NOTICE OF REGULAR CITY COUNCIL MEETING
CITY OF TOMBALL, TEXAS

MONDAY, MAY 1, 2017

6:00 P.M.

Notice is hereby given of a meeting of the Tomball City Council, to be held on Monday, May 1, 2017 at 6:00 P.M., City Hall, 401 Market Street, Tomball, Texas 77375, for the purpose of considering the following agenda items. All agenda items are subject to action. The reserves the right to meet in a closed session for consultation with attorney on any agenda item should the need arise and if applicable pursuant to authorization by Title 5, Chapter 551, of the Texas Government Code.

1.0 Call to Order

2.0 Invocation

- Led by Pastor Tommy Roberson, Real Life Ministries Tomball

3.0 Pledges to U.S. and Texas Flags

- Led by Members of the Tomball High School or Tomball Memorial High School Student Councils

4.0 Public Comments and Receipt of Petitions *[At this time, anyone will be allowed to speak on any matter other than personnel matters or matters under litigation, for length of time not to exceed three minutes. No Council/Board discussion or action may take place on a matter until such matter has been placed on an agenda and posted in accordance with law.]*

5.0 Presentations:

- Proclamation – May 1, 2017 is **"Tomball High School Cougar Pride Band Percussion - World Champions" Day**
- Proclamation – May 4, 2017 is **"2017 Tomball National Day of Prayer"**
- Proclamation – May 7-13, 2017 is **"National Travel and Tourism Week"**
- Proclamation – May 7-13, 2017 is **"National Hurricane Preparedness Week – Tomball, Texas"**
- Proclamation – May 14-20, 2017 is **"Tomball Firefighter Appreciation Week"**
- Proclamation – May 14-20, 2017 is **"National Public Works Week – Tomball, Texas"**
- Proclamation – May 16, 2017 is **"Peace Officers Memorial Day"** and May 14-20, 2017 is **"Tomball Police Week"**
- Proclamation – May 14-20, 2017 is **"National Emergency Medical Services Week"**

6.0 Reports and Announcements

- May 6-7, 2017 – ***Rails & Tails Mudbug Festival***
- May 27, 2017 – ***Tomball Honky Tonk Music Festival*** **and** ***Chili Challenge***
- Reports by City staff and members of council about items of community interest on which no action will be taken
    - David Esquivel – Report on the Success of the***Annual Spring Clean-Up and Chipping Week*** and the ***Tomball Consolidated Recycling Day***

7.0 Approve the Minutes of the April 17, 2017 Regular Tomball City Council Meeting and the April 24, 2017 Special Tomball City Council Meeting

8.0 Old Business:

8.1 Approve, on Second Reading, Resolution No. 2017-07-TEDC, a Resolution of the City Council of the City of Tomball, Texas, authorizing and approving the Tomball Economic Development Corporation's Project to Expend Funds in accordance with an Economic Development Agreement by and between the Corporation and A-K 133 HWY 249-GRAND PARKWAY, L.P., to make direct incentives to, or expenditures for, assistance with infrastructure costs for the promotion of new or expanded business enterprise related to the construction of a commercial shopping center known as the Grand Parkway Town Center to be located at the southwest corner of State Highway 249 and State Highway 99.

8.2 Adopt, on Second Reading, Ordinance No. 2017-12, an Ordinance of the City of Tomball, Texas, Amending Chapter 50 (Zoning) of the Tomball Code of Ordinances By Granting a Conditional Use Permit (CUP) to Francisco Choi, on behalf of TamiroWood, LLC, to Operate an "Assisted Living Facility (Continuing Care Retirement Community)" at 609 South Pine Street; Said Property Being approximately 2 acres, and Being Legally Described as Part of Outlots 127 and 129 Five Acre Tracts Tomball Outlots, Harris County, Texas, Generally Located on the East Side of South Pine Street Between James Street and Cherry Laurel Street; Providing Requirements and Conditions for this CUP; Containing Findings and Other Provisions Relating to the Subject; Providing a Penalty in an Amount Not to Exceed $2,000 for Violations Hereof; and Providing for Severability

Adopt, on Second Reading, Ordinance No. 2017-13, an Ordinance of the City of

8.3 Adopt, on Second Reading, Ordinance No. 2017-13, an Ordinance of the City of Tomball, Texas, Amending Its Zoning Ordinance, By Approving a Planned Development District of approximately 70.36 acres of Land, Legally Described as Reserve C, C1 And C2 Tomball Greens; Within The City of Tomball, Harris County, Texas; Amending the Official Zoning Map of the City to Reflect the Planned Development District to be known as Planned Development – 9 (PD-9) District; Adopting a Concept Plan and Regulations Applicable to PD-9 District; Providing for Severability; Providing for a Penalty of an amount not to Exceed $2,000 for Each Day of Violation of Any Provision Hereof, Making Findings of Fact; And Providing For Other Related Matters

8.4 Adopt, on Second Reading, Ordinance No. 2017-15, an Ordinance of the City of Tomball, Texas Amending the Code of Ordinances of the City Amending Article II, Taxicabs, of Chapter 48, Vehicles for Hire, to Add Definitions to Section 48-26, Definitions; Amending Section 48-31, Cruising Prohibited, to Allow City Council to Designate Parking Areas within the City for Taxicabs during Peak Times; Amending Section 48-32, Maximum Seating, to Increase the Maximum Number of Persons to Ten (10); Deleting Sections 48-33 through 48-33; Adding a New Section 4-33, Violations, to Specify Specific Actions which Violate This Ordinance; Amending Section 48-39, Property Left in Vehicle, to Delete Specific Penalty Provision; Deleting Section 48-40, Penalties; Amending Section 48-56, Required, of Division 2, Business Permit, to Exclude Taxicabs Licensed in Other Jurisdictions Delivering Passengers in the City; Amending Section 48-57, Application, to Require Certain Information to be Included in Business Permit Application; Amending Section 48-65, Inspection, to Delete Certain Inspection Requirements; Amending Section 48-66, Revocation, to Allow Chief of Police to Revoke Business Permit; Amending Section 48-67, Identification of Vehicles, to Allow City Secretary to Issue Taxi Permit Numbers; Amending Section 48-83, Application of Division 3, Driver's Licenses, Changing the Medical Reporting Requirements; Amending Section 48-87, Appeal, to Allow City Manager to Hear Appeal; Amending Section 48-88, Identification Cards, to Alter the Requirements of Identification Cards; Amending Sections 48-89, Transfer Prohibited, 48-90, Duration, and 48-91, Fee, to Add the Words "City Chauffer's License"; Amending Section 48-107, Minimum Amounts of Coverage, of Division 4, Insurance, Altering the Minimum Insurance Requirements; Amending Section 48-110, Increasing Amount upon Return of Execution Unsatisfied, to Clarify Regulations Therein; Providing a Penalty Not in Accordance with Section 1-14 of the City's Code of Ordinances for Any Violation Hereof with Each Day Constituting a Separate Offense; Providing for Severability and Providing Other Findings Related Hereto

9.0 New Business:

9.1 Approve Resolution No. 2017-08, a Resolution of the City Council of the City of Tomball, Texas, Sponsoring the July 4th Celebration, to be Held in Tomball on Tuesday, July 4, 2017, Closing State Highway Business 249 from Hicks Street to the North Entrance to the Kroger Parking Lot from 3:00 PM until 11:00 PM, and Authorizing the City Manager to Issue a Letter to TxDot Requesting the Closure of the Designated Portion of State Highway Business 249

9.2 Approve Resolution No. 2017-09, a Resolution of the City of Tomball, Texas, Amending the City of Tomball's Current Human Resources Handbook by Replacing Sections 2, 3, 4 and 7 Therein and Repealing all Other Resolutions or Parts of Resolutions Inconsistent or in Conflict Herewith; and Providing for Severability.

9.3 Conduct Public Hearing on Ordinance No. 2017-10 and Adopt, on First Reading,

Ordinance No. 2017-10, an Ordinance of the City of Tomball, Texas, Amending its Zoning Ordinance by Approving a Planned Development District of Approximately 65.6190 Acres of Land Located at the Southwest Corner of the Intersection of State Highway 249 and State Highway 99, Amending the Official Zoning Map of the City to Reflect the Planned Development District to be Known as Planned Development–10 (PD 10) District; Adopting Regulations Applicable To PD–10 District; Providing for Severability; Providing for a Penalty of an Amount not to Exceed $2,000.00 for Each Violation Hereof, with Each Day Constituting a New Violation; Making Findings of Fact; and Providing for Other Matters.

9.4 Approve and Ratify the Assignment of Development Agreement regarding the Assignment of Annual Assessment Collections for PID No. 3, The Reserve at Spring Lake (Zion Road Properties, LLC, PID #3 receivables to Preferred Bank.

9.5 Reappoint Sherrie Meicher as the City of Tomball's Representative to the Southeast Texas Housing Finance Corporation (SETH) Board of Directors

9.6 Executive Session: City Council will now meet in closed executive session pursuant to Section 551.071 of the Texas Government Code to discuss with the City Attorney the following pending litigation:

1. Cause No. 1058840; *City of Tomball, Texas v. James Midkiff*; in the Harris County Court at Law No. 3; and
2. Cause No. 1058870; *City of Tomball, Texas v. Carolyn Ann Lang*; in the Harris County Court at Law No. 4

9.7 Consideration and possible action to approve settlement in Cause No. 1058840; *City of Tomball, Texas v. James Midkiff*; in the Harris County Court at Law No. 3

9.8 Consideration and possible action to approve settlement in Cause No. 1058870; *City of Tomball, Texas v. Carolyn Ann Lang*; in the Harris County Court at Law No. 4

10.0 Adjournment

C E R T I F I C A T I O N

Doris Speer

_____

Doris Speer
City Secretary, TRMC

This facility is wheelchair accessible and accessible parking spaces are available Requests for accommodations or interpretive services must be made 48 hours prior to this meeting. Please feel free to contact the City Secretary's office at (281) 290-1002 or FAX (281) 351-6256 for further information.

AGENDAS MAY ALSO BE VIEWED ONLINE AT www.ci.tomball.tx.us.

Regular City Council
Agenda Item
Data Sheet

Meeting Date: May 1, 2017

Topic:

- Led by Pastor Tommy Roberson, Real Life Ministries Tomball

Background:

Origination:

Recommendation:

Party(ies) responsible for placing this item on agenda:

ACTION TAKEN

Approval	Readings Passed	Other
☐ Yes ☐ No	☐ 1st ☐ 2nd	

Regular City Council
Agenda Item
Data Sheet

Meeting Date: May 1, 2017

Topic:

- Led by Members of the Tomball High School or Tomball Memorial High School Student Councils

Background:

Origination:

Recommendation:

Party(ies) responsible for placing this item on agenda:

ACTION TAKEN

Approval	Readings Passed	Other
☐ Yes ☐ No	☐ 1st ☐ 2nd	

Regular City Council
Agenda Item
Data Sheet

Meeting Date: May 1, 2017

Topic:

- Proclamation – May 1, 2017 is **"Tomball High School Cougar Pride Band Percussion - World Champions" Day**
- Proclamation – May 4, 2017 is **"2017 Tomball National Day of Prayer"**
- Proclamation – May 7-13, 2017 is **"National Travel and Tourism Week"**
- Proclamation – May 7-13, 2017 is **"National Hurricane Preparedness Week – Tomball, Texas"**
- Proclamation – May 14-20, 2017 is **"Tomball Firefighter Appreciation Week"**
- Proclamation – May 14-20, 2017 is **"National Public Works Week – Tomball, Texas"**
- Proclamation – May 16, 2017 is **"Peace Officers Memorial Day"** and May 14-20, 2017 is **"Tomball Police Week"**
- Proclamation – May 14-20, 2017 is **"National Emergency Medical Services Week"**

Background:

Origination:

Recommendation:

Party(ies) responsible for placing this item on agenda:

ACTION TAKEN

Approval	Readings Passed	Other
☐ Yes ☐ No	☐ 1st ☐ 2nd	

ATTACHMENTS:

"Tomball High School Cougar Pride Band Percussion - World Champions" Day
"2017 Tomball National Day of Prayer"
"National Travel and Tourism Week"
"National Hurricane Preparedness Week – Tomball, Texas"
"Tomball Firefighter Appreciation Week"
"National Public Works Week – Tomball, Texas"
"Peace Officers Memorial Day" and "Tomball Police Week"
"National Emergency Medical Services Week"

Office of the Mayor

Tomball, Texas

Proclamation

WHEREAS, the Tomball High School Cougar Pride Band Percussion Ensemble won the 2017 WGI Percussion World Championship in Dayton, Ohio during the April 20-22, 2017 competition, winning the 2017 WGI Percussion Scholastic Open Class World Championship with a score of 95.4; and

WHEREAS, this was also Winter Guard International's 40th Anniversary; and

WHEREAS, the City Council wishes to congratulate the Tomball High School Cougar Pride Band Percussion Ensemble, Zach Harston, JD Yanda, Kyle Winn, Jill Isaacs, Brian Bowsher, Phil Boone, THS Director of Percussion, Rob Sullens, THS Head Band Director, Steve Fry, THS Principal, Greg Quinn, THS Band Booster Club President, Penny Dowdy and the parents, families, and supporters for an outstanding conclusion to an exciting year;

NOW, THEREFORE, by virtue of the authority vested in me as **Mayor of the City of Tomball**, on behalf of the Tomball City Council and all citizens hereof, I do hereby proclaim **Monday, May 1, 2017**, as:

"TOMBALL HIGH SCHOOL COUGAR PRIDE BAND PERCUSSION ENSEMBLE - 2017 WGI PERCUSSION WORLD CHAMPIONS" DAY

CITY OF TOMBALL TEXAS

In witness whereof I have hereunto set my hand and caused this seal to be affixed.

ATTEST: Doris Speer

DATE: April 27, 2017

COPYRIGHT 2005 www.MunicipalAwardsCompany.com Cullman, AL (256) 739-5951

Office of the Mayor

Tomball, Texas

Proclamation

WHEREAS, since our Nation's founding, Americans have turned to God for guidance, courage and knowledge through prayer; and

WHEREAS, citizens serving at the highest levels of our community have turned to prayer, seeking wisdom and protection from our Almighty Father; and

WHEREAS, National Days of Prayer are a venerable American tradition, the first such day having been proclaimed by the Continental Congress in 1775; and

WHEREAS, Congress has established the first Thursday in May as a National Day of Prayer; and

WHEREAS, it is eminently fitting and proper that the citizens of Tomball observe a day when all in our community may acknowledge our many blessings and express our gratitude to God for them while recognizing the need for strengthening religious and moral values in our land; and

WHEREAS, this will be the 66th consecutive National Day of Prayer observance, the theme of which is "**Wake Up America**", based on Daniel 9:19 – "*O Lord, listen! O Lord, forgive! O Lord, hear and act! For Your sake, O my God . . .(NIV)*"

NOW, THEREFORE, I, GRETCHEN FAGAN, Mayor of the City of Tomball, do hereby proclaim Thursday, May 4, 2017, as:

"2017 TOMBALL NATIONAL DAY OF PRAYER"

CITY OF TOMBALL TEXAS

In witness whereof I have hereunto set my hand and caused this seal to be affixed.

ATTEST: Doris Speer

DATE: April 27, 2017

COPYRIGHT 2005 www.MunicipalAwardsCompany.com Cullman, AL (256) 739-5951

Office of the Mayor

Tomball, Texas

Proclamation

WHEREAS, travel and tourism have a positive effect on the State of Texas and the City of Tomball, and impacts local businesses, as well as the well-being of individual travelers; and

WHEREAS, travel and tourism within the United States provide significant economic benefits for the nation each year, generating more than $2.3 trillion in economic output, and $67.8 billion for the State of Texas; and

WHEREAS, travel and tourism are among the largest private-sector employers in the United States and the State of Texas, supporting 15.3 million jobs; and

WHEREAS, travelers' spending in Texas directly generated tax revenues of $3.3 billion for state and local governments used to support essential services, programs, festivals and events, and

WHEREAS, travel and tourism impacts Tomball's economy directly through its hotels, restaurants, shopping and attractions, as well as non-travel related businesses, and

WHEREAS, leisure travel, which accounts for more than three-quarters of all trips taken nation-wide and in the State of Texas, spurs countless benefits to travelers' health and wellness, creativity, cultural awareness, education, happiness, productivity and relationships;

NOW, THEREFORE, by virtue of the authority vested in me as Mayor of the City of Tomball, on behalf of the Tomball City Council and all citizens hereof, I do hereby proclaim the week of **May 7 through 13, 2017** as:

"NATIONAL TRAVEL AND TOURISM WEEK - TOMBALL, TEXAS"

CITY OF TOMBALL TEXAS

In witness whereof I have hereunto set my hand and caused this seal to be affixed.

ATTEST: Doris Speer

DATE: April 27, 2017

COPYRIGHT 2005 www.MunicipalAwardsCompany.com Cullman, AL (256) 739-5951

Office of the Mayor

Tomball, Texas

Proclamation

WHEREAS, Texas' hurricane season officially begins June 1 and ends November 30, and history teaches that a lack of hurricane awareness and preparation are common threads among all major hurricane disasters, but that knowing our vulnerabilities and the actions we should take can reduce the effects of a hurricane disaster; and

WHEREAS, the 624-mile Texas Gulf coastline, areas of Texas hundreds of miles inland, and our area in particular, are vulnerable to the devastating effects of a hurricane or tropical storm, including heavy rainfall, inland flooding, high winds, tornadoes, and storm surges; and

WHEREAS, both public and private entities should develop emergency response and recovery plans in accordance with local jurisdictions and local emergency management offices, and

WHEREAS, the *National Oceanic and Atmospheric Administration* and the *Texas Division of Emergency Management* have designated the week of May 7-13, 2017 as ***National Hurricane Preparedness Week***; and

WHEREAS, the NOAA, the National Weather Service, the Texas Division of Emergency Management, and the leaders of the City of Tomball strongly suggest that all residents and visitors to this area be made aware of the potential dangers of these storms; and

WHEREAS, the best defense is preparedness and public education about the dangers of high winds, storm surge, flooding and tornadoes that may occur for hundreds of miles in conjunction with a hurricane or tropical storm;

NOW, THEREFORE, I, GRETCHEN FAGAN, Mayor of the City of Tomball, on behalf of the City Council, do hereby proclaim the week of May 7 through May 13, 2017 as:

"NATIONAL HURRICANE PREPAREDNESS WEEK – TOMBALL, TEXAS"

and urge all citizens of the City of Tomball and the surrounding community to participate in hurricane preparedness activities, and to pay close attention to watch and warning instructions.

CITY OF TOMBALL TEXAS

In witness whereof I have hereunto set my hand and caused this seal to be affixed.

ATTEST: Doris Speer

DATE: April 27, 2017

COPYRIGHT 2005 www.MunicipalAwardsCompany.com Cullman, AL (256) 739-5951

Office of the Mayor

Tomball, Texas

Proclamation

WHEREAS, the **Tomball Fire Department** has been protecting the City of Tomball and the surrounding area since its inception in 1934; and

WHEREAS, the **City of Tomball** recognizes, honors and promotes the value of the contributions of the members of the **Tomball Fire Department**, who place themselves in harm's way to ensure that persons and property are protected; and

WHEREAS, the **Tomball Fire Department** has grown to 18 full-time line positions, 5 full-time administrative/prevention staff members, 35 part-time line positions, 13 volunteer firefighters, and 10 vehicles/apparatus operating from three stations, providing fire and rescue services for the protection of life and property in and around Tomball 24 hours a day, seven days a week; and

WHEREAS, the **City of Tomball** and the **Tomball Fire Department** personnel have worked together to provide for the rapid deployment of firefighters and equipment, improved water supply and distribution systems, improved communication systems, and significant firefighter training—resulting in Tomball's earning an ISO rating of 1, the best rating for any fire department—volunteer or career—in the nation, benefitting our residents through the lowest possible insurance rates on property coverage; and

WHEREAS, **Tomball Fire Department** personnel also care for the community by teaching first-aid classes, assisting in preparing for and recovery from natural and man-made disasters, providing safe holiday fireworks displays; providing public education, providing Community Emergency Response Team (CERT) training and providing support for local families during the Christmas and Thanksgiving holiday seasons; and

WHEREAS, the members of the **Tomball Fire Department** are dedicated to reducing the occurrence of home fires and home fire injuries through prevention and protection education and constantly train to respond to any possible occurrence;

NOW, THEREFORE, I, GRETCHEN FAGAN, Mayor of the City of Tomball, Texas, on behalf of the Tomball City Council and all citizens hereof, do hereby proclaim **the week of May 14 through May 20, 2017** as:

"TOMBALL FIREFIGHTER APPRECIATION WEEK"

CITY OF TOMBALL TEXAS

In witness whereof I have hereunto set my hand and caused this seal to be affixed.

_____

ATTEST: Doris Speer

DATE: April 27, 2017

COPYRIGHT 2005 www.MunicipalAwardsCompany.com Cullman, AL (256) 739-5951

Office of the Mayor

Tomball, Texas

Proclamation

WHEREAS, the support of an understanding and informed citizenry is vital to the efficient operation of public works systems and programs for the health, safety and comfort of this community, such as water, sewer, gas, streets and highways, public buildings, parks, and solid waste collection; and

WHEREAS, the health, safety and comfort of Tomball greatly depends on these facilities and services and the quality and effectiveness of Tomball's facilities, as well as their planning, design and construction, is vitally dependent upon the efforts and skill of Public Works officials; and

WHEREAS, the public works services provided in Tomball are an integral part of our citizens' everyday lives and the efficiency of the qualified and dedicated personnel who staff Tomball's Public Works Department is materially influenced by people's attitude and understanding of the importance of the work they perform; and

WHEREAS, there would be no community without the quality of life Public Works provides, no community to police and protect, no public to lead or represent—this year's theme ***"Public Works Connects Us"*** speaks to the importance of Public Works and the men and women of the profession that are always there and always ready to perform the services in support of our daily quality of life; and

WHEREAS, 2017 marks the 57th annual National Public Works Week, sponsored by the American Public Works Association and the Tomball City Council wishes to recognize the dedication, talents and contributions made by Tomball Public Works employees;

NOW THEREFORE, I, Gretchen Fagan, Mayor of the City of Tomball, Texas on behalf of the Tomball City Council, do hereby proclaim May 14 through 20, 2017 as:

"NATIONAL PUBLIC WORKS WEEK – TOMBALL, TEXAS"

in the City of Tomball, Texas and I call upon all citizens and civic organizations to acquaint themselves with the issues involved in providing our Public Works services and to recognize the contributions that Public Works officials and employees make every day to our health, safety, comfort, and quality of life.

CITY OF TOMBALL TEXAS

In witness whereof I have hereunto set my hand and caused this seal to be affixed.

ATTEST: Doris Speer

DATE: April 27, 2017

COPYRIGHT 2005 www.MunicipalAwardsCompany.com Cullman, AL (256) 739-5951

Office of the Mayor

Tomball, Texas

Proclamation

WHEREAS, in every American community, law enforcement officers commit themselves to the preservation of life and property, risking their lives to protect us from all who would mock the law, providing protection, law and order and serving the cause of justice; and

WHEREAS, law enforcement officers, including members of the **Tomball Police Department,** accept a profound responsibility and work to uphold our laws, safeguard our rights and freedoms, and serve on the front lines in the fight against crime and terrorism; and

WHEREAS, we honor the heroism of all our law enforcement officers, especially those who have given their lives so that others might live, asking God's blessing for the families and friends they left behind; and

WHEREAS, by Joint Resolution approved October 1, 1962, as amended, Congress authorized and President Kennedy proclaimed May 15th of each year **"Peace Officers Memorial Day"** in honor of the Federal, State and municipal officers who have been killed or disabled in the line of duty, further designating the calendar week in which May 15 falls **"Police Week,"** and has directed that flags be flown at half-staff on **"Peace Officers Memorial Day",** under Public Law 103-322, as amended, and

WHEREAS, across the nation, **Police Week** is observed with ceremonies, including the hanging of a blue bow or ribbon to honor law enforcements officers who have sacrificed their lives in the line of duty and to honor those who still strive to keep us safe; and

WHEREAS, I encourage all citizens to express their deep appreciation to the men and women who risk their lives to guard and protect us;

NOW, THEREFORE, I, GRETCHEN FAGAN, Mayor of the City of Tomball, do hereby proclaim **Tuesday, May 16, 2017** as:

"PEACE OFFICERS MEMORIAL DAY"

and **May 14-20, 2017** as:

"TOMBALL POLICE WEEK"

and encourage the citizens of Tomball and those with us today to join us as we

"HONOR THE STANDING AND THE FALLEN"

CITY OF TOMBALL TEXAS

In witness whereof I have hereunto set my hand and caused this seal to be affixed.

ATTEST: Doris Speer

DATE: April 27, 2017

COPYRIGHT 2005 www.MunicipalAwardsCompany.com Cullman, AL (256) 739-5951

Office of the Mayor

Tomball, Texas

Proclamation

WHEREAS, emergency medical services is a vital public service that the members of **Northwest Rural Emergency Medical Service (NWEMS)** are ready to provide lifesaving care to those in need 24 hours a day, seven days a week; and

WHEREAS, access to quality emergency care dramatically improves the survival and recovery rate of those experiencing sudden illness or injury and **NWEMS** plays a critical role in public outreach and injury prevention, and is evolving in its role as an important member of the healthcare community; and

WHEREAS, emergency medical responders are supported by emergency medical dispatchers, firefighters, law enforcement officers, educators, administrators, researchers, emergency nurses, emergency physicians and others; and

WHEREAS, **NWEMS** responders will be the first to respond to terrorist or natural events and are constantly training to respond to any possible occurrence, benefitting the citizens of Tomball daily through the knowledge and skills of these highly-trained individuals, who, whether career or volunteer, engage in thousands of hours of specialized training and continuing education to enhance their life-saving skills, and the availability of the Texas trauma system; and

WHEREAS, it is appropriate for the City of Tomball to recognize the value and the accomplishments of emergency medical services providers, especially **Northwest Rural Emergency Medical Service,** by designating the **43rd Annual Emergency Medical Services Week;**

NOW, THEREFORE, I, GRETCHEN FAGAN, Mayor, on behalf of the City Council of the City of Tomball, Texas, do hereby proclaim the week of May 14-20, 2017 as:

"NATIONAL EMERGENCY MEDICAL SERVICES WEEK – "EMS STRONG: Always in Service" – TOMBALL, TEXAS"

CITY OF TOMBALL TEXAS

In witness whereof I have hereunto set my hand and caused this seal to be affixed.

ATTEST: Doris Speer

DATE: April 27, 2017

COPYRIGHT 2005 www.MunicipalAwardsCompany.com Cullman, AL (256) 739-5951

Regular City Council
Agenda Item
Data Sheet

Meeting Date: May 1, 2017

Topic:

- May 6-7, 2017 – ***Rails & Tails Mudbug Festival***
- May 27, 2017 – ***Tomball Honky Tonk Music Festival*** **and** ***Chili Challenge***
- Reports by City staff and members of council about items of community interest on which no action will be taken
    - David Esquivel – Report on the Success of the ***Annual Spring Clean-Up and Chipping Week*** and the ***Tomball Consolidated Recycling Day***

Background:

Origination:
Various

Recommendation:
N/A

Party(ies) responsible for placing this item on agenda:
City Secretary

ACTION TAKEN

Approval	Readings Passed	Other
☐ Yes ☐ No	☐ 1st ☐ 2nd	

Regular City Council
Agenda Item
Data Sheet

Meeting Date: May 1, 2017

Topic:
Approve the Minutes of the April 17, 2017 Regular Tomball City Council Meeting and the April 24, 2017 Special Tomball City Council Meeting

Background:

Origination:
City Secretary

Recommendation:

Party(ies) responsible for placing this item on agenda:
City Secretary

ACTION TAKEN

Approval	Readings Passed	Other
☐ Yes ☐ No	☐ 1st ☐ 2nd	

ATTACHMENTS:

Draft Minutes of the April 17, 2017 Regular Tomball City Council Meeting
Draft Minutes of the April 24, 2017 Special Tomball City Council Meeting

MINUTES OF REGULAR CITY COUNCIL MEETING
CITY OF TOMBALL, TEXAS

MONDAY, APRIL 17, 2017

6:00 P.M.

1.0 Call to Order

The Council meeting was called to order at 6:00 p.m. by Mayor Fagan. Other members present:

Councilman Hudgens
Councilman Stoll
Councilman Degges
Councilman Townsend
Councilman Klein Quinn

Others present:

Council-Elect Ford
City Manager – George Shackelford
Assistant City Manager – Robert Hauck
City Secretary – Doris Speer
City Attorney – Loren Smith
Police Chief – Billy Tidwell
Fire Chief – Randy Parr
Marketing Director – Mike Baxter
Finance Director – Glenn Windsor
Director of Public Works – David Esquivel
TEDC-Executive Director – Kelly Violette
Director of Community Development – Craig Meyers
City Planner – Amelia Lindley
City Engineer – Beth Jones
Assistant City Secretary – Tracy Garcia
Police Detective – Ron McGullion

2.0 The invocation was led by Pastor Andy Chute, Southwinds Baptist Church.

3.0 Pledges to U. S. and Texas Flags were led by Robert Hauck.

4.0 No Public Comments were received.

5.0 Presentations:

- Mayor Fagan presented a New Baby Proclamation to Jason and Hollyann Apel, Parents of **Jackson Scott Apel.**

6.0 Reports and Announcements:

- April 17-22, 2017 – Annual **Spring Clean-Up and Chipping Week**
- April 22, 2017 – **Tomball Consolidated Recycling Day** at Lone Star College-Tomball Campus, 30555 Tomball Parkway, South Entrance – 10:00 a.m.-2:00 p.m.
- April 22, 2017 – **Tomball Rotary Club Annual Fish Fry** at the Depot, 4:00 p.m.-8:00 p.m.
- April 24, 2017 – 2nd Public Hearing – Mustang Cat Annexation
- April 29, 2017 – **Tomball Lions Club Car Show** at Lone Star College, 10:00 a.m.-2:00 p.m.
- May 6-7, 2017 – ***Rails & Tails Mudbug Festival***
- May 27, 2017 – ***Tomball Honky Tonk Music Festival*** **and** ***Chili Challenge***
- Reports by City staff and members of council about items of community interest on which no action will be taken:
    - Mike Baxter reported on the Success of the ***8th Annual 5K Bunny Run and 1 Mile Kids Walk*** and the ***Ride 2 Recovery*** **Reception**

7.0 Motion was made by Councilman Townsend, second by Councilman Stoll, to approve the Minutes of the April 3, 2017 Regular Tomball City Council Meeting.

Motion carried unanimously.

8.0 Old Business:

8.1 Motion was made by Councilman Townsend, second by Councilman Klein Quinn, to adopt, on Second Reading, Ordinance No. 2017-08, an Ordinance of the City of Tomball, Texas, Extending the City Limits of Said City to Include All of the Territory within Certain Limits and Boundaries and Annexing to the City of Tomball All of the Territory within Such Limits and Boundaries; Approving a Service Plan for All of the Area within Such Limits and Boundaries; Containing Other Provisions Relating to the Subject; and Providing a Savings and Severability Clause [Tract 1: 65.6190 Acres of Land in the William Perkins Survey, Abstract No. 621, the T. A. Duclos Survey, Abstract No. 1473, and in the C. W. Hall Survey, Abstract No. 1639, Harris County, Tomball, Texas; Located within the Extraterritorial Jurisdiction of the City of Tomball, Harris County, Texas] (Grand Parkway). Vote was as follows:

Councilman Hudgens	Aye
Councilman Stoll	Aye
Councilman Degges	Aye
Councilman Townsend	Aye
Councilman Klein Quinn	Aye

Motion carried unanimously.

9.0 New Business:

9.1 Conduct First Public Hearing to Consider the Annexation of the Following Tract of Land: **A Tract or Parcel Containing 11.130 Acres or 484,852 Square Feet of Land, Situated in the Elizabeth Smith Survey, Abstract No. 70, Harris County, Texas, being out of a Called 16.4724 Acre Tract Conveyed to 11311 Holderreith Limited, L.P. as recorded under Harris County Clerk's File (H.C.C.F.) No. W840420, being more particularly described by Metes and Bounds as follows, with All Bearings being based on the Texas State Plane Coordinate System, South Central Zone, NAD 83:**

COMMENCING AT A 1 INCH IRON PIPE FOUND ON THE SOUTHERLY RIGHT-OF-WAY LINE OF HOLDERREITH ROAD (WIDTH VARIES) RECORDED UNDER FILM CODE (F.C.) NO. 594151, HARRIS COUNTY MAP RECORDS (H.C.M.R.), MARKING THE NORTHEAST CORNER OF A CALLED 18.778 ACRE TRACT CONVEYED TO BERNHARD AND ALVINA HOLDERIETH AS RECORDED UNDER H.C.C.F. NO. P225191;

THENCE NORTH 81 DEG. 09 MIN. 40 SEC. EAST, ALONG AND WITH THE SOUTHERLY RIIGHT-OF-WAY LINE OF SAID HOLDERREITH ROAD, A DISTANCE OF 409.45 FEET TO A POINT MARKING THE NORTHWEST CORNER OF A CALLED 1.2504 ACRE TRACT CONVEYED TO THE COUNTY OF HARRIS AS RECORDED UNDER H.C.C.F. NO. 2016466901 AND SAID 16.4724 ACRE TRACT AND THE NORTHEAST CORNER OF SAID 18.778 ACRE TRACT, FROM WHICH A CORNER BEARS FOR REFERENCE, NORTH 81 DEG. 09 MIN. 40 SEC. EAST, 244.50 FEET TO THE NORTHEAST CORNER OF SAID 1.2504 ACRE TR ACT AT THE INTERSECTION OF THE SOUTHERLY R.O.W. LINE OF SAID HOLDERREITH ROAD AND THE WESTERLY R.O.W. LINE OF HUFFSMITH-KOHRVILLE ROAD, FROM WHICH A FOUND 3/4 INCH IRON ROD BEARS FOR REFERENCE, NORTH 00 DEG. 33 MIN. 11 SEC. EAST, 0.32 FEET;

THENCE, SOUTH 01 DEG. 30 MIN. 23 SEC. EAST, LEAVING SAID R.O.W. LINE, A DISTANCE OF 20.25 FEET TO A CAPPED 5/8 INCH IRON ROD STAMPED "WINDROSE LAND SERVICES" SET ON THE COMMON LINE OF SAID 18.778 ACRE TRACT AND SAID 16.4724 ACR E TRACT, MARKING A WESTERLY CORNER OF SAID 1.2504 ACRE TRACT AND THE NORTHWEST CORNER AND POINT OF BEGINNING OF THE HEREIN DESCRIBED TRACT;

THENCE, THROUGH AND ACROSS SAID 16.4724 ACRE TRACT AND A LONG THE SOUTH AND WEST LINES OF SAID 1.2504 ACRE TRACT, THE FOLLOWING COURSES:

NORTH 81 DEG. 09 MIN. 42 SEC. EAST, 203.13 FEET TO A CAPPED 5/8 INCH IRON ROD STAMPED "WINDROSE LAND SERVICES" SET FOR AN ANGLE POINT;

SOUTH 49 DEG. 19 MIN. 45 SEC. EAST, 26.30 FEET TO A CAPPED 5/8 INCH IRON ROD STAMPED "WINDROSE LAND SERVICES" SET FOR A N ANGLE POINT;

SOUTH 00 DEG. 10 MIN. 48 SEC. WEST, 317.41 FEET TO A CAPPED 5/8 INCH IRON ROD STAMPED "WINDROSE LAND SERVICES" SET MARKING THE BEGINNING OF A CURVE TO THE LEFT;

ALONG SAID CURVE TO THE LEFT, HAVING A RADIUS OF 2050.00 FEET, A CENTRAL ANGLE OF 07 DEG. 42 MIN. 23 SEC., AN ARC LENGTH OF 275.73 FEET, AND A CHORD BEARING AND DISTANCE OF SOUTH 03 DEG. 40 MIN. 24 SEC. EAST, 275.52 FEET TO A CAPPED 5/8 INCH IRON ROD STAMPED "WINDROSE LAND SERVICES" SET MARKING A POINT OF TANGENCY;

SOUTH 07 DEG. 31 MIN. 35 SEC. EAST, 430.17 FEET TO A CAPPED 5/8 INCH IRON ROD STAMPED "WINDROSE LAND SERVICES" SET MARKING THE BEGINNING OF A CURVE TO THE RIGHT;

ALONG SAID CURVE TO THE RIGHT, HAVING A RADIUS OF 4450.00 FEET, A CENTRAL ANGLE OF 03 DEG. 18 MIN. 53 SEC., AN ARC LENGTH OF 257.44 FEET, AND A CHORD BEARING AND DISTANCE OF SOUTH 05 DEG. 52 MIN. 09 SEC. EAST, 257.40 FEET TO A CAPPED 5/8 INCH IRON ROD STAMPED "WINDROSE LAND SERVICES" SET MARKING AN EASTERLY CORNER OF THE HEREIN DESCRIBED TRACT;

SOUTH 85 DEG. 47 MIN. 18 SEC. WEST, 12.00 FEET TO A CAPPED 5/8 INCH IRON ROD STAMPED "W INDROSE LAND SERVICES" SET MARKING AN INTERIOR CORNER OF THE HEREIN DESCRIBED TRACT AND THE BEGINNING OF A CURVE TO THE RIGHT;

ALONG SAID CURVE TO THE RIGHT, HAVING A RADIUS OF 4438.00 FEET, A CENTRAL ANGLE OF 07 DEG. 40 MIN. 46 SEC., AN ARC LENGTH OF 594.83 FEET, AND A CHORD BEARING AND DISTANCE OF SOUTH 00 DEG. 22 MIN. 20 SEC. EAST, 594.38 FEET TO A CAPPED 5/8 INCH IRON ROD STAMPED "WINDROSE LAND SERVICES" SET ON THE WESTERLY R.O.W . LINE OF SAID HUFFSMITH-KOHRVILLE ROAD, MARKING THE SOUTH CORNER OF SAID 1.2504 ACRE TR ACT AND AN ANGLE POINT OF THE HEREIN DESCRIBED TRACT;

THENCE, ALONG THE WESTERLY R.O.W. LINE OF SAID HUFFSMITH-KOHRVILLE ROAD, SOUTH 44 DEG. 53 MIN. 35 SEC. WEST, A DISTANCE OF 105.45 FEET TO A CAPPED 5/8 INCH IRON ROD STAMPED "WINDROSE LAND SERVICES" SET MARKING THE NORTHEAST CORNER OF A CALLED 3.989 ACRE TRACT CONVEYED TO THE CITY OF TOMBALL AS RECORDED UNDER H.C.C.F. NO. X787363 AND THE SOUTHEAST CORNER OF THE HEREIN DESCRIBED TRACT, FROM WHICH A FOUND 1/2 INCH IRON ROD BEARS FOR REFERENCE, NORTH 00 DEG. 43 MIN. 29 SEC. WEST, 0.54 FEET;

THENCE, DEPARTING SAID R.O.W., SOUTH 88 DEG. 29 MIN. 37 SEC. WEST, A DISTANCE OF 186.62 FEET TO A CAPPED 5/8 INCH IRON ROD STAMPED "WINDROSE LAND SERVICES" SET ON THE EAST LINE OF A CALLED 26.0841 ACRE TRACT CONVEYED TO THE CITY OF TOMBALL AS RECORDED UNDER H.C.C.F. NO. X346741 AND MARKING THE NORTHWEST CORNER OF SAID 3.989 ACRE TRACT AND THE SOUTHWEST CORNER OF THE HEREIN DESCRIBED TRACT;

THENCE, NORTH 01 DEG. 30 MIN 23 SEC. WEST, A DISTANCE OF 1936.33 FEET TO THE PLACE OF BEGINNING AND CONTAINING 11.1307 ACRES OR 484,852 SQUARE FEET OF LAND AS SHOWN ON THE SURVEY, JOB NO. 53491 FILED IN THE OFFICES OF WINDROSE LAND SERVICES, INC.

Mayor Fagan called the public hearing to order at 6:08 p.m.

Receiving no public comments, Mayor Fagan closed the public hearing at 6:09 p.m.

9.2 The presentation by Mobilitie, LLC in Regards to Mobilitie's Desire to Engage in a Franchise Agreement with the City of Tomball to Install Transport Poles within the City's Rights-of-Way to Add Coverage and Capacity to Existing Wireless Networks was withdrawn at the request of Mobilitie.

No action taken.

9.3 Motion was made by Councilman Hudgens, second by Councilman Townsend, to approve, on First Reading, Resolution No. 2017-07-TEDC, a Resolution of the City Council of the City of Tomball, Texas, authorizing and approving the Tomball Economic Development Corporation's Project to Expend Funds in accordance with an Economic Development Agreement by and between the Corporation and A-K 133 HWY 249-GRAND PARKWAY, L.P., to make direct incentives to, or expenditures for, assistance with infrastructure costs for the promotion of new or expanded business enterprise related to the construction of a commercial shopping center known as the Grand Parkway Town Center to be located at the southwest corner of State Highway 249 and State Highway 99. Vote was as follows:

Councilman Hudgens	Aye
Councilman Stoll	Aye
Councilman Degges	Aye
Councilman Townsend	Aye
Councilman Klein Quinn	Nay

Motion carried, 4 votes Aye, 1 vote Nay.

9.4 Motion was made by Councilman Townsend, second by Councilman Stoll, to authorize the City Manager to enter into an Interlocal Agreement with Harris County (HCTRA) for reimbursement to the County for the relocation of crossing city utilities and for the purchase of additional ROW for right turn lanes at Baker, Zion and Brown Roads in the amount not to exceed $275,307.25.

Motion carried unanimously.

9.5 Motion was made by Councilman Klein Quinn, second by Councilman Stoll, to set June 5, 2017 at 4:00 p.m. as the date for presentation of the 5-Year Financial Plan to City Council.

Motion carried unanimously.

9.6 Motion was made by Councilman Hudgens, second by Councilman Townsend, to read Ordinance No. 2017-11 by caption only on First Reading.

Motion carried unanimously.

The following public comments were received regarding the 600 block of Texas Street:

Derek Duknic 634 Texas, 77375	-	Expressed his support for no parking signs in the 600 block of Texas
Jennifer Duknic 634 Texas, 77375	-	Expressed her support for no parking signs in the 600 block of Texas
Donald Downey 29918 Keen, 77375	-	Expressed his opposition to no parking signs in the 600 block of Texas.

Motion was made by Councilman Townsend, second by Councilman Stoll, to adopt, on First Reading, Ordinance No. 2017-11, an Ordinance Prohibiting On-Street Parking of Vehicles in a Designated Residential Area; Providing for a Severability Clause; Providing a Penalty for Violations Hereof; Providing a Savings Clause; Providing for the Publication in the Official Newspaper; and Providing an Effective Date (600 Block of Texas Street). Vote was as follows:

Councilman Hudgens	Aye
Councilman Stoll	Nay
Councilman Degges	Nay
Councilman Townsend	Nay
Councilman Klein Quinn	Nay

Motion FAILED, 1 vote Aye, 4 votes Nay.

9.7 Consideration to Approve **Zoning Case P17-0012**: Request by Francisco Choi, on behalf of Tamiro Wood LLC, to operate an Assisted Living Facility (continuing care retirement community) at 609 South Pine Street. The property is approximately 2 acres, legally described as Part of Outlots 127 and 129 five acre

tracts Tomball Outlots, generally located on the east side of South Pine Street between James Street and Cherry Laurel Street and is zoned Office District.

- Conduct Public Hearing on **Zoning Case P17-0012**

  Mayor Fagan called the public hearing to order at 6:33 p.m.

  Receiving no public comments, Mayor Fagan closed the public hearing at 6:33 p.m.

- Motion was made by Councilman Townsend, second by Councilman Stoll, to read Ordinance No. 2017-12 by caption only on First Reading.

  Motion carried unanimously.

  Motion was made by Councilman Hudgens, second by Councilman Stoll, adopt, on First Reading, Ordinance No. 2017-12, an Ordinance of the City of Tomball, Texas, Amending Chapter 50 (Zoning) of the Tomball Code of Ordinances By Granting a Conditional Use Permit (CUP) to Francisco Choi, on behalf of TamiroWood, LLC, to Operate an "Assisted Living Facility (Continuing Care Retirement Community)" at 609 South Pine Street; Said Property Being approximately 2 acres, and Being Legally Described as Part of Outlots 127 and 129 Five Acre Tracts Tomball Outlots, Harris County, Texas, Generally Located on the East Side of South Pine Street Between James Street and Cherry Laurel Street; Providing Requirements and Conditions for this CUP; Containing Findings and Other Provisions Relating to the Subject; Providing a Penalty in an Amount Not to Exceed $2,000 for Violations Hereof; and Providing for Severability. Vote was as follows:

Councilman Hudgens	Aye
Councilman Stoll	Aye
Councilman Degges	Aye
Councilman Townsend	Aye
Councilman Klein Quinn	Aye

  Motion carried unanimously.

9.8 Consideration to Approve **Zoning Case P17-0023**: Request by Scott McKinzie, on behalf of BCDE, LTD to amend Chapter 50 (Zoning) of the Tomball Code of Ordinances by rezoning approximately 70.3574 acres of land, legally described as Reserve C, C1 and C2 Tomball Greens, within the City of Tomball, Harris County,

Texas, generally located on the east side of Hufsmith-Kohrville Road, north side of Spell Road, from the Single-Family 9 District to the Planned Development District.

- Conduct Public Hearing on **Zoning Case P17-0023**

  Mayor Fagan called the public hearing to order at 7:09 p.m.; the following comments were received:

William Bisso 21207 Belmont Farms	-	Expressed his opposition to the proposed zoning change
Alireza Zadeh 21230 Magic Spell Dr.	-	Expressed his opposition to the proposed zoning change
Dave Gilbert 22527 Red Wing Trail	-	Expressed his opposition to the proposed zoning change
Katie Jones 21502 Country Club Green Circle	-	Expressed her opposition to the proposed zoning change
Danny Wilson 10730 Sir Alec	-	Expressed his opposition to the proposed zoning change
Joseph Key Spell Road	-	Expressed his opposition to the proposed zoning change (spoke on behalf of James Alsup, 21202 Belmont Farms)
Seth Keggins 11119 Ancient Lore	-	Expressed his opposition to the proposed zoning change
Nick Doud 10910 Gallant Flag Dr	-	Expressed his opposition to the proposed zoning change
Rob Maxwell 31507 Helen Lane	-	Expressed his support for the proposed zoning change
Robert Anderson Belmont Farms	-	Expressed his opposition to the proposed zoning change
Virgil Gooding Albury Trails	-	Expressed his opposition to the proposed zoning change

John Singles Courtly Manor Court	-	Expressed his opposition to the proposed zoning change

Receiving no additional public comments, Mayor Fagan closed the public hearing at 7:42 p.m.

- Motion was made by Councilman Townsend, second by Councilman Stoll, to read Ordinance No. 2017-13 by caption only on First Reading.

  Motion carried unanimously.

  Motion was made by Councilman Townsend, second by Councilman Hudgens, to adopt, on First Reading, Ordinance No. 2017-13, an Ordinance of the City of Tomball, Texas, Amending Its Zoning Ordinance, By Approving a Planned Development District of approximately 70.36 acres of Land, Legally Described as Reserve C, C1 And C2 Tomball Greens; Within The City of Tomball, Harris County, Texas; Amending the Official Zoning Map of the City to Reflect the Planned Development District to be known as Planned Development – 9 (PD-9) District; Adopting a Concept Plan and Regulations Applicable to PD-9 District; Providing for Severability; Providing for a Penalty of an amount not to Exceed $2,000 for Each Day of Violation of Any Provision Hereof, Making Findings of Fact; And Providing For Other Related Matters

  Motion to AMEND was made by Councilman Townsend, second by Councilman Hudgens, to adopt, on First Reading, Ordinance No. 2017-13, an Ordinance of the City of Tomball, Texas, Amending Its Zoning Ordinance, By Approving a Planned Development District of approximately 70.36 acres of Land, Legally Described as Reserve C, C1 And C2 Tomball Greens; Within The City of Tomball, Harris County, Texas; Amending the Official Zoning Map of the City to Reflect the Planned Development District to be known as Planned Development – 9 (PD-9) District; Adopting a Concept Plan and Regulations Applicable to PD-9 District; Providing for Severability; Providing for a Penalty of an amount not to Exceed $2,000 for Each Day of Violation of Any Provision Hereof, Making Findings of Fact; And Providing For Other Related Matters, with the additional requirement to limit the development to 251 houses and to use Hufsmith-Kohrville as an additional point of ingress/egress. Vote was as follows:

Councilman Hudgens	Aye
Councilman Stoll	Aye
Councilman Degges	Aye
Councilman Townsend	Aye

Councilman Klein Quinn Aye

Motion, as AMENDED, carried unanimously

Mayor Fagan called a recess at 8:06 p.m.

Upon reconvening into Regular session at 8:12 p.m., the following items were considered:

9.9 Motion was made by Councilman Stoll, second by Councilman Klein Quinn, to read Ordinance No. 2017-14 by caption only on First Reading.

Motion was made by Councilman Degges, second by Councilman Stoll, to adopt, on First Reading, Ordinance No. 2017-14, an Ordinance of the City of Tomball, Texas Waiving the Assessment and Collection of Impact Fees for Water and Wastewater Utilities for the Development of Non-Residential Properties Within the Old Town Area as Defined in the Tomball Comprehensive Plan and Including the Properties Located West of the BNSF Railroad, South of Fannin Street, East of South Elm Street, and North of Florence Street, Starting at the Southeast Corner at The BNSF Railroad and Florence Street Westerly Along Florence Street to South Pine Street, Northerly Along South Pine Street to Percival Street, Westerly Along Percival Street to School Street, Northerly Along School Street to Main Street, Westerly Along Main Street to Baker Street, Northerly Along Baker Street to Hicks Street, Easterly Along Hicks Street to North Magnolia Street, Northerly Along North Magnolia Street to Unimproved Right-of-Way North of Hicks and Epps Streets, Easterly Along Unimproved Right-of-Way North of Hicks and Epps Streets to North Cherry Street, Southerly Along North Cherry Street to Epps Street, Easterly Along Epps Street to North Elm Street, Southerly Along North Elm Street to Main Street, Main Street Southerly Along South Elm Street to Unimproved Fannin Street, Easterly Along Unimproved Fannin Street to Right-Of-Way Adjacent to BNSF Railroad, Southerly Along Right-of-Way Adjacent to BNSF Railroad to Florence Street and for Properties Adjacent to FM 2920 (Main Street) Between State Highway 249 Business and North Willow Street Until May 15, 2019; and Providing for Severability.

Councilman Degges withdrew his motion to adopt Ordinance No. 2017-14, second by Councilman Stoll.

Consideration of Ordinance No. 2017-14 died for lack of a motion.

9.10 Motion was made by Councilman Townsend, second by Councilman Klein Quinn, to read Ordinance No. 2017-15 by caption only on First Reading.

Motion carried unanimously.

Motion was made by Councilman Degges, second by Councilman Townsend, to adopt, on First Reading, Ordinance No. 2017-15, an Ordinance of the City of Tomball, Texas Amending the Code of Ordinances of the City Amending Article II, Taxicabs, of Chapter 48, Vehicles for Hire, to Add Definitions to Section 48-26, Definitions; Amending Section 48-31, Cruising Prohibited, to Allow City Council to Designate Parking Areas within the City for Taxicabs during Peak Times; Amending Section 48-32, Maximum Seating, to Increase the Maximum Number of Persons to Ten (10); Deleting Sections 48-33 through 48-33; Adding a New Section 4-33, Violations, to Specify Specific Actions which Violate This Ordinance; Amending Section 48-39, Property Left in Vehicle, to Delete Specific Penalty Provision; Deleting Section 48-40, Penalties; Amending Section 48-56, Required, of Division 2, Business Permit, to Exclude Taxicabs Licensed in Other Jurisdictions Delivering Passengers in the City; Amending Section 48-57, Application, to Require Certain Information to be Included in Business Permit Application; Amending Section 48-65, Inspection, to Delete Certain Inspection Requirements; Amending Section 48-66, Revocation, to Allow Chief of Police to Revoke Business Permit; Amending Section 48-67, Identification of Vehicles, to Allow City Secretary to Issue Taxi Permit Numbers; Amending Section 48-83, Application of Division 3, Driver's Licenses, Changing the Medical Reporting Requirements; Amending Section 48-87, Appeal, to Allow City Manager to Hear Appeal; Amending Section 48-88, Identification Cards, to Alter the Requirements of Identification Cards; Amending Sections 48-89, Transfer Prohibited, 48-90, Duration, and 48-91, Fee, to Add the Words "City Chauffer's License"; Amending Section 48-107, Minimum Amounts of Coverage, of Division 4, Insurance, Altering the Minimum Insurance Requirements; Amending Section 48-110, Increasing Amount upon Return of Execution Unsatisfied, to Clarify Regulations Therein; Providing a Penalty Not in Accordance with Section 1-14 of the City's Code of Ordinances for Any Violation Hereof with Each Day Constituting a Separate Offense; Providing for Severability and Providing Other Findings Related Hereto. Vote was as follows:

Councilman Hudgens	Aye
Councilman Stoll	Nay
Councilman Degges	Nay
Councilman Townsend	Aye
Councilman Klein Quinn	Aye

Motion carried, 3 votes Aye, 2 votes Nay.

10.0 Motion was made by Councilman Townsend, second by Councilman Klein Quinn, to adjourn.

Motion carried unanimously.

Meeting adjourned.

PASSED AND APPROVED this the 1st day of May 2017.

Doris Speer, TRMC, MMC
City Secretary

Gretchen Fagan
Mayor

MINUTES OF SPECIAL CITY COUNCIL MEETING
CITY OF TOMBALL, TEXAS

MONDAY, APRIL 24, 2017

5:30 P.M.

1.0 Call to Order

The Council meeting was called to order at 5:30 p.m. by Mayor Pro Tem Degges. Other members present:

Councilman Hudgens
Councilman Stoll
Councilman Townsend

Members absent:

Mayor Fagan
Councilman Klein Quinn

Others present:

Council-Elect Ford
City Manager – George Shackelford
City Secretary – Doris Speer
City Attorney – Loren Smith

2.0 No Public Comments were received.

3.0 New Business:

3.1 Conduct Second Public Hearing to Consider the Annexation of the Following Tract of Land: A Tract or Parcel Containing 11.130 Acres or 484,852 Square Feet of Land, Situated in the Elizabeth Smith Survey, Abstract No. 70, Harris County, Texas, being out of a Called 16.4724 Acre Tract Conveyed to 11311 Holderreith Limited, L.P. as recorded under Harris County Clerk's File (H.C.C.F.) No. W840420, being more particularly described by Metes and Bounds as follows, with All Bearings being based on the Texas State Plane Coordinate System, South Central Zone, NAD 83:

COMMENCING AT A 1 INCH IRON PIPE FOUND ON THE SOUTHERLY RIGHT-OF-WAY LINE OF HOLDERREITH ROAD (WIDTH VARIES)

RECORDED UNDER FILM CODE (F.C.) NO. 594151, HARRIS COUNTY MAP RECORDS (H.C.M.R.), MARKING THE NORTHEAST CORNER OF A CALLED 18.778 ACRE TRACT CONVEYED TO BERNHARD AND ALVINA HOLDERIETH AS RECORDED UNDER H.C.C.F. NO. P225191;

THENCE NORTH 81 DEG. 09 MIN. 40 SEC. EAST, ALONG AND WITH THE SOUTHERLY RIIGHT-OF-WAY LINE OF SAID HOLDERREITH ROAD, A DISTANCE OF 409.45 FEET TO A POINT MARKING THE NORTHWEST CORNER OF A CALLED 1.2504 ACRE TRACT CONVEYED TO THE COUNTY OF HARRIS AS RECORDED UNDER H.C.C.F. NO. 2016466901 AND SAID 16.4724 ACRE TRACT AND THE NORTHEAST CORNER OF SAID 18.778 ACRE TRACT, FROM WHICH A CORNER BEARS FOR REFERENCE, NORTH 81 DEG. 09 MIN. 40 SEC. EAST, 244.50 FEET TO THE NORTHEAST CORNER OF SAID 1.2504 ACRE TR ACT AT THE INTERSECTION OF THE SOUTHERLY R.O.W. LINE OF SAID HOLDERREITH ROAD AND THE WESTERLY R.O.W. LINE OF HUFFSMITH-KOHRVILLE ROAD, FROM WHICH A FOUND 3/4 INCH IRON ROD BEARS FOR REFERENCE, NORTH 00 DEG. 33 MIN. 11 SEC. EAST, 0.32 FEET;

THENCE, SOUTH 01 DEG. 30 MIN. 23 SEC. EAST, LEAVING SAID R.O.W. LINE, A DISTANCE OF 20.25 FEET TO A CAPPED 5/8 INCH IRON ROD STAMPED "WINDROSE LAND SERVICES" SET ON THE COMMON LINE OF SAID 18.778 ACRE TRACT AND SAID 16.4724 ACR E TRACT, MARKING A WESTERLY CORNER OF SAID 1.2504 ACRE TRACT AND THE NORTHWEST CORNER AND POINT OF BEGINNING OF THE HEREIN DESCRIBED TRACT;

THENCE, THROUGH AND ACROSS SAID 16.4724 ACRE TRACT AND A LONG THE SOUTH AND WEST LINES OF SAID 1.2504 ACRE TRACT, THE FOLLOWING COURSES:

NORTH 81 DEG. 09 MIN. 42 SEC. EAST, 203.13 FEET TO A CAPPED 5/8 INCH IRON ROD STAMPED "WINDROSE LAND SERVICES" SET FOR AN ANGLE POINT;

SOUTH 49 DEG. 19 MIN. 45 SEC. EAST, 26.30 FEET TO A CAPPED 5/8 INCH IRON ROD STAMPED "WINDROSE LAND SERVICES" SET FOR A N ANGLE POINT;

SOUTH 00 DEG. 10 MIN. 48 SEC. WEST, 317.41 FEET TO A CAPPED 5/8 INCH IRON ROD STAMPED "WINDROSE LAND SERVICES" SET MARKING THE BEGINNING OF A CURVE TO THE LEFT;

ALONG SAID CURVE TO THE LEFT, HAVING A RADIUS OF 2050.00 FEET, A CENTRAL ANGLE OF 07 DEG. 42 MIN. 23 SEC., AN ARC LENGTH OF 275.73 FEET, AND A CHORD BEARING AND DISTANCE OF SOUTH 03 DEG. 40 MIN. 24 SEC. EAST, 275.52 FEET TO A CAPPED 5/8 INCH IRON ROD STAMPED "WINDROSE LAND SERVICES" SET MARKING A POINT OF TANGENCY;

SOUTH 07 DEG. 31 MIN. 35 SEC. EAST, 430.17 FEET TO A CAPPED 5/8 INCH IRON ROD STAMPED "WINDROSE LAND SERVICES" SET MARKING THE BEGINNING OF A CURVE TO THE RIGHT;

ALONG SAID CURVE TO THE RIGHT, HAVING A RADIUS OF 4450.00 FEET, A CENTRAL ANGLE OF 03 DEG. 18 MIN. 53 SEC., AN ARC LENGTH OF 257.44 FEET, AND A CHORD BEARING AND DISTANCE OF SOUTH 05 DEG. 52 MIN. 09 SEC. EAST, 257.40 FEET TO A CAPPED 5/8 INCH IRON ROD STAMPED "WINDROSE LAND SERVICES" SET MARKING AN EASTERLY CORNER OF THE HEREIN DESCRIBED TRACT;

SOUTH 85 DEG. 47 MIN. 18 SEC. WEST, 12.00 FEET TO A CAPPED 5/8 INCH IRON ROD STAMPED "W INDROSE LAND SERVICES" SET MARKING AN INTERIOR CORNER OF THE HEREIN DESCRIBED TRACT AND THE BEGINNING OF A CURVE TO THE RIGHT;

ALONG SAID CURVE TO THE RIGHT, HAVING A RADIUS OF 4438.00 FEET, A CENTRAL ANGLE OF 07 DEG. 40 MIN. 46 SEC., AN ARC LENGTH OF 594.83 FEET, AND A CHORD BEARING AND DISTANCE OF SOUTH 00 DEG. 22 MIN. 20 SEC. EAST, 594.38 FEET TO A CAPPED 5/8 INCH IRON ROD STAMPED "WINDROSE LAND SERVICES" SET ON THE WESTERLY R.O.W . LINE OF SAID HUFFSMITH-KOHRVILLE ROAD, MARKING THE SOUTH CORNER OF SAID 1.2504 ACRE TR ACT AND AN ANGLE POINT OF THE HEREIN DESCRIBED TRACT;

THENCE, ALONG THE WESTERLY R.O.W. LINE OF SAID HUFFSMITH-KOHRVILLE ROAD, SOUTH 44 DEG. 53 MIN. 35 SEC. WEST, A DISTANCE OF 105.45 FEET TO A CAPPED 5/8 INCH IRON ROD STAMPED "WINDROSE LAND SERVICES" SET MARKING THE NORTHEAST CORNER OF A CALLED 3.989 ACRE TRACT CONVEYED TO THE CITY OF TOMBALL AS RECORDED UNDER H.C.C.F. NO. X787363 AND THE SOUTHEAST CORNER OF THE HEREIN DESCRIBED TRACT, FROM WHICH A FOUND 1/2 INCH IRON ROD BEARS FOR REFERENCE, NORTH 00 DEG. 43 MIN. 29 SEC. WEST, 0.54 FEET;

THENCE, DEPARTING SAID R.O.W., SOUTH 88 DEG. 29 MIN. 37 SEC. WEST, A DISTANCE OF 186.62 FEET TO A CAPPED 5/8 INCH IRON ROD STAMPED "WINDROSE LAND SERVICES" SET ON THE EAST LINE OF A CALLED 26.0841 ACRE TRACT CONVEYED TO THE CITY OF TOMBALL AS RECORDED UNDER H.C.C.F. NO. X346741 AND MARKING THE NORTHWEST CORNER OF SAID 3.989 ACRE TRACT AND THE SOUTHWEST CORNER OF THE HEREIN DESCRIBED TRACT;

THENCE, NORTH 01 DEG. 30 MIN 23 SEC. WEST, A DISTANCE OF 1936.33 FEET TO THE PLACE OF BEGINNING AND CONTAINING 11.1307 ACRES OR 484,852 SQUARE FEET OF LAND AS SHOWN ON THE SURVEY, JOB NO. 53491 FILED IN THE OFFICES OF WINDROSE LAND SERVICES, INC.

Mayor Pro Tem Degges called the public hearing to order at 5:30 p.m.

Receiving no public comments, Mayor Pro Tem Degges closed the public hearing at 5:31 p.m.

4.0 Motion was made by Councilman Townsend, second by Councilman Stoll, to adjourn.

Motion carried unanimously.

Meeting adjourned.

PASSED AND APPROVED this the 1st day of May 2017.

Doris Speer, TRMC, MMC	Gretchen Fagan
City Secretary	Mayor

Regular City Council
Agenda Item
Data Sheet

Meeting Date: May 1, 2017

Topic:
Approve, on Second Reading, Resolution No. 2017-07-TEDC, a Resolution of the City Council of the City of Tomball, Texas, authorizing and approving the Tomball Economic Development Corporation's Project to Expend Funds in accordance with an Economic Development Agreement by and between the Corporation and A-K 133 HWY 249-GRAND PARKWAY, L.P., to make direct incentives to, or expenditures for, assistance with infrastructure costs for the promotion of new or expanded business enterprise related to the construction of a commercial shopping center known as the Grand Parkway Town Center to be located at the southwest corner of State Highway 249 and State Highway 99.

Background:
All expenditures of the Tomball Economic Development Corporation (TEDC) sales tax revenue must first be approved as a "Project" of the Corporation. At its regular meeting on April 4, 2017, the TEDC Board of Directors did take formal action to approve, as a Project of the TEDC, an agreement with A-K 133 HWY 249-GRAND PARKWAY, L.P. for the promotion of new or expanded business development related to the construction of a new commercial shopping center known as the Grand Parkway Town Center.

Origination:
A-K 133 HWY 249-GRAND PARKWAY, L.P.

Recommendation:
Approval of Resolution No. 2017-07-TEDC on second reading

Funding:
Yes
Account Number:Sales Tax

Party(ies) responsible for placing this item on agenda:
Kelly Violette, Executive Director, Tomball Economic Development Corporation

ACTION TAKEN

Approval	Readings Passed	Other
☐ Yes ☐ No	☐ 1st ☐ 2nd	

ATTACHMENTS:

Resolution No. 2017-07-TEDC
TEDC Memo
Request Letter
Performance Agreement

RESOLUTION NO. 2017-07-TEDC

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF TOMBALL, TEXAS, AUTHORIZING AND APPROVING THE TOMBALL ECONOMIC DEVELOPMENT CORPORATION'S PROJECT TO EXPEND FUNDS IN ACCORDANCE WITH AN ECONOMIC DEVELOPMENT AGREEMENT BY AND BETWEEN THE CORPORATION AND A-K 133 HWY 249-GRAND PARKWAY, L.P. TO PROMOTE AND DEVELOP NEW OR EXPANDED BUSINESS ENTERPRISE; CONTAINING OTHER PROVISIONS RELATING TO THE SUBJECT; AND PROVIDING FOR SEVERABILITY.

* * * * *

WHEREAS, the Tomball Economic Development Corporation (the "TEDC"), created pursuant to the Development Corporation Act, now Chapter 501 of the Texas Local Government Code, as amended (the "Act"), desires to adopt projects and provide incentives for economic development within the City; and

WHEREAS, the Board of Directors of the TEDC had adopted as a specific project a grant in an amount equal to a portion of the new incremental sales tax revenues associated with the development of a new retail shopping center, known as the Grand Parkway Town Center; and

WHEREAS, pursuant to the Act, the TEDC may not undertake such project without the approval of Tomball City Council; and

WHEREAS, City Council finds and determines that such project promotes new or expanded business development and is in the best interests of the citizenry; now, therefore,

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF TOMBALL, TEXAS:

Section 1. The facts and matters set forth in the preamble of this Resolution are hereby found to be true and correct.

Section 2. The City Council hereby authorizes and approves the adoption, by the Board of Directors of the Tomball Economic Development Corporation, as a specific project for the economic development of the City, an expenditure in an amount equal to a portion of the new incremental sales tax to A-K 133 HWY 249-GRAND PARKWAY, L.P. in accordance with an economic development agreement by and between the TEDC and A-K 133 HWY 249-GRAND PARKWAY, L.P., to promote and develop new or expanded business enterprise, to be located at the corner of State Highway 249 and Grand Parkway.

Section 3. In the event any clause, phrase, provision, sentence, or part of this Resolution or the application of the same to any person or circumstance shall for any reason be adjudged invalid or held unconstitutional by a court of competent jurisdiction, it shall not affect, impair, or invalidate this Resolution as a whole or any part or provision hereof other than the part declared to

be invalid or unconstitutional; and the City Council of the City of Tomball, Texas, declares that it would have passed each and every part of the same notwithstanding the omission of any such part thus declared to be invalid or unconstitutional, whether there be one or more parts.

PASSED AND APPROVED on first reading this 17th day of April 2017.

PASSED, APPROVED, AND RESOLVED on second and final reading this 1st day of May 2017.

_____
Gretchen Fagan, Mayor

ATTEST:

_____
Doris Speer, City Secretary

TOMBALL
ECONOMIC DEVELOPMENT CORPORATION

TO: Honorable Mayor and City Council

FROM: Kelly Violette
Executive Director

MEETING DATE: April 17, 2017

SUBJECT: Grand Parkway Town Center Performance Agreement

On May 11, 2015, the Tomball City Council approved a Strategic Partnership Agreement (SPA) between Harris County Municipal Utility District No. 273 and the City of Tomball for a limited purpose annexation of 153.0194 acres at the southwest corner of State Highway 249 and the Grand Parkway.

Under the SPA, the city's intent was to collect a 2% sales and use tax on all taxable transactions within the boundaries of the limited purpose annexation. A portion of the 2% sales and use tax would be reimbursed to the developer over a 30-year period. In exchange for the sales tax revenue, the city would provide and sell potable water service to the District.

Approximately 65 acres within the District is proposed to be developed by NewQuest Properties as a retail shopping center known as Grand Parkway Town Center. The project, located at the southwest corner of State Highway 249 and State Highway 99, will consist of the development of a minimum of 130,000 square feet of retail space. The developer anticipates two to three major anchor tenants, including but not limited to a grocery store, membership warehouse club, sporting goods and fitness retailers with the potential for an office component.

Subsequent to the 2015 SPA approval, it was determined that the full 2% local sales tax is not available because the site is located in the Metropolitan Transit Authority of Harris County (METRO) boundaries and therefore subject to METRO's 1% sales tax. As such, the developer and the city began discussing a general-purpose annexation of the 65 acres, rather than the limited purpose annexation originally contemplated under the Strategic Partnership Agreement. Once the property is annexed into the city limits of Tomball, it will automatically be out of METRO jurisdiction and subject to all city taxes, ordinances,

and regulations. The local 2% sales tax includes 0.5% for property tax reduction, 0.5% to the Tomball Economic Development Corporation, and 1% to the City of Tomball.

On February 6, 2017, the City Council approved an Amended Strategic Partnership Agreement outlining the full purpose annexation, service agreements, and reimbursement terms. The annexation is currently in process and is anticipated to be completed on April 17, 2017.

On April 4, 2017, the TEDC approved an economic development performance agreement for the project under the terms originally contemplated by the city. The breakdown is as follows:

Years 1-5
- i. District receives 100% of 1.5 cents
- ii. City receives 100% for .5 cents for tax reduction
- iii. TEDC receives 0

Years 6-10
- i. District receives 75% of 1.5 cents
- ii. City receives 25% of 1.0 cents
- iii. TEDC receives 25% of .5 cents
- iv. City receives 100% of .5 cents for tax reduction

Years 11-30
- i. District receives 50% of 1.5 cents
- ii. City receives 50% of 1.0 cents
- iii. TEDC receives 50% of .5 cents
- iv. City receives 100% of .5 cents for tax reduction

NewQuest PROPERTIES®

March 30, 2017

Via email: kviolette@tomballtxedc.org

Kelly Violette, AICP
Executive Director
Tomball Economic Development Corporation
29201 Quinn Road, Suite B
Tomball, Texas 77375

Re: Grand Parkway Town Center – Performance Agreement

Dear Ms. Violette:

We thank you for the opportunity to introduce ourselves and describe the project we are undertaking at the southwest corner of SH 249 and the Grand Parkway in Tomball, Texas ("Grand Parkway Town Center").

We are NewQuest Properties, a multifaceted commercial real estate company engaged in development and brokerage activities throughout Texas and surrounding states. While we have grown to include projects throughout the country, our roots are here in northwest Houston where we are headquartered and our managing partner, Steve Alvis, and many of our employees reside. We have developed over one hundred and forty first-class retail shopping centers, the majority of which we build with the intention of managing and owning for generations to come. We pride ourselves on improving communities by creating shopping destinations for necessary goods and services in a high quality setting.

We purchased the property that includes Grand Parkway Town Center 24 years ago in anticipation of the future Grand Parkway. While it is unusual for us to purchase land years in advance of a development, our principals knew that one day it would be an important intersection and an ideal location for a first-class retail development serving the greater Tomball community.

The Grand Parkway came a few years later than we originally anticipated, but by 2016 we were ready initiate development with both Kroger and Sam's Club committing to anchor the project. Retailers in the project will include Kroger Marketplace, Dick's Sporting Goods, LA Fitness, Sam's Club, Chick-fil-A, Petco, Cracker Barrel, and Raising Cane's Chicken Fingers to name a few.

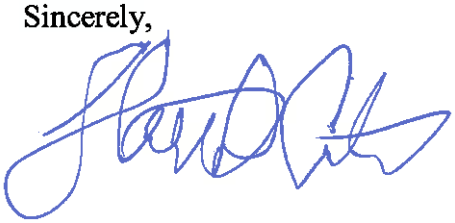
8827 W. Sam Houston Pkwy N., Suite 200 ~ Houston, TX 77040 ~ Tel 281-477-4300 Fax 281-477-4399
www.newquest.com

Although we previously entered into a Strategic Partnership Agreement with the City and Harris County MUD No. 273, we determined along with the City that it would be mutually beneficial to annex the project into the City for full purposes sooner rather than later. In exchange for agreeing to early annexation of the project and in order to offset the increase in ad valorem taxes, the City agreed to reimburse a portion of the sales tax collected from the project for a limited period of time. Based on the City's requirement to earmark 0.5% of its sales tax to property tax reduction and another 0.5% to economic development, the City agreed rebate 1.0% of the sales tax collected and to support an agreement with the Tomball EDC to rebate an additional 0.5%.

Grand Parkway Town Center is not an economically viable without the support of the City and Tomball EDC. The high quality of the project combined with caliber of tenants sought require this reimbursement. But for the economic development incentives agreed to with the City, this project would not happen.

We are requesting the support of the Tomball Economic Development Corporation in their participation in the sales tax rebate.

Sincerely,



Steven D. Alvis
President

cc: via email to the following:
Leah Hays (Olson & Olson LLP) lhayes@olsonllp.com

PERFORMANCE AGREEMENT
(City of Tomball Economic Development Corporation, Texas, Harris County)

This Performance Agreement ("Agreement") is made and entered into as of the ___ day of _____, 2017 (the "Effective Date"), between the Tomball Economic Development Corporation, a Type B economic development corporation ("Corporation"), and A-K 133 HWY 249-GRAND PARKWAY, L.P., a Texas limited partnership ("Developer").

RECITALS

A. Developer owns certain property in the City of Tomball (the "City"), being the commercial property located at the corner of State Highway 249 and Grand Parkway. The Property is reflected on the site plan attached hereto as Exhibit "A" and legally described on attached Exhibit "B" (the "Property"), and is a part of the property to be developed as the Grand Parkway Town Center (the "Shopping Center").

B. The Shopping Center, once development is completed will contain a minimum of one hundred thirty thousand (130,000) square feet of retail space.

C. The Developer desires to develop a portion of the Property into the Shopping Center by, among other things, designing and constructing buildings, installation of all utilities, construction of parking, providing access and circulation, signage, providing tenants, providing new landscaping, and in general making the Property and Shopping Center attractive to local and national retailers, all of which will make the Property and Shopping Center appealing to customers and pleasing to the City and its citizens (collectively, the "Project").

D. It is anticipated that the development of the Property and the Project will result in additional jobs, increase the tax base, both property taxes and sales taxes, and encourage economic development to the City.

E. The Corporation recognizes the positive economic impact that the Project will bring to the City through: the aesthetic improvements, diversification of the economy, reduction of unemployment and underemployment through the production of new jobs, the attraction of new businesses, improved real property enhancements, increased sales tax collection, by fulfilling a critical need for new retailers and restaurants within the City and the additional ad valorem and sales and use tax revenues generated by the Project for the City and the Corporation. The Corporation recognizes that without the development of the Shopping Center or the Project, the City would not receive these benefits.

F. The Corporation has established programs in accordance with Chapters 501, 502 and 505 of the Texas Local Government Code (the "EDC Statutes") to promote local economic development and stimulating business and commercial activity within the City.

G. The Corporation has concluded and hereby finds that this Agreement promotes economic development in the City and, as such, meets the requirements under the EDC Statutes, and the Corporation's established economic development program, and, further, is in the best interests of the City and the Corporation.

H. To ensure that the benefits the Corporation provide under this Agreement are utilized in a manner consistent with Article III, Section 52-a of the Texas Constitution, the EDC Statutes and other laws, the Developer has agreed to comply with certain conditions for receiving those benefits, as herein provided.

I. In consideration of the design and construction of the Project by the Developer, which will bring additional sales tax revenues and ad valorem taxes to the City and additional jobs resulting from the construction and development, the Corporation desires to make a grant to the Developer in an amount equal to a portion of the new incremental sales tax revenues, as provided in this Agreement, for a portion of the costs associated with the Project pursuant to the EDC Statutes (the "Grant") as an economic incentive for the Developer to develop and construct the Project.

J. In consideration of the design and construction of the Project by the Developer, which will bring the aforementioned benefits to the City, the Corporation, pursuant to the EDC Statutes and its established programs, desires to use the Grant to pay for a portion of the Project Costs (hereinafter defined), as an economic incentive for the Developer to develop and construct the Project.

K. The parties to this Agreement desire to enter into an agreement to set forth the terms and conditions by which the Project can be accomplished.

L. Developer has agreed to pay all costs and related expenses of design, financing and construction necessary to proceed with the Project.

M. The Corporation will use only the increase in sales and use taxes generated from the Property to provide reimbursement to the Developer, as provided in this Agreement.

NOW, THEREFORE, in consideration of the mutual promises, covenants, obligations and benefits of this Agreement, the Corporation and the Developer agree as follows:

ARTICLE I
CONSTRUCTION OF THE IMPROVEMENTS

Section 1.01. The Project. The Project shall generally consist of the development of the Property and shall include, among other things, demolition and/or new construction where necessary, designing and constructing buildings, installation of all utilities, drainage, site improvements, telecommunication and internet improvements, streets and roads, construction of parking, providing access and circulation, signage, landscaping & beautification, site work, driveway access improvements, lighting, tenant improvement allowances to relocate and attract new restaurants and retailers to the Property and all other work in general to make the Property attractive to local and national retailers and customers.

Section 1.02. The Project Costs. The "Project Costs" shall be any and all costs included with creating the Project, including but not limited to land cost, rights-of-way, easements, design, engineering, architecture, planning, testing, permitting, legal and other professional fees, plans, specifications, or surveys, construction, insurance, tenant improvement allowances, and reasonable and customary developer construction supervision fees.

Section 1.03. Construction of the Project. The Developer shall perform or cause to be performed all work associated with the Project. The Project: (i) shall be performed by the Developer or its tenants as provided for below; and (ii) shall be performed by the Developer or its tenants in a good and workmanlike manner in accordance with the provisions of this Agreement. The Developer agrees to obtain building permits for the Project in accordance with the terms of that certain First Amendment to the Development Agreement by and between the City of Tomball, Texas, Developer and Harris County Municipal Utility District No. 273, dated effective of the 17th day of April, 2017, as such may be amended from time to time (the "Development Agreement"), the agreed upon form of which is attached hereto as Exhibit "D".

Section 1.04. Design of the Project. All improvements to be constructed as part of the Project shall be designed by Developer, its consultants or its tenants. All designs, specifications and construction of the improvements shall be in compliance with Article III of the Development Agreement, attached hereto as Exhibit "D". Developer has and/or will apply for and obtain all necessary subdivision plats, if required, permits, licenses, variances, and approvals that are necessary to construct the improvements, including any environmental controls as required by the Development Agreement, attached hereto as Exhibit "D". These expenses are considered reimbursable under this Agreement.

Section 1.05. Performance and Completion of Construction. The City and the Corporation agree that the Project, including any improvements, included within the Property may be designed and constructed and/or funded in phases ("Phases"). Developer shall be responsible for the supervision of the Project and shall dictate the Phases.

Section 1.06. Performance Requirement. The Developer shall invest or cause to be invested, during the term of this Agreement, a minimum of ten million ($10,000,000) in Project Costs for the life of the Project. The Developer shall create or cause to be created or retained over the term of this Agreement a minimum of one hundred (100) full-time or part-time jobs as a result of the Project.

Section 1.07. Performance Criteria. The Corporation and Developer agree that the Developer must substantially comply with the following criteria to fulfill the obligations of this Agreement (the "Performance Criteria"):

A. Developer shall design and build the Project or Phases of the Project.
B. Developer shall comply with the obligations of this Agreement.
C. The fifth year after a retail store larger than 60,000 square feet ("Major Anchor Store") opens for business on the Property, the Developer will have invested or caused to be invested at least Two Million Five Hundred Thousand and No/100 Dollars ($2,500,000.00) in Project Costs and will have created or retained, or caused to be created or retained, at least thirty (30) full or part-time jobs as a result of the Project.
D. The tenth year after a Major Anchor Store opens for business on the Property, the Developer will have invested or caused to be invested at least Five Million and No/100 Dollars ($5,000,000.00) in Project Costs and will have created or retained, or caused to be created or retained, at least sixty (60) full or part-time jobs as a result of the Project.

E. The fifteenth year after the Major Anchor Store opens for business on the Property or when the Project is completed and certified complete by the Developer or Developer's Engineer as described in this Agreement, whichever occurs later, and every year after, the Developer will have invested or caused to be invested at least Ten Million and No/100 Dollars ($10,000,000.00) in Project Costs and will have created or retained, or caused to be created or retained, at least one hundred (100) full or part-time jobs as a result of the Project.

Section 1.08. Performance and Completion of the Project. Developer shall keep full and detailed accounts of all Project Costs incurred in the performance of each Phase of the Project in accordance with Developer's standard accounting practice ("Project Record"). Before the City or the Corporation shall be required to make any payment required in this Agreement, the Developer shall submit to the City and the Corporation satisfactory evidence of the expenditures on the Project in an amount at least equal to the Performance Criteria (as defined in Section 1.07). The City and the Corporation will be provided with access at all reasonable times, after ten (10) days' prior written notice, to Developer's Project Records, including any related records, correspondence, construction drawings, receipts, vouchers, memoranda and other documents relating to the Project or Project Costs, the construction contracts and payments thereof. Developer shall preserve all Project Records for a period of ten (10) years after completion of construction of each phase.

Section 1.09. Insurance. Developer shall maintain in force a general comprehensive public liability policy or policies of insurance written by one or more responsible insurance carriers licensed to do business in the state of Texas. Such policy shall insure against liability for injury to and/or death of any person and/or damage to property of any person or entity in connection with the performance of the Project, with single limit liability coverage of not less than two million dollars ($2,000,000). Developer will deliver to City a Certificate of Insurance evidencing the existence of such policy or policies of insurance.

Section 1.10. Performance Criteria Satisfied. The City's and the Corporation's payment to the Developer of the Available Tax Increment, defined below, shall occur once Developer commences construction of the Project or Phases of the Project and the Corporation receives Tax Revenue from the Property.

Section 1.11. Prohibited Uses. The Developer agrees that no portion of the Property shall be used for any of the purposes or uses provided in Exhibit "C" attached hereto, unless mutually agreed to and waived by the Developer and the Corporation.

ARTICLE II
REIMBURSEMENT

Section 2.01. Tax Revenues. "Tax Revenues" shall mean only the sales and use tax, including penalties and interest, received by the Corporation and which are generated from or attributable to the Property.

Section 2.02. Available Tax Increment. "Available Tax Increment" shall be the portion of the Tax Revenues that the Developer receives from the Corporation, which is an amount equal to:

(a) one hundred percent (100%) of the Tax Revenues attributable to sales and use taxes over the Property from the Effective Date of this Agreement until December 31st of the year in which the first Major Anchor Store opens for business on the Property; and

(b) one hundred percent (100%) of the Tax Revenues attributable to sales and use taxes over the Property for the first year in which a Major Anchor Store opens for business on the Property and for the next five (5) years; and

(c) seventy-five (75%) of the Tax Revenues attributable to sales and use taxes over the Property during years six (6) to ten (10); and

(d) fifty percent (50%) of the Tax Revenues attributable to sales and use taxes over the Property during years eleven (11) to thirty (30).

Section 2.03. Calculation of Available Tax Increment. No later than May 1 of each calendar year, the Corporation shall calculate the Tax Revenues and Available Tax Increment attributable to the prior year and provide such calculation to the Developer for Developer's review and concurrence. The Corporation hereby covenants and agrees upon the Effective Date of this Agreement to create a special fund (the "Reimbursement Fund") for the benefit of the Developer for the purpose of paying the Available Tax Increment. The Corporation shall deposit into the Reimbursement Fund amounts equal to the Available Tax Increment. The Reimbursement Fund shall always remain unencumbered by the Corporation and segregated from all other funds of the Corporation. Such funds are held in trust by the Corporation for the Developer to be used to make annual installment payments of the Available Tax Increment to the Developer in accordance with the terms hereof. Except for payments due to the Developer pursuant to this Agreement, the Reimbursement Fund shall not be used for any other purpose. The Corporation shall deposit with the Developer the Available Tax Revenues no later than June 1 of each calendar year for the term of this Agreement.

Section 2.04. Term of the Agreement. The Corporation's obligation to maintain the Reimbursement Fund and to reimburse Developer pursuant to this Agreement shall continue in full force and effect until the term of this Agreement expires or is earlier terminated. This Agreement shall automatically expire December 31st of the year after the last Available Tax Increment is calculated to the Developer, which is the thirty-first (31) year following the year the first major anchor tenant opens for business on the Property.

Section 2.05. Accounting. The Corporation shall designate a person or entity who will be responsible for providing the Developer with an accurate annual accounting of Tax Revenues and Available Tax Increment and the Reimbursement Fund, in order for Corporation and Developer to calculate the Available Tax Increment. The Corporation shall maintain a repayment record for periodic reporting to each party hereto. Developer understands that Corporation is not permitted to provide Developer with an accounting of sales and use tax amounts paid by individual tenants on the Property, but the City and Corporation will provide aggregate amounts of sales and use taxes paid by all of the tenants on the Property.

Section 2.06. Place for Payment. All payments made of the Available Tax Increment shall be made payable to Developer or its designee, and shall be sent to the designated office and place for notices set forth in paragraph 4.03 below.

ARTICLE III
REPRESENTATIONS

Section 3.01. Representations of the Corporation. The Corporation hereby represents to the Developer that as the date hereof:

The Corporation is a duly created and existing type B economic development corporation under the laws of the State of Texas and is duly qualified and authorized to carry on the governmental functions and operations as contemplated by this Agreement.

The Corporation has the power, authority and legal right under the laws of the State of Texas to enter into and perform this Agreement and the execution, delivery and performance hereof (i) will not, to the best of its knowledge, violate any applicable judgment, order, law or regulation, and (ii) do not constitute a default under, or result in the creation of, any lien, charge, encumbrance or security interest upon any assets of the Corporation under any agreement or instrument to which the Corporation is a party or by which the Corporation or its assets may be bound or affected.

This Agreement has been duly authorized, executed and delivered by the Corporation and constitutes a legal, valid and binding obligation of the Corporation, enforceable in accordance with its terms except to the extent that the enforceability of such instruments may be limited by bankruptcy, reorganization, insolvency, moratorium or other similar laws of general application in effect from time to time relating to or affecting the enforcement of creditors' rights.

The execution, delivery and performance of this Agreement by the Corporation does not require the consent or approval of any person, including the City, that has not been obtained.

Section 3.02. Representations of the Developer. The Developer hereby represents to the Corporation that as of the date hereof:

The Developer is duly authorized and existing and in good standing under the laws of the State of Texas, and is qualified to do business in the State of Texas.

The Developer has the power, authority and legal right to enter into and perform its obligations set forth in this Agreement, and the execution, delivery and performance hereof, (i) has been duly authorized, and will not, to the best of its knowledge, violate any judgment, order, law or regulation applicable to the Developer, and (ii) does not constitute a default under or result in the creation of, any lien, charge, encumbrance or security interest upon any assets of the Developer under any agreement or instrument to which the Developer is a party or by which the Developer or its assets may be bound or affected.

This Agreement has been duly authorized, executed and delivered and constitutes a legal, valid and binding obligation of the Developer, enforceable in accordance with its terms except to the extent that the enforceability of such instruments may be limited by bankruptcy,

reorganization, insolvency, moratorium or other similar laws of general application in effect from time to time relating to or affecting the enforcement of creditors' rights.

The Developer agrees that it does not and will not knowingly employ an undocumented worker. An "undocumented worker" shall mean an individual who, at the time of employment, is not (a) lawfully admitted for permanent residence to the United States, or (b) authorized by law to be employed in that manner in the United States.

ARTICLE IV
GENERAL PROVISIONS

Section 4.01. Defaults. If Developer is in default, after written notice and opportunity to cure, as hereafter provided, in the performance of any material provision of this Agreement or any phase of the Project, except for a requirement of Section(s) 1.06 and 1.07, the Corporation may terminate this Agreement. Default by Developer occurs if: (1) Developer fails to substantially perform any of its material duties under this Agreement, except for a requirement of Section(s) 1.06 and 1.07; (2) Developer becomes insolvent; (3) all or a substantial part of Developer's assets are assigned for the benefit of its creditors; or (4) a receiver or trustee is appointed for Developer. If a default occurs, the Corporation may deliver a written notice to Developer describing the default. Developer shall have thirty (30) days from receipt of the notice to substantially correct a default (or in the case of a default that is not susceptible to correction within thirty (30) days, then shall commence to cure such default within such time and continue with reasonable diligence, until corrected). If the Developer fails to substantially cure the default within such time, this Agreement shall be terminated automatically without further action by the Corporation.

It is agreed that, in the event of a default by the Developer on any of its obligations contained in Section(s) 1.06 or 1.07, after written notice and opportunity to cure as provided above, future payments by the Corporation of the Available Tax Increment shall cease unless and until such default is cured by Developer and the Developer shall reimburse the Corporation the past fiscal year amount of the Available Tax Increment within one hundred and twenty (120) days after the Developer fails to cure the default within such time to cure the default. This section fully specifies the terms under which repayment must be made if the Developer does not meet the performance requirements specified in this Agreement as provided in Local Government Code Chapter 501. This constitutes the full performance agreement remedy for repayment under this Agreement. It is further understood and agreed that if the Developer is convicted of a violation of 8 U.S.C. Section 1324a(f), the Developer shall reimburse the Corporation the full amount paid for the prior fiscal year of Available Tax Increment to the Developer by the Corporation within one hundred and twenty (120) days after the Corporation notifies the Developer of the violation.

Section 4.02. Force Majeure. The duties of Developer to perform any of the provisions of this Agreement shall be excused for a period equal to the period of prevention, delay or stoppage due to causes beyond the control of the Developer by reason of strikes, civil riots, war, invasion, fire or other casualty, or Acts of God ("Force Majeure")

Section 4.03. Miscellaneous.

A. None of the parties may assign its rights nor delegate its responsibilities under this Agreement without the written consent of each other party. However, without the written consent of the Corporation: (i) any successor owner(s) of the Property shall be entitled to any Reimbursement due under this Agreement if Developer assigns such rights to a successor, and (ii) the Developer may assign its full or partial rights to receive payments from the Corporation pursuant to this Agreement to a bank, financial institution, lending institution, partner, subsidiary, parent, or political subdivision of the State of Texas, including Harris County Municipal Utility District No. 273 or Harris County Improvement District No. 22.

B. Notices. All notices, requests, demands or other communications hereunder shall be in writing and shall be delivered by personal delivery, overnight mail or delivery service, facsimile, or United States registered or certified mail, return receipt requested, postage prepaid, addressed as follows (or such other person or address as may be furnished to City in writing from time to time):

CORPORATION:

CITY OF TOMBALL ECONOMIC DEVELOPMENT CORPORATION
21201 QUINN RD., SUITE B
TOMBALL, TX 77553
ATTN: EXECUTIVE DIRECTOR

WITH A COPY TO:
LEAH HAYES
OLSON & OLSON, LLP
2727 ALLEN PARKWAY, SUITE 600
HOUSTON, TEXAS 77019
LHAYES@OLSONLLP.COM

DEVELOPER:

A-K 133 HWY 249 GRAND PARKWAY, L.P.
8827 W. SAM HOUSTON PKWY, N., SUITE 200
HOUSTON, TEXAS 77040
ATTN: STEVEN D. ALVIS
EMAIL: SALVIS@NEWQUEST.COM

WITH A COPY TO:
NEWQUEST PROPERTIES
8827 W. SAM HOUSTON PKWY. N., SUITE 200
HOUSTON, TEXAS 77040
ATTN: LEGAL DEPARTMENT
EMAIL: LEGAL@NEWQUEST.COM
AND:

ALLEN BOONE HUMPHRIES ROBINSON, LLP
3200 SOUTHWEST FREEWAY, SUITE 2600
HOUSTON, TEXAS 77027
ATTN: STEVE ROBINSON
EMAIL: SROBINSON@ABHR.COM

C. The provisions of this Agreement are not intended to create, nor shall they in any way be interpreted to create, a joint venture, partnership, or any other similar relationship between the parties.

D. In the event that any party brings or commences legal proceedings to enforce any of the terms of this Agreement, and a judgment or award determines the successful party in such proceedings, such party shall be entitled to receive from the losing party in such action reasonable actual sums incurred as attorneys' fees and court costs, to be fixed by the courts in such action.

E. The captions heading the various sections of this Agreement are for the convenience and identification only, and shall not be deemed to limit or define the contents of their respective sections.

F. If any provisions or application of this Agreement shall be held illegal, invalid, or unenforceable by any court, the invalidity of such provision or application shall not affect or impair any of the remaining provisions and applications hereof.

G. The applicable venue for any dispute arising hereunder shall be the appropriate district, or county court in and for Harris County, Texas.

H. This Agreement may be executed in several counterparts, by separate signature pates, and/or by facsimile, each of which may be deemed an original and all of such counterparts and/or separate signature pages together shall constitute one and the same agreement.

I. This Agreement is not intended to confer any rights, privileges or causes of action upon any third party.

J. This Agreement constitutes a performance agreement under Section 501.158, Texas Local Government Code. The Corporation finds that the creation of the Project and the capital investment of the Project and the creation and/or retainage of a minimum of one hundred (100) full or part-time employees over the term of this Agreement is sufficient consideration for the incentives provided and expenditures made by the Corporation under this Agreement; thus, the performance requirements required by Section 501.158, Texas Local Government Code are met.

K. Time is of the essence in this Agreement.

[signatures to follow]

IN TESTIMONY OF WHICH, this Agreement, in multiple originals, each having equal force, has been executed on behalf of the parties hereto as follows, to-wit:

"DEVELOPER"

A-K 133 HWY 249 GRAND PARKWAY, L.P., a Texas limited partnership

BY: A-K 133, L.C., a Texas limited liability company, its general partner

By:_____
Name: _____
Title: _____

DRAFT

"CORPORATION"

TOMBALL ECONOMIC
DEVELOPMENT CORPORATION

By:_____
Name: Gretchen Fagan
Title: President, Board of Directors

ATTEST:

By: _____
Name: William E. Sumner
Title: Secretary, Board of Directors

EXHIBIT A
SITE PLAN

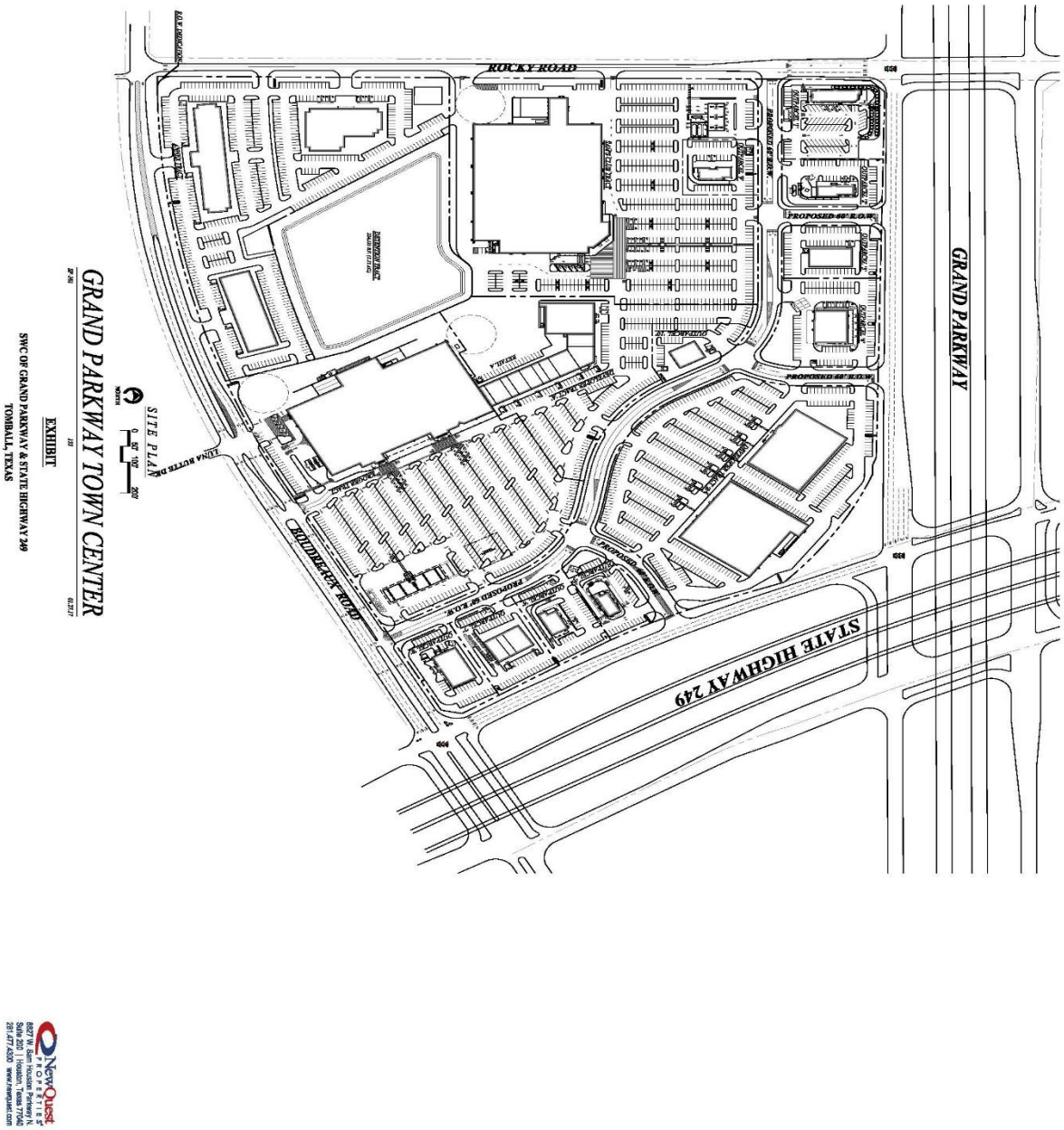


EXHIBIT B
LEGAL DESCRIPTION

May 10, 2016

Tract 1
65.6190 acres of land in the William Perkins Survey, Abstract No. 621,
the T. A. Duclos Survey, Abstract No. 1473,
and in the C. W. Hall Survey, Abstract No. 1639, Harris County, Texas

A FIELD NOTE DESCRIPTION of 65.6190 acres (2,858,363 square feet) of land in the Williams Perkins, Survey, Abstract No. 621, in the T. A. Duclos Survey, Abstract No. 1473, and in the C. W. Hall Survey, Abstract No. 1639, Harris County, Texas; said 65.6190 acre tract of land being several tracts of land conveyed to A-K Venture Capital, L.C., as recorded in Harris County Clerk's File Nos. P577137, 20150073274, 20150446291, 20150424692, 20150446503, 20150446572 and 20150085560; said tract being more particularly described by metes-and-bounds as follows with the bearings being based on Texas State Plane Coordinate System, South Central Zone (NAD83) per GPS Observations using National Geodetic Survey Continuously Operating Reference Stations:

COMMENCING FOR REFERENCE at a 5/8-inch iron rod found at the intersection of the south right-of-way line of Boudreaux Estates Drive (previously called Boudreaux Road, 60 feet wide) with the east right-of-way line of Rocky Road (previously called Boudreaux Road, 60 feet wide) for the northwest corner of a 14.8700 acre tract of land conveyed to Greater Life Church, as recorded in Harris County Clerk's File No. P747894;

THENCE, South 02° 42' 23" East with the east right-of-way line of said Rocky Road, at a distance of 508.47 pass a point at the intersection of the east right-of-way line of said Rocky Road with the north right-of-way line of State Highway 99 (Grand Parkway, right-of-way width varies), as recorded in Harris County Clerk's File No. 20130635661 and continuing for a total distance of 1,125.13 feet to a TXDOT monument disk found at the intersection of the east right-of-way line of said Rocky Road with the south right-of-way line of said State Highway 99 for a northwest corner and the POINT OF BEGINNING of this tract;

THENCE, North 87° 08' 44" East - 3.45 feet with a south right-of-way line of said State Highway 99 to a TXDOT monument disk found for an interior corner of this tract;

THENCE, North 02° 28' 32" West - 66.98 feet with an east right-of-way line of said State Highway 99 to a TXDOT monument disk found for an angle point of this tract;

THENCE, North 42° 34' 59" East - 50.02 feet with the southeast right-of-way line of said State Highway 99 to a TXDOT monument disk found for an angle point of this tract;

THENCE, North 88° 01' 15" East – 1,169.62 feet with the south right-of-way line of said State Highway 99 to a TXDOT monument disk found for an angle point of this tract;

THENCE, South 73° 26' 35" East – 26.19 feet with the south right-of-way line of said State Highway 99 to a TXDOT monument disk found for an angle point of this tract;

THENCE, North 88° 01' 15" East – 30.30 feet with the south right-of-way line of said State Highway 99 to a TXDOT monument disk found for the beginning of a non-tangent curve to the right;

THENCE, in a southeasterly direction with the south right-of-way line of said State Highway 99 and with said non-tangent curve to the right having a radius of 1,030.79 feet, a central angle of 22° 58' 29", a length of 413.33 feet and a chord bearing South 60° 10' 38" East – 410.57 feet to a 5/8-inch iron rod found in the southwest right-of-way line of State Highway 249 (width varies) for the northeast corner of this tract;

THENCE, in a southeasterly direction with the southwest right-of-way line of said State Highway 249 and with a non-tangent curve to the right having a radius of 1,379.00 feet, a central angle of 01° 37' 30", a length of 39.11 feet and a chord bearing South 23° 20' 16" East – 39.11 feet to a 5/8-inch iron rod with cap stamped "T.E.A.M." found for the end of said curve;

THENCE, South 22° 44' 12" East – 154.41 feet with the southwest right-of-way line of said State Highway 249 to a TXDOT monument disk found for a point-of-curvature;

THENCE, in a southeasterly direction with the southwest right-of-way line of said State Highway 249 and with a curve to the left having a radius of 1,512.00 feet, a central angle of 12° 29' 50", a length of 329.80 feet and a chord bearing South 28° 59' 08" East – 329.14 feet to a TXDOT monument disk found for the end of said curve;

THENCE, South 35° 12' 22" East – 395.67 feet with the southwest right-of-way line of said State Highway 249 to a TXDOT monument disk found at the northeast end of a cutback at the intersection of the southwest right-of-way line of said State Highway 249 with the northwest right-of-way line of Boudreaux Road (100 feet wide), as recorded in Harris County Clerk's File No. D900150 for a southeast corner of this tract;

THENCE, South 08° 39' 54" West – 53.94 feet with said cutback to a TXDOT monument disk found at the southwest end of said cutback for a southeast corner of this tract;

THENCE, South 58° 19' 09" West – 791.84 feet with the northwest right-of-way line of said Boudreaux Road to a 5/8-inch iron rod found for the beginning of a non-tangent curve to the right;

THENCE, in a westerly direction with the north right-of-way line of said Boudreaux Road and with said non-tangent curve to the right having a radius of 2,750.00 feet, a central angle of 28° 57' 23", a length of 1,389.80 feet and a chord bearing South 72° 50' 56" West – 1,375.06 feet to a 5/8-inch iron rod found at the intersection of the north right-of-way line of said Boudreaux Road with the east right-of-way line of said Rocky Road for the southwest corner of this tract;

THENCE, North 02° 42' 23" West – 1,732.43 feet with the east right-of-way line of said Rocky Road to the POINT OF BEGINNING and containing 65.6190 acres (2,858,363 square feet) of land.

Note: This metes-and-bounds description was written in conjunction with a survey performed on even date.

COMPILED BY:
TEXAS ENGINEERING AND MAPPING
Civil Engineers - Land Surveyors
Stafford, Texas
Firm Registration No. 10119000
Job No. 356-181
356-181_South_Tract_R1.doc



Brian Nesvadba
Registered Professional Land Surveyor
State of Texas No. 5776

EXHIBIT C
PROHIBITED USES

Except for those uses set forth in leases in effect at the Shopping Center as the date of this Agreement, the Shopping Center shall be subject during the term of this Agreement to those prohibited uses set forth in the Grand Parkway Town Center Planned Development District adopted by the City.

