

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



MONDAY, JUNE 3, 2019

6:00 P.M.

Notice is hereby given of a meeting of the Tomball City Council, to be held on Monday, June 3, 2019 at 6:00 P.M., City Hall, 401 Market Street, Tomball, Texas 77375, for the purpose of considering the following agenda items. All agenda items are subject to action. The Tomball City Council reserves the right to meet in a closed session for consultation with attorney on any agenda item should the need arise and if applicable pursuant to authorization by Title 5, Chapter 551, of the Texas Government Code.

1.0 Call to Order

2.0 Invocation

- Led by Pastor Billy Schiel – Bayou City Fellowship, Tomball

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

- ***Tomball City Pool – 2019 Swim Season*** - Jerry Matheson Park Pool will be open Memorial Weekend, May 25-27, then will reopen on June 4 and will operate with

normal hours through August 18. The pool will be open on Saturday and Sunday only on the weekends of August 24-25 and August 31-September 1. The pool will be closed every Monday during swim season 2019, except Memorial Day (May 27), July 4th, and Labor Day (September 2). Normal pool hours are: Tuesday – Friday: 10 a.m.-6 p.m. and Saturday & Sunday: 12 p.m.-8 p.m.

- June 8, 2019 – **2nd Saturday at the Depot**
- June 10, 2019 – Special City Council Meeting – Strategic Planning Session – Public Works Building-Training Room, 501-B James Street – 12:00 p.m.
- **TOMBALL KID'S CLUB – Activities: June 18, 20, 25, and 27 and July 2, 9, 11, 16, 18, 23 and 25** from 10:30 a.m. to 12:30 p.m., at the **Tomball Community Center. Backpack Buddy Pickup: June 21, 28 and July 12, 19, 26** from 10:30 a.m. to 12:30 p.m. at **Lone Star College-Tomball Community Library**
- June 27, 2019 – **11th Annual Economic Outlook Luncheon**, sponsored by the Tomball Economic Development Corporation, at LSC – Tomball – Beckendorf Conference Center, 30555 Tomball Parkway, from 11:30 a.m.-1:30 p.m.
- July 4, 2019 – **July Fourth Celebration & Street Festival** – Business 249 at FM 2920
- July 6, 2019 – **2nd Saturday at the Depot**
- August 2, 2019 – **Tomball Night**
- Reports by City staff and members of Council about items of community interest on which no action will be taken
 - Glenn Windsor – Presentation of the Quarterly Investment Report for period ending March 31, 2019. The Public Funds Investment Act requires that a report of the City's Investments be presented to Council on a quarterly basis. The investment report includes a listing of all investments together with information relating to diversification, cost vs. market values at the end of the quarter, yield information, and weighted average maturities. On March 31, 2019, the City had total cash and cash equivalents in the amount of \$68,547,364.

6.0 Approve the Minutes of the May 20, 2019 Regular Tomball City Council Meeting

7.0 Old Business:

- 7.1 Adopt, on Second Reading, Ordinance No. 2019-11, an Ordinance of the City of Tomball, Texas, Amending Chapter 50 (Zoning) of the Tomball Code of Ordinances by Changing the Zoning District Classification of Approximately 3.6 Acres of Land, Legally Described as Tracts 6, 7, 8 and 10 and Lot 9, Block 1 Hirschfield Farms Section 1 U/R, within the City of Tomball, Harris County, Texas, from the Agricultural District to the Commercial District; said Property being generally located at the Northeast corner of SH 249 and Alice Road; Providing for the Amendment of the Official Zoning Map of the City; Providing for Severability; Providing for a Penalty of an Amount Not to Exceed \$2,000 for Each Day of Violation of Any Provision Hereof, Making Findings of Fact; and Providing for Other Related Matters

8.0 New Business:

- 8.1 Approve Development Agreement between the City of Tomball and BCDE, Ltd. for the Construction of Improvements in Tomball Public Improvement District Number Four (TPID 4), Alexander Estates Subdivision
- 8.2 Approve Development Agreement between the City of Tomball and Brown Road,

LLC for the Construction of Improvements in Tomball Public Improvement
District Number Nine (TPID 9), Tomball Heights Subdivision

9.0 Adjournment

CERTIFICATION

I hereby certify that the above notice of meeting was posted on the bulletin board of City Hall; City of Tomball, Texas, a place readily accessible to the general public at all times, on the 30th day of May 2019 by 5:00 p.m., and remained posted for at least 72 continuous hours proceeding 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: June 3, 2019

Topic:

- Led by Pastor Billy Schiel – Bayou City Fellowship, Tomball

Background:

Origination:

Recommendation:

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

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

Regular City Council

Agenda Item

Data Sheet

Meeting Date: June 3, 2019

Topic:

- **Tomball City Pool – 2019 Swim Season** - Jerry Matheson Park Pool will be open Memorial Weekend, May 25-27, then will reopen on June 4 and will operate with normal hours through August 18. The pool will be open on Saturday and Sunday only on the weekends of August 24-25 and August 31-September 1. The pool will be closed every Monday during swim season 2019, except Memorial Day (May 27), July 4th, and Labor Day (September 2). Normal pool hours are: Tuesday – Friday: 10 a.m.-6 p.m. and Saturday & Sunday: 12 p.m.-8 p.m.
- June 8, 2019 – **2nd Saturday at the Depot**
- June 10, 2019 – Special City Council Meeting – Strategic Planning Session – Public Works Building-Training Room, 501-B James Street – 12:00 p.m.
- **TOMBALL KID'S CLUB – Activities: June 18, 20, 25, and 27 and July 2, 9, 11, 16, 18, 23 and 25** from 10:30 a.m. to 12:30 p.m., at the **Tomball Community Center. Backpack Buddy Pickup: June 21, 28 and July 12, 19, 26** from 10:30 a.m. to 12:30 p.m. at **Lone Star College-Tomball Community Library**
- June 27, 2019 – **11th Annual Economic Outlook Luncheon**, sponsored by the Tomball Economic Development Corporation, at LSC – Tomball – Beckendorf Conference Center, 30555 Tomball Parkway, from 11:30 a.m.-1:30 p.m.
- July 4, 2019 – **July Fourth Celebration & Street Festival** – Business 249 at FM 2920
- July 6, 2019 – **2nd Saturday at the Depot**
- August 2, 2019 – **Tomball Night**
- Reports by City staff and members of Council about items of community interest on which no action will be taken
 - Glenn Windsor – Presentation of the Quarterly Investment Report for period ending March 31, 2019. The Public Funds Investment Act requires that a report of the City's Investments be presented to Council on a quarterly basis. The investment report includes a listing of all investments together with information relating to diversification, cost vs. market values at the end of the quarter, yield information, and weighted average maturities. On March 31, 2019, the City had total cash and cash equivalents in the amount of \$68,547,364.

Background:

Origination:

Various

Recommendation:

N/A

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

City Secretary

ACTION TAKEN

Approval	Readings Passed	Other
----------	-----------------	-------

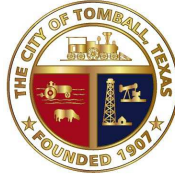
☐ Yes ☐ No	☐ 1 st ☐ 2 nd	
--	---	--

ATTACHMENTS:

June 10, 2019 – Special City Council Meeting – Strategic Planning Session
Quarterly Investment Report for period ending March 31, 2019

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

MONDAY, JUNE 10, 2019



12:00 P.M.

Notice is hereby given of a Special meeting of the Tomball City Council, to be held on Monday, June 10, 2019 at 12:00 p.m., at the **Public Works Building-Training Room, 501-B James Street, Tomball, Texas 77375**, for the purpose of considering the following agenda items. All agenda items are subject to action. The Tomball City Council reserves the right to meet in a closed session for consultation with attorney on any agenda item should the need arise and if applicable pursuant to authorization by Title 5, Chapter 551, of the Texas Government Code.

- 1.0 Call to Order
- 2.0 New Business:
 - 2.1 The Tomball City Council will enter into a Strategic Planning Session with City Staff and Ron Cox, Consultant
- 3.0 Adjournment

CERTIFICATION

I hereby certify that the above notice of meeting was posted on the bulletin board of City Hall, City of Tomball, Texas, a place readily accessible to the general public at all times, on the 30th day of May 2019 by 5:00 p.m., and remained posted for at least 72 continuous hours preceding the scheduled time of said meeting.

Doris Speer

Doris Speer
City Secretary, TRMC

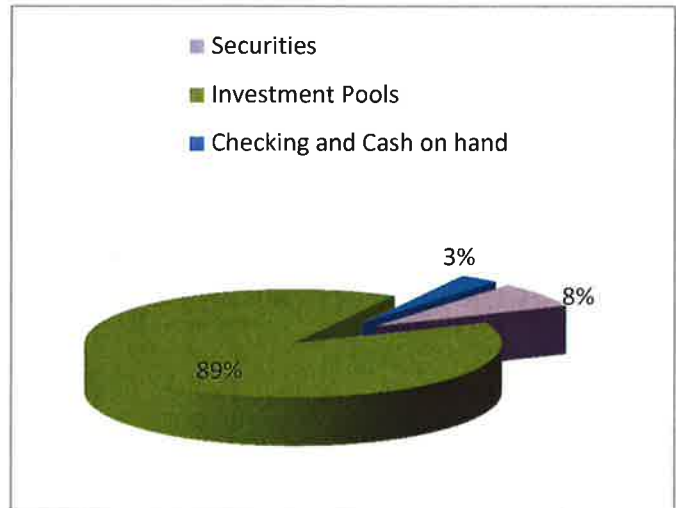
This facility is wheelchair accessible and accessible parking spaces are available. Requests for accommodations or interpretive services must be made 48 hours prior to this meeting. Please feel free to contact the City Secretary's office at (281) 290-1002 or FAX (281) 351-6256 for further information.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

CITY OF TOMBALL PORTFOLIO DIVERSIFICATION March 31, 2019

By Type

	Current Market Value	Percent Portfolio
Securities	\$ 5,251,398	8%
Investment Pools	61,167,526	89%
Checking and Cash on hand	2,128,440	3%
Total Portfolio	\$ 68,547,364	

Diversification by Type

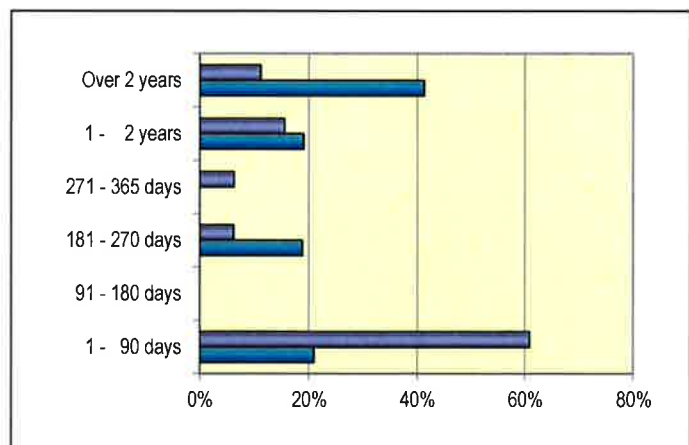


Safety of principal is the first priority of any Public investing portfolio. The City of Tomball invests in Securities of Federal, State and Local Governments, in Texas CLASS and in the state pool, TexPool. These investments are in securities with a rating of A-1/P-1 or higher and pools with Standard & Poor's highest rating of AAAM. Our charter requires that we maintain reserves of no less than 90 days and no more than one year of the current budgeted expenditures. The City currently has reserves in excess of the charter requirement.

By Maturity

	Current Market Value	Percent Portfolio
1 - 90 days	\$ 1,098,790	21%
91 - 180 days	-	0%
181 - 270 days	987,172	19%
271 - 365 days	-	0%
1 - 2 years	999,525	19%
Over 2 years	2,165,911	41%
Total Portfolio	\$ 5,251,398	

Diversification by Maturity



Ensuring adequate liquidity is available to cover all expenditures is the second priority of any public investing program. The City staff forecasts cash flow and ladders the maturity of investments to ensure funds are adequate when needed. A portion of funds are kept in overnight investments as a buffer for any unexpected expenditures. These overnight investments (TexPool, Texas CLASS) have been performing according to market in the yield category as well as providing liquidity.

**CITY OF TOMBALL
INVESTMENT PORTFOLIO SUMMARY
ACTIVITY FOR QUARTER ENDING
March 31, 2019**

ALL CITY FUNDS (POOLED)

INVESTMENTS	COST	MARKET	RATIO	YTM at COST	BENCHMARK YTM**
Beginning of period	4,757,287	4,723,465	0.9929	1.654%	2.60%
Purchases	1,000,000	1,000,000			
Maturities/Calls	500,000	(500,000)			
Change in value	-	27,933			
Sales					
End of period	5,257,287	5,251,398	0.9989	1.858%	2.40%

**Benchmark security is the One-year U. S. Treasury Bill
Weighted average maturity of the portfolio at quarter end is 509 days.

This report is in compliance with the investment strategies as approved
and the Public Funds Investment Act.

