

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



MONDAY, DECEMBER 3, 2018

6:00 P.M.

Notice is hereby given of a meeting of the Tomball City Council, to be held on Monday, December 3, 2018 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 James Roberson, Hufsmith Church of Christ, 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

- December 7-9, 2018 – **Tomball German Christmas Market**
- December 24-25, 2018 – **Christmas Holidays** – City offices closed

- January 1, 2019 – **New Year's Day Holidays** – City offices closed
- Reports by City staff and members of council about items of community interest on which no action will be taken:
 - Glenn Windsor – Quarterly Investment Report for Period Ending September 30, 2018. 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 September 30, 2018, the City had total cash and cash equivalents in the amount of \$69,325,792.

6.0 Approve the Minutes of the November 19, 2018 Special Tomball City Council Meeting and the November 19 2018 Regular Tomball City Council Meeting

7.0 Old Business:

- 7.1 Adopt, on Second Reading, Ordinance No. 2018-37, 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 Acres Of Land, Legally Described Tract 253a Tomball Outlots, Within The City Of Tomball, Harris County, Texas, From The Agricultural District To The Light Industrial District; Said Property Being Generally Located On The West Side Of Pitchford Road At 902 Pitchford 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
- 7.2 Adopt, on Second Reading, Ordinance No. 2018-38, 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 10 Acres Of Land, Legally Described Lot 1 Block 1 Welling Owens Quadruplexes, Within The City Of Tomball, Harris County, Texas, From The Planned Development District To The Office District; Said Property Being Generally Located On The East Side Of Lovett Street, South Of Carrell 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
- 7.3 Adopt, on Second Reading, Ordinance No. 2018-39, An Ordinance Of The City Of Tomball, Texas, Amending Chapter 50 (Zoning) Of The Tomball Code Of Ordinances By Granting A Conditional Use Permit (CUP) To Great Oak School To Operate A "School, Other Than Public Or Denominational"; Said Property Being Approximately 10 Acres, And Being Legally Described As Lot 1 Block 1 Welling Owens Quadruplexes, Within The City Of Tomball, Harris County, Texas, Generally Located On The East Side Of Lovett Street, South Of Carrell Street And Zoned Office District; Providing Requirements And Conditions For This CUP; Containing Findings And Other Provisions Relating To The Subject; Providing A Penalty In An Amount Not To Exceed \$2,000 For Violations Hereof; And Providing For Severability

8.0 New Business:

- 8.1 Approve, on First Reading, Resolution No. 2018-32-TEDC, a Resolution of the City Council of the City of Tomball, Texas, authorizing and approving the Tomball Economic Development Corporation's Project to Expend Funds in accordance with an Economic Development Agreement by and between the Corporation and Industrial Reserve, LLC, to make direct incentives to, or expenditures for, assistance with infrastructure costs to be required or suitable for the promotion of new or expanded business development related to the development and construction of a office/warehouse building to be located on approximately 1.9890 acres of land in the Jesse Pruitt Survey, Abstract 608, Harris County, Texas, and generally located at the northwest corner of Cherry Street and Theis Lane, Tomball, TX 77375. The estimated amount of expenditures for such Project \$44,650.00.
- 8.2 Approve, on First Reading, Resolution No. 2018-33-TEDC, a Resolution of the City Council of the City of Tomball, Texas, authorizing and approving the Tomball Economic Development Corporation's Project to Expend Funds in accordance with an Economic Development Agreement by and between the Corporation and Shri Vinayak LLC, to make direct incentives to, or expenditures for, assistance with infrastructure costs for the promotion of new or expanded business enterprise related to the construction of a Days Inn & Suites hotel to be located at 15525 FM 2920 Road, Tomball, Texas, 77377. The estimated amount of expenditures for such Project is \$149,750.00.
- 8.3 Consideration and possible action to approve, as a Project of the TEDC Corporation, an agreement with Houston Poly Bag I, LTD to make direct incentives to or expenditures for equipment expansion for the creation and retention of primary jobs for Houston Poly Bag I, LTD. The estimated amount of expenditures for such Project is an amount not to exceed \$110,369.00.
- 8.4 Consideration and Possible Action to Approve First Amendment to Economic Development Agreement between the Tomball Economic Development Corporation and Houston Poly Bag, Ltd. for Additional Funding of \$12,752.00
- 8.5 Appoint/Reappoint Members to Positions 2, 5, and 8 of the Tourism Advisory Committee Board, for Terms expiring December 5, 2018
- 8.6 Presentation by Hines Real Estate regarding Funding Options for Their Proposed Residential Subdivision in Tomball, Located at the Northeast Corner of Agg Road and Persimmon Street
- 8.7 Approve Abandonment of a Drainage Right-of-Way and Adopt, on First Reading, Ordinance No. 2018-40, an Ordinance of the City of Tomball, Texas, Finding and Determining that Public Convenience and Necessity No Longer Require the Continued Existence of a Drainage Right-of-Way situated within The Tomball 2920 Subdivision, Harris County, Texas, and as Recorded in the Map Records of Harris County, Texas; Vacating, Abandoning, and Closing Said Drainage Right-of-Way; Providing for Severability; and Containing Other Provisions Relating to the Subject
- 8.8 Adopt, on First Reading, Ordinance No. 2018-41, an Ordinance of the City Council of the City of Tomball, Texas, Approving the 2018 Updated Service and Assessment Plan for the City of Tomball Public Improvement District Number Three (PID No. 3), for The Reserve at Spring Lake Subdivision
- 8.9 Approve Software License and Service Agreement with Zuercher Technologies

for Replacement of Computer Aided Dispatch System (CAD) and Police Records Managment (RMS) for the Tomball Police Department, in the Amount of \$247,811.00

- 8.10 Approve the Execution of an Agreement for Professional Services with Freese & Nichols for the Completion of a Water and Wastewater Impact Fee Study in the Amount of \$59,100.00
- 8.11 Award Contract for Project No. 2018-20 – E&P Project 2018-10026, Pine Street Ground Storage Tank Rehabilitation, to NG Painting, L.P., in the Amount of \$139,000.00
- 8.12 Approve Fixed Pricing for Natural Gas Acquisitions for the City's North Gate Natural Gas Purchases from EDF Trading, for a Fixed Price of \$4.09/MMBtu from December 2018 through November 2019
- 8.13 Executive Session: The City Council will meet in Executive Session as Authorized by Title 5, Chapter 551, Government Code, the Texas Open Meetings Act, for the Following Purpose(s):
- Sec. 551.072 – Deliberations Regarding the Purchase, Exchange, Lease, or Value of Real Property

