

**NOTICE OF REGULAR CITY COUNCIL MEETING
CITY OF TOMBALL, TEXAS**



MONDAY, APRIL 17, 2017

6:00 P.M.

Notice is hereby given of a meeting of the Tomball City Council, to be held on Monday, April 17, 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 Tomball City Council 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 Andy Chute, Southwinds Baptist Church

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:

- New Baby Proclamation - 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 – Second 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 – report on the success of the ***8th Annual 5K Bunny Run and 1 Mile Kids Walk and Ride 2 Recovery Reception***

7.0 Approve the Minutes of the April 3, 2017 Regular Tomball City Council Meeting

8.0 Old Business:

- 8.1 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)

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 RIGHT-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 TRACT 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 ACRE 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:

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 AN
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 "WINDROSE 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 TRACT 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.

- 9.2 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
- 9.3 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.
- 9.4 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
- 9.5 Consider and Set a Date for Presentation of the 5-Year Financial Plan to City Council
- 9.6 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)
- 9.7 Consideration to approve **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.
 - Conduct Public Hearing on **Zoning Case P17-0012**
 - 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.

- 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**
 - 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.
- 9.9 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.
- 9.10 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 Chauffeur'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

10.0 Adjournment

CERTIFICATION

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 13th 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.

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: April 17, 2017

Topic:

- Led by Pastor Andy Chute, Southwinds Baptist Church

Background:

Origination:

Recommendation:

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

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

Regular City Council
Agenda Item
Data Sheet

Meeting Date: April 17, 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 ☐ Yes ☐ No	Readings Passed ☐ 1 st ☐ 2 nd	Other

Regular City Council
Agenda Item
Data Sheet

Meeting Date: April 17, 2017

Topic:

- New Baby Proclamation - Jason and Hollyann Apel, Parents of **Jackson Scott Apel**

Background:

Origination:

Recommendation:

N/A

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

City Secretary

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

Regular City Council

Agenda Item

Data Sheet

Meeting Date: April 17, 2017

Topic:

- 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 – Second 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 – report on the success of the ***8th Annual 5K Bunny Run and 1 Mile Kids Walk and Ride 2 Recovery Reception***

Background:

Origination:

Various

Recommendation:

N/A

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

City Secretary

ACTION TAKEN

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

ATTACHMENTS:

Tomball Consolidated Recycling Day
Public Hearings - Mustang Cat Annexation

Tomball Consolidated Recycling Day

Lone Star College- Tomball Campus
30555 Tomball Parkway
South Entrance

April 22nd Saturday- 10am-2pm

Drive Thru and Drop off the Following *APPROVED* items:

E-Waste (Computers and all accessories, Fax machines, laptop batteries, UPS/Lithium/Ni-cad Batteries, small kitchen appliances), Prescription Drugs (pill & liquid), Tires (car/truck/atv), Car battery (Non-Leaking), Used Motor oil,

~~NO PLASTIC BAGS, PAINT, STYROFOAM, OR HOUSEHOLD TRASH~~

Household paper/plastics/glass, Paper Shredding

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**NOTICE OF PUBLIC HEARINGS
CITY OF TOMBALL, TEXAS**



**REGULAR CITY COUNCIL MEETING
MONDAY, APRIL 17, 2017
AT
6:00 P.M.**

AND

**SPECIAL CITY COUNCIL MEETING
MONDAY, APRIL 24, 2017
AT
5:30 P.M.**

Notice is hereby given that **PUBLIC HEARINGS** will be held by the Tomball City Council, as the Governing Body of the City of Tomball, at the Regular Council Meeting on Monday, APRIL 17, 2017 at 6:00 p.m., and at a **SPECIAL** Council Meeting on **Monday, APRIL 24, 2017 at 5:30 p.m.**, at City Hall, 401 Market Street, Tomball, Texas 77375, for the purpose of considering the following Annexation:

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 FOLLOW, 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 HOLDERREITH AS RECORDED UNDER H.C.C.F. NO. P225191;

THENCE NORTH 81 DEG. 09 MIN. 40 SEC. EAST, ALONG AND WITH THE SOUTHERLY RIGHT-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 TRACT 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;

Notice of Public Hearings - City of Tomball City Council

April 17, 2017 and April 24, 2017

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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;

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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

Notice of Public Hearings - City of Tomball City Council

April 17, 2017 and April 24, 2017

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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.

Persons interested in the above-proposed Annexation will be given an opportunity to be heard. Legal descriptions and maps of said property are available for inspection at the office of the City Secretary, 401 Market Street, Tomball, Texas.

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 30th day of March 2017 by 5:00 p.m., and remained posted for at least 72 continuous hours preceding the scheduled time of said meeting.

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: April 17, 2017

Topic:
Approve the Minutes of the April 3, 2017 Regular Tomball City Council Meeting

Background:

Origination:
City Secretary

Recommendation:

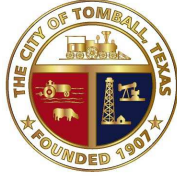
Party(ies) responsible for placing this item on agenda:
City Secretary

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

ATTACHMENTS:

Draft Minutes of the April 3, 2017 Regular Tomball City Council Meeting

MINUTES OF REGULAR CITY COUNCIL MEETING CITY OF TOMBALL, TEXAS



MONDAY, APRIL 3, 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
Assistant Fire Chief – Jonathon Fontenot
Marketing Director – Mike Baxter
Finance Director – Glenn Windsor
Director of Public Works – David Esquivel
Director of Community Development – Craig Meyers
City Planner – Amelia Lindley
City Engineer – Beth Jones
Community Center Director – Rosalie Dillon
Assistant City Secretary – Tracy Garcia
Fire Marshal – Joe Sykora
Accountant – Christine Brookshire
Police Captain – Rick Grassi

- 2.0 The invocation was led by Pastor Billy Hines, Affinity Life Giving Church, Tomball. Robert Hauck presented a tribute to Chief Deputy, Precinct 3, Clint Greenwood.

- 4.0 The following public comment was received:

Rodney Hutson
9431 Rosie Lane, 77354

- Spoke in favor of Item 9.6, regarding the reinstatement of the waiver of impact fees on FM 2920, from Business SH 249 to Willow Street.

- Tomball Fire Department – Pinning Ceremony
 - Captain Josh Brookshire
 - Fire Marshal Joe Sykora
 - Asst. Fire Marshal Scott Mullins
 - Deputy Fire Marshal Jason Herrman
 - Lieutenant David Hill
 - D/O Curtis Garmon
 - D/O Mariah Jaquez

- April 8, 2017 – ***8th Annual 5K Bunny Run and 1 Mile Kids Walk***
- April 8, 2017 – ***Ride 2 Recovery Reception*** – 11:00 a.m.-12:00 Noon at the Depot
- April 8, 2017 – **2nd Saturday at the Depot**
- April 17-22, 2017 – Annual **Spring Clean-Up and Chipping Week**
- April 17, 2017 – Public Hearing – Mustang Cat Annexation
- 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 – 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:
 - Councilman Townsend requested that cleanup following events include all parking lots used during events.

- 7.0 Motion was made by Councilman Townsend, second by Councilman Stoll, to approve the Minutes of the March 20, 2017 Regular Tomball City Council Meeting.

Motion carried unanimously.

8.0 Old Business:

- 8.1 Motion was made by Councilman Townsend, second by Councilman Stoll, to adopt, on Second Reading, Ordinance No. 2017-05, 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 Banson Ventures I, LLC to Operate a “Mini-Warehouse/Self Storage” at 1210 East Hufsmith Road; Said Property being Approximately 2.43 Acres, and Being Legally Described as Tract 3A R/S 10 Abstract 730 J S Smith, Tomball, Harris County, Texas, Generally Located on the South Side of East Hufsmith Road, between Zion Road and Snook Lane; 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	<u>Aye</u>
Councilman Stoll	<u>Aye</u>
Councilman Degges	<u>Aye</u>
Councilman Townsend	<u>Aye</u>
Councilman Klein Quinn	<u>Aye</u>

Motion carried unanimously.

- 8.2 Motion was made by Councilman Stoll, second by Councilman Townsend, to adopt, on Second Reading, Ordinance No. 2017-06, an Ordinance of the City of Tomball, Texas, Amending Chapter 50 (Zoning) of the Tomball Code of Ordinances by Changing the Zoning District Classification of Approximately 2 Acres of Land, Legally Described as Part of Outlots 127 and 129 Five Acre Tracts Tomball Outlots, within the City of Tomball, Harris County, Texas, from the Single-Family 6 District to the Office District; Said Property Being Generally Located on the East Side of South Pine Street between James Street and Cherry Laurel Street; Providing for the Amendment of the Official Zoning Map of the City; 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. Vote was as follows:

Councilman Hudgens	<u>Aye</u>
Councilman Stoll	<u>Aye</u>
Councilman Degges	<u>Aye</u>
Councilman Townsend	<u>Aye</u>
Councilman Klein Quinn	<u>Aye</u>

Motion carried unanimously.

9.0 New Business:

- 9.1 Presentation of the Comprehensive Annual Financial Report (CAFR) for the Fiscal Year Ending September 30, 2016 was given by Glenn Windsor and Sarah Roberts and Laura Lambert, representing Weaver and Tidwell, LLP.

No action taken.

- 9.2 Motion was made by Councilman Townsend, second by Councilman Stoll, to approve Resolution No. 2017-03R, a Resolution Declaring the Intention of the City of Tomball, Texas, to Institute Proceedings to Annex Certain Territory; Describing Such Territory; Setting the Dates, Times, and Places for Two Public Hearings at Which All Interested Parties Shall Have an Opportunity to be Heard; Providing for Publication of Notices of Such Public Hearings; and Directing Preparation of a Municipal Service Plan for the Territory Proposed to be Annexed (12.1624 Acres, Being Tract 3A, Abstract 70, E. Smith Survey, Located at 11311 Holderrieth Road, Harris County, Tomball, Texas).

Motion carried unanimously.

- 9.3 Motion was made by Councilman Hudgens, second by Councilman Stoll, to read Ordinance No. 2017-08 by caption only on First Reading.

Motion carried unanimously.

Motion was made by Councilman Townsend, second by Councilman Stoll, to adopt, on First 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	<u>Aye</u>
Councilman Stoll	<u>Aye</u>
Councilman Degges	<u>Aye</u>
Councilman Townsend	<u>Aye</u>

Councilman Klein Quinn Aye

Motion carried unanimously.

- 9.4 Motion was made by Councilman Townsend, second by Councilman Degges, to approve Renewal of the Memorandum of Understanding (MOU) between the City and Lone Star College-Tomball for the Use of a Portion of LSC-T Parking Lot for an Emergency Supply Distribution Center during Emergency Disaster Incidents.

Motion carried unanimously.

- 9.5 Presentation was made by Craig Meyers for discussion and possible action regarding Patio Homes and Zero Lot Line Development Regulations in Tomball.

No action was taken.

- 9.6 Presentation was made by Craig Meyers for discussion and possible action regarding Reinstating the Waiver of Water and Wastewater Impact Fees in the Old Town Area and for Properties along FM 2920 from Business 249 to Willow Street.

Additional information was requested by Council regarding the effect on the City's budget during the now-expired waiver period.

No action was taken.

- 9.7 Motion was made by Councilman Stoll, second by Councilman Quinn, to approve Lease Agreement with Frank and Russell DeNina, dba South Sycamore Int., LLC (Daily Workers Site), for 3.547-Acre Tract, Described as TR R10, Abstract 371 W. Hurd Survey, 0 Mechanic Road, between the City of Tomball and South Sycamore Int. LLC. Vote was as follows:

Councilman Hudgens	<u>Aye</u>
Councilman Stoll	<u>Aye</u>
Councilman Degges	<u>Aye</u>
Councilman Townsend	<u>Nay</u>
Councilman Klein Quinn	<u>Aye</u>

Motion carried, 4 votes Aye, 1 vote Nay.

- 9.8 Motion was made by Councilman Stoll, second by Councilman Townsend, to approve an Agreement with the Developer for the Construction of Public Improvements in the Amount of \$28,636.61 for the Upsizing of Water and Sanitary Sewer Main Extensions to Serve the Premium Interests Development.

Motion carried unanimously.

- 10.0 Motion was made by Councilman Townsend, second by Councilman Stoll, for adjournment.

Motion carried unanimously.

Meeting adjourned.

PASSED AND APPROVED this the 17th day of April 2017.

Doris Speer, TRMC, MMC
City Secretary

Gretchen Fagan
Mayor

Regular City Council

Agenda Item

Data Sheet

Meeting Date: April 17, 2017

Topic:

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)

Background:

Ordinance No. 2017-08 annexes property located at the intersection of State Highway 249 and Grand Parkway, further bounded on the west by Rocky Road and on the south by Boudreaux Road, for the proposed development of approximately 65.6190 acres of land.

Request for annexation was made by NewQuest Properties. The only utility the City will provide the development is water; taps will be made on the existing 12" water main along Rocky Road to serve them.

The required public hearings were held on March 6 and March 13; the second reading of Ordinance No. 2017-08 will be on the April 17, 2017 agenda for Council consideration.

Origination:

NewQuest Properties

Recommendation:

Adopt Ordinance No. 2017-08 on First Reading

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

City Secretary

ACTION TAKEN

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

ATTACHMENTS:

Ordinance No. 2017-08

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].

* * * * *

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

Section 1. The boundaries and limits of the City of Tomball, Texas, are hereby extended to embrace and include all of the territory described in **Exhibit "A"** attached hereto and made a part hereof and such territory hereby annexed to and made a part of the city.

Section 2. The plan for extension of municipal services into the territory annexed to the City of Tomball by the provisions of this ordinance is set forth in the "Municipal Service Plan" attached hereto as **Exhibit "B"** and made a part hereof for all purposes. Such Municipal Service Plan is hereby approved.

Section 3. If any section or part of this Ordinance be held unconstitutional, illegal, or invalid, or the application thereof ineffective or inapplicable as to any territory, such unconstitutionality, illegality, invalidity, or ineffectiveness of such section or part shall in no wise affect, impair, or invalidate the remaining portion or portions thereof, but as to such remaining portion or portions, the same shall be and remain in full force and effect; and should

this Ordinance for any reason be ineffective as to any part of the territory hereby annexed to the City of Tomball, such ineffectiveness of this Ordinance as to any such part or parts of any such territory shall not affect the effectiveness of this ordinance as to all of the remainder of such territory or area, and the City Council hereby declares it to be its purpose to annex to the City of Tomball every part of the territory described in Section 1 of this ordinance, regardless of whether any other part of such described territory is hereby effectively annexed to the City. Provided, further, that if there is included in the general description of territory set out in Section 1 of this Ordinance to be hereby annexed to the City of Tomball any territory which is already a part of and included within the general limits of the City of Tomball, or which is presently part of and included in the limits or extraterritorial jurisdiction of any other city, town, or village, or which is not within the City of Tomball's jurisdiction to annex, the same is hereby excluded and excepted from the territory to be annexed hereby as fully as if such excluded and excepted territory were especially and specifically described herein.

Section 4. Severability. 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 of 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, or whether there be one or more parts.

ORDINANCE NO. 2017-08
Annexation – 65.6190 Acres
Page 3

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 3RD DAY OF APRIL
2017.

COUNCILMAN HUDGENS	<u>AYE</u>
COUNCILMAN STOLL	<u>AYE</u>
COUNCILMAN DEGGS	<u>AYE</u>
COUNCILMAN TOWNSEND	<u>AYE</u>
COUNCILMAN KLEIN QUINN	<u>AYE</u>

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 17TH DAY OF APRIL
2017.

COUNCILMAN HUDGENS	_____
COUNCILMAN STOLL	_____
COUNCILMAN DEGGS	_____
COUNCILMAN TOWNSEND	_____
COUNCILMAN KLEIN QUINN	_____

GRETCHEN FAGAN, Mayor

ATTEST:

DORIS SPEER, City Secretary

EXHIBIT "A" – Page 1

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;

EXHIBIT "A" – Page 2

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.

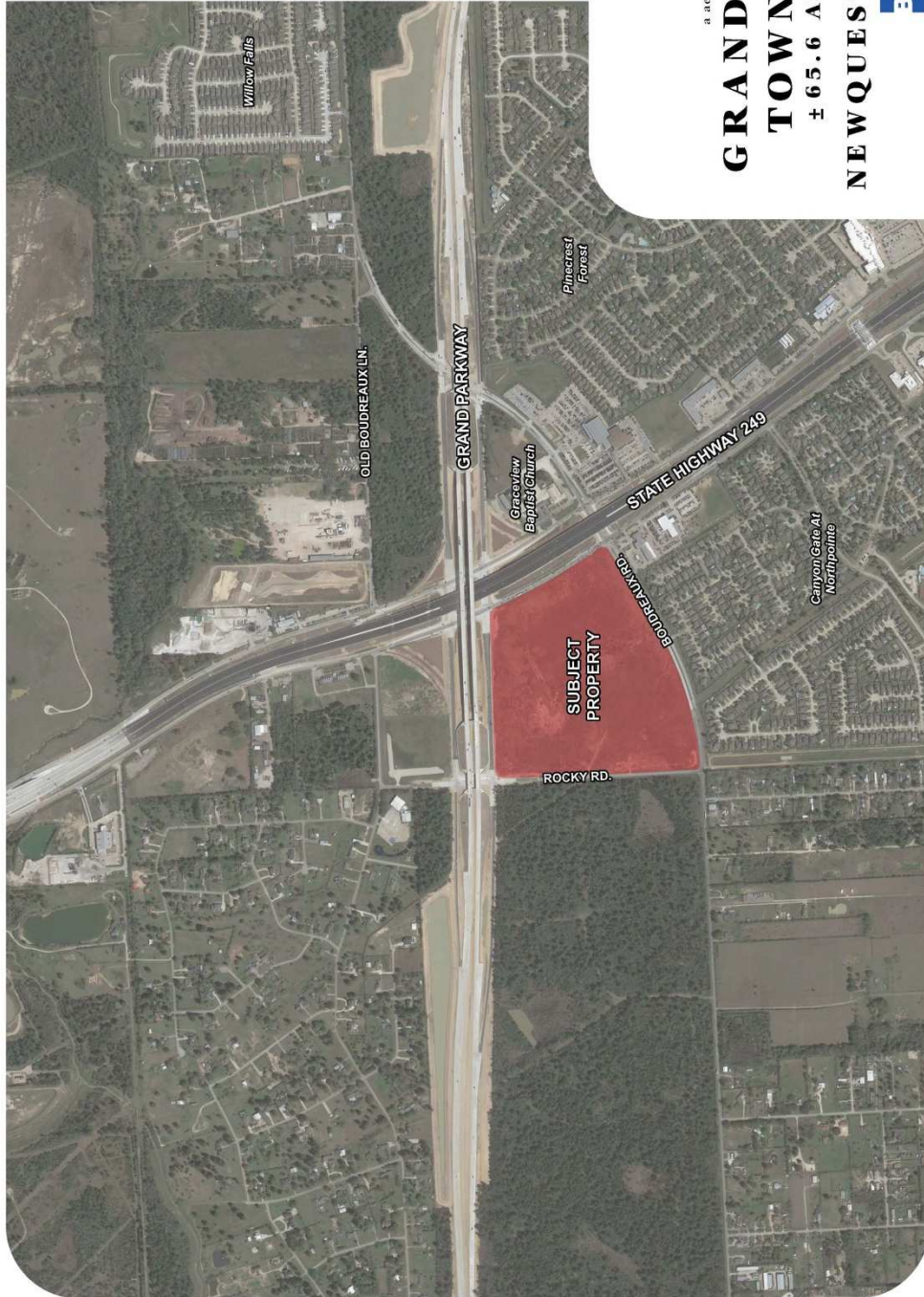
COMPILED BY:
TEXAS ENGINEERING AND MAPPING
Civil Engineers - Land Surveyors
Stafford, Texas
Firm Registration No. 10119000
Job No. 356-181
356-181_South_Tract_R1.doc




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

BOE | KERRY R. GILBERT & ASSOCIATES

BOE | KERRY R. GILBERT & ASSOCIATES



OPTION A

a acre map exhibit for
**GRAND PARKWAY
 TOWN CENTER**
 ± 65.6 ACRES OF LAND
 prepared for
NEWQUEST PROPERTIES



Land Planning Consultants -
 23501 Cinco Ranch Blvd., Suite A-250
 Houston, Texas 77058
 Tel: 281-579-0240
 Fax: 281-579-0240
 7000 North Meigs, Suite 330
 Houston, Texas 77058
 Tel: 513-583-4611
 Tel: 513-583-4611
 MAY 19, 2014
 KGA # 1456
 NOT TO SCALE

EXHIBIT A

THIS DRAWING IS A PRELIMINARY REPRESENTATION FOR INFORMATION PURPOSES ONLY AND IS SUBJECT TO CHANGE. ANYTHING SHOWN ON THIS DRAWING IS NOT A GUARANTEE OF ACCURACY. THIS DRAWING IS NOT A CONTRACT. THE INFORMATION ON THIS DRAWING IS NOT TO BE USED FOR ANY PURPOSE OTHER THAN THAT FOR WHICH IT WAS PREPARED. THE INFORMATION ON THIS DRAWING IS NOT TO BE USED FOR ANY PURPOSE OTHER THAN THAT FOR WHICH IT WAS PREPARED. THE INFORMATION ON THIS DRAWING IS NOT TO BE USED FOR ANY PURPOSE OTHER THAN THAT FOR WHICH IT WAS PREPARED.

BOE | KERRY R. GILBERT & ASSOCIATES

EXHIBIT "B"

CITY OF TOMBALL, TEXAS

MUNICIPAL SERVICE PLAN

I. INTRODUCTION

This Municipal Service Plan (the "Plan") is made by the City of Tomball, Texas (the "City"), pursuant to Chapter 43 of the Texas Local Government Code. This Plan relates to the annexation by the City of the tract of land ("Tract") described by metes and bounds in "Exhibit A," which is attached to this Plan and to the annexation ordinance of which this Plan is a part.

II. EFFECTIVE TERM

This Plan shall be in effect for a period of ten (10) years commencing on the effective date of the annexation of the Tract, unless otherwise stated in this Plan. Renewal of the Plan shall be at the option of the City. Such option may be exercised by the adoption of an ordinance by the City Council, which refers to this Plan and specifically renews this Plan for a stated period of time.

III. INTENT

It is the intent of the City that services under this Plan shall equal the number of services and the level of services in existence within the Tract prior to annexation and which are available in other parts of the City with land uses and population densities similar to those reasonably contemplated or projected within the Tract. However, it is not the intent of this Plan to require that a uniform level of service be provided to all areas of the City, including the Tract, where differing characteristics of topography, land utilization, and population density are considered as a sufficient basis for providing differing service levels.

The City reserves the right, granted to it by Section 43.056(k), Texas Local Government Code, to amend this Plan, if the City Council determines that changed conditions or subsequent occurrences or any other legally sufficient circumstances exist under the Texas Local Government Code, or other Texas laws to make this Plan unworkable, obsolete, or unlawful.

IV. SERVICE PROGRAMS

A. In General.

1. This Plan includes the following service programs: A 60-Day Program and a Capital Improvement Program.
2. As used in this Plan, "providing services" shall include having services provided by any method or means by which the City may extend

municipal services to any other area of the City. The City shall provide the area, or cause the area to be provided, with services in accordance with the Plan. This may include, but is not limited to, causing or allowing private utilities, governmental entities, and other public service organizations to provide such services, in whole or in part.

As used in this Plan, the phrase "standard policies and procedures" shall mean those policies and procedures of the City applicable to a particular service, which are in effect either at the time that the service is requested or at the time the service is made available or provided. Such policies and procedures may require a specific type of request be made, such as an application or a petition, may require that fees or charges be paid, and may include eligibility requirements or other similar provisions.