Treasurer 

Asst. Treasurer

**CITY OF TOMBALL
INVESTMENTS IN SECURITIES
PORTFOLIO AS OF MARCH 31, 2019**

SECURITY DESCRIPTION	CUSIP NUMBER	RATING	MATURITY DATE	INTEREST YIELD	MARKET VALUE	DAYS AFTER 03/31/19	INDIVIDUAL MARKET VALUE/TOTAL	WAM DAYS x PERCENT	CALLABLE
1) Kansas St. Dev. Fin. Auth. Revenue- 2.608%	485429Y32	A+	4/15/2020	2.608%	499,295	381	9.508%	36.22	Y
2) Federal Farm Credit Bank	3133EKDX1	AA+	3/25/2022	2.680%	998,971	1090	19.023%	207.35	Y
3) Denton TX ISD- 2.50%	249002AS5	AAA	8/15/2020	2.500%	500,230	503	9.526%	47.91	N
4) FANNIE MAE 2.3%	313586RC5	NR	10/9/2019	0.000%	987,172	192	18.798%	36.09	N
5) Texas A&M Revenue -1.592%	88213AHF5	AAA	5/15/2019	1.592%	1,098,790	45	20.924%	9.42	Y
6) Texas A&M Revenue -2.229	88213AHH1	AAA	5/15/2021	2.229%	898,056	776	17.101%	132.71	Y
7) Texas A&M Revenue - 1.4%	88213AFW0	AAA	5/15/2021	1.400%	268,884	776	5.120%	39.73	
TOTALS									
				1.858%	5,251,398	538	100.000%	509.44	

CITY OF TOMBALL
CASH AND CASH EQUIVALENTS
FOR QUARTER ENDING
March 31, 2019

FUNDS	CASH AND CASH EQUIVALENTS				INVESTMENTS			TOTAL CASH, CASH EQUIVALENTS AND INVESTMENTS
	TEXAS CLASS	TEXPOOL	OPERATING ACCOUNT	CASH ON HAND	TOTAL CASH AND CASH EQUIVALENTS	INVESTMENT SECURITIES	TOTAL INVESTMENTS	
MAJOR FUNDS								
General	2,646,411.47	8,774,673.89	565,533.00	\$ -	\$ 11,986,618	\$ 1,486,467	\$ 1,486,467	\$ 13,473,085
Debt Service	989,757.90	3,255,038.19	283,648.07	-	4,528,444.16	500,230.00	500,230.00	5,028,674.16
Enterprise	2,815,397.19	3,140,204.05	201,349.71	-	6,156,950.95	998,970.65	998,970.65	7,155,921.60
OTHER FUNDS								
Special Revenue	79,390.97	14,635.54	9,478.19	-	103,504.70	-	-	103,504.70
Housing Trust								
Municipal Court Building Security	105,854.62	73,183.80	54,543.43	-	233,581.85	-	-	233,581.85
Municipal Court Technology	63,512.73	110,257.39	17,275.28	-	191,045.40	-	-	191,045.40
Hotel Occupancy Tax	105,854.62	343,377.32	43,418.61	-	492,650.55	-	-	492,650.55
Red Light Camera Program	1,956.99	259,135.96	131,622.78	-	392,715.73	-	-	392,715.73
Disaster Preparedness	-	-	327,340.88	-	327,340.88	-	-	327,340.88
Tomball "Fun Runs"	-	5,183.04	4,872.61	-	10,055.65	-	-	10,055.65
General Capital Projects	58,388.42	30,934,084.16	154,941.19	-	31,147,413.77	2,265,730.00	2,265,730.00	33,413,143.77
Business Park		908,730.37	-	-	908,730.37	-	-	908,730.37
Fleet Replacement	475,614.49	957,452.30	105,454.67	-	1,538,521.46	-	-	1,538,521.46
Water Capital Recovery	105,959.07	2,037,497.96	73,593.43	-	2,217,050.46	-	-	2,217,050.46
Sewer Capital Recovery	158,468.53	1,599,248.41	72,305.55	-	1,830,022.49	-	-	1,830,022.49
Health Insurance Trust	-	1,122,283.29	83,062.18	-	1,205,345.47	-	-	1,205,345.47
Tomball Legacy Fund	-	25,973.95	-	-	25,973.95	-	-	25,973.95
TOTALS	\$ 7,606,567	\$ 53,560,959	\$ 2,128,440	\$ -	\$ 63,295,966	\$ 5,251,398	\$ 5,251,398	\$ 68,547,364

Regular City Council
Agenda Item
Data Sheet

Meeting Date: June 3, 2019

Topic:
Approve the Minutes of the May 20, 2019 Regular Tomball City Council Meeting

Background:

Origination:
City Secretary

Recommendation:
Approve Minutes

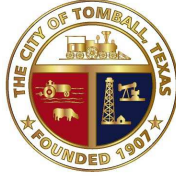
Party(ies) responsible for placing this item on agenda:
City Secretary

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

ATTACHMENTS:

Draft Minutes of the May 20, 2019 Regular Tomball City Council Meeting

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



**MONDAY, MAY 20, 2019
6:00 P.M.**

1.0 Meeting was called to order by Mayor Fagan. Other members present:

Councilman Ford
Councilman Stoll
Councilman Klein Quinn
Councilman Townsend

Members absent:

Councilman Degges - Excused

Others present:

City Manager – Robert Hauck
Assistant City Manager – David Esquivel
City Secretary – Doris Speer
City Attorney – Loren B. Smith
Director of Public Works – Beth Jones
Fire Chief – Randy Parr
Marketing Director – Mike Baxter
Finance Director – Glenn Windsor
Director of Community Development – Craig Meyers
Planner – Amelia Lindley
Assistant City Secretary – Tracy Garcia
Community Center Manager – Rosalie Dillon
Fire Marshal – Joe Sykora
Police Officer-Investigations – James Harral

2.0 The invocation was led by Pastor Greg Jenkins – Tomball Assembly of God

3.0 The pledges to U. S. and Texas Flags were led by Randy Parr.

4.0 The following public comments were received:

Bruce Hillegeist	-	Expressed his appreciation of the City's
President-GTACC		continue support of the annual Tomball
		Night events and parade.

5.0 Reports and Announcements:

- ***Tomball City Pool – 2019 Swim Season*** - Jerry Matheson Park Pool will be open Memorial Weekend, May 25-27, then will reopen on June 4 and will operate with normal hours through August 18. The pool will be open on Saturday and Sunday only on the weekends of August 24-25 and August 31-September 1. The pool will be closed every Monday during swim season 2019, except Memorial Day (May 27), July 4th, and Labor Day (September 2). Normal pool hours are: Tuesday – Friday: 10 a.m.-6 p.m. and Saturday & Sunday: 12 p.m.-8 p.m.
- June 8, 2019 – **2nd Saturday** at the Depot
- ***TOMBALL KID'S CLUB – Activities: June 18, 20, 25, and 27 and July 2, 9, 11, 16, 18, 23 and 25*** from 10:30 a.m. to 12:30 p.m., at the Tomball Community Center. ***Backpack Buddy Pickup: June 21, 28 and July 12, 19, 26*** from 10:30 a.m. to 12:30 p.m. at Lone Star College-Tomball Community Library
- Reports by City staff and members of Council about items of community interest on which no action will be taken:

6.0 Presentations:

Mayor Fagan presented the following proclamations to Tomball Public Works Department and Tomball Fire Department personnel:

- Proclamation – May 19-25, 2019 is “**National Public Works Week – Tomball, Texas**” – “**It Starts Here**”
- Proclamation – May 19-25, 2019 is “**National Hurricane Preparedness Week – Tomball, Texas**”

7.0 Motion was made by Councilman Stoll, second by Councilman Townsend, to approve the Minutes of the May 6, 2019 Regular Tomball City Council Meeting and the May 13, 2019 Special Tomball City Council Meeting.

Motion carried unanimously.

8.0 Old Business:

- 8.1 Motion was made by Councilman Townsend, second by Councilman Stoll, to adopt, on Second Reading, Ordinance No. 2019-10, an Ordinance of the City of Tomball, Texas, Amending Chapter 50 (Zoning) of the Tomball Code of Ordinances by Changing the Zoning District Classification of Approximately 1.5 Acres of Land, Legally Described as Tract 12E-2 & 12F-2 Abstract 378 W Hurd Survey, within the City of Tomball, Harris County, Texas, from the Agricultural District to the Commercial District; Said Property being generally located on the South Side of Michel Road, West of School Street; Providing for the Amendment of the Official Zoning Map of the City; Providing for Severability; Providing for a Penalty of an Amount Not to Exceed \$2,000 for Each Day of Violation of Any

Provision Hereof, Making Findings of Fact; and Providing for Other Related Matters. Vote was as follows:

Councilman Ford	<u>Aye</u>
Councilman Stoll	<u>Aye</u>
Councilman Degges	<u>Absent</u>
Councilman Townsend	<u>Aye</u>
Councilman Klein Quinn	<u>Aye</u>

Motion carried unanimously.

9.0 New Business:

- 9.1 Greg Sissel, CPA-BKD, LLP presented the Comprehensive Annual Financial Report (CAFR) for the Fiscal Year Ending September 30, 2018 to City Council.

No action necessary.

- 9.2 Consideration to Approve **Zoning Case P19-053**: Request by Harpreet Mangat to amend Chapter 50 (Zoning) of the Tomball Code of Ordinances by rezoning approximately 3.6 acres of land legally described as Tracts 6, 7, 8 and 10 and Lot 9, Block 1 Hirschfield Farms Section 1 U/R, within the City of Tomball, Harris County, Texas, generally located at the northeast corner of SH 249 and Alice Road, from the Agricultural District to the Commercial District.

- Conduct Public Hearing on **Zoning Case P19-053**

Mayor Fagan opened the Public Hearing at 6:22 p.m.

Receiving no public comments, Mayor Fagan closed the Public Hearing at 6:22 p.m.

- Motion was made by Councilman Townsend, second by Councilman Stoll, to read Ordinance No. 2019-11 by caption only on First Reading.

Motion carried unanimously.

Motion was made by Councilman Stoll, second by Councilman Townsend, to adopt, on First Reading, Ordinance No. 2019-11, an Ordinance of the City of Tomball, Texas, Amending Chapter 50 (Zoning) of the Tomball Code of Ordinances by Changing the Zoning District Classification of Approximately 3.6 Acres of Land, Legally Described as Tracts 6, 7, 8 and 10 and Lot 9, Block 1 Hirschfield Farms Section 1 U/R, within the City of Tomball, Harris County, Texas, from the Agricultural District to the Commercial District; said Property being generally located at the Northeast corner of SH 249 and Alice Road; Providing for the

Amendment of the Official Zoning Map of the City; Providing for Severability; Providing for a Penalty of an Amount Not to Exceed \$2,000 for Each Day of Violation of Any Provision Hereof, Making Findings of Fact; and Providing for Other Related Matters. Vote was as follows:

Councilman Ford	<u>Aye</u>
Councilman Stoll	<u>Aye</u>
Councilman Degges	<u>Absent</u>
Councilman Townsend	<u>Aye</u>
Councilman Klein Quinn	<u>Aye</u>

Motion carried unanimously.

- 9.3 Motion was made by Councilman Townsend, second by Councilman Stoll, to approve Resolution No. 2019-13, a Resolution of the City Council of the City of Tomball, Texas, Adopting the City's Water Conservation and Drought Contingency Plan (2019).

Motion carried unanimously.

- 9.4 Consideration and Possible Action Regarding the Use of Eminent Domain Authority to Condemn the Property as Follows:

Approve Resolution No. 2019-14, a Resolution of the City Council of the City of Tomball, Texas, Determining that Land is Needed to Install Public Utilities along Hufsmith Road, Specifically a Tract of Land Containing 0.1099 Acres Believed to be Owned by Barbara Hieden Seber, in the City of Tomball, Texas; and Authorizing the Institution of Eminent Domain Proceedings.

Motion was made by Councilman Stoll, second by Councilman Ford: "I move that the City of Tomball, Texas adopt this resolution authorizing the use of the power of eminent domain to acquire the property described in this resolution for public utility purposes." Vote was as follows:

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

Motion carried, 3 votes Aye, 1 vote Nay.

- 9.5 Consideration and Possible Action Regarding the Use of Eminent Domain Authority to Condemn the Property as Follows:

Approve Resolution No. 2019-15, Resolution of the City Council of the City of Tomball, Texas, Determining that Land is Needed to Install Public Utilities along Hufsmith Road, Specifically a Tract of Land Containing 0.0555 Acres Believed to be Owned by Frank Rhane Krzenski and Deanna Krzenski, in the City of Tomball, Texas; and Authorizing the Institution of Eminent Domain Proceedings

Motion was made by Councilman Stoll, second by Councilman Ford: "I move that the City of Tomball, Texas adopt this resolution authorizing the use of the power of eminent domain to acquire the property described in this resolution for public utility purposes." Vote was as follows:

Councilman Ford	<u>Aye</u>
Councilman Stoll	<u>Aye</u>
Councilman Degges	<u>Absent</u>
Councilman Townsend	<u>Aye</u>
Councilman Klein Quinn	<u>Aye</u>

Motion carried unanimously.

9.6 Consideration and Possible Action Regarding the Use of Eminent Domain Authority to Condemn the Property as Follows:

Approve Resolution No. 2019-16, a Resolution of the City Council of the City of Tomball, Texas, Determining that Land is Needed to Install Public Utilities along Hufsmith Road, Specifically a Tract of Land Containing 0.1107 Acres Believed to be Owned by James A. Johnson and Dorothy Johnson, in the City of Tomball, Texas; and Authorizing the Institution of Eminent Domain Proceedings

Motion was made by Councilman Townsend, second by Councilman Ford: "I move that the City of Tomball, Texas adopt this resolution authorizing the use of the power of eminent domain to acquire the property described in this resolution for public utility purposes." Vote was as follows:

Councilman Ford	<u>Aye</u>
Councilman Stoll	<u>Aye</u>
Councilman Degges	<u>Absent</u>
Councilman Townsend	<u>Aye</u>
Councilman Klein Quinn	<u>Aye</u>

Motion carried unanimously.

9.7 Consideration and Possible Action Regarding the Use of Eminent Domain Authority to Condemn the Property as Follows:

Approve Resolution No. 2019-17, a Resolution of the City Council of the City of Tomball, Texas, Determining that Land is Needed to Install Public Utilities along

Hufsmith Road, Specifically a Tract of Land Containing 0.1268 Acres Believed to be Owned by Brenda Ann Reiland and Alan Matthew Suhonen, in the City of Tomball, Texas; and Authorizing the Institution of Eminent Domain Proceedings

Motion was made by Councilman Townsend, second by Councilman Ford: "I move that the City of Tomball, Texas adopt this resolution authorizing the use of the power of eminent domain to acquire the property described in this resolution for public utility purposes." Vote was as follows:

Councilman Ford	<u>Aye</u>
Councilman Stoll	<u>Aye</u>
Councilman Degges	<u>Absent</u>
Councilman Townsend	<u>Aye</u>
Councilman Klein Quinn	<u>Aye</u>

Motion carried unanimously.