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 29th day of November 2018 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: December 3, 2018

Topic:

- Led by Pastor James Roberson, Hufsmith Church of Christ, Tomball

Background:

Origination:

Recommendation:

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

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

Regular City Council

Agenda Item

Data Sheet

Meeting Date: December 3, 2018

Topic:

- December 7-9, 2018 – **Tomball German Christmas Market**
- December 24-25, 2018 – **Christmas Holidays** – City offices closed
- January 1, 2019 – **New Year's Day Holidays** – City offices closed
- Reports by City staff and members of council about items of community interest on which no action will be taken:
 - Glenn Windsor – Quarterly Investment Report for Period Ending September 30, 2018. 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 September 30, 2018, the City had total cash and cash equivalents in the amount of \$69,325,792.

Background:

Origination:

Various

Recommendation:

N/A

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

City Secretary

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

ATTACHMENTS:

Quarterly Investment Report - Period Ending September 30, 2018

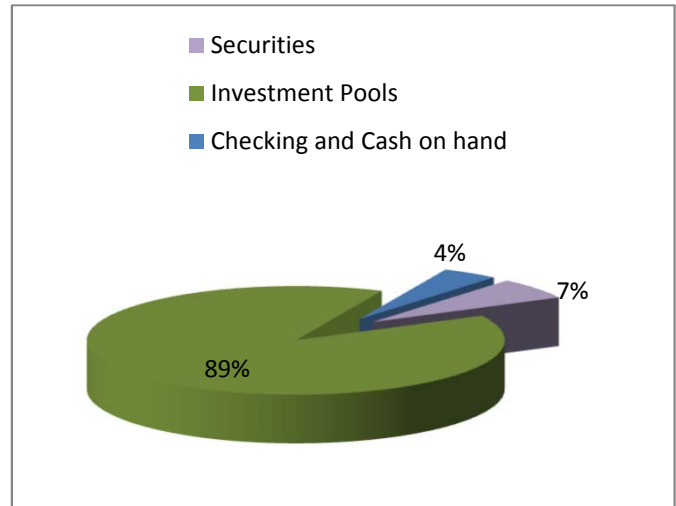
CITY OF TOMBALL PORTFOLIO DIVERSIFICATION September 30, 2018

By Type

	Current Market Value	Percent Portfolio
Securities	\$ 4,438,468	6.40%
Investment Pools	61,863,706	89.24%
Checking and Cash on hand	3,023,618	4.36%
Total Portfolio	\$ 69,325,792	

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.

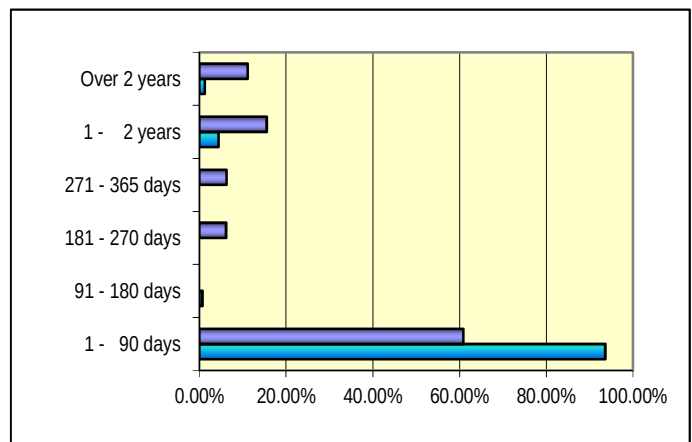
Diversification by Type



By Maturity

	Current Market Value	Percent Portfolio
1 - 90 days	\$ 64,887,324	93.60%
91 - 180 days	496,923	0.72%
181 - 270 days	-	-
271 - 365 days	-	0.00%
1 - 2 years	3,059,419	4.41%
Over 2 years	882,126	1.27%
Total Portfolio	\$ 69,325,792	

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
September 30, 2018**

ALL CITY FUNDS (POOLED)

INVESTMENTS	COST	MARKET	RATIO	YTM at COST	BENCHMARK YTM**
Beginning of period	2,499,608	2,459,846	0.9841	1.613%	2.33%
Purchases	1,992,786	1,992,786			
Maturities	-	0			
Change in value	-	(14,164)			
Sales					
End of period	4,492,394	4,438,468	0.9880	1.697%	2.59%

Total Accrued Interest at end of period: \$ 18,022

**Benchmark security is the One-year U. S. Treasury Bill
Weighted average maturity of the portfolio at quarter end is **488** 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 SEPTEMBER 30, 2018**

SECURITY DESCRIPTION	CUSIP NUMBER	RATING	MATURITY DATE	INTEREST YIELD	MARKET VALUE	DAYS AFTER 09/30/18	INDIVIDUAL MARKET VALUE/TOTAL	WAM DAYS x PERCENT
1) Kansas St. Dev. Fin. Auth. Revenue- 2.608%	485429Y32	A+	4/15/2020	2.608%	497,115	563	11.200%	63.06
2) Federal Farm Credit Bank- 1.25%	3133EFV38	AA+	3/29/2019	1.250%	496,923	180	11.196%	20.15
3) Denton TX ISD- 2.50%	249002AS5	AAA	8/15/2020	2.500%	495,750	685	11.169%	76.51
4) FANNIE MAE 2.3%	313586RC5	NR	10/9/2019	0.000%	972,439	374	21.909%	81.94
5) Texas A&M Revenue -1.592%	88213AHF5	AAA	5/15/2019	1.592%	1,094,115	227	24.651%	55.96
6) Texas A&M Revenue -2.229	88213AHH1	AAA	5/15/2021	2.229%	882,126	958	19.875%	190.40
TOTALS				1.697%	4,438,468	498	100.000%	488.02

