to finished grade. All exterior finishes shall be approved by the Board. No Improvement shall be covered with aluminum, iron, steel or other metal surface or finish unless previously approved in writing by the Board. Sidewalks of a design and location approved by the Board shall be constructed along one side of the right-of-way of all dedicated public streets (except State Highway 146) abutting any property line. Any concrete block exterior surfaces shall be painted. All exterior tilt-up concrete walls must be painted unless constructed with decorative aggregate exterior designs.

B. Building Set Backs. No building or structure or other facility of any nature shall be constructed or erected on a Tract between the adjoining street or roadway right-of-way line or adjoining side or rear property lines and the "Set Back Lines" (defined below) which shall run parallel to the Property as follows:

(1) For all buildings or other structures which are located along State Highway 146, the "Set Back Lines" along such streets and roadways shall be a minimum of fifty feet (50');

(2) For all buildings or other structures fronting any street or roadway, other than State Highway 146, the "Set Back Lines" along such streets or roadways shall be a minimum of twenty-five feet (25') or in accordance with the approved Final Plat of Port Crossing.

(3) For all buildings or other structures, the "Set Back Lines" along any side or rear property line not adjoining a street or roadway shall be a minimum of ten feet (10'); and

(4) The "Set Back Lines" for paving for parking areas which front State Hwy. 146 or any other streets or roadways within the Subject Property shall be determined by the Board. However, in no event shall any paving for parking be closer than ten feet (10') to any side or rear property line not adjoining a street or roadway.

For purposes of this Declaration, all Set Back Lines shall be measured from (a) the right-of-way line of the street or roadway adjoining the Tract as such right-of-way line exists at the time that the construction of the improvements on the Tract is commenced, or (b) the adjoining side or rear property line, as applicable.

C. Parking. Each Owner or lessee shall at all times devote a sufficient portion of its Tract to providing paved off-street parking facilities adequate for the use(s) to which its Tract is put and otherwise sufficient to comply with any applicable law, rule, regulation or ordinance, but not less than the following:

<u>Use</u>	<u>Number of Spaces</u>
Office	4 minimum, plus 3 spaces per 1000 square feet of net usable area
Retail	4 minimum, plus 4 spaces per 1000 square feet of net usable area
Commercial Services, Manufacturing or Limited Warehousing and Distribution	3 spaces per 1000 square feet of office area and one space per 1500 square feet of non-office area, but not less than one space per 1.5 non-office employees

Parking will not be permitted on any street or at any place other than the paved parking spaces provided therefore. Each Owner and lessee shall be responsible for compliance with this Paragraph C by constructing or exhibiting paved parking areas on such Owner's Tract, provided that paved parking areas shall cover not more than eighty-five percent (85%) of the area between a building and a dedicated or private street.

The Board reserves the right during its review of construction plans to relax minimum parking requirements, subject to compliance with all City of La Porte regulations and ordinances, on the Tracts where necessary or desirable to accomplish more effective and compatible land utilization.

D. Signs. All signs shall be in locations and of a design and material approved in writing in advance by the Board. No more than two (2) free standing ground or berm mounted permanent signs shall be permitted for each Tract, unless a Tract has frontage on two or more streets, in which case no more than three (3) free standing ground or berm mounted permanent signs shall be permitted for such Tract. Unless otherwise approved in writing by the Board, all other signs must be attached to a building and shall be parallel to and contiguous with its wall and not project above its roof line. No neon sign or sign of a flashing or moving character shall be installed and no sign shall be painted on a building wall.

Directional and traffic control signs, and signs advertising the sale or lease of a Tract are also permitted upon the written approval of the design and location by the Board. In the event a building has multiple tenants, all tenants may be shown on one of the permitted signs, at the discretion of the owner of the Tract. The Board shall have the right, and hereby reserves an easement, to enter upon any and all portions of the Property to remove any signs that are in violation of this Article 3 upon reasonable notice to the Owner or lessee of such portion of the Property, all at the expense of such Owner or lessee. The Board may promulgate sign guidelines (which shall include guidelines for pylon signs, monuments and flagpoles) which may be modified by the Board from time to time in its sole good faith discretion. Notwithstanding the Board's approval of any signs, all signs also shall comply with the City's zoning ordinance and be permitted by the City.

E. Harmful Substances. No affluent containing harmful bacteria, poisonous acids, oils or other harmful substance shall be permitted to drain or drift beyond the property lines of any Tract.

F. Loading/Unloading. Delivery vehicle loading and unloading shall occur on-site only and street delivery vehicle loading and unloading is not permitted. Loading/unloading facilities shall be separated from employee, customer and visitor circulation and parking areas.

Loading docks will not be permitted to face any public street or right-of-way, unless otherwise approved by the Board, and provision must be made for handling all freight on those sides of a building which do not face a street; provided, however, that in any instance in which a building would face streets on all of its sides, a loading dock or docks will be permitted on the two sides of such building which are, respectively, farthest from frontage streets unless the Developer shall in writing permit a loading dock on another side of such building. All loading docks must be screened from public view in a manner approved in writing by Developer prior to construction or alteration of any building.

G. Outside Storage or Operations; Screening. No outside storage of any kind shall be permitted except as expressly provided herein, or as otherwise approved in writing by the Board. Retail sales equipment may be displayed outside in a manner which is architecturally compatible with the other Improvements on the Tract, with the approval of the Board. Water towers, cooling towers, communication towers, fans, exterior processing equipment, storage tanks, roof-top equipment, ground-mounted equipment, and any other similar structures or equipment shall be architecturally compatible with the other Improvements on the Tract, or effectively shielded from view from a dedicated or private street in a manner approved in writing by the Board prior to construction. All screening devices shall be subject to compliance with all laws, regulations, codes and ordinances of all applicable governmental authorities.

The right of a purchaser, grantee, Owner or lessee to use any building or buildings shall not be construed to permit the keeping of articles, goods, materials, incinerators, storage tanks, boats, trailers, campers, horse trailers, buses, inoperative vehicles of any kind, boat rigging or other vehicles or associated equipment of a recreational or commercial nature, refuse containers or like equipment in the open or exposed to public view, or view from adjacent buildings. If it shall become necessary to store or keep such materials or equipment in the open, they shall be screened from view in a manner approved in writing by Developer. Adequate screening must also be provided to shield such stored materials and equipment from view from the ground floor level of all adjacent buildings. Under no circumstances shall any materials or equipment be stored within the applicable Set Back Line for any street.

H. Utility and Drainage Easements. Developer reserves the right, without the necessity of joinder of any Owner or other person or entity (and each and every Owner or lessee, by its acceptance of a deed or ground lease covering any portion of the Subject Property, hereby grants to Developer the right), to grant, dedicate, reserve or otherwise create, from time to time, easements ("Utility Easements") for public utility purposes in, on, over, through and across any portion of the Subject Property lying within twenty-five feet (25') of any street (dedicated or private) and within ten feet (10') of any side or rear property line, said easements to be for the purpose of laying, constructing, installing, maintaining, operating, inspecting, repairing, altering, substituting, replacing and removing any and all lines, cables, pipes, conduits, wires, poles, equipment and other necessary or desirable appurtenances for providing utilities (including, without limitation, electric, water, gas, telephone, sanitary sewer, drainage utilities and cable and other communications facilities) to the Subject Property; such easements to be for the use and

benefit of Developer, and any utility or cable company to whom Developer conveys or grants an easement for the purpose of providing utilities and related services to the Subject Property and the Owner of any portion of the Subject Property, their heirs, legal representatives, successors and assigns. If applicable, Owners shall have the right to use the drainage easement and to tie into any such utility lines located on such Owner's respective Tract upon payment of any tie-in charge imposed by the utility company, or by any party providing such utility service. No structure shall be erected on any of said easements, and no improvements may be placed within said easements without the prior written approval of the Board and any utility company using such easements. Easements may be crossed by driveways and walkways provided the Owner secures the necessary prior approval of the effected utility companies furnishing services, and provides and installs any special conduit and other equipment of approved (by the utility companies) type and size, under such driveways and walkways prior to construction thereof.

Title to any Tract conveyed by Developer by deed or other conveyance or ground lease shall not be held or construed in any event to include the title to the easement estates in favor of third parties affecting the Tract or any improvements within such easements or appurtenances thereto, constructed by or under Developer, the Association, third parties or their respective agents through, along, or upon any portion of the Subject Property, and the right to maintain, repair, sell, lease or replace such facilities or the appurtenances thereto (but not the Tract) to any municipality or other governmental agency or to any public service corporation or to any other party, is expressly reserved in Developer and the Association.