B. 60-Day Program. The following services will be provided within the Tract within the period required by State law. State law requires the City to provide the following services within sixty (60) days after the effective date of the annexation: police protection, fire protection, solid waste collection, operation and maintenance of water, wastewater, and gas facilities, operation and maintenance of roads and streets, including lighting, operation and maintenance of parks, playgrounds, and swimming pools, and maintenance of any other publicly owned facility, building or service. The 60-Day Program plan is as follows:

1. Police Protection. The Police Department of the City will provide protection and law enforcement within the Tract. These activities will include routine patrols and responses, handling of complaints and incident reports, and, as appropriate, support by special units. In order to provide the above services, the Police Department will operate from a City facility.
2. Fire Protection. The Fire Department of the City currently provides fire protection to the Tract. Fire protection will be provided from either the southside or central fire stations. Fire protection will remain at the current level of service.
3. Solid Waste Collection. All eligible residences and businesses will be provided solid waste collection service, either by City personnel or by contract.
4. Maintenance of Water, Wastewater, and Gas Facilities. There are no City water, wastewater, or gas facilities currently located within the Tract. If any such facilities are constructed or acquired by the City within the Tract, the City's Department of Public Works will operate and maintain such facilities at levels of service and maintenance comparable to those available for other such facilities in other parts of the City with similar topography, load use, and population density as those reasonably contemplated or projected within the Tract.

5. Operation and Maintenance of Roads and Streets (including lighting). The City's Department of Public Works will provide for the maintenance of roads and streets over which the City will have jurisdiction. Such Department will also provide services relating to traffic control devices and will provide street lighting for such roads and streets through an electric utility company or by other means. The operation and maintenance of roads and streets, including street lighting and traffic control devices, shall be provided at levels of service and maintenance comparable to those available for other roads and streets in other parts of the City with similar topography, load use, and population density as those reasonably contemplated or projected within the Tract.
6. Operation and Maintenance of Parks, Playground and Swimming Pools. There are no public parks, playgrounds, or swimming pools currently located within the Tract. If, as a result of acquisition of park land, any such facilities are constructed by the City within the Tract, the City's Department of Parks and Recreation will operate and maintain such facilities at levels of service and maintenance comparable to those available for other such facilities in other parts of the City with similar topography, load use, and population density as those reasonably contemplated or projected within the Tract.
7. Operation and Maintenance of Any Other Publicly-Owned Facility, Building, or Service. Those drainage facilities associated with City-maintained public streets will be maintained by the City's Department of Public Works, as needed. Any other facility, building, or service existing or which may be constructed or located by the City within the Tract, will be operated and maintained by an appropriate City department at levels of service and maintenance comparable to those available to other such facilities in other parts of the City with similar topography, load use, and population density as those reasonably contemplated or projected within the Tract.

- C. Capital Improvement Program. It is the intent of the City to provide full City services within the Tract not less than four and one-half (4-1/2) years after the effective date of annexation of the Tract, in accordance with the Texas Local Government Code, § 43.056(e).

The City will initiate the acquisition and construction of the capital improvements necessary to provide municipal services adequate to serve the Tract. Any necessary construction or acquisition is indicated below, and any such construction or acquisition shall begin within two (2) years of the effective date of this Plan and shall be substantially completed within 4-1/2 years, except as otherwise indicated:

1. Police Protection. No capital improvements are necessary at this time to provide police protection services within the Tract. The Tract will be

included with other City territory in connection with planning for new, revised, or expanded police facilities.

2. Fire Protection. No capital improvements are necessary at this time to provide fire protection services within the Tract. The Tract will be included with other City territory in connection with planning for new, revised, or expanded fire facilities.
3. Solid Waste Collection. No capital improvements are necessary at this time to provide solid waste collection services within the Tract. The Tract will be included with other City territory in connection with planning for new, revised, or expanded solid waste facilities and/or services.
4. Wastewater Facilities. The Tract will be included with other City territory in connection with planning for new, revised, or expanded public wastewater facilities. Wastewater services will be provided according to the standard policies and procedures of the City's Department of Public Works. A summary of the City's policies with regard to the extension of wastewater services is attached to and made a part of this Plan.
5. Water Distribution. The Tract will be included with other City territory in connection with planning for new, revised, or expanded public water facilities. Water services will be provided according to the standard policies and procedures of the City's Department of Public Works. A summary of the City's policies with regard to the extension of water services is attached to and made a part of this Plan.
6. Gas Distribution. The Tract will be included with other City territory in connection with planning for new, revised, or expanded public gas facilities. Gas services will be provided according to the standard policies and procedures of the City's Department of Public Works. A summary of the City's policies with regard to the extension of gas services is attached to and made a part of this Plan.
7. Roads and Streets (including lighting). The City will acquire jurisdiction in and over all public roads and streets within the Tract upon annexation, pursuant to Section 311.001 of the Texas Transportation Code and other similar provisions, except for public roads and streets subject to the jurisdiction of other governmental entities. Additional roads, streets, or related facilities are not necessary at this time to service the Tract. Future extensions of roads or streets and future installation of related facilities, such as traffic control devices or street lights, within the Tract will be governed by standard policies and procedures of the City. The Tract will be included with other City territory in connection with planning for new, improved, revised, widened, or enlarged roads, streets, or related facilities.
8. Parks, Playgrounds, and Swimming Pools. No capital improvements are necessary at this time to provide park and recreational services to the

Tract. The Tract will be included with other City territory in connection with planning for new, revised, or expanded parks, playgrounds, and/or swimming pools.

9. Other Publicly-Owned Facilities, Buildings or Services: Additional Services. In general, other City functions and services can be provided to the Tract by using existing capital improvements. At this time, additional capital improvements are not necessary to provide City services. However, the Tract will be included with other City territory in connection with planning for new, revised, or expanded facilities, functions, and services.

V. AMENDMENT: GOVERNING LAW

This Plan may not be amended or repealed, except as provided by the Texas Local Government Code or other controlling law. Neither changes in the methods or means of implementing any part of the service programs nor changes in the responsibilities of the various departments of the City shall constitute amendments to this Plan, and the City reserves the right to make such changes at any time. This Plan is subject to, and shall be interpreted in accordance with, the Constitution and laws of the United States of America and the State of Texas, the Texas Local Government Code, and any orders, rules, or regulations of any other governmental body having jurisdiction.

VI. FORCE MAJEURE

In the event the City is rendered unable, wholly or in part, by force majeure to carry out its obligations under this Plan, notice shall be given with full particulars of such force majeure, in writing, as soon as reasonably possible after the occurrence of the cause relied on, and the City's obligations, so far as effected by such force majeure, shall be suspended during the continuance of such inability so caused but for no longer period, and such cause shall, so far as possible, be remedied with all reasonable dispatch; provided, however, City shall not be required to settle a strike or dispute with workmen when such settlement is against the will of the City. The term "force majeure" shall mean acts of God, strikes, acts of the public enemy, wars, blockades, insurrections, riots, epidemics, landslides, lightning, earthquakes, fires, storms, floods, washouts, arrests and restraints of rulers and people, explosions, breakage or accident to machinery or lines of pipe, droughts, hurricanes and tornadoes, and any other inability of either party, whether similar to those enumerated or otherwise, not within the control of the City, which, by the exercise of reasonable diligence, the City shall not have been able to avoid.

VIII. ENTIRE PLAN

This document contains the entire and integrated Plan relating to the Tract and supersedes all other negotiations, representations, plans, and agreements, whether written or oral.

If one or more provisions of this Plan is held to be invalid, unenforceable, or illegal in any respect, the remainder the Plan shall remain valid and in full force and effect.

SUMMARY OF EXTENSION POLICY FOR WATER, WASTEWATER, AND GAS SERVICE

The following information is a summary of the City of Tomball's ("City") policies respecting water, wastewater and gas service extensions. This summary is made in compliance with the Texas Local Government Code, which requires that each annexation plan include a summary of the service extension policy. Nothing herein shall repeal any provision of the Code of Ordinances of the City of Tomball, as amended, or any of the uncodified ordinances that contain the City's policies and procedures.

The City extends water, wastewater, and gas services to existing unserved development as follows:

Construction of such service lines is based on a priority schedule that considers potential health hazards, population density, the number of existing buildings, the reasonable cost of providing service, and the desires of the residents of the unserved areas.

Extensions built by the City at its cost are included in its Capital Improvements Plan, which is updated annually. Placement of an extension or enlargement of any water and/or wastewater lines into the Capital Improvement Plan is based primarily on the following requirements: (1) to provide service to unserved areas, (2) and to provide adequate capacity for projected service requirements.

Persons or entities desiring to develop land within unserved areas must construct water, wastewater, and gas service lines and extensions to connect to City trunk lines to serve the new development.

Regular City Council
Agenda Item
Data Sheet

Meeting Date: April 17, 2017

Topic:

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:

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 "WINDROSE 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 TRACT 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.

Background:

This public hearing is the first of two public hearings required by the Local Government Code, Section 43.063. Hearings must be conducted on or after the 40th day but before the 20th day before the date of the first reading of the ordinance (21-39 day timeframe).

The hearing dates were set for the regular Council meeting on April 17, 2017 (28 days) at 6:00 p.m. and a special Council Meeting on April 24, 2017 (21 days) at 5:30 p.m.

The first reading of the ordinance to annex will be held at a regular Council meeting on Monday, May 15, 2017, at 6:00 p.m., and the second reading will be held at a special Council meeting on Monday, May 22, 2017, at 5:30 p.m., completing the annexation within the state timeline.

Origination:

Mustang CAT

Recommendation:

N/A

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

City Secretary

ACTION TAKEN

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

Notice of Public Hearings - 4/17/2017 and 4/24/2017

Annexation Calendar - 11311 Holderrieth

**NOTICE OF PUBLIC HEARINGS
CITY OF TOMBALL, TEXAS**



**REGULAR CITY COUNCIL MEETING
MONDAY, APRIL 17, 2017
AT
6:00 P.M.**

AND

**SPECIAL CITY COUNCIL MEETING
MONDAY, APRIL 24, 2017
AT
5:30 P.M.**

Notice is hereby given that **PUBLIC HEARINGS** will be held by the Tomball City Council, as the Governing Body of the City of Tomball, at the Regular Council Meeting on Monday, APRIL 17, 2017 at 6:00 p.m., and at a **SPECIAL** Council Meeting on **Monday, APRIL 24, 2017 at 5:30 p.m.**, at City Hall, 401 Market Street, Tomball, Texas 77375, for the purpose of considering the following Annexation:

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 FOLLOW, 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 HOLDERREITH AS RECORDED UNDER H.C.C.F. NO. P225191;

THENCE NORTH 81 DEG. 09 MIN. 40 SEC. EAST, ALONG AND WITH THE SOUTHERLY RIGHT-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 TRACT 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;

Notice of Public Hearings - City of Tomball City Council

April 17, 2017 and April 24, 2017

Page 2 of 3

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 "WINDROSE LAND SERVICES" SET MARKING AN INTERIOR CORNER OF THE HEREIN DESCRIBED TRACT AND THE BEGINNING OF A CURVE TO THE RIGHT;

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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

Notice of Public Hearings - City of Tomball City Council

April 17, 2017 and April 24, 2017

Page 3 of 3

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.

Persons interested in the above-proposed Annexation will be given an opportunity to be heard. Legal descriptions and maps of said property are available for inspection at the office of the City Secretary, 401 Market Street, Tomball, Texas.

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 30th day of March 2017 by 5:00 p.m., and remained posted for at least 72 continuous hours preceding the scheduled time of said meeting.

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.

REVISED - PROPOSED ANNEXATION – 11311 HOLDERRIETH LIMITED, L.P. – TRACT 3A, ABSTRACT 70, E. SMITH SVY – MUSTANG CAT

Council approves annexation request by adopting Resolution on 4/3/17, setting 4/17 (Monday, 6 p.m.) and 4/24 (Monday, 5:30 p.m.) for public hearings.

Send to paper on 3/21 ~~3/31~~ to run on 3/29 4/5 (12 days' notice for 4/17 meeting) and 4/12 (12 days' notice for 4/24 meeting) – TWO Special Council meetings required on **April 24, 2017 and May 22, 2017 (5:30 p.m.), in order to meet Local Government Code deadlines.**

Publish Dates & Public Hearing Dates – Complete Annexation on 5/15/2017 5/22/2017	Publish Date	First Public Hearing at REGULAR Meeting	Publish Date	Second Public Hearing at SPECIAL Meeting	First Reading of Ordinance at REGULAR Meeting	Second Reading of Ordinance at SPECIAL Meeting
Council approves annexation on 3/20 and sets Public Hearings as 4/3 and 4/10				Special Mtg 5:30 p.m.		Special Mtg 5:30 p.m.
1 st public hearing to 1 st reading is 28 days total; 63 days to complete annexation from approval of ORIGINAL resolution	4/5/2017 3/29/2017 12 days' notice	4/17/2017	4/12/2017 4/5/2017 12 days' notice	4/24/2017 4/17/2017	5/15/2017 5/8/2017	5/22/2017 5/15/2017
(40 days total from first publication notice to first reading)	(-40 days)	(28 days) to 1st reading		21 days to 1 st reading of ordinance	(Day 0)	(+7 days)

Publication date – more than 10 days' notice, less than 20 days' notice for public hearings [LGC, Sec. 43.063(c)] – **12 days' notice for each P.H.**

Public hearings – more than 20 days, less than 40 days between first public hearing and first reading of ordinance per LGC, Sec. 43.063(a)

NOTE: MUST have a minimum of **21 days** between the **second public hearing and the first reading of the ordinance**. – **21 days**

MUST have NO MORE than **40 days** between the first public hearing and the first reading of the ordinance.— **35 days**

(We will set public hearing dates between 21 and 39 days)

Annexation must be completed within 90 days, beginning to end (LGC, Sec. 43.064) – from 3/20 resolution to second reading of ordinance – **63 days**

City must give notice regarding intention to annex area 30 days before first public hearing to public and private entities – county, fire department, emergency services districts, utility companies [LGC, Sec. 43.062(b)] – **This requirement does not apply if we are annexing by petition.**

Resolutions No. 2017-03 will be on the 3/20/2017 agenda for Council approval, set public hearings and special meetings.

Regular City Council

Agenda Item

Data Sheet

Meeting Date: April 17, 2017

Topic:

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

Background:

Mobilitie, LLC reached out to City Staff in regards to expanding wireless coverage and capacity within the City of Tomball. Since their desire is to install systems within the public rights-of-way, a franchise agreement with the City of Tomball is necessary. Before working out agreement terms, City staff recommended that Mobilitie, LLC present their plan to City Council and receive feedback since installing their network within the City of Tomball involves the installation of 120 foot tall transport poles within the public rights-of-way.

Origination:

Kyle Edge, Mobilitie, LLC

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

Craig T. Meyers, Community Development Director

ACTION TAKEN

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

Cover Letter
Presentation

10 April, 2017

City of Tomball Council Members
City of Tomball
401 Market Street
Tomball, Texas 77375

RE: MOBILITIE, LLC'S PERMIT APPLICATION SUBMISSION FOR ITS PROPOSED DEPLOYMENT IN THE PUBLIC RIGHTS-OF-WAY IN CITY OF TOMBALL, TEXAS

Dear City Council:

Thank you for your time in allowing myself to speak for Mobilitie, LLC's ("Mobilitie") and the plans within City of Tomball, Texas ("the City"). Mobilitie is a wireless infrastructure company that develops intelligent infrastructure solutions to densify and optimize wireless carriers' services and geographic reach. In order to provide such telecommunications services to those emergency responders, city workers, businesses and the citizens, we have to have the necessary infrastructure.

TRANSPORT POLES

Mobilitie's Transport poles involves the installation of low-powered wireless equipment, consisting of a transmit-receive antenna and microwave dishes that communicates with wireless devices, a wireless backhaul antenna that connects the facility to the carrier's core network, and a compact radio, all of which are mounted on the new poles. These Transport poles add coverage and capacity to the existing wireless networks. In the Power Point packet, the photos of our 120' Transport Poles are shown along with a comparison of 120' and 80' coverage maps.

REQUEST FOR CITY COUNCIL CONSIDERATION FOR PROPOSED PROJECT

At this time, Mobilitie is proposing three (3) Transport poles. Mobilitie values the City's input on our proposal, and will work closely with the City to address any concerns with our proposal, such as **location, height and form**. This project is at the expense of Mobilitie and the City will be getting wireless infrastructure installed at zero cost. The City will also be compensated for the use of the Public Right-Of-Way in an Agreement that has been put on hold until the City Council agrees to the proposed project.

Mobilitie values its partnership with the City of Tomball to provide your constituents with high-speed connectivity. I look forward to talking more about the project and answering your questions during the City Council meeting on April 17th, 2017.

Kyle Edge, *NRE Permitting Manager*



CONFIDENTIALITY NOTICE | The message contains confidential and proprietary information, including all attachments (if any) to this message even if such attachments are not separately marked as confidential and/or proprietary. Such information is exclusively for the addressee(s) and no others, unless and to the extent expressly stated above to the contrary. If the recipient of this message is not the addressee, such recipient is prohibited from reading or using this message in any way. If you have received this message by mistake, please call us immediately and destroy the message and all attachments.



City of Tomball INFRASTRUCTURE INVESTMENT

Agenda

- About Mobilitie
- About the effort
- Regulatory status
- Network solutions
- Maps

About Mobilitie, LLC



Indoor and outdoor Small Cell networks use Femtocell, Picocell, and Microcell technologies with combined radio heads to provide improved 3G, 4G, LTE, and Wi-Fi service to enterprises and real estate properties



TRANSPORT CONNECTIVITY

Wireless and Wireline solutions that provide high data bandwidth connectivity to boost throughput and capacity of new and existing networks



High-density Wi-Fi networks that provide ubiquitous internet access to all wireless enable mobile and fixed devices



Indoor and outdoor neutral host Distributed Antenna Systems that provide improved coverage and capacity for all wireless carriers at large venues and in the most challenging locations across the country



COMMUNICATION TOWERS

Multi-carrier communication towers that enable improved wireless service to carriers across their nationwide macro networks based on our industry leading Lease-to-Suit® model



COLOCATION MANAGEMENT

Our program allows wireless carriers to focus on their core business by having Mobilitie manage third party activity on tower sites

Mobile data trends and demand drivers

**Smart phones
generate 41x more
data traffic**

Than the typical basic-feature cell phone

84%

OF TODAY'S SHOPPERS USE
THEIR SMARTPHONE TO HELP
SHOP IN-STORE

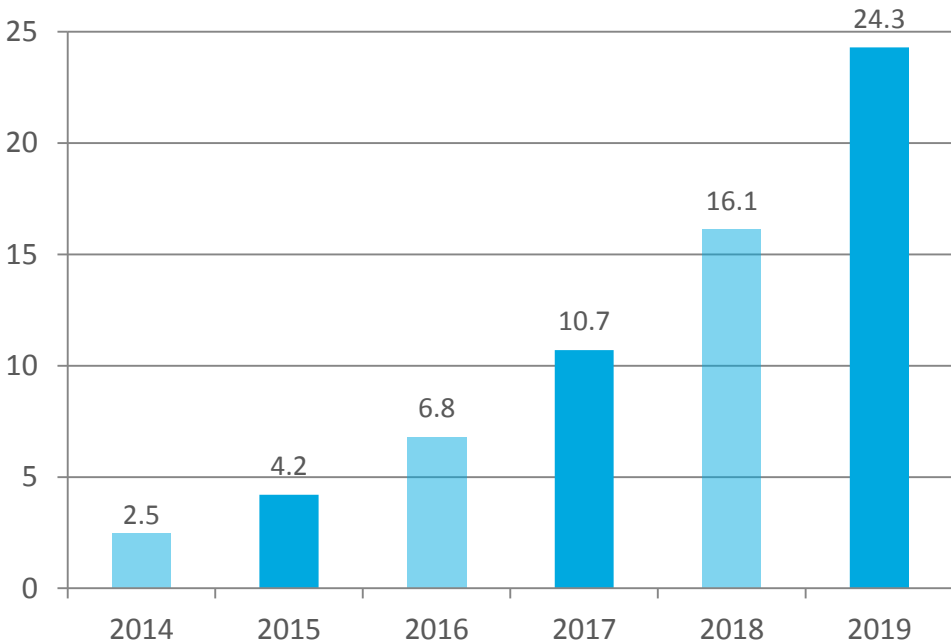
DATA CONSUMPTION

30 MILLION MB OF DATA ARE USED EVERY 5
MINUTES THROUGH MEDIA STREAMING

56%

OF MOBILE DATA IS
VIDEO

MOBILE DATA TRAFFIC (EB/MONTH)



U.S. MOBILE DATA USAGE

90%

OF HOUSEHOLDS USE
WIRELESS SERVICE

650%

INCREASE EXPECTANCY OF
MOBILE DATA FROM 2014 TO 2018

About the effort

Mobilitie designs, builds, owns and operates wireless infrastructure solutions to meet the needs of citizens, businesses and visitors by enabling connectivity.

