

AGREEMENT TO ACCEPT DONATION OF REAL PROPERTY

STATE OF TEXAS	§	ROW CSJ #: 0720-03-149
	§	Parcel #: P00058924 (Parcel 532)
COUNTY OF HARRIS	§	Project limits: South of Brown Rd to Montgomery C/L

THIS AGREEMENT is entered between the Contracting Parties, as defined below.

I. Contracting Parties:

Donor: THE CITY OF TOMBALL, HARRIS COUNTY, TEXAS, a Texas home-rule municipality
State: The Texas Department of Transportation (“**State**” or “**TxDOT**”)

II. Background:

Texas Transportation Code §201.206 authorizes the State to accept, from any source, a donation of realty for the purpose of carrying out its functions and duties. Texas Government Code Chapter 575, requires the governing board of a state agency, not later than the 90th day after a donation valued at \$500 or more is accepted, to acknowledge the acceptance of the donation by majority vote at an open meeting and prohibits a state agency from accepting a donation from a person who is a party to a contested case before the agency until the 30th day after the date the decision in the case becomes final. To provide guidance on when a donation may be accepted by the State, the Texas Transportation Commission (Commission) has adopted rules relating to the State acceptance of donations, codified as 43 TAC §§1.500-1.506. Acceptance of a donation of \$500.00 or more must be acknowledged by the Commission not later than the 90th day after the date the Donation is accepted by the State.

The Donor is a property owner desiring to donate property described herein to the State for no benefit or gain to the Donor. The State wishes to accept the donation of property and the Donor must execute this donation agreement.

III. Agreement:

The Donor, being fully informed of its right to receive just compensation for the Property, agrees to donate the property more particularly described on Exhibit “A”, attached hereto and incorporated herein for all purposes (the “**Property**”), to the State. The State certifies that its acceptance of the Property will further the State’s abilities to meet its responsibilities.

The value of the Property as determined by (leave blank if Donor has waived) is \$(leave blank if Donor has waived). The Donor has been informed of its right to conduct or waive an appraisal of the Property by a qualified appraiser. (_____) **Donor’s Initial**

IV. Representations and Warranties:

- A. The Donor represents and warrants that it has unrestricted fee ownership and use of the Property and that by signing the Donation Deed it is forever relinquishing and transferring all rights and interest in and to the Property to the State.
- B. The Donor acknowledges that it has been fully informed of Donor’s right to receive just compensation for the Property.
- C. Donor acknowledges that nothing contained in this Agreement shall be a limitation of any type on the divestment of interest by Donor to State.
- D. The Donor acknowledges that there is no official relationship between the Donor and the State.
- E. The Donor acknowledges that it will receive no benefit as a result of the donation of the Property.

- F. The Donor is not the subject of State regulation or oversight, or interested in or likely to become interested in any contract, purchase, payment, or claim with or against the State.
- G. The State determines that acceptance of the donation will provide a significant public benefit and such acceptance does not influence or appear to influence the State in the performance of its duties.
- H. The Donor acknowledges that TxDOT's acceptance of the donation does not bind State to a course of action or promise of performance.
- I. The State neither approves nor is responsible for any representations made by the Donor for tax purposes.
- J. The Donor acknowledges that the State will act in reliance of and in consideration of the promises made by the Donor in this agreement.
- K. The Donor acknowledges that this agreement is public information and will be furnished to a requestor pursuant to Chapter 552 of the Texas Government Code.

V. Hold Harmless:

The Donor shall save and hold harmless the State and its officers and employees from any and all claims and liability due to any intentional or negligent actions that are caused by or result from error, omission, or negligent act of the Donor or of any person employed by the Donor. The Donor shall also save harmless the State from any and all expense, including, but not limited to, attorney fees that may be incurred by the State in litigation or otherwise resisting the claim or liabilities that may be imposed on the State as a result of such activities by the Donor, its agents, or employees.

VI. Warranty of Use:

Donor represents and warrants to the State that Donor has no knowledge of any current or former use, generation, storage or disposal of any hazardous material on or under the Property currently or previously in violation of any federal, state or local governmental law or rule. Additionally, Donor represents and warrants to the State that Donor has no knowledge of the Property being used for a gas station, auto shop, or dry cleaning service, and has no knowledge of the presence of asbestos material on the Property. Donor has not received any notice of any action or proceeding relating to any hazardous materials or any release thereof on, in, under or about the Property.