An easement is hereby granted to utility companies and other entities supplying service (and agents and contractors thereof) for reasonable ingress and egress in connection with installing, replacing, repairing and maintaining all utilities, including, but not limited to, water, sewer, telephones, cable service, electricity, gas and appurtenances thereto, on, above, across and under the Subject Property within the utility easements from time to time existing to and from service lines situated within such easements to the point of service on or in any structure situated on the Tracts. Further, an easement is hereby granted to all police, fire protection, ambulance and other emergency vehicles, and to garbage and trash collection vehicles, postal service vehicles and other service vehicles, and to the operators thereof, to enter upon the Subject Property in performance of their duties. Neither Developer nor any utility company using the easements shall be liable for any damage done by either of them or their assigns, their agents, employees or contractors to shrubbery, trees, flowers or other improvements (except damage to the aforementioned special conduit and other equipment, if any) located on the land covered by said easements, except to the extent of their respective gross negligence or willful misconduct.

I. Temporary Structures. No tent, shack, temporary building or structure, other than construction offices and structures for related purposes during the construction period, shall be installed or maintained on any Tract without the prior written approval of the Board. All temporary structures used for construction purposes must receive approval by the Board with regard to location and appearance, and must be removed promptly upon completion of construction.

J. Fences. All fences installed by an Owner along or in the vicinity of the boundary lines of such Owner's Tract shall be approved by the Board and further subject to compliance with all laws, regulations, codes, and ordinances of all applicable governmental authorities.

K. Landscaping. Two complete sets of landscaping architectural plans must be submitted to the Board for written approval prior to commencement of construction on a Tract. All open, unpaved space, including, but not limited to, front, side and rear building setback areas, shall be planted and landscaped, according to the plan approved in writing by Developer. Landscape plans submitted for approval of the Board shall indicate the number, size, spacing and species of shrubs and trees, and the species of ground cover. A sprinkler system of approved design shall be installed in all landscaped areas. The Board will require reasonable landscaping of any traffic or parking island located within or at the edges of any parking areas. Landscaping in accordance with the plans approved by the Board must be installed within thirty (30) days following the occupancy of a building or Tract. This period may be extended by the Board in the event of Force Majeure delays. The Board may promulgate landscaping guidelines which may be modified by the Board from time to time in its discretion. All landscaping installed by an Owner shall be subject to compliance with all laws, regulations, codes, and ordinances of all applicable governmental authorities.

4.

MAINTENANCE OF PROPERTY

The Owner or lessees of any portion of the Subject Property shall have the duty of and responsibility for keeping their respective Tract and landscaping, vegetation, premises, Improvements and appurtenances, in a well-maintained, safe, clean, sanitary and attractive condition at all times, in compliance with all applicable regulations of governmental agencies having jurisdiction over health, environment, safety and pollution control. No refuse or waste materials shall be permitted to accumulate on any part of the Subject Property but shall be regularly collected and disposed of. If, in the opinion of the Developer, any such Owner or lessee is failing in this duty and responsibility, then Developer may give such Owner or lessee, or both, written notice of such fact, and such Owner or lessee must, within ten (10) days of such notice, undertake the care and maintenance reasonably necessary to restore such Owner's or lessee's property to a safe, clean and attractive condition. Should any such Owner or lessee fail to fulfill this duty and responsibility after such notice, then the Developer shall have the right and power to perform, or have performed, such care and maintenance, including, without limitation, the mowing of any vacant Tract, and the Owner and lessee (and/or both of them) of the Tract on which such work is performed by the Developer shall be liable for the cost of any such work and shall promptly reimburse the Developer for the cost thereof. If such Owner or lessee shall fail to so reimburse the Developer within thirty (30) days after being billed therefore, then said cost shall be a debt of such owner or lessee (and both or them), payable to the Developer, and shall be secured by the same lien that secures the payment of "Assessments" (hereafter defined), which lien shall be subordinate to any now existing or hereafter created valid liens securing purchase money, the cost of construction or permanent financing therefore, or any renewal or extension of such liens. From and after the Transfer Date, the Association automatically shall have the authority reserved to the Developer in this Article 4 to cure any default of an Owner or lessee. The Developer may delegate such right to cure any default of the Owner or Lessee to the Association prior to the Transfer Date.

The Developer and Port Crossing Association hereby agree to maintain all drainage and detention areas within the development.

5.

INSURANCE, INDEMNITY AND CASUALTY LOSS

A. Each Owner, with respect to its Tract, including the Improvements and any operations thereon, shall maintain at all times during the term of this Declaration, commercial general liability insurance (including contractual liability insurance) with combined single limit coverage for personal injury, bodily injury or death or property damage or destruction (including loss or the use thereof) in the amount of not less than Three Million Dollars (\$3,000,000), (which coverage may be in the form of combined single limit coverage, with an aggregate, or a combination of combined single limit coverage with umbrella coverage), provided further that the amount of such coverage is consistent with industry standard for similar buildings and the cost thereof is not financially prohibitive. Additionally, the Board shall have the right to require an increase in the aggregate limit of such liability insurance if it becomes industry standard to provide increased amounts of coverage. Such insurance shall be maintained in reputable, financially responsible insurance companies, licensed to do business in Texas, and each Owner shall furnish to the Board upon request a certificate or copy of its respective insurance policy conforming with the provisions hereof. The Developer and Board shall be named as an additional insured under each Owner's commercial general liability insurance policy, and such coverage shall be primary to any coverage maintained by the Developer and/or the Board.

B. Each Owner shall maintain, at its cost, property damage insurance covering the full replacement value of all Improvements located on their respective Tract, insuring against the perils of fire, lightning, extended coverage vandalism and malicious mischief, and flood insurance (if available) from time to time. Such insurance shall be maintained in a reputable, financially responsible insurance company, and the Owners shall furnish to any other Owner upon request a certificate or copy of its policy of insurance conforming to the foregoing provisions.

C. SUBJECT TO THE PROVISIONS OF PARAGRAPH D. BELOW, EACH OWNER ("INDEMNITOR") COVENANTS TO INDEMNIFY, DEFEND AND HOLD HARMLESS THE DEVELOPER, BOARD AND EACH OTHER OWNER ("INDEMNITEE") FROM AND AGAINST ALL CLAIMS, COSTS, EXPENSES AND LIABILITIES (INCLUDING REASONABLE ATTORNEYS' FEES) INCURRED IN CONNECTION WITH (I) ALL DAMAGES AND CLAIMS, INCLUDING ANY ACTION OR PROCEEDING BROUGHT, ARISING FROM OR AS A RESULT OF THE DEATH OR INJURY OF ANY PERSON, OR DAMAGE TO THE PROPERTY OF ANY PERSON OR ENTITY, WHICH SHALL OCCUR ON THE TRACT OWNED BY EACH INDEMNITOR, EXCEPT FOR CLAIMS CAUSED BY THE GROSS NEGLIGENCE OR WILLFUL ACT OR OMISSION OF THE INDEMNITEE, ITS LICENSEES, CONCESSIONAIRES, AGENTS, SERVANTS OR EMPLOYEES, OR THE AGENTS, SERVANTS OR EMPLOYEES OF ANY LICENSEE OR CONCESSIONAIRE WHEREVER THE SAME MAY OCCUR; AND (II) ALL DAMAGES AND CLAIMS ARISING FROM OR AS A RESULT OF THE DEATH OR INJURY OF ANY PERSON, OR DAMAGE TO THE PROPERTY OF ANY PERSON OR ENTITY WHICH OCCUR ON ANOTHER OWNER'S PROPERTY AS A RESULT OF THE NEGLIGENT OR WILLFUL ACTS OR OMISSIONS OF THE INDEMNITOR.

D. Notwithstanding anything contained in this Declaration to the contrary, each Owner ("Injured Owner") hereby waives any and all rights of recovery, claims, actions or cause of actions against another Owner, Developer and the Association and such other Owner's, Developer's and the Association's agents, servants, partners, shareholders, directors, trustees, officers or employees (collectively, the "Injuring Owner") for any loss or damage that may occur upon the Injured Owner's property or to any personal property of such Injured Owner by reason of fire, the elements or any other cause which is insured against (or could be insured against) by the terms of policies maintained by the Injured Owner or policies required to be maintained by Injured Owner pursuant to the terms of this Declaration, including the negligence of the Injuring Owner, its agents, officers, partners, shareholders, directors, trustees, servants or employees and no insurer shall have any right of subrogation or assignment against such Injuring Owner.