Mobilitie to lead largest small cell deployment in US

Enhancing coverage in all 50 US states

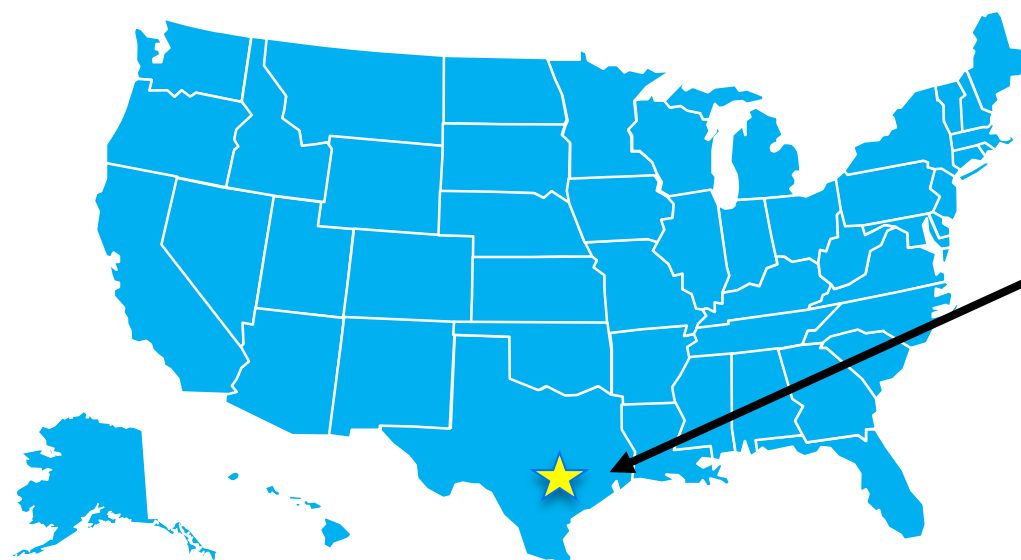
- Phased deployment of small cell sites
- All small cell sites to be operational within **14-18 months**

Mobilitie's regulatory status

Mobilitie is authorized to provide telecommunications services in all 50 states

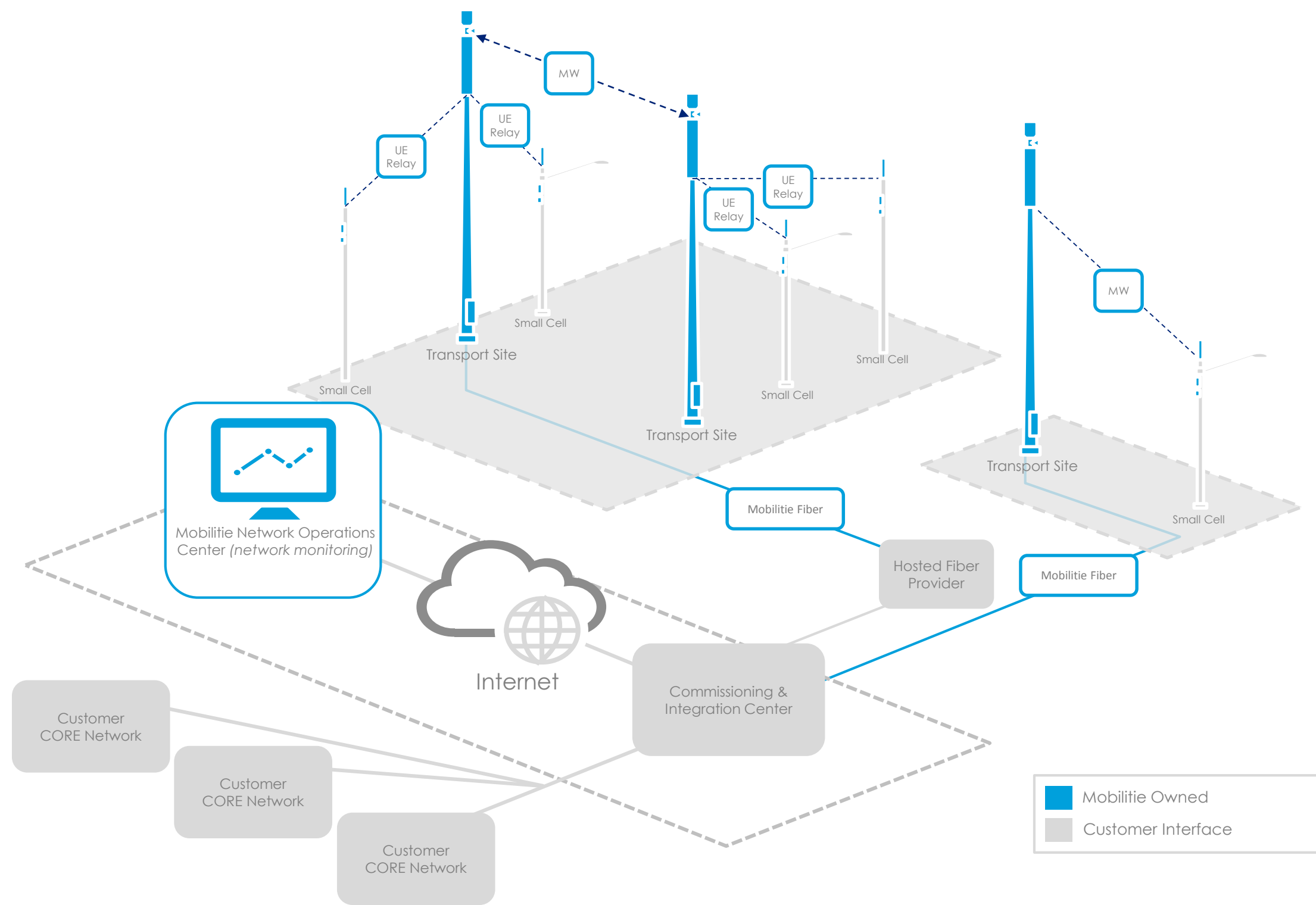
Infrastructure options include:

- Utility poles
- Light posts
- Transport facilities

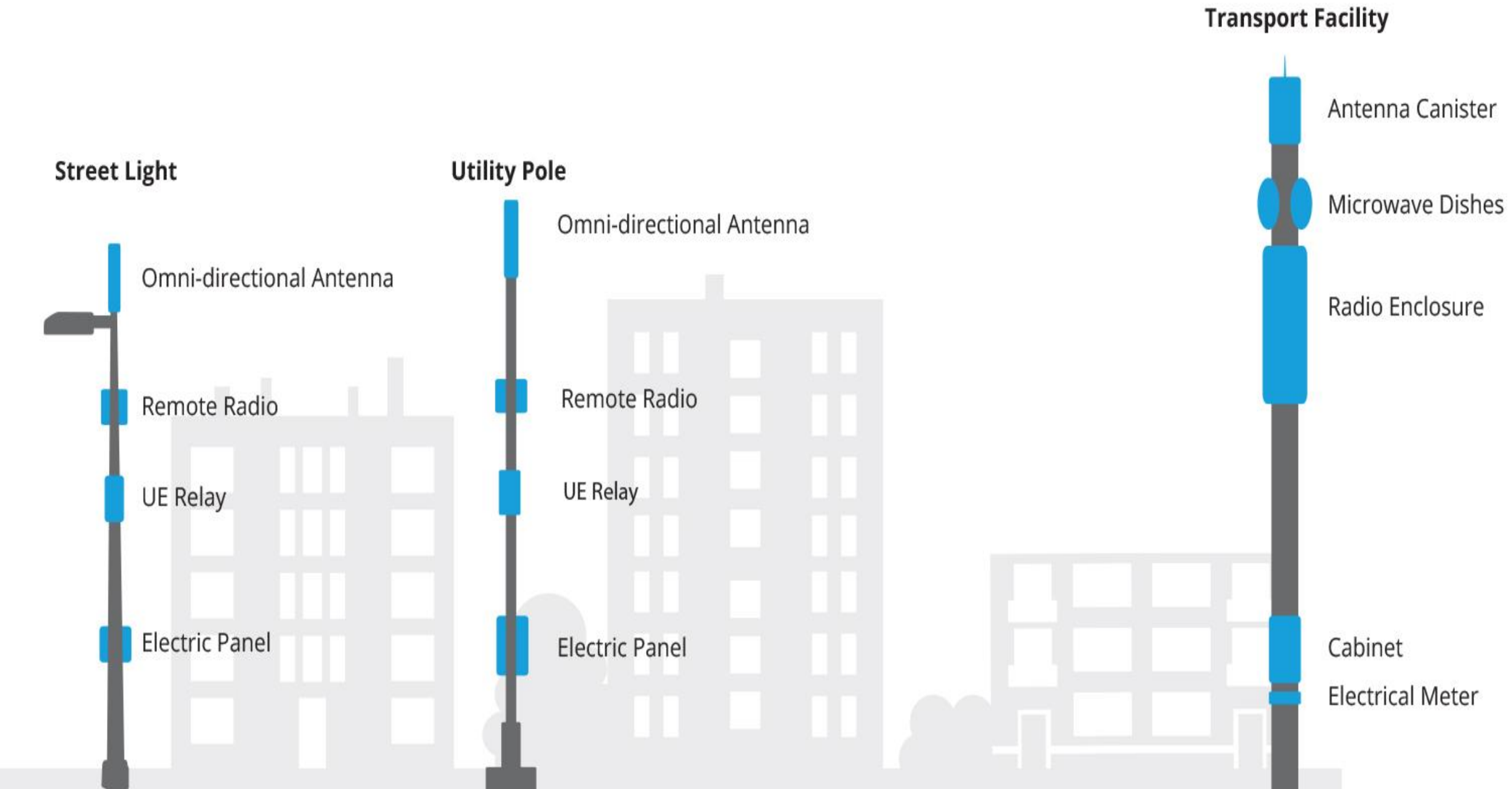


Mobilitie is a [certified telecommunications provider ("CTP") by the Texas Public Utility Commission]

Holistic network design



Design types



The traditional solution



The traditional solution



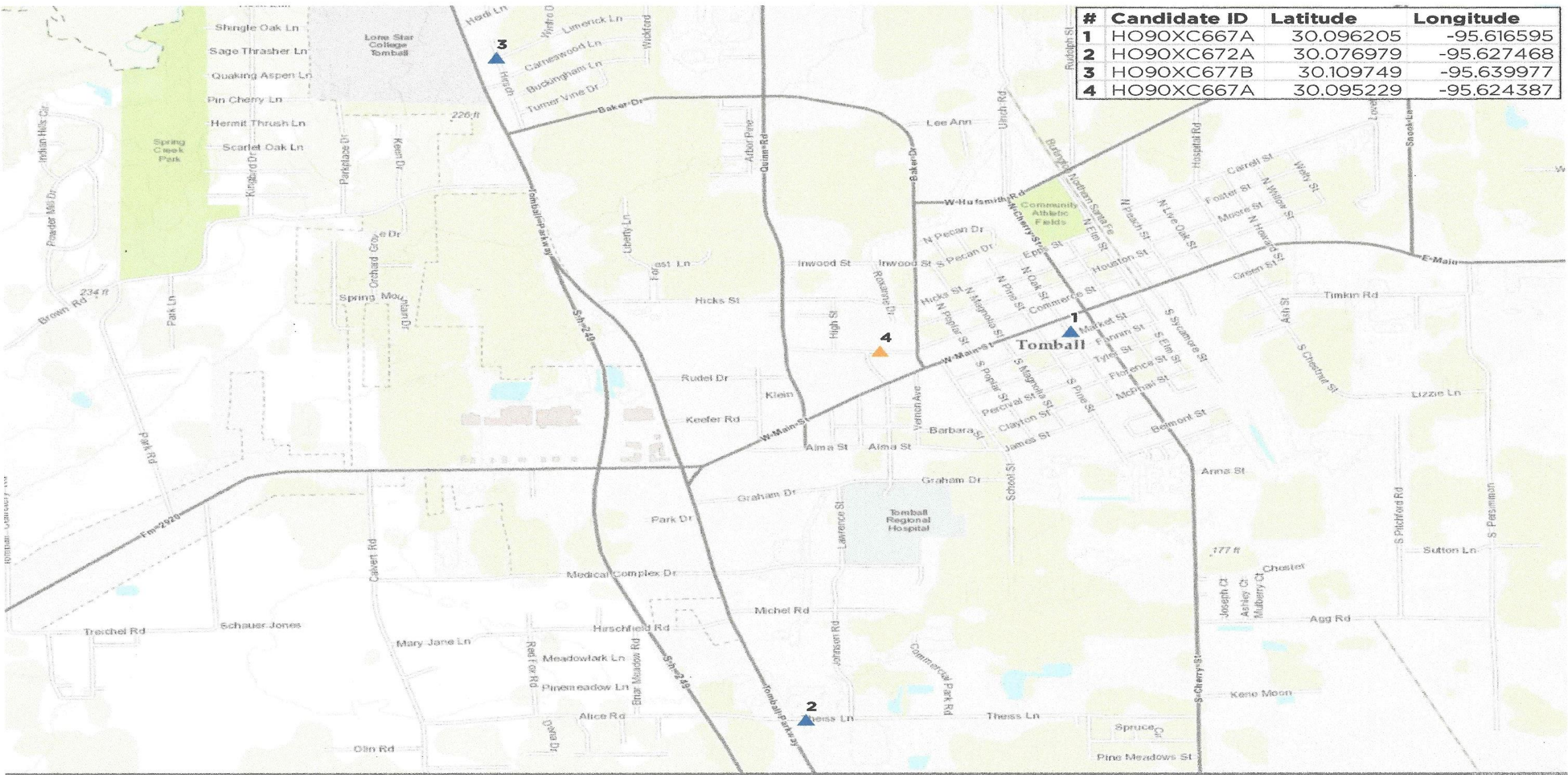
The traditional solution



Transport installations and photo simulation

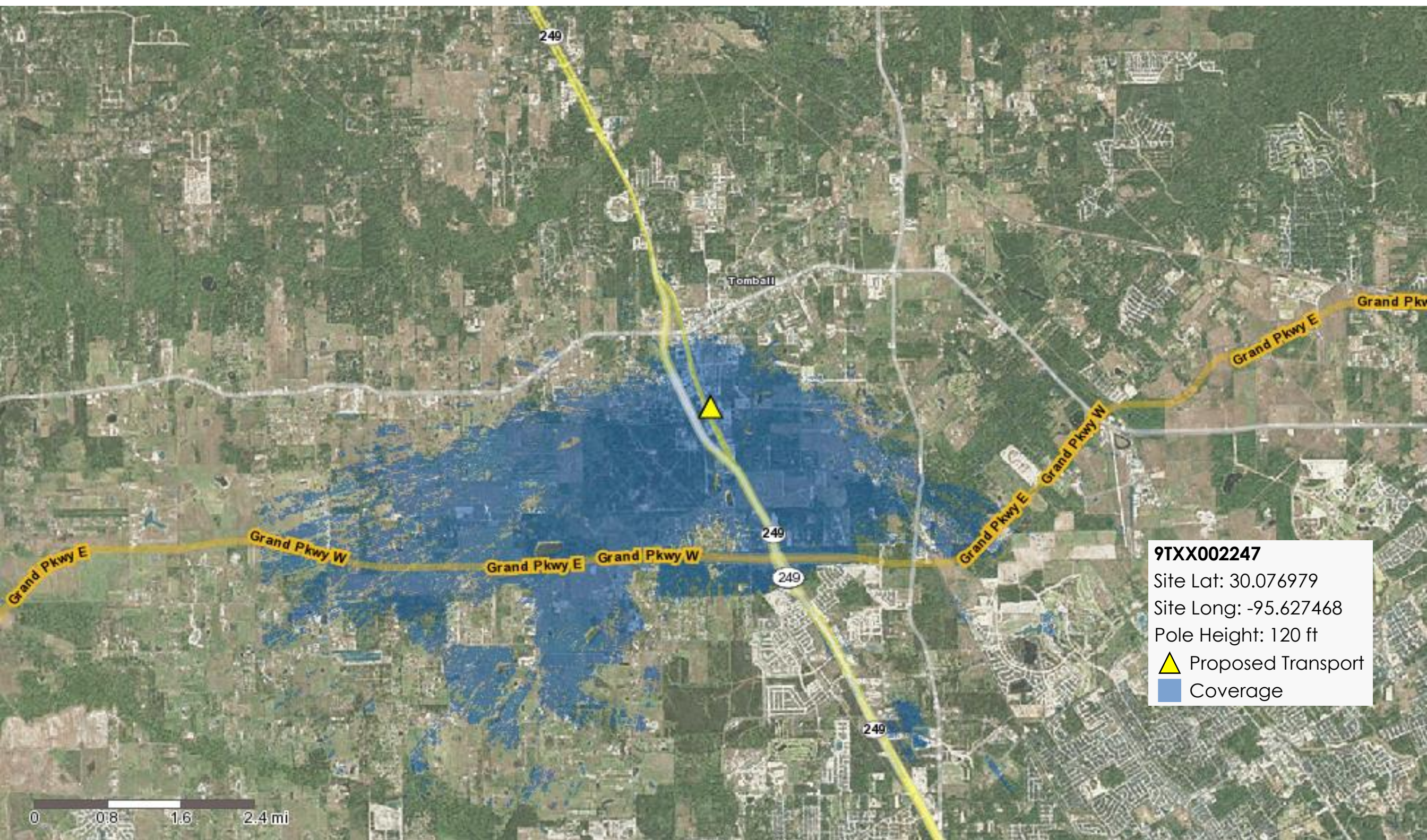


Please disregard Site #1, it has been replaced with Site# 4

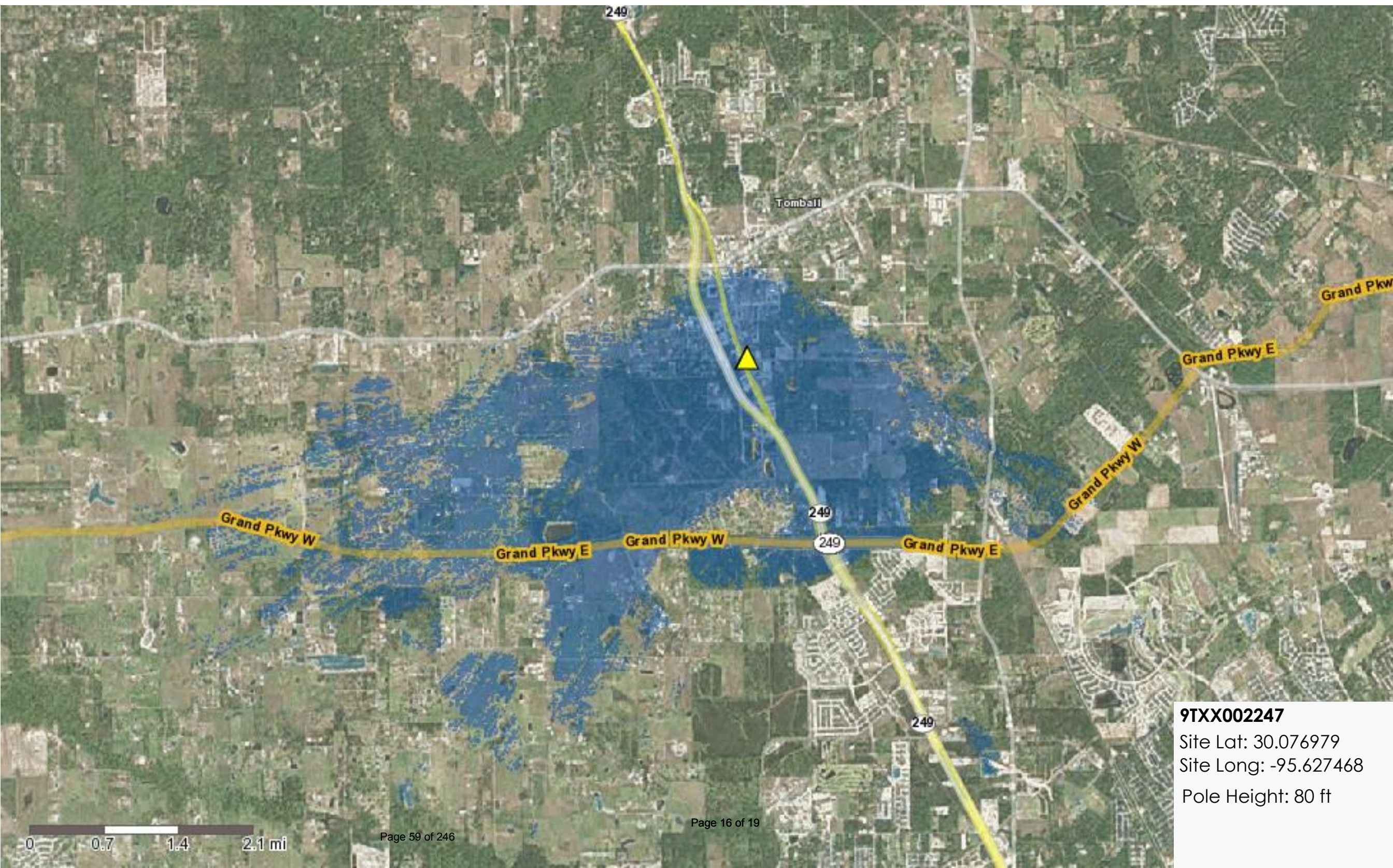


#	Candidate ID	Latitude	Longitude
1	HO90XC667A	30.096205	-95.616595
2	HO90XC672A	30.076979	-95.627468
3	HO90XC677B	30.109749	-95.639977
4	HO90XC667A	30.095229	-95.624387

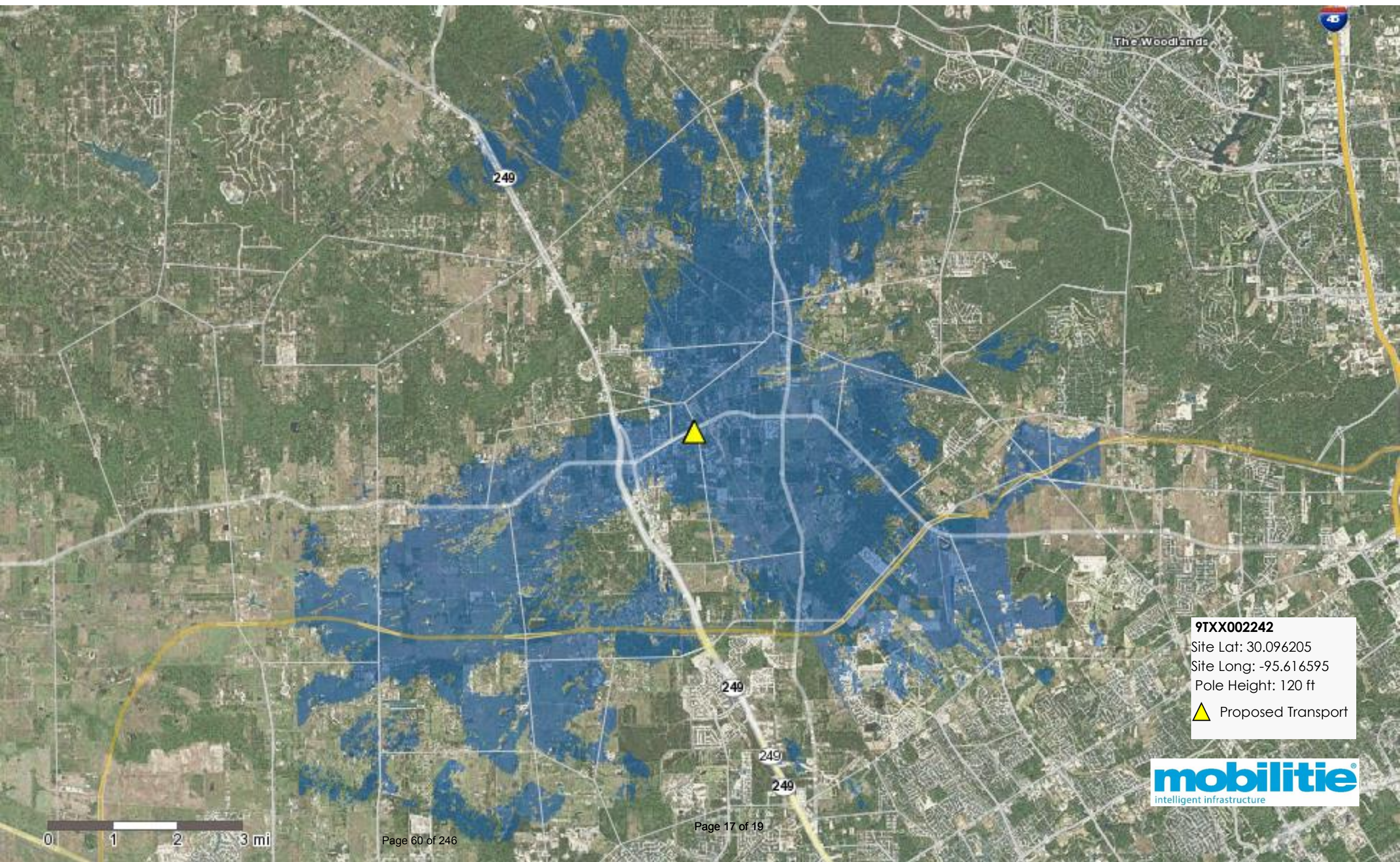
Example of 120' Transport Pole Coverage Area



Example of 80' Transport Pole Coverage Area



Example of 120' Transport Pole Coverage Area



9TXX002242

Site Lat: 30.096205

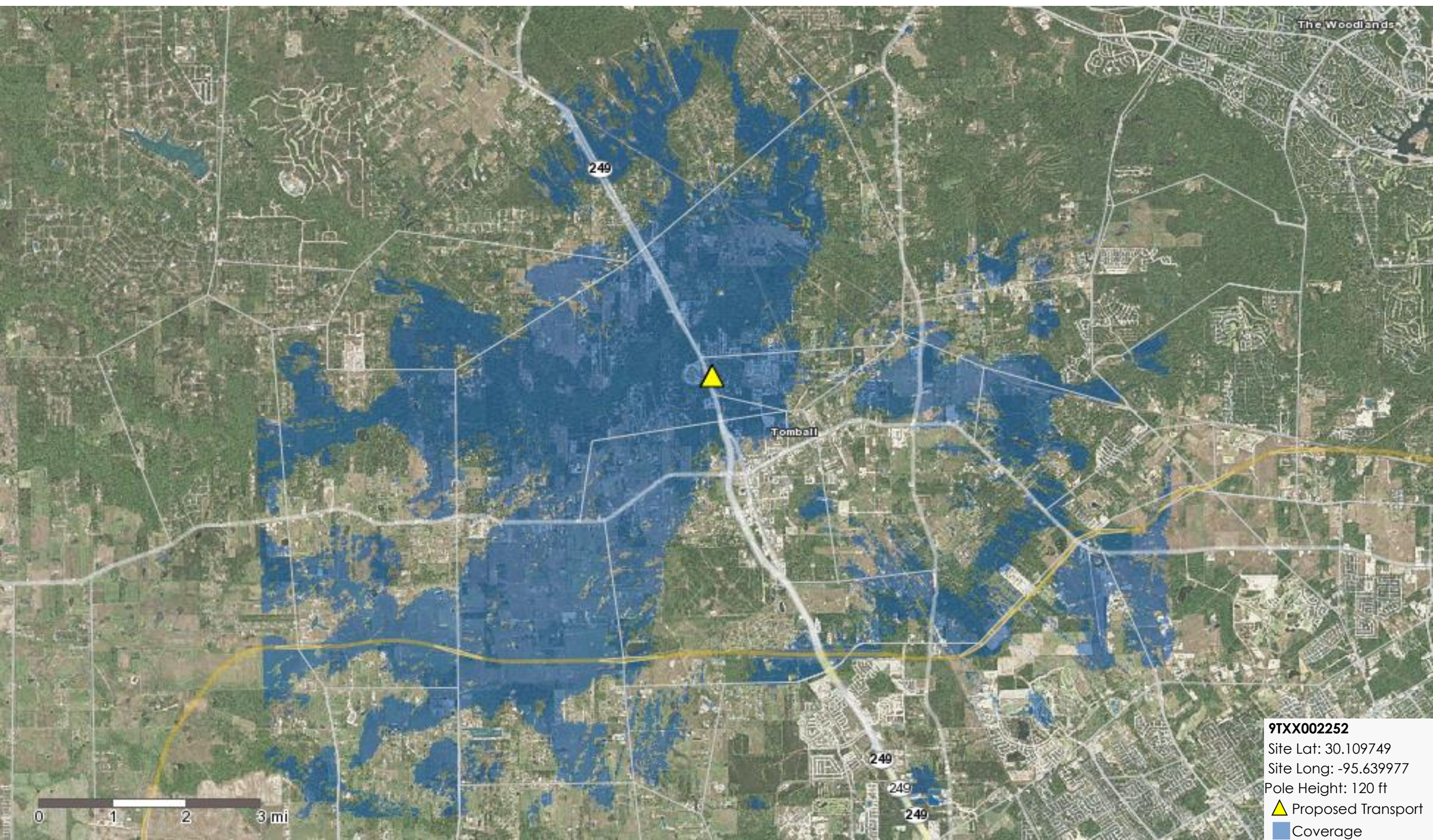
Site Long: -95.616595

Pole Height: 120 ft

▲ Proposed Transport

mobilitie
intelligent infrastructure

Proposed 120' Transport Pole Coverage Area



Thank you



WIRELESS COVERAGE SOLUTIONS

Regular City Council

Agenda Item

Data Sheet

Meeting Date: April 17, 2017

Topic:

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.