VII. Relocation Assistance: (If applicable)

Donor acknowledges receipt of the brochure entitled "*Relocation Assistance*" and understands that relocation assistance benefits, if any, are handled entirely separate from and in addition to this transaction. Relocation benefits, if any, will be examined on a case by case basis, and will be specifically set forth in a separate agreement.

VIII. Costs:

- A. The State, without cost to the Donor, shall pay the cost of recording all instruments conveying title to the State, and the State may, but is not obligated to, purchase an owner's title policy at the State's expense.
- B. Donor will be reimbursed for any fair and reasonable incidental expenses necessarily incurred in transferring title to the Property for use by State. Expenses eligible for reimbursement may include (1) recording fees, transfer taxes and similar expenses incidental to conveying the Property to State; and (2) penalty costs for prepayment of any preexisting recorded mortgage entered into in good faith encumbering the Property. Voluntary unnecessary expenses or expenses incurred in clearing questionable title will not be eligible for reimbursement. Eligible incidental expenses will be reimbursed upon submission of a claim supported by receipted bills or other evidence of actual expenses incurred. Donor may file a written request for review if Donor believes that the State failed to properly determine the eligibility for or the amount of incidental expenses to be reimbursed. There is no standard form on which to request a review of a claim; however, the request for review must be filed with the State within six months after you are notified of the State's determination on

any claim for reimbursement.

IX. Termination/Withdrawal:

If Donor withdraws from this agreement, in writing, before it is executed by the State, such withdrawal shall extinguish all rights, duties, obligations and liabilities of the State and the Donor under this agreement.

X. Sole Agreement:

This Agreement and the Donation Deed constitute the only promises, consideration and conditions of this conveyance, and no other promises, consideration or conditions have been signified or implied, except any benefits which Donor may or may not be entitled under the State's Relocation Assistance Program.

XI. Notices:

All notices to either party by the other party will be delivered personally or sent by U.S. Mail, postage prepaid, to the following addresses:

Donor:	State:
Attn:	Texas Department of Transportation Attn: Right of Way Division P.O. Box 5075 Austin, Texas 78763-5075

The notice shall be received by the addressee on the date delivered or deposited in the mail. Either party may change its address by sending written notice of the change to the other in the manner provided.

XII. Exhibits:

- A. Property Location Map or Survey
- B. Deed

The State and the Donor have executed duplicate counterparts of this agreement.

THE STATE

THE DONOR

Executed for the Executive Director and approved by the Texas Transportation Commission for the purpose and effect of carrying out the orders, established policies, or work programs approved and authorized by the Texas Transportation Commission.

The undersigned signatory warrants that he or she is an official representative of the organization making the donation described and is authorized to make the donation and to enter into this Agreement on behalf of the organization.

Texas Department of Transportation

Director, TxDOT Right of Way Division

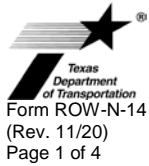
BY: _____
Authorized Signature

Typed or Printed Name and Title

Date:

Date:

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



DEED

TxDOT ROW CSJ: 0720-03-149

TxDOT Parcel ID: P00058924 (Parcel 532)

Grantor(s), whether one or more:

THE CITY OF TOMBALL, HARRIS COUNTY, TEXAS, a Texas home-rule municipality

Grantor's Mailing Address (including county):

Grantee:

The State of Texas, acting by and through the Texas Transportation Commission

Grantee's Authority:

The Texas Transportation Commission is authorized under the Texas Transportation Code to purchase land and such other property rights (including requesting that counties and municipalities acquire highway right of way) deemed necessary or convenient to a state highway or turnpike project to be constructed, reconstructed, maintained, widened, straightened, or extended, or to accomplish any purpose related to the location, construction, improvement, maintenance, beautification, preservation, or operation of a state highway or turnpike project.

