

AGREEMENT TO ACCEPT DONATION OF REAL PROPERTY

| | | |
|-------------------------|---|--|
| STATE OF TEXAS | § | ROW CSJ #: 0720-03-149 |
| | § | Parcel #: P00058926 (Parcel 540) |
| 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:

- 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.
- The Donor acknowledges that it has been fully informed of Donor’s right to receive just compensation for the Property.
- Donor acknowledges that nothing contained in this Agreement shall be a limitation of any type on the divestment of interest by Donor to State.
- The Donor acknowledges that there is no official relationship between the Donor and the State.
- 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

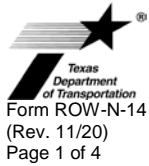
BY: _____
Authorized Signature

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: P00058926 (Parcel 540)

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 540
0.0058 ACRE (253 SQUARE FEET)
JOSEPH HOUSE SURVEY, ABSTRACT NUMBER 34
CITY OF TOMBALL
HARRIS COUNTY, TEXAS

Page 1 of 4

Being a tract or parcel, containing 0.0058 acre (253 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 the 44.575 acre remainder of that certain called 44.787 acres described in deed to Brown Road Timber Resources, L.L.C., dated January 25, 2008, as recorded under Harris County Clerk's File (H.C.C.F.) Number 20080043179 (Film Code (F.C.) Number 053-67-0585); said 0.0058 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 the point of intersection of the west line of said 44.787 acre tract with the existing south right-of-way (R.O.W.) line of Brown Road, based on an 80-foot width, as dedicated to County of Harris in Volume 3194, Page 388, Harris County Deed Records, and to City of Tomball (herein referred to as the "City Tract"), under H.C.C.F. Number 20110456210 (F.C. Number 027-61-0752); thence:

North 87°20'59" East, with the existing south R.O.W. line of said Brown Road and said City Tract, a distance of 445.18 feet to a 5/8-inch iron rod with plastic cap, stamped "TERRA SURVEYING," set marking the northerly end of a proposed cutback line formed with the existing west R.O.W. line of State Highway (S.H.) 249, based on a varying width; also marking the **POINT OF BEGINNING** and most westerly corner of the herein described tract, and having surface coordinates of X=3,031,404.68 and Y=13,965,788.81;

THENCE, North 87°20'59" East, continuing with the existing south R.O.W. line of said Brown Road and said City Tract, a distance of 24.88 feet to a point in the existing west R.O.W. line of said S.H. 249, being Parcel 506, as dedicated to State of Texas under H.C.C.F. Number V549094 (F.C. Number 548-02-1010); also being in the east line of said 44.787 acre tract; and being the southeast corner of said City Tract and being the northeast corner of the herein described tract, from which a found 5/8-inch iron rod with cap bears South 87°20'59" West, 0.14 feet;

TOMBALL TOLLWAY - PHASE 2
PARCEL 540
0.0058 ACRE (253 SQUARE FEET)
JOSEPH HOUSE SURVEY, ABSTRACT NUMBER 34
CITY OF TOMBALL
HARRIS COUNTY, TEXAS

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THENCE, South $02^{\circ}56'37''$ East, with the existing west R.O.W. line of said S.H. 249 and the west line of said Parcel 506, and the east line of said 44.787 acre tract, a distance of 20.37 feet to a 5/8-inch iron rod with plastic cap, stamped "TERRA SURVEYING," set in the proposed west R.O.W. line of said S.H. 249, and marking the southerly end of the aforesaid proposed cutback line and the most southerly corner of the herein described tract;

THENCE, North $53^{\circ}27'13''$ West, departing the existing west R.O.W. line of said S.H. 249 and across said 44.787 acre remainder tract with the proposed west R.O.W. line of said S.H. 249 and said proposed cutback line, a distance of 32.24 feet to the **POINT OF BEGINNING** and containing 0.0058 acre (253 square feet) of land.