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 first 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 ☐ Yes ☐ No	Readings Passed ☐ 1 st ☐ 2 nd	Other
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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 ____ day of _____, 2017.

PASSED, APPROVED, AND RESOLVED on second and final reading this ____ day of _____, 2017.

Gretchen Fagan, Mayor

ATTEST:

Doris Speer, City Secretary



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



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) lhays@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 pages, 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

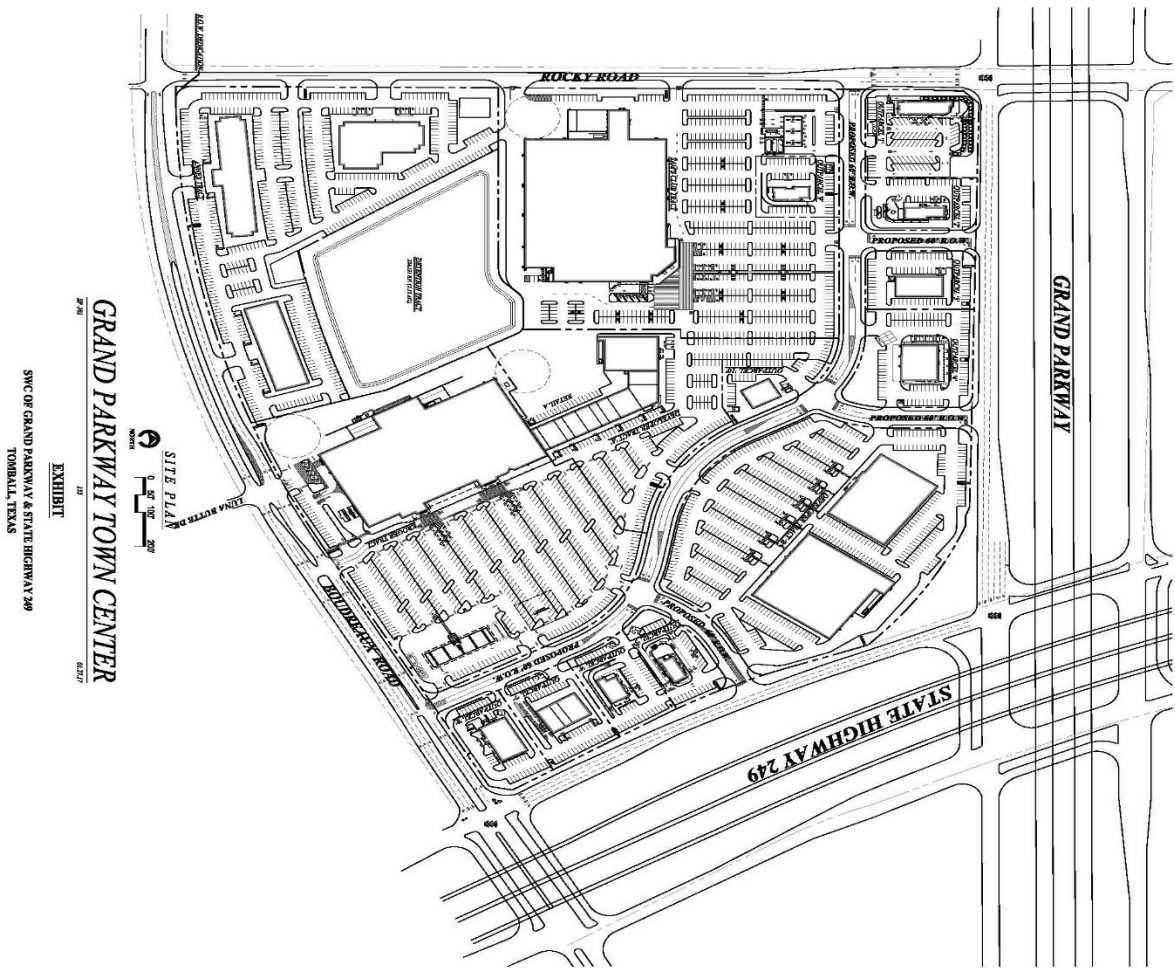
ATTEST:

By: _____

Name: William E. Sumner

Title: Secretary, Board of Directors

EXHIBIT A
SITE PLAN



NewQuest
 8427 W. Sam Houston Parkway N.
 Suite 207 | Houston, Texas 77060
 281.477.4200 www.newquest.com

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 but 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 is 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

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: April 17, 2017

Topic:

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

Background:

As a part of the Tomball Parkway expansion, phase II is being constructed to the Harris - Montgomery county line. There are city utilities located within the ROW of 249 that are required to be relocated as a part of the toll road expansion. The county is responsible for relocating the utilities parallel with the ROW and those in easements however the city is responsible for the relocation / adjustment of the utilities crossing the road ROW. The crossing utilities include a 12" water line, 6" gas line and gravity sewer lines and force mains. The costs for the City portion are not to exceed \$242,307.25. In addition to the costs of the utility relocation, staff recommends to purchase additional ROW to allow for right turn lanes for the streets of Baker, Zion and Brown Roads. These costs include the appraisals, special commissioner's hearing costs and amount of the just compensation paid to landowners for each acquisition. The total costs for the additional ROW shall not exceed \$33,000.00. The total amount to be paid to the county for crossing city utilities and the additional ROW for right turn lanes is not to exceed \$275,307.25. This cost is a non budgeted item.

Origination:

PW

Recommendation:

Approve interlocal agreement

Funding:

No

Funds will be transferred from Account: 400-613-6409; 400-154-6409 to Account:

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

David Esquivel

ACTION TAKEN

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

ILA document

Itemized Summary of Utility costs

Color coded Exhibits

INTERLOCAL AGREEMENT

This Interlocal Agreement ("Agreement") is entered into by and between **Harris County** ("County"), acting herein for the **Harris County Toll Road Authority**, hereinafter referred to as ("HCTRA") and the **City of Tomball** ("City") in accordance with the Interlocal Cooperation Act, Tex. Gov't Code §§ 791.001, *et seq.* County and City may each be referred to herein individually as a "Party" or collectively as the "Parties."

RECITALS

WHEREAS, the County has planned for a county toll road (Tomball Tollway) along SH249 from Spring Cypress Road to the County line at Spring Creek, linking with a toll road to be constructed in Montgomery County;

WHEREAS, the County has completed Phase 1 of the Tomball Tollway from Spring Cypress to FM 2920, which opened to traffic in April 2015, and is now beginning construction on Phase 2, which extends the tollway across Spring Creek ("Project");

WHEREAS, a portion of the Project passes within the City limits; and the City owns and operates a twelve (12)-inch waterline, a six (6)-inch gas main, and related appurtenances ("City Facilities") located in a dedicated public utility easement adjacent to both sides of the existing right-of-way ("ROW") of SH 249;

WHEREAS, the County will relocate the City Facilities within the road right-of way for SH 249, and the City will be responsible for the cost of the City Facilities crossing the road ROW, as shown as crosshatched on attached Exhibit A;

WHEREAS, as part of the Project, the City desires right turn lanes for Baker, Zion and Brown roads and the City will reimburse the County for all costs necessary to acquire the right-of-way for the right turn lanes, and the County will pay the cost to design, plan and construct the right turn lanes;

WHEREAS, the City will be responsible for maintenance of the right turn lanes, as shown on attached Exhibit B.

NOW, THEREFORE, for and in consideration of the mutual agreements contained herein the Parties agree as follows:

TERMS

1. The County, at its cost, will provide engineering and surveying for the relocations of City Facilities, and provide the plans, specifications and estimate to the City for review. The City will, within 21 days, provide the County with comments to the plans.
2. The County will relocate the City Facilities within the state right-of-way. During the relocation of the City Facilities, the City has the right of access to the construction site and the right to review all documents, maps, plats, records, photographs, reports or drawings affecting the City Facilities. However, the City shall notify HCTRA prior to any inspection of the construction site. In conducting said inspections, the City shall not interfere with the work in progress and will not direct the County's contractor. All comments will be given to HCTRA for resolution. Upon completion of construction of the City Facilities, the City shall assume full ownership of and responsibility for the maintenance and repair of the City Utilities to the extent and in the same manner as other like utilities maintained by the City.
3. The City is responsible for all costs related to construction of the City Facilities crossing the SH249 ROW as shown on Exhibit A. The cost for the work is \$242,307.25

and the County will send the City an invoice when all work is complete. The City will have 60 days to pay the County after receiving the invoice.

4. As part of the Project, the County also will acquire property needed for right turn lanes for Baker, Zion and Brown Roads, as they approach SH249, in the City's name ("Property"). The City will reimburse the County for all costs involving the acquisition of the Property, including, but not limited to, appraisal costs, special commissioner's hearing costs, and the amount of just compensation paid to the landowners for each acquisition. Upon the completion of the acquisitions of Property, the County will send the City an invoice indicating the costs of all the acquisitions. The costs of right-of-way shall not exceed \$33,000.00. The City will have 60 days to pay the County after receiving the invoice. The City grants the County a right-of-entry to construct the right-turn lanes on property donated to the City in connection with the Project.

5. The County will design and produce plans for the construction of the right turn lanes and submit them to the City for approval. The City will provide comments to the County within 21 days of submittal. Once the right turn lanes are constructed, the City will maintain the portion of the lanes outside of the SH249 right-of-way as shown on the shaded portions of Exhibit B.

6. The County shall furnish the City a copy of the record, "as-built" drawings and specifications in connection with the City Facilities after its receipt of a written request from City. However, County has no obligation to furnish said record drawings and specifications to City so long as any money is owed by City to County under this Agreement.

7. The City and its authorized representatives have the right to review and audit all books, records, vouchers and documents of whatever nature related to the County's performance under this Agreement during the period of performance of the Agreement and for three (3) years thereafter, or for so long as there exists any dispute or litigation arising from this Agreement. The City is responsible for the cost of any duplication.

8. Either Party may terminate this Agreement, subject to paying any money owed to the other Party up to the date of termination. The Parties will then have no obligation under this Agreement other than County shall return any unexpended funds paid to County by City pursuant to this Agreement. If either Party elects to terminate this Agreement pursuant to this paragraph, any interest earned on said funds paid to County by City pursuant to this Agreement becomes the sole property of County.

9. Upon completion of the construction of the Project and relocation of the City Facilities, the City is assigned any rights the County may have against the contractor, the design engineer, and the surety on the contractor's performance bond that relate to the City Facilities.

10. No Party shall make, in whole or in part, any assignment of this Agreement or any obligation hereunder without the prior written consent of the other Party hereto.

11. Any notice required to be given under this Agreement ("Notice") shall be in writing and shall be duly served when it shall have been personally delivered to the address below, or deposited, enclosed in an envelope with the proper postage prepaid thereon, and duly registered or certified, return receipt requested, in a United States Post Office, addressed to the County or the City at the following addresses:

City: City of Tomball
P.O. Box 820
Tomball, Texas 77377
Attention: Mr. George Shackelford

County: Harris County Toll Road Authority
7701 Wilshire Place Drive
Houston, Texas 77040
Attention: Gary K. Trietsch, P.E., Executive Director

Any Notice given hereunder is deemed given upon hand delivery or three (3) days after the date of deposit in the United States Mail.

Each Party shall have the right to change its respective address by giving at least fifteen (15) days' written notice of such change to the other Party.

Other communications, except for Notices required under this Agreement, may be sent by electronic means or in the same manner as Notices described herein.

12. Each Party shall be responsible for all claims and liability due to the activities of the Party's employees, officials, agent or subcontractors arising out of or under this Agreement and that result from any act, error, or omission, intentional tort, intellectual property infringement, or failure to pay a vendor, committed by the Party or its employees, officials, agents, consultants under contract, or any other entity over which it exercises control.

13. This Agreement supersedes any and all other discussions, negotiations and representations of any kind and represents the entire Agreement of the Parties concerning the subject herein.

14. Any oral or written representations or modifications concerning this instrument shall not be effective, excepting a subsequent written modification signed by both Parties.

15. This Agreement may be executed in several counterparts. Each counterpart is deemed an original and all counterparts together constitute one and the same instrument. In addition, each Party warrants that the undersigned is a duly authorized representative with the power to execute the Agreement.

HARRIS COUNTY

CITY OF TOMBALL

By: _____
Ed Emmett, County Judge
Date: _____

By: _____
Mayor
Date: _____

APPROVED AS TO FORM:

VINCE RYAN
County Attorney

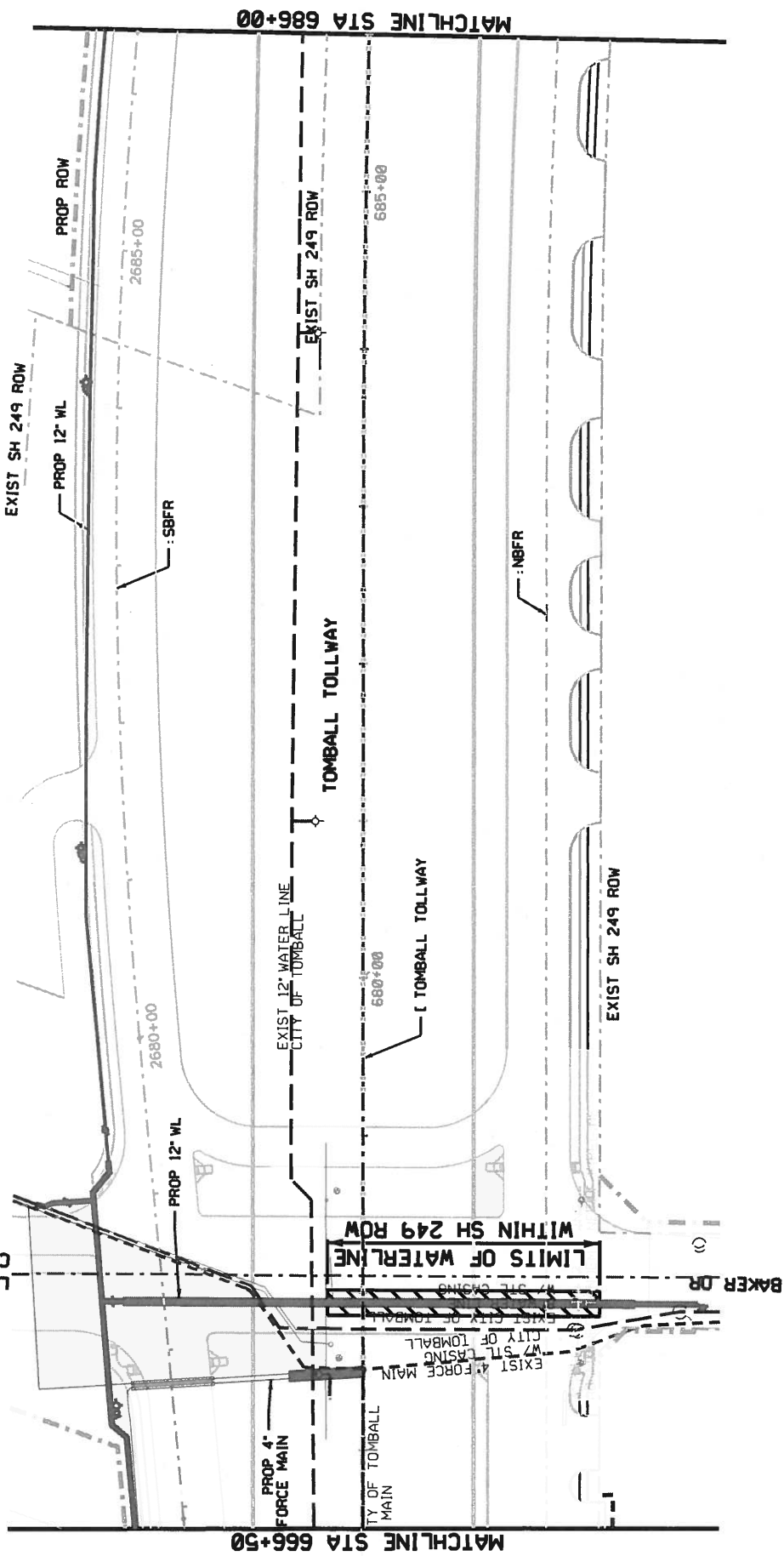
ATTEST:

By: _____
City Secretary

By: _____
Laura Fiorentino Cahill
Assistant County Attorney

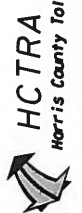


COLLEGE DRWY
LONE STAR



MATCHLINE STA 686+00

MATCHLINE STA 666+50

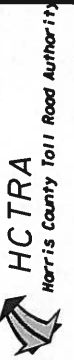
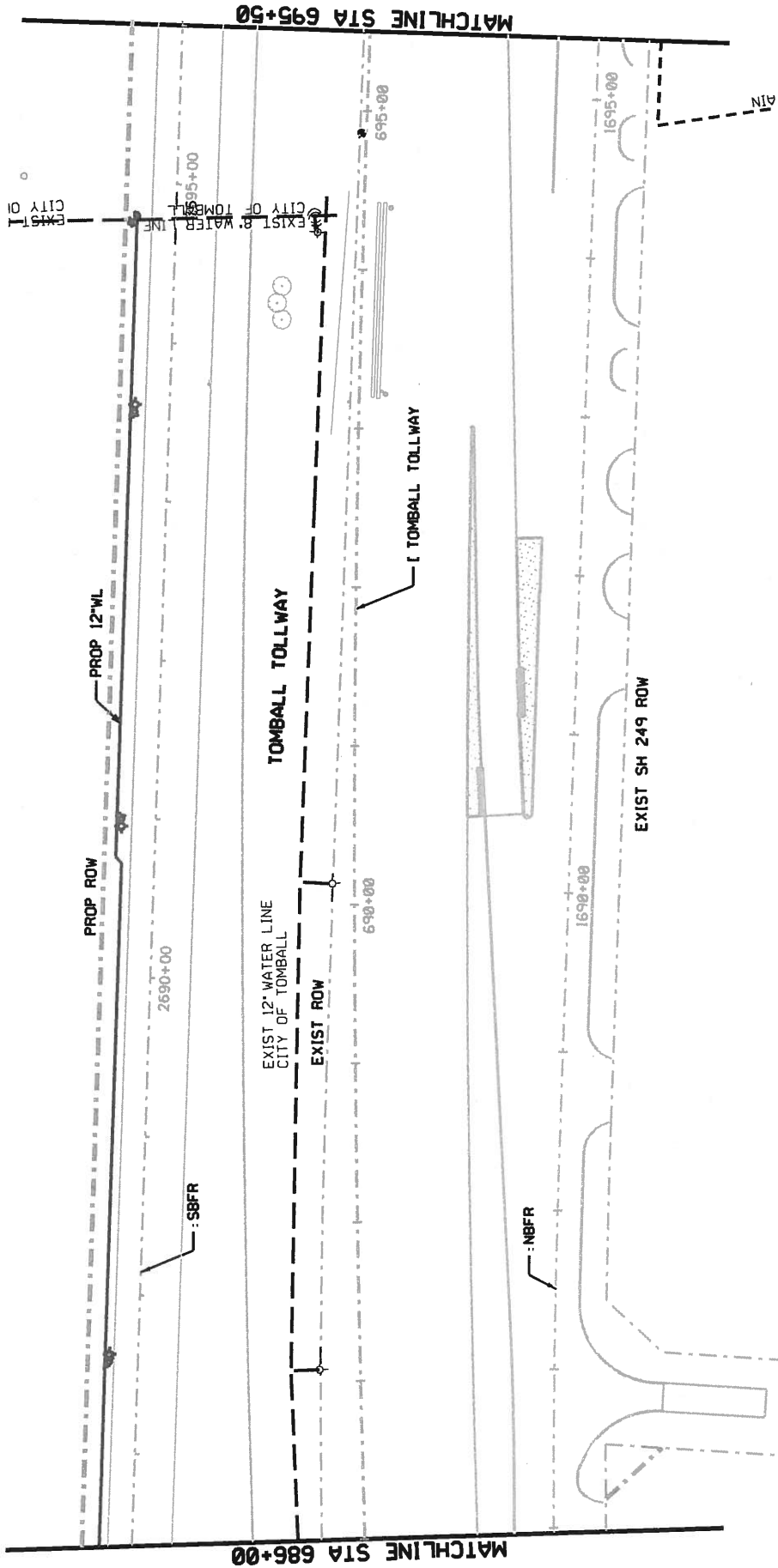


MAJOR TOLL ROAD CONNECTION
CITY OF TOMBALL
EXHIBIT A
SHEET 2 OF 6

STATE	PROJECT NO.	SHEET
TEXAS	6	2
COUNTY	DIST.	COUNTY
HARRIS	HOUSTON	HARRIS
JOB	SECT.	HIGHWAY NO.