CITY OF TOMBALL
CASH AND CASH EQUIVALENTS
FOR QUARTER ENDING
September 30, 2018

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	\$ 2,613,301	\$ 8,563,286	\$ 742,266	\$ 1,701	\$ 11,920,553	\$ 1,469,554	\$ 1,469,554	\$ 13,390,107
Debt Service	979,220.99	3,203,202.11	78,814.12	-	4,261,237.22	495,750.00	495,750.00	4,756,987.22
Enterprise	2,784,817.77	3,119,556.72	493,903.97	600.00	6,398,878.46	496,923.00	496,923.00	6,895,801.46
OTHER FUNDS								
Special Revenue	78,399.05	14,469.04	18,308.39	-	111,176.48	-	-	111,176.48
Housing Trust	-	-	-	-	-	-	-	-
Municipal Court Building Security	104,532.05	37,387.95	86,212.90	-	228,132.90	-	-	228,132.90
Municipal Court Technology	62,719.17	93,411.25	42,267.03	-	198,397.45	-	-	198,397.45
Hotel Occupancy Tax	104,532.05	357,058.45	22,310.83	-	483,901.33	-	-	483,901.33
Red Light Camera Program	-	321,109.53	45,793.48	-	366,903.01	-	-	366,903.01
Disaster Preparedness	-	-	(236,641.86)	-	(236,641.86)	-	-	(236,641.86)
Tomball "Fun Runs"	-	5,123.39	13,841.47	-	18,964.86	-	-	18,964.86
General Capital Projects	52,266.07	31,367,471.92	680,596.69	-	32,100,334.68	1,976,241.00	1,976,241.00	34,076,575.68
Business Park	-	932,411.70	-	-	932,411.70	-	-	932,411.70
Fleet Replacement	470,394.07	1,714,567.16	833,730.75	-	3,018,691.98	-	-	3,018,691.98
Water Capital Recovery	104,532.05	1,930,543.69	58,300.61	-	2,093,376.35	-	-	2,093,376.35
Sewer Capital Recovery	156,758.03	1,550,974.01	51,847.02	-	1,759,579.06	-	-	1,759,579.06
Health Insurance Trust	-	1,115,952.36	89,765.56	-	1,205,717.92	-	-	1,205,717.92
Tomball Legacy Fund	-	25,708.94	-	-	25,708.94	-	-	25,708.94
TOTALS	\$ 7,511,472	\$ 54,352,234	\$ 3,021,317	\$ 2,301	\$ 64,887,324	\$ 4,438,468	\$ 4,438,468	\$ 69,325,792

Regular City Council
Agenda Item
Data Sheet

Meeting Date: December 3, 2018

Topic:

Approve the Minutes of the November 19, 2018 Special Tomball City Council Meeting and the November 19 2018 Regular Tomball City Council Meeting

Background:

Origination:

City Secretary

Recommendation:

Approve Minutes

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

City Secretary

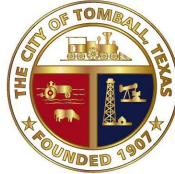
ACTION TAKEN		
Approval ☐ Yes ☐ No	Readings Passed ☐ 1 st ☐ 2 nd	Other

ATTACHMENTS:

Draft Minutes of the November 19, 2018 Special Tomball City Council Meeting

Draft Minutes of the November 19 2018 Regular Tomball City Council Meeting

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



**MONDAY, NOVEMBER 19, 2018
5:00 P.M.**

1.0 Meeting was called to order at 5:08 p.m. by Mayor Fagan. Other members present:

Councilman Ford
Councilman Stoll
Councilman Klein Quinn

Members absent:

Councilman Degges - Excused
Councilman Townsend - Excused

Others present:

City Manager – Robert Hauck
Assistant City Manager – David Esquivel
City Secretary – Doris Speer
City Attorney – Loren B. Smith
Director of Community Development – Craig Meyers
Director of Public Works – Beth Jones
Assistant City Engineer – Wesley Stoltz
Assistant City Secretary – Tracy Garcia

2.0 No public comments were received.

3.0 Workshop Session:

3.1 The Tomball City Council entered into a Workshop Session regarding the City of Tomball Water and Wastewater Master Plan, presented by Freese and Nichols.

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

Motion carried unanimously.

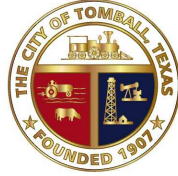
Meeting adjourned.

PASSED AND APPROVED this the 3rd day of December 2018.

Doris Speer, TRMC, MMC
City Secretary

Gretchen Fagan
Mayor

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



**MONDAY, NOVEMBER 19, 2018
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 Degges – arrived at 6:28 p.m.

Members absent:

Councilman Townsend - Excused

Others present:

City Manager – Robert Hauck
Assistant City Manager – David Esquivel
City Secretary – Doris Speer
City Attorney – Loren B. Smith
Fire Chief – Randy Parr
Marketing Director – Mike Baxter
Finance Director – Glenn Windsor
Director of Community Development – Craig Meyers
Director of Public Works – Beth Jones
Planner – Amelia Lindley
Assistant City Secretary – Tracy Garcia
Asst. Fire Chief – Jonathon Fontenot
Community Center Manager – Rosalie Dillon
Senior Accountant – Christine Brookshire
Police Captain – Ricky Doerre

2.0 The invocation was led by Pastor Dustin Reitzel, Woodlands Church Northpointe Campus.

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

4.0 The following public comment was received via text message:

Bruce Hillegeist - Expressed his appreciation for the help and support
President, GTACC provided by the City of Tomball, instrumental in the
success of the annual Holiday Parade.

5.0 Presentations:

- Mayor Fagan and Rob Hauck presented the Government Finance Officers Association **Certificate of Achievement for Excellence in Financial Reporting** for its Comprehensive Annual Financial Report (CAFR) for the Fiscal Year Ended September 30, 2017 (28th Year) to Glenn Windsor, Finance Director, and Christine Brookshire, Senior Accountant.