- 9.8 Motion was made by Councilman Klein Quinn, second by Councilman Townsend, to approve Resolution No. 2019-18, a Resolution of the City Council of the City of Tomball, Texas, Supporting the 47th Annual Tomball Night and Parade, to be Held in Tomball on Friday, August 2, 2019.

Motion carried unanimously.

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

Motion carried unanimously.

Meeting adjourned.

PASSED AND APPROVED this the 3rd day of June 2019.

Doris Speer, TRMC, MMC
City Secretary

Gretchen Fagan
Mayor

Regular City Council

Agenda Item

Data Sheet

Meeting Date: June 3, 2019

Topic:

Adopt, on Second Reading, Ordinance No. 2019-11, an Ordinance of the City of Tomball, Texas, Amending Chapter 50 (Zoning) of the Tomball Code of Ordinances by Changing the Zoning District Classification of Approximately 3.6 Acres of Land, Legally Described as Tracts 6, 7, 8 and 10 and Lot 9, Block 1 Hirschfield Farms Section 1 U/R, within the City of Tomball, Harris County, Texas, from the Agricultural District to the Commercial District; said Property being generally located at the Northeast corner of SH 249 and Alice Road; Providing for the Amendment of the Official Zoning Map of the City; Providing for Severability; Providing for a Penalty of an Amount Not to Exceed \$2,000 for Each Day of Violation of Any Provision Hereof, Making Findings of Fact; and Providing for Other Related Matters

Background:

On Monday, May 13, 2019, after conducting a Public Hearing, the Planning and Zoning Commission recommended approval of the rezoning request with a 4-0 vote.

Origination:

Harpreet Mangat

Recommendation:

Adopt, on Second Reading

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

City Secretary

ACTION TAKEN

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

ATTACHMENTS:

Ordinance No. 2019-11

Staff Report

Notice of Public Hearing

Property Owner Notification

ORDINANCE NO. 2019-11

AN ORDINANCE OF THE CITY OF TOMBALL, TEXAS, AMENDING CHAPTER 50 (ZONING) OF THE TOMBALL CODE OF ORDINANCES BY CHANGING THE ZONING DISTRICT CLASSIFICATION OF APPROXIMATELY 3.6 ACRES OF LAND, LEGALLY DESCRIBED AS TRACTS 6, 7, 8 AND 10 AND LOT 9, BLOCK 1 HIRSCHFIELD FARMS SECTION 1 U/R, WITHIN THE CITY OF TOMBALL, HARRIS COUNTY, TEXAS, FROM THE AGRICULTURAL DISTRICT TO THE COMMERCIAL DISTRICT; SAID PROPERTY BEING GENERALLY LOCATED AT THE NORTHEAST CORNER OF SH 249 AND ALICE ROAD; PROVIDING FOR THE AMENDMENT OF THE OFFICIAL ZONING MAP OF THE CITY; PROVIDING FOR SEVERABILITY; PROVIDING FOR A PENALTY OF AN AMOUNT NOT TO EXCEED \$2,000 FOR EACH DAY OF VIOLATION OF ANY PROVISION HEREOF, MAKING FINDINGS OF FACT; AND PROVIDING FOR OTHER RELATED MATTERS.

* * * * *

Whereas, Harpreet Mangat has requested that approximately 3.6 acres of land, legally described as Tracts 6, 7, 8 and 10 and Lot 9, Block 1 Hirschfield Farms Section 1 U/R, generally located at the northeast corner of SH 249 and Alice Road, within the City of Tomball, Harris County, Texas, (the "Property"), be rezoned; and

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

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

Whereas, the Planning & Zoning Commission recommended in its final report that City Council approve the requested rezoning of Commercial District; and

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

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

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

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

Section 2. The zoning classification of the Property is hereby changed from the Agricultural District to the Commercial District subject to the regulations, restrictions, and conditions hereafter set forth.

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

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

Section 5. 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 6. Any person who shall violate any provision of this Ordinance shall be deemed guilty of a misdemeanor and upon conviction, shall be fined in an amount not to exceed \$2,000. Each day of violation shall constitute a separate offense.

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 20TH DAY OF MAY 2019.

COUNCILMAN FORD	<u>AYE</u>
COUNCILMAN STOLL	<u>AYE</u>
COUNCILMAN DEGGES	<u>ABSENT</u>
COUNCILMAN TOWNSEND	<u>AYE</u>
COUNCILMAN KLEIN QUINN	<u>AYE</u>

SECOND READING:

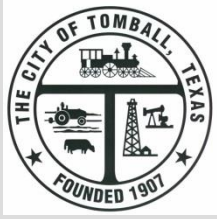
READ, PASSED, AND APPROVED AS SET OUT BELOW AT THE MEETING OF THE
CITY COUNCIL OF THE CITY OF TOMBALL HELD ON THE 3RD DAY OF JUNE 2019.

COUNCILMAN FORD	_____
COUNCILMAN STOLL	_____
COUNCILMAN DEGGES	_____
COUNCILMAN TOWNSEND	_____
COUNCILMAN KLEIN QUINN	_____

Gretchen Fagan, Mayor

ATTEST:

Doris Speer, City Secretary



Rezoning Staff Report

Planning & Zoning Commission Public Hearing Date: May 13, 2019

City Council Public Hearing Date: May 20, 2019

Rezoning Case: P19-053
Property Owner(s): Harpreet Mangat and Hardial Mangat
Applicant(s): Harpreet Mangat
Legal Description: Tracts 6, 7, 8 and 10 and Lot 9, Block 1 Hirschfield Farms Section 1 U/R
Location: Northeast corner of SH 249 and Alice Road (Exhibit "A")
Area: 3.6 acres (total site is 10.15 acres)
Comp Plan Designation: Commercial (Exhibit "B")
Present Zoning and Use: Agricultural District (Exhibit "C") / Undeveloped (Exhibit "D")
Request: Rezone from the Agricultural District to the Commercial District

Adjacent Zoning & Land Uses:

North: General Retail and Planned Development Districts / Breaux Machine Works and undeveloped (approved CUP for *mobile food court*)

South: Not Zoned / Alice Road and Harris County Flood Control channel

West: Not Zoned / SH 249

East: General Retail District / Harris County Flood Control channel

BACKGROUND

City Staff met with the applicant in March 2019 to discuss the development of the subject site.

ANALYSIS

The 3.6 acre subject site is currently zoned Agricultural District. The proposed rezoning is for the Commercial District. Properties in the immediate area are zoned General Retail and Planned Development to the north and General Retail to the east. Properties to the south and west are publicly owned by the Texas Department of Transportation (SH 249) or Harris County Flood Control (drainage channel).

The uses in the area include a machine shop (Breaux Machine Works), a State Highway, a flood control drainage channel, undeveloped property and a few general retail stores.

The Comprehensive Plan Future Land Use Map designates the property as Commercial which is intended for retail sales and service activities such as "shopping centers, convenience stores, auto

dealers, department stores, grocery and drug stores, entertainment facilities, food and beverage purveyors, salons, and small repair shops”.

The purpose of the Commercial Zoning District is to “provide a location for commercial and service-related establishments”. The Commercial Zoning District is an appropriate zoning district for the Commercial area.

ZONING CONSIDERATIONS

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

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

The uses permitted in the Commercial District appear to be appropriate for the area. The immediate area consists of SH 249, a Harris County Flood Control Ditch, Alice Road, a machine shop and a few retail businesses. With the direct access to SH 249 and Alice Road, a minor arterial, the property is best suited for a Commercial development.

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

Adequate utilities are available to be extended to the property and the existing streets adjacent to the property can accommodate traffic generated by a Commercial District development. According to Section 50-77 of the Tomball Code of Ordinances, the Commercial District should have “convenient access to thoroughfares and collector streets”. The subject site has direct access to both SH 249 and Alice Road.

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

There is vacant land in the City zoned Commercial District. There does not appear to be any special circumstances which may make a substantial part of any vacant land unavailable for development.

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

There has been steady development in the Commercial District in the City.

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

City Staff does not anticipate any adverse impacts on other areas designated for similar development.

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

Generally, the proposed rezoning does not appear to negatively affect the public health, safety, morals, or general welfare.

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

The Future Land Use Map designates the property as Commercial. The Commercial Zoning District is an appropriate district for the Commercial designated area. According to the Comprehensive Plan, the Commercial area is expected to have a steady stream of traffic throughout the day and into the evening and is an area for retail sales and service activities. According to Section 50-77 of the Tomball Code of Ordinances, the Commercial District “is intended to provide a location for commercial and service-related establishments”. The request appears to be consistent with the Comprehensive Plan.

PUBLIC COMMENT

Property owners within 200 feet of the project site were mailed notification of this proposal on April 26, 2019. The Notice of Public Hearing was published in the paper on May 1, 2019. Any public comment forms will be provided in the Planning & Zoning Commission and City Council packets or during the public hearing.

RECOMMENDATION

Based on the findings outlined in the analysis section of this staff report, City staff recommends approval of Zoning Case P19-053 for the following reasons:

1. The request meets the goals of City’s Comprehensive Plan;
2. The request is in conformance with the Future Land Use Map;
3. The request is generally appropriate with the surrounding land uses in the area;
4. The request is generally appropriate with the surrounding zoning districts.

EXHIBITS

- A. Aerial Photo
- B. Comprehensive Plan
- C. Zoning Map
- D. Site Photos
- E. Application

Exhibit "A"
Aerial Photo



Exhibit "B"
Comprehensive Plan

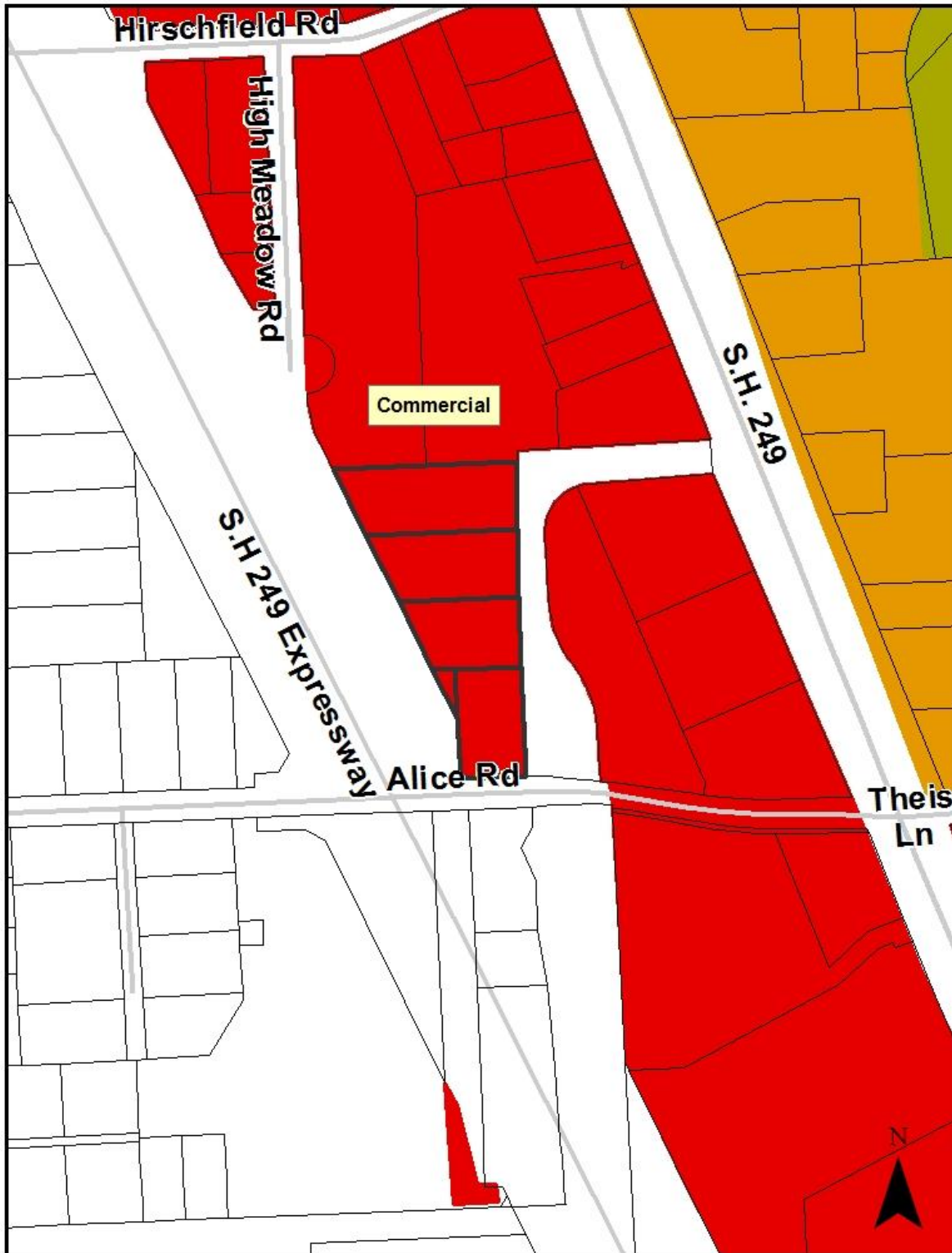
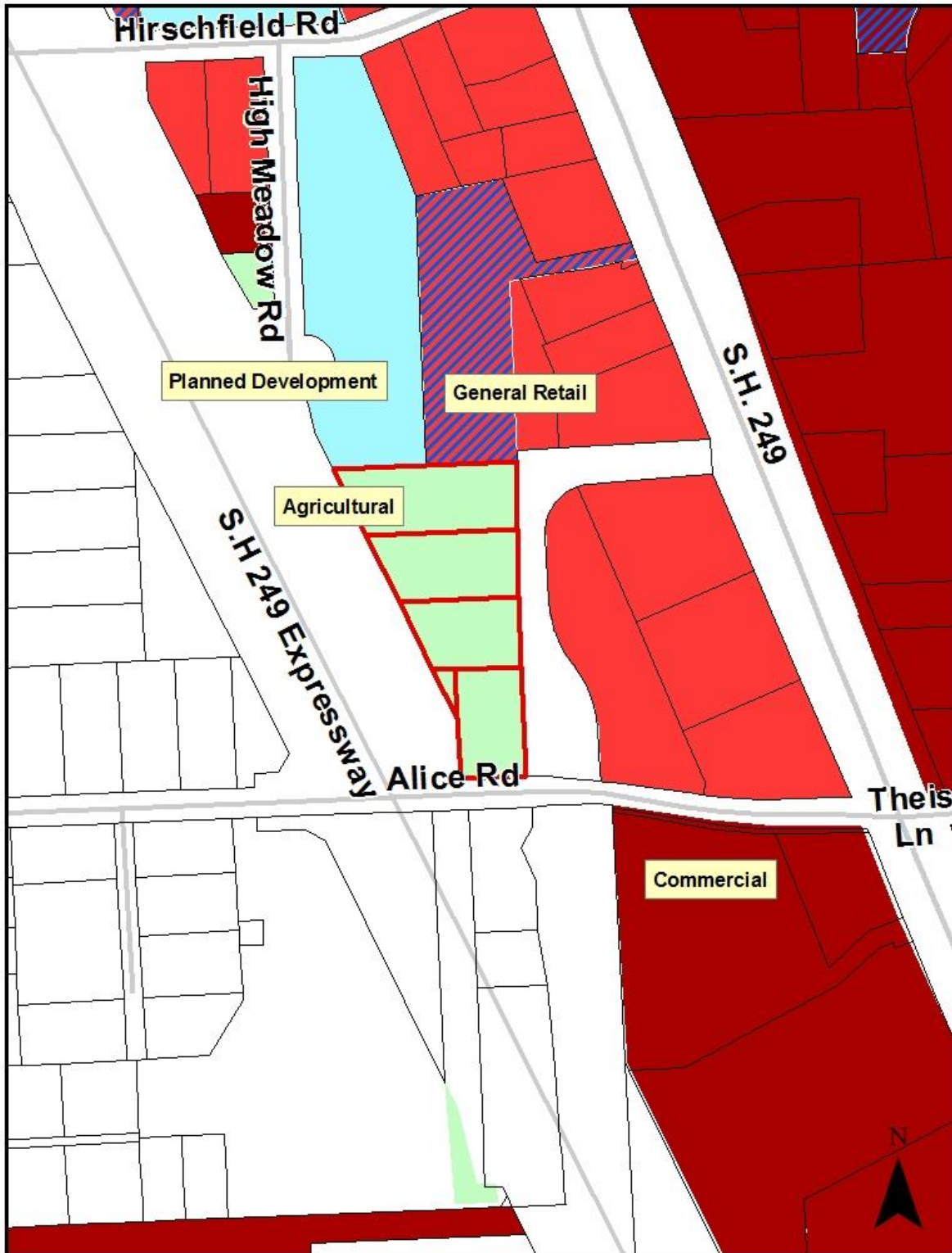