LEGEND



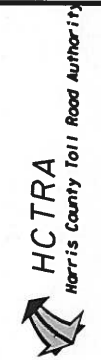
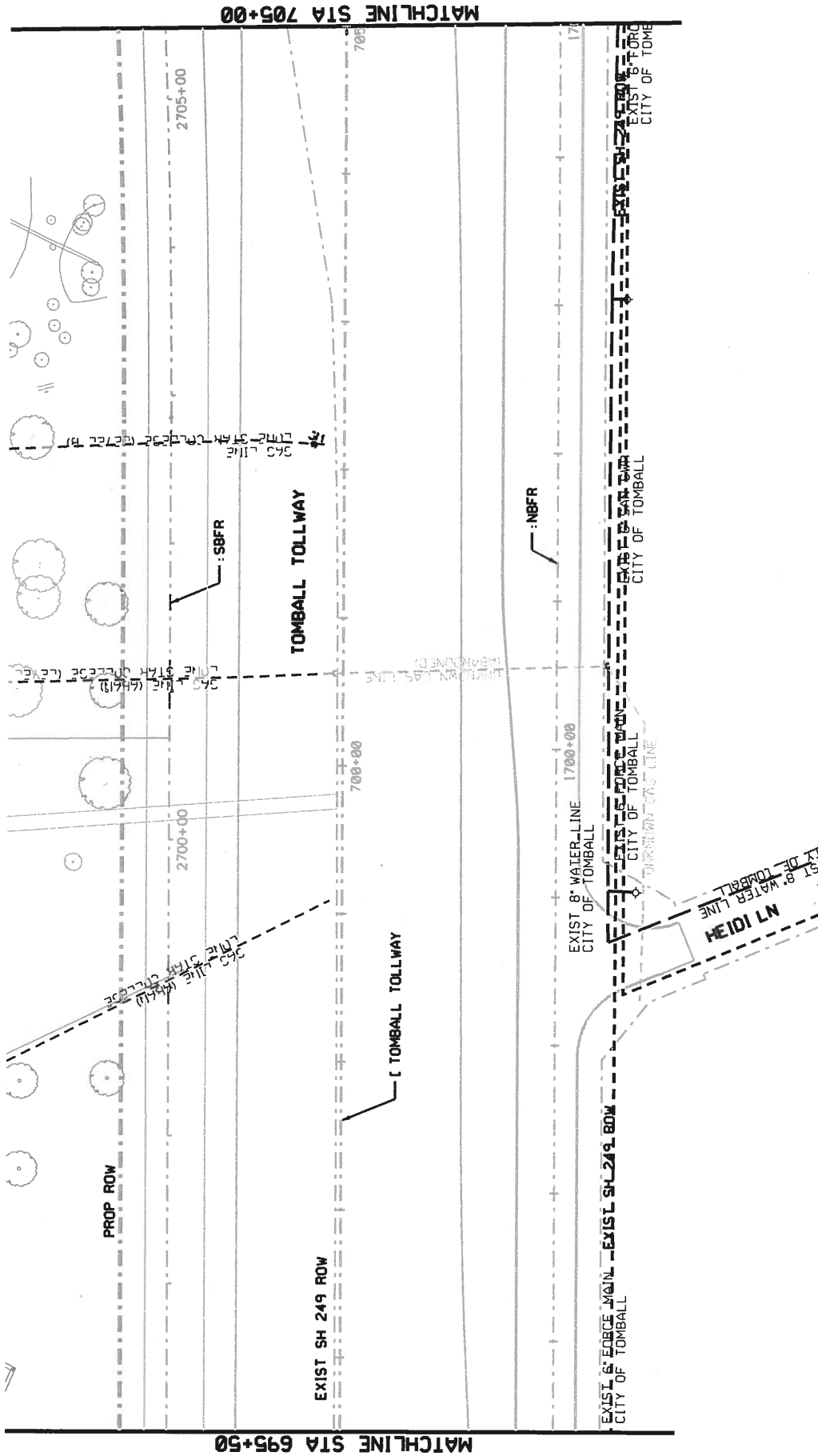
HARRIS TOLL ROAD BOTANOM CONNECTION
CITY OF TOMBALL
EXHIBIT A

STATE	PROJECT NO.	SHEET
TEXAS	6	3
COUNTY		
HARRIS		
JOB		
ROUTE NO.		

SHEET 3 OF 6



LEGEND



HARRIS TOLL ROAD EXTENSION CONNECTION
CITY OF TOMBALL
EXHIBIT A
SHEET 4 OF 6

SHEET	PROJECT NO.	SHEET		
		NO.	OF	TOTAL
6	6	4	4	4
STATE	DIST.	COUNTY		
TEXAS	HOUSTON	HARRIS		
CONTRACT	SECTION	JOB		
		HOUSTON		



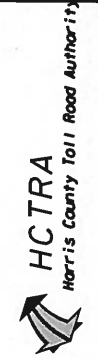
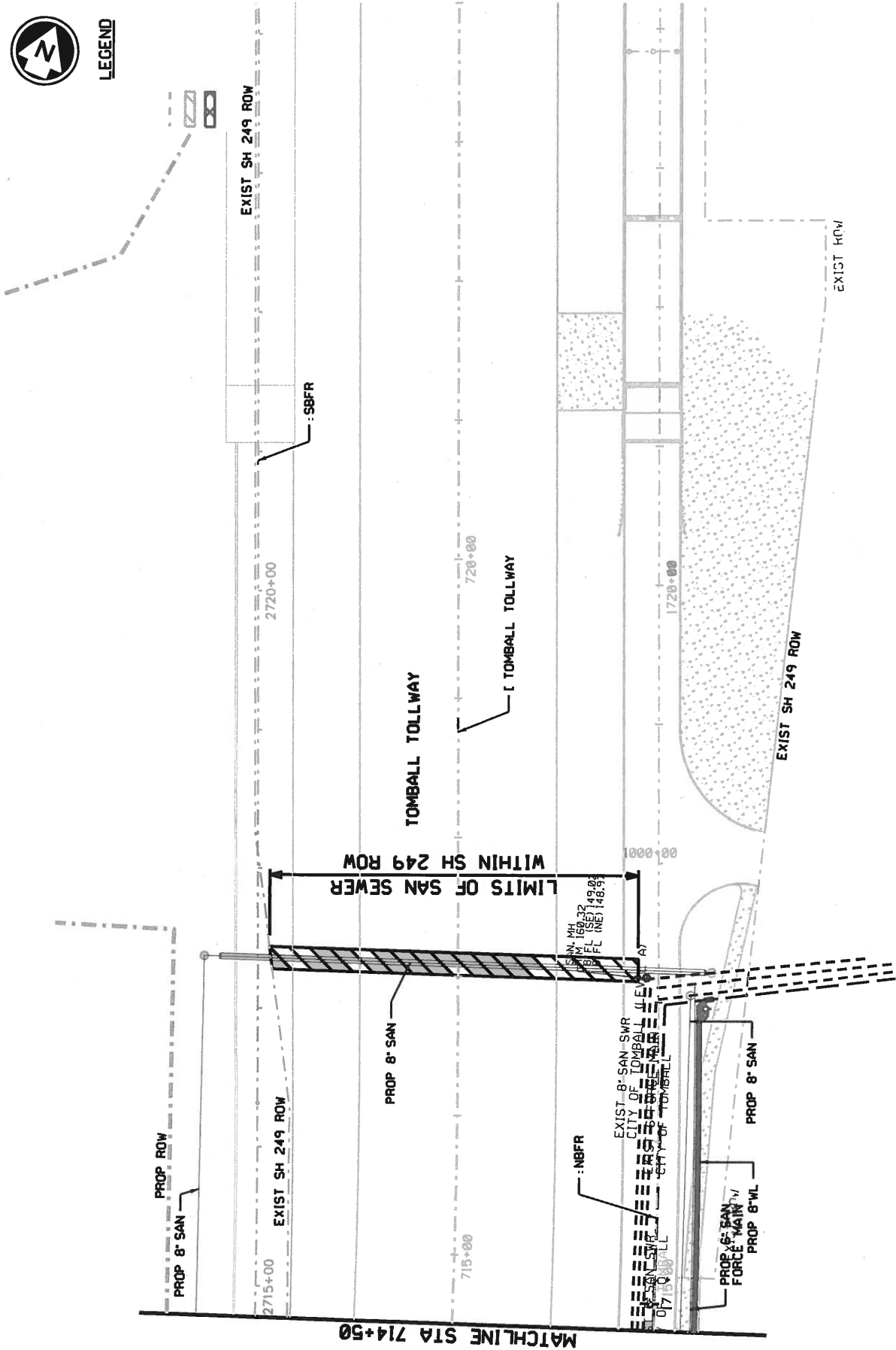
HCTRA
Harris County Toll Road Authority

HEAVY TOLL ROAD CONSTRUCTION
CITY OF TOMBALL
EXHIBIT A
SHEET 5 OF 1

ROAD DIST.	PROJECT NO.	SHEET NO.
6		5
STATE	DIST.	COUNTY
TEXAS	HOUSTON	HARRIS
CONTRACT	SECT.	JOB
		HIGHWAY NO.



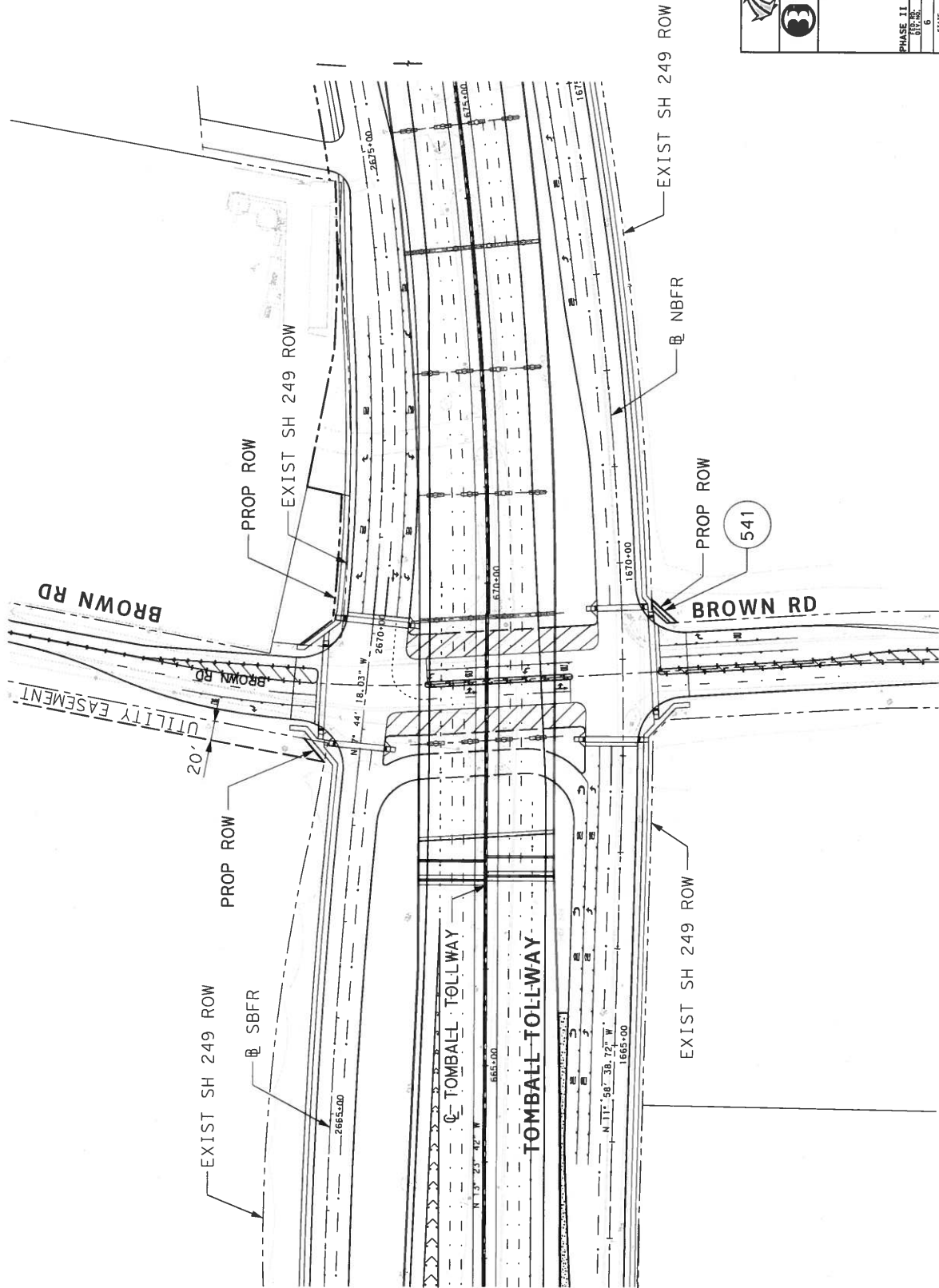
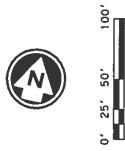
LEGEND



HOUSTON TOLL ROAD SYSTEM CONNECTION
CITY OF TOMBALL
EXHIBIT A

STATE	PROJECT NO.	SHEET
TEXAS	6	6
COUNTY	DIST.	HIGHWAY NO.
HARRIS	HOUSTON	
SECT.		

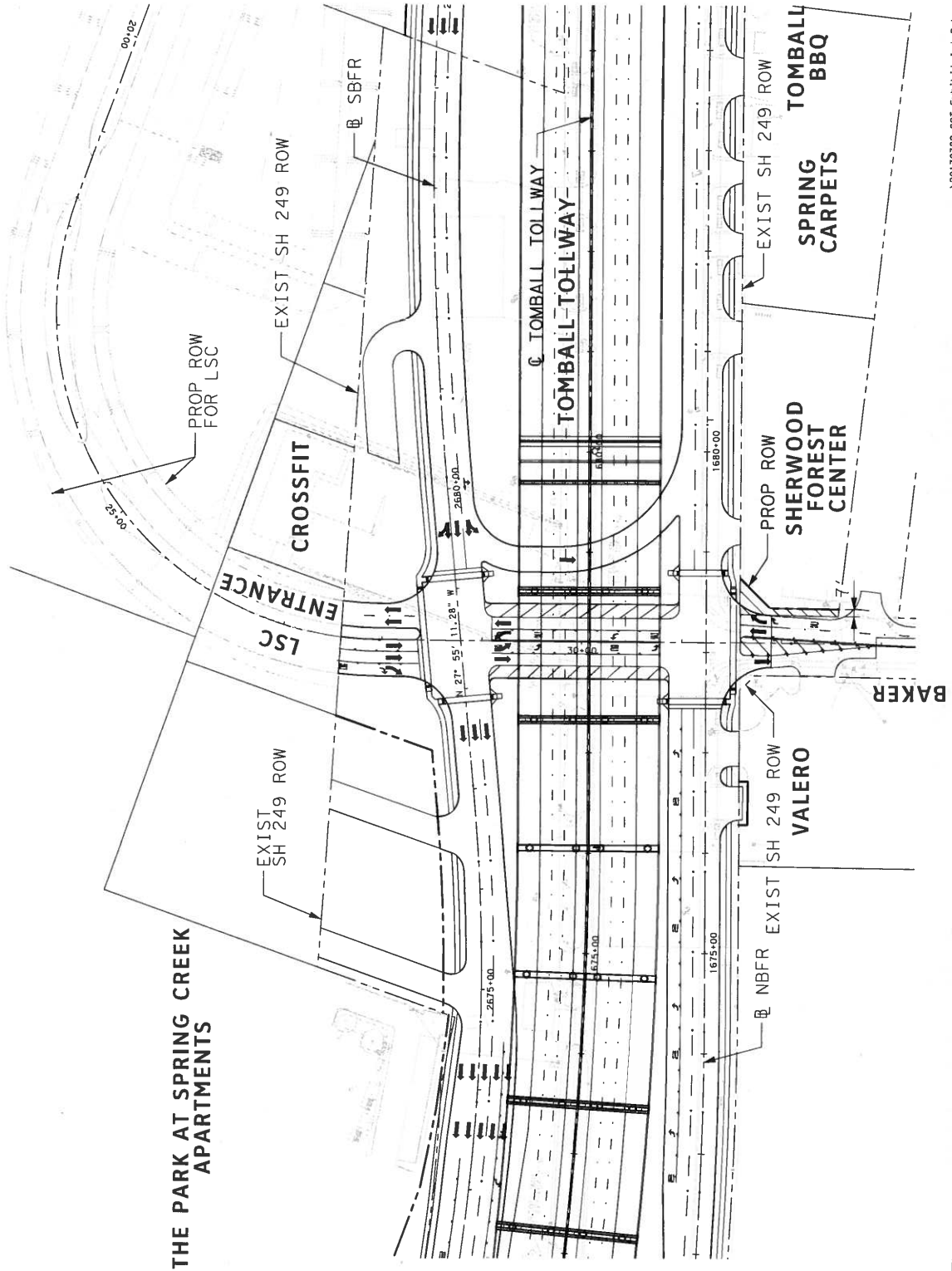
SHEET 6 OF 6



541
BROWN RD
(NE CORNER)
0.0049 AC

HCTRA Harris County Toll Road Authority		Binkley & Barfield, Inc consulting engineers Texas Registration Number F-527	
TOMBALL TOLLWAY		EXHIBIT B BROWN RD	
PHASE II R/W	CONTRACT NO. 806	SHEET NO. 100	SHEET 1 OF 3
STATE TEXAS	DIST. HOUSTON	COUNTY HARRIS	
SECTION 0720	SUB-SECTION 03	CORNER NO. 074, ETC.	SH 249

...\\20110322_COI_Exhibit-Int-Brown.dgn



Harris County Toll Road Authority



Binkley & Barfield, Inc.
consulting engineers
Texas Registration Number F-257

TOMBALL TOLLWAY

EXHIBIT B

LSC ENTRANCE / BAKER DR

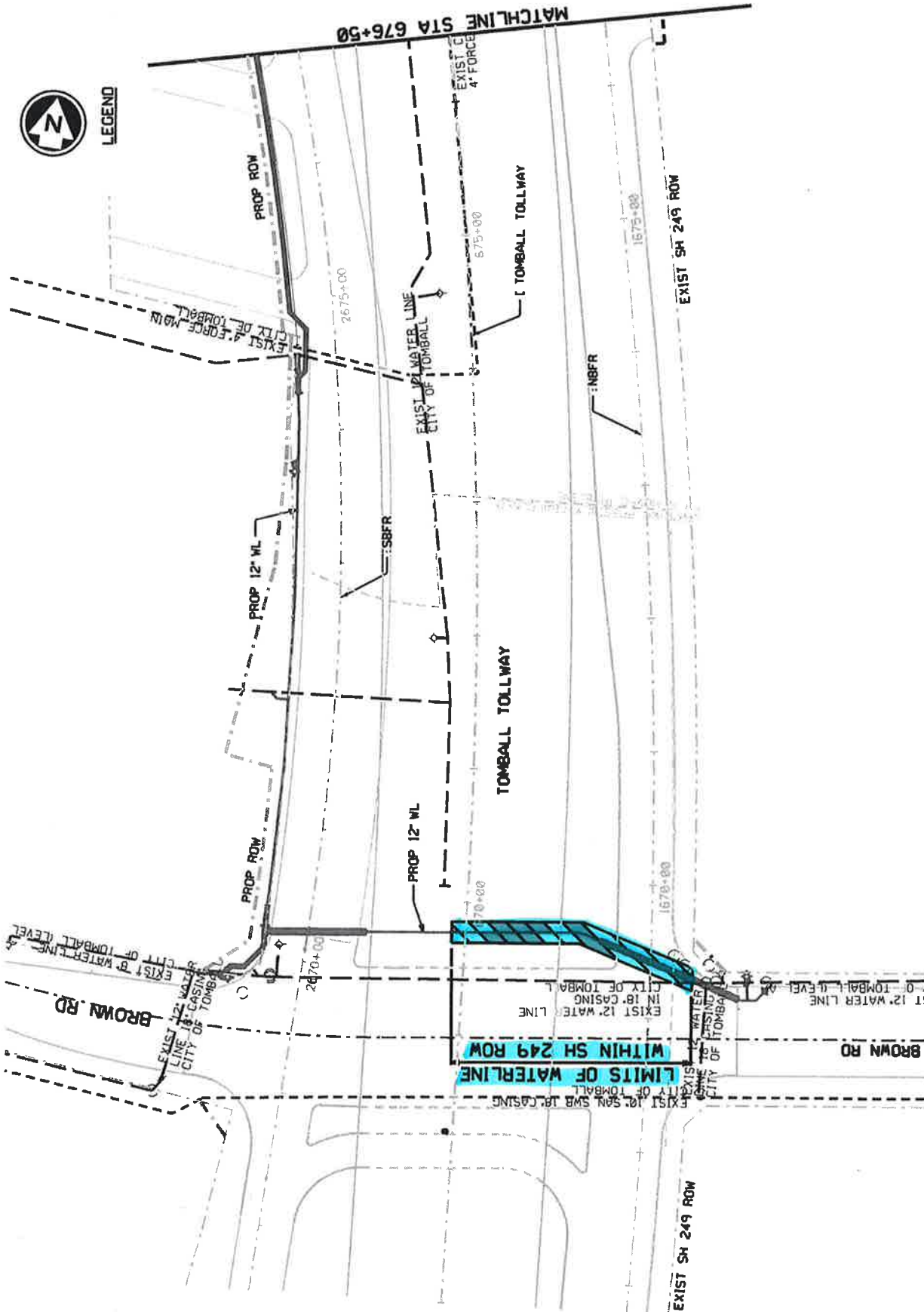
PHASE II		SHEET 2 OF 3	
LOG. NO.	CONTRACT NO.	SHEET NO.	
01720	806		
STATE	DIST.	COUNTY	
TEXAS	HOUSTON	HARRIS	
COMPL.	SECT.	JOB	
01720	03	074, ETC.	SH 249

[illegible]

TOTAL ESTIMATE COST FOR ADJUSTMENT OF CITY OF TOMBALL
FACILITIES LOCATED WITHIN TxDOT ROW



LEGEND



0' 50' 100'

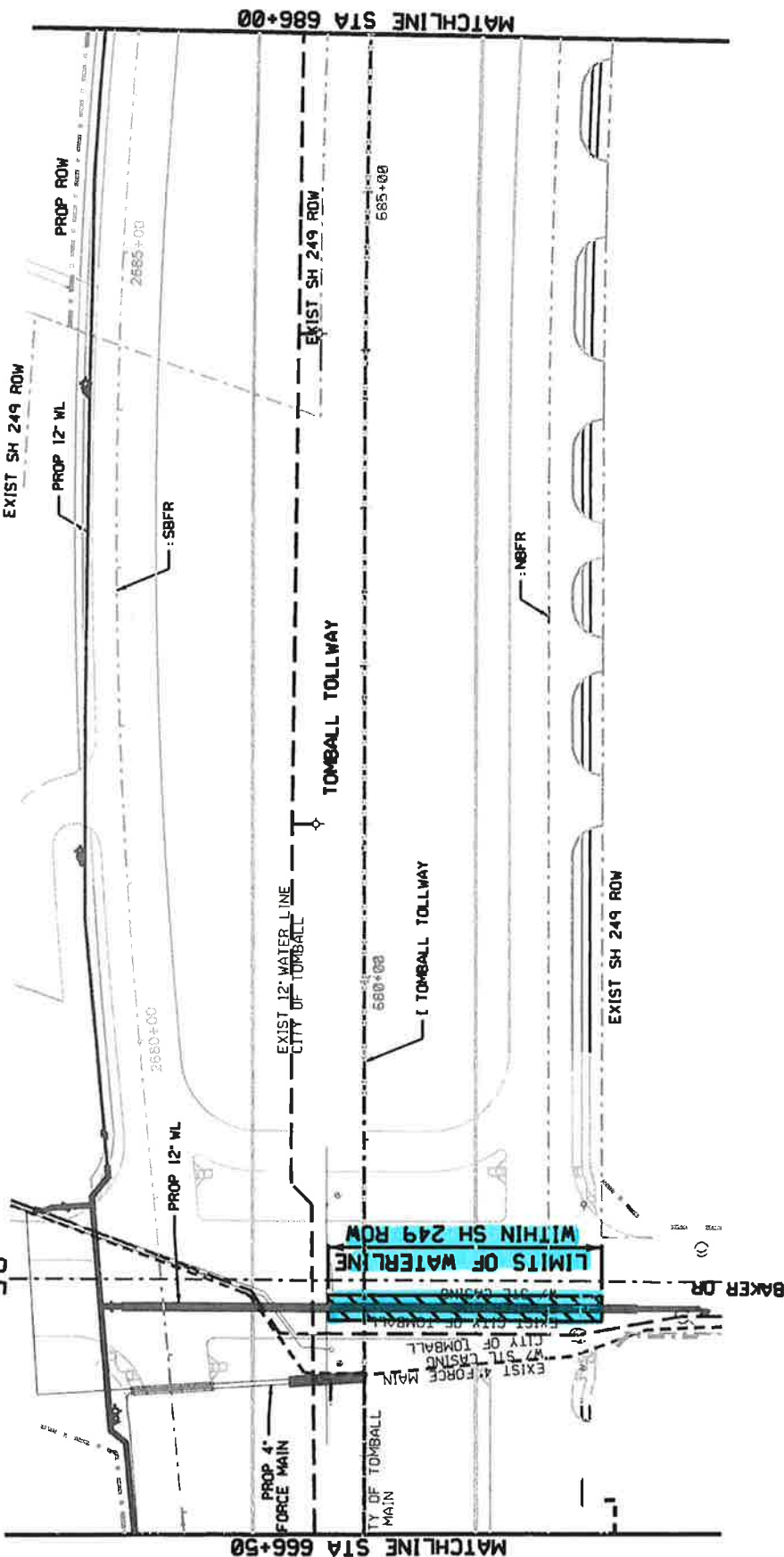


HARRIS TOLL ROAD SYSTEM CONNECTION
CITY OF TOMBALL
EXHIBIT A
SHEET 1 OF 6

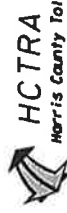
PROJECT NO.	SHEET NO.
STATE	COUNTY
DIST.	HARRIS
SECTION	JOB
CONTRACT	HIGHWAY NO.