The Texas Transportation Commission is also authorized under the Texas Transportation Code, Chapter 203 to acquire or request to be acquired such other property rights deemed necessary or convenient for the purposes of operating a state highway or turnpike project, with control of access as necessary to facilitate the flow of traffic and promote the public safety and welfare on both non-controlled facilities and designated controlled access highways and turnpike projects.

Grantee's Mailing Address (including county):

Texas Department of Transportation
125 E. 11th Street
Austin, Travis County, Texas 78701

Consideration:

The sum of Ten and no/100 Dollars (\$10.00) to Grantor in hand paid by Grantee, receipt of which is hereby acknowledged, and for which no lien is retained, either expressed or implied.

Property:

All of that certain tract or parcel of land in Harris County, Texas, being more particularly described in the attached Exhibit A (the “**Property**”).

Reservations from and Exceptions to Conveyance and Warranty:

This conveyance is made by Grantor and accepted by Grantee subject to the following:

1. Visible and apparent easements not appearing of record.
2. Any discrepancies, conflicts, or shortages in area or boundary lines or any encroachments or any overlapping of improvements which a current survey would show.
3. Easements, restrictions, reservations, covenants, conditions, oil and gas leases, mineral severances, and encumbrances for taxes and assessments (other than liens and conveyances) presently of record in the Official Public Records of Harris County, Texas, that affect the property, but only to the extent that said items are still valid and in force and effect at this time.

Grantor reserves all of the oil, gas, and sulfur in and under the Property but waives all rights of ingress and egress to the surface thereof for the purpose of exploring, developing, mining or drilling for same; however, nothing in this reservation shall affect the title and rights of the Grantee, its successors and assigns, to take and use all other minerals and materials thereon, therein, and thereunder.

Grantor is retaining title to the following improvements (“**Retained Improvements**”) located on the Property, to wit:

Grantor covenants and agrees to remove the Retained Improvements from the Property by N/A day of N/A 20N/A, subject to such extensions of time as may be granted by Grantee in writing. In the event Grantor fails, for any reason, to remove the Retained Improvements within the time prescribed, then, without further consideration, title to all or part of such Retained Improvements not so removed shall pass to and vest in Grantee, its successors and assigns, forever.

Access on and off Grantor’s remaining property to and from the State highway facility shall be permitted except to the extent that such access is expressly prohibited by the provisions set out in Exhibit “A”. Grantor acknowledges that such access on and off the State highway facility is subject to regulation as may be determined by the Texas Department of Transportation to be necessary in the interest of public safety or by applicable local municipal or county zoning, platting, or permitting requirements.

GRANTOR, for the Consideration and subject to the Reservations from Conveyance and the 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 way belonging, to have and to hold it to Grantee and Grantee’s successors and assigns forever. Grantor binds Grantor and Grantor’s heirs, successors, and assigns to Warrant and Forever Defend all and singular the Property to Grantee and Grantee’s successors and assigns against every person whomsoever lawfully claiming or to claim the same or any part thereof, except as to the Reservations from Conveyance and the Exceptions to Conveyance and Warranty.

When the context requires, singular nouns and pronouns include the plural.

EXECUTED on the date(s) of acknowledgment indicated below.

GRANTOR:

THE CITY OF TOMBALL, HARRIS COUNTY,
TEXAS, a Texas home-rule municipality

BY: _____

TITLE: _____

Acknowledgment

State of Texas
County of

This instrument was acknowledged before me on _____
_____ by _____. The
acknowledging person personally appeared by:

physically appearing before me.

appearing by an interactive two-way audio and video communication that meets the requirements for online
notarization under Texas Government Code, Chapter 406, Subchapter C.

Notary Public's Signature

AFTER RECORDING, RETURN TO:

[ADDITIONAL WORDING FOR AN EXHIBIT “A” WHERE WHOLE TAKE (NO REMAINDER) INVOLVED—INCLUDE THE FOLLOWING PARAGRAPH AS AN ADDITIONAL PAGE TO THE EXHIBIT “A” PROPERTY DESCRIPTION IMMEDIATELY AFTER THE LEGAL DESCRIPTION AND PLAT MAP]

The property described above relates to a “whole” property acquisition, so that there is no remainder or remaining property owned by the Grantors that was originally out of or a part of the property described above. Therefore, there are no access rights retained or remaining in Grantors, their successors and assigns, out of or relating to the property described above.