Exhibit "C"
Zoning Map

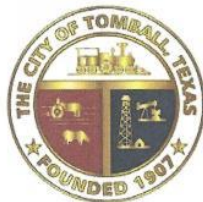


**Exhibit “D”
Site Photos**



Exhibit "E"
Application

Revised 5/19/15



APPLICATION FOR REZONING

Community Development Department
Planning Division

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

Applicant

Name: HARPREET MANGAT Title: OWNER
Mailing Address: 16433 SMITH ST City: HOUSTON State: TX
Zip: 77040
Phone: (832) 472-2990 Fax: (713) 937-9354 Email: hmangat@hotmail.com

Owner

Name: HARPREET MANGAT Title: OWNERS
Mailing Address: 16433 SMITH ST City: HOUSTON State: TX
Zip: 77040
Phone: (832) 472-2990 Fax: (713) 937-9354 Email: hmangat@hotmail.com
281-300-3799

Engineer/Surveyor (if applicable)

Name: _____ Title: _____
Mailing Address: _____ City: _____ State: _____
Zip: _____
Phone: (____) _____ Fax: (____) _____ Email: _____

Description of Proposed Project: RETAIL / OFFICE / RESTAURANT COMPLEX

Physical Location of Property: NORTHEAST CORNER OF HWY 249 BYPASS / ALICE RD

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

Legal Description of Property: HIRSCHFIELD FARMS SEC 1 U/R BLK 1, LOTS 6, 7, 8, 9, 10

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

Current Zoning District: AGRICULTURE

Current Use of Property: UNDEVELOPED

Proposed Zoning District: COMMERCIAL

Proposed Use of Property: RETAIL / OFFICE / RESTAURANT COMPLEX

104-771-000-0006 104-771-000-0009 3.6255
104-771-000-0007 104-771-000-0010
HCAD Identification Number: 104-771-000-0008 Acreage: _____

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

www.tomballtx.gov

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

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

X Harold L. Wright MD 3/29/19
Signature of Applicant Date

X Harold L. Wright MD 3/29/19
Signature of Owner Date

Harold L. Wright 3/29/19

Harpreet S. Mangat MD
Hardial S. Mangat
16433 Smith Street
Houston, TX 77040

March 29, 2019

City of Tomball
401 Market St
Tomball, TX 77375

Ref:- Request to change zoning of tract of land along NE corner of Hwy 249 Bypass/Alice RD

Sir/Madam;

We own the tract of land along NE corner of Hwy 249 Bypass/Alice RD known by Legal Description as Hirschfield Farms Sec 1 U/R Blk 1, Lots 6, 7, 8, 9 and 10. Also known by HCAD numbers 104-771-000-0006, 104-771-000-0007, 104-771-000-0008, 104-771-000-0009, and 104-771-000-0010.

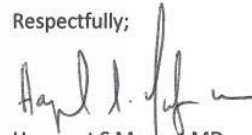
We are looking to develop this land into a high-end mixed-use development consisting of Retail Center, Office Complex, and Restaurant(s).

We understand that the City of Tomball currently has this land zoned as Agricultural. We kindly request the City of Tomball to change the zoning designation to Commercial as this land fronts a major freeway and city street. Additionally, lands adjacent and nearby to our tract have both commercial and retail developments in place.

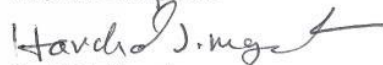
We strongly feel our project will be a beautiful addition to the City of Tomball.

Thank you.

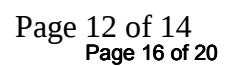
Respectfully;



Harpreet S Mangat MD



Hardial S. Mangat



Thomas Land Surveying
Surveying • Planning • Project Management

May 31, 2007

0.6547 Acre

Fieldnotes for 0.6547 acre of land out of Lot 9 and Lot 10, Block 1 of Hirschfield Farms, Section 1, an unrecorded subdivision in the J.M. Hooper Survey, Abstract No. 375, in Harris County, Texas, being comprised of the residue of that certain 1.500 acre tract of land conveyed to Edward H. Pampell, and Wife, Lavern Pampell, as described in deed recorded under County Clerk's File No. G700335 of the Real Property Records of Harris County and the residue of that certain 0.7509 acre tract of land conveyed to R.K. McGaughy, Trustee, as described in deed recorded under County Clerk's File No. N670793 of the said Real Property Records, said 0.6547 acre of land being more particularly described by metes and bounds as follows:

BEGINNING at a 5/8 inch steel rod set in the Northeasterly line of State Highway No. 249 (Bypass), right-of-way varies at this point, at its intersection with the North line of said Lot 10, marking the most Westerly or Northwest corner of the herein described tract, said point being in the South line of adjacent Lot 8 of said Block 1, and that certain 4.2416 acre tract of land conveyed to Hardial Mangat, as described in deed recorded under County Clerk's File No. P056901 of the said Real Property Records, said point also being the most Northerly Northeast corner of that certain 1.446 acre tract of land conveyed to the State of Texas, as described in deed recorded under County Clerk's File No. R882069 of the said Real Property Records;

Thence, North 87°23'00" East with the South line of said Lot 8 and the said 4.2416 acre tract, and with the North line of said Lot 10 and the said 1.500 acre tract, at 46.74 feet passing a 1/2 inch steel rod found marking the Northeast corner of said Lot 10 and the said 1.500 acre tract, and Northwest corner of said Lot 9 and the said 0.7509 acre tract, and continuing with the North line of said Lot 9 and the said 0.7509 acre tract in all, a total distance of 189.63 feet to a 1/2 inch steel rod found in the East line of the said J.M. Hooper Survey marking the Northeast corner of said Lot 9, the said 0.7509 acre tract, and the herein described tract, said point being the Southeast corner of the said 4.2416 acre tract, said point also being in the West line of the Sam Lewis Survey, Abstract No. 1704 and that certain 9.697 acre tract of land conveyed to the Harris County Flood Control District (H.C.F.C.D.), and described as Parcel "D" in deed recorded under County Clerk's File No. L951535 of the said Real Property Records;

Thence, South 02°00'57" East, 199.82 feet with the West line of the said Sam Lewis Survey and the said 9.697 acre tract, and with the East line of the said J.M. Hooper Survey, said Lot 9, and the said 0.7509 acre tract to a 3/4 inch steel rod set in the Northerly line of Alice Road (right-of-way varies) for the Southeast corner of the herein described tract, said point being the Northeast corner of that certain 0.154 acre tract of land conveyed to the State of Texas, as described in deed recorded under County Clerk's File No. S034599 of the said Real Property Records;

Thence, South 87°42'38" West, 70.49 feet with the North line of said Alice Road and the said 0.154 acre tract to a 5/8 inch steel rod set at a cut-back for said State Highway No. 249 (Bypass);

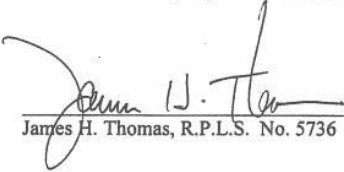
Thence, North 59°15'17" West, 50.30 feet with the Northeasterly line of the said 0.154 acre tract and with the said cut-back line to a 5/8 inch steel rod set in the Northeasterly line of said State Highway No. 249 (Bypass);

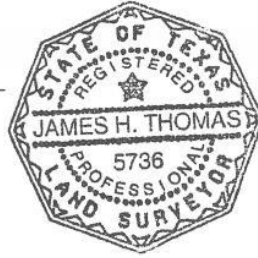
14340 Torrey Chase Blvd., Suite 270 • Houston, Texas 77014
(281) 440-7730 • Fax (281) 440-7737
www.thomaslandsurveying.com

0.6547 Acre
May 31, 2007
Page 2

Thence, North 26°13'13" West (basis bearing) with the Northeasterly line of said State Highway No. 249 (Bypass) and the said 0.154 acre tract, at 73.94 feet passing a 5/8 inch steel rod set in the West line of said Lot 9 and the said 0.7509 acre tract, and the East line of said Lot 10 and the said 1.500 acre tract, said point being the Northwest corner of the said 0.154 acre tract and the most Easterly Northeast corner of the aforesaid 1.446 acre tract, and continuing with the Northeasterly line of the said 1.446 acre tract in all, a total distance of 187.42 feet to the PLACE OF BEGINNING and containing 0.6547 acre or 28,518 square feet of land, more or less.

This description is based on the land title survey and plat (Job No. 07-15196A) made under the direction of James H. Thomas, Registered Professional Land Surveyor on May 31, 2007.


James H. Thomas, R.P.L.S. No. 5736



**NOTICE OF PUBLIC HEARING
CITY OF TOMBALL
PLANNING & ZONING COMMISSION (P&Z)
MAY 13, 2019
&
CITY COUNCIL
MAY 20, 2019**



Notice is Hereby Given that a Public Hearing will be held by the P&Z of the City of Tomball on **Monday, May 13, 2019, at 6:00 P.M.**, and by the City Council of the City of Tomball on **Monday, May 20, 2019, at 6:00 P.M.** at City Hall, 401 Market Street, Tomball Texas. On such dates, the P&Z and City Council will consider the following:

Zoning Case P19-053: Request by Harpreet Mangat to amend Chapter 50 (Zoning) of the Tomball Code of Ordinances by rezoning approximately 3.6 acres of land legally described as Tracts 6, 7, 8 and 10 and Lot 9, Block 1 Hirschfield Farms Section 1 U/R, within the City of Tomball, Harris County, Texas, generally located at the northeast corner of SH 249 and Alice Road, from the Agricultural District to the Commercial District.

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

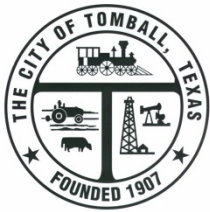
C E R T I F I C A T I O N

I hereby certify that the above notice of meeting was posted on the bulletin board of City Hall; City of Tomball, Texas, a place readily accessible to the general public at all times, on the **9th** day of **May 2019** by 5:00 p.m., and remained posted for at least 72 continuous hours preceding the scheduled time of said meeting.

Amelia Lindley

Amelia Lindley
City Planner

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



Notice of Public Hearing

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

CASE NUMBER: P19-053

APPLICANT/OWNER: Harpreet Mangat

LOCATION: Generally located at the northeast corner of SH 249 and Alice Road

PROPOSAL: To amend Chapter 50 (Zoning) of the Tomball Code of Ordinances by rezoning approximately 3.6 acres of land legally described as Tracts 6, 7, 8 and 10 and Lot 9, Block 1 Hirschfield Farms Section 1 U/R, within the City of Tomball, Harris County, Texas, from the Agricultural District to the Commercial District.