6.0 Reports and Announcements:

- November 22-23, 2018 – **Thanksgiving Holidays** – City offices closed
- December 1, 2018 – ***“Christmas on Commerce” – a 2nd Saturday at the Depot*** Event
- December 7-9, 2018 – **Tomball German Christmas Market**
- December 24-25, 2018 – **Christmas Holidays** – City offices closed
- January 1, 2019 – **New Year’s Day Holiday** – City offices closed
- Reports by City staff and members of Council about items of community interest on which no action will be taken:
 - Mike Baxter presented a report on the success of **Depot Day**, the ***Freight Train Food Truck Festival***, the **8th Annual Tomball Bluegrass Festival**, and the **Christmas Tree Lighting**.

7.0 Motion was made by Councilman Klein Quinn, second by Councilman Ford, to approve the Minutes of the November 5, 2018 Regular Tomball City Council Meeting.

Motion carried unanimously.

8.0 Old Business:

- 8.1 Motion was made by Councilman Stoll, second by Councilman Ford, to adopt, on Second Reading, Ordinance No. 2018-36, an Ordinance Amending the Code of Ordinances of the City of Tomball, Texas by Amending Section 8-122, Definitions, and Section 8-124, Keeping Restricted, of Article III, Livestock, of Chapter 8, Animals, to Add a Definition of Agricultural Science Project Center, and to Exclude the Regulations of Section 8-124 From Applying to Agricultural Science Project Centers; 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>Absent</u>
Councilman Klein Quinn	<u>Aye</u>

Motion carried unanimously.

9.0 New Business:

- 9.5 Consideration of item 9.5 was moved for consideration following adoption of Ordinance No. 2018-36.

Motion was made by Councilman Stoll, second by Councilman Ford, to approve Tomball Independent School District's Project Facility Guidelines for an Agricultural Science Project Center at 30330 Quinn Road.

Motion carried unanimously.

- 9.1 Motion was made by Councilman Ford, second by Councilman Stoll, to appoint Susan Harris, currently an Alternate Member, to fill the Unexpired Term vacated by Brett Tynes, Regular Member, on the Board of Adjustments, Term Expiring March 2, 2019.

Motion carried unanimously.

- 9.2 Consideration to Approve **Zoning Case P18-161**: Request by Timothy Hertel, on behalf of DFLEX POWER, LLC, to amend Chapter 50 (Zoning) of the Tomball Code of Ordinances by rezoning approximately 3 acres of land legally described as Tract 253A Tomball Outlots, within the City of Tomball, Harris County, Texas, generally located on the west side of Pitchford Road at 902 Pitchford Road, from the Agricultural District to the Light Industrial District.

- Mayor Fagan opened the Public Hearing on **Zoning Case P18-161** 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 Stoll, second by Councilman Ford, to read Ordinance No. 2018-37 by caption only on First Reading.

Motion carried unanimously.

Councilman Degges arrived at 6:28 p.m.

- Motion was made by Councilman Stoll, second by Councilman Ford, to adopt, on First Reading, Ordinance No. 2018-37, 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 Acres Of Land, Legally Described Tract 253A Tomball Outlots, Within The City Of Tomball, Harris County, Texas, From The Agricultural District To The Light Industrial District; Said Property Being Generally Located On The West Side Of Pitchford Road At 902 Pitchford 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>Aye</u>
Councilman Townsend	<u>Absent</u>
Councilman Klein Quinn	<u>Aye</u>

Motion carried unanimously.

- 9.3 Consideration to Approve **Zoning Case P18-166**: Request by Great Oak School to amend Chapter 50 (Zoning) of the Tomball Code of Ordinances by rezoning approximately 10 acres of land legally described as Lot 1 Block 1 Welling Owens Quadraplexes, within the City of Tomball, Harris County, Texas, generally located on the east side of Lovett Street, south of Carrell Street, from the Planned Development 2 District to the Office District.

- Mayor Fagan opened the Public Hearing on **Zoning Case P18-166** at 7:03 p.m.
- Receiving no public comments, Mayor Fagan closed the Public Hearing at 7:03 p.m.
- Motion was made by Councilman Stoll, second by Councilman Klein Quinn, to read Ordinance No. 2018-38 by caption only on First Reading.

Motion carried unanimously.

- Motion was made by Councilman Stoll, second by Councilman Klein Quinn, to adopt, on First Reading, Ordinance No. 2018-38, 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 10 Acres Of Land, Legally Described

Lot 1 Block 1 Welling Owens Quadrplexes, Within The City Of Tomball, Harris County, Texas, From The Planned Development District To The Office District; Said Property Being Generally Located On The East Side Of Lovett Street, South Of Carrell 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>Aye</u>
Councilman Townsend	<u>Absent</u>
Councilman Klein Quinn	<u>Aye</u>

Motion carried unanimously.

- 9.4 Consideration to Approve **Zoning Case P18-167**: Request by Great Oak School for a Conditional Use Permit to operate a School, other than public or denominational on approximately 10 acres of land legally described as Lot 1 Block 1 Welling Owens Quadrplexes, within the City of Tomball, Harris County, Texas. The property is generally located on the east side of Lovett Street, south of Carrell Street, and is zoned Office District.

- Mayor Fagan opened the Public Hearing on **Zoning Case P18-167** at 7:07 p.m.
- Receiving no public comments, Mayor Fagan closed the Public Hearing at 7:07 p.m.
- Motion was made by Councilman Stoll, second by Councilman Ford, to read Ordinance No. 2018-39 by caption only on First Reading.

Motion carried unanimously.

- Motion was made by Councilman Stoll, second by Councilman Ford, to adopt, on First Reading, Ordinance No. 2018-39, An Ordinance Of The City Of Tomball, Texas, Amending Chapter 50 (Zoning) Of The Tomball Code Of Ordinances By Granting A Conditional Use Permit (Cup) To Great Oak School To Operate A “School, Other Than Public Or Denominational”; Said Property Being Approximately 10 Acres, And Being Legally Described As Lot 1 Block 1 Welling Owens Quadrplexes, Within The City Of Tomball, Harris County, Texas, Generally Located On The East Side Of Lovett Street, South Of Carrell Street And Zoned Office District; Providing Requirements And Conditions For This CUP;

Containing Findings And Other Provisions Relating To The Subject; Providing A Penalty In An Amount Not To Exceed \$2,000 For Violations Hereof; And Providing For Severability. Vote was as follows:

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

Motion carried unanimously.

