NOTICE OF REGULAR CITY COUNCIL MEETING
CITY OF TOMBALL, TEXAS

MONDAY, OCTOBER 5, 2020

6:00 P.M.

Notice is hereby given of a meeting of the Tomball City Council, to be held on Monday, October 5, 2020 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

1.1 IN ACCORDANCE WITH ORDER OF THE OFFICE OF THE GOVERNOR ISSUED MARCH 16, 2020, THE CITY COUNCIL OF THE CITY OF TOMBALL, TEXAS, WILL CONDUCT THEMEETING SCHEDULED FOR OCTOBER 5, 2020, 6:00 P.M., AT 401 MARKET STREET, TOMBALL, TEXAS, 77375. IN ORDER TO ADVANCE THE PUBLIC HEALTH GOAL OF LIMITING FACE-TO-FACE MEETINGS (ALSO CALLED "SOCIAL DISTANCING") TO SLOW THE SPREAD OF THE CORONAVIRUS (COVID-19), THERE WILL BE LIMITED PUBLIC ACCESS TO THE LOCATION DESCRIBED ABOVE. THIS MEETING AGENDA AND THE AGENDA PACKET ARE POSTED ONLINE AT https://tomballtx.gov/Archive.aspx?AMID=38; A RECORDING OF THE MEETING WILL BE MADE AND WILL BE AVAILABLE TO THE PUBLIC IN ACCORDANCE WITH THE OPEN MEETINGS ACT UPON WRITTEN REQUEST.

The public toll-free dial-in numbers to participate in the telephonic meeting are any one of the following (dial by your location): **+1 346 248 7799 US (Houston); +1 253 215 8782 US (Tacoma); +1 669 900 9128 US (San Jose); +1 312**

626 6799 US (Chicago); +1 646 558 8656 US (New York); +1 301 715 8592 US (Germantown) - Meeting ID: 868 3488 7916. The public will be permitted to offer public comments telephonically, as provided by the agenda and as permitted by the presiding officer during the meeting.

2.0 Invocation

- Led by Pastor David Hinkle – Tomball Bible Church

3.0 Pledges to U.S. and Texas Flags

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 Reports and Announcements

- November 7, 2020- "**Depot Day**"- 10:00 a.m.-5:00 p.m., **a National Model Railroad Month Celebration at the Depot - Tomball-** *a Virtual Event*
- November 20, 2020 - **Christmas Tree Lighting at the Depot** - 7:00 p.m. - a *Virtual Event*
- November 26-27, 2020 - **Thanksgiving Holiday** - City offices closed
- December 24-25, 2020 - **Christmas Holidays** - City offices closed
- January 1, 2021 - **New Year's Day Holiday** - City offices closed
- Reports by City staff and Members of Council about items of community interest on which no action will be taken:

6.0 Approve the Minutes of the Regular September 7, 2020 City Council Meeting and the Special September 14, 2020 City Council Meeting.

7.0 New Business:

7.1 Approve Developer Agreement between the City of Tomball and HT Raburn Reserve Development LP to in regards to the over-sizing material cost of the water main extension through the Raburn Reserve subdivision in an amount not to exceed $24,511.86

7.2 Adopt, on First Reading, Ordinance No. 2020-31, an Ordinance Amending the Code of Ordinances of the City of Tomball, Texas by Amending Section 34-1, Definitions, and Section 34-7, Miscellaneous Sign Provisions, of Article I, In General, of Chapter 34, Signs, to Delete the Definition of Old Town Area and to Amend Regulations Regarding Sign Colors; 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

7.3 Award contract to for E&P Project 2019-10015 to Cooley Construction, LLC in the amount of $3,398,332.00 for the construction of drainage improvements along S. Persimmon.

7.4 Approve Resolution No. 2020-33, a Resolution of the City Council of the City of Tomball, Texas, authorizing the submission of a Local Parks Non-Urban Outdoor Recreation grant application to the Texas Parks and Wildlife Department and Authorize the City Manager and Assistant City Manager to act as the City's Executive Officer and authorized representative.

7.5 Conduct Public Hearing regarding the City's intent to apply for a Texas Parks and Wildlife Grant.

7.6 Approve Resolution No. 2020-34, a Resolution of the City Council of the City of Tomball, Texas, resolving to prevent mining and drilling At Jerry Matheson Park.

7.7 Appoint Weaver & Tidwell, LLP as auditors for the Fiscal Year Ending September 30, 2020 and authorize the City Manager to enter into negotiations with the firm as to fees charged and other relevant terms of the audit engagement

7.8 Adopt, on First and Final Reading, Ordinance No. 2020-28, An Ordinance of the City Council of the City of Tomball, Texas, Authorizing the Issuance of City of Tomball, Texas, General Obligation Refunding Bonds, Series 2020; Levying a Tax in Payment Thereof; Authorizing the Issuance of the Bonds in Accordance with Specified Parameters; Authorizing the Redemption Prior to Maturity of Certain Outstanding Bonds; Approving the Preparation and Distribution of an Official Statement; and Enacting Other Provisions Relating Thereto; and Providing for the Effective Date Thereof

7.9 Approve Resolution No. 2020-35, a Resolution of the City of Tomball, Texas, Adopting Texas Coalition for Affordable Power, Inc. (TCAP) Professional Services Agreement and Gexa Energy's Commercial Electric Service Agreement for Power to be Provided On and After January 1, 2023

8.0 Adjournment

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 1st day of October 2020 by 6:00 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: October 5, 2020

Topic:

- Led by Pastor David Hinkle – Tomball Bible Church

Background:

Origination:

Recommendation:

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

ACTION TAKEN

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

Regular City Council
Agenda Item
Data Sheet

Meeting Date: October 5, 2020

Topic:

- November 7, 2020- "**Depot Day**"- 10:00 a.m.-5:00 p.m., **a National Model Railroad Month Celebration at the Depot - Tomball-** *a Virtual Event*
- November 20, 2020 - **Christmas Tree Lighting at the Depot** - 7:00 p.m. - a *Virtual Event*
- November 26-27, 2020 - **Thanksgiving Holiday** - City offices closed
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- January 1, 2021 - **New Year's Day Holiday** - City offices closed
- Reports by City staff and Members of Council about items of community interest on which no action will be taken:

Background:

Origination:

Recommendation:

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

ACTION TAKEN

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

Regular City Council
Agenda Item
Data Sheet

Meeting Date: October 5, 2020

Topic:

Approve the Minutes of the Regular September 7, 2020 City Council Meeting and the Special September 14, 2020 City Council Meeting.

Background:

Origination:

City Secretary

Recommendation:

Approve

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

City Secretary

ACTION TAKEN

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

ATTACHMENTS:

September 21, 2020 Special Joint Tomball City Council & Tomball Economic Development Corporation
Regular September 21, 2020 Tomball City Council Meeting

MINUTES OF SPECIAL JOINT MEETING OF THE TOMBALL CITY COUNCIL AND THE TOMBALL ECONOMIC DEVELOPMENT CORPORATION CITY OF TOMBALL, TEXAS

MONDAY, SEPTEMBER 21, 2020

5:13 P.M.

1.0 The Special Joint Meeting of the Tomball City Council and the Tomball Economic Development Corporation was called to order at 4:35 p.m. by Mayor/TEDC President Fagan (in person). Other members present:

Tomball City Council:

Councilman Stoll
Councilman/TEDC Board Member Degges
Councilman Townsend (via video)
Councilman Lori Klein Quinn
Councilman Ford

Tomball Economic Development Corporation:

Board Member Benson
Board Member Jaeger (via video)

Others present:

City Manager – Robert Hauck
Assistant City Manager – David Esquivel
City Secretary – Doris Speer
Assistant City Secretary- Tracylynn Garcia
City Attorney – Loren B. Smith
Legal Secretary/Host - Layla Walker (via video)
Finance Director – Glenn Windsor
Marketing Director – Mike Baxter (via video)
Director of Community Development – Craig Meyers
Police Chief – Jeff Bert
Executive Director-TEDC – Kelly Violette
Assistant Director-TEDC – Tiffani Wooten
Administrative Assistant-TEDC – Tori Gleason

2.0 No public comments were received.

3.0 New Business:

3.1 Workshop Session: The Tomball City Council and the Tomball Economic Development Corporation entered into a Joint Workshop regarding Downtown Tomball Alley Enhancements.

4.0 Motion was made by Councilman Klein Quinn and Councilman Townsend to adjourn the meeting.

Motion carried unanimously.

Meeting adjourned at 6:04 p.m.

PASSED AND APPROVED this the 5th day of October 2020.

Doris Speer, TRMC, MMC	Gretchen Fagan
City Secretary	Mayor

MINUTES OF REGULAR CITY COUNCIL MEETING
CITY OF TOMBALL, TEXAS

MONDAY, SEPTEMBER 21, 2020
6:00 P.M.

The City Council of the City of Tomball, Texas, conducted the meeting scheduled for August 3, 2020, at 6:03 p.m., at 401 Market Street, Tomball, Texas, 77375, via video/telephone conference (Zoom).

1.0 Mayor Fagan called the meeting to order at 6:15 p.m., having established a quorum. Mayor Fagan read a statement regarding the process for the conduct of the meeting via Zoom and telephone. Members present (in person):

Councilman Ford
Councilman Stoll
Councilman Degges
Councilman Klein Quinn

Members present (via video):

Councilman Townsend

Others present:

City Manager – Robert Hauck
Assistant City Manager – David Esquivel
City Secretary – Doris Speer
Assistant City Secretary – Tracylynn Garcia
City Attorney – Loren Smith
Legal Secretary-Olson & Olson – Layla Walker (via video)
Fire Chief – Randy Parr
Fire Marshall – Joe Sykora (via video)
Assistant Fire Chief – Taner Drake
Police Chief – Jeff Bert
Marketing Director – Mike Baxter (via video)
Finance Director – Glenn Windsor
Director of Public Works – Beth Jones
Director of Community Development – Craig Meyers
Police Officer-Bailiff – Rom McGullion

2.0 The invocation was led by Pastor Jerry Williams – EPIC Ministriesd.

3.0 Pledges to U. S. and Texas Flags were led by Assistant Fire Chief Drake Taner.

4.0 One public comment was received:

David Quinn
13415 Lost Creek Rd
Tomball, Texas 77375

Spoke in favor of Alleyways.

5.0 No Reports and Announcements were given.

6.0 Motion was made by Councilman Stoll, second by Councilman Klein Quinn, to approve the Minutes of the September 8, 2020 Regular City Council Meeting and the September 14, 2020 Special Tomball City Council Meeting.

7.0 Old Business:

7.1 Motion was made by Councilman Stoll, second by Councilman Klein Quinn, to adopt, on Second Reading, Ordinance No. 2020-25, an Ordinance Amending the Code of Ordinances of the City of Tomball, Texas by Amending Section 34-1, Definitions, and Section 34-7, Miscellaneous Sign Provisions, of Article I, In General, of Chapter 34, Signs, to Add a Definition of Old Town Area and to Apply Regulations to Sign Colors within the Old Town Area; 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 Ford	Aye
Councilman Stoll	Nay
Councilman Degges	Aye
Councilman Klein Quinn	Aye
Councilman Townsend	Aye

Motion carried 4 votes Aye 1 vote Nay.

7.2 Motion was made by Councilman Townsend, second by Councilman Klein Quinn, approve, on Second Reading, Resolution No. 2020-26-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 Performance Agreement By and Between the Corporation and TCG Capital, LLC, to Make Direct Incentives to, or Expenditures for, Assistance with Infrastructure Costs Required or Suitable for the Promotion of New or Expanded Business Enterprise Related to the Construction of a 44,000 Square Foot Indoor Sports Facility to be Located at 19220 Theis Ln., Tomball, Texas 77375. The Estimated Amount of Expenditures for Such Project is $119,450.00.

Motion carried unanimously.

7.3 Motion was made by Councilman Townsend, second by Councilman Stoll, to adopt, on Second Reading, Ordinance No. 2020-26, an Ordinance of the City of Tomball, Texas Approving a Service and Assessment Plan and Assessment Roll for Authorized Improvements for The Raburn Reserve Public Improvement District (The "District"); Making a Finding of Special Benefit to Certain Property in The District; Levying Assessments Against Certain Property within The District and Establishing a Lien on Such Property; Providing for Payment of the Assessment in Accordance with Chapter 372, Texas Local Government Code, as Amended; Providing for the Method of Assessment and the Payment of the Assessments; Providing Penalties and Interest on Delinquent Assessments; Providing for Severability and Providing an Effective Date. Vote was as follows:

Councilman Stoll	Aye
Councilman Degges	Aye
Councilman Klein Quinn	Aye
Councilman Townsend	Aye
Councilman Ford	Aye

Motion carried unanimously.

8.0 New Business:

8.1 Motion was made by Councilman Townsend, second by Councilman Degges, to read Ordinance No. 2020-27 by caption only on First and Only Reading.

Motion carried unanimously.

Motion was made by Councilman Ford, second by Councilman Klein Quinn, to adopt, on First and Only Reading, Ordinance No. 2020-27, an Ordinance Approving and Authorizing the Issuance and Sale of the City of Tomball Special Assessment Revenue Bonds, (Raburn Reserve Public Improvement District Improvement Area #1 Project); Approving and Authorizing a Master Indenture of Trust and First Supplemental Indenture of Trust and Other Agreements and Documents in Connection Therewith; Making Findings with Respect to the Issuance of Such Bonds; and Providing an Effective Date. Vote was as follows:

Councilman Degges	Aye
Councilman Klein Quinn	Aye
Councilman Townsend	Aye
Councilman Ford	Aye
Councilman Stoll	Aye

8.2 Motion was made by Councilman Townsend, second by Councilman Stoll, to approve Resolution No. 2020-29, a Resolution of the City Council of the City of Tomball, Texas Approving a Reimbursement Agreement Relating to Improvement Area #1 of The Raburn Reserve Public Improvement District.

Motion carried unanimously.

8.3 Motion was made by Councilman Townsend, second by Councilman Stoll, to approve Resolution No. 2020-30, a Resolution of the City Council of the City of Tomball, Texas, Supporting the Passage of Legislation during the 87th Regular Session of the Texas Legislature (2021), to Allow for the Expenditure of Municipal Hotel Occupancy Tax Revenue by the City for Construction of Improvements in Municipal Parks.

Motion carried unanimously.

8.4 Motion was made by Councilman Stoll, second by Councilman Degges, to approve Resolution No. 2020-31, a Resolution of the City of Tomball, Texas, Approving the Master Fee Schedule for Fiscal Year 2020-2021.

Motion carried unanimously.

8.5 Motion was made by Councilman Klein Quinn, second by Councilman Townsend, to approve Resolution No. 2020-32, a Resolution of the City of Tomball, Texas, Adopting and Ratifying the City of Tomball's Investment Policy, as set forth in the City's Administrative Policy No. 13, entitled "Investment Policy".

Motion carried unanimously.

8.6 Motion was made by Councilman Stoll, second by Councilman Degges, to award Contract and Authorize the City Manager to Execute an Agreement for Grant Administration Services with Langford Community Management Services for E&P Project 2020-10035, Community Development Block Grant – Mitigation Project.

Motion carried unanimously.

8.7 Motion was made by Councilman Stoll, second by Councilman Klein Quinn, to award Contract and Authorize the City Manager to Execute an Agreement for Professional Engineering Services with Huitt-Zollars for E&P Project 2020-10035, Community Development Block Grant – Mitigation Project.

Motion carried unanimously.

8.8 Motion was made by Councilman Degges, second by Councilman Ford, to Appoint Assistant Court Clerk Inez Sanchez as Juvenile Case Manager for the Tomball Municipal Court.

Motion carried unanimously.

8.9 Motion was made by Councilman Degges, second by Councilman Stoll, to Approve Revisions to Administrative Policy Number 27, Adopting Policies and Procedures Necessary to Receive State and Federal Grant Funding.

Motion carried unanimously.

8.10 Executive Session: The City Council recessed at 6:36 p.m., to meet in Executive Session as Authorized by Title 5, Chapter 551, Government Code, the Texas Open Meetings Act, for the Following Purpose(s):

Sec. 551.074 – Personnel Matters: Deliberation of the Appointment, Employment, Employment, and Duties of a Public Officer or Employee – City Manager

Upon reconvening into the regular Council meeting at 6:54 p.m., the following items were considered:

8.11 Motion was made by Councilman Stoll, second by Councilman Degges, to approve the Amendments to and Extension of the Employment Contract for Robert Hauck, City Manager.

Motion carried unanimously.

9.0 Motion was made by Councilman Degges, second by Councilman Townsend, to adjourn.

Motion carried unanimously.

Meeting adjourned.

PASSED AND APPROVED this the 5th day of October 2020.

Doris Speer, TRMC, MMC
City Secretary

Gretchen Fagan
Mayor

Regular City Council
Agenda Item
Data Sheet

Meeting Date: October 5, 2020

Topic:

Approve Developer Agreement between the City of Tomball and HT Raburn Reserve Development LP to in regards to the over-sizing material cost of the water main extension through the Raburn Reserve subdivision in an amount not to exceed $24,511.86

Background:

The Raburn Reserve residential subdivision would typically be served by an eight inch water main, however the City needs the eight inch water main to be upsized to 12 inches in order to provide adequate water distribution to the area from the future East Water Plant. The Developer Agreement allows for reimbursement to HT Raburn Reserve Development LP for the increased water main size in the amount of $24,511.86

Origination:

Community Development Department

Recommendation:

Approval

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

Craig T. Meyers, Community Development Director

ACTION TAKEN

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

ATTACHMENTS:

Developer Agreement

AGREEMENT WITH DEVELOPER FOR CONSTRUCTION OF PUBLIC IMPROVEMENT

THE STATE OF TEXAS §
§
COUNTY OF HARRIS §

This Development Agreement executed as of the ____ day of ____________, 20__ between the City of Tomball, Texas, ("City") and HT Raburn Reserve Development LP, Owner and developer of that certain hereinafter described property located within the City, ("Developer") all collectively referred to as "Parties."

WHEREAS, Developer wishes to develop certain property located within the City limits, which is described in the Raburn Reserve Sec. 1 Replat, situated in the City of Tomball, Harris County, Texas, as depicted on a plat thereof recorded in file number RP-2020-366852 of the real property records of Harris County, Texas (the "Subdivision"); and

WHEREAS, the Subdivision lies within an area of the City and the Developer will be extending public water facilities; and

WHEREAS, during the development planning stage for the Property, the Developer submitted to the City a request to install the required water facilities which will have regional benefits to a portion of the City; and

WHEREAS, the City has no immediate plans to construct the required water facilities, but is willing to share in the cost of the construction of such facilities, and has funds appropriated and available to do so; and

WHEREAS, Developer has requested that it be allowed to construct the required water facilities to serve the Subdivision, and share the costs with the City; and

WHEREAS, Section 212.071, *et.seq*. of the Texas Local Government Code authorizes municipalities to enter into a contract with a developer of a subdivision or land in the municipality to construct public improvements related to the development without complying with the competitive sealed bidding procedures of Chapter 252 of the Texas Local Government Code;

NOW THEREFORE, for and in consideration of the premises and mutual obligations, covenants, and benefits hereinafter set forth, the Parties agree as follows:

ARTICLE I
Definitions

The following terms and phrases used in this Agreement shall have the meanings ascribed hereto:

1.01. "Agreement" means this agreement, including any amendments hereto, between the City and Developer.

1.02. "Contractor" shall mean the person, firm, corporation, partnership, association, or other entity awarded the contract by Developer for the construction and installation of the Improvements.

1.03. "Improvements" shall mean 2,099 linear feet of 12 inch water line to be constructed from Hufsmith-Kohrville Road, through the subdivision and ultimately to Persimmon Street and Medical Complex Road.

ARTICLE II
Construction of Improvements

2.01 Construction of Improvements. Developer agrees to construct the Improvements in accordance with the plans and specifications approved by the City Engineer, and as fully set forth in Exhibit "A" hereto. No material change in the construction plans shall be made by Developer without the prior written consent of the City Engineer. The entire cost of the construction of the Improvements shall be the responsibility and obligation of Developer, except as herein provided.

2.02. Contracts for Construction. Developer shall contract with a qualified Contractor to construct the Improvements in accordance with the approved plans and specifications. The City Engineer shall review all contract documents and costs estimates, and shall approve the Contractor prior to the award of the contract. Developer shall be solely responsible for payment of the work as it is completed, and shall make all payments in a timely manner to the Contractor, sub-contractors, and other parties involved in the construction of the Improvements.

2.03. Performance, Payment and Maintenance Bonds. Developer shall post within the City faithful performance, payment, and maintenance bonds for construction of the Improvements to ensure completion of the project. The bond must be executed by a corporate surety in accordance with Chapter 2253, Texas Government Code.

2.04. Inspection. The City Engineer or their designee shall periodically inspect the construction of the Improvements in the same manner, and shall possess the same authority, as is provided during the construction of subdivision improvements pursuant to the City of Tomball Subdivision Ordinance, as amended.

2.05. Insurance. The Contractor awarded the contract to construct the Improvements shall be required to carry Worker's Compensation Insurance on his employees and public liability and property damage insurance on his equipment and employees. The public liability insurance shall be not less than five hundred thousand dollars ($500,000.00) per person and one million dollars ($1,000,000.00) per occurrence, with property damage insurance of not less than five hundred thousand dollars ($500,000.00). In addition, City shall be furnished with Certificates of Insurance and shall be named an additional named insured on such Certificates, and City shall be notified within ten calendar days of any cancellation of such insurance.

2.06. Accounting. Developer shall submit to City a complete accounting of all costs incurred by Developer in the construction of the Improvements. City will not contribute or pay for any costs incurred by Developer which was not approved by the City prior to it being incurred. Developer shall maintain the accounting on this project for a period of two years from the date of acceptance by the City, and the City may inspect the Developer's books and records related to the project at any time with reasonable notice.

2.07. Indemnity. Developer agrees to protect, indemnify and save City harmless from and against all claims, demands and causes of action of every kind and character arising in favor of any third party on account of, or resulting from, the performance of this Agreement by Developer or Developer's agents, representatives, employees, contractors, or subcontractors.

ARTICLE III.
City Obligations

3.01. Oversized Improvements. The City agrees to pay to Developer the construction costs of oversizing the Improvements, not to exceed Twenty Four-Thousand Five-Hundred and Eleven Dollars and Eighty Six Cents ($24,511.86), as identified and described in Exhibit "B" attached hereto and made a part hereof.

3.02. Payment to Developer. Exhibit "B" attached hereto designates the proportional split in costs for construction of the Improvements. City shall deliver to Developer full payment of the City's share of the costs of construction of the Improvements following submittal and review of documentation showing final, actual construction costs paid by the Developer. The City Engineer or their designee shall review the construction documents, conduct a final inspection on the Improvements, noting any required corrections or repairs, and make a recommendation to City Council on acceptance of the Improvements. Upon action by City Council accepting such Improvements, the City will pay to Developer the City's share of the costs. Any additional costs above those enumerated, or above the amounts described in Exhibit "B" must be approved by the City prior to being incurred.

ARTICLE IV
Miscellaneous Provisions

4.01 Assignment. This Agreement shall bind and benefit the respective Parties and their legal successors and shall not be assignable, in whole or in party, by any party without first obtaining written consent of the other party.

4.02 Amendment or Modification. Except as otherwise provided in this Agreement, this Agreement shall be subject to change, amendment or modification only in writing, and by the signatures and mutual consent of the Parties.

4.03. Parties in Interest. This Agreement shall be for the sole and exclusive benefit of the Parties hereto and shall not be construed to confer any rights upon any third party.

4.04. Remedies Not Exclusive. The rights and remedies contained in this Agreement shall not be exclusive, but shall be cumulative of all rights and remedies now or hereinafter existing, by law or in equity.

4.05. Waiver. The failure of any party to insist in any one or more instances on the performance of any of the terms, covenants or conditions of this Agreement, or to exercise any of its rights, shall not be construed as a waiver or relinquishment of such term, covenant, or condition, or right with respect to further performance.

4.06. Entire Agreement. This Agreement constitutes the entire agreement between the Parties related to the subject matter of this Agreement and supersedes any and all prior agreements, whether oral or written, dealing with the subject matter of this Agreement.

4.07. Venue. This Agreement shall be performable and enforceable in Harris County, Texas, and shall be construed in accordance with the laws of the State of Texas.

4.08. Severability. If any term or provision of this Agreement is held to be invalid, void or unenforceable by a court of competent jurisdiction, the remainder of the terms and provisions of this Agreement shall remain in full force and effect and shall not in any way be invalidated, impaired or affected.

4.09. Notices. Any notice provided or permitted to be given under this Agreement must be in writing and may be served by (i) depositing the same in the United States mail, addressed to the party to be notified, postage prepaid, registered or certified mail, return receipt requested; or (ii) by delivering the same in person to such party; or (iii) by overnight or messenger delivery service that retains regular records of delivery and receipt; or (iv) by facsimile; provided a copy of such notice is sent within one (1) day thereafter by another method provided above.

The initial addresses of the parties for the purpose of notice under this Agreement shall be as follows:

If to City: City of Tomball
401 W. Market Street
Tomball, Texas 77375
ATTN: City Engineer

If to Developer: HT Raburn Reserve Development LP
6007 Dillon Creek Lane
Katy, Texas 77494
Attn: Adil Noorani

This Agreement may be executed in multiple counterparts, each of which shall be deemed an original, but all of which when taken together shall constitute one and the same instrument.

CITY OF TOMBALL

____
Gretchen Fagan
Mayor

ATTEST:

____
Doris Speer
City Secretary

ACKNOWLEDGEMENT

THE STATE OF TEXAS §
§
COUNTY OF HARRIS §

BEFORE ME, the undersigned authority, on this day personally appeared ____________________________, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same as the ______________________(Title) for ____, and for the purposes and consideration therein expressed.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, this the ____day

of_____________________________, 20___.

____

Notary Public in and for the

State of Texas

My Commission Expires:

DEVELOPER:

HT RABURN RESERVE DEVELOPMENT LP

By: HT Raburn Reserve Development LLC, its general partner

By: HT Raburn Reserve LP, its sole member

By: Hines Raburn Reserve LLC, its general partner

By: Hines Raburn Reserve Associates LP, its sole member

By: Hines Investment Management Holdings Limited Partnership, its general partner

By: HIMH GP LLC, its general partner

By: Hines Real Estate Holdings Limited Partnership, its sole member

By: JCH Investments, Inc., its general partner

____
Adil Noorani
Sr. Managing Director / COO

ACKNOWLEDGEMENT

THE STATE OF TEXAS §
§

COUNTY OF HARRIS §

BEFORE ME, the undersigned authority, on this day personally appeared ______________________________, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same as the City Manager for the City of Tomball, and for the purposes and consideration therein expressed. GIVEN UNDER MY HAND AND SEAL OF OFFICE, this the ____day of________________________________, 20___.

____

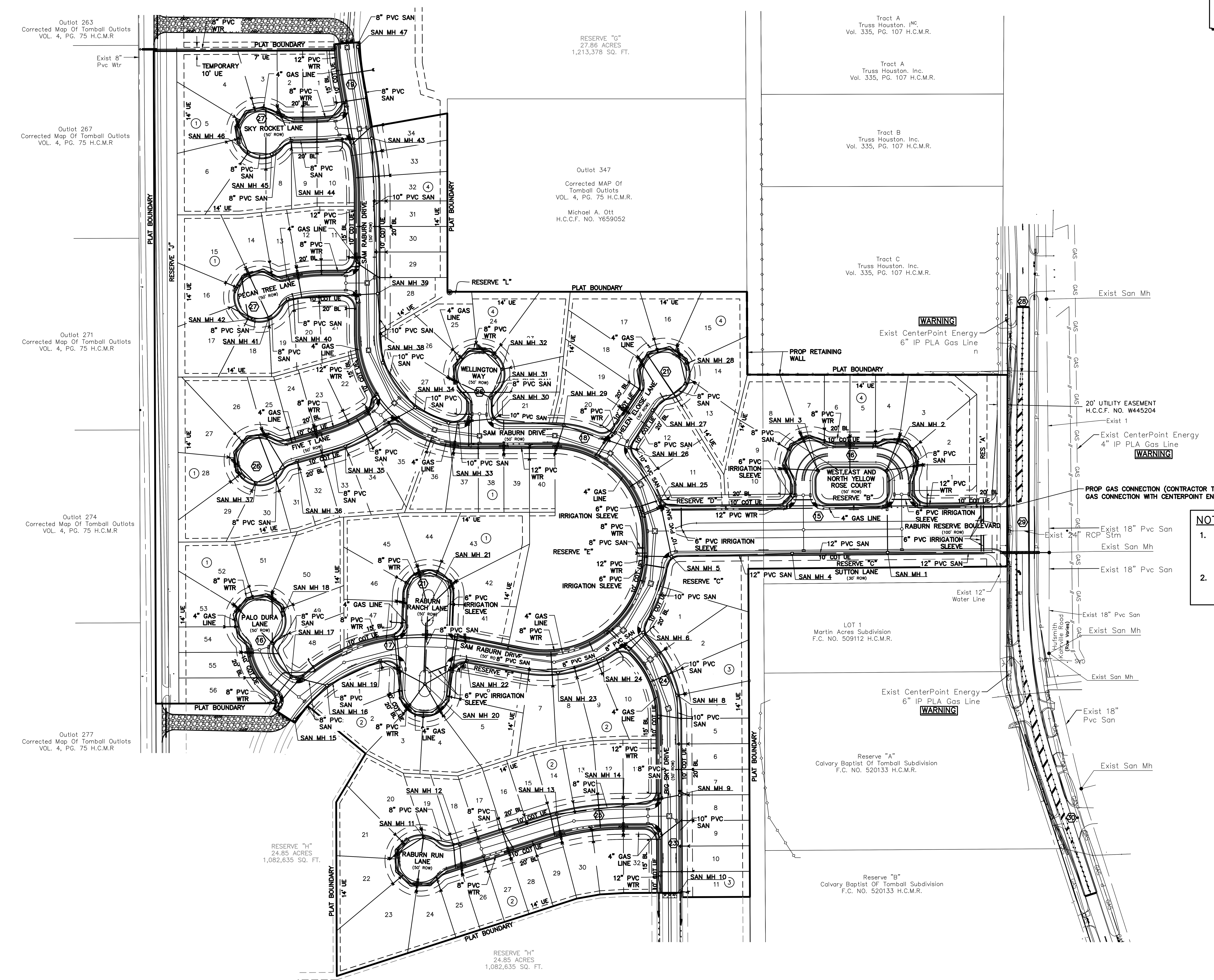
Notary Public in and for the

State of Texas

My Commission Expires:

EXHIBIT A

[See attached]



WARNING

OVERHEAD AND UNDERGROUND UTILITIES MAY EXIST IN THE VICINITY OF THIS PROJECT. LOCATIONS SHOWN FOR EXISTING UTILITIES ARE APPROXIMATE AND OTHER UTILITIES MAY EXIST IN THE VICINITY OF THE PROJECT WHICH ARE NOT SHOWN ON THE PLANS.

IT IS THE RESPONSIBILITY OF THE CONTRACTOR TO LOCATE ALL EXISTING UTILITIES, IN THE VICINITY OF THE PROJECT, PRIOR TO BEGINNING CONSTRUCTION.

NOTE

1. CONTRACTOR TO COORDINATE LOCATION OF GAS LINE & ALL ASSOCIATED APPURTENANCES WITH GAS COMPANY AND CITY OF TOMBALL, PRIOR TO INSTALLATION.
2. CONTRACTOR TO CONSTRUCT GAS LINE PER CITY OF TOMBALL DESIGN CRITERIA AND DETAILS.

BENCHMARK(S)/FLOODPLAIN:

BENCHMARK:
Harris County Floodplain Reference Mark No. 120055 located at the bridge of Hufsmith-Kohrville Road and Willow Creek. (NAVD 88, 2001 adjustment, Geoid99).

TEMPORARY BENCHMARK "2" ELEVATION – 173.41
BEING A 5/8-INCH IRON ROD WITH BLUE PLASTIC CAP STAMPED "E.H.R.A. T.P." SET ON THE WEST SIDE OF SOUTH PERSIMMON STREET, +/-2,200 FEET SOUTH OF LIZZIE LANE, +/- 550 FEET NORTH OF SUTTON LANE AND 15.8 FEET WEST OF THE ASPHALT PAVEMENT. (Pg 8 of 13)

TEMPORARY BENCHMARK "3" ELEVATION – 176.15
BEING THE MOST NORTHERLY BOLT ON THE FOOTING OF AN H.L.&P. ELECTRIC TOWER LOCATED ON THE EAST SIDE OF SOUTH PERSIMMON STREET +/- 700 FEET SOUTH OF ITS INTERSECTION WITH LIZZIE LANE. (Pg 1 of 13)

TEMPORARY BENCHMARK "5" ELEVATION – 166.87
BEING A 5/8-INCH IRON ROD WITH BLUE PLASTIC CAP STAMPED "E.H.R.A. T.P." SET ON THE EAST SIDE OF HUFSMITH-KOHRVILLE ROAD, +/-500 FEET SOUTH OF WILLOW CREEK ESTATES LANE, 85.7 FEET SOUTHEAST OF A POWERPOLE, 75.9 FEET EAST OF THE ASPHALT ROAD, 8.6 FEET WEST OF A WOOD FENCE, AND 55.3 FEET NORTHEAST OF A SANITARY MANHOLE. (Pg 6 of 13)

FLOODPLAIN:
ACCORDING TO THE FEDERAL EMERGENCY MANAGEMENT AGENCY (FEMA) FLOOD INSURANCE RATE MAP (FIRM) FOR HARRIS COUNTY, TEXAS, MAP NO. 48201C0230L, DATED JUNE 18, 2007, THE SUBJECT PROPERTY APPEARS TO BE WITHIN UNSHADED ZONE "X"; DEFINED AS AREAS OUTSIDE THE 2% ANNUAL CHANCE FLOOD PLAIN. THIS FLOOD STATEMENT DOES NOT IMPLY THAT THE PROPERTY OR STRUCTURES THEREON WILL BE FREE FROM FLOODING OR FLOOD DAMAGE. ON RARE OCCASIONS FLOODS CAN AND WILL OCCUR AND FLOOD HEIGHTS MAY BE INCREASED BY MAN-MADE OR NATURAL CAUSES. THIS FLOOD STATEMENT SHALL NOT CREATE LIABILITY ON THE PART OF EDMINSTER, HINSHAW, RUSS AND ASSOCIATES, INC.

LEGEND

- DOUBLE 1" WATER SERVICE LEAD
- SINGLE 1" WATER SERVICE LEAD
- DOUBLE 6" SANITARY SERVICE LEAD W/DOUBLE WYE
- SINGLE 6" SANITARY SERVICE LEAD W/SINGLE WYE
- SANITARY STACK (TYP)
- GAS SERVICE LEAD (SEE DETAIL SHEET 35)
- 1-18-FOOT JOINT OF 150 PSI LINED DUCTILE IRON OR PVC CENTERED AT WATER LINE AND SANITARY LINE W/ RESTRAINED JOINTS
- WHEELCHAIR RAMP (TYP)
- SHEET REFERENCE NUMBERS
- RETAINING WALL

APP.	REVISION	DATE

STATE OF TEXAS
VISHAL H. MERCHANT
108758
LICENSED
PROFESSIONAL ENGINEER
08/10/2020

QUALITY CONTROL | APPROVED
DATE | DATE

EHRA
ENGINEERING THE FUTURE
SINCE 1936
10011 Meadowglen Lane
Houston, Texas 77042
EHRAinc.com | 713.784.4500
TBPE No. F-726 | TBPLS No. 10092300

TO ARRANGE FOR LINES TO BE TURNED OOF OR MOVED, CALL CENTERPOINT AT 713-207-2222

NOTICE:
For your safety, you are required by Texas Law to call 811 at least 48 hours before you dig so that underground line can be marked.
This verification does not fulfill your obligation to call 811.

VERIFICATION OF PRIVATE UTILITY LINES

Date:

CenterPoint Energy/UNDERGROUND Electrical Facilities Verification ONLY
(This signature verifies existing underground facilities - not to be used for conflict verification.)
Signature Valid for six months

Date:

Approved for AT&T Texas/SWBT underground conduit facilities only.
Signature valid for one year.

CITY OF TOMBALL

RABURN RESERVE SECTION ONE

WATER DISTRIBUTION, GAS AND WASTEWATER COLLECTION SYSTEM

HORZ : 1"=100'
VERT :
EHRA JOB NO: 181-056-01
SHEET No: 8 OF 49
JOB NO: 2020-10012

CITY OF TOMBALL
Engineering
APPROVED
☐ With Conditions/Corrections as Noted
Date: 09/01/2020
Signature:
This approval shall expire two years from the date stamped

P-3974

P:\181-056-01\Drawings_Raburn Reserve Sec 1\5-9 LAYOUTS.dwg Aug 10, 2020-9:50pm Edited by: jrodriguez

EXHIBIT B

[See attached]

Raburn Reserve Sec. 1 Water Main Upsizing Memorandum

HT Raburn Reserve Development LP is the developer of the subdivision legally described as Raburn Reserve Sec. 1 Replat and intends to develop the subdivision for residential development. Public water service will be extended through the subdivision per City of Tomball requirements. City of Tomball requirements for water service to the development dictate an 8” diameter water main. Per the City of Tomball approved master plan an additional future ground water well and associated high service pumps station is proposed to be installed by the year 2022. The proposed 12” water main through the Raburn Reserve subdivision will provide downstream capacity corresponding with the additional future water source.

Attached is a summary of the bid tabulation for the subdivision as it relates to the water infrastructure installation at a total cost of $346,353.89. Additional to the summary of the bid tabulation is a comparable engineer estimate of the water main construction costs based on minimum water main sizes the City of Tomball would have accepted (8” water) at a total cost of $321,842.03. The difference in the bid tabulation summary and engineer estimate is $24,511.86 which reflects the difference in the cost of materials.