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

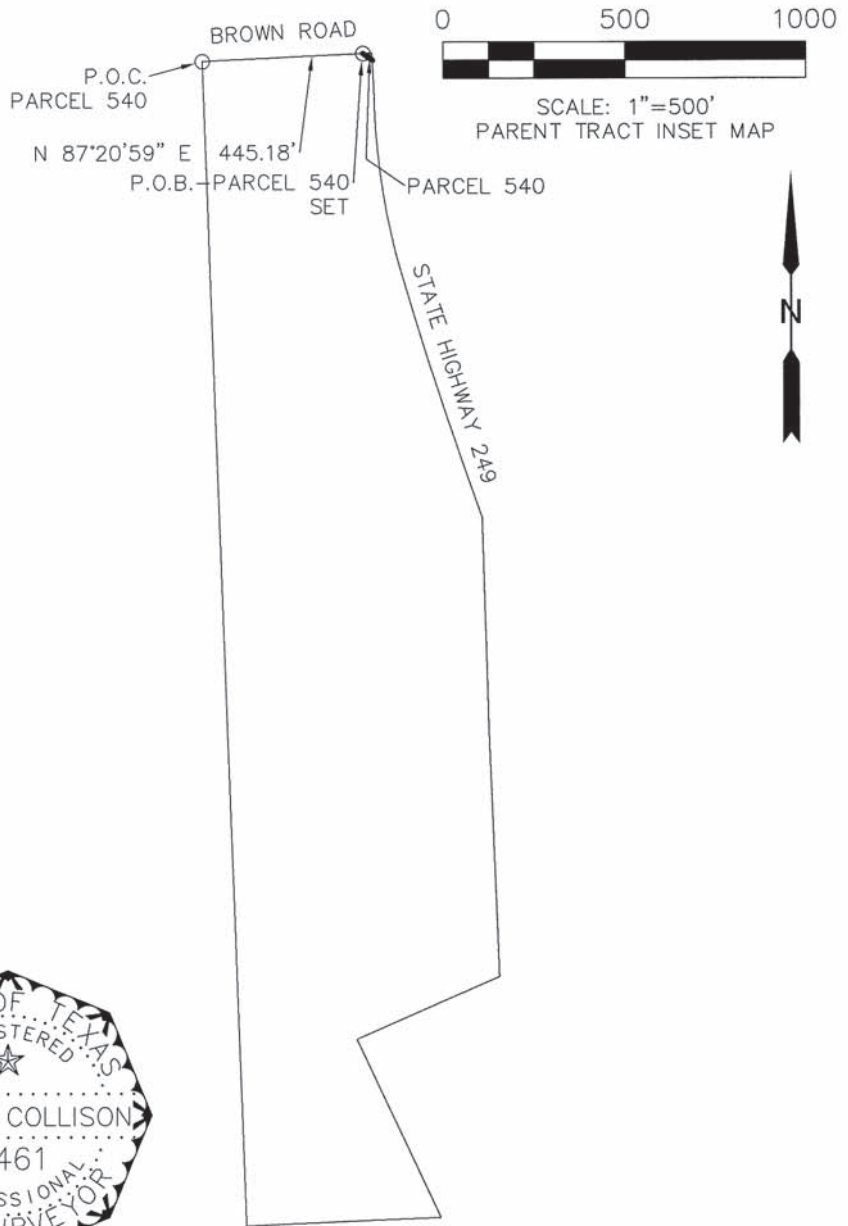
Compiled by:
Scott D. Mandeville, RPLS
Terra Surveying Company, Inc.
3000 Wilcrest Drive, Suite 210
Houston, Texas 77042
713-993-0327
Project Number 1053-1401



RECORDER'S MEMORANDUM:
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.