- 9.6 Motion was made by Councilman Klein Quinn, second by Councilman Degges, to authorize a Substitute Position Authority, on a Temporary Basis, to Cover Vacancy Created by the Long-Term Absence of Tomball Fire Captain, James Jones, Who has been Assigned to Military Reserve Duty.

Motion carried unanimously.

- 9.7 Motion was made by Councilman Stoll, second by Councilman Klein Quinn, to approve Resolution No. 2018-30, a Resolution of the City Council of the City of Tomball, Texas regarding Release of an Approximately 119-Acre Tract of Land Located at the Southwest Corner of FM 2920 and Telge Road, from the Extraterritorial Jurisdiction of the City of Houston, Texas (Trendmaker Homes).

Motion carried unanimously.

- 9.8 Executive Session: The City Council recessed at 7:15 p.m. to meet in Executive Session as Authorized by Title 5, Chapter 551, Government Code, the Texas Open Meetings Act, for the Following Purpose(s):

- Sec. 551.071 - Consultation with the City Attorney regarding a Matter that the Attorney's Duty Requires to be Discussed in Closed Session
- Sec. 551.074 – Personnel Matters: Deliberation of the Appointment, Employment, and Duties of a Public Officer or Employee.

Upon reconvening into regular session at 8:20 p.m., no action was taken regarding Executive Session.

10.0 Motion was made by Councilman Stoll, second by Councilman Degges, to adjourn.

Motion carried unanimously.

Meeting adjourned.

PASSED AND APPROVED this the 3rd day of December 2018.

Doris Speer, TRMC, MMC
City Secretary

Gretchen Fagan
Mayor

Regular City Council

Agenda Item

Data Sheet

Meeting Date: December 3, 2018

Topic:

Adopt, on Second Reading, Ordinance No. 2018-37, 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 Acres Of Land, Legally Described Tract 253a Tomball Outlots, Within The City Of Tomball, Harris County, Texas, From The Agricultural District To The Light Industrial District; Said Property Being Generally Located On The West Side Of Pitchford Road At 902 Pitchford 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, November 12, 2018, after conducting a public hearing, the Planning and Zoning Commission recommended Approval of the rezoning request with three votes Aye and two votes Nay.

Origination:

Timothy Hertel, on Behalf of DFLEX POWER, LLC

Recommendation:

Approval

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

Craig T. Meyers P.E., Community Development Director

ACTION TAKEN

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

ATTACHMENTS:

Ordinance No. 2018-37

P18-161 Staff Report

P18-161 Response Forms

Property Owner Notification

Notice of Public Hearing

ORDINANCE NO. 2018-37

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 ACRES OF LAND, LEGALLY DESCRIBED TRACT 253A TOMBALL OUTLOTS, WITHIN THE CITY OF TOMBALL, HARRIS COUNTY, TEXAS, FROM THE AGRICULTURAL DISTRICT TO THE LIGHT INDUSTRIAL DISTRICT; SAID PROPERTY BEING GENERALLY LOCATED ON THE WEST SIDE OF PITCHFORD ROAD AT 902 PITCHFORD 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, Timothy Hertel has requested that approximately 3 acres of land, legally described as Tract 253A Tomball Outlots, generally located on the west side of Pitchford Road at 902 Pitchford Road, 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 Light Industrial 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 Light Industrial 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 Light Industrial 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 Light Industrial 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 19TH DAY OF NOVEMBER 2018.

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

SECOND READING:

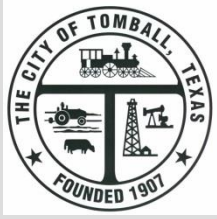
READ, PASSED, AND APPROVED AS SET OUT BELOW AT THE MEETING OF THE CITY COUNCIL OF THE CITY OF TOMBALL HELD ON THE 3RD DAY OF DECEMBER 2018.

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

Gretchen Fagan, Mayor

ATTEST:

Doris Speer, City Secretary



Rezoning Staff Report

Planning & Zoning Commission Public Hearing Date: November 12, 2018
City Council Public Hearing Date: November 19, 2018

Rezoning Case: P18-161
Property Owner(s): Victor Johnson
Applicant(s): Timothy Hertel, DFLEX POWER, LLC
Legal Description: Tract 253A Tomball Outlots
Location: West side of Pitchford Road at 902 Pitchford Road (Exhibit “A”)
Area: 3 acres
Comp Plan Designation: Business/Industrial (Exhibit “B”)
Present Zoning and Use: Agricultural District (Exhibit “C”) / Single-family residence (Exhibit “D”)
Request: Rezone from the Agricultural District to the Light Industrial District

Adjacent Zoning & Land Uses:

North: Agricultural District / Drainage ditch

South: Agricultural District / Centerpoint Energy access, mostly undeveloped

West: Agricultural District / Undeveloped

East: Agricultural District / Undeveloped

BACKGROUND

City Staff met with the applicant in August 2018 to discuss the development of a power generation plant on the subject site.

ANALYSIS

The property is currently zoned Agricultural District. All adjacent properties are also zoned Agricultural District. The land uses in the area include a City of Tomball drainage ditch, and nursery and a Center Point Energy substation. The remaining properties in the area are undeveloped.

The Comprehensive Plan designates the property as Business/Industrial. Surrounding properties are also designated as Business/Industrial. According to the Comprehensive Plan, the Business/Industrial “designation indicates where industrial and intensive employment activities should occur”. The request appears to be consistent with the City’s Comprehensive Plan.

ZONING CONSIDERATIONS

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

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

There are not many established land uses along Pitchford Road. The uses that are existing include a nursery, a Center Point Energy substation and a few single-family residences further south on Pitchford Road. There are single-family residences to the north of the property on Lizzie Lane, however, Lizzie Lane does not intersect Pitchford Road and the City of Tomball drainage ditch is between the site and the residences, creating a buffer.

- 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.**

Utilities will need to be extended at the developer's expense in order to serve the subject site. Pitchford Road is currently not constructed to City of Tomball requirements, and would therefore require a right-of-way dedication as well as upgrades to the road surface.

- 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 not a lot of vacant land in the City zoned Light Industrial. 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.**

Development in the Light Industrial District is mainly focused in the Business and Technology Park. There has not been a lot of other development activity in the Light Industrial District.