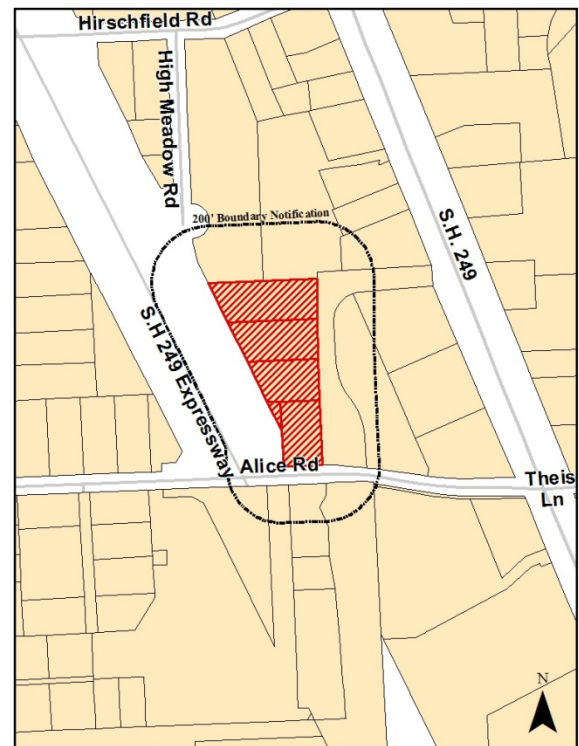
CONTACT: Amelia Lindley, Planner

PHONE: (281) 290-1410

E-MAIL: alindley@tomballtx.gov

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

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



**Planning & Zoning Commission
Public Hearing:
Monday, May 13, 2019, 6:00 PM**

**City Council Public Hearing:
*Monday, May 20, 2019, 6:00 PM**

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

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

Regular City Council

Agenda Item

Data Sheet

Meeting Date: June 3, 2019

Topic:

Approve Development Agreement between the City of Tomball and BCDE, Ltd. for the Construction of Improvements in Tomball Public Improvement District Number Four (TPID 4), Alexander Estates Subdivision

Background:

This item, if approved, will approve the Development Agreement between the City of Tomball and BCDE, Ltd. for TPID 4, Alexander Estates Subdivision. The District has already been created by City Council.

The development agreement is the same standard agreement that has been used in the other PIDs and describes the terms of the PIDs, responsibility of the developer, and the reimbursement of eligible public infrastructure costs through assessments.

Origination:

Finance

Recommendation:

Approve Development Agreement for TPID 4

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

Doris Speer, City Secretary

ACTION TAKEN

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

ATTACHMENTS:

TPID 4 - Development Agreement - COT and BCDE, Ltd.

DEVELOPMENT AGREEMENT

This Development Agreement (this “*Agreement*”) is made as of January 7, 2019, by and between the **CITY OF TOMBALL**, a municipal corporation and a home-rule city in the State of Texas (the “*City*”), and BCDE, Ltd a Texas limited partnership (the “*Developer*”).

RECITALS

WHEREAS, in accordance with the provisions of Chapter 372, TEX. LOCAL GOV’T CODE, and Resolution No. 2019-04 , the City Council of the City of Tomball created the Public Improvement District Number Four (the “*PID*”) pursuant to the petition for creation from the owner thereof; and

WHEREAS, the City Council of the City has determined that it is in the bests interest of the City and the land within the PID to finance the construction of certain PID Improvements (defined below) and that an assessment against the benefited property within the PID should be made; and

WHEREAS, the Developer is the owner of certain property within the PID described in Exhibit A and B, and wishes to finance and construct certain PID projects; and

WHEREAS, the Developer intends to assist the City in the financing and construction of the PID Improvements, in exchange for the City’s agreement to reimburse the Developer in accordance with the terms of this Agreement; now, therefore,

AGREEMENT

For and in consideration of the mutual promises, covenants, obligations, and benefits of this Agreement, the Developer contract and agree as follows:

ARTICLE 1 GENERAL TERMS

1.01 **Definitions.** The terms “*Agreement*,” “*City*,” “*Developer*,” “*PID*,” and “*PID Agreement*” have the meanings set forth in the preamble hereof, and the following terms shall have the meanings provided below, unless otherwise defined or the context clearly requires otherwise. For purposes of this Agreement, the words “shall” and “will” are mandatory, and the word “may” is permissive.

Act shall mean the Public Improvement District Assessment Act, Chapter 372, TEX. LOCAL GOV’T CODE, as amended.

Assessments shall mean assessments levied and collected in connection with the PID pursuant to the Act and the Plan, and deposited by the City into a PID Revenue Fund.

Developer Advances shall mean any funds advanced by the Developer pursuant to **Section 5.01**, and shall include any interest payable thereon.

Net Assessments shall mean the annual deposits of the Assessments into the PID Revenue Fund, less amounts reasonably required or anticipated to be required for the administration and operation of the PID in carrying out its responsibilities hereunder, including a reasonable operating reserve.

Parties or Party shall mean the City, and the Developer as parties to this Agreement.

PID Improvements shall mean the improvements described in **Article 3** hereof.

PID Revenue Fund shall mean the special fund established by the City and funded with payments made to the City pursuant to the PID.

Plan shall mean the final Service and Assessment Plan for the PID as approved by City Council in accordance with the Act.

Project shall mean the residential development within the PID projected to be carried out by the Developer described on Exhibit B.

1.02 Singular and plural; gender. Words used herein in the singular, where the context so permits, also include the plural and vice versa. The definitions of words in the singular herein also apply to such words when used in the plural where the context so permits and vice versa. Likewise, any masculine references shall include the feminine, and vice versa.

ARTICLE 2 REPRESENTATIONS

2.01 Representations of the City. The City hereby represents that:

a. The City is duly authorized and is qualified to do business in the State of Texas and is duly qualified to do business wherever necessary to carry on the operations contemplated by this Agreement.

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

c. This Agreement has been duly authorized, executed and delivered and constitutes a legal, valid and binding obligation of the City, enforceable in accordance with its terms.

2.02. Representations of the Developer. The Developer hereby represents that:

a. The Developer is duly authorized, created and existing under the laws of the State of Texas, is qualified to do business in the State of Texas and is duly qualified to do business wherever necessary to carry on the operations contemplated by this Agreement.

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

c. The Developer has sufficient capital to perform its obligations under this Agreement and will commence construction of the Project within eighteen (18) months of execution of this Agreement.

d. This Agreement has been duly authorized, executed and delivered and constitutes a legal, valid and binding obligation of the Developer, enforceable in accordance with its terms.

ARTICLE 3 THE PLAN AND PID IMPROVEMENTS

3.01 The PID Improvements. The PID Improvements are intended to enhance the proposed implementation of a development within the PID constituting the Project, as more fully described in the Plan.

3.02 PID Improvements description. The PID Improvements consist of acquisition, construction and development of the public improvements within the portion of the PID comprising the Project, as more fully described in Exhibit C, and as described in the Plan. The PID Improvements will be developed pursuant to a schedule consistent with the pace of development of the Project that is mutually agreeable to the Parties. The PID Improvements shall include all engineering, legal and other consultant fees and expenses related to such PID Improvements. The Developer shall be entitled to reimbursement of the project costs described in Exhibit C subject to the limitations contained in Section 3.03 of this agreement.

3.03 General terms of the Plan. The Plan has not yet been adopted by the City. The Parties anticipate that the Plan, at a minimum, will include the PID Improvements described above to serve the land within the PID, and such other facilities as may be agreed upon by the

Parties, and that the Assessments shall be assessed in phases to affect only the portions of the PID directly benefited by the PID improvements to be financed by each Assessment. The Assessments shall be based upon the agreed-upon estimated costs of the Public Improvements as reflected in Exhibit C, plus those related costs as deemed reimbursable by the City; however, the Assessments in the Plan shall be formulated in a manner that generally conforms to the equivalent of a \$0.90 tax rate for properties covered by the Plan on a project-wide basis, and a maximum fifteen (15) year payment term for each property covered by the Plan.

3.04. Additional Projects. This Agreement does not apply to any projects not specifically included in the Plan and defined herein unless this Agreement is amended to provide for the design and construction of such additional projects.

ARTICLE 4 DUTIES AND RESPONSIBILITIES OF THE DEVELOPER

4.01 Construction manager. The Developer agrees to construct the PID Improvements and to provide and furnish, or cause to be provided and furnished, all materials and services as and when required in connection with the construction of the PID Improvements. The Developer will obtain all necessary permits and approvals from the City and all other governmental officials and agencies having jurisdiction, provide supervision of all phases of construction of the PID Improvements, provide periodic reports of such construction to the City upon request, and cause the construction to be performed in accordance with the Plan.

4.02 Design of the PID Improvements. The Developer shall prepare or cause to be prepared the plans and specifications for the PID Improvements. Prior to the commencement of construction or implementation of the PID Improvements, the plans and specifications must be approved by the City. The PID Improvements shall be designed in accordance with City standards applicable to similar public improvements within the City.

4.03 Construction contracts. The Developer shall prepare the PID Improvements construction contract documents to ensure that the contract documents are in accordance with the approved plans and specifications. The Developer shall comply with all laws and regulations regarding the bidding and construction of public improvements applicable to similar facilities constructed by the City, including without limitation any applicable requirement relating to payment, performance and maintenance bonds.

4.04. Construction and implementation of the PID Improvements. The Developer shall be responsible for the inspection and supervision of the construction and implementation of the PID Improvements.

a. The Developer shall commence construction of the PID Improvements in a timely fashion to coincide with the expected development of the Project.

b. Upon completion of a contract for the construction of the PID Improvements, the Developer shall provide the City with a final summary of all costs associated with such contract, and show that all amounts owing to contractors and subcontractors have been paid in full evidenced by customary affidavits executed by such contractors. Following completion of a construction contract, the Developer will call for inspection of the applicable PID Improvements by the City, and upon approval thereof as being in compliance with City standards relating thereto, the PID Improvements will be conveyed to the City, subject only to the right to reimbursement for Developer Advances with respect thereto.

ARTICLE 5 PROJECT FINANCING AND FUNDING

5.01. The Developer Advances.

a. In connection with the construction of the PID Improvements the Developer has determined are required to be constructed to serve the Project, the Developer agrees to provide sufficient funds as such become due for all costs thereof (the "Developer Advances"), such as costs of design, engineering, materials, labor, construction, and inspection fees arising in connection with the PID Improvements, including all payments arising under any contracts entered into pursuant to this Agreement.

b. Interest on each Developer Advance shall accrue at a rate one-half of one percent above the highest average interest rate reported by *The Bond Buyer* newspaper in a weekly bond index in the month before the date of this agreement, compounded annually, whether such costs, fees, or expenses are paid or incurred before or after the effective date of this Agreement. The interest rate shall not exceed eight percent (8%). Interest shall be calculated on the basis of a year of 360 days and the actual days elapsed (including the first day but excluding the last day) occurring in the period for which such interest is payable, unless such calculation would result in a usurious rate, in which case interest shall be calculated on the per annum basis of a year of 365 or 366 days, as applicable, and the actual days elapsed (including the first day but excluding the last day).

5.02. Repayment of Developer Advances.

a. In consideration of the development and construction of the PID Improvements, the City shall begin repaying the Developer Advances, and shall continue such repayment until repaid in full, on the earliest date that funds are available from the following source, and solely from such source:

- (i) the Net Assessments, subject to the limitations set forth in **subsection (c)**.

b. the City shall reimburse the Developer for Developer Advances, plus interest, from Net Assessments from the Project accumulated in the PID Revenue Fund available in accordance with the priorities described in **Section 5.03** below.

c. At such time as funds are available to pay all or any portion of the Developer Advances made hereunder, the City shall hire a certified public accountant at the Developer's expense to calculate the amount due the Developer and prepare and submit a report to the City certifying the amount due the Developer for the Developer Advances being repaid with interest calculated thereon. Such report shall be approved at the earliest practicable time, but not later than 90 days after submission by the Developer of the records required therefor. The City shall make payment to the Developer within 30 days of approval of the accountant's report.

5.03. Priorities. Amounts deposited in the PID Revenue Fund shall be applied in the following order of priority (i) administrative and operating costs of the PID, (ii) payments to the Developer pursuant to **Section 5.02**, above.

ARTICLE 6 DEFAULT

6.01. Default.

a. If the City does not perform its obligations hereunder in substantial compliance with this Agreement, in addition to the other rights given the Developer under this Agreement, the Developer may enforce specific performance of this Agreement or seek actual damages incurred by the Developer for any such default.

b. If the Developer fails to commence or complete the PID Improvements or the Project in accordance with the terms of this Agreement, including the failure to fund Developer Advances or commence construction of the Project within eighteen (18) months, the City may terminate this Agreement with respect to its obligations to the Developer and shall be relieved of any obligation to reimburse the Developer for any Developer Advances or seek actual damages incurred for any such default.

c. The Party alleging default shall provide written notice to the other party of such default, and the defaulting party shall have 60 days to remedy the default prior to the declaration of any default hereunder.

ARTICLE 7 GENERAL

7.01. Inspections, audits. The Developer agrees to keep such operating records with respect to the PID Improvements and other activities contemplated by this Agreement and all costs associated therewith as may be required by the City, or by State and federal law or

regulation. The Developer shall allow the City access to, and the City shall have a right at all reasonable times to audit, all documents and records in the Developer's possession, custody or control relating to the PID Improvements that the City deems necessary to assist the City in determining the Developer's compliance with this Agreement.

7.02 Developer operations and employees. All personnel supplied or used by the Developer in the performance of this Agreement shall be deemed contractors or subcontractors of the Developer and will not be considered employees, agents, contractors or subcontractors of the City for any purpose whatsoever. The Developer shall be solely responsible for the compensation of all such contractors and subcontractors.

7.03 Personal liability of public officials, legal relations. To the extent permitted by State law, no director, officer, employee or agent of the City shall be personally responsible for any liability arising under or growing out of the Agreement. THE DEVELOPER SHALL INDEMNIFY AND SAVE HARMLESS THE CITY AND ITS RESPECTIVE OFFICERS, REPRESENTATIVES, AND AGENTS FROM ALL SUITS, ACTIONS, OR CLAIMS OF ANY CHARACTER BROUGHT FOR OR ON ACCOUNT OF ANY INJURIES OR DAMAGES RECEIVED BY ANY PERSON, PERSONS, OR PROPERTY RESULTING FROM THE NEGLIGENT ACTS OF THE DEVELOPER, OR ANY OF ITS AGENTS, OFFICERS, OR REPRESENTATIVES IN PERFORMING ANY OF THE SERVICES AND ACTIVITIES UNDER THIS AGREEMENT.