E. The insurance coverages described in Paragraphs A. and B. above may be carried under a policy or policies covering other liabilities, properties and locations of an Owner of the Tract subject to this Declaration or a subsidiary or affiliate or controlling corporation of such Owner. Each insurance policy or policies shall contain a provision that such policy may not be cancelled without a thirty (30) day written prior notice by the insurer to Developer and the Association.

F. In the event of a casualty loss to any Improvements, the affected Owner shall either (i) within a commercially reasonable time, not to exceed ninety (90) days after the occurrence of the casualty loss, commence to repair all exterior and structural portions of such Improvements to the condition which existed immediately prior to such damage or destruction or to such other condition approved by the Board, and complete the repair or restoration within one hundred eighty (180) days after the occurrence of the casualty loss, subject to Force Majeure delays or (ii) within a commercially reasonable time, not to exceed ninety (90) days after the occurrence of the casualty loss, demolish and remove its damaged Improvements leaving a graded and landscaped and/or seeded area. In the event of any such casualty loss or destruction, each Owner shall as soon as possible repair any common utility lines located upon its Tract which service another Owner's Tract. Any Owner that does not elect to repair or reconstruct after a casualty loss shall be entitled to retain all its insurance proceeds in connection with such casualty loss provided that such Owner demolishes and removes the damaged Improvements; otherwise, the insurance proceeds to cover the costs and expenses of demolishing and removing all damaged Improvements on its Tract shall belong to and be paid to the Association.

6.

ENVIRONMENTAL REMEDIATION

Each Owner ("First Owner") agrees to indemnify, defend and hold harmless each of the other Owners ("Other Owners") from and against any costs, fees or expenses (including, without limitation, environmental assessment, investigation and environmental remediation expenses, third party claims and environmental impairment expenses) incurred by any of the Other Owners in connection with First Owner's generation, storage, transportation, treatment or disposal of Hazardous Substances at, to or from the portion of the Subject Property owned by the First Owner, including, but not limited to, Other Owners' costs in connection with monitoring such compliance. "Hazardous Substances," as used in this Article 7I means (a) any "hazardous waste" as defined by the Resource Conservation and Recovery Act of 1976 (42 U.S.C. §6901 et seq), as amended from time to time, and regulations promulgated there under; (b) any "hazardous substance" as defined by the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (42 U.S.C. §9601 et seq), as amended from time to time, and regulations promulgated there under; (c) any oil, petroleum products, and their by-products; (d) any substance the presence of which on the portion of the Subject Property, (including, without limitation, in the soil, air, structures and surface and sub-surface waters) owned by the First Owner is prohibited, regulated or restricted by any law or regulation similar to those set forth in this definition, and (e) any other substance which by law or regulation requires special handling in its collection, generation, storage, transportation, treatment or disposal.

7.

ENFORCEMENT

Any notice to the Developer or Board, as applicable, or request for approval by the Developer or Board, as applicable, shall be made to the Developer or Board, as applicable, in writing, and shall be sent to the Developer or Board, as applicable, by certified or registered mail, postage prepaid, addressed to the then current address of such entities as announced from time to time. Initially, the address of the Developer is: Port Crossing, 3330 S. Sam Houston Parkway E., Houston, Texas 77047, Attention: Russell D. Plank. If any request for approval of a variance or exception to the restrictions provided herein, subject to compliance with all applicable laws, regulations, and ordinances of the City of La Porte or approval of any proposed action by an Owner is required to be made by the Developer or Board, as applicable, the Developer or Board, as applicable, shall, within thirty (30) days after the request is made, give the person making the request, at such person's address as shown in the request, written notification either of the approval by the Developer or Board, as applicable, or of its rejection of the request, with a specification of the reasons for such rejection. If the Developer or Board, as applicable, fails to give to the person requesting such approval notification of rejection within such 30-day period as provided for above, the Developer or Board, as applicable, shall be conclusively deemed to have given its approval with regard to the request made. Any approval or rejection given by the Developer or Board, as applicable, shall be in writing, and shall be signed by the Developer, or Board, as applicable, and any written approval, rejection or other communication by the Developer or Board, as applicable, may be relied upon, as the act of the Developer or Board, as applicable, by the person receiving such approval, rejection or other communication.

The Developer, including any successor owner of a substantial portion of the Subject Property succeeding the Developer as a developer of the Subject Property, any Owner and the Association (collectively, the "Principal Beneficiaries") shall have the right to enforce the restrictive covenants set forth in this Declaration against any person or persons violating or attempting to violate this Declaration. No tenant, lessee or occupant of any portion of the Subject Property and no customer or invitee of any such tenants, lessee or occupant and no other party whomsoever (other than a Principal Beneficiary, as aforesaid) shall have any rights to enforce any provision of this Declaration. In the event of a violation or attempted or threatened violation of any provision of this Declaration, in addition to all other rights and remedies available at law or in equity, a Principal Beneficiary shall be entitled to obtain restraining orders and injunctions (temporary and permanent) enjoining and prohibiting such violation, attempted or threatened violation and commanding compliance with the provisions of this Declaration, without the necessity of posting a bond.

COVENANT FOR MAINTENANCE ASSESSMENTS

A. Creation of the Lien and Personal Obligation of Assessment. The Developer for each Tract owned within the Subject Property, hereby covenants, and each Owner of any Tract by acceptance of a deed therefor, whether or not it shall be expressed in any such deed or other conveyance, is conclusively deemed to covenant and agree as a covenant running with the land to pay to the Association assessments or charges imposed from time to time by the Board for the purposes set forth in Section 8.B. below (hereinafter referred to as "Assessments"). The Board shall have the right to adopt and from time to time revise and amend procedures for the purpose of establishing the Assessments, due dates, billing and collection of the Assessments, provided that such procedures are not inconsistent with the provisions hereto. The assessments established by the Board shall commence against the subject Property on August 1, 2006. The Assessments shall be uniform as to each Tract on a per square foot basis according to the land area comprising such Tract. If the Assessments have commenced to accrue against the Owners, then, at the time an Owner takes title to a Tract, the installment for that month shall be prorated as of the day the Owner takes title. Any Assessments not paid and received within ten (10) days from the due date shall be deemed delinquent and, without notice, shall bear interest until paid at fifteen percent (15%) per annum, not to exceed the maximum non-usurious rate allowed by applicable law. The Board, at its option, may impose and collect late charges on delinquent payments, in addition to interest, in an amount to compensate the Association for the administrative burden of dealing with the delinquency.

To secure the payment of the Assessments levied hereunder and any other sums due hereunder (including, without limitation, reasonable attorney's fees and costs of collection, interest or late charges), a vendor's lien and superior title shall be and is hereby reserved, and a contractual lien is hereby created, in favor of the Association, in and to each Tract and assigned to the Association, which liens shall be enforceable as hereinafter set forth by the Board or its appointed agent ("Agent") on behalf of the Association.

Notice of the unpaid amounts, at any time, secured by the liens referred to, reserved by and created in this Article 8 may, but shall not be required to be given by the recordation in the Real Property Records of Harris County, Texas of a "Notice of Non-Payment," duly-executed and acknowledged by an Agent of the Association, setting forth the amount owed, the name of the reputed Owner or Owners of the affected Tract according to the books and records of the Association, and the legal description of such Tract. The cost of preparing and filing the Notice of Non-Payment and its release shall be secured by the lien therefor.