DRAFT

EXHIBIT D
DEVELOPMENT AGREEMENT

FIRST AMENDMENT TO THE DEVELOPMENT AGREEMENT

THE STATE OF TEXAS §
§
COUNTY OF HARRIS §

This **FIRST AMENDMENT TO THE DEVELOPMENT AGREEMENT** ("First Amendment"), effective the ____ day of _____, 2017 (the "Effective Date"), is among the **CITY OF TOMBALL, TEXAS**, a home rule municipality located in Harris County, Texas (the "City"), **A-K 133 HWY 249-GRAND PARKWAY, L.P.,** ("Developer") and **HARRIS COUNTY MUNICIPAL UTILITY DISTRICT NO. 273**, a political subdivision of the State of Texas (the "District"). The City, Developer, and the District are referred to individually as a "Party" or collectively as "Parties."

INTRODUCTION

The City authorized the execution of a Development Agreement between the City and A-K Texas Venture Capital, LC, by Ordinance No. _____ on _____, which Development Agreement was executed effective November 3, 2014 (the "Original Agreement" or the "Development Agreement") to incentivize the developer to develop a mixed use project known as Grand Parkway Town Center, as described in the Development Agreement as the "Project".

Subsequent to the execution and approval of the Original Agreement, the Project has reduced in size to 65.6190 acres, as more adequately shown and described on **Exhibit "A,"** due to right-of-way acquisition and dedication.

Moreover, A-K Texas Venture Capital, LC, the original developer, has sold its entire interest in the Project to A-K 133 HWY 249-GRAND PARKWAY, L.P., a Texas limited partnership ("Developer")

The Project will provide desired new economic development to the City with needed goods and services, jobs and tax base for the City and its citizens, and will have a direct and positive economic benefit to the City.

Developer advised the City that a contributing factor that would induce Developer to develop the Project in the near term, and include the attributes described in the Development Agreement, would be an agreement by the City to provide economic development incentives as set forth in the Development Agreement and First Amendment.

The City desires to encourage business relocations and expansions that will add property tax base and/or generate additional sales tax and other revenue for the City.

City approved and executed the Development Agreement and First Amendment to induce Developer to develop the Project.

The Development Agreement (and this First Amendment) is authorized under applicable law. Specifically, Texas Local Government Code Section 212.172 permits the City to contract with Developer regarding a broad range of issues, including, but not limited to:

> "(b)(7) provide for the annexation of the land as a whole or in parts and to provide for the terms of annexation if annexation is agreed by the parties;
>
> (b)(8) specify the uses and development of the land before and after annexation, if annexation is agreed by the parties; or
>
> (b)(9) include other lawful terms and consideration the parties consider appropriate."

The District was partially in the Extraterritorial Jurisdiction ("ETJ") of Houston and City, and the District elected that the entirety of the District would be located within the ETJ of Tomball, such that the District is fully located in, and subject to, the ETJ of the City.

District and City executed a Strategic Partnership Agreement effective May 6, 2015 (the "SPA") whereby they shared sales and use tax applicable within the District after being annexed for limited purposes. In reliance on the Development Agreement, District and Developer executed a Master Developer Financing Agreement dated April 9, 2015 ("Financing Agreement"). As contemplated by the SPA, the City annexed for limited purposes the entire District. Due to changes in the development schedule, the City and Developer both wish to amend the Development Agreement and the SPA. All Parties believe full purpose annexation of certain commercial areas of the District, defined herein as "Commercial Tract", would benefit all Parties. The Parties acknowledge that full purpose annexation of the Commercial Tract will allow for the most efficient reimbursement of the Developer by the District.

The Parties originally contemplated that the Project would not be annexed for full purposes, as Developer required the Project to remain free of municipal regulatory burden through its development and operation by being protected from annexation by City for the maximum term permitted by law. Developer will agree to the full purpose annexation and the other terms of this First Amendment if the Project can be developed and operated with the uses and development characteristics described in the Development Agreement and this First Amendment (collectively, the "Amended Agreement").

The District is now 136.0894 acres, and a map and metes and bounds more adequately describing the District is attached as **Exhibit "B."**

Due to the changing nature of the development of the District, the Parties wish to amend the Original Agreement, including the timing of when sections of the District will be annexed for full purposes and which portions of the District will remain annexed only for limited purposes, permitting Physical Development (defined below) and land use.

Due to the fact that portions of the District will be annexed for full purposes, the City agrees to rebate a portion of the ad valorem taxes on the property annexed for full purposes to the District.

The Parties desire that the Development Agreement be amended to address the description of a portion of the District being annexed for full purposes and the rebate of certain ad valorem taxes to the District.

The Developer and the City wish to enter into this First Amendment to further provide planning and development services essential to the development of the District and the Developer is contracting to construct and develop the water, sewer, and drainage, park and road facilities for the District, including to provide the public bidding for any third-party contract and to supervise and oversee all contracts and require the third-party contractor to exercise due diligence and good faith efforts to insure compliance by such contractors with all requirements of the City, subject to the terms of this Agreement and the Planned Development District.

City has adopted programs for promoting economic development, and the Amended Agreement and the economic development incentives set forth therein are given and provided by City pursuant to and in accordance with those programs, and the laws outlined in the Development Agreement.

City is authorized by Article III, Section 52-a of the Texas Constitution and Texas Local Government Code, Chapter 380 to provide economic development grants to promote local economic development and to stimulate business and commercial activity in the City.

City finds that the Amendment Agreement (i) embodies and eligible "program;" (ii) promotes economic development in the City of Tomball, Texas; (iii) furthers the general objectives of the City; (iv) benefits the City and City's inhabitants; (v) stimulates business and commercial activity in the City; (vi) meets the requisites under Chapter 380 of the Texas Local Government Code; (vii) is in the best interests of the City, and (viii) but for the economic incentives in the Amended Agreement, the Project would not be developed in the manner described in the Amended Agreement or in the near term.

The Parties hereby consent to this First Amendment as evidenced by their execution hereof.

The Parties agree to work with each other in good faith to enhance and preserve the general area for the citizens of City and surrounding areas.

Therefore, for good and valuable consideration the receipt and sufficiency of which are hereby acknowledged including the agreements set forth below, the Parties agree as follows:

ARTICLE I
DEFINITIONS

Section 1.01 Definitions. In addition to the terms defined elsewhere in this First Amendment, the Original Agreement, or in City ordinances the following terms and phrases used in this First Amendment will have the meanings set out below:

Amended Agreement: means, collectively, the Development Agreement and this First Amendment.

Amended SPA: means the Amended Strategic Partnership Agreement with an effective date as February 6, 2017, a copy of which is attached to this Amended Agreement as **Exhibit "C**."

Annual Payment: means the annual payment to be made by the City to the District, as defined in this First Amendment.

Approved Plans: means plans and specifications approved in accordance with all Approving Bodies.

Applicable Law: means all laws, rules, regulations, and case law applicable from time to time to the Parties and the Project, including but not limited to Texas Local Government Code Chapters 43, 212 and 245, as in effect from time to time.

Approving Bodies: means any or all of the following entities, as appropriate in a particular context: the City; Harris County, Texas; the TCEQ; the Attorney General of Texas; the Comptroller of Public Accounts of Texas; and all other federal, state, and local governmental authorities having regulatory jurisdiction and authority over the financing of the District Facilities, the construction of the District Facilities, or the subject matter of the Original Agreement or this First Amendment.

Bonds: means the District's bonds, notes, or other evidences of indebtedness issued from time to time for the purpose of purchasing, constructing, acquiring, operating, repairing, improving, or extending the District Facilities, payment of Water Impact Fees, payment of permanent wastewater treatment capacity, operating advances, and for such other purposes permitted or provided by state law, whether payable from

ad valorem taxes, the proceeds of one or more future bond issues, or otherwise, and including any bonds, notes, or similar obligations issued to refund such bonds.

Building Permits: permits required for Physical Development, including but not limited to permits relating to development, remodeling and occupancy.

Commercial Tract: means and includes the portion of the District shown on **Exhibit "A"**, or such revised portion of the Property as designed by Developer in notice to the City and the District.

Project Drainage and Detention Facilities: means and includes the Project detention pond, pump station, outfall structures, detention inlets in or along road right-of-ways and other drainage or detention facilities constructed or acquired or to be constructed or acquired by the District to serve the District, more adequately described at **Exhibit "D."**

District Facilities: means and includes the Project Wastewater Facilities, Project Drainage and Detention Facilities, drainage, road, and park and recreational facilities constructed or acquired or to be constructed or acquired by the District to serve the Project.

Project Water Facilities: means and includes the Project water lines and distribution facilities constructed or acquired or to be constructed or acquired by the District to serve the Project, more adequately described at **Exhibit "E."**

Project Wastewater Facilities: means and includes the Project wastewater lines and distribution facilities, including a lift station, constructed or acquired or to be constructed or acquired by the District to serve the Project, more adequately described at **Exhibit "E."**

Permitted Uses: means the uses of the Property described in the Amended Agreement (including by not limited to **Exhibit "F"**—Grand Parkway Town Center PDD), and is intended to include all commercial, office, retail, mixed use, self-storage, medical, professional, hotel, entertainment and ancillary uses.

Physical Development: means the physical aspects of the Project, including but not limited to buildings, signage, parking, fencing, and other structural aspects of the Project.

Public Roadways: means public streets constructed by the District for public use,

Water Impact Fee: means the amount to be paid to the City for water capacity and the City Water Facilities for each commercial connection within the District pursuant

to the City Ordinance on impact fees. The current calculation for the City Water Impact Fee is attached as **Exhibit "G."**

Any terms which are used herein and which are defined in the Code of Ordinances shall have the meaning ascribed to them in the Code of Ordinances unless same are expressly defined in this First Amendment in which case the definition contained herein shall control. Capitalized terms which are used and defined in this Original Agreement shall have the meaning ascribed to them in this First Amendment or the Original Agreement.

ARTICLE II
FULL PURPOSE ANNEXATION AND LAND USE

Section 2.01 Amended Strategic Partnership Agreement. The City and the District agree to take all steps necessary and convenient to enter into the Amended Strategic Partnership Agreement, substantially in the form of which is attached as **Exhibit "C".**

Section 2.02 Full Purpose Annexation of Portions of the District; Agreement not to Full Purpose Annex other Portions of the District. Pursuant to the Amended Strategic Partnership Agreement, the Parties agree to proceed with the development of the District under the provision of the Texas Local Government Code, Section 43.0751(f)(4). The Amended Strategic Partnership Agreement states that the City will annex for full purposes all of the portions of the District that are commercial property (the "Commercial Tract") in lieu of an annexation of any residential property or payment of any fee on residential property. A map showing the proposed Commercial Tract is attached as **Exhibit "A"**. The City agrees not to annex for full purposes any other property, other than the Commercial Tract, for a period of thirty (30) years or when

i. water, wastewater, drainage, street, road, park and recreational facilities have been completed to serve at least 90% of the developable acreage within the land within the District; and

ii. the Developer or developers in the District, or their successors or assigns, have been reimbursed by the District to the maximum extent permitted by the rules of the Texas Commission on Environmental Quality or the City assumes any obligation of the District for such reimbursement to the developers under such rules and pursuant to the terms of any reimbursement agreements between the District and such developers.

Section 2.03 Terms of Full Purpose Annexation. The terms of full purpose annexation for the Commercial Tract are as follows:

a. Developer shall petition for full purpose annexation of the Commercial Tract.

b. Developer shall, concurrently with petitioning for annexation, seek Planned Development District ("PDD") zoning for the annexed area, pursuant to City Zoning Ordinance Section 50-80, in accordance with the PDD regulations attached as **Exhibit "F."**

c. The City will expedite the annexation and zoning of the Commercial Tract, to be considered at the same City Council meeting as successive agenda items.

d. If the annexation is approved, but the PDD zoning is not approved, then Developer may apply for disannexation of the Commercial Tract, whereupon the City agrees to consider disannexation of the Commercial Tract as soon as practical. Moreover, the Amended SPA shall be further amended to have the same provisions as the original SPA, petition for limited purpose annexation of the Commercial Tracts (such that the Parties are in the same position as prior to the execution of this First Amendment). Additionally, this First Amendment shall terminate upon the disannexation and amendment of the SPA, and the Development Agreement shall continue as a valid and binding agreement of the Parties.

Section 2.04 Uses and Development After Annexation. The specified uses and development of the Commercial Tract permitted after full purpose annexation, notwithstanding any conflicting provision of this Amended Agreement, City zoning or land use regulations or any other provision of Applicable Law, are as follows:

a. The Permitted Uses are permitted both before and after full purpose annexation of the Commercial Tract.

b. The physical development of the Project consistent with the Amended Agreement is permitted both before and after full purpose annexation.

c. The District is currently in Harris County, Texas and the extraterritorial jurisdiction of the City. The intent of this Agreement and the PDD is for the Developer to develop the Project, to the extent possible, with the same restrictions and limitations the Developer would have in Harris County, Texas and the extraterritorial jurisdiction of the City even after full purpose annexation of the Project.

Section 2.05 Signage Provisions. On-premises and off-premises ground signs will be provided in a cohesive manner throughout the Commercial Tract. **Exhibit "I"** attached to the Original Agreement is hereby deleted in its entirety.

Section 2.06 Building Permits/Inspections/Certificate of Occupancy. The foregoing notwithstanding, the City shall require Building Permits for the Project under the current provisions of Chapter 10 of the City of Tomball Code of Ordinances. Subject to any changes in state law, for any construction within five (5) years of the date of this Agreement, the City shall issue Building Permits so long as the plans for such improvements meet the standards of the International Building Code, 2012 edition (nonresidential) (the "International Building Code") and any amendments to the International Building Code adopted by the City and in effect as of the date of this First Amendment. Any construction commenced after five (5) years of the date of this Agreement will be governed by the version of the international building code then in effect in the City. Site Plans shall be submitted and approved by the City prior to accepting Building Permit requests. The City will review and approve Site Plans in accordance with the Planned Development District (PDD) regulations. The City shall not consider any other provisions of the City of Tomball Code of Ordinances, other than stated above, when reviewing requests for Building Permits. The City shall issue Building Permits no later than fourteen (14) days after application for tenant spaces and no later than thirty (30) days after application for buildings, provided that all requirements for the issuance of such permits have been met. Developer shall elect to have the City utilize a third-party plan reviewer and building inspector, such as Bureau Veritas, at Developer's expense, in order to perform and expedite permit approvals. Notwithstanding the foregoing, no City inspections shall be required following the issuance of a Building Permit, other than the final inspection by the City fire marshal and any zoning compliance inspection. A certificate of occupancy shall be issued by the City within ten (10) days of passing the City fire marshal's final inspection and the City's receipt of certificates from a City approved third-party building inspector certifying such building has been constructed per the requirements of the International Building Code. Developer will only be required to pay to the City a fee in the amount of ten percent (10%) of the ordinarily required permit or fee cost for any construction, permits or inspections in accordance with the City's adopted Master Fee Schedule. The Developer is responsible for the cost of any third party inspector.

ARTICLE III
DESCRIPTION, DESIGN, AND CONSTRUCTION OF THE DISTRICT FACILITIES

Section 3.01 Description of the Project Facilities. Preliminary plans and specifications of the Project Facilities shall be prepared by the District Engineer in accordance with this Amended Agreement. The Project Facilities may include structures or improvements outside the boundaries of the District if reasonably necessary to serve the area within the District. The Project Facilities shall be designed by the District Engineer and constructed in accordance with sound engineering principals and in compliance with all applicable requirements and criteria of the applicable Approving Bodies. The District shall not be required to design and construct the District Facilities to requirements more stringent than the City's requirements. Some of the District Facilities, which were designed prior

to the approval of this Amended Agreement may be designed to City of Houston or Harris County standards, depending on the specific District Facility.

Section 3.02 Construction of the District Facilities. The District shall construct the District Facilities in accordance with the final plans and specifications. All changes of the final plans and specifications designed after the execution and approval of this Agreement shall be submitted to the City for approval. The District shall design, construct or extend the District Facilities in such phases or stages as the District, in its sole discretion, from time to time may determine to be economically feasible. The City has the right, but not the obligation, to inspect the design or construction of the District Facilities. The City may attend the final walk-through and inspection of the installation of the District Facilities. The District is not required to have any building inspections or pay any fees and charges applicable to inspections performed by the City with regard to the District Facilities.

Section 3.03 Review of District Facilities. Upon completion of the District Facilities, the District Engineer shall certify that the District Facilities have been completed in substantial compliance with the Approved Plans; the District Engineer shall certify that all bills and sums of money due in connection with the construction and installation of the District Facilities have been fully paid and that the District Facilities are free of any and all liens and claims, all according to the certification of the construction contractor. The District will provide this certificate to the City.

ARTICLE IV
WATER FACILITIES

Section 4.01 Water Supply. The City shall provide the Project with ultimate water service once the District has constructed the distribution system for the Project within the District. The City shall model the water system and identify any improvements required for the City to provide the ultimate water service to the Project. The District agrees to pay for 50% of the water modeling costs as well as the water system improvements required due to the development of the Project in the District. The City Water Impact Fees will apply to each individual customer and land use of the District that applies for water service from the City. The City and District will agree to a Water Impact Fee credit for any water system improvements the District must install due to the findings of the water modeling study. The City shall be responsible for the billing and collection of all water services in the District.

Section 4.02 Letter of Capacity Assurance; Assignability. The City agrees that the City Manager shall, upon reasonable request from the District, issue a letter of assurance to the owner of the platted property within the District confirming water availability for platted property, based upon the standard City criteria published by the City regarding the calculation of water requirements for various types of improvements. A draft example of that letter is attached as **Exhibit "H"** to this Amended Agreement.

Section 4.03 Water Impact Fees. In consideration of the City's provision of water supply and distribution capacity, the District, Developer or customer agree to pay to the City the Water Impact Fee. The City will confirm that the Water Impact Fee is paid prior to securing water service to the end customer. The Water Impact Fee shall be paid to the City by or on behalf of the District or by each individual water service customer before the connection of each specific retail meter. The City may amend the Water Impact Fee from time to time in accordance with the requirements of state law; provided, however, the Water Impact Fee shall be the same as the connection charge required inside the City limits. A copy of the City's Water Impact Fee is attached as **Exhibit "G."**

Section 4.04 Project Water Facilities. The Project Water Facilities shall be constructed by or on behalf of the District at its expense, including the cost to connect to existing City water distribution lines. The District agrees to follow Chapters 49 and 54 of the Texas Water Code, as amended, in recommending award of any construction contracts for Project Water Facilities. The District shall design, construct or extend the District Facilities in such phases or stages as the District determines to be economically feasible. The City, as part of its plan review, will approve the construction phases as it pertains to the operation and maintenance of the Project Water Facilities. The District shall construct the District Facilities in accordance with the final plans and specifications. For facilities to be conveyed by the District to the City, the Project Water Facility will be designed and constructed as per City requirements. For Project Water Facilities, the City shall review and approve the design plans and inspect the construction of the Project Water Facilities. Additionally, the City shall conduct a final walk-through and inspection of the installation of these District Water Facilities.

Section 4.05 Two Year Warranty of Project Water Facilities. For any Project Water Facility that will be deeded to the City for full ownership, operation and maintenance, the District shall (i) require a two year warranty of all work for Project Water Facilities within the construction contract; or (ii) require a one year warranty of all work for Project Water Facilities and the District shall warranty all work for the subsequent year. The District at its sole discretion will determine in each construction contract for the Project Water Facility which option it will choose to insure a two year warranty of all work regarding the Project Water Facilities.

Section 4.06 Ownership of the Project Water Facilities by the City. As the Project Water Facilities are constructed and completed, the District shall convey the Project Water Facilities to the City including all warranties.

Section 4.07 Ownership, Operation, and Maintenance of the Project Water Facilities by the City. As construction of each phase of the Project Water Facilities are completed, representatives of the City shall inspect the same and, if the City finds that the same have been constructed and completed in accordance with the final plans and specifications, the City will accept the same, subject to the two year warranty of work included in this Amended Agreement. Upon acceptance of the Project Water Facilities, the City shall

own, operate and maintain the Project Water Facilities by the City at its sole expense as provided herein. In the event that the Project Water Facilities have not been completed in accordance with the final plans and specifications, the City will immediately advise the District in what manner said Project Water Facilities do not comply, and the District shall immediately correct the same; whereupon the City shall again inspect the Project Water Facilities and accept the same if the defects have been corrected. During the term of this Amended Agreement, the City will operate the Project Water Facilities and provide service to all users within the District without discrimination. The City shall be responsible for the operation, maintenance, repair and rehabilitation of the Project Water Facilities by any governmental, administrative or judicial body promulgating the same.

Section 4.08 Water Modeling. The City shall obtain an engineering firm to model the city water system. The District shall pay for 50% of the cost to model the system. Once the model is complete, different water demand scenarios including fire flow demands will be modeled of the District. If there are any needed improvements to the City's water system in order for the system to provide the adequate water service, as required by the TCEQ regulations, the District shall participate in the construction of said improvements.

Section 4.09 City Water System Improvements. Any improvements to the water system that are identified by the modeling of the water system and by including the impact of the service and fire demands of the District shall be paid for by the District. The water model will include the District water facilities and demand projections of the anticipated water use at ultimate build out for the Project. The model will also include fire demands at the District. If the water system within the District or surrounding area need system improvements in order to provide the TCEQ minimums for a water system because of the impact of the District demands then the District shall pay for those improvements, including the costs of design and incidentals. The District will receive a Water Impact Fee credit for all water system improvements made by the District on behalf of the City pursuant to the water model. The City shall design, construct and inspect the improvements to the water system.

ARTICLE IV
OTHER DISTRICT FACILITIES AND OPERATION

Section 5.01 District Wastewater Facilities. The District will construct, own, operate, maintain, and rehabilitate the District's Wastewater Facilities, which includes the Project Wastewater Facilities. The District will not convey the District's Wastewater Facilities to the City for ownership or maintenance during the term of this Amended Agreement. The District shall contract with a regional wastewater treatment provider to provide regional wastewater treatment service. The District will contract and pay for all permanent wastewater treatment capacity, all operational costs for permanent wastewater treatment plant capacity and any upgrades or improvements to the contracted permanent wastewater treatment plant capacity. The District is responsible for the operating costs

and expansion of the permanent wastewater treatment facilities. The District shall not pay to the City any wastewater impact fee.

Section 5.02 Project Drainage and Detention Facilities. The District or another governmental entity will construct, own, operate, maintain, and rehabilitate the District's Drainage and Detention Facilities. The District will not convey the Project Drainage and Detention Facilities to the City for ownership or maintenance during the term of this Amended Agreement. The District may contract with a property owners association for maintenance of Project Drainage and Detention Facilities.

Section 5.03 Park Facilities. The District shall be permitted to acquire, own, develop, construct, improve, manage, maintain and operate improvements, facilities, and equipment for the purpose of providing parks and recreational facilities, to the extent authorized and permitted under state law. Upon any future dissolution of the District, the District shall convey to the City and the City agrees to accept the conveyance of any such park and recreational facilities, whereupon the City shall assume responsibility for the operation and maintenance of such facilities.

Section 5.04 Public Roadways. The District will construct the Public Roadways for acceptance by the City. The City will own and accept the Public Roadways upon completion of the construction of the Public Roadways. The City has the right, but not the obligation, to attend all inspections of the Public Roadway with the District Engineer. The District will provide all maintenance of the roadways either directly or to reimburse the City for costs associated with the maintenance of the Public Roadways accepted by the City. The District has the legal right to maintain the Public Roadways by using excess water or sewer revenues to maintain the Public Roadways. The District can levy a maintenance tax to maintain the Public Roadways. The District has the right to sell road bonds to construct, maintain, reconstruct, repair the Public Roadways as a capital project. The City shall consent to the District obtaining road powers if needed to construct or maintain the Public Roadways. Neither the City nor the District will accept, own, or maintain private roadways.

Section 5.05 Operation Charges. The District will contract with an operator to operate, maintain and repair the District Wastewater Facilities, Project Drainage and Detention Facilities and the Public Roadways

ARTICLE VI
FINANCING OF THE DISTRICT FACILITIES

Section 6.01 Authority of District to Issue Bonds. The District shall have the authority to issue, sell and deliver Bonds from time to time, as deemed necessary and appropriate by the Board of Directors of the District, for the purposes, in such forms and manner, and as permitted or provided by federal law, the general laws of the State of Texas and the Consent Ordinance.

Section 6.02 District Taxes. The District is authorized to assess, levy and collect ad valorem taxes upon all taxable properties within the District to provide for (i) the payment in full of the District's obligations, including principal, redemption premium, if any, or interest on the Bonds and to establish and maintain any interest and sinking fund, debt service fund or reserve fund and (ii) for the administration, operation, and maintenance purposes, all in accordance with applicable law. The parties agree that nothing herein shall be deemed or construed to prohibit, limit, restrict or otherwise inhibit the District's authority to levy ad valorem taxes as the Board of Directors of the District from time to time may determine to be necessary. The City and the District recognize and agree that all ad valorem tax receipts and revenues collected by the District, together with all Annual Payments shall become the property of the District and may be applied by the District to the payment of all or any designated portion of the principal or redemption premium, if any, or interest on the Bonds or otherwise in accordance with applicable law.

Section 6.03 Bonds as Obligations of the District. Unless and until the City shall dissolve the District and assume the District's assets and District's obligations, the Bonds of the District, as to both principal and interest, shall be and remain obligations solely of the District and shall never be deemed or construed to be obligations or indebtedness of the City; provided, however, that nothing herein shall limit or restrict the District's ability to pledge or assign all or any portion of the Annual Payments to be made by the City to the District as provided in this First Amendment, to the payment of the principal of, the redemption premium, if any, or interest on the Bonds or other contractual obligations of the District relating to the financing, acquisition, or use of the District Facilities.

Section 6.04 Not an Allocation Agreement. The City, Developer and District agree that the Amended Agreement is not an Allocation Agreement pursuant to 54.016(f), Texas Water Code.

Section 6.05 Northpointe Water Control and Improvement District. The Parties consent and acknowledge that a portion of the District lies within the Northpointe Water Control and Improvement District ("Northpointe"), which does not provide water, wastewater or internal storm drainage facilities, but only provides major outfall drainage and storm water detention to the land within its boundaries. The City does not require consent if Northpointe issues additional bonds, and the Northpointe bonds are not obligations of the City.

ARTICLE VII
ANNUAL PAYMENTS AND DISTRICT TAXES

Section 7.01 Calculation of Annual Payment. In consideration of the development of the land within the District and the related increase in the taxable value of such land to the City and in order to enhance the economic feasibility of the District and more equitably distribute among the taxpayers of the City and the District the burden of ad

valorem taxes to be levied from time to time by the City and the District, the City agrees to collect and pay to the District a portion of the ad valorem taxes collected by the City in future years on the land and improvements within the District and within the City limits (the "Annual Payment"). That portion of the City property tax which will be returned to the District, shall be at a rate of one hundred percent (100%) of the debt service portion of the City's ad valorem taxes applied on the land in the District and within the City limits and fifty percent (50%) of the maintenance and operation portion of the City's ad valorem tax applied on the land in the District and within the City limits. The Annual Payment shall be a payment of a portion of the City's tax revenues actually collected and received by the City, exclusive of any interest and penalties paid by the taxpayer to the City and exclusive of any collection costs incurred by the City.

Section 7.02 Payment of Annual Payment. The Annual Payment shall begin on May 1 in the calendar year following the calendar year for which the District initially receives a tax roll from the Harris County Appraisal District and shall be payable each May 1 thereafter (the "Payment Date"), with each such Annual Payment being applicable to the calendar year preceding the calendar year of each such May 1 (e.g. if the District receives a tax roll for the calendar year 2017, the Annual Payment for such year will be due May 1, 2018). Each Annual Payment that is not paid on or before the Payment Date shall be delinquent and shall incur interest at the rate of one percent (1%) of the amount of the Annual Payment per month, for each month or portion thereof during which the Annual Payment remains unpaid. On September 1 of each calendar year, the City shall cause to be paid to the District those portions of the Annual Payment which reflect collections made by the City subsequent to the Payment Date. The obligation of the City to make Annual Payments to the District shall terminate upon the termination of this First Amendment.

Section 7.03 Supplemental Tax Rolls; Correction Tax Rolls; Adjustment to Annual Payment. The Parties recognize and acknowledge that, from time to time, the Harris County Appraisal District may submit to the District or the City one or more supplemental tax rolls and/or correction tax rolls and that each such supplemental tax roll and/or correction tax rolls and that each such supplemental tax roll and/or correction tax roll may affect the total value of taxable properties within the District for a particular year and therefore the Annual Payment due and payable by the City for such year. The District agrees that promptly upon receiving a supplemental tax roll and/or correction tax roll, the District shall deliver such supplemental tax roll and/or correction tax roll to the City. Promptly upon receiving a supplemental tax roll and/or collection tax roll from the District, the City shall recalculate the amount of the Annual Payment pertaining thereto and shall notify the District of the amount of such recalculated Annual Payment if the supplemental tax rolls total more than a one million dollar difference. If the amount of the supplemental tax roll is less than one million dollars, the City and District will determine the amount and true-up the next fiscal year. Within forty-five (45) days from the date on which the District receives notice of a recalculated Annual Payment

that is more than one million dollars difference due to the supplemental tax rolls, the City shall offer to pay to the District the amount of the recalculated Annual Payment or offer to adjust the next Annual Payment accordingly. The District must notify the City regarding the District's preference of the recalculation of the Annual Payment.

Section 7.04 Access to Records for Verifying Calculation of Annual and Monthly Revenue Payments. The City shall maintain proper books, records and accounts; shall provide the District with an accounting together with each Annual Payment; and shall afford the District or its designated representatives reasonable access to its books, records, and accounts for purposes of verifying the amounts of each Annual Payment or recalculated Annual Payment, which is or becomes due and payable by the City hereunder. The District shall maintain proper books, records, and accounts of all Bonds and the District's debt service requirements and shall afford the City or its designated representatives reasonable access thereto for purpose of verifying the amounts of Annual Payments relative to the District's debt service requirements and general operating requirements.

Section 7.05 Termination of Debt Service Annual Payments. When the District reimburses the Developer in the District for the last reimbursement of a District Facility, the District will give the City written notice. The District will notify the City the Debt Service Annual Payment will cease when that series of bonds are retired and paid off by the District. In the written notice to the City, the District will notify the City what year the series of bonds will be retired. When the District has paid off that series of bonds, the City's Annual Payment solely related to debt service shall cease. The District is allowed to refund this last series of bonds, but is not allowed to extend the maturity upon refunding. Any additional debt issued by the District for rehabilitation or reconstruction of District Facilities will not impact the termination of the Debt Service Annual Payment as described in this Section. The Annual Payment of fifty percent (50%) of the maintenance and operation tax will continue until the City dissolves the District.

Section 7.06 Economic Incentives, Economic Development Grant and Economic Development Program. The City and the District agree that any cash payments from the City, whether the Annual Payments, or the Sales and Use Tax revenue under the Strategic Partnership Agreement and Amended Strategic Partnership Agreement, or any other payments from the City can be used by the District as an economic development grant or an economic development incentive program, as contemplated under Chapter 380 of the Texas Local Government Code. The District can use the monies received by the City (whether Annual Payments, Sales and Use Tax revenue or any other revenue) for anything the City could use the monies for or any other legal use of the revenue by the District.

ARTICLE VIII
DISSOLUTION OF THE DISTRICT

Section 8.01 Dissolution of the District. Notwithstanding the City annexing for full purposes the Commercial Tract, the City agrees not to dissolve the District or annex the residential portions of the District for full purposes until the earlier of the following conditions have been met:

a. Thirty years from the effective date of this Amended Agreement; or

b. The date when:

iii. water, wastewater, drainage, street, road, park and recreational facilities have been completed to serve at least 90% of the developable acreage within the land within the District; and

iv. the Developer or developers in the District, or their successors or assigns, have been reimbursed by the District to the maximum extent permitted by the rules of the Texas Commission on Environmental Quality or the City assumes any obligation of the District for such reimbursement to the developers under such rules and pursuant to the terms of any reimbursement agreements between the District and such developers.

Section 8.02 Transition upon Dissolution. When all required findings and procedures for the dissolution of the District have been duly, properly, and finally made and satisfied by the City, and unless otherwise mutually agreed by the City and the District pursuant to then existing law, the District agrees that its officers, agents, and representatives shall be directed to cooperate with the City in any and all respects reasonable necessary to facilitate the dissolution of the District and the transfer of the District assets to and the assumption of the District obligations by the City.

ARTICLE IX
TERM ASSIGNMENT AND REMEDIES

Section 9.01 Term. The term of the Amended Agreement will continue for thirty (30) years from the Effective Date. As to the District, the Amended Agreement shall terminate earlier automatically with the termination of the Amended Strategic Partnership Agreement. Otherwise the Amended Agreement may terminate on an earlier date under other provisions of this First Amendment or by written agreement of the City, Developer, and the District.

Section 9.02 Termination and Amendment by Agreement. The Amended Agreement may be terminated or amended as to all of the District at any time by mutual written consent of the City, Developer, and the District, or may be terminated or amended only as to a portion of the District by the mutual written consent of City, the owners of the portion of the land affected by the amendment or termination, Developer, and the District. In addition, Developer or the then owner of the Land may terminate the Amended Agreement at any time prior to development occurring on the Land if such party determines, in its sole discretion, that it is not beneficial for such party to proceed with the Project in accordance with the terms of the Amended Agreement. If such party terminates the Amended Agreement at a time when any site plan has been approved for any contemplated development activity on the Commercial Tract, such termination shall render any approved site plan void and no development approved on the site plan shall be undertaken on the Land. Upon termination of the Amended Agreement, any obligation of the City to provide water to unimproved Land within the District shall also terminate.

Section 9.03 Assignment.

a. The Amended Agreement, and the rights and obligations of Developer, in whole or in part, may be assigned by Developer to a successor or assign that acquires a portion of the Commercial Tract, a parent, subsidiary, affiliate or related entity of Developer.

b. Except for an assignment authorized by subsection a., the Amended Agreement, and the rights and obligations of Developer, in whole or in part, may be assigned by Developer to a subsequent owner, developer and/or builder of all or a portion of the Land upon written notice to the City. Any such assignment will be in writing, specifically set forth the assigned rights and obligations and be executed by the proposed assignee.

c. Except for an assignment authorized by subsection a., Developer will provide to the City at least fifteen days advance written notice of any assignment or partial assignment of Developer's rights and obligations under the Amended Agreement. If Developer assigns its rights and obligations as to a portion of the Land, then the rights and obligations of any assignee and Developer will be severable and Developer will not be liable for the nonperformance of the assignee and vice versa. In the case of nonperformance by one developer, the City may pursue all remedies against that nonperforming developer but will not impede development activities of any performing developer as a result of that nonperformance. The Amended Agreement is not intended to create any encumbrance to title as to any ultimate consumer who purchases any portion of the Land.

d. This District may assign any or all of its rights and obligations under the Amended Agreement to Harris County Improvement District No. 22. The District shall provide written notice to Developer and City of such assignment.

ARTICLE X
MISCELLANEOUS PROVISIONS

Section 10.01 Conflict, Term. The Amended Agreement shall remain in full force and effect except as specifically amended hereby. This First Amendment shall continue in force and be in effect so long as the Original Agreement is in force and effect.

Section 10.02 Severability; Waiver. The provisions of the Amended Agreement are severable, and if any provision or part of the Amended Agreement or the application thereof to any person or circumstances shall ever be held by any court of competent jurisdiction to be invalid or unconstitutional for any reason, the remainder of the Amended Agreement and the application of such provision or part of the Amended Agreement to other persons or circumstances shall not be affected thereby so long as the Amended Agreement is modified to provide the economic benefit or prevent the obligation or detriment provided or prevented by such severed provision.

Section 10.03 Merger. The Amended Agreement embodies the entire agreement among the Parties relative to the subject matter hereof and thereof.

Section 10.04 Authority for Execution. The City certifies, represents and warrants that the execution of this First Amendment is duly authorized and adopted in conformity with City ordinances. Developer hereby certifies, represents and warrants that the execution of this First Amendment s duly authorized and adopted in conformity with the articles of incorporation and bylaws or partnership agreement of each entity executing on behalf of Developer. The District certifies, represents and warrants that the execution of this First Amendment is duly authorized and adopted in conformity with the statutes and rules governing the District.

Section 10.05 Employment of Undocumented Workers. During the term of the Amended Agreement, Developer agrees not to knowingly employ any undocumented workers and, if convicted of a violation under 8 U.S.C. Section 1324a(f), shall repay any funds received hereunder from the City as of the date of such violation within 120 days after the date the Lessee is notified by the City of such violation. Developer is not liable for violations by any affiliate, tenants of the Project other third party with which Developer contracts.

Section 10.06 Developer Reliance. The Parties recognize that Developer would not expend significant sums to develop the Project without the commitments of the City

herein, and that the Developer relied on the legal enforceability of the City's obligations hereunder. The City will receive significant economic benefit from the development and operation of the Project. The City is accepting the benefit of the Project.

Section 10.07 Disclosure. City and District acknowledge receipt of Texas Ethics Commission Form 1295.

Section 10.08 Cooperation/Approvals/Time. The Parties shall cooperate in good faith to achieve the benefits of the Amended Agreement. The Parties shall take such additional actions and execute such additional documents as reasonably necessary to effectuate the Amended Agreement. No approval or consent related to the Amended Agreement may be unreasonably withheld, conditioned or delayed. Time is of the essence in the performance of the Amended Agreement.

Section 10.09 Recordation. An executed copy of both the Amended Agreement and the Original Agreement shall be recorded in the Real Property Records of Harris County, Texas.

Section 10.10 Construction. The Amended Agreement shall be construed equally as to the Parties and shall not be strictly construed against the drafter, as the documents are fully negotiated and jointly drafted by sophisticated parties with competent legal counsel.

Section 10.11 Exhibits. The following exhibits are attached to this First Amendment and made apart hereof for all purposes:

Exhibit "A" Metes and Bounds of the Project
Exhibit "B" Metes and Bounds of the District
Exhibit "C" Draft Amended Strategic Partnership Agreement
Exhibit "D" Paving and Drainage Map of the Project
Exhibit "E" Water and Sanitary Map of the Project
Exhibit "F" Grand Parkway Town Center PDD
Exhibit "G" Current City's Water Impact Fee
Exhibit "H" Draft Letter of Capacity

The undersigned Parties have executed this First Amendment on the dates indicated below.

CITY OF TOMBALL, TEXAS,
a home rule municipality

By: _____
Name: _____
Title: _____

ATTEST:

_____
Doris Speer, City Secretary

STATE OF TEXAS §

COUNTY OF HARRIS §

This instrument was acknowledged before me the ___ day of _____, 2017, by _____, _____ of the City of Tomball, Texas, a home rule municipality.

_____
Notary Public Signature

DRAFT

A-K 133 HWY 249-GRAND PARKWAY, L.P.,
a Texas limited partnership

By: A-K 133, L.C., a Texas limited liability company, its general partner

By:_____
Name: _____
Title: _____

STATE OF TEXAS §

COUNTY OF HARRIS §

This instrument was acknowledged before me the ____ day of _____, 2017, by _____, _____ of A-K 133 HWY 249-Grand Parkway, L.P.

_____
Notary Public Signature

HARRIS COUNTY MUNICIPAL UTILITY DISTRICT NO. 273, a political subdivision of the State of Texas

By: _____
Name: _____
Title: _____

ATTEST:

By: _____
Name: _____
Title: _____

STATE OF TEXAS §

COUNTY OF HARRIS §

This instrument was acknowledged before me the ____ day of _____, 2017, by _____, _____ of Harris County Municipal Utility District No. 273, a political subdivision of the State of Texas.

_____
Notary Public Signature

After Recording Return to:
A-K 133 HWY 249-GRAND PARKWAY, L.P.
c/o NewQuest Properties
8827 W. Sam Houston Pkwy. N., Suite 200
Houston, Texas 77040
Attn: Steven D. Alvis

Regular City Council
Agenda Item
Data Sheet

Meeting Date: May 1, 2017

Topic:

Adopt, on Second Reading, Ordinance No. 2017-12, an Ordinance of the City of Tomball, Texas, Amending Chapter 50 (Zoning) of the Tomball Code of Ordinances By Granting a Conditional Use Permit (CUP) to Francisco Choi, on behalf of TamiroWood, LLC, to Operate an "Assisted Living Facility (Continuing Care Retirement Community)" at 609 South Pine Street; Said Property Being approximately 2 acres, and Being Legally Described as Part of Outlots 127 and 129 Five Acre Tracts Tomball Outlots, Harris County, Texas, Generally Located on the East Side of South Pine Street Between James Street and Cherry Laurel Street; Providing Requirements and Conditions for this CUP; Containing Findings and Other Provisions Relating to the Subject; Providing a Penalty in an Amount Not to Exceed $2,000 for Violations Hereof; and Providing for Severability

Background:

On Monday, April 10, 2017, the Planning and Zoning Commission, after conducting a public hearing, unanimously voted to recommend approval of the request.

Origination:

Francisco Choi, on behalf of TamiroWood LLC.

Recommendation:

Approval

Party(ies) responsible for placing this item on agenda:

Craig T. Meyers, Community Development Director

ACTION TAKEN

Approval	Readings Passed	Other
☐ Yes ☐ No	☐ 1st ☐ 2nd	

ATTACHMENTS:

Ordinance No. 2017-12
Staff Report
Notice of Public Hearing
Property Owner Notification Letter
Response Form

ORDINANCE NO. 2017-12

AN ORDINANCE OF THE CITY OF TOMBALL, TEXAS, AMENDING CHAPTER 50 (ZONING) OF THE TOMBALL CODE OF ORDINANCES BY GRANTING A CONDITIONAL USE PERMIT (CUP) TO FRANCISCO CHOI, ON BEHALF OF TAMIROWOOD, LLC, TO OPERATE AN "ASSISTED LIVING FACILITY (CONTINUING CARE RETIREMENT COMMUNITY)" AT 609 SOUTH PINE STREET; SAID PROPERTY BEING APPROXIMATELY 2 ACRES, AND BEING LEGALLY DESCRIBED AS PART OF OUTLOTS 127 AND 129 FIVE ACRE TRACTS TOMBALL OUTLOTS, HARRIS COUNTY, TEXAS, GENERALLY LOCATED ON THE EAST SIDE OF SOUTH PINE STREET BETWEEN JAMES STREET AND CHERRY LAUREL STREET; PROVIDING REQUIREMENTS AND CONDITIONS FOR THIS CUP; CONTAINING FINDINGS AND OTHER PROVISIONS RELATING TO THE SUBJECT; PROVIDING A PENALTY IN AN AMOUNT NOT TO EXCEED $2,000 FOR VIOLATIONS HEREOF; AND PROVIDING FOR SEVERABILITY.

* * * * * * * * *

Whereas, Francisco Choi, on behalf of TamiroWood, LLC, has requested a CUP to operate an "assisted living facility (continuing care retirement community)" on approximately 2 acres of land, legally described Part of Outlots 127 and 129 five acre tracts Tomball Outlots, Harris County, Texas, generally located on the east side of South Pine Street, between James Street and Cherry Laurel Street, in the City of Tomball, Harris County, Texas, (the "Property"), and

Whereas, at least fifteen (15) days after publication in the official newspaper of the City of the time and place of a public hearing and at least ten (10) days after written notice of that hearing was mailed to the owners of land within two hundred feet of the Property in the manner required by law, the Planning & Zoning Commission held a public hearing on the requested CUP; and

Whereas, the public hearing was held before the Planning & Zoning Commission at least forty (40) calendar days after the City's receipt of the requested CUP; and

Whereas, the Planning & Zoning Commission recommended in its final report that City Council approve the requested CUP; and

Whereas, at least fifteen (15) days after publication in the official newspaper of the City of the time and place of a public hearing for the requested CUP, the City Council held the public hearing for the requested CUP and the City Council considered the final report of the Planning & Zoning Commission; and

Whereas, the City Council deems it appropriate to grant the requested CUP.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF TOMBALL, TEXAS, THAT:

Section 1. The facts and matters set forth in the preamble of this Ordinance are hereby found to be true and correct.

Section 2. A CUP to operate an "assisted living facility (continuing care retirement community)" at the Property and subject to the terms and conditions set forth below is hereby granted to Francisco Choi, on behalf of TamiroWood, LLC.

Section 3. The Official Zoning District Map of the City shall be revised and amended to show the CUP authorized for the Property, with the appropriate references thereon to the number and effective date of this Ordinance and a brief description of the nature of the CUP authorized.

Section 4. This Ordinance shall in no manner amend, change, supplement, or revise any provision of any ordinance of the City, save and except the granting of the CUP as herein provided.

Section 5. The CUP granted hereby shall be null and void after the expiration of two (2) years from the date of adoption hereof unless the Property is being used in accordance with the CUP herein authorized within said two-year period, or unless an extension of time is approved by City Council.

Section 6. Any person who shall violate any provision of this Ordinance shall be deemed guilty of a misdemeanor and, upon conviction, shall be fined in an amount not to exceed $2,000. Each day of violation shall constitute a separate offense.

Section 8. In the event any clause, phrase, provision, sentence, or part of this Ordinance or the application of the same to any person or circumstance shall for any reason be adjudged invalid or held unconstitutional by a court of competent jurisdiction, it shall not affect, impair, or invalidate this Ordinance as a whole or any part or provision hereof other than the part declared to be invalid or unconstitutional; and the City Council of the City of Tomball, Texas, declares that it would have passed each and every part of the same notwithstanding the omission of any such part thus declared to be invalid or unconstitutional, whether there be one or more parts.

FIRST READING:

READ, PASSED AND APPROVED AS SET OUT BELOW AT THE MEETING OF THE CITY COUNCIL OF THE CITY OF TOMBALL HELD ON THE 17TH DAY OF APRIL 2017.

COUNCILMAN HUDGENS	AYE
COUNCILMAN STOLL	AYE
COUNCILMAN DEGGES	AYE
COUNCILMAN TOWNSEND	AYE
COUNCILMAN QUINN	AYE

SECOND READING:

READ, PASSED AND APPROVED AS SET OUT BELOW AT THE MEETING OF THE CITY COUNCIL OF THE CITY OF TOMBALL HELD ON THE 1ST DAY OF MAY 2017.

COUNCILMAN HUDGENS	_____
COUNCILMAN STOLL	_____
COUNCILMAN DEGGES	_____
COUNCILMAN TOWNSEND	_____
COUNCILMAN QUINN	_____

_____
Gretchen Fagan, Mayor

ATTEST:

_____
Doris Speer, City Secretary

Conditional Use Permit (CUP) Staff Report

Planning & Zoning Commission Public Hearing Date: April 10, 2017
City Council Public Hearing Date: April 17, 2017

Rezoning Case:	P17-0012
Property Owner(s):	Jesus Gonzalez
Applicant(s):	Francisco Choi, for TamiroWood, LLC
Legal Description:	Part of Outlots 127 & 129 five acre tracts Tomball Outlots
Location:	East side of South Pine Street between James Street and Cherry Laurel Street (Exhibit "A")
Area:	2 acres
Comp Plan Designation:	High Density Residential (Exhibit "B")
Present Zoning and Use:	Office District (Exhibit "C") / Undeveloped property (Exhibit "D")
Proposed Use(s):	Assisted Living Facility
Request:	Conditional Use Permit (CUP) to allow the operation of an *Assisted Living Facility (continuing care retirement community)*

Adjacent Zoning & Land Uses:

North: Single-Family 6 / Assisted living facility

South: Single-Family 6 / Single-family residences

West: Single-Family 6/ City of Tomball Public Works Building and Service Center

East: Single-Family 6 and Multi-Family / Single-family and multi-family residences

BACKGROUND

In December 2016, City Staff met with the property owner and potential purchaser of the subject site to discuss a proposed assisted living facility. After discussing different options, the applicant submitted a rezoning application with intentions of filing a subsequent Conditional Use Permit application for an *assisted living facility (continuing care retirement community)*. On Thursday, March 9, 2017, the Planning and Zoning Commission unanimously voted to recommend approval of the rezoning request from the Single-Family 6 District to the Office District. On Monday, March 20, 2017, City Council voted to approve the rezoning request and First Reading of the ordinance and on Monday, April 3, 2017, City Council voted to approve the Second Reading.

The applicant is the current owner of the adjacent assisted living facility, Forever Young Senior Living.

ANALYSIS

According to Section 50-81 (f) of the Chapter 50 (Zoning), when considering applications for a CUP, the City shall, on the basis of the concept plan and other information submitted, evaluate the impact of the conditional use on and the compatibility of the use with surrounding properties and neighborhoods to ensure the appropriateness of the use at a particular location. Specific considerations shall include the extent to which:

1. **The proposed use at the specified location is consistent with the goals, objectives, and policies contained in the adopted Comprehensive Plan;**

   The Comprehensive Plan identifies the subject site as High Density Residential. It does not appear that the request is consistent with the goals of the Comprehensive Plan, however, it may be difficult to develop the site to meet the intent of the High Density Residential designation due to the unique layout of the site.

2. **The proposed use is consistent with the general purpose and intent of the applicable zoning district regulations;**

   According to the Zoning Ordinance, "a conditional use is a land use which, because of its unique nature, is compatible with the permitted land uses in a given zoning district only upon a determination that the external effects of the use in relation to the existing and planned uses of adjoining property and the neighborhood can be mitigated through imposition of certain standards and conditions."

   According to Section 50-75 (Office District) the purpose of the Office District is to "create an appropriate setting for low intensity office and professional uses" and should "be used as a transition district between residential uses and more intense uses". The proposed use appears to be consistent with the intent of the Office District as it provides a suitable buffer between the existing residential uses and the adjacent Public Works Service Center.

3. **The proposed use meets all supplemental standards specifically applicable to the use as set forth in the Zoning Ordinance;**

   Should the CUP application be approved by City Council, the applicant will be required to submit site and building plan applications and supporting documents to the City for review and approval. Specific details of site modifications will be shown at the time of plan review. The applicant has submitted a Special Exception Application for a reduction in the required parking.

4. **The proposed use is compatible with and preserves the character and integrity of adjacent development and neighborhoods and, as required by the particular circumstances, includes improvements or modifications either on-site or within the public rights-of-way to mitigate development-related adverse impacts;**

   The proposed use appears to be compatible with the adjacent developments. The site is adjacent to a memory care facility and the Tomball Public Works Building and Service Center.

5. **The proposed use is not materially detrimental to the public health, safety, convenience and welfare, or results in material damage or prejudice to other property in the vicinity.**

   Staff does not anticipate any adverse effects on surrounding properties.

PUBLIC COMMENT

Property owners within 200 feet of the project site were mailed notification of this proposal on March 24, 2017. A sign was placed on the property and Notice of Public Hearing was published in the paper on March 29, 2017. One public comment form has been received as of the date of this report.

RECOMMENDATION

Based on the findings outlined in the analysis section of this staff report, City staff recommends approval of Zoning Case P17-0012.

EXHIBITS

A. Aerial Photo
B. Comprehensive Plan
C. Zoning Map
D. Site Photos
E. CUP Application
F. Concept Plan

Exhibit "A"
Aerial Photo



Exhibit "B"
Comprehensive Plan

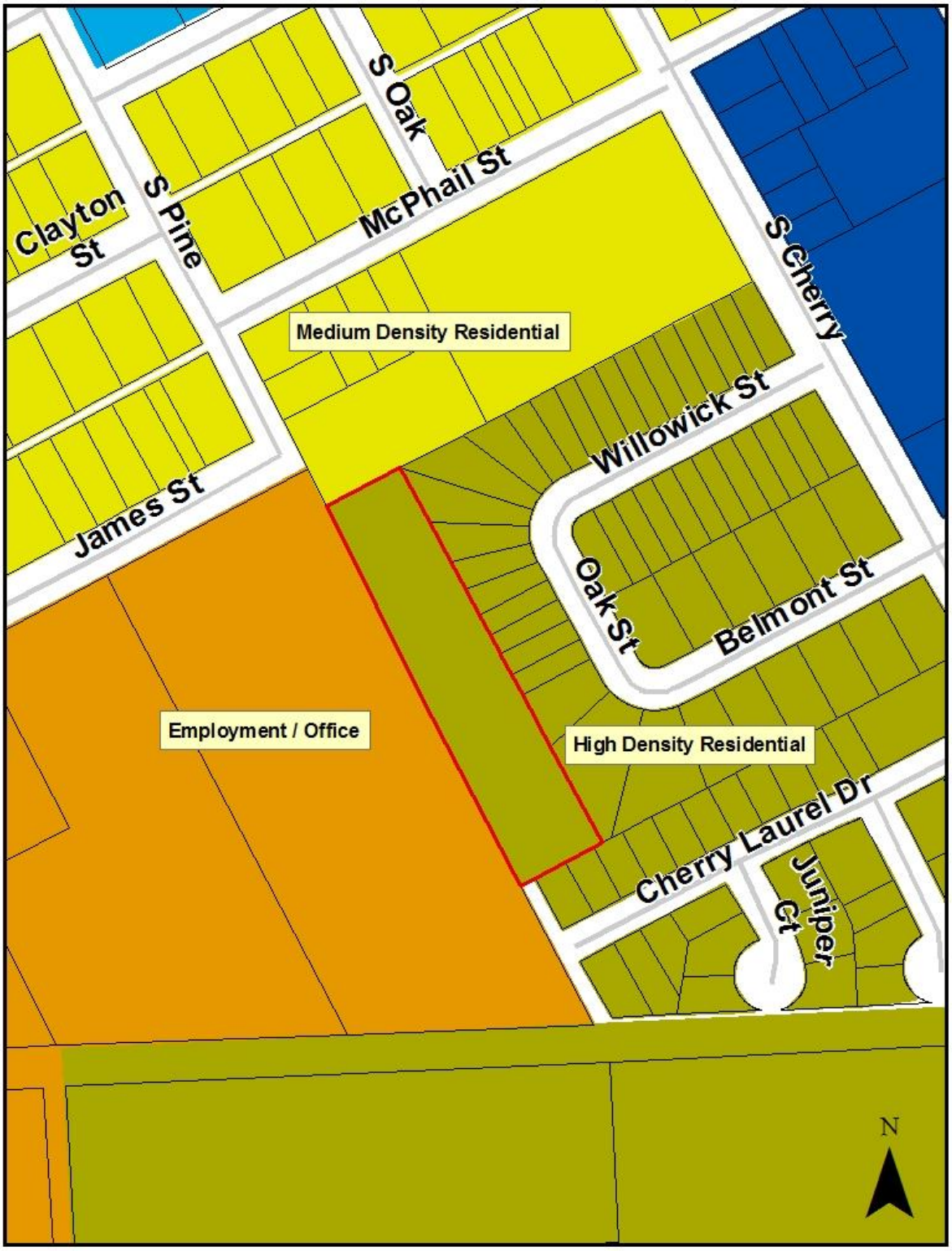


Exhibit "C"
Zoning Map

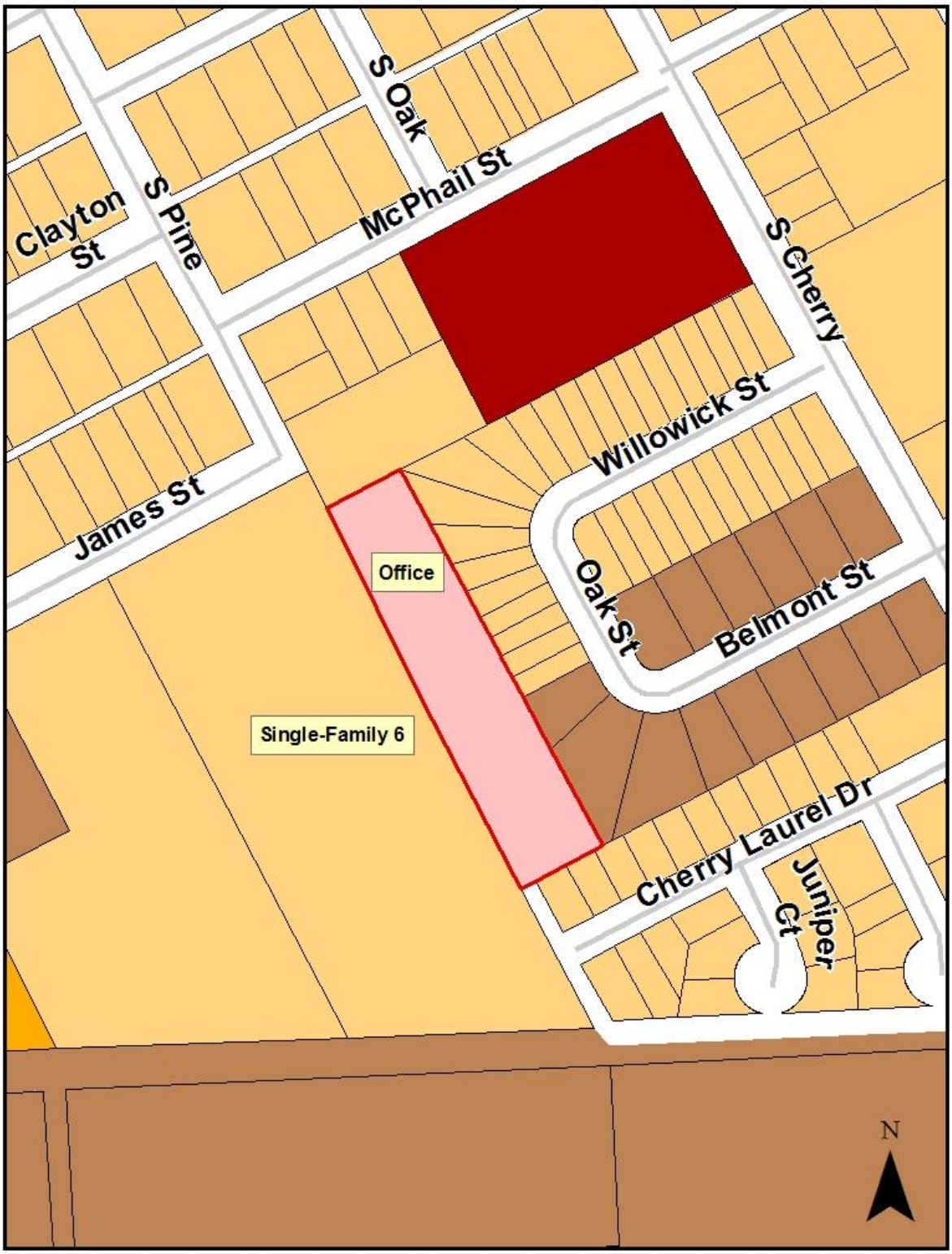


Exhibit "D"
Site Photos



Figure 1: Subject Site



Figure 2: Site view along South Pine Street

Revised 5/19/15

APPLICATION FOR CONDITIONAL USE PERMIT

Community Development Department
Planning Division

RECEIVED
FEB 16 2017
BY: EJones

A conditional use is a land use which, because of its unique nature, is compatible with the permitted land uses in a given zoning district only upon a determination that the external effects of the use in relation to the existing and planned uses of adjoining property and the neighborhood can be mitigated through imposition of certain standards and conditions.

No conditional use shall be established and no building permit shall be issued for any use designated as a conditional use within any zoning district until a conditional use permit (CUP) is approved and issued in accordance with the provisions of Section 50-34 of the Code of Ordinances.

APPLICATION SUBMITTAL: Applications will be ***conditionally*** accepted on the presumption that the information, materials and signatures are complete and accurate. If the application is incomplete or inaccurate, your project may be delayed until corrections or additions are received.

Applicant
Name: Francisco Choi, for TamiroWood, LLC Title: Partner
Mailing Address: P.O. Box 864 City: Georgetown State: TX
Zip: 78627
Phone: (512) 297-7263 Fax: (____) _____ Email: francisco@ftcarch.com

Owner
Name: R&MMB Property Mgmt, Inc, Rodolfo Barrera Title: President
Mailing Address: 23910 Saxon Way City: Hockley State: TX
Zip: 77447
Phone: (534-597-15) _____ Fax: (____) _____ Email: rudyj99@yahoo.com

Engineer/Surveyor (if applicable)
Name: Precision Surveyors, Edilberto V. Barrientos Title: Professional Land Surveyor
Mailing Address: 950 Threadneedle St, Suite 150 City: Houston State: TX
Zip: 77079
Phone: (281) 496-1586 Fax: (281) 496-1867 Email: orders@precisionsurveyors.com

Description of Proposed Project: Assisted Living Facility

Physical Location of Property: 609 South Pine Street

[General Location – approximate distance to nearest existing street corner]

Legal Description of Property: 9583 U/D INT IN TRS 127 &129 (1.9835 AC) Tomball Outlots

[Survey/Abstract No. and Tracts; or platted Subdivision Name with Lots/Block]

HCAD Identification Number: 0352840000129 Acreage: 1.9835

Current Use of Property: Vacant

Proposed Use of Property: Assisted Living Facility

Please note: A courtesy notification sign will be placed on the subject property during the public hearing process and will be removed when the case has been processed.

This is to certify that the information on this form is COMPLETE, TRUE, and CORRECT and the under signed is authorized to make this application. I understand that submitting this application does not constitute approval, and incomplete applications will result in delays and possible denial.

X _____ 2/16/17

Signature of Applicant **Date**

X _____ _____

Signature of Owner **Date**

CITY OF TOMBALL
281-351-5484

REC#: 00969207 2/16/2017 11:12 AM
OPER: RP TERM: 005
REF#: W 1698

TRAN: 130.0000 PLANNING AND ZONING
609 SOUTH PINE STREET
FRANCISCO CHOI
100-5442
CONDITIONAL USE PER 600.00CR

TENDERED: 600.00 CHECK
APPLIED: 600.00-

CHANGE: 0.00

City of Tomball, Texas www.tomballtx.gov

TamiroWood, LLC
803 Riverforest Drive
New Braunfels, TX 78132

16 February 2017

City of Tomball
501 James Street
Tomball, TX 77375

Subject: Rezoning and Conditional Use Permit for Outlots 127 and 129

Applicant TamiroWood, LLC, requests rezoning of Outlots 127 and 129 from Single Family to Office, coincident with the request for a Conditional Use Permit for an Assisted Living Facility.

These lots are adjacent to an existing Memory Care facility owned by the intended owners of these lots. The continuum of use, from Assisted Living to Memory Care, inspired this request.

The current zoning of Single Family, while congruent with the neighboring duplex and single family development, is not compatible with the development standards. And the location of the lots, across the street from municipal use equivalent to Light industrial, lend themselves to a different transitional use.

Single family lots are required to be 120 feet deep. Outlots 127 and 129 (not including the easement) are only about 114 feet deep.

Outlots 127 and 129 back up to duplex and single family development, but are across the street from heavier uses of the Public Works building and a water tower. Rezoning to Office with the Conditional Use as an assisted living facility is an acceptable interface between the more intense civic use and the neighborhood use.

As currently configured, zoned and constrained, Outlots 127 and 129 are undevelopable.

In addition to the Conditional Use Permit, Applicant intends to apply for one or more variances to permit viable development as an assisted living facility.

Absent these changes, Outlots 127 and 129 will forever be undeveloped. Of no value to the owners and of little taxable value to the City.

Francisco Choi
TamiroWood, LLC

Figure "F"
Concept Plan



NOTICE OF PUBLIC HEARING
CITY OF TOMBALL
PLANNING & ZONING COMMISSION (P&Z)
APRIL 10, 2017
&
CITY COUNCIL
APRIL 17, 2017

Notice is Hereby Given that a Public Hearing will be held by the P&Z of the City of Tomball on **Monday, April 10, 2017, at 6:00 P.M.,** and by the City Council of the City of Tomball on **Monday, April 17, 2017, at 6:00 P.M.** at City Hall, 401 Market Street, Tomball Texas. On such dates, the P&Z and City Council will consider the following:

Zoning Case P17-0012: Request by Francisco Choi, on behalf of TamiroWood LLC, to operate an *Assisted Living Facility (continuing care retirement community)* at 609 South Pine Street. The property is approximately 2 acres, legally described as Part of Outlots 127 and 129 five acre tracts Tomball Outlots, generally located on the east side of South Pine Street between James Street and Cherry Laurel Street and is zoned Office District.

Zoning Case P17-0023: Request by Scott McKinzie, on behalf of BCDE, LTD to amend Chapter 50 (Zoning) of the Tomball Code of Ordinances by rezoning approximately 70.3574 acres of land, legally described as Reserve C, C1 and C2 Tomball Greens, within the City of Tomball, Harris County, Texas, generally located on the east side of Hufsmith-Kohrville Road, north side of Spell Road, from the Single-Family 9 District to the Planned Development District.

At the public hearings, parties of interest and citizens will have the opportunity to be heard. All citizens of the City of Tomball, and any other interested parties, are invited to attend. Applications are available for public inspection Monday through Friday, except holidays, at the Public Works Building, located at 501 James Street, Tomball, TX 77375. Further information may be obtained by contacting the Planner, Amelia Lindley, at (281) 290-1410 or at alindley@tomballtx.gov.

C E R T I F I C A T I O N

I hereby certify that the above notice of meeting was posted on the bulletin board of City Hall; City of Tomball, Texas, a place readily accessible to the general public at all times, on the **6th** day of **April 2017** by 5:00 p.m., and remained posted for at least 72 continuous hours preceding the scheduled time of said meeting.

Kim Chandler
Kim Chandler
Secretary of the Board

This facility is wheelchair accessible and accessible parking spaces are available. Requests for accommodations or interpretive services must be made 48 hours prior to this meeting. Please feel free to contact the City Secretary's office at (281) 290-1002 or FAX (281) 351-6256 for further information. AGENDAS MAY ALSO BE VIEWED ONLINE AT www.tomballtx.gov.

Notice of Public Hearing

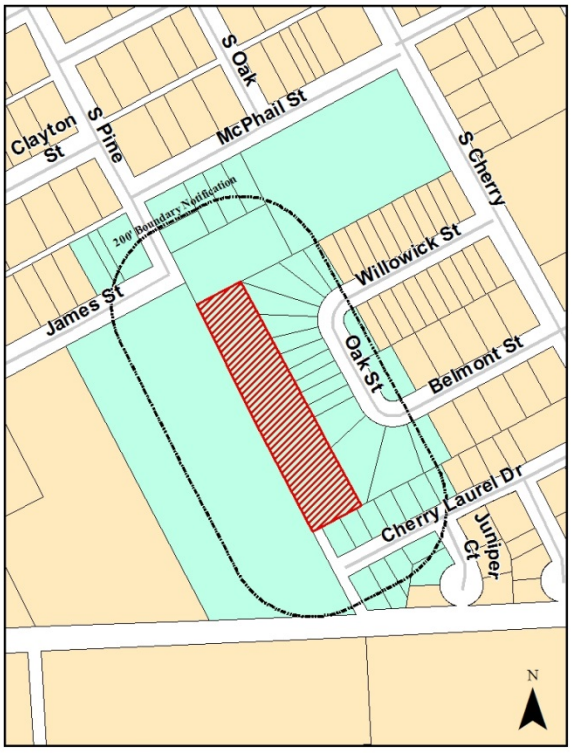
YOU ARE INVITED TO ATTEND Public Hearings before the **PLANNING & ZONING COMMISSION** and **CITY COUNCIL** of the City of Tomball regarding the following item:

CASE NUMBER: P17-0012

APPLICANT/OWNER: Francisco Choi, on behalf of TamiroWood LLC

LOCATION: The east side of South Pine Street between James Street and Cherry Laurel Street at 609 South Pine Street.

PROPOSAL: To operate an *Assisted Living Facility (continuing care retirement community).* The property is approximately 2 acres, legally described as Part of Outlots 127 and 129 five acre tracts Tomball Outlots, generally located on and is zoned Office District.



CONTACT: Amelia Lindley
PHONE: (281) 290-1410
E-MAIL: alindley@tomballtx.gov

Interested parties may contact the City of Tomball between 8:00 a.m. and 5:00 p.m. Monday through Friday for further information. The application is available for public review Monday through Friday, except holidays, between the hours of 8:00 a.m. and 5:00 p.m. in the Community Development Department office, located at 501 James Street, Tomball, TX 77375. The staff report will be available no later than 4:00 p.m. on the Friday preceding the meeting.

This notice is being mailed to all owners of real property within 200 feet of the request as such ownership appears on the last approved Harris County Appraisal District tax roll. Interested parties may appear and speak on the project or the staff recommendation at the meeting. Written comments may also be submitted for consideration.

Planning & Zoning Commission
Public Hearing:
Monday, April 10, 2017, 6:00 PM

City Council Public Hearing:
***Monday, April 17, 2017, 6:00 PM**

The Public Hearings will be held in the City Council Chambers, City Hall 401 Market Street, Tomball, Texas

*Should the Planning & Zoning Commission vote to table the recommendation on the case, the date and time of a future meeting will be specified and the City Council will not review the subject case until such a recommendation is forwarded to the City Council by the Planning & Zoning Commission.

Amelia Lindley

From: Verne Stueber <vernestueber@gmail.com>
Sent: Friday, March 31, 2017 2:20 PM
To: Amelia Lindley
Cc: Kathy Green
Subject: P17-0012 Hearings on April 10 & 17

Dear Ms Amelia Lindley,

I am a resident of Cherry Place subdivision and my address is:
430 Cherry Laurel Drive, Tomball, Tx 77375.

I am Emailing you re the subject hearings: for which I received a postal notice as I am within the 200' boundary notification. My concerns are the road connections to/from the proposed Assisted Livinmg facility. I assume S. Pine Street would be extended south of James Street to the south end of the proposed facility, which is almost to my street, Cherry Laurel Drive. That is my concern as Cherry Place (containing about 25 homes) is home , I believe, to all retired people, ranging in age to 95. Many of us walk our streets (no sidewalks) for exercise. If the extended S. Pine Street were connected to Cherry Laurel Drive for a connection to S. Cherry Street, I would be deeply concerned re the increased traffic on Cherry Laurel Drive.

<u>Without</u> a connection to Cherry Laurel Drive, the proposed facility would still have a connection to S. Cherry Street via north on S. Pine Street to McPhail Street (just north and east of James Street).

In replying, please CC Kathy Green, my daughter and designated driver since I lost my driving license because of vision problems due to 60 years of diabetes and my age of 88.

Best Regards, Verne Stueber

Regular City Council
Agenda Item
Data Sheet

Meeting Date: May 1, 2017

Topic:

Adopt, on Second Reading, Ordinance No. 2017-13, an Ordinance of the City of Tomball, Texas, Amending Its Zoning Ordinance, By Approving a Planned Development District of approximately 70.36 acres of Land, Legally Described as Reserve C, C1 And C2 Tomball Greens; Within The City of Tomball, Harris County, Texas; Amending the Official Zoning Map of the City to Reflect the Planned Development District to be known as Planned Development – 9 (PD-9) District; Adopting a Concept Plan and Regulations Applicable to PD-9 District; Providing for Severability; Providing for a Penalty of an amount not to Exceed $2,000 for Each Day of Violation of Any Provision Hereof, Making Findings of Fact; And Providing For Other Related Matters

Background:

On Monday, April 10, 2017, the Planning and Zoning Commission, after conducting a public hearing, voted to recommend denial of the request. The vote was two votes Aye, two votes Nay.

Amendments to Ordinance No. 2017-13, requested by Council on April 17, are shown on pages 12 through 14 of the Exhibits.

Origination:

BCDE, Ltd./Eibsen & Associates

Recommendation:

Adopt Ordinance No. 2017-13 on Second Reading

Party(ies) responsible for placing this item on agenda:

Craig T. Meyers, Community Development Director

ACTION TAKEN

Approval	Readings Passed	Other
☐ Yes ☐ No	☐ 1st ☐ 2nd	

ATTACHMENTS:

Ordinance No. 2017-13 Amended
Staff Report P17-0023
Notice of Public Hearing
Property Owner Notification Letter
Response Forms

ORDINANCE NO. 2017-13

AN ORDINANCE OF THE CITY OF TOMBALL, TEXAS, AMENDING ITS ZONING ORDINANCE, BY APPROVING A PLANNED DEVELOPMENT DISTRICT OF APPROXIMATELY 70.36 ACRES OF LAND, LEGALLY DESCRIBED AS RESERVE C, C1 AND C2 TOMBALL GREENS; WITHIN THE CITY OF TOMBALL, HARRIS COUNTY, TEXAS; AMENDING THE OFFICIAL ZONING MAP OF THE CITY TO REFLECT THE PLANNED DEVELOPMENT DISTRICT TO BE KNOWN AS PLANNED DEVELOPMENT – 9 (PD-9) DISTRICT; ADOPTING A CONCEPT PLAN AND REGULATIONS APPLICABLE TO PD-9 DISTRICT; PROVIDING FOR SEVERABILITY; PROVIDING FOR A PENALTY OF AN AMOUNT NOT TO EXCEED $2,000 FOR EACH DAY OF VIOLATION OF ANY PROVISION HEREOF, MAKING FINDINGS OF FACT; AND PROVIDING FOR OTHER RELATED MATTERS.

* * * * * * * * * *

Whereas, the property owners have requested that approximately 70.36 acres of land, legally described as Reserve C, C1 and C2 Tomball Greens, generally located East side of Hufsmith-Kohrville Road, north side of Spell Road, in the City of Tomball, Harris County, Texas, (the "Property"), be rezoned; and

Whereas, the property owners have presented an application to the City for a Planned Development District to allow the construction of a single-family development; and

Whereas, the Planned Development application consists of an application for Planned Development District (Exhibit "A"); Planned Development regulations (Exhibit "B") request letter (Exhibit "C"); and concept plan (Exhibit "D") attached to and made a part of this Ordinance; and

Whereas, at least fifteen (15) days after publication in the official newspaper of the City of the time and place of a public hearing and at least ten (10) days after written notice of that hearing was mailed to the owners of land within two hundred feet of the Property in the manner required by law, the Planning & Zoning Commission held a public hearing on the requested rezoning; and

Whereas, the public hearing was held before the Planning & Zoning Commission at least forty (40) calendar days after the City's receipt of the requested rezoning; and

Whereas, the Planning & Zoning Commission recommended in its final report that City Council deny the requested rezoning; and

Whereas, at least fifteen (15) days after publication in the official newspaper of the City of the time and place of a public hearing for the requested rezoning, the City Council held the public hearing for the requested rezoning and the City Council considered the final report of the Planning & Zoning Commission; and

Whereas, the City Council deems it appropriate to grant the requested rezoning.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF TOMBALL, TEXAS, THAT:

Section 1. The City Council finds that the facts and matters set forth in the preamble of this Ordinance are true and correct.

Section 2. The zoning classification of the Property is hereby changed from the Single-Family 9 District to the PD-9 District subject to the regulations, restrictions, and conditions hereafter set forth.

Section 3. The Official Zoning Map of the City of Tomball shall be revised and amended to show the designation of the Property as PD-9 District, with the appropriate reference thereon to the number and effective date of this Ordinance and a brief description of the nature of the change.

Section 4. This Ordinance shall in no manner amend, change, supplement, or revise any provision of any ordinance of the City of Tomball, save and except the change in zoning classification of the Property, to PD-9 District as described above.

Section 5. PD-9 shall be subject to the limitations, restrictions, and covenants outlined in Exhibit "B" and the following additional covenant:

A. Compliance with Application and Concept Plan. The granting of the PD District shall be conditioned upon the proposed improvements and land uses being located, constructed, and conducted upon the Property in substantial compliance with the application for PD District (Exhibit "A"), PD regulations (Exhibit "B"), request letter (Exhibit "C"), and concept plan (Exhibit "D") made a part hereof for all purposes.

Section 6. In the event any section, paragraph, subdivision, clause, phrase, provision, sentence, or part of this Ordinance or the application of the same to any person or circumstance shall for any reason be adjudged invalid or held unconstitutional by a court of competent jurisdiction, it shall not affect, impair, or invalidate this Ordinance as a whole or any part or provision hereof other any part or provision hereof other than the part declared to be invalid or unconstitutional; and the City Council of Tomball, Texas, declares that it would have passed each and every part of the same notwithstanding the omission of any and every part of the same notwithstanding the omission of any such part thus declared to be invalid or unconstitutional, or whether there be one or more parts.

Section 7. Any person who shall violate any provision of this Ordinance shall be deemed guilty of a misdemeanor and upon conviction, shall be fined in an amount not to exceed $2,000. Each day of violation shall constitute a separate offense.

Section 8. City Council finds and determines that the meeting at which this ordinance is passed was open to the public as required and that public notice of the time, place, and purpose of said meeting was given as required by the Texas Open Meetings Act, Tex.Gov't. Code ch. 551.

FIRST READING:

READ, PASSED AND APPROVED AS SET OUT BELOW AT THE MEETING OF THE CITY COUNCIL OF THE CITY OF TOMBALL HELD ON THE 17TH DAY OF APRIL 2017.

COUNCILMAN HUDGENS	AYE
COUNCILMAN STOLL	AYE
COUNCILMAN DEGGES	AYE
COUNCILMAN TOWNSEND	AYE
COUNCILMAN QUINN	AYE

SECOND READING:

READ, PASSED AND APPROVED AS SET OUT BELOW AT THE MEETING OF THE CITY COUNCIL OF THE CITY OF TOMBALL HELD ON THE 1ST DAY OF MAY 2017.

COUNCILMAN HUDGENS	_____
COUNCILMAN STOLL	_____
COUNCILMAN DEGGES	_____
COUNCILMAN TOWNSEND	_____
COUNCILMAN QUINN	_____

_____
Gretchen Fagan, Mayor

ATTEST:

_____
Doris Speer, City Secretary

Exhibit "A"
PD District Application

Revised 5/19/15

P17-0023

APPLICATION FOR REZONING

Community Development Department
Planning Division

RECEIVED
MAR 0 1 2017
BY: EJones

APPLICATION SUBMITTAL: Applications will be ***conditionally*** accepted on the presumption that the information, materials and signatures are complete and accurate. If the application is incomplete or inaccurate, your project may be delayed until corrections or additions are received.

Applicant
Name: Scott McKinzie, Jones|Carter Title: Planner
Mailing Address: 8701 New Trails Drive, Suite 200 City: The Woodlands State: TX
Zip: 77381
Phone: (281) 363-4039 Fax: (281) 363-3459 Email: smckinzie@jonescarter.com

Owner
Name: Doug Eibsen, BCDE, LTD / Eibsen & Assoc. Title: General Partner / President
Mailing Address: 24522 Creekview Dr City: Spring State: TX
Zip: 77389
Phone: (713) 628-3628 Fax: (___) ___ Email: DougEibsen@att.net

Engineer/Surveyor (if applicable)
Name: John Dreahn, Jones|Carter Title: Department Manager
Mailing Address: 8701 New Trails Drive, Suite 200 City: The Woodlands State: TX
Zip: 77381
Phone: (281) 363-4039 Fax: (281) 363-3459 Email: JDreahn@jonescarter.com

Description of Proposed Project: Alexander Estates, Single-Family Lot Subdivision

Physical Location of Property: Northeast corner of Huffsmith-Kohrville Road and Spell Road
[General Location – approximate distance to nearest existing street corner]

Legal Description of Property: Being a partial replat of Tomball Greens, Unrestricted Reserve C
[Survey/Abstract No. and Tracts; or platted Subdivision Name with Lots/Block]

Current Zoning District: SF-9

Current Use of Property: Vacant, undeveloped

Proposed Zoning District: Planned Development

Proposed Use of Property: Single Family Residential

HCAD Identification Number: 1207880000005, 1207880000007, 1207880000008 Acreage: 70.3574

Please note: A courtesy notification sign will be placed on the subject property during the public hearing process and will be removed when the case has been processed.

This is to certify that the information on this form is COMPLETE, TRUE, and CORRECT and the under signed is authorized to make this application. I understand that submitting this application does not constitute approval, and incomplete applications will result in delays and possible denial.

X _____ 2/28/2017
Signature of Applicant Date

X _____ 2/28/2017
Signature of Owner Date

CITY OF TOMBALL
281-351-5484

REC#: 00971836 3/01/2017 10:41 AM
OPER: RP TERM: 005
REF#: W 1905

TRAN: 130.0000 PLANNING AND ZONING
ALEXANDER ESTATES 70.3574 AC
EIBSEN & ASSOCIATES
100-5441
REZONING APPLICATIO 1,103.57CR

TENDERED: 1,103.57 CHECK
APPLIED: 1,103.57-

CHANGE: 0.00

City of Tomball, Texas 501 James Street, Tomball, Texas 77375 Phone: 281-290-1405 www.tomballtx.gov

EXHIBIT B
Planned Development

Alexander Estates

A. Contents. This final development plan includes the following sections:

- General Provisions
- Land Uses
- Development Regulations for Single Family Lots
- Landscape Regulations
- Pedestrian and Bicycle Circulation Regulations
- Building Regulations

B. General Provisions.

1. Building permits for single family homes will not be issued until the installation of a traffic signal at the intersection of Huffsmith-Kohrville Road and Spell Road.

2. The Planned Development, PD, approved herein must be constructed, developed, and maintained in compliance with this ordinance and other applicable ordinances of the City. If any provision or regulation of any City ordinance applicable in a SF-9 (Standard Single Family Residential) zoning district is not contained in this ordinance, all the regulations contained in the Development Code applicable to the SF-9 zoning district in effect on the effective date of this ordinance apply to this PD as though written herein, except to the extent the City regulation or provision conflicts with a provision of this ordinance.

3. Except as otherwise provided herein, the words used in this Planned Development have the meaning established by the Development Code. In this ordinance:

   Open Space means the portion of all land contained within the PD that is not covered by buildings, parking lots, driveways, improved pedestrian areas or other impermeable material. No portion of a residential lot or public street right-of-way shall be considered open space.

   PD means the planned development district created by this ordinance.

   Pavers mean colored interlocking bricks, tiles, stones, blocks, or concrete units.

4. The PD shall be developed in accordance with the following exhibits that are attached to and made part of this Final Development Plan:

   Exhibit B-1a: *Location Map*
   Exhibit B-1b: *Jurisdiction Map*
   Exhibit B-2a: *Site Plan*
   Exhibit B-2b: *Lot Configurations*
   Exhibit B-3: *Landscape, Open Space & Trail Plan*
   Exhibit B-4: *Plant List*

5. As shown on Exhibit B-1a, *Location Map*, the PD encompasses 70.3604, located east of Huffsmith Kohrville Road and north of Spell Road.

C. Land Uses.

1. Permitted land uses are listed below. All other land uses are prohibited in the PD.

Use	SIC Code
Private Household Services	8811
Dwellings – Single Family	99 (Non-Classifiable)
Parks and Recreational Facilities, Public or Private	99 (Non-Classifiable)
Residential Sales Office (Temporary)	

D. Development Regulations for Single Family Lots – Maximum 251 lots permitted, total lot count, generally in a configuration and location as shown on Exhibit B-2a, *Site Plan*, single-family home sites within the PD shall be developed in accordance with the following regulations:

1. SFR-1: Lots shown on Exhibit B-2a, *Site Plan*

   (a) Minimum lot area: 7,200
   (b) Minimum lot width: 60 feet
   (c) Minimum lot depth 115 feet

2. SFR-2: Lots shown on Exhibit B-2a, *Site Plan*

   (a) Minimum lot area: 6,000
   (b) Minimum lot width: 50 feet
   (c) Minimum lot depth 115 feet

3. Minimum building setbacks:

   (a) Front yard: 20 feet;
      i. 20% of all lots shall incorporate alternative garage setback as shown on Exhibit B-2b, *Lot Configurations*
   (b) Rear yard: 15 feet, except the minimum rear yard where lots back on Spell Road or Huffsmith-Kohrville Road shall not be less than 25 feet.
   (c) Side yard: 5 feet, 15 feet on street side

4. Fencing:

   (a) A minimum 8-foot in height masonry and/or wood fence shall be constructed adjacent to Huffsmith-Kohrville Road on residential lots, prior to the issuance of a certificate of occupancy for the residential home constructed on the lot:

   (b) Lots adjacent to the internal detention lake shall be permitted to construct only decorative "open" tubular steel fences.

E. Landscape Regulations – As shown on Exhibit B-3, *Landscape, Open Space & Trail Plan*, the PD shall be developed in accordance with the following landscape regulations:

1. Recreation sites and amenities:

   (a) A landscape, open space reserve, a minimum ¾ acres shall be provided within the neighborhood for recreational uses. The reserve shall be centrally located and have frontage on a minimum two public streets.

(b) Amenities shall include:
  i. A pedestrian plaza as defined below.
  ii. At least one of the following, a shade structure, a fire pit and or a water feature, (like a Koi pond, interactive fountain, or splash pad.)

2. Landscape buffers:

(a) 15-foot minimum buffer shall be provided along Spell Road.
(b) 10-foot minimum buffer, contiguous to lot lines, shall be provided along the primary entry street. As shown on Exhibit B-3, *Landscape, Open Space and Trail Plan*
(c) Required buffers along primary collector and entrance streets shall include one shade tree for each 30 feet of street frontage, or portion thereof, measured along the right-of-way line. The trees may be clustered or spaced linearly; they need not be placed evenly.
(d) Required buffers may include trails.

3. Open Space:

(a) Minimum 15% open space, inclusive of the detention pond, to be distributed as shown on Exhibit B-3, *Landscape, Open Space, & Trail Plan*.
(b) All required open space shall be owned and maintained by the Homeowners Association or the Imperial Development District and shall be accessible to all residents. Exhibit B-3, *Landscape, Open Space, & Trail Plan*.

4. Shade trees:

(a) A minimum of two trees shall be placed within the front yard setback on each residential lot.
(b) In addition, one tree shall be provided within 15 feet of a street-side lot line per 50 feet of lot frontage on the side street, or portion thereof. Required trees shall be placed within the side yard setback.
(c) Within street medians trees shall be provided at one tree per 30 linear feet of median or portion thereof.
(d) Shade trees shall have a minimum 4-inch caliper and minimum 10-foot height as measured at ground level when planted.

5. Plant species used to satisfy the requirements of the PD are listed on Exhibit B-4, *Plant List*.

G. Sidewalks and trails: As shown on Exhibit B-3, *Landscape, Open Space & Trail Plan*, the PD shall be developed in accordance with the following:

1. Sidewalks & trails:

(a) Minimum 5-foot width sidewalks shall be provided along both sides of local residential and collector streets.
(b) All sidewalks shall be paved with concrete. Trails around the detention pond or through greenbelt areas outside of the public right-of-way may be constructed with concrete of decomposed granite.
(c) A minimum of two pedestrian plazas shall be provided as shown on Exhibit B-3, *Landscape, Open Space & Trail Plan*. Pedestrian plazas shall be a minimum of 500 sq. ft. each and shall include, at a minimum, decorative paving, two seating benches, one landscaping planter box, and two shade trees.

2. Lighting used to illuminate sidewalks, trails, landscape buffers, the pedestrian plaza, or other common open space shall be arranged, located, or screened to direct light away from residential lots.

H. **Building Regulations** – Single family homes within the PD shall be developed in accordance with the following building regulations:

1. Primary exterior finishes are limited to brick, stone (natural, cast, or cultured-textured), stucco, and glass, and shall comprise at least 85% of the front façade and 50% of the remaining façades.

2. Secondary exterior finishes shall include wood, ceramic tiles, and fiber cement siding.

3. Use of architectural metals is limited to canopies, roof systems, and miscellaneous trim work and such use shall meet the durability standards of the development code.

4. The Director may approve alternative Primary or Secondary exterior finishes not specified herein if the Director determines that the alternative finish is respective of the architectural elements of the existing historical industrial buildings, substantially equal to or better than a specified Primary or Secondary exterior finish in quality, durability, and appearance, and the use thereof will not violate any provision of this Final Development Plan.

5. No single exterior finish material shall cover more than 80% of the front of any single family home.

6. The following building materials shall not be used on the exterior finish:

   (a) Vinyl siding, wood fiber hardboard siding, oriented strand board siding, plastic, or fiberglass panels.
   (b) Smooth or untextured concrete surfaces.
   (c) Exterior Insulated Finish Systems (E.I.F.S.)
   (d) Unfired or underfired clay, sand, or shale brick.

Exhibit B-4
Plant List for Alexander Estates

The following is a list of approved trees and shrubs. Alternative plants not specified in this list may be approved by the Director if determined that an alternative is substantially equal to or better than a specified material and the use will not violate any provision of the PD:

Shade Trees:

Pecan	*Carya illinoinensis*
Fringe Tree	*Chionanthus virginicus*
Japanese Blueberry	*Elaeocarpus decipiens*
Nellie R. Stevens Holly	*Ilex x attenuata 'Nellie R. Stevens'*
Savannah Holly	*Ilex attenuate 'Savannah'*
Southern Magnolia	*Magnolia grandiflora*
Loblolly Pine	*Pinus taeda*
Texas Pistache	*Pistacia texana*
Sycamore	*Platunus occidentalis'*
Bur Oak	*Quercus macrocarpa*
Chinkapin Oak	*Quercus muehlenbergii*
Monterey Oak	*Quercus polymorpha*
Water Oak	*Quercus nigra*
Live Oak	*Quercus virginiana*
Shumard Oak	*Quercus shumardii*
Bald Cypress	*Taxodium distichum*
Pond Cypress	*Taxodium ascendens*
Cedar Elm	*Ulmus crassifolia*
Bosque or Drake Elm	*Ulmus parvifolia 'Bosque' or 'Drake'*

Small & Ornamental Trees:

Texas Redbud	*Cercis canadensis 'var. texensis'*
European Fan Palm	*Chamaerops humilis*
Desert Willow	*Chilopsis linearis*
Smokebush	*Cotinus obovatus*
Foster Holly	*Ilex x attenuata 'Fosterii'*
Possumhaw Holly	*Ilex decidua*
Yaupon Holly	*Ilex vomitoria*
Columnar Juniper	*Juniporus spp.*
Crape Myrtle	*Lagerstroemia indica 'Basham's Pink', 'Natchez', 'Muskogee'*
Little Gem Magnolia	*Magnolia grandiflora 'Little Gem'*
Tree form (MT) Ligustrum	*Ligustrum japonicum*
Saucer Magnolia	*Magnolia x soulangeana*
Sweetbay Magnolia	*Magnolia virginiana*
Tree Wax Myrtle	*Myrica cerifica*
Mexican Plum	*Prunus mexicana*
Texas Sable Palm	*Sabal texana*
Texas Mountain Laurel	*Sophora secundiflora*
Windmill Palm	*Trachycarpus fortunei*
Chaste Tree	*Vitex agnus-castus*

Shrubs:

Abelia	*Abelia x grandiflora ' Prostrata', 'Sherwoodi', Edward Goucher'*
Dwarf Bottlebrush	*Callistemon citrinus 'Austraflora', 'Firebrand', 'Little John', and 'Splendens'*
Japanese Cleyera	*Ternstroemia gymnathera*
Sago Palm	*Cycas revoluta*
Umbrella Plant	*Cyperus alternifolius*
African/Butterfly Iris	*Dietes iridioides, Dietes bicolor*
Elaeagnus Ebbingei	*Elaeagnus macrophylla*
Silverberry	*Elaeagnus fruilandi*
Pineapple Guava	*Feijoa sellowiana*
Red Yucca	*Hesperaloe parviflora*
Barbados Cherry	*Malpighia Glabra*
Fatsia	*Fatsia japonica*
Dwarf Burford Holly	*Ilex cornuta 'Burfordii Nana'*
Chinese Holly	*Ilex cornuta 'Rotunda'*
Dwarf Yaupon	*Ilex vomitoria 'Nana'*
Louisiana Iris	*Iris louisiana*
Dwarf Crape Myrtle	*Lagerstroemia indica 'Nana'*
Ligustrum	*Ligustrum japonicum*
Waxleaf Glossy Privet	*Ligustrum lucidum*
Fringe Flower	*Loropetalum chinense*
Maiden Grass	*Miscanthus sinensis var.*
Dwarf Wax Myrtle	*Myrica pusilla*
Nandina	*Nandina domestica*
Purple Fountain Grass	*Pennisetum setaceum*
Indian Hawthorn	*Raphiolepis indica 'Clara'*
Shrub Rose	*Rosa spp. 'Knockout', 'The Fairy', 'Bonica', 'Carefree Wonder'*
Society Garlic	*Tulbaghia violacea*
Sweet Viburnum	*Viburnum spp.*
Bridal Wreath Spirea	*Spirea prunifolia*
Oleander	*Nerium oleander*
Dwarf Oleander	*Nerium oleander 'Petite Pink', 'Little Red'*
Plumbago	*Plumbago auriculata*
Dwarf Pomegranate	*Punica granatum 'Nana'*
Kumquat	*Fortunella spp.*
Muhly Grass	*Meuhlenbergia lindheimeri*
Dwarf Maiden Grass	*Miscanthus sinensis 'Morning Light'*

Exhibit "C"
PD District Request Letter

JONES | CARTER

8701 New Trails Drive, Suite 200
The Woodlands, Texas 77381-4241
Tel: 281.363.4039
Fax: 281.363.3459
www.jonescarter.com

March 1, 2017
Revised April 25, 2017

Mr. Craig Meyers, PE, CFM
Community Development Director
City of Tomball
501 James Street
Tomball, TX 77375

Re: Request for Rezoning

Mr. Meyers:

This letter serves as a formal rezoning request. The property in question is undeveloped, but is currently zoned Single Family 9 (SF-9) within the corporate limits of Tomball. We are requesting the property be rezoned to Planned Development (PD).

The property is located at the northeast intersection of Hufsmith-Kohrville Road and Spell Road, and consists of 70.3574 acres. The property is currently platted as Tomball Greens, and the portion proposed for rezoning is part of Unrestricted Reserve "C". The proposed development, Alexander Estates, consists of a maximum 251 single family residential lots with a required mix of two different lot sizes, 50' X 130' and 60' X 130'.

A PD Planned Development District is proposed to permit the development of a superior design neighborhood to what is otherwise permitted with SF-6 or even SF-9 single family district.

- The proposed PD will provide increased recreational and open space opportunities including required trails, plazas and recreational amenities
- It will require other amenities that are of special benefit to adjacent property owners and the overall community including required fencing along Huffsmith-Kohrville and landscape buffers along Spell Road.
- The proposed plan will provide an appropriate balance between intensity of development and open space. I have attached an illustration to this letter showing the expected yield on the property of over 200 lots without a change to the sites current zoning of R-9. Based on R-6 zoning the site could yield approximately 300 lots. The proposed PD proposes a maximum number of 251 lots and requires a minimum 15 percent of the site be open space, recreation and landscape reserve. The average lot size for the 50'-wide lots will be 6,500 sq. ft. and 7,800 sq. ft. for the 60'wide lots. The proposed lot sizes exceed the requested zoning district's minimum lot size of 4,000 sq. ft. and the minimum requirements of the R-6 District of 6,000 square feet.

- The proposed PD will exceed the standards of the City by requiring development within the subdivision to adhere to minimum building regulations, require alternative garage setbacks and require landscape trees on each single family lot.

Public access to the site will be from Spell Road and Huffsmith Kohrville Road. Traffic studies that have been performed indicate that the proposed development will not adversely impact vehicular or pedestrian access in the area. And to insure that the proposed development will not add to the existing traffic congestion we have made it a general condition of the zoning district that building permits for residential lots will not be issued until a traffic signal is constructed at the intersection of Spell Road and Huffsmith-Kohrville Road.

Drainage within the proposed subdivision will be collected and conveyed via a system of concrete curb and gutter streets and detained in an amenity pond that will feature landscape trails and benches as required by the PD. The development of the subdivision will actually reduce the amount of storm water runoff that currently drains to Spell Road.

This zone change request will be consistent with surrounding properties and developments in the area, as the property is surrounded on three sides with existing single family residential properties.

Attached to this request for reference is the current recorded plat for the property, as well as a conceptual site plan and the proposed ordinance language for the PD District.

Please feel free to contact me if you have any questions or would like any additional information. We appreciate your assistance and look forward to successfully rezoning the referenced property.

Regards,

Scott McKinzie, Planner

Exhibit "D"
Concept Plan

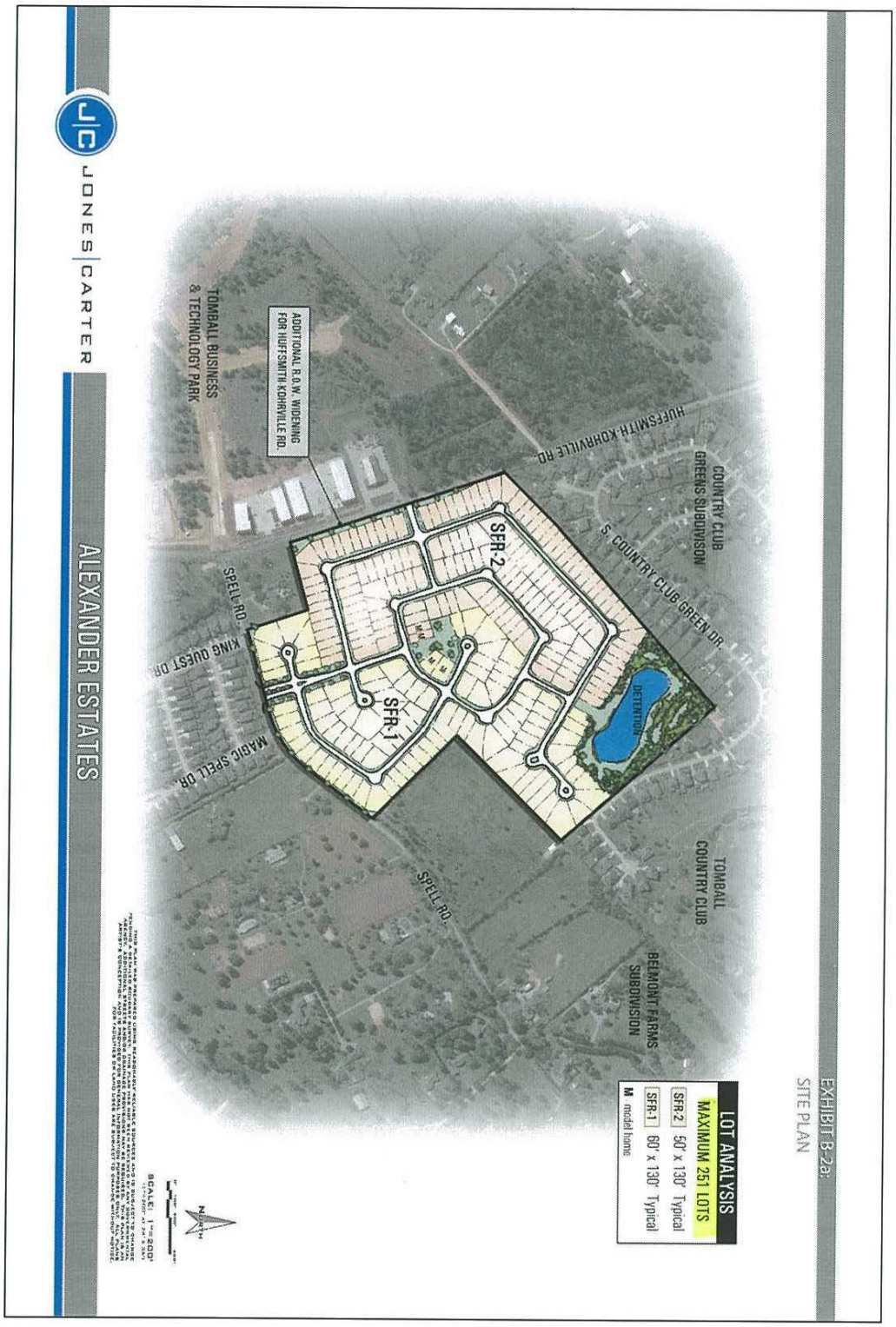


EXHIBIT B-3

LANDSCAPE, OPEN SPACE & TRAIL PLAN

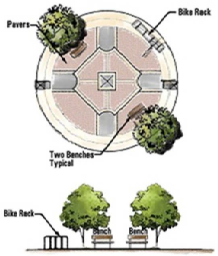
5' Sidewalk

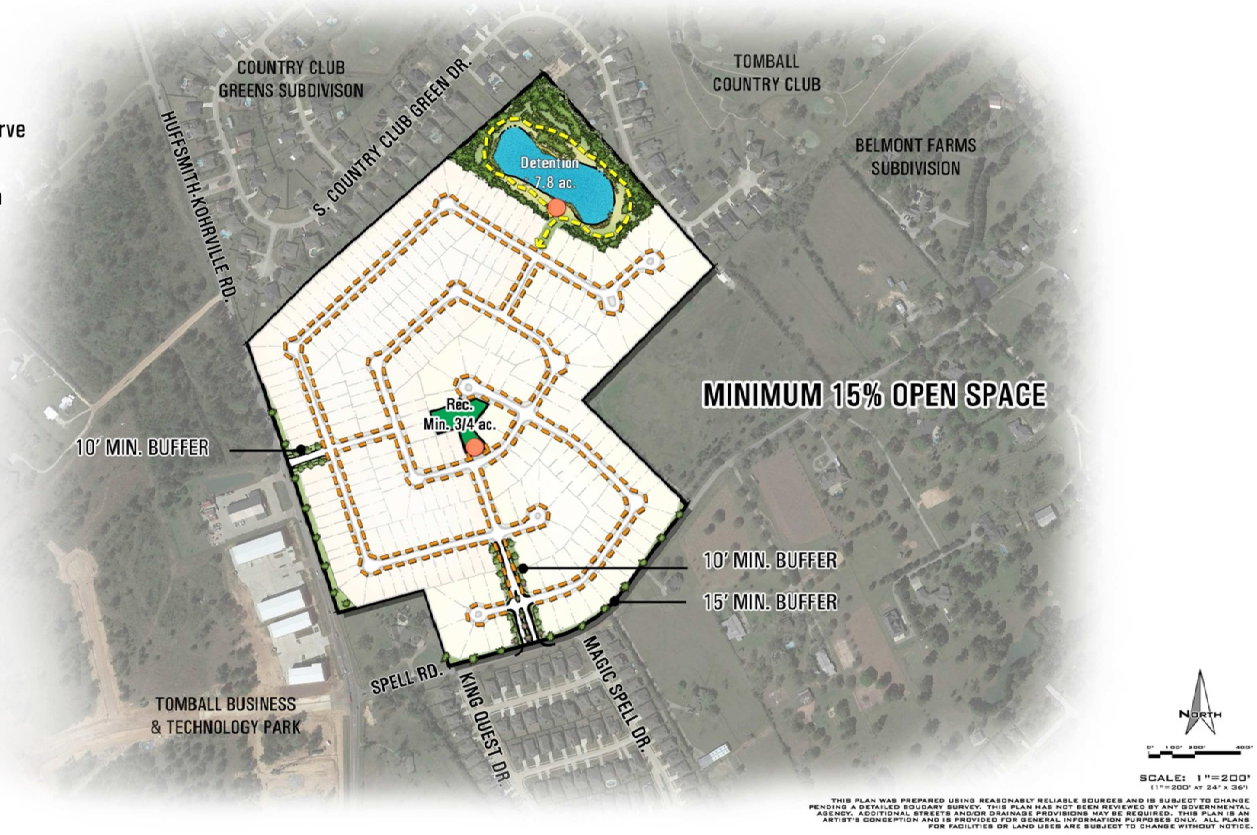
8' Pedestrian Trail

Required Recreation Reserve
Minimum 3/4 ac.

Proposed Pedestrian Plaza

Pedestrian Plaza Detail





THIS PLAN WAS PREPARED USING REASONABLY RELIABLE SOURCES AND IS SUBJECT TO CHANGE PENDING A DETAILED BOUNDARY SURVEY. THIS PLAN HAS NOT BEEN REVIEWED BY ANY GOVERNMENTAL AGENCY. ADDITIONAL STREETS AND/OR DRAINAGE PROVISIONS MAY BE REQUIRED. THIS PLAN IS AN ARTIST'S CONCEPTION AND IS PROVIDED FOR GENERAL INFORMATION PURPOSES ONLY. ALL PLANS FOR FACILITIES OR LAND USES ARE SUBJECT TO CHANGE WITHOUT NOTICE.