Sincerely,

Wesley Stolz, PE
City Engineer

City of Tomball Upsize Requirements Summary of Bid Tabulation 12" Water Main to Serve the Raburn Reserve Sec. 1 Subdivision September 24, 2020

ITEM	DESCRIPTION	UNIT	QUANTITY	UNIT PRICE	AMOUNT
1	6-Inch AWWA C-900 PVC Pipe (furnish and install, including thrust blocking and appurtenances with standard bedding and backfill complete in place.)	LF	353	$12.85	$4,536.05
2	8-Inch AWWA C-900 PVC Pipe (furnish and install, including thrust blocking and appurtenances with standard bedding and backfill complete in place.)	LF	4421	$19.20	$84,883.20
3	12-Inch AWWA C-900 PVC Pipe (furnish and install, including thrust blocking and appurtenances with standard bedding and backfill complete in place.)	LF	2811	$26.34	$74,041.74
4	6-Inch Gate Valve and Box (furnish and install, complete in place)	EA	21	$745.00	$15,645.00
5	8-Inch Gate Valve and Box (furnish and install, complete in place)	EA	19	$1,065.00	$20,235.00
6	12-Inch Gate Valve and Box (furnish and install, complete in place)	EA	13	$1,920.00	$24,960.00
7	Standard Fire Hydrant (furnish and install, complete in place)	EA	20	$2,690.00	$53,800.00
8	6-Inch, AWWA C-900, PVC Fire Hydrant Lead, (furnish and install, thurst blockign, all depths, complete in place)	LF	120	$11.80	$1,416.00
9	2-Inch Blow-Off Valve with Box Including Check Valve (furnish and install per City details, complete in place)	EA	1	$1,000.00	$1,000.00
10	6-Inch Plug and Clamp (furnish and install, complete in place)	EA	1	$100.00	$100.00
11	8-Inch Plug and Clamp (furnish and install, complete in place)	EA	9	$125.00	$1,125.00
12	12-Inch Plug and Clamp (furnish and install, complete in place)	EA	2	$185.00	$370.00
13	6-Inch x 6-Inch Tapping Sleeve with Valve (complete in place)	EA	1	$3,380.00	$3,380.00
14	12-Inch x 12-Inch Tapping Sleeve with Valve (complete in place)	EA	1	$6,655.00	$6,655.00
15	Ductile Iron Fittings (furnish and install, complete in place)	TONS	4	$1.00	$4.00
16	6-Inch Water by trenchless construction (Including Pipe, Bore Pits, Thrust Blocking, complete in place)	LF	28	$97.30	$2,724.40
17	Trench Safety System (furnish and install, complete in place)	LF	7785	$0.10	$778.50
18	Long Double Water Service Lead (furnish and install, meter box(es), complete in place)	EA	25	$925.00	$23,125.00
19	Long Single Water Service Lead (furnish and install, meter box(es), complete in place)	EA	2	$925.00	$1,850.00
20	Short Double Water Service Lead (furnish and install, meter box(es), complete in place)	EA	37	$380.00	$14,060.00
21	Short Single Water Service Lead (furnish and install, meter box(es), complete in place)	EA	9	$380.00	$3,420.00
22	Remove and Relocate 12-Inch Gate Valve (complete in place)	EA	1	$2,275.00	$2,275.00
23	Relocate Existing Fire Hydrant (complete in place)	EA	1	$5,970.00	$5,970.00
			TOTAL		**$346,353.89**

**City of Tomball Estimate of Probable Construction
Costs for Water Main Minimum Requirements Serve the
Raburn Reserve Sec. 1 Subdivision
September 24, 2020**

ITEM	DESCRIPTION	UNIT	QUANTITY	UNIT PRICE	AMOUNT
1	6-Inch AWWA C-900 PVC Pipe (furnish and install, including thrust blocking and appurtenances with standard bedding and backfill complete in place.)	LF	353	$12.85	$4,536.05
2	8-Inch AWWA C-900 PVC Pipe (furnish and install, including thrust blocking and appurtenances with standard bedding and backfill complete in place.)	LF	6520	$19.20	$125,184.00
3	12-Inch AWWA C-900 PVC Pipe (furnish and install, including thrust blocking and appurtenances with standard bedding and backfill complete in place.)	LF	712	$26.34	$18,754.08
4	6-Inch Gate Valve and Box (furnish and install, complete in place)	EA	21	$745.00	$15,645.00
5	8-Inch Gate Valve and Box (furnish and install, complete in place)	EA	30	$1,065.00	$31,950.00
6	12-Inch Gate Valve and Box (furnish and install, complete in place)	EA	2	$1,920.00	$3,840.00
7	Standard Fire Hydrant (furnish and install, complete in place)	EA	20	$2,690.00	$53,800.00
8	6-Inch, AWWA C-900, PVC Fire Hydrant Lead, (furnish and install, thurst blockign, all depths, complete in place)	LF	120	$11.80	$1,416.00
9	2-Inch Blow-Off Valve with Box Including Check Valve (furnish and install per City details, complete in place)	EA	1	$1,000.00	$1,000.00
10	6-Inch Plug and Clamp (furnish and install, complete in place)	EA	1	$100.00	$100.00
11	8-Inch Plug and Clamp (furnish and install, complete in place)	EA	11	$125.00	$1,375.00
12	12-Inch Plug and Clamp (furnish and install, complete in place)	EA	0	$185.00	$0.00
13	6-Inch x 6-Inch Tapping Sleeve with Valve (complete in place)	EA	1	$3,380.00	$3,380.00
14	12-Inch x 12-Inch Tapping Sleeve with Valve (complete in place)	EA	1	$6,655.00	$6,655.00
15	Ductile Iron Fittings (furnish and install, complete in place)	TONS	4	$1.00	$4.00
16	6-Inch Water by trenchless construction (Including Pipe, Bore Pits, Thrust Blocking, complete in place)	LF	28	$97.30	$2,724.40
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21	Short Single Water Service Lead (furnish and install, meter box(es), complete in place)	EA	9	$380.00	$3,420.00
22	Remove and Relocate 12-Inch Gate Valve (complete in place)	EA	1	$2,275.00	$2,275.00
23	Relocate Existing Fire Hydrant (complete in place)	EA	1	$5,970.00	$5,970.00
			TOTAL		**$321,842.03**

Regular City Council
Agenda Item
Data Sheet

Meeting Date: October 5, 2020

Topic:

Adopt, on First Reading, Ordinance No. 2020-31, an Ordinance Amending the Code of Ordinances of the City of Tomball, Texas by Amending Section 34-1, Definitions, and Section 34-7, Miscellaneous Sign Provisions, of Article I, In General, of Chapter 34, Signs, to Delete the Definition of Old Town Area and to Amend Regulations Regarding Sign Colors; 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:

Ordinance 2020-25, as adopted last month, amended Chapter 34-Signs by defining the Old Town Area of Tomball and prohibiting bright or fluorescent colors on signs within that defined area.

During deliberation of that Ordinance, City Staff was directed to amend Chapter 34-Signs by prohibiting bright or fluorescent colors on signs city wide. Ordinance 2020-31 addresses that directive.

Origination:

City Council

Recommendation:

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

Craig T. Meyers, Community Development Director

ACTION TAKEN

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

ATTACHMENTS:

Ordinance No. 2020-31

ORDINANCE NO. 2020-31

AN ORDINANCE AMENDING THE CODE OF ORDINANCES OF THE CITY OF TOMBALL, TEXAS BY AMENDING SECTION 34-1, DEFINITIONS, AND SECTION 34-7, MISCELLANEOUS SIGN PROVISIONS, OF ARTICLE I, IN GENERAL, OF CHAPTER 34, SIGNS, TO DELETE THE DEFINITION OF OLD TOWN AREA AND TO AMEND REGULATIONS REGARDING SIGN COLORS; 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 City Council of the City of Tomball, Texas finds that it is in the best interest of the health, safety and welfare of its citizens to amend the regulations of signs; and

WHEREAS, the City Council desires to regulate signs in the manner set forth in this ordinance; 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 34-1, Definitions, of Article I, In general, of Chapter 34, Signs, of the City of Tomball Code of Ordinances is hereby amended to delete the language struck through below as follows:

"**Section 34-1. – 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:

~~*Old Town Area* means the area within the boundary of the Revised Map of Tomball, recorded with the County on July 9, 1912."~~

<u>Section 3</u>. Section 34-7, Miscellaneous sign provisions, of Article I, In general, of Chapter 34, Signs, of the City of Tomball Code of Ordinances is hereby amended to delete the language struck through below as follows:

"**Section 34-7. – Miscellaneous sign provisions.**

(a) *Banner signs.* A property shall be limited to one on-premises or one off-premises banner signs, with a maximum size of 32 square feet. All banners signs shall be considered temporary in nature, as defined in this chapter. Excluding signs as specified under subsections 34-5(b)(2) and (b)(3)d.

(b) *Political signs.* A sign that contains primarily a political message and that is located on private real property with the consent of the property owner is exempt from the permit requirements of this chapter. Private real property does not include real property subject to an easement or other encumbrance that allows a municipality to use the property for a public purpose; provided, however, the sign may not have a sign area greater than 36 square feet, be more than eight feet high, be illuminated or have a moving part. This subsection does not apply to a sign, including a billboard, that contains primarily a political message on a temporary basis and that is generally available for rent or purchase to carry commercial advertising or other messages that are not primarily political.

(c) *Signs on public rights-of-way.*

(1) With the exception of signs lawfully permitted or erected prior to the effective date of the ordinance from which this chapter is derived, it shall be unlawful to place a sign upon a public street, public sidewalk, public alley, public right-of-way, public curb, or other public improvement in any public street or grounds, on any public bridge or part of same, or on any public building or structure of any kind belonging to the city, or in any public place, or on any public improvement unless express consent therefor shall have first been granted by the city council. However, coin-operated devices used to display and vend newspapers may so be placed, so long as they are not placed to impede vehicular or pedestrian traffic. This subsection does not apply to public property leased for private business purposes.

(2) Subdivision identification signs erected or painted directly upon the face of lawfully existing fences or walls are permitted, provided that:

a. The subdivision sign is facing a street which serves as an entrance to the subdivision to which such sign pertains;

b. The subdivision sign, or any part thereof, does not extend outward more than six inches from the face of the fence or wall upon which it is mounted; and

c. The subdivision sign, or any part thereof, does not extend above the fence or wall upon which it is mounted.

(3) Any unlawful sign found on public property, buildings, or structures belonging to the city or within a public right-of-way of a public street, public sidewalk, or public alley shall be seized and removal thereof is hereby authorized in addition to authority under chapter 20, article II. The sign administrator, employees of the police department and the department of public works are hereby authorized to impound any signs found on public property, buildings or structures, or a public street, public sidewalk, or public alley and transport or cause the same to be transported to a location to be designated by the sign administrator for storage. Any sign impounded and stored and not redeemed by the owner thereof within 30 days may be destroyed or sold at public auction in the same manner as surplus property of the city.

(4) During the early voting period through the end of the following election day, a maximum of two temporary political signs for each candidate, measure, or political party may be placed within the designated electioneering area of the early voting or voting polling place building's premises, which is also outside the prohibited area. The designated electioneering area is the portion of the grassy strip north of the Public Works Building, 501-B James Street, located outside the 100-foot prohibited area, and the area in Heritage Plaza, 400 Market Street, outside the designated 100-foot prohibited area. Such two signs shall each have a maximum area of four square feet but may contain the same message on both sides. Such signs must be placed in the designated electioneering area in a manner so as not to block or obscure other political signs. Such signs shall only be allowed from 7:00 a.m. on the beginning of the early voting period until 7:00 p.m. on election day, at which time the signs shall be removed by the person or organization placing them.

a. Any unauthorized persons removing political signs otherwise permitted by this section shall be guilty of a misdemeanor and subject to a fine as provided in section 1-14.

b. Failure to remove permitted signs in accordance with the section is a violation of this chapter subject to a fine as provided in this Code.

c. On election day only, each candidate may erect a single tent, canopy, or similar item encumbering or encroaching on public property in Heritage Plaza, 400 Market Street, in the designated location, located outside the 100-foot prohibited area, as decided during the drawing for location in Heritage Plaza conducted prior to the beginning of early voting.

d. Any signs on public property not permitted may be removed by the city. Any political signs installed prior to the authorized time, placed in a location other than the designated location delineated, or not removed within the time prescribed herein, may be removed by city personnel and discarded or destroyed.

e. The provisions of this subsection shall not apply to notices posted by order of the court or notices to the public as required by law to be posted in a public place.

(d) ~~In the "Old Town Area,"~~ ~~b~~Bright or fluorescent colors shall not be permitted on any part of any sign."

Section 4. In the event any section, paragraph, subdivision, clause, phrase, provision, sentence, or part of this Ordinance or the application of the same to any person or circumstance shall for any reason be adjudged invalid or held unconstitutional by a court of competent jurisdiction, it shall not affect, impair, or invalidate this Ordinance as a whole or any part or provision hereof other any part or provision hereof other than the part declared to be invalid or unconstitutional; and the City Council of Tomball, Texas, declares that it would have passed each and every part of the same notwithstanding the omission of any and every part of the same notwithstanding the omission of any such part thus declared to be invalid or unconstitutional, or whether there be one or more parts.

Section 5. 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 $2,000. Each day of violation shall constitute a separate offense.

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 5th DAY OF OCTOBER 2020.

COUNCILMAN FORD	________
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 19TH DAY OF OCTOBER 2020.

COUNCILMAN FORD	________
COUNCILMAN STOLL	________
COUNCILMAN DEGGES	________
COUNCILMAN TOWNSEND	________
COUNCILMAN KLEIN QUINN	________

____
Gretchen Fagan, Mayor

ATTEST:

____
Doris Speer, City Secretary

Regular City Council
Agenda Item
Data Sheet

Meeting Date: October 5, 2020

Topic:

Award contract to for E&P Project 2019-10015 to Cooley Construction, LLC in the amount of $3,398,332.00 for the construction of drainage improvements along S. Persimmon.

Background:

In accordance with the terms and conditions of the Community Development Block Grant, staff solicited sealed bids for the construction of drainage improvements along South Persimmon.

In order to obtain the most favorable pricing, sealed bids were solicited and a total of 12 bids were received. After review of all the bids and qualifications, Cooley Construction, LLC was determined to be the responsive lowest bidder.

Staff is recommending awarding the construction contract to Cooley Construction, LLC for a total amount of $3,398,332.00.

Origination:

Public Works Department

Recommendation:

Public Works staff recommends award of the construction contract to Cooley Construction, LLC in the amount of $3,398,332.00.

Funding:

Yes

Account Number:400-154-6409

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

Beth Jones, Public Works Director

ACTION TAKEN

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

ATTACHMENTS:

Bid Tabulation

City of Tomball
CDBG - Persimmon and Lizzie Lane Drainage Improvements

BID TAB				Engineers Estimate		Cooley Construction, LLC		Conrad Construction Co., LTD		WadeCon, LLC		JFT Construction, Inc.		FUSED Industries, LLC		Triple B Services, L.L.P.	
Item	Description	Unit	Quantity	Unit Price	Total Amount	Unit Price	Total Amount	Unit Price	Total Amount	Unit Price	Total Amount	Unit Price	Total Amount	Unit Price	Total Amount	Unit Price	Total Amount
Section A. Base Unit Price Table																	
1	Mobilization, Insurance and Bonds	LS	1	$ 100,000.00	$ 100,000.00	$100,000.00	$100,000.00	$100,000.00	$100,000.00	$100,000.00	$100,000.00	$100,000.00	$100,000.00	$100,000.00	$100,000.00	$100,000.00	$100,000.00
2	Traffic Control Plan	LS	1	$ 45,000.00	$ 45,000.00	$10,000.00	$10,000.00	$250,000.00	$250,000.00	$25,000.00	$25,000.00	$275,000.00	$275,000.00	$45,000.00	$45,000.00	$23,000.00	$23,000.00
3	Install Concrete Barriers	LF	1,200	$ 40.00	$ 48,000.00	$60.00	$72,000.00	$50.00	$60,000.00	$10.00	$12,000.00	$5.00	$6,000.00	$60.00	$72,000.00	$80.00	$96,000.00
4	Relocate Concrete Barriers Between Traffic Control Phases as Shown in Plans	LF	1,200	$ 15.00	$ 18,000.00	$5.00	$6,000.00	$17.50	$21,000.00	$10.00	$12,000.00	$1.00	$1,200.00	$5.00	$6,000.00	$14.00	$16,800.00
5	Remove Concrete Barriers	LF	1,200	$ 10.00	$ 12,000.00	$10.00	$12,000.00	$25.00	$30,000.00	$10.00	$12,000.00	$5.00	$6,000.00	$12.00	$14,400.00	$27.00	$32,400.00
6	Trench Safety System for Trench Excavations	LF	3,700	$ 5.00	$ 18,500.00	$4.00	$14,800.00	$5.00	$18,500.00	$20.00	$74,000.00	$0.01	$37.00	$5.00	$18,500.00	$2.00	$7,400.00
7	Roadway Excavation, Complete in Place	CY	970	$ 15.00	$ 14,550.00	$7.00	$6,790.00	$15.00	$14,550.00	$20.00	$19,400.00	$10.00	$9,700.00	$15.00	$14,550.00	$15.50	$15,035.00
8	Remove and Dispose of Existing Pavement, including Base Material by Milling Operations, Complete in Place	SY	3,583	$ 5.00	$ 17,915.00	$9.00	$32,247.00	$7.50	$26,872.50	$5.00	$17,915.00	$5.00	$17,915.00	$4.50	$16,123.50	$10.00	$35,830.00
9	Remove and Dispose of Existing Driveways (All Thickness, All Material), Complete in Place	SY	618	$ 15.00	$ 9,270.00	$9.00	$5,562.00	$10.00	$6,180.00	$10.00	$6,180.00	$5.00	$3,090.00	$12.00	$7,416.00	$11.00	$6,798.00
10	Remove Existing Culverts 24" and Smaller including SETs, Complete in Place	LF	506	$ 25.00	$ 12,650.00	$10.00	$5,060.00	$15.00	$7,590.00	$20.00	$10,120.00	$1.00	$506.00	$25.00	$12,650.00	$18.00	$9,108.00
11	Remove and Dispose Existing Junction Boxes, Complete in Place	EA	2	$ 500.00	$ 1,000.00	$500.00	$1,000.00	$1,000.00	$2,000.00	$1,000.00	$2,000.00	$100.00	$200.00	$500.00	$1,000.00	$850.00	$1,700.00
12	Furnish and Install 54" RCP at all depths, Bedding & Backfill, Complete in Place	LF	2,413	$ 275.00	$ 663,575.00	$382.00	$921,766.00	$340.00	$820,420.00	$345.00	$832,485.00	$360.00	$868,680.00	$393.00	$948,309.00	$350.00	$844,550.00
13	Furnish and Install 10'x8' RCB at all depths, Bedding & Backfill, Complete in Place	LF	1,024	$ 1,350.00	$ 1,382,400.00	$1,230.00	$1,259,520.00	$950.00	$972,800.00	$1,000.00	$1,024,000.00	$1,125.00	$1,152,000.00	$1,240.00	$1,269,760.00	$1,230.00	$1,259,520.00
14	Furnish and Install Type "E" Inlet, Complete in Place	EA	11	$ 5,000.00	$ 55,000.00	$3,215.00	$35,365.00	$3,600.00	$39,600.00	$3,000.00	$33,000.00	$3,400.00	$37,400.00	$3,000.00	$33,000.00	$3,627.00	$39,897.00
15	Furnish and Install Modified Type "A" Inlet, Complete in Place	EA	5	$ 5,000.00	$ 25,000.00	$2,600.00	$13,000.00	$3,500.00	$17,500.00	$4,000.00	$20,000.00	$2,200.00	$11,000.00	$6,000.00	$30,000.00	$4,628.00	$23,140.00
16	Furnish and Install 6'x6' Junction Box with Eccentric Type "C" Manhole Top (Includes Extra Depth), Complete in Place	EA	11	$ 7,000.00	$ 77,000.00	$5,655.00	$62,205.00	$5,350.00	$58,850.00	$7,000.00	$77,000.00	$6,200.00	$68,200.00	$11,000.00	$121,000.00	$5,500.00	$60,500.00
17	Furnish and Install Eccentric Type "C" Manhole Top, Complete in Place	EA	5	$ 2,000.00	$ 10,000.00	$1,000.00	$5,000.00	$2,100.00	$10,500.00	$4,000.00	$20,000.00	$1,800.00	$9,000.00	$1,300.00	$6,500.00	$2,100.00	$10,500.00
18	Furnish and Install 24" RCP at all depths, Bedding & Backfill, Complete in Place	LF	256	$ 75.00	$ 19,200.00	$108.00	$27,648.00	$150.00	$38,400.00	$100.00	$25,600.00	$110.00	$28,160.00	$90.00	$23,040.00	$112.00	$28,672.00
19	Roadside Ditch Re-Grading, Complete in Place	LF	2,552	$ 5.00	$ 12,760.00	$10.00	$25,520.00	$12.00	$30,624.00	$10.00	$25,520.00	$3.00	$7,656.00	$6.00	$15,312.00	$13.75	$35,090.00
20	Concrete Slope Paving for Roadside Ditch, Complete in Place	SY	1,580	$ 50.00	$ 79,000.00	$95.00	$150,100.00	$85.00	$134,300.00	$80.00	$126,400.00	$56.00	$88,480.00	$75.00	$118,500.00	$80.00	$126,400.00
21	24-inch Diameter RCP Culverts, Complete in Place	LF	2,046	$ 60.00	$ 122,760.00	$108.00	$220,968.00	$95.00	$194,370.00	$90.00	$184,140.00	$70.00	$143,220.00	$75.00	$153,450.00	$112.00	$229,152.00
22	Junction Box with Steel Plate Top, Complete in Place	EA	34	$ 3,000.00	$ 102,000.00	$1,875.00	$63,750.00	$1,350.00	$45,900.00	$5,000.00	$170,000.00	$2,200.00	$74,800.00	$2,680.00	$91,120.00	$2,494.00	$84,796.00
23	SET for 24" Culverts, Complete in Place	CY	40	$ 1,650.00	$ 66,000.00	$300.00	$12,000.00	$1,500.00	$60,000.00	$500.00	$20,000.00	$2,100.00	$84,000.00	$1,400.00	$56,000.00	$1,000.00	$40,000.00
24	Remove and Replace Fire Hydrant includes Gate Valve and 6" Lead, Complete in Place	EA	2	$ 6,000.00	$ 12,000.00	$5,500.00	$11,000.00	$6,500.00	$13,000.00	$5,000.00	$10,000.00	$5,000.00	$10,000.00	$6,500.00	$13,000.00	$5,400.00	$10,800.00
25	Furnish and Install 6" Water Line Including Fittings, All Depths, Bedding and Backfill, Complete in Place	LF	40	$ 50.00	$ 2,000.00	$100.00	$4,000.00	$200.00	$8,000.00	$80.00	$3,200.00	$75.00	$3,000.00	$32.00	$1,280.00	$103.00	$4,120.00
26	6" Wet Connection, Complete in Place	EA	1	$ 1,500.00	$ 1,500.00	$4,500.00	$4,500.00	$1,750.00	$1,750.00	$2,000.00	$2,000.00	$1,000.00	$1,000.00	$2,500.00	$2,500.00	$329.00	$329.00
27	6" Thick Stabilized Subgrade Manipulation, Complete in Place	SY	4,242	$ 5.00	$ 21,210.00	$3.50	$14,847.00	$6.00	$25,452.00	$5.00	$21,210.00	$3.00	$12,726.00	$9.00	$38,178.00	$12.00	$50,904.00

City of Tomball
CDBG - Persimmon and Lizzie Lane Drainage Improvements

BID TAB				Engineers Estimate		Cooley Construction, LLC		Conrad Construction Co., LTD		WadeCon, LLC		JFT Construction, Inc.		FUSED Industries, LLC		Triple B Services, L.L.P.	
Item	Description	Unit	Quantity	Unit Price	Total Amount	Unit Price	Total Amount	Unit Price	Total Amount	Unit Price	Total Amount	Unit Price	Total Amount	Unit Price	Total Amount	Unit Price	Total Amount
28	Lime for Subgrade Stabilization (5%), Complete in Place	TON	53	$ 200.00	$ 10,600.00	$220.00	$11,660.00	$225.00	$11,925.00	$190.00	$10,070.00	$300.00	$15,900.00	$180.00	$9,540.00	$205.00	$10,865.00
29	8" Thick Flexible Base, Complete in Place	SY	3,583	$ 35.00	$ 125,405.00	$18.00	$64,494.00	$30.00	$107,490.00	$40.00	$143,320.00	$60.00	$214,980.00	$22.00	$78,826.00	$17.75	$63,598.25
30	2" Thick HMAC Road, Complete in Place	SY	3,583	$ 15.00	$ 53,745.00	$17.00	$60,911.00	$25.00	$89,575.00	$13.00	$46,579.00	$18.00	$64,494.00	$18.00	$64,494.00	$16.50	$59,119.50
31	6" Thick Concrete Driveway, Complete in Place	SY	321	$ 65.00	$ 20,865.00	$115.00	$36,915.00	$90.00	$28,890.00	$70.00	$22,470.00	$60.00	$19,260.00	$70.00	$22,470.00	$96.75	$31,056.75
32	2" Thick HMAC Driveway, Complete in Place	SY	116	$ 15.00	$ 1,740.00	$19.00	$2,204.00	$60.00	$6,960.00	$20.00	$2,320.00	$18.00	$2,088.00	$25.00	$2,900.00	$100.00	$11,600.00
33	Crushed Limestone/Concrete Driveway, Complete in Place	SY	181	$ 50.00	$ 9,050.00	$25.00	$4,525.00	$35.00	$6,335.00	$60.00	$10,860.00	$21.00	$3,801.00	$22.00	$3,982.00	$24.75	$4,479.75
34	Install, Maintain, and Remove Temporary Driveway - Crushed Limestone/Concrete, Complete in Place	EA	8	$ 2,500.00	$ 20,000.00	$1,000.00	$8,000.00	$750.00	$6,000.00	$100.00	$800.00	$300.00	$2,400.00	$1,300.00	$10,400.00	$1,100.00	$8,800.00
35	Select Fill	CY	500	$ 25.00	$ 12,500.00	$15.00	$7,500.00	$12.50	$6,250.00	$20.00	$10,000.00	$10.00	$5,000.00	$9.00	$4,500.00	$14.50	$7,250.00
36	Clearing and Grubbing	LS	1	$ 7,500.00	$ 7,500.00	$10,000.00	$10,000.00	$7,500.00	$7,500.00	$200,000.00	$200,000.00	$1,000.00	$1,000.00	$7,194.50	$7,194.50	$30,000.00	$30,000.00
37	Hydromulch Seeding	AC	2	$ 3,500.00	$ 6,475.00	$2,000.00	$3,700.00	$1,850.00	$3,422.50	$2,000.00	$3,700.00	$1,700.00	$3,145.00	$2,000.00	$3,700.00	$1,800.00	$3,330.00
38	Reinforced Filter Fabric Fence	LF	900	$ 2.50	$ 2,250.00	$2.00	$1,800.00	$2.00	$1,800.00	$2.00	$1,800.00	$3.00	$2,700.00	$1.50	$1,350.00	$1.25	$1,125.00
39	TCEQ Notice Filing Fee	LS	1	$ 5,000.00	$ 5,000.00	$5,000.00	$5,000.00	$5,000.00	$5,000.00	$5,000.00	$5,000.00	$325.00	$325.00	$5,000.00	$5,000.00	$5,000.00	$5,000.00
40	Dewatering	LF	3,000	$ 25.00	$ 75,000.00	$1.00	$3,000.00	$15.00	$45,000.00	$5.00	$15,000.00	$25.00	$75,000.00	$0.01	$30.00	$1.00	$3,000.00
41	Remove and Relocate Mailbox	EA	10	$ 500.00	$ 5,000.00	$250.00	$2,500.00	$200.00	$2,000.00	$100.00	$1,000.00	$100.00	$1,000.00	$50.00	$500.00	$155.00	$1,550.00
42	Remove and Replace Barbwire Fence	LF	45	$ 25.00	$ 1,125.00	$25.00	$1,125.00	$50.00	$2,250.00	$10.00	$450.00	$10.00	$450.00	$25.00	$1,125.00	$28.00	$1,260.00
Sub Totals					$3,304,545.00		$3,319,982.00		$3,338,556.00		$3,358,539.00		$3,430,513.00		$3,444,600.00		$3,434,475.25
Section B. Extra Unit Price Table																	
43	Install and Remove Temporary 8" Brick Plug (All Sizes), Complete in Place	EA	17	$ 500.00	$ 8,500.00	$800.00	$13,600.00	$500.00	$8,500.00	$100.00	$1,700.00	$50.00	$850.00	$200.00	$3,400.00	$250.00	$4,250.00
44	Extra Hand Excavation	CY	100	$ 25.00	$ 2,500.00	$25.00	$2,500.00	$25.00	$2,500.00	$25.00	$2,500.00	$25.00	$2,500.00	$25.00	$2,500.00	$25.00	$2,500.00
45	Extra Machine Excavation	CY	100	$ 15.00	$ 1,500.00	$15.00	$1,500.00	$15.00	$1,500.00	$15.00	$1,500.00	$15.00	$1,500.00	$15.00	$1,500.00	$15.00	$1,500.00
46	Extra Placement of Backfill Material	CY	100	$ 10.00	$ 1,000.00	$10.00	$1,000.00	$10.00	$1,000.00	$10.00	$1,000.00	$10.00	$1,000.00	$10.00	$1,000.00	$10.00	$1,000.00
47	Extra Cement-Stabilized Sand	CY	100	$ 25.00	$ 2,500.00	$25.00	$2,500.00	$35.00	$3,500.00	$25.00	$2,500.00	$25.00	$2,500.00	$25.00	$2,500.00	$35.00	$3,500.00
48	Extra Solid Sod (at Project Manager's direction)	SY	150	$ 5.00	$ 750.00	$5.00	$750.00	$7.50	$1,125.00	$5.00	$750.00	$10.00	$1,500.00	$5.00	$750.00	$5.00	$750.00
49	Extra Select Fill	CY	100	$ 25.00	$ 2,500.00	$25.00	$2,500.00	$25.00	$2,500.00	$25.00	$2,500.00	$25.00	$2,500.00	$25.00	$2,500.00	$25.00	$2,500.00
50	Preparatory Work for Sampling and Analysis in Potentially Petroleum Contaminated Area (PPCA)	LS	1	$ 10,000.00	$ 10,000.00	$10,000.00	$10,000.00	$10,000.00	$10,000.00	$10,000.00	$10,000.00	$10,000.00	$10,000.00	$10,000.00	$10,000.00	$10,000.00	$10,000.00
51	Removal, Transportation, and Disposal of Class I Soils	CY	200	$ 70.00	$ 14,000.00	$70.00	$14,000.00	$70.00	$14,000.00	$70.00	$14,000.00	$70.00	$14,000.00	$70.00	$14,000.00	$125.00	$25,000.00
52	Removal, Transportation, and Disposal of Class II Soils	CY	200	$ 35.00	$ 7,000.00	$35.00	$7,000.00	$35.00	$7,000.00	$35.00	$7,000.00	$35.00	$7,000.00	$35.00	$7,000.00	$65.00	$13,000.00
53	Diversion/Bypass Pumping of Storm Runoff for Phase 2 and 3 (to be used only with City Approval and if Phase 2/3 work is completed before Phase 1 work)	LS	1	$ 1,000.00	$ 1,000.00	$1,000.00	$1,000.00	$1,000.00	$1,000.00	$1,000.00	$1,000.00	$1,000.00	$1,000.00	$1,000.00	$1,000.00	$1,000.00	$1,000.00
54	Diversion/Bypass Pumping of 54" RCP for Connection to 10'x8' RCB (to be used only with City Approval and if Phase 2/3 work is completed before Phase 1 work)	LS	1	$ 2,000.00	$ 2,000.00	$2,000.00	$2,000.00	$2,000.00	$2,000.00	$2,000.00	$2,000.00	$2,000.00	$2,000.00	$2,000.00	$2,000.00	$2,000.00	$2,000.00
55	Remove and Replace Water Line (All Sizes)	LF	100	$ 75.00	$ 7,500.00	$100.00	$10,000.00	$175.00	$17,500.00	$60.00	$6,000.00	$125.00	$12,500.00	$100.00	$10,000.00	$68.00	$6,800.00
56	Remove and Replace Water Line Services (All Sizes)	EA	10	$ 1,500.00	$ 15,000.00	$1,000.00	$10,000.00	$1,750.00	$17,500.00	$3,000.00	$30,000.00	$750.00	$7,500.00	$2,000.00	$20,000.00	$1,500.00	$15,000.00
Sub Totals					$75,750.00		$78,350.00		$89,625.00		$82,450.00		$66,350.00		$78,150.00		$88,800.00
Grand Total					$3,380,295.00		$3,398,332.00		$3,428,181.00		$3,440,989.00		$3,496,863.00		$3,522,750.00		$3,523,275.25

* Indicates disqualified bid

City of Tomball
CDBG - Persimmon and Lizzie Lane Drainage Improvements

BID TAB				L.N. McKean		E.P. Brady, Ltd.		Fellers & Clark, LP		Blazey Construction Services LLC*		DL Glover Inc*		Vaca Underground Utilities, Inc*	
Item	Description	Unit	Quantity	Unit Price	Total Amount	Unit Price	Total Amount	Unit Price	Total Amount	Unit Price	Total Amount	Unit Price	Total Amount	Unit Price	Total Amount
Section A. Base Unit Price Table															
1	Mobilization, Insurance and Bonds	LS	1	$100,000.00	$100,000.00	$100,000.00	$100,000.00	$100,000.00	$100,000.00	$100,000.00	$100,000.00	$100,000.00	$100,000.00	$100,000.00	$100,000.00
2	Traffic Control Plan	LS	1	$15,000.00	$15,000.00	$20,000.00	$20,000.00	$253,000.00	$253,000.00	$10,237.50	$10,237.50	$25,850.00	$25,850.00	$55,000.00	$55,000.00
3	Install Concrete Barriers	LF	1,200	$35.00	$42,000.00	$75.00	$90,000.00	$33.00	$39,600.00	$36.75	$44,100.00	$45.00	$54,000.00	$25.00	$30,000.00
4	Relocate Concrete Barriers Between Traffic Control Phases as Shown in Plans	LF	1,200	$18.00	$21,600.00	$8.50	$10,200.00	$5.50	$6,600.00	$10.50	$12,600.00	$5.00	$6,000.00	$4.00	$4,800.00
5	Remove Concrete Barriers	LF	1,200	$25.00	$30,000.00	$12.65	$15,180.00	$16.50	$19,800.00	$10.50	$12,600.00	$5.00	$6,000.00	$4.00	$4,800.00
6	Trench Safety System for Trench Excavations	LF	3,700	$4.00	$14,800.00	$1.00	$3,700.00	$1.30	$4,810.00	$1.05	$3,885.00	$10.00	$37,000.00	$1.00	$3,700.00
7	Roadway Excavation, Complete in Place	CY	970	$6.50	$6,305.00	$7.50	$7,275.00	$49.50	$48,015.00	$5.25	$5,092.50	$13.00	$12,610.00	$10.00	$9,700.00
8	Remove and Dispose of Existing Pavement, including Base Material by Milling Operations, Complete in Place	SY	3,583	$5.00	$17,915.00	$6.60	$23,647.80	$33.00	$118,239.00	$6.72	$24,077.76	$15.00	$53,745.00	$5.00	$17,915.00
9	Remove and Dispose of Existing Driveways (All Thickness, All Material), Complete in Place	SY	618	$16.00	$9,888.00	$10.45	$6,458.10	$30.80	$19,034.40	$17.22	$10,641.96	$15.00	$9,270.00	$5.00	$3,090.00
10	Remove Existing Culverts 24" and Smaller including SETs, Complete in Place	LF	506	$16.00	$8,096.00	$14.85	$7,514.10	$30.50	$15,433.00	$11.03	$5,581.18	$26.00	$13,156.00	$12.00	$6,072.00
11	Remove and Dispose Existing Junction Boxes, Complete in Place	EA	2	$1,750.00	$3,500.00	$1,000.00	$2,000.00	$1,145.00	$2,290.00	$1,050.00	$2,100.00	$2,000.00	$4,000.00	$200.00	$400.00
12	Furnish and Install 54" RCP at all depths, Bedding & Backfill, Complete in Place	LF	2,413	$444.00	$1,071,372.00	$493.00	$1,189,609.00	$354.50	$855,408.50	$270.80	$653,440.40	$326.00	$786,638.00	$325.00	$784,225.00
13	Furnish and Install 10'x8' RCB at all depths, Bedding & Backfill, Complete in Place	LF	1,024	$1,390.00	$1,423,360.00	$1,370.00	$1,402,880.00	$1,140.80	$1,168,179.20	$1,038.66	$1,063,587.84	$1,040.00	$1,064,960.00	$1,098.00	$1,124,352.00
14	Furnish and Install Type "E" Inlet, Complete in Place	EA	11	$2,600.00	$28,600.00	$3,435.00	$37,785.00	$3,295.00	$36,245.00	$2,703.75	$29,741.25	$4,000.00	$44,000.00	$3,000.00	$33,000.00
15	Furnish and Install Modified Type "A" Inlet, Complete in Place	EA	5	$3,000.00	$15,000.00	$4,100.00	$20,500.00	$4,730.00	$23,650.00	$1,354.50	$6,772.50	$2,850.00	$14,250.00	$3,000.00	$15,000.00
16	Furnish and Install 6'x6' Junction Box with Eccentric Type "C" Manhole Top (Includes Extra Depth), Complete in Place	EA	11	$5,500.00	$60,500.00	$7,750.00	$85,250.00	$11,285.00	$124,135.00	$5,250.00	$57,750.00	$5,500.00	$60,500.00	$5,000.00	$55,000.00
17	Furnish and Install Eccentric Type "C" Manhole Top, Complete in Place	EA	5	$4,500.00	$22,500.00	$2,350.00	$11,750.00	$1,960.00	$9,800.00	$1,139.25	$5,696.25	$1,650.00	$8,250.00	$2,400.00	$12,000.00
18	Furnish and Install 24" RCP at all depths, Bedding & Backfill, Complete in Place	LF	256	$100.00	$25,600.00	$195.00	$49,920.00	$96.90	$24,806.40	$69.67	$17,835.52	$85.00	$21,760.00	$104.00	$26,624.00
19	Roadside Ditch Re-Grading, Complete in Place	LF	2,552	$6.00	$15,312.00	$7.50	$19,140.00	$11.00	$28,072.00	$3.68	$9,391.36	$25.00	$63,800.00	$7.00	$17,864.00
20	Concrete Slope Paving for Roadside Ditch, Complete in Place	SY	1,580	$94.00	$148,520.00	$50.00	$79,000.00	$81.40	$128,612.00	$57.23	$90,423.40	$70.00	$110,600.00	$64.00	$101,120.00
21	24-inch Diameter RCP Culverts, Complete in Place	LF	2,046	$92.00	$188,232.00	$80.00	$163,680.00	$103.60	$211,965.60	$77.24	$158,033.04	$75.00	$153,450.00	$95.00	$194,370.00
22	Junction Box with Steel Plate Top, Complete in Place	EA	34	$2,850.00	$96,900.00	$3,400.00	$115,600.00	$2,630.00	$89,420.00	$1,050.00	$35,700.00	$2,050.00	$69,700.00	$2,500.00	$85,000.00
23	SET for 24" Culverts, Complete in Place	CY	40	$1,500.00	$60,000.00	$1,980.00	$79,200.00	$1,935.00	$77,400.00	$1,155.00	$46,200.00	$1,750.00	$70,000.00	$1,900.00	$76,000.00
24	Remove and Replace Fire Hydrant includes Gate Valve and 6" Lead, Complete in Place	EA	2	$5,500.00	$11,000.00	$4,600.00	$9,200.00	$4,765.00	$9,530.00	$4,200.00	$8,400.00	$5,850.00	$11,700.00	$200.00	$400.00
25	Furnish and Install 6" Water Line Including Fittings, All Depths, Bedding and Backfill, Complete in Place	LF	40	$30.00	$1,200.00	$100.00	$4,000.00	$77.50	$3,100.00	$72.03	$2,881.20	$105.00	$4,200.00	$90.00	$3,600.00
26	6" Wet Connection, Complete in Place	EA	1	$750.00	$750.00	$3,000.00	$3,000.00	$320.00	$320.00	$1,233.75	$1,233.75	$2,850.00	$2,850.00	$1,500.00	$1,500.00
27	6" Thick Stabilized Subgrade Manipulation, Complete in Place	SY	4,242	$3.00	$12,726.00	$11.55	$48,995.10	$7.70	$32,663.40	$15.75	$66,811.50	$4.00	$16,968.00	$3.00	$12,726.00

City of Tomball
CDBG - Persimmon and Lizzie Lane Drainage Improvements

BID TAB				L.N. McKean		E.P. Brady, Ltd.		Fellers & Clark, LP	
Item	Description	Unit	Quantity	Unit Price	Total Amount	Unit Price	Total Amount	Unit Price	Total Amount
28	Lime for Subgrade Stabilization (5%), Complete in Place	TON	53	$156.00	$8,268.00	$225.00	$11,925.00	$440.00	$23,320.00
29	8" Thick Flexible Base, Complete in Place	SY	3,583	$23.00	$82,409.00	$35.00	$125,405.00	$82.50	$295,597.50
30	2" Thick HMAC Road, Complete in Place	SY	3,583	$31.00	$111,073.00	$20.00	$71,660.00	$44.00	$157,652.00
31	6" Thick Concrete Driveway, Complete in Place	SY	321	$100.00	$32,100.00	$45.00	$14,445.00	$99.00	$31,779.00
32	2" Thick HMAC Driveway, Complete in Place	SY	116	$33.00	$3,828.00	$25.00	$2,900.00	$93.50	$10,846.00
33	Crushed Limestone/Concrete Driveway, Complete in Place	SY	181	$45.00	$8,145.00	$20.00	$3,620.00	$44.00	$7,964.00
34	Install, Maintain, and Remove Temporary Driveway - Crushed Limestone/Concrete, Complete in Place	EA	8	$2,500.00	$20,000.00	$1,975.00	$15,800.00	$6,350.00	$50,800.00
35	Select Fill	CY	500	$5.00	$2,500.00	$25.00	$12,500.00	$33.00	$16,500.00
36	Clearing and Grubbing	LS	1	$2,500.00	$2,500.00	$2,000.00	$2,000.00	$12,726.75	$12,726.75
37	Hydromulch Seeding	AC	2	$2,500.00	$4,625.00	$2,035.00	$3,764.75	$3,175.00	$5,873.75
38	Reinforced Filter Fabric Fence	LF	900	$1.75	$1,575.00	$2.10	$1,890.00	$3.20	$2,880.00
39	TCEQ Notice Filing Fee	LS	1	$5,000.00	$5,000.00	$5,000.00	$5,000.00	$5,000.00	$5,000.00
40	Dewatering	LF	3,000	$1.00	$3,000.00	$1.00	$3,000.00	$25.00	$75,000.00
41	Remove and Relocate Mailbox	EA	10	$25.00	$250.00	$1,150.00	$11,500.00	$1,270.00	$12,700.00
42	Remove and Replace Barbwire Fence	LF	45	$15.00	$675.00	$12.00	$540.00	$63.50	$2,857.50
Sub Totals					$3,736,624.00		$3,891,433.85		$4,161,625.00
Section B. Extra Unit Price Table									
43	Install and Remove Temporary 8" Brick Plug (All Sizes), Complete in Place	EA	17	$500.00	$8,500.00	$1,250.00	$21,250.00	$475.00	$8,075.00
44	Extra Hand Excavation	CY	100	$25.00	$2,500.00	$25.00	$2,500.00	$25.00	$2,500.00
45	Extra Machine Excavation	CY	100	$15.00	$1,500.00	$15.00	$1,500.00	$15.00	$1,500.00
46	Extra Placement of Backfill Material	CY	100	$10.00	$1,000.00	$10.00	$1,000.00	$10.00	$1,000.00
47	Extra Cement-Stabilized Sand	CY	100	$25.00	$2,500.00	$36.00	$3,600.00	$25.00	$2,500.00
48	Extra Solid Sod (at Project Manager's direction)	SY	150	$5.00	$750.00	$5.00	$750.00	$5.00	$750.00
49	Extra Select Fill	CY	100	$25.00	$2,500.00	$25.00	$2,500.00	$25.00	$2,500.00
50	Preparatory Work for Sampling and Analysis in Potentially Petroleum Contaminated Area (PPCA)	LS	1	$10,000.00	$10,000.00	$10,000.00	$10,000.00	$10,000.00	$10,000.00
51	Removal, Transportation, and Disposal of Class I Soils	CY	200	$70.00	$14,000.00	$70.00	$14,000.00	$70.00	$14,000.00
52	Removal, Transportation, and Disposal of Class II Soils	CY	200	$35.00	$7,000.00	$35.00	$7,000.00	$35.00	$7,000.00
53	Diversion/Bypass Pumping of Storm Runoff for Phase 2 and 3 (to be used only with City Approval and if Phase 2/3 work is completed before Phase 1 work)	LS	1	$1,000.00	$1,000.00	$1,000.00	$1,000.00	$1,000.00	$1,000.00
54	Diversion/Bypass Pumping of 54" RCP for Connection to 10'x8' RCB (to be used only with City Approval and if Phase 2/3 work is completed before Phase 1 work)	LS	1	$2,000.00	$2,000.00	$2,000.00	$2,000.00	$2,000.00	$2,000.00
55	Remove and Replace Water Line (All Sizes)	LF	100	$50.00	$5,000.00	$53.55	$5,355.00	$77.50	$7,750.00
56	Remove and Replace Water Line Services (All Sizes)	EA	10	$500.00	$5,000.00	$650.00	$6,500.00	$1,080.00	$10,800.00
Sub Totals					$63,250.00		$78,955.00		$71,375.00
Grand Total					$3,799,874.00		$3,970,388.85		$4,233,000.00

BID TAB	Blazey Construction Services LLC*		DL Glover Inc*		Vaca Underground Utilities, Inc*	
Item	Unit Price	Total Amount	Unit Price	Total Amount	Unit Price	Total Amount
28	$189.00	$10,017.00	$200.00	$10,600.00	$196.00	$10,388.00
29	$24.94	$89,360.02	$20.00	$71,660.00	$55.00	$197,065.00
30	$34.02	$121,893.66	$14.00	$50,162.00	$16.00	$57,328.00
31	$57.23	$18,370.83	$62.00	$19,902.00	$56.00	$17,976.00
32	$53.03	$6,151.48	$60.00	$6,960.00	$20.00	$2,320.00
33	$15.23	$2,756.63	$85.00	$15,385.00	$22.00	$3,982.00
34	$525.00	$4,200.00	$1,050.00	$8,400.00	$100.00	$800.00
35	$26.25	$13,125.00	$12.00	$6,000.00	$14.00	$7,000.00
36	$21,000.00	$21,000.00	$10,000.00	$10,000.00	$3,360.00	$3,360.00
37	$1,890.00	$3,496.50	$2,000.00	$3,700.00	$1,568.00	$2,900.80
38	$1.31	$1,179.00	$2.00	$1,800.00	$2.00	$1,800.00
39	$5,000.00	$5,000.00	$5,000.00	$5,000.00	$5,000.00	$5,000.00
40	$20.00	$60,000.00	$17.00	$51,000.00	$25.00	$75,000.00
41	$157.50	$1,575.00	$525.00	$5,250.00	$224.00	$2,240.00
42	$10.50	$472.50	$20.00	$900.00	$22.00	$990.00
Sub Totals		$2,843,411.53		$3,091,976.00		$3,166,407.80
Section B. Extra Unit Price Table						
43	$150.00	$2,550.00	$350.00	$5,950.00	$300.00	$5,100.00
44	$25.00	$2,500.00	$25.00	$2,500.00	$25.00	$2,500.00
45	$15.00	$1,500.00	$15.00	$1,500.00	$15.00	$1,500.00
46	$10.00	$1,000.00	$10.00	$1,000.00	$10.00	$1,000.00
47	$25.00	$2,500.00	$25.00	$2,500.00	$25.00	$2,500.00
48	$5.00	$750.00	$5.00	$750.00	$5.00	$750.00
49	$25.00	$2,500.00	$25.00	$2,500.00	$25.00	$2,500.00
50	$10,000.00	$10,000.00	$10,000.00	$10,000.00	$10,000.00	$10,000.00
51	$70.00	$14,000.00	$70.00	$14,000.00	$70.00	$14,000.00
52	$35.00	$7,000.00	$35.00	$7,000.00	$35.00	$7,000.00
53	$1,000.00	$1,000.00	$1,000.00	$1,000.00	$1,120.00	$1,120.00
54	$2,000.00	$2,000.00	$2,000.00	$2,000.00	$2,240.00	$2,240.00
55	$38.33	$3,833.00	$70.00	$7,000.00	$40.00	$4,000.00
56	$1,942.50	$19,425.00	$1,250.00	$12,500.00	$112.00	$1,120.00
Sub Totals		$70,558.00		$70,200.00		$55,330.00
Grand Total		$2,913,969.53		$3,162,176.00		$3,221,737.80

* Indicates disqualified bid

Regular City Council
Agenda Item
Data Sheet

Meeting Date: October 5, 2020

Topic:

Approve Resolution No. 2020-33, a Resolution of the City Council of the City of Tomball, Texas, authorizing the submission of a Local Parks Non-Urban Outdoor Recreation grant application to the Texas Parks and Wildlife Department and Authorize the City Manager and Assistant City Manager to act as the City's Executive Officer and authorized representative.