- 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 Business/Industrial which is intended for industrial and intensive employment activities including unenclosed assembly, warehousing, distribution facilities, and office/showrooms. The request appears to be consistent with the Future Land Use Map.

PUBLIC COMMENT

Property owners within 200 feet of the project site were mailed notification of this proposal on October 26, 2018. The Notice of Public Hearing was published in the paper on October 31, 2018. 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 P18-161 for the following reasons:

1. The request is in conformance with the Future Land Use Map;
2. The request is generally appropriate with the surrounding land uses in the area;

EXHIBITS

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

Exhibit "A"
Aerial Photo



Exhibit "B"
Comprehensive Plan

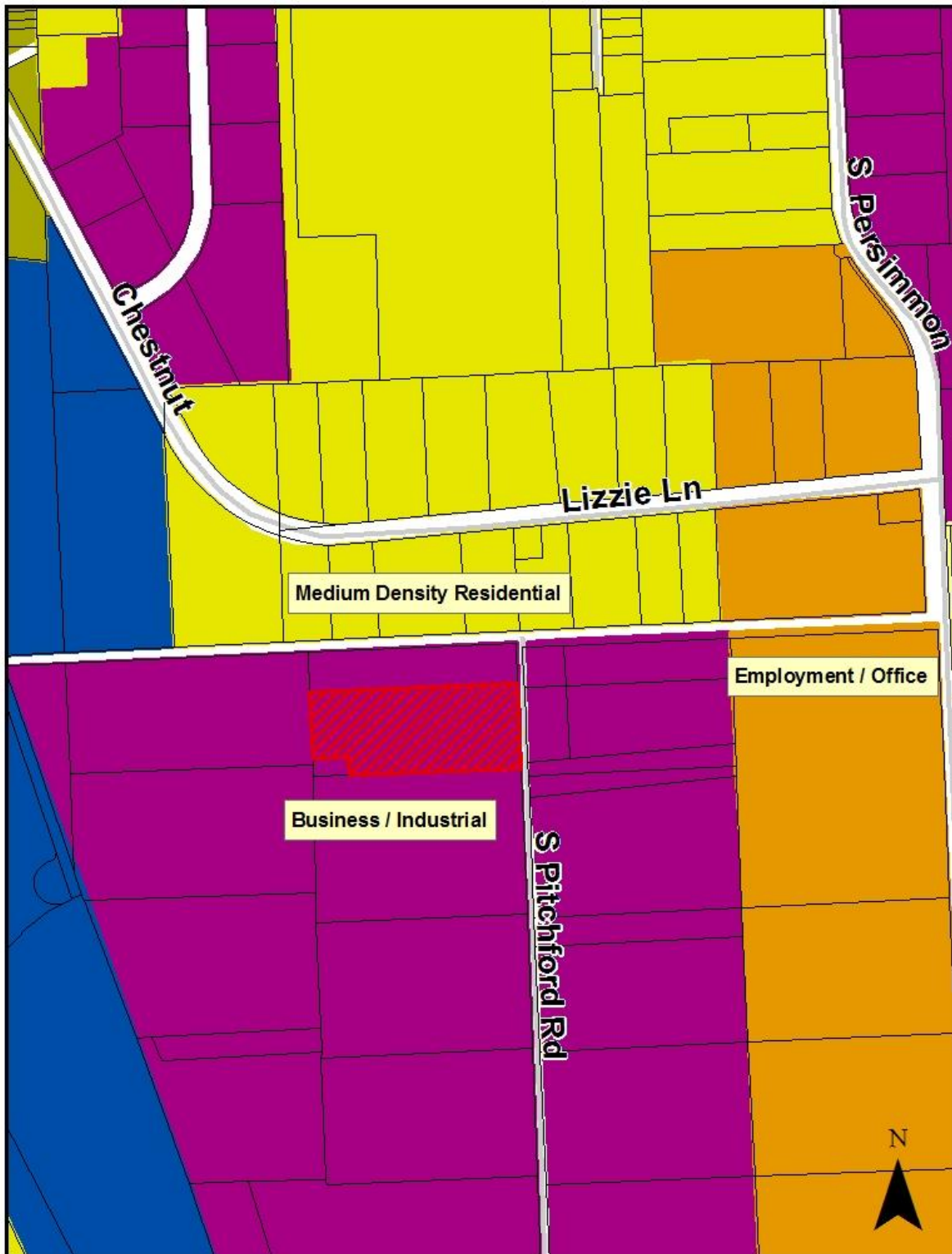
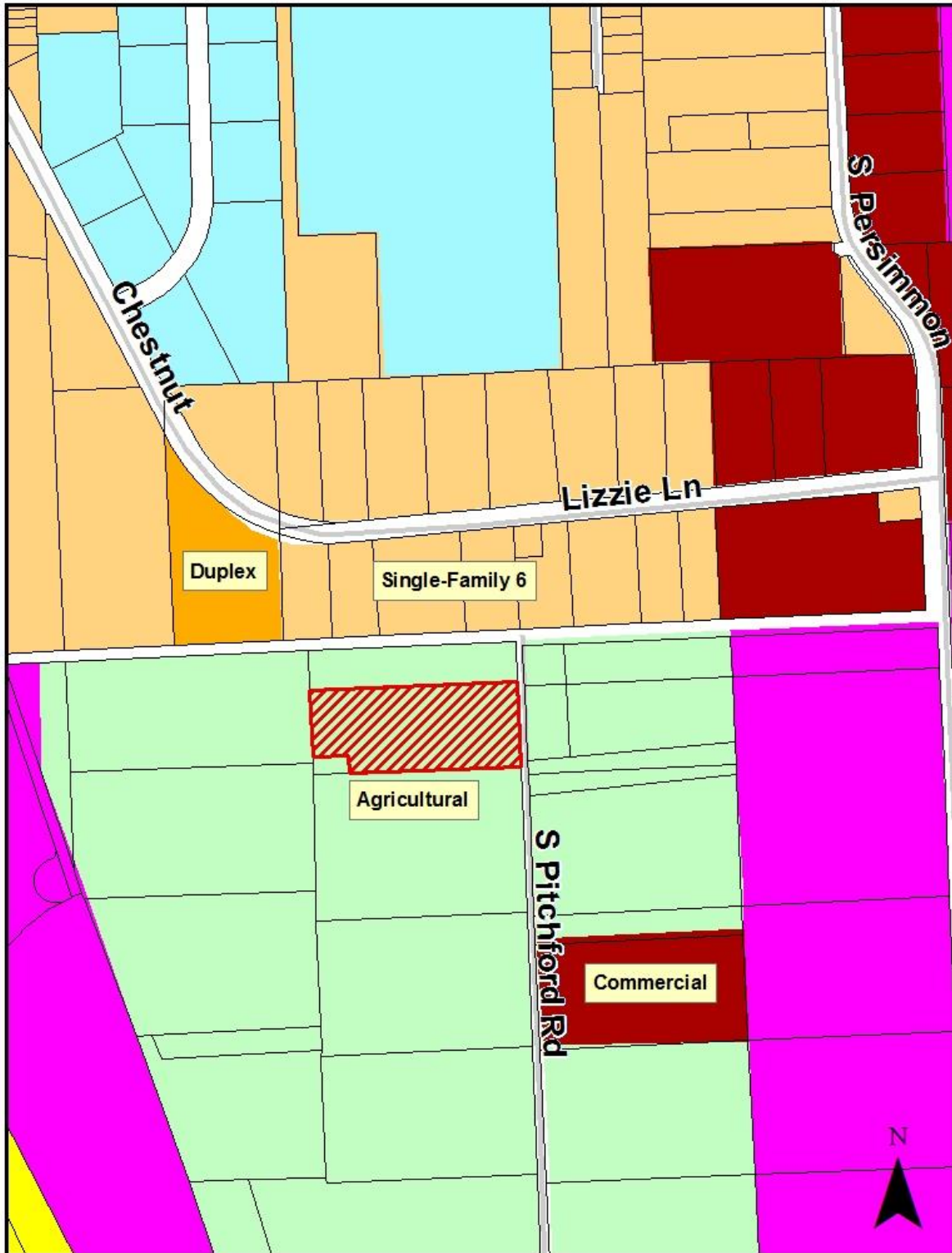