JONES | CARTER

ALEXANDER ESTATES

EXHIBIT B-2b:
LOT CONFIGURATIONS
TYPICAL LOT CONFIGURATION
10' MIN. BETWEEN HOMES
5' MIN. SIDE YARD
15' REAR YARD
5' MIN. SIDE YARD
15' SIDE YARD ON STREET CORNER
PUBLIC STREET
15' REAR YARD
5' MIN. SIDE YARD
DEFINITION OF PORCH: 5' MIN. DEPTH 15' MIN. WIDTH
OPTIONAL PORCH / LIVING AREA
20' MIN. FRONT YARD
5' SIDE WALK
PUBLIC STREET
ALTERNATIVE GARAGE SETBACKS
DETACHED GARAGE
J-SWING GARAGE
J-SWING GARAGE ALT.
GARAGE SETBACK
PASS -THROUGH GARAGE
PUBLIC STREET
DEFINITION OF PORCH: 5' MIN. DEPTH 15' MIN. WIDTH
OPTIONAL PORCH / LIVING AREA
5' MIN SET BACK FROM FRONT BUILDING FACADE OF THE LIVING AREA
DRAWING NOT TO SCALE
JONES | CARTER
ALEXANDER ESTATES

Rezoning Staff Report

Planning and Zoning Commission Public Hearing Date: April 10, 2017
City Council Public Hearing Date: April 17, 2017

Zoning Case:	P17-0023
Property Owner(s):	Doug Eibsen, BCDE, LTD / Eibsen & Associates
Applicant(s):	Scott McKinzie, Jones Carter
Legal Description:	Reserve C, C1 and C2 Tomball Greens
Location:	East side of Hufsmith-Kohrville Road, north side of Spell Road (Exhibit "A")
Area:	70.3574 acres
Present Zoning and Use:	Single-Family 9 District (Exhibit "B") / Undeveloped property (Exhibit "C")
Comp Plan Designation:	Medium Density Residential (Exhibit "D")
Proposed Zoning and Use:	Planned Development – 9 (PD-9) District / Single-Family Lot Subdivision

Adjacent Zoning and Use:

North: Outside City Limits / Single-family residences (Country Club Greens subdivision)

South: Outside City Limits / Spell Road and single-family residences

West: Light Industrial / Tomball Business Park and CREACOM, Inc.

East: Outside City Limits / Undeveloped

BACKGROUND

In early 2016, City Staff began meeting with the property owner to discuss the possibility of rezoning the subject site. The property was annexed into the City and rezoned from Agricultural to Single-family 9 in August 2014. Since then, the developer has altered the proposed development to include lots ranging from 6,500 – 7,800 square feet (Exhibit "F").

In October 2016, the applicant requested the property be rezoned from Single-Family 9 to Single-Family 6. The request was denied by City Council.

ANALYSIS

The applicant is requesting that the property be rezoned from the Single-Family 9 District to the PD-9 District to allow for a single-family lot subdivision. According to Section

50-80 of the Code of Ordinances, a Planned Development "is a district which accommodates planned associations of uses developed as integral land use units such as office parks, retail/commercial or service centers, shopping centers, residential developments having a mixture of housing options (e.g., Single-Family, Multifamily, Duplex (Two Family), etc.), or any appropriate combination of uses which may be planned, developed or operated as integral land use units either by a single owner or a combination of owners." Additionally, a Planned Development "may be used to permit new or innovative concepts in land utilization not permitted by other zoning districts in this chapter, to ensure the compatibility of land uses, and to allow for the adjustment of changing demands to meet the current needs of the community" by meeting one or more of the following purposes:

a. To provide for a superior design on lots or buildings;
b. To provide for increased recreation and open space opportunities for public use and enjoyment;
c. To provide amenities or features that would be of special benefit to the property users or to the overall community;
d. To protect or preserve natural amenities and environmental assests such as trees, creeks, ponds, floodplains, slopes, viewscapes, or wildlife habitats;
e. To protect or preserve existing historical buildings, structures, features or places;
f. To provide an appropriate balance between the intensity of development and the ability to provide adequate supporting public facilities and services; and
g. To meet or exceed the standards of this chapter.

The applicant's request for a single-family development appears to be consistent with the intent of the Planned Development District and appears to meet the current needs of the community by:

1. Providing a superior design on lots or buildings. The development will include two lot options: 50' x 130' and 60' x 130'.

2. Providing increased recreation and open space opportunities for public use and enjoyment. The development will include trails, plazas and other recreational amenities.

3. Providing amenities or features that would be of special benefit to the property users or to the overall community. The development will include the above mentioned amenities along with landscape buffers and fencing along Hufsmith-Kohrville and Spell Road.

4. Meeting and exceeding the standards of Chapter 50 (Zoning). The proposed development will incorporate all the above mentioned standards and amenities as well as increased design standards for the individual lots including alternative garage setbacks, landscape trees, and façade standards.

There are several land uses in the vicinity of the subject site. To the north are single-family residences in the Country Club Greens subdivision; to the south are Spell Road and single-family residences; to the west are Hufsmith-Kohrville Road and commercial uses (Tomball Business Park and CREACOM, Inc.), and a single-family residence; and to the east is vacant land. The PD-9 District appears to be consistent and compatible with

the existing single-family residences and vacant land in the vicinity. The proposed residential development will bring services to the area and be similar to existing development in the area.

The majority of the properties in the vicinity of the subject sire are not zoned because they are not in the City Limits; however, the primary zoning district in the surrounding area is Light Industrial (LI). The incompatibility of the request with the LI District to the west appears to be minimized because of their separation by Hufsmith-Kohrville Road.

The Comprehensive Plan designates the property as Medium Density Residential, which includes lots sizes ranging from 6,000 to 20,000 square feet. The proposed request is in conformance with the Comprehensive Plan.

ZONING CONSIDERATIONS

In making its recommendation regarding a proposed zoning change, the Planning and Zoning Commission and City Council shall consider the following factors:

A. Whether the uses permitted by the proposed change will be appropriate in the immediate area concerned, and their relationship to the general area and to the City as a whole.

The PD-9 District, along with its concept plan and development standards, appears to be compatible with the surrounding residential developments in the area.

B. Whether the proposed change is in accord with any existing or proposed plans for providing public schools, streets, water supply, sanitary sewers, and other utilities to the area.

The proposed rezoning is not anticipated to negatively impact any existing or proposed plans for providing public schools, streets, water supply, sanitary sewers, and other utilities to the area. The property is zoned to Klein ISD. The school district has included this development in their long range projection and they do not foresee issues with accommodating the influx of students. All public utility mains will be extended, at the developer's expense, to serve the properties.

C. The amount of vacant land currently classified for similar development in the vicinity and elsewhere in the City, and any special circumstances which may make a substantial part of such vacant land unavailable for development.

There are no vacant tracts in the vicinity classified for similar development.

D. The recent rate at which land is being developed in the same zoning classification as the request, particularly in the vicinity of the proposed change.

Planned Development 4 (Yaupon Trails) is the only other PD in the City that is designated for a single-family development. This development is located at Brown Road and Quinn Road, which is not in the vicinity of the proposed change.

E. How other areas designated for similar development will be, or are likely to be, affected if the proposed amendment is approved.

If the proposed rezoning is approved, few, if any affects on other areas designated for similar developments are anticipated.

F. Any other factors that will substantially affect the public health, safety, morals, or general welfare.

Generally, the proposed rezoning does not appear to negatively affect the public health, safety, morals, or general welfare. The proposed rezoning from Single-Family 9 to PD-9 will generate approximately one additional vehicle per minute during the peak hour. Harris County's plans to widen Hufsmith-Kohrville Road and the scheduled installation of a traffic signal at the Spell Road / Hufsmith-Kohrville intersection will alleviate traffic concerns in the area. The signal is now approved by Harris County and currently scheduled for construction in June 2017.

The existing uncontrolled overland flow will be captured in streets and storm sewers and routed to an onsite detention pond which will lessen existing flooding impacts on properties to the west, south and north. The controlled release from the onsite detention pond drains into a subsurface storm sewer and golf course pond which outfalls directly into a tributary of Willow Creek.

G. Whether the request is consistent with the Comprehensive Plan.

The Future Land Use plan designates the property Medium Density Residential, which would include lots ranging from 6,000 to 20,000 square feet. The proposed residential development includes lots that are similar in size to the single-family zoning districts, therefore, the proposed request is consistent with the Comprehensive Plan.

PUBLIC COMMENT

Property owners within 200 feet of the project site were mailed notification of this proposal on March 24, 2017. A sign was placed on the property and Notice of Public Hearing was published in the paper on March 29, 2017. Five public comment forms have been received as of the date of this report.

RECOMMENDATION

Based on the findings outlined in the analysis and zoning considerations sections of this staff report, City staff recommends approval of Zoning Case P17-0023.

EXHIBITS

A. Aerial Photo
B. Zoning Map
C. Site Photo(s)
D. Comprehensive Plan Map
E. Application
F. Concept Plan

Exhibit "A"
Aerial Photo

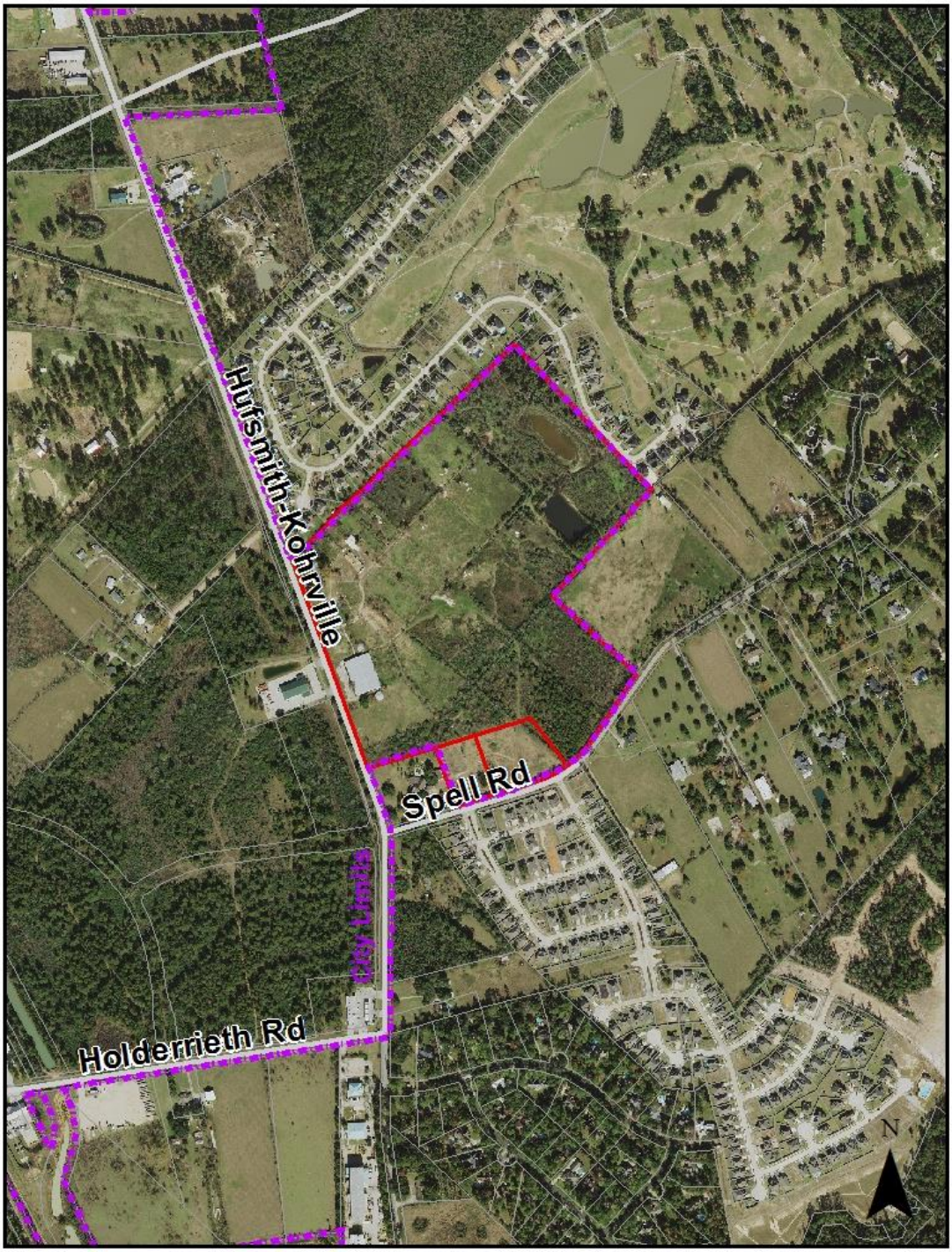


Exhibit "B"
Zoning Map

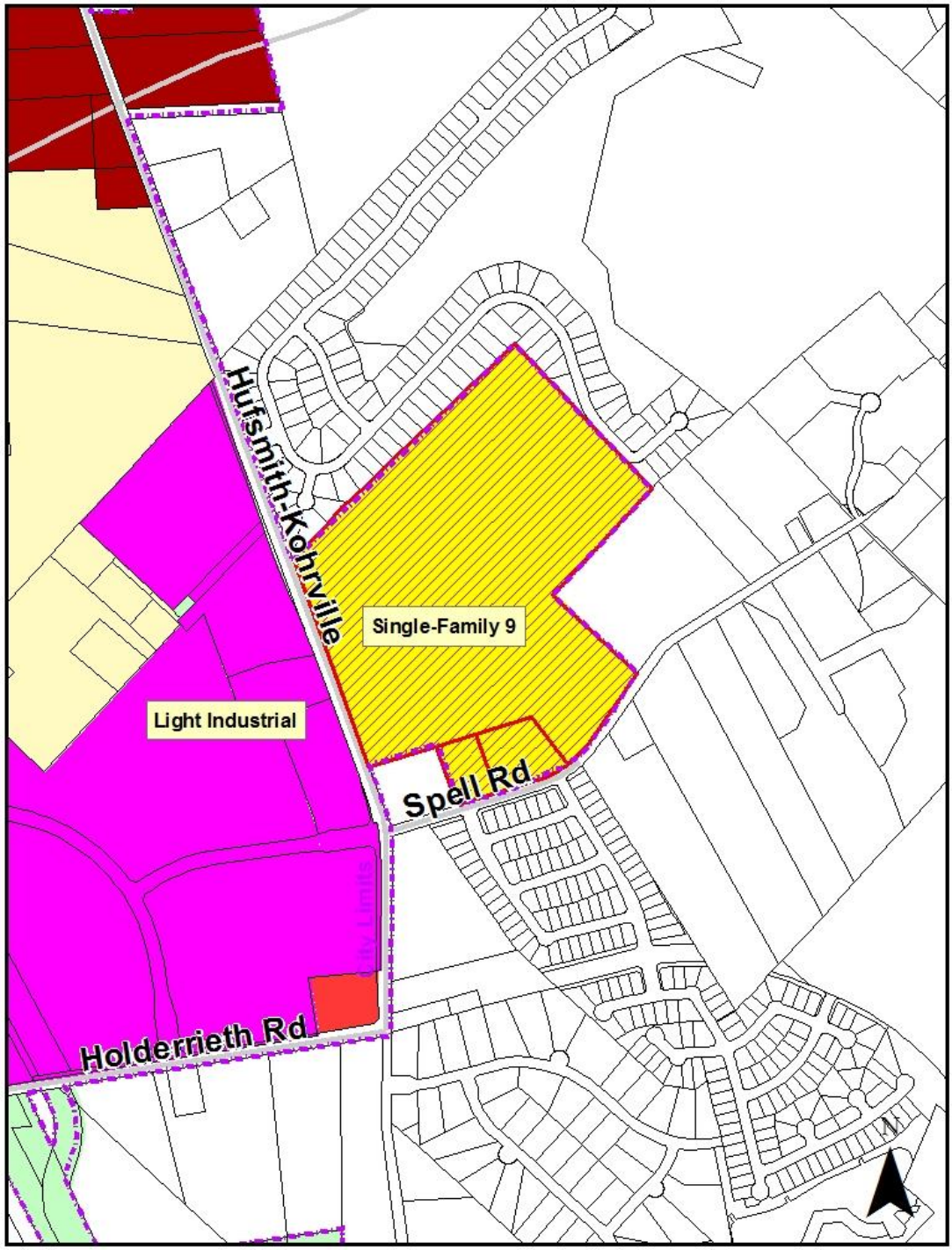


Exhibit "C"
Site Photo(s)

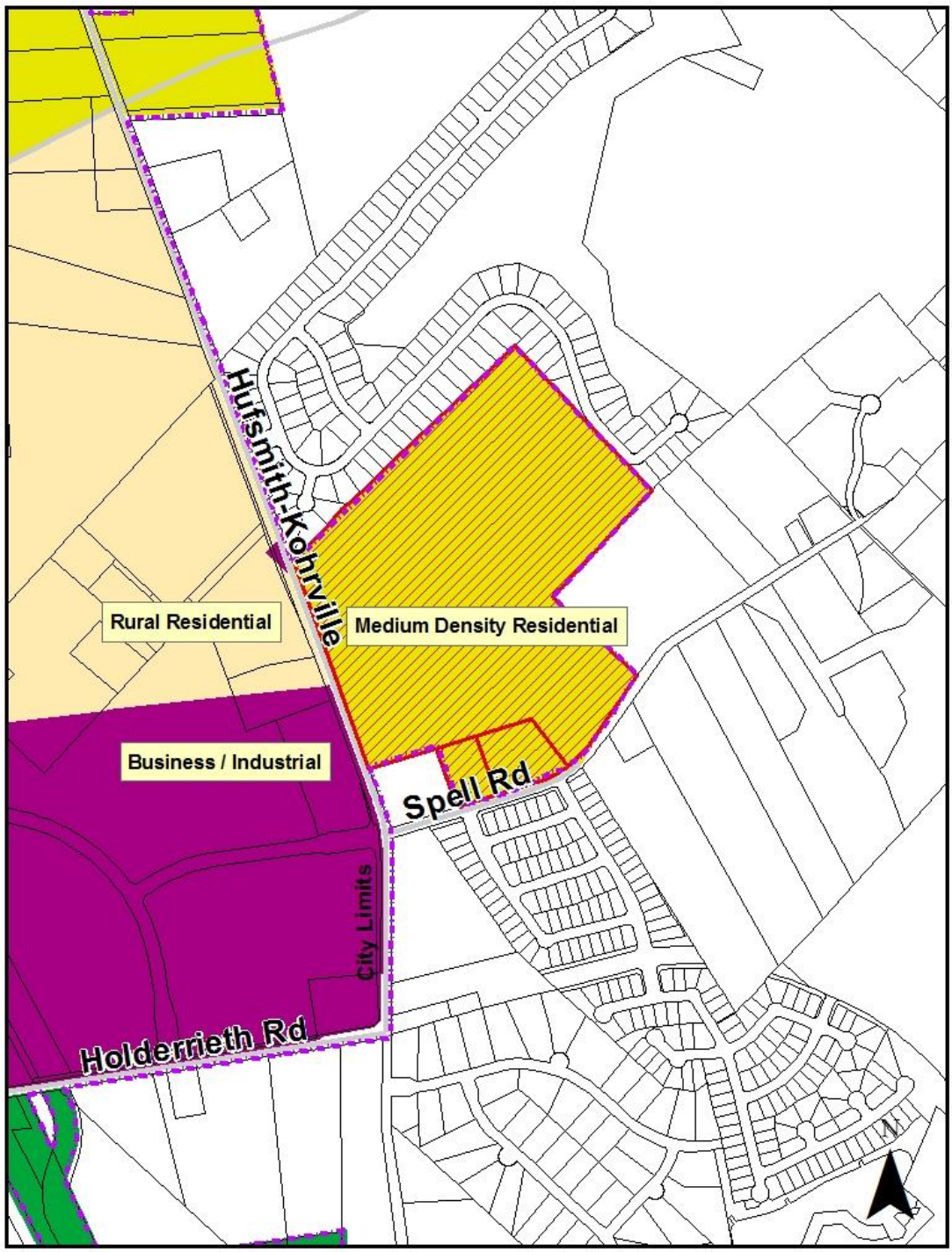


Subject Site along Hufsmith-Kohrville Road



Subject Site along Spell Road

Exhibit "D"
Comprehensive Plan Map



Revised 5/19/15

P17-0023

APPLICATION FOR REZONING

Community Development Department
Planning Division

RECEIVED
MAR 0 1 2017
BY: EJones

APPLICATION SUBMITTAL: Applications will be ***conditionally*** accepted on the presumption that the information, materials and signatures are complete and accurate. If the application is incomplete or inaccurate, your project may be delayed until corrections or additions are received.

Applicant
Name: Scott McKinzie, Jones|Carter Title: Planner
Mailing Address: 8701 New Trails Drive, Suite 200 City: The Woodlands State: TX
Zip: 77381
Phone: (281) 363-4039 Fax: (281) 363-3459 Email: smckinzie@jonescarter.com

Owner
Name: Doug Eibsen, BCDE, LTD / Eibsen & Assoc. Title: General Partner / President
Mailing Address: 24522 Creekview Dr City: Spring State: TX
Zip: 77389
Phone: (713) 628-3628 Fax: (____) _____ Email: DougEibsen@att.net

Engineer/Surveyor (if applicable)
Name: John Dreahn, Jones|Carter Title: Department Manager
Mailing Address: 8701 New Trails Drive, Suite 200 City: The Woodlands State: TX
Zip: 77381
Phone: (281) 363-4039 Fax: (281) 363-3459 Email: JDreahn@jonescarter.com

Description of Proposed Project: Alexander Estates, Single-Family Lot Subdivision

Physical Location of Property: Northeast corner of Huffsmith-Kohrville Road and Spell Road
[General Location – approximate distance to nearest existing street corner]

Legal Description of Property: Being a partial replat of Tomball Greens, Unrestricted Reserve C
[Survey/Abstract No. and Tracts; or platted Subdivision Name with Lots/Block]

Current Zoning District: SF-9

Current Use of Property: Vacant, undeveloped

Proposed Zoning District: Planned Development

Proposed Use of Property: Single Family Residential

HCAD Identification Number: 1207880000005 Acreage: 70.3574
1207880000007, 1207880000008

Please note: A courtesy notification sign will be placed on the subject property during the public hearing process and will be removed when the case has been processed.

This is to certify that the information on this form is COMPLETE, TRUE, and CORRECT and the under signed is authorized to make this application. I understand that submitting this application does not constitute approval, and incomplete applications will result in delays and possible denial.

X _____ 2/28/2017
Signature of Applicant Date

X _____ 2/28/2017
Signature of Owner Date

CITY OF TOMBALL
281-351-5484

REC#: 00971836 3/01/2017 10:41 AM
OPER: RP TERM: 005
REF#: W 1905

TRAN: 130.0000 PLANNING AND ZONING
ALEXANDER ESTATES 70.3574 AC
EIBSEN & ASSOCIATES
100-5441
REZONING APPLICATIO 1,103.57CR

TENDERED: 1,103.57 CHECK
APPLIED: 1,103.57-

CHANGE: 0.00

JONES | CARTER

8701 New Trails Drive, Suite 200
The Woodlands, Texas 77381-4241
Tel: 281.363.4039
Fax: 281.363.3459
www.jonescarter.com

March 1, 2017

Mr. Craig Meyers, PE, CFM
Community Development Director
City of Tomball
501 James Street
Tomball, TX 77375

Re: Request for Rezoning

Mr. Meyers:

This letter serves as a formal rezoning request. The property in question is undeveloped, but is currently zoned Single Family 9 (SF-9) within the corporate limits of Tomball. We are requesting the property be rezoned to Planned Development (PD).

The property is located at the northeast intersection of Hufsmith-Kohrville Road and Spell Road, and consists of 70.3574 acres. The property is currently platted as Tomball Greens, and the portion proposed for rezoning is part of Unrestricted Reserve "C". The proposed development, Alexander Estates, consists of a maximum 260 single family residential lots with a required mix of two different lot sizes, 50' X 130' and 60' X 130'.

A PD Planned Development District is proposed to permit the development of a superior design neighborhood to what is otherwise permitted with SF-6 or even SF-9 single family district.

- The proposed PD will provide increased recreational and open space opportunities including required trails, plazas and recreational amenities

- It will require other amenities that are of special benefit to adjacent property owners and the overall community including required fencing along Huffsmith-Kohrville and landscape buffers along Spell Road.

- The proposed plan will provide an appropriate balance between intensity of development and open space. I have attached an illustration to this letter showing the expected yield on the property of over 200 lots without a change to the sites current zoning of SF-9. Based on SF-6 zoning the site could yield approximately 300 lots. The proposed PD proposes a maximum number of 260 lots and requires a minimum 15 percent of the site be open space, recreation and landscape reserve. The average lot size for the 50'-wide lots will be 6,500 sq. ft. and 7,800 sq. ft. for the 60'wide lots. The proposed lot sizes exceed the requested zoning district's

minimum lot size of 4,000 sq. ft. and the minimum requirements of the SF-6 District of 6,000 square feet.

- The proposed PD will exceed the standards of the City by requiring development within the subdivision to adhere to minimum building regulations, require alternative garage setbacks and require landscape trees on each single family lot.

Access to the site will be from Spell Road. Traffic studies that have been performed indicate that the proposed development will not adversely impact vehicular or pedestrian access in the area. And to insure that the proposed development will not add to the existing traffic congestion we have made it a general condition of the zoning district that building permits for residential lots will not be issued until a traffic signal is constructed at the intersection of Spell Road and Huffsmith-Kohrville Road.

Drainage within the proposed subdivision will be collected and conveyed via a system of concrete curb and gutter streets and detained in an amenity pond that will feature landscape trails and benches as required by the PD. The development of the subdivision will actually reduce the amount of storm water runoff that currently drains to Spell Road.

This zone change request will be consistent with surrounding properties and developments in the area, as the property is surrounded on three sides with existing single family residential properties.

Attached to this request for reference is the current recorded plat for the property, as well as a conceptual site plan and the proposed ordinance language for the PD District.

Please feel free to contact me if you have any questions or would like any additional information. We appreciate your assistance and look forward to successfully rezoning the referenced property.

Regards,

Scott McKinzie, Planner

SWM:jr
M:\Scott\Tomball Spell\Plat submittal\Rezoning Request Submittal\Rezoning Request Letter.docx

TOMBALL GREENS
FINAL PLAT
BEING A SUBDIVISION OF 188.0623 ACRES
OUT OF THE ELIZABETH SMITH SURVEY, A-70
HARRIS COUNTY, TEXAS
3 RESERVES
DATE: JULY, 1999 SCALE: 1"=200'
OWNERS
T. C. C. DEVELOPMENT, INC.
TOMBALL COUNTRY CLUB, INC.
JACK N. WARREN
SURVEYOR
GARALD E. MUNGER, JR.
CENTURY ENGINEERING, INC.
2300 B. GEBERT SUITE 501 PASADENA, TEXAS 77506 (713) 750-4971
SHEET 1 OF 2
KEY MAP
VICINITY MAP
NOT TO SCALE
PROJECT SITE
UNRESTRICTED RESERVE "A"
64.5804 ACRES
SEE NOTES 8, 9 & 10
RESTRICTED RESERVE "B"
37.0265 ACRES
(RESTRICTED TO GOLF COURSE AND DETENTION POND)
SEE NOTES 9 & 10
UNRESTRICTED RESERVE "C"
86.4756 ACRES
SEE NOTES 8 & 9
HUFFSMITH - KOHRVILLE ROAD (80' R.O.W.)
MATCH LINE
GENERAL NOTES
GRAPHIC SCALE 1" = 200'
0 100 200 400 600 800

TOMBALL GREENS

FINAL PLAT

BEING A SUBDIVISION OF 188.0623 ACRES
OUT OF THE ELIZABETH SMITH SURVEY, A-70
HARRIS COUNTY, TEXAS

3 RESERVES

DATE: JULY, 1999 SCALE: 1"=200'

OWNER
T. C. C. DEVELOPMENT, INC.
TOMBALL COUNTRY CLUB, INC.
JACK N. WARREN

SURVEYOR
GARALD E. MUNGER, JR.

CENTURY ENGINEERING, INC.
2000 S. GESSNER SUITE 500 HOUSTON, TEXAS 77063 (713) 787-4871

SHEET 2 OF 2

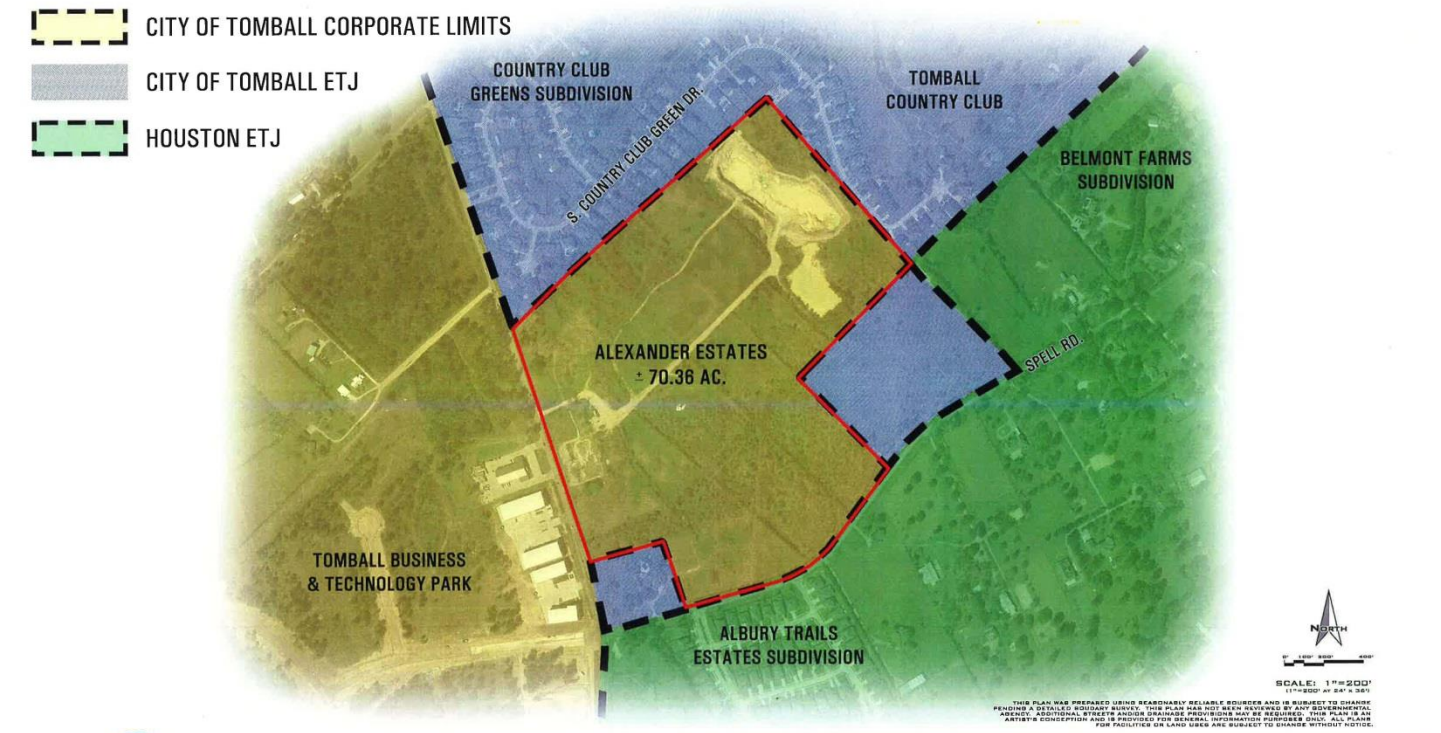
ILLUSTRATION 1
300 LOTS - SF-6
(50' X 120') - 6,000 S.F.
JONES|CARTER
ALEXANDER ESTATES
TOMBALL BUSINESS & TECHNOLOGY PARK
HUFSMITH-KOHRVILLE RD
COUNTRY CLUB GREENS SUBDIVISION
S. COUNTRY CLUB GREEN DR
DETENTION
SPELL RD
KING QUEST DR
MAGIC SPELL DR
TOMBALL COUNTRY CLUB
BELMONT FARMS SUBDIVISION
SPELL RD
NORTH
SCALE: 1"=200'

ILLUSTRATION 2
201 LOTS - SF-9
(75' X 120') - 9,000 S.F.
JONES|CARTER
ALEXANDER ESTATES
TOMBALL BUSINESS & TECHNOLOGY PARK
HUFFSMITH-KOHRVILLE RD.
COUNTRY CLUB GREENS SUBDIVISION
S. COUNTRY CLUB GREEN DR.
SPELL RD.
KING QUEST DR.
MAGIC SPELL DR.
DETENTION
TOMBALL COUNTRY CLUB
BELMONT FARMS SUBDIVISION
SPELL RD.
NORTH
SCALE: 1"=200'

Exhibit "F"
Concept Plan



EXHIBIT B-1b:
JURISDICTION MAP



JONES|CARTER

ALEXANDER ESTATES

EXHIBIT B-2a:

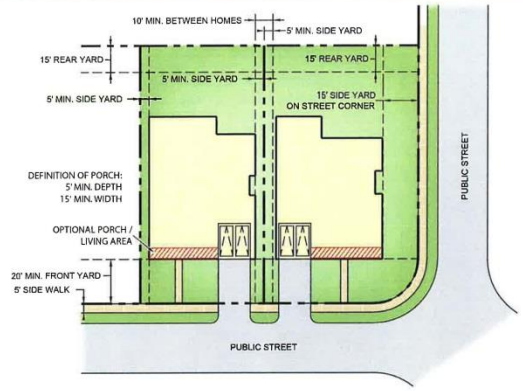
SITE PLAN

JONES|CARTER

ALEXANDER ESTATES

EXHIBIT B-2b:

LOT CONFIGURATIONS



TYPICAL LOT CONFIGURATION



DETACHED GARAGE | J-SWING GARAGE | J-SWING GARAGE ALT. | GARAGE SETBACK | PASS -THROUGH GARAGE

ALTERNATIVE GARAGE SETBACKS

DRAWING NOT TO SCALE

JONES | CARTER

ALEXANDER ESTATES

EXHIBIT B-3

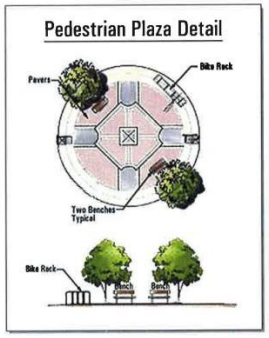
LANDSCAPE, OPEN SPACE & TRAIL PLAN

5' Sidewalk

8' Pedestrian Trail

Required Recreation Reserve
Minimum 3/4 ac.

Proposed Pedestrian Plaza





THIS PLAN WAS PREPARED USING REASONABLY RELIABLE SOURCES AND IS SUBJECT TO CHANGE PENDING A DETAILED BOUNDARY SURVEY. THIS PLAN HAS NOT BEEN REVIEWED BY ANY GOVERNMENTAL AGENCY. ADDITIONAL STREETS AND/OR DRAINAGE PROVISIONS MAY BE REQUIRED. THIS PLAN IS AN ARTIST'S CONCEPTION AND IS PROVIDED FOR GENERAL INFORMATION PURPOSES ONLY. ALL PLANS FOR FACILITIES OR LAND USES ARE SUBJECT TO CHANGE WITHOUT NOTICE.

JONES|CARTER

ALEXANDER ESTATES

NOTICE OF PUBLIC HEARING
CITY OF TOMBALL
PLANNING & ZONING COMMISSION (P&Z)
APRIL 10, 2017
&
CITY COUNCIL
APRIL 17, 2017

Notice is Hereby Given that a Public Hearing will be held by the P&Z of the City of Tomball on **Monday, April 10, 2017, at 6:00 P.M.,** and by the City Council of the City of Tomball on **Monday, April 17, 2017, at 6:00 P.M.** at City Hall, 401 Market Street, Tomball Texas. On such dates, the P&Z and City Council will consider the following:

Zoning Case P17-0012: Request by Francisco Choi, on behalf of TamiroWood LLC, to operate an *Assisted Living Facility (continuing care retirement community)* at 609 South Pine Street. The property is approximately 2 acres, legally described as Part of Outlots 127 and 129 five acre tracts Tomball Outlots, generally located on the east side of South Pine Street between James Street and Cherry Laurel Street and is zoned Office District.

Zoning Case P17-0023: Request by Scott McKinzie, on behalf of BCDE, LTD to amend Chapter 50 (Zoning) of the Tomball Code of Ordinances by rezoning approximately 70.3574 acres of land, legally described as Reserve C, C1 and C2 Tomball Greens, within the City of Tomball, Harris County, Texas, generally located on the east side of Hufsmith-Kohrville Road, north side of Spell Road, from the Single-Family 9 District to the Planned Development District.

At the public hearings, parties of interest and citizens will have the opportunity to be heard. All citizens of the City of Tomball, and any other interested parties, are invited to attend. Applications are available for public inspection Monday through Friday, except holidays, at the Public Works Building, located at 501 James Street, Tomball, TX 77375. Further information may be obtained by contacting the Planner, Amelia Lindley, at (281) 290-1410 or at alindley@tomballtx.gov.

C E R T I F I C A T I O N

I hereby certify that the above notice of meeting was posted on the bulletin board of City Hall; City of Tomball, Texas, a place readily accessible to the general public at all times, on the **6th** day of **April 2017** by 5:00 p.m., and remained posted for at least 72 continuous hours preceding the scheduled time of said meeting.

Kim Chandler
Kim Chandler
Secretary of the Board

This facility is wheelchair accessible and accessible parking spaces are available. Requests for accommodations or interpretive services must be made 48 hours prior to this meeting. Please feel free to contact the City Secretary's office at (281) 290-1002 or FAX (281) 351-6256 for further information. AGENDAS MAY ALSO BE VIEWED ONLINE AT www.tomballtx.gov.

Community Development Department

Notice of Public Hearing

YOU ARE INVITED TO ATTEND Public Hearings before the **PLANNING & ZONING COMMISSION** and **CITY COUNCIL** of the City of Tomball regarding the following item:

CASE NUMBER: P17-0023

APPLICANT/OWNER: Request by Scott McKinzie, on behalf of BCDE, LTD

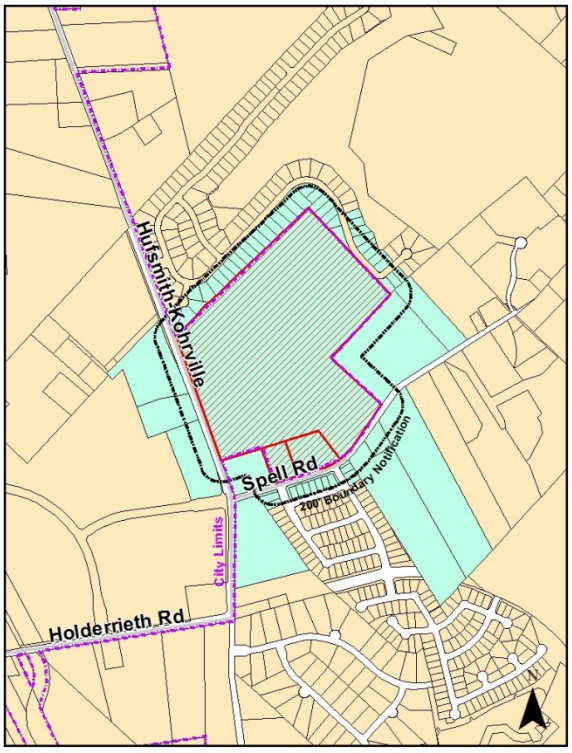
LOCATION: Generally located on the east side of Hufsmith-Kohrville Road, north side of Spell Road,

PROPOSAL: To amend Chapter 50 (Zoning) of the Tomball Code of Ordinances by rezoning approximately 70.3574 acres of land, legally described as Reserve C, C1 and C2 Tomball Greens, within the City of Tomball, Harris County, Texas, from the Single-Family 9 District to the Planned Development District.

CONTACT: Amelia Lindley
PHONE: (281) 290-1410
E-MAIL: alindley@tomballtx.gov

Interested parties may contact the City of Tomball between 8:00 a.m. and 5:00 p.m. Monday through Friday for further information. The application is available for public review Monday through Friday, except holidays, between the hours of 8:00 a.m. and 5:00 p.m. in the Community Development Department office, located at 501 James Street, Tomball, TX 77375. The staff report will be available no later than 4:00 p.m. on the Friday preceding the meeting.

This notice is being mailed to all owners of real property within 200 feet of the request as such ownership appears on the last approved Harris County Appraisal District tax roll.



Planning & Zoning Commission
Public Hearing:
Monday, April 10, 2017, 6:00 PM

City Council Public Hearing:
***Monday, April 17, 2017, 6:00 PM**

The Public Hearings will be held in the
City Council Chambers, City Hall
401 Market Street, Tomball, Texas

*Should the Planning & Zoning Commission vote to table the recommendation on the case, the date and time of a future meeting will be specified and the City Council will not review the subject case until such a recommendation is forwarded to the City Council by the Planning & Zoning Commission.

Public Comment Form

(Please type or use black ink)

All submitted forms will become a part of the public record.

Please return to:
City of Tomball
Attn: Amelia Lindley
501 James Street
Tomball, TX 77375

Name: VISH BHASKARAN
(please print)
Address: 11035 SPELL ROAD
TOMBALL TX 77375

Signature: V. Bhaskaran

Date: 4/3/17

___ I am **FOR** the requested Rezoning as explained on the attached public notice for **Zoning Case P17-0023. (Please state reasons below)**

X I am **AGAINST** the requested Rezoning as explained on the attached public notice for **Zoning Case P17-0023. (Please state reasons below)**

Date, Location & Time of **Planning & Zoning Commission** meeting:
Monday, April 10, 2017 6:00 PM
City Council Chambers of the City of Tomball, City Hall
401 Market Street, Tomball, Texas

Date, Location & Time of **City Council** meeting:
Monday, April 17, 2017, 6:00 PM
City Council Chambers of the City of Tomball, City Hall
401 Market Street, Tomball, Texas

COMMENTS:

I DO NOT WANT MY LAND INCLUDED IN THE ZONING CASE P17-0023.

You may also comment via email to ALindley@tomballtx.gov.
Please reference the case number in the subject line.
For questions regarding this request please call Amelia Lindley @ 281-290-1410.

Public Comment Form

(Please type or use black ink)

All submitted forms will become a part of the public record.

Please return to:
City of Tomball
Attn: Amelia Lindley
501 James Street
Tomball, TX 77375

Name: VATSALA BHASKARAN
(please print)
Address: 11035 SPELL ROAD
TOMBALL TEXAS 77375

Signature:

Date: 4/4/17

___ I am **FOR** the requested Rezoning as explained on the attached public notice for **Zoning Case P17-0023. (Please state reasons below)**

X I am **AGAINST** the requested Rezoning as explained on the attached public notice for **Zoning Case P17-0023. (Please state reasons below)**

Date, Location & Time of **Planning & Zoning Commission** meeting:
Monday, April 10, 2017 6:00 PM
City Council Chambers of the City of Tomball, City Hall
401 Market Street, Tomball, Texas

Date, Location & Time of **City Council** meeting:
Monday, April 17, 2017, 6:00 PM
City Council Chambers of the City of Tomball, City Hall
401 Market Street, Tomball, Texas

COMMENTS:

I DO NOT WANT MY PROPERTY TO BE INCLUDED IN THE ZONING. CASE P17-0023

You may also comment via email to ALindley@tomballtx.gov.
Please reference the case number in the subject line.
For questions regarding this request please call Amelia Lindley @ 281-290-1410.

Amelia Lindley

From: Cindy Fuller <cindy@fullerdrywall.com>
Sent: Friday, April 07, 2017 7:19 AM
To: Amelia Lindley
Subject: Case P17-0023 Alexander Estates

Good Morning,

My name is Cindy Fuller and my husband, James Fuller, and I live at 11001 Spell Rd. On Wednesday night we attended an informal question and answer with Doug Eibsen the developer of the new proposed Alexander Estates on Spell Rd., Tomball, Texas. I would like to voice concerns I have about this new development after listening to and getting disturbing answers from the developer.

I have seen first-hand the changes in flooding and traffic congestion since the construction of Albury Trails and now I fear what will happen with this newest development. While I am all for improvements, this one, with the way it is being presented, is going to have a dangerous outcome. Let me explain. The Albury Trails neighborhood is pretty much at the corner of Spell Rd. and Hufsmith Kohrville which is directly across Spell Rd. from the new proposed neighborhood, Alexander Estates. Albury Trails has one entrance in and one exit out via Spell Rd. With approximately 260 family homes, that is a lot of cars traveling a small two lane dead-end road daily. Alexander Estates is projecting another 260 homes with one entrance and one exit via Spell Rd. If each one of those new homes had just two residents per home that would add 520 additional cars to a two lane dead-end road. That number doesn't account for households with teenage drivers, visitors etc. Now, moving down Spell Rd. there are many homes most of which are acreage homes as well as the Belmont Farms neighborhood. All homes are accessed from Spell Rd. Many of the residences at the end of Spell Rd. are retired and/or disabled. Some have medical problems that require ambulatory assistance at times.

When asked last night if the entrance/exit for the new Alexander Estates could be moved to Hufsmith Kohrville to ease the burden on Spell Rd., we were told by the developer that there will be a signal light at the corner of Spell Rd. and Hufsmith Kohrville and another signal light at Holderreith and Hufsmith Kohrville "soon" and that he wanted HIS residences to have a "safe" entrance and exit. He also stated that an emergency exit would be placed on Hufsmith Kohrville. Here is the problem with that.

1. Spell Rd. is a two lane road and in rush hour traffic the Alexander Estate homeowners turning left into their subdivision are going to back up traffic from Spell onto Hufsmith Kohrville creating a very dangerous situation. When asked last night if they would agree to expanding Spell Rd. to make a safe left hand turn for the Alexander Estate homeowners to enter the neighborhood while allowing other homeowners to continue down Spell Rd., the developer would not give an answer or commit. I guess he doesn't care too much about their safety or anyone's safety living on or off Spell Rd. The developer stated that he sat at the corner of Spell Rd. and Hufsmith Kohrville from 6:30am to 8:30am and watched traffic. He stated he saw only five cars leaving off Spell Rd. to Hufsmith Kohrville. While that ridiculous statement did get a lot of laughs, it's simply not true unless of course he was there on a Sunday morning.

2. If two new traffic lights are in the works, those lights would control traffic flow on Hufsmith Kohrville for not only the Alexander Estates homeowners but for every neighborhood down Hufsmith Kohrville without backing up Spell Rd. With Spell Rd. being a two lane road, there is going to be a severe backup with people wanting to go right, left or straight. There is no credible reason for not having the entrance to Alexander Estates off Hufsmith Kohrville. With two new traffic signals going up, that will be a huge advantage to every neighborhood off Hufsmith Kohrville.

3. The emergency exit proposed for Alexander Estates off Hufsmith Kohrville is putting every single resident on Spell Rd including Albury Trails neighborhood is grave danger. If something would happen on Spell Rd. for instance, an accident blocking the two lane dead end Spell Rd, an ambulance, fire truck, police etc. would have to use the Alexander Estates emergency exit, drive through Alexander Estates hopefully make it to Spell Rd to reach the emergency. Those precious minutes could make the difference between life and death.

4. When asked last night about what size homes would be built, the builders committed to the project, he was a bit vague. He stated that he usually doesn't like to build a home under 2600 sq. ft. and then stated it would most likely be one story homes because it would be more of an "empty nester" community. I would have liked for him to have a solid plan to tell us. When someone sounds unsure or vague, it makes you question if they have a plan.

In conclusion, no one in this area is against a nice new neighborhood being built as long as it's done responsibly, respectfully and in keeping with the beauty of Spell Rd. That means being responsible about drainage, being respectful to every person depending on their home values not to decline which they would if an entrance was put on Spell Rd. Who would want to buy a home when they are sharing a two lane road with another large neighborhood as well as multiple families further down the road? Having the entrance on Hufsmith Kohrville and providing the drainage required for adding so much concrete would put everyone's mind at ease about this project and welcome them with open arms. I don't believe that is a lot to ask... do you?

Sincerely,
Cindy Fuller

Public Comment Form

(Please type or use black ink)

All submitted forms will become a part of the public record.

Please return to:
City of Tomball
Attn: Amelia Lindley
501 James Street
Tomball, TX 77375

Name: Michael Coulter
(please print)
Address: 11102 Roundtable Dr.
Tomball, TX 77375
Signature: Michael Coulter
Date: 4-6-2017

____ I am **FOR** the requested Rezoning as explained on the attached public notice for Z**oning Case P17-0023. (Please state reasons below)**

✓ I am **AGAINST** the requested Rezoning as explained on the attached public notice for Z**oning Case P17-0023. (Please state reasons below)**

Date, Location & Time of **Planning & Zoning Commission** meeting:
Monday, April 10, 2017 6:00 PM
City Council Chambers of the City of Tomball, City Hall
401 Market Street, Tomball, Texas

Date, Location & Time of **City Council** meeting:
Monday, April 17, 2017, 6:00 PM
City Council Chambers of the City of Tomball, City Hall
401 Market Street, Tomball, Texas

COMMENTS:

Main entrance should be located on Huffsmith Korville Rd. not on Spell Rd.

Lot size is too small. More homes could & will cause more areas to flood.

You may also comment via email to ALindley@tomballtx.gov.
Please reference the case number in the subject line.
For questions regarding this request please call Amelia Lindley @ 281-290-1410.

Amelia Lindley

From: DAWN EDEN <dawn.eden@sbcglobal.net>
Sent: Thursday, April 06, 2017 1:35 PM
To: Amelia Lindley
Cc: Amir
Subject: Case P17-0023

Dear Ms Lindley - we understand that a proposal is to be presented soon to the Tomball Council to change zoning of an adjacent property to our residence from Single-Family, 9 District to the Planned Development District meaning that, if approved, the Developer of the adjacent property could build many more homes than originally planned. We wish to vote against this zoning change; the reasons for our vote include:

1. Additional traffic in an area that is already suffering from extremely dangerous driving conditions (e.g. turning off Spell Road onto Hufsmith-Kohrville Road in either the west, north or south direction) - we take our lives in our hands every time we venture out in a vehicle from Spell Road - the proposed zoning change would only worsen the situation.
2. Additional burden during periods of heavy rain/flooding. The flooding in our area around Spell Road is terrific to say the least - adding more concrete surface to the local area will worsen an already dangerous situation.
3. Additional burden on our schools meaning an associated increase in School Bus traffic which is also related to my point 1, above. We will be putting more children in more danger of an accident when a School Bus turns out from Spell Road - why would anyone think this is appropriate ?

Please let us know if we should also submit an official voting form prior to the meeting. We greatly appreciate your assistance in this matter and we look forward to attending the meeting in person on Monday evening April 10, 2017.

Warm regards

Dawn Eden & Amir Ebrahimzadeh
21230 Magic Spell Drive
Tomball, TX 77375
M: 346 221-9641
E: dawn.eden@sbcglobal.net

From:	Amelia Lindley
To:	Elizabeth Jones
Subject:	FW: Case Number P17-0023- Zoning Change Request for 70.3574 acres on Spell Road
Date:	Thursday, April 06, 2017 9:12:43 AM

From: Anthony Gallegos [mailto:agallegos@sidewinderdrilling.com]
Sent: Wednesday, April 05, 2017 9:42 PM
To: fhudgens@tomballtxgov.com; Mark Stoll; Chad Degges; Derek Townsend; kleinquinn@tomballtx.gov; Amelia Lindley; Kimberly Chandler; randerson@tomballtxgov.com; droquemore@tomballtx.gov; wbenson@tomballtx.gov; ddunagin@tomballtx.gov; Craig Meyers; Brandi Jones; lsmith@tomballtx.gov
Cc: Tiffany Gallegos (aroughneck@yahoo.com)
Subject: Case Number P17-0023- Zoning Change Request for 70.3574 acres on Spell Road

Dear Tomball City Council Members & Tomball Planning and Development Members,

My family and I live at 21218 Belmont Farms Drive, Tomball, Texas 77375. We enjoy living in Tomball and we are proud to call Tomball home.

My family and many neighbors participated in the two hearings last October regarding a proposed rezoning of the referenced property. Therefore, we were surprised to see a "Zoning Change" notice posted on Spell Road adjacent to the property. We have since learned that hearings are scheduled for April 10th and April 17th before the City Council.

At the previous hearings last October, we expressed our concerns regarding traffic and flooding which will be amplified by the proposed rezoning. In my opinion, more homes means more cars, people and concrete.

Regarding traffic, we understand and appreciate that Huffsmith-Korville Road will be widened and eventually a traffic light may be installed at Spell Road and Huffsmith-Korville Road. However, the simplest way to address the valid concerns of existing residents is to have the proposed subdivision's primary ingress/egress onto Huffsmith-Korville Road. Regarding drainage, drainage is a big problem in the area from Huffsmith-Korville Road, down Spell Road, through our neighborhood on its way to Willow Creek. I find it difficult to believe the situation will be better with a higher density development as being proposed again.

Additional flooding and traffic congestion which will result from the proposed rezoning are very real concerns for my family and our neighbors. I wanted to express my concerns to you as you consider what is now the third request to rezone the referenced property.

Thank you in advance for allowing me to express our concerns and thank you for your service to this community.

Respectfully,

Anthony Gallegos
21218 Belmont Farms Drive

713 269 2723 (cell)
agallegos@sidewinderdrilling.com

Amelia Lindley

From: GJ Morgan <gjm0805@sbcglobal.net>
Sent: Friday, April 07, 2017 9:32 AM
To: Amelia Lindley
Subject: Case #P17-0023 Alexander Estates

Good Morning,

My name is Jackie Morgan and my husband Greg and I live at 11102 Maidenfair Drive in Albury Trails Estates. Wednesday night, I attended an informal meeting with Doug Eibsen, the developer of the proposed Alexander Estates neighborhood. I would first like you to know that I am not opposed to this neighborhood. I do understand the positive aspects of increased revenue for our beloved City of Tomball. I truly do not believe anyone is actually opposed to the proposed Alexander Estates neighborhood as long as Mr. Eibsen is dutiful and just with his plans. However, I am *adamantly* opposed with his plans as they were stated Wednesday night for two *very* relevant reasons.

The plan that Mr. Eibsen is proposing now has only one entrance and one exit located on Spell Road. Spell Road is a two lane road. Albury Trails Estates is not fully developed as it stands and with his proposed neighborhood, it would add a minimum 500 additional cars onto a small two lane road. This would be troubling during normal hours and an absolute disaster during peak drive times. At the meeting, we asked Mr. Eibsen to please consider his entrance/exit to be on Hufsmith Kohrville. His response was that he was concerned with the safety of his residents. He told us traffic lights were planned for both Holderrieth and Spell. I work in Houston and commute from Tomball so I am very familiar with the blessings of traffic lights. I benefit daily from the lights at Boudreaux and 2920 as they provide my break in traffic for safe crossing. If we have a traffic light at Spell Road, it will **without a doubt** give the residents of Alexander Estates safe time for their entry/exit from Hufsmith Kohrville. With Mr. Eibsen's proposed plan, I truly believe a light at Spell Road could make things even worse with traffic backup.

My second concern is flooding. Last year my husband and I had to stay in a hotel because we could not make it to our home. Our home was fine, we simply could not get there from Holderrieth, Hufsmith Kohrville, nor 2920. Spell Road also floods and gets worse the farther you travel down. I would like assurance from credible sources that Alexander Estates will not cause further flooding issues.

As I stated earlier, I truly believe the proposed Alexander Estates would be great for the City of Tomball, I am simply asking for it to be done sensibly.

Thank you for your consideration,

Jackie Morgan

Amelia Lindley

From: Julia Wilson <juliakwilson.13@gmail.com>
Sent: Monday, April 10, 2017 2:03 PM
To: Amelia Lindley
Subject: Zoning Case P17-0023
Attachments: Wilson_PublicCommentForm_AGAINST_ZoningCase_P17-0023.pdf

Good afternoon Ms. Lindley,

Attached please find my completed Public Comment Form regarding Zoning Case P17-0023. My husband and I live at 20827 Mystic Stone Drive in Albury Trails Estates and we are against the proposed zoning changes along Spell Road. We are concerned that there will be an increase in the number of people cutting through The Reserves and Albury Trails Estates from 2920 to get to Spell - we already have a problem with people speeding through the neighborhoods and ignoring stop signs - in order to get to the new development. Also, we already have a problem with flooding and traffic along Spell Road, even in moderate rain. Increasing the traffic even further by not having an additional exit from the proposed neighborhood and allowing smaller lot sizes (therefore, more homes and more cars) in the new neighborhood will most certainly cause a decrease in our property values.

Please let me know if you have any questions or need additional information regarding our being AGAINST the requested rezoning (Zoning Case P17-0023).

Thank you,
Julia Wilson

Public Comment Form

(Please type or use black ink)

All submitted forms will become a part of the public record.

Please return to:
City of Tomball
Attn: Amelia Lindley
501 James Street
Tomball, TX 77375

Name: Julia + Jason Wilson
(please print)
Address: 20827 Mystic Stone Dr.
Tomball, TX 77375
Signature:
Date: 4/10/17

____ I am **FOR** the requested Rezoning as explained on the attached public notice for **Zoning Case P17-0023. (Please state reasons below)**

X I am **AGAINST** the requested Rezoning as explained on the attached public notice for **Zoning Case P17-0023. (Please state reasons below)**

Date, Location & Time of **Planning & Zoning Commission** meeting:
Monday, April 10, 2017 6:00 PM
City Council Chambers of the City of Tomball, City Hall
401 Market Street, Tomball, Texas

Date, Location & Time of **City Council** meeting:
Monday, April 17, 2017, 6:00 PM
City Council Chambers of the City of Tomball, City Hall
401 Market Street, Tomball, Texas

COMMENTS:

We are concerned about the additional cars that will be using Spell because there won't be another exit to the new community. We already have a problem with people cutting through from 2920 and flooding along Spell during even moderate rain. Increasing the # of vehicles on Spell will make it more difficult in our neighborhood (Albury Trails Estates) and likely result in a decrease in our property values.

You may also comment via email to ALindley@tomballtx.gov.
Please reference the case number in the subject line.
For questions regarding this request please call Amelia Lindley @ 281-290-1410.

Amelia Lindley

From: Kelsie Rowland <krober24@gmail.com>
Sent: Monday, April 10, 2017 12:48 PM
To: Amelia Lindley
Subject: Case P17-0023

Jace Rowland
11110 Maidenfair Drive
Tomball, TX 77375

I am AGAINST the requested Rezoning as explained on the attached public notice for Zoning case P17-0023.

Reasons for being against:

1. Increased traffic concerns on an already small Spell Road.
2. More cut through traffic in our neighborhood to 2920 which is already a problem especially because they speed religiously when going through our neighborhood. We have many families with children and this is a huge safety concern for us.
3. Flooding will be an even bigger problem on Spell Road with the added concrete and construction for the development.
4. Only having the one entrance and exit for the new neighborhood on Spell Road increasing the daily traffic by 400+ cars a day.
5.Currently no traffic light at Spell Road and Hufsmith-Kohrville intersection.

Thank you,
Jace Rowland

Amelia Lindley

From: Jim Alsup <JAlsup@rioog.com>
Sent: Thursday, April 06, 2017 4:02 PM
To: Gretchen Fagan; fhudgens@tomballtxgov.com; Mark Stoll; Chad Degges; Derek Townsend; kleinquinn@tomballtx.gov; Amelia Lindley; Kimberly Chandler; randerson@tomballtxgov.com; droquemore@tomballtx.gov; wbenson@tomballtx.gov; ddunagin@tomballtx.gov; Craig Meyers; Brandi Jones; lsmith@tomballtx.gov
Subject: Case Number P17-0023- Zoning Change Request for 70.3574 acres on Spell Road

Attention: Tomball Mayor, Tomball City Council Members and Tomball Planning and Development Members:

My name is James Alsup and my family and I live at 21202 Belmont Farms Dr in Tomball. We have happily lived in Tomball for the past 9 years and with this being our 3rd occurrence living in the north Houston area, we purposely chose Tomball for our final residence in Houston.

I am writing each of you to voice my opposition to the subject Case Number P17-0023 seeking a Zoning Change Request for 70 acres on Spell Road. I am not opposed to the development of this property under the currently approved status of SF-9 but do object to the increased density that the smaller +/-6,000 ft^2 lots will result in.

I don't believe that Spell Road, with or without a stoplight on Huffsmith-Kohrville, can adequately handle the increased traffic from a 50% increase in cars and traffic that will result from the subject Zoning Change. In my opinion, the entrance to Alexander Estates should be placed on Huffsmith-Kohrville to mitigate this issue.

Flooding along and at the end of Spell Road has become an increasing issue the last three years. We have repeatedly seen standing water across Spell Road with each major rainfall in recent times. The incremental concrete and rooftops resulting from the 50% increase in the number of houses will only exacerbate this existing problem. We have a small detention pond on our property that has become a nightmare due to amount of debris flow that comes into the pond with the recent flooding.

The reason provided for the previous Zoning Change Application in October 2016 was that with the then current economic climate and state of the oil and gas industry, the Alexander Estates developer could not find a house builder to build in his subdivision with the +/- 9,000 ft^2 lots. At that time, I was pleased to hear City Council Member Ms. Quinn comment that long term decisions affecting our community should not be based on short term economic conditions that we all know will change. I steadfastly believe that this perspective is as valid today as it was last October. Further, as evidence of the improving state of the oil and gas business, I point to the drilling rig count in Texas increasing by about 20% from October 2016 to March 2017.

Lastly, I cannot help but frankly tell you how this further attempt at rezoning the subject land parcel feels to me. As a father, this reminds me of children, when told "no" by one parent, going to the other parent and asking the same question in hope of getting a different answer…

On behalf of my family, I thank you in advance for taking the time to hear our concerns for this Zoning Change Request.

Sincerely,

James Alsup
21202 Belmont Farms Drive
281.216.6629 – Cell

JAAlsup3@aol.com

Amelia Lindley

From: Joe Kee <jkee@sbcglobal.net>
Sent: Saturday, April 01, 2017 12:14 PM
To: F. S. Hudgens; Mark Stoll; Chad Degges; Derek Townsend; Lori Klein Quinn; Amelia Lindley; Kimberly Chandler; Richard Anderson; Darrel Roquemore; Will Benson Jr.; Dane Dunagin; Craig Meyers; Brandi Jones; Loren Smith
Cc: Brenda Kee; Eva Bisso; Beau Bisso; James Fuller
Subject: Case Number P17-0023- Zoning Change Request for 70.3574 acres on Spell Road

Dear **Tomball City Council Members** and **Tomball Planning and Development Members**,

My name is **Joseph Kee** and I reside at 10987 Spell Road, Tomball, Texas 77375. My family and my existing neighbors on **Spell Road** take great pride and enjoyment in living in Tomball. Many of us have made significant investments here and enjoy the beauty of the area.

I saw the "Zoning Change" notice posted on **Spell Road** and have learned that a new hearing is scheduled for 4-10-2017 and on 4-17-2017 for the City Council hearing.

It was our understanding from the previous two hearings that the property was to remain **R-9** for a number of reasons? **(Traffic, Safety, Flood Control, Roadside Trash, property value etc.)** **Spell Road** cannot accommodate another 100+ houses requested under **R-6** Zoning.

This will be the third time the owner/developer has requested changes to the zoning. A **"Planned Development District"** is just another attempt at saying, **"I want to build more houses on smaller lots with less value",** regardless of the concerns.

During the past 13 years, the 70+ acre property has fallen into a state of disrepair. The fencing is falling down, the property is over grown and is covered with trash, including the roadside.

The traffic light for **Holderrieth/Hufsmith Kohrville** was approved several years ago and is still not in place. Once installed, the light should improve flow and safety.

If another traffic light is now approved for **Spell Road/Hufsmith Kohrville**, it will also take significant time before it is installed and operating. I don't believe that the **Spell Road** traffic light should be a deciding factor in changing the existing zoning.

Please consider the following points when presented with the new changes to the existing zoning by the owner/developer:

1. **Traffic:** The 70+ acre property presently has two existing entrance/exits fronting **Hufsmith Kohrville** and all construction vehicles, vendors, workers should be required to enter/exit through those, before you allow the use of any ingress/egress from **Spell Road**. Especially before any new light is installed.
2. **Traffic:** The **Spell Road** entrance/exit of the proposed development should not be utilized, at any time, by construction vehicles, as they do not have the proper turn radius without damaging the roadside and further slowing traffic. The **Spell Road** entrance should be used only for home buyers and their guests and vendors. That traffic alone will be difficult, even with a new traffic light.
3. **Traffic:** R-6 vs. R-9 zoning would increase the Spell Road traffic by several hundred cars per day and the existing road is just not constructed to handle that.

4. **Trash:** I have personally picked up the roadside trash on **Spell Road** for the past 13 years. The existing neighbors take great pride that we have one of the best maintained and neatest streets in Tomball. This has been a major challenge to maintain since the new Albury Estates Sub-Division began construction at the corner. We also have been forced to cut and maintain the grass for 13 years on this owner/developer's side of Spell Road, as he never has and **Harris County** rarely cuts.
5. **Trash:** The new **Tomball Business Park** perimeter ditch on both **Holderrieth** and on **Hufsmith Kohrville** has been covered with trash since construction began and is not maintained. When Harris County workers do cut the roads, their mowers cut the trash into smaller pieces, making it look worse. Much of this trash also blows across **Hufsmith Kohrville** to this owner/developers side of the road creating the same problem. Since he also does not maintain his roadside, the area is starting to look much less valuable and attractive than it could be.
6. **Trash:** During heavy rain falls, much of the **Hufsmith Kohrville** trash washes down and accumulates near driveway culverts blocking water flow and looks horrible to visitors to Tomball. A requirement for this new development should be made that the owner maintains his perimeter space including the roadside.
7. **Flooding:** Since the developer has been doing dirt work on his property, surface water has increased on **Spell Road** to the point that much of the road surface is completely under water during heavy rains, as the ditches completely overflow. This problem has grown much worse in the past two years. His existing **R-9** zoning plan should reflect how he will not make it any worse. If flooding worsens, there should be language that compels him to remedy the problem.
8. **Construction:** Within the existing zoning approvals, if construction debris (dirt, concrete drippings, trash etc.) is carried out onto **Spell Road** and/or **Hufsmith Kohrville**, the developer should be required to remove it at once or face penalties. We experienced this with the Albury development.
9. **Habitation:** It is my understanding that a number of abandoned oil wells presently exist on the property and could pose a danger to new home buyers and possibly have an ill effect on ground water. The developer should provide proof to you that the wells do not pose any threat to new or existing neighbors, before construction begins.

Thank you for your time and consideration of these points in your decisions. As neighbors, we want the new development to be a great asset for Tomball, the local community and the owner/developer.

Sincerely,

Joseph M. Kee
Cell: 832-309-0630
Email: jkee@sbcglobal.net

Amelia Lindley

From: willandkaren@yahoo.com
Sent: Thursday, April 06, 2017 1:24 PM
To: Amelia Lindley
Subject: Fw: Case P17-0023 - Vote Against

It has recently come to my attention that the developer for Alexander Estates is seeking to modify the zoning for this property. I am currently a resident of Albury Trails Estates and therefore located in a community that would be directly affected by the developing of Alexander Estates.

The developer recently came by to talk with residents of ATE I have noted that he seeks the following:

- Lower the lot size in the development and increase the number of homes. This takes the lot from around 9000 sqft to approximately 6500 sqft per lo and number of homes from 180 to 260.

- To have the entrance and exit to the community be between the current ATE entrances and exits on Spell Rd (between Magic Spell.

- Sales prices of homes in the $300k-$400k range.

The notion that the developer will be able to sell homes in the $300k-$400k range on 6500sqft lots is completely unrealistic. In reality home prices will be much lower, having a negative effect on home values in ATE and therefore lower tax revenue for ESD8, school taxes etc. Note the sales in ATE are around $300k with lots larger than 6500sqft. Of more concern to me are two items:

- Increased traffic on Spell Rd. There is already considerable traffic on this road coming to and from ATE which will only increase as ATE is built out. Recall our community is a little over 50% built at this point. Adding an additional ~400 cars from Alexander Estates including rezoning will put undue strain on entry and exit. It will decrease safety at the Spell Huffsmith Kohrville intersection and therefore lead to an increase in accidents. The developer has failed to provide evidence that Spell Road can adequately cope with the increased load expected with the zoning change. He has also failed to demonstrate any form of action plan on how the traffic could be managed. He also refuses to relocate the entry and exit for the community onto Huffsmith Kohrville road. Further he has not acknowledged the additional through traffic through ATE and Inverness Estates that this development will cause. We in ATE already experience significant through traffic which causes safety issues in the neighborhood such as speeding, neglecting stop signs etc. This would be made substantially worse by development of Alexander Estates especially with the proposed zoning change.

- Secondly the developer has not demonstrated how the additional homes will not have a negative impact on the drainage at ATE. Recent storms and significant flooding in and around our neighborhood showed current drainage, with associated green space we currently have, is unable to cope with the strains of stormy weather. Too often, residents of ATE are unable to access the neighborhood or leave following extremely heavy rains. With development of Alexander Estates, and in particular with the rezoning to many additional homes, it has not been demonstrated how the additional flood waters will be accommodated once the area is developed and has much more concrete covered areas.

It is my strong recommendation to vote against the proposed zoning change for Alexander Estates.

Karen M. Walker, Ph.D.

11134 Benevolent Way

Tomball TX 77375

Amelia Lindley

From: Kevin Brown <kjb77070@yahoo.com>
Sent: Friday, April 07, 2017 9:20 AM
To: Amelia Lindley
Subject: RE: Case P17-0023 Alexander Estates

Good Morning,

My name is Kevin Brown and I live at 10711 Spell Rd. I am writing to voice my opposition to the development of Alexander Estates as it is currently planned. This development will be adding too much traffic onto Spell Road. Entrance onto and off of Spell Road is already a risky proposition. Adding so many additional vehicles onto this two lane road will be a disaster. Please when considering this, think about the outcome in human terms. This will literally exponentially increase the likelihood that members of our community will be tragically killed and their families forever devastated. As a father and a husband, I am asking you to please not compound my worries for the safety of my family and neighbors. Thank you.

Sincerely,
Kevin Brown

Public Comment Form

(Please type or use black ink)

All submitted forms will become a part of the public record.

Please return to:
City of Tomball
Attn: Amelia Lindley
501 James Street
Tomball, TX 77375

Name: Mary Lowman
(please print)
Address: 11307 S. Country Club Green Dr
Tomball, TX 77375

Signature: Mary Lowman

Date: 03/29/17

X I am **FOR** the requested Rezoning as explained on the attached public notice for **Zoning Case P17-0023. (Please state reasons below)**

____ I am **AGAINST** the requested Rezoning as explained on the attached public notice for **Zoning Case P17-0023. (Please state reasons below)**

Date, Location & Time of **Planning & Zoning Commission** meeting:
Monday, April 10, 2017 6:00 PM
City Council Chambers of the City of Tomball, City Hall
401 Market Street, Tomball, Texas

Date, Location & Time of **City Council** meeting:
Monday, April 17, 2017, 6:00 PM
City Council Chambers of the City of Tomball, City Hall
401 Market Street, Tomball, Texas

COMMENTS:

When is this going to be developed because the owner is not maintaining his property. Just sent Doug Eibsen a letter expressing my concerns (enclosed)

You may also comment via email to ALindley@tomballtx.gov.
Please reference the case number in the subject line.
For questions regarding this request please call Amelia Lindley @ 281-290-1410.

March 29, 2017

Dear Mr. Eibsen,

I understand that you are the developer of the property on Hufsmith-Kohrville Road known as Alexander Estates. My name is Mary Lowman and I live in Country Club Greens Subdivision. My property borders your development on the north side.

I am writing this letter to inform you that recently I had to pay someone $100 to trim back the foliage on your property that has encroached upon my property. In addition to this, my dog was recently bitten by a poisonous snake and I had to take her in to my vet for treatment. I am not asking you to pay for that vet bill, however , I am requesting that you reimburse me the $100 for the trimming of the encroached foliage. I feel it is your responsibility to maintain that property and that obviously is not being done. It has created problems in my yard with not only snakes, but wild animals like skunks, armadillos, gophers, and the like.

I would also like to know when this property will be developed because no one in our subdivision can give me an answer and neither can the City of Tomball. We have been informed only that a subdivision is being planned and we keep getting notices of a Public Hearing from the Tomball Planning and Zoning Commission, but nothing seems to go forward with this Planned Community called Alexander Estates.

We have been waiting years for this to happen, so in the meantime, can you at least make an effort to trim back the north border so we are not dealing with the issue at hand?

I look forward to hearing from you.

Sincerely,

Mary Lowman

11307 S. County Club Green Dr.

Tomball, TX 77375

(832) 326-4033

Amelia Lindley

From: Robert Anderson <Robert@earthstoneenergy.com>
Sent: Friday, April 07, 2017 7:03 AM
To: Gretchen Fagan; fhudgens@tomballtxgov.com; Mark Stoll; Chad Degges; Derek Townsend; kleinquinn@tomballtx.gov; Amelia Lindley; Kimberly Chandler; randerson@tomballtxgov.com; droquemore@tomballtx.gov; wbenson@tomballtx.gov; ddunagin@tomballtx.gov; Craig Meyers; Brandi Jones; lsmith@tomballtx.gov
Subject: Zoning Case P17-0023

Dear City of Tomball Mayor, Tomball City Council Members, and Tomball Planning & Zoning Committee Members,

It has been six months since the last hearing and denial of the BCDE, LTD ("BCDE") by the city council (see minutes from October 10, 2016) where BCDE wanted to re-zone from Single Family 9 ("SF9") to Single Family 6 ("SF6"). Now BCDE has proposed zoning change from SF9 to Planned Development District. I would ask what has changed with the overall situation surrounding this property to allow this zoning change?

My family and I reside at 21230 Belmont Farms Drive, Tomball, Texas and have done so for over four years. We also own property off Spell Road. Neither of which are adjacent to the property under consideration, however, as a resident off Spell Road, we are affected daily by the traffic on Huffsmith-Kohrville. A case in point, a terrible accident occurred on April 4, 2017 that had Huffsmith-Kohrville shut down and police barricades in place north and south of Spell Road for several hours. Since there is already an approved zoning plan in place, we are not going to be able to change the approved maximum number of homes that BCDE could develop. By allowing the developer to move to smaller lots and increase the number of homes we will be contributing to the growing traffic problem on Spell Road. Access in and out of our property is limited to Spell Road. As more traffic flows from Spell Road onto Huffsmith-Kohrville, without the appropriate stop lights in place, this will become increasingly dangerous.

A second area of concern is the flooding. If, by rezoning, more homes are allowed, the water runoff becomes a greater issue along Spell Road and Huffsmsith-Kohrville. The problem has not been alleviated by the developer's retention pond that is in place currently. We continue to see water flowing across Spell Road and Huffsmith-Kohrville during recent rainstorms. This flooding problem will only be increased when the current number of homes already approved get completed let alone increasing the number of homes allowed. This becomes a safety issue to Spell Road residences given the limited access in and out of our area.

We like the lifestyle of the Tomball area. We are not opposed to responsible development. What we are opposed to is increasing the traffic and flooding problems that would result by allowing an increase in the number of homes in the development.

We respectfully request that you all deny this request.

Robert & Sonni Anderson
21230 Belmont Farms Drive,
Tomball, Texas
Cell 713-819-0104

Amelia Lindley

From: Skip Fortune <skip.fortune@gmail.com>
Sent: Sunday, April 09, 2017 10:15 PM
To: F. S. Hudgens (fhudgens@tomballtxgov.com); Mark Stoll; Chad Degges; Derek Townsend; Lori Klein Quinn; Amelia Lindley; Kimberly Chandler; Richard Anderson (randerson@tomballtxgov.com); Darrel Roquemore (droquemore@tomballtx.gov); Will Benson Jr. (wbenson@tomballtx.gov); Dane Dunagin (ddunagin@tomballtx.gov); Craig Meyers; Brandi Jones; Loren Smith (lsmith@tomballtx.gov)
Cc: Joe Kee; brenhouston@sbcglobal.net; EvaBisso@bissomarine.com; BeauBisso@bissomarine.com; james@fullerdrywall.com; Duke VanLue
Subject: Case number P17-0023 Zoning Change Request

Dear Tomball City Council Members and Tomball Planning and Development Council

My name is Skip Fortune and my wife Georganne and I live at 11011 Spell Rd, Tomball Tx, 77375. It is our understanding that the developer is attempting for another time, a zoning change on a property located on Spell Rd, to build the proposed Alexander Estates. He is attempting to increase the number of homes from over 120 to over 200 homes. We oppose the increase in the number of proposed homes. This zoning change has been denied twice and the initial reasons for those denials have not changed. Those include traffic and drainage/flooding.

Traffic in general on Holderrieth, Hufsmith-Kohrville and Spell Rd have increased in the last few years. Hufsmith-Kohrville has seen the largest increase in construction vehicle traffic. The fatality on Hufsmith-Kohrville a few yards north of Spell Rd this past Tuesday, involving an 18 wheeler, unfortunately highlights this. The development of the Tomball Economic and Business Development Park is sure to increase traffic even more.

Spell Rd residents, along with the Albury Trails residents have one entrance in and out, on Spell Rd. It is difficult and dangerous to exit onto Hufsmith-Kohrville daily. Traffic lights for the intersections of Spell Rd/Hufsmith-Kohrville and Holderrieth/Hufsmith-Kohrville were approved years ago, but still have not been installed. With the traffic coming in and out daily from Albury Trails and the rest of the residents down Spell Rd (which is a dead end) it has become a daily challenge. The developer has suggested only one entrance to Alexander Estates to be on Spell Rd. We oppose this due to the already stated reasons.

Drainage and flooding is another big concern for Spell Rd when considering adding another 200+ homes. Since 2012, we have experienced multiple flooding events. There have been several times when Spell Rd was completely under water. The developers solution to this has at best been vague and will not suffice for the already existing problem.

We are not opposed to development, but hope it is done in a responsible manner. Thank you for your time and consideration in this manner.

Skip and Georganne Fortune

Amelia Lindley

From: Dee Thompson <dthomps127@gmail.com>
Sent: Tuesday, March 28, 2017 10:20 AM
To: Amelia Lindley
Subject: Zoning Case P17-0023

I am AGAINST the requested Rezoning as explained on the public notice I received for Zoning Case P17-0023.

I do not believe BCDE, LTD (requester) has properly studied the implications of using Spell Road as the only access to the proposed development. The additional traffic from the proposed development in conjunction with traffic already coming from Albury Trails Estates (which is growing) will cause traffic issues for residents and first responders. The intersection of Spell Road and Hufsmith-Kohrville is controlled by a stop sign. Turning left, towards the Woodlands, is hazardous on a good day. Also I do not feel Spell Road was designed for the amount of traffic that would result from the proposed rezoning. Who will bear the costs of upkeep? Will a traffic study be completed? Those questions need to be answered.

A secondary consideration is the amount of noise related to the increased traffic on Spell Road. What measures, if any, has BCDE proposed to mitigate those issues? Why isn't an outlet to Hufsmith-Korhville road being considered?

--
//signed//
Dee Thompson
11118 Roundtable Dr.
Tomball, TX 77375
208.310.3811

Amelia Lindley

From: Beau Bisso <BeauBisso@bissomarine.com>
Sent: Tuesday, March 28, 2017 10:44 PM
To: Amelia Lindley
Subject: Case Number P17-0023

Ms. Lindley:

My name is William Bisso, I reside at 21207 Belmont Farms Dr., Tomball, TX, 77375, and I own the property at 11000 Spell Rd. which abuts to the 70.3574 acres of land on Hufsmith-Kohrville and Spell Rd. (referred to henceforth as the "Development")

First of all, I want to be very clear that I am not opposed to responsible growth and improvement; but I am extremely concerned about several issues related to the proposed Development.

First, the Development has significant drainage issues which impact me directly. In previous rain storms the Development has drained directly onto my property. The water has been documented to literally flow onto and across my property to Spell Rd. I have lived at the end of Spell Road, on Belmont Farms Dr. for about 12 years, and until recently, I'd never seen Spell Rd flood. All of the water flow issues started following significant dirt work on the Development site. During the previous City Planning and City Hall meetings the developer claims to have a plan to divert collected water to the "back of the Development" out to a retaining pond on the golf course at Country Club Greens. My concern about the diverting of that water is that my home on Belmont Farms Dr. is very close to that retaining pond and the drainage ditch behind my home backs up with water "over its banks" encroaching upon my home when that retenion pond is full, which happens during even the most modest rainfall.

Secondly, I am very concerned about the potential traffic which will feed on to Spell Rd. creating a major traffic issue with potentially serious consequences in the event of an emergency. My neighbors and I at the dead end of Spell Rd. are isolated and have no other means of ingress or egress to our homes, otherthan to go to the intersection of Spell Rd. and Hufsmith-Kohrville. During the last hearings it was suggested that the Development use Hufsmith-Kohrville as its ingress and egress points which would ameloriate many concerns. The traffic density from adding hundreds of people from the Development onto Spell Rd. is a significant safety issue to my neighbors and me.

Thank you,

William Bisso

Amelia Lindley

From: Eric Wilson <ewilson3@ix.netcom.com>
Sent: Thursday, April 06, 2017 3:01 PM
To: Amelia Lindley
Subject: Case P17-0023

Hello Ms. Lindley,

I want to state I am AGAINST the proposed rezoning in this proposal.
I live in Albury Trails Estates. My property backs onto Spell Road and would be directly impacted by the proposed development. My reasons to object are:

1. Increased traffic - The proposal has the only entrance to the development on Spell Road. This is also the main entrance to Albury Trails Estates. Existing traffic on Spell Road is heavy at times and increased volume will make it very difficult to get in and out of this area. There will also be traffic cutting through Inverness Reserve and Albury Trails Estates, exacerbating existing traffic issues.

2. There was an earlier attempt to rezone which was rejected. The new proposal looks like another attempt to get the same approval which was already turned down. This is dishonest on the part of the developer.

3. There is no indication from the developer about flood control or sound reduction, i.e., building an adequate sound wall and constructing a verge wide enough for a border of hedges or trees.

Thank you for your consideration.

Eric Wilson
11110 Roundtable Drive
Tomball

April 6, 2017

This email has been checked for viruses by Avast antivirus software.
https://www.avast.com/antivirus

Regular City Council
Agenda Item
Data Sheet

Meeting Date: May 1, 2017

Topic:
Adopt, on Second Reading, Ordinance No. 2017-15, an Ordinance of the City of Tomball, Texas Amending the Code of Ordinances of the City Amending Article II, Taxicabs, of Chapter 48, Vehicles for Hire, to Add Definitions to Section 48-26, Definitions; Amending Section 48-31, Cruising Prohibited, to Allow City Council to Designate Parking Areas within the City for Taxicabs during Peak Times; Amending Section 48-32, Maximum Seating, to Increase the Maximum Number of Persons to Ten (10); Deleting Sections 48-33 through 48-33; Adding a New Section 4-33, Violations, to Specify Specific Actions which Violate This Ordinance; Amending Section 48-39, Property Left in Vehicle, to Delete Specific Penalty Provision; Deleting Section 48-40, Penalties; Amending Section 48-56, Required, of Division 2, Business Permit, to Exclude Taxicabs Licensed in Other Jurisdictions Delivering Passengers in the City; Amending Section 48-57, Application, to Require Certain Information to be Included in Business Permit Application; Amending Section 48-65, Inspection, to Delete Certain Inspection Requirements; Amending Section 48-66, Revocation, to Allow Chief of Police to Revoke Business Permit; Amending Section 48-67, Identification of Vehicles, to Allow City Secretary to Issue Taxi Permit Numbers; Amending Section 48-83, Application of Division 3, Driver's Licenses, Changing the Medical Reporting Requirements; Amending Section 48-87, Appeal, to Allow City Manager to Hear Appeal; Amending Section 48-88, Identification Cards, to Alter the Requirements of Identification Cards; Amending Sections 48-89, Transfer Prohibited, 48-90, Duration, and 48-91, Fee, to Add the Words "City Chauffer's License"; Amending Section 48-107, Minimum Amounts of Coverage, of Division 4, Insurance, Altering the Minimum Insurance Requirements; Amending Section 48-110, Increasing Amount upon Return of Execution Unsatisfied, to Clarify Regulations Therein; Providing a Penalty Not in Accordance with Section 1-14 of the City's Code of Ordinances for Any Violation Hereof with Each Day Constituting a Separate Offense; Providing for Severability and Providing Other Findings Related Hereto

Background:
Neal Maddin, formerly employed by The Village Apartments to provide transportation for their residents, desires to begin a taxi service using a 1997 bus with a wheelchair lift, that will accommodate up to 10 passengers. The Village Apartments has ceased offering transportation to its residents and Mr. Maddin has purchased the bus from the Village.

His plan is to travel to all the senior apartment complexes, picking up passengers and transporting them to various shopping centers, grocery stores, medical centers, and physicians, etc., and charging everyone approximately $5 per trip. The logo for The Village Apartments will be removed and replaced with the proper signage.

Upon staff's review of our current taxi ordinance, we recognized an opportunity to amend the ordinance to provide for this additional type of designated route, senior/disabled transportation, as well as making needed changes to our minimum insurance coverage requirements, removing outdated or no longer valid requirements, and allowing taxicabs licensed in another jurisdiction to only discharge passengers in the city.

Adopting Ordinance No. 2017-15 will provide another avenue of transportation within our city limits for individuals who need occasional transportation for medical and personal needs and will meet the City's Strategic Planning Initiatives regarding Community Life by enhancing public safety by providing safe transportation and improving our citizens' lives.

Origination:
Doris Speer, City Secretary

Recommendation:
Adopt Ordinance No. 2017-15 on Second Reading

Party(ies) responsible for placing this item on agenda:
Doris Speer, City Secretary

ACTION TAKEN

Approval	Readings Passed	Other
☐ Yes ☐ No	☐ 1st ☐ 2nd	

ATTACHMENTS:

Ordinance No. 2017-15

ORDINANCE NO. 2017-15

AN ORDINANCE OF THE CITY OF TOMBALL, TEXAS AMENDING THE CODE OF ORDINANCES OF THE CITY AMENDING ARTICLE II, TAXICABS, OF CHAPTER 48, VEHICLES FOR HIRE, TO ADD DEFINITIONS TO SECTION 48-26, DEFINITIONS; AMENDING SECTION 48-31, CRUISING PROHIBITED, TO ALLOW CITY COUNCIL TO DESIGNATE PARKING AREAS WITHIN THE CITY FOR TAXICABS DURING PEAK TIMES; AMENDING SECTION 48-32, MAXIMUM SEATING, TO INCREASE THE MAXIMUM NUMBER OF PERSONS TO TEN (10); DELETING SECTIONS 48-33 THROUGH 48-33; ADDING A NEW SECTION 4-33, VIOLATIONS, TO SPECIFY SPECIFIC ACTIONS WHICH VIOLATE THIS ORDINANCE; AMENDING SECTION 48-39, PROPERTY LEFT IN VEHICLE, TO DELETE SPECIFIC PENALTY PROVISION; DELETING SECTION 48-40, PENALTIES; AMENDING SECTION 48-56, REQUIRED, OF DIVISION 2, BUSINESS PERMIT, TO EXCLUDE TAXICABS LICENSED IN OTHER JURISDICTIONS DELIVERING PASSENGERS IN THE CITY; AMENDING SECTION 48-57, APPLICATION, TO REQUIRE CERTAIN INFORMATION TO BE INCLUDED IN BUSINESS PERMIT APPLICATION; AMENDING SECTION 48-65, INSPECTION, TO DELETE CERTAIN INSPECTION REQUIREMENTS; AMENDING SECTION 48-66, REVOCATION, TO ALLOW CHIEF OF POLICE TO REVOKE BUSINESS PERMIT; AMENDING SECTION 48-67, IDENTIFICATION OF VEHICLES, TO ALLOW CITY SECRETARY TO ISSUE TAXI PERMIT NUMBERS; AMENDING SECTION 48-83, APPLICATION OF DIVISION 3, DRIVER'S LICENSES, CHANGING THE MEDICAL REPORTING REQUIREMENTS; AMENDING SECTION 48-87, APPEAL, TO ALLOW CITY MANAGER TO HEAR APPEAL; AMENDING SECTION 48-88, IDENTIFICATION CARDS, TO ALTER THE REQUIREMENTS OF IDENTIFICATION CARDS; AMENDING SECTIONS 48-89, TRANSFER PROHIBITED, 48-90, DURATION, AND 48-91, FEE, TO ADD THE WORDS "CITY CHAUFFER'S LICENSE"; AMENDING SECTION 48-107, MINIMUM AMOUNTS OF COVERAGE, OF DIVISION 4, INSURANCE, ALTERING THE MINIMUM INSURANCE REQUIREMENTS; AMENDING SECTION 48-110, INCREASING AMOUNT UPON RETURN OF EXECUTION UNSATISFIED, TO CLARIFY REGULATIONS THEREIN; PROVIDING A PENALTY NOT IN ACCORDANCE WITH SECTION 1-14 OF THE CITY'S CODE OF ORDINANCES FOR ANY VIOLATION HEREOF WITH EACH DAY CONSTITUTING A SEPARATE OFFENSE; PROVIDING FOR SEVERABILITY AND PROVIDING OTHER FINDINGS RELATED HERETO.

* * * * *

WHEREAS, the City Council of the City of Tomball, Texas finds it to be in the best interest of the health, safety and welfare of the citizens to provide certain amendments to the City's regulations of taxicabs; and

WHEREAS, the City Council of the City of Tomball desires to amend the City's taxicab regulations as set forth herein; now, therefore,

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF TOMBALL, TEXAS:

Section 1. The facts and matters contained in the preamble to this ordinance are hereby found to be true and correct.

Section 2. Section 48-26, Definitions, of Division 1, Generally, of Article II, Taxicabs, of Chapter 48, Vehicles for Hire, of the Code of Ordinances of the City of Tomball, Texas is hereby amended by adding the language underscored below, Section 48-26 to read as follows:

"Section. 48-26. - 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:

Conduct a taxicab business shall mean the use of one or more taxicabs within the corporate limits of the city, by the owner thereof, for the purpose of carrying passengers for hire, either by driving the same himself or having the same driven by some other person, provided that this definition shall not apply to any licensed chauffeur hired as a driver by any person holding a permit to conduct a taxicab business in the city.

Cruise or cruising shall mean the movement of unoccupied taxicabs over the public streets of the City in search of prospective passengers for hire. An unoccupied taxicab is permitted to do answer a telephone call for taxicab service from an intended passenger which will not be deemed to constitute cruising.

Driver shall mean a person who drives or operates a taxicab.

Owner shall mean any person having the right to control a taxicab's operations and whom benefits from the collection of revenues derived from the

operation of taxicabs in the City of Tomball, but does not include a "driver" as herein defined. The word "owner" shall include any person with a substantial interest in the taxicab operations of the owner licensed under this Ordinance. A person has a substantial interest in the licensee's taxicab operation if:

1. the person has any ownership interest in the taxicab operation;

2. the person has any financial interest in the taxicab operation including, without limitation, a profit interest, loan, lease, or any other type of financial arrangement or scheme;

3. the person receives any benefit from the taxicab operation in an amount exceeding One Hundred Dollars ($100.00) per year;

4. the person, in seeking an application for a taxicab owner license, is acting in whole or in part for the benefit of or in concert with a person already holding a taxicab owner license;

5. the person is related to the taxicab owner licensee within the second degree of consanguinity or affinity as defined by the Texas Government Code.

Taxicab shall mean any and all vehicles carrying passengers for hire, with a rated capacity of twelve (12) persons or less, including the driver, except motor buses or motor coaches operated by bus lines over designated routes in and through the city."

Section 3. Section 48-31, Cruising Prohibited, of Division 1, Generally, of Article II, Taxicabs, of Chapter 48, Vehicles for Hire, of the Code of Ordinances of the City of Tomball, Texas is hereby amended by adding the language underscored below, Section 48-31 to read as follows:

"Section 48-31. – Cruising prohibited.

It shall be unlawful for any driver of any taxicab to drive or cruise about on the streets of the city seeking passengers who have not theretofore ordered or called for a taxicab. The City Council may designate areas within the City that may be used for taxi parking at times during which high demand for taxi service is anticipated. Such designated areas shall be made available to all taxicab vehicles licensed under this ordinance without preference to the taxicab owner or taxicab driver."

Section 4. Section 48-32, Maximum Seating, of Division 1, Generally, of Article II, Taxicabs, of Chapter 48, Vehicles for Hire, of the Code of Ordinances of the City of Tomball, Texas is hereby amended by adding the language underscored below and deleting the language struckthrough below, Section 48-32 to read as follows:

"Section 48-32. – Maximum seating.

It shall be unlawful to carry more than ~~five~~ ten (10) passengers in any taxicab, and in no event shall more than two passengers ride in the front seat with the driver."

Section 5. Sections 48-33 through 48-38 of Division 1, Generally, of Article II, Taxicabs, of Chapter 48, Vehicles for Hire, of the Code of Ordinances of the City of Tomball, Texas are hereby deleted in their entirety.

Section 6. The Code of Ordinances is further amended by adding a new section 48-33, Offenses, of Division 1, Generally, of Article II, Taxicabs, of Chapter 48, Vehicles for Hire, of the Code of Ordinances of the City of Tomball, Texas, Section 48-33 to read as follows:

"Section 48-33. – Offenses.

(a) It shall be unlawful for any person engaged in the taxicab business to overcrowd the taxicab.

(b) It shall be unlawful for any officer or employee of the city to accept, or a taxicab service permittee or employee to offer, either directly or indirectly, any gifts, discounts or gratuities in association within the provision of taxicab services.

(c) It shall be unlawful for a taxicab driver to receive or discharge passengers in the roadway of any street. It is a defense to this section that said driver drove to the right-hand sidewalk, the extreme right-hand side of the road as nearly as practical, or into a driveway or parking lot for such purposes.

(d) It shall be unlawful for a taxicab driver employed to carry passengers to a definite point to fail to take the most direct route that will carry such passengers safely and expeditiously to their destination, except when specifically requested by the passenger.

(e) It shall be unlawful for a taxicab driver to violate applicable laws relating to non-discrimination, accommodation of service animals, and accessibility. It shall be unlawful for a taxicab service operator or a taxicab

driver to impose additional charges for providing services to persons with physical disabilities because of those disabilities.

(f) It shall be unlawful for a taxicab driver to knowingly transport any person in the commission of a crime in any manner.

(g) It shall be unlawful for any driver or passenger of any taxicab to drink alcoholic beverages of any kind while inside the taxicab or while on duty.

(h) It shall be unlawful for any taxicab driver to consume any alcoholic beverages within four (4) hours prior to operation of a taxicab.

(i) It shall be unlawful for a taxicab driver to engage in the sale of alcoholic beverages or to solicit business for any person selling alcoholic beverages.

(j) It shall be unlawful for a taxicab driver to solicit patronage in a loud or annoying tone of voice, or in any manner annoy any person or obstruct the movement of any person, or follow any person for the purpose of soliciting patronage.

(k) It shall be unlawful for a taxicab driver to shall solicit business for or from a hotel, motel, or rooming place or attempt to promote or divert patronage for or from one business to another.

Section 7. Section 48-39, Property Left In Vehicle, of Division 1, Generally, of Article II, Taxicabs, of Chapter 48, Vehicles for Hire, of the Code of Ordinances of the City of Tomball, Texas is hereby amended by renumbering said section to Section 48-34, by adding the language underscored below and by deleting the language struckthrough below, Section 48-34 to read as follows:

"Section 48-34. – Property left in vehicle.

All drivers of taxicabs shall promptly deliver to the police department, or to authorized agencies of their companies, all property left in such vehicles by passengers. ~~Whoever violates the provisions of this section shall be guilty of a misdemeanor.~~"

Section 8. Section 48-40, Penalties, of Division 1, Generally, of Article II, Taxicabs, of Chapter 48, Vehicles for Hire, of the Code of Ordinances of the City of Tomball, Texas is hereby deleted in its entirety.

Section 9. Section 48-56, Required, of Division 2, Business Permit, of Article II, Taxicabs, of Chapter 48, Vehicles for Hire, of the Code of Ordinances of the City of Tomball, Texas is hereby amended by adding thereto the language underscored below, Section 48-56 to read as follows:

"Section 48-56. – Required.

It shall be unlawful for any person to drive or to operate, or to cause to be driven or operated, any taxicab upon or over any street in the city unless there has been obtained for such taxicab, existing in full force and effect, a permit duly issued by the city secretary.

This Section does not apply to taxicabs licensed in another jurisdiction that are only discharging passengers in the City. Taxicabs operating from cities other than the City of Tomball must be licensed under this Ordinance in order to pick up passengers within the City limits of Tomball."

Section 10. Section 48-57, Application, of Division 2, Business Permit, of Article II, Taxicabs, of Chapter 48, Vehicles for Hire, of the Code of Ordinances of the City of Tomball, Texas is hereby amended by adding thereto the language underscored below, Section 48-57 to read as follows:

"Section 48-57. – Application.

Before any person shall conduct a taxicab business in the city, he shall file with the city secretary an application to the city council for a permit to conduct such business in this city. The application shall state the name and address of such applicant, whether the applicant is an individual, firm or corporation, and if a firm, the name and address of each member thereof and the number of vehicles proposed to be operated under such permit.

The applicant shall also provide the following information in the application:

1. The trade name, if any, under which the applicant proposes to operate;
2. The address of the place of business from which the applicant purposes to operate;
3. The make, type, model, capacity and condition of the taxicabs proposed to be operated; the design and color schemes of each taxicab and the lettering and marks to be used thereon;

4. The number of taxicabs for which a permit is desired, and proof that these taxicabs are registered to the applicant;

5. A copy of the applicant's valid Texas driver's license;

6. A copy of insurance policy showing the current insurance coverage as required by this Ordinance;

7. Proof of annual state inspection for each vehicle being permitted;

8. Fee per vehicle as set forth in the City's Master Fee Schedule; and

9. A statement that the taxicab is not a passenger bus operating under the regulations of the Texas Railroad Commission."

Section 11. Section 48-65, Inspection, of Division 2, Business Permit, of Article II, Taxicabs, of Chapter 48, Vehicles for Hire, of the Code of Ordinances of the City of Tomball, Texas is hereby amended by deleting therefrom the language struckthrough below, Section 48-65 to read as follows:

"Section 48-65. – Inspection.

(a) Every holder of a permit to conduct a taxicab business in the city shall provide proof of an annual state inspection of each vehicle used in his business.

(b) ~~Every holder of a permit to conduct a taxicab business in the city shall have each and every taxicab used in his business inspected on the following schedule:~~

~~(1) For the first 50,000 miles only a state inspection will be required.~~
~~(2) After the vehicle has reached 50,000 miles, the vehicle shall be inspected once each quarter by a mechanic who makes his living working on the type of vehicles used as taxicabs and which mechanic is not employed by the holder of the permit or the taxicab company, and such mechanic shall prepare a statement in writing showing that he has inspected the vehicle; the date of such inspection; the license number of such vehicle or vehicles; the name of the permittee, and the serial number of his permit; and that the lights, brakes, and steering apparatus of such vehicle so inspected by him is in good mechanical condition.~~"

Section 12. Section 48-66, Revocation, of Division 2, Business Permit, of Article II, Taxicabs, of Chapter 48, Vehicles for Hire, of the Code of Ordinances of the City of

Tomball, Texas is hereby amended by adding thereto the language underscored below and deleting therefrom the language struckthrough below, Section 48-66 to read as follows:

"Section 48-66. – Revocation.

Any permit issued under the provisions of this division may be revoked by the chief of police ~~city council~~ for the violation by the licensee of any applicable provision of this Code, state law or city ordinance, rule or regulation."

Section 13. Section 48-67, Identification of Vehicles, of Division 2, Business Permit, of Article II, Taxicabs, of Chapter 48, Vehicles for Hire, of the Code of Ordinances of the City of Tomball, Texas is hereby amended by adding thereto the language underscored below, Section 48-67 to read as follows:

"Section 48-67. – Identification of vehicles.

Every holder of a permit granted under the terms of this division for a taxicab shall have and keep displayed in colors contrasting with the color of the vehicle on each side of each and every vehicle used by him as a motor cab the words, "TAXI PERMIT NO. _____," filling the blank with figures, provided by the city secretary, denoting the serial number of his permit and the year the permit is issued. The letters and figures shall be not less than three inches in height."

Section 14. Section 48-83, Application, of Division 3, Driver's Licenses, of Article II, Taxicabs, of Chapter 48, Vehicles for Hire, of the Code of Ordinances of the City of Tomball, Texas is hereby amended by adding thereto the language underscored below and deleting therefrom the language struckthrough below, Section 48-83 to read as follows:

"Section 48-83, - Application.

Any person desiring a city chauffeur's license required by this division shall make a written application therefor to the chief of police, which application shall be made upon a form provided by the city and which shall contain the following information:

(1) The full name, age and specific address of the applicant;

(2) The full name of the person or owner for whom the applicant proposes to be employed;

(3) The length of local residence of the applicant in the city and the state and if a citizen of the United States;

(4) A full personal description of the applicant including his age, height, size, race, color of eyes, complexion and color of hair, body and facial marks, defects, his full fingerprints and his photograph with his hat off;

(5) Whether the applicant has been convicted of a felony and full information concerning same; likewise if applicant has a police record with conviction of misdemeanor and full information concerning same;

(6) Whether the applicant has been convicted of violations of the law in the operation of motor vehicles, and if so, full information concerning same;

(7) ~~The fact that there has been delivered to the chief of police, by the applicant, the certificate of a reputable physician of the city that the applicant is not afflicted with active venereal disease or any disease or disability which would seriously impair his ability to drive and operate a taxicab in a safe manner upon the streets of the city; further, such certificate shall indicate specifically the condition of the hearing and eyesight of the applicant;~~

Each driver of any vehicle used for taxicab purposes shall, at the drive's expenses, furnish the city secretary with a medical report issued by a licensed physician showing such driver to be physically capable of operating a motor vehicle within the city for hire as a. taxicab. Such report must be furnished upon application for a license to drive a taxicab within the city.

(8) The number and date of issuance of the state license issued to the applicant."

Section 15. Section 48-87, Appeal, of Division 3, Driver's Licenses, of Article II, Taxicabs, of Chapter 48, Vehicles for Hire, of the Code of Ordinances of the City of Tomball, Texas is hereby amended by adding thereto the language underscored below and deleting therefrom the language struckthrough below, Section 48-87 to read as follows:

"Section 48-87. – Appeal.

If the chief of police has made his decision and declared same, either the applicant for license under this division, or any duly qualified citizen of the city, shall have the right to appeal to the city ~~council~~ manager within ten days, which appeal shall

be perfected by delivering, in writing, five copies of same to the city ~~council~~ manager, stating that an appeal from the decision of the chief of police is desired and the facts regarding same. The city ~~council~~ manager will then, within a period of not more than 15 days, after receiving such notice of appeal, grant a hearing thereon, and after the hearing of the appeal, shall within a period of five days sustain or reverse the decision of the chief of police. If no appeal is taken from the findings made by the chief of police, within the time provided above, the decision of the officer shall be final; otherwise, the decision of the city ~~council~~ manager shall become final."

Section 16. Section 48-88, Identification Cards, of Division 3, Driver's Licenses, of Article II, Taxicabs, of Chapter 48, Vehicles for Hire, of the Code of Ordinances of the City of Tomball, Texas is hereby amended by adding thereto the language underscored below and deleting therefrom the language struckthrough below, Section 48-88 to read as follows:

"Section 48-88. – Identification cards.

(a) Upon compliance with this division and the issuance of a license, the applicant shall be issued at the time of actual issuance of such license in question, two identification cards, one of which shall be not less than four by eight inches in dimension, which shall contain the full view photograph of the applicant, along with his complete description, and residence address ~~and his fingerprints and classification~~.

(b) One of such cards shall be displayed in a conspicuous place in the taxicab, conspicuous to passengers, and the other shall be carried on the person of the licensee at all times he is engaged in driving a taxicab within the city.

(c) The photographs shall be furnished by and at the expense of the applicant."

Section 17. Section 48-89, Transfer Prohibited, of Division 3, Driver's Licenses, of Article II, Taxicabs, of Chapter 48, Vehicles for Hire, of the Code of Ordinances of the City of Tomball, Texas is hereby amended by adding thereto the language underscored below, Section 48-89 to read as follows:

"Section 48-89. – Transfer prohibited.