7.04 Notices. Any notice sent under this Agreement (except as otherwise expressly required) shall be written and mailed, or sent by electronic or facsimile transmission confirmed by mailing written confirmation at substantially the same time as such electronic or facsimile transmission, or personally delivered to an officer of the receiving party at the following addresses:

City of Tomball
c/o City Manager
401 Market Street
Tomball, Texas 77375

PID Contract Administrator
Hawes Hill & Associates, LLP
P.O. Box 22167
Houston, Texas 77092
Attn: Scott Bean

BCDE, Ltd
24522 Creekview Drive
Spring, Texas 77389
Attn: Douglas J Eibsen

Each party may change its address by written notice in accordance with this section. Any communication addressed and mailed in accordance with this section shall be deemed to be given when so mailed, any notice so sent by electronic or facsimile transmission shall be

deemed to be given when receipt of such transmission is acknowledged, and any communication so delivered in person shall be deemed to be given when receipted for by, or actually received by the City, or the Developer, as the case may be.

7.05 Amendments and waivers. Any provision of this Agreement may be amended or waived if such amendment or waiver is in writing and is signed by the City and the Developer. No course of dealing on the part of the Parties, nor any failure or delay by one or more of the Parties, with respect to exercising any right, power or privilege under this Agreement shall operate as a waiver thereof, except as otherwise provided in this section.

7.06 Invalidity. In the event that any of the provisions contained in this Agreement shall be held unenforceable in any respect, such unenforceability shall not affect any other provision of this Agreement.

7.07 Successors and assigns. All covenants and agreements contained by or on behalf of a Party in this Agreement shall bind its successors and assigns and shall inure to the benefit of the other Parties, their successors and assigns. The Parties may assign their rights and obligations under this Agreement or any interest herein, only with the prior written consent of the other Parties, and any assignment without such prior written consent, including an assignment by operation of law, is void and of no effect; provided that, the Developer may make a collateral assignment in favor of a lender without consent. This section shall not be construed to prevent the Developer from selling lots, parcels or other portions of the Project in the normal course of business. If such assignment of the obligations by the Developer hereunder is effective, the Developer shall be deemed released from such obligations. If any assignment of the obligations by the Developer hereunder is deemed ineffective or invalid, the Developer shall remain liable hereunder.

7.08 Exhibits; titles of articles, sections and subsections. The exhibits attached to this Agreement are incorporated herein and shall be considered a part of this Agreement for the purposes stated herein, except that in the event of any conflict between any of the provisions of such exhibits and the provisions of this Agreement, the provisions of this Agreement shall prevail. All titles or headings are only for the convenience of the parties and shall not be construed to have any effect or meaning as to the agreement between the parties hereto. Any reference herein to a section or subsection shall be considered a reference to such section or subsection of this Agreement unless otherwise stated. Any reference herein to an exhibit shall be considered a reference to the applicable exhibit attached hereto unless otherwise stated.

7.09 Construction. This Agreement is a contract made under and shall be construed in accordance with and governed by the laws of the United States of America and the State of Texas, as such laws are now in effect.

7.10 Entire Agreement. **THIS WRITTEN AGREEMENT REPRESENTS THE FINAL AGREEMENT BETWEEN THE PARTIES AND MAY NOT BE CONTRADICTED BY EVIDENCE OF PRIOR, CONTEMPORANEOUS, OR SUBSEQUENT ORAL AGREEMENTS OF THE PARTIES. THERE ARE NO UNWRITTEN ORAL AGREEMENTS BETWEEN THE PARTIES.**

7.11 Term. This Agreement shall be in force and effect from the date of execution hereof for a term expiring on the date that the Developer Advances have been repaid in full, or January 1 of the year following the date the last assessment payment has been made in accordance with the PID Service and Assessment Plan and Assessment Roll(s).

7.12 Time of the essence. Time is of the essence with respect to the obligations of the Parties to this Agreement.

7.13 Approval by the Parties. Whenever this Agreement requires or permits approval or consent to be hereafter given by any of the parties, the parties agree that such approval or consent shall not be unreasonably conditioned, withheld or delayed.

7.14 Counterparts. This Agreement may be executed in multiple counterparts, each of which when so executed and delivered shall be deemed an original, but such counterparts together shall constitute but one and the same instrument.

7.15 Legal costs. If any Party hereto is the prevailing party in any legal proceedings against another Party brought under or with relation to this Agreement, such prevailing Party shall additionally be entitled to recover court costs and reasonable attorneys' fees from the non-prevailing Party to such proceedings.

7.16 Further assurances. Each Party hereby agrees that it will take all actions and execute all documents necessary to fully carry out the purposes and intent of this Agreement.

[EXECUTION PAGE FOLLOWS]

IN WITNESS WHEREOF, the parties hereto have caused this instrument to be duly executed as of June 3, 2019.

CITY OF TOMBALL, TEXAS

By: _____
Name: _____
Title: _____

BCDE, LTD

Douglas J Eibsen, President of
Eibsen & Associates, Inc.
General Manager of BCDE, Ltd

EXHIBIT A

STATE OF TEXAS §

COUNTY OF HARRIS §

A **METES AND BOUNDS** description of a 70.3604 acre tract of land situated in the Elizabeth Smith Survey, Abstract Number 70, Harris County, Texas; being a portion of Unrestricted Reserve "C" of Tomball Greens Final Plat as shown on a plat filed for record under Film Code Number 440128 of the Harris County Map Records, being the remainder of a called 78.4754 acre tract conveyed to BCDE, LTD. by Special Warranty Deed With Vendor's Lien dated December 30, 2002 and filed for record under Clerk's File No. W332593 of the Harris County Official Public Records of Real Property and being all of a called 4.882 acres conveyed to Eibsen & Associates, Inc. by Warranty Deed dated March 31, 2014 and filed for record under Clerk's File No. 20140133968 of the Harris County Official Public Records of Real Property; said 70.3604 acres being more particularly described as follows with all bearings based on a call of South 59°56'55" West along the southeast line of said Unrestricted Reserve "C":

BEGINNING at a found 5/8-inch iron rod in the northeast right-of-way of Huffsmith-Kohrville Road (called 60-feet wide), for the south corner of Country Club Greens Partial Replat as shown on a plat filed for record under Film Code No. 519229 of the Harris County Map Records and the northwest corner of said Unrestricted Reserve "C" and the herein described tract;

THENCE, North 45°27'56" East, 399.99 feet, departing said northeast right-of-way of Huffsmith-Kohrville Road, along the southeast line of said Country Club Greens Partial Replat, the northwest line of said Unrestricted Reserve "C" to a set 3/4-inch iron rod (with cap stamped "Cotton Surveying");

THENCE, North 49°06'40" East, 1333.88 feet, continuing along the southeast line of said Country Club Greens Partial Replat, the southeast line of Country Club Greens Partial Replat – Phase Two as shown on a plat filed for record under Film Code No. 540231 of the Harris County Map Records, the southeast line of Final Plat Country Club Greens as shown on a plat filed for record under Film Code No. 453082 of the Harris County Map Records, the northwest line of said Unrestricted Reserve "C" and said 78.4754 acres to a point for the north corner of said Unrestricted Reserve "C", the west corner of Lot 25, Block 3 of said Country Club Greens Partial Replat – Phase Two, same being the north corner of the herein described tract, from which a found 5/8-inch iron rod (with cap stamped "Terra Surveying") bears North 86°46'38" East 0.32 feet;

THENCE, South 40°44'59" East, 1111.89 feet along a northeast line of said 78.4754 acres, said Unrestricted Reserve "C", a southwest line of said Country Club Greens Partial Replat – Phase Two, and a southwest line of said Final Plat Country Club Greens as shown on a plat filed for record under Film Code No. 453082 of the Harris County Map Records to a point in the north line of a called 13.00 acre tract conveyed to J.D. Slaughter by Warranty Deed dated January 28, 2011 and filed for record under Clerk's File No. 20110042996 of the Harris County Official Public Records of Real Property for an interior corner of said Unrestricted Reserve "C" and the south corner of said Country Club Greens Partial Replat – Phase Two, same being the most northerly east corner of the herein described tract, from which a found 5/8-inch iron rod bears South 62°31'41" East, 0.24 feet;

THENCE, South 45°07'42" West, 813.03 feet along the northeast line of said 13.00 acres to a set 3/4-inch iron rod (with cap stamped "Cotton Surveying") for the west corner of said 13.00 acres, same being an interior corner of the herein described tract;

Alexander Estates
70.3604 Acres

Elizabeth Smith Survey
Abstract Number 70

THENCE, South 44°36'57" East, 646.34 feet along the southwest line of said 13.00 acres to a point in the northwest right-of-way of Spell Road (called 60-feet wide) and the southeast line of said Unrestricted Reserve "C", for the south corner of said 13.00 acres and the most southerly east corner of the herein described tract, from which a found 3/4-inch iron rod bears North 09°17'51" East, 0.24 feet;

THENCE, South 37°14'37" West, 452.09 feet along the northwest right-of-way of said Spell Road and the southeast line of said Unrestricted Reserve "C" to a found 5/8-inch iron rod, beginning a non-tangent curve to the right;

THENCE, in a southwest direction, continuing along the northwest right-of-way of said Spell Road and the southeast line of said Unrestricted Reserve "C" and said 4.822 acres, with the arc of said non-tangent curve to the right, passing a found 5/8-inch iron rod (with cap stamped "J.G.T. 1494") at an arc length of 183.48 feet for the east corner of said 4.822 acres, having a radius of 579.03 feet, a central angle of 37°34'11", an arc length of 379.68 feet, and a chord bearing South 56°12'14" West, 372.91 feet to a found 5/8-inch iron rod (with cap stamped "J.G.T. 1494");

THENCE, South 75°09'52" West, continuing along the northwest right-of-way of said Spell Road, the southeast line of said 4.822 acres and said Unrestricted Reserve "C", passing a found 5/8-inch iron rod (with cap stamped "J.G.T. 1494") at a distance of 228.98 feet, continuing for a total distance of 463.49 feet to a found 3/4-inch iron (with cap stamped "Cotton Surveying") for the southwest corner of said 4.882 acres and the most southerly southwest corner of the herein described tract;

THENCE, North 17°58'51" West, 350.00 feet, departing the northwest right-of-way of said Spell Road and the southeast line of said 4.822 acres to a found 3/4-inch iron (with cap stamped "Cotton Surveying") for the northwest corner of said 4.822 acres and an interior corner of the herein described tract;

THENCE, South 75°09'52" West, along the northwest line of the remainder of a called 8.000 acres conveyed to Ruth A. Hughes-Deaton by Warranty Deed with Vendor's Lien dated August 31, 2006 and filed for record under Clerk's File No. 20060029232 of the Harris County Official Public Records of Real Property, passing a found 5/8-inch iron rod (with cap stamped "King 4503") at a distance of 4.83 feet, continuing for a total distance of 388.70 feet to a found 5/8-inch iron rod (with cap stamped "King 4503") in the northeast right-of-way of said Huffsmith-Kohrville Road and the southwest line of said Unrestricted Reserve "C", for the northwest corner of said 8.000 acres and the most westerly southwest corner of said 78.4754 acres and the herein described tract;

THENCE, North 17°59'55" West, 1235.43 feet along northeast right-of-way of said Huffsmith-Kohrville Road, the southwest line of said Unrestricted Reserve "C" to the **POINT OF BEGINNING**, **CONTAINING** 70.3604 acres of land in Harris County, Texas

Cotton Surveying Company
8701 New Trails Drive, Suite 200
The Woodlands, TX 77381-4241
(281) 363-4039


Acting By/Through Ronald L. Hauck
Registered Professional Land Surveyor
No. 5343
rhauck@jonescarter.com
Texas Board of Professional Land Surveying
Registration No. 10046106

June 24, 2014



002426.4824-9705-9356.v2

EXHIBIT B

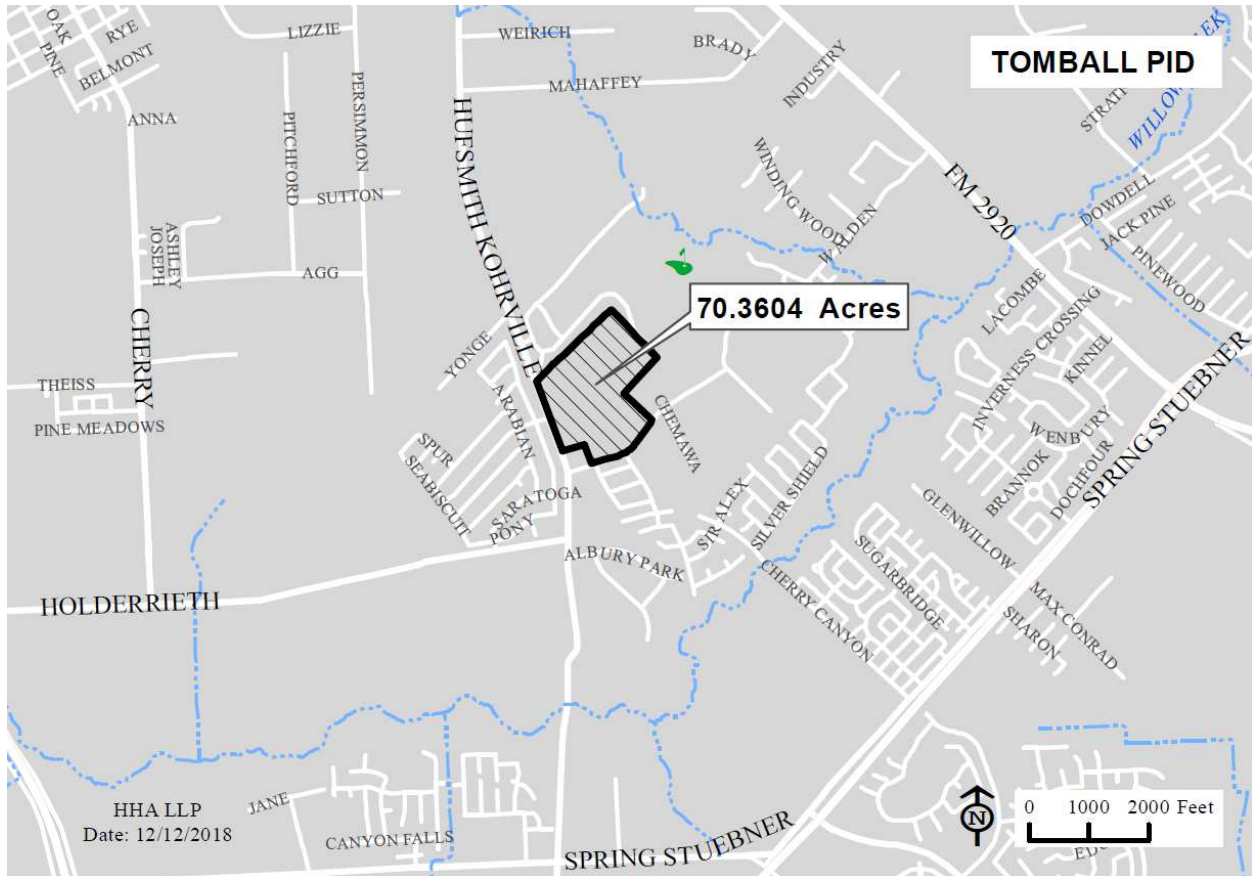


EXHIBIT C

The PID Improvements

Water, Sanitary Sewer, Gas, Storm Drainage & Detention, Landscaping and Amenities,
Engineering, Surveying and Professional Services
Estimated Total = \$8,500,000.00

Regular City Council

Agenda Item

Data Sheet

Meeting Date: June 3, 2019

Topic:

Approve Development Agreement between the City of Tomball and Brown Road, LLC for the Construction of Improvements in Tomball Public Improvement District Number Nine (TPID 9), Tomball Heights Subdivision

Background:

This item, if approved, will approve the Development Agreement between the City of Tomball and Brown Road, LLC, for TPID 9, Tomball Heights Subdivision. The District has already been created by City Council.