Exhibit "C"
Zoning Map



**Exhibit “D”
Site Photo**



Exhibit "E" Application

DocuSign Envelope ID: 3F744DB3-69B4-455D-A193-D52B243901BC

Revised 5/19/15



18-161

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: Timothy Hertel Title: Partner
Mailing Address: 11 Desert Rose Pl City: Spring State: TX
Zip: 77382
Phone: (804) 621-3061 Fax: (NA) NA Email: tim.hertel@dflexpower.com

Owner

Name: Victor Johnson Title: Owner
Mailing Address: 902 Pitchford Road City: Tomball State: Texas
Zip: 77375
Phone: (832) 515-5357 Fax: () Email: heat2treat@yahoo.com

Engineer/Surveyor (if applicable)

Name: Mira Ruiz (Ward, Getz & Associate) Title: Associate
Mailing Address: 2500 Tanglewilde City: Houston State: TX
Zip: 77063
Phone: (713) 357-6563 Fax: () Email: mruiz@wga-llp.com

Description of Proposed Project: Tomball Substation Electricity Balancing Station

Physical Location of Property: 902 Pitchford Road Tomball, Texas 77375

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

Legal Description of Property: TR 253A/Tomball Outlots

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

Current Zoning District: Agricultural (AG)

Current Use of Property: Residential

Proposed Zoning District: Light Industrial (LI)

Proposed Use of Property: Electricity Generating Unit

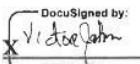
HCAD Identification Number: 0352880000360 **Acreage:** 3.0026

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.

