

**AGREEMENT FOR INSTALLATION
AND MAINTENANCE
OF CERTAIN FACILITIES
WITHIN PUBLIC ROADWAY RIGHT-OF-WAY
(CURRENT AS OF 07-07-09)**

WHEREAS, the _____ (the "*Company Name*"), located at _____ Street in Harris County, Tomball, Texas 77375; and

WHEREAS, the (*Company Name*) has requested consent from the City of Tomball, a home rule municipal corporation located in Harris County, Texas (the "City"), to install and maintain within the City; and

WHEREAS, the City Council of the City has considered such request and has agreed to grant same subject to the entering into of certain agreements and understandings relating thereto; now therefore,

For and in consideration of the benefits and obligations to be derived hereunder, the parties do hereby agree as follows:

1. City hereby authorizes the _____ to install and maintain _____, same being a _____ within the City.

2. The _____ agrees that it shall install _____ in accordance with the plans therefore as described and depicted in Exhibit "A" attached hereto and for all things made a part hereof (the "Installed Improvements") in a good and workmanlike manner, and that it shall maintain the Installed Improvements, including all equipment associated therewith, necessary or required to present a clean and attractive appearance and in a manner that prevents growth of weeds and other unsightly vegetation, algae, and fungus, prevents the accumulation of dirt and debris or stagnant water, and prevents the creation of hazards to pedestrian or vehicular traffic along and adjacent to the roadways.

3. In the event the _____ fails to install and maintain the Installed Improvements as required hereby, the City may, at its sole and absolute discretion, perform such required maintenance or remove the Installed Improvements. The _____ hereby agrees that all costs incurred by the City for such maintenance or removal shall be paid to the City by the _____ within thirty (30) days of receipt of the City's invoice for same.

4. The _____ hereby agrees to protect, defend, indemnify, and hold the City harmless from and against any and all claims, demands, and causes of action of every kind and character for liabilities, damages, losses and/or expenses of any kind, including attorneys' fees, arising out of or which are in any way related to the installation, maintenance, and existence of the Installed Improvements.

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Re: _____, Tomball, Texas

5. Without limiting any of the other obligations or liabilities of the _____, the _____, at its own expense, shall during the term of this Agreement purchase and maintain the hereinafter stipulated minimum insurance with companies duly licensed to write business in the State of Texas and rated A- or better by A. M. Best. The City shall be named as an additional insured on all required policies, all policies shall be endorsed to provide that such policies shall not be canceled without thirty (30) days prior notice being given to the City, and all policies shall be endorsed to provide a waiver of subrogation in favor of the City, its officers, agents and employees. Valid Certificates of Insurance showing the City as an additional insured, together with the endorsement by the issuing company that said policies shall not be canceled without thirty (30) days prior notice being given the City and the endorsements providing a waiver of subrogation in favor of the City, its officers, agents and employees shall be delivered to the City before this Agreement is executed:

- (1) Commercial General Liability Insurance, including Contractual Liability, covering, but not limited to, the liability assumed under the indemnification provisions of this Agreement, fully ensuring the Bank's liability for personal injury, including death, and for damage to property of third parties, with the following minimum limits:

| | |
|-------------------|-------------|
| General Aggregate | \$1,000,000 |
| Each Occurrence | \$ 500,000 |

The _____'s insurance shall be primary. Deductibles on each insurance policy shall be no greater than \$5,000. The _____ shall be responsible for the payment of all deductibles.

6. This Agreement may be terminated by either party upon thirty (30) days written notice to the other party. In the event of termination, and upon written demand by the City, the _____ shall remove, at its sole cost and expense, the Installed Improvements and return the _____, as near as practical, to the condition at the time of removal. If the _____ fails to remove the Installed Improvements and restore the _____ as required by this paragraph, within a reasonable period of time after demand, the City may perform such removal and restoration and shall be entitled to reimbursement for all costs incurred for same. The _____ hereby agrees to reimburse the City for costs incurred in such removal and restoration within thirty (30) days of receipt of the City's invoice.

7. All notices required hereunder shall be deemed effective upon the date of receipt thereof. Any notice given by mail shall be delivered by certified mail, return receipt requested, to the parties at their respective addresses as follows:

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Re: _____, Tomball, Texas

To the City: City of Tomball
 401 W. Market Street
 Tomball, Texas 77375
 Attn: City Manager

To the _____: _____
 c/o _____

EXECUTED this _____ day of _____, 20____.

CITY OF TOMBALL, TEXAS

By: _____
Name: Gretchen Fagan
Title: Mayor

_____ (OWNER)

By: _____
Name: _____
Title: _____