

## **DONATION AGREEMENT**

This Donation Agreement is made by and between the City of Tomball, Texas, a home-rule municipality incorporated pursuant to the laws of the State of Texas and located in Harris County, Texas (the “City”), and The Estate of Gilbert and Virginia Freitag, an individual (the “Donor”) (with the City and the Donor each being a “Party”, and collectively, the “Parties”), and is made effective as of the date of authorization by the City Council of the City (the “Council”) at its regular meeting on \_\_\_\_\_, 2024 (the “Effective Date”).

### **RECITALS**

**WHEREAS**, the City has express authority to contract with other persons pursuant to section 51.014 of the Texas Local Government Code; and

**WHEREAS**, the Donor owns certain items of antique train equipment, as listed in this Agreement, that Donor desires to donate to the City for display and maintenance at the City of Tomball Railroad Depot; and

**WHEREAS**, the City wishes to accept the donation of these items of antique train equipment in accordance with the terms of this Agreement; and

**WHEREAS**, the Council finds that the provisions contained in this Agreement are reasonable and necessary for the acceptance of these items of antique train equipment. **NOW THEREFORE**,

**IN CONSIDERATION OF THE MUTUAL COVENANTS AND OBLIGATIONS SET FORTH HEREIN, AND FOR OTHER GOOD AND VALUABLE CONSIDERATION, THE PARTIES COVENANT AND AGREE AS FOLLOWS:**

### **AGREEMENT**

#### **SECTION 1. PURPOSE**

This Agreement serves as a statement and exchange of promises between the City and the Donor. It is enacted to provide clear responsibilities and duties for the conveyance of the Donation by the Donor and acceptance of the Donation by the City. This Agreement will ensure that the Donation accepted by the City is in the best interest of the City and its citizens.

#### **SECTION 2. TERM**

This Agreement shall become binding on the Parties on the Effective Date and shall remain in full force and effect for a period of twenty (20) years.

#### **SECTION 3. THE DONATION**

The Donor agrees to donate the following items to the City for display at the City of Tomball Train Depot:

- 1) One (1) double control box semaphore signal;
- 2) One (1) base mast semaphore signal;
- 3) One (1) Wig-Wig Signal;
- 4) One (1) dual searchlight signal;
- 5) One (1) dual light road crossing signal;

- 6) One (1) quad light road crossing signal with gate arm;
- 7) One (1) base unit signal control/relay/battery box;
- 8) One (1) freight station baggage wagon;
- 9) One (1) large wheeled dual fire bottle cart;
- 10) One (1) baggage scale; and
- 11) Five (5) unique stitch stands.

Additionally, Donor will provide labor and materials to repaint, rewire, repair any mechanical problem needed, re-lamp signals, concrete bolting in-bed plates, assistance for electrical control system and assistance for initial wiring/connect of signals at the City of Tomball Train Depot. These items shall become the property of the City of Tomball immediately upon the execution of this Agreement.

#### **SECTION 4. CITY OF TOMBALL OBGLIATIONS.**

The City shall be responsible for the following:

- 1) Transporting the Donation items from their current location in Pearland, Texas to the City of Tomball Train Depot;
- 2) Providing a concrete foundation with electrical conduit in beds;
- 3) Providing storage and installation of signals and other items at the City of Tomball Train Depot;
- 4) Providing public activatable electrical control panel/system to activate each signal;
- 5) Displaying signage indicating "Freitag Memorial Signal Garden" or similar display signage;
- 6) Providing periodic maintenance and re-painting as needed; and
- 7) Agreeing to display the Donation items as much as practical during the term of this Agreement. The City shall not be obligated to display any or all of the donated items if any of the items become weathered, damaged or unfit for public display. Additionally, should the City no longer operate and maintain its Train Depot, the City shall not be obligated to display the donated items.

#### **SECTION 5. CONTACT INFORMATION**

All notices and communications required or contemplated under this Agreement may be conducted in person, but shall be memorialized through written notice to the addresses of the Parties as follows:

***For the City:***

City of Tomball  
Attn: City Manager  
401 Market Street  
Tomball, Texas 77375

***For the Donor:***

The Estate of Gilbert and Virginia Freitag

#### **SECTION 6. TRANSFERABILITY**

Except as may otherwise be expressly provided herein, the rights and obligations created by this Agreement may not be transferred or assigned to another party without the express written consent of the City and Donor.

## **SECTION 7. GOVERNING LAW**

The laws of the State of Texas shall govern any disputes or conflicts that arise under the terms of this Agreement. The venue for any legal action involving this Agreement shall be in a court of competent jurisdiction in Harris County.

## **SECTION 8. ENTIRE AGREEMENT**

This Agreement represents the entirety of the arrangement between the City and the Donor. No oral or other written contracts outside of this Agreement shall have any effect unless they are approved in writing by both Parties and made a part of this Agreement.

## **SECTION 9. OTHER DOCUMENTS**

The City and the Donor agree to execute such further documents, and to take such further acts, as may be necessary or required to carry out the terms of this Agreement.

## **SECTION 10. AMENDMENTS**

This Agreement may be amended only by an instrument in writing signed by the City and Donor.

## **SECTION 11. SEVERABILITY**

The provisions of this Agreement are severable, and if any provision or part of this Agreement or the application thereof to any person or circumstance shall ever be held by any agency or court of competent jurisdiction to be unenforceable, invalid or unlawful for any reason, the remainder of this Agreement shall not be affected thereby.

## **SECTION 12. NO THIRD-PARTY BENEFICIARIES**

Except as herein specifically and expressly provided, the terms and provisions of this Agreement are for the sole benefit of the City and Donor, and no third party whatsoever is intended to benefit here from.

## **SECTION 13. AUTHORIZATION**

- A.** The City represents and warrants to, and covenants with Donor that the execution, delivery and performance of this Agreement by the executing officer have been duly authorized. This Agreement has been duly and validly executed and delivered by the executing officer on behalf of the City, and constitutes a valid and binding obligation, enforceable against the City in accordance with its terms.
- B.** No consent or approval of any third party, including, without limitation, any governmental authority, is required in connection with the execution, delivery or performance of this Agreement. The execution and delivery of this Agreement, and the performance of the obligations and consummation of the transactions contemplated herein do not and will not conflict with or result in a breach of any of the terms, conditions or provisions of, or constitute a default under any contract, indenture, mortgage, loan agreement, lease, joint venture or other agreement or instrument to which the City is a party or by which the City or any of its respective properties are bound, or result in any violation by it of any law, order, rule or regulation of any court or governmental agency or body. The City is not in material violation of any law, ordinance, governmental rule or regulation or court decree to which it may be subject, nor has it failed to obtain and maintain in full force and effect any license, permit, certificate, franchise or other governmental authorization necessary to the ownership of its respective property or to the conduct of its operations under this Agreement.

SIGNATURES

THIS AGREEMENT IS EXECUTED BY THE PARTIES ON \_\_\_\_\_, 2024.

FOR: THE CITY

\_\_\_\_\_  
David Esquivel, City Manager

ATTEST:

\_\_\_\_\_  
Tracylynn Garcia, City Secretary

FOR: THE DONOR

*Gilbert Freitag*  
\_\_\_\_\_  
Name [Signature]

*Gilbert Freitag*  
\_\_\_\_\_  
Name [Printed]

*Estate Executor*  
\_\_\_\_\_  
Title

*The person signing on behalf of the Donor represents and warrants that he/she has sufficient authority to bind the Donor and enter this Agreement.*