Each Owner, by acceptance of a deed to such Owner's Tract, hereby expressly recognizes the existence of such liens as being prior to such Owner's ownership of such Tract and hereby vests in the Board or its Agent the right and power to bring all actions against such Owner or Owners personally for the collection of such Assessments and other sums due hereunder as a debt, and to enforce the aforesaid lien by all methods available for the enforcement of such liens, including by judicial and/or non-judicial foreclosure. Additionally, by acceptance of the deed to such Owner's Tract, each Owner expressly grants a power of sale such Owner's Tract and all Improvements thereon, and all rights appurtenant thereto for the purpose of securing the aforesaid Assessments and other sums due hereunder remaining unpaid by such Owner from time to time. The Agent may be changed at any time by the Board. In the event of the election by the Board to foreclose the liens herein provided for nonpayment of sums secured to be paid by such liens, then it shall be the duty of the Agent, as hereinabove provided, at the request of the Board (which request shall be presumed) to enforce this trust and to sell such Tract and all Improvements thereon, and all rights appurtenant thereto, at the door of the County Courthouse of Harris County, Texas (in the area designated by the Commissioner's Court of Harris County, Texas, for such purpose), on the first Tuesday in any month between the hours of 10:00 a.m. and 4:00 p.m. to the highest bidder for cash after the Agent shall have given notices of the proposed sale in the manner hereinafter set forth, or as provided by statute, whichever is less burdensome. Following sale, the Agent shall make due conveyance of the Tract and all Improvements thereon to the purchaser or purchasers,

and may, but shall not be required to, give a general warranty of title to such purchaser or purchasers binding upon the Owner or Owners of such Tract and all Improvements thereon and their heirs, executors, administrators, successors and assigns. The Agent shall give notice of such proposed sale by posting a written notice of time, place and terms of the sale for at least twenty-one (21) consecutive days preceding the date of sale at the Courthouse door of Harris County, Texas, by filing such notice with the County Clerk of Harris County, Texas, at least twenty-one (21) consecutive days preceding the date of sale, and, in addition, the Agent shall serve written notice at least twenty-one (21) days preceding the date of sale by certified mail on each debtor obligated to pay the debt according to the records of the Association of such sale and the notice thereof shall comply with the provisions of Section 51.002 of the Texas Property Code, as it may be amended from time to time. Service of such notice shall be completed upon deposit of the notice in the United States mail, properly addressed to such debtor obligated to pay the debt at the most recent address as shown by the records of the Association. The affidavit of any person having knowledge of the facts to the effect that such service was completed shall be prima facie evidence of the fact of such service. If any change in Texas law occurs subsequent to the date hereof, this paragraph A of Article 8 shall be amended to comply with such change in Texas law.

At any foreclosure, judicial or non-judicial, the Association shall be entitled to bid up to the amount of the sum secured by its lien, together with costs and attorney's fees, and to apply as a cash credit against its bid all sums due to the Association covered by the lien foreclosed. Out of the proceeds of such sale, there shall first be paid all expenses incurred by the Association in connection with such sale, including reasonable attorneys' fee and reasonable trustees' fees; second, from such proceeds there shall be paid to the Association an amount equal to the amount in default, plus interest thereon; and, third, the remaining balance shall be paid to such Owner and/or such Owner's mortgagee. From and after any such foreclosure, the occupants of such Tract shall be required to pay a reasonable rent for the use of such Tract and such occupancy shall constitute a tenancy-at-sufferance, and the purchaser at such foreclosure sale shall be entitled to the appointment of a receiver to collect such rents and further, shall be entitled to sue for recovery of possession of such Tract by forcible detainer without further notice.

B. Purpose of Assessments. The Assessments levied by the Board shall be used exclusively for the purpose of: (i) the operating costs and expenses of the Association; (ii) the payment of all organization costs and attorney fees incurred by the Association in connection with the enforcement of this Declaration, including, without limitation, enforcement of parking restrictions; (iii) the maintenance, replacement and repair of any Private Streets and any Improvements located within the Private Streets (but not the initial construction of the Private Streets); (iv) the establishment and maintenance of capital and operating reserves that the Board determines to be necessary and desirable; (v) the payment of any ad valorem or other taxes due on any property owned by the Association; (vi) the payment of any costs or expenses incurred with respect to the provision of any facilities and services related to the Private Streets and other portions of the Subject Property determined to be necessary by the Board; (vii) street lighting, street sweeping and street maintenance of any private streets in the Subject Property and maintenance of entry markers, greenbelts, signs, detention ponds, retention areas, esplanades and landscape reserves and other common areas owned by the Association or dedicated to a governmental entity; (viii) planting, landscaping, watering, irrigation, mowing, tree surgery and general upkeep and maintenance of plants or landscaped areas of the common areas owned by the Association; (viii) reimbursement of reasonable and customary costs and expenses of the Association in connection with its operation and management and administration of this Declaration (including, but not limited to, common engagement of third party architects, engineers, attorneys, accountants, managers and other consultants in connection with the administration of this Declaration) and such other non-capital items of expenses as may be deemed by the Association, in its discretion and in good faith, to be necessary or desirable for the carrying out of this Declaration; and (ix) promotion of the recreation, health, and safety (including, without limitation, security patrols and other security measures if deemed necessary by the Association; provided however, that the Association shall not be obligated to provide security patrols or other security measures and the provision of any security measure does not guarantee the safety of any Owners, employees, guests, contractors or invitees or that the property of any Owner, guest, contractor or invitee will not be damaged, vandalized or stolen) and the general welfare of the Owners and lessees the Subject Property.

C. Maintenance Fund. The Assessments collected by the Association shall be paid into a maintenance fund (the "Maintenance Fund") and shall be held, managed, invested and expended by the

Board, in its sole good faith discretion, for any of the permitted purposes. The Board and the Directors shall not be liable to any person or entity as a result of any action taken by the Board with respect to the Maintenance Fund, except for willful misconduct or fraud.

D. **Basis of Maximum of Annual Assessments.** Notwithstanding the provisions of Paragraph A of this Article 8 to the contrary, the maximum initial annual Assessment shall be two cents (\$0.02) per square foot of land area in the Subject Property. From and after January 1, of the next succeeding calendar year following the imposition of the Assessment, the annual Assessment may be increased as follows:

The Developer may determine and certify that the then current annual Assessment is not sufficient to meet reasonable expenses of maintaining and enforcing this Declaration and, the Developer may increase the annual Assessment by an amount which shall not exceed the greater of: (i) 10% or (ii) an amount equal to the yearly rise in the United States Department of Labor, Bureau of Labor Statistics ("BLS"), Consumer Price Index (for All Urban Consumers CPI-U) Houston-Galveston-Brazoria, TX. – All Items (1982-84 = 100) (the "Index") as of July of each year from the preceding July. If, however, the index should be discontinued, such calculation shall be made by use of another reputable index selected by the Board which is recognized by BLS and is comparable to the Index. Additionally, if the base period of the Index (currently 1982-84 = 100) is hereby modified, the base period used in making the aforesaid calculation shall be appropriately adjusted by the Board to reflect such modification and if the Index is published in such manner that an Index figure is not available each July, then the Index figure published for the most recent month preceding July shall be used.

The annual Assessment shall not be increased more than once in any calendar year. However, the right to increase the annual Assessment, as aforesaid, shall be cumulative and in the event the annual Assessment is not increased to the maximum amount allowed for any one or more years, then the Developer shall thereafter have the right to increase any subsequent annual Assessment to an amount equal to the maximum annual Assessment that would have been chargeable for that year as if the annual Assessment had been increased by the maximum allowable hereunder for each of such prior years.

Notwithstanding the foregoing provisions of this Paragraph 8.D, in the event the Board determines that it is necessary to increase the annual Assessment more than the amount prescribed by the formula, the Board, by majority vote, and the affirmative vote of two-thirds (2/3rds) of those Owners who are voting in person or by proxy at a meeting duly called for such purpose, may increase the maximum annual Assessment for the subject calendar year. Once the maximum annual assessment for any calendar year is increased pursuant to the provisions of this grammatical paragraph, the amount to which it has been increased shall be the amount used to determine the maximum annual Assessment for the next calendar year.

E. **Subordination of Assessment Lien to Mortgages.** The liens securing the Assessments provided for herein shall be subject and subordinate to (i) all liens for taxes or assessments levied by the City, County and State Governments or any political subdivision or special district thereof and (ii) the lien of any duly-recorded first and/or second mortgage lien or first and/or second lien deed of trust upon one or more Tracts made in good faith and for purchase money or improvements. The sale or transfer of any Tract shall not affect the assessment lien. However, the sale or transfer of any Tract which is subject to any first or second mortgage lien, pursuant to a foreclosure of such lien or a conveyance in lieu of foreclosure, shall extinguish the lien of such assessments as to payments thereof which become due prior to such sale or transfer. No sale or transfer shall relieve the new Owner of such Tract from liability for any assessment thereafter becoming due according to the terms herein contained or from the lien thereof.

F. **Exempt Property.** Notwithstanding anything to the contrary herein, the following property shall be exempt from the payment of assessments: (a) any areas designated as Common Areas by the Developer and accepted by the Association; and (b) all property dedicated to and accepted by any governmental authority or public utility.