Background:

To continue with the improvements and further development of Jerry Matheson Park, staff is requesting to submit an application to the Texas Parks and Wildlife Department for grant funding totaling $750,000 through their Local Parks Non-Urban Outdoor Recreation grant. The grant will be a match grant with the City matching $750,000 for a total project cost of $1,500,000.00.

Staff is currently advertising a Local Community Parks Survey to gather input from the community of the type of amenities they would like to see in our parks. This information will be utilized on the grant application to show the community support and need for the project and proposed improvements.

Resolution 2020-33, authorizes the City to execute and submit a grant application for the Local Parks Non-Urban Outdoor Recreation grant and authorize the City Manager and Assistant City Manager to act as the City's Executive Office and authorized representative.

Origination:

Public Works Department

Recommendation:

Staff recommends approving Resolution Number 2020-33

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

Beth Jones, Public Works Director

ACTION TAKEN

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

ATTACHMENTS:

Resolution 2020-33

RESOLUTION NO. 2020-33

A RESOLUTION OF THE CITY OF TOMBALL, TEXAS, DESIGNATING CERTAIN OFFICIALS AS BEING RESPONSIBLE FOR, ACTING FOR, AND ON BEHALF OF THE APPLICANT IN DEALING WITH THE TEXAS PARKS & WILDLIFE DEPARTMENT, FOR THE PURPOSE OF PARTICIPATING IN THE LOCAL PARK GRANT PROGRAM; CERTIFYING THAT THE APPLICANT IS ELIGIBLE TO RECEIVE PROGRAM ASSISTANCE; CERTIFYING THAT THE APPLICANT MATCHING SHARE IS READILY AVAILABLE; AND DEDICATING THE PROPOSED SITE FOR PERMANENT (OR FOR THE TERM OF THE LEASE FOR LEASED PROPERTY) PUBLIC PARK AND RECREATIONAL USE.

* * * * * * * * *

WHEREAS, the City of Tomball is fully eligible to receive assistance under the Program; and

WHEREAS, the City of Tomball is desirous of authorizing an official to represent and act for the Applicant in dealing with the Department concerning the Program; **NOW, THEREFORE**

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

Section 1. That the City of Tomball hereby certifies that they are eligible to receive assistance under the Program, and that notice of the application has been posted according to local public hearing requirements; and

Section 2. That the City of Tomball hereby certifies that the matching share for that application is readily available at this time; and

Section 3. That the City of Tomball hereby authorizes and directs the City Manager to act for the Applicant in dealing with the Texas Parks & Wildlife Department for the purposes of the Program, and that City Manager is hereby officially designated as the representative in this regard; and

Section 4. The City of Tomball hereby specifically authorizes the official to make application to the Texas Parks & Wildlife Department concerning the site to be known as Jerry Matheson Park in the City of Tomball for use as a park site and is hereby dedicated for public park and recreation purposes in perpetuity. Projects with federal monies may have differing requirements.

PASSED, APPROVED, AND RESOLVED this _____ day of __October__ 2020.

____
Gretchen Fagan
Mayor

ATTEST:

____
Doris Speer
City Secretary

Regular City Council Agenda Item Data Sheet

Meeting Date: October 5, 2020

Topic:
Conduct Public Hearing regarding the City's intent to apply for a Texas Parks and Wildlife Grant.

Background:
Pursuant to the guidelines issued by the Texas Parks and Wildlife Department for the proposed grant application, a Public Hearing will be conducted to provide information about the proposed park project and to allow for public comment.

Origination:
Public Works Department

Recommendation:
N/A

Party(ies) responsible for placing this item on agenda:
Beth Jones, Public Works Director

ACTION TAKEN

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

ATTACHMENTS:

Notice of Public Hearing

NOTICE OF PUBLIC HEARING
CITY OF TOMBALL, TEXAS

MONDAY, OCTOBER 5, 2020

6:00 P.M.

NOTICE OF PUBLIC HEARING OF THE CITY COUNCIL OF THE CITY OF TOMBALL REGARDING THE INTEN OF THE CITY TO CONSIDER AN APPLICATION FOR A GRANT FROM THE TEXAS PARKS AND WILDLIFE DEPARTMENT'S TEXAS RECREATION AND PARKS ACCOUNT PROGRAM.

NOTICE IS HEREBY GIVEN THAT a public hearing will be conducted by the City Council of the City of Tomball, Texas for 6:00 p.m. on October 5, 2020 at the regular meeting place of the City, the City Council Chamber at Tomball City Hall, 401 Market Street, Tomball, Texas 77375 (unless alternative meeting arrangements are required to address public health concerns, which meeting arrangements will be specified in the notice of such meeting posted in accordance with applicable law). The public hearing will provide information about the proposed park project. Public Comment is welcome and may be submitted in writing at City Hall during routine business hours. Citizens are invited to take an online survey regarding Tomball's Community Parks on the City website at https://tomballtx.gov.

For further information, contact Meagan Mageo at 281-290-1411.

This Notice of Public Hearing is given and the public hearing is being held pursuant to the requirements of the Act.

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 22nd day of September 2020 by 5:00 p.m., and remained posted for at least 72 continuous hours preceding the scheduled time of said meetings.

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: October 5, 2020

Topic:

Approve Resolution No. 2020-34, a Resolution of the City Council of the City of Tomball, Texas, resolving to prevent mining and drilling At Jerry Matheson Park.

Background:

Per the requirements of the Texas Parks and Wildlife Department, the City must adopt a resolution preventing mining and drilling activities at a park that is subject to a park development grant. Staff has begun an application to the Texas Parks and Wildlife Department for the Local Park Non-Urban Outdoor Recreation Grant for improvement to Jerry Matheson Park.

Resolution 2020-34, prevents the City from allowing mining or drilling at Jerry Matheson Park, if the grant is received and funds are used for its development, for the perpetuity of the park land.

Origination:

Public Works Department

Recommendation:

Staff recommends approving Resolution Number 2020-34

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

Beth Jones, Public Works Director

ACTION TAKEN

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

ATTACHMENTS:

Resolution 2020-34

RESOLUTION NO. 2020-34

A RESOLUTION OF THE CITY OF TOMBALL, TEXAS, RESOLVING TO PREVENT MINING AND DRILLING ON CITY PROPERTY BEING UTILIZED FOR A TEXAS PARKS AND WILDLIFE PARK DEVELOPMENT PROJECT.

* * * * * * * * *

WHEREAS, the City of Tomball has applied for grant funding from the Texas Parks and Wildlife Department for a park development grant project located within the city limits; and

WHEREAS, the Texas Parks and Wildlife Department grant program requires assurances that mining and drilling will not take place on property utilized for park development purposes; **NOW, THEREFORE**

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF TOMBALL, TEXAS declares and determines that no mining or drilling will take place in perpetuity on City park land, if Texas Parks and Wildlife grant funds are utilized for its development.

PASSED, APPROVED, AND RESOLVED this _____ day of October 2020.

____
Gretchen Fagan
Mayor

ATTEST:

____
Doris Speer
City Secretary

Regular City Council
Agenda Item
Data Sheet

Meeting Date: October 5, 2020

Topic:

Appoint Weaver & Tidwell, LLP as auditors for the Fiscal Year Ending September 30, 2020 and authorize the City Manager to enter into negotiations with the firm as to fees charged and other relevant terms of the audit engagement

Background:

We have completed our review of the nine accounting firms that responded to our Request for Qualifications (RFQ). The firm of BKD, LLP has performed the audit for the past three years. We felt it was time to issue an RFQ for the fiscal year ending 9/30/2020.

We received responses from nine firms. A selection committee independently evaluated each firm and the firms of Weaver & Tidwell and Whitley Penn were chosen to be interviewed by management.

The discussions with each firm included their approach to the audit given the restrictions relating to COVID-19, their staffing availability, and the City's expectations for the coming year.

Subsequent to both interviews, the firm of Weaver & Tidwell, LLP was selected to be included in this recommendation to the City Council.

Origination:

Finance

Recommendation:

Approve the firm of Weaver & Tidwell, LLP to perform the independent audit and prepare the Comprehensive Annual Financial Statements (CAFR) for the fiscal year ended September 30, 2020.

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

Glenn Windsor, CPA Finance Director

ACTION TAKEN

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

ATTACHMENTS:

City of Tomball FY20 RFQ

Listing of Firms Responding

CITY OF TOMBALL, TEXAS

RFQ 2020-15

REQUEST FOR QUALIFICATIONS

INDEPENDENT FINANCIAL AUDIT SERVICES

DUE DATE:

THURSDAY, September 17, 2020, AT 2:00 PM (CST)

ISSUED BY:

FINANCE DEPARTMENT

CITY OF TOMBALL, TEXAS
REQUEST FOR QUALIFICATIONS
INDEPENDENT FINANCIAL AUDIT SERVICES

TABLE OF CONTENTS

CITY OF TOMBALL, TEXAS
REQUEST FOR QUALIFICATIONS
INDEPENDENT FINANCIAL AUDIT SERVICES

I. INTRODUCTION

A. Request for Qualifications (RFQ)

The City of Tomball, Texas (the City) is soliciting Statements of Qualifications for services to audit its financial records and accounts and to prepare its comprehensive annual financial report (CAFR) based on the audit. Persons qualified to perform these services include certified public accountants who are licensed in the State of Texas.

B. Term of Engagement

A three-year engagement is contemplated, subject to the annual review and recommendation of the City Manager and Director of Finance, the satisfactory negotiation of terms (including a price acceptable to both the City and the selected firm), the concurrence of the City Council, and the annual availability of an appropriation. The audit will initially be performed for the fiscal year of October 1, 2019 to September 30, 2020.

II. DESCRIPTION OF THE MUNICIPALITY

A. Background Information

The City, incorporated on July 18, 1933, is located northwest of Houston, Texas, in a rapidly growing area of Harris County. The City currently occupies a land area of 12.31 square miles and serves an estimated population of 11,761. The City of Tomball is empowered to levy a property tax on both real and personal properties located within its boundaries. It also is empowered by state statute to extend its corporate limits by annexation, which occurs when deemed appropriate by the governing council. The City adopted a home rule charter by adoption January 17, 1987 and currently operates under the Council-Manager form of government, The City Council is comprised of six (6) members including the Mayor. The Council is responsible for adopting ordinances, regulations governing the City, adopting the budget, determining policies, and appointing the City Manager. The City Manager reports to the Council and is the chief operating officer of the City.

B. Current City Officials

- Elected Officials:

  Mayor..Gretchen Fagan

  Councilmember, Place 1..................................John Ford
  Councilmember, Place 2..................................Mark Stoll
  Councilmember, Place 3..................................Chad Degges
  Councilmember, Place 4..................................Derek S.Townsend, Sr.

Councilmember, Place 5 .... Lori Klein Quinn

- Appointed Officials:
  City Manager .... Robert S. Hauck
  Assistant City Manager .... David Esquivel, PE
  City Secretary .... Doris Speer
  Director of Finance .... Glenn Windsor, CPA
  Director of Public Works .... Beth Jones, PE
  Chief of Police .... Jeff Bert
  Fire Chief .... Randy Parr
  Director of Community Development .... Craig Meyers
  Director of Information Technology .... Doug Tippey
  Director of Human Resources .... Lisa Coe
  Director of Marketing .... Mike Baxter
  Tomball Economic Development Corporation
  Executive Director .... Kelly Violette

C. Fund Structure

As of August 31, 2020, the City's fund structure is as follows:

Fund Type	Number of Individual Funds	Number with Legally Adopted Annual Budgets
General fund	1	1
Special revenue funds	8	8
Debt service funds	1	1
Capital projects fund	1	1
Enterprise funds	1	1
Internal service funds	2	2
Agency funds	0	0
Pension trust funds	0	0

D. Budgetary Basis of Accounting

The City prepares its operating budget on an annual basis. The budgets for all governmental funds are prepared and adopted on a basis consistent with generally accepted accounting principles. The budgets prepared and adopted for enterprise funds differ from generally accepted accounting principles primarily in that depreciation expense is not a budgeted item, while capital outlay is budgeted as an expense. The budgets for capital projects funds are prepared and adopted on a fiscal year project basis.

E. Financial Information

Total annual appropriations for funds of the primary government for fiscal year 2019- 20 totaled $51 million. More detailed information about the City and its finances can be found in prior CAFRs and budgets. These documents, along with other information, are available on the City website at http://tomballtx.gov.

F. Pension Plans

The City's employees participate in the Texas Municipal Retirement System. The City also offers its employees an optional Internal Revenue Code Section 457(b) deferred compensation plan through ICMA-RC.

G. Federal and State Financial Assistance

During the fiscal year to be audited, the City may receive funding from federal and state financial assistance programs. A Single Audit may be required if the grant expenditure thresholds are met.

H. Component Units

Besides the primary government, the City's financial statements provide information for its three (3) component units. The Tomball Economic Development Corporation is included as a discretely presented component unit. This component unit is funded by the levy of a sales and use tax of one-half of one percent to promote economic development within the community. Blended component units include Employee Benefits Trust and the Tomball Legacy Fund, Inc.

I. Computer Systems

The City currently utilizes the INCODE, Version 10 software package from Tyler Technologies, Inc., for the following applications:

- General ledger
- Accounts payable
- Accounts receivable
- Check reconciliation
- Purchase orders
- Fixed assets
- Project accounting
- Payroll
- Court to include municipal and civil court
- Utility billing
- Cash collections
- Building projects *(includes permitting, inspections, code enforcement)*

J. Internal Audit Function

The City does not currently have any internal audit functions.

K. Finance Department Personnel

The Director of Finance has two Bachelor of Business Administration degrees from Lamar University in Beaumont and has over 34 years of municipal finance experience.

Other finance-related personnel include the following positions:

- One (1) Senior Accountant
- Two (2) Accountants
- Two (2) Accounting Assistants, for accounts payable and purchasing
- Utility Billing Supervisor

III. SCOPE OF AUDIT SERVICES REQUIRED

A. Auditing Standards to be Followed

The examination of the City's financial statements should be made in accordance with:

- Auditing standards generally accepted in the United States of America,
- Standards applicable to financial audits contained in *Government Auditing Standards* issued by the Comptroller General of the United States,
- Provisions of relevant Governmental Accounting Standards Board statements, and
- U.S. Office of Management and Budget Circular A-133, *Audits of States, Local Governments, and Non-Profit Organizations*, if applicable.

B. Reports to be Issued

The selected audit firm will be required to prepare the following reports:

- Independent Auditor's Report,
- Independent Auditor's Report on Internal Control Over Financial Reporting and on Compliance and Other Matters Based on an Audit of Financial Statements Performed in Accordance With *Government Auditing Standards*, and
- All other reports required of the independent auditor examining the City's financial statements in accordance with the standards listed above.

C. Evaluation of Internal Control Systems

The selected audit firm shall observe the adequacy of the systems of internal control. If weaknesses are noted, appropriate findings and recommendations should be reviewed with the City Manager and Director of Finance, with final inclusion in a separate letter to management.

D. Provision of Advisory Guidance

The successful audit firm will be expected to provide advisory guidance to City staff during the course of audit work for accounting and other technical matters necessary to keep the City in compliance with any changes in governmental accounting and financial reporting standards.

E. Special Assistance to be Provided

Each year, the City submits its CAFR to the Government Finance Officers Association of the United States and Canada (GFOA) for review in its Certificate of Achievement for Excellence in Financial Reporting Program. The City has received the Certificate of Achievement for 26 consecutive years, and it is anticipated that the City will again receive the certificate for its fiscal year 2016 CAFR. Therefore, the successful audit firm will be required to provide special assistance to meet the requirements of this program. The City will give additional consideration to those firms that have actively participated in technically assisting clients previously awarded the certificate.

F. Requested Client-prepared Schedules

The successful audit firm will be expected to submit a detailed list of requested client-prepared schedules to the City's Finance Department at an agreed-upon date to facilitate efficient and timely completion for the fieldwork process. Because the Finance Department is staffed at only a maintenance level and must carry on its normal operations during the audit, much of the time necessary for preparing schedules may require staff overtime. This time constraint should be taken into account in preparing the Statement of Qualifications.

G. CAFR Preparation

The audit firm will prepare the draft and final versions of the CAFR as follows:

- The introductory and statistical sections will be prepared by the auditor with assistance from City staff.
- The financial section will be prepared by the auditor. The auditor will compile and prepare all financial statements and schedules. The notes to the basic financial statements will be a joint effort of the City and the auditor, and they will be prepared by the auditor.

Printing and binding of copies of the CAFR will be the responsibility of the audit firm, with the report covers provided by the City. The audit firm will also provide the City with a print-ready version of the CAFR in Portable Document Format (PDF) to facilitate the printing of any additional copies and for posting the CAFR on the City's website.

H. Working Paper Retention and Access to Working Papers

All working papers and reports must be retained, at the auditor's expense, for a minimum of five (5) years, unless the firm is notified in writing by the City of the need to extend the retention period.

At the City's request, copies of any or all working papers prepared in conjunction with a respective audit engagement will be provided, on a timely basis, at no cost to the City. In addition, the audit firm shall respond to reasonable inquiries of successor auditors and allow them to review working papers relating to matters of continuing accounting significance.

IV. CITY OF TOMBALL'S RESPONSIBILITIES DURING THE AUDIT

A. The City's finance department staff shall close all accounts 45-60 days after fiscal year end and prepare, at the audit firm's option, a trial balance and/or detailed general ledger transaction listing for all funds to be examined by the auditor.

B. The City will provide the auditor with an onsite work area and access to a source of power, internet access, telephone, photocopier, and fax machine.

C. The City will make available and accessible all documents, records, and systems requested by the independent auditors to conduct their examination.

D. City staff will be available to provide documents and reports for examination, reproduce documents, prepare specific schedules, etc.

E. The City will allow the auditor access to staff work areas for confidential discussions to take place.

V. CALENDAR OF EVENTS

A. Selection of Audit Firm

The following is a proposed calendar of events for selection of an auditor. Dates are subject to change.

Advertisement of RFQ	Wednesday, September 2 and September 9, 2020
Deadline for RFQ Inquiries	Monday, September 14, 2020 at 5:00 PM
Due Date & Time for submittal	Thursday, September 17, 2020 by 2:00 PM
Evaluation of submissions and Interview of Finalists (including contract negotiations)	September 18 – 25, 2020
Selection announcement	Monday, September 28, 2020
Council Award	Monday, October 5, 2020
Notice to Proceed	Monday, October 12, 2020

B. Contemplated Schedule for Annual Audit

The desired schedule for completion of certain aspects of the audit for each year of the engagement is as follows:

1. The audit may commence after September 30 or at an earlier time for planning purposes as mutually agreed upon by the City.

2. The detailed list of requested schedules to be prepared by City staff needs to be provided to the City at least one (1) month prior to the beginning of fieldwork.

3. The preliminary draft report will be prepared by the audit firm and given to the City during February.

4. The audit firm will be required to present the CAFR to the City Council at a meeting scheduled in March.

VI. INFORMATION REQUESTED FROM AUDIT FIRMS

Any firm interested in being considered for the independent financial audit services engagement is requested to submit, on the firm's letterhead, a Statement of Qualifications which provides information on the points indicated below. Responding firms should refer to Section VII (Submission of Statement of Qualifications) of this RFQ for additional response guidelines.

To achieve a uniform review process and obtain the maximum degree of comparability, the Statement of Qualifications is to be organized according to the following outline:

A. Title Page

Show the RFQ subject, the name of the proposing firm, mailing address, website address, telephone number, primary contact, and date submitted.

B. Table of Contents

Include a clear identification of the material by section and by page number.

C. Letter of Transmittal

1. Briefly state the firm's understanding of the work to be performed and provide a clear commitment that work will be performed within the time periods specified in the RFQ.

2. Provide the names of the persons who will be authorized to make representations for the firm, their titles, addresses, email addresses, and telephone numbers.

3. State that the person signing the transmittal letter is authorized to bind the firm and enter into a contract.

4. The firm should provide affirmative statements that:

   a. It is licensed to practice in the State of Texas and

b. It is independent of the City of Tomball as defined by *Government Auditing Standards* issued by the Comptroller General of the United States. (Otherwise, identify and discuss any potential conflicts of interest of which the firm is aware.)

D. Profile of the Responding Firm *(15 points maximum)*

1. State whether the firm is local, regional, national, or international.

2. State the location of the office from which work is to be performed and the number of partners, managers, supervisors, seniors, and other professional staff employed at that office.

3. Describe the local office's capacity to audit information technology systems, including the number and classifications of personnel skilled in computer sciences who will work on the audit.

4. List the firm's professional affiliations and the results of the latest peer review.

E. Summary of the Responding Firm's Qualifications *(50 points maximum)*

1. Describe the firm's most recent auditing experience similar to the type of audit being requested. Include a reference list of local government audit clients and the number of years served for each. Indicate who prepared each entity's CAFR and whether the entity has been awarded any GFOA Certificates of Achievement for Excellence in Financial Reporting.

2. Identify the partner, audit manager, and supervisors who will work on the audit. Resumes including relevant governmental auditing experience and continuing education for each individual assigned to the audit should be included. (Resumes may be included as an appendix.)

3. Indicate the firm's experience in providing any additional services to local governments by listing the name of each entity, the type(s) of service performed, and the year(s) of engagement.

F. Approach to the Audit *(35 points maximum)*

1. Submit a work plan to accomplish the scope of services required, including an explanation of the audit methodology to be followed. In developing the work plan, reference should be made to sources of information, such as the City's budget and related materials, organizational charts, manuals and programs, and financial and other management information systems. The planned use of any specialists should also be specified. In addition,

proposers are required to provide the following information on their audit approach:

a. Proposed segmentation of the engagement,
b. Level of staff and number of hours to be assigned to each proposed segment of the engagement,
c. Sample sizes and the extent to which statistical sampling is to be used in the engagement,
d. Extent of the use of EDP software in the engagement,
e. Type and extent of analytical procedures to be used in the engagement,
f. Approach to be taken to gain and document an understanding of the City's internal control structure,
g. Approach to be taken in determining laws and regulations that will be subject to audit test work, and
h. Approach to be taken in drawing audit samples for purposes of tests of compliance.

2. State the purpose and degree of utilization of City of Tomball personnel.

VII. SUBMISSION OF STATEMENT OF QUALIFICATIONS

A. Instructions to Prospective Firms

The following instructions should be observed by firms responding to this RFQ:

1. Please respond specifically to all information requested in this RFQ or indicate why a particular response is not given.

2. Please limit responses to relevant material. Any additional data may be included in the Statement of Qualifications at the proposer's discretion. Additional information must be submitted in the form of an appendix or bound separately.

3. Identify the RFQ item being addressed in the introduction to each response.

4. Respondents or their representatives are prohibited from communicating with City of Tomball officials (including City Council members) and employees regarding the RFQ from the time it is released until it has been acted upon by the City Council. Violation of this provision by respondents or their agents will lead to disqualification of the respective Statement of Qualifications from consideration.

5. If there are any clarification questions regarding the scope of work and/or any other requirements of this RFQ, respondents or their representatives should submit them in writing and forward them via

email to Glenn Windsor, Director of Finance, at gwindsor@tomballtx.gov.

6. The City of Tomball is subject to the Texas Open Records Act. However, certain types of information may be exempt from disclosure under the Act. Firms submitting information which they deem confidential or proprietary must clearly mark and identify such information page by page. The City will, to the extent allowed by applicable law, protect such information from disclosure. The final decision as to what information must be disclosed under the Open Records Act lies with the Texas Attorney General.

B. Filing Requirements

The City of Tomball requests two (2) bound copies of the Statement of Qualifications, along with one (1) unbound copy suitable for reproduction. All Statements of Qualifications should be sealed in an envelope and clearly marked "Statement of Qualifications for Independent Financial Audit Services" on the outside of the envelope or on any carrier's envelope.

Sealed Statements of Qualifications are to be mailed, sent by overnight courier, or hand-delivered to the attention of:

City of Tomball
Attn: Mystal Lato, Accounting Assistant
501 James Street, Tomball, TX 77375

The City of Tomball will accept sealed Statements of Qualifications for independent financial audit services **until 2:00 PM on Thursday, September 17, 2020**. **Statements of Qualifications received after this time will not be considered.**

The City of Tomball will not be responsible in the event that the U.S. Postal Service or any other courier system fails to deliver the sealed Statements of Qualifications to the City of Tomball by the deadline specified above. Electronic transmission or facsimile of the Statement of Qualifications will **NOT** accepted.

VIII. EVALUATION CRITERIA

City staff's recommendation to the City Council will be based on the Statement of Qualifications determined to offer the best value to the City and its citizens. The evaluation of the Statement of Qualifications will be made based on, but not limited to, the following criteria, in no particular order of priority or rating, in addition to the scoring listed in Section VI (Information Requested from Audit Firms) of this document. These factors will be applied to all eligible, responsive firms in comparing the Statements of Qualifications received and in selecting the audit firm.

The City of Tomball reserves the right to require oral presentations by any or all firms. A contract award may be made without oral presentations and/or discussions with firms after RFQ responses are received by the City. Therefore, RFQ responses should be submitted on the most favorable terms.

All costs directly or indirectly related to preparation of a response or oral presentation, if any, required to supplement and/or clarify an item in the RFQ shall be the sole responsibility of, and shall be borne by, the responding firm.

The City will use the following criteria in selecting the best qualified firm:

A. Knowledge of generally accepted accounting principles, auditing standards, financial policies, and procedures applicable to governmental entities,

B. Prior experience in auditing financial statements of similar sized or larger municipal governments in Texas,

C. Proposing firm's approach to the examination and the work plan for accomplishing the scope of services required in the RFQ,

D. Availability of trained personnel and technical resources required for conducting the audit and for providing consultation on accounting and other technical matters as needed to keep the City current on any changes in governmental accounting and financial reporting standards, and

E. A demonstrated ability to provide assistance in obtaining the Certificate of Achievement for Excellence in Financial Reporting from the Government Finance Officers Association.

IX. RIGHTS RESERVED BY THE CITY OF TOMBALL

The City of Tomball reserves the right to:

A. Accept, reject, re-solicit, and/or extend the RFQ by up to two (2) additional weeks from the original submission date if only one or no Statement of Qualifications is received by the submission deadline,

B. Hold Statements of Qualifications for 90 days from the submission date without action,

C. Extend the original 90-day holding period prior to the award if agreed upon in writing by both parties,

D. Request additional information or to meet with representatives from responding firms to discuss items in the Statement of Qualifications before and after submission, any or all of which may be used in forming a recommendation,

E. Disregard and reject the entire Statement of Qualifications for any alterations, changes, or deletions made to this RFQ by the proposer,

F. Reject any or all Statements of Qualifications received and to accept the Statement of Qualifications the City considers being in its best interest based upon the requirements and descriptions outlined in the RFQ,

G. Retain all Statements of Qualifications submitted and to use any ideas in a Statement of Qualifications regardless of whether that Statement is selected, and

H. Terminate all or any part of the unfinished portion of the work resulting from this solicitation within thirty (30) days written notice due to default, delay, or non-performance by the firm or if it is deemed in the best interest of the City for convenience.

X. WARRANTIES

A. The successful firm warrants that it will not delegate or subcontract its responsibilities under the audit engagement without the express prior written consent of the City.

B. The successful firm warrants that it will not replace or substitute key audit personnel without the City's knowledge and consent.

C. The successful firm warrants that it is willing and able to obtain an errors and omissions insurance policy providing a prudent amount of coverage for willful or negligent acts or the omissions of any officers or employees.

D. The submission of a Statement of Qualifications shall be prima facie evidence that the proposing firm has full knowledge of the scope, nature, quantity, and quality of the work to be performed, the detailed requirements of the specifications, and the conditions under which the work is to be performed.

XI. DOLLAR COST OF THE AUDIT SERVICES TO BE PROVIDED

Once the City has ranked all validly submitted Statements of Qualifications and selected a firm on the basis of demonstrated competence and qualifications, the City will enter into negotiations with the successful firm in an attempt to obtain a fair and reasonable price for its services. To this end, the firm will be expected to provide the following items for consideration at that time:

A. The dollar cost is to provide the maximum not-to-exceed fee. The total hours and hourly rate required to complete the requested work by staff classification are to be stated. The resulting all-inclusive maximum not-to-exceed fee amount is to contain all direct and indirect costs, including all out-of-pocket expenses.

B. The cost to perform the Single Audit (if applicable) is to be shown separately from the cost to audit the basic financial statements and required supplementary information. In addition, the expected rates for any additional services for which the City might desire to utilize the expertise of the auditor on additional projects outside the scope of this financial audit engagement are to be provided.

C. The expected manner and terms of payment for the proposed engagement are to be provided.

Audit Firms Responding to the RFQ:

Weaver & Tidwell, LLP

Whitley Penn, LLP

Park Fowler & Co., PLLC

Belt Harris Pechacek, LLLP

McConnell & Jones, LLP

Pattillo, Brown & Hill, LLP

BKD. LLP

RSM, LLP

Richard Brozewicz, CPA

Regular City Council Agenda Item Data Sheet

Meeting Date: October 5, 2020

Topic:

Adopt, on First and Final Reading, Ordinance No. 2020-28, An Ordinance of the City Council of the City of Tomball, Texas, Authorizing the Issuance of City of Tomball, Texas, General Obligation Refunding Bonds, Series 2020; Levying a Tax in Payment Thereof; Authorizing the Issuance of the Bonds in Accordance with Specified Parameters; Authorizing the Redemption Prior to Maturity of Certain Outstanding Bonds; Approving the Preparation and Distribution of an Official Statement; and Enacting Other Provisions Relating Thereto; and Providing for the Effective Date Thereof

Background:

The new bonds will refund the remaining Series 2013 obligations with an approximate annual savings of $32,248 through 2033, a total present savings of $386,981. Issuance of new bonds at a lower interest rate than what we are paying on the remaining debt from the Series 2013 Certificates of Obligation that have a final maturity in 2033.

Origination:

Finance

Recommendation:

Approval of Ordinance No. 2020-28

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

Glenn Windsor, CPA Finance Director

ACTION TAKEN

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

ATTACHMENTS:

Ordinance No. 2020-28
GO Refunding Bonds, Series 2020 Timetable
GO Refunding Bonds, Preliminary Numbers
GO Refunding Bonds, Summary

ORDINANCE NO. 2020-28

AUTHORIZING THE
ISSUANCE OF

CITY OF TOMBALL, TEXAS
GENERAL OBLIGATION REFUNDING BONDS
SERIES 2020

Adopted: October 5, 2020

#6240127.2

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MISCELLANEOUS

ADOPT ON FIRST AND FINAL READING, ORDINANCE NO. 2020-28, AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF TOMBALL, TEXAS, AUTHORIZING THE ISSUANCE OF THE CITY OF TOMBALL, TEXAS GENERAL OBLIGATION REFUNDING BONDS, SERIES 2020; LEVYING A TAX IN PAYMENT THEREOF; AUTHORIZING THE ISSUANCE OF THE BONDS IN ACCORDANCE WITH SPECIFIED PARAMETERS; AUTHORIZING THE REDEMPTION PRIOR TO MATURITIES OF CERTAIN OUTSTANDING BONDS; ENACTING OTHER PROVISIONS RELATED THERETO; AND PROVIDING FOR THE EFFECT DATE THEREOF

****

WHEREAS, the City of Tomball, Texas (the "City") has heretofore issued the bonds or obligations described on the attached Schedule I (the "Refunded Obligations Candidates"); and

WHEREAS, the City desires to refund all or a portion of the Refunded Obligations Candidates in order to achieve a present value savings in debt service; and

WHEREAS, it is intended that all or a portion of the Refunded Obligation Candidates shall be designated as Refunded Obligations (as hereinafter defined) in the Pricing Certificate (as hereinafter defined) and shall be refunded pursuant to this Ordinance and the Pricing Certificate; and

WHEREAS, Chapter 1207, Texas Government Code, as amended ("Chapter 1207"), authorizes the City to issue refunding bonds for the purpose of refunding the Refunded Obligations in advance of their maturities, and to accomplish such refunding by depositing directly with a paying agent for the Refunded Obligations (or other qualified escrow agent), the proceeds of such refunding bonds, together with other available funds or securities, in an amount sufficient to provide for the payment or redemption of the Refunded Obligations, and provides that such deposit shall constitute the making of firm banking and financial arrangements for the discharge and final payment or redemption of the Refunded Obligations; and

WHEREAS, the City desires to authorize the execution of an escrow agreement or a deposit agreement, if necessary, in order to provide for the deposit of proceeds of the refunding bonds and, to the extent specified pursuant hereto, other lawfully available funds of the City and to pay the redemption price of the Refunded Obligations when due; and

WHEREAS, upon the issuance of the refunding bonds herein authorized and the deposit of funds referred to above, the Refunded Obligations shall no longer be regarded as being outstanding, except for the purpose of being paid pursuant to such deposit, and the pledges, liens, trusts and all other covenants, provisions, terms and conditions of the ordinances authorizing the issuance of the Refunded Obligations shall be, with respect to the Refunded Obligations, discharged, terminated and defeased; and

WHEREAS, the City hereby finds and determines that the issuance and delivery of the refunding bonds hereinafter authorized is necessary and in the public interest and the use of the proceeds in the manner herein specified constitutes a valid public purpose; and

WHEREAS, the City hereby finds and determines that the refunding contemplated in this Ordinance will benefit the City by providing a present value savings in the debt service payable by the City, and that such benefit is sufficient consideration for the refunding of the Refunded Obligations; and

WHEREAS, pursuant to Section 1207.007, the City desires to delegate the authority to effect the sale of the Bonds (as defined herein) to the Authorized Officer (hereinafter defined); and

WHEREAS, the meeting at which this Ordinance is being considered is open to the public as required by law, and the public notice of the time, place and purpose of said meeting was given as required by Chapter 551, Texas Government Code and the March 16, 2020 action by the Governor of the State of Texas under Section 418.016, Texas Government Code, suspending certain provisions of the Texas Opens Meetings Act; Now, Therefore

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

ARTICLE I

DEFINITIONS AND OTHER PRELIMINARY MATTERS

Section 1.01 Definitions.

Unless otherwise expressly provided in this Ordinance or unless the context clearly requires otherwise, the following terms shall have the meanings specified below:

"Authorized Officer" means the Mayor, the City Manager, the Assistant City Manager or the Director of Finance of the City, who are authorized to act on behalf of the City in selling and delivering the Bonds, or such other officers of the City as designated in writing.

"Bond" means any of the Bonds.

"Bonds" means the City's bonds authorized to be issued by Section 3.01 of this Ordinance.

"Bond Counsel" means Bracewell LLP.

"Business Day" means a day that is not a Saturday, Sunday, legal holiday or other day on which banking institutions in the city where the Designated Payment/Transfer Office is located are required or authorized by law or executive order to close.

"City" means the City of Tomball, Texas.

"Closing Date" means the date of the initial delivery of and payment for the Bonds.

"Code" means the Internal Revenue Code of 1986, as amended, and, with respect to a specific section thereof, such reference shall be deemed to include (a) the Regulations promulgated under such section, (b) any successor provision of similar import hereafter enacted,

(c) any corresponding provision of any subsequent Internal Revenue Code and (d) the regulations promulgated under the provisions described in (b) and (c).