LOVE STAR
COLLEGE DRWY



SHEET 2 OF 6

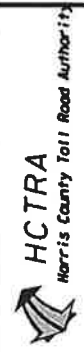
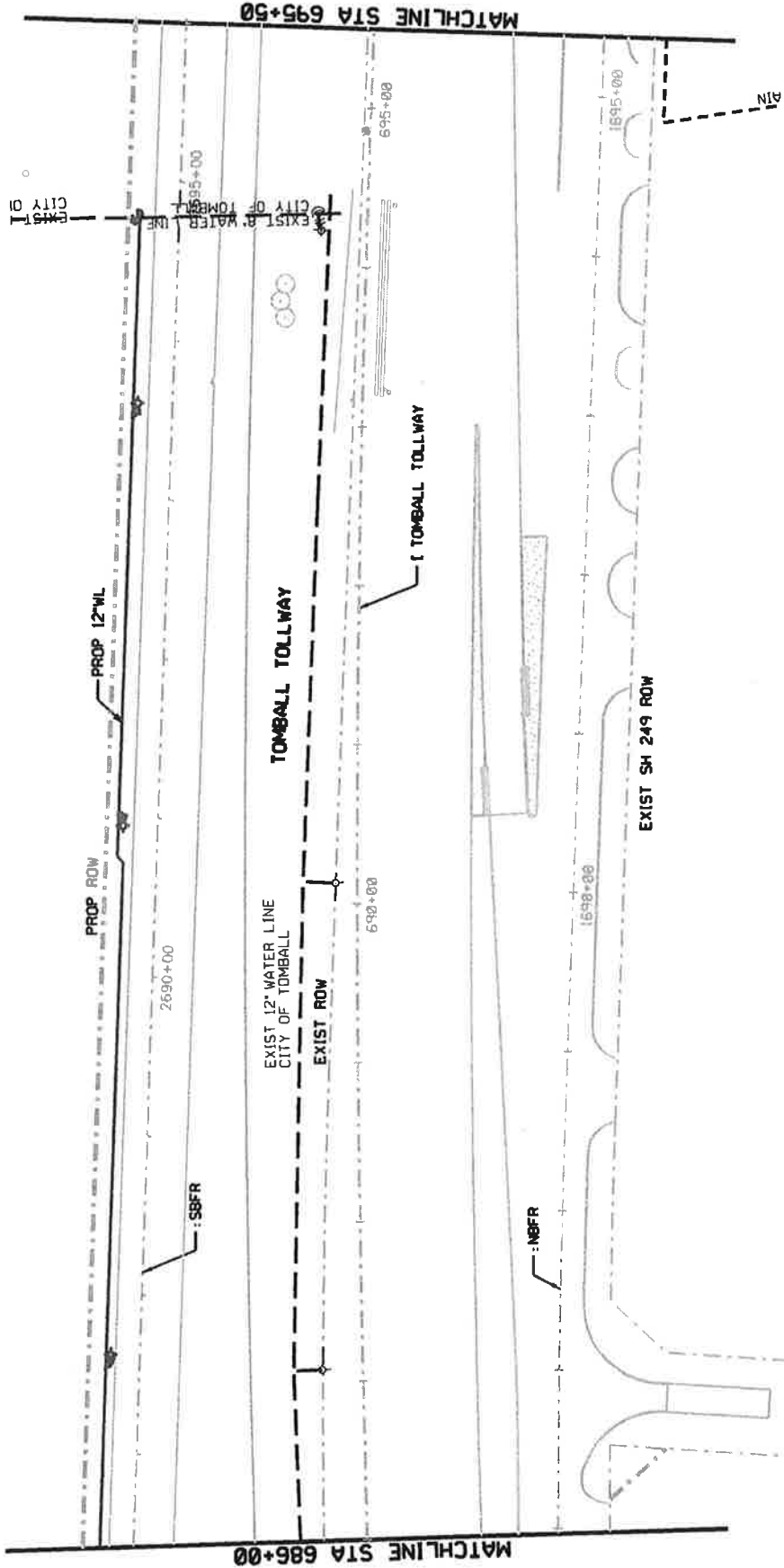


HARRIS TOLL ROAD AUTHORITY CONNECTION
CITY OF TOMBALL
EXHIBIT A

STATE	DIST.	PROJECT NO.	SHEET NO.
TEXAS	HOUSTON		2
COUNTY	HARRIS		
SECTION	JOB		
	LEGEND		



LEGEND



HARRIS TOLL ROAD CONNECTION CONNECTOR
CITY OF TOMBALL
EXHIBIT A
SHEET 3 OF 6

STATE	PROJECT NO.	SHEET
TEXAS	6	3
COUNTY	DIST.	COUNTY
HARRIS	HOUSTON	HARRIS
JOB	SECTION	HIGHWAY NO.

STATUS

PERMANENT IMPROVEMENTS

PLANNING AND DESIGN

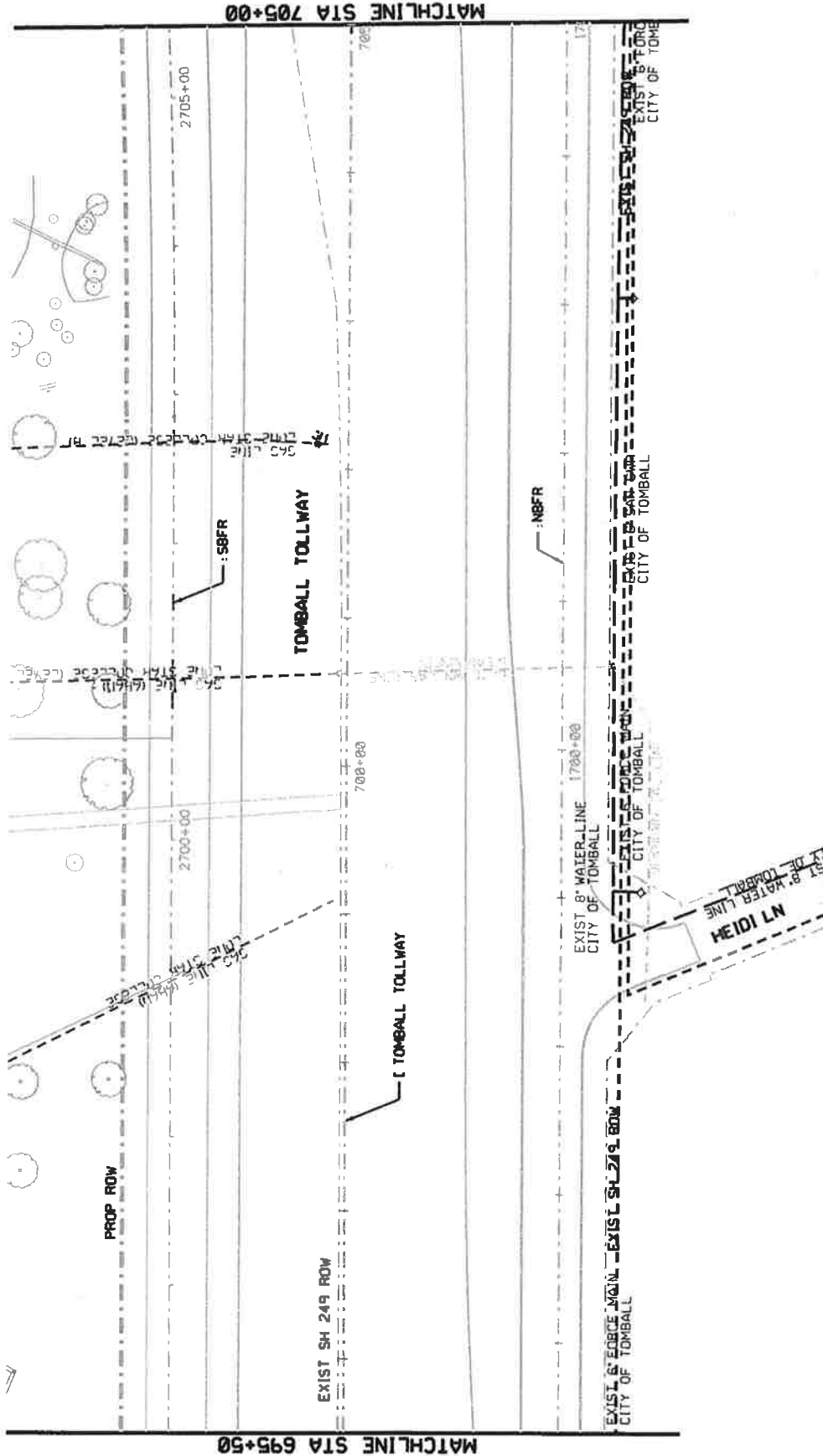
USE AND MAINTENANCE

STREET

FILED OFFICE
DATE: 04/15/2015



LEGEND



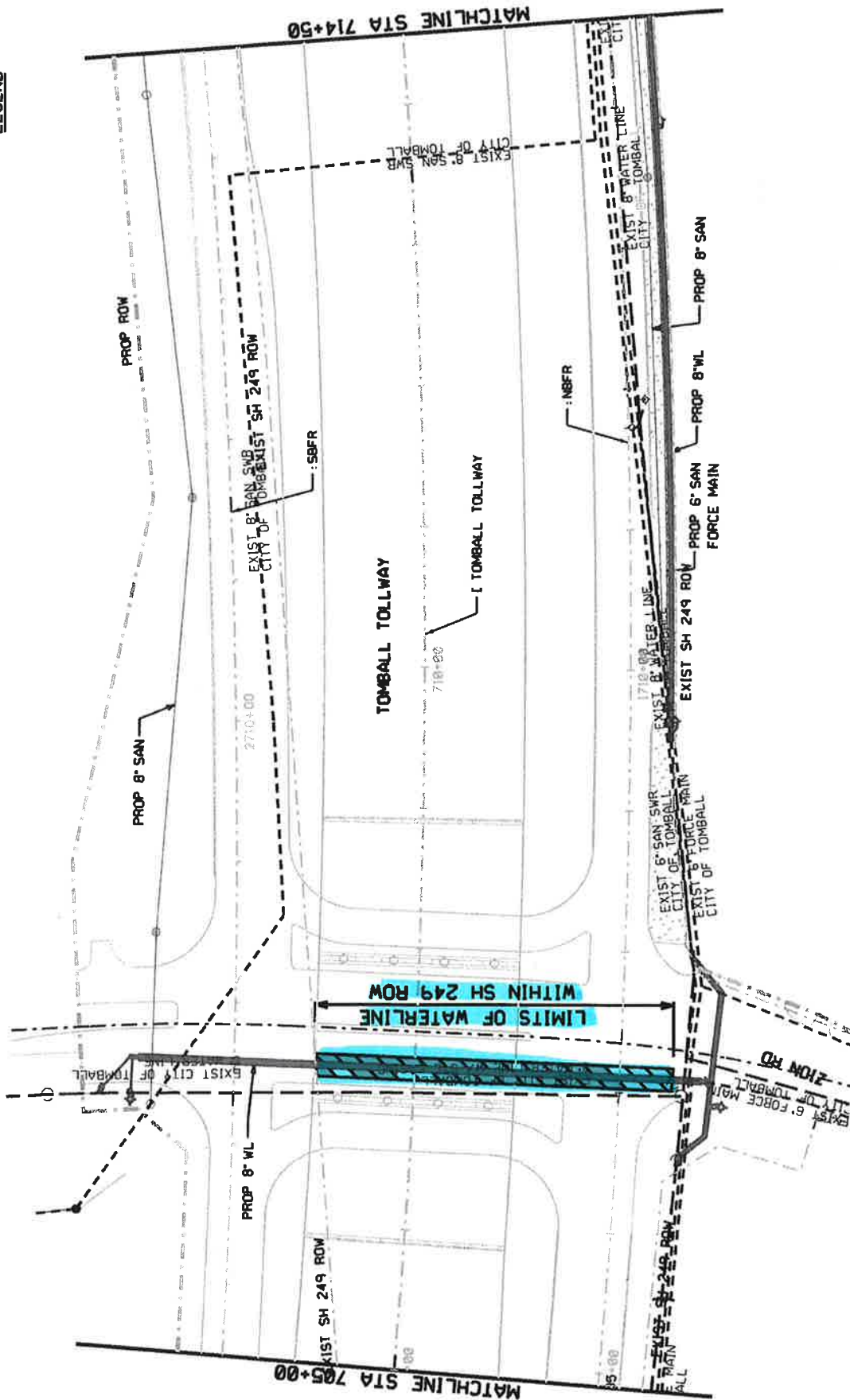
HARRIS TOLL ROAD STATION CONNECTOR
CITY OF TOMBALL
EXHIBIT A

STATE	DIST.	PROJECT NO.	SHEET
TEXAS	HOUSTON	6	4
COUNTY	HARRIS		
SECTION	JOB		
HIGHWAY NO.			

SHEET 4 OF 6



LEGEND



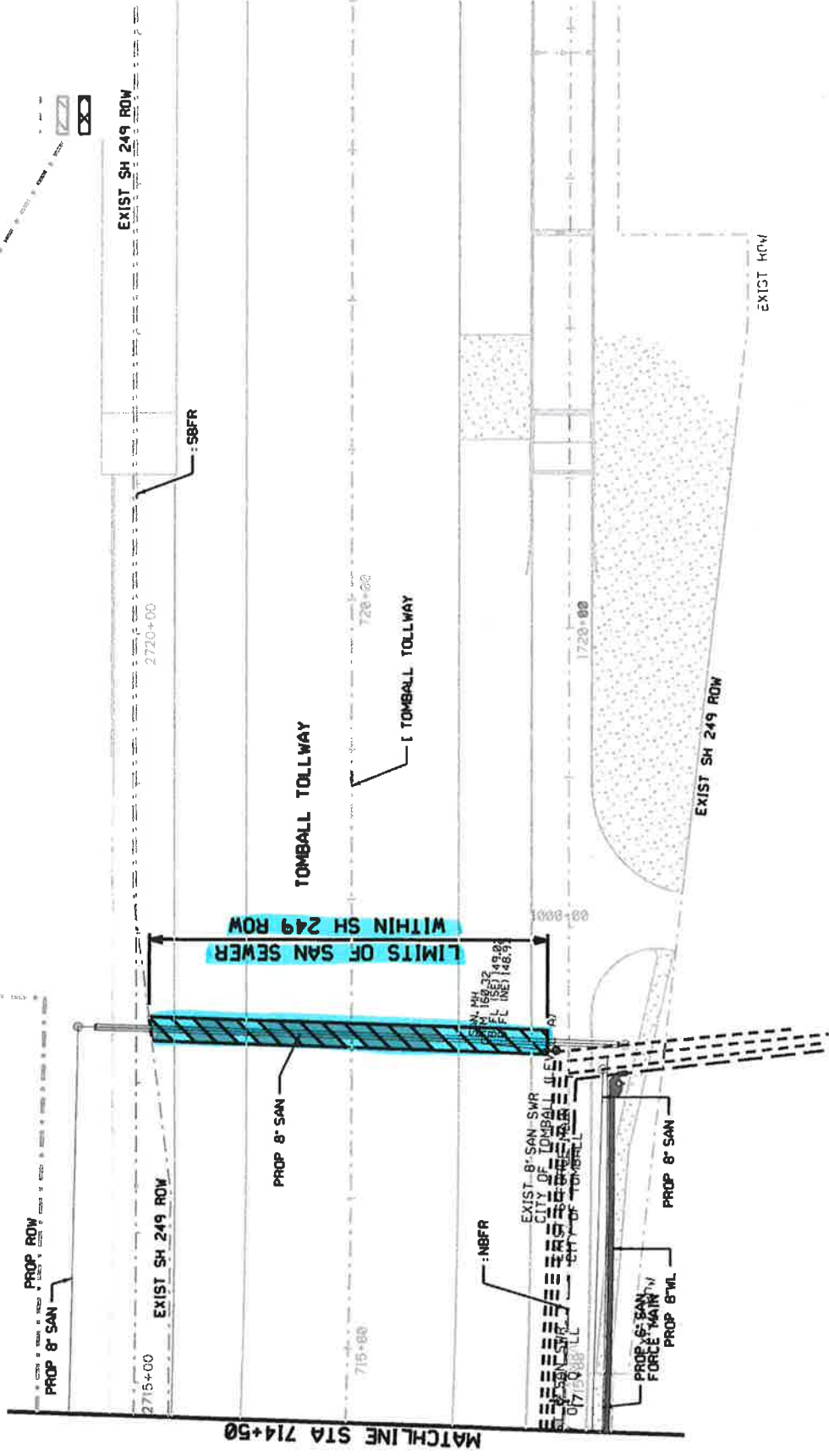
HCTRA
Harris County Toll Road Authority

HAIRY TOLL ROAD CONNECTION CORRECTOR
CITY OF TOMBALL
EXHIBIT A
SHEET 5 OF 6

PROJECT NO.	SHEET
6	5
STATE	COUNTY
TEXAS	HARRIS
CITY	JOB
HOUSTON	HIGHWAY NO.
SECT.	



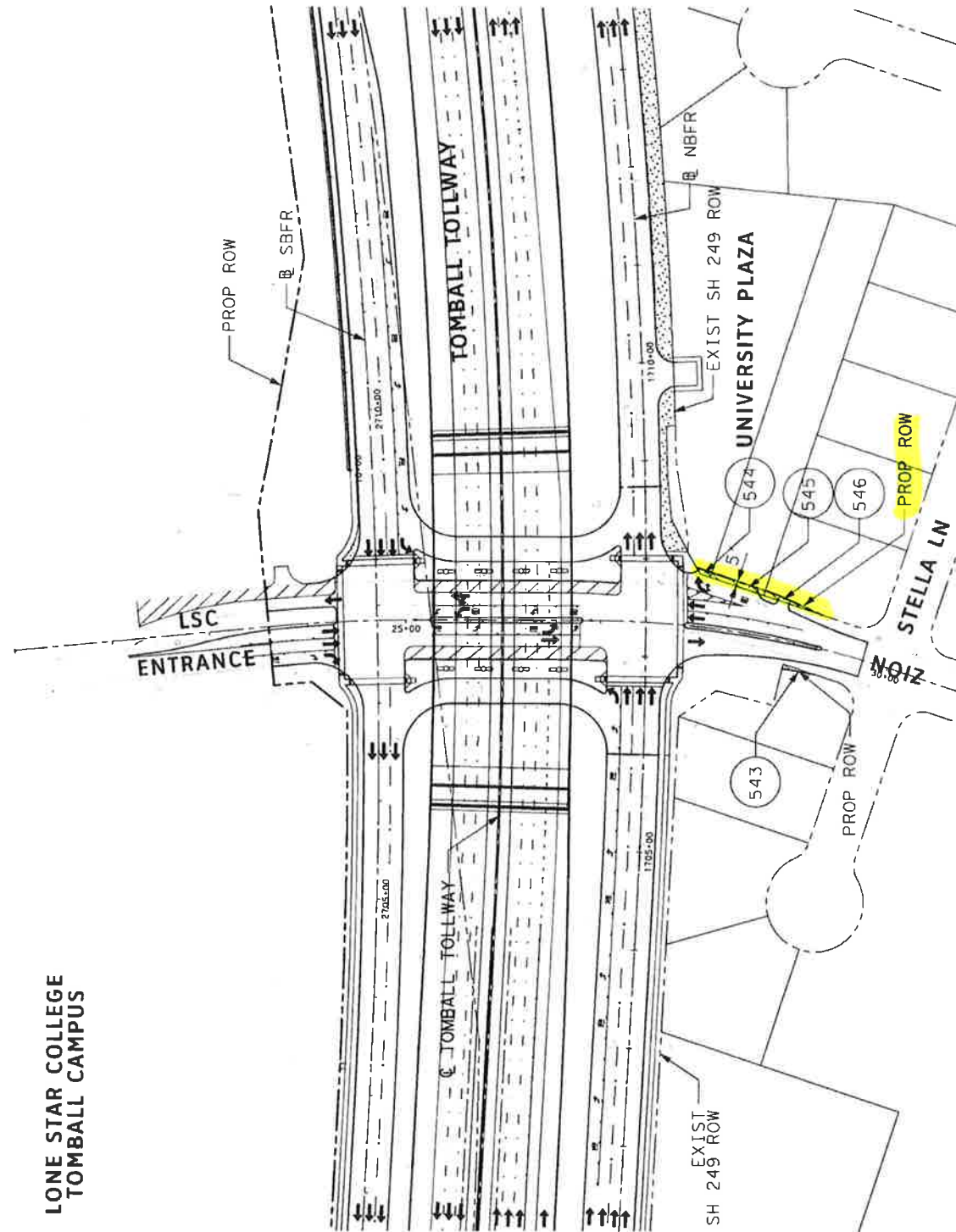
LEGEND



DATE: 04/26/06						 HCTRA Harris County Toll Road Authority		HARRIS TOLL ROAD AUTHORITY CONNECTION	
								CITY OF TOMBALL	
								EXHIBIT A	
								SHEET 6 OF 6	
								PROJECT NO.	
								6	
								SHEET NO.	
								6	
								STATE	
								TEXAS	
								COUNTY	
								HOUSTON	
								DIST.	
								HARRIS	
								JOB	
								HIGHWAY NO.	
								6	



HAZARD TOLL ROAD CANTON CORRECTOR



543
ZION RD
(SE CORNER)
0.0018 AC

544
ZION RD
(NE CORNER)
0.0016 AC

545
ZION RD
(NE CORNER)
0.0067 AC

546
ZION RD
(NE CORNER)
0.0045 AC

ИСТРА

HERNANDO COUNTY TOLL ROAD AUTHORITY



Blinkley & Barfield, Inc.
consulting engineers

TOMBALL TOLLWAY

EXHIBIT D

ZION RD

PHASE II	CONTRACT NO.	EST. NO.
6	806	
STATE	BIST.	EDUC.
TEXAS	HOUSTON	MARQIS
COMM.	SECT.	JOB
0720	03	074, ETC.
		SH 249

Regular City Council
Agenda Item
Data Sheet

Meeting Date: April 17, 2017

Topic:

Consider and Set a Date for Presentation of the 5-Year Financial Plan to City Council

Background:

City Staff is working on the 5-Year Financial Plan, with the goal of presenting it to Council at a special workshop meeting prior to a regular Council meeting.