No city chauffeur's license issued under this division shall be transferable."

Section 18. Section 48-90, Duration, of Division 3, Driver's Licenses, of Article II, Taxicabs, of Chapter 48, Vehicles for Hire, of the Code of Ordinances of the City of Tomball,

Texas is hereby amended by adding thereto the language underscored below, Section 48-90 to read as follows:

"Section 48-90. – Duration.

Every city chauffeur's license issued under this division shall be valid for a period of 12 months from its date of issuance."

Section 19.. Section 48-91, Fee, of Division 3, Driver's Licenses, of Article II, Taxicabs, of Chapter 48, Vehicles for Hire, of the Code of Ordinances of the City of Tomball, Texas is hereby amended by adding thereto the language underscored below, Section 48-91 to read as follows:

"Section 48-91. – Fee.

No fee shall be charged for the issuance of a city chauffeur's license under this division."

Section 20. Section 48.107, Minimum Amount of Coverage, of Division 4, Insurance of Article II, Taxicabs, of Chapter 48, Vehicles for Hire, of the Code of Ordinances of the City of Tomball, Texas, is hereby amended by deleting therefrom the language struckthrough below and adding thereto the language underscored below, Section 48-107 to read as follows:

"Section 48-107. – Minimum amount of coverage.

(a) The ~~maximum~~ minimum amount of recovery in a policy of insurance required by this division shall not be less than the following sums:

(1) For the injury or death of any one person in any one accident, ~~$20,000.00~~ $500,000.00.

(2) For total liability in any one accident or personal injuries or death, ~~$40,000.00~~ $1,000,000.00.

(3) For injury or destruction of property in any one accident, ~~$15,000.00~~ $50,000.00.

(4) For PIP coverage in any one accident, $5,000.00.

(b) ~~The minimum amount of insurance liability shall never be less than the amount established by the statutes of the state under the Texas Safety~~

~~Responsibility Act, Vernon's Ann. Civ. St. art. 6701h, or amendments thereto.~~ "

Section 21. Section 48-110, Increasing Amount upon Return of Execution Unsatisfied, of Division 4, Insurance of Article II, Taxicabs, of Chapter 48, Vehicles for Hire, of the Code of Ordinances of the City of Tomball, Texas, is hereby amended by deleting therefrom the language struckthrough below and adding thereto the language underscored below, Section 48-110 to read as follows:

"Section 48-110. – Increasing amount upon return of execution unsatisfied.

In the event of the ~~If the~~ return unsatisfied of any execution issued on any final judgment rendered against any taxicab owner in any suit for damages on account of injury to person or property occasioned by the operation of any taxicab, such owner, within ten (10) days after the return of such execution unsatisfied, provided the judgment is still unpaid, shall increase the amount of his insurance coverage to pay ~~by the amount of~~ such judgment or otherwise furnish evidence satisfactory to the city manager that such owner can pay said judgment, and failing to do so shall forthwith cease the operation of taxicabs in the city until such additional insurance is deposited or such judgment is paid."

Section 22. Any person who shall intentionally, knowingly, recklessly, or with criminal negligence, violate any provision of this Ordinance, shall be deemed guilty of a misdemeanor and, upon conviction, shall be fined in accordance with Section 1-14 of this Code of Ordinances. Each day of violation shall constitute a separate offense.

Section 23. It is the intent of the City that this Ordinance shall comply in all respects with the applicable provisions of the United States Constitution, the Texas Constitution, and the Charter of the City of Tomball. In the event any clause, phrase, provision, sentence, or part of this Ordinance or the application of the same to any person or circumstance shall for any reason be adjudged invalid or held unconstitutional by a court of competent jurisdiction, it shall not affect, impair, or invalidate this Ordinance as a whole or any part or provision hereof other than the part declared to be invalid or unconstitutional; and the City Council of the City of Tomball, Texas,

declares that it would have passed each and every part of the same notwithstanding the omission of any such part thus declared to be invalid or unconstitutional, whether there be one or more parts.

Section 24. This Ordinance shall take effect fourteen (14) days from and after its passage and the publication of the caption hereof, as provided by law and the City's Home Rule Charter.

FIRST READING:

READ, PASSED AND APPROVED AS SET OUT BELOW AT THE MEETING OF THE CITY COUNCIL OF THE CITY OF TOMBALL HELD ON THE 17TH DAY OF APRIL 2016.

COUNCILMAN HUDGENS	AYE
COUNCILMAN STOLL	NAY
COUNCILMAN DEGGES	NAY
COUNCILMAN TOWNSEND	AYE
COUNCILMAN KLEIN QUINN	AYE

SECOND READING:

READ, PASSED AND APPROVED AS SET OUT BELOW AT THE MEETING OF THE CITY COUNCIL OF THE CITY OF TOMBALL HELD ON THE 1ST DAY OF MAY 2016.

COUNCILMAN HUDGENS	_____
COUNCILMAN STOLL	_____
COUNCILMAN DEGGES	_____
COUNCILMAN TOWNSEND	_____
COUNCILMAN KLEIN QUINN	_____

_____
Gretchen Fagan, Mayor

ATTEST:

_____
Doris Speer, City Secretary

Regular City Council
Agenda Item
Data Sheet

Meeting Date: May 1, 2017

Topic:

Approve Resolution No. 2017-08, a Resolution of the City Council of the City of Tomball, Texas, Sponsoring the July 4th Celebration, to be Held in Tomball on Tuesday, July 4, 2017, Closing State Highway Business 249 from Hicks Street to the North Entrance to the Kroger Parking Lot from 3:00 PM until 11:00 PM, and Authorizing the City Manager to Issue a Letter to TxDot Requesting the Closure of the Designated Portion of State Highway Business 249

Background:

For the past several years, the July 4th Celebration has expanded to include a large, well attended, street party featuring live music, food and games on Business SH 249.

Origination:

Fire Department

Recommendation:

Staff recommends approval

Party(ies) responsible for placing this item on agenda:

Parr/Baxter

ACTION TAKEN

Approval	Readings Passed	Other
☐ Yes ☐ No	☐ 1st ☐ 2nd	

ATTACHMENTS:

Resolution No. 2017-08

RESOLUTION NO. 2017-08

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF TOMBALL, TEXAS, SPONSORING THE *JULY 4TH CELEBRATION*, TO BE HELD IN TOMBALL ON TUESDAY, JULY 4, 2017, CLOSING STATE HIGHWAY BUSINESS 249 FROM HICKS STREET TO THE NORTH ENTRANCE TO THE KROGER PARKING LOT FROM 3:00 PM UNTIL 11:00 PM., AND AUTHORIZING THE CITY MANAGER TO ISSUE A LETTER TO TxDOT REQUESTING THE CLOSURE OF THE DESIGNATED PORTION OF STATE HIGHWAY BUSINESS 249

* * * * * * * * * *

WHEREAS the City of Tomball annually provides a ***July 4th Celebration*** for the enjoyment of its citizens and the surrounding community, with a fireworks display under the direction of the Tomball Fire Department; and

WHEREAS the ***July 4th Celebration*** provides a unique opportunity to showcase Tomball's many attractions and encourage citizens to enjoy the festivities and sales offered by local merchants in Tomball on July 4th; and

WHEREAS the ***July 4th Celebration*** has become one of the most popular fireworks displays, drawing people from surrounding areas including Magnolia, Spring, Houston and The Woodlands; and

WHEREAS the ***July 4th Celebration*** plans include many activities sponsored during the day by the Tomball Fire Department and the Tomball Police Department, including a block party; and

WHEREAS the City of Tomball desires and requests the closure of the following portion of State Highway 249 on Tuesday, July 4, 2017, from 3:00 pm to 11:00 pm;

NOW, THEREFORE, BE IT RESOLVED that the City of Tomball and its governing body endorses and supports the ***July 4th Celebration*** as a safe July 4th holiday for its citizens and the surrounding community.

PASSED AND APPROVED AS SET OUT BELOW AT THE MEETING OF THE CITY COUNCIL HELD ON THE 1ST DAY OF MAY 2017.

_____
GRETCHEN FAGAN, Mayor

ATTEST:

_____
Doris Speer, City Secretary

Regular City Council
Agenda Item
Data Sheet

Meeting Date: May 1, 2017

Topic:
Approve Resolution No. 2017-09, a Resolution of the City of Tomball, Texas, Amending the City of Tomball's Current Human Resources Handbook by Replacing Sections 2, 3, 4 and 7 Therein and Repealing all Other Resolutions or Parts of Resolutions Inconsistent or in Conflict Herewith; and Providing for Severability.

Background:
The City of Tomball's Human Resources Handbook as last updated and approved by City Council in 2014. After a full review, changes were needed to match staffing needs, clarify policies and amend some benefits. City Management reviewed current policies , made recommendations for changes and updates, and have agreed to the recommended policy attached

Origination:
Human Resources

Recommendation:
Staff recommends approval

Party(ies) responsible for placing this item on agenda:
Lisa Coe

ACTION TAKEN

Approval	Readings Passed	Other
☐ Yes ☐ No	☐ 1st ☐ 2nd	

ATTACHMENTS:

Resolution No. 2017-09
Amended Section 2
Amended Section 3
Amended Section 4
Amended Section 7
Current Handbook

RESOLUTION NO. 2017-09

A RESOLUTION OF THE CITY OF TOMBALL, TEXAS, AMENDING THE CITY OF TOMBALL'S HUMAN RESOURCES HANDBOOK BY REPLACING SECTIONS 2, 3, 4, AND 7 THEREIN AND REPEALING ALL OTHER RESOLUTIONS OR PARTS OF RESOLUTIONS INCONSISTENT OR IN CONFLICT HEREWITH; AND PROVIDING FOR SEVERABILITY.

* * * * * * * * * * * *

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF TOMBALL, TEXAS:

Section 1. City of Tomball, Texas Resolution No. 2014-24, passed and approved the 6th day of October 2014 and being a resolution PROVIDING FOR THE ADOPTION OF THE CITY OF TOMBALL'S HUMAN RESOURCES HANDBOOK, is hereby amended by deleting Sections 2, 3, 4, and 7, in their entirety, and replacing them with Revised Sections 2, 3, 4, and 7 and substituting therefor in the "Human Resources Handbook"; copies of said Sections are attached hereto as Exhibit "A" and made a part thereof.

Section 2. All resolutions or parts of resolutions inconsistent or in conflict herewith are, to the extent of such inconsistency or conflict, hereby repealed.

Section 3. In the event any clause phrase, provision, sentence, or part of this Resolution or the application of the same to any person or circumstances shall for any reason be adjudged invalid or held unconstitutional by a court of competent jurisdiction, it shall not affect, impair, or invalidate this Resolution as a whole or any part or provision hereof other than the part declared to be invalid or unconstitutional; and the City Council of the City of Tomball, Texas, declares that it would have passed each and every part of the same notwithstanding the omission of any such part thus declared to be invalid or unconstitutional, whether there be one or more parts.

PASSED, APPROVED, AND RESOLVED this the 1st day of May, 2017.

_____
GRETCHEN FAGAN, Mayor
City of Tomball

ATTEST:

_____
DORIS SPEER, City Secretary
City of Tomball

SECTION 2 – EMPLOYMENT

2.01 RECRUITING PROCEDURES

The Human Resources Department will advertise as necessary to recruit prospective applicants for vacant positions, communicate with appropriate agencies, contact possible sources for applicants, and maintain applicant files.

The Human Resources Department is responsible for:

1. Placing advertising on the City's website, in publications, and any other appropriate advertising site.
2. Accepting all applications. Applications are only accepted at the time of an active recruitment.

A. REQUEST TO RECRUIT

Recruitments can be conducted in the following manner:

1. Public – Applications will be accepted from external and internal candidates. Job postings are available on the City's website, emailed to all City employees and posted in common areas.
2. Internal Only – Applications will be accepted only from internal candidates. Job postings are emailed to all City employees and posted in common areas.

B. JOB POSTINGS

The Human Resources Department will develop a job posting to describe the particular requirements for vacant positions. The job posting will reference the minimum requirements for the position, as this will provide the basis on which applicant qualifications will be evaluated.

Highly complex or difficult to fill positions may be posted as "open until filled" at the request of the Department Head and with the consent of the Director of Human Resources. An open-ended search will not have a fixed deadline for the receipt of applications. The job posting and related advertisements will specify the date when the review of applications will begin. This will allow Human Resources to continue to accept applications until an ideal candidate is identified.

C. APPLICATIONS

Applications will only be accepted by the Human Resources Department during the specified open period of the job posting. Applications that have not been processed and routed by the Human Resources Department during the posting period are not eligible for consideration. Resumes submitted without a completed City of Tomball application will not be considered for employment, with the exception of certain executive positions.

Current City employees who wish to be considered for opportunities within the City must complete a Transfer application. Internal applicants must discuss their intent to compete for a different position with their current Supervisor/Manager or Director before submitting an application.

D. SHARING OF APPLICANT POOLS

Once a final candidate is selected from a pool of applications, the pool will remain viable for a period of 3 months. During this period, if a vacancy occurs with the same job title, the Hiring Department may choose to review applications from the pool rather than re-recruit.

E. INTERVIEWS

The Department Director shall review the applications and schedule interviews for those candidates selected for further consideration. Consideration must be given to all applications received; however, interviews need not be provided to all applicants.

The Human Resources Department can assist the Department Director in structuring interview questions, seating interviewing panels, devising scoring mechanisms and for other assistance in the interview process. Interview questions must be relevant and related to the position and the skills required. In addition, all candidates must be asked the same core group of questions to provide a fair and equal opportunity process.

F. SKILLS TESTING

The Hiring Department will contact the Human Resources Department to arrange for skill testing. Skills such as, but not limited to, typing, word processing, spreadsheets, databases, job knowledge, and other current systems and applications may be measured.

G. REFERENCE CHECKS

All efforts shall be made to determine the applicant's past work history. The best reference is someone who is in a position to evaluate the applicant's work performance. Personal references should be avoided unless they are the only references available.

The Department Director or Hiring Manager shall conduct reference checks prior to communicating a conditional offer of employment to a candidate. If an internal candidate is being considered, reference checks must include at least one person from the current supervisory chain of command.

H. SELECTION

The Hiring Department will be responsible for selecting from among the referred candidates to fill vacancies. Selection(s) must be defensible and documented.

The Hiring Department is responsible for sending letters or emails to applicants, regardless of whether or not they were interviewed, notifying unsuccessful applicants that another candidate was selected.

I. PRE-EMPLOYMENT MEDICAL SCREENING

1. Drug and Alcohol

Any external applicant for employment who has been made a conditional offer of employment will be required to undergo a drug test for the presence of drugs in their system. The Human Resources Department must receive a negative test result before the applicant may be made a final offer of employment. A job applicant who refuses to consent to a drug test as a condition of employment will be denied employment with the City of Tomball.

After a conditional offer of employment is made, the Department Head is responsible for making an appointment for a pre-employment physical (if required for the position), and instructing the applicant to report to the Human Resources Department for the pre-employment drug test. The applicant must report to the Human Resources Department within 24 hours of being notified of the drug test.

The Human Resources Department will provide the paperwork for the applicant to take to the Testing Site. The applicant must show picture identification to a representative at the testing site. The applicant must provide the sample as required or lose the opportunity for employment.

The testing site will provide Human Resources with the result of each drug test. The original result will be kept on file with the Human Resources Department, where it will be retained for a minimum of two years.

If the applicant receives a positive result on the drug test, the Human Resources Department will inform the Hiring Department. The conditional job offer will be rescinded by the Human Resources Department. The Hiring Department can choose another applicant from the same applicant pool or reopen the position for recruitment.

Any applicant who has tested positive for a controlled substance during the application process may be considered for employment with the City of Tomball, following a period of one year and a documented drug rehabilitation program. Upon reapplication, the applicant must also agree to at least one year of random drug tests (6 tests during the one year period) paid for by the City.

2. Physical Examinations – Non-Public Safety

Physical examinations will be required for those applicants being considered to fill a position that is highly physical in nature and/or where there will be frequent exposure to sun, heat, cold, humidity, and rain. Applicants in labor intensive positions, whether full-time, part-time or seasonal/temporary, must successfully complete a physical examination. These jobs often require heavy lifting and/or physical stamina. Both external and internal applicants must first be informed of a conditional offer for the positions and then be sent for a physical examination arranged by the Human Resources Department. Reasonable accommodations will be made for persons with disabilities, in accordance with the Americans with Disabilities Act.

3. Physical Examinations – Public Safety

All public safety police applicants who are being considered to fill a position will undergo a thorough physical examination and will also be required to pass a psychological screening process which includes a written psychological test and an oral interview with a psychologist. Document L-2 is signed by the physician stating the applicant is able to perform the essential duties of a police officer. The psychologist signs an L-3 stating there is no mental reason that an applicant could not perform the duties of a police officer. Both the L-2 and the L-3 forms are required by the State of Texas licensing agency for police officers and are sent to the state once an applicant has been employed by the City of Tomball Police Department. Dispatch candidates will also be required to provide an authenticated L-2 and L-3 indicating that they are fit to perform the duties of a dispatcher.

After a conditional employment offer is made, firefighter applicants are required to complete a pre-employment physical and must be deemed able to perform the essential duties of a firefighter by the City's contracted physician. Firefighter applicants must meet the standards of the National Fire Protection Association.

J. BACKGROUND INVESTIGATIONS

Background investigations will be done in accordance with the requirements for filling the vacant position.

1. Background Check – Non-public Safety

The background information will be used to ensure that the City does not place an applicant in a position that may create liability for the City. An applicant will not be disqualified from hire merely by having a criminal conviction. The nature of the offense, how much time has passed, and the job the applicant has applied for will be taken into consideration. Because of confidentiality issues, the

Human Resources Department is responsible for receiving and evaluating all applicant background information.

2. Background Investigations - Public Safety

   A thorough and comprehensive background investigation is completed on each police officer, public service officer, dispatcher, and firefighter candidate. Background investigations are completed internally by a City approved background investigator and maintained in accordance with department protocol.

K. DRIVER'S LICENSE VERIFICATION AND HISTORY CHECK (MVR), IF APPLICABLE

Applicants that are considered for a position that requires the operation of a City vehicle must possess a valid Texas Driver's License. The applicant will have a Driver's License Verification and History Check before a final offer for employment will be made.

An applicant whose position requires driving a city vehicle or driving on City business may not have more than 2 moving violations in a previous 3-year period, not including drug or alcohol related violations, or any drug or alcohol related motor vehicle violation. An applicant with any drug or alcohol convictions within the last 10 years from date of application will not be considered for employment.

Public safety police applicants are required to comply with the police department's rejection criteria, which include but are not limited to frequency of driving violations and frequency of both at-fault and not at-fault accidents.

If the personal driving record requirements are not met, the Human Resources Department will notify the Department Head, as well as call or meet with the applicant to discuss the applicant's driving record and reason for no longer considering the applicant for employment.

L. CREDIT HISTORY CHECK, IF APPLICABLE

The pre-employment credit report can provide insight into an applicant's financial responsibility. The report will be requested for those individuals being employed in a financial/accounting position and/or having significant fiscal responsibilities. The same process for "Notice of Intent to take Adverse Employment Action" described under the MVR section of this manual, will be used to notify the applicant.

Once all pre-employment activities are successfully completed, the Human Resources Department will contact the Department Head to proceed with the applicant. The Department Head will confirm the job offer with the applicant.

2.02 MINIMUM AGE REQUIREMENTS

Age limits are imposed for certain positions on the basis of a bona fide occupational qualification or statutory requirement. The City will comply with all specific State laws or any federally imposed age requirements. No person under the age of 16 will be employed in any position in the City.

When the City employs an individual under 18, the employee may not begin working until the parent(s) or legal guardian(s) grant permission in writing. No person under 18 years of age will be employed in any regular position, or any temporary or part-time position requiring the operation of a motorized vehicle owned by the City.

2.03 NEPOTISM (Employment of Relatives)

A. Family Member

The City of Tomball defines a family member as:

1. A relationship created by marriage includes: spouse, spouse's child, spouse's parent, spouse's brother, spouse's sister, spouse's nephew, spouse's niece, spouse's grandchild, spouse's grandparent, spouse's first cousin, spouse's aunt, and spouse's uncle.
2. A relationship created by birth (blood) includes: parent, brother, sister, child, grandparent, grandchild, aunt, uncle, niece, nephew, first cousin, great-grandparent, great-grandchild, great-aunt, great-uncle, great-niece, and great-nephew.
3. Significant others who live in the same household.

B. Applicants

An applicant may not be hired as an employee if that department already employs a person who is a family member of the applicant. This passage does not apply to volunteers with the fire and police departments.

C. Employees within the same department

If an employee becomes a family member of another employee who works in the same department ~~and neither employee voluntarily resigns or is able to transfer to another position in another department within 60 days of the date the employees become family members, then the person with the least amount of consecutive service time with the City immediately prior to the date the employees become family members, is considered to have automatically resigned their position of employment on the 61st day following the date the employees become family members.~~ the employees may remain in the department, however, they may not directly supervise one another.

D. Elected Officials

No person related within the second degree by affinity* or third degree of consanguinity** to the mayor, any member of the City Council, any officer of the City or officer of any City Board shall be appointed, voted upon or confirmed by that relative to any office, position, clerkship, employment or duty of the City. This prohibition shall not apply, however, to any person who shall have been continuously employed by the City for a period of six (6) months prior to the election of the Mayor or Council member so related to him/her. The person must have been continuously employed by the City for a period of thirty (30) days prior to the appointment of a related officer of a City Board or officer of the City to retain employment.

* "Affinity" is relationship created by marriage and within the second degree includes spouses, mother-in-law, father-in-law, sister-in-law, brother-in-law, daughter-in-law, son-in-law, grandparent-in-law and grandchildren-in-law.

**"Consanguinity" is a relationship created by birth and within the first and second degree includes grandparents, parents, brothers, sisters, children and grandchildren, and within the third degree includes aunts, uncles, nieces, nephews, great-grandchildren and great-grandparents.

2.04 RE-EMPLOYMENT

An employee who resigned from City service and submitted a written notice of resignation stating the date of departure and the reason for resignation is considered to have left in "good standing". The notice of resignation must have been submitted a minimum of fourteen calendar days prior to the effective date. Employees who did not leave in "good standing" will not be re-employed with the City unless the City Manager grants approval.

If a former employee is re-employed by the City of Tomball within any time frame, the original hire date will not be used to restore vacation, sick, holiday, personal days and longevity accrual rates. All accrual rates will be based on the new hire date, any previous time will not be merged together. Prior service will not count for eligibility for any paid time off, and there will be no restoration of any accrued time that was unpaid at the time of separation of employment with the City of Tomball.

2.05 EMPLOYMENT AND ELECTED OFFICES

An employee must notify the City Manager of his or her intention to file as a candidate for any publicly elected office prior to filing as a candidate. The determination will then be made, on a case by case basis as to whether there is any conflict with the employee's position with the City.

An employee may not serve on any city council appointed board or commission, except as authorized by ordinance, the City Manager, or as specified in the employee's job duties.

Employees who are elected or appointed to a public office are required to resign from City employment, if the candidacy or position creates a conflict of interest with their City position, or the position provides for remuneration.

2.06 ORIENTATION

The Department Head and supervisors shall orient all new employees. Such orientation training includes the duties of the position, hours of work, relationship to the other employees, safety precautions, the rights and obligations of an employee, and information about the units and department. The new employee should be made welcome and be encouraged to ask questions, especially during the first weeks at work. Employees shall also be given a set of these rules.

SECTION 3 - STANDARDS OF CONDUCT

3.01 EMPLOYEE CONDUCT

A. STANDARDS OF CONDUCT

1. Employees shall not:

   a. Contract with the City with any type of personal business unless authorized by the City Manager.

   b. Accept or solicit, for personal financial gain, any benefit that might reasonably tend to influence them to act improperly in the discharge of official duties.

   c. Use their official positions improperly to secure unwarranted privileges or exemptions for themselves, relatives or others. This includes suggestion or influence that the City transacts business with any entity of which they or their relatives are officers, agents or members or in which they or their relatives have a financial interest.

   d. Lie to their supervisor or provide deceitful information.

   e. Participate in making or influencing any City governmental decision or action in which they know that they have any financial interest.

   f. Use or disclose, other than in the performance of their official duties or as may be required by law, confidential information gained in the course of or by reasons of their positions.

   g. Transact any business (other than ministerial acts) or render any decisions on matters under the City's jurisdiction on behalf of the City with any entity of which they or their relatives are officers, employees, agents or members or in which they or their relatives have a financial interest. In the event such a circumstance arises, then they shall then make known their interest, and in the case of an employee, disclose the matter to their Department Head so that reassignment or other suitable action may be taken. Purchasing must also be notified.

   h. Accept other employment, in addition to their City position, or engage in outside activities incompatible with the full and proper discharge of their duties and responsibilities with the City, or which might impair their independent judgment in the performance of their public duty.

   i. Participate in a decision regarding a matter under the jurisdiction of the City, if the employee or a relative of the employee is negotiating or has negotiated employment with a person or organization that has a financial interest. The employee shall immediately notify their Department Head that a conflict of interest exists and follow their instructions with regard to further involvement in the matter.

   j. Receive any fee or compensation for their services as employees of the City from any source other than the City, except as may be otherwise provided by law. This shall not prohibit their performing the same or other services for a public or private organization that they perform for the City if there is no conflict with their City duties and responsibilities.

k. Knowingly perform or refuse to perform any act in order to deliberately thwart the execution of the City ordinances, rules or regulations or the achievement of official City programs.

l. Personally represent or appear on behalf of the private interest of another before the City Council or any City board or department; or if the represented person's interest is adverse to that of the City, represent any person:

i. in any quasi-judicial proceeding involving the City; or

ii. in any judicial proceeding to which the City is a party

2. Provided, nothing in subsection (1) above shall preclude:

a. Any employee from performing the duties of his or her employment;

b. Any employee from appearing before the City Council or any City board or department, in a manner consistent with other City policies and rules, to discuss any general City policies or public issues; or

c. An employee from testifying as a witness under subpoena in a judicial or quasi-judicial proceeding.

B. EXCEPTIONS

Exceptions made to any item in Policy 3.01 must be approved by the City Manager and kept on file by the Finance Department or Human Resources Department, as appropriate.

C. NOTIFICATION OF FRAUDULENT INCIDENT OR PRACTICES

In the event that an employee observes a fraudulent act or suspects that a fraudulent act has occurred, notification of the act must be made in accordance with the Interdepartmental Policy and Procedures.

3.02 ATTENDANCE

Employees shall be required to be at their places of work in accordance with work schedules established by their department. Employees are expected to be at their work place or on official duty during City business hours or be officially excused by their supervisors. Any employee who fails to report, is habitually tardy, leaves the workplace without proper authorization or misuses leave may be subject to disciplinary action. All departments shall maintain accurate attendance records.

Whenever an employee is unable to report to work because of illness, injury or an emergency, the employee must call their supervisor as far in advance as possible prior to their scheduled shift time, and each subsequent day thereafter. Such notification should include when the employee can be expected to report to work. Leave time is subject to the approval of the supervisor. The absent employee is responsible for ensuring that proper advance notice of absence or late arrival is given to their supervisor, in accordance with the department rules. If a voice mail is left, it is the employee's responsibility to call back to ensure that the message was received. Messages left with non-supervisory personnel will not be accepted. Failure to provide proper notification of an absence or lateness, unexcused absences, late arrivals or early departures from work may result in disciplinary action, up to and including termination.

Any employee who fails to report to work for 3 consecutive workdays, and fails to notify their supervisor in advance of the reason for the failure to report to work, will be considered to have voluntarily and irrevocably resigned from their position at the end of the 3rd day unless the City determines that the employee has a sufficient excuse for not giving notice.

3.03 MEAL AND BREAK PERIODS

Supervisors shall implement work schedules, including work hours and lunch schedules, to meet the general requirements of their departments and divisions. Break/rest periods are not required by the Fair Labor Standards Act however, the City of Tomball may allow two 15 minute rest periods, which may be provided each day and are to be taken within the work area. The meal period should be 45 minutes or one hour in length and should normally be taken between 11:00 a.m. and 2:00 p.m. for those employees working a standard eight-hour shift. Rest periods and lunch breaks are to be taken as assigned and cannot be stored or banked. Schedules for Police and Fire Department personnel will be established by the respective Chief. Break periods may be delayed in order to maintain production or services.

3.04 EMERGENCY CONDITIONS

The citizens of Tomball depend on City employees before, during and after an emergency or disaster to provide or restore essential public services for the health, safety and quality of life for our community. In the event of a wide scale emergency that could impact our community, all employees must be ready to assist in managing the crisis and will be considered essential for the continuity of governmental operations until he/she are specifically relieved by the Department Director or their designee. This policy applies to all non-exempt and exempt employees, and it recognizes that some emergencies will provide no advanced warning.

A. EMPLOYEE GROUPS

In a large scale emergency, City employees will be required to fulfill their individual responsibilities and function as a team to protect the City's vital assets, and maintain and restore essential City services. While the fire and police departments typically provide emergency services, other City departments may also be called upon to participate in response efforts.

B. PAY PROVISIONS

In the event of a Disaster Declaration, State of Emergency or a long term emergency, all non-exempt that are declared "Essential personnel" and are required to work the duration of the event, will be eligible for overtime at the rate of one and one half (1 1/2) times their regular hourly rate of pay for actual hours worked. Exempt employees may receive time off for extensive hours worked during an emergency situation, as defined by the City Manager.

C. ABSENT EMPLOYEES

Once a State of Emergency is declared, employees who are absent, employees who leave early and employees who do not report to work without the appropriate authorization are subject to the appropriate disciplinary action, up to and including termination.

3.05 APPROPRIATE APPEARANCE

The personal appearance and grooming of our employees plays an important role in the perception that the public and citizens have of the City of Tomball. Employees are expected to dress appropriately and professionally and present a clean and neat appearance while at work and while representing the City or conducting City business. Employees are expected to maintain minimum standards of dress, grooming and personal hygiene appropriate for the position and job duties and as necessary to protect the safety of the employees. This policy establishes the foundation for the City's dress code policy. In order to maintain a positive public image and to assist employees in determining what is appropriate, the following guidelines are established.

A. DAY-TO-DAY ATTIRE

Business attire or a required uniform is to be worn on a daily basis. Police and Fire Department employees are covered under Departmental policies regarding appropriate dress and appearance.

B. PROHIBITED ATTIRE

In order to maintain a positive public image and to assist employees in determining what is appropriate, the following items are prohibited or restricted:

- Shirts that allow a bare midriff
- Beach type flip-flops
- Sweat-shirts, sweat pants, wind suits, overalls or shorts (Department Heads may make exceptions for uniformed seasonal wear)
- Ripped Jeans
- T-shirts and/or ball caps with advertisements, political messages, or slogans (unless provided by the City for a specific City/Public event)
- Clothing with obscene messages or that endorse alcohol, tobacco products, drugs, pornography, or offensive material of any kind
- Revealing, sheer, suggestive, see-through blouses or sweaters (unless worn over or under another shirt)
- Provocative or revealing, low cut attire including body-hugging, see-through, or excessively tight fabrics
- Lip, nose and eyebrow rings/studs, tongue studs or similar type facial jewelry (excluding ear lobes)
- Clothing that is dirty, soiled, stained, wrinkled, ripped or tattered
- Visible tattoos which could be deemed offensive
- Clothing that is better suited for the beach, yard work, dance clubs, exercise sessions, and sports contests
- Hair should not be worn in a manner to create a safety hazard. Hair styles and hair colors must be appropriate to the employee's position and extremes of any type are unacceptable. For

example, green hair, mohawk style haircuts, and severely spiked hair are not allowed. Hair, including facial hair, must be clean and neatly groomed at all times.

Employees in violation of this policy may be sent home. Under such circumstances, employees may not be paid for work time missed. Employees whose grooming or personal appearance violates this policy may be disciplined up to and including termination of employment.

The Director, with approval of the City Manager, may make departmental exceptions to this policy when deemed necessary for business reasons or implement a more restrictive dress and appearance policy.

Directors, Managers and Supervisors are responsible for enforcing this policy in their respective departments in order to maintain acceptable dress and appearance.

3.06 USE OF CITY PROPERTY

City facilities, equipment, supplies, and other City resources are made available to help the employees perform their job duties and not for their personal use. The City, however, recognizes that under certain circumstances the employee's limited use of City telephones, computers, facsimile, e-mail, copiers, internet, and similar resources for personal use may be necessary or beneficial to the City. The City may establish separate policies governing the use of specific equipment. An employee that violates this policy, with excessive use of City equipment for private use, shall be subject to disciplinary action up to and including termination. Excessive use is defined as any use that could generate additional expense to the City, or decrease customer service internally or externally, or otherwise lower productivity of employees.

A. TELEPHONE LONG DISTANCE

All employees are restricted from making non-business long distance telephone calls via the City's long distance provider, except in emergency situations. Calls placed through personal calling cards, pre-paid cards, and/or credit cards are not prohibited, other than the general prohibition on employees unreasonably using work time for personal business. Calls made to an 800, 877, or 888, are acceptable. Calls to 900 numbers or numbers that will switch to a 900 call are not acceptable and shall be subject to disciplinary action.

B. CITY NON-TAKE-HOME VEHICLES

It is the policy of the City of Tomball to provide for transportation needs, as necessary, for its employees. City-owned vehicles may be used only for City business, except as otherwise specifically authorized by department policy approved by the City Manager.

Employees assigned a City vehicle will be required to sign a statement indicating that they have read and will comply with the rules and provisions of this policy. Employees who do not comply with the provisions of this policy shall be subject to disciplinary action up to, and including, termination.

All operators of City vehicles and equipment must possess a valid Texas Driver's License. Personal driving records can impact employees who must drive City vehicles or equipment to perform their jobs. At no time will city employees drive a city vehicle without a valid Texas Driver's License in their possession. All employees who drive City vehicles or receive vehicle allowances from the City will be subject to random motor vehicle records (MVR) checks.

B. TAKE HOME VEHICLES

Take-home vehicles are vehicles owned, leased, or otherwise under care and control of the City of Tomball and are taken home by the employee after regular working hours in order to respond to City emergencies, posing threats to life and/or property. Any non-compliance with this administrative procedure may result in immediate suspension from the take-home vehicle program or disciplinary action up to and including termination.

1. Authorization

   Authorization for the use of a City take-home vehicle is the responsibility of the City Manager or his designee. A Department Director may authorize the temporary use of a City take-home vehicle for a special assignment or event. Department Directors, acting as designees or while authorizing exceptions as provided for in this directive, must be able to articulate just cause for any deviation.

2. Maintenance

   To prolong the life and properly maintain City vehicles, employees will ensure that their assigned vehicles have sufficient gas, oil, and other fluids to prevent premature failure, and that all tires are kept properly inflated. The employee, to whom a vehicle is assigned, is responsible for the condition of the vehicle and for insuring that it continues on its scheduled maintenance program as set up by the Fleet Services Department. Any problems with the operation of the vehicle should be promptly reported to the Fleet Maintenance department. Said vehicles should be removed from service until the problem can be evaluated and/or corrected. Careless, abusive, negligent, or reckless handling or operation of any City vehicle by any employee may result in disciplinary action up to and including termination.

3. Accidents

   All vehicle accidents shall be reported to the vehicle maintenance department. All city-owned vehicles and equipment involved in an accident shall be examined by the vehicle maintenance department prior to returning to service. The vehicle maintenance department shall determine if further examination or repairs by a specialized technician are necessary before returning a damaged unit to service.

4. Liability

   Depending on the circumstances, the City of Tomball reserves the right to limit its liability for personal losses of the employee in the event of theft of belongings from a city-owned vehicle. Employees are responsible for taking prudent steps to ensure the reasonable security of the vehicle and its contents.

   The City of Tomball also reserves the right to limit its liability in the event of an accident that is caused by the employee, depending on the time and the circumstances of the accident. Any tickets or fines received by the employee during their operation of a city-owned vehicle will be the responsibility of the employee.

5. Personal Use

   It is understood that use of a City take-home vehicle for City purposes is unavoidably commingled with a small amount of personal use. However, using a City take-home vehicle for the sole purpose of conducting personal business is prohibited. Take-home vehicles shall

not normally be used for personal business. Use of the vehicle for personal stops while en route between work and home are allowed if they do not significantly alter the normal route taken.

C. ALL VEHICLES

The following information is applicable to both City take-home vehicles and City non-take-home vehicles. All vehicles must be operated in a lawful manner and appropriately maintained under the care and control of the assigned employee. Any non-compliance of this administrative procedure may result in immediate suspension from the take-home vehicle program or disciplinary action up to and including termination.

- All employees who drive City vehicles or receive allowances from the City must immediately inform their Department Head in writing, of any past convictions or pending charges from Driving While Intoxicated, Driving under the Influence of Drugs and/or moving traffic violations.
- Employees will not use City vehicles to haul or tow anything other than City equipment needed in the performance of their job assignment.
- Employees will not possess, purchase, or be under the influence of drugs or alcoholic beverages while operating City vehicles or equipment, or a private vehicle while performing City duties. Tobacco use is not allowed in any City vehicle at any time.
- An employee licensed to carry a concealed handgun under Texas law may not carry the concealed handgun in a City vehicle unless the employee is a licensed peace officer of the City and has the approval of their Department Head.
- Generally, non-city employees are not authorized to be passengers. Exceptions may be authorized by the appropriate Department Head.
- In no case shall a person other than a City employee be allowed to drive a City vehicle unless approved by the Department Head for an authorized use.
- All operators of City vehicles shall possess a valid Texas driver's license and maintain a satisfactory driving record and the appropriate license at all times. Driving records will periodically be examined.
- Employees who operate City vehicles in the course and scope of their employment must notify their supervisor if and when their driver's license becomes invalid or suspended for any reason.
- City employees, while operating City vehicles, are required to remain within the City limits unless conducting official business or commuting to and from work. Any other exception requires the approval of the Department Head.
- All employees, if involved in any vehicular collision in a City vehicle or in a private vehicle while performing City duties, shall call the appropriate law enforcement agency and contact their Department Head or appropriate supervisor. The Human Resources Department will be notified by the supervisor so that an accident report can be completed and an insurance claim can be filed. The employee is also subject to post accident drug testing.
- Employees are not permitted under any circumstances to operate a City vehicle or private vehicle while performing City duties in situations where the employee is temporarily unable to operate a vehicle safely or legally, because of illness, medication or intoxication.

- Employees whose position require the operation of a motor vehicle must exercise due diligence to drive safely, wear seat belts, follow all traffic laws, and avoid distractions while driving, such as using cellular telephones or entering date on a Mobile Data Terminal (MDT) except as provided by state law for emergency response.
- Some city-owned vehicles are equipped with GPS tracking devices. Tampering with and/or disengaging such equipment is grounds for disciplinary action up to and including termination.

D. CELLULAR PHONES

The City will own and provide cellular phones and services to qualified and approved employees. The City will maintain a single service provider contract from authorized state, local or federal cooperative contracts that offer discounted pricing and a wide range of service plans. Use of any other services provider or contract for City owned cellular phones and/or services must be justified and approved.

As an alternative to a City owned and provided cellular phone and service, the City Manager may authorize the issuance of a monthly stipend to those employees deemed to be Critical Decision Makers. These payments are intended to pay only for City related costs incurred on personal cellular phone accounts, and eliminate the need for those employees to carry and maintain a separate phone for City business. This stipend is considered taxable income to the employee.

3.07 INFORMATION TECHNOLOGY SYSTEM USE

The City provides technology and communications systems to employees. This includes internet and e-mail, as well as any system or part of a system owned or leased by the City that is used for sending, receiving, or accessing information by electronic means and transported on wired or wireless networks.

This policy provides guidelines for the general use of the City computers, electronic mail, and Internet access. It applies to both internal and external email sent and received, all Internet access, and any software or hardware installed on a City computer. These guidelines do not supersede any state or federal laws, or any other agency's policies regarding confidentiality, information dissemination, or standards of conduct. This policy is not intended to cover every possible situation. Instead, it is designed to express the City of Tomball's philosophy and set forth general principles when using electronic media and services.

The City will review alleged violations of this policy on a case-by-case basis. Any violation of this policy could result in disciplinary actions, up to and including termination. Additionally, violations of this policy, when appropriate, may be referred for criminal prosecution.

A. ACCEPTABLE USE

Permissible use of the System is to carry forward City business. Use is encouraged when it results in the most efficient and effective means of communication. It is the responsibility of the employee to use the System, including internet and e-mail to assist in carrying out the business purposes of the City. This includes, but is not limited to:

1. Perform job functions,
2. Communicate information in a timely manner,
3. Coordinate meetings of individuals, locations, and City resources,

4. Communicate with departments throughout the City, and
5. Communicate with outside organizations as required performing an employee's job functions.

Generally, email and Internet should be used only for official City business however, brief and occasional email messages of a personal nature may be sent and received and occasional surfing and browsing for non-business reasons. Personal email and use of the internet should not impede the conduct of City business or violate policy restrictions. Personal email Internet use should not cause the City to incur a direct cost in addition to the general overhead of email. Consequently, employees upon receiving personal email should read it and delete it. Personal use must not interfere with performance of job duties.

B. UNACCEPTABLE USE

Unless the use is related to the employee's job duties or authorized by a supervisor, employees may not use the System for any of the following purposes:

1. Under no circumstances is an employee of City of Tomball authorized to engage in any activity that is illegal under local, state, federal or international law while utilizing City of Tomball-owned resources.
2. Sending unsolicited email messages, including the sending of "junk mail" or other advertising material to individuals who did not specifically request such material (email spam) or creating or forwarding chain letters.
3. Sending, forwarding, creating, downloading, viewing, storing, or copying e-mails or information that violates any City policy and especially racial, offensive, or sexual, or contain other derogatory content that violates any City policy. Employees who receive inappropriate e-mails with content not within the City's policies from any City employee must report the matter to their supervisor or Human Resources Department immediately.
4. Surfing internet websites that are offensive, sexually explicit, abusive, threatening, or otherwise inappropriate for the workplace.
5. Spending excessive amounts of time on personal e-mail, surfing of the internet, or participating in chat rooms. Excessive use is defined as any use that could generate additional expense to the City, or decrease customer service internally or externally, or otherwise lower productivity of employees.
6. Copying or transmitting any documents, software or other information protected by the copyright laws, without proper authorization by the copyright owner. Copyright protection applies to any document, photo, software, or information unless it is specifically marked as public, not copyrighted, or freeware. In the absence of any specific copyright markings, material or information should be considered copyright protected.
7. Breaking into the System or unauthorized use of a password.
8. Intentionally and maliciously misrepresenting the originator of any type of electronic information.
9. Intercepting, eavesdropping, recording or altering another person's email, except as authorized the appropriate Department Head.
10. Attempting to send e-mail anonymously.

11. Soliciting, advertising or otherwise marketing for outside business ventures, personal parties, social meetings, and charities, membership in an organization or other matters not connected to the City or the community.
12. Installing copies of any software onto City of Tomball computers, or copying software from the City's computer to install on any other computer.
13. Using e-mail and the Internet for monetary interest or gain, or political purposes.
14. Employees should not subscribe to mailing lists or mail services strictly for personal use and should not participate in electronic discussion groups (i.e. list server, Usenet, news groups, chat rooms) for personal purposes.
15. Using the e-mail and Internet facilities to disable, impair or overload the performance of any computer system or network, or to circumvent any system intended to protect the privacy or security of another user.
16. Impeding the City network bandwidth performance through web sites with streaming or continuous audio or video for non-business use, i.e. radio station broadcasts, video trailers, internet games, etc.

C. OWNERSHIP

All electronic information on the System remains the property of the City and public records, subject to the Texas Public Information Act. Employees have no right of privacy in the use of the System, even if permitted for personal use. Employees should have no expectation of privacy regarding their use of e-mail, e-mail content and the use of the Internet. Employees must recognize that it is within the capabilities of the System to recover previously deleted elements at any time and those recovered elements remain the property of the City.

D. MONITORING

The City reserves the right, with or without notice, at any time, for any reason, to monitor the use of the System and to access information sent, received or stored. All e-mail is subject to review by management or its representatives at any time, with our without notice. Use of the City e-mail and Internet system by an employee indicates that the employee understands that the agency has a right to inspect and audit all email communications, Internet usage, and consents to any inspections.

E. PUBLIC DISCLOSURE

Any information on the System is presumed to be subject to disclosure, upon request, as public information. Therefore, employees should use discretion in making use of the System to discuss sensitive matters or matters in litigation.

F. PASSWORDS

Passwords are an important aspect of computer security. Employees must take every precaution to protect their passwords. A poorly chosen password may result in the compromise of the City's network.

If an account or password is suspected to have been compromised, report the incident to Information Technology and change all passwords.

G. SOFTWARE

To protect the integrity of the City's computer network environment, all software must be pre-approved by the Department Head or designated personnel, and a compatibility check completed

through the IT department before installation. Unauthorized software installation is strictly prohibited. Any software installed by the IT Department shall not be removed or altered in any way.

To maintain compliance with U.S. Copyright laws and to protect the integrity of the City of Tomball computer environment from viruses, unauthorized installation or downloading of any unauthorized software is strictly prohibited. Employees are not permitted to install their own copies of any software onto City computers. Likewise, employees are not permitted to copy software from a City computer to be used on any other computer unless such installation is in accordance with the applicable licensing agreement and has been previously authorized by the Department Head or designated personnel. Any employee, who knowingly makes, acquires or uses unauthorized copies of software licensed to the City of Tomball or who places or uses unauthorized software on the City of Tomball premises or equipment shall be subject to disciplinary action.

H. HARDWARE

Any employee's personal computer or equipment that is attached to the City of Tomball's network is subject to all rules within this policy. No hardware shall be installed or removed from the City of Tomball's computer without authorization from the Department Head or designated personnel and notification to the IT Department.

I. LAPTOPS

Laptops are assigned to individuals and/or departments. Employees who remove them from designated office spaces will take personal responsibility for the safety of these items. Employees may be held liable should laptops be damaged, lost or stolen while in an individual employee's possession.

J. AUDITS

The City reserves the right at any time to conduct audits of any or all of the City of Tomball's computers to ensure that the City is in compliance with all software licenses. Unauthorized software will be deleted upon detection.

3.08 MEDIA CONTACTS

The City Manager's office and designated public information officers are authorized to serve as liaisons to media representatives regarding policy issues. Other employees are not authorized to make statements on behalf of the City, unless directed to do so by the Department Head and in response to an inquiry for routine factual information relating specifically to his/her duties as a city employee, and not relating to litigation, legal opinions or City personnel matters. If an employee receives an inquiry, he/she should report the inquiry to the Department Head, and describe any response made to such inquiry. Nothing in this handbook prohibits the exercise of constitutional rights, which generally protect communications made as a citizen on matters of public concern, but not communications made as an employee on matters of personal interest.

3.09 SOCIAL MEDIA POLICY

This policy addresses the responsibility of all employees with regard to their personal use of social media. This policy also outlines the protocol and procedure for employee and volunteer use of social media to disseminate public information and/or promote special events, programs, and services on behalf of the City of Tomball.

A. DEFINITION

For purposes of this policy, "social media" shall mean the use of technology in combination with electronic social networks of any type. Social media sites may include, but not be limited to, Facebook, Twitter, LinkedIn, MySpace, YouTube, blogs, Wikis, chat rooms, and on-line forums. It will also include official City of Tomball websites and all forms of on-line community sites that are established and maintained by the City of Tomball. Social media activity includes but is not limited to texting, blogging, posting, and other actions involving technology and social media sites. The term "Employee", in this section, shall mean a full-time, part-time, or contract employee or volunteer for the City.

B. COVERAGE

This policy applies to all city departments and all employees.

C. EMPLOYEE PERSONAL USE OF SOCIAL MEDIA

The lines between public and private, personal and professional can become blurred in on-line social networks. With that in mind, below are guidelines for social media use by City employees while off duty.

1. Employees who use social media for personal use should not discuss information about the City's employees, citizens, vendors, issues, business, or legal matters without express consent to do so. Posting of confidential information may violate state law and subject the user to criminal penalty.
2. Personal use of social media while off duty must not interfere with or conflict with the employee's duties or job performance, utilize the employee status as a City employee to bolster his opinion or violate any City policy. Employees are encouraged to act responsibly while off duty and to exercise good judgment when using social media.
3. Employees should consider the following guidelines for personal use of social media:
    - Respect coworkers and the City. Do not post any confidential information obtained through employment with the City and/or pictures on the Internet that may defame, embarrass, insult, demean or damage the reputation of the City or any of its employees.
    - Do not post any information and/or pictures that may constitute violation of any City policy.
    - Do not post pictures containing images of City uniforms or insignia, City logos, City equipment or City work sites.
    - Do not permit or fail to remove postings violating this policy, even when placed by others on the employee's blog. Recognize that postings, even if done off premises and while off duty could have an adverse effect on the City's legitimate business interests.
    - Do not link from a personal blog or social networking site to the City's internal or external web site.

- Do not post on social media sites the name, trademark, slogan or logo of the City.
- Do not use City names or identifiers for your personal social networking accounts or email accounts.
- The City may require removal of any material that is disruptive to the workplace or impairs the mission of the City.

The City has a vested interest in protecting its confidential information and in encouraging employees to engage in communication with people outside the City that, not only reflects positively on the employee as an individual, but also on the City.

D. USE OF SOCIAL MEDIA ON DUTY

The City of Tomball permits the use of social media while on duty for the sole purpose of conducting City business and only with department director approval. Alternately, the City prohibits all personal use of social media while on duty regardless of whether the personal use is on a personal device or city-owned equipment, public wifi or city-owned private network unless such use is expressly permitted by the department director.

1. All communication representing the City through social media outlets should remain professional in nature. Incomplete, inaccurate, inappropriate, threatening, demeaning, harassing or poorly worded postings may be harmful to the City's reputation or violate City policy. Such wording will be removed by the Information Technology Services Department.
2. Employees bear full responsibility for the material they post on social media sites. Inappropriate usage of social media can be grounds for disciplinary action, up to and including termination.
3. Public messages relating to City of Tomball activities on social media sites and/or any messages that might act as the "voice" or attempt to reflect the views of the City of Tomball must be approved by the department director.
4. Employees shall not ignore copyright laws, cite, or reference sources inaccurately. Plagiarism is prohibited.
5. All information published on social media sites must comply with City of Tomball's privacy and/or data policies. This includes comments, pictures, video, audio, or any other multimedia posted on social networking sites, blogs, and forums.
6. Media inquiries generated on social media sites should be referred to the City Secretary or City Manager.

E. OFFICIAL SOCIAL MEDIA SITES

1. Official social media sites representing the City of Tomball will be the property of the City of Tomball. All social media sites and email accounts shall be established by the Information Technology Department.
2. The Information Technology Department shall be responsible for the technical oversight of the City of Tomball's social media formats to include:
    - Establishing social media sites and related email accounts.
    - Maintaining a list of social media domains, account logins and passwords and changing passwords. Notification to IT is required if an employee is no longer designated to update content on a social media site(s).

3. Social media formats must meet one or both of the following purposes:
    - Provide residents of Tomball information about City events, activities and issues.
    - Promote the positive aspects of the City of Tomball to those in and outside the community.
4. The City's official website, www.tomballtx.gov, will remain the primary location for internet content regarding city business, services and events. Whenever possible, links within social media formats should direct users back to the City's website for more information, forms, documents or on-line services necessary to conduct business with the City of Tomball.
5. A request to the Information Technology Department and approval by the City Manager are required prior to the establishment of any social media site. Requests to the Information Technology department must include:
    - Purpose for the site and intended content to be posted/shared including the primary audience to be served;
    - Indication of how often the site's content will be reviewed and updated to ensure material accuracy and appropriateness;
    - Identification of individual(s) responsible for managing/overseeing and corresponding with the public (employee's name and position must be included) as well as indicating what provisions will be made if the responsible party leaves the position or is absent.

F. CONTENT MANAGEMENT FOR SOCIAL MEDIA SITES

1. Only designated department employees approved by the Department Director will have authority to publish content on official social media sites of the City of Tomball.
2. Department directors are responsible for monitoring site activity and ensuring content is consistent with the goals and objectives of the City.
3. Departments are responsible for responding to public commentary, inquiries or complaints. Responses must be approved by the Department Head.
4. Communication through social media is a public record. Both the posts by City employees and any feedback by others will be part of the public records of the City of Tomball and will be subject to the Texas Public Information Act (Chapter 552 of the Texas Government Code). Designated department employees posting content on these sites will be responsible for maintaining copies of content posted to comply the City of Tomball Records Management Program.
5. Content posted by "friends," "followers" or "fans" will not constitute a representation, agreement or endorsement on the part of the City of Tomball. The City of Tomball Information Technology Department reserves the right to delete any comment or posting that is deemed inappropriate, malicious, offensive, threatening, profane or insulting. Content that promotes, fosters or perpetuates discrimination on the basis of race, creed, color, age, religion, gender, marital status, disability, national origin or sexual orientation will not be permitted. Users who violate these guidelines may be blocked from posting commentary to City of Tomball social media sites/pages.
6. Any comments posted by external parties on City of Tomball social media sites are not official public testimony concerning any project or program. An opinion expressed on a City of Tomball

page is posted for discussion only and is not a substitute for a formal statement in public hearing process.

7. If a question arises regarding the use or posting of confidential information (e.g. litigation, investigations, etc.) on a social media site, the matter shall be referred to the City Attorney for review. The information in question shall not be posted, or if already posted, shall be removed until an opinion is rendered by the City Attorney. The City Manager or designee reserves the right to restrict or remove City information from an official City social media site if the City Manager believes that the information does not serve the best interests of the city.

G. DISCLAIMER

1. Each Official City of Tomball Social Media Site/Page must include a Disclaimer that contains the following information:

"The City of Tomball does not warrant or make representations or endorsements as to the quality, content, suitability, accuracy, or completeness of the information, text, graphics, links, and other items contained on a social media site's server or any other server. Such materials have been compiled from a variety of sources, and are subject to change without notice from the City. The City's primary and predominant internet presence shall remain the City's official website at www.tomballtx.gov and no other website or social media site can characterize itself as such.

Except to the extent required by law, commercial use of the materials is prohibited without the written permission of the City.

Some of the links on the City's social media pages may lead to resources outside the City of Tomball municipal government. The presence of these links should not be construed as an endorsement by the City of these sites or their content. The City is not responsible for the content of any such external link. The responsibility for content rests with the third party organizations that are providing the information.

Comments posted on this site by "friends," "fans," or "followers" or others will be monitored and any postings or comments that are disrespectful, offensive, dishonest, or do not accurately reflect the views, values or objectives of the City of Tomball will be deleted without notice.

Except to the extent required by law, communications made through e-mail and comments posted shall in no way be deemed to constitute legal notice to the City of Tomball or any of its agencies, officers, employees, agents, or representatives with respect to any existing or potential claim or cause of action against the agencies, officers, employees, agents or representatives where notice to the City is required by any federal, state or local laws, rules or its regulations. Notice of any claim must be filed in writing to the City Secretary of the City of Tomball, 401 Market St., Tomball TX, 77375.

H. ENFORCEMENT

1. Violations of this policy may result in immediate revocation of any or all electronic communications access and user privileges and may be grounds for disciplinary action up to and including termination. Certain violations could result in civil or criminal liabilities for the user. Individual supervisors do not have the authority to make exceptions to this policy.

2. No employee or volunteer should have any expectation of privacy or confidentiality when using any City resource, including the city's public and private networks. The City reserves the right to access, intercept, monitor and review all information accessed, posted, sent, stored, printed, or received through its communications systems or equipment at any time.

3. All social media access and use involving City equipment and resources are subject to the City's Internet, Intranet, and Email Use Policy.

I. REPORTING VIOLATIONS

1. The City urges employees to report any violations or possible perceived violations to their supervisor, department director, or the Human Resources Department. Violations include discussions of the City and its employees and patrons, any discussion of personal information and any unlawful activity related to blogging or social networking.

3.10 POLITICAL ACTIVITY

An employee may not endorse a candidate for federal, state or local public office while on-duty or permit the display of the City logo or the use of any city equipment or property in support of such candidates. All employees shall notify their supervisor when seeking or accepting nomination or election to any public office that provides enumeration for the same (Article 16, Sec. 40, Constitution, State of Texas). The determination will then be made, on a case by case basis, as to whether there is any conflict with the employee's position with the City. Employees who are elected or appointed to a public office are required to resign from City employment, if the candidacy or position creates a conflict of interest with their City position, or the position provides for remuneration.

An employee may not engage in political activity relating to a campaign for an elective public office or a proposition to be voted on by the public while in City uniform, on-duty, or while representing or acting on behalf of the City. For purposes of this policy, to engage in political activity includes:

1. Using or granting permission to use his or her job title for political activity.
2. Making a speech to a group or gathering supporting or opposing a candidate or proposition.
3. Distributing information relating to the campaign of a candidate or a proposition.
4. Wearing a campaign button while in uniform.
5. Circulating or signing a petition for a candidate or proposition.
6. Soliciting votes for a candidate or proposition.
7. Using City equipment to promote a candidate or proposition.
8. Soliciting campaign contributions for a candidate or for or against a proposition.
9. Any activity supporting or opposing a candidate or proposition expressed in a manner, time, or location that the public might reasonably believe represents a position of the City.
10. Any activity supporting or opposing a candidate or proposition expressed in a manner, time, or location that disrupts or interferes with the operations or effectiveness of City operations.

3.11 OUTSIDE EMPLOYMENT

While employed by the City, regular full time employees must notify their Supervisor before accepting additional employment. Employment at the City of Tomball is considered to be an employee's primary employer. Employees are subject to certain restrictions outlined as follows:

1. The City requires that employees' activities and conduct away from the job must not compete or conflict with or compromise the City's interest, or adversely affect job performance and the ability to fulfill all responsibilities to the City. This requirement, for example, prohibits employees from performing any services for customers on non-working time that are normally performed by City personnel. This prohibition also extends to the unauthorized use of any City tools or equipment. In addition, employees are not to solicit or conduct any outside business during paid working time, except for those exempt employees who, with permission of the City Manager, are able to structure their City employment so that outside employment is not an interference with their City job requirements.
2. All full-time employees must obtain prior approval from their Department Head before any outside employment is undertaken. Employee requests for permission to accept outside employment, including self-employment, must be submitted in writing to the employee's Supervisor and to the Director for final approval. The request must state any pertinent information about the outside employer, the nature of the job, and the hours of employment. The Director's decision will be final.
3. It is the responsibility of the employee to submit a new request for permission for outside employment annually to their Director for approval. Also, if at any time during the course of the outside employment that the employee's Director changes, a new request should be submitted.
4. Employees are cautioned to consider carefully the demands that additional work activity will create before requesting permission to seek or accept outside employment. Outside employment will not be considered an excuse for poor job performance, absenteeism, tardiness, leaving early, refusal to travel, or refusal to work overtime or different hours. If outside work activity does cause or contribute to job-related problems, it must be discontinued, and, if necessary, disciplinary procedures will be followed to deal with the specific problems.
5. Employees may not hold outside employment while on FMLA leave, sick leave, disability leave or while receiving worker's compensation benefits unless expressly authorized in writing in advance by the Director and City Manager.

This policy supplements and supports department defined policies already in place.

3.12 SOLICITATIONS

Solicitation and distribution of literature or goods in employee work areas by non-employees is prohibited.

The City may authorize a limited number of fund drives for charitable organizations.

3.13 SMOKING AND TOBACCO PRODUCTS

Employees must comply with the City's ordinance prohibiting the use of tobacco products in any City-owned building, facility or motor vehicle. Employees will be allowed to smoke only in designated smoking areas, as determined by State and Federal guidelines. In this policy, the "use of tobacco products" means the inhaling, exhaling, burning or carrying of any lighted cigar, cigarette, or other

combustible tobacco product in any manner, including cigarettes and cigars; the chewing of tobacco; and the use of snuff.

3.14 WEAPONS

An employee licensed to carry a concealed handgun under Texas law may not carry the concealed handgun or prohibited weapon into a City building, in a City vehicle, or on the employee's person while on duty as a City employee, unless the employee is a certified law enforcement officer for the City of Tomball. The City Manager may grant exceptions for former City of Tomball law enforcement officers that assume new positions in the City.

3.15 ACCEPTANCE OF GIFTS

A gift is an economic gain or economic advantage to an employee or to a relative of an employee. The purpose of laws and policies governing gifts to public employees is to regulate attempts to influence the employees to use their authority or discretion to the advantage of the person making the gift. The City Manager and Finance Director may accept gifts to the City and issue acknowledgements on behalf of the City, subject to restrictions set forth in the City's Code of Ordinances and Charter.

Employees can only accept gifts when in compliance with Federal and State laws and this policy.

A. It is a crime for a public employee to agree to make a decision in return for a payment or receipt of some other benefit.

B. Employees may not accept gifts, favors, services or promises of future employment that could relate to, or influence the performance of the employee's official duties.

C. Employees may not use their position to gain special privileges or benefits and are to avoid participating financially in any business enterprise, which might influence their official decisions and judgments.

D. Employees may not hold any position with any business enterprise or governmental unit, which would conflict with the proper performance of the employee's duties or responsibilities.

E. Employees, employee's spouse and minor children are prohibited from soliciting or receiving gifts in any amount unless a specific statutory exception applies.

F. Perishable items or gifts sent to an employee should be placed in a common area for all employees to share. Similarly, legally acceptable gift certificates sent to employees should be given to Human Resources for use throughout the year to benefit all employees.

E. Benefit means any economic gain or economic advantage to an employee or relative of an employee but does not include:

   1. Political contributions made and reported in accordance with the law.

   2. Awards publicly presented in recognition of public service.

3. Gifts or tokens of recognition presented by representatives of governmental bodies or political subdivisions who are acting in their official capacities.
4. Commercially reasonable loans made in the ordinary course of the lender's business.
5. Complimentary copies of trade publications,
6. Reasonable hosting, including travel and expenses, entertainment, meals or refreshments furnished in connection with public events, appearances or ceremonies related to official City business, if furnished by the sponsor of such public event; or in connections with speaking engagements, teaching or rendering other public assistance to an organization or another governmental entity.
7. Any economic gain or economic advantage conferred by any one person or organization if the economic value totals less than $25.00 per calendar year.

F. Donation of Prohibited Gifts.

1. An employee who receives a gift that would be in violation of State law who wishes to donate the gift to a recognized tax-exempt charitable organization, must, within five (5) business days of receipt of the gift, file a written statement, through their Director, to Finance Administration describing the gift, the date it was received, the date it was donated, and to what organization it was donated.
2. An employee who receives a gift that would be in violation of State law who wishes to donate the gift to the City, must, within five (5) business days of receipt of the gift, file a written statement, through their Director, to Finance Administration. The Executive Team will determine the disposition of the gift.

3.16 SUBSTANTIAL INTEREST IN BUSINESS ENTITY

A member of the governing body or another officer whether elected, appointed, paid or unpaid, of the City of Tomball shall disclose their interest in a business entity as required and described as "substantial interest" in Chapter 171 of the Local Government Code.

A person has a substantial interest in a business entity if:

1. The person owns 10 percent or more of the voting stock or shares of the business entity, or owns either 10 percent or more, or $15,000 or more of the fair market value of the business entity.
2. Funds received by the person from the business entity exceed 10 percent of the person's gross income for the previous year.
3. A person has a substantial interest in real property if the interest is an equitable or legal ownership with a fair market value of $2,500 or more.

A local public official is considered to have a substantial interest if a person related to the official in the first degree of consanguinity or affinity, as determined under Chapter 573 of the Government Code.

3.17 DRUG-FREE AND ALCOHOL-FREE WORKPLACE

The presence or use of illegal drugs or alcohol on the job is prohibited. It is the policy of the City of Tomball to:

- Maintain a safe, drug-free and alcohol-free work environment for its employees, conducive to effective city government operations, and to make a good faith effort to comply with the Federal Drug-Free Workplace Act of 1988, as amended.
- Prohibit the manufacture, distribution, dispensation, possession, sale or use of controlled substance drugs, intoxicants by employees at any time on-or off duty.
- Ensure that while on duty for or acting on behalf of the City, while wearing a City uniform and/or in a City vehicle, while on City premises, that employees will not be impaired by alcohol, intoxicants, or have controlled substances present in their systems not prescribed by a licensed physician.
- Require employees taking prescription medications that would impair their ability to operate vehicles, machinery, or equipment in a safe manner, to inform their supervisor of the potential danger.
- Subject employees to drug and alcohol testing when a supervisor has reasonable suspicion of drug or alcohol use; after certain accidents; when returning to duty as a result of self-referral; as follow-up after a determination that an employee was in need of assistance in resolving drug or alcohol problems; when promoted to a safety sensitive position; and for random testing if the employee is in a safety-sensitive position.

For further information, please refer to the City of Tomball's Substance Abuse and Alcohol Misuse Prevention Policy.

SECTION 4 – SALARY ADMINISTRATION

The City of Tomball's compensation policies (salary administration and pay practices) have been designed to provide guidelines for ensuring fair and equitable practices and to maintain compliance with the Fair Labor Standards Act (FLSA).

4.01 CATEGORIES OF EMPLOYMENT

A. AT-WILL EMPLOYER

Employment at the City of Tomball is at-will for an indefinite period of time, until terminated by either the City or the employee, with or without cause. That means either party may end the relationship with or without prior notice or cause.

No written or oral representation by the City of Tomball personnel will create a contract of employment. No employment practices of the City are intended to create a contract of employment. No changes in the City's employment-at-will policy will be effective unless executed in writing a signed by both the City Manager and Human Resources Director and approved by City Council. The City also retains the right to change any terms, conditions, benefits or privileges of employment at any time without notice.

B. PROBATIONARY PERIOD

All employees serve an initial six (6) month probationary period, which at the City's discretion, may be extended for a period not to exceed twelve (12) months. Police Officers will serve a probationary period of one year. Termination of employment during this probationary period is final with no appeal. **See section 4.09 for more information.**

C. PROBATIONARY EMPLOYMENT

Each new employee is placed into a probationary status until he/she completes the probationary period. The probationary period allows the supervisor or department director an opportunity to evaluate, train, coach and observe the employee's ability to perform assigned duties. Throughout the probationary period, the supervisor shall communicate and document the provisional employee's progress in his/her performance. If the employee's performance meets expected levels, they complete their probation after six (6) months. If the employee's performance during the provisional period is less than satisfactory, the probationary period may, at the discretion of the supervisor and with approval of the Department Head, be extended for an additional six (6) months. At any time during the probationary period and employee may be dismissed without further recourse. Even after completing the probationary period, an employee's employment with the City remains at-will in nature.

D. FULL-TIME EMPLOYEE

A full-time employee is defined as an employee who works a minimum of 40 hours a week or 2,080 hours annually in a full-time position; or an average of 53 hours a week or 2,756 annually in a full-time shift Firefighter position. Such employees are eligible for all City benefits. Full-time employees are further classified in one of the following categories:

1. Exempt: Certain employees, due to their position title and responsibilities, are exempt from the minimum wage and overtime provisions of the FLSA. Exempt employees primarily include those individuals occupying a bona fide executive, administrative, and/or professional position under the

FLSA. All positions are evaluated to ensure accurate classifications and may be re-evaluated as necessary to ensure the position is classified appropriately.

2. Non-Exempt: An employee covered by overtime provisions of the FLSA. Non-exempt employees include hourly employees (where pay is directly related to the number of hours worked) and some non-exempt salaried workers (clerical, first-line supervisory, and paraprofessional job categories). Non-exempt employees may receive overtime pay or be offered compensatory time at the rate of time and one-half in lieu of overtime pay. Time and one-half is used in calculating overtime and compensatory time in situations where the actual hours worked exceed standard work week hours.

3. Shift Firefighter: An employee who is trained in fire suppression, has the responsibility to fight fires, and is either actually engaged in fire suppression work and/or non-fire related emergency responses, and who works ~~24~~ 48 hours on, with ~~48~~ 96 hours off.

E. PART-TIME EMPLOYEE

A part-time employee is defined as an employee who normally works less than 999 hours per calendar year on a continuous basis. Supervisors must prohibit part-time employees from working more than 999 hours in a calendar year. Part-time employees are eligible for annual performance evaluations but are not eligible for any City benefits except those required by law.

F. SPECIAL ASSIGNMENT EMPLOYEE

A special assignment employee is defined as an employee who works between 1000 and 2000 hours per calendar year on a continuous basis. Special Assignment employees are eligible for annual performance evaluations and are eligible for Retirement, Medical and limited vacation and sick leave.

G. TEMPORARY EMPLOYEE

1. Temporary/Seasonal

A temporary/seasonal employee is defined as an employee who, regardless of the number of hours worked per week, will not exceed 999 hours in a calendar year and may only work periodically for a specific season or time period. These employees are not eligible for any City benefits, except those required by law, and are required to re-apply each successive year for continued employment consideration.

2. Interns

A degree-seeking college student hired for a specific period of time (i.e., summer, school semester) for the purpose of career development or field experience, with no entitlement to a job upon completion. Intern positions are considered “At-Will” and will not exceed 999 hours in a calendar year. The goal of an internship at the City is for the intern to gain insight into local government and municipal operations and prepare for future leadership positions. The experience is for the intern’s benefit, not the City’s advantage, and interns will not be used to displace regular employees. Interns may be asked to complete tasks that enable them to gain job related experience, including tasks not directly related to their course of study. Any paid internships shall be established annually during the budget process and are subject to the availability of funds.

4.02 WORK SCHEDULES

Employees in all City departments, with the exception of certain shift positions in the Fire Department and the Police Department, will observe a forty-hour work week. The work period begins 12:00 a.m. Monday (6:00 a.m. for Shift Police Personnel and 7:00 a.m. for shift Firefighters) and consists of seven consecutive 24-hour periods. Employees working a standard forty-hour work week schedule will consist of five eight-hour shifts. Police Officers, Jailers, and Dispatchers may utilize a work week schedule consisting of eight, ten or twelve hour shifts, in accordance with FLSA, provided the service level to the community can be adequately maintained.

Each department head is responsible for exercising adequate supervision to ensure that employees are complying with established work schedules and that unscheduled work is performed only in bona fide emergencies. The department head is responsible for controlling starting and stopping time and all work times. If an employee starts work early or works late and the time for either period is seven minutes or less, then that time is considered incidental and will not require compensation. Overtime will begin the eighth minute and will be calculated in 15 minute intervals.

It is the employee's responsibility to comply with department work schedules and to avoid work that is unscheduled or unauthorized.

While many City services are provided on a 24-hour basis, seven days per week, the City has established its core business hours as 8:00 a.m. to 5:00 p.m., Monday through Thursday, and 8:00 a.m. to 4:00 p.m. on Friday.

A. WORK SCHEDULES FOR SHIFT FIREFIGHTERS

Under the 207K exemption of the FLSA, City of Tomball shift firefighters observe a 14-day work cycle for the purposes of calculating overtime. For shift firefighters, the work cycle begins at 7:00 a.m. on Monday and concludes at 6:59 a.m. 14 days later. Fire Department personnel on a 48-hour shift are regularly scheduled to work an average of 53 hours per week, based on ~~24~~ 48-hour shifts with ~~48~~ 96 hours off between shifts. Days off and shifts may change to meet the business needs of the city. For Shift Fire Personnel, the work day of 24-hour employees is considered to be 12 hours of leave for accrual/usage purposes.

B. WORK SCHEDULES FOR EXEMPT EMPLOYEES

Exempt employees work at the discretion of their department head or the City Manager and may be required to work hours in excess of the normal work week. Exempt positions are not eligible for overtime payment or the accrual of compensatory time. Therefore, the department head may define the work hours and hold the employee accountable to a specified schedule without affecting the exempt status under the FLSA.

The department head shall be available and accessible during the City's core business hours, as well as outside of those established hours as needed to ensure City services and programs are available.

C. WORK SCHEDULES FOR NON-EXEMPT EMPLOYEES

Non-exempt employees in all City departments will observe a forty-hour workweek. Directors, with approval of the City Manager, may establish the work schedules for their non-exempt employees based on providing the most comprehensive customer service to the public and to internal customers.

For purposes of calculating overtime under the FLSA, the work week begins on Monday at 12:00 a.m. (midnight) and ends on Sunday at 11:59 p.m., except for fire and police shift personnel. This work week

is defined for all types of shifts with the exception of a 9/80 schedule which has a workweek defined as beginning on Friday at 11:00 a.m. or 11:30 a.m. and ending on Friday at 10:59 a.m. or 11:29 a.m.

Non-exempt employee positions shall record each workday separately with respect to hours worked. Any hours worked outside of a normal work week schedule must be recorded on the time clock applicable to each workday. As set out above, any overtime must be approved in advance in writing, by a supervisor. If an employee leaves a work site periodically during the workday for personal reasons, the employee shall reflect the lost time on the time clock (i.e. vacation, sick leave, compensatory time, etc.). Hours must be recorded in increment of .25, (i.e. .25, .50, or .75).

The above referenced work schedules are defined to provide direction to employees, supervisors, and Payroll. However, there may be other work schedules based on the unique services provided by individual departments. All work schedules are to be defined and approved according to this policy, and Payroll is to be notified two weeks before they are implemented.

D. OVERTIME

All employees may be required to work overtime when necessary as determined by departmental management. All overtime must be pre-approved. Specific overtime assignments shall be rotated and allocated as evenly as possible among employees qualified to do the work. Employees are expected to respond to a reasonable request to work overtime and may be subject to disciplinary action for failing to stay or report for overtime work.

Any overtime work performed outside of an employee's normal work week must be promptly recorded and documented for purposes of maintaining an accurate payroll as set out below. Overtime shall only be granted with prior consent by the Supervisor and must be recorded and approved on the time sheet. Hours must be recorded in increments of .25, (i.e. .25, .50, or .75). Employees who work overtime without authorization are subject to disciplinary action, up to and including termination. By issuing an employee a PDA, cell phone, laptop or any similar remote access device, the City does not give such employee permission to work outside of a normal work week schedule and any overtime work involving such equipment also must be approved in advance.

1. Non-exempt employees (excluding shift firefighters) shall receive overtime at the rate of 1-1/2 hours for each hour of time worked in excess of 40 hours in a workweek. Shift firefighters will be paid one and one half times the regular rate for each hour worked in excess of 106 hours in any given work period. Overtime may be compensated in one of two ways: accrual of compensatory time or overtime payment (see 4.04 Overtime Pay Procedures).
2. Non-exempt employees, who are being paid overtime or provided comp time, are responsible for notifying their immediate supervisor if their normal work assignment cannot be completed within the established work hours, and shall not perform any work outside of their normal work week schedule unless expressly authorized do so in writing, in advance by a supervisor.

E. WAIVER PROHIBITED

The requirement that overtime must be paid after 40 hours a week or ~~average 53~~ 106 hours in a 14 day cycle for shift fire personnel may not be waived by agreement between any employee and the City.

4.03 PAY PROCEDURES

A. BI-WEEKLY PAYROLL

The City of Tomball operates on a bi-weekly payroll system and paychecks are issued 26 times a calendar year, except every 7 years, there are 27 pay periods.

B. DIRECT DEPOSIT AND CHECK STUBS

Direct deposit offers a cost-effective way of ensuring that all employees are paid in a timely manner. Therefore, all employees are required to have direct deposit for their paycheck. Check stubs are given to employees on payday Friday. Each employee shall check each bi-weekly deposit confirmation for accuracy.

C. ERRORS IN PAY

It is the employee's responsibility to notify Human Resources, if the employee detects errors in a paycheck. This includes over and under payments, errors in deductions, and other information that would cause a discrepancy in the net or gross income of the employee. If an error occurs, which results in an overpayment to an employee, the employee will be required to reimburse the overpayment to the City. If the error occurs on the employee's final paycheck, corrections must be made in cash or cashier's check. If the error results in underpayment, the HR Department will rectify the problem as soon as possible, or no later than the next regularly scheduled pay period.

4.04 OVERTIME PAY PROCEDURES

Exempt positions are not eligible for overtime pay or the accrual of compensatory time. Human Resources shall maintain a listing of all positions, showing their designation as either exempt or non-exempt.

A. OVERTIME CALCULATIONS

Overtime is defined as those hours actually worked, by non-exempt employees during any FLSA-defined workweek, which exceed 40 hours specified for such workweek or exceeds 106 hours in a 14-day cycle for non-exempt shift firefighters.

Overtime will not be paid or accrued until the allowable number of hours has been surpassed for a given workweek regardless of the daily schedule of an eligible employee. All non-exempt employees who are directed to work after completing work beyond the normal 40 hour schedule or 106 hour schedule (shift-firefighters) will begin to accrue overtime hours to be compensated in one of two manners:

1. Compensatory time - accrued at an additional one and one-half times the hours worked; or
2. Overtime payments - paid an additional one and one-half times the hourly rate

B. COMPENSATORY TIME

1. ACCRUAL

Non-exempt personnel, excluding Police Officers may accrue a maximum of 80 hours of compensatory time for hours worked (53 hours of actual overtime worked). Non-exempt Police Officers and Firefighters may accrue a maximum of 160 hours of compensatory time for hours worked (106 hours of actual overtime worked). When compensatory time is used, it is not counted as time worked for calculation of overtime.

A non-exempt employee who has accrued the maximum number of compensatory hours for his/her position, shall thereafter be paid in money for any overtime hours worked until such time that the

employee's compensatory time has been reduced below the maximum permitted (80 or 160 depending on position).

2. RECORD KEEPING OF COMPENSATORY TIME

Payroll records shall reflect the number of hours of compensatory time earned and used by each non-exempt employee in each pay period. The regular timesheets will provide a record of all overtime, both paid and compensatory time earned and used.

4. PROMOTION OF A NON-EXEMPT EMPLOYEE TO AN EXEMPT POSITION

When a non-exempt employee is promoted to an exempt employment status, the employee shall have the compensatory time balance cashed out prior to or at the effective date of the promotion.

C. OVERTIME AND LEAVE

If an employee works in excess of 40 hours during a regular workweek or 106 hours in a 14-day cycle for shift firefighters, the employee will be paid money or in compensatory time. Any paid vacation, personal or sick hours used by an employee during the same work week, will be calculated at the employee's regular rate of pay. In short, an employee will receive overtime compensation only after the employee has physically worked 40 hours during a regular work week or 106 hours in a 14-day cycle for shift firefighters. Vacation, Sick Leave, Holidays and Comp Time are not considered time worked for the purpose of calculating overtime.

D. OVERTIME AND HOLIDAYS

Employees, except for shift fire and police personnel, will be paid a rate of one and one-half times their regular hourly rate for the holiday hours worked. Shift police and fire personnel who are required to work on an official holiday will be paid a rate of one and one-half times their regular hourly rate for the entire shift that actually begins on the holiday. This is in addition to any holiday pay earned by the employee.

4.05 TIME AND PAY FOR ON-CALL, CALLBACK AND CALL OUT SITUATIONS

A. ON-CALL AND CALL BACK

On-Call time is not considered time worked and is not compensable at the employee's regular hourly rate of pay. On-call time is the time outside of regularly scheduled working hours when an employee is assigned to be available for callback. The employee is free to pursue personal activities but must respond to summons (paging, telephone or radio) within designated guidelines determined by the Director. Employees must abide by the guidelines set out in the Drug-Free and Alcohol-Free Workplace Policy of this manual. An employee may receive a stipend at the rate determined

Callback time is generally defined as the time the City requires an "on-call" employee to return to work on an unscheduled or emergency basis to work outside of the employee's regularly scheduled work hours. However, there are times when the "on call" employee must call in another employee with a particular expertise to fix an issue. This person is also considered to be on "call back" under this policy. The time that a non-exempt "on-call" employee is assigned to callback time will be considered as hours worked if during that time the employee is required to perform the employee's regular duties. When an employee is on an "on-call" status and is called to work, compensation will be given to the employee as defined below:

1. Return to the employee's usual place of work: any time worked less than 2 hours, will still be deemed as 2 hours of work, in accordance with the Fair Labor Standards Act. Any incident exceeding two hours will be paid according to the length of time requiring the employee's attention.
2. Remain near a telephone at a fixed location

The following provisions also apply to call back time and pay:

- Call back time does not change the number of hours scheduled as on call.
- If a non-exempt "on-call" employee is subject to callback, any hour(s) worked during the period of callback will be paid at the employee's overtime rate, regardless of the actual number of hours worked in the workweek.
- Call back pay is not associated with time where employees are asked to remain at work, or held over for a shift. If an employee is asked to remain at work after their shift, pay will be subject to the Fair Labor Standards Act guidelines.
- Exempt employees are not eligible for callback pay.

Departments can make their own policies concerning what positions will be mandated for "on-call" duty and what the length of response time must be for employees to return to the work site.

On-call time and callback time must be reported on the employee's bi-weekly timesheet, in accordance with the guidelines listed above.

B. CALL OUT

Non-exempt employees called back to work shall be paid at the rate of one and one-half times the regular rate of pay for the time worked, with a minimum of two hours of pay. The exception being where the call runs into the normal workday at which time a non-exempt employee's pay would change to straight time. The call out time is separate from the normal 40 hour work week calculation.

4.06 STEP-UP PAY, CERTIFICATION AND LICENSE PAYS

A. STEP-UP PAY

When an employee is temporarily assigned the duties and responsibilities of a higher classification, that employee may receive additional compensation if the assignment exceeds ten working days. The rate of pay will be determined by Human Resources and shall not exceed the range or position the employee is assuming.

B. CERTIFICATION AND LICENSE PAY

It is the policy of the City of Tomball to encourage its employees to participate in advanced training. Levels of training and certification for that training should be recognized. To properly compensate those employees who achieve required levels of certification and/or licenses, the city has adopted a certification and license policy which can be reviewed in the Human Resources Department at any time. When certification and license pay apply, eligible employees will only be compensated for the highest level of certification and degree level they achieve. Any changes to this policy will only be made during budget discussions depending on the funding levels that are available for the future year.

It is the employee's responsibility to notify their supervisor and provide documentation when they obtain a higher certification or education level, or if the certification or assignment pay no longer applies to their position. The supervisor will then notify the Human Resources Department.

4.07 TRAVEL TIME

A. COMMUTE TIME

Travel time at the beginning or end of the workday is not compensable. Generally, an employee is not at work until they reach the work site. This includes travel to offsite locations where the employee may have a temporary assigned worksite (i.e. training in Houston). However, if a non-exempt employee is required to report to work to pick up materials, equipment or other employees, or to receive instructions prior to traveling to the worksite, then the time from the worksite to the final destination is compensable. An employee who operates a City vehicle need not be compensated for commute time simply because the employee is driving the vehicle, so long as it is for the employee's convenience. A non-exempt employee who is directed to chauffeur other employees by his supervisors is entitled to compensation.

B. OVERNIGHT TRAVEL

Travel time is compensable when it occurs during the non-exempt employee's normal work hours. Moreover, if the travel occurs during the normal working hours of a non-exempt employee, even if on nonworking days (i.e. Saturday or Sunday for an employee who works Monday to Friday), the time is compensable. ~~Travel time that occurs outside of regular working hours where the employee is a passenger and free to relax does not count as working time. However, if the non-exempt employee is required to drive or perform work, then the time is compensable~~.

C. TRAVEL AND EXPENSES REIMBURSEMENT

Please refer to the City of Tomball Travel and Expense Reimbursement Policy for information regarding travel and expenses reimbursement.

4.08 LIGHT-DUTY ASSIGNMENT

The City's return to work Light Duty Program is based on the belief that it is in the best interest of both the employee and the City for an employee to return to work in some capacity following an on the job-related illness, injury, or medical condition. Under this basis, Directors are instructed to work with Managers to identify possible Light Duty assignments. Attempts will first be made to provide Light Duty assignments in the department and division in which the employee currently works. If placement is not possible, then the Human Resources Department will attempt to place the individual in another department, based on physical ability skills and available assignments.

Light duty assignments are limited to those employees who have sustained an injury, illness, or other medical condition on the job. If an employee is unable to work at full duty capacity due to an injury, illness, or other medical condition, but is able to work in some capacity, they may be eligible for light duty.

The employee's treating health care professional must have the expectation that the employee will be able to work in a full-duty capacity. The employee must obtain a Doctor's Note from the health care professional that releases the employee to perform the assigned duties and submit it to Human Resources. For the 1st six months after the injury or onset of illness, an employee must provide medical documentation to Human Resources, in 45-day increments in order to remain on light duty. The supervisor shall provide Human Resources with the light duty job requirements.

An employee who is released to return to work in less than a full-duty status by the health care professional may be required to work in a position or department other than his normal position or department. The City will consider returning the employee to work in a light duty work assignment resulting from a vacant position or work overflow.

Work duties will be assigned in accordance with the employee's limitations and knowledge, skills, and abilities and the needs of the City. No Light Duty will be assigned unless a health care professional's release is provided.

A. EMPLOYEE RESPONSIBILITIES ON LIGHT DUTY

An employee with a light duty assignment will be required to continue to present progress reports to their supervisor after each doctor's visit that states the employee's progress and the expected date of return to full duty.

Employees with a light duty assignment may not work any second jobs that conflict with the restrictions set forth by the health care professional. This will be in effect until the employee is released for full duty by their health care professional.

An employee's participation in the Light Duty Program may be suspended and/or terminated for the following reasons:

1. The treating health care professional temporarily prohibits the injured employee from continuing with a Light Duty assignment.
2. There is no longer any assignment available within the City which can be performed by the injured employee, given their current restrictions.
3. The treating health care professional indicates that the injured employee has reached maximum medical improvement and will not be able to return to their prior position with or without reasonable accommodation, in any reasonable foreseeable timeframe.
4. An injured employee has been on a light duty assignment for a period of 6 months, which is the maximum time allowed any employee to remain on Light Duty work without a recommendation of extension from the Assistant City Manager/City Manager.
5. The employee fails to comply with departmental policies and procedures, or any City policies and procedures.
6. If the employee fails to perform the assigned tasks, the employee will be removed and may be subject to disciplinary action.
7. The employee fails to comply with the terms and conditions of the Light Duty Program and/or fails to meet acceptable work standards and performance levels of the assigned position.
8. The City cannot make reasonable accommodations that meet the restrictions as outlined by the health care professional.
9. The health care professional releases the employee for full-time, regular duties without restrictions.
10. If work assignments conflict with restrictions.

The employee participating in the Light Duty Program will discuss with the supervisor the hours to be worked, not to exceed a 40 hour workweek.

The employee will be required to wear appropriate dress for the light duty assignment. This will be left to the discretion of the employee's assigned supervisor and in the case of Police and Fire personnel, the department's supervisor or the Chief's approval.

When possible, the employee shall attempt to schedule medical treatment or physical therapy appointments in an effort to minimize the interference with the employee's work schedule. It is the employee's responsibility to promptly return to work after Light Duty medical treatments or physical therapy appointments scheduled during normal work hours or to notify the Light Duty supervisor if unable to do so following each appointment with a health care professional.

B. DIRECTOR'S, MANAGER'S, SUPERVISOR'S RESPONSIBILITIES IN REGARDS TO LIGHT DUTY

1. It will be the Director's/Manager's responsibility to assign an employee to light duty in the employee's regular department/division, whenever possible. If light duty is not available within the employee's Department/Division, Human Resources will survey other Departments for suitable light duty assignments.
2. All light duty job offers must be made in writing.
3. It is the responsibility of the Director's/Manager that receives an employee on the Light Duty Program to:
   a. Supervise the work of the light duty employee so that the performance standards of the assigned positions are met.
   b. Notify Human Resources if the light duty employee fails to meet the performance standards of the position.
   c. Notify Human Resources of any physical compliance rules or restrictions not adhered to by the light duty employee.

4.09 PROBATIONARY PERIOD

A. PURPOSE

The purpose of the probationary period is to allow newly hired full-time employees and the City the opportunity to measure and evaluate their satisfaction with the working relationship. At any time the employee or the City has the right to terminate the employment relationship, with or without notice, with or without cause. The City also retains the right to change any terms, conditions, benefits or privileges of employment at any time without notice. No employment contract either expressed or implied shall exist between the City and the employee for any duration, either specified or non-specified, during the introductory period.

B. LENGTH OF PROBATIONARY PERIOD

The length of the probationary period is as follows:

1. All full-time employees, excluding Police Officers and Dispatchers, shall complete a probationary period of six months from the date of hire.
2. Police Dispatchers shall complete a six month probationary period from the end of their training and Police Officers shall complete a one-year probationary period from the end of their training ~~date of hire~~.

At least 30 days before the end of the probationary period, the Supervisor must begin reviewing the employee's performance. At that time, if it is determined that the employee's performance is not satisfactory, the employee will be terminated from employment before the end of the probationary period. If it is determined that the employee's performance needs further evaluation, the Supervisor/

Director may, before the end of the Probationary Period, recommend to extend the employee's Probationary Period as provided below.

C. EXTENSION OF THE PROBATIONARY PERIOD

At the discretion of the Supervisor and Director and with the concurrence of the Director of Human Resources, an employee's Probationary Period may be extended up to six months.

D. POSITION CHANGES (INTERNAL MOVES)

Probationary periods will apply to all full-time employees that have a change in jobs (through reclassification, promotion, demotion, or reorganization) and are subject to a 6-month probationary period. At the end of 6 months in the new position, the incumbent will receive a 6-month review to be documented as a periodic update in the performance evaluation system. The 6-month review is not subject to an increase in pay, but is to determine if an employee can continue in the position. If the employee is not performing satisfactorily, they are subject to disciplinary action.

An employee who changes positions (through reclassification, reorganization, demotion, or promotion) may not transfer or change jobs within the first 6 months of the action without the consent of their Director.

4.10 EMPLOYEE PERFORMANCE AND DEVELOPMENT SYSTEM

The performance evaluation is a measurement of an employee's work performance over a period of time. The performance evaluation is also a developmental tool that is used as a means for the supervisor to communicate to the employee essential job factors, skills, expectations, and at what level the employee should be performing.

The City will evaluate employees at least annually. This evaluation will include a discussion between the employee and his/her immediate supervisor to determine goals and evaluate progress toward better performance and personal development. Performance evaluation results are used in determining merit increases and promotions. An employee's immediate supervisor will complete written performance evaluations with final written approval by the Department Head or City Manager. Employees will be given a copy of the evaluation prepared by their supervisor.

Salary increases may be given to reward individual performance are subject to budgetary guidelines established by the City.

A. ELIGIBILITY

All full-time and part-time employees shall be evaluated based upon a performance plan, to include the City's guiding values, mandatory job factors, and/or leadership and other criteria developed by the Supervisor and the employee. Employees hired during the last quarter of the fiscal year will not be eligible for a merit increase until the annual review the following year.

Supervisors shall review staff evaluations with the Director/Manager prior to discussing with the employee as part of the department calibration stage of the evaluation.

B. ANNUAL PERFORMANCE EVALUATION

An employee receiving a "Marginal" rating on their annual evaluation will not receive an adjustment to pay and will be placed on a Performance Improvement Plan and given 90 days to improve. If at the end of the 90-day period, the employee's performance improves to "Proficient", the employee will continue employment with the City and may be eligible to receive an adjustment from the date of the "Proficient"

rating. The employee's next evaluation will be on the next common review date and may be eligible for an adjustment based on performance for the entire previous 12 months.

Upon the re-evaluation, if performance is still rated as "Marginal" the employee is subject to disciplinary action, up to and including termination, in accordance with directions provided by this policy and the Human Resources Department.

C. PERFORMANCE IMPROVEMENT PLAN

Employees may be disciplined for conduct or performance or a combination of the two. At any time, if an employee's performance falls below expected levels the employee may be placed on a Performance Improvement Plan and given 90 days to improve. If at the end of the 90-day period, the employee receives a rating that is below "Proficient", the employee is subject to disciplinary action, up to and including termination, in accordance with directions provided by this policy and the Human Resources Department.

D. EMPLOYEE EVALUATIONS WHILE ON LEAVE OF ABSENCE

If an employee is out on an approved leave of absence, including but not necessarily limited to, leave due to an on-the-job injury, FMLA leave, or Military leave, then the employee shall be evaluated based on their performance while at work. However, merit pay will be based on the evaluation rating, as if the employee were at work the entire evaluation period. If an employee is out the entire evaluation period, then the supervisor will use the previous evaluation period rating. Any salary increase shall occur on the effective date of the change.

4.11 PAY PLAN AND COMPENSATION GUIDELINES, AND JOB DESCRIPTIONS

A. COMPENSATION PHILOSOPHY

The City maintains a position classification system for all workers in an effort to apply sound principles of measurement to determine an internally equitable market value of each position in the City. The request for new classifications will occur during the budget process each year.

The City's compensation program will provide compensation opportunities (direct pay and indirect pay, career opportunities, benefits, etc.) that are a blend of those offered by its competitors.

Each job classification in the City will be assigned to the pay structure and will have a pay grade defined by the minimum and maximum dollar limits. The pay grade defines the pay opportunities for the job.

Pay structures shall be reviewed periodically to reflect the city's changing competitive position, economic conditions, and compensation objectives; and shall be subject to the budgetary guidelines established by the City.

B. ESTABLISHMENT OF PLAN

The City Council shall establish the pay plan annually during the budget process, which includes compensation and salary structure recommendations made by the City Manager or his designee. One of the functions of the budget process is to consider the competing priorities for limited revenue resources. It may be determined that the City's current financial status cannot support the total cost. Conversely, in a positive financial condition, the City may consider increasing the percentages allotted. The financial status will affect both structure adjustments and individual salaries during any future fiscal years.

Generally, when any salary structure is adjusted, the employee's salary will be adjusted in order to maintain the employee's position in the structure. In addition, the employee may receive a budgeted merit increase. Conversely, if the City's financial status cannot support a structure adjustment and a merit increase in the same year, the City may elect to adjust the structure one year and in the following year provide a merit increase to employees with no structure adjustments, or may elect to maintain the current pay structure until conditions change.

C. SALARY RANGES

Each position in the City has a salary range defined by minimum and maximum salary limits and a midpoint. The salary range defines the pay opportunities for the job. The salary ranges and midpoints are to be reviewed and revised to reflect changing competitive positions, economic conditions and compensation objectives.

Employees shall not be paid less than the minimum of the pay grade established for their position and increases shall not provide for employee salaries to exceed the maximum of the pay range for their position. The midpoint of the range is equivalent to the average salary paid in the market, with the basic compensation philosophy that an employee should be at or near the midpoint of the range when he or she has attained five years of tenure in the position.

Employees whose salary is at or above the maximum of their pay grade will be "frozen" until the structure "catches up" with the individual's rate of pay. Employees at the maximum of their pay range may, with the approval of the City Manager and as provided for in the budget, be eligible for lump sum payments that are not included in the base pay of the employee. The pay described above is nonrecurring, and will not extend beyond the end of the fiscal year in which such pay is authorized, and will be tied to satisfactory job performance.

D. JOB DESCRIPTIONS

The job description provides a general summary of the purpose, essential duties, responsibilities and requirements of a position. It is not intended to be a comprehensive listing of all tasks associated with the position nor an implied contract between the City and the employee. Job descriptions are required for all positions and will define the position as exempt or non-exempt.

The main objectives of the job description are:

1. To serve as a means of communication between the supervisor and the employee to clarify the responsibilities and expectations of the job;
2. To serve as the main resource to determine the salary range;
3. To serve as the basis for the annual performance appraisal;
4. To identify minimum qualifications and applied skills, as well as knowledge and ability for the purpose of recruitment, selection, promotion and training.

Employees are hired on the assumption that each employee will "perform other work related duties as required" that may not be specifically spelled out in their job description.

4.12 MAINTENANCE OF CLASSIFICATION AND PAY PLANS

The Human Resources Department, assisted by the Department Heads, shall have primary responsibility for maintaining the classification and pay plans. All changes in job duties of a position and job classification of a position must be approved by the City Manager.

Department Heads and supervisors have a duty to report substantial changes in the duties and responsibilities of positions under their control, so that classification adjustments may be made.

The City Manager shall recommend to the City Council changes in the pay plan necessary to keep the City policy current, uniform and equitable. Recommended changes in pay policy shall be effective when the budget containing said changes is approved by City Council.

4.13 PROMOTIONS

It is the policy of the City to encourage and provide opportunities for promotion. Each employee is responsible for monitoring vacancies and is encouraged to apply for vacant positions, in which he/she is interested in and for which he/she is qualified. A promotion is defined as the assumption of job duties and responsibilities that are higher in character and scope than the previous job. A promotion occurs when the new job is of a higher salary range than the prior job and is accompanied by a job title change.

When a non-exempt employee is promoted to an exempt employment status, the employee shall have the compensatory time balance cashed out prior to the effective date of the promotion. Payment shall be made at the employee's rate of pay on the effective date of the cash out.

General guidelines relating to advancement or promotion are as follows:

1. If an employee is promoted, the resulting salary increase shall be at least an amount sufficient to reach the minimum salary range for the new job. If the current rate of pay is more than the maximum rate of pay for the new classification then the pay shall remain the same.
2. Promotions are subject to a six month probationary period. If the employee fails to meet the established performance standards, he/she may return to his/her previous position or a similar position, if a position is available.
3. Part-time employees promoting into a regular full-time position will use the new start date in their full time position as their accrual date for benefits.

4.14 LATERAL TRANSFERS

A lateral transfer is movement from one position to another position within the same pay range. In the event an incumbent is transferred, whether voluntary or involuntary, to a position with the same pay range,

the incumbent shall remain at the same salary. A lateral transfer will require a six-month probationary period.

4.15 DEMOTIONS

A demotion occurs when an employee moves from one job position to a position of a lower salary range and therefore, may result in a lower salary based on the minimum and maximum of the salary range for the position.

4.16 REORGANIZATIONS

An employee may be transferred, have a job title change or have a salary increased or decreased due to a department or City-wide reorganization.

4.17 REDUCTION-IN-FORCE

From time to time economic conditions or the changing staffing needs of the City create situations which will require a reduction in force or layoff from specific positions.

SECTION 7 – ACCRUALS AND LEAVE

7.01 VACATION

A. USE OF ACCRUED VACATION LEAVE

In appreciation of continuous service, the City shall provide employees in full-time positions, except as provided by contract, an opportunity for paid vacation leave away from the work environment. The City encourages employees to use vacation leave annually.

Approval of vacation leave shall be based on departmental needs. An employee may not take vacation leave without written approval of the supervisor.

An employee's approved leave shall be charged and used in amounts of not less than one-fourth (quarter) of an hour increments.

B. ELIGIBILITY

All full-time employees shall accrue vacation leave according to the chart below and shall comply with the following vacation leave guidelines:

1. Vacation leave is earned from the most recent date of full-time employment and accrued on a bi-weekly basis following the pay period it is earned.
2. Employees are allowed to use vacation leave after they have completed their six (6) month probationary period. Employees who are on probation will accrue vacation during this six (6) month probationary period however, if the employee's employment is terminated prior to regular employee status, no vacation accrual will be credited.
3. Employees may not substitute vacation leave for disciplinary suspension without pay.
4. If an employee goes on unpaid leave status, vacation leave shall not continue to accrue until the employee returns to work.

C. VACATION ACCRUAL

Vacation is accrued on a bi-weekly basis. The schedule below reflects vacation leave earned per pay period and per year by all employees in full-time positions:

Length of Service	All Employees, excluding Shift Firefighters	Shift Firefighters
4 years of service or less	10 days per year or 3.08 hours per pay period	10 days per year or 4.62 hours per pay period
End of 5th Year, but less than 12 years of service	15 days per year or 4.62 hours per pay period	15 days per year or 6.93 hours per pay period
End of 12th Year, but less than 20 years of service	20 days per year or 6.15 hours per pay period	20 days per year or 9.23 hours per pay period
20th Year and thereafter	20 days per year or 6.15 hours per pay period, plus one additional day for each year of service beginning year 20 (limited to five extra days)	20 days per year or 9.23 hours per pay period, plus 12 hours for each year of service beginning year 20 (limited to 60 extra hours)

To adhere to the application of accrued time in accordance with our previous policy, the change from two to three weeks of vacation will occur at the time of the fifth anniversary by adding a week of accrued time to the two weeks already accrued in the fifth year. The same change will occur at the twelfth anniversary.

D. SCHEDULING VACATION USAGE

The employee's supervisor must approve all vacation leave, giving due consideration to the needs of the department and the ability of the remaining staff to perform the work of the department or division, as well as the preference of the employee. Each employee is requested to give their supervisor the maximum notice possible (generally at least 10 business days in advance), prior to the requested leave dates (s) in accordance with department policy. If an employee, due to some unforeseen emergency, is requested to work during a scheduled vacation, the employee can re-schedule vacation at another time. An employee may not be granted vacation leave in excess of the actual amount accrued. An employee may not request unpaid leave if they have vacation accrued that they are eligible to use.

E. HOLIDAYS WITHIN VACATION PERIODS

If a holiday falls within a scheduled vacation period, the employee shall receive holiday pay, in lieu of vacation pay.

F. REIMBURSEMENT FOR UNUSED VACATION

An employee shall receive reimbursement of unused accrued vacation at the time of separation of employment or retirement if they meet the following requirements:

- Employee must have completed 6 months of employment (or 12 months if the probationary period was extended),
- The employee provides a 2 week notice, and
- The employee has not been terminated.

In the case of the death of the employee, the estate of a deceased employee is entitled to payment for accrued vacation leave acquired by that employee.

G. VACATION CARRY OVER

Accumulated vacation leave in an amount not to exceed one times the employee's annual accrual amount, may be carried forward from year to year, except as provided by contract. Any unused vacation leave accumulated in excess of this amount will be lost, and may not thereafter be exercised by such employee.

7.02 SICK LEAVE

A. ACCRUAL OF SICK LEAVE

All full-time employees, other than shift firefighters, accrue 3.08 hours of sick leave per pay period or 10 days per year, to a maximum of 960 hours. Shift firefighters accrue 4.62 hours of sick leave per pay period or 10 days per year, to a maximum of 960 hours. Part-time and temporary employees are ineligible to earn or receive paid sick leave.

B. USE OF SICK LEAVE

An employee may use sick leave:

- For the employee's non-work related illness or injury that prevents the employee from working.
- To receive medical care from a physician, dentist, or other health care provider.
- Pregnancy and the birth of a child to an employee shall be deemed a bona fide illness for this purpose and no additional sick leave shall be authorized for maternity leave.

An employee may use up to ~~16~~ 32 hours of accrued sick leave in a calendar year:

- To care for an employee's sick child (dependent minor child in the home) or spouse or parent

NOTE: Leave allowed by the Family Medical Leave Act (FMLA) may apply to the serious injury or illness of you or your family member. Please refer to The Family and Medical Leave Act in Section 7.10 or contact Human Resources.

Using sick leave for purposes other than authorized by this policy is just cause for disciplinary action up to and including termination of employment. The use of sick leave time is not counted as time worked under the FLSA.

C. WORK-RELATED INJURY

Loss of work due to an accident or injury received while at work is not charged against sick time.

D. ACCRUED TIME

Sick leave time begins the first working day of the illness. An employee who has used up their accumulated sick leave must then use their compensatory time, vacation leave, or any other applicable accrued leave benefit, if available. After the employee has exhausted all accumulated time, additional time off is without pay, if approved by the City Manager. Please refer to the Leave of Absence Policy in Section 7.11 for more information.

E. NOTICE REQUIREMENTS

If an employee finds it necessary to be absent due to illness or injury, the employee or employee's representative must notify the immediate supervisor or Department Director on the first day, and each subsequent day thereafter, of the employee's absence before the beginning of the employees scheduled shift or as prescribed by the department. Messages left with non-supervisory personnel will not be accepted. In this regard, the employee must understand and abide by their department's notice requirements.

When the employee returns to work after an absence of three or more days he or she shall be required to provide a doctor's certification that confirms that the employee's absence constituted an appropriate use of sick leave. Department Directors who have reason to believe that sick leave has been abused may request such certification when an employee has been absent for less than three days.

F. ABUSE OF SICK LEAVE

The frequent claiming of sick leave benefits may under certain circumstances, constitute grounds to believe that an employee's physical condition is below that required to perform the essential functions of his or her job. Evidence of malingering or abuse of this benefit will be considered grounds for disciplinary action, up to and including termination.