"Dated Date" means the date of the Bonds as designated in the Pricing Certificate.

"Debt Service" means collectively, all amounts due and payable with respect to the Bonds representing the principal of the Bonds and the interest thereon, payable at the times and in the manner provided herein and in the Pricing Certificate and the payment of the costs associated therewith.

"Designated Payment/Transfer Office" means (i) with respect to the initial Paying Agent/Registrar, named in the Pricing Certificate, the Designated Payment/Transfer Office as designated in the Paying Agent/Registrar Agreement, or at such other location designated by the Paying Agent/Registrar, and (ii) with respect to any successor Paying Agent/Registrar, the office of such successor designated and located as may be agreed upon by the City and such successor.

"DTC" means The Depository Trust Company of New York, New York, or any successor securities depository.

"DTC Participant" means brokers and dealers, banks, trust companies, clearing corporations and certain other organizations on whose behalf DTC was created to hold securities to facilitate the clearance and settlement of securities transactions among DTC Participants.

"Escrow Agent" means the escrow agent designated in the Pricing Certificate.

"Escrow Agreement" means the escrow agreement by and between the City and the Escrow Agent relating to the Refunded Obligations.

"Escrow Fund" means the fund or funds established by the Escrow Agreement to hold cash and securities for the payment of debt service on the Refunded Obligations.

"Escrow Securities" means (1) direct noncallable obligations of the United States, including obligations that are unconditionally guaranteed by the United States; (2) noncallable obligations of an agency or instrumentality of the United States, including obligations that are unconditionally guaranteed or insured by the agency or instrumentality and that, on the date of the Pricing Certificate, are rated as to investment quality by a nationally recognized investment rating firm not less than "AAA" or its equivalent; and (3) noncallable obligations of a state or an agency or a county, municipality, or other political subdivision of a state that have been refunded and that, on the date of the Pricing Certificate, are rated as to investment quality by a nationally recognized investment rating firm not less than "AAA" or its equivalent.

"Financial Obligation" means a (a) debt obligation; (b) derivative instrument entered into in connection with, or pledged as security or a source of payment for, an existing or planned debt obligation; or (c) guarantee of a debt obligation or any such derivative instrument; provided that "financial obligation" shall not include municipal securities (as defined in the Securities Exchange Act of 1934, as amended) as to which a final official statement (as defined in the Rule) has been provided to the MSRB consistent with the Rule.

"Fiscal Year" means such fiscal year of the City as shall be set from time to time by the City Council.

"Initial Bond" means the Initial Bond authorized by Section 3.04(d) of this Ordinance.

"Initial Purchaser" means, if the Bonds are sold pursuant to a competitive sale, the initial purchaser or purchasers of the Bonds designated in the Pricing Certificate.

"Interest and Sinking Fund" means the interest and sinking fund established by Section 2.02 of this Ordinance.

"Interest Payment Date" means the date or dates on which interest on the Bonds is scheduled to be paid, as designated in the Pricing Certificate.

"Maturity" means the date on which the principal of the Bonds becomes due and payable according to the terms thereof, whether at Stated Maturity or by proceedings for prior redemption.

"MSRB" means the Municipal Securities Rulemaking Board.

"Notice of Sale" means the notice of sale in the form approved by the Authorized Officer and utilized in conjunction with the Preliminary Official Statement in the sale of the Bonds if the Bonds are sold pursuant to a competitive sale.

"Ordinance" means this Ordinance authorizing the Bonds.

"Owner" means the person who is the registered owner of a Bond or Bonds, as shown in the Register.

"Paying Agent/Registrar" means the paying agent/registrar designated in the Pricing Certificate.

"Paying Agent Registrar Agreement" means the Paying Agent/Registrar Agreement between the Paying Agent/Registrar and the City relating to the Bonds.

"Pricing Certificate" means a certificate or certificates to be signed by the Authorized Officer in connection with the issuance of Bonds under this Ordinance.

"Purchase Contract" means the purchase contract between the City and the Underwriter providing for the sale of the Bonds, if the Bonds are sold pursuant to a negotiated sale.

"Record Date" means the Record Date set forth in the Pricing Certificate.

"Refunded Obligation Candidates" means the obligations of the City described in Schedule I attached hereto which are hereby authorized to be designated as Refunded Obligations in the Pricing Certificate.

"Refunded Obligations" mean those obligations of the City designated as such in the Pricing Certificate from the list of Refunded Obligation Candidates.

"Representative" means, if the Bonds are sold pursuant to a negotiated sale, the representative of the Underwriters designated in the Purchase Contract.

"Register" means the bond register specified in Section 3.06(a).

"Regulations" means the applicable, proposed, temporary or final Treasury Regulations promulgated under the Code, or, to the extent applicable to the Code, under the Internal Revenue Code of 1954, as such regulations may be amended or supplemented from time to time.

"Representations Letter" means the Blanket Letter of Representations between the City and DTC.

"Rule" means SEC Rule 15c2-12, as amended from time to time.

"SEC" means the United States Securities and Exchange Commission.

"Special Payment Date" means the date that is 15 days after the Special Record Date, as described in Section 3.03(e).

"Special Record Date" means the new record date for interest payment established in the event of a nonpayment of interest on a scheduled payment date, and for 30 days thereafter, as described in Section 3.03(e).

"State" means the State of Texas.

"Stated Maturity" means the respective stated maturity dates of the Bonds specified in the Pricing Certificate.

"Unclaimed Payments" means money deposited with the Paying Agent/Registrar for the payment of principal, premium, if any, or interest, or money set aside for the payment of Bonds duly called for redemption prior to Stated Maturity and remaining unclaimed by the Owners of such Bonds for 90 days after the applicable payment or redemption date.

"Underwriter" means, if the Bonds are sold pursuant to a negotiated sale, the underwriter or underwriters designated in the Purchase Contract.

Section 1.02 Findings.

The declarations, determinations and findings declared, made and found in the preamble to this Ordinance are hereby adopted, restated and made a part of the operative provisions hereof.

Section 1.03 Table of Contents, Titles and Headings.

The table of contents, titles and headings of the articles and sections of this Ordinance have been inserted for convenience of reference only and are not to be considered a part hereof and shall not in any way modify or restrict any of the terms or provisions hereof and shall never be considered or given any effect in construing this Ordinance or any provision hereof or in ascertaining intent, if any question of intent should arise. References to section numbers shall mean sections in this Ordinance.

Section 1.04 Interpretation.

(a) Unless the context requires otherwise, words of the masculine gender shall be construed to include correlative words of the feminine and neuter genders and vice versa, and words of the singular number shall be construed to include correlative words of the plural number and vice versa.

(b) Any action required to be taken on a date which is not a Business Day shall be taken on the next succeeding Business Day and have the same effect as if taken on the date so required.

(c) This Ordinance and all the terms and provisions hereof shall be liberally construed to effectuate the purposes set forth herein and to sustain the validity of this Ordinance.

(d) References to section numbers shall mean sections in this Ordinance unless designated otherwise.

ARTICLE II

SECURITY FOR THE BONDS; INTEREST AND SINKING FUND

Section 2.01 Tax Levy.

(a) Pursuant to the authority granted by the Constitution and the laws of the State, there shall be levied and there is hereby levied for the current year and for each succeeding year hereafter while any part of the principal of the Bonds or any interest thereon is outstanding and unpaid, an ad valorem tax on all taxable property within the City, at a rate sufficient, within the limit prescribed by law, to pay the Debt Service requirements of the Bonds, being (i) the interest on the Bonds, and (ii) a sinking fund for their redemption at maturity or a sinking fund of two percent (2%) per annum (whichever amount is greater), when due and payable, full allowance being made for delinquencies and costs of collection.

(b) The ad valorem tax thus levied shall be assessed and collected each year against all taxable property appearing on the tax rolls of the City most recently approved in accordance with law, and the money thus collected shall be deposited as collected to the Interest and Sinking Fund.

(c) Said ad valorem tax, the collections therefrom, and all amounts on deposit in or required hereby to be deposited to the Interest and Sinking Fund are hereby pledged and committed irrevocably to the payment of the principal of and interest on the Bonds and related fees and expenses when and as due and payable in accordance with their terms and this Ordinance and related expenses.

(d) To pay Debt Service on the Bonds coming due prior to receipt of the taxes levied to pay such Debt Service, there is hereby appropriated from current funds on hand, which are hereby certified to be on hand and available for such purpose, an amount sufficient to pay such Debt Service, and such amount shall be used for no other purpose.

Section 2.02 Interest and Sinking Fund.

(a) The City hereby establishes a special fund or account to be designated the "City of Tomball, Texas, General Obligation Refunding Bonds, Series 2020, Interest and Sinking Fund" (the "Interest and Sinking Fund") said fund to be maintained at an official depository bank of the City separate and apart from all other funds and accounts of the City.

(b) Money on deposit in or required by this Ordinance to be deposited to the Interest and Sinking Fund shall be used solely for the purpose of paying the interest on and principal of the Bonds when and as due and payable in accordance with their terms and this Ordinance.

ARTICLE III

AUTHORIZATION; GENERAL TERMS AND PROVISIONS REGARDING THE BONDS

Section 3.01 Authorization.

The City's Bonds to be designated "City of Tomball, Texas, General Obligation Refunding Bonds, Series 2020," unless otherwise designated in the Pricing Certificate are hereby authorized to be issued and delivered in accordance with the Constitution and the laws of the State, specifically Chapter 1207. The Bonds shall be issued in an aggregate principal amount not to exceed $5,725,000 the purpose of refunding the Refunded Obligations and paying the costs of issuing the Bonds.

Section 3.02 Date, Denomination, Maturities and Interest.

(a) The Bonds shall be dated the Dated Date as set forth in the Pricing Certificate, shall be issued in fully registered form, without coupons in denominations of $5,000 or any integral multiple thereof, and shall be numbered separately from R-1 upward, or such other designation acceptable to the City and the Paying Agent/Registrar, except the Initial Bond, which shall be numbered I-1. Bonds delivered on transfer of or in exchange for other Bonds shall be numbered in order of their authentication by the Paying Agent/Registrar, shall be in denominations of $5,000 or any integral multiple thereof, and shall mature on the same date and bear interest at the same rate as the Bond or Bonds in lieu of which they are delivered.

(b) The Bonds shall mature on the same day in each of the years and in the principal amounts, and shall bear interest at the per annum rates, all as set forth in the Pricing Certificate.

(c) Interest shall accrue and be paid on each Bond, respectively, until the principal amount thereof has been paid or provision for such payment has been made, from the later of (i) the Dated Date or the Closing Date, as set forth in the Pricing Certificate, or (ii) the most recent Interest Payment Date to which interest has been paid or provided for at the rate per annum for each respective maturity specified in the Pricing Certificate. Such interest shall be payable on each Interest Payment Date until Maturity and shall be calculated on the basis of a 360-day year of twelve 30-day months.

Section 3.03 Medium, Method and Place of Payment.

(a) Debt Service shall be paid in lawful money of the United States of America.

(b) Interest on the Bonds shall be paid by check dated as of the Interest Payment Date, and sent United States mail, first class, postage prepaid, by the Paying Agent/Registrar to each Owner, as shown in the Register at the close of business on the Record Date, at the address of each such Owner as such appears in the Register or by such other customary banking arrangements acceptable to the Paying Agent/Registrar and the Owner; provided, however, that the Owner shall bear all risk and expense of such other banking arrangements.

(c) The principal of each Bond shall be paid to the Owner thereof on the Maturity date thereof at Maturity upon presentation and surrender of such Bond at the Designated Payment/Transfer Office.

(d) If the date for the payment of Debt Service is not a Business Day, then the date for such payment shall be the next succeeding Business Day, and payment on such date shall have the same force and effect as if made on the original date payment was due and no additional interest shall be due by reason of nonpayment on the date on which such payment is otherwise stated to be due and payable.

(e) In the event of a nonpayment of interest on a scheduled payment date, and for 30 days thereafter, a Special Record Date will be established by the Paying Agent/Registrar, if and when funds for the payment of such interest have been received from the City. Notice of the Special Record Date and of the Special Payment Date of the past due interest shall be sent at least five (5) Business Days prior to the Special Record Date by United States mail, first class, postage prepaid, to the address of each Owner of a Bond appearing on the books of the Paying Agent/Registrar at the close of business on the last Business Day next preceding the date of mailing of such notice.

(f) Unclaimed Payments shall be segregated in a special account and held in trust, uninvested by the Paying Agent/Registrar, for the account of the Owners of the Bonds to which such Unclaimed Payments pertain. Subject to Title 6, Texas Property Code, Unclaimed Payments remaining unclaimed by the Owners entitled thereto for three (3) years after the applicable payment or redemption date shall be applied to the next payment or payments on the Bonds thereafter coming due and, to the extent any such money remains three (3) years after the retirement of all outstanding Bonds, such money shall be paid to the City to be used for any lawful purpose. Thereafter, neither the City, the Paying Agent/Registrar nor any other person shall be liable or responsible to any Owners of such Bonds for any further payment of such unclaimed moneys or on account of any such Bonds, subject to Title 6, Texas Property Code.

Section 3.04 Execution and Registration of Bonds.

(a) The Bonds shall be executed on behalf of the City by the Mayor or Mayor Pro Tem and the City Secretary, by their manual or facsimile signatures, and the official seal of the

City shall be impressed or placed in facsimile thereon. Such facsimile signatures on the Bonds shall have the same effect as if each of the Bonds had been signed manually and in person by each of said officers, and such facsimile seal on the Bonds shall have the same effect as if the official seal of the City had been manually impressed upon each of the Bonds.

(b) In the event that any officer of the City whose manual or facsimile signature appears on the Bonds ceases to be such officer before the authentication of such Bonds or before the delivery thereof, such signature nevertheless shall be valid and sufficient for all purposes as if such officer had remained in such office.

(c) Except as provided below, no Bond shall be valid or obligatory for any purpose or be entitled to any security or benefit of this Ordinance unless and until there appears thereon the Certificate of Paying Agent/Registrar substantially in the form provided herein, duly authenticated by manual execution by an officer or duly authorized signatory of the Paying Agent/Registrar. It shall not be required that the same officer or authorized signatory of the Paying Agent/Registrar sign the certificate of Paying Agent/Registrar on all of the Bonds. In lieu of the executed certificate of Paying Agent/Registrar described above, the Initial Bond delivered at the Closing Date shall have attached thereto the Comptroller's Registration Certificate substantially in the form provided herein, manually executed by the Comptroller of Public Accounts of the State, or by her duly authorized agent, which certificate shall be evidence that the Bond has been duly approved by the Attorney General of the State, and that it is a valid and binding obligation of the City, and that it has been registered by the Comptroller of Public Accounts of the State.

(d) On the Closing Date, one Initial Bond representing the entire principal amount of the Bonds designated in the Pricing Certificate, payable in stated installments to the Representative or its designee (if the Bonds are sold pursuant to a negotiated sale) or the Initial Purchaser or its designee (if the Bonds are sold pursuant to a competitive sale), executed by the manual or facsimile signatures of the Mayor or Mayor Pro Tem and the City Secretary or Deputy City Secretary, approved by the Attorney General of the State, and registered and manually signed by the Comptroller of Public Accounts of the State, will be delivered to the Representative or its designee (if the Bonds are sold pursuant to a negotiated sale) or the Initial Purchaser or its designee (if the Bonds are sold pursuant to a competitive sale). Upon payment for the Initial Bond, the Paying Agent/Registrar shall cancel the Initial Bond and deliver registered definitive Bonds to DTC in accordance with Section 3.09 hereof. To the extent the Paying Agent/Registrar is eligible to participate in DTC's FAST System, as evidenced by an agreement between the Paying Agent/Registrar and DTC, the Paying Agent/Registrar shall hold the definitive Bonds in safekeeping for DTC.

Section 3.05 Ownership.

(a) The City, the Paying Agent/Registrar and any other person may treat the Owner as the absolute owner of such Bond for the purpose of making and receiving payment of the principal thereof, for the further purpose of making and receiving payment of the interest thereon (subject to the provisions herein that the interest on the Bonds is to be paid to the person in whose name the Bond is registered on the Record Date or Special Record Date, as applicable), and for all other purposes, whether or not such Bond is overdue, and neither the City nor the Paying Agent/Registrar shall be bound by any notice or knowledge to the contrary.

(b) All payments made to the Owner of a Bond shall be valid and effectual and shall discharge the liability of the City and the Paying Agent/Registrar upon such Bond to the extent of the sums paid.

Section 3.06 Registration, Transfer and Exchange.

(a) So long as any Bonds remain outstanding, the City shall cause the Paying Agent/Registrar to keep at its Designated Payment/Transfer Office a bond register (the "Register") in which, subject to such reasonable regulations as it may prescribe, the Paying Agent/Registrar shall provide for the registration and transfer of Bonds in accordance with this Ordinance.

(b) The ownership of a Bond may be transferred only upon the presentation and surrender of the Bond to the Paying Agent/Registrar at the Designated Payment/Transfer Office with such endorsement or other evidence of transfer acceptable to the Paying Agent/Registrar. No transfer of any Bond shall be effective until entered in the Register.

(c) The Bonds shall be exchangeable upon the presentation and surrender thereof at the Designated Payment/Transfer Office for a Bond or Bonds of the same maturity and interest rate and in any denomination or denominations of any integral multiple of $5,000, and in an aggregate principal amount equal to the unpaid principal amount of the Bonds presented for exchange.

(d) The Paying Agent/Registrar is hereby authorized to authenticate and deliver Bonds transferred or exchanged in accordance with this Section. A new Bond or Bonds will be delivered by the Paying Agent/Registrar, in lieu of the Bond being transferred or exchanged, at the Designated Payment/Transfer, or sent by United States mail, first class, postage prepaid, to the Owner or his designee. Each Bond delivered by the Paying Agent/Registrar in accordance with this Section shall constitute an original contractual obligation of the City and shall be entitled to the benefits and security of this Ordinance to the same extent as the Bond or Bonds in lieu of which such Bond is delivered.

(e) No service charge shall be made to the Owner for the initial registration, any subsequent transfer, or exchange for a different denomination of any of the Bonds. The Paying Agent/Registrar, however, may require the Owner to pay a sum sufficient to cover any tax or other governmental charge that is authorized to be imposed in connection with the registration, transfer or exchange of a Bond.

(f) Neither the City nor the Paying Agent/Registrar shall be required to issue, transfer or exchange any Bond called for redemption, in whole or in part, within 45 days prior to the date fixed for redemption; provided, however, such limitation of transfer shall not be applicable to an exchange by the Owner of the uncalled principal balance of a Bond.

Section 3.07 Cancellation. All Bonds paid or redeemed before the Stated Maturity in accordance with this Ordinance, and all Bonds in lieu of which exchange Bonds or replacement

Bonds are authenticated and delivered in accordance with this Ordinance, shall be cancelled upon the making of proper records regarding such payment, redemption, exchange or replacement. The Paying Agent/Registrar shall dispose of such cancelled Bonds in the manner required by the Securities Exchange Act of 1934, as amended.

Section 3.08 Replacement Bonds.

(a) Upon the presentation and surrender to the Paying Agent/Registrar of a mutilated Bond, the Paying Agent/Registrar shall authenticate and deliver in exchange therefor a replacement Bond of like maturity, interest rate and principal amount, bearing a number not contemporaneously outstanding. The City or the Paying Agent/Registrar may require the Owner of such Bond to pay a sum sufficient to cover any tax or other governmental charge that is authorized to be imposed in connection therewith and any other expenses connected therewith.

(b) In the event that any Bond is lost, apparently destroyed or wrongfully taken, the Paying Agent/Registrar, pursuant to the applicable laws of the State and in the absence of notice or knowledge that such Bond has been acquired by a bona fide purchaser, shall authenticate and deliver a replacement Bond of like maturity, interest rate and principal amount, bearing a number not contemporaneously outstanding, provided that the Owner first complies with the following requirements:

(i) furnishes to the Paying Agent/Registrar satisfactory evidence of his or her ownership of and the circumstances of the loss, destruction or theft of such Bond;

(ii) furnishes such security or indemnity as may be required by the Paying Agent/Registrar and the City to save them harmless;

(iii) pays all expenses and charges in connection therewith, including, but not limited to, printing costs, legal fees, fees of the Paying Agent/Registrar, and any tax or other governmental charge that is authorized to be imposed; and

(iv) satisfies any other reasonable requirements imposed by the City and the Paying Agent/Registrar.

(c) If, after the delivery of such replacement Bond, a bona fide purchaser of the original Bond in lieu of which such replacement Bond was issued presents for payment such original Bond, the City and the Paying Agent/Registrar shall be entitled to recover such replacement Bond from the person to whom it was delivered or any person taking therefrom, except a bona fide purchaser, and shall be entitled to recover upon the security or indemnity provided therefor to the extent of any loss, damage, cost, or expense incurred by the City or the Paying Agent/Registrar in connection therewith.

(d) In the event that any such mutilated, lost, apparently destroyed, or wrongfully taken Bond has become or is about to become due and payable, the Paying Agent/Registrar, in its discretion, instead of issuing a replacement Bond, may pay such Bond if it has become due and payable or may pay such Bond when it becomes due and payable.

(e) Each replacement Bond delivered in accordance with this Section shall constitute an original additional contractual obligation of the City and shall be entitled to the benefits and security of this Ordinance to the same extent as the Bond or Bonds in lieu of which such replacement Bond is delivered.

Section 3.09 Book-Entry Only System.

(a) Unless otherwise specified in the Pricing Certificate, the definitive Bonds shall be initially issued in the form of a separate fully registered Bond for each of the maturities thereof. Upon initial issuance, the ownership of each such Bond shall be registered in the name of Cede & Co., as nominee of DTC, and except as provided in Section 3.10 hereof, all of the outstanding Bonds shall be registered in the name of Cede & Co., as nominee of DTC.

(b) With respect to Bonds registered in the name of Cede & Co., as nominee of DTC, the City and the Paying Agent/Registrar shall have no responsibility or obligation to any DTC Participant or to any person on behalf of whom such a DTC Participant holds an interest in the Bonds, except as provided in this Ordinance. Without limiting the immediately preceding sentence, the City and the Paying Agent/Registrar shall have no responsibility or obligation with respect to (i) the accuracy of the records of DTC, Cede & Co. or any DTC Participant with respect to any ownership interest in the Bonds, including any notice of redemption, (ii) the delivery to any DTC Participant or any other person, other than an Owner of any notice with respect to the Bonds, or (iii) the payment to any DTC Participant or any other person, other than an Owner of any amount with respect to principal of or interest on the Bonds. Notwithstanding any other provision of this Ordinance to the contrary, the City and the Paying Agent/Registrar shall be entitled to treat and consider the person in whose name each Bond is registered in the Register as the absolute owner of such Bond for the purpose of payment of principal of, premium, if any, and interest on the Bonds for the purpose of giving notices with respect to such Bond, and other matters with respect to such Bond, for the purpose of registering transfer with respect to such Bond, and for all other purposes whatsoever. The Paying Agent/Registrar shall pay all principal of and interest on the Bonds only to or upon the order of the respective Owners, as shown in the Register, as provided in this Ordinance, or their respective attorneys duly authorized in writing, and all such payments shall be valid and effective to fully satisfy and discharge the City's obligations with respect to payment of premium, if any, principal and interest on the Bonds to the extent of the sum or sums so paid. No person other than an Owner, as shown in the Register, shall receive a Bond evidencing the obligation of the City to make payments of amounts due pursuant to this Ordinance. Upon delivery by DTC to the Paying Agent/Registrar of written notice to the effect that DTC has determined to substitute a new nominee in place of Cede & Co., and subject to the provisions of this Ordinance with respect to interest payments being mailed to the Owner as shown on the Register on the Record Date, the word "Cede & Co." in this Ordinance shall refer to such new nominee of DTC.

(c) The Representation Letter previously executed and delivered by the City, and applicable to the City's obligations delivered in book-entry-only form to DTC as securities depository, is hereby ratified and approved for the Bonds.

Section 3.10 Successor Securities Depository; Transfer Outside Book-Entry Only System.

In the event that the City determines that it is in the best interest of the City and of the beneficial owners of the Bonds that they be able to obtain certificated Bonds, or in the event DTC discontinues the services described herein, the City or the Paying Agent/Registrar shall (i) appoint a successor securities depository, qualified to act as such under Section 17(a) of the Securities Exchange Act of 1934, as amended, notify DTC and DTC Participants of the appointment of such successor securities depository and transfer one or more separate Bonds to such successor securities depository; or (ii) notify DTC and DTC Participants of the availability through DTC of certificated Bonds and cause the Paying Agent/Registrar to transfer one or more separate registered Bonds to DTC Participants having Bonds credited to their DTC accounts. In such event, the Bonds shall no longer be restricted to being registered in the Register in the name of Cede & Co., as nominee of DTC, but may be registered in the name of the successor securities depository, or its nominee, or in whatever name or names Owners transferring or exchanging Bonds shall designate, in accordance with the provisions of this Ordinance.

Section 3.11 Payments to Cede & Co.

Notwithstanding any other provision of this Ordinance to the contrary, so long as any Bonds are registered in the name of Cede & Co., as nominee of DTC, all payments with respect to principal of, premium, if any, and interest on such Bonds, and all notices with respect to such Bonds, shall be made and given, respectively, in the manner provided in the Representation Letter of the City to DTC.

ARTICLE IV

REDEMPTION OF BONDS BEFORE MATURITY

Section 4.01 Limitation on Redemption.

The Bonds shall be subject to redemption before Stated Maturity only as provided in this Article IV and in the Pricing Certificate.

Section 4.02 Optional Redemption.

The Bonds shall be subject to redemption at the option of the City at such times, in such amounts, in such manner and at such redemption prices as may be designated in the Pricing Certificate.

Section 4.03 Mandatory Redemption.

(a) The Bonds designated as “Term Bonds” in the Pricing Certificate (the “Term Bonds”), if any, are subject to scheduled mandatory redemption and will be redeemed by the City, in part, at a price equal to the principal amount thereof, without premium, plus accrued interest to the redemption date, out of moneys available for such purpose in the Interest and Sinking Fund, on the dates and in the respective principal amounts as set forth in the Pricing Certificate.

(b) Prior to each scheduled mandatory redemption date, the Paying Agent/Registrar shall select for redemption by lot, or by any other customary method that results in a random selection, a principal amount of Term Bonds equal to the aggregate principal amount of such Term Bonds to be redeemed, shall call such Term Bonds for redemption on such scheduled mandatory redemption date, and shall give notice of such redemption, as provided in Section 4.05.

(c) The principal amount of the Term Bonds required to be redeemed on any redemption date pursuant to subparagraph (a) of this Section 4.03 shall be reduced, at the option of the City, by the principal amount of any Term Bonds which, at least 45 days prior to the mandatory sinking fund redemption date (i) shall have been acquired by the City and delivered to the Paying Agent/Registrar for cancellation, or (ii) shall have been redeemed pursuant to the optional redemption provisions hereof and not previously credited to a mandatory sinking fund redemption.

Section 4.04 Partial Redemption.

(a) If less than all of the Bonds are to be redeemed pursuant to Section 4.02, the City shall determine the maturities (or mandatory sinking fund payment with respect to Term Bonds, if any) and the principal amount thereof to be redeemed and shall direct the Paying Agent/Registrar to call by lot or any other customary random selection method such Bonds for redemption.

(b) A portion of a single Bond of a denomination greater than $5,000 may be redeemed, but only in a principal amount equal to $5,000 or any integral multiple thereof. The Paying Agent/Registrar shall treat each $5,000 portion of such Bond as though it were a single Bond for purposes of selection for redemption.

(c) Upon surrender of any Bond for redemption in part, the Paying Agent/Registrar, in accordance with Section 3.06 of this Ordinance, shall authenticate and deliver exchange Bonds in an aggregate principal amount equal to the unredeemed principal amount of the Bond so surrendered, such exchange being without charge.

Section 4.05 Notice of Redemption to Owners.

(a) The Paying Agent/Registrar shall give notice of any redemption of Bonds by sending notice by United States mail, first class, postage prepaid, not less than 30 days before the date fixed for redemption, to the Owner of each Bond (or part thereof) to be redeemed, at the address shown on the Register at the close of business on the Business Day next preceding the date of mailing such notice.

(b) The notice shall state the redemption date, the redemption price, the place at which the Bonds are to be surrendered for payment, and, if less than all the Bonds outstanding are to be redeemed, an identification of the Bonds or portions thereof to be redeemed.

(c) The City reserves the right to give notice of its election or direction to redeem Bonds under Section 4.02 conditioned upon the occurrence of subsequent events. Such notice may state (i) that the redemption is conditioned upon the deposit of moneys and/or authorized securities, in an amount equal to the amount necessary to effect the redemption, with the Paying Agent/Registrar, or such other entity as may be authorized by law, no later than the redemption date or (ii) that the City retains the right to rescind such notice at any time prior to the scheduled redemption date if the City delivers a certificate of the City to the Paying Agent/Registrar instructing the Paying Agent/Registrar to rescind the redemption notice, and such notice and redemption shall be of no effect if such moneys and/or authorized securities are not so deposited or if the notice is rescinded. The Paying Agent/Registrar shall give prompt notice of any such rescission of a conditional notice of redemption to the affected Owners. Any Bonds subject to conditional redemption where redemption has been rescinded shall remain outstanding and the rescission of such redemption shall not constitute an event of default.

(d) Any notice given as provided in this Section shall be conclusively presumed to have been duly given, whether or not the Owner receives such notice.

Section 4.06 Payment Upon Redemption.

(a) Before or on each redemption date, the City shall deposit with the Paying Agent/Registrar money sufficient to pay all amounts due on the redemption date and the Paying Agent/Registrar shall make provision for the payment of the Bonds to be redeemed on such date by setting aside and holding in trust such amounts as are received by the Paying Agent/Registrar from the City and shall use such funds solely for the purpose of paying the principal of, redemption premium, if any, and accrued interest on the Bonds being redeemed.

(b) Upon presentation and surrender of any Bond called for redemption to the Paying Agent/Registrar on or after the date fixed for redemption, the Paying Agent/Registrar shall pay the principal of, redemption premium, if any, and accrued interest on such Bond to the date of redemption from the money set aside for such purpose.

Section 4.07 Effect of Redemption.

(a) When Bonds have been called for redemption in whole or in part and due provision has been made to redeem same as herein provided, the Bonds or portions thereof so redeemed shall no longer be regarded as outstanding except for the purpose of receiving payment solely from the funds so provided for redemption, and the rights of the Owners to collect interest which would otherwise accrue after the redemption date on any Bond or portion thereof called for redemption shall terminate on the date fixed for redemption.

(b) If the City shall fail to make provision for payment of all sums due on a redemption date, then any Bond or portion thereof called for redemption shall continue to bear interest at the rate stated on the Bond until due provision is made for the payment of same by the City.

Section 4.08 Lapse of Payment.

Money set aside for the redemption of the Bonds and remaining unclaimed by the Owners thereof shall be subject to the provisions of Section 3.03(f) hereof.

ARTICLE V

PAYING AGENT/REGISTRAR

Section 5.01 Appointment of Initial Paying Agent/Registrar.

(a) The Authorized Officer is hereby authorized to select and appoint the initial Paying Agent/Registrar, and the initial Paying Agent/Registrar shall be designated in the Pricing Certificate.

(b) The form of Paying Agent/Registrar Agreement is hereby approved. The Authorized Officer is hereby authorized and directed to execute and deliver, or cause the execution and delivery by the Mayor or Mayor Pro Tem and the City Secretary of the City, a Paying Agent/Registrar Agreement, specifying the duties and responsibilities of the City and the Paying Agent/Registrar.

Section 5.02 Qualifications.

Each Paying Agent/Registrar shall be a commercial bank or trust company organized under the laws of the State, or any other entity duly qualified and legally authorized to serve as and perform the duties and services of paying agent and registrar for the Bonds.

Section 5.03 Maintaining Paying Agent/Registrar.

(a) At all times while any of the Bonds are outstanding, the City will maintain a Paying Agent/Registrar that is qualified under Section 5.02 of this Ordinance.

(b) If the Paying Agent/Registrar resigns or otherwise ceases to serve as such, the City will promptly appoint a replacement, provided no such resignation shall be effective until a successor Paying Agent/Registrar has accepted the duties of Paying Agent/Registrar for the Bonds.

Section 5.04 Termination.

The City reserves the right to terminate the appointment of any Paying Agent/Registrar by (i) delivering to the entity whose appointment is to be terminated 45 days' written notice of the termination of the appointment and of the Paying Agent/Registrar Agreement, stating the effective date of such termination, and (ii) appointing a successor Paying Agent/Registrar; provided that, no such termination shall be effective until a successor Paying Agent/Registrar has been appointed and has accepted the duties of Paying Agent/Registrar for the Bonds.

Section 5.05 Notice of Change to Owners.

Promptly upon each change in the entity serving as Paying Agent/Registrar, the City will cause notice of the change to be sent to each Owner by first class United States mail, postage prepaid, at the address thereof in the Register, stating the effective date of the change and the name and mailing address of the replacement Paying Agent/Registrar.

Section 5.06 Agreement to Perform Duties and Functions.

By accepting the appointment as Paying Agent/Registrar, and by executing the Paying Agent/Registrar Agreement, the Paying Agent/Registrar is deemed to have agreed to the provisions of this Ordinance and that it will perform the duties and functions of Paying Agent/Registrar prescribed herein.

Section 5.07 Delivery of Records to Successor.

The Paying Agent/Registrar, promptly upon the appointment of a successor, will deliver the Register (or a copy thereof) and all other pertinent books and records relating to the Bonds to the successor Paying Agent/Registrar.

ARTICLE VI

FORM OF THE BONDS

Section 6.01 Form Generally.

(a) The Bonds, including the Registration Certificate of the Comptroller of Public Accounts of the State to accompany the Initial Bond, the Certificate of the Paying Agent/Registrar, and the Assignment form which shall accompany, appear on or be attached or affixed to each of the Bonds, (i) shall be substantially in the form set forth in the form of the Bonds attached hereto as Exhibit A, with such appropriate insertions, omissions, substitutions, and other variations as may be necessary or desirable and not prohibited by this Ordinance and the Pricing Certificate, and (ii) may have such letters, numbers, or other marks of identification (including identifying numbers and letters of the Committee on Uniform Securities Identification Procedures of the American Bankers Association) and such legends and endorsements (including any legend relating to bond insurance for the Bonds or reproduction of an opinion of counsel) as, consistently herewith, may be determined by the Authorized Officer or by the officers executing such Bonds, as evidenced by their execution thereof.

(b) The definitive Bonds shall be typewritten, photocopied, printed, lithographed, or engraved, and may be produced by any combination of these methods or produced in any other similar manner, all as determined by the officers executing such Bonds, as evidenced by their execution thereof.

(c) The Initial Bond submitted to the Attorney General of the State may be typewritten and photocopied or otherwise reproduced.

Section 6.02 CUSIP Registration.

The City may secure identification numbers through the CUSIP Global Services, which is managed on behalf of the American Bankers Association by S&P Global Market Intelligence, or another entity that provides securities identification numbers for municipal securities, and may print such numbers on the face of the Bonds. It is expressly provided, however, that the presence or absence of CUSIP numbers on the Bonds or any errors or omissions in the printing of such number shall be of no significance or effect in regard to the legality thereof and neither the City nor Bond Counsel to the City are to be held responsible for CUSIP numbers incorrectly printed on the Bonds.

Section 6.03 Legal Opinion.

The approving legal opinion of Bond Counsel may be attached to or printed on the reverse side of each Bond.

Section 6.04 Bond Insurance.

If the Bonds are sold pursuant to a negotiated sale and a determination is made that the purchase of bond insurance would result in savings to the City, the Authorized Officer is hereby authorized to approve the purchase of and payment of the premium for bond insurance by the City and the terms or commitment for such insurance, if any. All officials and representatives of the City are authorized and directed to execute such documents and to do any and all things necessary or desirable to obtain such insurance. A statement relating to the bond insurance obtained for the Bonds, if any, may be printed on or attached to each Bond. If the Bonds are sold pursuant to a competitive sale and bond insurance is obtained by the Initial Purchaser, the Bonds may bear an appropriate legend as provided by the insurer.

ARTICLE VII

DELEGATION OF AUTHORITY, SALE AND DELIVERY OF BONDS, DEPOSIT OF PROCEEDS

Section 7.01 Sale of Bonds; Deposit of Proceeds; Official Statement.

(a) The Bonds shall be sold to the Underwriter or the Initial Purchaser in accordance with the terms of this Ordinance. As authorized by Chapter 1207, the Authorized Officer is authorized to act on behalf of the City in selling and delivering the Bonds and in carrying out the other procedures specified in this Ordinance, including determining whether the Bonds should be sold at a competitive sale or a negotiated sale, the price at which each of the Bonds will be sold, the number and designation of each series or subseries of Bonds to be issued, whether such series of Bonds will be designated as qualified tax-exempt obligations, the form in which the Bonds shall be issued, the years and dates on which the Bonds will mature, the principal amount to mature in each of such years, the aggregate principal amount of the Refunded Obligations, the aggregate principal amount of the Bonds to be issued by the City, the rate of interest to be borne by each maturity of the Bonds, the Interest Payment Dates, the Record Date, the dates, prices and terms upon and at which the Bonds shall be subject to redemption prior to maturity at the option of the City and shall be subject to mandatory sinking fund redemption, the final defeasance provisions, the designation of the Refunded Obligations from the Schedule of Refunded Obligation Candidates attached hereto as Schedule I, the selection of the Underwriter if the Bonds are sold pursuant to a negotiated sale, the selection of a paying agent/registrar, the escrow agent, if any, the designation of a verification agent, if any, and bond insurer, if any, and all other matters relating to the issuance, sale and delivery of the Bonds and including the refunding of the Refunded Obligations, all of which shall be specified in the Pricing Certificate; provided that the following conditions can be satisfied:

(i) the true interest cost for the Bonds shall not be a rate greater than 3.25%, which amount is less than the maximum rate allowed under Section Chapter 1204.006, Texas Government Code, as amended;

(ii) the aggregate principal amount of the Bonds authorized to be issued for the purposes described in Section 3.01 shall not exceed the limit described in that Section;

(iii) the refunding of the Refunded Obligations shall produce a present value debt service savings of at least 4.00% of the principal amount of the Refunded Obligations; and

(iv) no Bond shall mature later than the latest maturity date of the Refunded Obligations.

(b) If the Bonds are sold pursuant to a negotiated sale, the Authorized Officer is hereby authorized and directed to execute and deliver on behalf of the City a Purchase Contract providing for the sale of the Bonds to the Underwriter, in such form as determined by the Authorized Officer. The Authorized Officer is hereby authorized and directed to approve the final terms and provisions of the Purchase Contract in accordance with the terms of the Pricing Certificate and this Ordinance, which final terms shall be determined to be the most advantageous reasonably attainable by the City, such approval and determination being evidenced by its execution thereof by the Authorized Officer. If the Bonds are sold pursuant to a competitive sale, the Authorized Officer is hereby authorized and directed to approve, in conformity with this Ordinance and the Notice of Sale, the terms, conditions and specifications for the sale of the Bonds, and is further authorized to award the sale of the Bonds to one or more purchasers submitting the bid or bids conforming to the specifications set forth in the Notice of Sale that produce the lowest true interest cost to the City. All officers, agents and representatives of the City are hereby authorized to do any and all things necessary or desirable to satisfy the conditions set out therein and to provide for the issuance and delivery of the Bonds. The Initial Bond shall initially be registered in the name of the Representative (if the Bonds are sold pursuant to a negotiated sale) or such other entity as my be a specified in the Purchase Contract or the Initial Purchaser (if the Bonds are sold pursuant to a competitive sale) or such other entity as may be specified in the bid form(s).

(c) The authority granted to the Authorized Officer under Sections 7.01(a) through 7.01(c) shall expire at 11:59 p.m. on a date 180 days from the date of this Ordinance, unless otherwise extended by the City by separate action. For purposes of clarity, if the award of sale is made within such period, the closing on the Bonds may take place after the expiration of such period.

(d) The City hereby approves the preparation and distribution of a Preliminary Official Statement and a Notice of Sale (if the Bonds are sold pursuant to a competitive sale) for the use in the initial offering and sale of the Bonds, each in the form and with such addenda, supplements or amendments as may be approved by the Authorized Officer as evidenced by a certificate of the Authorized Officer. The City hereby authorizes the Authorized Officer to approve the form and content and the distribution of the Notice of Sale (if applicable) and the

Preliminary Official Statement prepared for the use in the initial offering and sale of the Bonds and to deem the Preliminary Official Statement (with such addenda, supplements or amendments as may be approved by the Authorized Officer), final within the meaning and for the purposes of paragraph (b)(1) of Rule 15c2-12 under the Securities and Exchange Act of 1934. The City hereby authorizes the preparation of the Official Statement reflecting the terms of the Purchase Contract (if the Bonds are sold pursuant to a negotiated sale) or winning bid form (if the Bonds are sold pursuant to a competitive sale) and other relevant information. The use of such final Official Statement by the Underwriter or the Initial Purchaser, as applicable (in the form and with such appropriate variations as shall be approved by the Authorized Officer and the Representative or the Initial Purchaser, as applicable), is hereby approved and authorized, and if required, the proper officials of the City are authorized to sign such Official Statement. If the Bonds are sold pursuant to a competitive sale, the proper officials of the District are authorized to execute and deliver a certificate pertaining to such Official Statement as prescribed therein, dated as of the date of payment for and delivery of the Bonds.