The development agreement is the same standard agreement that has been used in the other PIDs and describes the terms of the PIDs, responsibility of the developer, and the reimbursement of eligible public infrastructure costs through assessments.

Origination:

Finance

Recommendation:

Approve Development Agreement for TPID 9

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

Doris Speer, City Secretary

ACTION TAKEN

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

ATTACHMENTS:

TPID 9 - Development Agreement - COT and Brown Road, LLC

DEVELOPMENT AGREEMENT

This Development Agreement (this "*Agreement*") is made as of May 14, 2019, by and between the **CITY OF TOMBALL**, a municipal corporation and a home-rule city in the State of Texas (the "*City*"), and **BROWN ROAD, LLC** a Texas limited liability company (the "*Developer*").

RECITALS

WHEREAS, in accordance with the provisions of Chapter 372, TEX. LOCAL GOV'T CODE, and Resolution No. 2019-12, the City Council of the City of Tomball created the Public Improvement District Number Nine (the "*PID*") pursuant to the petition for creation from the owner thereof; and

WHEREAS, the City Council of the City has determined that it is in the best interest of the City and the land within the PID to finance the construction of certain PID Improvements (defined below) and that an assessment against the benefited property within the PID should be made; and

WHEREAS, the Developer is the owner of certain property within the PID described in Exhibit A and B, and wishes to finance and construct certain PID projects; and

WHEREAS, the Developer intends to assist the City in the financing and construction of the PID Improvements, in exchange for the City's agreement to reimburse the Developer in accordance with the terms of this Agreement; now, therefore,

AGREEMENT

For and in consideration of the mutual promises, covenants, obligations, and benefits of this Agreement, the Developer contract and agree as follows:

ARTICLE 1 GENERAL TERMS

1.01 **Definitions.** The terms "*Agreement*," "*City*," "*Developer*," "*PID*," and "*PID Agreement*" have the meanings set forth in the preamble hereof, and the following terms shall have the meanings provided below, unless otherwise defined or the context clearly requires otherwise. For purposes of this Agreement, the words "shall" and "will" are mandatory, and the word "may" is permissive.

Act shall mean the Public Improvement District Assessment Act, Chapter 372, TEX. LOCAL GOV'T CODE, as amended.

Assessments shall mean assessments levied and collected in connection with the PID pursuant to the Act and the Plan, and deposited by the City into a PID Revenue Fund.

Developer Advances shall mean any funds advanced by the Developer pursuant to **Section 5.01**, and shall include any interest payable thereon.

Net Assessments shall mean the annual deposits of the Assessments into the PID Revenue Fund, less amounts reasonably required or anticipated to be required for the administration and operation of the PID in carrying out its responsibilities hereunder, including a reasonable operating reserve.

Parties or Party shall mean the City, and the Developer as parties to this Agreement.

PID Improvements shall mean the improvements described in **Article 3** hereof.

PID Revenue Fund shall mean the special fund established by the City and funded with payments made to the City pursuant to the PID.

Plan shall mean the final Service and Assessment Plan for the PID as approved by City Council in accordance with the Act.

Project shall mean the residential development within the PID projected to be carried out by the Developer described on Exhibit B.

1.02 Singular and plural; gender. Words used herein in the singular, where the context so permits, also include the plural and vice versa. The definitions of words in the singular herein also apply to such words when used in the plural where the context so permits and vice versa. Likewise, any masculine references shall include the feminine, and vice versa.

ARTICLE 2 REPRESENTATIONS

2.01 Representations of the City. The City hereby represents that:

a. The City is duly authorized and is qualified to do business in the State of Texas and is duly qualified to do business wherever necessary to carry on the operations contemplated by this Agreement.

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

c. This Agreement has been duly authorized, executed and delivered and constitutes a legal, valid and binding obligation of the City, enforceable in accordance with its terms.

2.02. Representations of the Developer. The Developer hereby represents that:

a. The Developer is duly authorized, created and existing under the laws of the State of Texas, is qualified to do business in the State of Texas and is duly qualified to do business wherever necessary to carry on the operations contemplated by this Agreement.

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

c. The Developer has sufficient capital to perform its obligations under this Agreement and will commence construction of the Project within eighteen (18) months of execution of this Agreement.

d. This Agreement has been duly authorized, executed and delivered and constitutes a legal, valid and binding obligation of the Developer, enforceable in accordance with its terms.

ARTICLE 3
THE PLAN AND PID IMPROVEMENTS

3.01 The PID Improvements. The PID Improvements are intended to enhance the proposed implementation of a development within the PID constituting the Project, as more fully described in the Plan.

3.02 PID Improvements description. The PID Improvements consist of acquisition, construction and development of the public improvements within the portion of the PID comprising the Project, as more fully described in Exhibit C, and as described in the Plan. The PID Improvements will be developed pursuant to a schedule consistent with the pace of development of the Project that is mutually agreeable to the Parties. The PID Improvements shall include all engineering, legal and other consultant fees and expenses related to such PID Improvements. The Developer shall be entitled to reimbursement of the project costs described in Exhibit C subject to the limitations contained in Section 3.03 of this agreement.

3.03 General terms of the Plan. The Plan has not yet been adopted by the City. The Parties anticipate that the Plan, at a minimum, will include the PID Improvements described

above to serve the land within the PID, and such other facilities as may be agreed upon by the Parties, and that the Assessments shall be assessed in phases to affect only the portions of the PID directly benefited by the PID improvements to be financed by each Assessment. The Assessments shall be based upon the agreed-upon estimated costs of the Public Improvements as reflected in Exhibit C, plus those related costs as deemed reimbursable by the City; however, the Assessments in the Plan shall be formulated in a manner that generally conforms to the equivalent of a \$0.75 tax rate for properties covered by the Plan on a project-wide basis, and a maximum fifteen (15) year payment term for each property covered by the Plan.

3.04. Additional Projects. This Agreement does not apply to any projects not specifically included in the Plan and defined herein unless this Agreement is amended to provide for the design and construction of such additional projects.

ARTICLE 4

DUTIES AND RESPONSIBILITIES OF THE DEVELOPER

4.01 Construction manager. The Developer agrees to construct the PID Improvements and to provide and furnish, or cause to be provided and furnished, all materials and services as and when required in connection with the construction of the PID Improvements. The Developer will obtain all necessary permits and approvals from the City and all other governmental officials and agencies having jurisdiction, provide supervision of all phases of construction of the PID Improvements, provide periodic reports of such construction to the City upon request, and cause the construction to be performed in accordance with the Plan.

4.02 Design of the PID Improvements. The Developer shall prepare or cause to be prepared the plans and specifications for the PID Improvements. Prior to the commencement of construction or implementation of the PID Improvements, the plans and specifications must be approved by the City. The PID Improvements shall be designed in accordance with City standards applicable to similar public improvements within the City.

4.03 Construction contracts. The Developer shall prepare the PID Improvements construction contract documents to ensure that the contract documents are in accordance with the approved plans and specifications. The Developer shall comply with all laws and regulations regarding the bidding and construction of public improvements applicable to similar facilities constructed by the City, including without limitation any applicable requirement relating to payment, performance and maintenance bonds.

4.04. Construction and implementation of the PID Improvements. The Developer shall be responsible for the inspection and supervision of the construction and implementation of the PID Improvements.

a. The Developer shall commence construction of the PID Improvements in a timely fashion to coincide with the expected development of the Project.

b. Upon completion of a contract for the construction of the PID Improvements, the Developer shall provide the City with a final summary of all costs associated with such contract, and show that all amounts owing to contractors and subcontractors have been paid in full evidenced by customary affidavits executed by such contractors. Following completion of a construction contract, the Developer will call for inspection of the applicable PID Improvements by the City, and upon approval thereof as being in compliance with City standards relating thereto, the PID Improvements will be conveyed to the City, subject only to the right to reimbursement for Developer Advances with respect thereto.

ARTICLE 5 PROJECT FINANCING AND FUNDING

5.01. The Developer Advances.

a. In connection with the construction of the PID Improvements the Developer has determined are required to be constructed to serve the Project, the Developer agrees to provide sufficient funds as such become due for all costs thereof (the "Developer Advances"), such as costs of design, engineering, materials, labor, construction, and inspection fees arising in connection with the PID Improvements, including all payments arising under any contracts entered into pursuant to this Agreement.

b. Interest on each Developer Advance shall accrue at a rate one-half of one percent above the highest average interest rate reported by *The Bond Buyer* newspaper in a weekly bond index in the month before the date of this agreement, compounded annually, whether such costs, fees, or expenses are paid or incurred before or after the effective date of this Agreement. The interest rate shall not exceed eight percent (8%). Interest shall be calculated on the basis of a year of 360 days and the actual days elapsed (including the first day but excluding the last day) occurring in the period for which such interest is payable, unless such calculation would result in a usurious rate, in which case interest shall be calculated on the per annum basis of a year of 365 or 366 days, as applicable, and the actual days elapsed (including the first day but excluding the last day).

5.02. Repayment of Developer Advances.

a. In consideration of the development and construction of the PID Improvements, the City shall begin repaying the Developer Advances, and shall continue such repayment until repaid in full, on the earliest date that funds are available from the following source, and solely from such source:

- (i) the Net Assessments, subject to the limitations set forth in **subsection (c)**.

b. the City shall reimburse the Developer for Developer Advances, plus interest, from Net Assessments from the Project accumulated in the PID Revenue Fund available in accordance with the priorities described in **Section 5.03** below.

c. At such time as funds are available to pay all or any portion of the Developer Advances made hereunder, the City shall hire a certified public accountant at the Developer's expense to calculate the amount due the Developer and prepare and submit a report to the City certifying the amount due the Developer for the Developer Advances being repaid with interest calculated thereon. Such report shall be approved at the earliest practicable time, but not later than 90 days after submission by the Developer of the records required therefor. The City shall make payment to the Developer within 30 days of approval of the accountant's report.

5.03. Priorities. Amounts deposited in the PID Revenue Fund shall be applied in the following order of priority (i) administrative and operating costs of the PID, (ii) payments to the Developer pursuant to **Section 5.02**, above.

ARTICLE 6 DEFAULT

6.01. Default.

a. If the City does not perform its obligations hereunder in substantial compliance with this Agreement, in addition to the other rights given the Developer under this Agreement, the Developer may enforce specific performance of this Agreement or seek actual damages incurred by the Developer for any such default.

b. If the Developer fails to commence or complete the PID Improvements or the Project in accordance with the terms of this Agreement, including the failure to fund Developer Advances or commence construction of the Project within eighteen (18) months, the City may terminate this Agreement with respect to its obligations to the Developer and shall be relieved of any obligation to reimburse the Developer for any Developer Advances or seek actual damages incurred for any such default.

c. The Party alleging default shall provide written notice to the other party of such default, and the defaulting party shall have 60 days to remedy the default prior to the declaration of any default hereunder.

ARTICLE 7 GENERAL

7.01. Inspections, audits. The Developer agrees to keep such operating records with respect to the PID Improvements and other activities contemplated by this Agreement and all costs associated therewith as may be required by the City, or by State and federal law or

regulation. The Developer shall allow the City access to, and the City shall have a right at all reasonable times to audit, all documents and records in the Developer's possession, custody or control relating to the PID Improvements that the City deems necessary to assist the City in determining the Developer's compliance with this Agreement.

7.02 Developer operations and employees. All personnel supplied or used by the Developer in the performance of this Agreement shall be deemed contractors or subcontractors of the Developer and will not be considered employees, agents, contractors or subcontractors of the City for any purpose whatsoever. The Developer shall be solely responsible for the compensation of all such contractors and subcontractors.

7.03 Personal liability of public officials, legal relations. To the extent permitted by State law, no director, officer, employee or agent of the City shall be personally responsible for any liability arising under or growing out of the Agreement. THE DEVELOPER SHALL INDEMNIFY AND SAVE HARMLESS THE CITY AND ITS RESPECTIVE OFFICERS, REPRESENTATIVES, AND AGENTS FROM ALL SUITS, ACTIONS, OR CLAIMS OF ANY CHARACTER BROUGHT FOR OR ON ACCOUNT OF ANY INJURIES OR DAMAGES RECEIVED BY ANY PERSON, PERSONS, OR PROPERTY RESULTING FROM THE NEGLIGENT ACTS OF THE DEVELOPER, OR ANY OF ITS AGENTS, OFFICERS, OR REPRESENTATIVES IN PERFORMING ANY OF THE SERVICES AND ACTIVITIES UNDER THIS AGREEMENT.