The suggested date is Monday, June 5, 2017, at 4 p.m.

Origination:

City Manager

Recommendation:

N/A

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

City Secretary

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

Regular City Council

Agenda Item

Data Sheet

Meeting Date: April 17, 2017

Topic:

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)

Background:

Staff replaced a dilapidated No Parking sign along the 600 block of Texas Street around November of 2016.

Once this sign was replaced, a concerned landowner contacted the staff and asked why a new sign was placed. After further research staff could not find an established "No Parking" ordinance designating the block for "No Parking". Staff then removed the sign which prompted another landowner to question and express their concerns of the removal of the sign.

A request was then submitted by Mr. Derek Duknic to establish a no parking zone along both sides of the 600 block of Texas Street. Staff proceeded with the process of establishing this zone which included notifying property owners and submitting an ordinance to the city council for approval. Staff also reviewed the request and it is the opinion of emergency response staff that the street does have physical limitations of access if there are vehicles parked along the street right of way.

Based on the width of the street, it is acknowledged by both the fire and police departments that a "No Parking" zone would be helpful in assuring better access when responding to an emergency. Not all property owners are in agreement for the no parking zone.

Mr. Donald Downey owns property in the block and does not agree with the recommendation. Mr. Downey's opinion is that there has not been a problem with parking in the past and the proposed ordinance only will hinder daily activities if approved as recommended.

Notification of the property owners, as listing in the Harris County Appraisal District tax rolls, fronting the 600 block of Texas Street have been notified.

Origination:

Public Works

Recommendation:

n/a

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

David Esquivel

ACTION TAKEN

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

ATTACHMENTS:

No parking Ordinance

Landowners list of notification

sample letter

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.

WHEREAS, the City of Tomball is a home rule city acting under its charter adopted by the electorate pursuant to Article XI, Section 5 of the Texas Constitution and Chapter 9 of the Local Government Code; and

WHEREAS, the City Council recognizes that streets within certain residential areas within the City are too narrow to allow on-street parking of vehicles in those residential areas; and

WHEREAS, the City Council desires to adopt new regulations restricting the on-street parking of vehicles in designated residential areas;

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

Section 1. It shall be unlawful for any person to park, or allow to be parked, any motor vehicle on the street or street right-of-way, in the following designated residential area:

The East End of Texas Street, between Willow and Welty Streets (600 Block of Texas Street).

Parking does not include the expeditious loading or unloading of passengers, freight, household goods, material or merchandise between the hours of sunrise and sunset.”

Section 2. 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 \$200.00. Each day of violation shall constitute a separate offense.

Section 3. 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 4. 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 3RD DAY OF APRIL 2017.

COUNCILMAN HUDGENS	_____
COUNCILMAN STOLL	_____
COUNCILMAN DEGGS	_____
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 17TH DAY OF APRIL 2017.

COUNCILMAN HUDGENS	_____
COUNCILMAN STOLL	_____
COUNCILMAN DEGGS	_____
COUNCILMAN TOWNSEND	_____
COUNCILMAN KLEIN QUINN	_____

Gretchen Fagan, Mayor

ATTEST:

Doris Speer, City Secretary

**Constance Singleton
9225 Katy Fwy Ste 204
Houston Tx 77024-1509**

**Torres Tyler P
18502 Hardy Trace Dr
Tomball Tx 77377-2522**

**Torres Todd M
615 Texas St
Tomball Tx 77375-4858**

**Mcclure Helen
33903 Cripple Creek Dr
Pinehurst Tx 77362-4040**

**Mcclure Helen
633 Texas St
Tomball Tx 77375**

**Carmona Socorro
633 Texas St Trlr 1
Tomball Tx 77375-4818**

**Carmona Socorro
633 Texas St # 1
Tomball Tx 77375**

**Downey Donald R & Eleuteria R
29918 Keen Rd
Tomball Tx 77377-3821**

**Downey Donald R & Eleuteria R
635 Texas St
Tomball Tx 77375**

**Davis Melody A
1435 Terracewood St
Nacogdoches Tx 75965-2250**

**Reeves Stacy E
21103 Fm 362 Rd
Waller Tx 77484-5922**

**Reeves Stacy E
614 Texas St
Tomball Tx 77375**

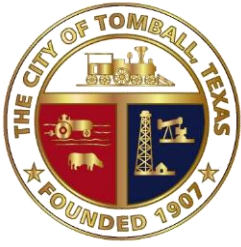
**Johnson Roger L Jr
622 Texas St
Tomball Tx 77375-4859**

**Detwiler Maribel D & Earl F
626 Texas St
Tomball Tx 77375-4859**

**Duknic Derek & Jennifer
634 Texas St
Tomball Tx 77375-4859**

**Rex Jonathan & Angela
636 Texas St
Tomball Tx 77375-4859**

Wilcox John T
Po Box 341
Conroe Tx 77305-0341



City of Tomball

Gretchen Fagan
Mayor

George Shackelford
City Manager

March 30, 2017

RE: Proposed No Parking Ordinance – 600 Blk of Texas Avenue also being between Willow Street and Welty Streets.

Dear Homeowner,

A request has been made to the City Council to establish a “No Parking” zone by ordinance along both sides of Texas Ave between Willow Street and Welty Street which is also the 600 block of Texas Avenue. This notice has been provided to you as a property owner who would be affected by this ordinance. The proposed ordinance is scheduled to be heard by the City Council on April 17th beginning at 6:00 pm. The “No Parking” zone has been requested due to the concerns of being able to access property in routine daily activities but also in cases of emergencies. Both the Fire Chief and Police Chief are in agreement that this proposal is a prudent action to help ensure access.

If you have any concerns, questions comments regarding this proposal you are encouraged to do so. You may call or email me at 281-290-1415 (desquivel@tomballtx.gov) or Lexi McMinn at 281-290-1425 (amcminn@tomballtx.gov). You may also attend the council meeting.

Sincerely,

David Esquivel, PE
Director of Public Works
City of Tomball

Regular City Council

Agenda Item

Data Sheet

Meeting Date: April 17, 2017

Topic:

Consideration to approve **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.

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

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

ATTACHMENTS:

Ordinance No. 2017-12

Notice of Public Hearing

Property Owner Notification Letter

Staff Report

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	_____
COUNCILMAN STOLL	_____
COUNCILMAN DEGGES	_____
COUNCILMAN TOWNSEND	_____
COUNCILMAN 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 1ST DAY OF MAY 2017.

COUNCILMAN HUDGENS	_____
--------------------	-------

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

Gretchen Fagan, Mayor

ATTEST:

Doris Speer, City Secretary

**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.

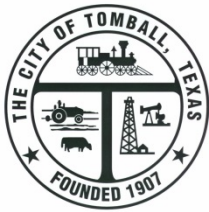
At the public hearings, parties of interest and citizens will have the opportunity to be heard. All citizens of the City of Tomball, and any other interested parties, are invited to attend. Applications are available for public inspection Monday through Friday, except holidays, at the Public Works Building, 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.

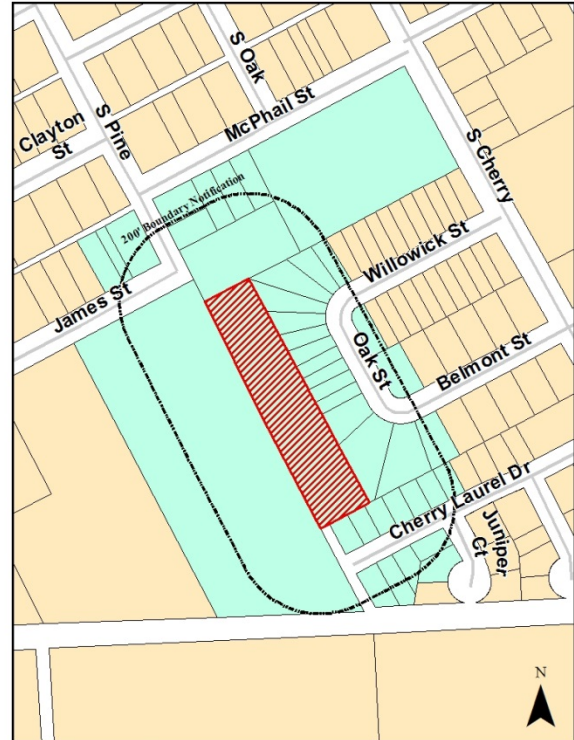
CONTACT: Amelia Lindley

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:

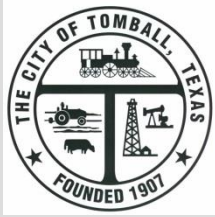
Monday, April 10, 2017, 6:00 PM

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.



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

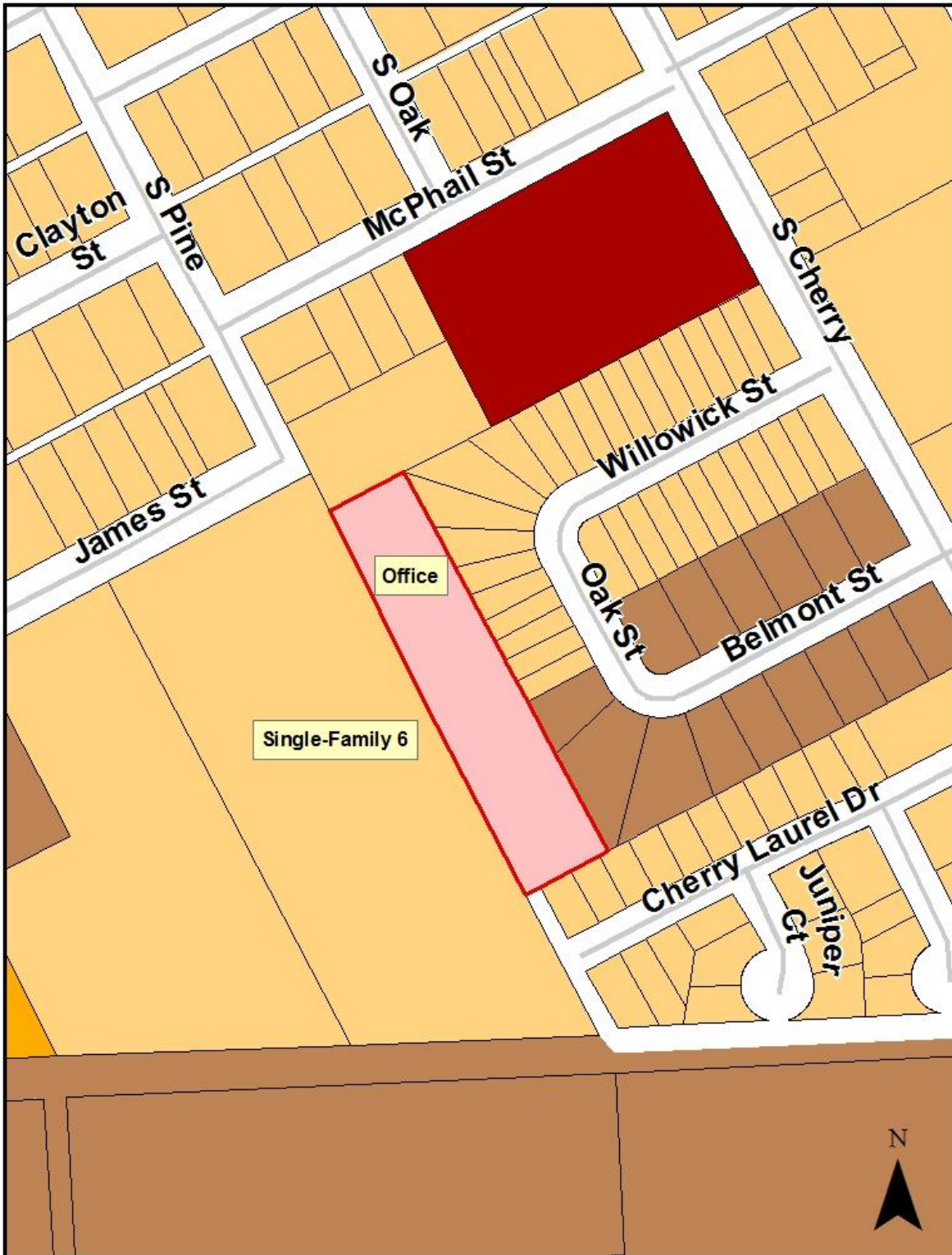
Exhibit "A"
Aerial Photo



Exhibit "B"
Comprehensive Plan



Exhibit "C"
Zoning Map



**Exhibit “D”
Site Photos**



Figure 1: Subject Site



Figure 2: Site view along South Pine Street

Exhibit "E"

CUP Application

Revised 5/19/15



APPLICATION FOR CONDITIONAL USE PERMIT

Community Development Department
Planning Division



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: (834-987-15) 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

City of Tomball, Texas 501 James Street, Tomball, Texas 77375 Phone: 281-290-1405

www.tomballtx.gov

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

City of Tomball, Texas

TENDERED: 600.00 CHECK
APPLIED: 600.00-
CHANGE: 0.00

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**



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 Living 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.

Without 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: April 17, 2017

Topic:

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**
- 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.

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.

Origination:

BCDE, Ltd./Eibsen & Associates

Recommendation:

Approval

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

Craig T. Meyers, Community Development Director

ACTION TAKEN

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

Ordinance 2017-13
Notice of Public Hearing
Property Owner Notification Letter
Staff Report P17-0023
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 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	_____
COUNCILMAN STOLL	_____
COUNCILMAN DEGGES	_____
COUNCILMAN TOWNSEND	_____
COUNCILMAN 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 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



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

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 
Signature of Applicant

2/29/2017

Date

X 
Signature of Owner

2/20/2017

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” PD District Regulations

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

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 260 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
7. 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:
 - (a) 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 $\frac{3}{4}$ 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.

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

Small & Ornamental Trees:

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

Shrubs:

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

Exhibit "C"

PD District Request Letter



March 1, 2017

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

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 Hufsmith-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



Mr. Meyers

2

March 1, 2017

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,

A handwritten signature in black ink, appearing to read 'Scott McKinzie'.

Scott McKinzie, Planner

SWM:jr

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

**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.

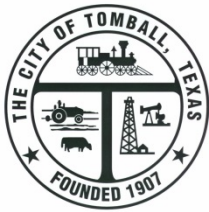
At the public hearings, parties of interest and citizens will have the opportunity to be heard. All citizens of the City of Tomball, and any other interested parties, are invited to attend. Applications are available for public inspection Monday through Friday, except holidays, at the Public Works Building, 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: P17-0023

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.

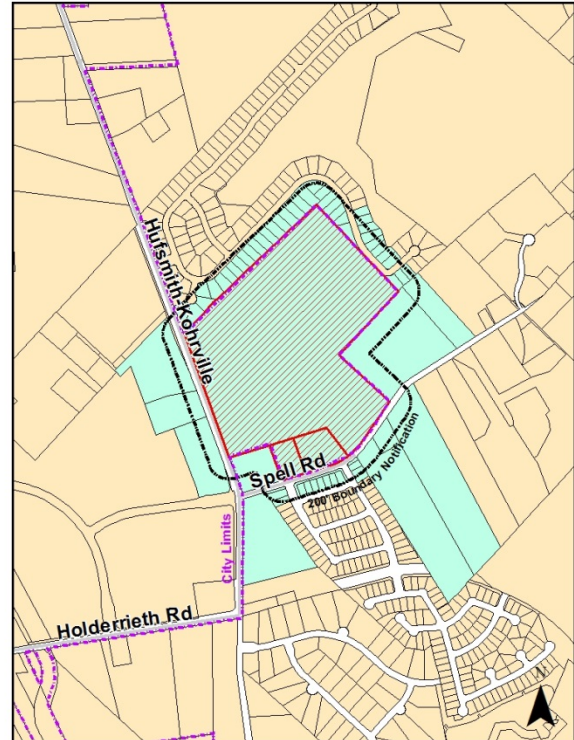
CONTACT: Amelia Lindley

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:

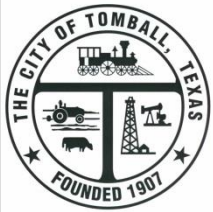
Monday, April 10, 2017, 6:00 PM

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.



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 assets 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 site 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

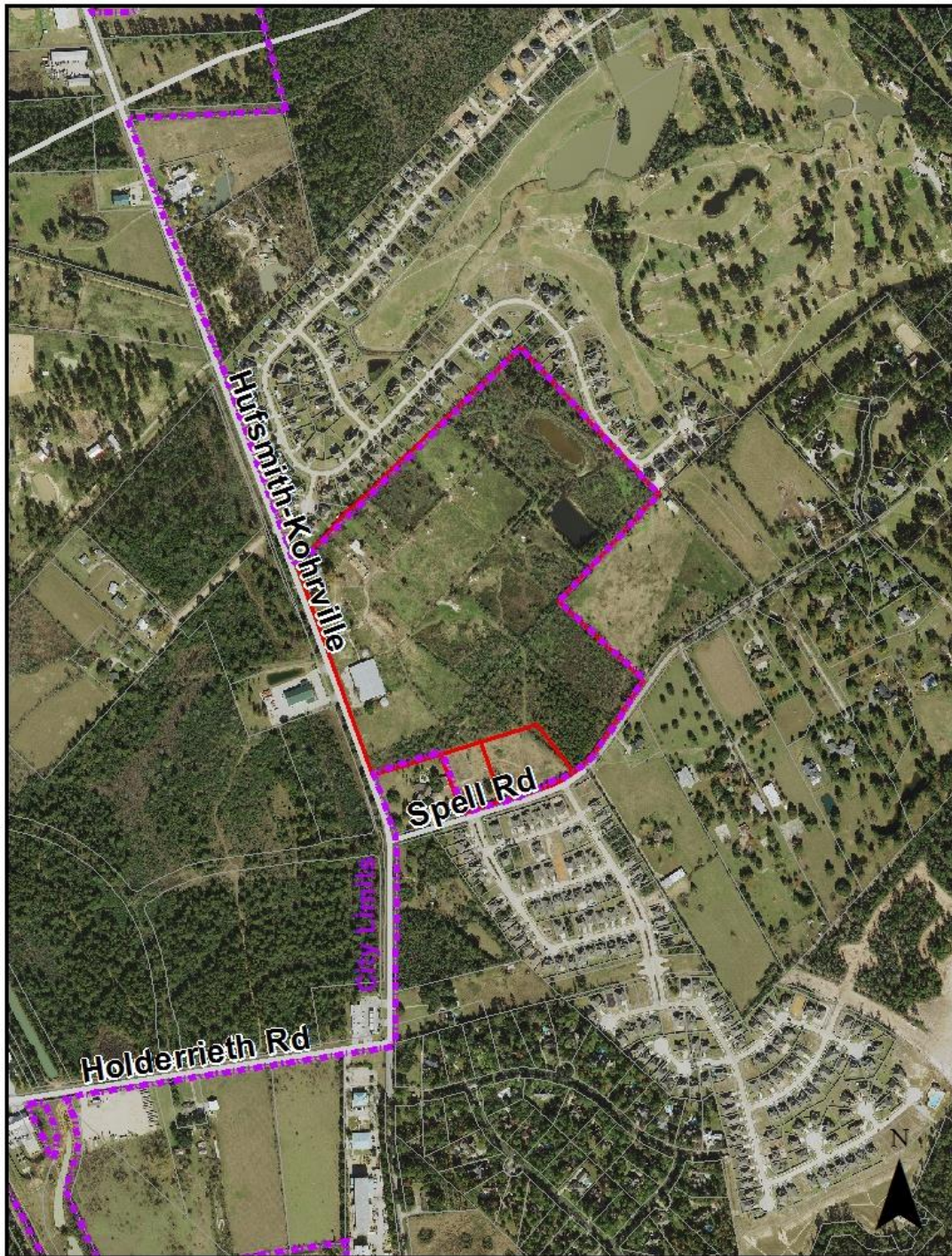
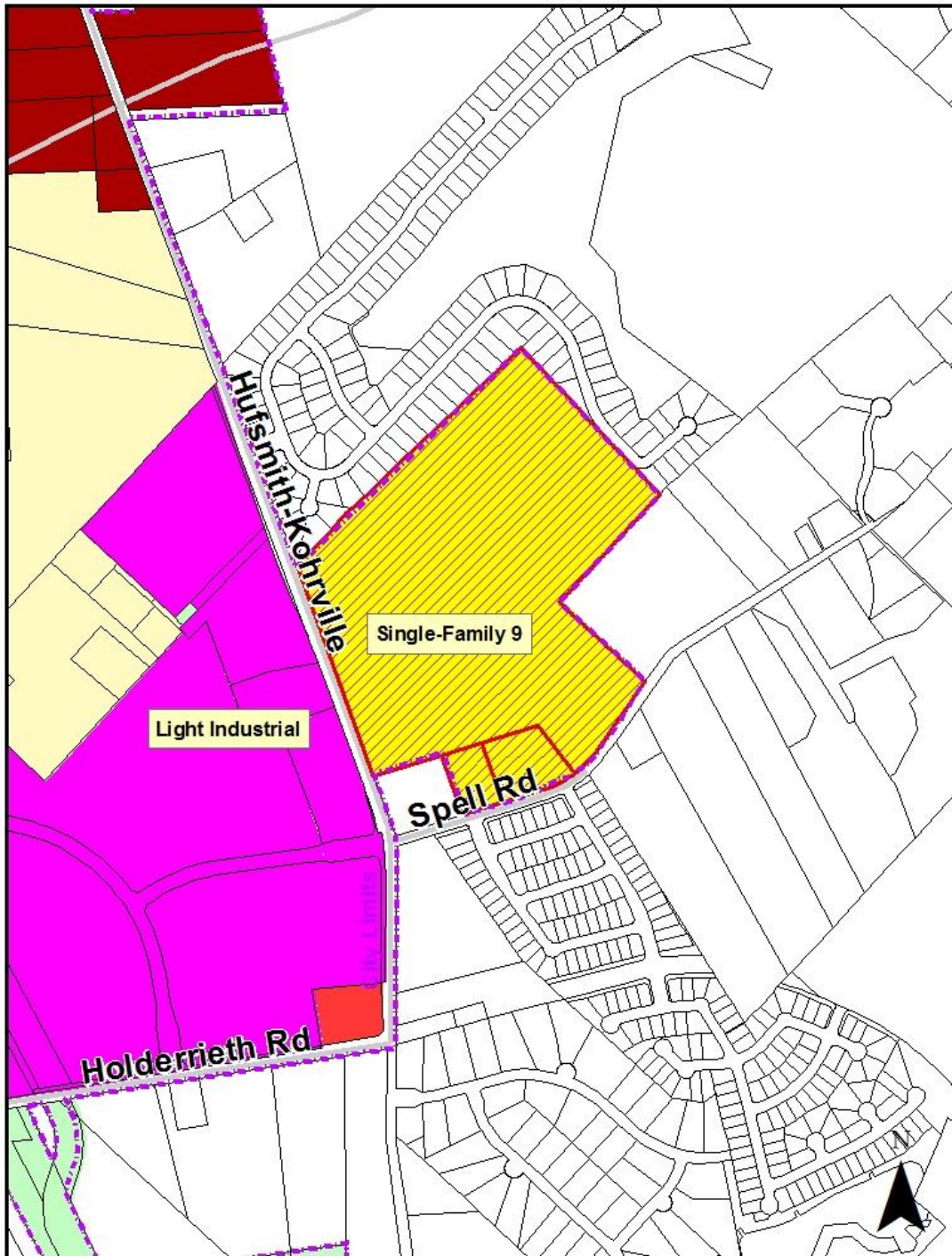