Note to Right of Way Project Delivery Personnel: For partial takings, delete this page.

EXHIBIT A

TOMBALL TOLLWAY – PHASE 2
PARCEL 532
0.0442 ACRE (1,924 SQUARE FEET)
JOSEPH HOUSE SURVEY, ABSTRACT NUMBER 34
CITY OF TOMBALL
HARRIS COUNTY, TEXAS

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Being a tract or parcel, containing 0.0442 acre (1,924 square feet) of land, situated in the Joseph House Survey, Abstract Number 34, City of Tomball, Harris County, Texas, and being part of and out of that certain called 0.2175 acre described in deed to Mariah Group, Ltd., dated July 12, 2011, as recorded under Harris County Clerk's File (H.C.C.F.) Number 20110288171 (Film Code (F.C.) Number 025-11-0401); said 0.0442 acre tract being more particularly described as follows (all bearings and coordinates are based on the Texas Coordinate System, South Central Zone (4204), North American Datum of 1983 (NAD 83), 1993 adjustment; all distances and coordinates herein are surface values and may be converted to grid by dividing by a surface adjustment factor of 1.00013; all distances and coordinates herein are based on the U.S. Survey Foot):

COMMENCING at a point in the east line of that certain called 10.2406 acres described in deed to CFH Tomball Partners, L.P., dated November 26, 2014, as recorded under H.C.C.F. Number 20140550784 (F.C. Number 064-04-1654); also being the southwest corner of the remainder of that certain called 1.022 acres described in deed to Tomball Riverwalk Limited Partnership (formerly known as Burnside Wichita Limited Partnership), dated April 2, 2002, as recorded under H.C.C.F. Number V723478 (F.C. Number 550-82-3394); also being the northwest corner of said 0.2175 acre tract, from which a found 5/8-inch iron rod bears South 88°43'54" West, 0.13 feet; thence:

N 88°43'54" East, with the south line of said 1.022 acre tract and the north line of said 0.2175 acre tract, a distance of 36.87 feet to a 5/8-inch iron rod with plastic cap, stamped "TERRA SURVEYING," set in the proposed west right-of-way (R.O.W.) line of State Highway (S.H.) 249, based on a varying width, and marking the **POINT OF BEGINNING** and northwest corner of the herein described tract, and having surface coordinates of X=3,031,382.58 and Y=13,966,043.88;

THENCE, North 88°43'54" East, continuing with the south line of said 1.022 acre tract and the north line of said 0.2175 acre tract, a distance of 8.96 feet to a point in the existing west R.O.W. line of said S.H. 249, based on a varying width, and being the west common corner of Parcels 507A and 507B, as dedicated to State of Texas under H.C.C.F. Numbers 20070059638 (F.C. Number 038-65-1026) and H.C.C.F. Number Y500047 (F.C. Number 006-15-1565), respectively; also being northeast corner of said 0.2175 acre tract and the herein described tract;

TOMBALL TOLLWAY – PHASE 2
PARCEL 532
0.0442 ACRE (1,924 SQUARE FEET)
JOSEPH HOUSE SURVEY, ABSTRACT NUMBER 34
CITY OF TOMBALL
HARRIS COUNTY, TEXAS

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THENCE, southerly and westerly with the existing west R.O.W. line of said S.H. 249, and the easterly and southerly lines of said 0.2175 acre tract, the following courses:

Southerly, with a non-tangent curve to the right, having a radius of 1,894.86 feet, an arc length of 145.80 feet, a delta angle of $04^{\circ}24'31''$, and a chord which bears South $10^{\circ}12'46''$ East, 145.77 feet to a point for the northerly end of an existing cutback line, and being the most northerly southeast corner of said 0.2175 acre tract and the herein described tract, from which a found 5/8-inch iron rod with cap bears North $14^{\circ}41'$ West, 0.23 feet;

South $39^{\circ}24'46''$ West, a distance of 17.13 feet to point for the southerly end of said existing cutback line, and being the most southerly southeast corner of said 0.2175 acre tract and the herein described tract, from which a found 5/8-inch iron rod with cap bears North $23^{\circ}11'$ West, 0.17 feet;