G. REIMBURSEMENT FOR UNUSED SICK LEAVE

Employees shall receive reimbursement of unused, accrued sick leave at the time of separation or retirement up to the maximum hours specified in the chart below if:

- Employee must have completed five consecutive years of service, and
- Employee provides 2 week notice, and
- Has not been terminated.

Employees hired prior to October 1, 2014

Length of Service	Sick Hours Reimbursed
5 years	20 days
6 years	25 days
7 years	30 days
8 years	40 days
9 years	50 days
10 or more years	60 days

Employees hired on October 1, 2014 and thereafter

Length of Service	Sick Hours Reimbursed
10 years	20 days
11 years	25 days
12 years	30 days
13 years	40 days
14 years	50 days
15 or more years	60 days

Each day is equal to 8 hours.

In the case of the death of any employee, the estate of a deceased employee is entitled to payment for accrued sick leave acquired by that employee up to the maximum hours specified.

Any employee, who terminates employment with the City of Tomball and is compensated for accumulated sick leave at the time of separation pursuant to this subsection, shall not be eligible for re-employment by the City for a period of one year following separation, except upon the written approval of the Department Director and the City Manager. If a former employee is re-employed by the City of Tomball, the original hire date will not be used to restore sick leave accrual rates. Please refer to Section 2.04 for more information.

7.03 SICK LEAVE INCENTIVE PROGRAM

As an incentive to encourage the responsible use of sick leave, the city will pay an employee four 8 hour sick leave days (32 hours) earned in any one calendar year if the employee meets the following requirements:

- The employees must have at least 10 days (80 hours) or 120 hours for shift firefighters accumulated sick leave remaining after the 32 hour deduction.
- The employees must not have taken more than two sick days (as determined by the normal working schedule) during the preceding calendar year.

Those employees eligible to be paid for the four days will be notified by Human Resources, through their Department Director with instructions for authorizing payment. Payment in lieu of sick leave will be made the second pay period in January of each year.

7.04 SICK LEAVE DONATIONS

An employee may experience a catastrophic illness, injury or other medical condition that prevents the employee from working for a period of time, and may cause the employee to use up his/her bank of sick, vacation and compensatory time. Before going onto unpaid leave, the employee may request leave donations from other City employees by filling out a "Request for Leave Donation" form. The City Manager will then decide if it qualifies as a catastrophic illness and if so, approve the request for donations. Other City employees may then donate up to 8 hours of their paid vacation or compensatory time. If the donating employee has been here longer than five years, he/she may also donate from their sick leave bank any of their sick leave credit that would be paid upon their resignation as listed in section 7.02.

Donations will be used on a first in, first out basis. The use of donated time will cease upon the employee's return to full time work and any unused donations will be returned to the donating employees. All donations will be handled through Human Resources only and will be kept completely confidential to avoid problems with employee relations.

7.05 PERSONAL LEAVE

Personal leave is provided at the rate of 16 hours per year for all full-time employees at the beginning of the calendar year. Leave is subject to the attendance and leave approval provisions of this policy and may not be taken during the probationary period. Personal leave does not accrue beyond the calendar year and unused hours will not be paid at the end of the year.

7.06 HOLIDAY LEAVE

A. CITY HOLIDAYS

The City provides full-time employees with paid holiday leave each year. Part-time and temporary/seasonal employees are ineligible for holiday compensation.

Every calendar year the City of Tomball recognizes 10 holidays, although certain employees may be required to report for duty:

- New Year's Day
- Good Friday
- Memorial Day
- Independence Day
- Labor Day
- Thanksgiving day
- Day after Thanksgiving
- Christmas Eve
- Christmas Day
- One Floating Holiday - given on January 1 of each year and cannot be taken until the probationary period is completed. Must be scheduled and taken during the calendar year and shall not be subject to carry-over or payment if not used.

If a holiday falls on a Saturday, the preceding Friday will be observed as a holiday, and if the holiday falls on a Sunday, the following Monday is observed as a holiday.

If a full-time, regular employee is currently at work and/or on an approved leave of absence with pay the day before and the day after a holiday, the employee will receive pay for the holiday.

B. SHIFT FIREFIGHTERS

This section applies to all non-exempt full-time shift Firefighters. The City of Tomball shall maintain compliance with all provisions of the Fair Labor Standards Act as applied to the allocation and use of holidays in the Fire Department.

All full-time shift Firefighters will be paid for 12 hours at the employee's regular rate of pay for every City holiday, whether or not the Firefighter works on the holiday. All full-time shift Firefighters who work a shift that begins on a City holiday will be paid a rate of one and one-half times their regular hourly rate.

The City has designated the floating holiday as the September 11th Memorial holiday for firefighters only if the firefighter chooses to use the floating holiday for that purpose on this day, and its use does not unduly disrupt the department's operation. For all other employees, the floating holiday is unchanged.

While firefighters have the same number of holidays as all other City employees, in accordance with H.B. 2113, the Texas legislature has amended Section 142.0013 (c) of the Local Government Code mandating that one of the City's holidays be designated as September 11th Memorial Holiday for all firefighters. All City employees have the same number of holidays on the same days however; this amendment mandates that the City refers to one of those holidays by a different name for a particular category of employees.

C. POLICE PERSONNEL

All full-time police personnel who work a shift that begins on a City holiday will be paid a rate of one and one-half times their regular hourly rate for that day of work.

7.07 FUNERAL LEAVE

Employees may be granted up to three days of paid leave per year to attend or arrange the funeral, and settle the affairs of an immediate family member. For the purpose of this policy, "immediate family" shall mean the employee's spouse, children, father, mother, brother, sister, father-in-law, mother-in-law, brother-in-law, sister-in-law, grandchildren and grandparents of the employee or employee's spouse.

The City Manager may allow administrative time off to attend the funeral of an employee, an employee's spouse or child, a former employee or well-known community leader, but only to the extent that it does not affect the safe and effective operation of city services.

7.08 EMERGENCY LEAVE

All regular and probationary employees may be granted emergency leave for the period not to exceed three consecutive workdays days per calendar year, in the case of a serious illness or accident of a member of the employee's or employee's spouse family requiring immediate medical attention. Family members include parents, grandparents, brothers, sisters, children, in-laws and spouses. Emergency leave may include visitation of the seriously ill person in an intensive care or hospice setting. Documentations will be required to validate the emergency. Approval of emergency leave will be determined by the Human Resources Department.

7.09 CITIZENSHIP LEAVE

All full-time employees shall be granted leave with pay when it is necessary to be absent in order to fulfill citizenship obligations, in accordance with State Law, Texas Labor Code Sec. 52.051, Fair Labor Standards Act (FLSA), and Jury System Improvement Act of 1978. Part-time, temporary, and seasonal employees shall be granted leave without pay in order to fulfill citizenship obligations.

Employees are required to give advance notice of an absence for citizenship obligations. Employees that must be absent from work to fulfill citizenship obligations are required to notify their supervisor at least (3) days prior to the leave or at the earliest opportunity. The employee must provide a copy of the court order or jury summons.

A. JURY DUTY

The City shall grant jury duty leave for an employee summoned to serve on any grand, petit, or municipal court jury. The City shall not dismiss an employee from employment because of the nature or length of the employee's jury service. When an employee is on jury leave, he or she shall continue to receive his or her regular rate of pay in addition to any per diem received by the employee from the state or the court for jury service. Pay shall not exceed the number of hours in the employee's regular workweek. The time spent on jury duty that coincides with the employee's regular work time is counted as straight time for overtime calculation purposes.

If an employee is chosen as a juror, they must notify their supervisor immediately and fulfill their citizenship obligation. If the employee is not selected as a juror, the employee is required to report back to work upon being released from service. If more than 50% of the employee's shift remains at the time the employee is released from service, the employee is expected to report back to work during that shift. If less than 50% of the employee's shift is left at the time the employee is released from service, the employee is expected to report to work on their next scheduled shift.

A shift employee may be given time off with pay from duty, if in the judgment of their supervisor, the period of time spent on jury duty or as a witness on behalf of the City may impact job safety. (i.e. shift police officers that work night shift may require time off).

All employees must provide proof of attendance from the presiding court to their supervisor upon their return to work. Proof of attendance must be forwarded to Human Resources.

B. COURT APPEARANCES

Employees who are subpoenaed to appear in court or before any other judicial or administrative body in the furtherance of official city business or as a "Good Samaritan" will be compensated in accordance with this policy.

Employees that request time off to appear in court in a matter personal to the individual (divorce, liability suit, etc.) either as a defendant, plaintiff, or witness shall be required to use accrued leave in accordance with the appropriate policy.

All employees must provide proof of required attendance and participation from the presiding court to their supervisor upon their return to work. Proof of attendance must be forwarded to Human Resources.

C. VOTING

On the day of an election, an employee who does not have at least two consecutive hours outside the employee's work hours to vote, shall, upon the employee's request, be given time off to vote during the employee's work hours.

7.10 FAMILY AND MEDICAL LEAVE ACT

A. FAMILY AND MEDICAL LEAVE ACT OF 1993

The City provides leave to eligible employees in accordance with the Family and Medical Leave Act (FMLA). Federal law allows the City to require qualified employees to use FMLA when absent from work for a qualified reason. Under the FMLA, eligible employees may take up to 12 weeks of job-protected leave each year for specified family and medical reasons or 26 weeks of leave to care for an injured or ill service member. FMLA is unpaid leave which runs concurrently with other types of leave that are paid, such as sick leave, vacation leave, and worker's compensation. FMLA leave is typically unpaid unless the absence also qualifies for paid leave under another City policy.

B. ELIGIBILITY REQUIREMENTS

To be eligible for FMLA leave, an employee must:

- Have worked for the City for at least 12 months (need not necessarily be consecutive 12 months);

- Have worked for the City at least 1,250 hours during the 12 months before the start of the leave; and
- Work within 75 miles of a City worksite employing 50 or more employees.

C. QUALIFYING REASONS FOR LEAVE

1. Twelve Weeks of Leave. An eligible employee as defined above may take up to 12 weeks of FMLA leave in a single 12-month period (the city uses a rolling 12-month period measured backwards) for one or more of the following reasons:

   a. When the employee is unable to perform the functions of his/her job because of his/her own serious health condition;

   b. For the birth or placement of a child for adoption or foster care. FMLA leave for birth or placement for adoption or foster care must conclude within 12 months following the birth or placement. In addition, if an employee and the employee's spouse are both employed by the City, both are jointly entitled to a combined total of 12 work weeks of family leave for the birth or placement of a child for adoption or foster care;

   c. To care for a spouse, child, or parent (but not a parent-in-law) with a serious health condition, the employee need not be the only individual available to care for the qualified family member; or

   d. A qualifying exigency arising out of the fact that the employee's spouse, child, or parent is a covered military member on active duty (or has been notified of an impending call or order to active duty) in support of a contingency operation.

2. Twenty-Six Weeks of Leave. Eligible employees may take up to 26 weeks of FMLA leave in a single 12-month period to care for a covered service member (i.e., the employee's spouse, child, parent, or next of kin) with a serious injury or illness incurred in the line of duty while on active duty in the Armed Forces. The employee need not be the only individual available to care for the covered service member. If an employee and the employee's spouse are both employed by the City, both are jointly entitled to a combined total of 26 work weeks of leave during a single 12-month period.

3. Maximum Amount of Leave. The maximum amount of FMLA leave available, even if there are multiple FMLA qualifying events, is 12 weeks during a 12-month period or 26 weeks in a single 12-month period to care for an injured or ill service member.

D. DEFINITIONS

1. Son or daughter means a biological, adopted, or foster child, a stepchild, a legal ward, or a child of a person standing in the position of a parent.

2. Parent means biological parent or an individual who stands or stood in loco parentis to an employee when the employee was a child.

3. Covered service member means a member of the Armed Forces, including a member of the National Guard or Reserves, who is undergoing medical treatment, recuperation, or therapy, in outpatient status, or is on the temporary disability retired list, for a serious injury or illness.

4. 12-Month Period for Covered Service Members - The 12-month leave period for calculating leave to care for a covered service member with a serious injury or illness is the 12-month period measured forward from the date an employee's first FMLA leave to care for the covered service member

begins. During this 12-month period, the maximum FMLA leave an employee may take for any qualifying reason is limited to a combined total of 26 weeks.

5. 12-Month Period for All Other FMLA Leave - To determine eligibility for all other leave, the City uses a rolling 12-month period measured backward from the date of any FMLA leave.
6. Health Care Provider (HCP) – Means a doctor of medicine or osteopathy who is authorized to practice medicine or surgery (as appropriate) by the State in which the doctor practices; or any other person determined by the Secretary of Labor to be capable of providing health care services.
7. Next of Kin of a Covered Service Member – Means the nearest blood relative other than the covered service member's spouse, parent, or child.
8. Incapacity – Means the inability to work, attend school or perform other regular daily activities.
9. Serious Health Condition - For purposes of this policy, a "serious health condition" means an illness, injury, impairment, or physical or mental condition that involves:

    a. Inpatient care – an overnight stay in a hospital, hospice, or residential medical care facility, including any period of incapacity or any subsequent treatment in connection with such inpatient care; or

    b. Continuing treatment by a health care provider (HCP) - includes one or more of the following:

        - Incapacity & Treatment - a period of incapacity of more than three consecutive, full calendar days, and any subsequent treatment or period of incapacity relating to the same condition that also involves treatment: (i) two or more times (within 30 days of the first day of incapacity, unless extenuating circumstances exist), by a HCP or under direct supervision of, under orders of, or on referral by, a HCP, or (ii) by a HCP on at least one occasion which results in a regimen of continuing treatment under supervision of the HCP. The first (or only) in-person treatment visit must take place within 7 days of the first day of incapacity.
        - Pregnancy & Prenatal Care - any period of incapacity due to pregnancy, or for prenatal care;
        - Chronic Conditions - any period of incapacity or treatment for such incapacity due to a chronic serious health condition which (i) requires periodic visits (at least twice a year) for treatment by, or under the direct supervision of a HCP, or (ii) continues over an extended period of time (including recurring episodes of a single underlying condition); and (iii) may cause episodic rather than a continuing period of incapacity (e.g., asthma, diabetes, epilepsy, etc.);
        - Permanent or Long-Term Conditions - a period of incapacity which is permanent or long-term due to a condition for which treatment may not be effective (e.g., Alzheimer's, a severe stroke, or the terminal stages of a disease);
        - Conditions Requiring Multiple Treatments - any period of absence to receive multiple treatments (including any period of recovery there from) by, or under the supervision of, under orders of, or on referral by, a HCP either for restorative surgery after an accident or other injury, or for a condition that would likely result in a period of incapacity of more than three consecutive, full calendar days in the absence of medical intervention or treatment (e.g., chemo or radiation for cancer, physical therapy for severe arthritis, or dialysis for kidney disease).

    Unless complications arise, the common cold, the flu, earaches, upset stomach, minor ulcers, headaches (other than migraines), routine dental or orthodontia problems, and periodontal disease

are not serious health conditions. In addition, routine physicals, eye examinations, and dental examinations are not considered treatment.

10. Qualifying Exigency – this term includes issues arising from short-term deployments of seven or less calendar days prior to the date of the deployment; military events and related activities such as official ceremonies and programs sponsored by the military and to attend family support or assistance programs and informational briefings; childcare and school activities; financial and legal arrangements; counseling; rest and recuperations; post-deployment activities; and additional activities arising out of the covered military member's active duty or call to active duty status if the employee and the City agree that such leave qualifies as an exigency, and agree to both the timing and duration of the leave.

E. EMPLOYEE NOTIFICATION REQUIREMENTS

Employees must give the City sufficient information so that it can make a determination as to whether the employee's absence is FMLA-qualifying. If an employee fails to explain the reasons, FMLA leave may be denied. Employees must also indicate on their time records when an absence or tardy is or may be covered by FMLA. Any absence or illness that results in more than three days' absence must be reported to the City's Human Resources Department. City of Tomball reserves the right to retroactively designate leave as FMLA if the leave qualifies under the FMLA regulations.

1. Foreseeable and Unforeseeable Leave. Employees must provide their Director and the Human Resources Department with at least 30 days' advance notice when the need for FMLA leave is foreseeable. (Form HR 7.03 - Request for FMLA). If the need for FMLA leave is not foreseeable, employees must provide their Director and the Human Resources Department with as much advance notice as practicable, in accordance with their Department's normal call-in procedures. The employee must also provide an explanation as to why he/she was unable to provide at least 30 days' advance notice of the need for leave.

2. Content of Notice. Employees must provide the City with documentation, stating the reasons for the needed leave sufficient to allow the City to determine if the absence is FMLA-qualifying, and the anticipated timing and duration of the leave, if known. If the employee has previously taken FMLA leave for the same reason, he/she must specifically reference the qualifying reason for leave or the need for FMLA leave. The City may seek additional information from the employee, and the employee is obligated to respond to the City's questions so the City can determine if an absence is potentially FMLA-qualifying. The employee must notify the City as soon as practicable if the dates of his/her scheduled leave change or are extended, or where such dates are initially unknown.

3. Compliance with City's Call-In Procedures. Employees must comply with their Department's normal call-in procedures for reporting absences, tardies, and requesting leave, e.g., contacting a specific supervisor by a certain time. Notice may be given by the employee's spokesperson only if the employee is physically unable to do so personally. Where an employee does not comply with the City's and Department's normal call-in procedures and no unusual circumstances justify the failure to comply, FMLA-protected leave may be delayed or denied.

4. Consequences for Failing to Provide Required Notice. If the employee fails to timely explain the reasons for his/her need for leave, FMLA leave may be denied or delayed for up to 30 days. The employee may also be subject to disciplinary action in accordance with City policy. Likewise, if an employee fails to respond to the City's reasonable inquiries regarding a leave request, the employee may not be granted FMLA leave protection.

5. Scheduling Planned Medical Treatment. When an employee intends to take leave for planned medical treatment for him/herself or for his/her spouse, child or parent, the employee is ordinarily expected to consult with his/her supervisor and try to schedule the treatment so as not to disrupt unduly the City's operations, subject to the approval of the treating health care provider. This should be completed prior to the scheduling of treatment in order to coordinate a treatment schedule which best suits the needs of both the employee and the City.

6. Periodic Check-In While on FMLA. Employees should check in periodically with their supervisor and with the Human Resources Department regarding their status and intent to return to work. If the employee discovers that the amount of leave originally anticipated is no longer necessary, the employee must provide the City with reasonable notice (i.e., within two business days) of the changed circumstances if foreseeable.

F. CITY RESPONSIBILITIES

1. Human Resources Department: The Human Resources Department is responsible for the verification, approval and notification of FMLA leave. The Human Resources Department may place an employee on FMLA leave if it determines that a qualifying event has occurred.

   a. Eligibility Notice. The Human Resources Department will notify an employee of his/her eligibility to take FMLA within five business days (absent extenuating circumstances) of its receipt of the employee's request for FMLA leave (or from when the City otherwise determines that an employee's absence may be FMLA-qualifying). Employee eligibility is determined (and notice will be provided) at the commencement of the first instance of leave for each FMLA-qualifying reason in the applicable 12-month period. Notification may be oral or in writing. If an employee's eligibility status changes, the Human Resources Department will so notify the employee within five business days, absent extenuating circumstances.

   b. Rights & Responsibilities Notice. The Human Resources Department will provide employees with a notice detailing the City's specific expectations, the employee's obligations, and consequences to the employee of not meeting his/her obligations. The Human Resources Department will provide this notice each time it provides the Eligibility Notice described above. The required certification form will accompany this notice. If any of the specific information in the Rights & Responsibilities Notice changes, the Human Resources Department will notify the employee within five business days of its receipt of the employee's first notice of need for leave subsequent to any change.

   c. Designation Notice. When the Human Resources Department has enough information to determine if an absence is FMLA-qualifying (e.g., after receiving the employee's fully completed Certification), the Human Resources Department will notify the employee in writing (FMLA HR 7.12) as to whether the leave will or will not be designated as FMLA. This Designation Notice will be given to the employee within five business days, absent extenuating circumstances. If the information in the Designation Notice changes, the Human Resources Department will notify the employee within five business days of the City's receipt of the employee's first notice of need for leave subsequent to any change.

   d. Certification Forms & Other Required Documentation. The Human Resources Department is responsible for determining the completeness and authenticity of certification forms, fitness-for-duty/return to work certifications, and for review and coordination of all other FMLA documentation required by this policy.

2. Supervisors & Directors: So that the Human Resources Department can meet the notice deadlines required by the FMLA, supervisors must immediately notify both their Director and the Human Resources Department if they have reason to believe an employee's absence is due to an FMLA-covered reason. Supervisors must make this report even if the employee is using paid time off to cover the absence, e.g., sick leave, comp time, vacation, holiday. Supervisors and Directors must report to Human Resources any time an employee misses work for more than three days because of his/her own illness or injury or that of a spouse, child or parent. When an employee submits a leave/absence form indicating an FMLA absence, the form must be sent to the Human Resources Department immediately.

G. MEDICAL CERTIFICATIONS AND OTHER REQUIRED DOCUMENTATION

In all instances in which the City requests a certification from an employee, it is the employee's responsibility to provide the Human Resources Department with a complete and sufficient certification; failure to do so may result in the denial or delay of FMLA leave.

1. Certification. An employee must provide the Human Resources Department with a complete and sufficient medical certification supporting the need for FMLA leave due to a serious health condition affecting the employee, his/her spouse, child or parent , or due to the serious injury or illness of a covered service member. The required medical certification forms are available from the Human Resources Department. The certification must set forth the beginning and expected ending dates of the leave. In the case of intermittent leave, the certification must also provide the dates and duration of the treatments necessitating the intermittent leave. The employee is responsible for any expenses associated with providing the City with a required certification. The employee must turn in the required certification to the Human Resources Department within 15 days after it is requested, unless not practicable under the circumstances.

2. Second & Third Opinions. In some cases, the City may require a second or third medical opinion (at the City's expense). The City will not require second or third opinions in the case of leave to care for a covered service member.

3. Recertification. Employees may be asked to periodically recertify the need for FMLA. The City will not, however, require recertification in the case of leave to care for a covered service member. The recertification must be provided within 15 days or as soon as practicable under the particular facts and circumstances. The employee is responsible for any expenses associated with providing the City with any required recertification.

    a. 30-day rule. The City will request recertification no more than every 30 days and only in connection with an absence by the employee unless paragraphs b or c below applies.

    b. More than 30 days. If the certification indicates that the minimum duration of the condition is more than 30 days, the City will wait until that minimum duration expires before requiring a recertification, unless paragraph c below applies. If the minimum duration of a serious health condition extends beyond six months, the City may nevertheless request a recertification every six months in connection with an employee's absence.

    c. Less than 30 days. The City may request recertification in less than 30 days if the employee requests an extension of leave, circumstances described by the previous certification have changed significantly (e.g., the duration or frequency of the absence, the nature or severity of the illness, complications, a pattern of unscheduled absences), or the City receives information that casts doubt upon the employee's stated reason for the absence or the continuing validity of the certification.

d. Annual Medical Certifications. If a serious health condition lasts beyond a single leave year, the City may require the employee to provide a new medical certification in each subsequent leave year.

4. Return to Work Certification. Employees must submit a work release from their healthcare provider before they can return to work if FMLA leave is a result of the employee's own serious health condition. An employee who fails to timely provide the City with this certification will not be allowed to return to work. Any expense associated with the required work release will be the employee's responsibility.

   While the City will not require a fitness-for-duty certification to return to duty for each absence taken on intermittent or reduced leave schedule, it may require such a certification up to once every 30 days if reasonable safety concerns (i.e., a reasonable belief of significant risk of harm to the employee or others) exist as to the employee's ability to perform his/her duties, based on the serious health condition for which the employee took leave.

5. Failure to Provide Certifications & Deficient Certifications. If an employee fails to provide a required certification within 15 days after the City requests it, the City may deny leave until the certification is provided. If the employee never produces the certification or recertification, the employee is not eligible for FMLA protections. If the certification is incomplete or insufficient, the Human Resources Department will notify the employee, in writing, and advise the employee what additional information is required. The City will provide the employee with seven additional days to cure any deficiency. If the deficiencies are not cured with the seven-day deadline, the City may deny the taking of FMLA leave. The Human Resources Department (or other authorized person) may contact the health care provider for purposes of clarification and authentication after giving the employee the opportunity to cure any deficiencies.

6. Documenting Family Relationships. If an employee elects to take FMLA leave in order to care for a qualifying family member or to care for a covered service member, the employee may be required to provide reasonable documentation confirming the family relationship.

H. CERTIFICATIONS FOR QUALIFIED EXIGENCY LEAVE

1. Active Duty Orders. The first time an employee requests leave because of a qualifying exigency arising out of the active duty or called to active duty status of a covered military member, the employee must provide a copy of the covered military member's active duty orders or other documentation issued by the military which indicates that the covered military member is on active duty or call to active duty status in support of a contingency operation, and the dates of the active duty service.

2. Certification Form. The employee must complete and submit to the Human Resources Department the appropriate certification form in support of his/her need for leave. This form must be turned in within 15 days after the City requests it.

3. Verification. If the qualifying exigency involves meeting with a third party, the Human Resources Department (or other authorized person) may contact the individual or entity with whom the employee is meeting for purposes of verifying a meeting or appointment, and the nature of the meeting. The City may also contact an appropriate unit of the Department of Defense to request verification of active duty or call to active duty status.

4. Denial or Delay of Leave. Exigency leave may be delayed or denied if the employee fails to turn in the required certification within 15 days. If the certification is incomplete or insufficient, the Human Resources Department will notify the employee, in writing, and advise the employee what

additional information is required. The City will provide the employee with seven additional days to cure any deficiency. If deficiencies are not cured with the seven-day deadline, the City may deny the taking of FMLA leave.

I. INTERMITTENT & REDUCED LEAVE SCHEDULE

An eligible employee may take FMLA leave on an intermittent or reduced schedule basis, because of a qualifying exigency, only if medically necessary, for planned medical treatment, or as otherwise approved by the Director.

1. Notice. The employee must inform the City of the reasons why the intermittent or reduced leave schedule is necessary and of the schedule for treatment, if necessary.
2. Scheduling Planned Medical Treatment. When an employee intends to take leave for planned medical treatment for him/herself or for his/her spouse, child or parent, the employee is ordinarily expected to consult with his/her supervisor and try to schedule the treatment so as not to disrupt unduly the City's operations, subject to the approval of the treating health care provider. This should be done prior to the scheduling of treatment in order to work out a treatment schedule which best suits the needs of the both the employee and the City.
3. Temporary Transfer. The City may temporarily transfer the employee to an alternative position (with equivalent pay and benefits, but not necessarily equivalent duties) in order to better accommodate an employee's intermittent or reduced leave schedule.
4. Minimum Increments. Intermittent leave will be counted in increments of 15 minutes to hourly for payroll purposes.
5. Exempt Employees. Exempt employees using unpaid intermittent or reduced schedule FMLA leave may be docked for absences of less than a day without jeopardizing their exempt status under the Fair Labor Standards Act (FLSA).

J. EMPLOYEE BENEFITS

1. Group Health Insurance. During any period of FMLA leave, the City will continue to pay its portion, if any, of any group health insurance coverage for the employee on the same terms as if the employee had continued to work. Where applicable, the employee must timely pay his or her share of health insurance premiums while on FMLA leave. The City will advise the employee of the terms and conditions for making such payments. Failure to pay premiums in a timely manner will result in cancellation of group health coverage.
2. Continued Service. The period of FMLA leave, whether paid or unpaid, shall be treated as continued service for the employee's vesting and eligibility for retirement and longevity.
3. Other Benefits. The employee's use of FMLA leave will not result in the loss of any employment benefit that accrued prior to the start of the employee's leave, and seniority will not be affected. However, benefit accruals, such as vacation and sick leave, will be suspended during any unpaid leave.
4. Holidays. When an employee takes a full work week of FMLA leave and a holiday occurs within the week, the week is counted as a full week of FMLA leave. If, however, an employee uses FMLA in increments of less than a week, the intervening holiday does not count against the employee's FMLA entitlement unless the employee was otherwise scheduled and expected to work on the holiday. Employees must be on an approved leave of absence with pay the full day before and the

day after a holiday to receive pay for the holiday; therefore, employees on unpaid FMLA leave are not normally paid for holidays.

K. JOB RESTORATION AFTER FMLA LEAVE

1. Re-employment Rights. Upon return from FMLA leave, an employee will normally be restored to his/her original job or to an equivalent job with equivalent pay, benefits, and other terms and conditions. An employee, however, has no greater right to reinstatement than if he/she had been continuously employed during the period of FMLA leave. Further, the City may delay restoration to employees who fail to timely provide a fitness-for-duty certification to return to work.

2. Key Employees. Under certain circumstances the City is not required to reinstate "key" employees. Certain highly compensated key employees may be denied reinstatement when necessary to prevent “substantial and grievous economic injury” to the City’s operations. A “key” employee is a salaried eligible employee who is among the highest paid 10 percent of employees within 75 miles of the worksite. An employee will be notified of his/her status as a key employee, when applicable, after requesting FMLA leave.

L. OTHER EMPLOYMENT DURING FMLA PROHIBITED

Under no circumstances may an employee on FMLA leave, sick leave, disability leave, or workers’ compensation leave engage in outside employment unless expressly authorized in writing in advance by the Director.

M. FRAUD

An employee who fraudulently obtains FMLA leave is not protected by the FMLA’s job restoration or maintenance of health benefits provisions. Further, an employee who commits fraud may be terminated from City employment.

N. FMLA STATUTE AND REGULATIONS

This policy is intended to explain benefits available to eligible employees under the FMLA. It is not intended to create any rights to leave beyond those created by the FMLA.

O. MANDATORY REPORTING OF IMPROPER HANDLING OF FMLA

Employees must immediately report, in writing, to their Director or the Human Resources Department, the following so that the City can investigate and respond appropriately:

- Any interference with, restraint or denial of the employee’s right to take FMLA or any rights protected by the FMLA or this policy.
- Any discrimination or perceived acts of discrimination against the employee for any right protected by the FMLA or this policy.
- Any refusal by a supervisor to authorize FMLA leave or attempt to discourage an employee from taking FMLA leave.
- Any attempt to avoid the City’s FMLA responsibilities.
- Discrimination or retaliation against an employee for exercising or attempting to exercise FMLA rights.
- Discrimination or retaliation against an employee for opposing or complaining about any unlawful practice under the Act or this policy

7.11 LEAVE OF ABSENCE

A. LEAVE OF ABSENCE

Employees may be granted a leave of absence at the discretion of their Director, with the approval of the City Manager, provided the employee's absence will not unduly disrupt the operations of the department and City, or place an undue burden on fellow employees. A request for leave must be in writing and state the nature and duration of the leave. A leave of absence may be granted on an incremental basis. The maximum length of a leave of absence shall be 3 months.

B. ACCRUED TIME

If accrued leave is available, an employee must exhaust all applicable accrued leave balances while on a leave of absence. Once eligible accrued leave balances have been exhausted, any time spent on an approved leave of absence will be time without pay.

C. REPORTING REQUIREMENTS

An employee on a leave of absence shall be required to report their status to the immediate supervisor the first business day of each week.

D. EMPLOYEE BENEFITS

An employee shall be required to continue to pay the current premium contributions for any elected group health benefits. Once all accrued leave is exhausted and the employee begins leave without pay, the employee shall pay all health insurance and/or other premiums.

During any leave of absence without pay, an employee shall accrue no vacation or sick time, and no credited service toward retirement or longevity. An employee returning to work after leave without pay which extends for more than three months shall be evaluated based on the actual time they were at work.

E. REINSTATEMENT

If the need to fill the position should arise due to unforeseen circumstances, or if the job is eliminated due to a reduction in force, the City of Tomball cannot guarantee the reinstatement of an employee on an extended leave at the end of the leave period.

7.12 MILITARY LEAVE

This policy establishes the rules and procedures that apply to employees enlisted in the United States military reserves or the Texas National Guard that are required to take military leave.

A. MILITARY TRAINING LEAVE

The City provides military training leave to employees who are required to satisfy military obligations under the Uniformed Services Employment and Reemployment Rights Act (USERRA) or other applicable law.

B. MILITARY ACTIVE DUTY

1. The City provides leave to employees who are called to military active duty to satisfy military obligations under USERRA or other applicable law.

2. While not required by federal law, the City does provide supplemental pay to employees called to military active duty when the employee's military wage or salary is less than their City wage or salary. For more information on supplemental pay, please see Item C. Pay and Benefits.

C. PAY AND BENEFITS WHILE ON MILITARY TRAINING LEAVE OR MILITARY ACTIVE DUTY

1. Employees who are absent from work for military training leave or when called to military active duty are entitled to military pay for up to 120 hours, or 168 hours for shift firefighters, per calendar year, in accordance with Section 431.005 of the Texas Government Code. Requests for military pay may only be made for the calendar year in which leave is to be granted.

2. If the employee is called to extended active duty the City of Tomball will pay the difference between the military pay and the employee's normal salary for a period not to exceed six months.

3. After the six month period, the employee's accrued balances of vacation, compensatory time and holiday time may be used to supplement the military pay up to the employee's normal salary amount. At the point that all accrued leave has been exhausted, the employee will be placed on unpaid leave. The employee's job will be available upon return as specified by Federal and State law.

4. Other benefits, i.e. Vacation and sick leave, shall continue to accrue while the employee is on military leave.

5. Military pay hours are considered time not worked and cannot be used to accrue overtime. Employees shall only be paid for hours missed as a result of military training leave or when called to military active duty.

6. There is no accrual of military pay hours. Unused military pay hours shall not be paid out at the employee's separation from employment. Unused hours will not be carried over to the next calendar year.

7. Holiday pay shall be granted (paid) during the expenditure of the 120 hours, or 168 hours for shift firefighters, of military pay. Holiday pay shall be paid at straight time.

8. The entitlements outlined in this policy apply only to those employees who are activated from a military reserve or Texas National Guard unit. Those employees who enlist in the US military shall not be eligible for supplemental pay or the City's participation in paying a portion of the dependent premium.

D. PROCEDURES

1. The following procedures apply to both Military Training Leave and Military Active Duty.

   a. Employees must provide notice, including a copy of military orders documenting the requirement to take military leave, to their immediate supervisor.

   b. The supervisor is responsible for notifying the Manager and/or Director. The Director shall provide a copy of the military orders to the Human Resources Department.

   c. Employees are responsible for checking with the Human Resources Department to determine their responsibilities while on military training leave or when called to military active duty.

2. The following procedures apply only to Military Active Duty.

    a. Supplemental Pay. Employees must provide the Human Resources Department with a copy of their military pay record prior to receiving supplemental pay.

    b. Health Insurance. From the date military active leave begins, the employee may elect to continue dependent health insurance coverage as allowed by federal law, which is continuously up to 18 months, and state law, which is up to an additional 6 months following the exhaustion of the federal limit. For the first 18 months of the employee's leave, the employee shall pay the premium-contribution rate for the elected dependent coverage. Thereafter, employees may maintain the same dependent coverage by paying the full cost of the insurance premium. Employees are eligible to be reinstated on the insurance plans at the employee's premium-contribution rate on the day they return to the City as a full-time employee, and must complete the required forms to reinstate coverage.

    c. TMRS Retirement Benefits. Employees who take military active leave may apply to the Texas Municipal Retirement System (TMRS) for service credits for the time they were on leave if the employee:

        - Returns to work within 90 days of the end of leave;
        - Receives an honorable discharge;
        - Completes an application and forms required by TMRS;
        - Within 5 years of the end of the leave, deposits the money that would have been deducted from the employee's salary had the employee not been on leave, according to rules established by TMRS.

    d. Deferred Compensation. Employee deferred compensation plans (457 plans) shall be maintained while on leave. If reemployed, the employee may resume contributions or contact the deferred compensation plan provider to make any changes.

    e. Return from Military Active Duty. Employees returning from active duty must provide written copies of their separation or deactivation orders to the City as follows:

        - Less than 31 days of leave - within 72 hours of their release from service.
        - More than 30 but less than 181 days of leave - within 14 days of their release from service.
        - More than 180 days of leave - within 90 days of their release from service.

    3. Reemployment. The City, in accordance with USERRA, shall reemploy employees that:

        a. Served for a period of 5 years or less (unless their service fits into one of the excused categories defined in USERRA);

        b. Are discharged under honorable conditions; and

        c. Reapply in a timely manner.

7.13 ADMINISTRATIVE LEAVE

Under justifiable circumstances a Director may, with the approval of the City Manager, place an employee on administrative leave with or without pay. Such circumstances may be, but are not limited to, completion of pending criminal or administrative investigations.

7.14 INCLEMENT WEATHER

The City is responsible for providing Police, Fire, water, sewer, and other services to the citizens of the City with or without inclement weather conditions. Given these responsibilities, it is the City's policy to be open for business under all types of weather conditions.

All employees shall be required to work on their normally scheduled work days regardless of inclement weather conditions unless instructed otherwise by their Supervisor.

Supervisors are responsible for ensuring that their operations are adequately staffed during periods of inclement weather. Employees who miss work or expect to be late for work due to inclement weather conditions must personally notify their Supervisor immediately. Failure to properly notify their Supervisor may result in disciplinary action, up to and including termination.

Employees who miss work due to inclement weather may use accrued vacation or compensatory time to compensate for the lost time. Employees with no vacation or compensatory time accrued shall not be reimbursed for the lost time.

City of Tomball
Human Resources Handbook
Table of Contents

Introduction

I-1.1 Purpose of the Handbook
I-1.2 Use of the Handbook
I-1.3 Amendments

Section 1 Unlawful Harassment and Discriminatory Practices

1.01 Equal Employment Opportunity
1.02 Disabilities
1.03 Unlawful Harassment
1.04 Reporting and Investigating Discrimination or Harassment
1.05 Retaliation

Section 2 Employment

2.01 Recruiting Procedures
2.02 Minimum Age Requirements
2.03 Nepotism
2.04 Re-employment
2.05 Employment and Elected Offices
2.06 Orientation

Section 3 Standards of Conduct

3.01 Employee Conduct
3.02 Attendance
3.03 Meal and Break Periods
3.04 Emergency Conditions
3.05 Appropriate Appearance
3.06 Use of City Property
3.07 Information Technology System Use
3.08 Media Contacts
3.09 Social Media Policy
3.10 Political Activity
3.11 Outside Employment
3.12 Solicitations
3.13 Smoking and Tobacco Products
3.14 Weapons
3.15 Acceptance of Gifts
3.16 Substantial Interest in Business Entity
3.17 Drug and Alcohol-Free Workplace

Section 4 Salary Administration

4.01 Categories of Employment
4.02 Work Schedules

4.03 Pay Procedures
4.04 Overtime Procedures
4.05 Time and Pay for On-Call, Callback and Call-Out Situations
4.06 Step-Up Pay, Certification and License Pay
4.07 Travel Time
4.08 Light Duty Assignment
4.09 Probationary Period
4.10 Employee Performance and Development System
4.11 Pay Plan and Compensation Guidelines, and Job Descriptions
4.12 Maintenance of Classification and Pay Plans
4.13 Promotions
4.14 Lateral Transfers
4.15 Demotions
4.16 Reorganizations
4.17 Reduction-In-Force

Section 5 Employee Benefits and Services
5.01 Enrollment and Plan Year
5.02 Group Health Plans
5.03 Life Insurance and ADD
5.04 Long Term Disability
5.05 Flexible Spending Account
5.06 Employee Assistance Program
5.07 Texas Municipal Retirement System
5.08 Retirement and Benefits
5.09 Social Security and Medicare
5.10 Workers Compensation
5.11 Optional 457 Plans
5.12 COBRA
5.13 Tuition Reimbursement Program
5.14 Training Schools
5.15 Longevity Pay

Section 6 Discipline/Grievances/Appeals
6.01 Discipline
6.02 Grievance
6.03 Aggrieved Employees
6.04 Duties of Supervisor
6.05 Appeal by Employee
6.06 What is Not Discipline
6.07 Applicability

Section 7 Accruals and Leave
7.01 Vacation
7.02 Sick Leave
7.03 Sick Leave Incentive Program
7.04 Sick Leave Donations
7.05 Personal Leave

7.06 Holiday Leave
7.07 Funeral Leave
7.08 Emergency Leave
7.09 Citizenship Leave
7.10 Family and Medical Leave Act
7.11 Leave of Absence
7.12 Military Leave
7.13 Administrative Leave

Section 8 Separation from Employment
8.01 Resignations
8.02 Retirements
8.03 Reductions-In-Force (Lay-offs)
8.04 Absence Without Leave
8.05 Terminations
8.06 Incapacity
8.07 Death
8.08 Exit Interviews
8.09 Return of City Property/Equipment
8.10 Separation Pay

Section 9 Privacy and Records Management
9.01 Employee Privacy
9.02 Privacy Policy and Procedures
9.03 Protection of Confidentiality
9.04 Responsibilities Under the Texas Public Information Act
9.05 Personnel Files
9.06 Employee Access to Personnel Records
9.07 City Officials' Access to Employee Records
9.08 Disclosure of Employee Information
9.09 Tape Recording
9.10 Current Address and Information
9.11 Searches

INTRODUCTION

The City of Tomball welcomes you to our staff. We want to make your first days on the job as pleasant and comfortable as possible.

As a new employee you may have questions about City policies, procedures and expectations of you as an employee. This handbook will answer most of those questions. For additional information or clarification, please speak to your direct supervisor, department head, or the Human Resources Department.

I-1.1 PURPOSE

The purpose of the City of Tomball Employee Policy Manual is to provide a consistent guide to personnel interaction involving City employees. It is not intended to create contractual rights regarding employment. It also is not intended to give specific guidelines for every conceivable personnel interaction, but rather to be a guide to thinking. These policies are sufficiently broad to provide the latitude of discretion, which may be needed in individual situations. However, this degree of discretion shall not be permitted to violate a policy's intent. This Manual should be referred to regularly when making decisions affecting City personnel. It will help to ensure that decisions are objective, fair, consistent, and in accordance with the expectations of City management. It is your responsibility to ask questions if you do not understand any policy or procedure. The more you know about working at the City of Tomball, the easier it will be for you to understand your role in relation to other positions.

The City of Tomball is an At-Will employer (see Section 4.01). This handbook does not create, reflect or imply any contractual or vested right. Either you or the City may terminate this relationship at any time with or without cause.

I-1.2 USE OF THIS HANDBOOK

The City Manager or his/her designee is authorized and directed to administer this handbook, including the right to establish whatever detailed regulations and procedures may be necessary to further explain and clarify the provisions of this handbook, except with respect to those employees appointed directly by the City Council, unless further delegated to do so by the City Council.

In addition to the policies outlined in this manual, it is the prerogative of each department head to develop and implement standard operating procedures, guidelines or general orders, which are separate from or in addition to the polices contained in this handbook. Department procedures must be consistent with City policies and in no case will departmental policies supersede those contained in this handbook. The City Manager or his/her designee will resolve any conflicts between department policies and city wide policies. In order to be in effect, all policies and commitments regarding your employment must be in writing and on file with Human Resources.

Many of these policies and descriptions in this handbook are summarized from laws, rules, plans, insurance policies and other official documents which actually control specific matters. These official documents take precedence over this handbook in all cases. The Human Resources representative is responsible for providing access to the official document during normal working hours.

References to benefits, insurance coverage, leave accruals and holiday pay are applicable to regular full-time employees.

It is your responsibility as an employee to read, understand and comply with all policies, procedures, guidelines and practices of both the City and individual departments.

I-1.3 AMENDMENTS

Due to ongoing changes in Federal and State laws and or budgetary limitations, the City retains the right to change, modify, suspend or cancel any of the benefits, policies and procedures at the sole discretion of the City Council, after providing notice to employees. Any employee who continues to work after receiving notice that a policy has been revised and implemented, is deemed to have accepted the change in policy. This handbook is subject to the City Charter as well as the constitution and laws of the State of Texas and the United States.

This version of the City of Tomball Human Resources Handbook supersedes all prior versions issued by the City. This handbook was approved by the City of Tomball City Council by Resolution Number 2014-24 and became effective on 10-6-2014.

SECTION 1 – UNLAWFUL HARASSMENT AND DISCRIMINATORY PRACTICES

1.01 EQUAL EMPLOYMENT OPPORTUNITY

The City of Tomball is an equal opportunity employer. The City does not discriminate against qualified applicants or its employees in its employment policies, practices and access to its services.

Title VII of the Civil Rights Act of 1964, as amended, and other state and federal civil rights laws prohibits discrimination against or preference for any person in recruitment, hiring, promotion, discharge, pay, fringe benefits, membership, job training, classification, appointment, referral, retention, discipline and other aspects of employment on the basis of race, color, national origin, sex, age, marital status, disability or religion.

The Equal Pay Act of 1963 (EPA), as amended, prohibits discrimination in payment of wages to women and men performing substantially equal work in the same establishment; recognizing that not all employees perform at the same level, employee salaries may be different based on factors other than gender, including individual performance evaluations.

The Genetic Information Nondiscrimination Act of 2008 (GINA) prohibits discrimination in health coverage (Title I) and employment (Title II) based on genetic information. The law prohibits employers from using genetic information for hiring, firing, promotion decisions, and for any other decision regarding the terms of employment.

The City will adhere to and abide by all fair employment laws, acts, and their amendments that apply to municipal entities.

The City will not allow illegal discrimination in the workplace, and conduct found to violate the City's policies relating to discrimination and harassment may lead to discipline, up to and including termination.

1.02 DISABILITIES

The City does not discriminate on the basis of disability in its employment policies or in its admission to or access to its services and programs. The Rehabilitation Act of 1973, as amended, the Americans with Disabilities Act of 1990 (ADA), the ADA Amendments Act of 2008 (ADAAA), and the Texas Commission on Human Rights Act (TCHRA) protect qualified applicants and employees with disabilities from discrimination in hiring, promotion, discharge, pay, job training, fringe benefits, classification, referral, and other aspects of employment on the basis of disability. These laws also require that the City provide applicants and employees with disabilities with reasonable accommodation that does not impose undue hardship on the City. Requests for accommodation and complaints about accessibility should be directed to the Human Resources Department.

1.03 UNLAWFUL HARASSMENT

It is the right of all employees to perform their jobs in an environment free from all forms of harassment. The City prohibits and will not tolerate unwelcome conduct by any person, including City employees, vendors, customers, and any other person who enters the workplace, if the conduct is based on race, color, sex (including sexual harassment), religion, national origin, disability, or age, and if:

1. Submitting to the conduct or being subjected to the conduct is made either explicitly or implicitly a term or condition of employment, including hiring, promotion, pay, fringe benefits, job training, classification, referral, and other aspects of employment; or
2. Submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting such individual; or
3. The conduct has the purpose or effect of unreasonably interfering with an individual's performance on the job or it creates a hostile, offensive or intimidating work environment.

Harassment may include offensive jokes, slurs, epithets or name calling, other derogatory ethnic/racial/sexual remarks, physical assaults or threats, attempted assaults, stalking, and other inappropriate or harassing physical conduct. While supervisors are responsible for creating and maintaining an atmosphere free of harassment, employees are responsible for respecting the rights of co-workers. The City will not tolerate discriminatory conduct or the display of discriminatory materials in the workplace that are offensive to a reasonable employee.

Sexual harassment may include unwelcome sexual advances, innuendo, requests for sexual favors, sexually demeaning conduct, or other physical, verbal or visual conduct based on sex. Sexual harassment does not depend on the harasser's motives or intentions, but on whether the behavior is unwelcome.

Any employee found in violation of this policy will be subject to disciplinary action, up to and including termination.

1.04 REPORTING AND INVESTIGATING DISCRIMINATION OR HARASSMENT

Any employee that is subject to, is a witness to, or becomes aware of any conduct that might be considered a violation of the protections in this section must report in a timely manner the incident to the Human Resources Department. If the Human Resources employee is the person engaging in the alleged conduct, the employee should report the conduct to the City Manager. Confidentiality of the report will be maintained as much as possible. However, absolute confidentiality cannot be promised as the report may be disclosed to persons who need the information to conduct an investigation, or to take corrective action, or both.

After an incident described by this section has been reported, the Human Resources Department will conduct an investigation, and when appropriate, local law enforcement officials will be involved to ensure the safety of employees. If it is determined that discrimination or harassment prohibited by this section did occur, the City will take prompt corrective action to END the harassment or discrimination, RETURN lost benefits or opportunities to the employee, RESTORE a proper work place environment, and DISCIPLINE the harasser. An employee who is found to have engaged in conduct in violation of this section is subject to appropriate disciplinary action, including termination.

1.05 RETALIATION

Title VII, the ADAAA, the ADEA, and the TCHRA prohibit retaliation against an individual for filing a charge of discrimination, participating in an investigation of a discrimination claim, or opposing discriminatory practices.

Retaliation is an adverse employment action that occurs as a result of an employee reporting a violation of this section, refusing to participate in a violation of this section, or participating as a witness to an investigation conducted under this section. Adverse employment action includes decisions related to hiring, firing, pay, job assignments, promotions, layoffs, training or fringe benefits.

The City will not tolerate retaliation of any kind or in any manner. This protection extends not only to individuals who complain about unlawful harassment and/or activities, but also those who serve as witnesses in investigations.

In accordance with the Texas Whistleblower Act, the City prohibits suspending, terminating or taking other adverse personnel action against a City employee who in good faith, reports a violation of the law by the City or its employee to an appropriate law enforcement authority. Acts of retaliation must be immediately reported to the Human Resources Department.

A report of a violation of this section that is made in good faith will not be held against an employee. However, the misuse of the complaint process, such as knowingly make false statements, may result in appropriate disciplinary action, up to and including termination.

SECTION 2 – EMPLOYMENT

2.01 RECRUITING PROCEDURES

The Human Resources Department will advertise as necessary to recruit prospective applicants for vacant positions, communicate with appropriate agencies, contact possible sources for applicants, and maintain applicant files.

The Human Resources Department is responsible for:

1. Placing advertising on the City's website, in publications, and any other appropriate advertising site.
2. Accepting all applications. Applications are only accepted at the time of an active recruitment.

A. REQUEST TO RECRUIT

Recruitments can be conducted in the following manner:

1. Public – Applications will be accepted from external and internal candidates. Job postings are available on the City's website, emailed to all City employees and posted in common areas.
2. Internal Only – Applications will be accepted only from internal candidates. Job postings are emailed to all City employees and posted in common areas.

B. JOB POSTINGS

The Human Resources Department will develop a job posting to describe the particular requirements for vacant positions. The job posting will reference the minimum requirements for the position, as this will provide the basis on which applicant qualifications will be evaluated.

Highly complex or difficult to fill positions may be posted as "open until filled" at the request of the Department Head and with the consent of the Director of Human Resources. An open-ended search will not have a fixed deadline for the receipt of applications. The job posting and related advertisements will specify the date when the review of applications will begin. This will allow Human Resources to continue to accept applications until an ideal candidate is identified.

C. APPLICATIONS

Applications will only be accepted by the Human Resources Department during the specified open period of the job posting. Applications that have not been processed and routed by the Human Resources Department during the posting period are not eligible for consideration. Resumes submitted without a completed City of Tomball application will not be considered for employment, with the exception of certain executive positions.

Current City employees who wish to be considered for opportunities within the City must complete a Transfer application. Internal applicants must discuss their intent to compete for a different position with their current Supervisor/Manager or Director before submitting an application.

D. SHARING OF APPLICANT POOLS

Once a final candidate is selected from a pool of applications, the pool will remain viable for a period of 3 months. During this period, if a vacancy occurs with the same job title, the Hiring Department may choose to review applications from the pool rather than re-recruit.

E. INTERVIEWS

The Department Director shall review the applications and schedule interviews for those candidates selected for further consideration. Consideration must be given to all applications received; however, interviews need not be provided to all applicants.

The Human Resources Department can assist the Department Director in structuring interview questions, seating interviewing panels, devising scoring mechanisms and for other assistance in the interview process. Interview questions must be relevant and related to the position and the skills required. In addition, all candidates must be asked the same core group of questions to provide a fair and equal opportunity process.

F. SKILLS TESTING

The Hiring Department will contact the Human Resources Department to arrange for skill testing. Skills such as, but not limited to, typing, word processing, spreadsheets, databases, job knowledge, and other current systems and applications may be measured.

G. REFERENCE CHECKS

All efforts shall be made to determine the applicant's past work history. The best reference is someone who is in a position to evaluate the applicant's work performance. Personal references should be avoided unless they are the only references available.

The Department Director or Hiring Manager shall conduct reference checks prior to communicating a conditional offer of employment to a candidate. If an internal candidate is being considered, reference checks must include at least one person from the current supervisory chain of command.

H. SELECTION

The Hiring Department will be responsible for selecting from among the referred candidates to fill vacancies. Selection(s) must be defensible and documented.

The Hiring Department is responsible for sending letters or emails to applicants, regardless of whether or not they were interviewed, notifying unsuccessful applicants that another candidate was selected.

I. PRE-EMPLOYMENT MEDICAL SCREENING

1. Drug and Alcohol

Any external applicant for employment who has been made a conditional offer of employment will be required to undergo a drug test for the presence of drugs in their system. The Human Resources Department must receive a negative test result before the applicant may be made a final offer of employment. A job applicant who refuses to consent to a drug test as a condition of employment will be denied employment with the City of Tomball.

After a conditional offer of employment is made, the Department Head is responsible for making an appointment for a pre-employment physical (if required for the position), and instructing the applicant to report to the Human Resources Department for the pre-employment drug test. The applicant must report to the Human Resources Department within 24 hours of being notified of the drug test.

The Human Resources Department will provide the paperwork for the applicant to take to the Testing Site. The applicant must show picture identification to a representative at the testing site. The applicant must provide the sample as required or lose the opportunity for employment.

The testing site will provide Human Resources with the result of each drug test. The original result will be kept on file with the Human Resources Department, where it will be retained for a minimum of two years.

If the applicant receives a positive result on the drug test, the Human Resources Department will inform the Hiring Department. The conditional job offer will be rescinded by the Human Resources Department. The Hiring Department can choose another applicant from the same applicant pool or reopen the position for recruitment.

Any applicant who has tested positive for a controlled substance during the application process may be considered for employment with the City of Tomball, following a period of one year and a documented drug rehabilitation program. Upon reapplication, the applicant must also agree to at least one year of random drug tests (6 tests during the one year period) paid for by the City.

2. Physical Examinations – Non-Public Safety

Physical examinations will be required for those applicants being considered to fill a position that is highly physical in nature and/or where there will be frequent exposure to sun, heat, cold, humidity, and rain. Applicants in labor intensive positions, whether full-time, part-time or seasonal/temporary, must successfully complete a physical examination. These jobs often require heavy lifting and/or physical stamina. Both external and internal applicants must first be informed of a conditional offer for the positions and then be sent for a physical examination arranged by the Human Resources Department. Reasonable accommodations will be made for persons with disabilities, in accordance with the Americans with Disabilities Act.

3. Physical Examinations – Public Safety

All public safety police applicants who are being considered to fill a position will undergo a thorough physical examination and will also be required to pass a psychological screening process which includes a written psychological test and an oral interview with a psychologist. A document called an L-2 is signed by the physician stating the applicant is able to perform the essential duties of a police officer. The psychologist signs an L-3 stating there is no mental reason that an applicant could not perform the duties of a police officer. Both the L-2 and the L-3 forms are required by the State of Texas licensing agency for police officers and are sent to the state once an applicant has been employed by the City of Tomball Police Department.

After a conditional employment offer is made, firefighter applicants are required to complete a pre-employment physical and must be deemed able to perform the essential duties of a firefighter by the City's contracted physician. Firefighter applicants must meet the standards of the National Fire Protection Association.

J. BACKGROUND INVESTIGATIONS

Background investigations will be done in accordance with the requirements for filling the vacant position.

1. Background Check – Non-public Safety

The background information will be used to ensure that the City does not place an applicant in a position that may create liability for the City. An applicant will not be disqualified from hire merely by having a criminal conviction. The nature of the offense, how much time has passed, and the job the applicant has applied for will be taken into consideration. Because of confidentiality issues, the Human Resources Department is responsible for receiving and evaluating all applicant background information.

2. Background Investigations - Public Safety

   A thorough and comprehensive background investigation is completed on each police officer, public service officer, dispatcher, and firefighter candidate. Background investigations are completed internally by a City approved background investigator and maintained in accordance with department protocol.

K. DRIVER'S LICENSE VERIFICATION AND HISTORY CHECK (MVR), IF APPLICABLE

Applicants that are considered for a position that requires the operation of a City vehicle must possess a valid Texas Driver's License. The applicant will have a Driver's License Verification and History Check before a final offer for employment will be made.

An applicant whose position requires driving a city vehicle or driving on City business may not have more than 2 moving violations in a previous 3-year period, not including drug or alcohol related violations, or any drug or alcohol related motor vehicle violation. An applicant with any drug or alcohol convictions within the last 10 years from date of application will not be considered for employment.

Public safety police applicants are required to comply with the police department's rejection criteria, which include but are not limited to frequency of driving violations and frequency of both at-fault and not at-fault accidents.

If the personal driving record requirements are not met, the Human Resources Department will notify the Department Head, as well as call or meet with the applicant to discuss the applicant's driving record and reason for no longer considering the applicant for employment.

L. CREDIT HISTORY CHECK, IF APPLICABLE

The pre-employment credit report can provide insight into an applicant's financial responsibility. The report will be requested for those individuals being employed in a financial/accounting position and/or having significant fiscal responsibilities. The same process for "Notice of Intent to take Adverse Employment Action" described under the MVR section of this manual, will be used to notify the applicant.

Once all pre-employment activities are successfully completed, the Human Resources Department will contact the Department Head to proceed with the applicant. The Department Head will confirm the job offer with the applicant.

2.02 MINIMUM AGE REQUIREMENTS

Age limits are imposed for certain positions on the basis of a bona fide occupational qualification or statutory requirement. The City will comply with all specific State laws or any federally imposed age requirements. No person under the age of 16 will be employed in any position in the City.

When the City employs an individual under 18, the employee may not begin working until the parent(s) or legal guardian(s) grant permission in writing. No person under 18 years of age will be employed in any regular position, or any temporary or part-time position requiring the operation of a motorized vehicle owned by the City.

2.03 NEPOTISM (Employment of Relatives)

A. Family Member

The City of Tomball defines a family member as:

1. A relationship created by marriage includes: spouse, spouse's child, spouse's parent, spouse's brother, spouse's sister, spouse's nephew, spouse's niece, spouse's grandchild, spouse's grandparent, spouse's first cousin, spouse's aunt, and spouse's uncle.
2. A relationship created by birth (blood) includes: parent, brother, sister, child, grandparent, grandchild, aunt, uncle, niece, nephew, first cousin, great-grandparent, great-grandchild, great-aunt, great-uncle, great-niece, and great-nephew.
3. Significant others who live in the same household.

B. Applicants

An applicant may not be hired as an employee if that department already employs a person who is a family member of the applicant.

C. Employees within the same department

If an employee becomes a family member of another employee who works in the same department, and neither employee voluntarily resigns or is able to transfer to another position in another department within 60 days of the date the employees become family members, then the person with the least amount of consecutive service time with the City immediately prior to the date the employees become family members, is considered to have automatically resigned their position of employment on the 61st day following the date the employees become family members. This passage does not apply to volunteers with the fire and police departments.

D. Elected Officials

No person related within the second degree by affinity* or third degree of consanguinity** to the mayor, any member of the City Council, any officer of the City or officer of any City Board shall be appointed, voted upon or confirmed by that relative to any office, position, clerkship, employment or duty of the City. This prohibition shall not apply, however, to any person who shall have been continuously employed by the City for a period of six (6) months prior to the election of the Mayor or Council member so related to him/her. The person must have been continuously employed by the City for a period of thirty (30) days prior to the appointment of a related officer of a City Board or officer of the City to retain employment.

* "Affinity" is relationship created by marriage and within the second degree includes spouses, mother-in-law, father-in-law, sister-in-law, brother-in-law, daughter-in-law, son-in-law, grandparent-in-law and grandchildren-in-law.

**"Consanguinity" is a relationship created by birth and within the first and second degree includes grandparents, parents, brothers, sisters, children and grandchildren, and within the third degree includes aunts, uncles, nieces, nephews, great-grandchildren and great-grandparents.

2.04 RE-EMPLOYMENT

An employee who resigned from City service and submitted a written notice of resignation stating the date of departure and the reason for resignation is considered to have left in "good standing". The notice of resignation must have been submitted a minimum of fourteen calendar days prior to the effective date. Employees who did not leave in "good standing" will not be re-employed with the City unless the City Manager grants approval.

If a former employee is re-employed by the City of Tomball within any time frame, the original hire date will not be used to restore vacation, sick, holiday, personal days and longevity accrual rates. All accrual rates will be based on the new hire date, any previous time will not be merged together. Prior service will not count for eligibility for any paid time off, and there will be no restoration of any accrued time that was unpaid at the time of separation of employment with the City of Tomball.

2.05 EMPLOYMENT AND ELECTED OFFICES

An employee must notify the City Manager of his or her intention to file as a candidate for any publicly elected office prior to filing as a candidate. The determination will then be made, on a case by case basis as to whether there is any conflict with the employee's position with the City.

An employee may not serve on any city council appointed board or commission, except as authorized by ordinance, the City Manager, or as specified in the employee's job duties.

Employees who are elected or appointed to a public office are required to resign from City employment, if the candidacy or position creates a conflict of interest with their City position, or the position provides for remuneration.

2.06 ORIENTATION

The Department Head and supervisors shall orient all new employees. Such orientation training includes the duties of the position, hours of work, relationship to the other employees, safety precautions, the rights and obligations of an employee, and information about the units and department. The new employee should be made welcome and be encouraged to ask questions, especially during the first weeks at work. Employees shall also be given a set of these rules.

SECTION 3 - STANDARDS OF CONDUCT

3.01 EMPLOYEE CONDUCT

A. STANDARDS OF CONDUCT

1. Employees shall not:

   a. Contract with the City with any type of personal business unless authorized by the City Manager.

   b. Accept or solicit, for personal financial gain, any benefit that might reasonably tend to influence them to act improperly in the discharge of official duties.

   c. Use their official positions improperly to secure unwarranted privileges or exemptions for themselves, relatives or others. This includes suggestion or influence that the City transacts business with any entity of which they or their relatives are officers, agents or members or in which they or their relatives have a financial interest.

   d. Lie to their supervisor or provide deceitful information.

   e. Participate in making or influencing any City governmental decision or action in which they know that they have any financial interest.

   f. Use or disclose, other than in the performance of their official duties or as may be required by law, confidential information gained in the course of or by reasons of their positions.

   g. Transact any business (other than ministerial acts) or render any decisions on matters under the City's jurisdiction on behalf of the City with any entity of which they or their relatives are officers, employees, agents or members or in which they or their relatives have a financial interest. In the event such a circumstance arises, then they shall then make known their interest, and in the case of an employee, disclose the matter to their Department Head so that reassignment or other suitable action may be taken. Purchasing must also be notified.

   h. Accept other employment, in addition to their City position, or engage in outside activities incompatible with the full and proper discharge of their duties and responsibilities with the City, or which might impair their independent judgment in the performance of their public duty.

   i. Participate in a decision regarding a matter under the jurisdiction of the City, if the employee or a relative of the employee is negotiating or has negotiated employment with a person or organization that has a financial interest. The employee shall immediately notify their Department Head that a conflict of interest exists and follow their instructions with regard to further involvement in the matter.

   j. Receive any fee or compensation for their services as employees of the City from any source other than the City, except as may be otherwise provided by law. This shall not prohibit their performing the same or other services for a public or private organization that they perform for the City if there is no conflict with their City duties and responsibilities.

k. Knowingly perform or refuse to perform any act in order to deliberately thwart the execution of the City ordinances, rules or regulations or the achievement of official City programs.

l. Personally represent or appear on behalf of the private interest of another before the City Council or any City board or department; or if the represented person's interest is adverse to that of the City, represent any person:

i. in any quasi-judicial proceeding involving the City; or

ii. in any judicial proceeding to which the City is a party

2. Provided, nothing in subsection (1) above shall preclude:

a. Any employee from performing the duties of his or her employment;

b. Any employee from appearing before the City Council or any City board or department, in a manner consistent with other City policies and rules, to discuss any general City policies or public issues; or

c. An employee from testifying as a witness under subpoena in a judicial or quasi-judicial proceeding.

B. EXCEPTIONS

Exceptions made to any item in Policy 3.01 must be approved by the City Manager and kept on file by the Finance Department or Human Resources Department, as appropriate.

C. NOTIFICATION OF FRAUDULENT INCIDENT OR PRACTICES

In the event that an employee observes a fraudulent act or suspects that a fraudulent act has occurred, notification of the act must be made in accordance with the Interdepartmental Policy and Procedures.

3.02 ATTENDANCE

Employees shall be required to be at their places of work in accordance with work schedules established by their department. Employees are expected to be at their work place or on official duty during City business hours or be officially excused by their supervisors. Any employee who fails to report, is habitually tardy, leaves the workplace without proper authorization or misuses leave may be subject to disciplinary action. All departments shall maintain accurate attendance records.

Whenever an employee is unable to report to work because of illness, injury or an emergency, the employee must call their supervisor as far in advance as possible prior to their scheduled shift time, and each subsequent day thereafter. Such notification should include when the employee can be expected to report to work. Leave time is subject to the approval of the supervisor. The absent employee is responsible for ensuring that proper advance notice of absence or late arrival is given to their supervisor, in accordance with the department rules. If a voice mail is left, it is the employee's responsibility to call back to ensure that the message was received. Messages left with non-supervisory personnel will not be accepted. Failure to provide proper notification of an absence or lateness, unexcused absences, late arrivals or early departures from work may result in disciplinary action, up to and including termination.

Any employee who fails to report to work for 3 consecutive workdays, and fails to notify their supervisor in advance of the reason for the failure to report to work, will be considered to have voluntarily and irrevocably resigned from their position at the end of the 3rd day unless the City determines that the employee has a sufficient excuse for not giving notice.

3.03 MEAL AND BREAK PERIODS

Supervisors shall implement work schedules, including work hours and lunch schedules, to meet the general requirements of their departments and divisions. Break/rest periods are not required by the Fair Labor Standards Act however, the City of Tomball may allow two 15 minute rest periods, which may be provided each day and are to be taken within the work area. The meal period should be 45 minutes or one hour in length and should normally be taken between 11:00 a.m. and 2:00 p.m. for those employees working a standard eight-hour shift. Rest periods and lunch breaks are to be taken as assigned and cannot be stored or banked. Schedules for Police and Fire Department personnel will be established by the respective Chief. Break periods may be delayed in order to maintain production or services.

3.04 EMERGENCY CONDITIONS

The citizens of Tomball depend on City employees before, during and after an emergency or disaster to provide or restore essential public services for the health, safety and quality of life for our community. In the event of a wide scale emergency that could impact our community, all employees must be ready to assist in managing the crisis and will be considered essential for the continuity of governmental operations until he/she are specifically relieved by the Department Director or their designee. This policy applies to all non-exempt and exempt employees, and it recognizes that some emergencies will provide no advanced warning.

A. EMPLOYEE GROUPS

In a large scale emergency, City employees will be required to fulfill their individual responsibilities and function as a team to protect the City's vital assets, and maintain and restore essential City services. While the fire and police departments typically provide emergency services, other City departments may also be called upon to participate in response efforts.

B. PAY PROVISIONS

In the event of a Disaster Declaration, State of Emergency or a long term emergency, all non-exempt that are declared "Essential personnel" and are required to work the duration of the event, will be eligible for overtime at the rate of one and one half (1 1/2) times their regular hourly rate of pay for actual hours worked. Exempt employees may receive time off for extensive hours worked during an emergency situation, as defined by the City Manager.

C. ABSENT EMPLOYEES

Once a State of Emergency is declared, employees who are absent, employees who leave early and employees who do not report to work without the appropriate authorization are subject to the appropriate disciplinary action, up to and including termination.

3.05 APPROPRIATE APPEARANCE

The personal appearance and grooming of our employees plays an important role in the perception that the public and citizens have of the City of Tomball. Employees are expected to dress appropriately and professionally and present a clean and neat appearance while at work and while representing the City or conducting City business. Employees are expected to maintain minimum standards of dress, grooming and personal hygiene appropriate for the position and job duties and as necessary to protect the safety of the employees. This policy establishes the foundation for the City's dress code policy. In order to maintain a positive public image and to assist employees in determining what is appropriate, the following guidelines are established.

A. DAY-TO-DAY ATTIRE

Business attire or a required uniform is to be worn on a daily basis. Police and Fire Department employees are covered under Departmental policies regarding appropriate dress and appearance.

B. PROHIBITED ATTIRE

In order to maintain a positive public image and to assist employees in determining what is appropriate, the following items are prohibited or restricted:

- Shirts that allow a bare midriff
- Beach type flip-flops
- Sweat-shirts, sweat pants, wind suits, overalls or shorts (Department Heads may make exceptions for uniformed seasonal wear)
- Ripped Jeans
- T-shirts and/or ball caps with advertisements, political messages, or slogans (unless provided by the City for a specific City/Public event)
- Clothing with obscene messages or that endorse alcohol, tobacco products, drugs, pornography, or offensive material of any kind
- Revealing, sheer, suggestive, see-through blouses or sweaters (unless worn over or under another shirt)
- Provocative or revealing, low cut attire including body-hugging, see-through, or excessively tight fabrics
- Lip, nose and eyebrow rings/studs, tongue studs or similar type facial jewelry (excluding ear lobes)
- Clothing that is dirty, soiled, stained, wrinkled, ripped or tattered
- Visible tattoos which could be deemed offensive
- Clothing that is better suited for the beach, yard work, dance clubs, exercise sessions, and sports contests
- Hair should not be worn in a manner to create a safety hazard. Hair styles and hair colors must be appropriate to the employee's position and extremes of any type are unacceptable. For

example, green hair, mohawk style haircuts, and severely spiked hair are not allowed. Hair, including facial hair, must be clean and neatly groomed at all times.

Employees in violation of this policy may be sent home. Under such circumstances, employees may not be paid for work time missed. Employees whose grooming or personal appearance violates this policy may be disciplined up to and including termination of employment.

The Director, with approval of the City Manager, may make departmental exceptions to this policy when deemed necessary for business reasons or implement a more restrictive dress and appearance policy.

Directors, Managers and Supervisors are responsible for enforcing this policy in their respective departments in order to maintain acceptable dress and appearance.

3.06 USE OF CITY PROPERTY

City facilities, equipment, supplies, and other City resources are made available to help the employees perform their job duties and not for their personal use. The City, however, recognizes that under certain circumstances the employee's limited use of City telephones, computers, facsimile, e-mail, copiers, internet, and similar resources for personal use may be necessary or beneficial to the City. The City may establish separate policies governing the use of specific equipment. An employee that violates this policy, with excessive use of City equipment for private use, shall be subject to disciplinary action up to and including termination. Excessive use is defined as any use that could generate additional expense to the City, or decrease customer service internally or externally, or otherwise lower productivity of employees.

A. TELEPHONE LONG DISTANCE

All employees are restricted from making non-business long distance telephone calls via the City's long distance provider, except in emergency situations. Calls placed through personal calling cards, pre-paid cards, and/or credit cards are not prohibited, other than the general prohibition on employees unreasonably using work time for personal business. Calls made to an 800, 877, or 888, are acceptable. Calls to 900 numbers or numbers that will switch to a 900 call are not acceptable and shall be subject to disciplinary action.

B. CITY NON-TAKE-HOME VEHICLES

It is the policy of the City of Tomball to provide for transportation needs, as necessary, for its employees. City-owned vehicles may be used only for City business, except as otherwise specifically authorized by department policy approved by the City Manager.

Employees assigned a City vehicle will be required to sign a statement indicating that they have read and will comply with the rules and provisions of this policy. Employees who do not comply with the provisions of this policy shall be subject to disciplinary action up to, and including, termination.

All operators of City vehicles and equipment must possess a valid Texas Driver's License. Personal driving records can impact employees who must drive City vehicles or equipment to perform their jobs. At no time will city employees drive a city vehicle without a valid Texas Driver's License in their possession. All employees who drive City vehicles or receive vehicle allowances from the City will be subject to random motor vehicle records (MVR) checks.

B. TAKE HOME VEHICLES

Take-home vehicles are vehicles owned, leased, or otherwise under care and control of the City of Tomball and are taken home by the employee after regular working hours in order to respond to City emergencies, posing threats to life and/or property. Any non-compliance with this administrative procedure may result in immediate suspension from the take-home vehicle program or disciplinary action up to and including termination.

1. Authorization

   Authorization for the use of a City take-home vehicle is the responsibility of the City Manager or his designee. A Department Director may authorize the temporary use of a City take-home vehicle for a special assignment or event. Department Directors, acting as designees or while authorizing exceptions as provided for in this directive, must be able to articulate just cause for any deviation.

2. Maintenance

   To prolong the life and properly maintain City vehicles, employees will ensure that their assigned vehicles have sufficient gas, oil, and other fluids to prevent premature failure, and that all tires are kept properly inflated. The employee to whom a vehicle is assigned, is responsible for the condition of the vehicle and for insuring that it continues on its scheduled maintenance program as set up by the Fleet Services Department. Any problems with the operation of the vehicle should be promptly reported to the Fleet Maintenance department. Said vehicles should be removed from service until the problem can be evaluated and/or corrected. Careless, abusive, negligent, or reckless handling or operation of any City vehicle by any employee may result in disciplinary action up to and including termination.

3. Accidents

   All vehicle accidents shall be reported to the vehicle maintenance department. All city-owned vehicles and equipment involved in an accident shall be examined by the vehicle maintenance department prior to returning to service. The vehicle maintenance department shall determine if further examination or repairs by a specialized technician are necessary before returning a damaged unit to service.

4. Liability

   Depending on the circumstances, the City of Tomball reserves the right to limit its liability for personal losses of the employee in the event of theft of belongings from a city-owned vehicle. Employees are responsible for taking prudent steps to ensure the reasonable security of the vehicle and its contents.

   The City of Tomball also reserves the right to limit its liability in the event of an accident that is caused by the employee, depending on the time and the circumstances of the accident. Any tickets or fines received by the employee during their operation of a city-owned vehicle will be the responsibility of the employee.

5. Personal Use

   It is understood that use of a City take-home vehicle for City purposes is unavoidably commingled with a small amount of personal use. However, using a City take-home vehicle for the sole purpose of conducting personal business is prohibited. Take-home vehicles shall

not normally be used for personal business. Use of the vehicle for personal stops while en route between work and home are allowed if they do not significantly alter the normal route taken.

C. ALL VEHICLES

The following information is applicable to both City take-home vehicles and City non-take-home vehicles. All vehicles must be operated in a lawful manner and appropriately maintained under the care and control of the assigned employee. Any non-compliance of this administrative procedure may result in immediate suspension from the take-home vehicle program or disciplinary action up to and including termination.

- All employees who drive City vehicles or receive allowances from the City must immediately inform their Department Head in writing, of any past convictions or pending charges from Driving While Intoxicated, Driving under the Influence of Drugs and/or moving traffic violations.
- Employees will not use City vehicles to haul or tow anything other than City equipment needed in the performance of their job assignment.
- Employees will not possess, purchase, or be under the influence of drugs or alcoholic beverages while operating City vehicles or equipment, or a private vehicle while performing City duties. Tobacco use is not allowed in any City vehicle at any time.
- An employee licensed to carry a concealed handgun under Texas law may not carry the concealed handgun in a City vehicle unless the employee is a licensed peace officer of the City and has the approval of their Department Head.
- Generally, non-city employees are not authorized to be passengers. Exceptions may be authorized by the appropriate Department Head.
- In no case shall a person other than a City employee be allowed to drive a City vehicle unless approved by the Department Head for an authorized use.
- All operators of City vehicles shall possess a valid Texas driver's license and maintain a satisfactory driving record and the appropriate license at all times. Driving records will periodically be examined.
- Employees who operate City vehicles in the course and scope of their employment must notify their supervisor if and when their driver's license becomes invalid or suspended for any reason.
- City employees, while operating City vehicles, are required to remain within the City limits unless conducting official business or commuting to and from work. Any other exception requires the approval of the Department Head.
- All employees, if involved in any vehicular collision in a City vehicle or in a private vehicle while performing City duties, shall call the appropriate law enforcement agency and contact their Department Head or appropriate supervisor. The Human Resources Department will be notified by the supervisor so that an accident report can be completed and an insurance claim can be filed. The employee is also subject to post accident drug testing.
- Employees are not permitted under any circumstances to operate a City vehicle or private vehicle while performing City duties in situations where the employee is temporarily unable to operate a vehicle safely or legally, because of illness, medication or intoxication.

- Employees whose position require the operation of a motor vehicle must exercise due diligence to drive safely, wear seat belts, follow all traffic laws, and avoid distractions while driving, such as using cellular telephones or entering date on a Mobile Data Terminal (MDT) except as provided by state law for emergency response.
- Some city-owned vehicles are equipped with GPS tracking devices. Tampering with and/or disengaging such equipment is grounds for disciplinary action up to and including termination.

D. CELLULAR PHONES

The City will own and provide cellular phones and services to qualified and approved employees. The City will maintain a single service provider contract from authorized state, local or federal cooperative contracts that offer discounted pricing and a wide range of service plans. Use of any other services provider or contract for City owned cellular phones and/or services must be justified and approved.

As an alternative to a City owned and provided cellular phone and service, the City Manager may authorize the issuance of a monthly stipend to those employees deemed to be Critical Decision Makers. These payments are intended to pay only for City related costs incurred on personal cellular phone accounts, and eliminate the need for those employees to carry and maintain a separate phone for City business. This stipend is considered taxable income to the employee.

3.07 INFORMATION TECHNOLOGY SYSTEM USE

The City provides technology and communications systems to employees. This includes internet and e-mail, as well as any system or part of a system owned or leased by the City that is used for sending, receiving, or accessing information by electronic means and transported on wired or wireless networks.

This policy provides guidelines for the general use of the City computers, electronic mail, and Internet access. It applies to both internal and external email sent and received, all Internet access, and any software or hardware installed on a City computer. These guidelines do not supersede any state or federal laws, or any other agency's policies regarding confidentiality, information dissemination, or standards of conduct. This policy is not intended to cover every possible situation. Instead, it is designed to express the City of Tomball's philosophy and set forth general principles when using electronic media and services.

The City will review alleged violations of this policy on a case-by-case basis. Any violation of this policy could result in disciplinary actions, up to and including termination. Additionally, violations of this policy, when appropriate, may be referred for criminal prosecution.

A. ACCEPTABLE USE

Permissible use of the System is to carry forward City business. Use is encouraged when it results in the most efficient and effective means of communication. It is the responsibility of the employee to use the System, including internet and e-mail to assist in carrying out the business purposes of the City. This includes, but is not limited to:

1. Perform job functions,
2. Communicate information in a timely manner,
3. Coordinate meetings of individuals, locations, and City resources,

4. Communicate with departments throughout the City, and
5. Communicate with outside organizations as required performing an employee's job functions.

Generally, email and Internet should be used only for official City business however, brief and occasional email messages of a personal nature may be sent and received and occasional surfing and browsing for non-business reasons. Personal email and use of the internet should not impede the conduct of City business or violate policy restrictions. Personal email Internet use should not cause the City to incur a direct cost in addition to the general overhead of email. Consequently, employees upon receiving personal email should read it and delete it. Personal use must not interfere with performance of job duties.

B. UNACCEPTABLE USE

Unless the use is related to the employee's job duties or authorized by a supervisor, employees may not use the System for any of the following purposes:

1. Under no circumstances is an employee of City of Tomball authorized to engage in any activity that is illegal under local, state, federal or international law while utilizing City of Tomball-owned resources.
2. Sending unsolicited email messages, including the sending of "junk mail" or other advertising material to individuals who did not specifically request such material (email spam) or creating or forwarding chain letters.
3. Sending, forwarding, creating, downloading, viewing, storing, or copying e-mails or information that violates any City policy and especially racial, offensive, or sexual, or contain other derogatory content that violates any City policy. Employees who receive inappropriate e-mails with content not within the City's policies from any City employee must report the matter to their supervisor or Human Resources Department immediately.
4. Surfing internet websites that are offensive, sexually explicit, abusive, threatening, or otherwise inappropriate for the workplace.
5. Spending excessive amounts of time on personal e-mail, surfing of the internet, or participating in chat rooms. Excessive use is defined as any use that could generate additional expense to the City, or decrease customer service internally or externally, or otherwise lower productivity of employees.
6. Copying or transmitting any documents, software or other information protected by the copyright laws, without proper authorization by the copyright owner. Copyright protection applies to any document, photo, software, or information unless it is specifically marked as public, not copyrighted, or freeware. In the absence of any specific copyright markings, material or information should be considered copyright protected.
7. Breaking into the System or unauthorized use of a password.
8. Intentionally and maliciously misrepresenting the originator of any type of electronic information.
9. Intercepting, eavesdropping, recording or altering another person's email, except as authorized the appropriate Department Head.
10. Attempting to send e-mail anonymously.

11. Soliciting, advertising or otherwise marketing for outside business ventures, personal parties, social meetings, and charities, membership in an organization or other matters not connected to the City or the community.
12. Installing copies of any software onto City of Tomball computers, or copying software from the City's computer to install on any other computer.
13. Using e-mail and the Internet for monetary interest or gain, or political purposes.
14. Employees should not subscribe to mailing lists or mail services strictly for personal use and should not participate in electronic discussion groups (i.e. list server, Usenet, news groups, chat rooms) for personal purposes.
15. Using the e-mail and Internet facilities to disable, impair or overload the performance of any computer system or network, or to circumvent any system intended to protect the privacy or security of another user.
16. Impeding the City network bandwidth performance through web sites with streaming or continuous audio or video for non-business use, i.e. radio station broadcasts, video trailers, internet games, etc.

C. OWNERSHIP

All electronic information on the System remains the property of the City and public records, subject to the Texas Public Information Act. Employees have no right of privacy in the use of the System, even if permitted for personal use. Employees should have no expectation of privacy regarding their use of e-mail, e-mail content and the use of the Internet. Employees must recognize that it is within the capabilities of the System to recover previously deleted elements at any time and those recovered elements remain the property of the City.

D. MONITORING

The City reserves the right, with or without notice, at any time, for any reason, to monitor the use of the System and to access information sent, received or stored. All e-mail is subject to review by management or its representatives at any time, with our without notice. Use of the City e-mail and Internet system by an employee indicates that the employee understands that the agency has a right to inspect and audit all email communications, Internet usage, and consents to any inspections.

E. PUBLIC DISCLOSURE

Any information on the System is presumed to be subject to disclosure, upon request, as public information. Therefore, employees should use discretion in making use of the System to discuss sensitive matters or matters in litigation.

F. PASSWORDS

Passwords are an important aspect of computer security. Employees must take every precaution to protect their passwords. A poorly chosen password may result in the compromise of the City's network.

If an account or password is suspected to have been compromised, report the incident to Information Technology and change all passwords.

G. SOFTWARE

To protect the integrity of the City's computer network environment, all software must be pre-approved by the Department Head or designated personnel, and a compatibility check completed

through the IT department before installation. Unauthorized software installation is strictly prohibited. Any software installed by the IT Department shall not be removed or altered in any way.

To maintain compliance with U.S. Copyright laws and to protect the integrity of the City of Tomball computer environment from viruses, unauthorized installation or downloading of any unauthorized software is strictly prohibited. Employees are not permitted to install their own copies of any software onto City computers. Likewise, employees are not permitted to copy software from a City computer to be used on any other computer unless such installation is in accordance with the applicable licensing agreement and has been previously authorized by the Department Head or designated personnel. Any employee, who knowingly makes, acquires or uses unauthorized copies of software licensed to the City of Tomball or who places or uses unauthorized software on the City of Tomball premises or equipment shall be subject to disciplinary action.

H. HARDWARE

Any employee's personal computer or equipment that is attached to the City of Tomball's network is subject to all rules within this policy. No hardware shall be installed or removed from the City of Tomball's computer without authorization from the Department Head or designated personnel and notification to the IT Department.

I. LAPTOPS

Laptops are assigned to individuals and/or departments. Employees who remove them from designated office spaces will take personal responsibility for the safety of these items. Employees may be held liable should laptops be damaged, lost or stolen while in an individual employee's possession.

J. AUDITS

The City reserves the right at any time to conduct audits of any or all of the City of Tomball's computers to ensure that the City is in compliance with all software licenses. Unauthorized software will be deleted upon detection.

3.08 MEDIA CONTACTS

The City Manager's office and designated public information officers are authorized to serve as liaisons to media representatives regarding policy issues. Other employees are not authorized to make statements on behalf of the City, unless directed to do so by the Department Head and in response to an inquiry for routine factual information relating specifically to his/her duties as a city employee, and not relating to litigation, legal opinions or City personnel matters. If an employee receives an inquiry, he/she should report the inquiry to the Department Head, and describe any response made to such inquiry. Nothing in this handbook prohibits the exercise of constitutional rights, which generally protect communications made as a citizen on matters of public concern, but not communications made as an employee on matters of personal interest.

3.09 SOCIAL MEDIA POLICY

This policy addresses the responsibility of all employees with regard to their personal use of social media. This policy also outlines the protocol and procedure for employee and volunteer use of social media to disseminate public information and/or promote special events, programs, and services on behalf of the City of Tomball.

A. DEFINITION

For purposes of this policy, "social media" shall mean the use of technology in combination with electronic social networks of any type. Social media sites may include, but not be limited to, Facebook, Twitter, LinkedIn, MySpace, YouTube, blogs, Wikis, chat rooms, and on-line forums. It will also include official City of Tomball websites and all forms of on-line community sites that are established and maintained by the City of Tomball. Social media activity includes but is not limited to texting, blogging, posting, and other actions involving technology and social media sites. The term "Employee", in this section, shall mean a full-time, part-time, or contract employee or volunteer for the City.

B. COVERAGE

This policy applies to all city departments and all employees.

C. EMPLOYEE PERSONAL USE OF SOCIAL MEDIA

The lines between public and private, personal and professional can become blurred in on-line social networks. With that in mind, below are guidelines for social media use by City employees while off duty.

1. Employees who use social media for personal use should not discuss information about the City's employees, citizens, vendors, issues, business, or legal matters without express consent to do so. Posting of confidential information may violate state law and subject the user to criminal penalty.
2. Personal use of social media while off duty must not interfere with or conflict with the employee's duties or job performance, utilize the employee status as a City employee to bolster his opinion or violate any City policy. Employees are encouraged to act responsibly while off duty and to exercise good judgment when using social media.
3. Employees should consider the following guidelines for personal use of social media:
    - Respect coworkers and the City. Do not post any confidential information obtained through employment with the City and/or pictures on the Internet that may defame, embarrass, insult, demean or damage the reputation of the City or any of its employees.
    - Do not post any information and/or pictures that may constitute violation of any City policy.
    - Do not post pictures containing images of City uniforms or insignia, City logos, City equipment or City work sites.
    - Do not permit or fail to remove postings violating this policy, even when placed by others on the employee's blog. Recognize that postings, even if done off premises and while off duty could have an adverse effect on the City's legitimate business interests.
    - Do not link from a personal blog or social networking site to the City's internal or external web site.

- Do not post on social media sites the name, trademark, slogan or logo of the City.
- Do not use City names or identifiers for your personal social networking accounts or email accounts.
- The City may require removal of any material that is disruptive to the workplace or impairs the mission of the City.

The City has a vested interest in protecting its confidential information and in encouraging employees to engage in communication with people outside the City that, not only reflects positively on the employee as an individual, but also on the City.

D. USE OF SOCIAL MEDIA ON DUTY

The City of Tomball permits the use of social media while on duty for the sole purpose of conducting City business and only with department director approval. Alternately, the City prohibits all personal use of social media while on duty regardless of whether the personal use is on a personal device or city-owned equipment, public wifi or city-owned private network unless such use is expressly permitted by the department director.

1. All communication representing the City through social media outlets should remain professional in nature. Incomplete, inaccurate, inappropriate, threatening, demeaning, harassing or poorly worded postings may be harmful to the City's reputation or violate City policy. Such wording will be removed by the Information Technology Services Department.
2. Employees bear full responsibility for the material they post on social media sites. Inappropriate usage of social media can be grounds for disciplinary action, up to and including termination.
3. Public messages relating to City of Tomball activities on social media sites and/or any messages that might act as the "voice" or attempt to reflect the views of the City of Tomball must be approved by the department director.
4. Employees shall not ignore copyright laws, cite, or reference sources inaccurately. Plagiarism is prohibited.
5. All information published on social media sites must comply with City of Tomball's privacy and/or data policies. This includes comments, pictures, video, audio, or any other multimedia posted on social networking sites, blogs, and forums.
6. Media inquiries generated on social media sites should be referred to the City Secretary or City Manager.

E. OFFICIAL SOCIAL MEDIA SITES

1. Official social media sites representing the City of Tomball will be the property of the City of Tomball. All social media sites and email accounts shall be established by the Information Technology Department.
2. The Information Technology Department shall be responsible for the technical oversight of the City of Tomball's social media formats to include:
    - Establishing social media sites and related email accounts.
    - Maintaining a list of social media domains, account logins and passwords and changing passwords. Notification to IT is required if an employee is no longer designated to update content on a social media site(s).

3. Social media formats must meet one or both of the following purposes:
    - Provide residents of Tomball information about City events, activities and issues.
    - Promote the positive aspects of the City of Tomball to those in and outside the community.
4. The City's official website, www.tomballtx.gov, will remain the primary location for internet content regarding city business, services and events. Whenever possible, links within social media formats should direct users back to the City's website for more information, forms, documents or on-line services necessary to conduct business with the City of Tomball.
5. A request to the Information Technology Department and approval by the City Manager are required prior to the establishment of any social media site. Requests to the Information Technology department must include:
    - Purpose for the site and intended content to be posted/shared including the primary audience to be served;
    - Indication of how often the site's content will be reviewed and updated to ensure material accuracy and appropriateness;
    - Identification of individual(s) responsible for managing/overseeing and corresponding with the public (employee's name and position must be included) as well as indicating what provisions will be made if the responsible party leaves the position or is absent.

F. CONTENT MANAGEMENT FOR SOCIAL MEDIA SITES

1. Only designated department employees approved by the Department Director will have authority to publish content on official social media sites of the City of Tomball.
2. Department directors are responsible for monitoring site activity and ensuring content is consistent with the goals and objectives of the City.
3. Departments are responsible for responding to public commentary, inquiries or complaints. Responses must be approved by the Department Head.
4. Communication through social media is a public record. Both the posts by City employees and any feedback by others will be part of the public records of the City of Tomball and will be subject to the Texas Public Information Act (Chapter 552 of the Texas Government Code). Designated department employees posting content on these sites will be responsible for maintaining copies of content posted to comply the City of Tomball Records Management Program.
5. Content posted by "friends," "followers" or "fans" will not constitute a representation, agreement or endorsement on the part of the City of Tomball. The City of Tomball Information Technology Department reserves the right to delete any comment or posting that is deemed inappropriate, malicious, offensive, threatening, profane or insulting. Content that promotes, fosters or perpetuates discrimination on the basis of race, creed, color, age, religion, gender, marital status, disability, national origin or sexual orientation will not be permitted. Users who violate these guidelines may be blocked from posting commentary to City of Tomball social media sites/pages.
6. Any comments posted by external parties on City of Tomball social media sites are not official public testimony concerning any project or program. An opinion expressed on a City of Tomball

page is posted for discussion only and is not a substitute for a formal statement in public hearing process.

7. If a question arises regarding the use or posting of confidential information (e.g. litigation, investigations, etc.) on a social media site, the matter shall be referred to the City Attorney for review. The information in question shall not be posted, or if already posted, shall be removed until an opinion is rendered by the City Attorney. The City Manager or designee reserves the right to restrict or remove City information from an official City social media site if the City Manager believes that the information does not serve the best interests of the city.

G. DISCLAIMER

1. Each Official City of Tomball Social Media Site/Page must include a Disclaimer that contains the following information:

"The City of Tomball does not warrant or make representations or endorsements as to the quality, content, suitability, accuracy, or completeness of the information, text, graphics, links, and other items contained on a social media site's server or any other server. Such materials have been compiled from a variety of sources, and are subject to change without notice from the City. The City's primary and predominant internet presence shall remain the City's official website at www.tomballtx.gov and no other website or social media site can characterize itself as such.

Except to the extent required by law, commercial use of the materials is prohibited without the written permission of the City.

Some of the links on the City's social media pages may lead to resources outside the City of Tomball municipal government. The presence of these links should not be construed as an endorsement by the City of these sites or their content. The City is not responsible for the content of any such external link. The responsibility for content rests with the third party organizations that are providing the information.

Comments posted on this site by "friends," "fans," or "followers" or others will be monitored and any postings or comments that are disrespectful, offensive, dishonest, or do not accurately reflect the views, values or objectives of the City of Tomball will be deleted without notice.

Except to the extent required by law, communications made through e-mail and comments posted shall in no way be deemed to constitute legal notice to the City of Tomball or any of its agencies, officers, employees, agents, or representatives with respect to any existing or potential claim or cause of action against the agencies, officers, employees, agents or representatives where notice to the City is required by any federal, state or local laws, rules or its regulations. Notice of any claim must be filed in writing to the City Secretary of the City of Tomball, 401 Market St., Tomball TX, 77375.

H. ENFORCEMENT

1. Violations of this policy may result in immediate revocation of any or all electronic communications access and user privileges and may be grounds for disciplinary action up to and including termination. Certain violations could result in civil or criminal liabilities for the user. Individual supervisors do not have the authority to make exceptions to this policy.

2. No employee or volunteer should have any expectation of privacy or confidentiality when using any City resource, including the city's public and private networks. The City reserves the right to access, intercept, monitor and review all information accessed, posted, sent, stored, printed, or received through its communications systems or equipment at any time.

3. All social media access and use involving City equipment and resources are subject to the City's Internet, Intranet, and Email Use Policy.

I. REPORTING VIOLATIONS

1. The City urges employees to report any violations or possible perceived violations to their supervisor, department director, or the Human Resources Department. Violations include discussions of the City and its employees and patrons, any discussion of personal information and any unlawful activity related to blogging or social networking.

3.10 POLITICAL ACTIVITY

An employee may not endorse a candidate for federal, state or local public office while on-duty or permit the display of the City logo or the use of any city equipment or property in support of such candidates. All employees shall notify their supervisor when seeking or accepting nomination or election to any public office that provides enumeration for the same (Article 16, Sec. 40, Constitution, State of Texas). The determination will then be made, on a case by case basis, as to whether there is any conflict with the employee's position with the City. Employees who are elected or appointed to a public office are required to resign from City employment, if the candidacy or position creates a conflict of interest with their City position, or the position provides for remuneration.

An employee may not engage in political activity relating to a campaign for an elective public office or a proposition to be voted on by the public while in City uniform, on-duty, or while representing or acting on behalf of the City. For purposes of this policy, to engage in political activity includes:

1. Using or granting permission to use his or her job title for political activity.
2. Making a speech to a group or gathering supporting or opposing a candidate or proposition.
3. Distributing information relating to the campaign of a candidate or a proposition.
4. Wearing a campaign button while in uniform.
5. Circulating or signing a petition for a candidate or proposition.
6. Soliciting votes for a candidate or proposition.
7. Using City equipment to promote a candidate or proposition.
8. Soliciting campaign contributions for a candidate or for or against a proposition.
9. Any activity supporting or opposing a candidate or proposition expressed in a manner, time, or location that the public might reasonably believe represents a position of the City.
10. Any activity supporting or opposing a candidate or proposition expressed in a manner, time, or location that disrupts or interferes with the operations or effectiveness of City operations.

3.11 OUTSIDE EMPLOYMENT

While employed by the City, regular full time employees must notify their Supervisor before accepting additional employment. Employment at the City of Tomball is considered to be an employee's primary employer. Employees are subject to certain restrictions outlined as follows:

1. The City requires that employees' activities and conduct away from the job must not compete or conflict with or compromise the City's interest, or adversely affect job performance and the ability to fulfill all responsibilities to the City. This requirement, for example, prohibits employees from performing any services for customers on non-working time that are normally performed by City personnel. This prohibition also extends to the unauthorized use of any City tools or equipment. In addition, employees are not to solicit or conduct any outside business during paid working time, except for those exempt employees who, with permission of the City Manager, are able to structure their City employment so that outside employment is not an interference with their City job requirements.
2. All full-time employees must obtain prior approval from their Department Head before any outside employment is undertaken. Employee requests for permission to accept outside employment, including self-employment, must be submitted in writing to the employee's Supervisor and to the Director for final approval. The request must state any pertinent information about the outside employer, the nature of the job, and the hours of employment. The Director's decision will be final.
3. It is the responsibility of the employee to submit a new request for permission for outside employment annually to their Director for approval. Also, if at any time during the course of the outside employment that the employee's Director changes, a new request should be submitted.
4. Employees are cautioned to consider carefully the demands that additional work activity will create before requesting permission to seek or accept outside employment. Outside employment will not be considered an excuse for poor job performance, absenteeism, tardiness, leaving early, refusal to travel, or refusal to work overtime or different hours. If outside work activity does cause or contribute to job-related problems, it must be discontinued, and, if necessary, disciplinary procedures will be followed to deal with the specific problems.
5. Employees may not hold outside employment while on FMLA leave, sick leave, disability leave or while receiving worker's compensation benefits unless expressly authorized in writing in advance by the Director and City Manager.

This policy supplements and supports department defined policies already in place.

3.12 SOLICITATIONS

Solicitation and distribution of literature or goods in employee work areas by non-employees is prohibited.

The City may authorize a limited number of fund drives for charitable organizations.

3.13 SMOKING AND TOBACCO PRODUCTS

Employees must comply with the City's ordinance prohibiting the use of tobacco products in any City-owned building, facility or motor vehicle. Employees will be allowed to smoke only in designated smoking areas, as determined by State and Federal guidelines. In this policy, the "use of tobacco products" means the inhaling, exhaling, burning or carrying of any lighted cigar, cigarette, or other

combustible tobacco product in any manner, including cigarettes and cigars; the chewing of tobacco; and the use of snuff.

3.14 WEAPONS

An employee licensed to carry a concealed handgun under Texas law may not carry the concealed handgun or prohibited weapon into a City building, in a City vehicle, or on the employee's person while on duty as a City employee, unless the employee is a certified law enforcement officer for the City of Tomball.

3.15 ACCEPTANCE OF GIFTS

A gift is an economic gain or economic advantage to an employee or to a relative of an employee. The purpose of laws and policies governing gifts to public employees is to regulate attempts to influence the employees to use their authority or discretion to the advantage of the person making the gift. The City Manager and Finance Director may accept gifts to the City and issue acknowledgements on behalf of the City, subject to restrictions set forth in the City's Code of Ordinances and Charter.

Employees can only accept gifts when in compliance with Federal and State laws and this policy.

A. It is a crime for a public employee to agree to make a decision in return for a payment or receipt of some other benefit.

B. Employees may not accept gifts, favors, services or promises of future employment that could relate to, or influence the performance of the employee's official duties.

C. Employees may not use their position to gain special privileges or benefits and are to avoid participating financially in any business enterprise, which might influence their official decisions and judgments.

D. Employees may not hold any position with any business enterprise or governmental unit, which would conflict with the proper performance of the employee's duties or responsibilities.

E. Employees, employee's spouse and minor children are prohibited from soliciting or receiving gifts in any amount unless a specific statutory exception applies.

F. Perishable items or gifts sent to an employee should be placed in a common area for all employees to share. Similarly, legally acceptable gift certificates sent to employees should be given to Human Resources for use throughout the year to benefit all employees.

E. Benefit means any economic gain or economic advantage to an employee or relative of an employee but does not include:

   1. Political contributions made and reported in accordance with the law.
   2. Awards publicly presented in recognition of public service.
   3. Gifts or tokens of recognition presented by representatives of governmental bodies or political subdivisions who are acting in their official capacities.

4. Commercially reasonable loans made in the ordinary course of the lender's business.
5. Complimentary copies of trade publications,
6. Reasonable hosting, including travel and expenses, entertainment, meals or refreshments furnished in connection with public events, appearances or ceremonies related to official City business, if furnished by the sponsor of such public event; or in connections with speaking engagements, teaching or rendering other public assistance to an organization or another governmental entity.
7. Any economic gain or economic advantage conferred by any one person or organization if the economic value totals less than $25.00 per calendar year.

F. Donation of Prohibited Gifts.

1. An employee who receives a gift that would be in violation of State law who wishes to donate the gift to a recognized tax-exempt charitable organization, must, within five (5) business days of receipt of the gift, file a written statement, through their Director, to Finance Administration describing the gift, the date it was received, the date it was donated, and to what organization it was donated.
2. An employee who receives a gift that would be in violation of State law who wishes to donate the gift to the City, must, within five (5) business days of receipt of the gift, file a written statement, through their Director, to Finance Administration. The Executive Team will determine the disposition of the gift.

3.16 SUBSTANTIAL INTEREST IN BUSINESS ENTITY

A member of the governing body or another officer whether elected, appointed, paid or unpaid, of the City of Tomball shall disclose their interest in a business entity as required and described as "substantial interest" in Chapter 171 of the Local Government Code.

A person has a substantial interest in a business entity if:

1. The person owns 10 percent or more of the voting stock or shares of the business entity, or owns either 10 percent or more, or $15,000 or more of the fair market value of the business entity.
2. Funds received by the person from the business entity exceed 10 percent of the person's gross income for the previous year.
3. A person has a substantial interest in real property if the interest is an equitable or legal ownership with a fair market value of $2,500 or more.

A local public official is considered to have a substantial interest if a person related to the official in the first degree of consanguinity or affinity, as determined under Chapter 573 of the Government Code.

3.17 DRUG-FREE AND ALCOHOL-FREE WORKPLACE

The presence or use of illegal drugs or alcohol on the job is prohibited. It is the policy of the City of Tomball to:

- Maintain a safe, drug-free and alcohol-free work environment for its employees, conducive to effective city government operations, and to make a good faith effort to comply with the Federal Drug-Free Workplace Act of 1988, as amended.
- Prohibit the manufacture, distribution, dispensation, possession, sale or use of controlled substance drugs, intoxicants by employees at any time on-or off duty.
- Ensure that while on duty for or acting on behalf of the City, while wearing a City uniform and/or in a City vehicle, while on City premises, that employees will not be impaired by alcohol, intoxicants, or have controlled substances present in their systems not prescribed by a licensed physician.
- Require employees taking prescription medications that would impair their ability to operate vehicles, machinery, or equipment in a safe manner, to inform their supervisor of the potential danger.
- Subject employees to drug and alcohol testing when a supervisor has reasonable suspicion of drug or alcohol use; after certain accidents; when returning to duty as a result of self-referral; as follow-up after a determination that an employee was in need of assistance in resolving drug or alcohol problems; when promoted to a safety sensitive position; and for random testing if the employee is in a safety-sensitive position.

For further information, please refer to the City of Tomball's Substance Abuse and Alcohol Misuse Prevention Policy.

SECTION 4 – SALARY ADMINISTRATION

The City of Tomball's compensation policies (salary administration and pay practices) have been designed to provide guidelines for ensuring fair and equitable practices and to maintain compliance with the Fair Labor Standards Act (FLSA).

4.01 CATEGORIES OF EMPLOYMENT

A. AT-WILL EMPLOYER

Employment at the City of Tomball is at-will for an indefinite period of time, until terminated by either the City or the employee, with or without cause. That means either party may end the relationship with or without prior notice or cause.

No written or oral representation by the City of Tomball personnel will create a contract of employment. No employment practices of the City are intended to create a contract of employment. No changes in the City's employment-at-will policy will be effective unless executed in writing a signed by both the City Manager and Human Resources Director and approved by City Council. The City also retains the right to change any terms, conditions, benefits or privileges of employment at any time without notice.

B. PROBATIONARY PERIOD

All employees serve an initial six (6) month probationary period, which at the City's discretion, may be extended for a period not to exceed twelve (12) months. Police Officers will serve a probationary period of one year. Termination of employment during this probationary period is final with no appeal. **See section 4.09 for more information.**

C. PROBATIONARY EMPLOYMENT

Each new employee is placed into a probationary status until he/she completes the probationary period. The probationary period allows the supervisor or department director an opportunity to evaluate, train, coach and observe the employee's ability to perform assigned duties. Throughout the probationary period, the supervisor shall communicate and document the provisional employee's progress in his/her performance. If the employee's performance meets expected levels, they complete their probation after six (6) months. If the employee's performance during the provisional period is less than satisfactory, the probationary period may, at the discretion of the supervisor and with approval of the Department Head, be extended for an additional six (6) months. At any time during the probationary period and employee may be dismissed without further recourse. Even after completing the probationary period, an employee's employment with the City remains at-will in nature.