Exhibit "B"
Zoning Map



**Exhibit “C”
Site Photo(s)**



Subject Site along Hufsmith-Kohrville Road



Subject Site along Spell Road

**Exhibit “D”
Comprehensive Plan Map**

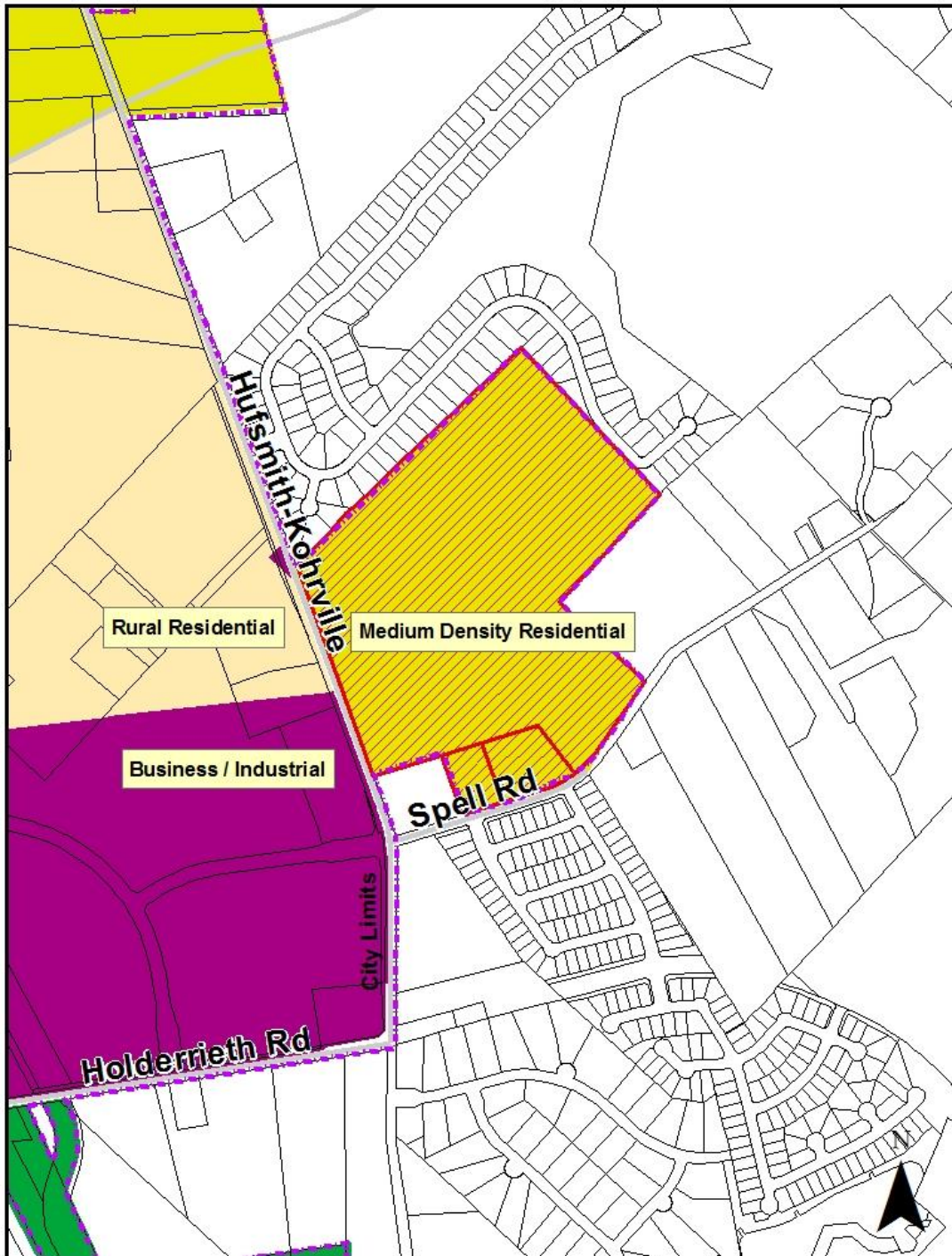


Exhibit "E"
PDD Application

Revised 5/19/15



P17-0023
APPLICATION FOR REZONING
Community Development Department
Planning Division



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

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
Signature of Applicant

Date

2/28/2017

X
Signature of Owner

Date

2/28/2017

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



March 1, 2017

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

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 Hufsmith-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



JONES | CARTER

Mr. Meyers

2

March 1, 2017

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.

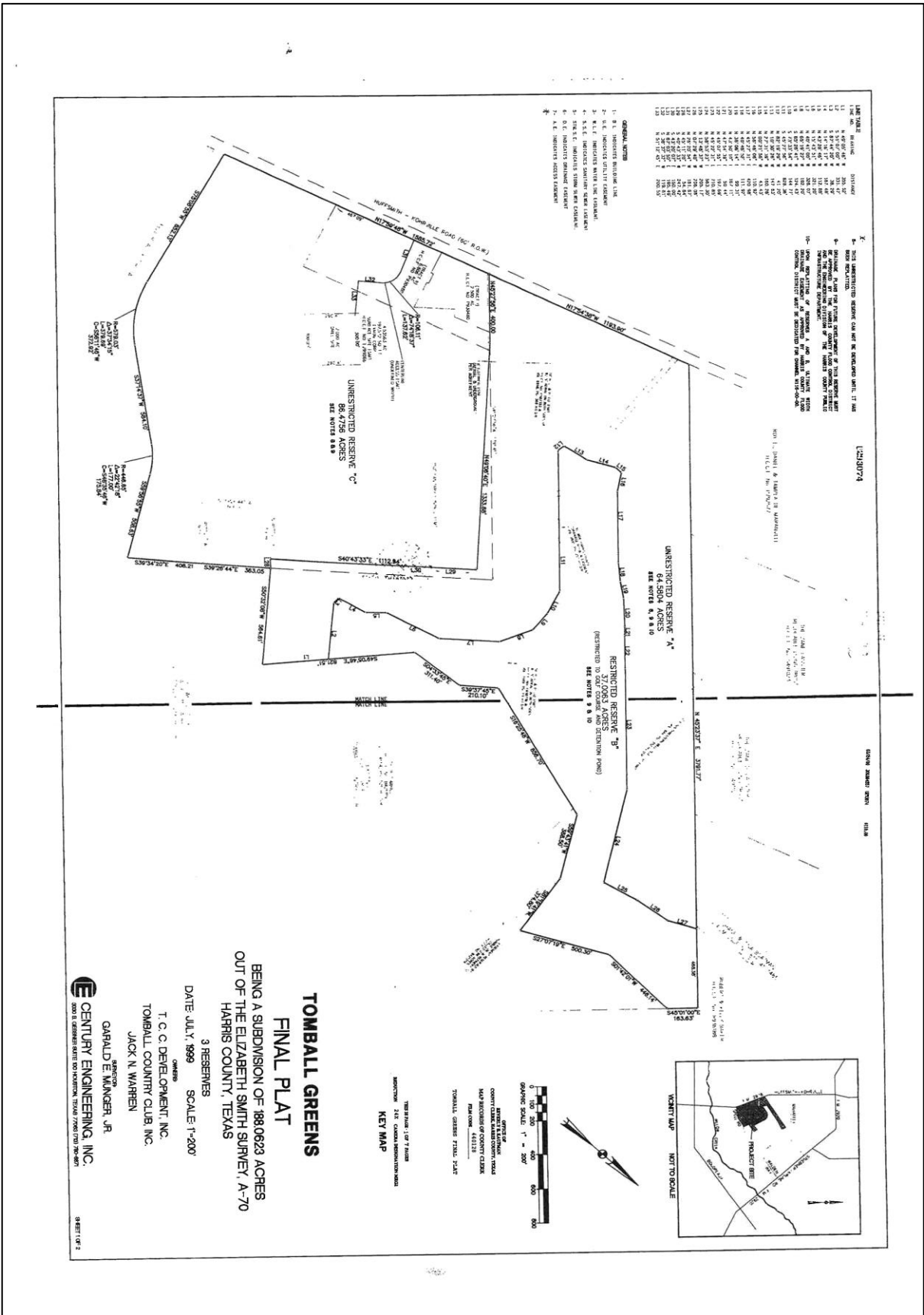
Please feel free to contact me if you have any questions or would like any additional information. We appreciate your assistance and look forward to successfully rezoning the referenced property.

Regards,

Scott McKinzie, Planner

SWM:jr

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





JONES CARTER

ALEXANDER ESTATES



THIS MAP WAS PREPARED USING AERIAL PHOTOGRAPHY. THE PROPOSED DEVELOPMENT IS SHOWN IN YELLOW. THE DETENTION POND IS SHOWN IN BLUE. THE PROPOSED DEVELOPMENT IS SHOWN IN YELLOW. THE DETENTION POND IS SHOWN IN BLUE. THE PROPOSED DEVELOPMENT IS SHOWN IN YELLOW. THE DETENTION POND IS SHOWN IN BLUE.



ILLUSTRATION 1
300 LOTS - SF-6
(50' X 120') - 6,000 S.F.



JONES CARTER

ALEXANDER ESTATES



THIS MAP WAS PREPARED USING REASONABLY ACCURATE AIRBORNE AND GROUND SURVEY DATA AND IS SUBJECT TO CHANGE WITHOUT NOTICE. THE PROPERTY LINES AND LOT AREAS SHOWN ON THIS MAP ARE BASED ON THE BEST AVAILABLE DATA AND ARE NOT GUARANTEED. THE PROPERTY LINES AND LOT AREAS SHOWN ON THIS MAP ARE NOT TO BE USED FOR ANY OTHER PURPOSES WITHOUT THE WRITTEN CONSENT OF JONES CARTER.

SCALE: 1"=200'

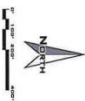
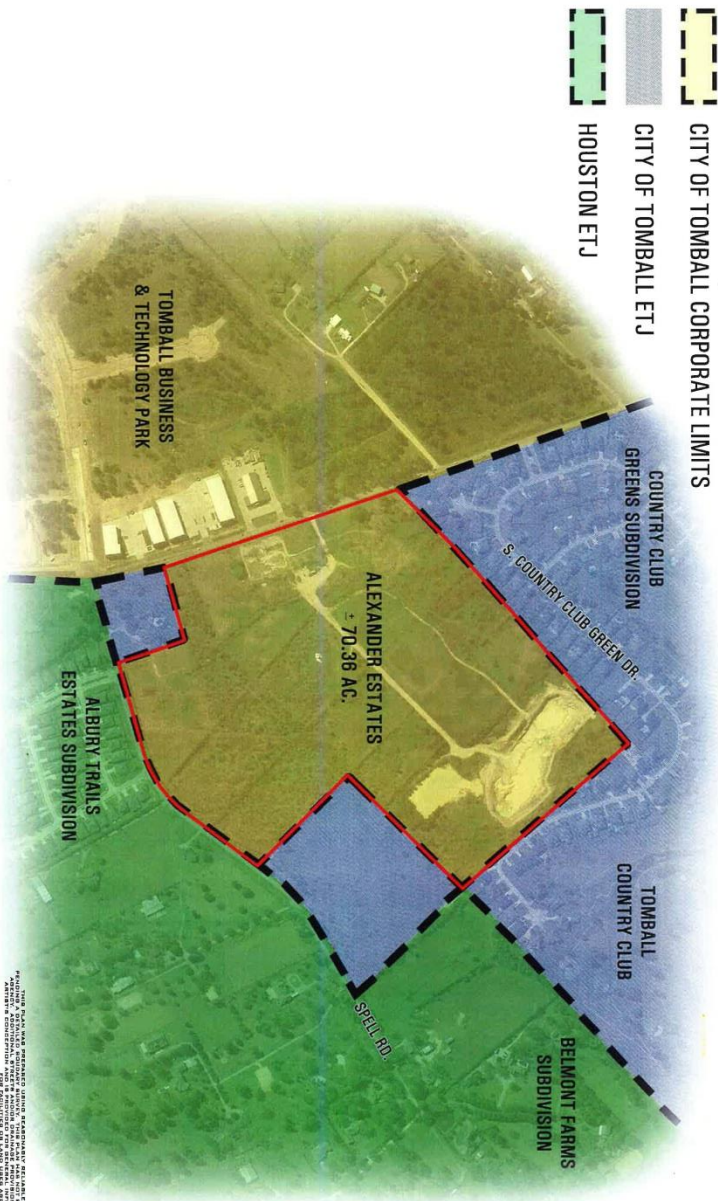


ILLUSTRATION 2
201 LOTS - SF-9
(75' X 120') - 9,000 S.F.

Exhibit “F”
Concept Plan



EXHIBIT B-1b:
JURISDICTION MAP



JONES & CARTER

ALEXANDER ESTATES

EXHIBIT B-2a:
SITE PLAN



LOT ANALYSIS	
MAXIMUM 260 LOTS	
SFR-2	50' x 130' Typical
SFR-1	60' x 130' Typical
M	model home

THIS PLAN HAS BEEN PREPARED USING AERIAL PHOTOGRAPHS AND FIELD SURVEY DATA. THE PROPERTY LINES AND LOT AREAS SHOWN ON THIS PLAN ARE BASED ON THE SURVEY DATA. THE PROPERTY LINES AND LOT AREAS SHOWN ON THIS PLAN ARE NOT TO BE USED FOR ANY OTHER PURPOSES. THE PROPERTY LINES AND LOT AREAS SHOWN ON THIS PLAN ARE NOT TO BE USED FOR ANY OTHER PURPOSES.

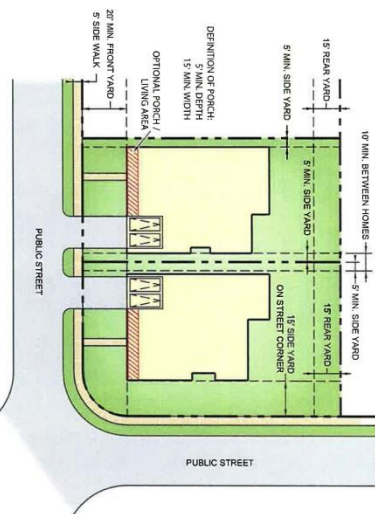


J.C. JONES & CARTER

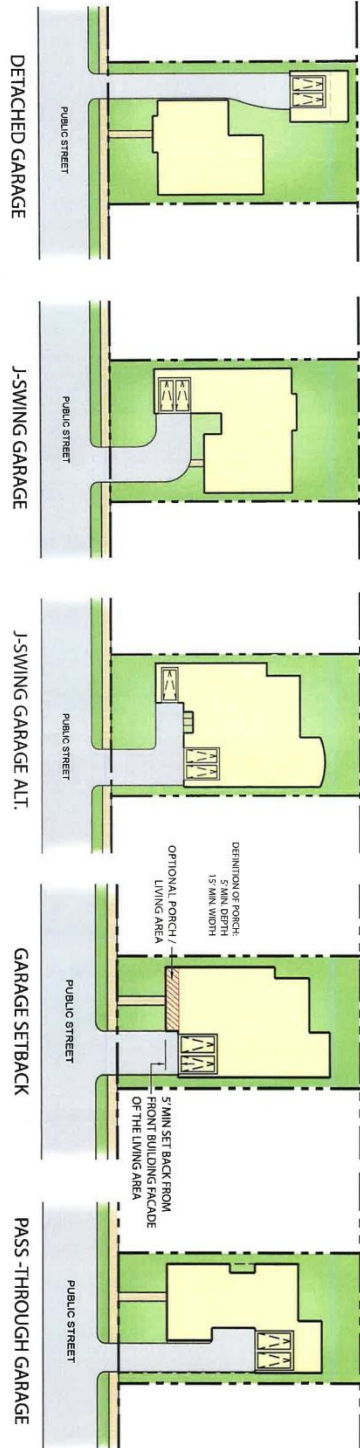
ALEXANDER ESTATES

EXHIBIT B-2b:

LOT CONFIGURATIONS



TYPICAL LOT CONFIGURATION



DETACHED GARAGE

J-SWING GARAGE

J-SWING GARAGE ALT.

GARAGE SETBACK

PASS-THROUGH GARAGE



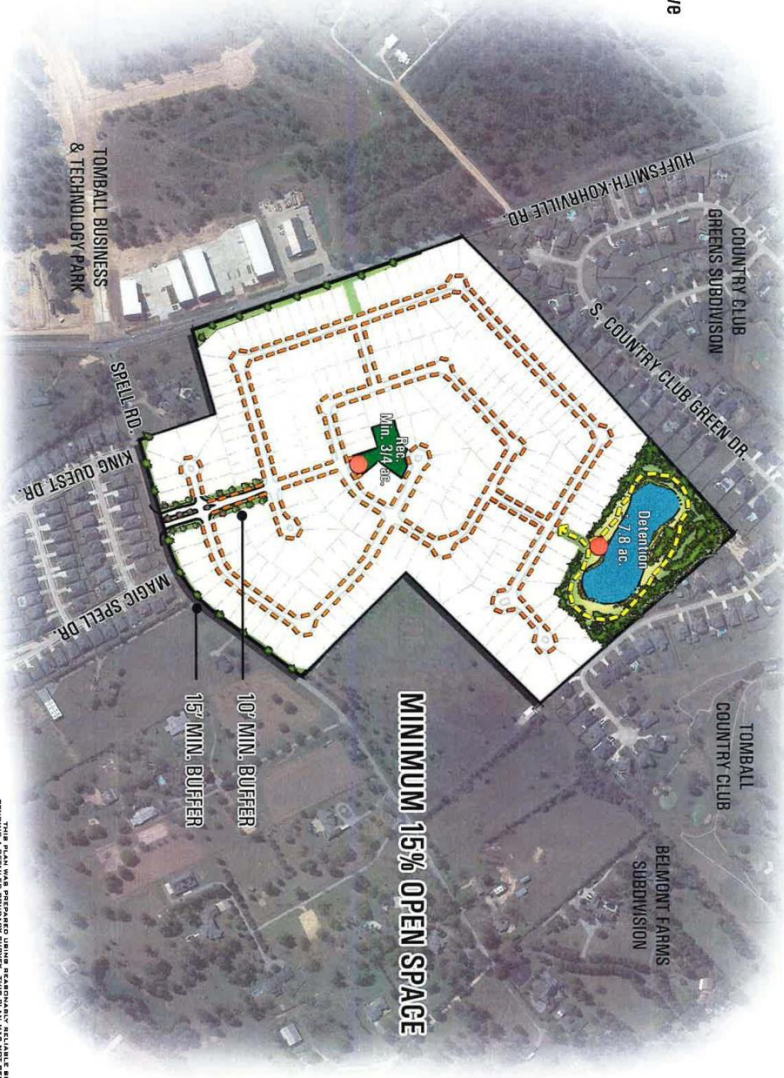
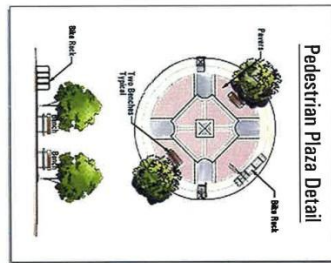
JONES | CARTER

ALTERNATIVE GARAGE SETBACKS

DRAWING NOT TO SCALE

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 SUBMITTED TO THE CITY OF HOUSTON FOR REVIEW AND APPROVAL. THE CITY OF HOUSTON DOES NOT WARRANT THE ACCURACY OF THE INFORMATION PROVIDED HEREON. THE CITY OF HOUSTON DOES NOT WARRANT THE ACCURACY OF THE INFORMATION PROVIDED HEREON. THE CITY OF HOUSTON DOES NOT WARRANT THE ACCURACY OF THE INFORMATION PROVIDED HEREON.



JONES & CARTER

ALEXANDER ESTATES



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:

(please print)

Address:

Signature:

Date:

VATSALA BHASKARAN

11035 SPELL ROAD

TOMBALL TEXAS 77375

[Signature]

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)

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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 in 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 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:

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: [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)

☒ 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 ft² 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 ft² 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

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 lot 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 Huffsmith-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@tomballtx.gov.com); Mark Stoll; Chad Degges; Derek Townsend; Lori Klein Quinn; Amelia Lindley; Kimberly Chandler; Richard Anderson (randerson@tomballtx.gov.com); Darrel Roquemoore (droquemoore@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 retention 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, other than 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 ameliorate 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: April 17, 2017

Topic:

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.

Background:

On April 3, 2017, City Council directed Staff to reinstate the non-residential property water and wastewater impact fee waiver area that expired on March 2, 2017. If passed, Ordinance 2017-14 will waive the water and wastewater impact fees in the Old Town Area and for properties along FM 2920 from Business 249 to Willow Street until May 15, 2019.

Origination:

City Council

Recommendation:

Approval

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

Craig T. Meyers, Community Development Director

ACTION TAKEN

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

Ordinance 2017-14

Impact Fee Waiver Area Map

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.

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WHEREAS, on or about August 4, 2014, the City Council of the City of Tomball, Texas adopted a Capital Improvements Plan and Impact Fees for Water and Wastewater Utilities; and

WHEREAS, the City Council desires to waive impact fees for water and wastewater utilities for non-residential properties located 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 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; 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 are hereby found to be true and correct.

Section 2. 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 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 are hereby waived until May 15, 2019.

Section 3. 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.

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	_____
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 1ST DAY OF MAY
2017.

COUNCILMAN HUDGENS
COUNCILMAN STOLL
COUNCILMAN DEGGS
COUNCILMAN TOWNSEND
COUNCILMAN KLEIN QUINN

Gretchen Fagan, Mayor

ATTEST:

Doris Speer, City Secretary

City of Tomball, Texas

Impact Fee Waiver Area



Regular City Council

Agenda Item

Meeting Date: April 17, 2017

Data Sheet

Topic:

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 Chauffeur'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 First Reading

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

Doris Speer, City Secretary

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

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.

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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 driver'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 _____ DAY OF _____ 2016.

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 _____ 2016.

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

Gretchen Fagan, Mayor

ATTEST:

Doris Speer, City Secretary