Westerly, with a non-tangent curve to the right, having a radius of 944.25 feet, an arc length of 29.80 feet, a delta angle of $01^{\circ}48'29''$, and a chord which bears South $80^{\circ}12'44''$ West, 29.80 feet to a 5/8-inch iron rod with plastic cap, stamped "TERRA SURVEYING," set in the proposed R.O.W. line of said S.H. 249, and marking the southerly end of a proposed cutback line and the most southwesterly corner of the herein described tract;

THENCE, northerly, departing the existing west R.O.W. line of said S.H. 249 and across said 0.2175 acre tract with the proposed west R.O.W. line of said S.H. 249, the following courses:

North $39^{\circ}47'23''$ East, a distance of 42.93 feet to a 5/8-inch iron rod with plastic cap, stamped "TERRA SURVEYING," set marking the northerly end of said proposed cutback line, and marking an angle point in the proposed west R.O.W. line of said S.H. 249 and the herein described tract;

Northerly, along a non-tangent curve to the left, having a radius of 1,898.00 feet, an arc length of 130.47 feet, a delta angle of $03^{\circ}56'19''$, and a chord which bears North $09^{\circ}43'36''$ West, 130.45 feet to the **POINT OF BEGINNING** and containing 0.0442 acre (1,924 square feet) of land.

TOMBALL TOLLWAY – PHASE 2
PARCEL 532
0.0442 ACRE (1,924 SQUARE FEET)
JOSEPH HOUSE SURVEY, ABSTRACT NUMBER 34
CITY OF TOMBALL
HARRIS COUNTY, TEXAS

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There also exists a separate drawing of the subject tract, as prepared by Terra Surveying Company, Inc., under this project number of even date.

Compiled by:
Scott D. Mandeville, RPLS
Terra Surveying Company, Inc.
3000 Wilcrest Drive, Suite 210
Houston, Texas 77042
713-993-0327
Project Number 1053-1401




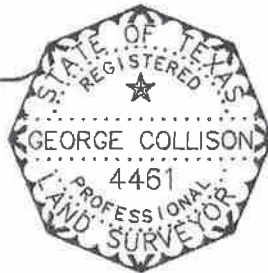
ABBREVIATIONS

A.E. AERIAL EASEMENT
 AC. ACRES
 CONC. CONCRETE
 ESMT. EASEMENT
 EXIST. EXISTING
 F.C. FILM CODE
 F/K/A FORMERLY KNOWN AS
 FND. FOUND
 H.C.C.F. HARRIS COUNTY CLERK'S FILE
 H.C.D.R. HARRIS COUNTY DEED RECORDS
 H.C.F.C.D. HARRIS COUNTY FLOOD CONTROL DISTRICT
 H.C.M.R. HARRIS COUNTY MAP RECORDS
 H.L.&P. HOUSTON LIGHTING & POWER
 INT. INTEREST
 I.P. IRON PIPE
 I.R. IRON ROD
 MONU. MONUMENT (4"x4", PILLAR)
 NO. NUMBER
 P.O.B. POINT OF BEGINNING
 P.O.C. POINT OF COMMENCING
 PROP. PROPOSED
 P.U.E. PUBLIC UTILITY EASEMENT
 PG. PAGE
 R.O.W. RIGHT-OF-WAY
 SET SET 5/8" IRON ROD WITH CAP, STAMPED "TERRA SURVEYING", UNLESS OTHERWISE NOTED
 SQ. FT. SQUARE FEET
 TXDOT TEXAS DEPARTMENT OF TRANSPORTATION
 VOL. VOLUME
 W/ WITH

CURVE TABLE					
NO.	RADIUS	ARC LENGTH	DELTA ANGLE	CHORD BEARING	CHORD
C1	1,894.86'	145.80'	04°24'31"	S 10°12'46" E	145.77'
C2	944.25'	29.80'	01°48'29"	S 80°12'44" W	29.80'
C3	1,898.00'	130.47'	03°56'19"	N 09°43'36" W	130.45'

LINE TABLE		
NO.	BEARING	DISTANCE
L1	N 88°43'54" E	36.87'
L2	N 88°43'54" E	8.98'
L3	S 39°24'46" W	17.13'
L4	N 39°47'23" E	42.93'