(e) The Authorized Officer and all other officers of the City are authorized to take such actions to obtain such consents or approvals and to execute such documents, certificates and receipts as they may deem necessary and appropriate in order to consummate the delivery of the Bonds, pay the costs of issuance of the Bonds, and effectuate the terms and provisions of this Ordinance.

Section 7.02 Deposit of Proceeds; Transfer of Funds.

Proceeds from the sale of the Bonds, together with other funds of the City, if any, shall, promptly upon receipt by the City, be applied as set out in the Pricing Certificate. Any proceeds remaining after the accomplishment of such purposes, including interest earnings on the investment of such proceeds, shall be deposited to the Interest and Sinking Fund.

Section 7.03 Control and Delivery of Bonds.

(a) The Mayor is hereby authorized to have control of the Initial Bond and all necessary records and proceedings pertaining thereto pending investigation, examination, and approval of the Attorney General of the State, registration by the Comptroller of Public Accounts of the State and registration with, and initial exchange or transfer by, the Paying Agent/Registrar.

(b) After registration by the Comptroller of Public Accounts of the State, delivery of the Bonds shall be made to either the Underwriter or the Initial Purchaser under and subject to the general supervision and direction of the Authorized Officer, against receipt by the City of all amounts due to the City under the terms of sale.

ARTICLE VIII

REPRESENTATIONS AND COVENANTS

Section 8.01 Payment of the Bonds.

On or before each date on which principal, premium, if any, or interest is due on the Bonds, there shall be made available to the Paying Agent/Registrar, out of the Interest and Sinking Fund, money sufficient to pay such principal, premium, if any, or interest when due.

Section 8.02 Other Representations and Covenants.

(a) The City will faithfully perform at all times any and all covenants, undertakings, stipulations, and provisions contained in this Ordinance and in each Bond; the City will promptly pay or cause to be paid the principal of and interest on each Bond on the dates and at the places and manner prescribed in such Bond; and the City will, at the times and in the manner prescribed by this Ordinance, deposit or cause to be deposited the amounts of money specified by this Ordinance.

(b) The City is duly authorized under the laws of the State to issue the Bonds; all action on its part for the creation and issuance of the Bonds has been or will be duly and effectively taken; and the Bonds in the hands of the Owners thereof are and will be valid and enforceable obligations of the City in accordance with their terms.

ARTICLE IX

PROVISIONS CONCERNING FEDERAL INCOME TAX MATTERS

Section 9.01 General.

The City covenants not to take any action or omit to take any action that, if taken or omitted, would cause the interest on the Bonds to be includable in gross income for federal income tax purposes. In furtherance thereof, the City covenants to comply with sections 103 and 141 through 150 of the Code and the provisions set forth in the Federal Tax Certificate executed by the City in connection with the Bonds.

Section 9.02 No Private Activity Bonds.

The City covenants that it will use the proceeds of the Bonds (including investment income) and the property financed, directly or indirectly, with such proceeds so that the Bonds will not be "private activity bonds" within the meaning of section 141 of the Code. Furthermore, the City will not take a deliberate action (as defined in section 1.141-2(d)(3) of the Regulations) that causes the Bonds to be a "private activity bond" unless it takes a remedial action permitted by section 1.141-12 of the Regulations.

Section 9.03 No Federal Guarantee.

The City covenants not to take any action or omit to take any action that, if taken or omitted, would cause the Bonds to be "federally guaranteed" within the meaning of section 149(b) of the Code, except as permitted by section 149(b)(3) of the Code.

Section 9.04 No Hedge Bonds.

The City covenants not to take any action or omit to take action that, if taken or omitted, would cause the Bonds to be "hedge bonds" within the meaning of section 149(g) of the Code.

Section 9.05 No Arbitrage Bonds.

The City covenants that it will make such use of the proceeds of the Bonds (including investment income) and regulate the investment of such proceeds of the Bonds so that the Bonds will not be "arbitrage bonds" within the meaning of section 148(a) of the Code.

Section 9.06 Required Rebate.

The City covenants that, if the City does not qualify for an exception to the requirements of section 148(f) of the Code, the City will comply with the requirement that certain amounts earned by the City on the investment of the gross proceeds of the Bonds, be rebated to the United States.

Section 9.07 Information Reporting.

The City covenants to file or cause to be filed with the Secretary of the Treasury an information statement concerning the Bonds in accordance with section 149(e) of the Code.

Section 9.08 Record Retention.

The City covenants to retain all material records relating to the expenditure of the proceeds (including investment income) of the Refunded Obligations and the Bonds and the use of the property financed, directly or indirectly, thereby until three years after the last Bond is redeemed or paid at maturity (or such other period as provided by subsequent guidance issued by the Department of the Treasury) in a manner that ensures their complete access throughout such retention period.

Section 9.09 Registration.

If the Bonds are "registration-required bonds" under section 149(a)(2) of the Code, the Bonds will be issued in registered form.

Section 9.10 Favorable Opinion of Bond Counsel.

Notwithstanding the foregoing, the City will not be required to comply with any of the federal tax covenants set forth above if the City has received an opinion of nationally recognized bond counsel that such noncompliance will not adversely affect the excludability of interest on the Bonds from gross income for federal income tax purposes.

Section 9.11 Continuing Compliance.

Notwithstanding any other provision of this Ordinance, the City's obligations under the federal tax covenants set forth above will survive the defeasance and discharge of the Bonds for as long as such matters are relevant to the excludability of interest on the Bonds from gross income for federal income tax purposes.

Section 9.12 Qualified Tax-Exempt Obligations.

City hereby designates the Bonds as "qualified tax-exempt obligations" for purposes of section 265(b) of the Code. In connection therewith, the City represents that (a) the aggregate amount of tax-exempt obligations issued by the City during calendar year 2020, including the Bonds, that have been designated as "qualified tax-exempt obligations" under section 265(b)(3) of the Code does not exceed $10,000,000, and (b) the reasonably anticipated amount of tax-exempt obligations which will be issued by the City during calendar year 2020, including the Bonds, will not exceed $10,000,000. For purposes of this Section, the term "tax-exempt obligation" does not include (i) "private activity bonds" within the meaning of section 141 of the Code, other than "qualified 501(c)(3) bonds" within the meaning of section 145 of the Code or (ii) obligations issued to currently refund any obligation to the extent that the amount of the refunding obligation does not exceed the outstanding amount of the refunded obligation. In addition, for purposes of this Section, the City includes all entities which are aggregated with the City under the Code.

ARTICLE X

DISCHARGE

Section 10.01 Discharge.

The Bonds may be refunded, discharged or defeased in any manner now or hereafter permitted by applicable law.

ARTICLE XI

CONTINUING DISCLOSURE UNDERTAKING

Section 11.01 Annual Reports.

(a) The City shall provide annually to the MSRB, (i) within six (6) months after the end of each Fiscal Year of the City ending in or after 2021, financial information and operating data with respect to the City of the general type included in the Official Statement, being the information described in the Pricing Certificate, and including financial statements of the City if audited financial statements of the City are then available, and (ii) if not provided as part of such financial information and operating data, audited financial statements of the City, when and if available. Any financial statements so to be provided shall be (i) prepared in accordance with the accounting principles described in the rules to the financial statements for the most recently concluded Fiscal Year, or such other accounting principles as the City may be required to employ, from time to time, by State law or regulation, and (ii) audited, if the City commissions an audit of such statements and the audit is completed within the period during which they must be provided. If the audit of such financial statements is not complete within 12 months after any such fiscal year end, then the City shall file unaudited financial statements within such 12-month period and audited financial statements for the applicable fiscal year, when and if the audit report on such financial statements becomes available.

(b) If the City changes its Fiscal Year, it will notify the MSRB of the change (and of the date of the new Fiscal Year) prior to the next date by which the City otherwise would be required to provide financial information and operating data pursuant to this Section.

(c) The financial information and operating data to be provided pursuant to this Section may be set forth in full in one or more documents or may be included by specific reference to any document, including an official statement or other offering document, if it is available to the public on the MSRB's internet website or has been filed with the SEC. The financial information or operating data shall be provided in an electronic format as prescribed by the MSRB.

Section 11.02 Event Notices.

(a) The City shall provide the following to the MSRB, in an electronic format as prescribed by the MSRB, in a timely manner not in excess of ten (10) business days after the occurrence of the event, notice of any of the following events with respect to the Bonds:

(1) Principal and interest payment delinquencies;

(2) Non-payment related defaults, if material;

(3) Unscheduled draws on debt service reserves reflecting financial difficulties;

(4) Unscheduled draws on credit enhancements reflecting financial difficulties;

(5) Substitution of credit or liquidity providers, or their failure to perform;

(6) Adverse tax opinions, the issuance by the Internal Revenue Service of proposed or final determinations of taxability, Notices of Proposed Issue (IRS Form 5701-TEB) or other material notices or determinations with respect to the tax status of the Bonds, or other material events affecting the tax status of the Bonds;

(7) Modifications to rights of the holders of the Bonds, if material;

(8) Bond calls, if material, and tender offers;

(9) Defeasances;

(10) Release, substitution, or sale of property securing repayment of the Bonds, if material;

(11) Rating changes;

(12) Bankruptcy, insolvency, receivership or similar event of the City;

Note to paragraph 12: For the purposes of the event identified in paragraph 12 of this section, the event is considered to occur when any of the following occur: the appointment of a receiver, fiscal agent or similar officer for the City in a proceeding under the U.S. Bankruptcy Code or in any other proceeding under state or federal law in which a court or governmental authority has assumed jurisdiction over substantially all of the assets or business of the City, or if such jurisdiction has been assumed by leaving the existing governing body and officials or officers in possession but subject to the supervision and orders of a court or governmental authority, or the entry of an order confirming a plan of reorganization, arrangement or liquidation by a court or governmental authority having supervision or jurisdiction over substantially all of the assets or business of the City.

(13) The consummation of a merger, consolidation, or acquisition involving the City or the sale of all or substantially all of the assets of the City, other than in the ordinary course of business, the entry into a definitive agreement to undertake such an action or the termination of a definitive agreement relating to any such actions, other than pursuant to its terms, if material;

(14) Appointment of successor or additional trustee or the change of name of a trustee, if material;

(15) Incurrence of a Financial Obligation of the City, if material, or agreement to covenants, events of default, remedies, priority rights, or other similar terms of a Financial Obligation of the City, any of which affect security holders, if material; and

(16) Default, event of acceleration, termination event, modification of terms, or other similar events under the terms of a Financial Obligation of the City, any of which reflect financial difficulties.

Note to paragraphs (15) and (16): For purposes of the events identified in paragraphs (15) and (16) of this section and in the definition of Financial Obligation in Section 1.01, the City intends the words used in such paragraphs to have the meanings ascribed to them in SEC Release No. 34-83885 dated August 20, 2018 (the "2018 Release") and any further written guidance provided by the SEC or its staff with respect to the amendments to the Rule effected by the 2018 Release.

(b) The City shall provide to the MSRB, in an electronic format as prescribed by the MSRB, in a timely manner, notice of a failure by the City to provide required annual financial information in accordance with Section 11.01. All documents provided to the MSRB pursuant to this section shall be accompanied by identifying information as prescribed by the MSRB.

Section 11.03 Limitations, Disclaimers and Amendments.

(a) The City shall be obligated to observe and perform the covenants specified in this Article for so long as, but only for so long as, the City remains an "obligated person" with respect to the Bonds within the meaning of the Rule, except that the City in any event will give notice of any deposit that causes the Bonds no longer to be outstanding.

(b) The provisions of this Article are for the sole benefit of the Owners and beneficial owners of the Bonds, and nothing in this Article, express or implied, shall give any benefit or any legal or equitable right, remedy, or claim hereunder to any other person. The City undertakes to provide only the financial information, operating data, financial statements, and notices which it has expressly agreed to provide pursuant to this Article and does not hereby undertake to provide any other information that may be relevant or material to a complete presentation of the City's financial results, condition, or prospects or hereby undertake to update any information provided in accordance with this Article or otherwise, except as expressly provided herein. The City does not make any representation or warranty concerning such information or its usefulness to a decision to invest in or sell Bonds at any future date.

UNDER NO CIRCUMSTANCES SHALL THE CITY BE LIABLE TO THE OWNER OR BENEFICIAL OWNER OF ANY BOND OR ANY OTHER PERSON, IN CONTRACT OR TORT, FOR DAMAGES RESULTING IN WHOLE OR IN PART FROM ANY BREACH BY THE CITY, WHETHER NEGLIGENT OR WITH OR WITHOUT FAULT ON ITS PART, OF ANY COVENANT SPECIFIED IN THIS ARTICLE, BUT EVERY RIGHT AND REMEDY OF ANY SUCH PERSON, IN CONTRACT OR TORT, FOR OR ON ACCOUNT OF ANY SUCH BREACH SHALL BE LIMITED TO AN ACTION FOR MANDAMUS OR SPECIFIC PERFORMANCE.

(c) No default by the City in observing or performing its obligations under this Article shall comprise a breach of or default under the Ordinance for purposes of any other provisions of this Ordinance.

(d) Nothing in this Article is intended or shall act to disclaim, waive, or otherwise limit the duties of the City under federal and state securities laws.

(e) The provisions of this Article may be amended by the City from time to time to adapt to changed circumstances that arise from a change in legal requirements, a change in law, or a change in the identity, nature, status, or type of operations of the City, but only if (1) the provisions of this Article, as so amended, would have permitted an underwriter to purchase or sell Bonds in the primary offering of the Bonds in compliance with the Rule, taking into account any amendments or interpretations of the Rule to the date of such amendment, as well as such changed circumstances, and (2) either (A) the Owners of a majority in aggregate principal amount of the outstanding Bonds consent to such amendment or (B) a person that is unaffiliated with the City (such as nationally recognized bond counsel) determines that such amendment will not materially impair the interests of the Owners and beneficial owners of the Bonds. The City may also repeal or amend the provisions of this Section if the SEC amends or repeals the applicable provisions of the Rule or any court of final jurisdiction enters judgment that such provisions of the Rule are invalid, and the City also may amend the provisions of this Section in its discretion in any other manner or circumstance, but in either case only if and to the extent that the provisions of this sentence would not have prevented an underwriter from lawfully purchasing or selling the Bonds in the primary offering of the Bonds, giving effect to (a) such provisions as so amended and (b) any amendments or interpretations of the Rule. If the City so amends the provisions of this Article, the City shall include with any amended financial information or operating data next provided in accordance with this Article an explanation, in narrative form, of the reasons for the amendment and of the impact of any change in the type of financial information or operating data so provided.

Section 11.04 Amendments to the Rule.

In the event the Authorized Officer, in consultation with Bond Counsel and the City's financial advisor, determines that it is necessary or desirable to amend the provisions of Section 11.01 in order to facilitate compliance with amendments to the Rule and related guidance from the SEC, the Authorized Officer may make such changes in the Pricing Certificate for the Bonds, and such amendments are hereby authorized and shall be deemed effective as set forth in the Pricing Certificate.

ARTICLE XII

SUBSCRIPTION FOR SECURITIES; APPROVAL OF ESCROW AGREEMENT; PAYMENT FOR REFUNDED OBLIGATIONS

Section 12.01 Subscription for Securities.

The Authorized Officer is authorized to make necessary arrangements for and to execute such documents and agreements in connection with the purchase of the Escrow Securities required by and referenced in the Escrow Agreement, if any, as may be necessary for the Escrow Fund and the application for the acquisition of the Escrow Securities is hereby approved and ratified.

Section 12.02 Approval of Escrow Agreement; Deposit with Paying Agent for Refunded Obligations.

The Authorized Officer is hereby authorized to select and appoint the Escrow Agent for the Bonds, if any, and the Escrow Agent shall be designed in the Pricing Certificate. The Authorized Officer is authorized to execute and deliver, or cause the execution and delivery by the Mayor or Mayor Pro Tem and the City Secretary of the City, an Escrow Agreement, having such terms and provisions as are approved by the Authorized Officer as evidenced by his execution thereof or the execution thereof by other appropriate City officials. Alternatively, the Authorized Officer may elect to deposit directly with the paying agent for the Refunded Obligations the proceeds of the Bonds, together with other available funds, in an amount sufficient to provide for the payment or redemption of the Refunded Obligations and is hereby authorized to execute and deliver a deposit agreement in connection with such deposits if necessary in connection with such deposits.

Section 12.03 Redemption and Defeasance of Refunded Obligations.

Following the deposit to the Escrow Fund or such other fund held by the paying agent/registrar for the Refunded Obligations as herein specified, or with the paying agent/registrar for the Refunded Obligations, the Refunded Obligations shall be payable solely from and secured by the cash and securities on deposit in the Escrow Fund or such other fund held by the paying agent/registrar for the Refunded Obligations for the purpose of refunding the Refunded Obligations and shall cease to be payable from ad valorem taxes. The Refunded Obligations are hereby called for redemption prior to maturity on the dates and at the redemption prices set forth in the Pricing Certificate. The City Secretary is hereby authorized and directed to cause to be delivered to the paying agent/registrar for the Refunded Obligations a certified copy of this Ordinance calling the Refunded Obligations for redemption and a copy of the Pricing Certificate calling the Refunded Obligations for redemption. The delivery of this Ordinance and the Pricing Certificate to the paying agent/registrar for the Refunded Obligations shall constitute the giving of notice of redemption to the paying agent/registrar for the Refunded Obligations, and such paying agent/registrar is hereby authorized and directed to give notice of redemption to the owners and to the insurers of the Refunded Obligations, if applicable, in accordance with the requirements of the respective ordinances authorizing the issuance thereof.

ARTICLE XIII

MISCELLANEOUS

Section 13.01 Changes to Ordinance.

Bond Counsel is hereby authorized to make changes to the terms of this Ordinance if necessary or desirable to carry out the purposes hereof or in connection with the approval of the issuance of the Bonds by the Attorney General of the State.

Section 13.02 Related Matters.

To satisfy in a timely manner all of the City's obligations under this Ordinance, the Mayor, the City Secretary, any Authorized Officer and all other appropriate officers and agents of the City are hereby authorized and directed to do any and all things necessary and/or convenient to carry out the terms and purposes of this Ordinance.

Section 13.03 Individuals Not Liable.

No covenant, stipulation, obligation or agreement herein contained shall be deemed to be a covenant, stipulation, obligation or agreement of any member of City Council or agent or employee of City Council or of the City in his or her individual capacity and neither the members of City Council nor any officer thereof, nor any agent or employee of City Council or of the City, shall be liable personally on the Bonds, or be subject to any personal liability or accountability by reason of the issuance thereof.

Section 13.04 Severability and Savings.

It is hereby declared to be the intention of the City Council that the sections, paragraphs, sentences, clauses and phrases of this Ordinance are severable and, if any phrase, clause, sentence, paragraph or section of this Ordinance should be declared invalid by the final judgment or decree of any court of competent jurisdiction, such invalidity shall not affect any of the remaining phrases, clauses, sentences, paragraphs and sections of this Ordinance.

Section 13.05 Repealer.

All ordinances or resolutions, or parts thereof, heretofore adopted by the City and inconsistent with the provisions of this Ordinance are hereby repealed to the extent of such conflict.

Section 13.06 Force and Effect.

This Ordinance shall be in full force and effect from and after its final passage, and it is so ordained.

[Execution Page Follows]

FIRST AND FINAL READING:

READ, PASSED AND APPROVED AS SET OUT BELOW AT THE MEETING OF THE CITY COUNCIL OF THE CITY OF TOMBALL HELD ON THE 5th DAY OF OCTOBER, 2020.

COUNCILMAN FORD	________
COUNCILMAN STOLL	________
COUNCILMAN DEGGES	________
COUNCILMAN TOWNSEND	________
COUNCILMAN KLEIN QUINN	________

City Secretary City of Tomball, Texas	Mayor City of Tomball, Texas

[SEAL]

SCHEDULE I

SCHEDULE OF REFUNDED OBLIGATION CANDIDATES

Combination Tax and Revenue Certificates of Obligation, Series 2013

EXHIBIT A

FORM OF THE BONDS

(a) Form of Bond.

REGISTERED
NO. ________

REGISTERED
$___________

United States of America
State of Texas
Counties of Harris and Montgomery

CITY OF TOMBALL, TEXAS
GENERAL OBLIGATION REFUNDING BOND
SERIES 2020

INTEREST RATE:	MATURITY DATE:	[CLOSING/DATED] DATE:	CUSIP NO.:
____________	____________	________[1]	____________

The City of Tomball, Texas (the "City"), in the Counties of Harris and Montgomery, State of Texas, for value received, hereby promises to pay to

____

or registered assigns, on the maturity date specified above, the sum of

____ DOLLARS

unless the payment of the principal hereof shall have been paid or provided for, and to pay interest on such principal amount from the later of the [Closing/Dated] Date specified above or the most recent interest payment date to which interest has been paid or provided for until payment of such principal amount has been paid or provided for, at the per annum rate of interest specified above, computed on the basis of a 360-day year of twelve 30-day months, such interest to be paid semiannually on _________[2] and _________[3] of each year, commencing _________[4].

The principal of this Bond shall be payable without exchange or collection charges in lawful money of the United States of America upon presentation and surrender of this Bond at

[1] Insert from Pricing Certificate.
[2] Insert from Pricing Certificate.
[3] Insert from Pricing Certificate.
[4] Insert from Pricing Certificate.

the corporate trust office of ____[5]____, (the "Paying Agent/Registrar"), ____[6]____, or such other location designated by the Paying Agent/Registrar (the "Designated Payment/Transfer Office"), of the Paying Agent/ Registrar or, with respect to a successor paying agent/registrar, at the Designated Payment/Transfer Office of such successor. Interest on this Bond is payable by check dated as of the interest payment date, mailed by the Paying Agent/Registrar to the registered owner at the address shown on the registration books kept by the Paying Agent/Registrar, or by such other customary banking arrangements acceptable to the Paying Agent/Registrar and the person to whom interest is to be paid; provided, however, that such person shall bear all risk and expense of such other customary banking arrangements. For the purpose of the payment of interest on this Bond, the registered owner shall be the person in whose name this Bond is registered at the close of business on the "Record Date," which shall be the ____[7]____ day of the month next preceding such interest payment date. In the event of a nonpayment of interest on a scheduled payment date, and for 30 days thereafter, a new record date for such interest payment (a "Special Record Date") will be established by the Paying Agent/Registrar, if and when funds for the payment of such interest have been received from the City. Notice of the Special Record Date and of the special payment date of the past due interest (the "Special Payment Date," which date shall be 15 days after the Special Record Date) shall be sent at least five (5) business days prior to the Special Record Date by United States mail, first class, postage prepaid, to the address of each owner of a Bond appearing on the books of the Paying Agent/Registrar at the close of business on the fifteenth day next preceding the date of mailing of such notice.

If the date for the payment of the principal of or interest on this Bond shall be a Saturday, Sunday, legal holiday, or day on which banking institutions in the city where the Paying Agent/Registrar is located are required or authorized by law or executive order to close, the date for such payment shall be the next succeeding day which is not a Saturday, Sunday, legal holiday, or day on which banking institutions are required or authorized to close, and payment on such date shall for all purposes be deemed to have been made on the original date payment was due.

This Bond [is dated ___________ and][8] is one of a series of fully registered bonds specified in the title hereof, issued in the aggregate principal amount of $____[9]____ (herein referred to as the Bonds") pursuant to a certain ordinance (the "Bond Ordinance") adopted by the City Council of the City and a pricing certificate executed pursuant to the Bond Ordinance (the "Pricing Certificate," and, together with the Bond Ordinance, the "Ordinance"), for the purposes of refunding certain outstanding obligations of the City and paying the costs of issuing the Bonds.

The Bonds and the interest thereon are payable from the proceeds of a direct and continuing ad valorem tax levied, within the limits prescribed by law, against all taxable property in the City sufficient, together with certain available funds of the City on deposit in the interest

[5] Insert from Pricing Certificate.
[6] Insert from Pricing Certificate.
[7] Insert from Pricing Certificate.
[8] Delete if interest on the Bonds accrues from the Dated Date.
[9] Insert from Pricing Certificate.

and sinking fund for the Bonds, to provide for the payment of the principal of and interest on the Bonds, as described and provided in the Ordinance.

[The Bonds are not subject to optional redemption prior to maturity.] [10]

[The City has reserved the option to redeem the Bonds maturing on and after [________, in whole or from time to time in part before their respective scheduled maturity dates, on February ________, or on any date thereafter, at a redemption price equal to the principal amount thereof plus accrued interest to the date of redemption. If less than all of the Bonds are to be redeemed, the City shall determine the maturity or maturities and the amounts thereof to be redeemed and shall direct the Paying Agent/Registrar to call by lot the Bonds, or portions thereof, within such maturity and in such principal amounts, for redemption.] [11]

[Bonds maturing ________ (the "Term Bonds") are subject to mandatory sinking fund redemption prior to their scheduled maturity, and will be redeemed by the City, in part at a redemption price equal to the principal amount thereof, without premium, plus interest accrued to the redemption date, on the dates and in the principal amounts shown in the following schedule:

$ ______ Term Bonds Maturing ______

Mandatory Redemption Date	Redemption Date
______	______
______ (maturity)	______

The Paying Agent/Registrar will select for redemption by lot, or by any other customary method that results in a random selection the specific Term Bonds (or with respect to Term Bonds having a denomination in excess of $5,000, each $5,000 portion thereof) to be redeemed by mandatory redemption. The principal amount of Term Bonds required to be redeemed on any redemption date pursuant to the foregoing mandatory sinking fund redemption provisions hereof shall be reduced, at the option of the City, by the principal amount of any Term Bonds which, at least 45 days prior to the mandatory sinking fund redemption date (i) shall have been acquired by the City and delivered to the Paying Agent/Registrar for cancellation, or (ii) shall have been redeemed pursuant to the optional redemption provisions hereof and not previously credited to a mandatory sinking fund redemption.] [12]

[Not less than 30 days prior to a redemption date for the Bonds, the City shall cause a notice of redemption to be sent by United States mail, first class, postage prepaid, to the Owners of the Bonds to be redeemed at the address of the Owner appearing on the registration books of the Paying Agent/Registrar at the close of business on the business day next preceding the date of mailing such notice.

In the Ordinance, the City reserves the right, in the case of an optional redemption, to give notice of its election or direction to redeem Bonds conditioned upon the occurrence of

[10] Delete if Bonds are subject to optional redemption prior to maturity.
[11] Delete if Bonds are not subject to optional redemption prior to maturity.
[12] Delete if Term Bonds are not issued.

subsequent events. Such notice may state (i) that the redemption is conditioned upon the deposit of moneys and/or authorized securities, in an amount equal to the amount necessary to effect the redemption, with the Paying Agent/Registrar, or such other entity as may be authorized by law, no later than the redemption date, or (ii) that the City retains the right to rescind such notice at any time on or prior to the scheduled redemption date if the City delivers a certificate of the City to the Paying Agent/Registrar instructing the Paying Agent/Registrar to rescind the redemption notice, and such notice and redemption shall be of no effect if such moneys and/or authorized securities are not so deposited or if the notice is rescinded. The Paying Agent/Registrar shall give prompt notice of any such rescission of a conditional notice of redemption to the affected Owners. Any Bond subject to conditional redemption for which such redemption has been rescinded shall remain outstanding.

Any notice so mailed shall be conclusively presumed to have been duly given, whether or not the registered owner receives such notice. Notice having been so given and subject, in the case of an optional redemption, to any rights or conditions reserved by the City in the notice, the Bonds called for redemption shall become due and payable on the specified redemption date, and notwithstanding that any Bond or portion thereof has not been surrendered for payment, interest on such Bonds or portions thereof shall cease to accrue.] [13]

As provided in the Ordinance, and subject to certain limitations therein set forth, this Bond is transferable upon surrender of this Bond for transfer at the Designated Payment/Transfer Office of the Paying Agent/Registrar with such endorsement or other evidence of transfer as is acceptable to the Paying Agent/Registrar; thereupon, one or more new fully registered Bonds of the same stated maturity, of authorized denominations, bearing the same rate of interest, and for the same aggregate principal amount will be issued to the designated transferee or transferees.

The City, the Paying Agent/Registrar, and any other person may treat the person in whose name this Bond is registered as the owner hereof for the purpose of receiving payment as herein provided (except interest shall be paid to the person in whose name this Bond is registered on the Record Date) and for all other purposes, whether or not this Bond be overdue, and neither the City nor the Paying Agent/Registrar shall be affected by notice to the contrary.

IT IS HEREBY CERTIFIED AND RECITED that the issuance of this Bond and the series of which it is a part is duly authorized by law; that all acts, conditions and things required to be done precedent to and in the issuance of the Bonds have been properly done and performed and have happened in regular and due time, form and manner, as required by law; that sufficient and proper provision for the levy and collection of taxes has been made, within the limits prescribed by law, which when collected shall be appropriated exclusively to the timely payment of the principal of and interest on the Bonds; and that the total indebtedness of the City, including the Bonds, does not exceed any constitutional or statutory limitation.

IN WITNESS WHEREOF, the City has caused this Bond to be duly executed under its official seal in accordance with law.

____________________________ ____________________________

[13] Delete if Bonds are not subject to optional redemption prior to maturity.

City Secretary City of Tomball, Texas	Mayor [Pro Tem] [14] City of Tomball, Texas

[SEAL]

(b) Form of Certificate of Paying Agent/Registrar.

CERTIFICATE OF PAYING AGENT/REGISTRAR

This is one of the Bonds referred to in the within mentioned Ordinance. The series of Bonds of which this Bond is a part was originally issued as one Initial Bond which was approved by the Attorney General of the State of Texas and registered by the Comptroller of Public Accounts of the State of Texas.

THE BANK OF NEW YORK MELLON
TRUST COMPANY, N.A.,
as Paying Agent/Registrar

Date:______________________________ By:______________________________
Authorized Signatory

(c) Form of Assignment.

ASSIGNMENT

FOR VALUE RECEIVED, the undersigned hereby sells, assigns, and transfers unto (print or typewrite name, address and Zip Code of transferee): ____________________________
____
(Social Security or other identifying number:____________________________) the within Bond and all rights hereunder and hereby irrevocably constitutes and appoints _______________ ______attorney to transfer the within Bond on the books kept for registration hereof, with full power of substitution in the premises.

Dated:______________________________ Signature Guaranteed By: __________________________________ Authorized Signatory	NOTICE: The signature on this Assignment must correspond with the name of the registered owner as it appears on the face of the within Bond in every particular and must be guaranteed in a manner acceptable to the Paying Agent/Registrar.

[14] Delete if the Mayor executes the Bonds.

(d) Initial Bond Insertions.

(i) The Initial Bond shall be in the form set forth in paragraphs (a), and (c) of this Section, except that, in the event there is more than one maturity of Bonds:

(A) immediately under the name of the Bond, the headings "INTEREST RATE" and "MATURITY DATE" shall both be completed with the words "As Shown Below" and "CUSIP NO.: _______________" deleted;

(B) in the first paragraph the words "on the Maturity Date specified above, the sum of _______ DOLLARS" shall be deleted and the following will be inserted: "on ___________[15] in the years, in the principal installments and bearing interest at the per annum rates set forth in the following schedule:"

(Information to be inserted from the Pricing Certificate); and

(C) the Initial Bond shall be numbered I-1.

(ii) The following Registration Certificate of Comptroller of Public Accounts shall appear on the Initial Bond:

REGISTRATION CERTIFICATE OF
COMPTROLLER OF PUBLIC ACCOUNTS

OFFICE OF THE COMPTROLLER	§	
OF PUBLIC ACCOUNTS	§	REGISTER NO.
THE STATE OF TEXAS	§	

I HEREBY CERTIFY THAT this Bond has been examined, certified as to validity, and approved by the Attorney General of the State of Texas and that this Bond has been registered by the Comptroller of Public Accounts of the State of Texas.

WITNESS MY SIGNATURE AND SEAL OF OFFICE this ____________________.

[SEAL]

____
Comptroller of Public Accounts of
the State of Texas

[15] Insert from Pricing Certificate.

CERTIFICATE FOR ORDINANCE

THE STATE OF TEXAS §
COUNTIES OF HARRIS AND MONTGOMERY §

I, the undersigned officer of the City Council of the City of Tomball, Texas, hereby certify as follows:

1. The City Council of the City of Tomball, Texas, convened in a regular meeting on the 5th day of October, 2020, by video conference pursuant to the March 16, 2020 action by the Governor of the State of Texas under Section 418.016 of the Texas Government Code suspending certain provisions of the Texas Open Meetings Act, and the roll was called of the duly constituted officers and members of said City Council, to wit:

Gretchan Fagan	Mayor
John F. Ford	Councilman Position 1
Mark Stoll	Mayor Pro Tem and Councilman, Position 2
Chad Degges	Councilman, Position 3
Derek Townsend Sr.	Mayor Pro Tem Council Position 4
Lori Klein Quinn	Council Position 5

and all of said persons were present, except the following absentee(s): ______________________, thus constituting a quorum. Whereupon, among other business, the following was transacted at said meeting: a written

ORDINANCE NO. 2020-28

ADOPT ON FIRST AND FINAL READING, ORDINANCE NO. 2020-28, AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF TOMBALL, TEXAS, AUTHORIZING THE ISSUANCE OF THE CITY OF TOMBALL, TEXAS GENERAL OBLIGATION REFUNDING BONDS, SERIES 2020; LEVYING A TAX IN PAYMENT THEREOF; AUTHORIZING THE ISSUANCE OF THE BONDS IN ACCORDANCE WITH SPECIFIED PARAMETERS; AUTHORIZING THE REDEMPTION PRIOR TO MATURITIES OF CERTAIN OUTSTANDING BONDS; ENACTING OTHER PROVISIONS RELATED THERETO; AND PROVIDING FOR THE EFFECT DATE THEREOF

was duly introduced for the consideration of said City Council. It was then duly moved and seconded that said ordinance be adopted; and, after due discussion, said motion, carrying with it the adoption of said ordinance, prevailed and carried by the following vote:

_________ Member(s) of City Council shown present above voted "Aye".
_________ Member(s) of City Council shown present above voted "No".
_________ Member(s) of City Council abstained from voting.

2. A true, full and correct copy of the aforesaid ordinance adopted at the meeting described in the above and foregoing paragraph is attached to and follows this certificate; that said ordinance has been duly recorded in said City Council's minutes of said meeting; that the persons named in the above and foregoing paragraph are the duly chosen, qualified and acting officers and members of said City Council as indicated therein; that each of the officers and members of said City Council was duly and sufficiently notified, in advance, of the date, hour, place and purpose of the aforesaid meeting, and that said ordinance would be introduced and considered for adoption at said meeting; that said meeting was open to the public as required by law; and that public notice of the date, hour, place and subject of said meeting was given as required by Chapter 551, Texas Government Code and the March 16, 2020 action by the Governor of the State of Texas under Section 418.016, Texas Government Code, suspending certain provisions of the Texas Open Meetings Act.

SIGNED AND SEALED this 5th day of October, 2020.