G. Annual Financial Report. The Association shall deliver to each Owner an unaudited annual financial report as required by the Texas Nonprofit Corporation Act not later than sixty (60) days after the end of each calendar year.

9.

PROPERTY OWNERS' ASSOCIATION

The administration of the Subject Property shall be governed by the PORT CROSSING ASSOCIATION, a Texas non-profit corporation ("Association") to be formed not later than one hundred eighty (180) days following the closing of the sale of the first Tract out of the Subject Property. The Association shall act through a Board of Directors ("Board") of not less than three (3) Directors who need not be members of the Association. The initial Directors of the Association shall be selected by the Developer. The initial Directors for the Association shall hold office for an initial term of three (3) years and, thereafter, until their successors are duly elected and qualified. After the expiration of the term of the initial Directors, the members of the Association shall elect a Board of Directors as provided for in the Bylaws of the Association. Directors shall receive no compensation for their services, but, by resolution of the Board, a Director may be reimbursed for reasonable expenses and costs incurred by him in carrying out his duties. The Board shall have the power to enact any rules, bylaws, procedures and regulations, not inconsistent with this Declaration.

"Transfer Date," as used herein, shall mean the earlier to occur of: (i) January 1, 2026; (ii) thirty (30) days following the date that seventy-five percent (75%) or more of the total square footage of the Subject Property has been conveyed to parties not related to or affiliated with the Developer; or (iii) the Developer's recordation of a notice in the Real Property Records of Harris County, Texas, to the effect that the Transfer Date has occurred for purposes of this Declaration.

The Directors and the officers of the Association shall not be personally liable to the Owners, Developer or the Association for any mistake of judgment or for any other acts or omissions of any nature whatsoever (including, without limitation, any mistake in judgment, negligence or nonfeasance arising out of or in connection with the approval or disapproval or failure to approve any submitted plans), except for gross negligence, willful misconduct or bad faith. Every person who submits any Plans to the Board for approval as herein provided agrees by submission of such Plans, and every lessee or Owner or person claiming by or through an Owner or lessee agrees by acquiring title to any Tract or interest in a Tract, that it will not bring any action or suit against the Association or any director or officer, or any one or more of them, their respective agents, employees, members or assigns, to recover any damages as a result thereof, except for gross negligence, willful misconduct or bad faith.

Any Owner of a Tract within the Subject Property shall be a member of the Association, and shall remain a member for the period of its ownership. Each member of the Association shall be entitled to one (1) vote for each ten thousand (10,000) sq. ft. of the total square footage of the Tract it owns; provided, however, that in the event of the expansion of the Subject Property subject to this Declaration, the votes to which an Owner of land within the Subject Property is entitled shall be revised and adjusted to a ratio that said number of square feet owned bears to the total number of square feet in the Subject Property, as expanded. There shall be no fractional votes. No Owner shall be entitled to vote in any election concerning any action submitted before the Members for their vote during any period in which any such fees or assessments assessed against such Owner are delinquent or such Owner is otherwise in violation, of this Declaration as to which such Owner has received written notice of such violation.

10.

SEVERABILITY

Invalidation of any one of these covenants and restrictions by judgment or court order shall in no way affect any of the other provisions, which shall remain in full force and effect.

11.

ADDITIONAL RESTRICTIONS

The Developer may make additional restrictions applicable to any Tract by appropriate provisions in any deed or deeds hereafter conveying any land within the Subject Property, without otherwise modifying the general plan outlined above, and such other restrictions shall inure to the benefit of the Owners of any other land in the Subject Property in the same manner as though they had been expressed herein. Without the consent of any other party, including any Owner, Developer shall have the right to extend the restrictions and covenants hereof to any land hereafter owned or acquired by Developer, any boundary of which lies within one mile of the Subject Property ("Additional Land") by filing a supplemental declaration, in the Real Property Records of Harris County, Texas, adding the Additional Land to the Subject Property subject to this Declaration. Nothing herein contained, however, shall be deemed to impose any restrictions on any portion of the Additional Land unless Developer, as the owner of the Additional Land or any portion thereof, thereafter elects to subject any portion of the Additional Land to the general plan outlined above by expressly providing for same in any deed or other instrument executed by the Developer, as the owner of the portion of the Additional Land to be made subject to these covenants and restrictions.

12.

TERM

These covenants shall run with the land comprising the Subject Property and shall be binding on all Owners and lessees of any of the Subject Property and their respective heirs, executors, Boards, devisees, successors and assigns, and all persons claiming under them, from the date on which these covenants are recorded though January 1, 2056, after which time these covenants shall be automatically extended for successive periods of ten (10) years each, unless within six (6) months prior to January 1, 2056 (or the end of any extended period) an instrument executed and acknowledged by the persons or entities who then own at least two-thirds (2/3rds) of the total square footage of land in the Subject Property (exclusive of public streets) has been recorded in the Real Property Records of Harris County, Texas, terminating these covenants in whole or in part at the end of any such original or extended term.

13.

AMENDMENTS

Notwithstanding the provisions of Article 12 to the contrary, this Declaration may be amended at any time (subject to compliance with all applicable laws, codes, regulations, and ordinances of the City of La Porte) by the written action of the Owners of at least two-thirds (2/3rds) of the total square footage in the Subject Property, regardless of whether such two-thirds (2/3rds) ownership consists of Developer alone, Developer and Other Owners or Other Owners alone; provided, however, that if such two-thirds (2/3rds) ownership consists of Owners alone, then so long as Developer retains fee simple legal title to at least five (5) acres in the Subject Property, such Other Owners must obtain Developer's written consent to any amendment of this Declaration and Developer agrees to consider any proposed amendment in the exercise of good faith judgment and to describe its objections thereto, if any, in writing in reasonable detail. No amendment shall be effective unless made and recorded ten (10) days in advance of the effective date of such change and unless written notice of the proposed amendment is sent to Developer and every Owner at least thirty (30) days in advance of any action taken prior to recordation. No amendment shall be applicable to existing Improvements on the Subject Property (or the replacement of such Improvements following casualty or other damage if restored in a substantially similar manner and the restoration is in compliance with all applicable laws), unless such instrument(s) shall be signed by all of the then Owners of the Subject Property. Notwithstanding anything herein to the contrary, Developer shall have and reserves the right at any time and from time to time, without the joinder or consent of any owner or other party, to amend this Declaration by any instrument in writing duly signed, acknowledged and filed for record by Developer for the purpose of correcting any typographical or grammatical error, ambiguity or inconsistency appearing herein or clarifying any provision therein; provided, however, that

any such amendment shall be consistent with and in furtherance of the general plan of development as evidenced by this Declaration and shall not impair or affect the vested property or other rights of any Owner; and provided further, that nothing herein shall be construed to permit an amendment providing for a use inconsistent with or prohibited by the provisions of this Declaration.

14.

MISCELLANEOUS

A. Protection of Name. No Owner shall use the phrase "Port Crossing" or any word or words similar thereto in connection with any Tract or any business operated in connection with any Tract, without the prior written consent of Developer. The restriction contained in this Paragraph A is for the sole benefit of and may be enforced only by Developer.

B. Notices. Any notice permitted or required to be given under this Declaration shall be in writing and may be given either personally or by mail, facsimile machine (with confirmation of delivery) or overnight air courier service. If served by mail, each notice shall be sent postage prepaid, certified mail, return receipt requested, addressed to any person at the address given by such Person to the Association in writing for the purpose of service of such notice, or to the Tract of such person if no address has been given to the Association and shall be deemed given, if not actually received earlier, at 5:00 p.m. on the second business day after it is deposited in a regular depository of the United States Postal Service. Such address may be changed from time to time by notice in writing to the Association.

C. Right of Entry; Enforcement by Self Help. The Association shall have the right, in addition to and not in limitation of all the rights it may have under this Declaration, to enter upon any Tract, including any Improvements located thereon, for emergency, security, maintenance, repair or safety purposes, which right may be exercised by the Association's Board, officers, agents, employees, managers, and all police officers, firefighters, ambulance personnel, and similar emergency personnel in the performance of their respective duties. Except in an emergency situation, entry shall be only during reasonable hours and after reasonable notice to the Owner or occupant of the Tract or Improvements.