BY: 
 GEORGE COLLISON
 REGISTERED PROFESSIONAL
 LAND SURVEYOR
 TEXAS REGISTRATION NO. 4461



DATED: 3-31-16

GENERAL NOTES

1. THIS PLAT WAS PREPARED WITHOUT BENEFIT OF A TITLE COMMITMENT WHICH MAY OTHERWISE REVEAL EASEMENTS AND OTHER ENCUMBRANCES OF RECORD NOT CURRENTLY SHOWN HEREON. TERRA SURVEYING COMPANY DID NOT PERFORM ANY ADDITIONAL RESEARCH TO DETERMINE THE EXISTENCE OF ANY SUCH ENCUMBRANCES.
2. ALL BEARINGS AND COORDINATES ARE BASED ON THE TEXAS COORDINATE SYSTEM, SOUTH CENTRAL ZONE (4204), NORTH AMERICAN DATUM OF 1983 (NAD 83), 1993 ADJUSTMENT. ALL DISTANCES AND COORDINATES SHOWN HEREON ARE SURFACE VALUES AND MAY BE CONVERTED TO GRID BY DIVIDING BY A SURFACE ADJUSTMENT FACTOR OF 1.00013. ALL DISTANCES AND COORDINATES SHOWN HEREON ARE BASED ON THE U.S. SURVEY FOOT.
3. THERE IS ALSO A SEPARATE METES AND BOUNDS OF THE SUBJECT TRACT, AS PREPARED BY TERRA SURVEYING COMPANY, UNDER THIS PROJECT NUMBER OF EVEN DATE.