[SEAL]

City Secretary
City of Tomball, Texas

City of Tomball, Texas

General Obligation Refunding, Series 2020

Projected Schedule of Events

Oct-20						
S	M	T	W	T	F	S
				1	2	3
4	5	6	7	8	9	10
11	12	13	14	15	16	17
18	19	20	21	22	23	24
25	26	27	28	29	30	31

Nov-20						
S	M	T	W	T	F	S
1	2	3	4	5	6	7
8	9	10	11	12	13	14
15	16	17	18	19	20	21
22	23	24	25	26	27	28
29	30					

Dec-20						
S	M	T	W	T	F	S
		1	2	3	4	5
6	7	8	9	10	11	12
13	14	15	16	17	18	19
20	21	22	23	24	25	26
27	28	29	30	31		

City Counsel Meeting   Holiday

By	Day	Event	Responsibility
5-Oct-20	**Monday**	**City Counsel Adopts Parameters Ordinance**	**City**
6-Oct-20	Tuesday	Provide first draft of Preliminary Official Statement (POS) to City and Bond Counsel for comments and modifications	FA
15-Oct-20	Thursday	Receive comments to first draft of POS	FWG
19-Oct-20	Monday	Send second draft of POS to working group for comments Send second draft of POS to Rating Agency	FA FA
26-Oct-20	Week Of	Rating Agency Calls	City, FA
27-Oct-20	Tuesday	Receive comments to second draft of POS	FWG
29-Oct-20	Thursday	Send out POS for final comments and sign off	FA
5-Nov-20	Thursday	Receive final comments to POS	FA
19-Nov-20	Thursday	Receive credit ratings	FA
23-Nov-20	Monday	Finalize POS and Notice of Sale Distribute electronically through i-Deal Prospectus	FA
24-Nov-20	Tuesday	Apply for CUSIP Numbers	FA
2-Dec-20	**Wednesday**	**Competitive Bids Due** **Pricing Officer Executes Pricing Certificate**	**City, FA**
3-Dec-20	Thursday	Circulate Draft of Final Official Statement (FOS)	FA
4-Dec-20	Friday	Submit transcript of proceedings to Attorney General	BC
7-Dec-20	Monday	Comments due on FOS	FWG
9-Dec-20	Wednesday	Print and Mail OS	FA
22-Dec-20	Tuesday	Circulate Closing Memo	FA
29-Dec-20	Tuesday	Closing and Delivery of Funds	FWG

Symbol Key		
FWG	Finance Working Group	Includes the City, BC & FA
City	City of Tomball	--
BC	Bond Counsel	Bracewell LLP
FA	Financial Advisor	HilltopSecurities

HilltopSecurities
A Hilltop Holdings Company

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City of Tomball, Texas
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Refunded Bonds: Series 2013
BQ AA+ Market Interest Rates as of 09/30/2020 + 10bps
Preliminary Numbers/Subject to Change

SOURCES AND USES OF FUNDS

City of Tomball, Texas
General Obligation Refunding Bonds, Series 2020
Refunded Bonds: Series 2013
BQ AA+ Market Interest Rates as of 09/30/2020 + 10bps
Preliminary Numbers/Subject to Change

Dated Date	12/29/2020
Delivery Date	12/29/2020

Sources:	
Bond Proceeds:	
Par Amount	5,225,000.00
Premium	579,178.55
	5,804,178.55
Other Sources of Funds:	
Debt Service Fund	30,304.17
	5,834,482.72

Uses:	
Refunding Escrow Deposits:	
Cash Deposit	0.20
SLGS Purchases	5,692,832.00
	5,692,832.20
Delivery Date Expenses:	
Cost of Issuance	95,822.70
Underwriter's Discount	41,800.00
	137,622.70
Other Uses of Funds:	
Additional Proceeds	4,027.82
	5,834,482.72

SUMMARY OF REFUNDING RESULTS

City of Tomball, Texas
General Obligation Refunding Bonds, Series 2020
Refunded Bonds: Series 2013
BQ AA+ Market Interest Rates as of 09/30/2020 + 10bps
Preliminary Numbers/Subject to Change

Dated Date	12/29/2020
Delivery Date	12/29/2020
Arbitrage yield	1.103905%
Escrow yield	0.072052%
Value of Negative Arbitrage	7,478.97
Bond Par Amount	5,225,000.00
True Interest Cost	1.336748%
Effective Interest Cost	1.223427%
Net Interest Cost	1.412678%
All-In TIC	1.600840%
Average Coupon	2.870662%
Average Life	7.054
Par amount of refunded bonds	5,625,000.00
Average coupon of refunded bonds	2.627232%
Average life of refunded bonds	6.932
PV of prior debt to 12/29/2020 @ 1.600840%	6,045,233.68
Net PV Savings	352,401.48
Percentage savings of refunded bonds	6.264915%

SAVINGS

City of Tomball, Texas
General Obligation Refunding Bonds, Series 2020
Refunded Bonds: Series 2013
BQ AA+ Market Interest Rates as of 09/30/2020 + 10bps
Preliminary Numbers/Subject to Change

Date	Prior Debt Service	Prior Receipts	Prior Net Cash Flow	Refunding Debt Service	Savings	Present Value to 12/29/2020 @ 1.6008399%
09/30/2021	136,712.50	30,304.17	106,408.33	106,408.33		68.23
09/30/2022	537,662.50		537,662.50	507,600.00	30,062.50	29,632.38
09/30/2023	539,462.50		539,462.50	508,500.00	30,962.50	30,010.21
09/30/2024	546,012.50		546,012.50	513,700.00	32,312.50	30,794.90
09/30/2025	547,312.50		547,312.50	513,200.00	34,112.50	31,967.10
09/30/2026	548,412.50		548,412.50	517,000.00	31,412.50	28,945.60
09/30/2027	548,737.50		548,737.50	515,100.00	33,637.50	30,480.96
09/30/2028	548,275.00		548,275.00	517,500.00	30,775.00	27,417.51
09/30/2029	551,925.00		551,925.00	521,450.00	30,475.00	26,713.39
09/30/2030	549,056.25		549,056.25	517,200.00	31,856.25	27,482.29
09/30/2031	549,600.00		549,600.00	515,100.00	34,500.00	29,315.67
09/30/2032	549,075.00		549,075.00	515,200.00	33,875.00	28,347.68
09/30/2033	548,100.00		548,100.00	515,100.00	33,000.00	27,197.75
	6,700,343.75	30,304.17	6,670,039.58	6,283,058.33	386,981.25	348,373.66

Savings Summary

Dated Date	12/29/2020
Delivery Date	12/29/2020
PV of savings from cash flow	348,373.66
Plus: Refunding funds on hand	4,027.82
Net PV Savings	352,401.48

BOND PRICING

City of Tomball, Texas
General Obligation Refunding Bonds, Series 2020
Refunded Bonds: Series 2013
BQ AA+ Market Interest Rates as of 09/30/2020 + 10bps
Preliminary Numbers/Subject to Change

Bond Component	Maturity Date	Amount	Rate	Yield	Price	Yield to Maturity	Call Date	Call Price	Premium (-Discount)
Bond Component:									
	02/15/2022	345,000	4.000%	0.500%	103.930				13,558.50
	02/15/2023	360,000	4.000%	0.550%	107.287				26,233.20
	02/15/2024	380,000	4.000%	0.600%	110.519				39,972.20
	02/15/2025	395,000	4.000%	0.650%	113.621				53,802.95
	02/15/2026	415,000	4.000%	0.750%	116.318				67,719.70
	02/15/2027	430,000	4.000%	0.850%	118.768				80,702.40
	02/15/2028	450,000	4.000%	0.950%	120.971				94,369.50
	02/15/2029	470,000	3.000%	1.050%	115.152				71,214.40
	02/15/2030	480,000	3.000%	1.150%	114.315 C	1.329%	02/15/2029	100.000	68,712.00
	02/15/2031	490,000	2.000%	1.350%	104.986 C	1.468%	02/15/2029	100.000	24,431.40
	02/15/2032	500,000	2.000%	1.450%	104.201 C	1.587%	02/15/2029	100.000	21,005.00
	02/15/2033	510,000	2.000%	1.550%	103.423 C	1.687%	02/15/2029	100.000	17,457.30
		5,225,000							579,178.55

Dated Date	12/29/2020	
Delivery Date	12/29/2020	
First Coupon	02/15/2021	
Par Amount	5,225,000.00	
Premium	579,178.55	
Production	5,804,178.55	111.084757%
Underwriter's Discount	(41,800.00)	(0.800000%)
Purchase Price	5,762,378.55	110.284757%
Accrued Interest		
Net Proceeds	5,762,378.55	

CALL PROVISIONS

City of Tomball, Texas
General Obligation Refunding Bonds, Series 2020
Refunded Bonds: Series 2013
BQ AA+ Market Interest Rates as of 09/30/2020 + 10bps
Preliminary Numbers/Subject to Change

Call Table: CALL

Call Date	Call Price
02/15/2029	100.00

Call Provisions Setup

Bond Component	Call Table	Callable Dates
Bond Component	CALL	Any Date

BOND SUMMARY STATISTICS

City of Tomball, Texas
General Obligation Refunding Bonds, Series 2020
Refunded Bonds: Series 2013
BQ AA+ Market Interest Rates as of 09/30/2020 + 10bps
Preliminary Numbers/Subject to Change

Dated Date	12/29/2020
Delivery Date	12/29/2020
First Coupon	02/15/2021
Last Maturity	02/15/2033
Arbitrage Yield	1.103905%
True Interest Cost (TIC)	1.336748%
Net Interest Cost (NIC)	1.412678%
All-In TIC	1.600840%
Average Coupon	2.870662%
Average Life (years)	7.054
Weighted Average Maturity (years)	7.010
Duration of Issue (years)	6.412
Par Amount	5,225,000.00
Bond Proceeds	5,804,178.55
Total Interest	1,058,058.33
Net Interest	520,679.78
Bond Years from Dated Date	36,857,638.89
Bond Years from Delivery Date	36,857,638.89
Total Debt Service	6,283,058.33
Maximum Annual Debt Service	521,450.00
Average Annual Debt Service	518,071.69
Underwriter's Fees (per $1000)	
Average Takedown	
Other Fee	8.000000
Total Underwriter's Discount	8.000000
Bid Price	110.284757

Bond Component	Par Value	Price	Average Coupon	Average Life	Average Maturity Date	PV of 1 bp change
Bond Component	5,225,000.00	111.085	2.871%	7.054	01/18/2028	3,238.60
	5,225,000.00			7.054		3,238.60

	TIC	All-In TIC	Arbitrage Yield
Par Value	5,225,000.00	5,225,000.00	5,225,000.00
+ Accrued Interest			
+ Premium (Discount)	579,178.55	579,178.55	579,178.55
- Underwriter's Discount	(41,800.00)	(41,800.00)	
- Cost of Issuance Expense		(95,822.70)	
- Other Amounts			
Target Value	5,762,378.55	5,666,555.85	5,804,178.55
Target Date	12/29/2020	12/29/2020	12/29/2020
Yield	1.336748%	1.600840%	1.103905%

UNDERWRITER'S DISCOUNT

City of Tomball, Texas
General Obligation Refunding Bonds, Series 2020
Refunded Bonds: Series 2013
BQ AA+ Market Interest Rates as of 09/30/2020 + 10bps
Preliminary Numbers/Subject to Change

Underwriter's Discount	$/1000	Amount
Other Underwriter's Discount	8.00	41,800.00
	8.00	41,800.00

BOND DEBT SERVICE

City of Tomball, Texas
General Obligation Refunding Bonds, Series 2020
Refunded Bonds: Series 2013
BQ AA+ Market Interest Rates as of 09/30/2020 + 10bps
Preliminary Numbers/Subject to Change

Dated Date	12/29/2020
Delivery Date	12/29/2020

Period Ending	Principal	Coupon	Interest	Debt Service	Annual Debt Service
02/15/2021			21,658.33	21,658.33	
08/15/2021			84,750.00	84,750.00	
09/30/2021					106,408.33
02/15/2022	345,000	4.000%	84,750.00	429,750.00	
08/15/2022			77,850.00	77,850.00	
09/30/2022					507,600.00
02/15/2023	360,000	4.000%	77,850.00	437,850.00	
08/15/2023			70,650.00	70,650.00	
09/30/2023					508,500.00
02/15/2024	380,000	4.000%	70,650.00	450,650.00	
08/15/2024			63,050.00	63,050.00	
09/30/2024					513,700.00
02/15/2025	395,000	4.000%	63,050.00	458,050.00	
08/15/2025			55,150.00	55,150.00	
09/30/2025					513,200.00
02/15/2026	415,000	4.000%	55,150.00	470,150.00	
08/15/2026			46,850.00	46,850.00	
09/30/2026					517,000.00
02/15/2027	430,000	4.000%	46,850.00	476,850.00	
08/15/2027			38,250.00	38,250.00	
09/30/2027					515,100.00
02/15/2028	450,000	4.000%	38,250.00	488,250.00	
08/15/2028			29,250.00	29,250.00	
09/30/2028					517,500.00
02/15/2029	470,000	3.000%	29,250.00	499,250.00	
08/15/2029			22,200.00	22,200.00	
09/30/2029					521,450.00
02/15/2030	480,000	3.000%	22,200.00	502,200.00	
08/15/2030			15,000.00	15,000.00	
09/30/2030					517,200.00
02/15/2031	490,000	2.000%	15,000.00	505,000.00	
08/15/2031			10,100.00	10,100.00	
09/30/2031					515,100.00
02/15/2032	500,000	2.000%	10,100.00	510,100.00	
08/15/2032			5,100.00	5,100.00	
09/30/2032					515,200.00
02/15/2033	510,000	2.000%	5,100.00	515,100.00	
09/30/2033					515,100.00
	5,225,000		1,058,058.33	6,283,058.33	6,283,058.33

BOND DEBT SERVICE

City of Tomball, Texas
General Obligation Refunding Bonds, Series 2020
Refunded Bonds: Series 2013
BQ AA+ Market Interest Rates as of 09/30/2020 + 10bps
Preliminary Numbers/Subject to Change

Dated Date	12/29/2020
Delivery Date	12/29/2020

Period Ending	Principal	Coupon	Interest	Debt Service
09/30/2021			106,408.33	106,408.33
09/30/2022	345,000	4.000%	162,600.00	507,600.00
09/30/2023	360,000	4.000%	148,500.00	508,500.00
09/30/2024	380,000	4.000%	133,700.00	513,700.00
09/30/2025	395,000	4.000%	118,200.00	513,200.00
09/30/2026	415,000	4.000%	102,000.00	517,000.00
09/30/2027	430,000	4.000%	85,100.00	515,100.00
09/30/2028	450,000	4.000%	67,500.00	517,500.00
09/30/2029	470,000	3.000%	51,450.00	521,450.00
09/30/2030	480,000	3.000%	37,200.00	517,200.00
09/30/2031	490,000	2.000%	25,100.00	515,100.00
09/30/2032	500,000	2.000%	15,200.00	515,200.00
09/30/2033	510,000	2.000%	5,100.00	515,100.00
	5,225,000		1,058,058.33	6,283,058.33

SUMMARY OF BONDS REFUNDED

City of Tomball, Texas
General Obligation Refunding Bonds, Series 2020
Refunded Bonds: Series 2013
BQ AA+ Market Interest Rates as of 09/30/2020 + 10bps
Preliminary Numbers/Subject to Change

Bond	Maturity Date	Interest Rate	Par Amount	Call Date	Call Price
Combination Tax & Revenue Certificates of Obligation, Series 2013, 2013:					
BOND	02/15/2022	2.000%	405,000.00	02/15/2021	100.000
	02/15/2023	2.000%	415,000.00	02/15/2021	100.000
	02/15/2024	2.000%	430,000.00	02/15/2021	100.000
	02/15/2025	2.000%	440,000.00	02/15/2021	100.000
	02/15/2026	2.000%	450,000.00	02/15/2021	100.000
	02/15/2027	2.250%	460,000.00	02/15/2021	100.000
	02/15/2028	2.250%	470,000.00	02/15/2021	100.000
	02/15/2029	2.500%	485,000.00	02/15/2021	100.000
	02/15/2030	2.750%	495,000.00	02/15/2021	100.000
	02/15/2031	3.000%	510,000.00	02/15/2021	100.000
	02/15/2032	3.000%	525,000.00	02/15/2021	100.000
	02/15/2033	3.000%	540,000.00	02/15/2021	100.000
			5,625,000.00		

PRIOR BOND DEBT SERVICE

City of Tomball, Texas
General Obligation Refunding Bonds, Series 2020
Refunded Bonds: Series 2013
BQ AA+ Market Interest Rates as of 09/30/2020 + 10bps
Preliminary Numbers/Subject to Change

Period Ending	Principal	Coupon	Interest	Debt Service
09/30/2021			136,712.50	136,712.50
09/30/2022	405,000	2.000%	132,662.50	537,662.50
09/30/2023	415,000	2.000%	124,462.50	539,462.50
09/30/2024	430,000	2.000%	116,012.50	546,012.50
09/30/2025	440,000	2.000%	107,312.50	547,312.50
09/30/2026	450,000	2.000%	98,412.50	548,412.50
09/30/2027	460,000	2.250%	88,737.50	548,737.50
09/30/2028	470,000	2.250%	78,275.00	548,275.00
09/30/2029	485,000	2.500%	66,925.00	551,925.00
09/30/2030	495,000	2.750%	54,056.25	549,056.25
09/30/2031	510,000	3.000%	39,600.00	549,600.00
09/30/2032	525,000	3.000%	24,075.00	549,075.00
09/30/2033	540,000	3.000%	8,100.00	548,100.00
	5,625,000		1,075,343.75	6,700,343.75

PRIOR BOND DEBT SERVICE

City of Tomball, Texas
General Obligation Refunding Bonds, Series 2020
Refunded Bonds: Series 2013
BQ AA+ Market Interest Rates as of 09/30/2020 + 10bps
Preliminary Numbers/Subject to Change

Combination Tax & Revenue Certificates of Obligation, Series 2013 (2013)

Period Ending	Principal	Coupon	Interest	Debt Service
09/30/2021			136,712.50	136,712.50
09/30/2022	405,000	2.000%	132,662.50	537,662.50
09/30/2023	415,000	2.000%	124,462.50	539,462.50
09/30/2024	430,000	2.000%	116,012.50	546,012.50
09/30/2025	440,000	2.000%	107,312.50	547,312.50
09/30/2026	450,000	2.000%	98,412.50	548,412.50
09/30/2027	460,000	2.250%	88,737.50	548,737.50
09/30/2028	470,000	2.250%	78,275.00	548,275.00
09/30/2029	485,000	2.500%	66,925.00	551,925.00
09/30/2030	495,000	2.750%	54,056.25	549,056.25
09/30/2031	510,000	3.000%	39,600.00	549,600.00
09/30/2032	525,000	3.000%	24,075.00	549,075.00
09/30/2033	540,000	3.000%	8,100.00	548,100.00
	5,625,000		1,075,343.75	6,700,343.75

UNREFUNDED BOND DEBT SERVICE

City of Tomball, Texas
General Obligation Refunding Bonds, Series 2020
Refunded Bonds: Series 2013
BQ AA+ Market Interest Rates as of 09/30/2020 + 10bps
Preliminary Numbers/Subject to Change

Period Ending	Principal	Coupon	Interest	Debt Service
09/30/2021	395,000	2.000%	3,950	398,950
	395,000		3,950	398,950

UNREFUNDED BOND DEBT SERVICE

City of Tomball, Texas
General Obligation Refunding Bonds, Series 2020
Refunded Bonds: Series 2013
BQ AA+ Market Interest Rates as of 09/30/2020 + 10bps
Preliminary Numbers/Subject to Change

Combination Tax & Revenue Certificates of Obligation, Series 2013 (2013)

Period Ending	Principal	Coupon	Interest	Debt Service	Annual Debt Service
02/15/2021	395,000	2.000%	3,950	398,950	
09/30/2021					398,950
	395,000		3,950	398,950	398,950

ESCROW REQUIREMENTS

City of Tomball, Texas
General Obligation Refunding Bonds, Series 2020
Refunded Bonds: Series 2013
BQ AA+ Market Interest Rates as of 09/30/2020 + 10bps
Preliminary Numbers/Subject to Change

Dated Date	12/29/2020
Delivery Date	12/29/2020

Period Ending	Interest	Principal Redeemed	Total
02/15/2021	68,356.25	5,625,000.00	5,693,356.25
	68,356.25	5,625,000.00	5,693,356.25

ESCROW DESCRIPTIONS

City of Tomball, Texas
General Obligation Refunding Bonds, Series 2020
Refunded Bonds: Series 2013
BQ AA+ Market Interest Rates as of 09/30/2020 + 10bps
Preliminary Numbers/Subject to Change

	Type of Security	Type of SLGS	Maturity Date	First Int Pmt Date	Par Amount	Rate	Max Rate
Dec 29, 2020:							
	SLGS	Certificate	02/15/2021	02/15/2021	5,692,832	0.070%	0.070%
					5,692,832		

SLGS Summary

SLGS Rates File	29SEP20
Total Certificates of Indebtedness	5,692,832.00

ESCROW COST

City of Tomball, Texas
General Obligation Refunding Bonds, Series 2020
Refunded Bonds: Series 2013
BQ AA+ Market Interest Rates as of 09/30/2020 + 10bps
Preliminary Numbers/Subject to Change

Type of Security	Maturity Date	Par Amount	Rate	Total Cost
SLGS	02/15/2021	5,692,832	0.070%	5,692,832.00
		5,692,832		5,692,832.00

Purchase Date	Cost of Securities	Cash Deposit	Total Escrow Cost
12/29/2020	5,692,832	0.20	5,692,832.20
	5,692,832	0.20	5,692,832.20

ESCROW COST DETAIL

City of Tomball, Texas
General Obligation Refunding Bonds, Series 2020
Refunded Bonds: Series 2013
BQ AA+ Market Interest Rates as of 09/30/2020 + 10bps
Preliminary Numbers/Subject to Change

Type of Security	Maturity Date	Par Amount	Rate	Total Cost
DSF:				
SLGS	02/15/2021	30,303.97	0.070%	30,303.97
BP:				
SLGS	02/15/2021	5,662,528.03	0.070%	5,662,528.03
		5,692,832.00		5,692,832.00

Escrow	Purchase Date	Cost of Securities	Cash Deposit	Total Escrow Cost	Yield
DSF	12/29/2020	30,303.97	0.20	30,304.17	0.072062%
BP	12/29/2020	5,662,528.03		5,662,528.03	0.072052%
		5,692,832.00	0.20	5,692,832.20	

ESCROW CASH FLOW

City of Tomball, Texas
General Obligation Refunding Bonds, Series 2020
Refunded Bonds: Series 2013
BQ AA+ Market Interest Rates as of 09/30/2020 + 10bps
Preliminary Numbers/Subject to Change

Date	Principal	Interest	Net Escrow Receipts
02/15/2021	5,692,832.00	524.05	5,693,356.05
	5,692,832.00	524.05	5,693,356.05

Escrow Cost Summary

Purchase date	12/29/2020
Purchase cost of securities	5,692,832.00

ESCROW SUFFICIENCY

City of Tomball, Texas
General Obligation Refunding Bonds, Series 2020
Refunded Bonds: Series 2013
BQ AA+ Market Interest Rates as of 09/30/2020 + 10bps
Preliminary Numbers/Subject to Change

Date	Escrow Requirement	Net Escrow Receipts	Excess Receipts	Excess Balance
12/29/2020		0.20	0.20	0.20
02/15/2021	5,693,356.25	5,693,356.05	(0.20)	
	5,693,356.25	5,693,356.25	0.00	

ESCROW STATISTICS

City of Tomball, Texas
General Obligation Refunding Bonds, Series 2020
Refunded Bonds: Series 2013
BQ AA+ Market Interest Rates as of 09/30/2020 + 10bps
Preliminary Numbers/Subject to Change

Escrow	Total Escrow Cost	Modified Duration (years)	Yield to Receipt Date	Yield to Disbursement Date	Perfect Escrow Cost	Value of Negative Arbitrage	Cost of Dead Time
DSF	30,304.17	0.128	0.072062%	0.072062%	30,264.36	39.81	
BP	5,662,528.03	0.128	0.072052%	0.072052%	5,655,088.87	7,439.16	
	5,692,832.20				5,685,353.23	7,478.97	0.00

Delivery date	12/29/2020
Arbitrage yield	1.103905%

HilltopSecurities
A Hilltop Holdings Company.

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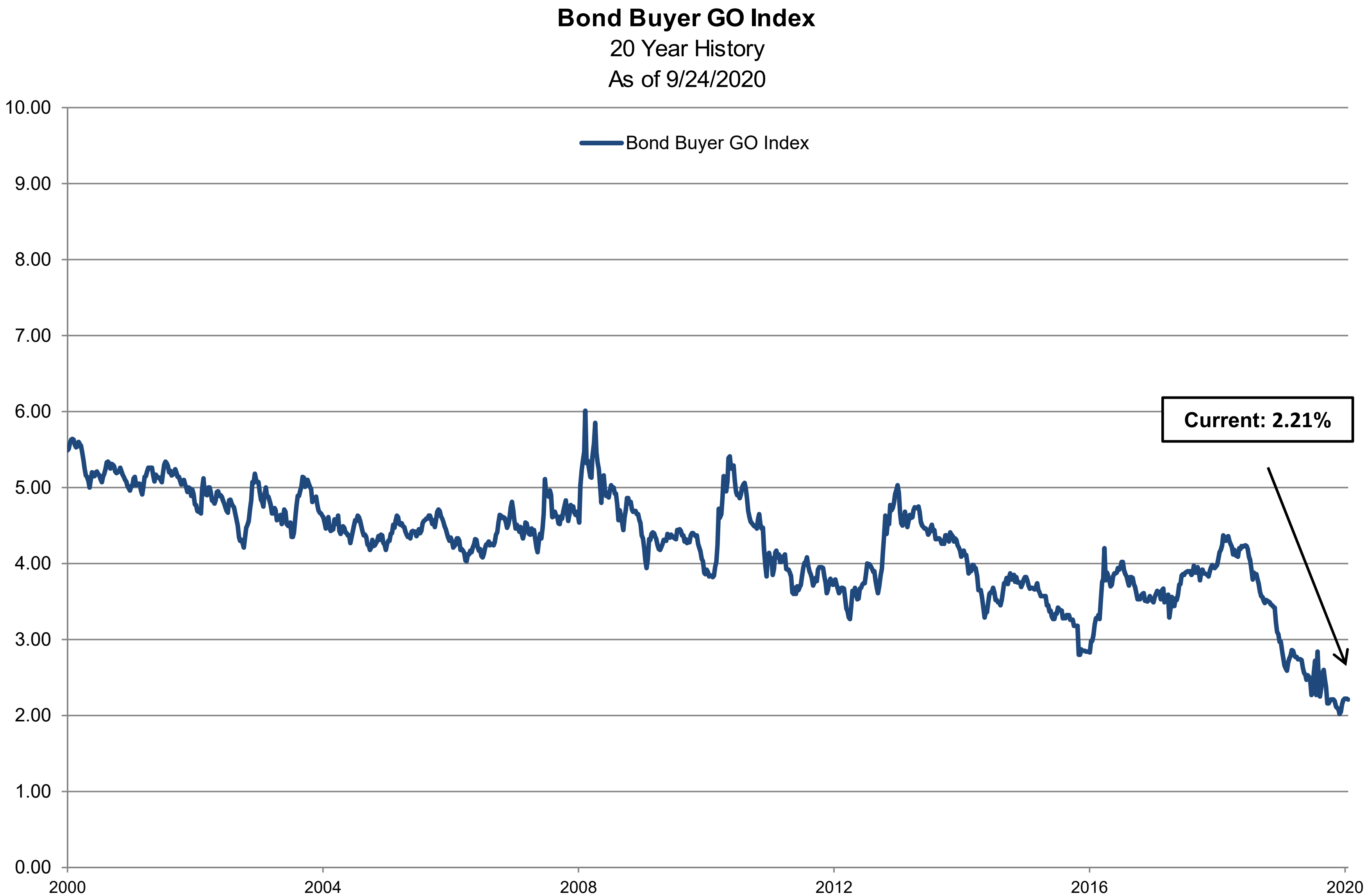
September 2020



This graph depicts historical interest rates and their respective relationships. Future interest rates are dependent upon many factors such as, but not limited to, interest rate trends, tax rates, the supply and demand of short term securities, changes in laws, rules and regulations, as well as changes in credit quality and rating agency considerations. The effect of changes in such factors individually or in any combination could materially affect the relationships and effective interest rates. These results should be viewed with these potential changes in mind as well as the understanding that there may be interruptions in the short term market or no market may exist at all.

Bond Issue to be Refunded – Certificates of Obligation, Series 2013

Series 2013

• Aggregate Callable Principal Amount:	$5,625,000
• Principal Maturity Dates:	2022-2033
• Interest Rates:	2.000% - 3.000%
• Call Dates:	02/15/2021 @ Par
• Final Maturity Date:	02/15/2033

Savings at Current Market Rates(1)

Approximately $32,248 Projected Average Annual Savings in FY 2022-2033

Date	Prior Debt Service	Prior Receipts	Prior Net Cash Flow	Refunding Debt Service	Savings	Present Value to 12/29/2020 @ 1.6008399%
09/30/2021	136,712.50	30,304.17	106,408.33	106,408.33		68.23
09/30/2022	537,662.50		537,662.50	507,600.00	30,062.50	29,632.38
09/30/2023	539,462.50		539,462.50	508,500.00	30,962.50	30,010.21
09/30/2024	546,012.50		546,012.50	513,700.00	32,312.50	30,794.90
09/30/2025	547,312.50		547,312.50	513,200.00	34,112.50	31,967.10
09/30/2026	548,412.50		548,412.50	517,000.00	31,412.50	28,945.60
09/30/2027	548,737.50		548,737.50	515,100.00	33,637.50	30,480.96
09/30/2028	548,275.00		548,275.00	517,500.00	30,775.00	27,417.51
09/30/2029	551,925.00		551,925.00	521,450.00	30,475.00	26,713.39
09/30/2030	549,056.25		549,056.25	517,200.00	31,856.25	27,482.29
09/30/2031	549,600.00		549,600.00	515,100.00	34,500.00	29,315.67
09/30/2032	549,075.00		549,075.00	515,200.00	33,875.00	28,347.68
09/30/2033	548,100.00		548,100.00	515,100.00	33,000.00	27,197.75
	6,700,343.75	30,304.17	6,670,039.58	6,283,058.33	386,981.25	348,373.66

- Present Value Savings as a percent of refunded par value is 6.264915%
- All Inclusive True Interest Cost is 1.600840%
- No savings taken in current fiscal year
- PV rate used is the all inclusive cost of the current estimated refunding debt service

(1). Market Rates from September 30, 2020 + 10bps for illustration only

Disclosure

This communication is intended for issuers for educational and informational purposes only and does not constitute legal or investment advice, nor is it an offer or a solicitation of an offer to buy or sell any investment or other specific product or service. Financial transactions may be dependent upon many factors such as, but not limited to, interest rate trends, tax rates, supply, change in laws, rules and regulations, as well as changes in credit quality and rating agency considerations. The effect of such changes in such assumptions may be material and could affect the projected results. Any outcome or result Hilltop Securities, or any of its employees, may have achieved on behalf of our clients in previous matters does not necessarily indicate similar results can be obtained in the future for current or potential clients. Hilltop Securities makes no claim the use of this communication will assure a successful outcome. This communication is intended for institutional use only. For additional information, comments or questions, please contact Hilltop Securities.

Regular City Council
Agenda Item
Data Sheet

Meeting Date: October 5, 2020

Topic:

Approve Resolution No. 2020-35, a Resolution of the City of Tomball, Texas, Adopting Texas Coalition for Affordable Power, Inc. (TCAP) Professional Services Agreement and Gexa Energy's Commercial Electric Service Agreement for Power to be Provided On and After January 1, 2023

Background:

The City's existing five-year contract to purchase power through the Texas Coalition for Affordable Power, Inc. ("TCAP") ends on December 31, 2022. The City has been a member of ("TCAP") for the purchase of electricity since 2002. TCAP is a non-profit, political subdivision corporation, owned and controlled by its 166 political subdivision members, the vast majority of which are cities. TCAP is governed by a 15-member member board of directors, all of whom must be city employees or elected city officials. City Manager Robert Hauck is currently a member of the TCAP Board representing the Houston Region.

The SHP program was designed to mitigate market rate risk by buying electricity on or near a monthly basis on a rolling two-year period. Since TCAP closely monitors electricity rates and ERCOT, there may be months when demand will stretch the resources. Under SHP, purchasing electricity in those months would be avoided and when prices return to a lower and stable level, additional purchases would be made to cover the months passed over. The "go forward" for the program is at least 30% of TCAP's total kWh contracted for SHP.

Currently 112 members of TCAP have agreed to participate in the SHP and members that choose not to participate will be provided the opportunity to enter into a new fixed-rate contract during fiscal year 2020-21.

TCAP's membership consumes approximately 1.2 billion kilowatt hours ("kWh") annually. The value of the aggregated load is extremely appealing to wholesale market participants, enabling TCAP to get the market competitive pricing at any particular moment. In addition to the size of its load, TCAP derives benefit from geographic diversity. TCAP members reside in all four Electric Reliability Council of Texas ("ERCOT") zones and are spread between the entire length and breadth of Texas, from Wichita Falls to Harlingen, and from Odessa to Palestine. Given consumption is influenced by weather, and since weather conditions are seldom the same across all of Texas, it is unlikely that all TCAP members reach peak consumption simultaneously. If the peaks of all TCAP members were totaled, the sum would equal 257 megawatts ("MW"), but a wholesale supplier views the peak consumption of TCAP as an aggregated load rather than the sum of the peaks of all members. TCAP's peak demand is 190 MW. That reduction in peak is a specific and unique benefit of aggregation. Unlike other aggregation groups that accept counties and school districts as members, TCAP has focused its membership on cities and other political subdivisions that have a relationship with cities to maintain the very favorable load factor of cities with high off- peak consumption from street lights which provides favorable pricing terms.

TCAP has modeled SHP for the prior 5-year fixed rate contract and it was determined that the City of Tomball would have saved approximately $22,667 during the 2018-2020.

Purchases would begin in January 2021 for SHP contracts starting January 1, 2023. SHP is designed to allow members to convert, if desired, to a fixed rate contract at periodic points in time. SHP is flexible and should market dynamics change and a sudden rise in market prices occur and don't appear to be dropping, TCAP will offer its members a fixed rate to lock in current prices at that time.

Origination:
City Management and Finance Department

Recommendation:
Approve Resolution Adopting Texas Coalition for Affordable Power, Inc. (TCAP) Professional Services Agreement and Gexa Energy's Commercial Electric Service Agreement.

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

ACTION TAKEN

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

ATTACHMENTS:

TCAP Resolution
TCAP SHP PPT
Exhibit A
Exhibit B

RESOLUTION NO. ________

RESOLUTION OF THE CITY OF TOMBALL TEXAS ADOPTING TCAP'S PROFESSIONAL SERVICES AGREEMENT AND GEXA ENERGY'S COMMERCIAL ELECTRIC SERVICE AGREEMENT FOR POWER TO BE PROVIDED ON AND AFTER JANUARY 1, 2023

WHEREAS, the City of Tomball ("City") is a member of Texas Coalition For Affordable Power, Inc. ("TCAP"), a non-profit, political subdivision corporation of the State of Texas; and

WHEREAS, TCAP has previously arranged for the City to purchase power through Gexa Energy with a contract set to expire December 31, 2022; and

WHEREAS, TCAP has designed a new procurement strategy that will involve TCAP initially committing to purchase power two years in advance of delivery on behalf of its members who desire participation in a Strategic Hedging Program ("SHP") that will involve a series of monthly competitive auctions; and

WHEREAS, TCAP has prepared a Professional Services Agreement ("PSA"), attached as Exhibit A, that, in addition to enumerating services and benefits to members of TCAP, provides TCAP with specific authority to procure power in the wholesale market on behalf of members who choose to participate in the SHP; and

WHEREAS, approval of the PSA is a necessary, but not sufficient, prerequisite to participation in the SHP; and

WHEREAS, the PSA is a relational contract that defines services provided by TCAP to members regardless of whether a member decides to commit to the SHP; and

WHEREAS, the industry-standard retail contract is a Commercial Electric Service Agreement ("CESA") offered by a Retail Electric Provider ("REP"); and

WHEREAS, TCAP has negotiated modifications to the current CESA between the City and Gexa Energy to reflect participation in the SHP; and

WHEREAS, the CESA that will facilitate participation in the SHP effective for power deliveries in and beyond 2023 (attached as Exhibit B) will need to be approved and signed prior to October 31, 2020; and

WHEREAS, the City desires to participate in the SHP.

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

SECTION 1. That the City Manager is authorized to sign Exhibit A, TCAP's Professional Services Agreement, and Exhibit B, Gexa Energy's CESA, and send the agreements to TCAP, 15455 Dallas Parkway, Ste 600, Addison, TX 75001.

PASSED AND APPROVED this __________ day of ___________________, 2020

____
MAYOR

ATTEST:

____
City Secretary

APPROVED AS TO FORM:

____
City Attorney

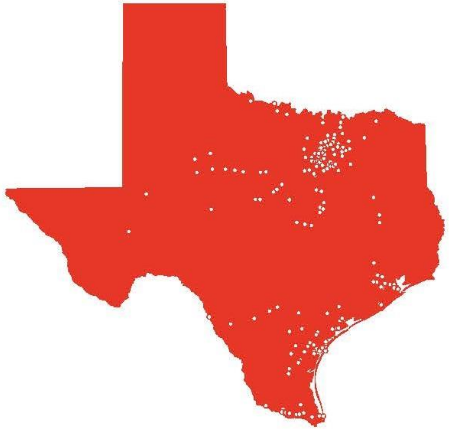
TCAP's SHP Procurement Program

The Future of TCAP Energy

Texas Coalition for Affordable Power

2020

Who is TCAP?



166 Members

88 Members – North Zone

54 Members – South Zone

12 Members – West Zone

12 Members – Houston Zone

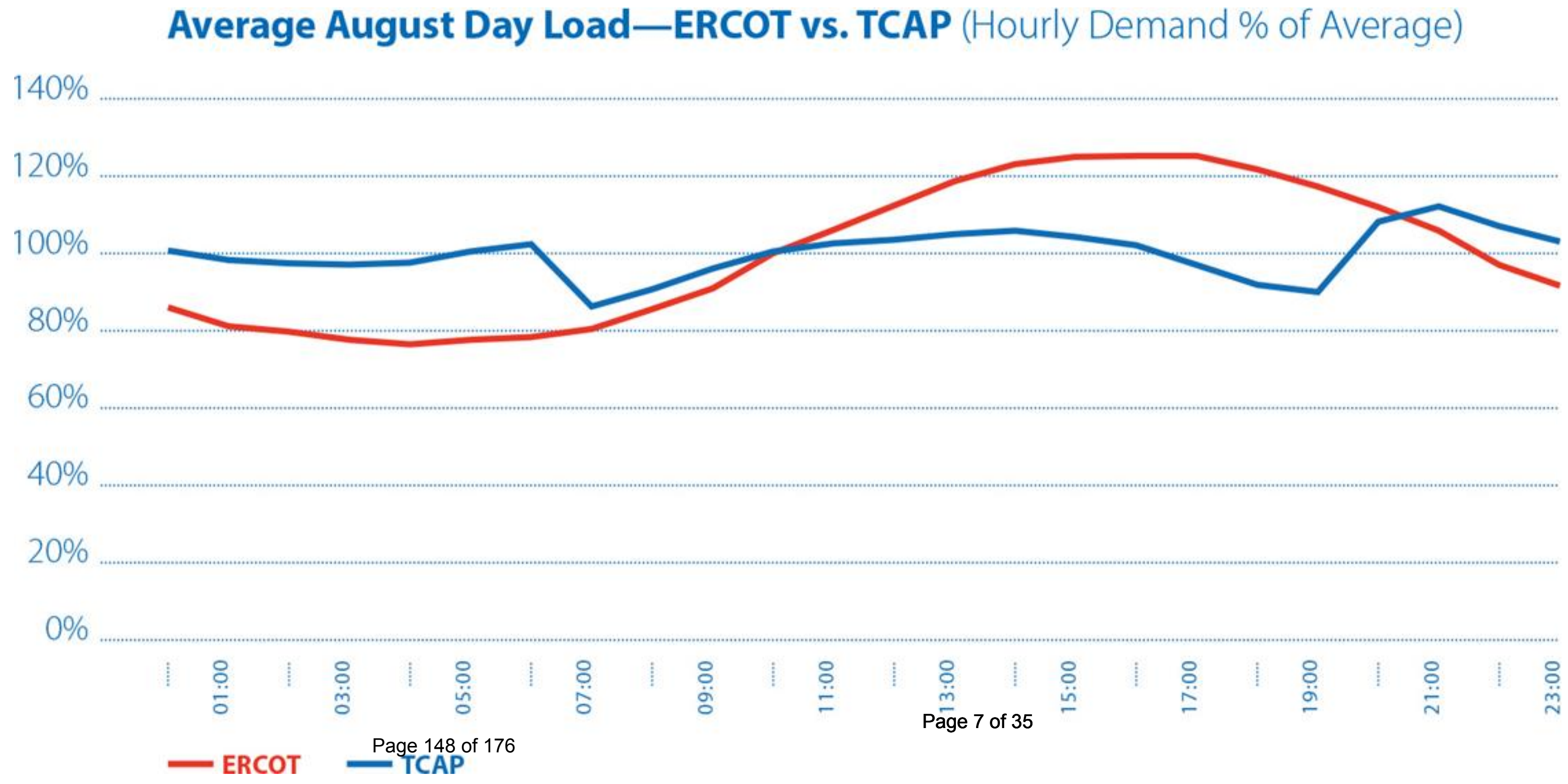
TCAP Board

Place 1- Sugar Land (Houston)	Place 2 – Corpus Christi (South)	Place 3 – Victoria (South)	Place 4 – Wichita Falls (North)	Place 5 – Lewisville (North)
Place 6- McAllen (South)	Place 7 – Duncanville (North)	Place 8 – Kingsville (South)	Place 9 – Brownwood (North)	Place 10 – Bishop (South)
Place 11 – Rockport (South)	Place 12 – North Richland Hills (North)	Place 13- Odessa (West)	Place 14 – Tomball (Houston)	Place 15 – Grand Prairie (North)

Large Members | Medium Members | Small Members | At Large

WHY TCAP?