In addition to any other remedies provided for herein, the Association or its duly authorized agent shall have the power to enter upon any Improvements or any portion of a Tract to abate or remove, using such force as reasonably may be necessary, any Improvement to Property, other structure, or thing or condition that violates this Declaration, the Bylaws, any Rules and Regulations, or any use restrictions. Unless an emergency situation exists, such self-help shall be preceded by written notice. All costs of self-help, including reasonable attorney's fees actually incurred, shall be assessed against the violating Owner and shall be collected as provided for herein for the collection of Assessments.

All such entries shall be made with as little inconvenience to the Owner as is practicable in the judgment of the Association and any damages caused thereby (as distinguished from repairs with respect to which the Association is entitled to a reimbursement assessment) shall be borne by the Maintenance Fund of the Association.

D. Platting/Replatting. If for any reason, the Developer should be required or deem it necessary to plat or replat the Subject Property, or any portion thereof, such platting or replatting may be accomplished without the consent of the Other Owners, or their mortgagees; provided, however, that the Developer has obtained the approval of the City and other governmental body or bodies, as applicable, for such platting or replatting. In addition, if for any reason an Owner other than the Developer, should find it necessary or be required to plat or replat all or a portion of the Tract owned by him, such Owner may proceed with the platting or replatting without the consent of the Other Owners, or their mortgagees; provided, however, that (i) such Owner has obtained the approval of the appropriate governmental body or bodies, and (ii) the Board has given its prior written consent to such platting or replatting, which consent shall not be unreasonably withheld or delayed.

E. **Violations of Law.** Any violation of any federal, state, municipal, or local law, ordinance, rule, or regulation, pertaining to the ownership, occupation, or use of any property within the Subject Property hereby is declared to be a violation of this Declaration and shall be subject to any and all of the enforcement procedures set forth in this Declaration.

F. **Remedies Cumulative.** Each remedy provided under this Declaration is cumulative and not exclusive.

G. **Restrictions Construed Together.** All of the provisions of this Declaration shall be construed liberally to promote and effectuate the fundamental concepts of the Subject Property, as set forth in the Declaration.

H. **Number and Gender.** Unless the context requires a contrary construction, the singular shall include the plural and the plural the singular; and the masculine, feminine, or neuter shall each include the masculine, feminine, and neuter.

I. **Estoppel Certificates.** Within fifteen (15) days after receipt of a written request from any Owner, the Association shall certify by written instrument, duly executed and acknowledged, to any lender, purchaser or any other person specified in the request: (i) whether this Declaration has been supplemented or amended, and if so, the substance of the supplement or amendment; (ii) whether the Owner is in violation of any provision of this Declaration, and if so, the description of the violation; (iii) the then current amounts of Assessments and the status of their payment by such Owner; and (iv) any other matters may be reasonably requested by the Owner.

J. **Captions for Convenience.** The titles, headings, and captions used in this Declaration are intended solely for convenience of reference and shall not be considered in construing any of the provisions of this Declaration.

K. **Force Majeure.** "Force Majeure," as used herein, shall mean any delays in performance by a party required hereunder due to strikes, riots, acts of God, shortages of labor or materials, work, governmental laws, regulations or restrictions, inclement weather or any other causes of any kind whatsoever which are beyond the reasonable control of such party, in which event, the party prevented from performing as a result of such Force Majeure delays, shall be entitled to an extension of the time for performance equal to the duration of such Force Majeure delays.

L. **Governing Law.** This Declaration shall be construed and governed under the laws of the State of Texas.

M. **Mergers or Consolidations.** Upon a merger or consolidation of the Association with another association, its properties, rights, and obligations may be transferred by operation of law to another surviving or consolidated association or, alternatively, the properties, rights, and obligations of another association may be added by operation of law to the properties, rights, and obligations of the Association as a surviving corporation pursuant to a merger. The surviving or consolidated association may administer and enforce the covenants, conditions, and restrictions established by this Declaration governing the Subject Property, together with the covenants and restrictions established upon any other property, as one plan, subject also to the provisions of the Declaration.

N. **Delay in Enforcement.** No delay in enforcing the provisions of this Declaration as to any breach or violation thereof shall impair, damage, or waive the right of any party entitled to enforce the same to obtain relief against or recover for the continuation or repetition of such breach or violation or any similar breach or violation thereof at any later time or times.

EXECUTED this 26th day of September, 2006.

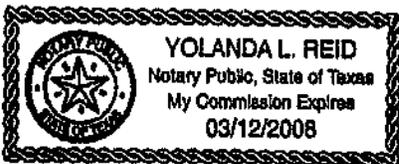
PORT CROSSING LAND, LP,
a Texas limited partnership

By: Port Crossing Land GP, LLC,
a Texas limited liability company
its general partner

By Russell D. Plank
Russell D. Plank, Vice President

THE STATE OF TEXAS §
 §
COUNTY OF HARRIS §

This instrument was acknowledged before me on this 26th day of September, 2006, by RUSSELL D. PLANK, Vice President of PORT CROSSING GP, LLC, a Texas limited liability company, general partner of Port Crossing Land, LP, a Texas limited partnership, on behalf of such partnership.



Yolanda L. Reid
Notary Public in and for
The State of Texas

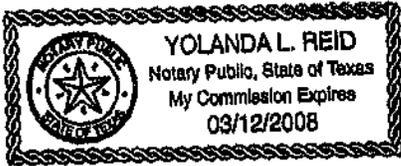
POWELL ROAD LOGISTICS, L.P.,
a Texas limited partnership

By: Powell Road Logistics GP, LLC,
a Texas limited liability company,
its general partner

By Russell D. Plank
Russell D. Plank, Vice President

THE STATE OF TEXAS §
 §
COUNTY OF HARRIS §

This instrument was acknowledged before me on this 26th day of September, 2006, by RUSSELL D. PLANK, Vice President of POWELL ROAD LOGISTICS GP, LLC, a Texas limited liability company, general partner of Powell Road Logistics, L.P., a Texas limited partnership, on behalf of such partnership.



Yolanda L. Reid
Notary Public in and for
The State of Texas

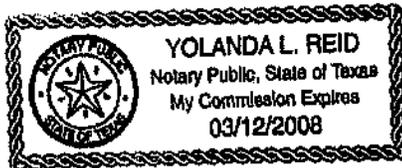
FLPCW, LP,
a Texas limited partnership

By: FLP Candle GP, Inc.,
a Texas corporation,
its general partner

By: George Cook
George Cook, President

THE STATE OF TEXAS §
 §
COUNTY OF HARRIS §

This instrument was acknowledged before me on this 26th day of September, 2006, by GEORGE COOK, President of FLP Candle GP, Inc., a Texas corporation, general partner of FLPCW, LP, a Texas limited partnership, on behalf of such partnership.



Yolanda L. Reid
Notary Public in and for
The State of Texas

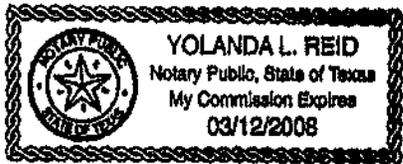
NATIONAL PROPERTY HOLDINGS, L.P.,
a Texas limited partnership

By: National Property Holdings GP, LLC,
a Texas limited liability company
its general partner

By Russell D. Plank
Russell D. Plank, Vice President

THE STATE OF TEXAS §
 §
COUNTY OF HARRIS §

This instrument was acknowledged before me on this 20th day of September, 2006, by RUSSELL D. PLANK, Vice President of NATIONAL PROPERTY HOLDINGS GP, LLC, a Texas limited liability company, general partner of National Property Holdings, L.P., a Texas limited partnership, on behalf of such partnership.



Yolanda L. Reid
Notary Public in and for
The State of Texas

DEL PISO INVESTMENTS, LLLP, an Arizona limited liability limited partnership

By: Harl Avenue Investments, L.L.C., an Arizona limited liability company, its general partner

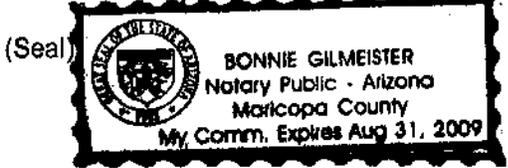
By: [Signature]
Gary Skarsten, Manager

By: [Signature]
Matthew Huarte, Manager

STATE OF ARIZONA §
COUNTY OF ARIZONA §
MARICOPA §

This instrument was acknowledged before me on this the 26 day of September, 2006, by Gary Skarsten, Manager of Harl Avenue Investments, L.L.C., an Arizona limited liability company, general partner of Del Piso Investments, LLLP, an Arizona limited liability limited partnership, on behalf on said limited liability limited partnership.