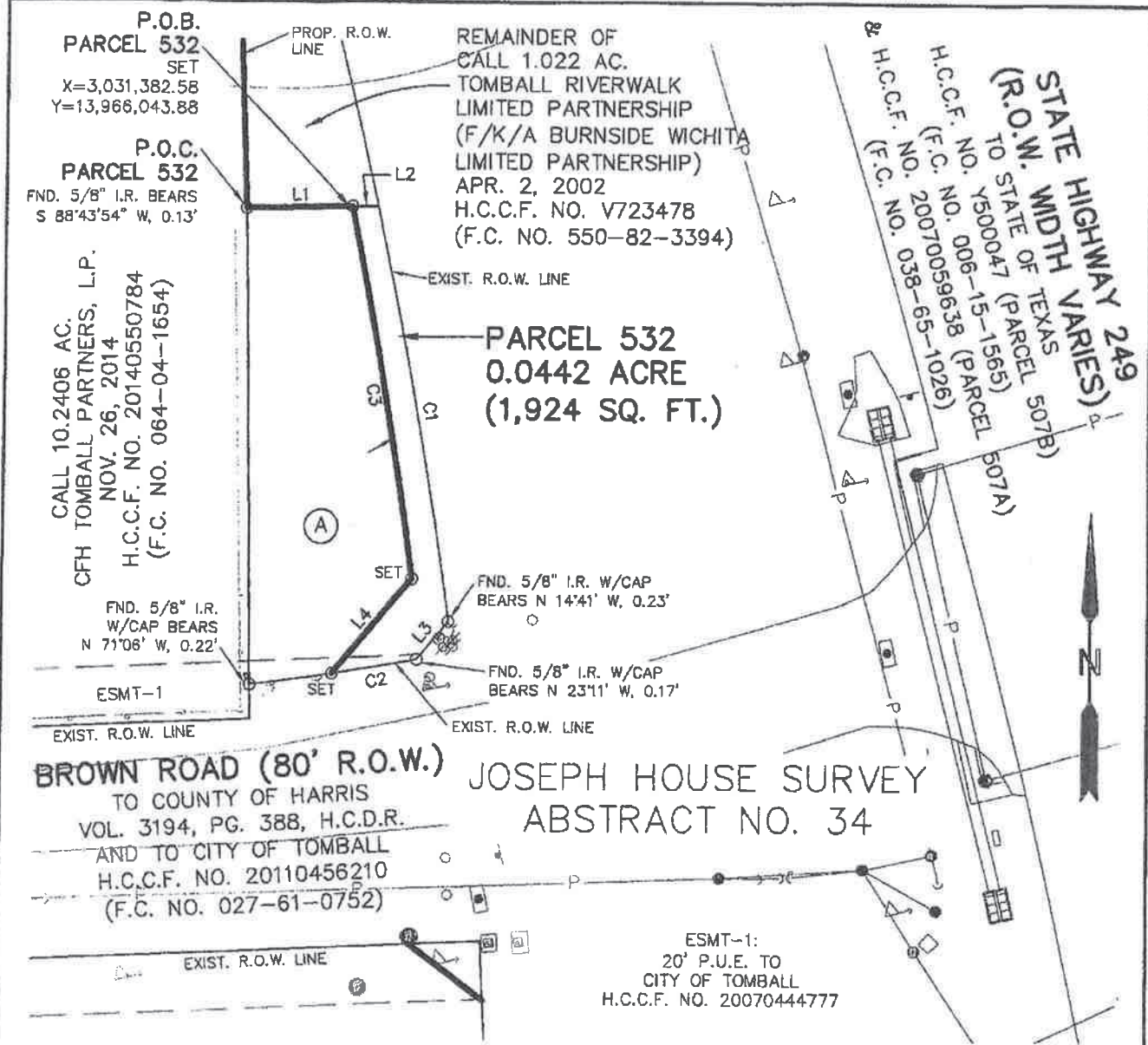
REV	DESCRIPTION	DATE	BY	APPD

**TOMBALL TOLLWAY-PHASE 2
 PARCEL 532
 MARIAH GROUP, LTD.
 JOSEPH HOUSE SURVEY, ABSTRACT NO. 34
 CITY OF TOMBALL, HARRIS COUNTY, TEXAS**

TERRA
 TERRA SURVEYING CO., INC.
 3000 WILCREST DRIVE
 SUITE 210
 HOUSTON, TEXAS 77042
 (713) 993-0327
 FAX (713) 993-9231

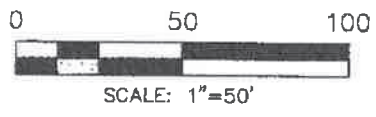
KEY MAP: 288-B
 SCALE: 1"=50'
 PROJECT: 1053-1401
 DATE: APRIL 2016
 DRAWN BY: SDM
 PAGE 4 OF 5

At the time of recordation, this instrument was found to be inadequate for the best photographic reproduction because of illegibility, carbon or photo copy, discolored paper, etc. All blockouts, additions and changes were present at the time the instrument was filed and recorded.



BROWN ROAD (80' R.O.W.)
 TO COUNTY OF HARRIS
 VOL. 3194, PG. 388, H.C.D.R.
 AND TO CITY OF TOMBALL
 H.C.C.F. NO. 20110456210
 (F.C. NO. 027-61-0752)

**JOSEPH HOUSE SURVEY
 ABSTRACT NO. 34**



	EXISTING	TAKING	REMAINING
ACRES	0.2175	0.0442	0.1733
SQ. FT.	9,475	1,924	7,551

EXISTING ACRES/SQ. FT. IS CALL AREA FROM SUBJECT DEED

(A)
 CALL 0.2175 AC.
 MARIAH GROUP, LTD.
 JULY 12, 2011
 H.C.C.F. NO. 20110288171
 (F.C. NO. 025-11-0401)

ESMT-1:
 20' P.U.E. TO
 CITY OF TOMBALL
 H.C.C.F. NO. 20070444777

REV	DESCRIPTION	DATE	BY	APPD

**TOMBALL TOLLWAY-PHASE 2
 PARCEL 532
 MARIAH GROUP, LTD.
 JOSEPH HOUSE SURVEY, ABSTRACT NO. 34
 CITY OF TOMBALL, HARRIS COUNTY, TEXAS**

TERRA
 TERRA SURVEYING CO., INC.
 3000 WILCREST DRIVE
 SUITE 210
 HOUSTON, TEXAS 77042
 (713) 993-0327
 FAX (713) 993-9231

KEY MAP: 288-B
 SCALE: 1"=50'
 PROJECT: 1053-1401
 DATE: APRIL 2016
 DRAWN BY: SDM
 PAGE 5 OF 5