D. FULL-TIME EMPLOYEE

A full-time employee is defined as an employee who works a minimum of 40 hours a week or 2,080 hours annually in a full-time position; or an average of 53 hours a week or 2,756 annually in a full-time shift Firefighter position. Such employees are eligible for all City benefits. Full-time employees are further classified in one of the following categories:

1. Exempt: Certain employees, due to their position title and responsibilities, are exempt from the minimum wage and overtime provisions of the FLSA. Exempt employees primarily include those individuals occupying a bona fide executive, administrative, and/or professional position under the

FLSA. All positions are evaluated to ensure accurate classifications and may be re-evaluated as necessary to ensure the position is classified appropriately.

2. Non-Exempt: An employee covered by overtime provisions of the FLSA. Non-exempt employees include hourly employees (where pay is directly related to the number of hours worked) and some non-exempt salaried workers (clerical, first-line supervisory, and paraprofessional job categories). Non-exempt employees may receive overtime pay or be offered compensatory time at the rate of time and one-half in lieu of overtime pay. Time and one-half is used in calculating overtime and compensatory time in situations where the actual hours worked exceed standard work week hours.

3. Shift Firefighter: An employee who is trained in fire suppression, has the responsibility to fight fires, and is either actually engaged in fire suppression work and/or non-fire related emergency responses, and who works 24 hours on, with 48 hours off.

E. PART-TIME EMPLOYEE

A part-time employee is defined as an employee who normally works less than 999 hours per calendar year on a continuous basis. Supervisors must prohibit part-time employees from working more than 999 hours in a calendar year. Part-time employees are eligible for annual performance evaluations but are not eligible for any City benefits except those required by law.

F. SPECIAL ASSIGNMENT EMPLOYEE

A special assignment employee is defined as an employee who works between 1000 and 2000 hours per calendar year on a continuous basis. Special Assignment employees are eligible for annual performance evaluations and are eligible for Retirement, Medical and limited vacation and sick leave.

G. TEMPORARY EMPLOYEE

1. Temporary/Seasonal

A temporary/seasonal employee is defined as an employee who, regardless of the number of hours worked per week, will not exceed 999 hours in a calendar year and may only work periodically for a specific season or time period. These employees are not eligible for any City benefits, except those required by law, and are required to re-apply each successive year for continued employment consideration.

2. Interns

A degree-seeking college student hired for a specific period of time (i.e., summer, school semester) for the purpose of career development or field experience, with no entitlement to a job upon completion. Intern positions are considered “At-Will” and will not exceed 999 hours in a calendar year. The goal of an internship at the City is for the intern to gain insight into local government and municipal operations and prepare for future leadership positions. The experience is for the intern’s benefit, not the City’s advantage, and interns will not be used to displace regular employees. Interns may be asked to complete tasks that enable them to gain job related experience, including tasks not directly related to their course of study. Any paid internships shall be established annually during the budget process and are subject to the availability of funds.

4.02 WORK SCHEDULES

Employees in all City departments, with the exception of certain shift positions in the Fire Department, will observe a forty-hour work week. The work period begins 12:01 a.m. Monday (6:00 a.m. for Shift Police Personnel and 7:00 a.m. for shift Firefighters) and consists of seven consecutive 24-hour periods. Employees working a standard forty-hour work week schedule will consist of five eight-hour shifts. Police Dispatchers may utilize a work week schedule consisting of four ten-hour shifts, provided the service level to the community can be adequately maintained.

Each department head is responsible for exercising adequate supervision to ensure that employees are complying with established work schedules and that unscheduled work is performed only in bona fide emergencies. The department head is responsible for controlling starting and stopping time and all work times. If an employee starts work early or works late and the time for either period is seven minutes or less, then that time is considered incidental and will not require compensation. Overtime will begin the eighth minute and will be calculated in 15 minute intervals.

It is the employee's responsibility to comply with department work schedules and to avoid work that is unscheduled or unauthorized.

While many City services are provided on a 24-hour basis, seven days per week, the City has established its core business hours as 8:00 a.m. to 5:00 p.m., Monday through Thursday, and 8:00 a.m. to 4:00 p.m. on Friday.

A. WORK SCHEDULES FOR SHIFT FIREFIGHTERS

Under the 207K exemption of the FLSA, City of Tomball shift firefighters observe a 14-day work cycle for the purposes of calculating overtime. For shift firefighters, the work cycle begins at 7:00 a.m. on Monday and concludes at 6:59 a.m. 14 days later. Fire Department personnel on a 24-hour shift are regularly scheduled to work an average of 53 hours per week, based on 24-hour shifts with 48 hours off between shifts. Days off and shifts may change to meet the business needs of the city. For Shift Fire Personnel, the work day of 24-hour employees is considered to be 12 hours of leave for accrual/usage purposes.

B. WORK SCHEDULES FOR EXEMPT EMPLOYEES

Exempt employees work at the discretion of their department head or the City Manager and may be required to work hours in excess of the normal work week. Exempt positions are not eligible for overtime payment or the accrual of compensatory time. Therefore, the department head may define the work hours and hold the employee accountable to a specified schedule without affecting the exempt status under the FLSA.

The department head shall be available and accessible during the City's core business hours, as well as outside of those established hours as needed to ensure City services and programs are available.

C. WORK SCHEDULES FOR NON-EXEMPT EMPLOYEES

Non-exempt employees in all City departments will observe a forty-hour workweek. Directors, with approval of the City Manager, may establish the work schedules for their non-exempt employees based on providing the most comprehensive customer service to the public and to internal customers.

For purposes of calculating overtime under the FLSA, the work week begins on Sunday at 12:00 a.m. (midnight) and ends on Saturday at 11:59 p.m., except for fire shift personnel. This work week is defined for all types of shifts with the exception of a 9/80 schedule which has a workweek defined as beginning on Friday at 11:00 a.m. or 11:30 a.m. and ending on Friday at 10:59 a.m. or 11:29 a.m.

Non-exempt employee positions shall record each workday separately with respect to hours worked. Any hours worked outside of a normal work week schedule must be recorded on the time clock applicable to each workday. As set out above, any overtime must be approved in advance in writing, by a supervisor. If an employee leaves a work site periodically during the workday for personal reasons, the employee shall reflect the lost time on the time clock (i.e. vacation, sick leave, compensatory time, etc.). Hours must be recorded in increment of .25, (i.e. .25, .50, or .75).

The above referenced work schedules are defined to provide direction to employees, supervisors, and Payroll. However, there may be other work schedules based on the unique services provided by individual departments. All work schedules are to be defined and approved according to this policy, and Payroll is to be notified two weeks before they are implemented.

D. OVERTIME

All employees may be required to work overtime when necessary as determined by departmental management. All overtime must be pre-approved. Specific overtime assignments shall be rotated and allocated as evenly as possible among employees qualified to do the work. Employees are expected to respond to a reasonable request to work overtime and may be subject to disciplinary action for failing to stay or report for overtime work.

Any overtime work performed outside of an employee's normal work week must be promptly recorded and documented for purposes of maintaining an accurate payroll as set out below. Overtime shall only be granted with prior consent by the Supervisor and must be recorded and approved on the time sheet. Hours must be recorded in increments of .25, (i.e. .25, .50, or .75). Employees who work overtime without authorization are subject to disciplinary action, up to and including termination. By issuing an employee a PDA, cell phone, laptop or any similar remote access device, the City does not give such employee permission to work outside of a normal work week schedule and any overtime work involving such equipment also must be approved in advance.

1. Non-exempt employees (excluding shift firefighters) shall receive overtime at the rate of 1-1/2 hours for each hour of time worked in excess of 40 hours in a workweek. Shift firefighters will be paid one and one half times the regular rate for each hour worked in excess of 106 hours in any given work period. Overtime may be compensated in one of two ways: accrual of compensatory time or overtime payment (see 4.04 Overtime Pay Procedures).
2. Non-exempt employees, who are being paid overtime or provided comp time, are responsible for notifying their immediate supervisor if their normal work assignment cannot be completed within the established work hours, and shall not perform any work outside of their normal work week schedule unless expressly authorized do so in writing, in advance by a supervisor.

E. WAIVER PROHIBITED

The requirement that overtime must be paid after 40 hours a week or average 53 hours for shift fire personnel may not be waived by agreement between any employee and the City.

4.03 PAY PROCEDURES

A. BI-WEEKLY PAYROLL

The City of Tomball operates on a bi-weekly payroll system and paychecks are issued 26 times a calendar year, except every 7 years, there are 27 pay periods.

B. DIRECT DEPOSIT AND CHECK STUBS

Direct deposit offers a cost-effective way of ensuring that all employees are paid in a timely manner. Therefore, all employees are required to have direct deposit for their paycheck. Check stubs are given to employees on payday Friday. Each employee shall check each bi-weekly deposit confirmation for accuracy.

C. ERRORS IN PAY

It is the employee's responsibility to notify Human Resources, if the employee detects errors in a paycheck. This includes over and under payments, errors in deductions, and other information that would cause a discrepancy in the net or gross income of the employee. If an error occurs, which results in an overpayment to an employee, the employee will be required to reimburse the overpayment to the City. If the error occurs on the employee's final paycheck, corrections must be made in cash or cashier's check. If the error results in underpayment, the HR Department will rectify the problem as soon as possible, or no later than the next regularly scheduled pay period.

4.04 OVERTIME PAY PROCEDURES

Exempt positions are not eligible for overtime pay or the accrual of compensatory time. Human Resources shall maintain a listing of all positions, showing their designation as either exempt or non-exempt.

A. OVERTIME CALCULATIONS

Overtime is defined as those hours actually worked, by non-exempt employees during any FLSA-defined workweek, which exceed 40 hours specified for such workweek or exceeds 106 hours in a 14-day cycle for non-exempt shift firefighters.

Overtime will not be paid or accrued until the allowable number of hours has been surpassed for a given workweek regardless of the daily schedule of an eligible employee. All non-exempt employees who are directed to work after completing work beyond the normal 40 hour schedule or 106 hour schedule (shift-firefighters) will begin to accrue overtime hours to be compensated in one of two manners:

1. Compensatory time - accrued at an additional one and one-half times the hours worked; or
2. Overtime payments - paid an additional one and one-half times the hourly rate

B. COMPENSATORY TIME

1. ACCRUAL

Non-exempt personnel, excluding Police Officers may accrue a maximum of 80 hours of compensatory time for hours worked (53 hours of actual overtime worked). Non-exempt Police Officers and Firefighters may accrue a maximum of 160 hours of compensatory time for hours worked (106 hours of actual overtime worked). When compensatory time is used, it is not counted as time worked for calculation of overtime.

A non-exempt employee who has accrued the maximum number of compensatory hours for his/her position, shall thereafter be paid in money for any overtime hours worked until such time that the employee's compensatory time has been reduced below the maximum permitted (80 or 160 depending on position).

2. RECORD KEEPING OF COMPENSATORY TIME

   Payroll records shall reflect the number of hours of compensatory time earned and used by each non-exempt employee in each pay period. The regular timesheets will provide a record of all overtime, both paid and compensatory time earned and used.

4. PROMOTION OF A NON-EXEMPT EMPLOYEE TO AN EXEMPT POSITION

   When a non-exempt employee is promoted to an exempt employment status, the employee shall have the compensatory time balance cashed out prior to or at the effective date of the promotion.

C. OVERTIME AND LEAVE

If an employee works in excess of 40 hours during a regular workweek or 106 hours in a 14-day cycle for shift firefighters, the employee will be paid money or in compensatory time. Any paid vacation, personal or sick hours used by an employee during the same work week, will be calculated at the employee's regular rate of pay. In short, an employee will receive overtime compensation only after the employee has physically worked 40 hours during a regular work week or 106 hours in a 14-day cycle for shift firefighters. Vacation, Sick Leave, Holidays and Comp Time are not considered time worked for the purpose of calculating overtime.

D. OVERTIME AND HOLIDAYS

Employees, except for shift fire and police personnel, will be paid a rate of one and one-half times their regular hourly rate for the holiday hours worked. Shift police and fire personnel who are required to work on an official holiday will be paid a rate of one and one-half times their regular hourly rate for the entire shift that actually begins on the holiday. This is in addition to any holiday pay earned by the employee.

4.05 TIME AND PAY FOR ON-CALL, CALLBACK AND CALL OUT SITUATIONS

A. ON-CALL AND CALL BACK

On-Call time is not considered time worked and is not compensable at the employee's regular hourly rate of pay. On-call time is the time outside of regularly scheduled working hours when an employee is assigned to be available for callback. The employee is free to pursue personal activities but must respond to summons (paging, telephone or radio) within designated guidelines determined by the Director. Employees must abide by the guidelines set out in the Drug-Free and Alcohol-Free Workplace Policy of this manual. An employee may receive a stipend at the rate determined

Callback time is generally defined as the time the City requires an "on-call" employee to return to work on an unscheduled or emergency basis to work outside of the employee's regularly scheduled work hours. However, there are times when the "on call" employee must call in another employee with a particular expertise to fix an issue. This person is also considered to be on "call back" under this policy. The time that a non-exempt "on-call" employee is assigned to callback time will be considered as hours worked if during that time the employee is required to perform the employee's regular duties. When an employee is on an "on-call" status and is called to work, compensation will be given to the employee as defined below:

1. Return to the employee's usual place of work: any time worked less than 2 hours, will still be deemed as 2 hours of work, in accordance with the Fair Labor Standards Act. Any incident exceeding two hours will be paid according to the length of time requiring the employee's attention.

2. Remain near a telephone at a fixed location

The following provisions also apply to call back time and pay:

- Call back time does not change the number of hours scheduled as on call.
- If a non-exempt "on-call" employee is subject to callback, any hour(s) worked during the period of callback will be paid at the employee's overtime rate, regardless of the actual number of hours worked in the workweek.
- Call back pay is not associated with time where employees are asked to remain at work, or held over for a shift. If an employee is asked to remain at work after their shift, pay will be subject to the Fair Labor Standards Act guidelines.
- Exempt employees are not eligible for callback pay.

Departments can make their own policies concerning what positions will be mandated for "on-call" duty and what the length of response time must be for employees to return to the work site.

On-call time and callback time must be reported on the employee's bi-weekly timesheet, in accordance with the guidelines listed above.

B. CALL OUT

Non-exempt employees called back to work shall be paid at the rate of one and one-half times the regular rate of pay for the time worked, with a minimum of two hours of pay. The exception being where the call runs into the normal workday at which time a non-exempt employee's pay would change to straight time. The call out time is separate from the normal 40 hour work week calculation.

4.06 STEP-UP PAY, CERTIFICATION AND LICENSE PAYS

A. STEP-UP PAY

When an employee is temporarily assigned the duties and responsibilities of a higher classification, that employee may receive additional compensation if the assignment exceeds ten working days. The rate of pay will be determined by Human Resources and shall not exceed the range or position the employee is assuming.

B. CERTIFICATION AND LICENSE PAY

It is the policy of the City of Tomball to encourage its employees to participate in advanced training. Levels of training and certification for that training should be recognized. To properly compensate those employees who achieve required levels of certification and/or licenses, the city has adopted a certification and license policy which can be reviewed in the Human Resources Department at any time. When certification and license pay apply, eligible employees will only be compensated for the highest level of certification and degree level they achieve. Any changes to this policy will only be made during budget discussions depending on the funding levels that are available for the future year.

It is the employee's responsibility to notify their supervisor and provide documentation when they obtain a higher certification or education level, or if the certification or assignment pay no longer applies to their position. The supervisor will then notify the Human Resources Department.

4.07 TRAVEL TIME

A. COMMUTE TIME

Travel time at the beginning or end of the workday is not compensable. Generally, an employee is not at work until they reach the work site. This includes travel to offsite locations where the employee may have a temporary assigned worksite (i.e. training in Houston). However, if a non-exempt employee is required to report to work to pick up materials, equipment or other employees, or to receive instructions prior to traveling to the worksite, then the time from the worksite to the final destination is compensable. An employee who operates a City vehicle need not be compensated for commute time simply because the employee is driving the vehicle, so long as it is for the employee's convenience. A non-exempt employee who is directed to chauffeur other employees by his supervisors is entitled to compensation.

B. OVERNIGHT TRAVEL

Travel time is compensable when it occurs during the non-exempt employee's normal work hours. Moreover, if the travel occurs during the normal working hours of a non-exempt employee, even if on nonworking days (i.e. Saturday or Sunday for an employee who works Monday to Friday), the time is compensable. Travel time that occurs outside of regular working hours where the employee is a passenger and free to relax does not count as working time. However, if the non-exempt employee is required to drive or perform work, then the time is compensable.

C. TRAVEL AND EXPENSES REIMBURSEMENT

Please refer to the City of Tomball Travel and Expense Reimbursement Policy for information regarding travel and expenses reimbursement.

4.08 LIGHT-DUTY ASSIGNMENT

The City's return to work Light Duty Program is based on the belief that it is in the best interest of both the employee and the City for an employee to return to work in some capacity following an on the job-related illness, injury, or medical condition. Under this basis, Directors are instructed to work with Managers to identify possible Light Duty assignments. Attempts will first be made to provide Light Duty assignments in the department and division in which the employee currently works. If placement is not possible, then the Human Resources Department will attempt to place the individual in another department, based on physical ability skills and available assignments.

Light duty assignments are limited to those employees who have sustained an injury, illness, or other medical condition on the job. If an employee is unable to work at full duty capacity due to an injury, illness, or other medical condition, but is able to work in some capacity, they may be eligible for light duty.

The employee's treating health care professional must have the expectation that the employee will be able to work in a full-duty capacity. The employee must obtain a Doctor's Note from the health care professional that releases the employee to perform the assigned duties and submit it to Human Resources. For the 1st six months after the injury or onset of illness, an employee must provide medical documentation to Human Resources, in 45-day increments in order to remain on light duty. The supervisor shall provide Human Resources with the light duty job requirements.

An employee who is released to return to work in less than a full-duty status by the health care professional may be required to work in a position or department other than his normal position or department. The City will consider returning the employee to work in a light duty work assignment resulting from a vacant position or work overflow.

Work duties will be assigned in accordance with the employee's limitations and knowledge, skills, and abilities and the needs of the City. No Light Duty will be assigned unless a health care professional's release is provided.

A. EMPLOYEE RESPONSIBILITIES ON LIGHT DUTY

An employee with a light duty assignment will be required to continue to present progress reports to their supervisor after each doctor's visit that states the employee's progress and the expected date of return to full duty.

Employees with a light duty assignment may not work any second jobs that conflict with the restrictions set forth by the health care professional. This will be in effect until the employee is released for full duty by their health care professional.

An employee's participation in the Light Duty Program may be suspended and/or terminated for the following reasons:

1. The treating health care professional temporarily prohibits the injured employee from continuing with a Light Duty assignment.
2. There is no longer any assignment available within the City which can be performed by the injured employee, given their current restrictions.
3. The treating health care professional indicates that the injured employee has reached maximum medical improvement and will not be able to return to their prior position with or without reasonable accommodation, in any reasonable foreseeable timeframe.
4. An injured employee has been on a light duty assignment for a period of 6 months, which is the maximum time allowed any employee to remain on Light Duty work without a recommendation of extension from the Assistant City Manager/City Manager.
5. The employee fails to comply with departmental policies and procedures, or any City policies and procedures.
6. If the employee fails to perform the assigned tasks, the employee will be removed and may be subject to disciplinary action.
7. The employee fails to comply with the terms and conditions of the Light Duty Program and/or fails to meet acceptable work standards and performance levels of the assigned position.
8. The City cannot make reasonable accommodations that meet the restrictions as outlined by the health care professional.
9. The health care professional releases the employee for full-time, regular duties without restrictions.
10. If work assignments conflict with restrictions.

The employee participating in the Light Duty Program will discuss with the supervisor the hours to be worked, not to exceed a 40 hour workweek.

The employee will be required to wear appropriate dress for the light duty assignment. This will be left to the discretion of the employee's assigned supervisor and in the case of Police and Fire personnel, the department's supervisor or the Chief's approval.

When possible, the employee shall attempt to schedule medical treatment or physical therapy appointments in an effort to minimize the interference with the employee's work schedule. It is the employee's responsibility to promptly return to work after Light Duty medical treatments or physical therapy appointments scheduled during normal work hours or to notify the Light Duty supervisor if unable to do so following each appointment with a health care professional.

B. DIRECTOR'S, MANAGER'S, SUPERVISOR'S RESPONSIBILITIES IN REGARDS TO LIGHT DUTY

1. It will be the Director's/Manager's responsibility to assign an employee to light duty in the employee's regular department/division, whenever possible. If light duty is not available within the employee's Department/Division, Human Resources will survey other Departments for suitable light duty assignments.
2. All light duty job offers must be made in writing.
3. It is the responsibility of the Director's/Manager that receives an employee on the Light Duty Program to:
    a. Supervise the work of the light duty employee so that the performance standards of the assigned positions are met.
    b. Notify Human Resources if the light duty employee fails to meet the performance standards of the position.
    c. Notify Human Resources of any physical compliance rules or restrictions not adhered to by the light duty employee.

4.09 PROBATIONARY PERIOD

A. PURPOSE

The purpose of the probationary period is to allow newly hired full-time employees and the City the opportunity to measure and evaluate their satisfaction with the working relationship. At any time the employee or the City has the right to terminate the employment relationship, with or without notice, with or without cause. The City also retains the right to change any terms, conditions, benefits or privileges of employment at any time without notice. No employment contract either expressed or implied shall exist between the City and the employee for any duration, either specified or non-specified, during the introductory period.

B. LENGTH OF PROBATIONARY PERIOD

The length of the probationary period is as follows:

1. All full-time employees, excluding Police Officers, shall complete a probationary period of six months from the date of hire.
2. Police Officers shall complete a one-year probationary period from the date of hire.

At least 30 days before the end of the probationary period, the Supervisor must begin reviewing the employee's performance. At that time, if it is determined that the employee's performance is not satisfactory, the employee will be terminated from employment before the end of the probationary period. If it is determined that the employee's performance needs further evaluation, the Supervisor/ Director may, before the end of the Probationary Period, recommend to extend the employee's Probationary Period as provided below.

C. EXTENSION OF THE PROBATIONARY PERIOD

At the discretion of the Supervisor and Director and with the concurrence of the Director of Human Resources, an employee's Probationary Period may be extended up to six months.

D. POSITION CHANGES (INTERNAL MOVES)

Probationary periods will apply to all full-time employees that have a change in jobs (through reclassification, promotion, demotion, or reorganization) and are subject to a 6-month probationary period. At the end of 6 months in the new position, the incumbent will receive a 6-month review to be documented as a periodic update in the performance evaluation system. The 6-month review is not subject to an increase in pay, but is to determine if an employee can continue in the position. If the employee is not performing satisfactorily, they are subject to disciplinary action.

An employee who changes positions (through reclassification, reorganization, demotion, or promotion) may not transfer or change jobs within the first 6 months of the action without the consent of their Director.

4.10 EMPLOYEE PERFORMANCE AND DEVELOPMENT SYSTEM

The performance evaluation is a measurement of an employee's work performance over a period of time. The performance evaluation is also a developmental tool that is used as a means for the supervisor to communicate to the employee essential job factors, skills, expectations, and at what level the employee should be performing.

The City will evaluate employees at least annually. This evaluation will include a discussion between the employee and his/her immediate supervisor to determine goals and evaluate progress toward better performance and personal development. Performance evaluation results are used in determining merit increases and promotions. An employee's immediate supervisor will complete written performance evaluations with final written approval by the Department Head or City Manager. Employees will be given a copy of the evaluation prepared by their supervisor.

Salary increases may be given to reward individual performance are subject to budgetary guidelines established by the City.

A. ELIGIBILITY

All full-time and part-time employees shall be evaluated based upon a performance plan, to include the City's guiding values, mandatory job factors, and/or leadership and other criteria developed by the Supervisor and the employee. Employees hired during the last quarter of the fiscal year will not be eligible for a merit increase until the annual review the following year.

Supervisors shall review staff evaluations with the Director/Manager prior to discussing with the employee as part of the department calibration stage of the evaluation.

B. ANNUAL PERFORMANCE EVALUATION

An employee receiving a "Marginal" rating on their annual evaluation will not receive an adjustment to pay and will be placed on a Performance Improvement Plan and given 90 days to improve. If at the end of the 90-day period, the employee's performance improves to "Proficient", the employee will continue employment with the City and may be eligible to receive an adjustment from the date of the "Proficient" rating. The employee's next evaluation will be on the next common review date and may be eligible for an adjustment based on performance for the entire previous 12 months.

Upon the re-evaluation, if performance is still rated as "Marginal" the employee is subject to disciplinary action, up to and including termination, in accordance with directions provided by this policy and the Human Resources Department.

C. PERFORMANCE IMPROVEMENT PLAN

Employees may be disciplined for conduct or performance or a combination of the two. At any time, if an employee's performance falls below expected levels the employee may be placed on a Performance Improvement Plan and given 90 days to improve. If at the end of the 90-day period, the employee receives a rating that is below "Proficient", the employee is subject to disciplinary action, up to and including termination, in accordance with directions provided by this policy and the Human Resources Department.

D. EMPLOYEE EVALUATIONS WHILE ON LEAVE OF ABSENCE

If an employee is out on an approved leave of absence, including but not necessarily limited to, leave due to an on-the-job injury, FMLA leave, or Military leave, then the employee shall be evaluated based on their performance while at work. However, merit pay will be based on the evaluation rating, as if the employee were at work the entire evaluation period. If an employee is out the entire evaluation period, then the supervisor will use the previous evaluation period rating. Any salary increase shall occur on the effective date of the change.

4.11 PAY PLAN AND COMPENSATION GUIDELINES, AND JOB DESCRIPTIONS

A. COMPENSATION PHILOSOPHY

The City maintains a position classification system for all workers in an effort to apply sound principles of measurement to determine an internally equitable market value of each position in the City. The request for new classifications will occur during the budget process each year.

The City's compensation program will provide compensation opportunities (direct pay and indirect pay, career opportunities, benefits, etc.) that are a blend of those offered by its competitors.

Each job classification in the City will be assigned to the pay structure and will have a pay grade defined by the minimum and maximum dollar limits. The pay grade defines the pay opportunities for the job.

Pay structures shall be reviewed periodically to reflect the city's changing competitive position, economic conditions, and compensation objectives; and shall be subject to the budgetary guidelines established by the City.

B. ESTABLISHMENT OF PLAN

The City Council shall establish the pay plan annually during the budget process, which includes compensation and salary structure recommendations made by the City Manager or his designee. One of the functions of the budget process is to consider the competing priorities for limited revenue resources. It may be determined that the City's current financial status cannot support the total cost. Conversely, in a positive financial condition, the City may consider increasing the percentages allotted. The financial status will affect both structure adjustments and individual salaries during any future fiscal years.

Generally, when any salary structure is adjusted, the employee's salary will be adjusted in order to maintain the employee's position in the structure. In addition, the employee may receive a budgeted merit increase. Conversely, if the City's financial status cannot support a structure adjustment and a

merit increase in the same year, the City may elect to adjust the structure one year and in the following year provide a merit increase to employees with no structure adjustments, or may elect to maintain the current pay structure until conditions change.

C. SALARY RANGES

Each position in the City has a salary range defined by minimum and maximum salary limits and a midpoint. The salary range defines the pay opportunities for the job. The salary ranges and midpoints are to be reviewed and revised to reflect changing competitive positions, economic conditions and compensation objectives.

Employees shall not be paid less than the minimum of the pay grade established for their position and increases shall not provide for employee salaries to exceed the maximum of the pay range for their position. The midpoint of the range is equivalent to the average salary paid in the market, with the basic compensation philosophy that an employee should be at or near the midpoint of the range when he or she has attained five years of tenure in the position.

Employees whose salary is at or above the maximum of their pay grade will be "frozen" until the structure "catches up" with the individual's rate of pay. Employees at the maximum of their pay range may, with the approval of the City Manager and as provided for in the budget, be eligible for lump sum payments that are not included in the base pay of the employee. The pay described above is nonrecurring, and will not extend beyond the end of the fiscal year in which such pay is authorized, and will be tied to satisfactory job performance.

D. JOB DESCRIPTIONS

The job description provides a general summary of the purpose, essential duties, responsibilities and requirements of a position. It is not intended to be a comprehensive listing of all tasks associated with the position nor an implied contract between the City and the employee. Job descriptions are required for all positions and will define the position as exempt or non-exempt.

The main objectives of the job description are:

1. To serve as a means of communication between the supervisor and the employee to clarify the responsibilities and expectations of the job;
2. To serve as the main resource to determine the salary range;
3. To serve as the basis for the annual performance appraisal;
4. To identify minimum qualifications and applied skills, as well as knowledge and ability for the purpose of recruitment, selection, promotion and training.

Employees are hired on the assumption that each employee will "perform other work related duties as required" that may not be specifically spelled out in their job description.

4.12 MAINTENANCE OF CLASSIFICATION AND PAY PLANS

The Human Resources Department, assisted by the Department Heads, shall have primary responsibility for maintaining the classification and pay plans. All changes in job duties of a position and job classification of a position must be approved by the City Manager.

Department Heads and supervisors have a duty to report substantial changes in the duties and responsibilities of positions under their control, so that classification adjustments may be made.

The City Manager shall recommend to the City Council changes in the pay plan necessary to keep the City policy current, uniform and equitable. Recommended changes in pay policy shall be effective when the budget containing said changes is approved by City Council.

4.13 PROMOTIONS

It is the policy of the City to encourage and provide opportunities for promotion. Each employee is responsible for monitoring vacancies and is encouraged to apply for vacant positions, in which he/she is interested in and for which he/she is qualified. A promotion is defined as the assumption of job duties and responsibilities that are higher in character and scope than the previous job. A promotion occurs when the new job is of a higher salary range than the prior job and is accompanied by a job title change.

When a non-exempt employee is promoted to an exempt employment status, the employee shall have the compensatory time balance cashed out prior to the effective date of the promotion. Payment shall be made at the employee's rate of pay on the effective date of the cash out.

General guidelines relating to advancement or promotion are as follows:

1. If an employee is promoted, the resulting salary increase shall be at least an amount sufficient to reach the minimum salary range for the new job. If the current rate of pay is more than the maximum rate of pay for the new classification then the pay shall remain the same.
2. Promotions are subject to a six month probationary period. If the employee fails to meet the established performance standards, he/she may return to his/her previous position or a similar position, if a position is available.
3. Part-time employees promoting into a regular full-time position will use the new start date in their full time position as their accrual date for benefits.

4.14 LATERAL TRANSFERS

A lateral transfer is movement from one position to another position within the same pay range. In the event an incumbent is transferred, whether voluntary or involuntary, to a position with the same pay range, the incumbent shall remain at the same salary. A lateral transfer will require a six-month probationary period.

4.15 DEMOTIONS

A demotion occurs when an employee moves from one job position to a position of a lower salary range and therefore, may result in a lower salary based on the minimum and maximum of the salary range for the position.

4.16 REORGANIZATIONS

An employee may be transferred, have a job title change or have a salary increased or decreased due to a department or City-wide reorganization.

4.17 REDUCTION-IN-FORCE

From time to time economic conditions or the changing staffing needs of the City create situations which will require a reduction in force or layoff from specific positions.

SECTION 5 – EMPLOYEE BENEFITS AND SERVICES

The City of Tomball provides a benefits program for its full-time employees. The actual terms of coverage are as described in the individual summary plan documents, and the summary provided below is only to inform employees of the general benefits and procedures in a more concise manner. The terms of coverage are subject to periodic revision. All benefit guides and plan summaries can be obtained through the Human Resources Department.

5.01 ENROLLMENT AND PLAN YEAR

Full time employees are eligible for health and dental benefits and will be advised of group medical plans, dependent coverage availability, as well as current premium costs, during orientation. Employees and their eligible dependents will usually be covered on the 1st day of the next month following the start of employment. Group health plans operate on a fiscal year basis, beginning October 1 and ending September 30. Open Enrollment for the upcoming plan year occurs in September of each year. Once elections have been made to participate or not participate in the group health plans, no change or revocation may be made in that election until the next open enrollment period, except in the case of a qualifying event, as defined by the Internal Revenue Code. Premiums for group and voluntary plans are deducted bi-weekly from the employee's paycheck.

5.02 GROUP HEALTH PLANS

A. GROUP MEDICAL AND DENTAL PLANS

Full time employees are eligible for health and dental benefits and will be advised of group health and dental insurance plans, dependent coverage availability and current premium costs during orientation. The City offers a choice of group health plans to full–time employees, and their eligible dependents. Employees and their eligible dependents will usually be covered on the first day of the next month following the start of employment with the City. An employee's spouse who is eligible for medical and/or dental insurance at his/her place of employment will not be eligible for medical and/or dental insurance provided by the City of Tomball. See Plan Documents for specific information concerning coverage.

B. GROUP VISION CARE PLAN

Employees may elect vision insurance for themselves and their eligible dependents. The cost of coverage for this optional product is deducted from the employee paycheck on a bi-weekly basis.

5.03 LIFE INSURANCE AND ACCIDENTAL DEATH & DISMEMBERMENT (AD&D)

A. GROUP LIFE AND AD&D

Full time employees will be provided Term Life Insurance and Accidental Death and Dismemberment Insurance (AD&D) with a minimum value of 1 x base salary.

B. OPTIONAL LIFE AND AD&D

Employees may elect additional life insurance with or without an accident and dismemberment provision for themselves and their spouse and children. All costs for additional coverage are the responsibility of the employee. The cost of coverage for these optional products is deducted from the employee paycheck on a bi-weekly basis.

5.04 LONG TERM DISABILITY

A. LONG-TERM DISABILITY

The City of Tomball provides all full time employees with Long-Term Disability Insurance.

If an employee becomes disabled as defined by the terms of the policy, they would be eligible to receive a monthly benefit of 60% of their basic monthly income, to a maximum benefit as defined by the plan. There is a 90-calendar day elimination period, meaning benefits would begin on the 91st day for a disability related to an accident or an illness. The plan provides for a coordination of benefits, and disability payments are reduced in coordination with other benefits such as workers' compensation, or other similar compensation.

5.05 FLEXIBLE SPENDING ACCOUNT

Eligible employees have the option of participating in a Flexible Spending Plan that allows the employee to contribute pre-tax salary to an account. Money allocated in this account can be used to reimburse the employee for medical, dental and prescription co-payments, uncovered medical or dental charges and dependent care coverage. Employees make an annual determination on the amount to be allocated to this account. Once the employee makes a decision to participate, the decision cannot be revoked unless the employee has a qualifying event or during annual enrollment. Unused funds revert to the City annually.

5.06 EMPLOYEE ASSISTANCE PROGRAM

The Employee Assistance Program (EAP) is designed to provide full-time employees and their dependents with professional, cost-effective assistance in resolving difficult personal problems. An individual's voluntary involvement in the EAP is confidential.

5.07 TEXAS MUNICIPAL RETIREMENT SYSTEM (TMRS)

A. RETIREMENT SYSTEM

The City of Tomball participates in the Texas Municipal Retirement System (TMRS).

B. ELIGIBILITY AND VESTING

Upon hire, all full-time employees become a member of TMRS. Participation on TMRS is mandatory if the employee's position normally requires them to work at least 1,000 hours per year. The vesting period is five (5) years.

C. CONTRIBUTIONS

Seven percent (7%) of an employee's gross salary is automatically deducted from their paycheck. The employee contribution is tax deferred. The City matches employee contributions at 2:1.

D. SEPARATION FROM EMPLOYMENT

If at separation, an employee is not vested in TMRS, the employee may either choose to:

1. Leave the money in the retirement system for up to five years, or
2. Withdraw the employee's contributions plus any accrued interest in a lump sum, less appropriate taxes, or
3. Roll the employee's contributions plus any accrued interest into a qualified retirement plan.

If at separation, an employee is vested in TMRS, the employee may either choose to:

1. Leave the employee's contributions plus interest in TMRS and receive a pension when qualified; or
2. Withdraw the employee's contributions plus interest in a lump sum, less appropriate taxes; or
3. Roll the employee's contributions plus interest into a qualified retirement plan.

E. RETIREMENT OPTIONS

An employee is eligible for retirement from TMRS if one of the following qualifications is met:

1. Five (5) years of service and at least 60 years old; or
2. Twenty (20) years of service, as defined by TMRS

F. DEATH BENEFIT

1. Should an employee die while still in the City's employment, TMRS provides a death benefit to the employee's beneficiary approximately equal to the employee's current annual salary.
2. Retirees are provided a death benefit in an amount set by TMRS.

G. DISABILITY

1. If an employee can no longer perform his or her job at the City as a result of an illness or injury, TMRS may provide an occupational disability retirement, regardless of whether the age or service requirements have been met. An Occupational Disability is based on the employee's deposits and interest, the city's matching funds, and other credits.

H. UNPAID LEAVE STATUS

1. If an employee is on unpaid leave status and has exhausted all accrued leave benefits, the employee will not be able to contribute to TMRS. If this occurs, TMRS requires an employee to request an extension of his/her Supplemental Death Benefit and have it approved by the TMRS Medical Board.

5.08 RETIREMENT AND BENEFITS

Employees hired on October 1, 2014 and thereafter:

A. A retiree and his or her covered dependent(s) may be eligible for continued health insurance coverage through COBRA according to regulatory requirements. Retirees may not add dependents after retiring. Retirees are responsible for all costs, including premiums and administrative fees, associated with COBRA benefits. Retiree/Dependent COBRA benefits will be terminated if the City (or the City's Third Party Administrator) does not receive the required contributions by the due date.

B. Retirees may elect to seek health insurance through the state-based insurance exchanges after their creation by 2014 as currently mandated by the Patient Protection and Affordable Care Act ("APA" or "Act").

Employees hired prior to October 1, 2014:

A. RETIREE HEALTH BENEFITS

In order to recognize and reward long-term employees, as well as to provide an incentive for remaining in the City's employment, the City may pay a portion of the premium for continuation of the medical and dental coverage of certain retirees. Enrollment for retiree coverage must be completed no later than 30 days after the date of retirement. Later enrollment is not permitted. Any retiree eligible for medical coverage with another group plan shall not qualify for medical coverage with the City of Tomball.

Any employee hired on or after October 1, 2014, will no longer have any portion of their retiree health benefits paid for by the City. The eligibility requirements and premiums listed below, only apply to full-time employees hired prior to October 1, 2014.

B. ELIGIBILITY

In order to be eligible for this benefit, the retiree must meet the following criteria.

1. Retiree must be vested, age 55 or older and a current recipient of retirement benefits from the Texas Municipal system.
2. Retiree must have been a full time employee of the City of Tomball for 10 consecutive years immediately prior to retirement.
3. Retiree must satisfy the applicable plan requirements for the extension of retiree coverage under the medical and dental insurance benefit plan offered by the City at the time of retirement.

C. PREMIUMS

Beginning with retirement and ending when the person is eligible for Medicare coverage, the City may pay a portion of the retiree medical and dental coverage premiums in accordance with the following schedule.

1. The City may pay 40% of the premium costs for retirees having at least 10 years, but less than 15 years, of full time service with the City.
2. The City may pay 55% of the premium costs for retirees having at least 15 years, but less than 20 years, of full time service with the City.
3. The City may pay 70% of the premium costs for retirees having at least 20 years, but less than 25 years, of full time service with the City.

4. The City may pay 85% of the premium costs for retirees having at least 25 years of full time service with the City.

Eligible retirees shall pay 100% of vision premiums and 100% of the premiums for basic life insurance, which is currently $2,000.

D. RETIREE DEPENDENT COVERAGE

Presently, a retiree's spouse and dependent(s) are also eligible for continued coverage if they are already covered at the time of retirement. Retirees may not add dependents after retiring. Each retiree is responsible for all costs, including premiums, associated with spouse and dependent benefits. The benefit includes the same medical coverage approved by Council and selected for current employees and excludes accidental death and life coverage.

E. MEDICARE AGE

The City of Tomball will no longer pay any retiree premiums once the retiree is eligible for Medicare coverage. Retirees who are eligible for Medicare coverage may, at their sole expense, continue to purchase coverage for themselves and their eligible dependents as provided under the applicable terms of City's policies. The City's policy will be a secondary policy to Medicare.

F. ANNUAL CERTIFICATION

Retirees, including covered spouse and dependents, shall certify their eligibility for continued health insurance benefits on an annual basis. The City will provide a Certification form to all retirees enrolled in the City's health plan, which must be returned by the chosen deadline. Failure to provide the Eligibility Certification form by the deadline will result in discontinuation of coverage.

5.9 SOCIAL SECURITY AND MEDICARE

The City of Tomball does participate in the Social Security and Medicare system.

5.10 WORKERS COMPENSATION

The City provides workers compensation coverage to all employees for job related injuries or occupational illnesses suffered by the employee while acting in the course and scope of their position. If an employee sustains a job related injury, the injury is to be reported immediately to the employee's supervisor or department head by the injured employee and any employee that provides assistance to the injured employee. A first Report of Injury Form is also to be immediately completed. To the extent provided by State law, worker's compensation insurance will cover medical expenses for treatment of such job related injuries. In order for the medical expenses to be paid, the employee must follow the appropriate guidelines issued by our worker's compensation carrier.

REMEMBER: Employees should never pay for treatment or prescriptions associated with the injury. **Employees should never use their personal insurance card for a work related injury.**

Administrative Leave will be provided for the first seven days for a worker injured in the course and scope of employment. Once the employee misses seven calendar days, the injured employee becomes eligible for temporary income benefits as required by the Texas Workers' Compensation Act. Temporary Income Benefits are approximately 70% of an employee's average wage during the previous 13 weeks. If the

absence is due to a serious health condition, the workers' compensation leave will run concurrently with Family and Medical Leave. After seven calendar days of missed work the employee may be eligible for wage continuation payments. More information is available in the Human Resources Department.

If an employee is absent due to an on the job injury or illness, the injured or ill employee will continue to accrue sick and vacation leave benefits for the first three months of the injury or illness. Accruals will cease after three months and until the employee returns to work.

5.11 OPTIONAL 457 PLANS

A. DEFERRED COMPENSATION PROGRAM

Deferred Compensation (Internal Revenue Code 457, Section (b)(2)) is a voluntary benefit available to public sector employees only and is not available to employees in the private sector. All full-time employees of the City are eligible to participate in the Deferred Compensation System.

This program allows public sector employees to defer a portion of their income and the taxes on that income to build a bigger fund for supplemental retirement income. The plan administrator sets the minimum that you may contribute to a Deferred Compensation plan and the maximum contribution is set annually by the Internal Revenue Service.

B. ROTH IRA

The IRS regulations have been updated to allow public employers to offer ROTH IRA's to employees through payroll deduction. Deductions into a ROTH IRA are deducted from the employees pay check after-tax and are subject to all IRS regulations.

C. DISCONTINUATION AND WITHDRAWALS

Employees participating in a deferred compensation program may begin and/or discontinue contributions to the program at any time. Money contributed toward Deferred Compensation can only be withdrawn following separation of employment with City of Tomball, or in the case of an emergency. The Internal Revenue Code 457 defines circumstances that qualify for an emergency.

5.12 CONSOLIDATED OMNIBUS BUDGET RECONCILIATION ACT OF 1985 (COBRA)

The Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA) became effective on April 7, 1986. Through COBRA, the City of Tomball employees and their dependents, who are currently enrolled in qualified group benefits, are afforded an opportunity to extend those benefits at 102% of the established monthly premium (subject to change from time to time) in situations by which the benefits coverage would otherwise end. The length of COBRA varies depending on the nature of the qualifying event, but could range between 18 and 36 months.

5.13 TUITION REIMBURSEMENT PROGRAM

The Tuition Reimbursement Program is provided for eligible full-time employees to supplement the cost of obtaining degrees that will help them in their current job or in future jobs with the City. The Human Resources Department will administer the program and review all reimbursement applications.

A. ELIGIBILITY

This program shall apply to all regular, full time employees in good standing, who have completed two (2) years of employment with the City, are eligible to apply for tuition reimbursement for courses begun after the two-year anniversary. This policy shall apply to degree related programs only from an accredited (see HR for the list of acceptable accreditations) college, university, or technical school and will cover associate degrees, undergraduate bachelor's degrees and master's degrees. Employees will be limited to one degree per level (i.e. bachelors, masters). The courses and/or degree programs must relate to the employees' current positions, or to career paths with the City that they may be reasonably following in the near future.

B. SCHEDULING

Employees are responsible for scheduling classes that will not conflict with their work schedule. The Department Director has the option of altering the employee's work schedule if special circumstances are warranted. Employees shall not be permitted to attend courses under this educational reimbursement program during work hours unless authorized by the City Manager. Employees attending courses under this educational reimbursement program shall not be compensated for their course work as hours worked.

C. REIMBURSEMENT AMOUNT

The City shall reimburse the employee the cost of the tuition, lab fees, books and other mandatory fees for courses directly related to their degree plan. Reimbursements shall not include miscellaneous expenses such as late fees, travel expenses, out of district fees, parking fees, finance fees, health center fees, athletic fees and deposits, etc. Employees must earn a grade of "C" or better in undergraduate classes and a "B" or better in graduate classes to receive this benefit. It is not the policy of the City to reimburse the cost of tuition and fees for any individual who is receiving or is eligible to receive assistance from such other sources as scholarships, grants and other subsidy programs (e.g. G.I. Bill).

The availability of tuition reimbursement is subject to City Council approved funding levels. The total amount of annual tuition reimbursement (not to exceed $4,000 in a calendar year) will be established annually, as part of the budget process based upon anticipated participation and available funding. The training needs of the department as a whole will be considered before individual requests for tuition reimbursement are added to the budget.

D. SERVICE REQUIREMENTS/REPAYMENT OBLIGATIONS

Requirements for continued service with the City after course completion are an assurance that the City will benefit from employee participation in the program. If an employee leaves City employment for any reason before a service requirement is completed, the employee must repay to the City all or part of the tuition that was paid to the employee.

A two (2) year service requirement begins on the reimbursement check date. A separate two-year service requirement must be completed for each reimbursement payment made to the employee. If the service requirement is not completed, the debt will be paid in one of the following ways:

1. If the employee has worked less than one year of the service requirement, the employee will

repay to the City the full amount of the reimbursement payment made to the employee.

2. If the employee has worked at least one year, but less than two years, of the service requirement, the employee will repay to the City 50% of the amount of the reimbursement payment, made to the employee.

A service requirement is **not** an assurance of continued employment by the City.

If a termination of employment occurs (voluntary or involuntary) and the employee owes a repayment amount, and the employee does not otherwise repay the amount, the employee agrees to have the repayment amount deducted from the employee's paychecks that are issued after the termination decision occurs.

E. APPLICATION

To begin participation in the Tuition Reimbursement Program, employees must notify their Department Head in writing by submitting a completed application for the program with proper signatures along with a degree plan from the school and tuition dollar estimates in time for the budget preparation workshops (usually in March) for the next fiscal year. All paperwork must then be forwarded to the HR department. This must be done each year for all classes to be taken in the next fiscal year.

To be considered for reimbursement, the course must be on the approved degree plan. Upon completion of a class, the employee must fill out a PA-7 listing course(s) taken on the comment line, attach a copy of the tuition receipt and a grade report, obtain the necessary signatures and forward the documents to Human Resources within 45 days of the completion of class. After reviewing the documents they will be forwarded to Accounts Payable for processing. All checks will be available for pick up in the Human Resources Department. The employee must sign a tuition repayment agreement before the check is released. **Requests for reimbursement received more than 45 days after the last day of class, and those without an application on file will not be honored.**

REMINDER: It is the employee's responsibility to complete all steps of the process within the specified deadlines. This includes Department Head approval and the time constraints placed on the Initial Application and on the deadline for submissions of an official grade report. The Human Resources Department will not be responsible for notifying the employee of deadline dates. Any required documentation or forms not submitted within the stipulated time frame will not be reimbursed.

5.14 TRAINING SCHOOLS

The City will pay appropriate costs for mandatory training for certification purposes, or to maintain such certification. The employee's Department Director must approve the training in advance.

5.15 LONGEVITY PAY

This policy applies to City employees employed full-time for a minimum of twelve consecutive months. Employees receive $5.00 per month for each year of continuous service. Longevity pay shall be in addition to an employee's base salary and shall be paid annually in December. Longevity pay is subject to TMRS and income tax withholding. Former employees who are re-hired will be paid longevity pay without regard to their prior employment, after the minimum 12 consecutive months have passed.

SECTION 6 – DISCIPLINE/GRIEVANCES/APPEALS

6.01 DISCIPLINE

It is the intent of the City of Tomball to compensate its employees fairly; to make all reasonable provisions for their safety and health; to provide adequate instruction, direction and equipment; and to treat all employees with dignity and respect. All employees are expected to work diligently and conscientiously for the benefit of the City as directed by their supervisors and maintain a high level of conduct on and off the job.

A. DISCIPLINARY GUIDELINES

The City of Tomball encourages the use and application of progressive discipline whenever practical. Accordingly, mild disciplinary action may be taken when an employee first has problems with attendance, work performance, or conduct that is disruptive or inappropriate in nature. If the employee fails to correct the problem, or develops other problems, more severe disciplinary action shall be taken. Using progressive discipline in such a manner maximizes an employee's opportunity to correct problems.

Utilizing progressive discipline, however, does not preclude or inhibit the City from exercising its right to impose severe discipline, including the immediate termination, of an employee, whenever such action is deemed appropriate. By providing for the possible use of progressive discipline, the City in no way has waived or altered the "At-Will" nature of employment with the City. While in most cases the disciplinary action taken will depend upon the degree of severity of the offense(s), the record of the offender, and the seriousness of the consequences of the offense(s), there are certain offenses, which will result in severe disciplinary action regardless of the disciplinary record of the offender.

The purpose of standard disciplinary procedures is to make it easier to be consistent by applying similar penalties for similar offenses. However, Directors, Managers, and immediate Supervisors have the discretion to take the totality of the circumstances into account when taking disciplinary action.

B. BASIS FOR DISCIPLINE

The specific descriptions following each general heading are examples of that type of conduct and are not intended to be all-inclusive. Offenses such as these listed below or violations of other City or department policies and/or procedures constitute grounds for disciplinary action, up to and including termination:

1. Unsatisfactory Attendance
    a. Unauthorized absences.
    b. Abuse of leave.
    c. Tardiness.
2. Unsatisfactory Performance
    a. Inability or unwillingness to satisfactorily perform assigned work.
    b. Failing to perform duties at an acceptable level.
    c. Failure to successfully complete a performance improvement plan.
3. Indifference Toward Work
    a. Inefficiency, negligence, loafing, carelessness, leaving work without permission, excessive use of City time for performing personal business during work hours, abuse of eating or rest periods, sleeping

(other than designated times for Fire Shift Personnel) or otherwise being inattentive during work hours, interfering with the work of others, mistreatment of the public or other employees.

b. Negligently causing damage to City property.

c. Failure to meet or maintain specified conditions of employment, such as failure to obtain a degree or obtain/maintain a license or certificate required as a condition for performing a job.

d. Misusing or failing to use delegated authority in performance of duties.

4. Dereliction of Duty

a. Failure to observe and follow the policies of the employee's department/office or the City.

b. Failure of an employee to take appropriate action when a violation of policies, rules, or regulations comes to his/her attention, regardless of the violator's assignment or position in the City.

c. Failure to promptly report or deliver to a Supervisor any property found by, confiscated by, or relinquished to an employee of the City without undue delay.

d. Failure to promptly report damage to City equipment or property of others.

5. Insubordination

a. Failure or refusal by an employee to perform assigned work or to fully comply with instructions or orders from a supervisor or other appropriate manager. This may include the use of abusive language, displaying of hostility, or indifference in response to supervision.

b. The following procedures apply in the event that an employee questions an order given by a supervisor:

If an employee believes that the instruction or order is improper, the employee should obey the order or instruction and question the order later in a reasonable manner.

If an employee believes an instruction or order, if followed, would result in personal injury or damage to City equipment, they should notify the supervisor who issued the order, or if necessary, request approval by another supervisor.

If an employee believes an instruction or order is illegal, they should immediately notify a supervisor above the supervisor giving the instruction or order.

c. Refusal to submit to corrective action or performance improvement as required by a supervisor.

6. Violation of Safety Rules

a. Improper removal of safety guards (e.g. fire extinguishers); failure or improper use of safety equipment; failure to follow safety practice rules, which includes failure or refusal to participate in required post-accident drug and/or alcohol testing; failure to report an on-the-job injury, vehicle accident, or unsafe condition on the day of the occurrence; smoking in prohibited areas.

b. Causing or contributing to an accident by operating City equipment in an unsafe or unauthorized manner.

c. Failure to notify supervisor, prior to reporting to work, of taking prescribed or over-the-counter drugs with a warning label.

7. Dishonesty

    a. Misuse of City property or funds.

    b. Falsifying or altering City documents.

    c. Any falsifying action detrimental to the City; cheating; lying to any City official or member of City Management, including the employee's immediate supervisor.

    d. Falsely reporting illness or injury, or otherwise attempting to deceive any representative of the City as to a health or medical condition. Falsifying origin of personal injury to collect workers' compensation. Misuse of paid or unpaid leave of absence.

8. Disturbance

    The City prohibits and will not tolerate employee conduct that is harassing, intimidating, threatening, or violent, including, but not limited to:

    a. Using confidential information in ways that may be detrimental to the City or to another employee.

    b. Entering City property for unauthorized reasons.

    c. Participation by an employee in a disturbance occurring on City property or while on duty.

    d. Harassment of or discourtesy to other City employees or citizens; creating dissension or discord between employees, or between employees and citizens.

    e. Use of abusive, profane, or threatening language; inappropriate or harassing comments, jokes, references, or mannerisms; threats of violence; physical challenges to fight.

    f. Horseplay; inappropriate or harassing physical contact; deliberately causing injury to fellow employees; attempted assault or assaulting of fellow employee(s); fighting on City property; possession of dangerous weapons, firearms, explosives without permission.

9. Misuse of City Equipment or Services

    a. Careless, negligent, or improper use of City property or equipment.

    b. Abuse, misuse, deliberate destruction, abandonment, or damaging of property, tools, facilities, or equipment belonging to other employees, citizens or the City.

10. Sabotage

    a. Deliberate damage or destruction of City equipment or property; advocacy of, or participation in, unlawful trespass or seizure of City property.

    b. Encouraging or engaging in illegal slowdowns, sit-ins, strikes or any other concerted effort to limit or restrict City employees from working.

    b. Falsifying, altering, or unauthorized destruction of City records.

    c. Willful waste of public supplies, service, or equipment.

11. Misconduct

    a. The violation of any federal or state law, rule, regulation, or City ordinance while on duty, or the violation of any federal or state law, rule, regulation, or City ordinance while off-duty, including a criminal act, that may have an adverse impact upon the City or on the public confidence in the integrity of City government, or on the relationship of the employee and other employees, or acts which reflect poorly upon the City's image.

    b. Theft of, aiding, or encouraging the theft of cash, City property, or equipment.

c. Operating or conducting illegal activity on the job or on City property.

d. Unauthorized charges against the City's account.

12. Taping

To assure the reasonable expectation of privacy in casual, business, or personal conversations, no employee, official or visitor may audio or videotape conversations of any employee, official, and/or visitor in City owned or occupied buildings and land, or through City owned or operated telephone equipment with the following exceptions:

a. City Council meetings (regular, special, and emergency) and workshops.

b. Public Hearings

c. Official Police Department investigations or official "stops" by police officers on duty.

d. Seminars. With the consents of the presenter.

e. Equipment demonstrations, with the consent of the demonstrator.

f. Employee counseling sessions and employee hiring and exit interviews with the knowledge and consent of all parties present.

g. Unless prior permission is granted by the City Manager.

13. Disqualification from Operating City Vehicles or Equipment

C. TYPES OF DISCIPLINARY ACTIONS

All or a combination of the following progressive disciplinary measures may be taken by supervisors. Supervisors will evaluate each situation and take the appropriate level of discipline. Some infractions may warrant skipping steps in the process.

1. Counseling

The Supervisor should document and verbally advise the employee of their unsatisfactory performance or conduct and recommend areas for improvement.

Counseling shall be administered soon after the time the unsatisfactory performance or misconduct occurs and documented informally in the employee's departmental file.

2. Reprimand

Reprimands are written memos given to employees for unsatisfactory performance, for policy, procedural, or conduct violations, or in instances where counseling has already been given and the violation has subsequently been repeated or where unsatisfactory performance has continued.

When a written reprimand is given, it is to be administered in a timely manner. The employee concerned is to be informed directly of the conduct, the rule it violates, the action being taken, the terms and conditions of that action, the consequences of that action, and consequences of future violations.

Supervisors shall provide the employee with a copy of the reprimand. Originals of all reprimands shall be sent to the Human Resources Department for inclusion in the employee's Personnel File.

3. Suspension or Involuntary Demotion

A suspension without pay or an involuntary demotion may be administered in situations where reprimands have been imposed for previous infractions or lack of performance, or in situations that are serious enough to warrant this level of discipline without prior discipline. Suspension of exempt employees must be in compliance with the Fair Labor Standards Act (FLSA).

4. Termination

   Termination may be the culmination of a progressive discipline or performance improvement process. Alternatively, termination may occur as the first disciplinary measure undertaken if the situation warrants it.

D. DISCIPLINARY PROCESS

Any Department Head who proposes to suspend an employee without pay, demote an employee, or terminate an employee is required before making a final decision, to give the employee notice of the proposed disciplinary action and an opportunity to respond. The employee must appear at the time indicated to give a verbal response to the proposed disciplinary action, but he or she also may submit a written response. The employee may accept the action or explain why the disciplinary action should not be taken. If the Department Head receives new information from the employee that may affect the disciplinary action, the Department Head should reconsider the proposed discipline in light of such new information, promptly conduct any investigation that is warranted, and then make a decision based on all of the information. After carefully considering the employee's response and any other new information, the Department Head may impose the disciplinary action as originally planned, modify such discipline, or forgo any discipline.

Department Heads must follow procedures outlined by the Human Resources Department in executing any documents of proposed or actual disciplinary actions.

E. PERFORMANCE IMPROVEMENT PLAN

Employees may be disciplined for conduct or performance or a combination of the two. At times performance is more predominantly the issue and for these instances a Performance Improvement Plan may be used in lieu of or in addition to other discipline.

1. Annual Performance Evaluation.

   An employee receiving a "Marginal" rating on their annual evaluation will not receive an adjustment to pay and will be placed on a Performance Improvement Plan and given 90 days to improve. If at the end of the 90-day period, the employee's performance improves to "Proficient", the employee will continue employment with the City and may be eligible to receive an adjustment from the date of the "Proficient" rating. The employee's next evaluation will be on the next common review date and may be eligible for an adjustment based on performance for the entire previous 12 months.

   Upon the re-evaluation, if performance is still rated as "Marginal" the employee is subject to disciplinary action, up to and including termination, in accordance with directions provided by this policy and the Human Resources Department.

2. Other Situations.

   At any time, if an employee's performance falls below expected levels the employee may be placed on a Performance Improvement Plan and given 90 days to improve. If at the end of the 90-day period, the employee receives a rating that is below "Proficient", the employee is subject to disciplinary action, up to and including termination, in accordance with directions provided by this policy and the Human Resources Department.

F. EMPLOYEE REPRESENTATIVES

An employee does not have the right to have a representative present during any interview involved in an investigation of misconduct of the employee or another employee. An employee has the right to have a representative assist or represent the employee at any stage of the disciplinary proceeding that applies to that employee after the employee has been given notice of a proposed disciplinary action.

6.02 GRIEVANCE

A grievance is a claim by an employee that he/she has been unjustly disciplined or has been adversely affected by a personnel decision. A grievance is an informal discussion, with the purpose of giving the grievant an opportunity to present his or her position on the matter. Everyone involved in the chain of command should listen and consider the grievance, but this is not intended to mean, nor shall it have the effect of requiring, that any written notice, any charges, any witnesses, or any response or written reasons for decisions be presented during or after the grievance process by the City.

Grievances may not be filed by probationary or temporary employees.

6.03 AGGRIEVED EMPLOYEES

An employee having a grievance relating to employment shall first present the grievance to his or her Department Head, either verbally or in writing. The grievance should be presented within three working days of the date of the occurrence which led to the grievance, or within three working days from the date the employee first had knowledge of the occurrence.

6.04 DUTIES OF SUPERVISOR

The Department Head receiving a grievance has a duty to be attentive to the employee's concerns, to arrive at a full understanding of employee's point of view and to give the employee a clear and specific answer. If the Department Head believes the grievance to be of a substantial nature and not to have been settled to the full satisfaction of the employee, the Department Head shall make an immediate record in writing of the facts and report the grievance to the City Manager.

6.05 APPEAL BY EMPLOYEE

An employee, who after discussing a grievance with the employee's Department Head and not being satisfied with the answer, may appeal the grievance to the City Manager within five working days of the meeting with the Department Head. Any appeal to the latter shall be made in writing. The decision by the City Manager will be final.

6.06 WHAT IS NOT DISCIPLINE

Layoffs, reductions-in-force, expiration of temporary appointments, separations allowed by other sections of this handbook, pay reductions or other measures resulting from economy campaigns, reorganizations or other similar policies are not considered discipline and cannot be appealed under the City's policies and procedures.

6.07 APPLICABILITY

This section is not applicable to persons holding the following positions: City Manager; City Attorney; Municipal Court Judges; Department Heads who serve at the pleasure of the City Manager subject to the Charter; part-time, seasonal and temporary employees who serve at will, provisional employees who serve at will, and all other positions for which the Charter or state law prescribes disciplinary or dismissal requirements different from those stated in this section.

SECTION 7 – ACCRUALS AND LEAVE

7.01 VACATION

A. USE OF ACCRUED VACATION LEAVE

In appreciation of continuous service, the City shall provide employees in full-time positions, except as provided by contract, an opportunity for paid vacation leave away from the work environment. The City encourages employees to use vacation leave annually.

Approval of vacation leave shall be based on departmental needs. An employee may not take vacation leave without written approval of the supervisor.

An employee's approved leave shall be charged and used in amounts of not less than one-fourth (quarter) of an hour increments.

B. ELIGIBILITY

All full-time employees shall accrue vacation leave according to the chart below and shall comply with the following vacation leave guidelines:

1. Vacation leave is earned from the most recent date of full-time employment and accrued on a bi-weekly basis following the pay period it is earned.
2. Employees are allowed to use vacation leave after they have completed their six (6) month probationary period. Employees who are on probation will accrue vacation during this six (6) month probationary period however, if the employee's employment is terminated prior to regular employee status, no vacation accrual will be credited.
3. Employees may not substitute vacation leave for disciplinary suspension without pay.
4. If an employee goes on unpaid leave status, vacation leave shall not continue to accrue until the employee returns to work.

C. VACATION ACCRUAL

Vacation is accrued on a bi-weekly basis. The schedule below reflects vacation leave earned per pay period and per year by all employees in full-time positions:

Length of Service	All Employees, excluding Shift Firefighters	Shift Firefighters
4 years of service or less	10 days per year or 3.08 hours per pay period	10 days per year or 4.62 hours per pay period
End of 5th Year, but less than 12 years of service	15 days per year or 4.62 hours per pay period	15 days per year or 6.93 hours per pay period
End of 12th Year, but less than 20 years of service	20 days per year or 6.15 hours per pay period	20 days per year or 9.23 hours per pay period
20th Year and thereafter	20 days per year or 6.15 hours per pay period, plus one additional day for each year of service beginning year 20 (limited to five extra days)	20 days per year or 9.23 hours per pay period, plus 12 hours for each year of service beginning year 20 (limited to 60 extra hours)

To adhere to the application of accrued time in accordance with our previous policy, the change from two to three weeks of vacation will occur at the time of the fifth anniversary by adding a week of accrued time to the two weeks already accrued in the fifth year. The same change will occur at the twelfth anniversary.

D. SCHEDULING VACATION USAGE

The employee's supervisor must approve all vacation leave, giving due consideration to the needs of the department and the ability of the remaining staff to perform the work of the department or division, as well as the preference of the employee. Each employee is requested to give their supervisor the maximum notice possible (generally at least 10 business days in advance), prior to the requested leave dates (s) in accordance with department policy. If an employee, due to some unforeseen emergency, is requested to work during a scheduled vacation, the employee can re-schedule vacation at another time. An employee may not be granted vacation leave in excess of the actual amount accrued. An employee may not request unpaid leave if they have vacation accrued that they are eligible to use.

E. HOLIDAYS WITHIN VACATION PERIODS

If a holiday falls within a scheduled vacation period, the employee shall receive holiday pay, in lieu of vacation pay.

F. REIMBURSEMENT FOR UNUSED VACATION

An employee shall receive reimbursement of unused accrued vacation at the time of separation of employment or retirement if they meet the following requirements:

- Employee must have completed 6 months of employment (or 12 months if the probationary period was extended),
- The employee provides a 2 week notice, and
- The employee has not been terminated.

In the case of the death of the employee, the estate of a deceased employee is entitled to payment for accrued vacation leave acquired by that employee.

G. VACATION CARRY OVER

Accumulated vacation leave in an amount not to exceed one times the employee's annual accrual amount, may be carried forward from year to year, except as provided by contract. Any unused vacation leave accumulated in excess of this amount will be lost, and may not thereafter be exercised by such employee.

7.02 SICK LEAVE

A. ACCRUAL OF SICK LEAVE

All full-time employees, other than shift firefighters, accrue 3.08 hours of sick leave per pay period or 10 days per year, to a maximum of 960 hours. Shift firefighters accrue 4.62 hours of sick leave per pay period or 10 days per year, to a maximum of 960 hours. Part-time and temporary employees are ineligible to earn or receive paid sick leave.

B. USE OF SICK LEAVE

An employee may use sick leave:

- For the employee's non-work related illness or injury that prevents the employee from working.
- To receive medical care from a physician, dentist, or other health care provider.
- Pregnancy and the birth of a child to an employee shall be deemed a bona fide illness for this purpose and no additional sick leave shall be authorized for maternity leave.

An employee may use up to 16 hours of accrued sick leave in a calendar year:

- To care for an employee's sick child (dependent minor child in the home) or spouse

NOTE: Leave allowed by the Family Medical Leave Act (FMLA) may apply to the serious injury or illness of you or your family member. Please refer to The Family and Medical Leave Act in Section 7.10 or contact Human Resources.

Using sick leave for purposes other than authorized by this policy is just cause for disciplinary action up to and including termination of employment. The use of sick leave time is not counted as time worked under the FLSA.

C. WORK-RELATED INJURY

Loss of work due to an accident or injury received while at work is not charged against sick time.

D. ACCRUED TIME

Sick leave time begins the first working day of the illness. An employee who has used up their accumulated sick leave must then use their compensatory time, vacation leave, or any other applicable accrued leave benefit, if available. After the employee has exhausted all accumulated time, additional time off is without pay, if approved by the City Manager. Please refer to the Leave of Absence Policy in Section 7.11 for more information.

E. NOTICE REQUIREMENTS

If an employee finds it necessary to be absent due to illness or injury, the employee or employee's representative must notify the immediate supervisor or Department Director on the first day, and each subsequent day thereafter, of the employee's absence before the beginning of the employees scheduled shift or as prescribed by the department. Messages left with non-supervisory personnel will not be accepted. In this regard, the employee must understand and abide by their department's notice requirements.

When the employee returns to work after an absence of three or more days he or she shall be required to provide a doctor's certification that confirms that the employee's absence constituted an appropriate use of sick leave. Department Directors who have reason to believe that sick leave has been abused may request such certification when an employee has been absent for less than three days.

F. ABUSE OF SICK LEAVE

The frequent claiming of sick leave benefits may under certain circumstances, constitute grounds to believe that an employee's physical condition is below that required to perform the essential functions of his or her job. Evidence of malingering or abuse of this benefit will be considered grounds for disciplinary action, up to and including termination.

G. REIMBURSEMENT FOR UNUSED SICK LEAVE

Employees shall receive reimbursement of unused, accrued sick leave at the time of separation or retirement up to the maximum hours specified in the chart below if:

- Employee must have completed five consecutive years of service, and
- Employee provides 2 week notice, and
- Has not been terminated.

Employees hired prior to October 1, 2014

Length of Service	Sick Hours Reimbursed
5 years	20 days
6 years	25 days
7 years	30 days
8 years	40 days
9 years	50 days
10 or more years	60 days

Employees hired on October 1, 2014 and thereafter

Length of Service	Sick Hours Reimbursed
10 years	20 days
11 years	25 days
12 years	30 days
13 years	40 days
14 years	50 days
15 or more years	60 days

Each day is equal to 8 hours.

In the case of the death of any employee, the estate of a deceased employee is entitled to payment for accrued sick leave acquired by that employee up to the maximum hours specified.

Any employee, who terminates employment with the City of Tomball and is compensated for accumulated sick leave at the time of separation pursuant to this subsection, shall not be eligible for re-employment by the City for a period of one year following separation, except upon the written approval of the Department Director and the City Manager. If a former employee is re-employed by the City of Tomball, the original hire date will not be used to restore sick leave accrual rates. Please refer to Section 2.04 for more information.

7.03 SICK LEAVE INCENTIVE PROGRAM

As an incentive to encourage the responsible use of sick leave, the city will pay an employee four 8 hour sick leave days (32 hours) earned in any one calendar year if the employee meets the following requirements:

- The employees must have at least 10 days (80 hours) or 120 hours for shift firefighters accumulated sick leave remaining after the 32 hour deduction.
- The employees must not have taken more than two sick days (as determined by the normal working schedule) during the preceding calendar year.

Those employees eligible to be paid for the four days will be notified by Human Resources, through their Department Director with instructions for authorizing payment. Payment in lieu of sick leave will be made the second pay period in January of each year.

7.04 SICK LEAVE DONATIONS

An employee may experience a catastrophic illness, injury or other medical condition that prevents the employee from working for a period of time, and may cause the employee to use up his/her bank of sick, vacation and compensatory time. Before going onto unpaid leave, the employee may request leave donations from other City employees by filling out a "Request for Leave Donation" form. The City Manager will then decide if it qualifies as a catastrophic illness and if so, approve the request for donations. Other City employees may then donate up to 8 hours of their paid vacation or compensatory time. If the donating employee has been here longer than five years, he/she may also donate from their sick leave bank any of their sick leave credit that would be paid upon their resignation as listed in section 7.02.

Donations will be used on a first in, first out basis. The use of donated time will cease upon the employee's return to full time work and any unused donations will be returned to the donating employees. All donations will be handled through Human Resources only and will be kept completely confidential to avoid problems with employee relations.

7.05 PERSONAL LEAVE

Personal leave is provided at the rate of 16 hours per year for all full-time employees at the beginning of the calendar year. Leave is subject to the attendance and leave approval provisions of this policy and may not be taken during the probationary period. Personal leave does not accrue beyond the calendar year and unused hours will not be paid at the end of the year.

7.06 HOLIDAY LEAVE

A. CITY HOLIDAYS

The City provides full-time employees with paid holiday leave each year. Part-time and temporary/seasonal employees are ineligible for holiday compensation.

Every calendar year the City of Tomball recognizes 10 holidays, although certain employees may be required to report for duty:

- New Year's Day
- Good Friday
- Memorial Day
- Independence Day
- Labor Day
- Thanksgiving day
- Day after Thanksgiving
- Christmas Eve
- Christmas Day
- One Floating Holiday - given on January 1 of each year and cannot be taken until the probationary period is completed. Must be scheduled and taken during the calendar year and shall not be subject to carry-over or payment if not used.

If a holiday falls on a Saturday, the preceding Friday will be observed as a holiday, and if the holiday falls on a Sunday, the following Monday is observed as a holiday.

If a full-time, regular employee is currently at work and/or on an approved leave of absence with pay the day before and the day after a holiday, the employee will receive pay for the holiday.

B. SHIFT FIREFIGHTERS

This section applies to all non-exempt full-time shift Firefighters. The City of Tomball shall maintain compliance with all provisions of the Fair Labor Standards Act as applied to the allocation and use of holidays in the Fire Department.

All full-time shift Firefighters will be paid for 12 hours at the employee's regular rate of pay for every City holiday, whether or not the Firefighter works on the holiday. All full-time shift Firefighters who work a shift that begins on a City holiday will be paid a rate of one and one-half times their regular hourly rate.

The City has designated the floating holiday as the September 11th Memorial holiday for firefighters only if the firefighter chooses to use the floating holiday for that purpose on this day, and its use does not unduly disrupt the department's operation. For all other employees, the floating holiday is unchanged.

While firefighters have the same number of holidays as all other City employees, in accordance with H.B. 2113, the Texas legislature has amended Section 142.0013 (c) of the Local Government Code mandating that one of the City's holidays be designated as September 11th Memorial Holiday for all firefighters. All City employees have the same number of holidays on the same days however; this amendment mandates that the City refers to one of those holidays by a different name for a particular category of employees.

C. POLICE PERSONNEL

All full-time police personnel who work a shift that begins on a City holiday will be paid a rate of one and one-half times their regular hourly rate for that day of work.

7.07 FUNERAL LEAVE

Employees may be granted up to three days of paid leave per year to attend or arrange the funeral, and settle the affairs of an immediate family member. For the purpose of this policy, "immediate family" shall mean the employee's spouse, children, father, mother, brother, sister, father-in-law, mother-in-law, brother-in-law, sister-in-law, grandchildren and grandparents of the employee or employee's spouse.

The City Manager may allow administrative time off to attend the funeral of an employee, an employee's spouse or child, a former employee or well-known community leader, but only to the extent that it does not affect the safe and effective operation of city services.

7.08 EMERGENCY LEAVE

All regular and probationary employees may be granted emergency leave for the period not to exceed three consecutive workdays days per calendar year, in the case of a serious illness or accident of a member of the employee's or employee's spouse family requiring immediate medical attention. Family members include parents, grandparents, brothers, sisters, children, in-laws and spouses. Emergency leave may include visitation of the seriously ill person in an intensive care or hospice setting. Documentations will be required to validate the emergency. Approval of emergency leave will be determined by the Human Resources Department.

7.09 CITIZENSHIP LEAVE

All full-time employees shall be granted leave with pay when it is necessary to be absent in order to fulfill citizenship obligations, in accordance with State Law, Texas Labor Code Sec. 52.051, Fair Labor Standards Act (FLSA), and Jury System Improvement Act of 1978. Part-time, temporary, and seasonal employees shall be granted leave without pay in order to fulfill citizenship obligations.

Employees are required to give advance notice of an absence for citizenship obligations. Employees that must be absent from work to fulfill citizenship obligations are required to notify their supervisor at least (3) days prior to the leave or at the earliest opportunity. The employee must provide a copy of the court order or jury summons.

A. JURY DUTY

The City shall grant jury duty leave for an employee summoned to serve on any grand, petit, or municipal court jury. The City shall not dismiss an employee from employment because of the nature or length of the employee's jury service. When an employee is on jury leave, he or she shall continue to receive his or her regular rate of pay in addition to any per diem received by the employee from the state or the court for jury service. Pay shall not exceed the number of hours in the employee's regular workweek. The time spent on jury duty that coincides with the employee's regular work time is counted as straight time for overtime calculation purposes.

If an employee is chosen as a juror, they must notify their supervisor immediately and fulfill their citizenship obligation. If the employee is not selected as a juror, the employee is required to report back to work upon being released from service. If more than 50% of the employee's shift remains at the time the employee is released from service, the employee is expected to report back to work during that shift. If less than 50% of the employee's shift is left at the time the employee is released from service, the employee is expected to report to work on their next scheduled shift.

A shift employee may be given time off with pay from duty, if in the judgment of their supervisor, the period of time spent on jury duty or as a witness on behalf of the City may impact job safety. (i.e. shift police officers that work night shift may require time off).

All employees must provide proof of attendance from the presiding court to their supervisor upon their return to work. Proof of attendance must be forwarded to Human Resources.

B. COURT APPEARANCES

Employees who are subpoenaed to appear in court or before any other judicial or administrative body in the furtherance of official city business or as a "Good Samaritan" will be compensated in accordance with this policy.

Employees that request time off to appear in court in a matter personal to the individual (divorce, liability suit, etc.) either as a defendant, plaintiff, or witness shall be required to use accrued leave in accordance with the appropriate policy.

All employees must provide proof of required attendance and participation from the presiding court to their supervisor upon their return to work. Proof of attendance must be forwarded to Human Resources.

C. VOTING

On the day of an election, an employee who does not have at least two consecutive hours outside the employee's work hours to vote, shall, upon the employee's request, be given time off to vote during the employee's work hours.

7.10 FAMILY AND MEDICAL LEAVE ACT

A. FAMILY AND MEDICAL LEAVE ACT OF 1993

The City provides leave to eligible employees in accordance with the Family and Medical Leave Act (FMLA). Federal law allows the City to require qualified employees to use FMLA when absent from work for a qualified reason. Under the FMLA, eligible employees may take up to 12 weeks of job-protected leave each year for specified family and medical reasons or 26 weeks of leave to care for an injured or ill service member. FMLA is unpaid leave which runs concurrently with other types of leave that are paid, such as sick leave, vacation leave, and worker's compensation. FMLA leave is typically unpaid unless the absence also qualifies for paid leave under another City policy.

B. ELIGIBILITY REQUIREMENTS

To be eligible for FMLA leave, an employee must:

- Have worked for the City for at least 12 months (need not necessarily be consecutive 12 months);

- Have worked for the City at least 1,250 hours during the 12 months before the start of the leave; and
- Work within 75 miles of a City worksite employing 50 or more employees.

C. QUALIFYING REASONS FOR LEAVE

1. Twelve Weeks of Leave. An eligible employee as defined above may take up to 12 weeks of FMLA leave in a single 12-month period (the city uses a rolling 12-month period measured backwards) for one or more of the following reasons:

   a. When the employee is unable to perform the functions of his/her job because of his/her own serious health condition;

   b. For the birth or placement of a child for adoption or foster care. FMLA leave for birth or placement for adoption or foster care must conclude within 12 months following the birth or placement. In addition, if an employee and the employee's spouse are both employed by the City, both are jointly entitled to a combined total of 12 work weeks of family leave for the birth or placement of a child for adoption or foster care;

   c. To care for a spouse, child, or parent (but not a parent-in-law) with a serious health condition, the employee need not be the only individual available to care for the qualified family member; or

   d. A qualifying exigency arising out of the fact that the employee's spouse, child, or parent is a covered military member on active duty (or has been notified of an impending call or order to active duty) in support of a contingency operation.

2. Twenty-Six Weeks of Leave. Eligible employees may take up to 26 weeks of FMLA leave in a single 12-month period to care for a covered service member (i.e., the employee's spouse, child, parent, or next of kin) with a serious injury or illness incurred in the line of duty while on active duty in the Armed Forces. The employee need not be the only individual available to care for the covered service member. If an employee and the employee's spouse are both employed by the City, both are jointly entitled to a combined total of 26 work weeks of leave during a single 12-month period.

3. Maximum Amount of Leave. The maximum amount of FMLA leave available, even if there are multiple FMLA qualifying events, is 12 weeks during a 12-month period or 26 weeks in a single 12-month period to care for an injured or ill service member.

D. DEFINITIONS

1. Son or daughter means a biological, adopted, or foster child, a stepchild, a legal ward, or a child of a person standing in the position of a parent.

2. Parent means biological parent or an individual who stands or stood in loco parentis to an employee when the employee was a child.

3. Covered service member means a member of the Armed Forces, including a member of the National Guard or Reserves, who is undergoing medical treatment, recuperation, or therapy, in outpatient status, or is on the temporary disability retired list, for a serious injury or illness.

4. 12-Month Period for Covered Service Members - The 12-month leave period for calculating leave to care for a covered service member with a serious injury or illness is the 12-month period measured forward from the date an employee's first FMLA leave to care for the covered service member

begins. During this 12-month period, the maximum FMLA leave an employee may take for any qualifying reason is limited to a combined total of 26 weeks.

5. 12-Month Period for All Other FMLA Leave - To determine eligibility for all other leave, the City uses a rolling 12-month period measured backward from the date of any FMLA leave.
6. Health Care Provider (HCP) – Means a doctor of medicine or osteopathy who is authorized to practice medicine or surgery (as appropriate) by the State in which the doctor practices; or any other person determined by the Secretary of Labor to be capable of providing health care services.
7. Next of Kin of a Covered Service Member – Means the nearest blood relative other than the covered service member's spouse, parent, or child.
8. Incapacity – Means the inability to work, attend school or perform other regular daily activities.
9. Serious Health Condition - For purposes of this policy, a "serious health condition" means an illness, injury, impairment, or physical or mental condition that involves:

    a. Inpatient care – an overnight stay in a hospital, hospice, or residential medical care facility, including any period of incapacity or any subsequent treatment in connection with such inpatient care; or

    b. Continuing treatment by a health care provider (HCP) - includes one or more of the following:

        - Incapacity & Treatment - a period of incapacity of more than three consecutive, full calendar days, and any subsequent treatment or period of incapacity relating to the same condition that also involves treatment: (i) two or more times (within 30 days of the first day of incapacity, unless extenuating circumstances exist), by a HCP or under direct supervision of, under orders of, or on referral by, a HCP, or (ii) by a HCP on at least one occasion which results in a regimen of continuing treatment under supervision of the HCP. The first (or only) in-person treatment visit must take place within 7 days of the first day of incapacity.
        - Pregnancy & Prenatal Care - any period of incapacity due to pregnancy, or for prenatal care;
        - Chronic Conditions - any period of incapacity or treatment for such incapacity due to a chronic serious health condition which (i) requires periodic visits (at least twice a year) for treatment by, or under the direct supervision of a HCP, or (ii) continues over an extended period of time (including recurring episodes of a single underlying condition); and (iii) may cause episodic rather than a continuing period of incapacity (e.g., asthma, diabetes, epilepsy, etc.);
        - Permanent or Long-Term Conditions - a period of incapacity which is permanent or long-term due to a condition for which treatment may not be effective (e.g., Alzheimer's, a severe stroke, or the terminal stages of a disease);
        - Conditions Requiring Multiple Treatments - any period of absence to receive multiple treatments (including any period of recovery there from) by, or under the supervision of, under orders of, or on referral by, a HCP either for restorative surgery after an accident or other injury, or for a condition that would likely result in a period of incapacity of more than three consecutive, full calendar days in the absence of medical intervention or treatment (e.g., chemo or radiation for cancer, physical therapy for severe arthritis, or dialysis for kidney disease).

    Unless complications arise, the common cold, the flu, earaches, upset stomach, minor ulcers, headaches (other than migraines), routine dental or orthodontia problems, and periodontal disease

are not serious health conditions. In addition, routine physicals, eye examinations, and dental examinations are not considered treatment.

10. Qualifying Exigency – this term includes issues arising from short-term deployments of seven or less calendar days prior to the date of the deployment; military events and related activities such as official ceremonies and programs sponsored by the military and to attend family support or assistance programs and informational briefings; childcare and school activities; financial and legal arrangements; counseling; rest and recuperations; post-deployment activities; and additional activities arising out of the covered military member's active duty or call to active duty status if the employee and the City agree that such leave qualifies as an exigency, and agree to both the timing and duration of the leave.

E. EMPLOYEE NOTIFICATION REQUIREMENTS

Employees must give the City sufficient information so that it can make a determination as to whether the employee's absence is FMLA-qualifying. If an employee fails to explain the reasons, FMLA leave may be denied. Employees must also indicate on their time records when an absence or tardy is or may be covered by FMLA. Any absence or illness that results in more than three days' absence must be reported to the City's Human Resources Department. City of Tomball reserves the right to retroactively designate leave as FMLA if the leave qualifies under the FMLA regulations.

1. Foreseeable and Unforeseeable Leave. Employees must provide their Director and the Human Resources Department with at least 30 days' advance notice when the need for FMLA leave is foreseeable. (Form HR 7.03 - Request for FMLA). If the need for FMLA leave is not foreseeable, employees must provide their Director and the Human Resources Department with as much advance notice as practicable, in accordance with their Department's normal call-in procedures. The employee must also provide an explanation as to why he/she was unable to provide at least 30 days' advance notice of the need for leave.

2. Content of Notice. Employees must provide the City with documentation, stating the reasons for the needed leave sufficient to allow the City to determine if the absence is FMLA-qualifying, and the anticipated timing and duration of the leave, if known. If the employee has previously taken FMLA leave for the same reason, he/she must specifically reference the qualifying reason for leave or the need for FMLA leave. The City may seek additional information from the employee, and the employee is obligated to respond to the City's questions so the City can determine if an absence is potentially FMLA-qualifying. The employee must notify the City as soon as practicable if the dates of his/her scheduled leave change or are extended, or where such dates are initially unknown.

3. Compliance with City's Call-In Procedures. Employees must comply with their Department's normal call-in procedures for reporting absences, tardies, and requesting leave, e.g., contacting a specific supervisor by a certain time. Notice may be given by the employee's spokesperson only if the employee is physically unable to do so personally. Where an employee does not comply with the City's and Department's normal call-in procedures and no unusual circumstances justify the failure to comply, FMLA-protected leave may be delayed or denied.

4. Consequences for Failing to Provide Required Notice. If the employee fails to timely explain the reasons for his/her need for leave, FMLA leave may be denied or delayed for up to 30 days. The employee may also be subject to disciplinary action in accordance with City policy. Likewise, if an employee fails to respond to the City's reasonable inquiries regarding a leave request, the employee may not be granted FMLA leave protection.

5. Scheduling Planned Medical Treatment. When an employee intends to take leave for planned medical treatment for him/herself or for his/her spouse, child or parent, the employee is ordinarily expected to consult with his/her supervisor and try to schedule the treatment so as not to disrupt unduly the City's operations, subject to the approval of the treating health care provider. This should be completed prior to the scheduling of treatment in order to coordinate a treatment schedule which best suits the needs of both the employee and the City.

6. Periodic Check-In While on FMLA. Employees should check in periodically with their supervisor and with the Human Resources Department regarding their status and intent to return to work. If the employee discovers that the amount of leave originally anticipated is no longer necessary, the employee must provide the City with reasonable notice (i.e., within two business days) of the changed circumstances if foreseeable.

F. CITY RESPONSIBILITIES

1. Human Resources Department: The Human Resources Department is responsible for the verification, approval and notification of FMLA leave. The Human Resources Department may place an employee on FMLA leave if it determines that a qualifying event has occurred.

   a. Eligibility Notice. The Human Resources Department will notify an employee of his/her eligibility to take FMLA within five business days (absent extenuating circumstances) of its receipt of the employee's request for FMLA leave (or from when the City otherwise determines that an employee's absence may be FMLA-qualifying). Employee eligibility is determined (and notice will be provided) at the commencement of the first instance of leave for each FMLA-qualifying reason in the applicable 12-month period. Notification may be oral or in writing. If an employee's eligibility status changes, the Human Resources Department will so notify the employee within five business days, absent extenuating circumstances.

   b. Rights & Responsibilities Notice. The Human Resources Department will provide employees with a notice detailing the City's specific expectations, the employee's obligations, and consequences to the employee of not meeting his/her obligations. The Human Resources Department will provide this notice each time it provides the Eligibility Notice described above. The required certification form will accompany this notice. If any of the specific information in the Rights & Responsibilities Notice changes, the Human Resources Department will notify the employee within five business days of its receipt of the employee's first notice of need for leave subsequent to any change.

   c. Designation Notice. When the Human Resources Department has enough information to determine if an absence is FMLA-qualifying (e.g., after receiving the employee's fully completed Certification), the Human Resources Department will notify the employee in writing (FMLA HR 7.12) as to whether the leave will or will not be designated as FMLA. This Designation Notice will be given to the employee within five business days, absent extenuating circumstances. If the information in the Designation Notice changes, the Human Resources Department will notify the employee within five business days of the City's receipt of the employee's first notice of need for leave subsequent to any change.

   d. Certification Forms & Other Required Documentation. The Human Resources Department is responsible for determining the completeness and authenticity of certification forms, fitness-for-duty/return to work certifications, and for review and coordination of all other FMLA documentation required by this policy.

2. Supervisors & Directors: So that the Human Resources Department can meet the notice deadlines required by the FMLA, supervisors must immediately notify both their Director and the Human Resources Department if they have reason to believe an employee's absence is due to an FMLA-covered reason. Supervisors must make this report even if the employee is using paid time off to cover the absence, e.g., sick leave, comp time, vacation, holiday. Supervisors and Directors must report to Human Resources any time an employee misses work for more than three days because of his/her own illness or injury or that of a spouse, child or parent. When an employee submits a leave/absence form indicating an FMLA absence, the form must be sent to the Human Resources Department immediately.

G. MEDICAL CERTIFICATIONS AND OTHER REQUIRED DOCUMENTATION

In all instances in which the City requests a certification from an employee, it is the employee's responsibility to provide the Human Resources Department with a complete and sufficient certification; failure to do so may result in the denial or delay of FMLA leave.

1. Certification. An employee must provide the Human Resources Department with a complete and sufficient medical certification supporting the need for FMLA leave due to a serious health condition affecting the employee, his/her spouse, child or parent , or due to the serious injury or illness of a covered service member. The required medical certification forms are available from the Human Resources Department. The certification must set forth the beginning and expected ending dates of the leave. In the case of intermittent leave, the certification must also provide the dates and duration of the treatments necessitating the intermittent leave. The employee is responsible for any expenses associated with providing the City with a required certification. The employee must turn in the required certification to the Human Resources Department within 15 days after it is requested, unless not practicable under the circumstances.

2. Second & Third Opinions. In some cases, the City may require a second or third medical opinion (at the City's expense). The City will not require second or third opinions in the case of leave to care for a covered service member.

3. Recertification. Employees may be asked to periodically recertify the need for FMLA. The City will not, however, require recertification in the case of leave to care for a covered service member. The recertification must be provided within 15 days or as soon as practicable under the particular facts and circumstances. The employee is responsible for any expenses associated with providing the City with any required recertification.

    a. 30-day rule. The City will request recertification no more than every 30 days and only in connection with an absence by the employee unless paragraphs b or c below applies.

    b. More than 30 days. If the certification indicates that the minimum duration of the condition is more than 30 days, the City will wait until that minimum duration expires before requiring a recertification, unless paragraph c below applies. If the minimum duration of a serious health condition extends beyond six months, the City may nevertheless request a recertification every six months in connection with an employee's absence.

    c. Less than 30 days. The City may request recertification in less than 30 days if the employee requests an extension of leave, circumstances described by the previous certification have changed significantly (e.g., the duration or frequency of the absence, the nature or severity of the illness, complications, a pattern of unscheduled absences), or the City receives information that casts doubt upon the employee's stated reason for the absence or the continuing validity of the certification.

d. Annual Medical Certifications. If a serious health condition lasts beyond a single leave year, the City may require the employee to provide a new medical certification in each subsequent leave year.

4. Return to Work Certification. Employees must submit a work release from their healthcare provider before they can return to work if FMLA leave is a result of the employee's own serious health condition. An employee who fails to timely provide the City with this certification will not be allowed to return to work. Any expense associated with the required work release will be the employee's responsibility.

   While the City will not require a fitness-for-duty certification to return to duty for each absence taken on intermittent or reduced leave schedule, it may require such a certification up to once every 30 days if reasonable safety concerns (i.e., a reasonable belief of significant risk of harm to the employee or others) exist as to the employee's ability to perform his/her duties, based on the serious health condition for which the employee took leave.

5. Failure to Provide Certifications & Deficient Certifications. If an employee fails to provide a required certification within 15 days after the City requests it, the City may deny leave until the certification is provided. If the employee never produces the certification or recertification, the employee is not eligible for FMLA protections. If the certification is incomplete or insufficient, the Human Resources Department will notify the employee, in writing, and advise the employee what additional information is required. The City will provide the employee with seven additional days to cure any deficiency. If the deficiencies are not cured with the seven-day deadline, the City may deny the taking of FMLA leave. The Human Resources Department (or other authorized person) may contact the health care provider for purposes of clarification and authentication after giving the employee the opportunity to cure any deficiencies.

6. Documenting Family Relationships. If an employee elects to take FMLA leave in order to care for a qualifying family member or to care for a covered service member, the employee may be required to provide reasonable documentation confirming the family relationship.

H. CERTIFICATIONS FOR QUALIFIED EXIGENCY LEAVE

1. Active Duty Orders. The first time an employee requests leave because of a qualifying exigency arising out of the active duty or called to active duty status of a covered military member, the employee must provide a copy of the covered military member's active duty orders or other documentation issued by the military which indicates that the covered military member is on active duty or call to active duty status in support of a contingency operation, and the dates of the active duty service.

2. Certification Form. The employee must complete and submit to the Human Resources Department the appropriate certification form in support of his/her need for leave. This form must be turned in within 15 days after the City requests it.

3. Verification. If the qualifying exigency involves meeting with a third party, the Human Resources Department (or other authorized person) may contact the individual or entity with whom the employee is meeting for purposes of verifying a meeting or appointment, and the nature of the meeting. The City may also contact an appropriate unit of the Department of Defense to request verification of active duty or call to active duty status.

4. Denial or Delay of Leave. Exigency leave may be delayed or denied if the employee fails to turn in the required certification within 15 days. If the certification is incomplete or insufficient, the Human Resources Department will notify the employee, in writing, and advise the employee what

additional information is required. The City will provide the employee with seven additional days to cure any deficiency. If deficiencies are not cured with the seven-day deadline, the City may deny the taking of FMLA leave.

I. INTERMITTENT & REDUCED LEAVE SCHEDULE

An eligible employee may take FMLA leave on an intermittent or reduced schedule basis, because of a qualifying exigency, only if medically necessary, for planned medical treatment, or as otherwise approved by the Director.

1. Notice. The employee must inform the City of the reasons why the intermittent or reduced leave schedule is necessary and of the schedule for treatment, if necessary.
2. Scheduling Planned Medical Treatment. When an employee intends to take leave for planned medical treatment for him/herself or for his/her spouse, child or parent, the employee is ordinarily expected to consult with his/her supervisor and try to schedule the treatment so as not to disrupt unduly the City's operations, subject to the approval of the treating health care provider. This should be done prior to the scheduling of treatment in order to work out a treatment schedule which best suits the needs of the both the employee and the City.
3. Temporary Transfer. The City may temporarily transfer the employee to an alternative position (with equivalent pay and benefits, but not necessarily equivalent duties) in order to better accommodate an employee's intermittent or reduced leave schedule.
4. Minimum Increments. Intermittent leave will be counted in increments of 15 minutes to hourly for payroll purposes.
5. Exempt Employees. Exempt employees using unpaid intermittent or reduced schedule FMLA leave may be docked for absences of less than a day without jeopardizing their exempt status under the Fair Labor Standards Act (FLSA).

J. EMPLOYEE BENEFITS

1. Group Health Insurance. During any period of FMLA leave, the City will continue to pay its portion, if any, of any group health insurance coverage for the employee on the same terms as if the employee had continued to work. Where applicable, the employee must timely pay his or her share of health insurance premiums while on FMLA leave. The City will advise the employee of the terms and conditions for making such payments. Failure to pay premiums in a timely manner will result in cancellation of group health coverage.
2. Continued Service. The period of FMLA leave, whether paid or unpaid, shall be treated as continued service for the employee's vesting and eligibility for retirement and longevity.
3. Other Benefits. The employee's use of FMLA leave will not result in the loss of any employment benefit that accrued prior to the start of the employee's leave, and seniority will not be affected. However, benefit accruals, such as vacation and sick leave, will be suspended during any unpaid leave.
4. Holidays. When an employee takes a full work week of FMLA leave and a holiday occurs within the week, the week is counted as a full week of FMLA leave. If, however, an employee uses FMLA in increments of less than a week, the intervening holiday does not count against the employee's FMLA entitlement unless the employee was otherwise scheduled and expected to work on the holiday. Employees must be on an approved leave of absence with pay the full day before and the

day after a holiday to receive pay for the holiday; therefore, employees on unpaid FMLA leave are not normally paid for holidays.

K. JOB RESTORATION AFTER FMLA LEAVE

1. Re-employment Rights. Upon return from FMLA leave, an employee will normally be restored to his/her original job or to an equivalent job with equivalent pay, benefits, and other terms and conditions. An employee, however, has no greater right to reinstatement than if he/she had been continuously employed during the period of FMLA leave. Further, the City may delay restoration to employees who fail to timely provide a fitness-for-duty certification to return to work.

2. Key Employees. Under certain circumstances the City is not required to reinstate "key" employees. Certain highly compensated key employees may be denied reinstatement when necessary to prevent “substantial and grievous economic injury” to the City’s operations. A “key” employee is a salaried eligible employee who is among the highest paid 10 percent of employees within 75 miles of the worksite. An employee will be notified of his/her status as a key employee, when applicable, after requesting FMLA leave.

L. OTHER EMPLOYMENT DURING FMLA PROHIBITED

Under no circumstances may an employee on FMLA leave, sick leave, disability leave, or workers’ compensation leave engage in outside employment unless expressly authorized in writing in advance by the Director.

M. FRAUD

An employee who fraudulently obtains FMLA leave is not protected by the FMLA’s job restoration or maintenance of health benefits provisions. Further, an employee who commits fraud may be terminated from City employment.

N. FMLA STATUTE AND REGULATIONS

This policy is intended to explain benefits available to eligible employees under the FMLA. It is not intended to create any rights to leave beyond those created by the FMLA.

O. MANDATORY REPORTING OF IMPROPER HANDLING OF FMLA

Employees must immediately report, in writing, to their Director or the Human Resources Department, the following so that the City can investigate and respond appropriately:

- Any interference with, restraint or denial of the employee’s right to take FMLA or any rights protected by the FMLA or this policy.
- Any discrimination or perceived acts of discrimination against the employee for any right protected by the FMLA or this policy.
- Any refusal by a supervisor to authorize FMLA leave or attempt to discourage an employee from taking FMLA leave.
- Any attempt to avoid the City’s FMLA responsibilities.
- Discrimination or retaliation against an employee for exercising or attempting to exercise FMLA rights.
- Discrimination or retaliation against an employee for opposing or complaining about any unlawful practice under the Act or this policy

7.11 LEAVE OF ABSENCE

A. LEAVE OF ABSENCE

Employees may be granted a leave of absence at the discretion of their Director, with the approval of the City Manager, provided the employee's absence will not unduly disrupt the operations of the department and City, or place an undue burden on fellow employees. A request for leave must be in writing and state the nature and duration of the leave. A leave of absence may be granted on an incremental basis. The maximum length of a leave of absence shall be 3 months.

B. ACCRUED TIME

If accrued leave is available, an employee must exhaust all applicable accrued leave balances while on a leave of absence. Once eligible accrued leave balances have been exhausted, any time spent on an approved leave of absence will be time without pay.

C. REPORTING REQUIREMENTS

An employee on a leave of absence shall be required to report their status to the immediate supervisor the first business day of each week.

D. EMPLOYEE BENEFITS

An employee shall be required to continue to pay the current premium contributions for any elected group health benefits. Once all accrued leave is exhausted and the employee begins leave without pay, the employee shall pay all health insurance and/or other premiums.

During any leave of absence without pay, an employee shall accrue no vacation or sick time, and no credited service toward retirement or longevity. An employee returning to work after leave without pay which extends for more than three months shall be evaluated based on the actual time they were at work.

E. REINSTATEMENT

If the need to fill the position should arise due to unforeseen circumstances, or if the job is eliminated due to a reduction in force, the City of Tomball cannot guarantee the reinstatement of an employee on an extended leave at the end of the leave period.

7.12 MILITARY LEAVE

This policy establishes the rules and procedures that apply to employees enlisted in the United States military reserves or the Texas National Guard that are required to take military leave.

A. MILITARY TRAINING LEAVE

The City provides military training leave to employees who are required to satisfy military obligations under the Uniformed Services Employment and Reemployment Rights Act (USERRA) or other applicable law.

B. MILITARY ACTIVE DUTY

1. The City provides leave to employees who are called to military active duty to satisfy military obligations under USERRA or other applicable law.

2. While not required by federal law, the City does provide supplemental pay to employees called to military active duty when the employee's military wage or salary is less than their City wage or salary. For more information on supplemental pay, please see Item C. Pay and Benefits.

C. PAY AND BENEFITS WHILE ON MILITARY TRAINING LEAVE OR MILITARY ACTIVE DUTY

1. Employees who are absent from work for military training leave or when called to military active duty are entitled to military pay for up to 120 hours, or 168 hours for shift firefighters, per calendar year, in accordance with Section 431.005 of the Texas Government Code. Requests for military pay may only be made for the calendar year in which leave is to be granted.

2. If the employee is called to extended active duty the City of Tomball will pay the difference between the military pay and the employee's normal salary for a period not to exceed six months.

3. After the six month period, the employee's accrued balances of vacation, compensatory time and holiday time may be used to supplement the military pay up to the employee's normal salary amount. At the point that all accrued leave has been exhausted, the employee will be placed on unpaid leave. The employee's job will be available upon return as specified by Federal and State law.

4. Other benefits, i.e. Vacation and sick leave, shall continue to accrue while the employee is on military leave.

5. Military pay hours are considered time not worked and cannot be used to accrue overtime. Employees shall only be paid for hours missed as a result of military training leave or when called to military active duty.

6. There is no accrual of military pay hours. Unused military pay hours shall not be paid out at the employee's separation from employment. Unused hours will not be carried over to the next calendar year.

7. Holiday pay shall be granted (paid) during the expenditure of the 120 hours, or 168 hours for shift firefighters, of military pay. Holiday pay shall be paid at straight time.

8. The entitlements outlined in this policy apply only to those employees who are activated from a military reserve or Texas National Guard unit. Those employees who enlist in the US military shall not be eligible for supplemental pay or the City's participation in paying a portion of the dependent premium.

D. PROCEDURES

1. The following procedures apply to both Military Training Leave and Military Active Duty.

   a. Employees must provide notice, including a copy of military orders documenting the requirement to take military leave, to their immediate supervisor.

   b. The supervisor is responsible for notifying the Manager and/or Director. The Director shall provide a copy of the military orders to the Human Resources Department.

   c. Employees are responsible for checking with the Human Resources Department to determine their responsibilities while on military training leave or when called to military active duty.

2. The following procedures apply only to Military Active Duty.

    a. Supplemental Pay. Employees must provide the Human Resources Department with a copy of their military pay record prior to receiving supplemental pay.

    b. Health Insurance. From the date military active leave begins, the employee may elect to continue dependent health insurance coverage as allowed by federal law, which is continuously up to 18 months, and state law, which is up to an additional 6 months following the exhaustion of the federal limit. For the first 18 months of the employee's leave, the employee shall pay the premium-contribution rate for the elected dependent coverage. Thereafter, employees may maintain the same dependent coverage by paying the full cost of the insurance premium. Employees are eligible to be reinstated on the insurance plans at the employee's premium-contribution rate on the day they return to the City as a full-time employee, and must complete the required forms to reinstate coverage.

    c. TMRS Retirement Benefits. Employees who take military active leave may apply to the Texas Municipal Retirement System (TMRS) for service credits for the time they were on leave if the employee:

        - Returns to work within 90 days of the end of leave;
        - Receives an honorable discharge;
        - Completes an application and forms required by TMRS;
        - Within 5 years of the end of the leave, deposits the money that would have been deducted from the employee's salary had the employee not been on leave, according to rules established by TMRS.

    d. Deferred Compensation. Employee deferred compensation plans (457 plans) shall be maintained while on leave. If reemployed, the employee may resume contributions or contact the deferred compensation plan provider to make any changes.

    e. Return from Military Active Duty. Employees returning from active duty must provide written copies of their separation or deactivation orders to the City as follows:

        - Less than 31 days of leave - within 72 hours of their release from service.
        - More than 30 but less than 181 days of leave - within 14 days of their release from service.
        - More than 180 days of leave - within 90 days of their release from service.

    3. Reemployment. The City, in accordance with USERRA, shall reemploy employees that:

        a. Served for a period of 5 years or less (unless their service fits into one of the excused categories defined in USERRA);

        b. Are discharged under honorable conditions; and

        c. Reapply in a timely manner.