Given under my hand and seal of office this 26 SEPTEMBER day of July, 2006, A.D.

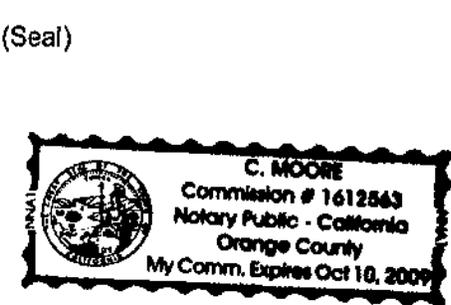


[Signature]
NOTARY PUBLIC, STATE OF ARIZONA
My Commission Expires: 8-31-2009

CALIFORNIA
STATE OF ARIZONA §
COUNTY OF Orange §

This instrument was acknowledged before me on this the 25 day of September, 2006, by Matthew Huarte, Manager of Harl Avenue Investments, L.L.C., an Arizona limited liability company, general partner of Del Piso Investments, LLLP, an Arizona limited liability limited partnership, on behalf on said limited liability limited partnership.

Given under my hand and seal of office this 25 day of July, 2006, A.D.



[Signature]
NOTARY PUBLIC, STATE OF CA
My Commission Expires: 10/10/2009


D R A F T

**DRAFT TRAFFIC CONTROL PLAN
TEXAS IMPORT-EXPORT PARK
An Approximate 291-acre Mixed Use Development
La Porte, Texas**

A commercial mixed use project is to be constructed within a PUD zoning district in the City of La Porte, Texas. This project known as *Texas Import-Export Park* (Project) combines as a planned community, a full range of uses from multifamily to rail-served industrial. Pursuant to the adoption of a Special Conditional Use Permit (SCUP) by the City, this document is to provide guidance as to the control of internal and external automobile and truck traffic generated by the Project. While the General Plan for the Project generally designates the various uses, by ordinance each individual building or development site will require further Site Plan review. That review process will, therefore, include an expansion of the Traffic Control Plan to address site specific issues particular to that use or plan as an addendum to this document.

The goal of the Traffic Control Plan is to insure the efficient flow of traffic to and from and within the Project in a manner that will minimize additional adverse impacts to the existing thoroughfare system of the area. It is intended that the guidance established herein shall be enforced by the Project Property Owners Association (Association) with oversight by the City. This guidance is to be used in the preparation of development site plans as well as the implementation of operational parameters for internal control of all vehicular traffic by the Owner-Developer and assigns, including project managers, tenants, and subsequent individual site owners or businesses.

The site is served by a controlled access principle arterial, State Highway 146, with a planned interchange at Wharton Weems Boulevard, a planned 4-lane collector street, bisecting the Project and turning into Powell Road as a parallel facility to S.H. 146. Due to the relatively limited service area of the Wharton Weems-Powell connection, it will more than adequately accommodate anticipated traffic generated by such a Project.

Therefore, managers, tenants, and business owner-operators are to provide routing instructions for all traffic serving sites within the Project. This shall include employees, company trucks and vehicles, customers, carriers, vendors or regular contractors making repetitive deliveries.

TRAFFIC CONTROL GUIDELINES

The following initial guidelines address the essential initial issues of traffic control relative to the Project and may be amended as more detailed planning and site specific issues develop.

DRAFT

All Project generated traffic shall be directed to ingress and egress the site at the S.H. 146-Wharton Weems Blvd. intersection. Every effort is to be made to discourage or prevent traffic to or from Fairmont Parkway. Internal traffic is to also be directed to the S.H. 146-Weems intersection, especially truck traffic.

Site plan design where practicable shall utilize common driveways and cross-access easements (drives) between sites to facilitate quality and effective internal traffic flow, circulation within the Project.

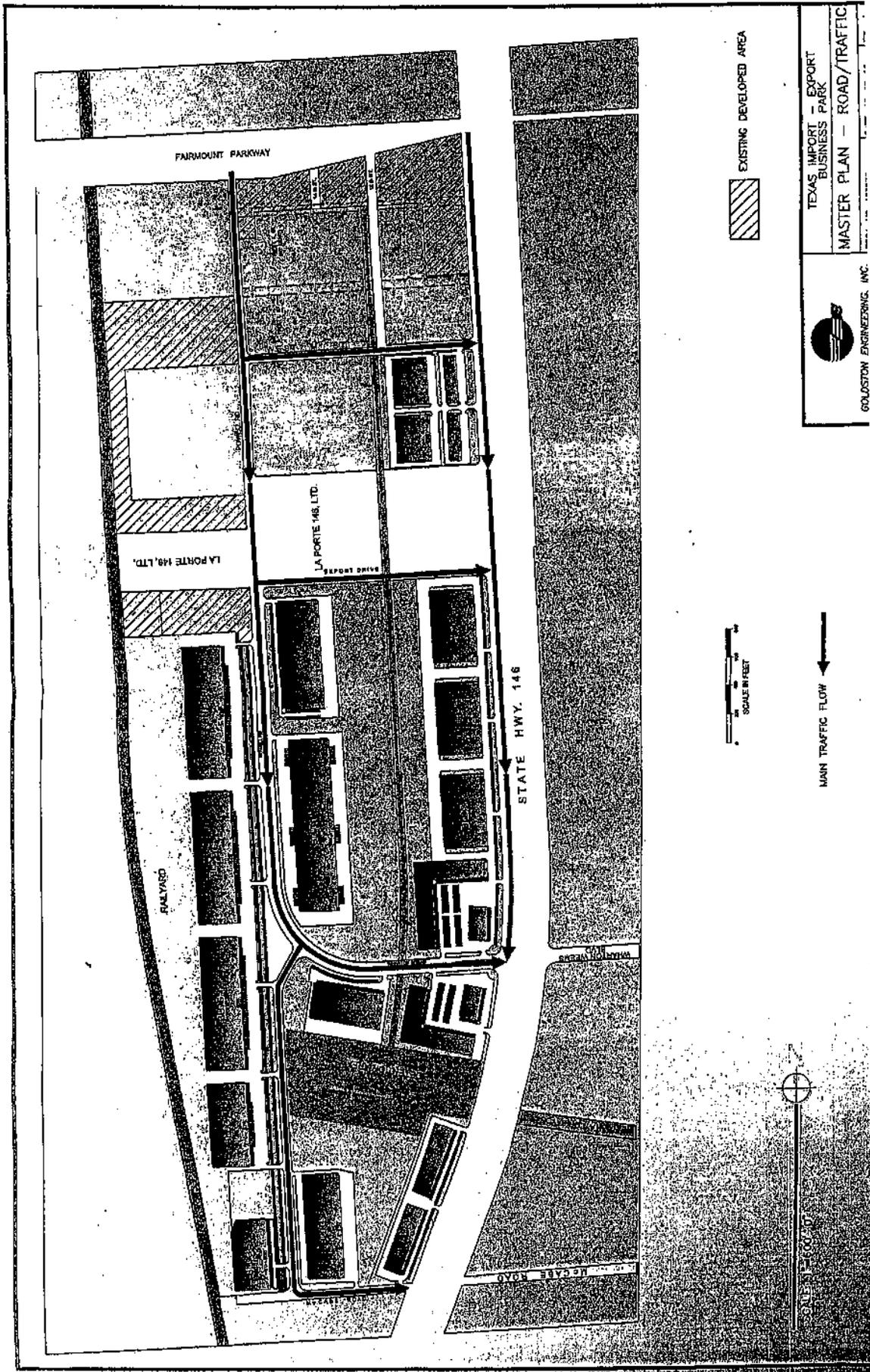
Driveways, especially to S. H. 146, shall be minimized to the extent practicable and within the limits stated within the SCUP. Each building site must be allowed at least one driveway if requested, but sharing of driveways should be encouraged as a policy. Location of driveways opposite each other along Wharton Weems Blvd. should be encouraged, particularly where esplanade openings might exist.

Driveways along Powell Road shall be designed and signed accordingly to facilitate the flow of truck traffic toward the S.H. 146 intersection. A driveway design that would preempt truck traffic to the north toward Fairmont Parkway is to be mandated, except for those destined to facilities that may exist south of Fairmont Parkway.

Esplanades, esplanade openings, including left turn lanes, and driveway curb returns shall be designed to safely accommodate truck traffic with minimum impacts on other roadway traffic. Where possible and practicable consideration shall be given to the separation of automobile and truck entrances, driveways and parking.