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



BY: *[Signature]*
 GEORGE COLLISON
 REGISTERED PROFESSIONAL
 LAND SURVEYOR
 TEXAS REGISTRATION NO. 4461



DATED: 3-31-16

GENERAL NOTES

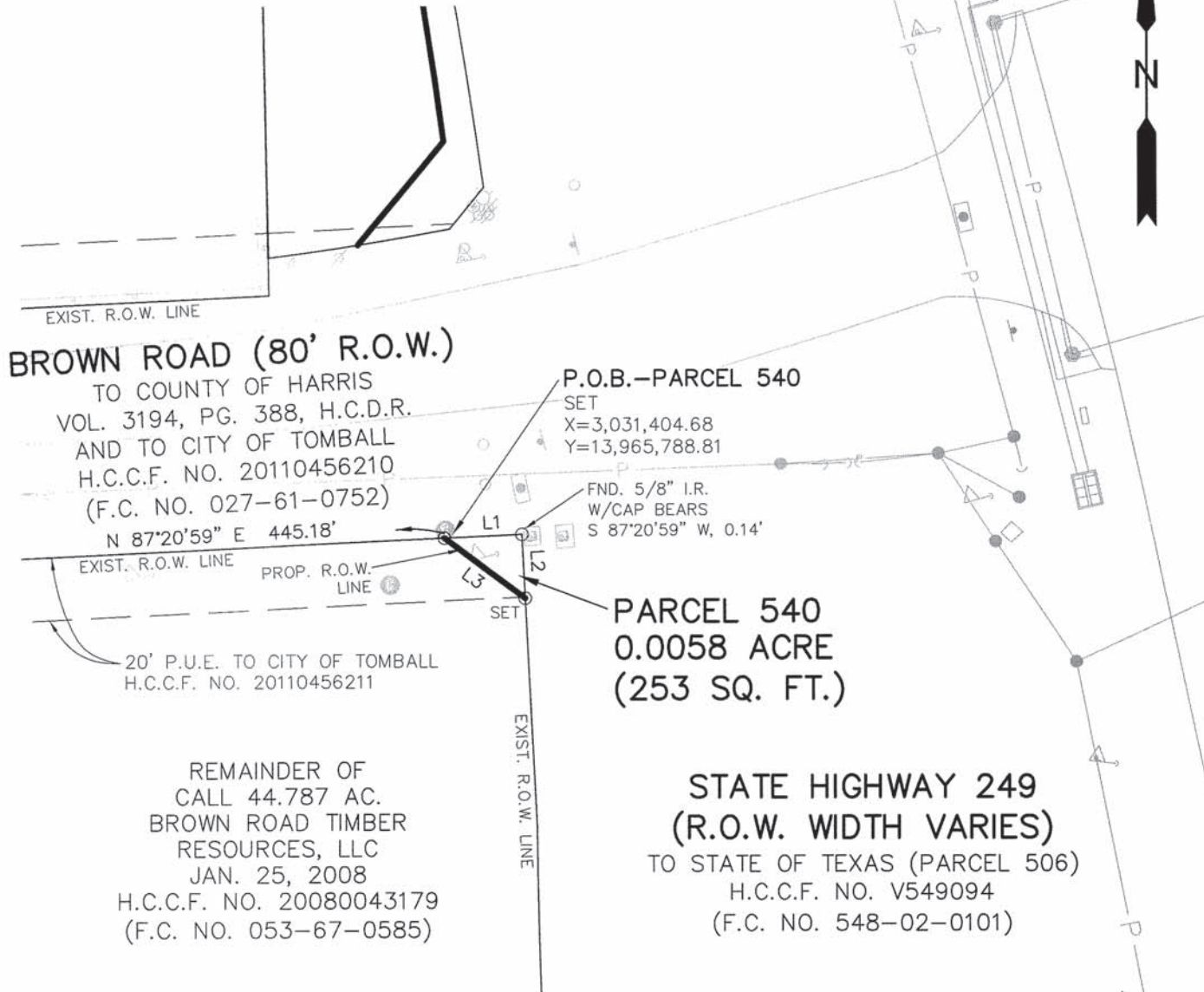
1. THIS PLAT WAS PREPARED WITHOUT BENEFIT OF A TITLE COMMITMENT WHICH MAY OTHERWISE REVEAL EASEMENTS AND OTHER ENCUMBRANCES OF RECORD NOT CURRENTLY SHOWN HEREON. TERRA SURVEYING COMPANY DID NOT PERFORM ANY ADDITIONAL RESEARCH TO DETERMINE THE EXISTENCE OF ANY SUCH ENCUMBRANCES.
2. ALL BEARINGS AND COORDINATES 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 540
 BROWN ROAD TIMBER RESOURCES, LLC
 JOSEPH HOUSE SURVEY, ABSTRACT NO. 34
 CITY OF TOMBALL, HARRIS COUNTY, TEXAS**

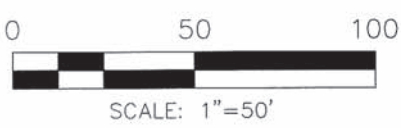
| | |
|---|--------------------|
| TERRA SURVEYING CO., INC. 3000 WILCREST DRIVE SUITE 210 HOUSTON, TEXAS 77042 (713) 993-0327 FAX (713) 993-9231 | KEY MAP: 288-B |
| | SCALE: 1"=50' |
| | PROJECT: 1053-1401 |
| | DATE: APRIL 2016 |
| | DRAWN BY: SDM |
| PAGE 3 OF 4 | |

JOSEPH HOUSE SURVEY
ABSTRACT NO. 34



REMAINDER OF
CALL 44.787 AC.
BROWN ROAD TIMBER
RESOURCES, LLC
JAN. 25, 2008
H.C.C.F. NO. 20080043179
(F.C. NO. 053-67-0585)

| LINE TABLE | | |
|------------|---------------|----------|
| NO. | BEARING | DISTANCE |
| L1 | N 87°20'59" E | 24.88' |
| L2 | S 02°56'37" E | 20.37' |
| L3 | N 53°27'13" W | 32.24' |



| | EXISTING | TAKING | REMAINING |
|---------|-----------|--------|-----------|
| ACRES | 44.575 | 0.0058 | 44.569 |
| SQ. FT. | 1,941,687 | 253 | 1,941,434 |

EXISTING ACRES/SQ. FT. IS CALCULATED FROM DEEDS

| REV | DESCRIPTION | DATE | BY | APPD |
|-----|-------------|------|----|------|
| | | | | |

TOMBALL TOLLWAY—PHASE 2
PARCEL 540
BROWN ROAD TIMBER RESOURCES, LLC
JOSEPH HOUSE SURVEY, ABSTRACT NO. 34
CITY OF TOMBALL, HARRIS COUNTY, TEXAS

| | |
|--|--------------------|
| <p>TERRA TERRA SURVEYING CO., INC. 3000 WILCREST DRIVE SUITE 210 HOUSTON, TEXAS 77042 (713) 993-0327 FAX (713) 993-9231</p> | KEY MAP: 288-B |
| | SCALE: 1"=50' |
| | PROJECT: 1053-1401 |
| | DATE: APRIL 2016 |
| | DRAWN BY: SDM |
| | PAGE 4 OF 4 |