7.13 ADMINISTRATIVE LEAVE

Under justifiable circumstances a Director may, with the approval of the City Manager, place an employee on administrative leave with or without pay. Such circumstances may be, but are not limited to, completion of pending criminal or administrative investigations.

SECTION 8 - SEPARATION FROM EMPLOYMENT

Although we hope your employment with the City of Tomball will be a mutually rewarding experience, we understand that varying circumstances do cause employees to voluntarily resign employment. Should this time come you are asked to follow the guidelines below regarding notice and exit procedures.

8.01 RESIGNATIONS

A. NOTICE OF RESIGNATION

Employees may leave City service in good standing by submitting a written resignation to their supervisor ten (10) business days in advance of their final day of employment. The written resignation shall include the effective date of the resignation, the reason for resigning, and signature of the employee. An employee's resignation is effective when their Supervisor accepts the resignation. The notice of resignation will be placed in the employee's Personnel File. Employees who resign in this manner and whose documented performance and employment record meets or exceeds standards will be eligible for reemployment.

Under certain circumstances, if the Director and the Director of Human Resources feels that is in the best interest of the City, the ten day notice requirement may be waived.

B. ORAL RESIGNATIONS

In instances where only an oral resignation is tendered, the Director shall promptly communicate the facts in writing to the Human Resources Department for inclusion in the employee's Personnel File. Oral resignations shall be considered as failure to properly notify and employees are not eligible for rehire.

C. JOB ABANDONMENT

An employee voluntarily and irrevocably resigns City employment if the employee:

1. Fails to return from an approved leave of absence on the date specified by the employee or the date agreed upon by the City and employee, without prior notice or sufficient cause.
2. Fails to report to work without notice to the City for 3 consecutive workdays or shifts without sufficient cause.

Employees who abandon their jobs will not be eligible for rehire.

D. WITHDRAWAL OF RESIGNATION

An employee wishing to request the withdrawal of an accepted resignation shall submit a written statement to the Director outlining the basis for the request prior to the effective date. Once a resignation is tendered by the employee and accepted as provided in this section, it may not be withdrawn unless the Director agrees.

E. RESIGNATION IN LIEU OF PENDING DISCIPLINARY ACTION TERMINATION

A resignation because of pending or possible disciplinary action will be considered as separation for misconduct. Employees who resign in lieu of pending disciplinary action will not be eligible for rehire.

8.02 RETIREMENTS

Full-time employees are afforded retirement under the Texas Municipal Retirement System. Eligible employees may retire from City service in accordance with applicable programs. Retirement with the City of Tomball is a voluntary separation and employment is terminated on the last day worked. For more information on Retirement, please refer to Section 5.07 or contact the Human Resources Department.

8.03 REDUCTION IN FORCE (LAYOFFS)

From time to time economic conditions or the changing staffing needs of the City create situations which require a reduction in force or layoff from specific positions. A reduction in force is a non-disciplinary decrease in the number of authorized positions.

8.04 ABSENCE WITHOUT LEAVE

If an employee is absent from work, without proper authorization, whether for part or all of a working day or for a longer period, such absence shall be grounds for disciplinary action or termination.

8.05 TERMINATIONS

Employees separated through termination are not eligible for rehire except as otherwise required by federal or state law.

All non-elected officers and employees of the City shall be appointed or hired for an indefinite term and either the City or employee can terminate the employment and compensation at will, at any time with or without cause.

Non-elected officers of the City and Department Directors shall be removed by the City Manager in accordance with the City Charter. Other employees of the City shall be removed by their respective Department Head with the consent of the City Manager. No verbal or written reason for dismissal is required to be given to the employee.

8.06 INCAPACITY

An employee may be separated from employment for incapacity due to medical reasons arising from illness, injury, or other medical conditions when the employee, with or without reasonable accommodation, is unable to perform the essential functions of the job; or continued employment creates a direct threat to the health and safety of the employee or others.

It is the supervisor's responsibility to know an employee's ability to perform essential job functions. Should an employee's ability to physically or mentally perform his or her duties be questioned, the Director through the Director of Human Resources may accept the determination of the employee's treating physician and/or may require the employee to submit to a medical evaluation performed by a physician approved by the City. A finding of incapacity shall be made through an individual job related medical examination by the physician. Separation for incapacity will not be considered disciplinary action.

8.07 DEATH

If a City employee dies, their estate will receives all pay due as well as any earned and payable benefits as of the date of the employee's death.

8.08 EXIT INTERVIEWS

Each person departing from City employment is required to meet with the Human Resources Department for an exit interview. Departments must notify the Human Resources Department regarding employee separations. The Human Resources Department will schedule an exit interview to conduct out-processing of the employee.

8.09 RETURN OF CITY PROPERTY/EQUIPMENT

Supervisors are responsible for obtaining all departments-issued City property, such as keys, tools, manuals, inclement weather gear, protective gear, uniforms, cell phones, etc. that may be in the employees possession or custody and returning the items to the appropriate departments.

Employees who fail to return City property may be delayed in payment of final pay until all City property is returned. If these items are damaged or missing, their value will be deducted from the separating employee's final paycheck as outlined in the Payroll Deduction Authorization form.

8.10 SEPARATION PAY

The separation date for all employees is the last day of actual work. Final pay received by an employee will not be construed to extend employment with the City of Tomball beyond the separation date. Any accrued compensatory hours will be cashed out to the employee on the final paycheck from the City. Full-time employees leaving in good standing, who have completed their probationary period, may be eligible for vacation and sick leave as outlined in Section 7. Authorized deductions, which include Federal Insurance Contribution Act (FICA), social security, insurance premiums, Texas Municipal Retirement System (TMRS), etc., will also be withheld from the departing employee's final check. The final check will be deposited into the employees account on the next pay date. Final pay check stubs will be mailed to the address designated at the time of separation.

SECTION 9 – PRIVACY AND RECORDS MANAGEMENT

9.01 EMPLOYEE PRIVACY

The City will retain its duties and privileges as an employer consistent with good business practices. This includes collection, retention, use, disclosure and confidentiality of employee information.

9.02 PRIVACY RULE POLICY AND PROCEDURES

A. Purpose and Scope

The Health Insurance Portability and Accountability Act (HIPAA) Standards for Privacy of Identifiable Health Information (the Privacy Rule) is effective April 14, 2004. The Privacy Rule provides the first comprehensive Federal protection for the privacy of health information. In accordance with the Privacy Rule, the City of Tomball will implement reasonably minimum necessary policies and procedures that limit how much protected health information is used, disclosed, and requested for certain purposes. The City is required by applicable federal and state law to maintain the privacy of protected health information. The HIPAA Privacy Rule permits disclosure of health information for workers' compensation purposes as governed by the State of Texas Labor Code and the Texas Workers' Compensation Commission associated rules. In addition, the HIPAA Privacy Rule permits the employer to collect health information as needed for employment. The HIPAA Privacy Rule does not affect medical information the employer collects and uses to carry out obligations under the Family Medical Leave Act, the Americans with Disabilities Act as Amended (ADAAA), and similar laws.

B. Protected Health Information Definition

Protected Health Information (PHI) is any individually identifiable health information that is written, oral, or electronic, including demographic information collected from an individual. PHI also relates to past, present, or future physical or mental health or condition of an individual; or the past, present, or future payment for the provision of health care to an individual; and:

1. That identifies the individual; or
2. There is a reasonable basis to believe the information can be used to identify the individual.

C. Designation of Privacy Officer

1. The Privacy Officer for the Health Plan is the Director of Human Resources.
2. The Privacy Officer is responsible for:
    a. The development and implementation of the privacy policies and procedures,
    b. Tracking the use and disclosure of PHI,
    c. Selecting and ensuring implementation of an initial training program and then subsequent "new hire" training,
    d. Overseeing HIPAA Privacy compliance,
    e. Monitoring legal and regulatory changes and suggesting new policies as needed.

3. The Privacy Officer may delegate responsibilities to other Human Resources staff as required.

D. Notice of Privacy Practices

All employees will receive a Privacy Notice from the City of Tomball and/or health insurance vendor.

The City will limit whom within the organization has access to PHI based on who needs access to perform their job duties. PHI will only be used or disclosed as authorized or required by law.

The City may release PHI to business associates with whom the City has written agreements containing terms to protect the privacy of PHI. A business associate is a person or entity who performs or assists the City with an activity involving the use or disclosure of medical information that is protected under the Privacy Rules.

The City will use or disclose employee PHI to a public or private entity authorized by law to assist in disaster relief efforts or as authorized by law deemed to be in the public interest or benefit according to the Privacy Rule.

Designated City staff that have access to PHI will be required to practice the following safeguards for individuals' health information.

- Speaking quietly when discussing PHI.
- Under no circumstances discuss individual health information outside an assigned work area;
- Isolating and locking file cabinets and file rooms; and
- Providing additional safety measures by securing personal information in the work area. Protected information will be placed in files or properly put away and not left in an open area. Staff will protect information displayed on computer terminals in open areas and information on fax machines with multiple users.

Any identifiable health information such as pre-employment physicals, drug screens, and health and welfare benefit information will not be made a part of an employee's Personnel File. A benefits file will be maintained for all full-time employees and will not be combined with the Personnel File after termination of employment. The benefits file will not be released under the Public Information Act unless required by law. The City will not be responsible for any incidental use or disclosure of information if designated staff with access to PHI make every reasonable effort to avoid being overheard and reasonably limit information shared.

Certain City personnel will be approved to have access to PHI to carry out their job duties. These staff members will be allowed to receive only the listed type of PHI needed to properly perform their job responsibilities.

1. Human Resources Staff -

The Director of Human Resources will be allowed information related to employment physicals and drug screens and other HR personnel as authorized by the Director. Specific information regarding employment physicals or drug screens will not be disclosed to the supervisor or any other staff member. This information will be filed separately from the employee's Personnel File. It is the responsibility of the employee or prospective employee to discuss specifics with the physician. Only HR personnel authorized by the Director will have access to PHI, and confidential files. Personnel and confidential files are retained indefinitely and will be housed in the Human Resources Department in a secure locked area, or at a secure area off site. These files contain PHI and it is the responsibility of the Privacy Officer to monitor access.

The Privacy Officer or designee will be responsible for retrieving requested information and all PHI files. Under no circumstances will Human Resources staff allow access to confidential files without the consent of the Privacy Officer.

Copies from the PHI and/or benefit files will only be distributed by the Human Resources Department through the oversight of the Privacy Officer.

2. Personal Health Information –

   HR personnel, as designated by the HR Director, will be allowed access to information related to employee benefits, disability assessments, and voluntary information provided by a City employee or retiree to provide customer service. Under no circumstances will HR personnel solicit PHI when assisting customers. All information voluntarily provided by an individual will be absolutely safeguarded. Human Resources may only use PHI in connection with providing customer service purposes and as authorized and required by law.

   HR personnel, as designated by the Director, will disclose PHI to a personal representative or family member of an employee or retiree if the personal representative or family member they have properly designated and documented in writing through written authorization. It is the responsibility of the employee or retiree to revoke the authorization in writing should the designated person no longer need access to personal information.

   The Director of Human Resources will enter into and monitor Business Associates Agreements between the City of Tomball and any health insurance vendors to assure privacy of protected information.

3. Americans with Disabilities Coordinator –

   Per the Americans with Disabilities Act Amendments Act of 2008 (ADAAA), the Director of Human Resources, or designee, will be designated as the ADAAA coordinator and will have access to medical information necessary to assist an employee with ADAAA issues to determine reasonable accommodations for their current position or placement in another position within the City. All disability assessment information will be kept in the individual's PHI file unless the disability is the result of an on-the-job illness or injury. Workers' Compensation assessments will be retained by Risk Management. Employees that assist the ADAAA Coordinator are prohibited from discussing PHI with any employee outside of the designated staff that needs the information to perform their required job duties.

4. Supervisory Staff -

   Supervisory staff will make every effort to limit the amount of employee's PHI to information absolutely necessary to perform required job duties. Physician's notes for sick leave absences may be retained by the Supervisor where the files will be kept in a secure locked area. Information in connection with FMLA will be retained in Human Resources where the files will be kept in a secure locked area. Supervisors are prohibited to disclose information to anyone who does not have a valid business need for the information. Supervisory staff will make no reference to individual health information through written correspondence or electronic mail. FMLA request forms and medical disability information not related to Worker's Compensation will be sent to the authorized HR personnel only. Copies of FMLA forms will not be attached to or be sent to the City's payroll department.

5. City of Tomball Employees -

   All employees are entitled to have personal and medical information private. Under no circumstances will a City employee disclose PHI regarding another City employee through the electronic mail system or written correspondence, unless the affected employee provides written authorization. Unauthorized disclosure of PHI may constitute a federal crime and will subject an employee to immediate disciplinary action up to and including termination.

6. Complaint Filing Procedures -

   Anyone who believes that the City of Tomball is not complying with a requirement of the Privacy Rule may submit a written complaint to the Privacy Officer. The writing must contain a description of the complaint and an explanation of the circumstances surrounding the complaint.

   Complaints may also be filed with the Secretary of the United States Department of Health and Human Services. No retaliation will be taken or tolerated because someone files a complaint with the Privacy Officer or Department of Health and Human Services.

9.03 PROTECTION OF CONFIDENTIALITY

The Director of Human Resources and other appropriate officials will take necessary actions to protect the privacy of personal data both in City maintained personnel files and the personnel data system.

The Human Resources Department will develop a department structure, which limits access to employee's personnel files as allowed by the Texas Public Information Act. Use of records for improper or unauthorized purposes may result in disciplinary action.

9.04 RESPONSIBILITIES UNDER TEXAS PUBLIC INFORMATION ACT

While the Texas Public Information Act requires that much of the documents and information collected by the City is subject to public disclosure upon written request, a City employee has the right to choose whether or not to allow public access to portions of his or her personnel file that reveal a home address, home telephone number, social security number and information that reveals whether or not he or she has family members. Home addresses, telephone numbers, social security numbers and personal family information of peace officers are automatically closed to the public. A signed form must be in the employee's personnel file that states that this information is not to be released or it is subject to release under this Act. A new employee, must state is writing, no later than the 14th day after the initial date of employment, if this information is to be available upon public request or to remain confidential.

9.05 PERSONNEL FILES

The City of Tomball maintains the following files for each employee:

A. PERSONNEL FILES

   Personnel Files of all employees are kept in the Human Resources Department. They contain all the information that was used in the hiring process- job application, W-4 and tax withholding information, supplementary materials submitted with the job application (resumes, licenses, certificates. etc.) and test records, reference check lists, aptitude testing data, pay adjustments, performance appraisals, notices of disciplinary actions, grievances/appeals filed and their responses, etc. The law requires special handling and segregation of other information, explained in the following sections.

B. CONFIDENTIAL FILES

The Human Resources Department maintains confidential files for employees based on the guidelines set forth by the Equal Employment Opportunity Commission (EEOC). Under the EEOC guidelines, the personnel files should not include the following:

- Benefits Claims forms
- Reimbursement requests for medical expenses
- Drug testing results
- Post-offer physical examinations
- Financial and credit information
- Results of back ground investigations
- Motor Vehicle Records
- Voluntary disclosure information from the applicant regarding a "disability" as defined by Section 503 of the Rehabilitation Act of 1973
- Any record of voluntary medical history obtained from an employee or any documents relating to an employee's medical condition.

These guidelines are meant to apply mainly to information collected in connection with the Americans with Disabilities Act Amendments Act of 2008 (ADAAA), but as the employment relationship continues after hire, medical information on employees may come from any number of sources, and it must be handled with utmost care and placed in a separate confidential file. The Human Resources Department maintains confidential files for each employee, as detailed below:

1. Protected Health Information (PHI)
    a. The Privacy Officer, or designee, maintains files on Protected Health Information with access limited to:
        - Supervisors who may need to know about restrictions on the work or duties of an employee and necessary accommodations
        - First aid and safety personnel in connection with emergencies
        - Government officials investigating compliance
        - Government agencies gathering statistics
        - Insurance carriers assessing health status in connection with life or health insurance policy.
        - Employee Assistance Program information.
    b. Leave

        Under federal and state law, employers must keep detailed records of paid and unpaid leave, including records of notifications made, health care costs incurred, disputes about leave, and information on serious health conditions necessitating leave. Special security precautions apply to information about the employee's medical history and condition.
2. General Confidential Files

    Any information not specifically related to employee wage and hour status of job performance is carefully scrutinized to determine whether it reveals any private fact about an employee. If it does,

it is placed in this general confidential file rather than the “Personnel File”. Financial and credit information and the results of back ground investigations and drug and alcohol results are kept in this file. Specific medical information is not a part of this file.

The City will not collect or retain the following information in the Personnel Files”, except as may be needed for employment, insurance, or retirement matters:

- Names and birth dates of employees' family members. This is kept in a separate benefits file.
- Generally, marriage certificates, birth certificates or other personal documents will not be maintained with the exception for benefits purposes, such as documentation of qualifying events. The general rule will be a business need to know.
- Information on an employee's credit worthiness, financial standing or like information. This is kept in a separate confidential file.
- Medical information as needed, based on job requirements, will be maintained in separate files, as per federal regulations.

3. Benefits Files

   The Human Resources Department maintains a benefits file on all employees that contains benefits enrollment forms and related documentation.

4. Departmental Files

   Each Supervisor may maintain a limited "Departmental Personnel File" on employees in their charge. Information in this file will be considered necessary to properly administer and supervise employees within their work unit. This information may include, but is not limited to: performance evaluations, attendance records, emergency notification records, notes, memos, letters, information concerning recent disciplinary actions and other information relating to the employees' job training and performance.

9.06 EMPLOYEE ACCESS TO PERSONNEL RECORDS

The employee has the right to review their personnel files. Specific guidelines for employee access are as follows:

A. An employee who wishes to see their personnel records should contact the Human Resources Department, where a representative will assist the employee. If the employee wishes to see a departmental personnel file, the supervisor or manager will arrange a time convenient for the review. A representative of Human Resources will be present at all times.

B. Employees have the right to review information in their personnel file and their departmental file.

C. The Director of Human Resources will strictly limit the internal availability of personal information to those officials with a clear need to know.

D. The Director of Human Resources will refuse to release any information, except under the Texas Public Information Act, to outside sources without the employee's written approval. Exceptions are limited to simple employment verification and legal requirements as may be necessary.

E. The Director of Human Resources requires each employee to strictly adhere to these policies and practices. Violations are subjected to appropriate disciplinary action.

An employee may inspect their files and may take notes or have single copies made of any page in the file. No employee is allowed to remove any documentation from any personnel file. In such cases, an employee may be disciplined for removing City property.

An employee has the right to request a correction or deletion of inaccurate information. Approval for correction or deletion of any material rests with the Director of Human Resources and such requests must be submitted in writing. In case of disagreement with the information in their file, the employee may add a statement of disagreement in the file.

9.07 CITY OFFICIALS' ACCESS TO EMPLOYEE RECORDS

Access to employee personal information is prohibited to other employees with the following exceptions:

A. Human Resources Department staff to which the Director of Human Resources authorizes access to files in conduct of their normal duties.

B. An employee's immediate supervisor.

C. Supervisors, within the chain of command of an employee, with a legitimate need to know.

D. Persons involved in considering an employee for a promotional opportunity or other job change.

E. City Attorneys, Directors, and Managers who the Director of Human Resources determines have a business need to know in the interest of matters pertaining to the City.

F. Internal and external auditors of the City who the Director of Human Resources determines have a business need to know in performing an audit on the operations of the City.

9.08 DISCLOSURE OF EMPLOYEE INFORMATION

All requests for information about current and former employees as well as job applicants will be referred to the Human Resources Department. In most cases, written approval of the individual is required (other than routine employment verification) before personal data may be disclosed to an outside source. Exceptions to this rule include:

A. Requests from prospective employers concerning dates of employment, title or position and job location.

B. Subpoenas and judicial orders.

9.09 TAPE RECORDING

To assure the reasonable expectation of privacy in casual, business, or personal conversations, no employee, may audio or videotape conversations of any employee, official, and/or visitor in City owned or occupied buildings, unless the person grants permission. Please refer to Section 6.01 for a list of exceptions.

9.10 CURRENT ADDRESS AND INFORMATION

Each employee is responsible for promptly notifying the Human Resources Department of changes in address, telephone number, marital status and dependents. Please be sure to provide the necessary documentation for a change in marital status. A form for address changes is available from Human Resources. This responsibility extends to employees on layoff status and leaves of absence.

9.11 SEARCHES

The City may conduct inspections or searches of City property at any time at the discretion of the Department Director or City Manager with or without the employees consent or approval, and without prior notice to the employee. The City may search City property regardless of whether the property is used exclusively by the employee, is secured, unsecured or secured by a lock or locking device provided by the employee or the City.

The City may also conduct inspections or searches of an employee's personal property, that are brought onto City property or the employee's workplace during the employee's work hours, if a supervisor has reasonable suspicion to believe that the employee's property is being used in violation of any City policy or state or federal law. In addition to personal property, the City reserves the right, with cause, to search any office, desk, file, computer, locker or any other area or article owned by the City. In this connection, all offices, desks, files (including electronic or computer files), computers, lockers, vehicles and any other piece of equipment or furniture are property of the City and are issued for the use of employees only during the employee's employment by the City.

An employee who interferes with a search or fails to cooperate in allowing a search conducted under this policy, including giving access to City property as directed, is subject to discipline, including possible termination.

Regular City Council
Agenda Item
Data Sheet

Meeting Date: May 1, 2017

Topic:
Conduct Public Hearing on Ordinance No. 2017-10 and Adopt, on First Reading, Ordinance No. 2017-10, an Ordinance of the City of Tomball, Texas, Amending its Zoning Ordinance by Approving a Planned Development District of Approximately 65.6190 Acres of Land Located at the Southwest Corner of the Intersection of State Highway 249 and State Highway 99, Amending the Official Zoning Map of the City to Reflect the Planned Development District to be Known as Planned Development–10 (PD 10) District; Adopting Regulations Applicable To PD–10 District; Providing for Severability; Providing for a Penalty of an Amount not to Exceed $2,000.00 for Each Violation Hereof, with Each Day Constituting a New Violation; Making Findings of Fact; and Providing for Other Matters.

Background:
Ordinance 2017-10 creates Planned Development District-10 (PD 10) which was approved by City Council on February 6, 2017 as part of the NewQuest Properties amended Development Agreement.

Origination:
NewQuest Properties

Recommendation:
Approval

Party(ies) responsible for placing this item on agenda:
Craig T. Meyers, Community Development Director

ACTION TAKEN

Approval	Readings Passed	Other
☐ Yes ☐ No	☐ 1st ☐ 2nd	

ATTACHMENTS:

Notice of Public Hearing
Ordinance No. 2017-10

NOTICE OF PUBLIC HEARING
CITY OF TOMBALL
CITY COUNCIL
MAY 1, 2017

Notice is Hereby Given that a Public Hearing will be held by the City Council of the City of Tomball on **Monday, May 1, 2017, at 6:00 P.M.** at City Hall, 401 Market Street, Tomball Texas. On such dates, the P&Z and City Council will consider the following:

Zoning Case P17-0011: Request by G. Matthew Lueckenhoff, on behalf of New Quest Properties, to amend Chapter 50 (Zoning) by zoning an approximately 65 acre tract of land, legally described as 65.6190 acres of land in the William Perkins Survey, Abstract No. 621, the T.A. Duclos Survey, Abstract No. 1473, and in the C.W. Hall Survey, Abstract No. 1639, Harris County, Texas, generally located at the southwest corner of State Highway 249 and State Highway 99 to the Planned Development 10 District.

At the public hearings, parties of interest and citizens will have the opportunity to be heard. All citizens of the City of Tomball, and any other interested parties, are invited to attend. Applications are available for public inspection Monday through Friday, except holidays, at the Public Works Building, located at 501 James Street, Tomball, TX 77375. Further information may be obtained by contacting the Planner, Amelia Lindley, at (281) 290-1410 or at alindley@tomballtx.gov.

C E R T I F I C A T I O N

I hereby certify that the above notice of meeting was posted on the bulletin board of City Hall; City of Tomball, Texas, a place readily accessible to the general public at all times, on the **27th** day of **April 2017** by 5:00 p.m., and remained posted for at least 72 continuous hours preceding the scheduled time of said meeting.

Kim Chandler
Kim Chandler
Secretary of the Board

This facility is wheelchair accessible and accessible parking spaces are available. Requests for accommodations or interpretive services must be made 48 hours prior to this meeting. Please feel free to contact the City Secretary's office at (281) 290-1002 or FAX (281) 351-6256 for further information. AGENDAS MAY ALSO BE VIEWED ONLINE AT www.tomballtx.gov.

ORDINANCE NO. 2017-10

AN ORDINANCE OF THE CITY OF TOMBALL, TEXAS, AMENDING ITS ZONING ORDINANCE BY APPROVING A PLANNED DEVELOPMENT DISTRICT OF APPROXIMATELY 65.6190 ACRES OF LAND LOCATED AT THE SOUTHWEST CORNER OF THE INTERSECTION OF STATE HIGHWAY 249 AND STATE HIGHWAY 99, AMENDING THE OFFICIAL ZONING MAP OF THE CITY TO REFLECT THE PLANNED DEVELOPMENT DISTRICT TO BE KNOWN AS PLANNED DEVELOPMENT – 10 (PD 10) DISTRICT; ADOPTING REGULATIONS APPLICABLE TO PD – 10 DISTRICT; PROVIDING FOR SEVERABILITY; PROVIDING FOR A PENALTY OF AN AMOUNT NOT TO EXCEED $2,000.00 FOR EACH VIOLATION HEREOF, WITH EACH DAY CONSTITUTING A NEW VIOLATION; MAKING FINDINGS OF FACT; AND PROVIDING FOR OTHER MATTERS.

* * * * *

WHEREAS, the property owners have requested that approximately 65.6190 acres of land located at the southwest corner of the intersection of State Highway 249 and State Highway 99, more particularly described in Exhibit "C", attached hereto and incorporated herein for all purposes (the "Property"), be annexed into the City of Tomball (the "City"); and

WHEREAS, the property owners and the City have agreed that the Property will be placed into a Planned Development District pursuant to Section 50-80 of the City's Code of Ordinances; and

WHEREAS, the City Council finds it to be in the best interest of the health, safety and welfare of its citizens to place the Property into a Planned Development District – PD-10 District – in accordance with the following terms and regulations; now, therefore,

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF TOMBALL, TEXAS:

Section 1. The facts and matters set out in the preamble to this ordinance are hereby found to be true and correct.

Section 2. The zoning classification of the Property is hereby deemed PD-10 District subject to the regulations, restrictions and conditions hereafter set forth.

Section 3. The Official Zoning Map of the City of Tomball shall be revised and amended to show the designation of the Property as PD-10 District, with the appropriate reference thereon to the number and effective date of this Ordinance and a brief description of the nature of the change.

Section 4. This Ordinance shall in no manner amend, change, supplement or revise any provision of any ordinance of the City of Tomball, save and except to reflect the zoning classification of the Property.

Section 5. PD-10 District shall be subject to the following limitation, restrictions and covenants:

I. INTRODUCTION

This planned unit development application was prepared on behalf of NewQuest Properties (the "Developer") pursuant to the City of Tomball ordinances related to Planned Development Districts. The purpose of this Grand Parkway Town Center Planned Development District (this "PDD") is to encourage flexibility in the use and development of the land in order to promote the most appropriate design. These requirements will help to facilitate the development of a commercial project known as Grand Parkway Town Center that will service the surrounding communities (the "Project").

The development and operation of the Project shall be governed solely by the terms of this PDD for purposes of Chapter 50 of the City of Tomball Code of Ordinances. In the event of any conflicts between the terms and provisions of this PDD and the terms and provisions of the City of Tomball Code of Ordinances, present or future, the terms and provisions of the PDD shall supersede and control. No provision of Chapter 50 of the City of Tomball Code of Ordinances, as such may be amended from time to time, shall prevent the development or operation of the property so long as the terms and provisions of the PDD are satisfied. To the extent this document does not address subject matter governed by Sec. 50-77 of the City of Tomball Code of Ordinances, the provisions of Sec. 50-77 in effect as of the date of this document shall apply to the Project.

II. EXISTING CONDITIONS

A. Physical Opportunities and Constraints

Located at the southwest corner of the intersection of State Highway 249 ("S.H. 249") and State Highway 99 (the "Grand Parkway"), the Project is composed of 65.6190 acres as depicted in Exhibit A – Area Location Map and Exhibit B – Project Survey, and more particularly described in Exhibit C – Legal Description attached hereto (the "Property"). The Property is located north of Boudreaux Road and the Northpointe subdivision and east of Rocky Road.

Located along the southwestern corner of the site are a thirty five (35) foot wide pipeline easement and a fifty (50) foot wide pipeline easement that extend diagonally from Rocky Road to Boudreaux Road. The Property is currently undeveloped and in a rough graded condition. Please refer to Exhibit B – Project Survey for all existing conditions.

B. Surrounding Land Use

The mix of land uses that surround the Project range from single family residential to commercial uses. Immediately west and north of the Project is undeveloped land. To the east, across S.H. 249, is Graceview Baptist Church. Southeast is a variety of commercial uses including an automobile dealership as well as an auto repair facility south of the site is Northpointe, a single family development. More rural residential development is located to the southwest of the Property. The surrounding land uses can be seen on Exhibit A – Area Location Map attached hereto.

III. PROJECT DESCTIPTION

A. Compliance with Comprehensive Plan

The City of Tomball's Comprehensive Plan does not designate a specific land use for the Property. However, the Project, as proposed, is consistent with existing development along S.H. 249 as well as along the Grand Parkway.

B. Plan Description

The Concept Plan consists of various retail and commercial uses, including multiple large anchor tenants, a large grocery store with attached retail and two (2) fuel centers, various pad sites for banks and restaurants, a pharmacy and similar single tenant development. The southwest portion of the site is proposed as various commercial uses. A large detention pond will be located toward the center of the Property to provide the necessary detention within the Project. The Concept Plan for the Project is attached hereto as Exhibit D. Changes may be made to the Concept Plan per Article III, Section E (12) below.

Access to the Property may be taken from the frontage roads for the Grand Parkway and/or from S.H. 249. Local traffic will be able to access the site from Rocky Road and Boudreaux Road. Adequate internal circulation will be provided within the site to ensure appropriate access and internal connectivity between uses. Developer intends to construct an internal sixty foot (60') right of way connecting to Rocky Road and Boudreaux Road in the general location depicted on the Concept Plan. The proposed pad sites will primarily be situated immediately adjacent to Grand Parkway and S.H. 249 while the large anchor tenants will be both internal to the site and at the intersection of the major thoroughfares.

The Project will be developed with a consistent signage and landscaping plan that will create cohesiveness amongst the various users as well as help to unify the Project and create an aesthetically pleasing destination for residents and visitors to the area.

C. General Project Character

1. Buildings: All buildings within the Project shall be constructed of typical materials used on similar projects in the area. The materials and colors of each *building* shall be complementary to the surrounding Project. No further restrictions shall apply to the size, location or materials of the buildings within the Project.

2. Access & Mobility: The Project will take primary access from the Grand Parkway and S.H. 249 and secondary access from Rocky Road and Boudreaux Road.

3. Parks Dedication: No designated park land or fee in lieu thereof or open space dedication is required within the Project.

D. Zoning

1. Current and Surrounding Zoning: The Property and all surrounding property is currently outside the city limits of the City of Tomball and are therefore not within any zoning district.

2. Platting: The City of Tomball hereby acknowledges that a preliminary plat has been submitted for the Project meeting the requirements of Section 50-37 of the Tomball Zoning Ordinance.

3. Land Uses: All uses designated as permitted or permitted subject to a conditional use permit (CUP) in a Commercial District (C) as of the date of this PDD shall be allowed by right. For the avoidance of doubt, the current City of Tomball Commercial District ordinance and Use Regulations chart are attached hereto as Exhibit E.

E. Project Development Regulations

With some exceptions contained herein, the Project will conform to the development regulations for the Commercial Zoning District as described in Section 50-77 of the Tomball Zoning Ordinance. Any items not specifically addressed below shall revert to the regulations set forth in the Section 50-77 of the City of Tomball Zoning Ordinance in place at the time the PDD is approved. The below regulations shall apply to all development within the project:

1. Building Height: The maximum building height for any building within the Project shall be one hundred twenty (120) feet. All accessory buildings (as defined in the City of Tomball Zoning Ordinance) shall be limited to one (1) story in height.

2. Minimum Building Setbacks: The below setbacks shall be adhered to on all development within the Project:

    a. Front Setback (arterial) – Minimum twenty-five (25) feet from front property line (including front property line adjacent to an arterial street).
    b. Interior Front Setback – Minimum of ten (10) feet from any public right-of-way located within the interior of the Project.
    c. Interior Side Setbacks - When retail or commercial uses are platted adjacent to other retail or commercial uses and integrated into the Project, no side yard setback is required.
    d. Rear Setback - Minimum ten (10) feet from front property line.
    e. Side Setbacks - Minimum ten (10) feet from the property line.

3. Maximum Lot Coverage:

Commercial Uses - Maximum lot coverage is 70 percent including main and accessory buildings; maximum 90 percent impervious coverage (including all buildings, parking areas, sidewalks, etc.)

4. Maximum floor area: There is no maximum floor area ratio.

5. Screening, Buffering and Fencing Requirements: All standards listed in Section 50-115 of the Zoning Ordinance must apply, with the exception of the following:

    a. A six (6) foot high tubular steel fence may be permitted at the perimeter of the Property in place of a solid screening wall.

    b. All required screening will be opaque except in the case of garden center that is attached as an accessory use to the primary retail use.

In lieu of opaque screening, garden centers will be required to provide a permanent enclosure but no opacity regulations are required.

6. Supplemental Regulations: Temporary Seasonal Sale – Section 50-116(2)(b) shall be adhered to with the exception of the regulations listed below:

    a. Temporary seasonal sales may occupy the parking spaces that are required by this chapter for the primary uses of the property for seasonal sales on a temporary basis only, which is a maximum of thirty (30) days per display of seasonal materials and a maximum of seven (7) displays per calendar year, provided parking is adequate and not overloading the streets or adjacent properties; and

    b. Tenants or occupants may conduct occasional sidewalk sales on the sidewalk located immediately in front of the premises such tenant or occupant is then occupying so long as the sidewalk sales do not impair ingress and egress on such sidewalks. Any anchor tenant or grocery store may conduct year round selling on the sidewalk immediately in front of the premises occupied by such anchor tenant or grocery store.

7. Landscaping: Landscaping must be installed in accordance with the landscape plan for the Project (See Exhibit F - Landscape Plan attached hereto). Final location of all planting may shift as final design of the individual parcels is developed, but an amendment to the landscape plan will not be required so long as the total number of trees and shrubs and the overall percentage of landscape area does not change more than ten (10) percent from the approved plan.

8. Lighting: The Project will be consistent with the lighting regulations as set forth in the City of Tomball Code of Ordinances, with the exception of the following:

    All lighting shall be directed downward and shielded so as to prevent the direct illumination of public rights-of-way and adjacent properties and to minimize glare. Lighting shall be limited to a maximum of four (4) foot candle along all property lines, unless adjacent to a residential district or use.

9. Façade Overlay District: The Project is not subject to any current or future Overlay District

10. Parking:

a. The Project will comply with the parking requirements listed below:

i. All Retail and Grocery uses - 4 spaces per 1000 sq ft.
ii. Home Improvement Center – 2.5 spaces per 1000 sq. ft.
iii. Eating Establishment – 8 space per 1000 sq. ft.
iv. Bank/Financial Institution – 3 spaces per 1000 sq. ft.
v. Office - 3 spaces per 1000 sq. ft.
vi. Motion Picture Theater – 1 space per 4 theater seats
vii. Clinic, Emergency Care – 4 spaces per 1000 sq. ft.

b. Stacking – Section 50.112(c)(11) shall be adhered to with the exception of the regulations listed below:

i. For financial institutions with drive-through facilities, each teller window or station, human or mechanical, shall be provided with a minimum of three stacking spaces;

ii. For each service window of a drive-through restaurant, a minimum of three spaces shall be provided for the first vehicle stop, and two spaces shall be provided for each additional vehicle stop (order/pick-up windows, etc.); and

iii. Escape lanes shall not be required for drive-through facilities located within the Project.

11. Public Street: Any public street must have a minimum sixty (60) foot right of way. Utilities may be provided within the allotted right of way. No additional utility easements will be required if sufficient space is available within the right of way.

12. Changes to Concept Plan: The City Manager or designee shall approve any changes to the Concept Plan so long as the Project continues to be consistent with other first class commercial projects in the area. Changes that do not conform with the foregoing require approval of the City of Tomball Planning and Zoning Commission and Tomball City Council.

F. Utilities

Utilities will be provided by the City of Tomball (waterline only), Harris County Municipal Utility District No. 273 and Northpointe Water Control and Improvement District and will be coordinated with all applicable agencies.

G. Signage

The Project will comply with the signage requirements listed below:

1. Definitions:

a. Approved Signs: The signage shown on Exhibits G-1 and G-2 attached hereto, plus any signage which is, from time to time, adopted by a National Chain located in the Project.

b. National Chain: A retail business which operates (i) fifty (50) or more united in at least two (2) states under the same trade name, or (ii) twenty-five (25) or more units in the State of Texas under the same trade name.

2. Pylon/Monument Signage: On-premises and off-premises ground signs will be provided in a cohesive manner throughout the Project. Please refer to Exhibit G-1 for the proposed locations of approved signs and Exhibit G-2 for the signage designs (collectively, the "Signage Exhibits"). The final locations and design of the approved signs may vary depending on the final layout of the Project, and shall be determined by Developer. So long as the maximum size and number of approved signs does not differ materially from those depicted in the Signage Exhibits, no amendment to the attached Signage Exhibits will be required, and such signs will be deemed approved. No provision of Chapter 34 of the City of Tomball Code of Ordinances, as such may be amended from time to time, shall prevent the installation of the approved signs. All signs depicted in the Signage Exhibits shall be constructed according to the standards of the International Building Code, 2012 edition (nonresidential) (the International Building Code) and any amendments to the International Building Code adopted by the City of Tomball and in effect as of the date of this document.

3. Wall Signs: The maximum horizontal length of any tenant wall sign (including wall signs of National Chains) shall not exceed eighty percent (80%) of the width of such tenant's usable storefront. Storefront width applies to one (1) surface material. If the width of the storefront contains more than one building/façade material, the size limitation shall be determined based on the width of one (1) building/façade material, rather than the combined width of multiple building/façade materials.

Except for the foregoing, wall signs shall be allowed within the Project without limitation to the number, size or location of such wall signs.

4. Construction/Advertising Signs: Signs setting forth information concerning a building or other structure under repair or construction or advertising the sale or rental of the premises are permitted so long as the building or other structure is under repair or construction or so long as the premises is for sale or rent, and no permit shall be required to erect, construct or reconstruct such signs.

5. Temporary Signs: Temporary signs are permitted for advertising grand openings and holiday promotions so long as such temporary signs are removed within sixty (60) days of the date they are installed. Temporary signs shall otherwise be permitted for up to fourteen (14) consecutive days. No permit shall be required to erect, construct or reconstruct such signs.

6. National Chain Signs: Subject to Article III, Section G (3) above, the standard signs and logos of a National Chain (including, but not limited to, marquee signs, projecting signs, wall signs and roof signs) shall be permitted so long as such signs and logos do not utilize flashing, moving or audible lights or appurtenances.

7. CEVMS: Changeable electronic variable message signs (CEVMS) are permitted adjacent to state right-of-way so long as such CEVMSs meet the other requirements contained within Chapter 34 of the City of Tomball Code of Ordinances.

8. Signs Permits: The foregoing notwithstanding, the City of Tomball may issue permits for signage in the Project, but only to ensure the requirements of this Section G have been satisfied. If the NewQuest Properties, or its affiliate, certifies to the City that any signage in the Project satisfies the requirements of this Section G, the City shall issue permits for the signage within ten (10) days thereafter.

H. Development Schedule

It is anticipated that the Project will be developed in multiple phases over a three (3) year period. The Concept Plan is conceptual in nature and the location and size of the buildings may change in response to market driven forces. The location and timing of the phases is dependent upon market driven forces and the City of Tomball shall approve any future changes to location of timing of the phases and/or the Concept Plan so long as the Project is consistent with other first class commercial projects in the area.

I. Exhibits

A. Area Map
B. Survey
C. Legal Description
D. Concept Plan
E. Sec. 50-77 – Commercial District (C) & Sec. 50-82 – Use regulations (charts)
F. Landscape Plan
G. Signage Exhibits

Section 6. Any person who shall intentionally, knowingly, recklessly, or with criminal negligence, violate any provision of this Ordinance, shall be deemed guilty of a misdemeanor and, upon conviction, shall be fined in an amount not to exceed $2000. Each day of violation shall constitute a separate offense.

Section 7. It is the intent of the City that this Ordinance shall comply in all respects with the applicable provisions of the United States Constitution, the Texas Constitution, and the Charter of the City of Tomball. In the event any clause, phrase, provision, sentence, or part of this Ordinance or the application of the same to any person or circumstance shall for any reason be adjudged invalid or held unconstitutional by a court of competent jurisdiction, it shall not affect, impair, or invalidate this Ordinance as a whole or any part or provision hereof other than the part declared to be invalid or unconstitutional; and the City Council of the City of Tomball, Texas, declares that it would have passed each and every part of the same notwithstanding the omission of any such part thus declared to be invalid or unconstitutional, whether there be one or more parts.

Section 8. This Ordinance shall take effect fourteen (14) days from and after its passage and the publication of the caption hereof, as provided by law and the City's Home Rule Charter.

FIRST READING:

READ, PASSED AND APPROVED AS SET OUT BELOW AT THE MEETING OF THE CITY COUNCIL OF THE CITY OF TOMBALL HELD ON THE _____ DAY OF _____ 2017.

COUNCILMAN HUDGENS	_____
COUNCILMAN STOLL	_____
COUNCILMAN DEGGES	_____
COUNCILMAN TOWNSEND	_____
COUNCILMAN KLEIN QUINN	_____

SECOND READING:

READ, PASSED AND APPROVED AS SET OUT BELOW AT THE MEETING OF THE CITY COUNCIL OF THE CITY OF TOMBALL HELD ON THE _____ DAY OF _____ 2017.

COUNCILMAN FORD	_____
COUNCILMAN STOLL	_____
COUNCILMAN DEGGES	_____
COUNCILMAN TOWNSEND	_____
COUNCILMAN KLEIN QUINN	_____

_____
Gretchen Fagan, Mayor

ATTEST:

_____
Doris Speer, City Secretary

EXHIBIT A

BGE | KERRY R. GILBERT & ASSOCIATES

©2014 BGE | KERRY R. GILBERT & ASSOCIATES, All Rights Reserved



N

OPTION A

a acre map exhibit for

GRAND PARKWAY TOWN CENTER

± 65.6 ACRES OF LAND

prepared for

NEWQUEST PROPERTIES

BGE KERRY R. GILBERT & ASSOCIATES

-- Land Planning Consultants --
23501 Cinco Ranch Blvd., Suite A-250
Katy, Texas 77494
Tel: 281-579-0340

7000 North Mopac, Suite 330
Austin, TX 78731
Tel: 512-583-4511

2595 Dallas Parkway, Suite 204
Frisco, TX 75034
Tel: 972-464-5831

NOT TO SCALE

MAY 26, 2016
KGA # 1-456

EXHIBIT A

THIS DRAWING IS A PICTORIAL REPRESENTATION FOR PRESENTATION PURPOSES ONLY AND IS SUBJECT TO CHANGE. FURTHER, SAID DRAWING IS A SCANNED IMAGE ONLY AND IS NOT FOR COMPUTATION OR CONSTRUCTION PURPOSES. THIS DRAWING MAY OR MAY NOT INCORPORATE INFORMATION AND/OR DATA PROVIDED TO BGE | KERRY R. GILBERT & ASSOCIATES BY OTHER CONSULTANTS RELATIVE TO ENGINEERING AND DRAINAGE, FLOODPLAINS AND ENVIRONMENTAL ISSUES AND SHOULD NOT BE RELIED UPON FOR ANY PURPOSE. NO WARRANTIES, EXPRESS OR IMPLIED, CONCERNING THE ACTUAL DESIGN, LOCATION, AND CHARACTER OF THE FACILITIES SHOWN ON THIS MAP ARE INTENDED. ADDITIONALLY, NO WARRANTY IS MADE TO THE ACCURACY OF THE INFORMATION CONTAINED HEREIN.

©2015 BGE | KERRY R. GILBERT & ASSOCIATES, ALL RIGHTS RESERVED

BGE | KERRY R. GILBERT & ASSOCIATES

EXHIBIT B

EXHIBIT B

LEGAL DESCRIPTION – TRACT 1:

A FIELD NOTE DESCRIPTION of 65.8190 acres (2,868,383 square feet) of land in the Williams Perkins, Survey, Abstract No. 621, to the T. A. Duclos Survey, Abstract No. 1473, and in the C. W. Hall Survey, Abstract No. 1639, Harris County, Texas; said 65.8190 acre tract of land being several tracts of land conveyed to A-E Venture Capital, L.C., as recorded in Harris County Clerk's File Nos. P377137, 20130073274, 20130048231, 20130048682, 20150448803, 20190448672, and 20190085960; said tract being more particularly described by metes-and-bounds as follows with the bearings being based on Texas State Plane Coordinate System, South Central Zone (NAD83) per GPS Observations using National Geodetic Survey Continuously Operating Reference Stations:

COMMENCING FOR REFERENCE at a 5/8-inch iron rod found at the intersection of the south right-of-way line of Boudreaux Estates Drive (previously called Boudreaux Road, 60 feet wide) with the east right-of-way line of Rocky Road (previously called Boudreaux Road, 60 feet wide) for the northwest corner of a 14.8700 acre tract of land conveyed to Grace Life Church, as recorded in Harris County Clerk's File No. P747894;

THENCE, South 02° 42' 23" East with the east right-of-way line of said Rocky Road, at a distance of 636.47 pass a point at the intersection of the east right-of-way line of said Rocky Road with the north right-of-way line of State Highway 99 (Grand Parkway, right-of-way width varies), as recorded in Harris County Clerk's File No. 20130839881, and continuing for a total distance of 1,735.13 feet to a TXDOT monument disk found at the intersection of the east right-of-way line of said Rocky Road with the north right-of-way line of said State Highway 99 for a northwest corner and the POINT OF BEGINNING of this tract;

THENCE, North 67° 06' 44" East – 3.45 feet with a south right-of-way line of said State Highway 99 to a TXDOT monument disk found for an interior corner of this tract;

THENCE, North 02° 08' 25" West – 66.98 feet with an east right-of-way line of said State Highway 99 to a TXDOT monument disk found for an angle point of this tract;

THENCE, North 42° 34' 09" East – 80.02 feet with the southeast right-of-way line of said State Highway 99 to a TXDOT monument disk found for an angle point of this tract;

THENCE, North 88° 01' 13" East – 1,166.62 feet with the south right-of-way line of said State Highway 99 to a TXDOT monument disk found for an angle point of this tract;

THENCE, South 73° 26' 25" East – 25.76 feet with the south right-of-way line of said State Highway 99 to a TXDOT monument disk found for an angle point of this tract;

THENCE, North 88° 01' 13" East – 30.32 feet with the south right-of-way line of said State Highway 99 to a TXDOT monument disk found for the beginning of a non-tangent curve to the right;

THENCE, in a southeasterly direction with the south right-of-way line of said State Highway 99 and with said non-tangent curve to the right having a radius of 1,030.78 feet, a central angle of 22° 59' 25", a length of 413.53 feet and a chord bearing South 80° 70' 35" East – 410.67 feet to a 5/8-inch iron rod found in the southwest right-of-way line of State Highway 249 (width varies) for the northeast corner of this tract;

THENCE, in a southeasterly direction with the southwest right-of-way line of said State Highway 249 and with a non-tangent curve to the right having a radius of 1,370.00 feet, a central angle of 01° 37' 30", a length of 39.11 feet and a chord bearing South 23° 02' 19" East – 39.10 feet to a 5/8-inch iron rod with cap stamped "T.E.A.M." found for the end of said curve;

THENCE, South 22° 14' 12" East – 154.41 feet with the southwest right-of-way line of said State Highway 249 to a TXDOT monument disk found for a point of curve;

THENCE, in a southeasterly direction with the southwest right-of-way line of said State Highway 249 and with a curve to the left having a radius of 1,342.00 feet, a central angle of 12° 30' 50", a length of 326.80 feet and a chord bearing South 28° 39' 08" East – 326.15 feet to a TXDOT monument disk found for the end of said curve;

THENCE, South 35° 13' 22" East – 385.87 feet with the southwest right-of-way line of said State Highway 249 to a TXDOT monument disk found at the northwest end of a cutback at the intersection of the southwest right-of-way line of said State Highway 249 with the northwest right-of-way line of Boudreaux Road (100 feet wide), as reported in Harris County Clerk's File No. D402158 for a southeast corner of this tract;

THENCE, South 09° 39' 54" West – 53.94 feet with said cutback to a TXDOT monument disk found at the southwest end of said cutback for a southeast corner of this tract;

THENCE, South 58° 19' 08" West – 791.84 feet with the northwest right-of-way line of said Boudreaux Road to a 5/8-inch iron rod found for the beginning of a non-tangent curve to the right;

THENCE, in a westerly direction with the north right-of-way line of said Boudreaux Road and with said non-tangent curve to the right having a radius of 2,730.00 feet, a central angle of 28° 07' 33", a length of 1,366.80 feet and a chord bearing South 72° 50' 28" West – 1,373.00 feet to a 5/8-inch iron rod found at the intersection of the north right-of-way line of said Boudreaux Road with the east right-of-way line of said Rocky Road for the southwest corner of this tract;

THENCE, North 02° 42' 23" West – 1,732.43 feet with the east right-of-way line of said Rocky Road to the POINT OF BEGINNING and containing 65.8190 acres (2,868,383 square feet) of land.

LEGAL DESCRIPTION – TRACT 2:

A FIELD NOTE DESCRIPTION of 5.3170 acres (231,609 square feet) of land in the T. A. Duclos Survey, Abstract No. 1473 and in the C. W. Hall Survey, Abstract No. 1639, Harris County, Texas; said 5.3170 acre tract of land being the remainder of a 24.8225 acre tract of land, "Tract 1", conveyed to A-E Venture Capital, L.C., as recorded in Harris County Clerk's File No. P377137 and being more particularly described by metes-and-bounds as follows with the bearings being based on Texas State Plane Coordinate System, South Central Zone (NAD83) per GPS Observations using National Geodetic Survey Continuously Operating Reference Stations:

COMMENCING FOR REFERENCE at a 5/8-inch iron rod found at the intersection of the south right-of-way line of Boudreaux Estates Drive (previously called Boudreaux Road, 60 feet wide) with the east right-of-way line of Rocky Road (previously called Boudreaux Road, 60 feet wide) for the northwest corner of a 14.8700 acre tract of land conveyed to Grace Life Church, as recorded in Harris County Clerk's File No. P747894;

THENCE, North 87° 36' 01" East with the south right-of-way line of said Boudreaux Road and with the north line of said 14.8700 acre tract, at a distance of 600.21 feet pass a 5/8-inch iron rod found and continuing for a total distance of 730.32 feet to a 5/8-inch iron rod with cap stamped "TEAM" set for the northeast corner of "Director Lot 3" conveyed to Mark Day, as recorded in Harris County Clerk's File No. 20150448231 and for the northwest corner and POINT OF BEGINNING of this tract;

THENCE, North 87° 36' 01" East – 402.05 feet with the south right-of-way line of said Boudreaux Road and with the north line of said 24.8225 acre tract to a 5/8-inch iron rod found at the northeast end of a cutback at the intersection of the south right-of-way line of said Boudreaux Road with the southwest right-of-way line of State Highway 249 (width varies) for a northeast corner of said 24.8225 acre tract and for the northeast corner of this tract;

THENCE, South 58° 00' 19" East – 92.71 feet with said cutback to a point for the east corner of this tract, from which a found disturbed 5/8-inch iron rod bears North 03° 38' 21" West – 0.44 feet, and from which a 5/8-inch iron rod with cap set at the southeast end of said cutback bears South 58° 00' 19" East – 19.86 feet;

THENCE, in a southwesterly direction with the northwest line of a tract of land conveyed to The State of Texas, as recorded in Harris County Clerk's File No. 20120043180 (State Highway 99, width varies) and with a non-tangent curve to the right having a radius of 835.78 feet, a central angle of 26° 10' 22", a length of 381.88 feet and a chord bearing South 27° 42' 41" West – 378.54 feet to a TXDOT monument disk found for the end of said curve;

THENCE, South 38° 01' 13" West – 52.82 feet with the north line of said State Highway 99 to a TXDOT monument disk found for the northeast corner of existing State Highway 99 (Grand Parkway, width varies), conveyed to The State of Texas, as recorded in Harris County Clerk's File No. 20130839881 and for the southeast corner of this tract;

THENCE, North 01° 54' 16" West – 428.78 feet with the east line of said 14.8700 acre tract to a 5/8-inch iron rod with cap stamped "TEAM" set for the southwest corner of "Director Lot 5" conveyed to Felicia Lee, as recorded in Harris County Clerk's File No. 20150448548 and for a northwest corner of this tract;

THENCE, North 87° 36' 01" East – 100.00 feet with the south line of said "Director Lot 5" to a 5/8-inch iron rod with cap stamped "TEAM" set for the southeast corner of said "Director Lot 5" and for an interior corner of this tract;

THENCE, North 01° 54' 16" West with the east line of said "Director Lot 5", at a distance of 600.00 feet pass the northeast corner of said "Director Lot 5" and the southeast corner of "Director Lot 4" conveyed to Margaret Gallagher, as recorded in Harris County Clerk's File No. 20150448550 and continuing with the east line of said "Director Lot 4" for a total distance of 1050.00 feet to a 5/8-inch iron rod with cap stamped "TEAM" set for the northeast corner of said "Director Lot 4", for the southeast corner of "Director Lot 3" conveyed to Jack Hall, as recorded in Harris County Clerk's File No. 20150448399, for the southeast corner of said "Director Lot 3" and for a northwest corner of this tract;

THENCE, North 87° 36' 01" East – 50.00 feet with the south line of said "Director Lot 3" to a 5/8-inch iron rod with cap stamped "TEAM" set for the southeast corner of said "Director Lot 3" and for an interior corner of this tract;

THENCE, North 01° 54' 16" West – 150.00 feet with the east line of said "Director Lot 3" to the POINT OF BEGINNING and containing 5.3170 acres (231,609 square feet) of land.

LINE TABLE		
LINE	BEARING	DISTANCE
L1	N 47°51'15" E	57.53'
L2	N 36°30'08" W	7.23'
L3	N 87°13'44" E	3.45'
L4	N 02°08'25" W	66.98'
L5	N 42°34'09" E	80.02'
L6	S 73°26'25" E	25.76'
L7	N 88°01'13" E	30.32'
L8	S 48°09'34" E	63.64'
L9	N 87°36'01" E	100.00'
L10	N 01°54'16" W	100.00'
L11	N 87°36'01" E	50.00'
L12	N 01°54'16" W	100.00'
L13	S 87°36'01" W	100.00'
L14	S 01°54'16" E	100.00'
L15	N 87°36'01" E	100.00'
L16	N 87°36'01" E	100.00'
L17	S 38°09'01" E	11.90'
L18	N 38°09'01" E	39.09'

CURVE TABLE				
CURVE	DELTA	RADIUS	LENGTH	CHORD
C1	26°10'22"	835.78'	381.88'	N 27°42'41" E – 378.54'
C2	22°59'25"	1030.78'	413.53'	N 80°30'35" E – 410.67'
C3	1°37'30"	1370.00'	39.11'	N 23°02'19" E – 39.10'
C4	12°30'50"	1342.00'	326.80'	S 28°39'08" E – 326.15'
C5	28°07'33"	2730.00'	1366.80'	S 72°50'28" E – 1373.00'
C6	9°23'22"	2084.50'	13.76'	N 33°30'01" E – 13.75'

TEXAS STATE TITLE, LLC			
FILE NO.: 1420128845		EFFECTIVE: APRIL 4, 2015 ISSUED: MAY 20, 2015	
SCHEDULE "B" ITEM NO.	RECORDING INFORMATION	DESCRIPTION	DISPOSITION
10D	H.C.C.F. NO. 20120043180	TEMPORARY DRAINAGE EASEMENT	AS SHOWN
10H	VOL. 2913, PG. 592, H.C.D.R. H.C.C.F. NO. X726994 H.C.C.F. NO. D951271 H.C.C.F. NO. 20060376760	TENNESSEE GAS TRANSMISSION CO. PIPELINE EASEMENT	AS SHOWN
10I	VOL. 6438, PG. 609, H.C.D.R.	HUMBLE OIL & REFINING CO. 20' PIPELINE EASEMENT	AS SHOWN
10S	H.C.C.F. NO. L394863	GRANT OF ACCESS, RIGHTS, EGRESS TO PROPERTY FROM PROPOSED GRADE HIGHWAY	ACCESS DENIED, LINES AS SHOWN PER TXDOT ROW PLANS
10U	NONE	SUBJECT PROPERTY LIES WITHIN BOUNDARIES OF EXTRATERRITORIAL JURISDICTION, CONTROL AND IMPROVEMENT DISTRICT	AFFECTS TRACT NOT PLOTTABLE
10V	NONE	SUBJECT PROPERTY LIES WITHIN BOUNDARIES OF HARRIS COUNTY MUNICIPAL UTILITY DISTRICT NO. 573	AFFECTS TRACT NOT PLOTTABLE
10W	H.C.C.F. NO. 239086	Ordinance 1989 FOR CITY OF HOUSTON ORDINANCE NO. 89-1078	AS SHOWN

BENCHMARK: FLOODPLAIN REFERENCE MARK NO. 1200TD IS A ALUMINUM ROD STAMPED "1200TD", LOCATED IN THE GROUND APPROXIMATELY 0.05 MILES NORTHWEST OF THE INTERSECTION OF SH 249 AND BOUDREAUX AND APPROXIMATELY 11' SOUTH OF YELLOW CREEK, IN THE YELLOW WATERSHED AND IN MAP NO. 2886
ELEVATION = 153.32' (NAVD 1988, 2001 ADJUSTMENT)

TBM 1:
RAILROAD SPIKE IN THE WEST SIDE OF THE POWER POLE AT THE SOUTH CORNER OF NEW BOUDREAUX ROAD AND ROCKY ROAD, AS SHOWN.
ELEVATION = 167.58'

TBM 2:
BOX CUT IN THE EAST SIDE OF POWER POLE NORTH OF NEW BOUDREAUX ROAD ON THE WEST SIDE OF ROCKY ROAD, AS SHOWN.
ELEVATION = 165.68'

TBM 3:
BOX CUT IN THE SOUTH SIDE OF POWER POLE WEST OF HIGHWAY 249 FRONTAGE ROAD ON THE NORTH SIDE OF BOUDREAUX ESTATES DRIVE, AS SHOWN.
ELEVATION = 167.27'

TBM 4:
BOX CUT ON TYPE 'C' INLET NORTH OF NEW BOUDREAUX ROAD ON THE WEST SIDE OF HIGHWAY 249 FRONTAGE ROAD, AS SHOWN.
ELEVATION = 163.11'

TBM 5:
BOX CUT ON TYPE 'C' INLET NORTH OF NEW BOUDREAUX ROAD ON THE WEST SIDE OF HIGHWAY 249 FRONTAGE ROAD, AS SHOWN.
ELEVATION = 164.79'

TBM 6:
BOX CUT ON TYPE 'C' INLET NORTH OF NEW BOUDREAUX ROAD ON THE WEST SIDE OF HIGHWAY 249 FRONTAGE ROAD, AS SHOWN.
ELEVATION = 164.27'

TBM 7:
BOX CUT ON TYPE 'C' INLET NORTH OF NEW BOUDREAUX ROAD ON THE WEST SIDE OF HIGHWAY 249 FRONTAGE ROAD, AS SHOWN.
ELEVATION = 165.15'

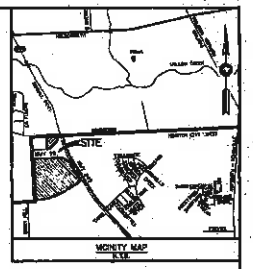
TBM 8:
BOX CUT ON TYPE 'C' INLET WEST OF HIGHWAY 249 FRONTAGE ROAD ON THE NORTH SIDE OF NEW BOUDREAUX ROAD, AS SHOWN.
ELEVATION = 165.26'

TBM 9:
BOX CUT ON TYPE 'C' INLET WEST OF HIGHWAY 249 FRONTAGE ROAD ON THE NORTH SIDE OF NEW BOUDREAUX ROAD, AS SHOWN.
ELEVATION = 165.49'

TBM 10:
BOX CUT ON CONCRETE NOSE AT WEST SIDE OF MEDIAN ALONG NEW BOUDREAUX ROAD, AS SHOWN.
ELEVATION = 167.15'

TBM 11:
RAILROAD SPIKE IN POWER POLE NORTH OF NEW BOUDREAUX ROAD ON THE WEST SIDE OF ROCKY ROAD, AS SHOWN.
ELEVATION = 164.01'

TBM 12:
RAILROAD SPIKE IN POWER POLE, NOT USED.
ELEVATION = 165.83'



NOTES:

1.) BEARINGS SHOWN HEREON ARE BASED ON TEXAS STATE PLANE COORDINATE SYSTEM, SOUTH CENTRAL ZONE (NAD83) USING NGS CONTINUOUSLY OPERATING REFERENCE STATIONS.

2.) THE SURVEYOR HAS NOT ABSTRACTED THIS PROPERTY; DEED INFORMATION SHOWN HEREON WAS RESEARCHED AND PROVIDED BY TEXAS STATE TITLE, LLC.

3.) THE CERTIFICATE SHOWN HEREON IS VALID ONLY IF THIS DOCUMENT CONTAINS AN ORIGINAL STAMPED OR IMPRESSION SEAL AND SIGNATURE OF THE SURVEYOR. SAID CERTIFICATION SHALL NOT APPLY TO ANY COPIES OR ALTERED ORIGINALS.

4.) THIS SURVEY WAS PERFORMED IN CONNECTION WITH THE "COMMITMENTS FOR TITLE INSURANCE" ISSUED BY TEXAS STATE TITLE, LLC ON MAY 20, 2015, EFFECTIVELY DATED APRIL 4, 2015, FILE NO. 1420122845, AND IS RULED UPON FOR PURPOSES THEREOF.

5.) ACCORDING TO THE FEDERAL EMERGENCY MANAGEMENT AGENCY'S FLOOD INSURANCE RATE MAP FOR HARRIS COUNTY, TEXAS AND INCORPORATED AREAS, COMMUNITY PANEL NO. 48201C0485M EFFECTIVELY DATED OCTOBER 16, 2013, THIS PROPERTY LIES IN ZONE "X", AN AREA DETERMINED TO BE OUTSIDE OF THE 0.2% ANNUAL CHANCE FLOODPLAIN.

6.) METES-AND-BOUNDS DESCRIPTIONS WERE COMPILED IN CONJUNCTION WITH THIS SURVEY.

7.) ALL RODS SET ARE 5/8" IRON RODS WITH CAPS STAMPED: "T.E.A.M. – 281-491-2525.

8.) THIS TRACT OF LAND WAS SURVEYED IN THE FIELD ON AUGUST 18, 2014. ANY CHANGES MADE AFTER THIS DATE ARE NOT SHOWN HEREON.

9.) ALL UNDERGROUND UTILITIES MAY NOT BE SHOWN HEREON. THE LOCATIONS OF UTILITIES SHOWN HEREON ARE KNOWN PER RECORD DRAWINGS AND ABOVE GROUND EVIDENCE. SIZES, DEPTHS, AND LOCATIONS MAY VARY. FOR THE LOCATION OF ANY ADDITIONAL UTILITIES THAT MAY EXIST, PLEASE CALL THE "TEXAS ONE CALL" LOCATING SERVICE.

10.) ADDITIONAL BUILDING LINES MAY EXIST PER CITY OF HOUSTON AND TXDOT REQUIREMENTS THAT ARE NOT SHOWN.

LEGEND

B.	= BOLLARD
BWF	= BARBED WIRE FENCE
CLF	= CHAIN LINK FENCE
CONC	= CONCRETE
CSP	= CROSS-BALK POLE
DE	= DRIVE GATE
DYE	= DOUBLE YELLOW STRIPE
EB	= ELECTRIC BOX
EOA	= EDGE OF ASPHALT
FH	= FIRE HYDRANT
FL	= FLOW LINE
FWS	= FILLER
FOC	= FIBER OPTIC CABLE MARKER (+)
G	= GUTTER
GP	= GATE POST
H.C.C.F.	= HARRIS COUNTY CLERK'S FILE
H.C.D.R.	= HARRIS COUNTY DEED RECORDS
HLP	= HOUSTON LIGHTING AND POWER
HOF	= HOG WIRE FENCE
IP	= IRON PIPE
IR	= IRON ROD
LS	= LIGHT STANDARD
MH	= MANHOLE
MP	= METER POLE
OTH	= ORANGE TUBE MARK (M)
OPL	= OVERHEAD POWER LINE
PLM	= PIPELINE MARKER (+)
PLR	= PIPELINE RISER
PLS	= PIPELINE STAKE (+)
P.O.B.	= POINT OF BEGINNING
P.O.C.	= POINT OF COMMENCEMENT
PP	= POWER POLE
PWF	= PIPE-RAIL FENCE
PRV	= PRESSURE RELEASE VALVE
PV	= PIPE VENT
RCP	= REINFORCED CONCRETE PIPE
R.O.W.	= RIGHT OF WAY
S.E.T.	= SLOPED END TREATMENT
SD.FT.	= SQUARE FEET
STM	= STORM
SWBT	= SOUTHWESTERN BELL TELEPHONE
SWS	= SINGLE WHITE STRIPE
TBM	= TEMPORARY BENCHMARK
TC	= TOP OF CURB
TDG	= TOP OF GRATE
TOV	= TOP OF VALVE
TP	= TELEPHONE PEDESTAL
TSFS	= TRAFFIC SIGNAL PULL BOX
TSP	= TRAFFIC SIGNAL POLE
W/	= WITH
WCR	= WHEEL CHAIR RAMP
WV	= WATER VALVE
(NFV)	= NOT FIELD VERIFIED

I, Brian Newcombe, a Registered Professional Land Surveyor of the State of Texas, hereby certify that the above plat correctly represents the tracts found at the time of the survey made on the ground under my supervision. This survey substantially complies with the current Texas Society of Professional Surveyor's Standards and Specifications for a Category 1B, Condition II, Survey.

Brian Newcombe
Registered Professional Land Surveyor
State of Texas No. 5776

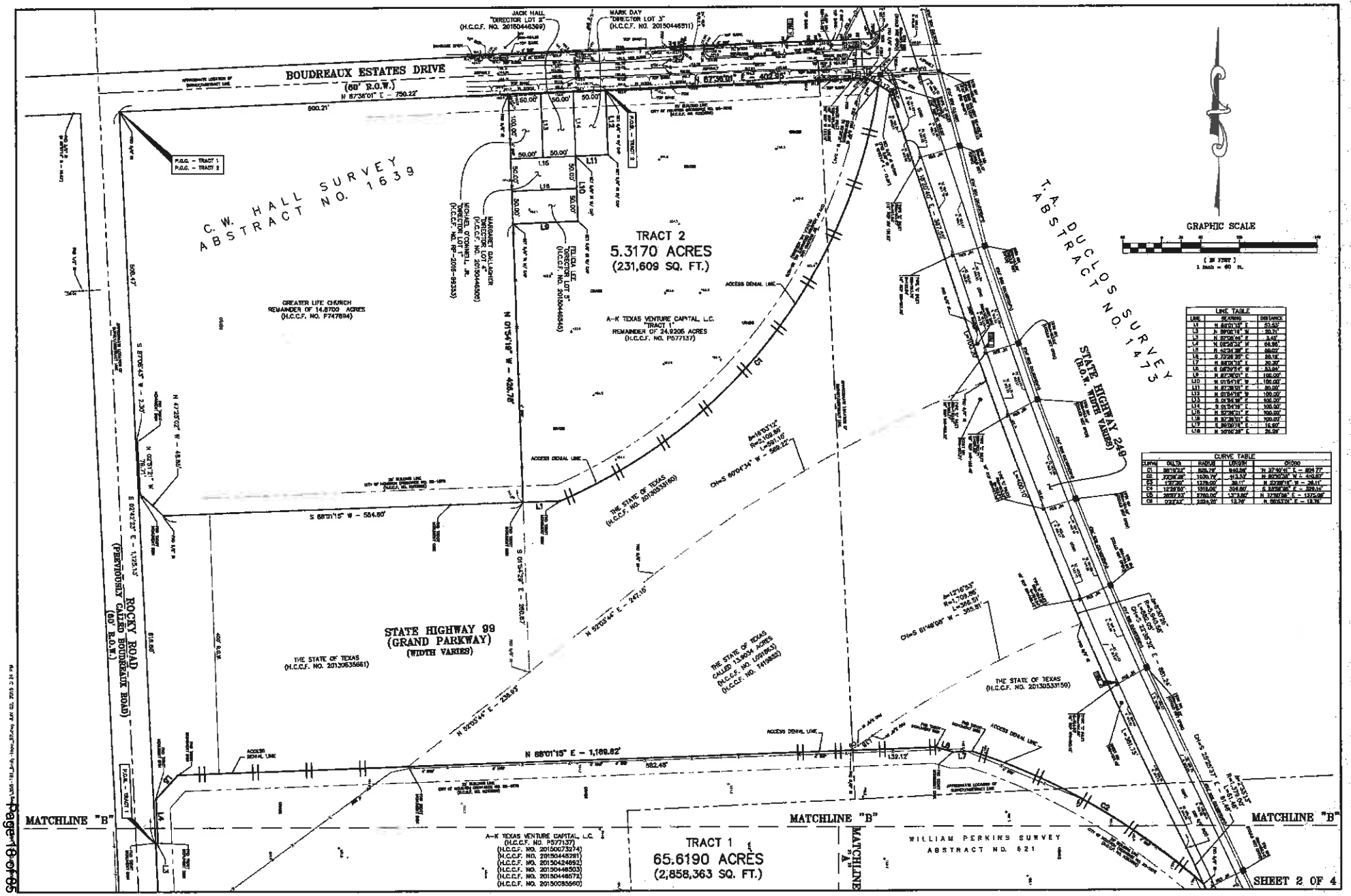
STATE OF TEXAS
REGISTERED
BRIAN NEWCOMBE
5776
LAND SURVEYOR

SHEET 1 OF 4

TEXAS ENGINEERING AND MAPPING CO.
12215 CENTURY DRIVE
STAFFORD, TEXAS 77477
PHONE: 281.491.2525 FAX: 281.491.2550
FIRM REGISTRATION #: 10114900
www.texas-tamc.com

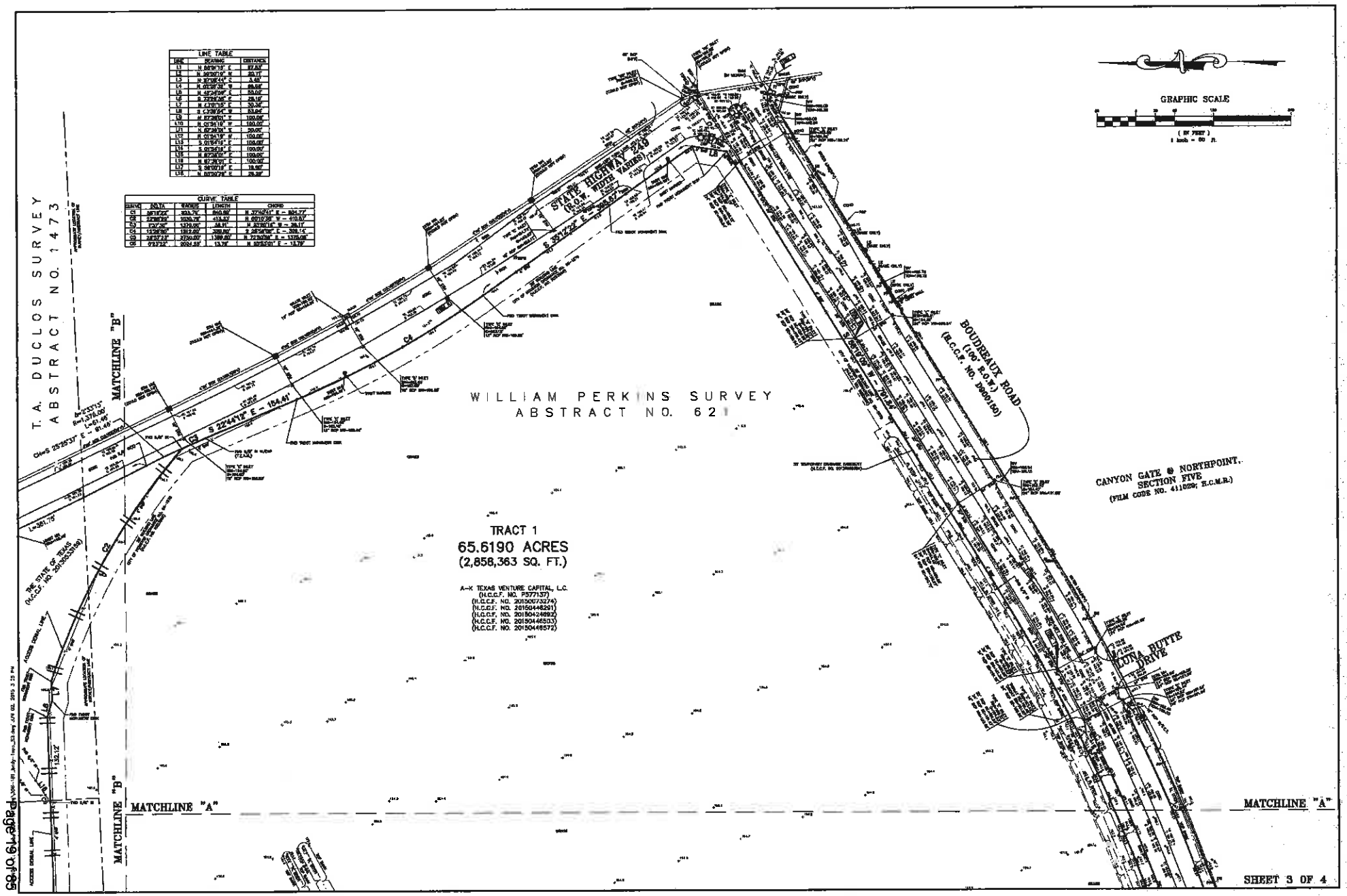
STANDARD LAND AND TOPOGRAPHIC SURVEY
OF
A 65.8190 ACRE (2,868,383 SQ. FT.) TRACT OF LAND AND A 5.3170 ACRE (231,609 SQ. FT.) TRACT OF LAND IN THE T. A. DUCLOS SURVEY, ABSTRACT NO. 1473, IN THE WILLIAM PERKINS SURVEY, ABSTRACT NO. 621, AND IN THE C.W. HALL SURVEY, ABSTRACT NO. 1639, HARRIS COUNTY, TEXAS

DRWN: RS	CHKD BY: BN	CALC. BY: BSN	CALC'D: BSN
DATE: 05-10-15	SCALE: 1"=60'	REV MAP: 238 D	JOB NO.: 396-141



LINE TABLE		
LINE	BEARING	DISTANCE
L1	N 87°01'15" E	57.53'
L2	N 39°00'16" W	33.21'
L3	N 87°00'44" E	3.43'
L4	N 69°20'32" W	66.96'
L5	N 45°24'38" E	59.02'
L6	S 70°24'39" E	59.19'
L7	N 88°01'15" E	20.37'
L8	S 88°57'41" W	13.99'
L9	N 87°36'01" E	106.00'
L10	N 01°54'18" W	100.00'
L11	N 87°36'01" E	50.00'
L12	N 01°54'18" W	100.00'
L13	S 01°54'18" E	100.00'
L14	S 87°36'01" W	100.00'
L15	S 01°54'18" E	100.00'
L16	N 87°36'01" E	100.00'
L17	N 87°36'01" E	100.00'
L18	S 88°01'15" E	16.60'
L19	N 39°56'39" E	26.96'

CURVE TABLE				
CURVE	DELTA	RADIUS	LENGTH	CHORD
C1	26°13'22"	826.78'	846.06'	N 37°30'41" E – 838.77'
C2	3°29'38"	1030.74'	413.53'	N 30°43'26" W – 410.82'
C3	1°57'26"	1378.00'	39.11'	N 29°28'15" W – 39.11'
C4	11°28'50"	1918.00'	384.00'	S 34°56'38" E – 383.34'
C5	3°07'33"	2760.00'	151.30'	N 74°32'08" E – 151.28'
C6	2°22'47"	3484.00'	72.79'	N 35°47'51" E – 72.79'


LINE TABLE
CURVE TABLE
T. A. DUCLOS SURVEY
ABSTRACT NO. 1473
WILLIAM PERKINS SURVEY
ABSTRACT NO. 621
MATCHLINE "B"
MATCHLINE "A"
STATE HIGHWAY 249
(R.O.W. WIDTH VARIES)
BOUDREAUX ROAD
(R.C.C.P. NO. 20050150)
CANYON GATE @ NORTHPOINT, SECTION FIVE
(FILM CODE NO. 411029; H.C.M.R.)
TRACT 1
65.6190 ACRES
(2,858,363 SQ. FT.)
A-K TEXAS VENTURE CAPITAL, LC.
(H.C.C.F. NO. P577137)
(H.C.C.F. NO. 20150073274)
(H.C.C.F. NO. 20150448291)
(H.C.C.F. NO. 20150448892)
(H.C.C.F. NO. 20150446503)
(H.C.C.F. NO. 20150446572)
THE STATE OF TEXAS
(H.C.C.F. NO. 20130333456)
GRAPHIC SCALE
SHEET 3 OF 4

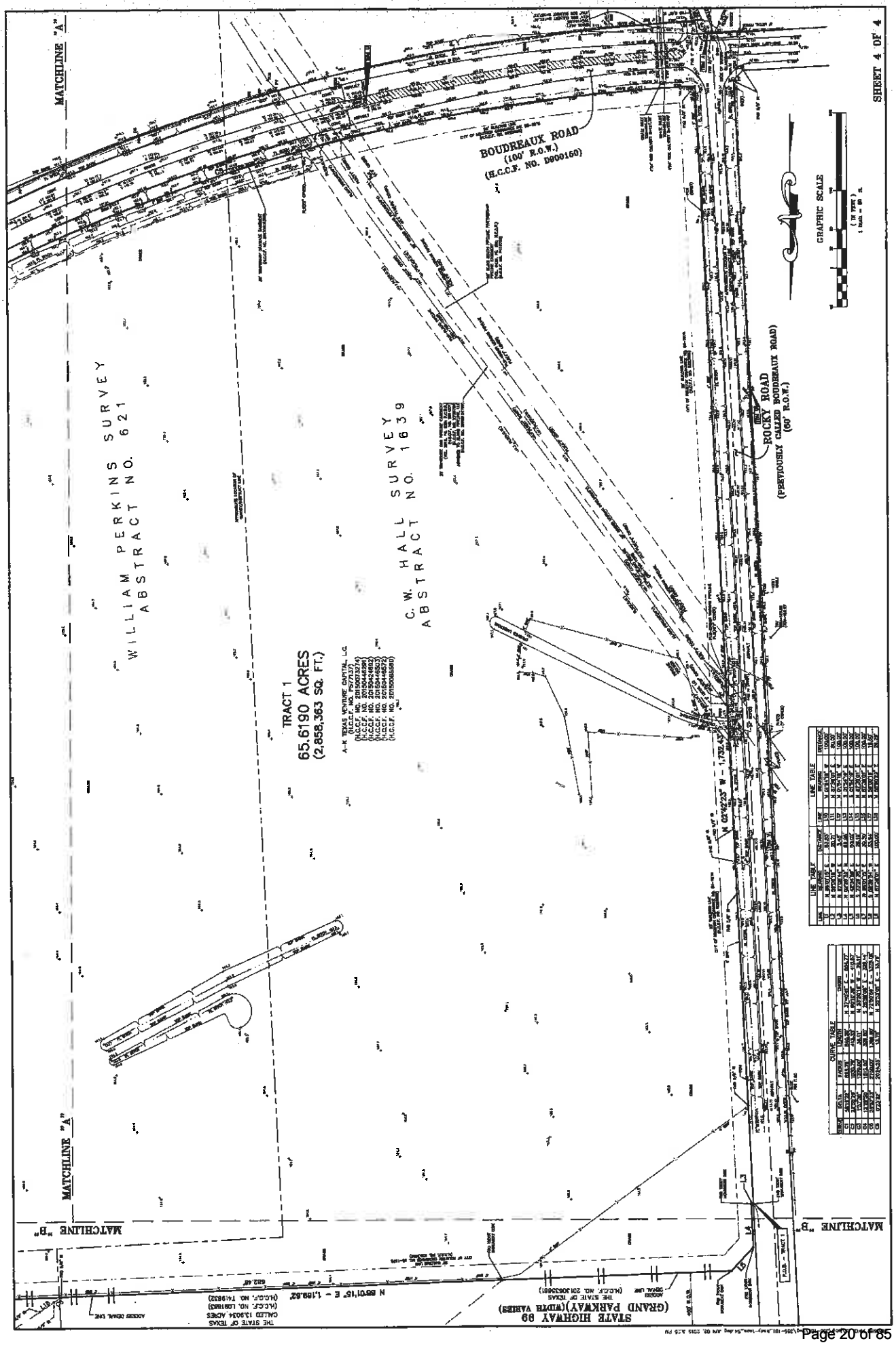

SHEET 4 OF 4
MATCHLINE "A"
MATCHLINE "B"
BOUDREAUX ROAD
(100' R.O.W.)
(H.C.C.F. NO. D900160)
ROCKY ROAD
(PREVIOUSLY CALLED BOUDREAUX ROAD)
(60' R.O.W.)
STATE HIGHWAY 99
(GRAND PARKWAY)(WIDTH VARIES)
WILLIAM PERKINS SURVEY
ABSTRACT NO. 621
C.W. HALL SURVEY
ABSTRACT NO. 1639
TRACT 1
65.6190 ACRES
(2,858,363 SQ. FT.)
GRAPHIC SCALE
LINE TABLE
CURVE TABLE
N 65°01'15" E - 1,158.62'
N 02°46'23" W - 1,732.45'

EXHIBIT C

EXHIBIT C

May 10, 2016

Tract 1
65.6190 acres of land in the William Perkins Survey, Abstract No. 621,
the T. A. Duclos Survey, Abstract No. 1473,
and in the C. W. Hall Survey, Abstract No. 1639, Harris County, Texas

A FIELD NOTE DESCRIPTION of 65.6190 acres (2,858,363 square feet) of land in the Williams Perkins, Survey, Abstract No. 621, in the T. A. Duclos Survey, Abstract No. 1473, and in the C. W. Hall Survey, Abstract No. 1639, Harris County, Texas; said 65.6190 acre tract of land being several tracts of land conveyed to A-K Venture Capital, L.C., as recorded in Harris County Clerk's File Nos. P577137, 20150073274, 20150446291, 20150424692, 20150446503, 20150446572 and 20150085560; said tract being more particularly described by metes-and-bounds as follows with the bearings being based on Texas State Plane Coordinate System, South Central Zone (NAD83) per GPS Observations using National Geodetic Survey Continuously Operating Reference Stations:

COMMENCING FOR REFERENCE at a 5/8-inch iron rod found at the intersection of the south right-of-way line of Boudreaux Estates Drive (previously called Boudreaux Road, 60 feet wide) with the east right-of-way line of Rocky Road (previously called Boudreaux Road, 60 feet wide) for the northwest corner of a 14.8700 acre tract of land conveyed to Greater Life Church, as recorded in Harris County Clerk's File No. P747894;

THENCE, South 02° 42' 23" East with the east right-of-way line of said Rocky Road, at a distance of 508.47 pass a point at the intersection of the east right-of-way line of said Rocky Road with the north right-of-way line of State Highway 99 (Grand Parkway, right-of-way width varies), as recorded in Harris County Clerk's File No. 20130635661 and continuing for a total distance of 1,125.13 feet to a TXDOT monument disk found at the intersection of the east right-of-way line of said Rocky Road with the south right-of-way line of said State Highway 99 for a northwest corner and the POINT OF BEGINNING of this tract;

THENCE, North 87° 08' 44" East - 3.45 feet with a south right-of-way line of said State Highway 99 to a TXDOT monument disk found for an interior corner of this tract;

THENCE, North 02° 28' 32" West - 66.98 feet with an east right-of-way line of said State Highway 99 to a TXDOT monument disk found for an angle point of this tract;

THENCE, North 42° 34' 59" East - 50.02 feet with the southeast right-of-way line of said State Highway 99 to a TXDOT monument disk found for an angle point of this tract;

THENCE, North 88° 01' 15" East – 1,169.62 feet with the south right-of-way line of said State Highway 99 to a TXDOT monument disk found for an angle point of this tract;

THENCE, South 73° 26' 35" East – 26.19 feet with the south right-of-way line of said State Highway 99 to a TXDOT monument disk found for an angle point of this tract;

THENCE, North 88° 01' 15" East – 30.30 feet with the south right-of-way line of said State Highway 99 to a TXDOT monument disk found for the beginning of a non-tangent curve to the right;

THENCE, in a southeasterly direction with the south right-of-way line of said State Highway 99 and with said non-tangent curve to the right having a radius of 1,030.79 feet, a central angle of 22° 58' 29", a length of 413.33 feet and a chord bearing South 60° 10' 38" East – 410.57 feet to a 5/8-inch iron rod found in the southwest right-of-way line of State Highway 249 (width varies) for the northeast corner of this tract;

THENCE, in a southeasterly direction with the southwest right-of-way line of said State Highway 249 and with a non-tangent curve to the right having a radius of 1,379.00 feet, a central angle of 01° 37' 30", a length of 39.11 feet and a chord bearing South 23° 20' 16" East – 39.11 feet to a 5/8-inch iron rod with cap stamped "T.E.A.M." found for the end of said curve;

THENCE, South 22° 44' 12" East – 154.41 feet with the southwest right-of-way line of said State Highway 249 to a TXDOT monument disk found for a point-of-curvature;

THENCE, in a southeasterly direction with the southwest right-of-way line of said State Highway 249 and with a curve to the left having a radius of 1,512.00 feet, a central angle of 12° 29' 50", a length of 329.80 feet and a chord bearing South 28° 59' 08" East – 329.14 feet to a TXDOT monument disk found for the end of said curve;

THENCE, South 35° 12' 22" East – 395.67 feet with the southwest right-of-way line of said State Highway 249 to a TXDOT monument disk found at the northeast end of a cutback at the intersection of the southwest right-of-way line of said State Highway 249 with the northwest right-of-way line of Boudreaux Road (100 feet wide), as recorded in Harris County Clerk's File No. D900150 for a southeast corner of this tract;

THENCE, South 08° 39' 54" West – 53.94 feet with said cutback to a TXDOT monument disk found at the southwest end of said cutback for a southeast corner of this tract;

THENCE, South 58° 19' 09" West – 791.84 feet with the northwest right-of-way line of said Boudreaux Road to a 5/8-inch iron rod found for the beginning of a non-tangent curve to the right;

THENCE, in a westerly direction with the north right-of-way line of said Boudreaux Road and with said non-tangent curve to the right having a radius of 2,750.00 feet, a central angle of 28° 57' 23", a length of 1,389.80 feet and a chord bearing South 72° 50' 56" West – 1,375.06 feet to a 5/8-inch iron rod found at the intersection of the north right-of-way line of said Boudreaux Road with the east right-of-way line of said Rocky Road for the southwest corner of this tract;

THENCE, North 02° 42' 23" West – 1,732.43 feet with the east right-of-way line of said Rocky Road to the POINT OF BEGINNING and containing 65.6190 acres (2,858,363 square feet) of land.

Note: This metes-and-bounds description was written in conjunction with a survey performed on even date.

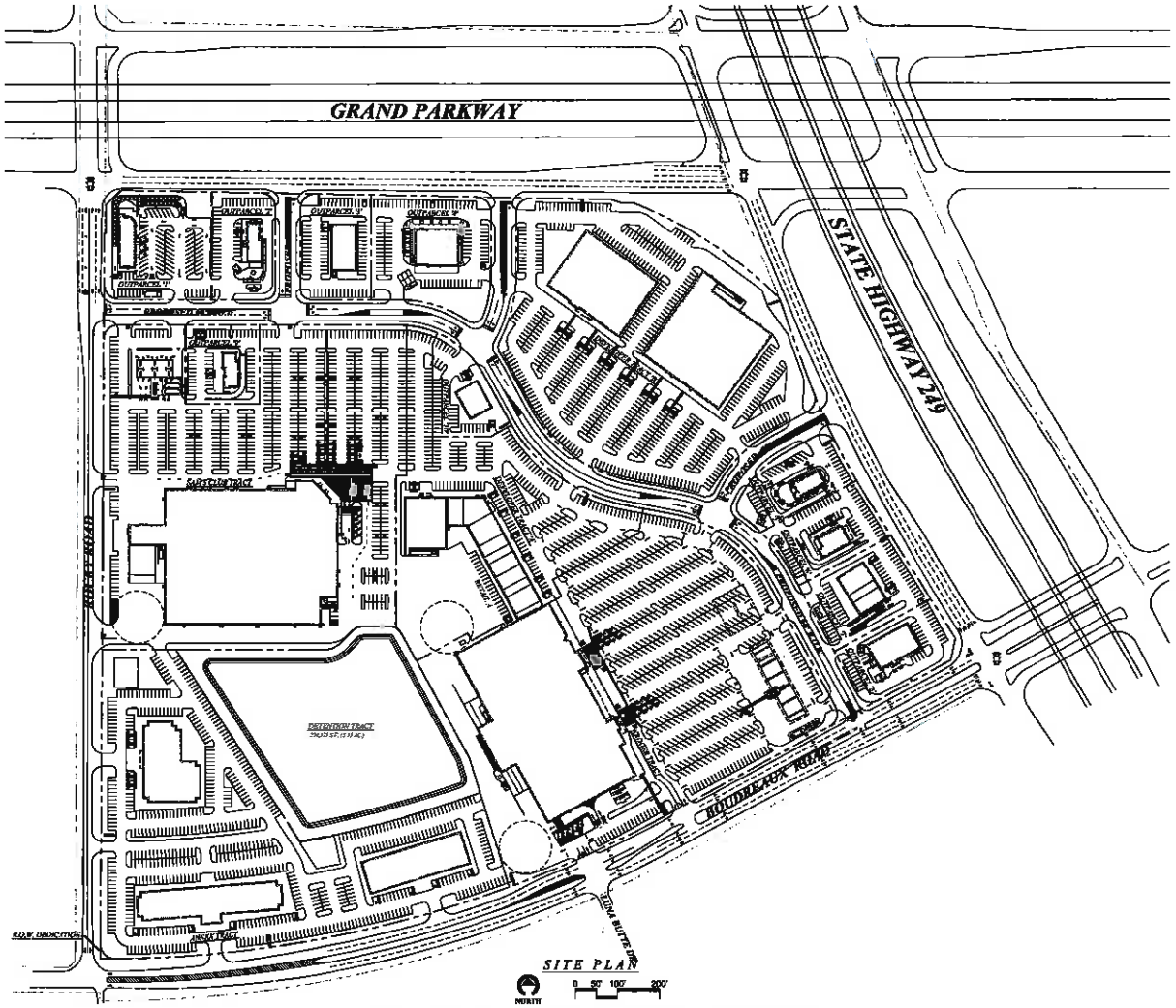
COMPILED BY:
TEXAS ENGINEERING AND MAPPING
Civil Engineers - Land Surveyors
Stafford, Texas
Firm Registration No. 10119000
Job No. 356-181
356-181_South_Tract_R1.doc



Brian Nesvadba
Registered Professional Land Surveyor
State of Texas No. 5776

EXHIBIT D

EXHIBIT D



GRAND PARKWAY TOWN CENTER

EXHIBIT

SWC OF GRAND PARKWAY & STATE HIGHWAY 249
TOMBALL, TEXAS

NewQuest PROPERTIES
8827 W. Sam Houston Parkway N.
Suite 200 | Houston, Texas 77040
281.477.4300 www.newquest.com

EXHIBIT E

EXHIBIT E

Sec. 50-77. - Commercial District (C).

(a) General purpose and description. The C Commercial District is intended to provide a location for commercial and service-related establishments, such as wholesale product sales, welding/contractors shops, automotive repair services, upholstery shops, and other similar commercial uses. Some light manufacturing may also be allowed with certain conditions. The uses envisioned for the C Commercial District will typically utilize smaller sites and have operation characteristics which are generally not compatible with residential uses and some nonresidential uses. Convenient access to thoroughfares and collector streets is also a primary consideration.

(b) Permitted uses. Those uses listed for the C district in the use charts (section 50-82) as "P" or "C" are authorized uses permitted by right or conditionally permitted uses, respectively.

(c) Height regulations. The maximum height in the C district shall be:

(1) 70 feet for the main buildings; also see setback requirements related to height in subsection (d)(2)b of this section.

(2) One story for accessory buildings.

(3) Additional height may be approved by CUP.

(d) Area regulations.

(1) Size of lot.

a. Minimum lot area: 10,000 square feet.

b. Minimum lot width: 60 feet.

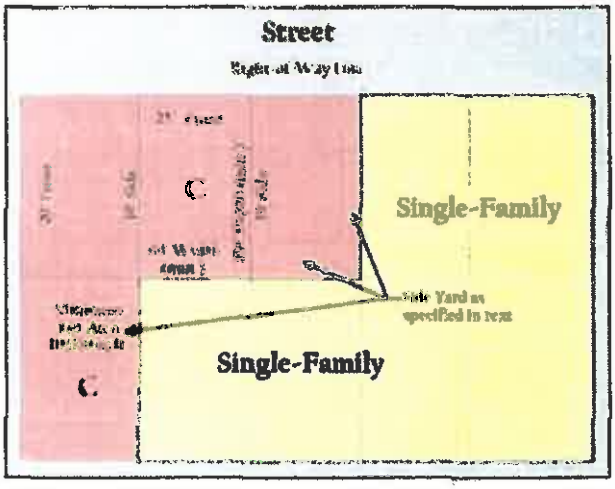
c. Minimum lot depth; 100 feet.

(2) Size of yards.

a. Minimum front yard: 25 feet. Where a lot faces a designated arterial street, the front yard shall be a minimum of 35 feet.

b. Minimum side and rear yard: ten feet. If adjacent to a single-family, duplex (two family), patio home or single-family attached district, then side and rear setbacks (within which parking is permitted) shall be according to the height of the primary structure, as follows:

Illustration 50-77-1: Setback and height relationship for commercial structures



1. Setbacks shall be measured at a ratio of five feet in horizontal setback distance for every three feet of building height as shown in Illustration 50-75-2.
2. Setback measurements shall be calculated by story.
3. These measurements shall not limit any building to less than 35 feet.

c. Interior side yards: when retail uses are platted adjacent to other retail uses and integrated into an overall shopping center site (i.e., lots/lease spaces abutting one another), no side yard is required provided it complies with the city's building code.

d. Exceptions for certain retail shopping center outbuildings fronting State Highway 249: notwithstanding any other provision of this section to the contrary, the building line for retail outbuildings adjacent to State Highway 249 and State Highway 249 Bypass shall be ten feet if:

1. The retail outbuilding is within a shopping center development (a development comprised of retail businesses which share common parking and pedestrian areas and facilities for their clientele) which contains not less than 1¼ acres of land and which has not less than 240 feet of frontage on said State Highway 249 and State Highway 249 Bypass;
2. The retail outbuilding contains not more than 100 square feet of floor area;
3. The retail outbuilding is located so as not to create a hazard to vehicular or pedestrian traffic on the shopping center site, the adjacent State Highway 249 and State Highway 249 Bypass, or any other adjacent public or private street or property; limit spacing of said structures to no greater than one per 300 feet;
4. The retail outbuilding is located not less than 50 feet from any paved portion of State Highway 249 and State Highway 249 Bypass, whether main lane or access road; and
5. The retail outbuilding is located so as to be a minimum of 300 feet from the closest retail outbuilding along either side of State Highway 249 and State Highway 249 Bypass, measured in a straight line from the center fronts of each retail outbuilding.

(3) Maximum lot coverage. Maximum lot coverage is 60 percent including main and accessory buildings; maximum 90 percent impervious coverage (including all buildings, parking areas, sidewalks, etc.).

(4) Maximum floor area. Maximum floor area ratio (FAR) is 2:1.

(5) The maximum glare produced by any industry shall be limited to four footcandles of illumination intensity beyond the industrial or commercial tract boundary throughout the light frequency spectrum beginning with ultraviolet and ending through the infrared wavelengths.

(Code 1978, § 5-9; Code 1993, § 14-9; Ord. No. 2008-01, § 31, 2-4-2008)

Sec. 50-82. - Use regulations (charts).

(a) Conformance with the use charts.

(1) Generally. The use of land and/or buildings shall be in accordance with those listed in the following use charts. No land or building shall hereafter be used and no building or structure shall be erected, altered, or converted other than for those uses specified in the zoning district in which it is located. The legend for interpreting the permitted uses in the use charts are:

P	Designates use permitted in the zoning district indicated
(Blank)	Designates use prohibited (i.e., not allowed) in the zoning district indicated
C	Designates use may be permitted in the zoning district indicated by a CUP (also see section 50-81)
‡	The land use is defined within section 50-2

(2) Unlisted uses. If a use is not listed (or is blank) in the use charts, it is not allowed in any zoning district (see subsection (a)(4) of this section).

(3) Use chart organization. The land uses are listed in the use charts in alphabetical order.

(4) Classification of new/unlisted uses. It is recognized that new types of land use will arise in the future, and forms of land use not presently anticipated may seek to locate in the city. In order to provide for such changes and contingencies, a determination as to the appropriate classification of any new or unlisted form of land use in the use charts shall be made as follows:

a. Initiation.

1. A person, city department, the planning and zoning commission, or the city council may propose zoning amendments to regulate new and previously unlisted uses.

2. A person requesting the addition of a new or unlisted use shall submit to the city manager or his designee, all information necessary for the classification of the use, including but not limited to the following:

(i) The nature of the use and whether the use involves dwelling activity, sales, services, or processing;

(ii) The type of product sold or produced under the use;

(iii) Whether the use has enclosed or outside storage and the amount and nature of the storage;

(iv) Anticipated employment typically anticipated with the use;

(v) Transportation requirements;

(vi) The nature and time of occupancy and operation of the premises;

(vii) The off-street parking and loading requirements;

(viii) The amount of noise, odor, fumes, dust, toxic materials and vibration likely to be generated;

(ix) The requirements for public utilities such as sanitary sewer and water and any special public services that may be required; and

(x) Impervious surface coverage.

b. The city manager, or his designee, shall refer the question concerning any new or unlisted use to the planning and zoning commission, requesting a recommendation as to the zoning classification into which such use should be placed. The referral of the use interpretation question shall be accompanied by the statement of facts in subsection (a)(4)a.2 of this section. An amendment to this chapter shall be required as prescribed by section 50-34.

c. The planning and zoning commission shall consider the nature and described performance of the proposed use and its compatibility with the uses permitted in the various districts and determine the zoning district or districts within which such use is most similar and should be permitted (by right or by CUP).

d. The planning and zoning commission shall transmit its findings and recommendations to the city council as to the classification proposed for any new or unlisted use. The city council shall approve or disapprove the recommendation of the planning and zoning commission or make such determination concerning the classification of such use as is determined appropriate based upon its findings. If approved, the new or unlisted use shall be amended in the use charts of subsection(b) of this section according to section 50-34.

e. Standards for new and unlisted uses may be interpreted by the city manager, or his designee, as those of a similar use. When a determination of the appropriate zoning district cannot be readily ascertained, the same criteria outlined in subsection (a)(b) of this section shall be followed for determination of the appropriate district. The decision of the city manager, or his designee, may be appealed according to the process outlined in subsections (a)(4)a2 through (a)(4)d of this section.

(b) Use charts.