All aspects of traffic design discussed herein, including but not limited to geometric design, traffic signs, and standards shall conform to the applicable provisions of the City Code of Ordinances, the Texas Manual on Uniform Traffic Control Devices, and recommendations and standards of the traffic industry (AASHTO).

Included for information purposes only are examples of traffic control devices and designs that illustrate potential solutions to various conditions discussed above. A thorough engineering analysis of the Project will include more detailed study of these traffic issues and will be incorporated into this document.



FAIRMOUNT PARKWAY

LA PORTE #49, LTD.

LA PORTE #48, LTD.

RAILYARD

STATE HWY. 146



MAIN TRAFFIC FLOW

EXISTING DEVELOPED AREA

TEXAS IMPORT-EXPORT
BUSINESS PARK
MASTER PLAN - ROAD/TRAFFIC



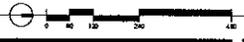
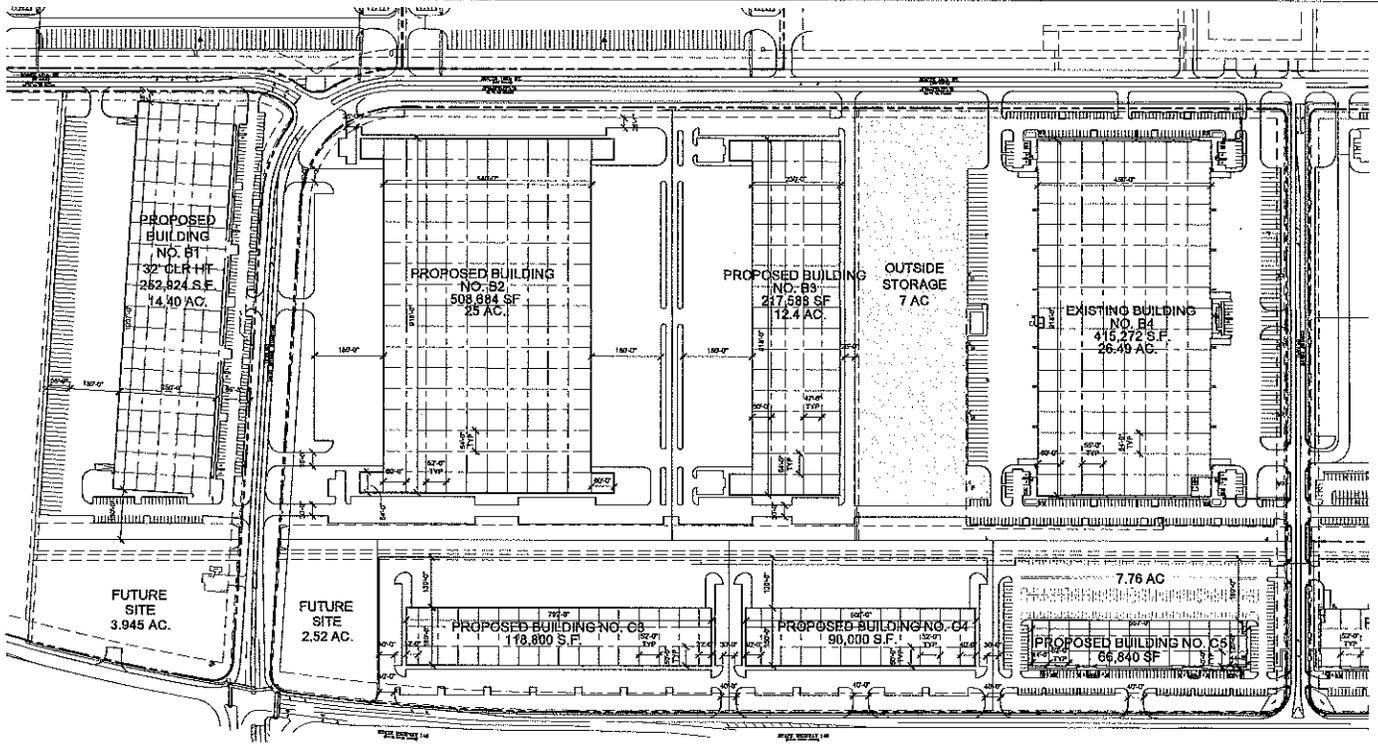
GOLDSTON ENGINEERING, INC.



SCALE 1"=600' 00"

SITE PLAN - B2 & B3 - OPTION 03

PROPOSED BUILDING B2 SITE AREA = 25 ACRES	BUILDING AREA = 508,684 SF	COVERAGE = 46.6%
PROPOSED BUILDING B3 SITE AREA = 12.4 ACRES	BUILDING AREA = 217,588 SF	COVERAGE = 40.3%



LIBERTY PORT CROSSING
 a project for
LIBERTY PROPERTY TRUST

10/17/11

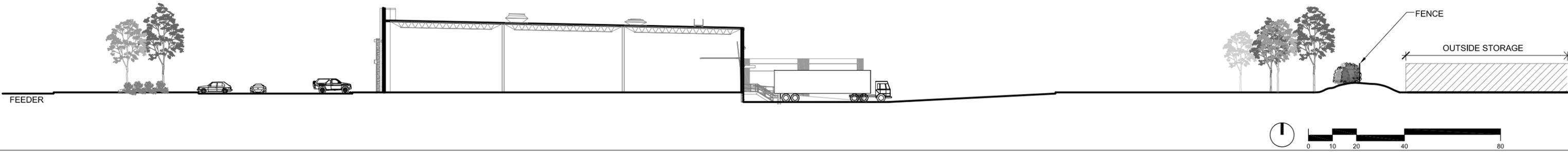
13 FEBRUARY 2017

T049



BUILDING IMAGE W/ CORRESPONDING SECTION

SECTION - BUILDING C4



VIEW OF BUILDINGS C4 & C5 FROM HIGHWAY 146 FEEDER



REQUEST FOR CITY COUNCIL AGENDA ITEM

Agenda Date Requested: <u>February 27, 2017</u>	<u>Appropriation</u>
Requested By: <u>Traci Leach</u>	Source of Funds: _____
Department: <u>Administration</u>	Account Number: _____
Report: <input checked="" type="radio"/> Resolution: <input type="radio"/> Ordinance: <input type="radio"/>	Amount Budgeted: _____
Other: <input type="radio"/> _____	Amount Requested: _____
Attachments :	Budgeted Item: <input checked="" type="radio"/> YES <input type="radio"/> NO

SUMMARY & RECOMMENDATIONS

At the February 13, 2017 Council meeting, Council requested that an action item be placed on the next agenda to extend the "go live" date for the ONE Solution implementation to April 15, 2017.

An Executive Session item is also on this agenda to allow the Council to discuss legal options related to the existing Sungard contract.

Action Required of Council:

Consider approval or other action to extend the deadline for "go live" for ONE Solution core finance functions to April 15, 2017.

Approved for City Council Agenda

Corby D. Alexander, City Manager

Date



Council Agenda Item February 27, 2017

9. ADMINISTRATIVE REPORTS

- Fiscal Affairs Committee Meeting, Monday, March 13, 2017
- City Council Meeting, Monday, March 13, 2017
- Planning and Zoning Commission Meeting, Thursday, March 16, 2017
- City Council Meeting, Monday, March 27, 2017

10. COUNCIL COMMENTS regarding matters appearing on the agenda; recognition of community members, city employees, and upcoming events; inquiry of staff regarding specific factual information or existing policies – Council members Earp, Clausen, J. Martin, K. Martin, Kaminski, Zemanek, Leonard, Engelken and Mayor Rigby.

11. EXECUTIVE SESSION

The City Council reserves the right to meet in closed session on any agenda item should the need arise and if applicable pursuant to authorization by Title 5, Chapter 551, of the Texas Government Code, in accordance with the authority contained in:

Texas Government Code, Section 551.074 - Personnel Matter: Deliberation concerning the appointment, employment, evaluation, reassignment, duties, discipline, or dismissal of a public officer or employee, unless the officer or employee requests a public hearing: Patrice Fogarty, City Secretary.

Texas Government Code, Section 551.071 (1) (A) - Pending or Contemplated Litigation: Meet with City Attorney and City Manager to discuss performance issues under contract with SunGard.

12. RECONVENE into regular session and consider action, if any, on item(s) discussed in executive session.

13. ADJOURN