- Non-profit organization
- Wholesale Market
- Pool energy to negotiate low rates

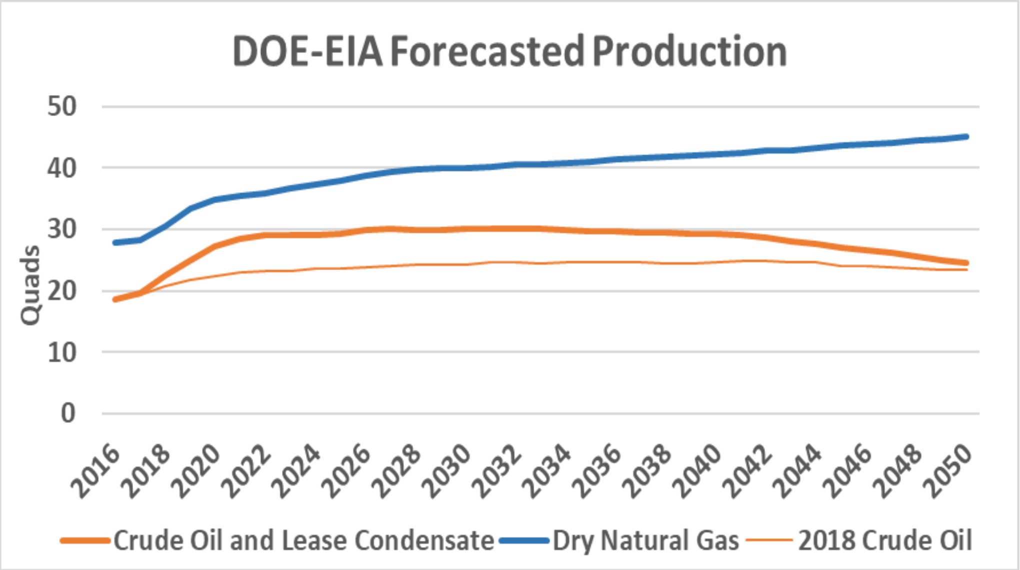


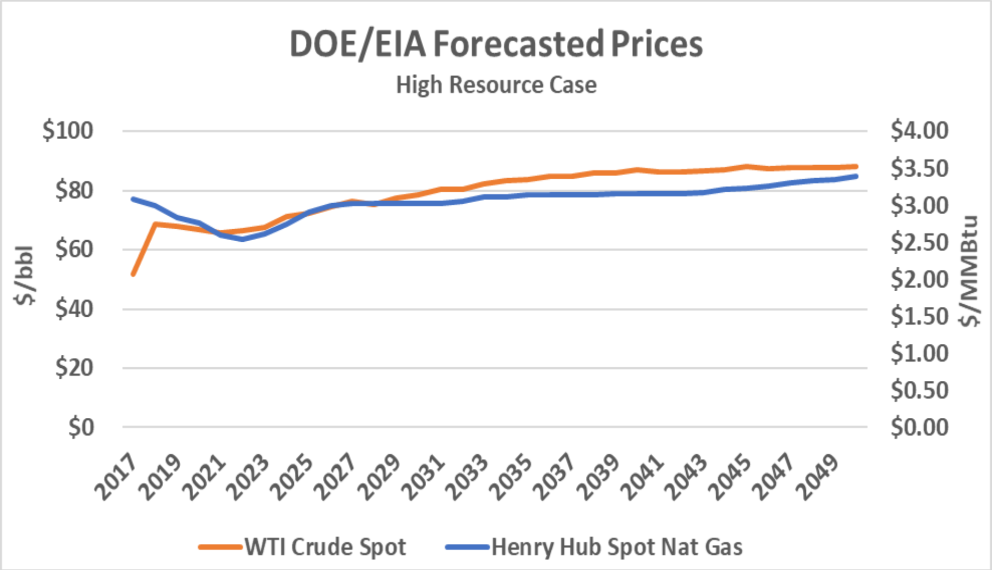
Future Contract

- Current Contract ends December 2022
- TCAP has developed a new procurement option
- The new method should eliminate timing the market to get the best price

U.S. Energy Future is Bright

World's Largest Producer of Oil and Natural Gas





Positive Supply Outlook

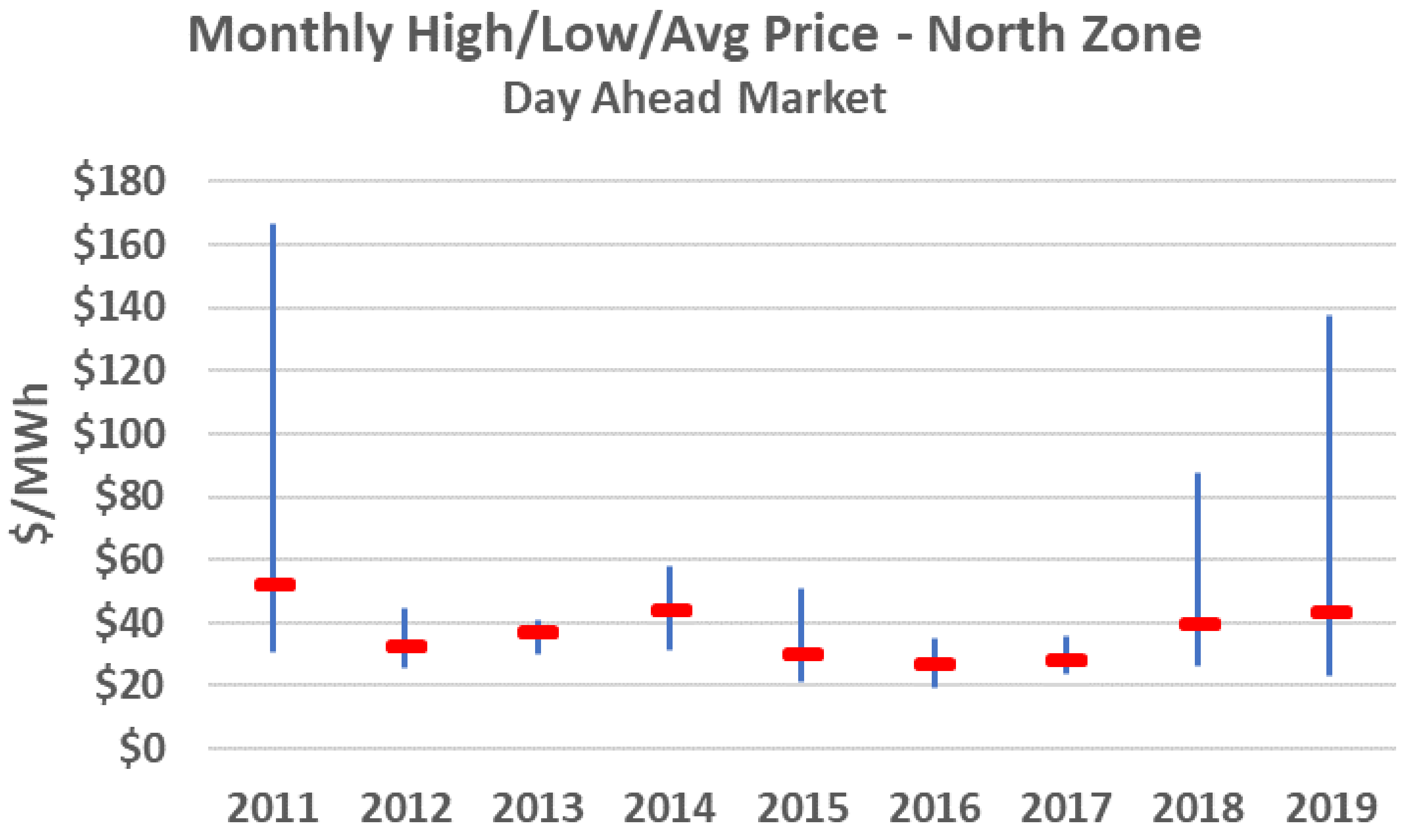
DOE Production Estimate Through 2050 Show a Well Supplied Market

Stable Price Outlook

Actual Natural Gas and Oil Spot Prices Currently Lower than Projected Prices

Source: DOE/EIA AEO 2019/2018

SHP - The Average Is Much More Stable



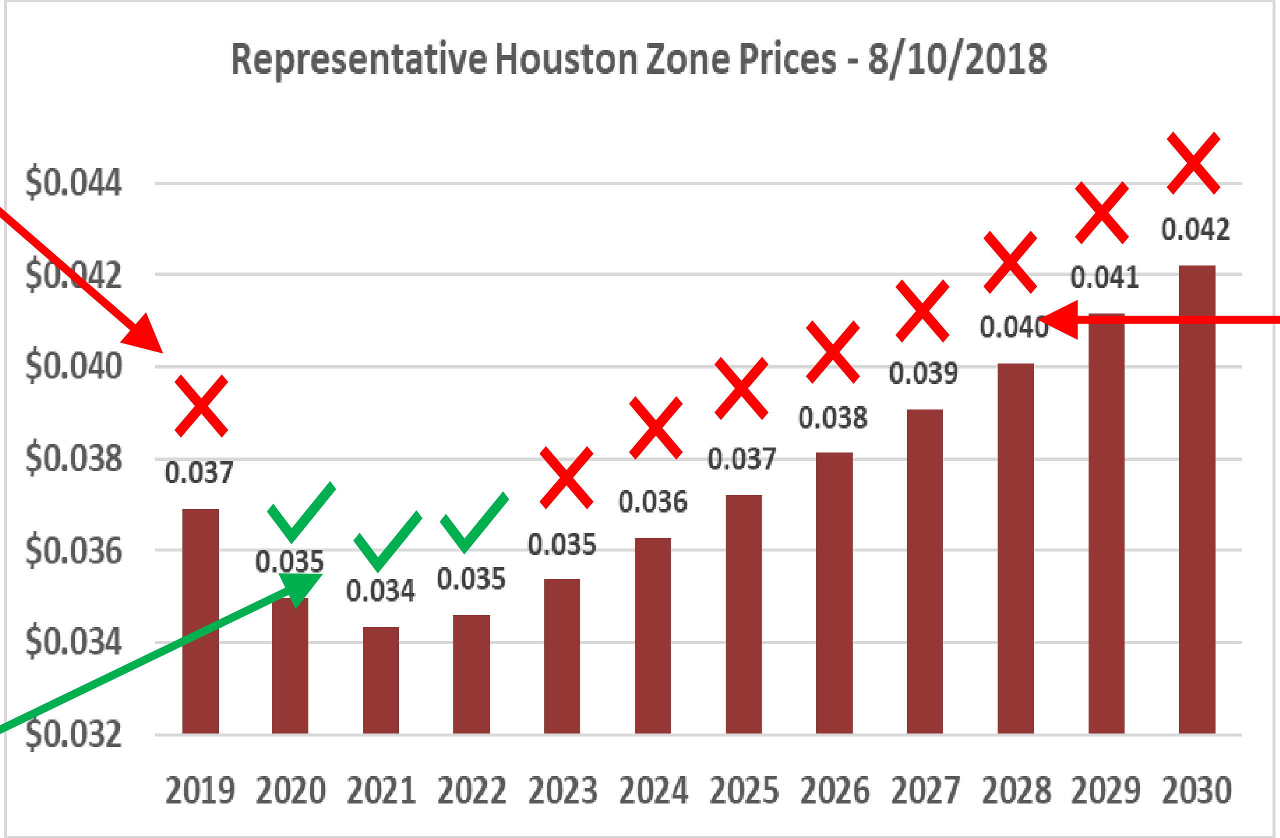
Price Range Varies Greatly by Year

But Average Pricing is Much Less Volatile

ERCOT Pricing Pattern Dynamics

Why Does Price Change Over Time?

Prices Reflect Current Market Problems and Issues



Prices Increase Over Time Reflecting Carrying Costs of Procurement for Future Needs and Risk Premiums for future market uncertainty

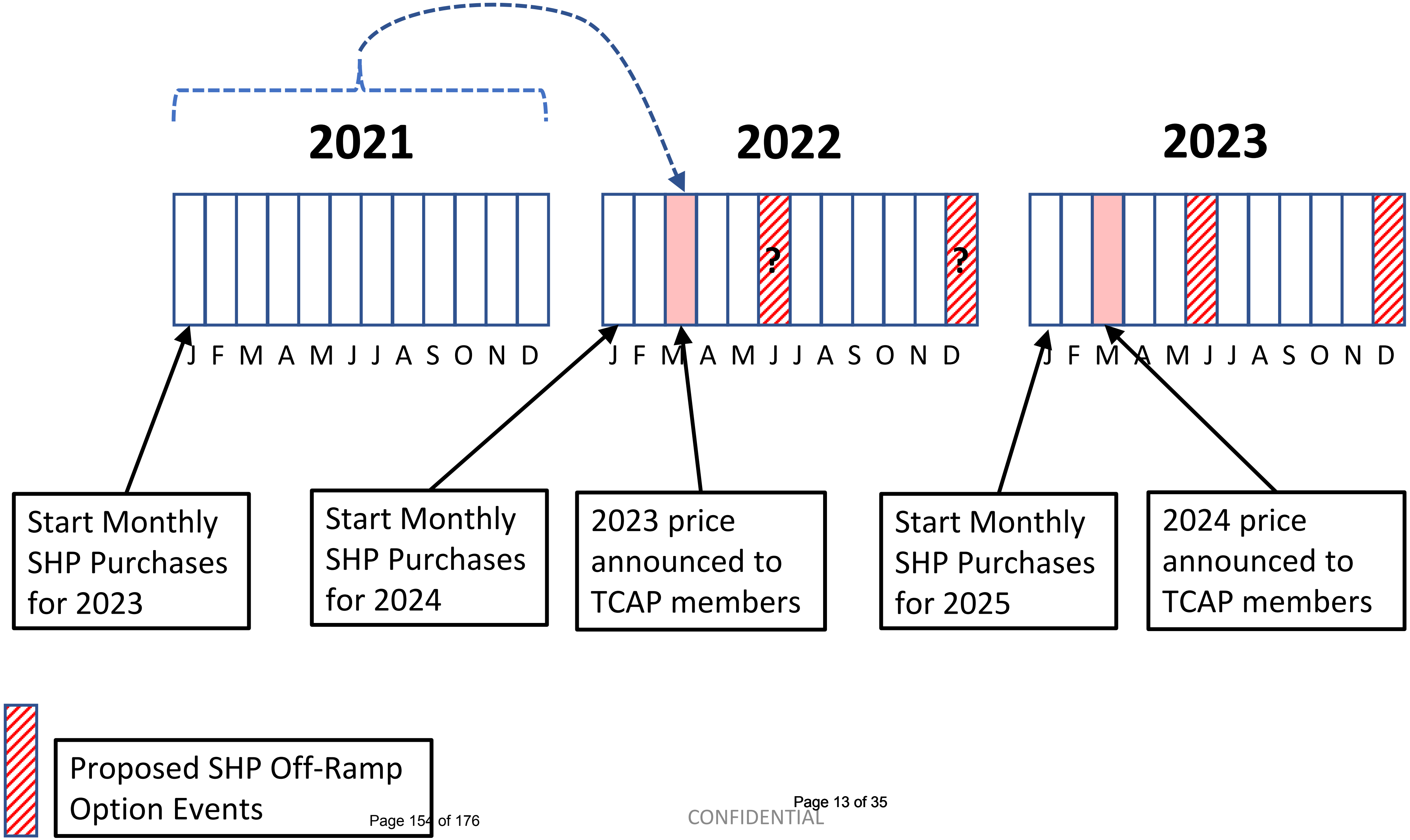
Market Feels Short Term Problems will be Resolved. Carrying Charges and Market Premium are Low. Typically, **A Good Time to Buy**.

This Pattern Reflects a Well Supplied Market

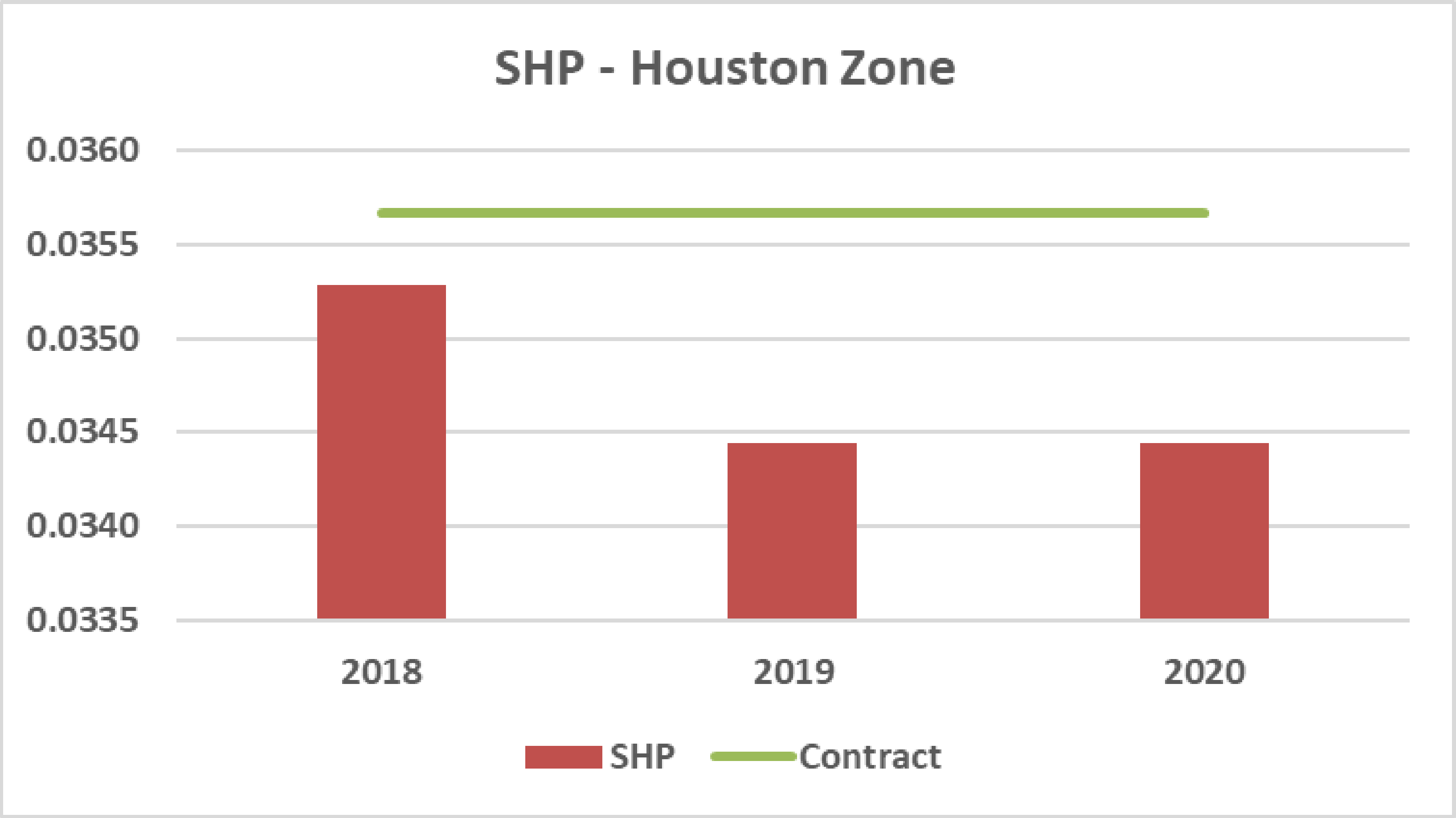
SHP Mechanics – What is Different?

- **Ultra-Competitive RFP Process for Procureme**nt
- **Periodic Procurements**
  - Multiple RFPs for Each Year's Procurement to Mitigate Price Risk
  - Avoids the "All-In" Guess of a Single Fixed Price Multi-Year Deal
- **Fits Member Needs**
  - **Timely** – Price known Prior to Fiscal Year Budgeting Needs
  - **Market Competitive** – Avoids Having To Explain a Long Term Out of Market Price to Citizens
  - **Flexible** – Periodic Off-Ramps Allow Member to Convert to Fixed Price if Desired
  - **Renewable –** SHP Uses RECs to Make Contract All Renewable

SHP – Timeline of Future Events for 2023 Start



Analysis Shows SHP Works



Tomball	$3,113	$9,737	$9,817

Long Range Lookback Shows Savings From 2% (Worst Case) to 32% Over Fixed Price Option

Recent Market Quotes Suggest Pricing May Be Significantly Lower For Next Renewal Period.

Recap and SHP Advantages

- Energy Future Looks Positive – abundant supplies and stable to low prices
- SHP is a unique opportunity for TCAP members
- Structured to Buy When Price is Advantageous
  - Avoid Buyer's Remorse of the "All-In" Guess of a Long-Term Fixed Price (50% correct)
  - Avoids Carrying Charges and Risk Premiums
  - Know Future Price Prior to Budgeting
- All Renewable Contract
- SHP is flexible – Adaptable and Can Convert to Fixed Price

QUESTIONS?

CALL TCAP

Margaret Somereve
msomereve@tcaptx.com
972-764-3136

Exhibit A

PROFESSIONAL SERVICES AGREEMENT BETWEEN

______________________________ AND TEXAS COALITION FOR AFFORDABLE

POWER, INC.

This Professional Services Agreement ("AGREEMENT") is made and entered by and between Texas Coalition for Affordable Power, Inc. ("TCAP"), a non-profit, political subdivision corporation, and ____________________________________("MEMBER"), a TCAP member.

SECTION 1 DURATION:
This AGREEMENT becomes effective as of signing by MEMBER and shall remain effective as long as MEMBER is being served by TCAP and MEMBER's electric load included in a current TCAP procurement.

SECTION 2 PURPOSE OF AGREEMENT:
The purpose of this AGREEMENT is to define services and obligations of TCAP to MEMBER and obligations of MEMBER to TCAP and other members. In furtherance of this AGREEMENT, MEMBER will enter into a Commercial Electric Service Agreement ("CESA") with a retail electric provider ("REP") selected by TCAP pursuant to the terms set forth herein; provided that nothing in this AGREEMENT is intended to alter the price or other terms of MEMBER's current CESA in effect through December 31, 2022.

SECTION 3 OBLIGATIONS OF TCAP TO MEMBER:
MEMBER authorizes TCAP to contract for the purchase of energy for MEMBER in the wholesale market from an energy manager selected by TCAP ("Energy Manager") and to select an acceptable, cost-beneficial REP to serve MEMBER's electric accounts. TCAP shall provide procurement services, which services shall consist of securing wholesale power for MEMBER through an alternative procurement strategy, such as TCAP's Strategic Hedging Program ("SHP"), as may be authorized and defined by TCAP's Board of Directors. If MEMBER has provided to TCAP an Authorized Election Form, TCAP's procurement services to MEMBER shall also consist of arranging fixed-price, fixed-term offers to MEMBER following solicitation of competitive offers. TCAP consultants and attorneys will negotiate terms and conditions of all contracts, monitor performance of Energy Managers and REPs, work to avoid and remedy problems that may be encountered by MEMBER where possible, assist MEMBER with wires company issues, and represent MEMBER in energy related matters before State agencies, the courts or legislature. TCAP will provide additonal customer services to MEMBER that are defined in SECTION 5.

SECTION 4 OBLIGATIONS AND RIGHTS OF MEMBER:
MEMBER will honor the terms of its CESA and promptly pay or promptly dispute invoices from its REP. MEMBER will comply with the confidentiality and non-disclosure obligations contained in its CESA and Section 7 of this AGREEMENT. MEMBER will

designate one or more individuals to receive notices and updates from TCAP and will promptly update contact information. MEMBER will pay aggregation fees to support the non-profit functions of TCAP assessed annually by the TCAP Board of Directors and recovered as part of the energy charges paid to REP. Also, MEMBER will pay or receive refunds equal to the Quarterly Adjustment and the Annual Adjustment mutually agreed upon by TCAP and the Energy Manager to address certain variable costs and charges, including costs imposed by ERCOT, such payment or receipt of funds subject to the reserve account as further described herein. TCAP members will fund, and TCAP will maintain and administer, a reserve account to facilitate the reconciliation of any Quarterly Adjustments or Annual Adjustments by collecting any excess amounts paid and/or paying any deficient amounts incurred (as possible). The reserve account balance will be maintained at a minimum level to cover anticipated future needs for up to two (2) years. The TCAP Board may vote to refund to members amounts in excess of future anticipated needs. Any monies remaining in the reserve account at the dissolution of TCAP will be refunded to current membership at the time of dissolution. TCAP is owned and controlled by its members and is governed by a Board of Directors consisting of employees or elected officials of members. Consistent with TCAP's Bylaws, each MEMBER has a right to nominate its representative to serve on the Board of Directors and has a right to vote in annual elections of Board members. MEMBER has a right to attend or monitor each Board meeting. TCAP has a financial audit performed each year and MEMBER has a right to a copy of the annual audit upon request.

SECTION 5 TCAP SERVICES TO MEMBER:

A. Procurement of Energy Supplies and REP Services

1. TCAP Procurement Services and Capabilities

TCAP will assist prospective members in reviewing market conditions and in estimating the most price opportune time to contract for energy supplies. TCAP will work with MEMBER to achieve a competitive price that balances supply security and risk tolerance while maintaining superior billing and customer services. As a political subdivision corporation, offering electricity procurement to political subdivisions, TCAP has the ability to procure wholesale energy supplies and REP services separately to secure the most effective combination of competitively priced energy supplies and superior billing and customer services. TCAP may utilize either wholesale or retail sources of power, or some combination of both. TCAP may utilize multiple suppliers with different generation resources. TCAP will solicit bids from multiple sources for energy supplies. TCAP aggregates the load of all members to maximize clout in negotiating contract terms. TCAP's objective in negotiations with suppliers is to continue obtaining favorable terms regarding band widths for annual usage based on total load of all members (rather than based on MEMBER's individual load) and to minimize fees for adding or deleting accounts. TCAP will monitor the wholesale and retail markets for favorable hedging opportunities. TCAP will also monitor, evaluate and issue requests for proposals for power development opportunities beneficial to its MEMBERS, including renewable projects (each, a "Power Project").

2. MEMBER Procurement Options

If MEMBER elects a fixed-price contract for a fixed period by submitting an Authorized Election Form, TCAP will function as MEMBER'S agent in the wholesale energy marketplace in soliciting, evaluating and negotiating each such fixed-price contract. Absent an election, MEMBER shall participate in other procurement strategy options offered by TCAP, such as TCAP's SHP, and TCAP will function as MEMBER's electric energy procurer. As such, TCAP will (i) oversee the Energy Manager, (ii) will direct the Energy Manager to solicit wholesale energy market quotes, (iii) will cause the Energy Manager to transact at the most favorable executable market quotes and (iv) will negotiate and develop the Energy Price in MEMBER'S CESA (the "CESA Energy Price"). The CESA Energy Price shall be developed and agreed upon by TCAP, the Energy Manager and the REP and shall include the wholesale energy market transactions as well as Energy Manager's estimate of any non-fixed charges, including zonal congestion charges, ancillaries service charges, and other charges in connection with MEMBER'S load. If MEMBER elects to purchase power from a Power Project solicited and chosen by TCAP via a competitive RFP process (or other similar process), TCAP will function as MEMBER'S electric energy procurer, and will direct the Energy Manager to include the value of the power procured from such projects in the development of MEMBER'S CESA price.

B. Customer and Billing Services Provided by TCAP

1. REP Portal

TCAP consultants oversee the development and presentation of the REP's portal for TCAP members; the REP will be responsible for operation of the portal. TCAP provides training and assistance regarding portal use.

2. REP Customer Service

TCAP negotiates with the REP regarding service standards and annually reviews REP performance. TCAP maintains a right to replace a REP for unsatisfactory performance without affecting the price of wholesale power, so long as the replacement REP has a credit rating acceptable to the Energy Manager. TCAP continuously monitors customer billings and will alert both the REP and MEMBER, when appropriate, of any billing errors and the adjustments needed to ensure accurate and reliable billings to MEMBER. TCAP will advocate on behalf of MEMBER when needed to resolve billing or customer service issues. TCAP will review customer billings and make MEMBER aware of inactive accounts that MEMBER may be able to disconnect to save monthly charges.

3. TCAP Assistance with Budgets and Required Filings and Assistance with TDSP Issues

TCAP monitors Public Utility Commission ("PUC") and ERCOT activity and will provide MEMBER a forecast of changes in non-by passable charges that may impact MEMBER's annual budget estimates. TCAP will prepare an annual electricity cost estimate for MEMBER. TCAP will assist MEMBER in preparation of energy related reports that may be necessary for MEMBER to file in response to legislative or agency mandates. TCAP will assist MEMBER in understanding non-bypassable charges included in REP invoices, and assist in resolving issues caused by errors of MEMBER'S Transmission and Distribution Service Provider ("TDSP" aka "wires company").

4. Information Services

TCAP maintains a member web site, www.tcaptx.com. In addition to regular blog postings on energy news relevant to MEMBER, TCAP has prepared and posted major reports on the history of deregulation in Texas and a history of ERCOT. TCAP consultants continuously monitor the Nymex gas market, ERCOT energy market, and economic conditions that may affect MEMBER, as well as activities at the PUC and ERCOT. Important trends are noted in consultant reports to the Board of Directors and are attached to Board Minutes. TCAP's Executive Director prepares and distributes a monthly newsletter and coordinates TCAP activities with various city coalitions and Texas Municipal League ("TML"). The Executive Director monthly newsletters will also include important or trending issues in the energy markets.

5. Demand Response, Distributed Generation and Cost Savings Strategy

TCAP will work with relevant service providers to make available to MEMBER competitive demand reduction programs that facilitate MEMBER's participation in TDSP and ERCOT cost reduction strategies approved by the PUC. Upon request, TCAP will monitor and evaluate demand reduction program performance metrics. TCAP will assist MEMBER in reviewing, analyzing and developing distributed generation programs that can reduce wires and energy costs and/or provide backup power to specific facilities. TCAP will assist MEMBER in meeting renewable energy goals established by MEMBER, including behind-the-meter solar projects and local wind projects.

6. Regulatory and Legislative Representation

TCAP will provide representation and advocacy services on energy issues relevant to MEMBER in regulatory and legislative areas including, but not limited to, ERCOT stakeholder meetings, PUC projects and dockets, and legislative actions.

7. Strategic Hedging

To the extent that there is sufficient interest and commitment of load of TCAP members within an ERCOT zone, and to the extent MEMBER has not elected a fixed-price contract for a fixed period, MEMBER will perpetually (subject to potential charter or ordinance constraints on length of contracts) commit to two-year participation obligations. MEMBER may terminate participation in the SHP, without energy price penalties and with minimal other termination fees, by providing sufficient notice as set forth herein (Section 6). A SHP price will be determined at least 9 months prior to the effective date of the price by averaging the winning bids from periodic competitive auctions that occur throughout the 24 months preceding the effective date. TCAP will direct Energy Manager to conduct the periodic competitive auctions. TCAP will have the right to audit the auction results. The auction process will be designed to identify competitively priced energy supplies from a variety of creditworthy suppliers, resulting in prices that are rarely, if ever, significantly above prevailing market prices and that should generally be less than pricing for long-term fixed priced contracts (when evaluated from a common contract start date and term). Designed to take advantage of the characteristics of the nation's well supplied energy markets, the SHP will also be flexible enough to respond to market changes when and if they occur in the future. Participation in the SHP may be viewed as a series of 24 -month forward year-to-year contracts for as long as desired by MEMBER. If MEMBER participates in the SHP, MEMBER agrees that TCAP is authorized to direct Energy Manager to procure electric energy in the wholesale market on MEMBER's behalf and that TCAP is authorized to commit MEMBER's load to periodic competitive auctions.

SECTION 6 MEMBER RIGHT OF TERMINATION:
A. Fixed-Term, Fixed-Price Contract

MEMBER may terminate a CESA prior to the end-of-term specified in a contract subject to payment of "Liquidated Damages" prescribed in MEMBER's CESA. If MEMBER commits to a fixed multi-year term, fixed-price contract and wants to terminate the agreement prior to the end of the fixed multi-year term, liquidated damages will be based on the differential in the price of electric energy futures contracts used to support the fixed-price agreement and the price of comparable electric energy contracts at time of termination and shall also include damages prescribed herein and in the CESA, as applicable. If electric energy prices are lower at the point of termination than they were at time of contracting, MEMBER should expect to pay energy price damages upon early termination. In any event, any termination payment will be calculated and assessed in accordance with MEMBER's CESA.

B. Strategic Hedging Program

Since the SHP is based on a series of one-year term contracts, MEMBER is entitled to exit the program so long as notice of termination can be given prior to inclusion of MEMBER's load in the competitive auction process for a future year's price. TCAP will periodically notify MEMBER of expected procurement schedules and provide no less than 90 days prior notice of any upcoming solicitiation, and MEMBER may notify TCAP that it wants to exclude its load from the competitive auction process by giving notice at least 60 days prior to the next procurement date. Termination of involvement in SHP without appropriate notice will require calculation of damages as prescribed by CESA under Edison Electric Institute ("EEI") principles with the intent of making the REP and Energy Manager whole for the termination. Liquidated damages will be based on the differential in the price of electric energy futures contracts used to support the SHP price and the price of comparable electric energy contracts at time of termination and shall also include damages prescribed herein and in the CESA, as applicable. If electric energy prices are lower at the point of termination than they were at time of contracting, MEMBER should expect to pay energy price damages upon early termination. In any event, any termination payment will be calculated and assessed in accordance with MEMBER's CESA.

C. Participation in Power Projects

If MEMBER has chosen to purchase power from a Power Project through TCAP, in accordance with a signed Project Addendum attached to MEMBER'S CESA, MEMBER's termination rights with respect to its commitment to purchase power from the Power Project shall be contained in the Project Addendum.

SECTION 7 CONFIDENTIALITY:

MEMBER is a governmental body subject to public information laws, including Chapter 552 of the Texas Government Code. If MEMBER receives a valid request under applicable public information laws for information related to this AGREEMENT or its CESA, it shall provide TCAP notice of the request including a description the information sought prior to MEMBER's release of information so that TCAP has the opportunity to determine whether such information is subject to an exception as trade secret, competitive, comercial, or financial information. With the exception of the preceding disclosures pursuant to public information laws, a Party (that party, the "Receiving Party") shall keep confidential and not disclose to third parties any information related this AGREEMENT, except for disclosures to Authorized Parties or as otherwise required by law; and provided that MEMBER authorizes TCAP to provide Energy Manager and REP with any relevant information concerning MEMBER's account, usage and billings. The provisions of this Section 7 apply regardless of fault and survive termination, cancellation, suspension, completion or expiration of this AGREEMENT for a period of two (2) years. "Authorized Parties" means those respective officers, directors, employees, agents, representatives and professional consultants of MEMBER and TCAP and each of their respective affiliates that have a need to know the confidential information for the purpose of evaluating, performing or administering this AGREEMENT.

SECTION 8 PARAGRAPH HEADINGS:

The paragraph headings contained in this AGREEMENT are for convenience only and shall is no way enlarge or limit the scope or meaning of the various and several paragraphs.

SECTION 9 COUNTERPARTS:
This AGREEMENT may be executed in multiple counterparts, each of which shall be deemed an original, and all of which shall constitute but one and the same instrument.

SECTION 10 DEFINITIONS:

"Annual Adjustment" shall mean either a credit to MEMBER for the over-collection of funds, or a charge to MEMBER for under-collection of funds, related to Power Project settlements, if applicable. For those MEMBERS that participate in SHP, the Annual Adjustment shall also include (i) adjustments related to the loss factor for each specific ERCOT zone and (ii) adjustments related to load reconciliation as determined by TCAP, the Energy Manager and the REP.

"Energy Manager" means the wholesale market participant selected by TCAP to conduct SHP procurements at TCAP's direction, in accordance with Section 5A and Section 7 of this Agreement. The Energy Manager may sell all or a portion of the required wholesale energy to TCAP or TCAP's REP.

"Power Project" means a power generation project identified by TCAP to supply electric energy to one or more TCAP Members.

"Project Addendum" means the Addendum for a Power Project, if any, signed and attached as an Exhibit to MEMBER'S CESA.

"QSE Services Fee" means the QSE Services Fee in affect during the Delivery Term, as agreed between TCAP and Energy Manager.

"Quarterly Adjustment" shall mean either a credit to MEMBER for the over-collection of funds, or a charge to MEMBER for under-collection of funds, related to (i) ERCOT zonal congestion charges and (ii) ancillary services charges and other charges imposed by governmental agencies or ERCOT upon wholesale suppliers or REPs under statutes, regulations or courts for services within ERCOT zones. Said charges or refunds will be proportional to MEMBER's relative contribution to TCAP load within specific ERCOT zones.

"**Retail Electric Provider" or "REP"** means the Retail Electric Provider that is party to (i) the REP Services Agreement with TCAP and (ii) the CESA between itself and MEMBER for the provision of retail electric service.

"Strategic Hedging Program" or "SHP" means an energy procurement strategy approved by TCAP's Board of Directors, overseen by TCAP's designated consultants, and administered by TCAP's appointed Energy Manager, whereby wholesale energy is solicited and procured at agreed upon intervals, as directed by TCAP.

EXECUTED on this the _____ day of ____________, 20_____.

MEMBER:

By: _________________________________

Printed Name: ________________________

Title: _______________________________

TCAP:

By: _________________________________

Printed Name: ________________________

Title: _______________________________

COMMERCIAL ELECTRICITY SERVICE AGREEMENT

This Commercial Electricity Service Agreement, including all of the Attachments, Schedules, and Exhibits, which are attached and incorporated (collectively, the "**Agreement**"), is entered into between Gexa Energy, LP ("**Gexa**"), a Texas limited partnership, and ("**Customer**"). Gexa and Customer may be referred to individually as a "**Party**" or collectively as the "**Parties**".

SECTION 1: RETAIL ELECTRIC SALES AND SERVICES

1.1 Appointment and Scope. Customer appoints Gexa as its Retail Electric Provider ("**REP**") for the ESI ID(s) served under this Agreement. Customer authorizes Gexa to: (i) act as Customer's REP for all purposes; and (ii) provide the services required of a REP including, without limitation, the procurement, scheduling and delivery of electricity throughout the Term to each of the ESI ID(s) in accordance with the terms set forth in this Agreement, including the Terms and Conditions of Service set forth in Attachment A. Customer's appointment imposes no other duties on Gexa other than those specified in this Agreement and the REP Services Agreement.

1.2 Agreement to Purchase. Customer shall purchase its electricity requirements from Gexa throughout the Term for each of the ESI ID(s) except as otherwise provided. The electricity and services Customer receives from Gexa is for Customer's exclusive proprietary use. Customer alone shall pay for electricity and services provided and for electricity and services Customer fails to take pursuant to its contractual obligations. If Gexa fails to deliver sufficient quantities of electricity to the TDSP for delivery to Customer or fails to schedule the delivery of sufficient quantities of electricity (collectively, a "**Scheduling Failure**") the TDSP is obligated by law and by its tariff to deliver sufficient electricity to satisfy Customer's needs. If a Scheduling Failure occurs, Gexa shall financially settle, at no additional cost or expense to Customer, with its Qualified Scheduling Entity (as defined by ERCOT) for the purchase of electricity necessary to cover the Scheduling Failure.

1.3 Membership in TCAP. Customer is a current member of the Texas Coalition for Affordable Power, Inc. ("**TCAP**"), and has entered into the Professional Services Agreement (the "PSA") authorizing the purchase of wholesale energy on behalf of the Customer by TCAP and/or TCAP's Energy Manager. Such wholesale energy purchases will affect the calculation of the Energy Price throughout the Term of this Agreement as described in Section 2. If, at any time during the Term, Customer elects to participate in a Power Purchase Agreement with a project to be developed for TCAP's members, and executes the Project Addendum for such project, then the Project Addendum will be attached hereto as Schedule I. Notwithstanding Customer's TCAP membership status, Customer agrees to fulfill all of its obligations under this Agreement, the PSA and, if applicable, the Project Addendum throughout the Term of this Agreement.

1.4 Term.

(a) Effective Date and Termination Date. Gexa shall provide retail electric service under this Agreement to each ESI ID beginning on the Effective Date and Terminating on the Termination Date, as further defined in this Section 1.4(a) (such period, the "**Term**"). The Effective Date will occur either (i) on the date occurring on or after the Expected Start Date stated in Attachment B on which each such ESI ID is enrolled with Gexa's service for any new customer, or (ii) if Customer is an existing customer then the Expected Start Date is the meter read date following the expiration of the Customer's prior Agreement with Gexa. Gexa shall continue to provide retail electric service to each ESI ID unless or until the Customer gives notice to TCAP and Gexa of its intent to terminate its membership with TCAP ("Termination Notice"). The Termination Date will occur on each respective ESI ID meter read date during the last month of the calendar year for which electricity has been purchased on Customer's behalf by either TCAP or the Energy Manager in accordance with the PSA prior to the Termination Notice, except that in no event will the Term exceed beyond December 31, 2037. For avoidance of doubt, the Termination Date for each respective ESI ID shall be the sooner to occur of (i) the meter read date occurring in the last month of the calendar year for which electricity has been purchased by either TCAP or the Energy Manager on behalf of the Customer prior to the Termination Notice or (ii) the meter read date occurring in December 2037. As a result of variations in the timing of the Effective Date described in this Section 1.4 the Term may include a partial calendar month in addition to the number of months set forth in Attachment B, if any.

(b) Delayed Effective Date. Gexa shall use commercially reasonable efforts to cause the Effective Date for each ESI ID to occur on the Expected Start Date. If the Effective Date for an ESI ID occurs more than 20 days after the Expected Start Date, Customer may provide Gexa with evidence of the amount of electricity purchased by Customer from its current REP in connection with that ESI ID during the period on and after the 21st day after the Expected Start Date until the Effective Date (the "**Delayed Effective Date Period**"), and the total amount paid by Customer to its current REP for the electricity it purchased during the Delayed Effective Date Period (the "**Delayed Effective Date Electricity Amount**"). Upon receipt of evidence from Customer Gexa shall calculate and provide Customer a credit against future purchases under this Agreement equal to the positive amount resulting from the following calculation: (a) the Delayed Effective Date Electricity Amount minus (b) the amount that Customer would have paid to Gexa pursuant to this Agreement during the Delayed Effective Date Period for the same amount of electricity purchased by Customer from its current REP during that period in connection with the affected ESI ID(s); provided, that Gexa shall not be required to provide a credit with respect to any period during a Delayed Effective Date Period where the delay was caused by an event outside of Gexa's control.

(c) Service After Term. If, for any reason, service continues beyond the Term, it will be on a month-to-month basis, and the Agreement will continue in effect for the ESI ID(s) except that the Energy Price will be the greater of: (i) the Energy Price as set forth in Section 2.1 below, or (ii) the aggregate weighted average of the Market Rate (as defined herein) as determined for all of the ESI ID(s), for as long as service continues. If Customer has not switched from Gexa to another supplier at the expiration of the Term, Gexa shall serve Customer at the rate set forth in this Section for a minimum of 60 days. After those 60 days, Gexa may continue to serve Customer or terminate the Agreement and disconnect Customer.

1.5 Modifications to ESI IDs. Gexa shall work with Customer in good faith during the Term to reasonably accommodate and assist Customer with the management of its electricity needs. If at any time during the Term, Customer wants to i) add or delete one or more ESI IDs, ii) otherwise modify the ESI ID information as a result of a decision by Customer to open, close or sell a facility owned or leased by Customer, iii) expand an existing facility, or iv) increase an existing facility's metered load, then Customer shall provide written notice to Gexa of such change ("ESI ID Change Notice") . If such change to the ESI ID is expected to occur prior to the first month of any calendar year for which the Energy Price has been established as of the date of the ESI ID Change Notice, in accordance with Section 2.1 (a) of this Agreement, such notice shall include Customer's election of the "Special Load Threshold," as defined below, which will apply to such change in load. If, in Gexa's reasonable judgment, i) the addition is a separately metered load which does not exceed the applicable Special Load Threshold; or ii) does not result in a net increase in excess of the applicable Special Load Threshold for an existing facility, Gexa shall use commercially reasonable efforts to promptly implement such changes, including providing required notices to ERCOT. If the addition is a separately metered load which exceeds the applicable Special Load Threshold, or results in a net increase in excess of the applicable Special Load Threshold after consideration of any contemporaneous offsetting load decreases, Gexa shall provide service to that ESI ID and shall determine any incremental charge or credit to provide service to any changed ESI IDs. Gexa shall apply such charge or credit to the affected ESI IDs, after such charges have been reviewed by TCAP. "Special Load Threshold" shall mean additional peak demand that is reasonably expected during the first twelve months following commercial operations to exceed, at Customer's election, either (i) 0.25 MW at any time or an annual average load of 0.125 MW or (ii) 1.0 MW at any time or an annual average load of 0.5 MW. Gexa shall make periodic reports regarding changes to the billing status of any ESI ID(s) available to Customer and TCAP. Amendments that add or remove ESI ID(s) as a result of changes made pursuant to this section are incorporated into this Agreement, and are effective on the Effective Date for each ESI ID(s) added to this Agreement or the date that retail electric service for any removed ESI ID(s) ceases or is transferred to another REP.