Types of Land Uses	Residential Zoning Districts								Nonresidential Zoning Districts					OT&MU	Parking ratio (Also see section 50-112)
	AG	SF-20-E	SF-9	SF-6		D	MF	MHP	O	GR		C	LI		
Agriculture															
Bulk grain and/or feed storage	P											C	C		1 space per 1,000 square feet
Farm (ranch, garden, crops, livestock, or orchard) ‡	P	P	P	P		P	P	P	P	P		P	P	P	None

Feed and grain store/farm supply store ‡	C									C		P	P	C	1 space per 500 square feet
Flour and other grain mills													P		1 space per 1,000 square feet
Livestock, wholesale/auction	C														None
Livestock sales/auction	C														None
Stable, commercial	C												C		1 space per 1,000 square feet
Stables (private, principal or accessory use) ‡	P			C											None
Residential															
Accessory building/structure (business or industry) ‡									P	P		P	P	P	None
Accessory building/structure (residential) ‡	P	P	P	P		P	P							P	None
Accessory dwelling	P	P	P	C		C	C							P	None
Garage/accessory dwelling ‡	P	P	P	C		C	C							P	None
Caretaker's, guard's residence ‡	P	C					P		P	P		P	P	P	1 space per caretaker/guard
Dwelling, four-family							P							P	2 spaces per

(quadraplex) (defined under Multiple-family dwelling) ‡																	dwelling
Dwelling, HUD code-manufactured home ‡								P							C		2 spaces per dwelling
Dwelling, industrialized home ‡	P	P	P	P		P	P	P							C		2 spaces per dwelling
Dwelling, multiple-family ‡							P								P		2 spaces per dwelling
Dwelling, single-family attached ‡						P	P								P		2 spaces per dwelling
Dwelling—Single-family detached ‡	P	P	P	P		P	P								P		2 spaces per dwelling
Dwelling, two-family, duplex or duplex townhome ‡						P	P								P		2 spaces per dwelling
Dwelling, zero-lot line/patio home ‡						P	P								P		2 spaces per dwelling
Home occupation ‡	P	P	P	P		P	P			P		P	P		P		None
Residential use ‡	P	P	P	P		P	P	P	C	C		C			P		2 spaces per dwelling
Private street subdivision	P	P	P	P		P	P			C		C			P		None
Office																	
Clinic, emergency care										P		P	P		C		1 space per 150 square feet
Clinic, medical and/or									P	P		P	P		P		1 space per

dental																	300 square feet
Credit agency										P	P		P	P	P		1 space per 300 square feet
Bank, savings and loan, or credit union (no motor bank services)										P	P		P	P	P		1 space per 300 square feet
Bank, savings and loan, or credit union (with motor bank services)										C	P		P	P	P		1 space per 300 square feet
Office, professional and general business ‡										P	P		P	P	P		1 space per 300 square feet
Office, parole-probation											P		P	P	C		1 space per 300 square feet
Office showroom/warehouse ‡										C	C		P	P	P		1 space per 300 square feet
Security monitoring company (no outside storage)										P	P		P	P	P		1 space per 300 square feet
Telemarketing agency										C	C		C	P	C		1 space per 250 square feet
Telephone exchange/switching station ‡	C									P	P		P	P	C		1 space per 500 square feet
Temporary real estate	P	P	P	P		P	P	P	P	P		P	P		P		4 spaces

field office															
Model home (including sales office)	P	P	P	P	P	P	P	P	P		C	C	P	2 spaces per model
Personal and Business															
Ambulance service									C		P	P	C	1 space per 500 square feet
Automobile driving school (including defensive driving)								C	P		P	P	P	1 space per classroom seat
Barber/beauty shop (no related school/college)								C	P		P	P	P	1 space per 200 square feet
Bed and breakfast inn ‡	P	C	C	C	C	C		C	P		P		P	2 spaces plus one per guest room
Check cashing service									P		P	P	P	1 space per 100 square feet
Dance hall/dancing facility ‡									C		C		P	1 space per 100 square feet
Dance/drama/music schools (performing arts, martial arts)	C	C	C	C	C	C	C	C	P		P	P	P	1 space per 100 square feet
Fortunetelling and similar activities ‡												C		1 space per 300 square feet

Funeral home ‡											C		P	P	C	See section 50-112
Greenhouse (non-retail/hobby)	P	P	P	P		P	P	P							P	None
Health club (indoor)									C	P		P	P		P	One space per 300 square feet
Health club (outdoor)										P		P	P		P	One space per 300 square feet
Hotel/motel ‡										P		P	P		P	See section 50-112
Laundromat/washateria/ self-service ‡										P		P	P		P	1 space per 200 square feet
Laundry/dry cleaning (retail only, drop off/pick up) ‡									C	P		P	P		P	1 space per 200 square feet
Mailing service (private)										P		P	P		P	1 space per 200 square feet
Pharmacy (retail only)									C	P		P	P		P	1 space per 200 square feet
Reception venue	C	C							C	P		P	P		P	1 space: 4 seats
Recreational vehicle park								C								
Rehabilitation care facility (halfway house) ‡	C	C	C	C		C	C	C	C	P		C P	P		C	Greater of 1 per three

																beds or 1.5 spaces per dwelling
Rehabilitation care institution (business) ‡	C	C	C	C		C	C			C	P		P	P	P	Greater of 1 per three beds or 1.5 spaces per dwelling
Seamstress, dressmaker or tailor (retail only)										C	P		P	P	P	1 per 200 square feet
Sexually oriented business														C		
Tattoo or body piercing studio ‡											C		P			1 space per 200 square feet
Wedding chapel											P		P	P	P	1 per four seats
Retail																
Antique shop (no outside sales or storage) ‡											P		P	P	P	1 space per 500 square feet
Antique shop (with outside storage)											C		P	P	P	1 space per 500 square feet
Apparel shop											P		P	P	P	1 space per 200 square feet
Art gallery/museum/dealer ‡										C	P		P	P	P	1 space per 500 square feet

| | | |

| | | |

Eating establishment (with drive-through service) ‡												P		P	P	P	
Electronic goods (retail only)												P		P	P	P	1 space per 200 square feet
Florist shop (retail only) ‡											C	P		P	P	P	1 space per 200 square feet
Food or grocery store												P		P	P	P	1 space per 500 square feet
Furniture and appliance store (retail only) ‡												P		P	P	P	1 space per 500 square feet
Furniture store (new and used) ‡												P		P	P	P	1 space per 200 square feet
General retail stores (no outside storage)												P		P	P	P	1 space per 200 square feet
Gift or card shop (retail only)											C	P		P	P	P	1 space per 200 square feet
Hardware store												P		P	P	P	1 space per 400 square feet
Hobby and crafts store (retail only)											C	P		P	P	P	1 space per 200 square feet

| | | |

| | | |

| | | |

| | | |

| | | |

Motorcycle sales/dealer w/outdoor sales, storage, and display ‡											P			P	P		See section 50-112
Motorcycle sales/dealer w/no outdoor sales, storage, and display											P			P	P	C	See section 50-112
Parking lot or garage for passenger cars and trucks of less than one-ton capacity ‡	C		C	C		C	C			C	P			P	P	C	None
Personal watercraft sales (new/repair) w/outdoor sales, storage, and display											P			P	P		See section 50-112
Personal watercraft sales (new/repair) w/no outdoor sales, storage, and display											P			P	P	C	See section 50-112
Railroad team tracks, unloading docks, and spurs														P	P	C	None
Railroad yards, round house or shop														C	P	C	1 space per 1,000 square feet
Taxi/limousine service											C			P	P	C	1 space per 1.5 automobiles in service
Tire sales (indoors, no outside storage) ‡														P	P	P	1 space per 1,000 square feet
Tire sales (outdoors, with														C	P		1 space per

| | | |

Amusement, commercial, temporary, (e.g., carnival, haunted house). (Note: Allowed by building official for up to 10 days) ‡								C				C	P		C	Determined by P and Z
Amusement devices/arcade (4 or more devices, indoors only) ‡										C		P	P		C	1 space per game table plus one per amusement device
Billiard/pool facility (4 or more tables)										C		P	P		C	1 space per 200 square feet
Bingo facility										C		P	P		P	1 space per 200 square feet
Bowling alley (air conditioned and soundproofed)										P		P	P		C	4 spaces per lane
Dinner theatre										P		P	P		P	1 space per three seats or bench seating space
Drive-in theater												C	C		C	1 space per speaker
Golf driving range	C									C		P	P		C	See section 50-112
Golf course (private) ‡	C	C	C	C		C	C		C	C		C	C		C	6 spaces per hole
Golf course (publicly	P	P	P	P		P	P	P	P	P		P	P		P	6 spaces per

owned) ‡																hole
Playfield or stadium (private)	C									C		P	P	P		1 space per three seats'
Recreational vehicle park/campground ‡	C											C	P	C		1.5 per RV pad
Skating rink										P		P	P	P		1 space per 200 square feet, plus 1 per 3 seats based on max capacity
Swimming pool, private (use by membership) ‡	P	P	P	P		P	P	P	P	P		P	P	P		1 space for each 100 square feet of gross water surface and deck area
Swimming pool, commercial ‡									C	P		P	P	P		1 space per 100 square feet of gross water surface and deck area
Tennis court (private/not lighted)	P	P	P	P		P	P	P	P	P		P	P	P		2 spaces per court
Tennis court (private/lighted)	C	C	C	C		C	C	C		C		C	C	C		2 spaces per court
Institutional/Governmental																
Adult day care (business)	See Household care facility															
Antenna (commercial)	See section 50-116															

Antenna (noncommercial)	See section 50-116																		
Armed services recruiting center										P	P		P	P		P			1 space per 300 square feet
Assisted living facility (continuing care retirement community) ‡							P			C	P		P			P			1.5 spaces per dwelling unit plus any additional space for accessory uses
Auction house											C		P	P		C			1 space per 100 square feet
Broadcast station (with tower)	See section 50-116																		
Broadcast towers (commercial)	See section 50-116																		
Cellular communications tower/PCS	See section 50-116																		
Cemetery and/or mausoleum ‡	C	C	C	C		C	C		C	C	C		C	C		C			1 space per 5,000 square feet of land
Child day care center (business) ‡							C			C	P		P			P			1 space per three children
Church/temple/place of worship ‡	P	P	P	P		P	P		P	P	P		P	P		P			1 space per four seats in sanctuary
Civic center (municipal) ‡	P	P	P	P		P	P		P	P	P		P	P		P			10 spaces plus

																1,300 square feet above 2,000
Civic club									P	P		P	P	P		See section 50-112
Community center (public)	C	C	C	C		C	C	C	P	P		P	P	P		See section 50-112
Community home ‡	P	P	P	P		P	P	P						P		1 space per 300 square feet
Community or social buildings ‡	C	C	C	C		C	C	C	P	P		P	P	P		1 space per 300 square feet
Country club (private) ‡	C	C	C	C		C	C		C	C		C	C	P		10 spaces plus one per 300 square feet above 2,000
Earth satellite dish (private, less than 3 feet in diameter)	See section 50-116															
Electric power plant												C	P	C		1 space per 1,000 square feet
Electrical substation ‡	C	C	C	C		C	C	C	C	C		C	C	C		1 space per 1,000 square feet
Exhibition hall ‡										C		P	P	C		1 space per 100 square feet
Fair ground or rodeo ‡	C											C	C	C		1 space per

																1,000 square feet of land area
Family home (child care in place of residence) ‡	P	P	P	P		P	P	P	P	P		P		P		1 space per 10 children plus 1 space per teacher
Fraternal organization ‡									C	P		P	P	P		10 spaces plus 1 per 300 square feet above 2,000
Fraternity or sorority house ‡						C	C		C	C		C		C		2 spaces per bedroom
Governmental building or use (county, state or federal) ‡	C	C	C	C		C	C	C	P	P		P	P	P		1 space per 300 square feet
Heliport ‡									C	C		C	C	C		3 spaces
Helistop									C	C		C	C	C		3 spaces
Hospital ‡									C	P		P	P	P		1 space per bed
Household care facility ‡	P	P	P	P		P	P	P						P		1 space per 6 clients
Household care institution										P		P	P			1 space per 6 clients
Institution for alcoholic, narcotic, or psychiatric patients ‡										C		C	P	C		1 space per 200 square feet
Institution of religious, educational or	C	C	C	C		C	C	C	C	P		P	P	P		1 space per 200 square

philanthropic nature															feet
Municipal facility or use ‡	P	P	P	P		P	P	P	P	P		P	P	P	1 space per 300 square feet
Museum	C	C	C	C		C	C	C	C	P		P	P	P	See section 50-112
Park and/or playground (private) ‡	P	P	P	P		P	P	P	P	P		P	P	P	
Park and/or playground (public, municipal) ‡	P	P	P	P		P	P	P	P	P		P	P	P	
Penal or correctional institutions	C											P	P	C	1 space per 500 square feet
Post office (governmental)	P	P	P	P		P	P	P	P	P		P	P	P	10 plus 1 per 200 square feet
Non-city public assembly (auditorium, gymnasium, stadiums, meeting halls, etc.)										P		P	P	C	1 space per 4 seats
Radio, television and communications towers	See section 50-116														
Rectory/parsonage	P	P	P	P		P	P	P	P	P		P	P	P	5 spaces, plus 1 per bedroom
Retirement housing for the elderly ‡	See Assisted living facility														
Riding academy	P	C	C	C		C	C	C	C	C		C	P	C	1 space per five stalls

Sanitary landfill (private)														C			1 space per ten acres
School, business (e.g., barber/beauty/cosmetology)										P			P	P	P		1 space per three students, based on design
School, college or university	C	C	C	C		C	C	C	C	P			P	P	P		10 per classroom plus 2 per office
School, commercial trade (vocational) ‡									C	P			P	P	P		1 space per student
School, public or denominational ‡	P	P	P	P		P	P	P	P	P			P	P	P		See section 50-112
School, other than public or denominational ‡									C	P			P	P	P		
Sheltered care facility ‡							C			C			C	C	C		1 space per three beds or 1.5 per dwelling
Sign, all types (defined within the referenced section) ‡	See ch. 34 of this Code																
Skilled nursing facility ‡							P		C	C			P		C		See section 50-112
Studio for radio and/or television (no towers) ‡									P	P			P	P	P		1 space per 200 square feet
Commercial and Wholesale Trade																	

Animal kennel (outdoor pens)	P												C	P			1 space per 500 square feet
Appliance repair											P		P	P		P	1 space per 500 square feet
Book binding													P	P		P	1 space per 500 square feet
Carpet and rug cleaning plant											C		P	P		C	1 space per 1,000 square feet
Cattle, swine, or poultry feedlot (CAFO)	C													C			1 space per 5,000 square feet of land
Cleaning plant (commercial laundry) ‡											C		P	P		C	1 space per 1,000 square feet
Communication equipment sales/service (installation and/or repair, no outdoor sales or storage or towers/antennae)											P		P	P		P	1 space per 1,000 square feet
Construction contractor with storage yard	C												P	P			1 space per 1,000 square feet of land
Contractor's office/sales, no outside storage including vehicles											P		P	P		P	1 space per 1,000 square feet of land
Contractor's temporary	P	P	P	P		P	P	P	P	P			P	P		P	None

| | | |

| | | |

News printing															P	P		C			1 space per 1,000 square feet
Outdoor sales as a primary use ‡													C		P	P					1 space per 5,000 square feet of land area
Pawn shop ‡															P	P		C			1 space per 200 square feet
Pet and animal grooming shop (no outside kennels) ‡													P		P	P		P			1 space per 200 square feet
Plumbing shop													C		P	P		C			1 space per 200 square feet
Printing equipment, supplies and repairs													C		P	P		C			1 space per 500 square feet
Propane sales filling (retail)													C		P	P		C			1 space per 200 square feet
Publishing and printing company													C		P	P		P			1 space per 500 square feet
Quick lube/oil change/minor inspection													P		P	P		P			1 space per 200 square feet .
Salvage storage yard ‡																C					5 per acre
Scientific and industrial															C	P					1 space per

research laboratories (hazardous) ‡																				300 square feet
Scientific and industrial research laboratories (nonhazardous) ‡											P	C		P	P		P			1 space per 300 square feet
Scrap metal storage yard															C					5 space per acre
Security systems installation company												C		P	P		C			1 space per 300 square feet
Sheet metal shop														P	P					1 space per 1,000 square feet
Storage of cement, sands and gravel	C													C	P					1 space per 5,000 square feet of storage area
Storage of used lumber and building materials														C	P					1 space per 5,000 square feet of storage area
Taxicab storage and repair														P	P					1 space per 500 square feet
Taxidermist	C											C		P	P					1 space per 500 square feet
Tool and machinery rental (indoor storage only) ‡												P		P	P		P			1 space per 200 square feet

| | | |

																			feet
Adhesives and sealants manufacture														C	C				1 space per 1,000 square feet
Aircraft parts manufacture															P				1 space per 1,000 square feet
Airplane repair and manufacturing															P				1 space per 1,000 square feet
Animal processing and slaughter														C	C				1 space per 1,000 square feet
Any manufacture or industrial process not listed and not prohibited by law														C	C				1 space per 1,000 square feet
Artificial flower manufacture												C		P	P				1 space per 1,000 square feet
Asphalt paving and roofing material manufacture															C				1 space per 1,000 square feet
Awning manufacture, cloth, metal and wood														P	P				1 space per 1,000 square feet
Bag manufacturing														P	P				1 space per 1,000 square feet
Battery manufacture															C				1 space per

| | | |

| | | |

| | | |

| | | |

Sec. 50-77. - Commercial District (C).

(a) General purpose and description. The C Commercial District is intended to provide a location for commercial and service-related establishments, such as wholesale product sales, welding/contractors shops, automotive repair services, upholstery shops, and other similar commercial uses. Some light manufacturing may also be allowed with certain conditions. The uses envisioned for the C Commercial District will typically utilize smaller sites and have operation characteristics which are generally not compatible with residential uses and some nonresidential uses. Convenient access to thoroughfares and collector streets is also a primary consideration.

(b) Permitted uses. Those uses listed for the C district in the use charts (section 50-82) as "P" or "C" are authorized uses permitted by right or conditionally permitted uses, respectively.

(c) Height regulations. The maximum height in the C district shall be:

(1) 70 feet for the main buildings; also see setback requirements related to height in subsection (d)(2)b of this section.

(2) One story for accessory buildings.

(3) Additional height may be approved by CUP.

(d) Area regulations.

(1) Size of lot.

a. Minimum lot area: 10,000 square feet.

b. Minimum lot width: 60 feet.

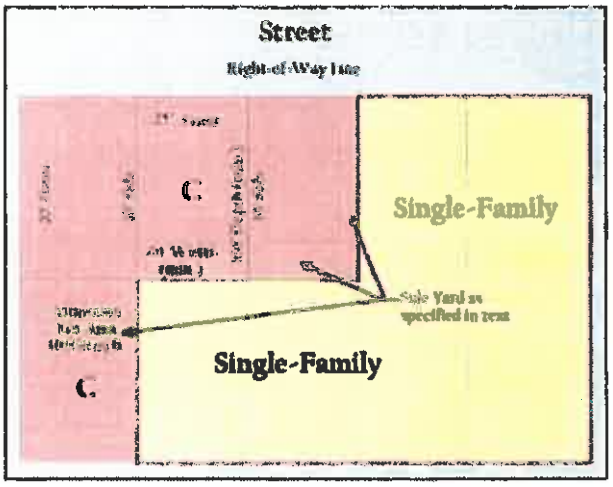
c. Minimum lot depth; 100 feet.

(2) Size of yards.

a. Minimum front yard: 25 feet. Where a lot faces a designated arterial street, the front yard shall be a minimum of 35 feet.

b. Minimum side and rear yard: ten feet. If adjacent to a single-family, duplex (two family), patio home or single-family attached district, then side and rear setbacks (within which parking is permitted) shall be according to the height of the primary structure, as follows:

Illustration 50-77-1: Setback and height relationship for commercial structures



1. Setbacks shall be measured at a ratio of five feet in horizontal setback distance for every three feet of building height as shown in Illustration 50-75-2.
2. Setback measurements shall be calculated by story.
3. These measurements shall not limit any building to less than 35 feet.

c. Interior side yards: when retail uses are platted adjacent to other retail uses and integrated into an overall shopping center site (i.e., lots/lease spaces abutting one another), no side yard is required provided it complies with the city's building code.

d. Exceptions for certain retail shopping center outbuildings fronting State Highway 249: notwithstanding any other provision of this section to the contrary, the building line for retail outbuildings adjacent to State Highway 249 and State Highway 249 Bypass shall be ten feet if:

1. The retail outbuilding is within a shopping center development (a development comprised of retail businesses which share common parking and pedestrian areas and facilities for their clientele) which contains not less than 1¼ acres of land and which has not less than 240 feet of frontage on said State Highway 249 and State Highway 249 Bypass;
2. The retail outbuilding contains not more than 100 square feet of floor area;
3. The retail outbuilding is located so as not to create a hazard to vehicular or pedestrian traffic on the shopping center site, the adjacent State Highway 249 and State Highway 249 Bypass, or any other adjacent public or private street or property; limit spacing of said structures to no greater than one per 300 feet;
4. The retail outbuilding is located not less than 50 feet from any paved portion of State Highway 249 and State Highway 249 Bypass, whether main lane or access road; and
5. The retail outbuilding is located so as to be a minimum of 300 feet from the closest retail outbuilding along either side of State Highway 249 and State Highway 249 Bypass, measured in a straight line from the center fronts of each retail outbuilding.

(3) Maximum lot coverage. Maximum lot coverage is 60 percent including main and accessory buildings; maximum 90 percent impervious coverage (including all buildings, parking areas, sidewalks, etc.).

(4) Maximum floor area. Maximum floor area ratio (FAR) is 2:1.

(5) The maximum glare produced by any industry shall be limited to four footcandles of illumination intensity beyond the industrial or commercial tract boundary throughout the light frequency spectrum beginning with ultraviolet and ending through the infrared wavelengths.

(Code 1978, § 5-9; Code 1993, § 14-9; Ord. No. 2008-01, § 31, 2-4-2008)

| | | |

| | | |

| | | |

Reduction of fats, ores, metals, garbage, offal, etc.; rendering plant																									1 space per 1,000 square feet
Rock quarries, sand, gravel and earth excavations or extractions	C																	C							1 space per acre
Rug and carpet manufacture																	C	P							1 space per 1,000 square feet
Sand, gravel, or stone storage (including sales) ‡	C																C	P							1 space per 1.5 employees, plus five per acre
Shellac and varnish manufacture																		C							1 space per 1,000 square feet
Sign manufacturing (no outside storage)																	C	P							1 space per 1,000 square feet
Sign manufacturing (with outside storage)																	C	P							1 space per 1,000 square feet
Snuff manufacture																		C							1 space per 1,000 square feet
Soap, detergents, cleaning preparations manufacture																		C							1 space per 1,000 square feet
Starch manufacture																		C							1 space per

| | | |

Wood container manufacture														C	P				1 space per 1,000 square feet
Wood distillation (manufacture of tar, charcoal, turpentine and similar															C				1 space per 1,000 square feet
Wood preserving manufacture and treatment															C				1 space per 1,000 square feet
Wood products manufacture														C	P				1 space per 1,000 square feet

(Ord. No. 2008-01, § 38, 2-4-2008; Ord. No. 2010-09, § 2, 5-3-2010; Ord. No. 2012-18, § 2, 7-2-2012; Ord. No. 2013-23, § 2, 2-2-2013; Ord. No. 2013-19, § 2, 11-4-2013; Ord. No. 2014-35, § 2, 10-6-2014; Ord. No. 2014-45, § 2, 1-5-2015; Ord. No. 2015-07, § 3, 4-20-2015; Ord. No. 2015-19, § 2, 10-5-2015; Ord. No. 2015-25, § 2, 1-4-2016)

| | | |

| | | |

| | | |

Reduction of fats, ores, metals, garbage, offal, etc.; rendering plant																							1 space per 1,000 square feet
Rock quarries, sand, gravel and earth excavations or extractions	C																C						1 space per acre
Rug and carpet manufacture																C	P						1 space per 1,000 square feet
Sand, gravel, or stone storage (including sales) ‡	C															C	P						1 space per 1.5 employees, plus five per acre
Shellac and varnish manufacture																	C						1 space per 1,000 square feet
Sign manufacturing (no outside storage)																C	P						1 space per 1,000 square feet
Sign manufacturing (with outside storage)																C	P						1 space per 1,000 square feet
Snuff manufacture																	C						1 space per 1,000 square feet
Soap, detergents, cleaning preparations manufacture																	C						1 space per 1,000 square feet
Starch manufacture																	C						1 space per

| | | |

| | | |

EXHIBIT F

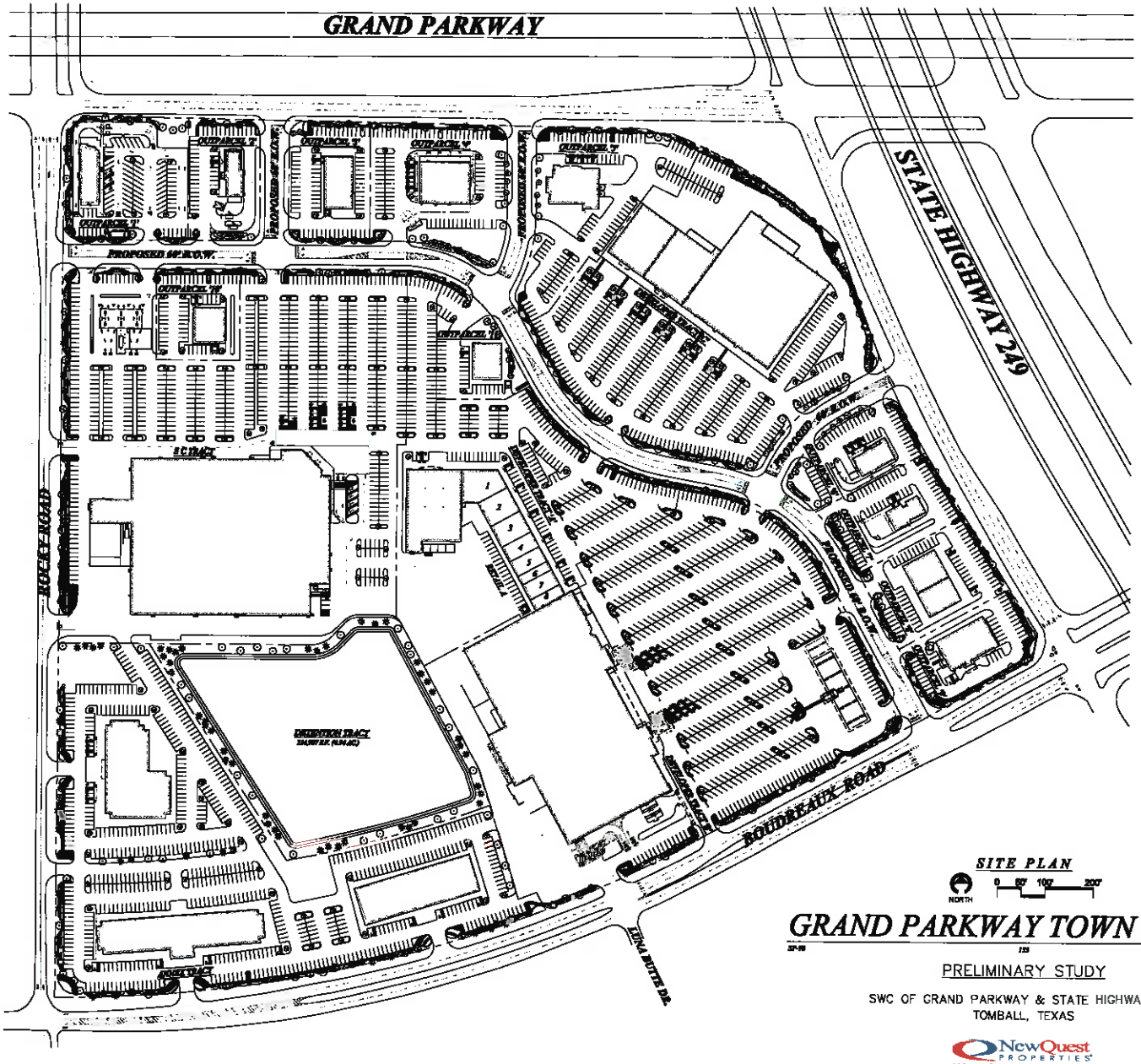
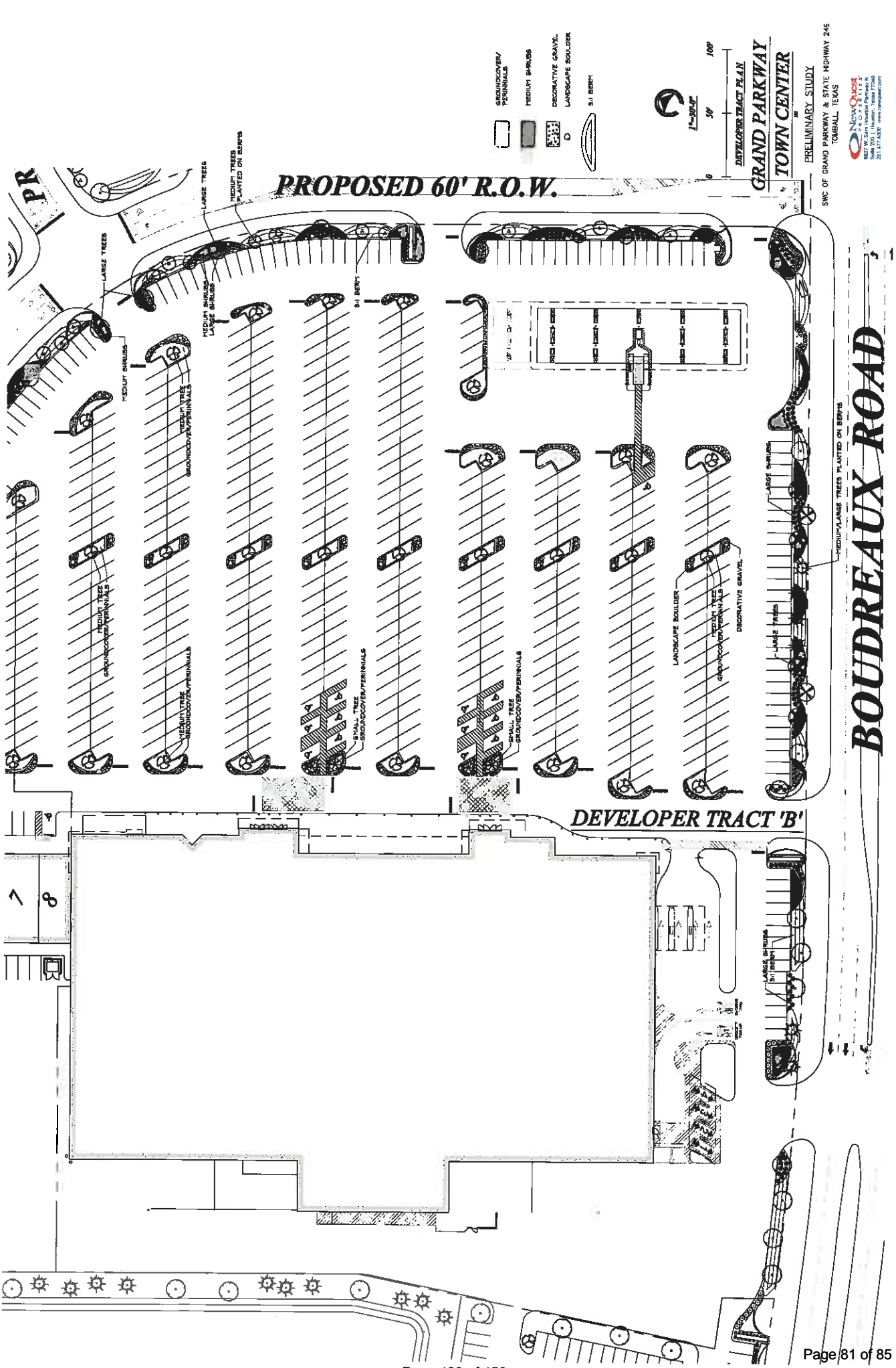
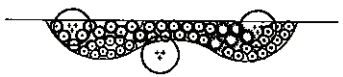

GRAND PARKWAY
STATE HIGHWAY 249
BOUDREAUX ROAD
DETENTION TRACT
SITE PLAN
NORTH
0 50' 100' 200'
GRAND PARKWAY TOWN CENTER
PRELIMINARY STUDY
SWC OF GRAND PARKWAY & STATE HIGHWAY 249
TOMBALL, TEXAS
NewQuest PROPERTIES
8827 W. Sam Houston Parkway N.
Suite 200 | Houston, Texas 77040
281.477.4300 www.newquest.com

EXHIBIT F


PROPOSED 60' R.O.W.
DEVELOPER TRACT 'B'
BOUDREAUX ROAD
DEVELOPER TRACT PLAN
GRAND PARKWAY TOWN CENTER
PRELIMINARY STUDY
SWC OF GRAND PARKWAY & STATE HIGHWAY 249
TOMBALL, TEXAS
GROUNDCOVER/ PERENNIALS
MEDIUM SHRUBS
DECORATIVE GRAVEL
LANDSCAPE BOULDER
3:1 BERM
LARGE TREES
MEDIUM TREES PLANTED ON BERMS
MEDIUM SHRUBS LARGE SHRUBS
MEDIUM TREE GROUNDCOVER/PERENNIALS
SMALL TREE GROUNDCOVER/PERENNIALS
LARGE SHRUBS
MEDIUM/LARGE TREES PLANTED ON BERMS
LANDSCAPE BOULDER
DECORATIVE GRAVEL
LARGE TREES
NewQuest Properties

PREFERRED PLANTINGS:

1. BEDS SHOULD HAVE A NATURAL, CURVILINEAR EDGE WITH MASS GROUPINGS OF PLANT MATERIAL
2. TREES SHOULD BE PLANTED IN A NATURAL, OFF-CENTER LAYOUT, LEAVING VISIBILITY TO SIGNAGE
3. A MAJORITY OF TREES SHOULD BE EVERGREEN
4. SHRUB PLANTINGS SHOULD BE A NICE MIX OF EVERGREEN, ORNAMENTAL GRASSES, AND GROUNDCOVER



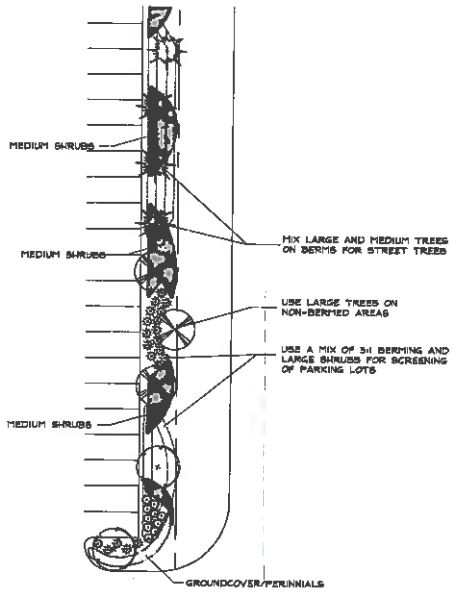
1. AVOID LONG LINEAR BEDS AND PLANTINGS
2. AVOID EVENLY SPACED AND PLANTED TREES.



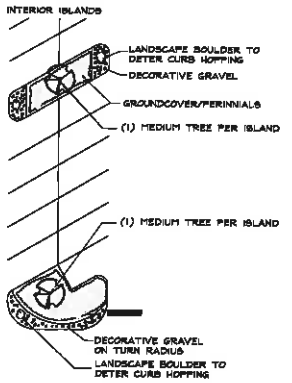
1. IT IS THE LANDSCAPE DESIGNER'S RESPONSIBILITY TO VERIFY ALL QUANTITIES MEET LANDSCAPE REQUIREMENTS FOR PERMITTING

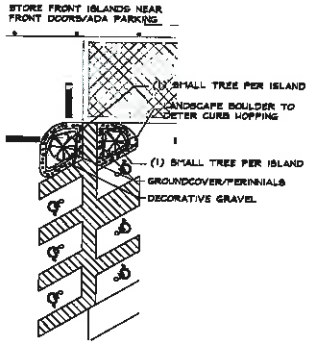
2. TRACT PLANTINGS SHALL USE MATERIAL FROM GRAND PARKWAY TOWN CENTER PLANT LIST

STREET FRONTAGE:



PARKING LOTS:





PLANT LIST - GRAND PARKWAY TOWN CENTER

	COMMON NAME	SCIENTIFIC NAME	SIZE	REMARKS
LARGE TREES	LOBLOLLY PINE	Pinus taeda	65 gal	3" CAL. 12-14'HT; 7-8'SPRD; SPECIMEN
	MONTERREY OAK	Quercus polymorpha	65 gal	3" CAL. 12-14'HT; 7-8'SPRD; SPECIMEN
	LIVE OAK	Quercus virginiana	65 gal	3" CAL. 12-14'HT; 7-8'SPRD; SPECIMEN
	CEDAR ELM	Ulmus crassifolia	65 gal	3" CAL. 12-14'HT; 7-8'SPRD; SPECIMEN
MED. TREES	EAGLESTON HOLLY	Ilex x attenuata 'Eagleston'	65 gal	2.5" CAL. 8-10'HT; 5-7'SPRD; SPECIMEN
	EAST PALATKA HOLLY	Ilex x attenuata 'East Palatka'	65 gal	2.5" CAL. 8-10'HT; 5-7'SPRD; SPECIMEN
	SAVANNAH HOLLY	Ilex x attenuata 'Savannah'	65 gal	2.5" CAL. 8-10'HT; 5-7'SPRD; SPECIMEN
	YAUPON TREE	Ilex vomitoria	65 gal	8-10'ht; 5-6'sprd; MULTI-TRUNK; 3 CANE MIN. TREEFORM
	CRAPE MYRTLE 'NATCHEZ'	Lagerstroemia x 'Natchez'	65 gal	12-14'ht; 6-8'sprd MULTI-TRUNK; 3 CANE MIN.
SMALL TREES	WAX MYRTLE	Myrica cerifera	65 gal	8-10'ht; 5-6'sprd; MULTI-TRUNK; 3 CANE MIN. TREEFORM
	TEXAS MOUNTAIN LAUREL	Sophora secundiflora	65 gal	2" CAL. 8'-10'Ht; 5'-6'sprd; SPECIMEN
	VITEX TREE	Vitex agnus-castus	65 gal	8'-10'ht; 5-6'sprd; MULTI-TRUNK; 3 CANE MIN.
LARGE SHRUBS	LITTLE RICHARD ABELIA	Abelia x grandiflora 'Little Richard'	3 gal	18" ht.; 18"sprd. Full, rooted.
	TEXAS SAGE GREENCLOUD	Leucophyllum frutescens 'Greencloud'	3 gal	24" ht.; 18"sprd. Full, rooted.
	TEXAS SAGE SILVERADO	Leucophyllum frutescens 'Silverado'	3 gal	24" ht.; 18"sprd. Full, rooted.
	MAIDEN GRASS	Miscanthus sinensis 'Gracillimus'	3 gal	24" ht.; 24"sprd. Full, rooted.
	MORNING LIGHT GRASS	Miscanthus sinensis 'Morning Light'	3 gal	24" ht.; 24"sprd. Full, rooted.
	GULF MUHLY GRASS	Muhlenbergia capillaris	3 gal	24" ht.; 24"sprd. Full, rooted.
	LINDHEIMER'S MUHLY	Muhlenbergia lindheimeri	3 gal	24" ht.; 24"sprd. Full, rooted.
	DWARF WAX MYRTLE	Myrica cerifera 'Pumila'	3 gal	24" ht.; 18"sprd. Full, rooted.
MED. SHRUBS	YELLOW SUN YUCCA	Hesperoles parviflora 'Yellow Sun'	3 gal	15" ht.; 15"sprd. Full, rooted.
	CARISSA HOLLY	Ilex cornuta 'Carissa'	3 gal	15" ht.; 15"sprd. Full, rooted.
	DWARF YAUPON HOLLY	Ilex vomitoria 'Nana'	3 gal	15" ht.; 15"sprd. Full, rooted.
	PROSTRATE JUNIPER	Juniperus Horizontalis 'Prostrata'	3gal	8" ht.; 15"sprd. Full, rooted.
	PARSON'S JUNIPER	Juniperus chinensis 'Parsonii'	3gal	8" ht.; 15"sprd. Full, rooted.
	ADAGIO GRASS	Miscanthus sinensis 'Adagio'	3 gal	18" ht.; 18"sprd. Full, rooted.
	LITTLE KITTEN GRASS	Miscanthus sinensis 'Little Kitten'	3 gal	18" ht.; 18"sprd. Full, rooted.
	YAKU JIMA GRASS	Miscanthus sinensis 'Yaku Jima'	3 gal	18" ht.; 18"sprd. Full, rooted.
	MEXICAN FEATHER GRASS	Nassella tenuissima	3 gal	15" ht.; 15"sprd. Full, rooted.
	CASSIAN GRASS	Pennisetum alopecuroides 'Cassian'	3 gal	20" ht.; 18"sprd. Full, rooted.
	HAMELN GRASS	Pennisetum alopecuroides 'Hameln'	3 gal	20" ht.; 18"sprd. Full, rooted.
	MEXICAN BUSH SAGE	Salvia leucantha	3 gal	18" ht.; 15"sprd. Full, rooted.
GROUNDCOVER /PERENNIAL	COREOPSIS varieties	Coreopsis sp.	1 gal	12" ht.; 12"sprd. Full, rooted.
	BICOLOR IRIS	Dietes bicolor	1 gal	12" ht.; 12"sprd. Full, rooted. YELLOW FLOWERING
	LEMON CREAM LANTANA	Lantana camara 'Little Lemon Cream'	1 gal	8" ht.; 8"sprd. Full, rooted.
	NEW GOLD LANTANA	Lantana camara 'New Gold'	1 gal	8" ht.; 8"sprd. Full, rooted.
	TRAILING PURPLE LANTANA	Lantana montevidensis 'Purple'	1 gal	6" ht.; 12"sprd. Full, rooted.
	GOLDSTRUM DAISY	Rudbeckia fulgida 'Goldstrum'	1 gal	12" ht.; 12"sprd. Full, rooted.
	DAISY	Rudbeckia sp.	1 gal	12" ht.; 12"sprd. Full, rooted.
	MEALY BLUE SAGE	Salvia farinacea	1 gal	12" ht.; 12"sprd. Full, rooted.
	VICTORIA BLUE SAGE	Salvia farinacea 'Victoria'	1 gal	12" ht.; 12"sprd. Full, rooted.
	MOONLIGHT AUTUMN SAGE	Salvia greggii 'Moonlight'	1 gal	12" ht.; 12"sprd. Full, rooted.
	PURPLE SALVIA	Salvia greggii 'Purple'	1 gal	12" ht.; 12"sprd. Full, rooted.
	RASPBERRY SALVIA	Salvia greggii 'Raspberry Delight'	1 gal	12" ht.; 12"sprd. Full, rooted.
	MAY NIGHT SAGE	Salvia X 'May Night'	1 gal	12" ht.; 12"sprd. Full, rooted.
	VERBENA	Verbena 'Homestead Purple'	1 gal	12" ht.; 12"sprd. Full, rooted.
	DAYLILY 'HAPPY RETURNS' LIRIOPE 'EMERALD GODDESS'	Hemerocallis 'Happy Returns' Liriope muscari 'Love Potion'	1 gal 1 gal	12" ht.; 12"sprd. Full, rooted. 12" OC 12" ht.; 12"sprd. Full, rooted. 12" OC
	ASIAN JASMINE	Trachelospermum asiaticum	4" pot	4" ht.; 8"sprd. Full, rooted.

**OTHER PLANT MATERIAL MAY BE USED BY APPROVAL ONLY

OTHER LANDSCAPE MATERIAL:

1. LANDSCAPE ROCK SHALL BE MOSS ROCK
2. STANDARD BULLROCK SHALL BE 5"-8" AGGREGATE IN SIZE OR EQUAL.
3. FLAGSTONE SHALL BE OKLAHOMA BROWN OR SIMILAR.
4. BORDER ROCK SHALL BE OKALHOMA BROWN CHOP OR MATCH OTHER STONE ON PROPERTY

GRAND PARKWAY TOWN CENTER

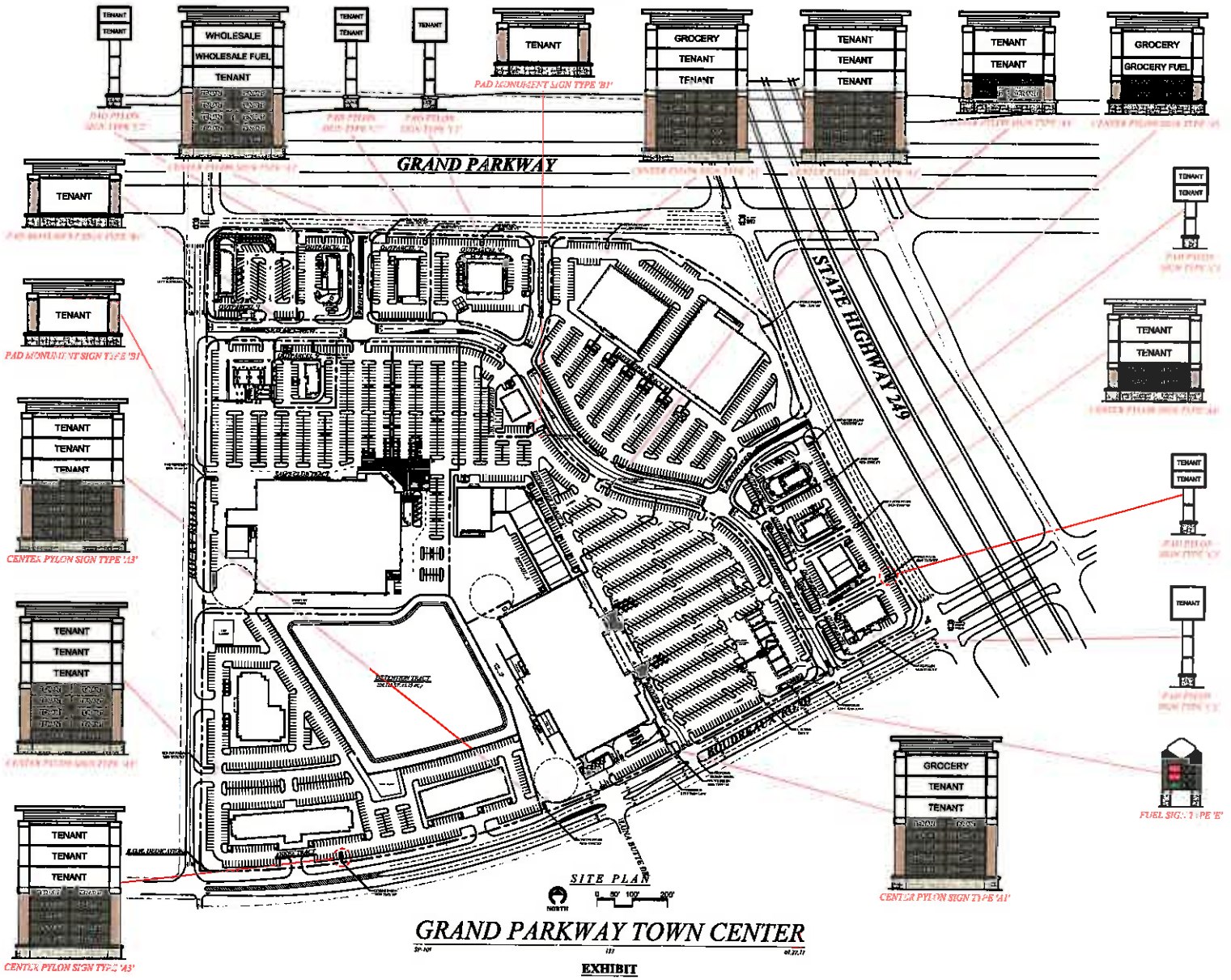
PRELIMINARY STUDY

SWC OF GRAND PARKWAY & STATE HIGHWAY 249
TOMBALL, TEXAS

NewQuest PROPERTIES
6807 W. Sam Houston Parkway N.
Suite 200 | Houston, Texas 77040
281.477.4300 www.newquest.com

EXHIBIT G

EXHIBIT G-1



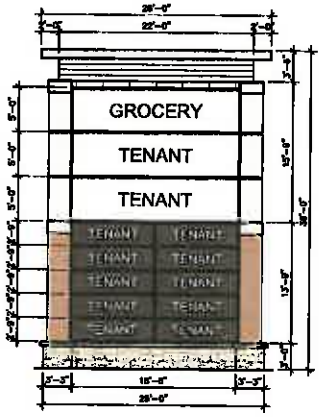
GRAND PARKWAY TOWN CENTER

EXHIBIT

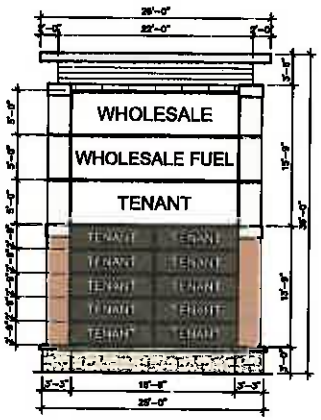
SWC OF GRAND PARKWAY & STATE HIGHWAY 249
TOMBALL, TEXAS

NewQuest Properties
6827 W. Sam Houston Parkway N.
Suite 200 | Houston, Texas 77040
281.477.4500 www.newquest.com

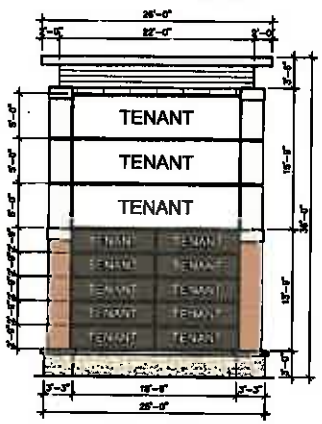
EXHIBIT G-2



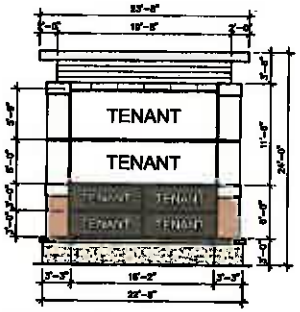
CENTER PYLON SIGN TYPE 'A1'
SCALE: NOT TO SCALE



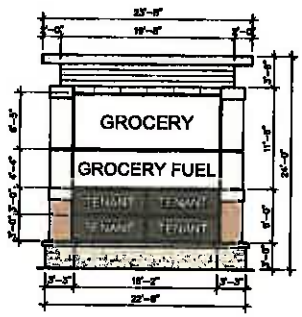
CENTER PYLON SIGN TYPE 'A2'
SCALE: NOT TO SCALE



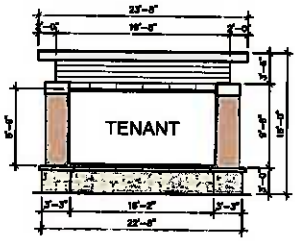
CENTER PYLON SIGN TYPE 'A3'
SCALE: NOT TO SCALE



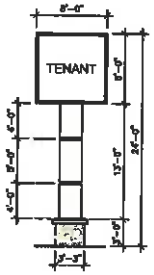
CENTER PYLON SIGN TYPE 'A4'
SCALE: NOT TO SCALE



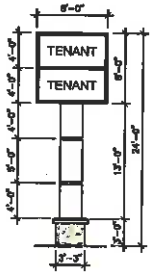
CENTER PYLON SIGN TYPE 'A5'
SCALE: NOT TO SCALE



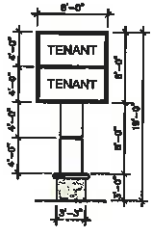
PAD MONUMENT SIGN TYPE 'B1'
SCALE: NOT TO SCALE



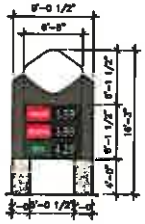
PAD PYLON SIGN TYPE 'C1'
SCALE: NOT TO SCALE



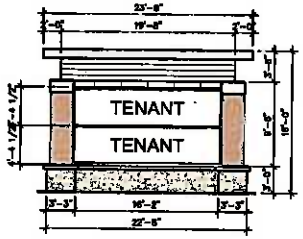
PAD PYLON SIGN TYPE 'C2'
SCALE: NOT TO SCALE



PAD PYLON SIGN TYPE 'C3'
SCALE: NOT TO SCALE



FUEL SIGN TYPE 'E'
SCALE: NOT TO SCALE



PAD MONUMENT SIGN TYPE 'B2'
SCALE: NOT TO SCALE

SIGNAGE

GRAND PARKWAY TOWN CENTER

SIGNAGE 133 01.31.17

EXHIBIT

SWC OF GRAND PARKWAY & STATE HIGHWAY 249
TOMBALL, TEXAS

NewQuest PROPERTIES
8827 W. Sam Houston Parkway N.
Suite 200 | Houston, Texas 77040
281.477.4300 www.newquest.com

Regular City Council
Agenda Item
Data Sheet

Meeting Date: May 1, 2017

Topic:
Approve and Ratify the Assignment of Development Agreement regarding the Assignment of Annual Assessment Collections for PID No. 3, The Reserve at Spring Lake (Zion Road Properties, LLC, PID #3 receivables to Preferred Bank.

Background:
A development agreement is in place between the City of Tomball and the developer, whereby the City has agreed to collect the annual assessment payments at the same time as the property taxes (or provide for the collection of the assessment through the Harris County tax office) and then convey the assessment revenue to the developer annually as a reimbursement for the infrastructure costs detailed in the agreement.The developer is requesting that there be an assignment of those annual assessment collections to another entity, which is allowable under the agreement subject to the City's consent.

Origination:
Finance

Recommendation:
Staff recommends approval of the assignment.

Party(ies) responsible for placing this item on agenda:
Glenn Windsor, CPA, Finance Director

ACTION TAKEN

Approval	Readings Passed	Other
☐ Yes ☐ No	☐ 1st ☐ 2nd	

ATTACHMENTS:

Council Information Sheet for PID # 3
PID # 3 Development Agreement
PID # 3 Assignment Agreement

Council Item Information Sheet – Service and Assessment Plan/Section One Assessment Roll for Public Improvement District Number Three (Reserve at Spring Lake Subdivision)

Action Requested

Approval of the Service and Assessment Plan for Public Improvement District Number Three and approval of the Section One Assessment Roll.

Information

Public infrastructure improvements are underway for the Reserve at Spring Lake Subdivision within Public Improvement District Number Three created by the City in 2009. Per Chapter 372 of the Local Government Code, a Service and Assessment Plan must be approved by City Council prior to levying the assessments. The Plan shows the estimated total costs for public improvements in the PID and the assessments to be levied against residential property in the PID. Each property (lot) will pay a portion of the public improvement costs based on the size of the property. The Plan also specifies how the assessments are to be collected.

The assessments prescribed in the Plan are by lot category. The total, one-time assessment per lot category is specified in the plan as well as the annual installment (financed assessment rate at 5.25% annual interest) as follows:

Reserve at Spring Lake Lot Categories (By Size)	Total Assessment (Principal)	Financed Assessment (Annual Payment)
1.) Up to 1.5 Acres	$45,929.08	$4,500.00
2.) 1.5 Acres to 2.0 Acres	$68,893.62	$6,750.00
3.) 2.0 Acres to 3.0 Acres	$91,858.15	$9,000.00
4.) 3.0 Acres and Larger	$114,822.69	$11,250.00

The annual payment, principal, and interest are demonstrated on the attached example amortization schedule which will be kept for each property covered by the assessment. The principal amount of the assessment is payable at any time by each homeowner which would terminate the assessment.

The assessments are formulated to reimburse the developer for 50% of the public infrastructure costs of the development plus interest while staying at or below the equivalent of a $0.90 tax rate on a project wide basis. For illustration, the attached amortization schedule details the amortization for a Lot Category 1 property. It is estimated that the average price of the homes to be constructed on Lot Category 1 properties will be $500,000. The annual assessment payment for the Lot Category 1 is $4,500, or the equivalent of a $0.90 tax rate on a $500,000 home.

Proper disclosure notices detailing the assessment will be presented to potential homebuyers by the homebuilders, and for acknowledgement at closing in the same manner as disclosure notices used in MUDs and other special districts with an ad valorem tax rate.

Future Actions

The District Administrator will work with City staff on the collection of the assessments. The PID assessments will be collected on an annual basis in the same manner as property taxes and transferred to a City-established PID revenue fund. A reimbursement report will be performed

by an independent CPA firm prior to reimbursement to the developer. The revenues will be disbursed to the developer once a year after administrative costs have been deducted.

TOMBALL PID THREE
EXAMPLE AMORTIZATION SCHEDULE

AMORTIZATION SCHEDULE BY LOT CATEGORY

LOT CATEGORY	1
Duration (in years)	15
Interest Rate	5.25%
Annual Payment Amount	$4,500.00
Total Lifetime Payments	$67,500.00
Total Principal	$45,929.08
Total Interest	$21,570.92

Payment	Principal	Interest	Payment	Principal Balance
				$45,929.08
1	$2,088.72	$2,411.28	$4,500.00	$43,840.36
2	$2,198.38	$2,301.62	$4,500.00	$41,641.97
3	$2,313.80	$2,186.20	$4,500.00	$39,328.18
4	$2,435.27	$2,064.73	$4,500.00	$36,892.91
5	$2,563.12	$1,936.88	$4,500.00	$34,329.78
6	$2,697.69	$1,802.31	$4,500.00	$31,632.10
7	$2,839.32	$1,660.69	$4,500.00	$28,792.78
8	$2,988.38	$1,511.62	$4,500.00	$25,804.40
9	$3,145.27	$1,354.73	$4,500.00	$22,659.13
10	$3,310.40	$1,189.60	$4,500.00	$19,348.74
11	$3,484.19	$1,015.81	$4,500.00	$15,864.55
12	$3,667.11	$832.89	$4,500.00	$12,197.44
13	$3,859.63	$640.37	$4,500.00	$8,337.80
14	$4,062.27	$437.73	$4,500.00	$4,275.53
15	$4,275.53	$224.47	$4,500.00	$0.00
TOTAL	**$45,929.08**	**$21,570.92**	**$67,500.00**	

COPY

DEVELOPMENT AGREEMENT

This Development Agreement (this "*Agreement*") is made as of May 3, 2010, by and between the **CITY OF TOMBALL**, a municipal corporation and a home-rule city in the State of Texas (the "City"), and **ZION ROAD PROPERTIES, LLC**, a Texas limited liability company (the "*Developer*").

RECITALS

WHEREAS, in accordance with the provisions of Chapter 372, TEX. LOCAL GOV'T CODE, and Resolution 2009-28, the City Council of the City of Tomball created the Public Improvement District Number Three (the "*PID*") pursuant to the petition for creation from the owner thereof; and

WHEREAS, the City Council of the City has determined that it is in the bests interest of the City and the land within the PID to finance the construction of certain PID Improvements (defined below) and that an assessment against the benefited property within the PID should be made; and

WHEREAS, the Developer is the owner of certain property within the PID described in Exhibit A and B, and wishes to finance and construct certain PID projects; and

WHEREAS, the Developer intends to assist the City in the financing and construction of the PID Improvements, in exchange for the City's agreement to reimburse the Developer in accordance with the terms of this Agreement; now, therefore,

AGREEMENT

For and in consideration of the mutual promises, covenants, obligations, and benefits of this Agreement, the Developer contract and agree as follows:

ARTICLE 1
GENERAL TERMS

1.01 Definitions. The terms "*Agreement*," "*City*," "*Developer*," "*PID*," and "*PID Agreement*" have the meanings set forth in the preamble hereof, and the following terms shall have the meanings provided below, unless otherwise defined or the context clearly requires otherwise. For purposes of this Agreement, the words "shall" and "will" are mandatory, and the word "may" is permissive.

Act shall mean the Public Improvement District Assessment Act, Chapter 372, TEX. LOCAL GOV'T CODE, as amended.

Assessments shall mean assessments levied and collected in connection with the PID pursuant to the Act and the Plan, and deposited by the City into a PID Revenue Fund.

Developer Advances shall mean any funds advanced by the Developer pursuant to **Section 5.01**, and shall include any interest payable thereon.

Net Assessments shall mean the annual deposits of the Assessments into the PID Revenue Fund, less amounts reasonably required or anticipated to be required for the administration and operation of the PID in carrying out its responsibilities hereunder, including a reasonable operating reserve.

Parties or *Party* shall mean the City, and the Developer as parties to this Agreement.

PID Improvements shall mean the improvements described in **Article 3** hereof.

PID Revenue Fund shall mean the special fund established by the City and funded with payments made to the City pursuant to the PID.

Plan shall mean the final Service and Assessment Plan for the PID as approved by City Council in accordance with the Act.

Project shall mean the residential development within the PID projected to be carried out by the Developer described on Exhibit B.

1.02 Singular and plural; gender. Words used herein in the singular, where the context so permits, also include the plural and vice versa. The definitions of words in the singular herein also apply to such words when used in the plural where the context so permits and vice versa. Likewise, any masculine references shall include the feminine, and vice versa.

ARTICLE 2
REPRESENTATIONS

2.01 Representations of the City. The City hereby represents that:

a. The City is duly authorized and is qualified to do business in the State of Texas and is duly qualified to do business wherever necessary to carry on the operations contemplated by this Agreement.

b. The City has the power, authority and legal right to enter into and perform its obligations set forth in this Agreement, and the execution, delivery and performance hereof, (i) have been duly authorized, (ii) will not, to the best of its knowledge, violate any judgment, order, law or regulation applicable to the City, and (iii) does not constitute a default under or result in the creation of, any lien, charge, encumbrance or security interest upon any assets of the City under any agreement or instrument to which the City is a party or by which the City or its assets may be bound or affected.

c. This Agreement has been duly authorized, executed and delivered and constitutes a legal, valid and binding obligation of the City, enforceable in accordance with its terms.

2.02. Representations of the Developer. The Developer hereby represents that:

a. The Developer is duly authorized, created and existing under the laws of the State of Texas, is qualified to do business in the State of Texas and is duly qualified to do business wherever necessary to carry on the operations contemplated by this Agreement.

b. The Developer has the power, authority and legal right to enter into and perform its obligations set forth in this Agreement, and the execution, delivery and performance hereof, (i) have been duly authorized, (ii) will not, to the best of its knowledge, violate any judgment, order, law or regulation applicable to the Developer or any provisions of the Developer's organizational documents, and (iii) does not constitute a default under or result in the creation of, any lien, charge, encumbrance or security interest upon any assets of the Developer under any agreement or instrument to which the Developer is a party or by which the Developer or its assets may be bound or affected.

c. The Developer has sufficient capital to perform its obligations under this Agreement and will commence construction of the Project within eighteen (18) months of execution of this Agreement.

d. This Agreement has been duly authorized, executed and delivered and constitutes a legal, valid and binding obligation of the Developer, enforceable in accordance with its terms.

ARTICLE 3
THE PLAN AND PID IMPROVEMENTS

3.01 The PID Improvements. The PID Improvements are intended to enhance the proposed implementation of a development within the PID constituting the Project, as more fully described in the Plan.

3.02 PID Improvements description. The PID Improvements consist of acquisition, construction and development of the public improvements within the portion of the PID comprising the Project, as more fully described in Exhibit C, and as described in the Plan. The PID Improvements will be developed pursuant to a schedule consistent with the pace of development of the Project that is mutually agreeable to the Parties. The PID Improvements shall include all engineering, legal and other consultant fees and expenses related to such PID Improvements. The Developer shall be entitled to reimbursement of up to 50% of the project costs described in Exhibit C subject to the limitations contained in Section 3.03 of this agreement.

3.03 General terms of the Plan. The Plan has not yet been adopted by the City. The Parties anticipate that the Plan, at a minimum, will include the PID Improvements described above to serve the land within the PID, and such other facilities as may be agreed upon by the Parties, and that the Assessments shall be assessed in phases to affect only the portions of the PID directly benefited by the PID improvements to be financed by each Assessment. The Assessments shall be based upon the agreed-upon percentage of estimated costs of the Public Improvements as reflected in Exhibit C, plus those related costs as deemed reimbursable by the City; however, the Assessments in the Plan shall be formulated in a manner that generally conforms to the equivalent of a $0.90 tax rate for properties covered by the Plan on a project-

wide basis, and a maximum fifteen (15) year payment term for each property covered by the Plan.

3.04. Additional Projects. This Agreement does not apply to any projects not specifically included in the Plan and defined herein unless this Agreement is amended to provide for the design and construction of such additional projects.

ARTICLE 4
DUTIES AND RESPONSIBILITIES OF THE DEVELOPER

4.01 Construction manager. The Developer agrees to construct the PID Improvements and to provide and furnish, or cause to be provided and furnished, all materials and services as and when required in connection with the construction of the PID Improvements. The Developer will obtain all necessary permits and approvals from the City and all other governmental officials and agencies having jurisdiction, provide supervision of all phases of construction of the PID Improvements, provide periodic reports of such construction to the City upon request, and cause the construction to be performed in accordance with the Plan.

4.02 Design of the PID Improvements. The Developer shall prepare or cause to be prepared the plans and specifications for the PID Improvements. Prior to the commencement of construction or implementation of the PID Improvements, the plans and specifications must be approved by the City. The PID Improvements shall be designed in accordance with City standards applicable to similar public improvements within the City.

4.03 Construction contracts. The Developer shall prepare the PID Improvements construction contract documents to ensure that the contract documents are in accordance with the approved plans and specifications. The Developer shall comply with all laws and regulations regarding the bidding and construction of public improvements applicable to similar facilities constructed by the City, including without limitation any applicable requirement relating to payment, performance and maintenance bonds.

4.04. Construction and implementation of the PID Improvements. The Developer shall be responsible for the inspection and supervision of the construction and implementation of the PID Improvements.

a. The Developer shall commence construction of the PID Improvements in a timely fashion to coincide with the expected development of the Project.

b. Upon completion of a contract for the construction of the PID Improvements, the Developer shall provide the City with a final summary of all costs associated with such contract, and show that all amounts owing to contractors and subcontractors have been paid in full evidenced by customary affidavits executed by such contractors. Following completion of a construction contract, the Developer will call for inspection of the applicable PID Improvements by the City, and upon approval thereof as being in compliance with City standards relating thereto, the PID Improvements will be conveyed to the City, subject only to the right to reimbursement for Developer Advances with respect thereto.

ARTICLE 5
PROJECT FINANCING AND FUNDING

5.01. The Developer Advances.

a. In connection with the construction of the PID Improvements the Developer has determined are required to by constructed to serve the Project, the Developer agrees to provide sufficient funds as such become due for all costs thereof (the "Developer Advances"), such as costs of design, engineering, materials, labor, construction, and inspection fees arising in connection with the PID Improvements, including all payments arising under any contracts entered into pursuant to this Agreement.

b. Interest on each Developer Advance shall accrue at a rate one-half of one percent above the highest average interest rate reported by *The Bond Buyer* newspaper in a weekly bond index in the month before the date of this agreement, compounded annually, whether such costs, fees, or expenses are paid or incurred before or after the effective date of this Agreement. The interest rate shall not exceed eight percent (8%). Interest shall be calculated on the basis of a year of 360 days and the actual days elapsed (including the first day but excluding the last day) occurring in the period for which such interest is payable, unless such calculation would result in a usurious rate, in which case interest shall be calculated on the per annum basis of a year of 365 or 366 days, as applicable, and the actual days elapsed (including the first day but excluding the last day).

5.02. Repayment of Developer Advances.

a. In consideration of the development and construction of the PID Improvements, the City shall begin repaying the Developer Advances, and shall continue such repayment until repaid in full, on the earliest date that funds are available from the following source, and solely from such source:

(i) the Net Assessments, subject to the limitations set forth in **subsection (c)**.

b. the City shall reimburse the Developer for Developer Advances, plus interest, from Net Assessments from the Project accumulated in the PID Revenue Fund available in accordance with the priorities described in **Section 5.03** below.

c. At such time as funds are available to pay all or any portion of the Developer Advances made hereunder, the City shall hire a certified public accountant at the Developer's expense to calculate the amount due the Developer and prepare and submit a report to the City certifying the amount due the Developer for the Developer Advances being repaid with interest calculated thereon. Such report shall be approved at the earliest practicable time, but not later than 90 days after submission by the Developer of the records required therefor. The City shall make payment to the Developer within 30 days of approval of the accountant's report.

5.03. Priorities. Amounts deposited in the PID Revenue Fund shall be applied in the following order of priority (i) administrative and operating costs of the PID, (ii) payments to the Developer pursuant to **Section 5.02**, above.

ARTICLE 6
DEFAULT

6.01. Default.

a. If the City does not perform its obligations hereunder in substantial compliance with this Agreement, in addition to the other rights given the Developer under this Agreement, the Developer may enforce specific performance of this Agreement or seek actual damages incurred by the Developer for any such default.

b. If the Developer fails to commence or complete the PID Improvements or the Project in accordance with the terms of this Agreement, including the failure to fund Developer Advances or commence construction of the Project within eighteen (18) months, the City may terminate this Agreement with respect to its obligations to the Developer and shall be relieved of any obligation to reimburse the Developer for any Developer Advances or seek actual damages incurred for any such default.

c. The Party alleging default shall provide written notice to the other party of such default, and the defaulting party shall have 60 days to remedy the default prior to the declaration of any default hereunder.

ARTICLE 7
GENERAL

7.01. Inspections, audits. The Developer agrees to keep such operating records with respect to the PID Improvements and other activities contemplated by this Agreement and all costs associated therewith as may be required by the City, or by State and federal law or regulation. The Developer shall allow the City access to, and the City shall have a right at all reasonable times to audit, all documents and records in the Developer's possession, custody or control relating to the PID Improvements that the City deems necessary to assist the City in determining the Developer's compliance with this Agreement.

7.02 Developer operations and employees. All personnel supplied or used by the Developer in the performance of this Agreement shall be deemed contractors or subcontractors of the Developer and will not be considered employees, agents, contractors or subcontractors of the City for any purpose whatsoever. The Developer shall be solely responsible for the compensation of all such contractors and subcontractors.

7.03 Personal liability of public officials, legal relations. To the extent permitted by State law, no director, officer, employee or agent of the City shall be personally responsible for any liability arising under or growing out of the Agreement. THE DEVELOPER SHALL INDEMNIFY AND SAVE HARMLESS THE CITY AND ITS RESPECTIVE OFFICERS, REPRESENTATIVES, AND AGENTS FROM ALL SUITS, ACTIONS, OR CLAIMS OF ANY CHARACTER BROUGHT FOR OR ON ACCOUNT OF ANY

INJURIES OR DAMAGES RECEIVED BY ANY PERSON, PERSONS, OR PROPERTY RESULTING FROM THE NEGLIGENT ACTS OF THE DEVELOPER, OR ANY OF ITS AGENTS, OFFICERS, OR REPRESENTATIVES IN PERFORMING ANY OF THE SERVICES AND ACTIVITIES UNDER THIS AGREEMENT.

7.04 Notices. Any notice sent under this Agreement (except as otherwise expressly required) shall be written and mailed, or sent by electronic or facsimile transmission confirmed by mailing written confirmation at substantially the same time as such electronic or facsimile transmission, or personally delivered to an officer of the receiving party at the following addresses:

City of Tomball
c/o City Manager
401 Market Street
Tomball, Texas 77375

PID Contract Administrator
Hawes Hill Calderon, LLP
P.O. Box 22167
Houston, Texas 77092
Attn: Scott Bean

Mr. Robert M. Allen
Zion Road Properties, LLC
9977 W. Sam Houston Parkway N.,#150
Tomball, Texas 77064

Each party may change its address by written notice in accordance with this section. Any communication addressed and mailed in accordance with this section shall be deemed to be given when so mailed, any notice so sent by electronic or facsimile transmission shall be deemed to be given when receipt of such transmission is acknowledged, and any communication so delivered in person shall be deemed to be given when receipted for by, or actually received by the City, or the Developer, as the case may be.

7.05 Amendments and waivers. Any provision of this Agreement may be amended or waived if such amendment or waiver is in writing and is signed by the City and the Developer. No course of dealing on the part of the Parties, nor any failure or delay by one or more of the Parties, with respect to exercising any right, power or privilege under this Agreement shall operate as a waiver thereof, except as otherwise provided in this section.

7.06 Invalidity. In the event that any of the provisions contained in this Agreement shall be held unenforceable in any respect, such unenforceability shall not affect any other provision of this Agreement.

7.07 Successors and assigns. All covenants and agreements contained by or on behalf of a Party in this Agreement shall bind its successors and assigns and shall inure to the benefit of the other Parties, their successors and assigns. The Parties may assign their rights and obligations under this Agreement or any interest herein, only with the prior written consent of the other Parties, and any assignment without such prior written consent, including an assignment by

operation of law, is void and of no effect; provided that, the Developer may make a collateral assignment in favor of a lender without consent. This section shall not be construed to prevent the Developer from selling lots, parcels or other portions of the Project in the normal course of business. If such assignment of the obligations by the Developer hereunder is effective, the Developer shall be deemed released from such obligations. If any assignment of the obligations by the Developer hereunder is deemed ineffective or invalid, the Developer shall remain liable hereunder.

7.08 Exhibits; titles of articles, sections and subsections. The exhibits attached to this Agreement are incorporated herein and shall be considered a part of this Agreement for the purposes stated herein, except that in the event of any conflict between any of the provisions of such exhibits and the provisions of this Agreement, the provisions of this Agreement shall prevail. All titles or headings are only for the convenience of the parties and shall not be construed to have any effect or meaning as to the agreement between the parties hereto. Any reference herein to a section or subsection shall be considered a reference to such section or subsection of this Agreement unless otherwise stated. Any reference herein to an exhibit shall be considered a reference to the applicable exhibit attached hereto unless otherwise stated.

7.09 Construction. This Agreement is a contract made under and shall be construed in accordance with and governed by the laws of the United States of America and the State of Texas, as such laws are now in effect.

7.10 Entire Agreement. **THIS WRITTEN AGREEMENT REPRESENTS THE FINAL AGREEMENT BETWEEN THE PARTIES AND MAY NOT BE CONTRADICTED BY EVIDENCE OF PRIOR, CONTEMPORANEOUS, OR SUBSEQUENT ORAL AGREEMENTS OF THE PARTIES. THERE ARE NO UNWRITTEN ORAL AGREEMENTS BETWEEN THE PARTIES.**

7.11 Term. This Agreement shall be in force and effect from the date of execution hereof for a term expiring on the date that the Developer Advances have been repaid in full, or January 1 of the year following the date the last assessment payment has been made in accordance with the PID Service and Assessment Plan and Assessment Roll(s).

7.12 Time of the essence. Time is of the essence with respect to the obligations of the Parties to this Agreement.

7.13 Approval by the Parties. Whenever this Agreement requires or permits approval or consent to be hereafter given by any of the parties, the parties agree that such approval or consent shall not be unreasonably conditioned, withheld or delayed.

7.14 Counterparts. This Agreement may be executed in multiple counterparts, each of which when so executed and delivered shall be deemed an original, but such counterparts together shall constitute but one and the same instrument.

7.15 Legal costs. If any Party hereto is the prevailing party in any legal proceedings against another Party brought under or with relation to this Agreement, such prevailing Party shall additionally be entitled to recover court costs and reasonable attorneys' fees from the non-prevailing Party to such proceedings.

7.16 Further assurances. Each Party hereby agrees that it will take all actions and execute all documents necessary to fully carry out the purposes and intent of this Agreement.

[EXECUTION PAGE FOLLOWS]

IN WITNESS WHEREOF, the parties hereto have caused this instrument to be duly executed as of May 6, 2010.

CITY OF TOMBALL, TEXAS

By: _____
Name: Gretchen Fagan
Title: Mayor

ZION ROAD PROPERTIES, LLC

_____
Robert M. Allen
Title: Manager

EXHIBIT A

METES AND BOUNDS DESCRIPTION
232.8801 ACRE (10,144,254 SQUARE FEET)
ALL OF A CALLED 164.7078 ACRES TRACT
AND ALL OF A CALLED 68.1723 ACRES TRACT
IN THE JOSEPH MILLER LEAGUE, A-50
AND THE W H CLEMENS SURVEY, A-1641
HARRIS COUNTY, TEXAS

Being 232.8801 acre (10,144,254 square feet) of land, being all of a called 164.7078 acres tract, conveyed to Yaupon Ranch, Ltd. by deed recorded under County Clerk's File Number (CCF) 2007-0138375 of the Official Public Records of Real Property of Harris County, Texas (OPRRP HCT), and all of a called 68.1723 acres tract, conveyed to Yaupon Ranch, Ltd. by deed recorded under CCF Z236940 OPRRP HCT. Said 232.8801 acres tract lying in the Joseph Miller League, Abstract 50 and W H Clemens Survey, A-1641 and being more particularly described by metes and bounds, with bearings based on the North line of said 164.7078 acres tract, called "East", as follows:

BEGINNING at a found 1 inch iron pipe, next to a three inch iron pipe in the Southwest corner of a called 10 acres tract referenced in deed to Tomball ISD recorded under CCF X890598 OPRRP HCT, being the same as the remainder of a called 10 acres tract conveyed to Vilma Masterson et al by deed recorded under CCF 371361 DR HCT, said iron pipe also marking the Southeast corner of a called 13 acre tract conveyed to Neigdick Lester, record information not found;

THENCE East, basis of bearings, along the common South line of said 10 acre tract, a distance of 912.36 feet to a found 3 inch iron pipe in the South line of a called 10 acre tract conveyed to Vilma Masterson et al, by deed recorded under CCF 371361 DR HCT, being the same further conveyed under Tax Suite Sale to Tomball Independent School District, by deed recorded under CCF X890598 OPRRP HCT;

THENCE North 89°55'38" East, in part along the South line of said called 10-acre tract, a distance of 600.70 feet to a set 5/8 inch iron rod. Said iron rod set in a point from which a 5/8 inch iron rod with;

THENCE North 00°43'17" West, a distance of 87.16 feet, to a point in the centerline of Spring Creek (the dividing line between the Counties of Harris and Montgomery);

THENCE along said centerline of said Spring Creek, the following courses:
North 67°07'18" East, a distance of 154.67 feet;
North 80°22'28" East, a distance of 113.12 feet;
North 87°09'19" East, a distance of: 110.50 feet;
North 87°53'00" East, a distance of: 210.89 feet;
South 83°18'22" East, a distance of 202.76 feet;
South 42°35'23" East, a distance of 169.62 feet;
And South 56°06'19" East a distance of 15.97 feet, to a point in said centerline for the Northeast corner of the herein described tract, also being the Northwest corner of a called 26.5 acre tract conveyed to Tomball Gun Club by deed recorded under CCF B717054 OPRRP HCT;

THENCE South 00°26'02" East, along the West line of said 26.5 acre tract, pass at a distance of 91.93 feet a found 5/8 inch iron rod with cap, in said West line, on the High bank of said Spring creek and continuing to a total distance of 1271.15 feet, to a found 5/8 inch iron rod with cap in the North right-of-way line (ROW) of the G N R R Company (now Missouri Pacific RR Co.) 100 feet wide ROW;

THENCE North 56°52'59" West, along said North ROW, a distance of 896.47 feet, to a set 5/8 inch iron rod in the West line of said 21.118-acre tract, also being the East line of said 90.63 acre tract, for an internal corner of the herein described tract;

THENCE South 00°43'15" East, across said ROW, a distance of 120.38 feet to a set 5/8 inch iron rod with cap in the South ROW of said G N RR Company (now Missouri Pacific RR Co.) and an internal corner of the herein described tract;

THENCE South 56°52'15" East, along said South ROW, a distance of 852.06 feet, to a found 5/8 inch iron rod with cap, in the North line of said 68.1723 acres tract;

THENCE South 56°54'33" East, along said cutback and the Southwest line of said I. & G.N. Railroad, a distance of 44.05 feet to a found 5/8 inch iron with cap, marking the Northwest corner of a called 15.6463 acre tract conveyed to Tomball Gun Club, Inc. by deed recorded under CCF No. L547016 OPRRP HCT;

THENCE South 00°03'08" West, along the West line of said 15.6463 acres tract and a called 4.0000 acres tract to Pricila Brown Estate as shown in Harris County Appraisal District, Account No. 041-006-002-0022, a distance of 1759.27 feet to a found 1/2 inch iron rod in the Northeast corner of a called 2.7859 acre easement tract to Houston Lighting and Power Company recorded under CCF No. G985469 OPRRP HCT;

THENCE South 00°04'29" West, along the West line of said 4.0000 acres tract and the East line of said 2.7859 acre easement tract, a distance of 90.20 feet to a set 5/8 inch iron rod, marking the Southwest corner of said 4.0000 acre tract, and the Northwest corner of a called 155.696 acre tract conveyed to Hobby H. Mccall Living Trust, recorded under CCF No. P916725 OPRRP HCT;

THENCE South 00°47'42" East, along the West line of said 155.696 acre tract, a distance of 84.46 feet to a found 5/8 inch iron rod in the Southeast corner of said 2.7859 acre easement tract;

THENCE South 00°44'33" East, continuing along said 155.696 acre tract, a distance of 748.41 feet to a found 1/2 inch iron rod with cap, marking the Northeast corner of a called 22.8365 acre tract conveyed to Jack Frey Properties by deed recorded under CCF No. J585122 OPRRP HCT and the most Easterly Southeast corner of the herein described tract;

THENCE North 85°40'01" West, along the North line of said 22.8365 acre tract, a distance of 363.82 feet, to a set 5/8 inch iron rod for the Northwest corner of said 22.8365 acre tract and the internal corner of the herein described tract;

THENCE South 00°38'14" East, along the West line of said 22.8365 acre tract, a distance of 2775.27 feet to a found 1/2 inch iron rod, marking the Southwest corner of said 22.8365 acre tract and the most Southerly Southeast corner of the herein described tract, being in the North ROW line of said Zion Road;

THENCE South 89°29'18" West, along the North ROW line of said Zion Road, a distance of 351.35 feet to a found 1/2 inch pipe, marking the Southeast corner of said 164.7078 acres tract, said pipe being in the North right-of-way (ROW) line of Zion Road, 60' wide ROW);

THENCE South 87°13'11" West, along said ROW, a distance of 39.59 feet to a found 1 inch iron pipe for corner;

THENCE North 00°48'47" West a distance of 1402.26 to a set 5/8 inch iron rod, said point being the Southeast corner of a called 1.334 acre tract conveyed to Raymond L Ulrich by CCF C648757 OPRRP HCT, and now being part of said 19.496 acre tract;

THENCE North 00°53'58" West, along the East line of said 1.334 acre tract, a distance of 99.79 feet, to a found 3 inch iron pipe for corner;

THENCE South 89°12'11" West, along the North line of said 1.334 acre tract, a distance of 565.59 feet, to a found 1 1/2 inch iron pipe for corner;

THENCE South 01°15'42" East, along the West line of said 1.334 acre tract, a distance of 100.16 feet, to a found 1 1/2 iron pipe for corner marking the Northeast corner of McKinney PL Subdivision an

unrecorded Subdivision;

THENCE South 89°45'36" West, along the North line of said McKinney PL Subdivision, a distance of 134.11 feet to a found 5/8 inch iron rod marking the Southeast corner of a called 19.98 acre tract conveyed to Richard Kinsey by deed recorded under CCF No. S913430 OPRRP HCT;

THENCE North 00°51'43" West, along the East line of said 19.98 acre tract, a distance of 962.95 feet to a found 5/8 inch iron rod marking the Northeast corner of said 19.98 acre tract and an internal corner of the herein described tract;

THENCE South 88°35'00" West, along the North line of said 19.98 acre tract, a distance of 20.10 feet to a found 1 1/2 inch iron rod marking the Southeast corner of the remainder of a called 15.000 acre tract conveyed to Jimmy Adams by deed recorded under CCF No. S832826 OPRRP HCT;

THENCE North 01°29'11" West, along the East line of said 15.000 acre tract, pass at a distance of 2.81 feet a found 5/8 inch iron rod with cap, pass at a distance of 9.77 feet a found 5/8 inch iron rod with cap, and continuing to a total distance of 191.51 feet to a found 5/8 inch iron rod with cap for angle point;

THENCE North 01°01'18" West, along the East line of said 15.000 acre tract, a called 7.500 acre tract conveyed to Samuel Olivo by deed recorded under CCF No. V586304 OPRRP HCT, a called 5.47 acre tract conveyed to Rock Graham by deed recorded under CCF No(s). S971746 and S832827 OPRRP HCT, a called 9.470 acre tract conveyed to Mathew Klein by deed recorded under CCF No. S960728 OPRRP HCT, pass at a distance of 182.21 feet a found 5/8 inch iron with cap in the Southeast corner of said 7.500 acre tract, a distance of 1334.94 feet to a found 2 inch iron pipe marking the Southeast corner of a remainder of a called 10.452 acre tract conveyed to James Kirkman by deed recorded under CCF No. P763144 OPRRP HCT;

THENCE North 00°17'31" West, along the East line of said remainder of a called 10.452 acre tract and Red Oak Terrace an unrecorded subdivision, pass at a distance of 525.61 feet a found 2 inch pipe next to a 5/8 inch iron rod marking the Southeast corner of said Red Oak Terrace Subdivision, pass at a distance of 924.40 feet the Southwest corner of said 2.4546 acre tract, pass at a distance of 1061.61 feet the Northwest corner of said 2.4546 acre tract, and continuing along the West line of said 51.706 acre tract, to a total distance of 1549.51 feet to a found 2 inch iron pipe for the Northeast corner of said unrecorded subdivision, also being the Southeast corner of said 28.7386 acre tract;

THENCE North 89°35'33" West, along the North line of said Red Oak Terrace Subdivision and the South line of said 28.7386 acre tract, pass at a distance of 141.02 a found 1/2 inch iron rod marking the common North corner of tract 34 of said Red Oak Terrace conveyed to Mick Corporation by deed recorded under CCF J788626 OPRRP HCT and tract 35 conveyed to John W and Connie Page by deed recorded under CCF U436525 OPRRP HCT, pass at a distance of 439.22 a found 3/4 inch iron rod marking the Northwest corner of said tract 35 and a Centerpoint Energy tract, pass at a distance of 521.30 feet the Southeast corner of said 0.9722 acre tract, pass at a distance of 669.38 feet the Southwest corner of said 0.9722 acre tract, pass at a distance of 751.46 feet a found 5/8 inch iron rod marking the common North corner of said Centerpoint Energy tract and tract 40 conveyed to Howard Ellery Gene by deed recorded under CCF H821490 OPRRP HCT, pass at a distance of 870.00 feet a set 5/8 inch iron rod in the East right of way line of Ulrich Road, a 30.00 feet easement recorded in Volume 2379, Page 677 and Volume 2379, Page 657 of the Deed Records of Harris County, Texas, and continuing a total distance of 900.00 feet to a point in the centerline of said Ulrich Road for corner;

THENCE North 01°00'56" West, along the center line of said Ulrich Road a distance of 740.73 feet to a found 2 inch iron pipe for the Southeast corner of said 24.56 acre tract;

THENCE South 89°43'54" West, along the South line of said 24.56 acre tract, along the North line of a called 12 acres tract, conveyed to Lenoir M. Josey Inc., by deed recorded in Volume 5059, Page 234 DR HCT, and a called 12 acres recording information not found a distance of 1404.44 feet to a point from which a found 3 inch pipe bears South 89°43'54" West, 20.00 feet, being in the centerline of Spring Creek;

THENCE the following calls along the centerline of Spring Creek;
North 49°11'52" East, a distance of 64.65 feet to an angle point;
North 21°16'10" East, a distance of 220.98 feet to an angle point;
North 05°08'59" West, a distance of 119.99 feet to an angle point;
North 35°37'40" East, a distance of 75.85 feet to an angle point;
North 21°46'34" West, a distance of 157.84 feet to an angle point;
North 33°54'38" East, a distance of 63.77 feet to a point for corner, being in the South line of said 13 acre tract;

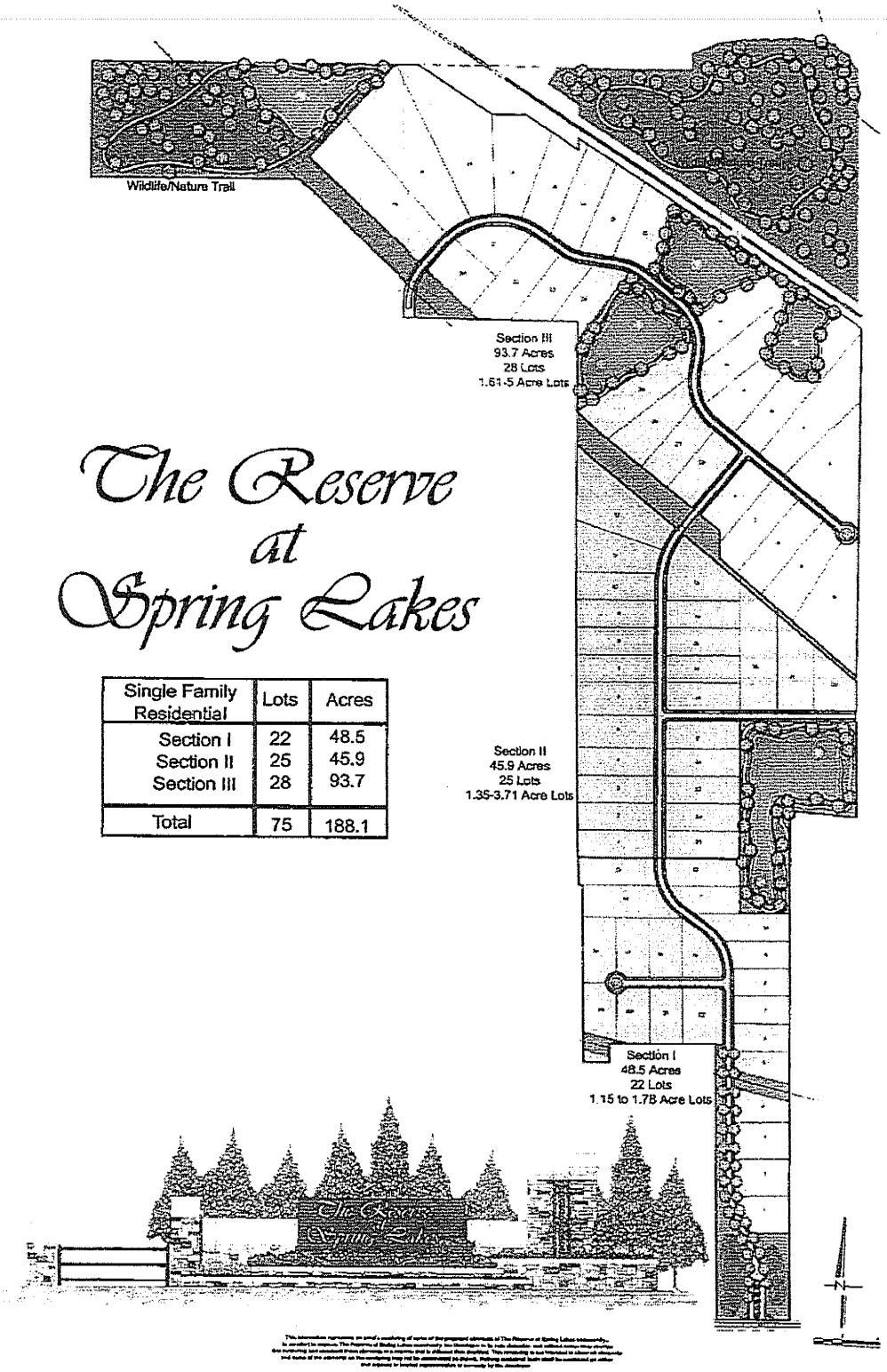
THENCE North 89°51'55" East, along the South line of said 13 acre tract, a distance of 1254.53 feet to the **POINT OF BEGINNING** and containing a computed 232.8801 acres (10,144,254 square feet) of land.

Prepared by:
Town and Country Surveyors
25307 North Freeway, IH 45 N
The Woodlands TX, 77380
Phone (281) 465-8730
Fax (281) 465-8731

David J. Strauss, RPLS 4833
Job No. 0451-0001
September 21, 2007

EXHIBIT B

Description of Residential Development



Single Family Residential	Lots	Acres
Section I	22	48.5
Section II	25	45.9
Section III	28	93.7
Total	75	188.1

EXHIBIT C

The PID Improvements

Tomball Acreage Development
Preliminary Construction Estimate Section One

Roadway and Utilities	3312 LF
Total Lots	22
ACRES	48.5

Storm Quantities

	Unit	Quantity	Unit Price	Total Amount
18"	LF	-	$40.00	$0.00
24"	LF	-	$50.00	$0.00
30"	LF	-	$75.00	$0.00
36"	LF	250	$90.00	$22,500.00
Inlets	EA	-	$2,000.00	$0.00
MH	EA	-	$3,000.00	$0.00
Approximate Total for Storm Drainage System				**$22,500.00**

Water Distribution Quantities

	Unit	Quantity	Unit Price	Total Amount
6" WL	LF	-	$30.00	$0.00
8" WL	LF	3,312	$40.00	$132,480.00
10" WL	LF	-	$50.00	$0.00
Service Connections	EA	16	$1,500.00	$24,000.00
Water Valves	EA	4	$2,500.00	$10,000.00
Fire Hydrants	EA	12	$3,000.00	$36,000.00
Approximate Total for Water Distribution				**$202,480.00**

Sanitary Sewer Quantities

		Unit	Quantity	Unit Price	Total Amount
8" San Swr		LF	3,312	$50.00	$165,600.00
10" San Swr	extension	LF	1,500	$75.00	$112,500.00
6" Leads		EA	16	$2,000.00	$32,000.00
San Swr MH		EA	12	$3,000.00	$36,000.00
4" Force Main		LF	-	$30.00	$0.00
WW Lift Station		EA	-	$150,000.00	$0.00
Approximate Total for San Swr					**$346,100.00**

Gas Distribution Quantities

	Unit	Quantity	Unit Price	Total Amount
2" Gas Line	LF	3,312	$30.00	$99,360.00
Approximate Total for Gas Distribution				**$99,360.00**

Roadway Quantities

	Unit	Quantity	Unit Price	Total Amount
6" Concrete Roadway	SY	12,238	$40.00	$489,520.00
Stop Signs with Street Names	EA	2	$1,000.00	$2,000.00
Approximate Total for Roadway				**$491,520.00**

Detention and Parkland

	Unit	Quantity	Unit Price	Total Amount
Land Reserved for greenspace and amenity areas	AC	15.33	$30,000.00	$459,960.00
Clearing	AC	25.00	$5,000.00	$125,000.00
Detention Excavation	CY	58685	$4.50	$264,082.50
Pond Lining	SY	20000	$4.50	$90,000.00
Storm Water Pump	LS	0	$100,000.00	$0.00
Rip Rap	SY	500	$50.00	$25,000.00
Emergency Overflow	LS	1	$50,000.00	$50,000.00
36" RCP	LF	200	$90.00	$18,000.00
Approximate total cost for Detention Pond Area				**$1,032,042.50**

Misc Costs

	Unit	Quantity	Unit Price	Total Amount
Pipeline Conflicts	EA	1	$50,000.00	$50,000.00
Approximate total cost for Misc Items				**$50,000.00**
Construction Totals				$2,244,002.50
Contingency	10%			$224,400.25
Overall Construction Costs				**$2,468,402.75**

Engineering,Surveying, Platting and Construction Phase Services 15%	**$370,260.41**
Total Development Costs	**$ 2,838,663.16**
OVERALL LOT COST	**$129,030.14**

Exhibit "C"

Tomball Acreage Development
Preliminary Construction Estimate Section TWO

Roadway and Utilities	2896 LF
Total Lots	25
ACRES	45.9

Storm Quantities

	Unit	Quantity	Unit Price	Total Amount
18"	LF	-	$40.00	$0.00
24"	LF	-	$50.00	$0.00
30"	LF	-	$75.00	$0.00
36"	LF	100	$90.00	$9,000.00
Inlets	EA	-	$2,000.00	$0.00
MH	EA	-	$3,000.00	$0.00
Approximate Total for Storm Drainage System				**$9,000.00**

Water Distribution Quantities

	Unit	Quantity	Unit Price	Total Amount
6" WL	LF	-	$30.00	$0.00
8" WL	LF	2,896	$40.00	$115,840.00
10" WL	LF	-	$50.00	$0.00
Service Connections	EA	16	$1,500.00	$24,000.00
Water Valves	EA	3	$2,500.00	$7,500.00
Fire Hydrants	EA	12	$3,000.00	$36,000.00
Approximate Total for Water Distribution				**$183,340.00**

Sanitary Sewer Quantities

		Unit	Quantity	Unit Price	Total Amount
8" San Swr		LF	2,896	$50.00	$144,800.00
10" San Swr	extension	LF	-	$75.00	$0.00
6" Leads		EA	16	$2,000.00	$32,000.00
San Swr MH		EA	10	$3,000.00	$30,000.00
4" Force Main		LF	-	$30.00	$0.00
WW Lift Station		EA	-	$150,000.00	$0.00
Approximate Total for San Swr					**$206,800.00**

Gas Distribution Quantities

	Unit	Quantity	Unit Price	Total Amount
2" Gas Line	LF	2,896	$30.00	$86,880.00
Approximate Total for Gas Distribution				**$86,880.00**

Roadway Quantities

	Unit	Quantity	Unit Price	Total Amount
6" Concrete Roadway	SY	9,009	$40.00	$360,360.00
Stop Signs with Street Names	EA	1	$1,000.00	$1,000.00
Approximate Total for Roadway				**$361,360.00**

Detention and Parkland

	Unit	Quantity	Unit Price	Total Amount
Land Reserved for greenspace and amenity areas	AC	-	$30,000.00	$0.00
Clearing	AC	13.00	$5,000.00	$65,000.00
Detention Excavation	CY	55539	$4.50	$249,925.50
Pond Lining	SY	20000	$4.50	$90,000.00
Storm Water Pump	LS	0	$100,000.00	$0.00
Rip Rap	SY	200	$50.00	$10,000.00
Emergency Overflow	LS	0	$50,000.00	$0.00
36" RCP	LF	-	$90.00	$0.00
Approximate total cost for Detention Pond Area				**$414,925.50**

Misc Costs

	Unit	Quantity	Unit Price	Total Amount
Pipeline Conflicts	EA	0	$50,000.00	$0.00
Approximate total cost for Misc Items				**$0.00**
Construction Totals				$1,262,305.50
Contingency	10%			$126,230.55
Overall Construction Costs				**$1,388,536.05**

Engineering,Surveying, Platting and Construction Phase Services 15%	**$208,280.41**
Total Development Costs	**$ 1,596,816.46**
OVERALL LOT COST	**$63,872.66**

Tomball Acreage Development
Preliminary Construction Estimate Section Three

Roadway and Utilities	4123 LF
Total Lots	28
ACRES	93.7

Storm Quantities

	Unit	Quantity	Unit Price	Total Amount
18"	LF	-	$40.00	$0.00
24"	LF	-	$50.00	$0.00
30"	LF	-	$75.00	$0.00
36"	LF	200	$90.00	$18,000.00
Inlets	EA	-	$2,000.00	$0.00
MH	EA	-	$3,000.00	$0.00
Approximate Total for Storm Drainage System				**$18,000.00**

Water Distribution Quantities

	Unit	Quantity	Unit Price	Total Amount
6" WL	LF	-	$30.00	$0.00
8" WL	LF	4,752	$40.00	$190,080.00
10" WL	LF	-	$50.00	$0.00
Service Connections	EA	25	$1,500.00	$37,500.00
Water Valves	EA	6	$2,500.00	$15,000.00
Fire Hydrants	EA	15	$3,000.00	$45,000.00
Approximate Total for Water Distribution				**$287,580.00**

Sanitary Sewer Quantities

		Unit	Quantity	Unit Price	Total Amount
8" San Swr		LF	3,623	$50.00	$181,150.00
10" San Swr	extension	LF	-	$75.00	$0.00
6" Leads		EA	16	$2,000.00	$32,000.00
San Swr MH		EA	10	$3,000.00	$30,000.00
4" Force Main		LF	-	$30.00	$0.00
WW Lift Station		EA	-	$150,000.00	$0.00
Approximate Total for San Swr					**$243,150.00**

Gas Distribution Quantities

	Unit	Quantity	Unit Price	Total Amount
2" Gas Line	LF	5,123	$30.00	$153,690.00
Approximate Total for Gas Distribution				**$153,690.00**

Roadway Quantities

	Unit	Quantity	Unit Price	Total Amount
6" Concrete Roadway	SY	13,627	$40.00	$545,080.00
Stop Signs with Street Names	EA	2	$1,000.00	$2,000.00
Approximate Total for Roadway				**$547,080.00**

Detention and Parkland

	Unit	Quantity	Unit Price	Total Amount
Land Reserved for greenspace and amenity areas	AC	43.32	$30,000.00	$1,299,600.00
Clearing	AC	30.00	$5,000.00	$150,000.00
Detention Excavation	CY	113400	$4.50	$510,300.00
Pond Lining	SY	30000	$4.50	$135,000.00
Storm Water Pump	LS	0	$100,000.00	$0.00
Rip Rap	SY	600	$50.00	$30,000.00
Emergency Overflow	LS	3	$50,000.00	$150,000.00
36" RCP	LF	200	$90.00	$18,000.00
Approximate total cost for Detention Pond Area				**$2,292,900.00**

Misc Costs

	Unit	Quantity	Unit Price	Total Amount
Pipeline Conflicts	EA	2	$50,000.00	$100,000.00
Approximate total cost for Misc Items				**$100,000.00**

Overall Construction Costs **$4,006,640.00**

Engineering,Surveying, Platting and Construction Phase Services 15% **$600,996.00**

Total Development Costs **$ 4,607,636.00**

OVERALL LOT COST **$164,558.43**

PREFERRED BANK,
a federal savings and loan association
11757 Katy Freeway, Suite 100
Houston, Texas 77079

March 31, 2017

City of Tomball Public Improvement
District Number Three
City of Tomball
c/o City Manager
401 Market Street
Tomball, Texas 77375

Re: Development Agreement (the "**Development Agreement**") dated May 3, 2010, by and between CITY OF TOMBALL PUBLIC IMPROVEMENT DISTRICT NUMBER THREE (the "**District**") and ZION ROAD PROPERTIES, LLC, a Texas limited liability company ("**Borrower**")

Gentlemen:

Please be advised that Borrower, referred to as "**Developer**" under the Development Agreement, has certain rights, titles and interests under the Development Agreement. Borrower has collaterally assigned all of its rights, titles and interests in and to such rights arising under the Development Agreement to our Bank as additional security for the payment and performance of certain liabilities, obligations and indebtedness owing by Borrower to us.

In connection with such assignment, we have the right to notify you to make all future distributions due Borrower directly to us. Therefore, you are hereby directed to make all future distributions due to Borrower under the Development Agreement directly to us, at the above address, to the attention of the undersigned, Donald J. Najvar.

All capitalized terms used herein not defined herein have the meaning ascribed to them in the Development Agreement.

We additionally request that you confirm the following information concerning the Development Agreement and the Borrower's interest therein (such confirmation to be evidenced by your execution of a copy of this letter, however, if you cannot confirm any of the following information, please advise us immediately):

1. A true, correct and complete copy of the Development Agreement and all exhibits are attached hereto.

2. The Development Agreement has not been modified or amended.

3. You have not previously received any notice of assignment by Borrower of its rights under the Development Agreement.

4. The District is not aware of any default under the Development Agreement by any party thereto.

5. The District presently has no defense to any obligation it has under the Development Agreement.

6. The provisions for Repayment of the Developer Advances set forth in Section 5.02 of the Development Agreement have not been modified or amended.

In addition to confirming the foregoing information, we ask that you agree, by executing a copy of this letter in the space provided below, that:

1. You will notify the undersigned of any modification of, or attempt to modify, the Development Agreement;

2. You will comply with any future instructions you receive from us, whether or not those instructions or orders are consented to by Borrower, relating to the Borrower's interest in the Development Agreement;

3. These instructions cannot be modified or amended, except by written instruments joined in by us;

4. The undersigned individual signing for and on behalf of the District has been duly authorized to act on behalf of the District in acknowledging and consenting to this letter.

5. The District make all Repayments of the Developer Advances directly to us (and not Borrower), until the District receives a letter from us to the contrary, or unless the District has been notified of a dispute regarding disbursement of the Repayments of the Developer Advances.

This notice is joined herein by Borrower to acknowledge Borrower's consent hereto and to represent Borrower's agreement with the provisions hereof. Borrower also joins herein for the purpose of acknowledging that the District may comply with any future instructions or orders that the District receives from the Bank concerning Borrower's interest in the Development Agreement without the necessity that those future instructions or orders be consented to by Borrower.

Please acknowledge your receipt of this letter, and evidence your confirmation of the above-referenced matters by executing a copy of this letter in the space provided below and by returning such copy to the undersigned immediately at the address set forth herein.

Thank you for your cooperation.

Very truly yours,

PREFERRED BANK

By:_____
Name:_____
Title:_____

ACKNOWLEDGED AND AGREED TO
THIS 31 DAY OF MARCH, 2017

ZION ROAD PROPERTIES, LLC,
a Texas limited liability company

By:_____
Gary Kolkhorst, Manager

ACKNOWLEDGED AND AGREED TO
THIS ___ DAY OF _____, 2017:

CITY OF TOMBALL PUBLIC IMPROVEMENT DISTRICT NUMBER THREE

By:_____
Name:_____
Title:_____

Regular City Council
Agenda Item
Data Sheet

Meeting Date: May 1, 2017

Topic:
Reappoint Sherrie Meicher as the City of Tomball's Representative to the Southeast Texas Housing Finance Corporation (SETH) Board of Directors

Background:
Sherrie Meicher, in Congressman McCaul's office, has served on the SETH Board of Directors since her appointment in June 2016 and I would like to recommend her reappointment as a Director.

Origination:
Mayor Fagan

Recommendation:
Reappointment of Sherrie Meicher as a Director of the Southeast Texas Housing Finance Corporation (SETH)

Party(ies) responsible for placing this item on agenda:
City Secretary

ACTION TAKEN

Approval	Readings Passed	Other
☐ Yes ☐ No	☐ 1st ☐ 2nd	

Regular City Council
Agenda Item
Data Sheet

Meeting Date: May 1, 2017

Topic:

Executive Session: City Council will now meet in closed executive session pursuant to Section 551.071 of the Texas Government Code to discuss with the City Attorney the following pending litigation:

1. Cause No. 1058840; *City of Tomball, Texas v. James Midkiff*; in the Harris County Court at Law No. 3; and
2. Cause No. 1058870; *City of Tomball, Texas v. Carolyn Ann Lang*; in the Harris County Court at Law No. 4

Background:

Origination:

Recommendation:

Party(ies) responsible for placing this item on agenda:

ACTION TAKEN

Approval	Readings Passed	Other
☐ Yes ☐ No	☐ 1st ☐ 2nd	

Regular City Council
Agenda Item
Data Sheet

Meeting Date: May 1, 2017

Topic:
Consideration and possible action to approve settlement in Cause No. 1058840; *City of Tomball, Texas v. James Midkiff*; in the Harris County Court at Law No. 3

Background:

Origination:

Recommendation:

Party(ies) responsible for placing this item on agenda:

ACTION TAKEN

Approval	Readings Passed	Other
☐ Yes ☐ No	☐ 1st ☐ 2nd	

Regular City Council
Agenda Item
Data Sheet

Meeting Date: May 1, 2017

Topic:
Consideration and possible action to approve settlement in Cause No. 1058870; *City of Tomball, Texas v. Carolyn Ann Lang*; in the Harris County Court at Law No. 4

Background:

Origination:

Recommendation:

Party(ies) responsible for placing this item on agenda:

ACTION TAKEN

Approval	Readings Passed	Other
☐ Yes ☐ No	☐ 1st ☐ 2nd	