7.04 Notices. Any notice sent under this Agreement (except as otherwise expressly required) shall be written and mailed, or sent by electronic or facsimile transmission confirmed by mailing written confirmation at substantially the same time as such electronic or facsimile transmission, or personally delivered to an officer of the receiving party at the following addresses:

City of Tomball
c/o City Manager
401 Market Street
Tomball, Texas 77375

PID Contract Administrator
Hawes Hill & Associates, LLP
P.O. Box 22167
Houston, Texas 77092
Attn: Scott Bean

BROWN ROAD LLC
25211 GROGANS MILL RD STE 110
SPRING TX 77380-2188

Each party may change its address by written notice in accordance with this section. Any communication addressed and mailed in accordance with this section shall be deemed to be given when so mailed, any notice so sent by electronic or facsimile transmission shall be deemed to be given when receipt of such transmission is acknowledged, and any

communication so delivered in person shall be deemed to be given when receipted for by, or actually received by the City, or the Developer, as the case may be.

7.05 Amendments and waivers. Any provision of this Agreement may be amended or waived if such amendment or waiver is in writing and is signed by the City and the Developer. No course of dealing on the part of the Parties, nor any failure or delay by one or more of the Parties, with respect to exercising any right, power or privilege under this Agreement shall operate as a waiver thereof, except as otherwise provided in this section.

7.06 Invalidity. In the event that any of the provisions contained in this Agreement shall be held unenforceable in any respect, such unenforceability shall not affect any other provision of this Agreement.

7.07 Successors and assigns. All covenants and agreements contained by or on behalf of a Party in this Agreement shall bind its successors and assigns and shall inure to the benefit of the other Parties, their successors and assigns. The Parties may assign their rights and obligations under this Agreement or any interest herein, only with the prior written consent of the other Parties, and any assignment without such prior written consent, including an assignment by operation of law, is void and of no effect; provided that, the Developer may make a collateral assignment in favor of a lender without consent. This section shall not be construed to prevent the Developer from selling lots, parcels or other portions of the Project in the normal course of business. If such assignment of the obligations by the Developer hereunder is effective, the Developer shall be deemed released from such obligations. If any assignment of the obligations by the Developer hereunder is deemed ineffective or invalid, the Developer shall remain liable hereunder.

7.08 Exhibits; titles of articles, sections and subsections. The exhibits attached to this Agreement are incorporated herein and shall be considered a part of this Agreement for the purposes stated herein, except that in the event of any conflict between any of the provisions of such exhibits and the provisions of this Agreement, the provisions of this Agreement shall prevail. All titles or headings are only for the convenience of the parties and shall not be construed to have any effect or meaning as to the agreement between the parties hereto. Any reference herein to a section or subsection shall be considered a reference to such section or subsection of this Agreement unless otherwise stated. Any reference herein to an exhibit shall be considered a reference to the applicable exhibit attached hereto unless otherwise stated.

7.09 Construction. This Agreement is a contract made under and shall be construed in accordance with and governed by the laws of the United States of America and the State of Texas, as such laws are now in effect.

7.10 Entire Agreement. THIS WRITTEN AGREEMENT REPRESENTS THE FINAL AGREEMENT BETWEEN THE PARTIES AND MAY NOT BE CONTRADICTED BY EVIDENCE OF PRIOR, CONTEMPORANEOUS, OR SUBSEQUENT ORAL AGREEMENTS OF THE PARTIES. THERE ARE NO UNWRITTEN ORAL AGREEMENTS BETWEEN THE PARTIES.

7.11 Term. This Agreement shall be in force and effect from the date of execution hereof for a term expiring on the date that the Developer Advances have been repaid in full, or January 1 of the year following the date the last assessment payment has been made in accordance with the PID Service and Assessment Plan and Assessment Roll(s).

7.12 Time of the essence. Time is of the essence with respect to the obligations of the Parties to this Agreement.

7.13 Approval by the Parties. Whenever this Agreement requires or permits approval or consent to be hereafter given by any of the parties, the parties agree that such approval or consent shall not be unreasonably conditioned, withheld or delayed.

7.14 Counterparts. This Agreement may be executed in multiple counterparts, each of which when so executed and delivered shall be deemed an original, but such counterparts together shall constitute but one and the same instrument.

7.15 Legal costs. If any Party hereto is the prevailing party in any legal proceedings against another Party brought under or with relation to this Agreement, such prevailing Party shall additionally be entitled to recover court costs and reasonable attorneys' fees from the non-prevailing Party to such proceedings.

7.16 Further assurances. Each Party hereby agrees that it will take all actions and execute all documents necessary to fully carry out the purposes and intent of this Agreement.

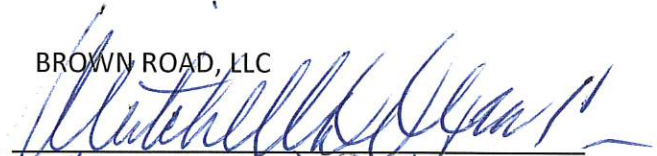
[EXECUTION PAGE FOLLOWS]

IN WITNESS WHEREOF, the parties hereto have caused this instrument to be duly executed as of _____, 2019.

CITY OF TOMBALL, TEXAS

By: _____
Name: _____
Title: _____

BROWN ROAD, LLC



MITCHELL D. O'NEIL, Manager

EXHIBIT A

FIELD NOTE DESCRIPTION OF 9.2191 ACRES (401,586 SQUARE FEET) OF LAND OUT OF UNRESTRICTED RESERVE "H", BLOCK 1 OF LESLIE'S PARK SUBD., ACCORDING TO THE MAP OR PLAT THEREOF RECORDED IN FILM CODE NO. 400005 H.C.M.R. AND BEING THE RESIDUE OF THAT CERTAIN CALLED 15.27 ACRE TRACT RECORDED UNDER HARRIS COUNTY CLERK'S FILE NO. 20130446051 OF THE DEED RECORDS OF HARRIS COUNTY, TEXAS, SAID 9.2191 ACRE TRACT BEING MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS, (BEARINGS ARE BASED ON THE TEXAS STATE PLANE COORDINATE SYSTEM, SOUTH CENTRAL ZONE);

BEGINNING at a 3/4 inch iron rod found in the East right-of-way line of Quinn Road (width varies) and the North line of Tomball ISD Tract, as recorded under H.C.C.F. No. S483753 for the Southwest corner of said Unrestricted Reserve "H", same being the Southwest corner of said called 15.27 acre tract and the herein described tract, said iron rod falling in the arc of a curve to the Right;

THENCE, Northerly, along the East right-of-way line of Quinn Road, with said curve to the Right, having a radius of 1150.00 feet, a central angle of 11°19'54", an arc length of 227.44 feet and a chord bearing and distance of N 07°52'32" W, 227.07 feet to the Point of Tangency of said curve, from which a found 3/4 inch iron rod bears, S 12°03' E, 2.4 feet;

THENCE, North 02°12'35" West, continuing along the East right-of-way line of Quinn Road, a distance of 54.40 feet to a 5/8 inch iron rod with cap found for the Westerly most Northwesterly corner of the herein described tract;

THENCE, North 42°41'46" East, along a cutback line, a distance of 1.46 feet to a 5/8 inch iron rod with cap found in the South right-of-way line of Brown Hufsmith Road for the Northerly most Northwesterly corner of the herein described tract;

THENCE, North 87°49'00" East, along the South right-of-way line of Brown Hufsmith Road, a distance of 767.00 feet to a 5/8 inch iron rod with cap found for the Point of Curvature of a curve to the Right;

THENCE, Easterly, continuing along the South right-of-way line of Brown Hufsmith Road, with said curve to the Right, having a radius of 1590.42 feet, a central angle of 07°44'22", an arc length of 214.83 feet and a chord bearing and distance of S 88°15'43" E, 214.67 feet to a 5/8 inch iron rod found for the Point of Tangency;

THENCE, South 84°23'32" East, continuing along the South right-of-way line of Brown Hufsmith Road, a distance of 161.36 feet to a 5/8 inch iron rod with cap found for the Northwest corner of Unrestricted Reserve "A", Block 1 of Brown-Hufsmith Church Subd., as recorded in Film Code No. 681555 H.C.M.R. and the Northeast corner of the herein described tract;

THENCE, in a Southerly direction, along and with the Westerly and Southerly line of said Brown-Hufsmith Church Subd., the following three (3) courses and distances:

- 1) South 02°26'52" East, 494.20 feet to a 5/8 inch iron rod with cap found for corner;
- 2) North 88°49'52" East, 41.44 feet to a 5/8 inch iron rod with cap found for corner;
- 3) South 69°30'55" East, 204.50 feet to a 5/8 inch iron rod with alum. cap found in the South line of said Unrestricted Reserve "H", same being the North line of 140-foot wide H.C.F.C.D. right-of-way, as recorded under H.C.C.F. No. M201069 for Southeasterly corner of the herein described tract, said iron marks the Point of Curvature of a curve to the Left;

THENCE, Southwesterly, along the North right-of-way line of said H.C.F.C.D. Fee Strip, with said curve to the Left, having a radius of 320.00 feet, a central angle of 19°50'30", an arc length of 110.82 feet and a chord bearing and distance of S 57°15'44" W, 110.26 feet to a 5/8 inch iron rod found for the Easterly corner of that certain called 3.996 acre tract recorded under H.C.C.F. No. W206016 and the Southerly corner of the herein described tract;

THENCE, in a Northwesterly direction, along and with the common line between said 3.996 acre tract and said Unrestricted Reserve "H", the following two (2) courses and distances:

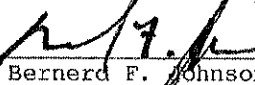
- 1) North 42°37'24" West, 144.35 feet to a 5/8 inch iron rod with cap found for corner;
- 2) South 88°49'52" West, 299.48 feet to a 5/8 inch iron rod with cap found in the East line of said Tomball ISD Tract for the Northwest corner of said called 3.996 acre and an exterior corner of the herein described tract;

THENCE, North 01°10'08" West, along the East line of said Tomball ISD Tract, a distance of 254.46 feet to a point for the Northeast corner of said Tomball ISD Tract and an interior corner of the herein described tract, from which a found 5/8 inch iron rod with cap bears, S 54°40' W, 0.70 feet;

THENCE, South 88°49'52" West, along the North line of said Tomball ISD Tract, a distance of 868.56 feet to the POINT OF BEGINNING and containing 9.2191 acres (401,586 square feet) of land, more or less.

CENTURY ENGINEERING, INC.

Dated this 6th day of November, 2018


Bernard F. Johnson

Registered Professional Land Surveyor No. 4314

CEI JOB NO. 18100-00.00

(QW19) 18100A.T



EXHIBIT B

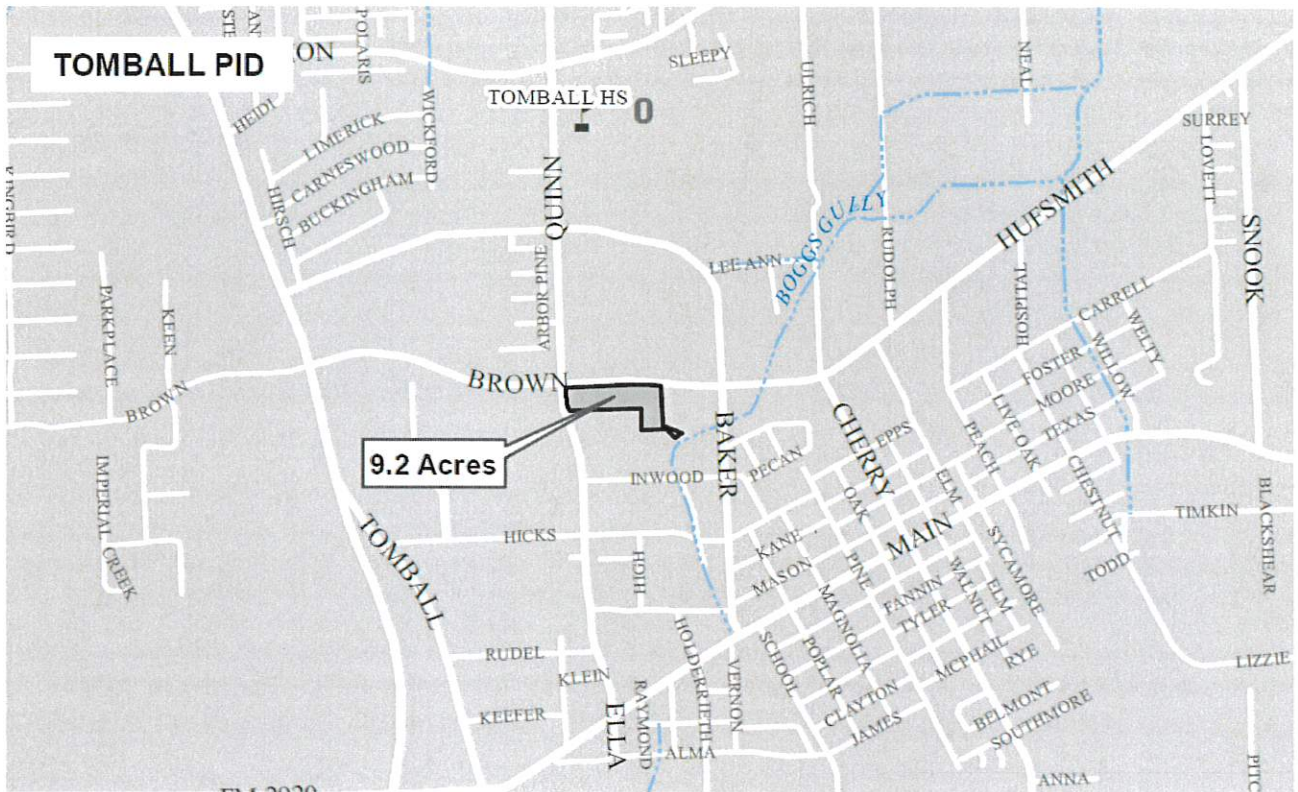


EXHIBIT C

The PID Improvements

Water, Sanitary Sewer, Gas, Storm Drainage & Detention, Landscaping and Amenities,
Engineering, Surveying and Professional Services

Estimated Total = \$1,350,000.00