SECTION 2: RETAIL ELECTRIC ENERGY SERVICE CHARGES

2.1 Energy Price.

(a) If Customer has elected to fix all or a portion of the Energy Price for a fixed term by providing an Authorized Election Form to TCAP in accordance with the PSA, the Energy Price shall equal the fixed price as determined by TCAP in accordance with the PSA, and the Authorized Election Form. Any portion of the Energy Price that is not fixed shall be noted in the Authorized Election Form, and shall be settled with Customer in accordance with Section 2.2 of this Agreement. If Customer has not made such an election, the Energy Price shall be determined in accordance with the PSA, as follows:

(i) TCAP shall periodically solicit, or direct its designated Energy Manager to solicit, wholesale energy market quotes, and may direct the Energy Manager to transact at the lowest of the market quotes obtained for the purpose of serving customer's load, in accordance with the PSA (each such transacted quote, a "**Wholesale Transaction**").

(ii) Once TCAP has directed its Energy Manager to enter into Wholesale Transactions sufficient to serve Customer's load for a given calendar year, Energy Manager and TCAP shall establish the Energy Price for that Calendar Year in accordance with those procedures outlined in the PSA, which Customer hereby acknowledges it has reviewed and accepted. TCAP shall set the Energy Price for a given Calendar Year no later than nine (9) months prior to the start of such Calendar Year. If Customer elects to participate in a project and executes the Project Addendum, the Energy Price shall include an estimate of the Project Settlement for each month of the Calendar Year in accordance with the Project Addendum.

(b) For the purposes of Section 3 the Energy Price shall be converted to dollars per kWh.

2.2 Energy Price Adjustments.

(a) Energy Manager shall have the right to reconcile the revenues received from the Customer with Energy Manager's Supplier Cost on (i) a quarterly basis, by determining the Quarterly Adjustment in the manner specified in the PSA and (ii) on an annual basis, by determining the Annual Adjustment in the manner specified in the PSA. The Quarterly Adjustment and Annual Adjustment may be either a charge or a credit, and shall be collected from or remitted to Customer, as appropriate, in the manner specified in the PSA.

(b) TCAP and Energy Manager may mutually agree to fix certain component charges comprising Customer's Energy Price for a given Calendar Year, if TCAP determines that fixing these charges is likely to benefit Customer. Charges that are fixed by TCAP and Energy Manager for a given Calendar Year shall not be included in the calculation of either the Quarterly Adjustment or the Annual Adjustment for such Calendar Year, in accordance with the PSA.

2.3 Additional Pass-Through Charges. Gexa shall pass through and identify separately on Customer's bill with no mark-up Delivery Charges, Non-Recurring Charges, or Taxes that are not included in the Energy Price(s). All charges are exclusive of Taxes. Pass-Through charges may include charges related to amounts owed to Gexa and/or Wholesale Supplier in accordance with Section1.3.

2.4 Tax Exempt Status. Customer shall provide Gexa with all required exemption certificates if Customer is exempt from paying any Taxes. Gexa shall not recognize an exemption without the exemption certificates and shall not be required to refund or credit previously paid Taxes unless the taxing entity sends the refund to Gexa. Gexa shall, however, assign to Customer any applicable claims for refund.

SECTION 3: BILLING AND PAYMENT

3.1 Billing and Payment. Gexa shall invoice Customer's accounts on a monthly basis and shall bill Customer on a consolidated basis for all ESI IDs upon Customer's request. Gexa shall provide a summary bill for all accounts and detailed information for each account. Customer shall remit payment within 30 days of receiving the invoice. Gexa shall base the invoice amount on actual data provided by ERCOT and the TDSP. If ERCOT or the TDSP does not provide actual data in a timely manner, Gexa shall use estimated data to calculate the invoice and, upon receipt of actual data, reconcile the charges and adjust them as needed in subsequent invoices.

3.2 Project Settlement Agent Services. Gexa shall remit the total Project Settlement to the Project on a monthly basis, in accordance with the REP Services Agreement.

3.3 Late Penalties, Interest on Overdue Payments, Invoice Disputes. If Customer fails to remit all undisputed amounts on or before the due date, interest will accrue on any due and unpaid amounts from the due date at a rate of one percent per month, or the highest rate permitted by law, whichever is less. If Customer disputes a portion of an invoice it shall provide Gexa a written explanation specifying the amount in dispute and the reason for the dispute within 20 days of the invoice date. If Customer does not provide timely notice, Customer shall owe all amounts by the due date. Notwithstanding the above, if Customer notifies Gexa of a disputed invoice, regardless of whether Customer has already paid the invoice, Gexa shall make records in its possession that are reasonably necessary for Customer to determine the accuracy of the invoice available to Customer during normal business hours; provided, however that neither party may request an adjustment or correction of an invoice unless written notice of such dispute is given within twelve months after the due date of such invoice; provided further, that such twelve month limit does not apply in the case of TDSP meter tampering charges first billed to Gexa that prevent Gexa from reasonably adjusting invoices prior to the twelve month period. In all cases, Gexa and Customer shall use good faith efforts to resolve disputes. In the event the Parties are unable to resolve a dispute within ten days of the notice date, either Party may begin legal proceedings to seek resolution. Any amounts determined owed shall be paid within three days after a decision.

3.4 Aggregator Fees. Pursuant to the REP Services Agreement between Gexa and TCAP, Gexa is obligated to pay TCAP an amount determined by multiplying a TCAP Aggregation Fee by the volume consumed in association with the ESI IDs (the "**Aggregator Fee**"). Customer shall pay the Aggregator Fee. The initial TCAP Aggregation Fee is $0.001 per kWh, however, it may be changed by the TCAP Board of Directors at any time. Gexa shall state the Aggregator Fee as a separate line item on the Customer's bill.

3.5 Billing Guarantee. Gexa shall issue an invoice based on actual or estimated usage to Customer for every ESI ID at least one time per month. If, for reasons other than Force Majeure, Gexa fails to invoice an ESI ID within 120 days of any scheduled meter read, Gexa irrevocably waives its right to invoice Customer for any energy consumed at that ESI ID for the meter read cycle that should have been invoiced, unless not less than 10 days prior to the expiration of such 120 day period, Gexa provides Customer with a written explanation of the circumstances that prevent Gexa from issuing that invoice and the expected time by which an invoice can be issued. In such event, Customer and Gexa shall determine a reasonable extension period, not to exceed 30 days, within which an invoice will be issued. Gexa shall adjust or true-up each invoice no more than twice and Gexa shall issue such adjustments within 210 days of the initial issue date. Notwithstanding the foregoing, Gexa may issue an invoice or partial invoice arising from meter tampering charges without limitation and within a reasonable time after first billed to Gexa by the TDSP.

SECTION 4: CUSTOMER INFORMATION, CREDIT AND DEPOSITS

4.1 Customer Information. By entering into this Agreement and appointing Gexa as Customer's agent for electricity service, Customer authorizes Gexa to obtain certain information that Gexa may need to provide Customer's electric service, including Customer's address, telephone number, account numbers, historical usage information, and historical payment information from Customer's TDSP, and Customer further authorizes its TDSP to release that information to Gexa.

4.2 Deposits and Other Security. A Party (the "**Requesting Party**") may require the other Party (the "**Providing Party**") to provide a deposit (or additional deposit if an initial deposit was also required), letter of credit, or other form of credit assurance reasonably acceptable to the Requesting Party (collectively, "**Performance Assurance**") during the Term of this Agreement if: (i) the Requesting Party determines in its reasonable discretion that there has been a material adverse change in the Providing Party's or its guarantor's (if applicable) credit status or financial condition (which, if applicable, will mean that its credit or bond rating has dropped lower than BBB- by Standard & Poor's Rating Group or Baa3 by Moody's Investor Services or ceases to be rated by either of these agencies); or (ii) Customer has been delinquent in paying the electric bill by more than seven days more than twice during the past twelve months. Any Performance Assurance, less any outstanding balance owed by Providing Party to the Requesting Party, will be returned to the Providing Party once the Providing Party's or its guarantor's (if applicable) credit or financial condition becomes satisfactory or, if applicable, to a credit or bond rating of BBB- or Baa3 or higher, whichever occurs earlier; or, if the Performance Assurance relates to delinquent payments, the Providing Party has paid all outstanding balances and has made all payments within the dates set forth in this Agreement for a period of six consecutive months.

SECTION 5: EARLY TERMINATION; DAMAGES

5.1 Cancellation by Customer for Insufficient Appropriations. If, during Customer's annual appropriations determination, the applicable governmental authorities do not allocate sufficient funds to allow Customer to continue to perform its obligations under this Agreement (an "**Appropriations Failure**"), then Customer or Gexa shall have the right to terminate this Agreement in full or as to any affected ESI ID upon 30 days advance written notice effective at the end of the period for which appropriations are made; provided, that if appropriations are subsequently allocated for electricity for the ESI IDs covered by this Agreement, then the termination may be revoked at Gexa's option and those appropriations shall continue to apply to this Agreement and shall not be used for an electricity supply agreement with another REP. Upon a termination of this Agreement for Appropriations Failure, in full or as to any ESI ID(s), Customer shall pay all amounts due Gexa under this Agreement, including the Customer Early Termination Damages.

5.2 Customer Early Termination Damages. Except in connection with the closure of a facility associated with an ESI ID pursuant to Section 1.5, in connection with a Force Majeure Event, or as otherwise provided or excused in this Agreement, if Customer cancels this Agreement before the end of the Term and refuses to accept electric supply delivery from Gexa for any ESI ID(s), Gexa may charge Customer early termination damages equal to the sum of (a) the Retail Termination Payment, (b) the QSE Services Termination Payment, (c) the Quarterly and Annual Adjustment Payment, and (d) the Wholesale Transaction Termination Payment, as each of these terms are defined below (the sum total of these, the "**Customer Early Termination Damages**"). The "**Retail Termination Payment**" shall equal the product of (a) the Expected Usage for each ESI ID subject to Customer's cancelation or refusal of electric supply delivery ("**Customer Terminated Usage**") *multiplied by* (b) the sum of (i) the Aggregator Fee and (ii) the REP Services Fee specified in the REP Services Agreement. The "**QSE Services Termination Payment**" shall equal the product of (a) the Customer Terminated Usage grossed up for losses *multiplied by* (b) the QSE Services Fee, as defined in the PSA. The **"Quarterly and Annual Adjustment Payment"** shall be calculated by the Energy Manager in accordance with the PSA, and shall include any Quarterly and Annual Adjustment amounts for electricity provided to the Customer under this Agreement prior to the termination of this Agreement, which have not yet been charged or credited to Customer, as appropriate. For avoidance of doubt, the Quarterly and Annual Adjustment Payment may be either a charge or a credit to Customer, as calculated in accordance with the PSA. If the Customer Early Termination Damages are charged due to an Event of Default by Customer, then the Customer Early Termination Damages will also include Gexa's reasonable costs relating to the determination and collection of Customer Early Termination Damages, including attorney and consultant fees incurred. The provisions in Section 3 related to Billing and Payment apply to the billing, due date, and collection of Customer Early Termination Damages. Customer agrees that Customer Early Termination Damages are a reasonable estimate of the damages due Gexa for failure to accept electric supply, and are not punitive in nature.

5.3 Termination for Wholesale Supply Failure. If, during the Term, the Wholesale Transactions are terminated as a result of a default by the Energy Manager ("**Wholesale Supply Failure**"), then this Agreement will also terminate effective on the date the Wholesale Agreement terminates. In the event of a termination for Wholesale Supply Failure, Gexa shall pay Customer a Wholesale Termination Payment if required by Section 5.5.

5.4 Gexa Early Termination Damages. Except for a Wholesale Supply Failure, a Force Majeure Event, or as otherwise provided or excused in this Agreement, if Gexa cancels this Agreement and refuses to provide electric supply delivery to Customer for any or all ESI ID(s), Customer shall have the right to charge Gexa an early termination penalty equal to the amount determined as follows: the product of (i) the Expected Usage for each ESI ID subject to

Gexa's cancellation or refusal of electric supply delivery ("**Gexa Terminated Usage**") *multiplied by* (ii) the REP Services Fee specified in the REP Services Agreement (that result the "**Gexa Early Termination Damages**"). If the Gexa Early Termination Damages are charged due to an Event of Default by Gexa, then the Gexa Early Termination Damages will also include Customer's reasonable costs relating to the determination and collection of Gexa Early Termination Damages, including attorney and consultant fees incurred. Gexa agrees the Gexa Early Termination Damages are a reasonable estimate of the damages due Customer for failure to deliver electric supply, and are not punitive in nature.

5.5 Wholesale Transaction Termination Payment. If the Wholesale Transactions are terminated then Gexa shall calculate the portion of the termination payment paid under each Wholesale Transaction attributable to Customer's load. The termination payment under each Wholesale Transaction shall be calculated by subtracting the Wholesale Supplier's actual cost for the portion of the Wholesale Transaction still outstanding for the remainder of the Term from the current market value of comparable electric energy futures contracts. Energy Manager, in its sole discretion, shall determine the current market value of a comparable electricity futures contract within three (3) business days of the termination of a Wholesale Transaction, and shall be either (i) the value of the Wholesale Transaction actually sold to a third-party market participant or (ii) a third-party market quote for a comparable electricity energy future contracts. Energy Manager shall sum Customer's prorata share of each termination payment for each Wholesale Transaction attributable to Customer's Load to determine a total Wholesale Transaction Termination Payment under this Agreement (the "**Wholesale Transaction Termination Payment**"). Customer or Gexa shall pay the Wholesale Transaction Termination Payment to the other, as appropriate, in the manner described below and without regard to who is a defaulting party. If the Wholesale Transaction Termination Payment is negative, Customer shall pay Gexa the Wholesale Transaction Termination Payment. If the Wholesale Transaction Termination Payment is positive, Gexa shall pay Customer the Wholesale Transaction Termination Payment. To the extent a termination payment due from Gexa to the Energy Manager is adjusted in Gexa's account to reflect the full benefit of TCAP transacting with a replacement REP, Gexa shall make corresponding adjustments to the Wholesale Transaction Termination Payment on a pro-rata basis. Gexa shall remit a Wholesale Transaction Termination Payment due Customer, within 30 days of Gexa receiving the payment from the Energy Manager. Customer shall remit a Wholesale Transaction Termination Payment due Gexa within 30 days of Gexa's invoice. Gexa shall use commercially reasonable efforts to collect Termination Payments from the Energy Manager that include amounts due Customer.

SECTION 6: NOTICES AND PAYMENT

6.1 General Notice. Except as otherwise required by Applicable Law, all notices are deemed duly delivered if hand delivered or sent by United States, prepaid first class mail, facsimile, or by overnight delivery service. Notice by facsimile or hand delivery is effective on the day actually received, notice by overnight United States mail or courier is effective on the next business day after it is sent, and notice by U.S. Mail is effective on the second day after it is sent. The Parties shall send notices to the addresses below or any other address one Party provides to the other in writing:

a. If to Customer (type customer address below):

b. If to Gexa:
Gexa Energy, LP
20455 State Highway 249, Suite 200
Houston, Texas 77070

6.2 Payments. The Parties shall send payments to the addresses below or any other address one Party provides to the other in writing:

a. If to Customer (type customer address below):

b. If to Gexa:

Gexa Energy, LP
20455 State Highway 249, Suite 200
Houston, Texas 77070

SECTION 7: DEFINITIONS

7.1 Definitions. In addition to terms defined elsewhere in this Agreement, when used with initial capitalization, whether singular or plural, capitalized terms have the meanings set forth in this Section 7.1. All other capitalized terms not otherwise defined shall have the meanings given them in the following documents, with any conflicting definitions contained in those documents applied in the following order: PURA, the PUCT Substantive Rules, and the ERCOT Protocols.

1. "**Actual Usage**" means the actual amount of electric energy (in kWh) used at the ESI ID(s) as determined by the TDSP.

2. "**Delivery Charges**" means those charges or credits from the TDSP pursuant to its tariff, including, but not limited to: Transmission and Distribution Charges, System Benefit Fund Charge, Nuclear Decommissioning Charge, Competitive Transition Charge, Standard Customer Metering Charge, Customer Charge, Merger Savings and Rate Reduction Credit, Excess Mitigation Credit and Utility Imposed Reactive Power Charges.

3. "**EEI Master Agreement**" mean an EEI Master Agreement between Gexa and the Energy Manager governing the Wholesale Transactions entered into by the Energy Manager in accordance with Section 2.1 and transferred by the Energy Manager to Gexa.

4. "**Effective Date**" means the date of the first meter reading of an ESI ID provided to Gexa by the TDSP after the TDSP and ERCOT shall have timely performed any required enrollment and cancellation procedures necessary to switch Customer's REP to such ESI ID to Gexa.

5. "**Electricity Related Charges**" means, unless noted otherwise: Ancillary Services Charge, Congestion, ERCOT Administrative Fee, Delivery Loss Charge, Transmission Loss Charge, Renewable Energy Credit Charge, Residential Energy Credit Charge, Unaccounted For Energy Charge, Qualified Scheduling Entity Charge, Imbalance Settlement Charge.

6. **Energy Manager**" means the wholesale market participant designated by TCAP to perform the services described in the PSA.

7. "**Energy Price(s)**" means the rates per unit of measure specified in Section 2.1 and includes all Electricity Related Charges.

8. "**ERCOT**" means the Electric Reliability Council of Texas.

9. "**ERCOT Protocols**" means the document adopted, published, and amended from time to time by ERCOT, and initially approved by the PUCT, to govern electric transactions in the ERCOT Region, including any attachments or exhibits referenced in the document, that contains the scheduling, operating, planning, reliability, and settlement policies, rules, guidelines, procedures, standards, and criteria of ERCOT, or any successor document thereto.

10. "**ESI ID(s)**" means the Electric Service Identifiers for the property service addresses identified on Attachment B to this Agreement or if Customer is an existing Gexa customer then the list of service addresses currently served by Gexa, as such list may be modified from time to time as provided in Section 1.5.

11. "**Expected Usage**" means either the amount stated in Attachment B calculated for the remaining Term, or if no amounts are stated or Customer is an existing Gexa customer then the average actual monthly Customer energy usage from the comparable month from the previous year (or if an average cannot be computed due to limited service by Gexa or other circumstances, an average monthly usage as is reasonably determined by Gexa) times the number of months remaining in the Term as outlined in Section 1.4.

12. "**kWh**" means kilowatt hour.

13. "**LMP**" or "**Locational Marginal Price**" means the price calculated for the applicable trading hub pursuant to the ERCOT Protocols.

14. "**Market Rate**" means 135% of the load-weighted average of the hourly LMPs at the corresponding load zone, as determined for any delivery period.

15. "**Nodal Market**" means the implementation of wholesale market design by ERCOT with locational marginal pricing for resources.

16. “**Nodal Congestion**” means the positive difference in price between the real-time settlement point price as determined by ERCOT for the trading hub and the real-time settlement point price as determined by ERCOT for the load zone associated with the customer Facilities.

17. “**Non-Recurring Charges**” means any charges imposed by the TDSP or other third parties on a non-recurring basis for services, repairs or additional equipment needed for Customer’s electric service.

18. *“***PUCT***”* means Public Utility Commission of Texas.

19. “**Project Settlement Payment**” means the Project Settlement Payment as defined in the Project Addendum, attached as Schedule I to this Agreement.

20. **“QSE Services Fee”** means the fee owed from Customer to Gexa, and remitted from Gexa to Energy Manager, for QSE Services performed by Energy Manager for the Term, as mutually agreed between TCAP and Energy Manager, the Customer having authorized TCAP to negotiate such fee on behalf of Customer in the PSA. The QSE Services Fee shall be included in the Energy Price for the Term.

21. **“REP Services Agreement”** means the REP Services Agreement currently in effect during the Term, as amended from time to time, between Gexa and TCAP.

22. **“REP Services Fee”** means the fee owed from Customer to Gexa, for REP services rendered during the Term, as mutually agreed between TCAP and Gexa, the Customer having authorized TCAP to negotiate such fee on behalf of Customer in the PSA. The REP Services Fee shall be included in the Energy Price for the Term.

23. “**Taxes**” means all taxes, assessments, levies, duties, charges, fees and withholdings of any kind levied by a duly-constituted taxing authority and all penalties, fines, and additions to tax, and interest thereon that are directly related to the services provided under this Agreement, but does not include the System Benefit Fund fee and fees and charges imposed by ERCOT. By way of example only, Taxes includes: Sales Tax, Miscellaneous Gross Receipts Tax, PUCT Assessment Fees and Franchise Fees.

24. *“***TCAP***”* means Texas Coalition for Affordable Power, an aggregation pool of governmental and other entities organized and administered by TCAP of which Customer is a member for the ESI IDs.

25. **“TDSP”** or **“Transmission and Distribution Service Provider”** means an entity regulated by the State of Texas, which transmits or distributes electric energy.

“

Attachments:

Attachment A	Terms and Conditions of Service
Attachment B (for new TCAP Customers only)	Offer Sheet (ESI ID list and Expected Start Date)

CUSTOMER (type Customer name in field below):	**GEXA:** **Gexa Energy, LP, By its General Partner Gexa Energy GP, LLC**
By:	By:
Printed:	Printed:
Title:	Title:
Date:	Date:

Terms and Conditions of Service
Attachment A

These Terms and Conditions of Service form an integral part of the Commercial Electricity Service Agreement between Customer and Gexa. In addition to the terms defined elsewhere in this Agreement, when used with initial capitalization, whether singular or plural, capitalized terms have the meanings set forth in Section 7.1 of this Agreement. Customer should thoroughly review the entire Agreement, including these Terms and Conditions of Service, before executing this Agreement.

A. REPRESENTATIONS AND WARRANTIES

A.1 Customer's Representations and Warranties. As a material inducement to entering into this Agreement, Customer represents and warrants to Gexa as follows: (a) it is a duly organized entity and is in good standing under the laws of Texas; (b) the execution and delivery of the Agreement are within its powers, have been duly authorized by all necessary action, and do not violate the terms or conditions of contracts it is party to or laws applicable to it; (c) performance of this Agreement will be duly authorized by all necessary action and will not violate the terms or conditions of contracts it is party to; (d) as of the date sales of electricity by Gexa to Customer under the Agreement start, Customer will have all regulatory authorizations necessary for it to legally perform its operations and such performance will not violate the terms or conditions of contracts it is party to or laws applicable to it; (e) this Agreement is a legal, valid, and binding obligation of Customer enforceable against it in accordance with its terms, subject to bankruptcy, insolvency, reorganization, and other laws affecting creditor's rights generally, and with regard to equitable remedies, subject to the discretion of the court before which proceedings to obtain the same may be pending; (f) there are no bankruptcy, insolvency, reorganization, receivership, or other similar proceedings pending or being contemplated by it, or to its knowledge threatened against it; (g) there are no suits, proceedings, judgments, rulings, or orders by or before any court or any government authority that could materially adversely affect its ability to perform the Agreement; and (h) as of the Effective Date and throughout the Term, there is no other contract for the purchase of electricity by Customer for the ESI ID(s), or, if such a contract presently exists, that it will terminate prior to delivery under this Agreement.

A.2 Gexa's Representations and Warranties. As a material inducement to entering into this Agreement, Gexa represents and warrants to Customer as follows: (a) it is duly organized, validly existing, and in good standing under the laws of the jurisdiction of its formation and is qualified to conduct its business in those jurisdictions necessary to perform the Agreement; (b) the execution and delivery of the Agreement are within its powers, have been duly authorized by all necessary action, and do not violate the terms or conditions of its governing documents or contracts it is party to or any laws applicable to it; (c) performance of the Agreement will be duly authorized by all necessary action and will not violate the terms or conditions of its governing documents or contracts it is party to; (d) as of the date sales of electricity by Gexa to Customer under the Agreement start, Gexa will have all regulatory authorizations necessary for it to legally perform its operations and such performance will not violate the terms or conditions of its governing documents, contracts it is party to, or laws applicable to it; and (e) the Agreement constitutes a legal, valid, and binding obligation of Gexa enforceable against it in accordance with its terms, subject to bankruptcy, insolvency, reorganization, and other laws affecting creditor's rights generally, and with regard to equitable remedies, subject to the discretion of the court before which proceedings to obtain the same may be pending.

A.3 Forward Contract. (i) This Agreement constitutes a forward contract within the meaning of the United States Bankruptcy Code ("**Code**"); (ii) Gexa is a forward contract merchant; and (iii) either Party is entitled to the rights under, and protections afforded by, the Code.

B. DISCLAIMERS OF WARRANTIES; LIMITATION OF LIABILITIES

B.1 LIMITATIONS OF LIABILITY. LIABILITIES NOT EXCUSED BY REASON OF FORCE MAJEURE OR AS OTHERWISE PROVIDED, ARE LIMITED TO DIRECT ACTUAL DAMAGES. GEXA IS NOT LIABLE TO CUSTOMER FOR CONSEQUENTIAL, INCIDENTAL, PUNITIVE, EXEMPLARY OR INDIRECT DAMAGES OR LOSS OF REVENUES OR PROFIT. THESE LIMITATIONS APPLY WITHOUT REGARD TO THE CAUSE OF ANY LIABILITY OR DAMAGE. EXCEPT FOR (a) THE GEXA EARLY TERMINATION DAMAGES DUE IF GEXA DEFAULTS, (b) THE CUSTOMER EARLY TERMINATION DAMAGES DUE IF CUSTOMER DEFAULTS, AND (c) THE WHOLESALE TRANSACTION TERMINATION PAYMENT, THE LIABILITY OF EITHER PARTY TO THE OTHER FOR ANY OBLIGATIONS UNDER THIS AGREEMENT SHALL BE LIMITED TO THE AGGREGATE AMOUNT OF ALL DOLLARS PAID BY CUSTOMER TO GEXA (IF CUSTOMER) OR RECEIVED BY GEXA (IF GEXA) PURSUANT TO THIS AGREEMENT. THERE ARE NO THIRD PARTY BENEFICIARIES TO THIS AGREEMENT.

B.2 Duty to Mitigate. Each Party shall mitigate damages and use commercially reasonable efforts to minimize any damages it may incur as a result of the other Party's performance or non-performance.

B.3 WAIVER OF CUSTOMER PROTECTION RULES AND CONSUMER RIGHTS. THE PARTIES FURTHER ACKNOWLEDGE THAT THE CUSTOMER PROTECTION RULES ADOPTED BY THE PUBLIC UTILITY COMMISSION (AS CONTAINED IN ITS SUBSTANTIVE RULES 25.471 ET SEQ.) ("**CUSTOMER PROTECTION RULES**") THAT PERTAIN TO RETAIL ELECTRIC SERVICE RELATED TO RESCISSION RIGHTS, CUSTOMER DISCLOSURES, DELIVERY OF CUSTOMER CONTRACTS TO CUSTOMERS, RECORDKEEPING, INTEREST PAID ON DEPOSITS AND CUSTOMER NOTICES DO NOT APPLY TO THIS AGREEMENT. EXCEPT AS SET FORTH IN THIS SECTION, CUSTOMER EXPRESSLY WAIVES THE CUSTOMER PROTECTION RULES THAT PERTAIN TO RETAIL ELECTRIC SERVICE RELATED TO RESCISSION RIGHTS, CUSTOMER DISCLOSURES, DELIVERY OF CUSTOMER CONTRACTS TO CUSTOMERS, RECORDKEEPING, INTEREST PAID ON DEPOSITS AND CUSTOMER NOTICES TO THE FULLEST EXTENT ALLOWED

BY APPLICABLE LAW. CUSTOMER FURTHER WAIVES ITS RIGHTS UNDER THE DECEPTIVE TRADE PRACTICES--CONSUMER PROTECTION ACT, SECTION 17.41, ET. SEQ., BUSINESS & COMMERCE CODE, A LAW THAT GIVES CONSUMERS SPECIAL RIGHTS AND PROTECTIONS. CUSTOMER REPRESENTS AND WARRANTS TO GEXA THAT: (a) CUSTOMER IS NOT IN A SIGNIFICANTLY DISPARATE BARGAINING POSITION IN RELATION TO GEXA; (b) CUSTOMER IS REPRESENTED BY LEGAL COUNSEL THAT WAS NEITHER DIRECTLY NOR INDIRECTLY IDENTIFIED, SUGGESTED OR SELECTED BY GEXA; AND (c) CUSTOMER VOLUNTARILY CONSENTS TO THIS WAIVER AFTER CONSULTATION WITH ITS LEGAL COUNSEL.

B.4 UCC/Disclaimer of Warranties. The electricity delivered is a “good” as that term is understood in the Texas B&CC (UCC §2.105). The Parties waive the UCC to the fullest extent allowed by law and the UCC requirements do not apply to this Agreement, unless otherwise provided. If there is a conflict between the UCC and this Agreement, this Agreement controls. Neither Party controls nor physically takes possession of the electric energy prior to delivery to Customer’s ESI ID(s). Therefore, neither Party is responsible to the other for any damages associated with failure to deliver the electric energy, nor for damages it may cause prior to delivery to Customer’s ESI ID(s). Once the electric energy is delivered to Customer’s ESI ID(s) it is deemed in possession and control of Customer. ELECTRICITY SOLD UNDER THIS AGREEMENT WILL MEET THE QUALITY STANDARDS OF THE APPLICABLE LOCAL DISTRIBUTION UTILITY AND WILL BE SUPPLIED FROM A VARIETY OF SOURCES. GEXA MAKES NO REPRESENTATIONS OR WARRANTIES OTHER THAN THOSE EXPRESSLY SET FORTH IN THIS AGREEMENT, AND GEXA EXPRESSLY DISCLAIMS ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. GEXA EXPRESSLY NEGATES ALL OTHER REPRESENTATIONS OR WARRANTIES, WRITTEN OR ORAL, EXPRESS OR IMPLIED, INCLUDING ANY REPRESENTATION OF WARRANTY WITH RESPECT TO CONFORMITY, TO MODELS OR SAMPLES, MERCHANTABILITY, OR FITNESS FOR A PARTICULAR PURPOSE.

B.5 Force Majeure. Gexa shall make commercially reasonable efforts to provide electric service, but does not guarantee a continuous supply of electricity. Gexa does not generate electricity nor does it transmit or distribute electricity. Causes and events out of the control of Gexa and Customer ("**Force Majeure Event(s)**") may result in interruptions in service or the ability to accept electricity. If either Party is unable to perform its obligations, in whole or in part, due to a Force Majeure Event, then the obligations of the affected Party (other than the obligation to pay any amounts owed to Gexa that relate to periods prior to the Force Majeure Event) are suspended to the extent made necessary by such Force Majeure Event. Therefore, neither Party is liable to the other Party for damages caused by Force Majeure Events, including acts of God, acts of, or the failure to act by, any governmental authority (including the PUCT or ERCOT and specifically including failure by ERCOT to make Customer meter read data available), accidents, strikes, labor troubles, required maintenance work, events of “force majeure” or “uncontrollable force” or a similar term as defined under the applicable transmission provider’s tariff, inability to access the local distribution utility system, non-performance by the supplier or the local distribution utility, changes in laws, rules, or regulations of any governmental authority (including the PUCT or ERCOT) that would prevent the physical delivery of energy to Customer’s facilities, or any cause beyond such Party’s control. The Parties agree that Appropriations Failures and Scheduling Failures are not Force Majeure Events.

C. CONFIDENTIALITY AGREEMENT

C.1 Confidentiality. Customer is a governmental body subject to public information laws, including Chapter 552 of the Texas Government Code. If Customer recieves a valid request under applicable public information laws for information related to this Agreement, it shall provide Gexa notice of the request including a description the information sought prior to Customer’s release of information so that Gexa has the opportunity to determine whether such information is subject to an exception as trade secret, competitive, comercial, or financial information. With the exception of the preceding disclosures pursuant to public infromation laws, a Party (that party, the “**Receiving Party**”) shall keep confidential and not disclose any to third parties Confidential Information which is disclosed to the Receiving Party by the other Party (that party, the “**Disclosing Party**”) except for disclosures to Authorized Parties or as required by law. “**Confidential Information**” means information in written or other tangible form which is marked as “Confidential” when it is disclosed to the Receiving Party, except that Confidential Information shall not include information which (i) is available to the public, (ii) becomes available to the public other than as a result of a breach by the Receiving Party of its obligations hereunder, (iii) was known to the Receiving Party prior to its disclosure by the Disclosing Party, or (iv) becomes known to the Receiving Party thereafter other than by disclosure by the Disclosing Party. The provisions of this Section apply regardless of fault and survive termination, cancellation, suspension, completion or expiration of this Agreement for a period of two (2) years. Customer authorizes Gexa to provide TCAP with all information requested by TCAP about Customer’s account and billings. “**Authorized Parties**” means those officers, directors, employees, agents, representatives and professional consultants of the Parties, and of the Parties’ affiliates, that have a need to know the Confidential Information for the purpose of evaluating and performing this Agreement.

D. DEFAULT AND REMEDIES

D.1 Events of Default. An event of default (“**Event of Default**”) means: (a) the failure of Customer to make, when due, any payment required under this Agreement for any undisputed amount if that payment is not made within fifteen (15) business days after receipt of written notice (facsimile or electronic mail are valid forms of notice for this paragraph) from Gexa; or (b) any representation or warranty made by a Party proves to be false or misleading in any material respect; (c) except as provided in clause (a) above or otherwise in this section D.1, the failure of any Party to perform its obligations under this Agreement and that failure is not excused by Force Majeure and remains uncured following 20 business days written notice of the failure; (d) the defaulting Party (i) makes an assignment or any general arrangement for the benefit of creditors; or (ii) files a petition or otherwise commences, authorizes or acquiesces to a bankruptcy proceeding or similar proceeding for the protection of creditors, or has such a petition filed against it and that petition is not withdrawn or dismissed within 20 business days after filing; or (iii) otherwise becomes insolvent; or (iv) is unable to pay its debts when due; or (v) fails to establish, maintain or extend Credit in form and in an amount acceptable to Gexa when required; or (e) the Wholesale Transaction is terminated due to a default by Gexa under CESAs with other TCAP members or due to a default by the Energy Manager under the Wholesale Transaction. If an Event of Default listed in subsection (d) of this Section occurs, it is deemed to have automatically occurred prior to such event.

D.2 Remedies upon an Event of Default. If an Event of Default occurs and is continuing, upon written notice to the defaulting Party, the non-defaulting Party may (a) commence an action to require the defaulting Party to remedy such default and specifically perform its duties and obligations in accordance with the Agreement; (b) exercise any other rights and remedies it has at equity or at law, subject to the Agreement's Limitations of Liabilities; and/or (c) suspend performance; provided, however, that suspension shall not continue for longer than ten (10) Business Days unless the non-defaulting Party has declared an early termination with proper notice. If Customer is responsible for an Event of Default and fails to cure within ten (10) days of written notice (such additional cure period does not apply to default for non-payment), in addition to its other remedies, Gexa may (i) terminate this Agreement; and (ii) charge Customer the Customer Early Termination Penalty pursuant to Section 5 of this Agreement. Notwithstanding the above, Gexa shall not disconnect or order disconnection of service to Customer unless the following events have all occurred: (1) Customer has an Event of Default for nonpayment under Section D.1(a) above, (2) Gexa gives Customer a ten (10) day written disconnection notice; and (3) Customer does not pay all undisputed outstanding payments owed by the end of the ten (10) day notice period. .

E. MISCELLANEOUS PROVISIONS

E.1 Disclaimer. This Agreement does not constitute, create, or otherwise recognize the existence of a joint venture, association, partnership, or other formal business entity of any kind among the Parties and the rights and obligations of the Parties are limited to those set forth in this Agreement.

E.2 Headings. The descriptive headings of the Articles and Sections of this Agreement are inserted for convenience only and are not intended to affect the meaning, interpretation or construction of this Agreement.

E.3 Waiver. Except as otherwise provided, failure of a Party to comply with an obligation, covenant, agreement, or condition may be waived by the other Party only in a writing signed by the Party granting the waiver, but that waiver does not constitute a waiver of, or estoppel with respect to a subsequent failure of the first Party to comply with that obligation, covenant, agreement, or condition.

E.4 Assignment. Except as provided in the REP Services Agreement, Customer shall not assign this Agreement, in whole or in part, or any of its rights or obligations purusant to the Agreement without Gexa's prior written consent, which shall not be unreasonably withheld. Gexa may withold consent if a proposed assignee fails to be at least as creditworthy as Customer as of the Effective Date. Gexa may: (a) transfer, sell, pledge, encumber or assign the revenues or proceeds of this Agreement in connection with any financing or other financial arrangement; (b) transfer or assign this Agreement to a Gexa affiliate with operating capability and financial condition substantially similar to Gexa; (c) transfer or assign this Agreement to any person or entity succeeding to all or substantially all of the assets of Gexa with an operating capability and financial condition substantially similar to Gexa as of the execution date of this Agreement; and/or (d) transfer or assign this Agreement to a certified REP with an operating capability and financial condition substantially similar to Gexa as of the execution date of this Agreement. In the case of (b), (c), or (d), any such assignee shall agree in writing to be bound by these Terms and Conditions of Service, and upon assignment, Gexa shall have no further obligations under this Agreement. Gexa shall not assign the Agreement to a non-affiliated entity (including its guarantor) that has a credit rating lower than BBB- without the prior written consent of TCAP, which shall not be unreasonably withheld.

E.5 No Third-Party Beneficiaries. This Agreement does not confer any rights or remedies on any person or party other than the Parties, their successors and permitted assigns; except that the Parties recognize that TCAP is entitled to receive the Aggegator Fee .

E.6 Severability. If a provision of this Agreement is held to be unenforceable or invalid by a court or regulatory authority of competent jurisdiction, the validity and enforceability of the remaining provisions are unaffected by that holding, and the Parties shall, to the extent possible, negotiate an equitable adjustment to the provisions of this Agreement in order to preserve the original intent and purpose of this Agreement.

E.7 Entire Agreement; Amendments. This Agreement constitutes the entire understanding between the Parties, and supersedes any and all previous understandings, oral or written, with respect to the subjects it covers. This Agreement may be amended only upon the mutually signed, written agreement of the Parties.

E.8 Further Assurances. The Parties shall promptly execute and deliver, at the expense of the Party requesting such action, any and all other and further instruments and documents which are reasonably requested in order to effectuate the transactions contemplated in this Agreement.

E.9 Emergency, Outage and Wire Service. In the event of an emergency, outage or service need, Customer shall call the TDSP for the service area of the ESI ID experiencing the emergency, outage or service need.

E.10 Customer Care. Customer may contact Gexa Customer Care if Customer has specific comments, questions, disputes, or complaints toll free at 1-866-961-9399, Monday to Friday 7:00 a.m. – 8:00 p.m. CST and Saturday from 8:00 a.m. – 2:00 p.m.. Gexa shall assist and cooperate with Customer regarding communications with a TDSP relating to service to any ESI ID served by Gexa under this Agreement.

E.11 Governing Law.

a. This Agreement is governed by and construed and enforced in accordance with the laws of the State of Texas applicable to contracts made and performed in the State of Texas, without regard to the State of Texas conflict of laws provisions.

b. All disputes between the Parties under this Agreement which are not otherwise settled will be decided by a court of competent jurisdiction in Harris County, Texas, and the Parties submit to the jurisdiction of the courts of the State of Texas and the Federal District Courts in Houston, Harris County, Texas. All disputes are governed under the laws of the State of Texas.

c. Subject to the provisions of E.11.a. above, this Agreement is subject to, and in the performance of their respective obligations under this Agreement the Parties shall comply with, all applicable federal, state and local laws, regulations and requirements (including the rules, regulations and requirements of quasigovernmental and regulatory authorities with jurisdiction over the Parties, including ERCOT) (collectively, "*Applicable Law*").

E.12 No Presumption Against Drafting. Both Parties contributed to the drafting of this Agreement. The rule of construction that any ambiguity is construed against the party who drafted this Agreement does not apply to this Agreement.

E.13 Counterparts; Facsimile Copies. This Agreement may be executed in counterparts, all of which constitute one and the same Agreement and each is deemed an original. A facsimile copy of either Party's signature is considered an original for all purposes, and each Party shall provide its original signature upon request.

E.15 Offer for Electric Service; Refusal of Service. This Agreement, including these Terms and Conditions of Service, constitute an offer for electric service, and is expressly conditioned on acceptance of this Agreement by Gexa. Gexa may refuse to provide electric service to Customer subject to the requirements of Applicable Law.