☒  10/2/2018
Signature of Applicant Date

☒  10/2/2018 6:23:21 PM CDT
Signature of Owner Date

CITY OF TOMBALL
281-351-5484

REC#: 01047719 10/03/2018 10:47 AM
OPER: LC TERM: 005
REF#: W1005

TRAN: 130.0000 PLANNING AND ZONING
902 PITCHFORD RD
TIMOTHY HERTEL
100-5441
REZONING APPLICATIO 440.00CR

TENDERED: 440.00 CHECK
APPLIED: 440.00-
CHANGE: 0.00

Exhibit B: Conceptual Site Plan

DFLEX POWER, LLC



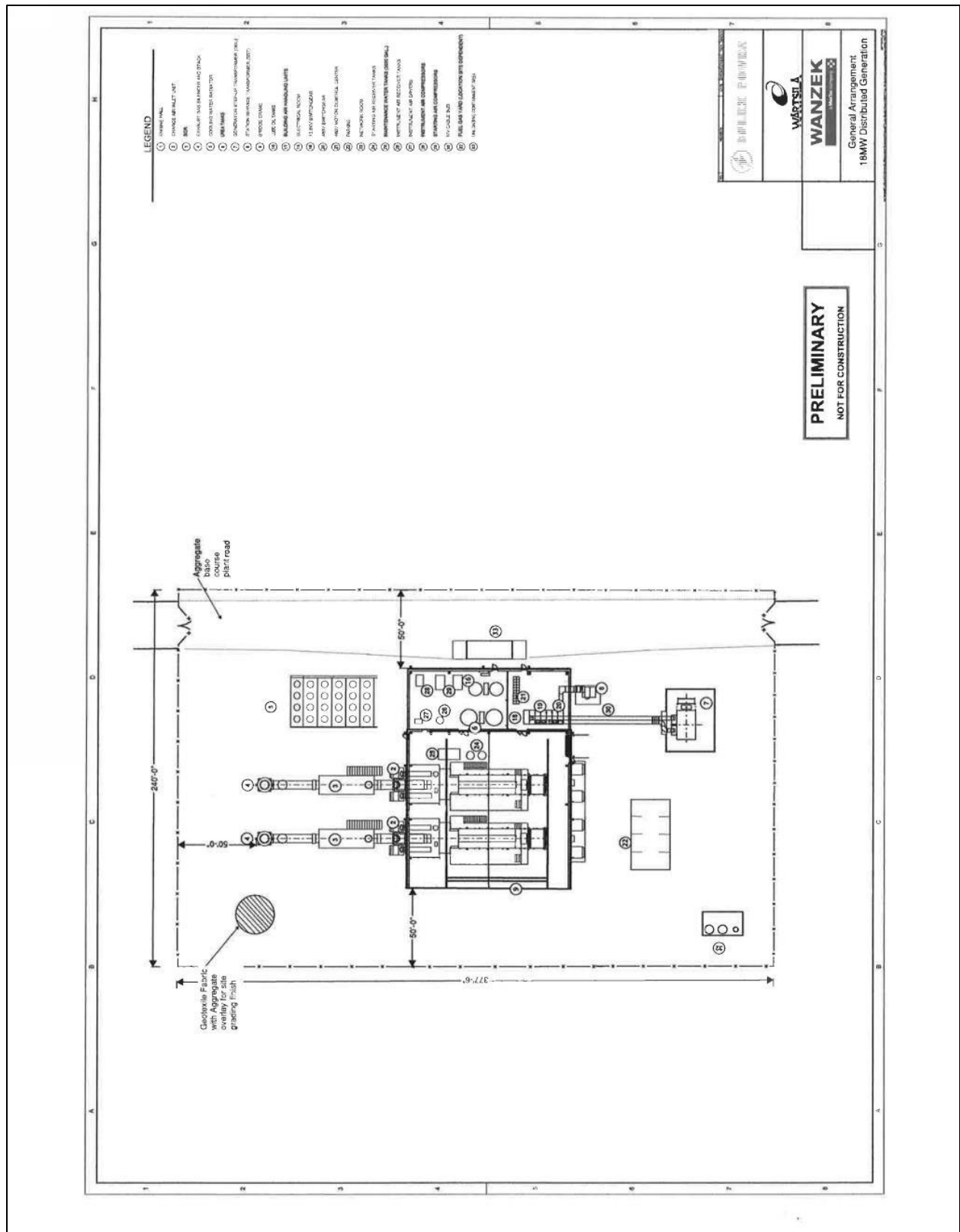




Exhibit C: Boundary Survey

DFLEX POWER, LLC

Harris County Appraisal District



PUBLICATION DATE:
12/22/2017

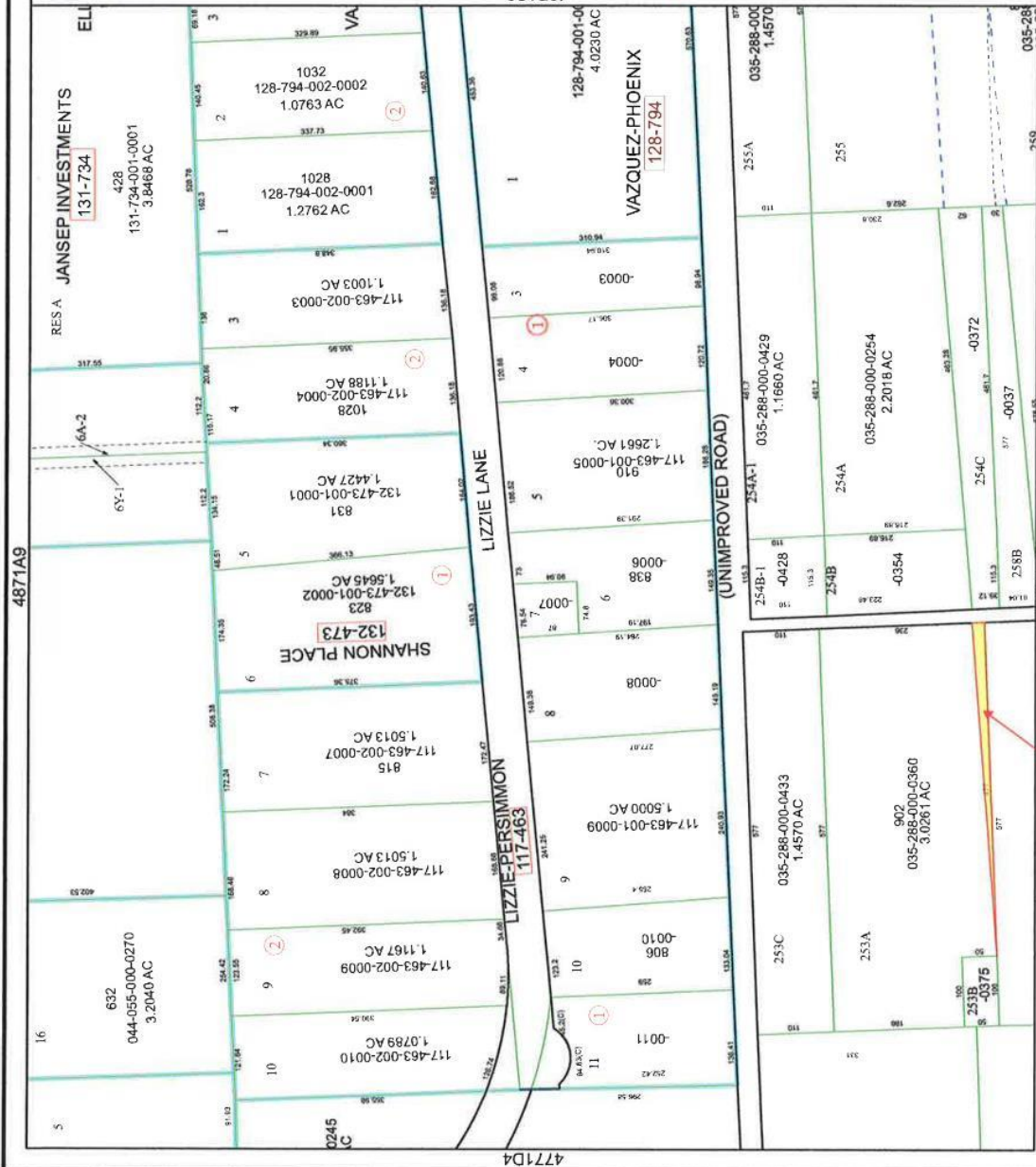
Geospatial or map data maintained by the Harris County Appraisal District is for informational purposes only and may not have been prepared for or be suitable for legal, engineering or surveying purposes. It does not represent an on-the-ground survey and only represents the approximate location of property boundaries.

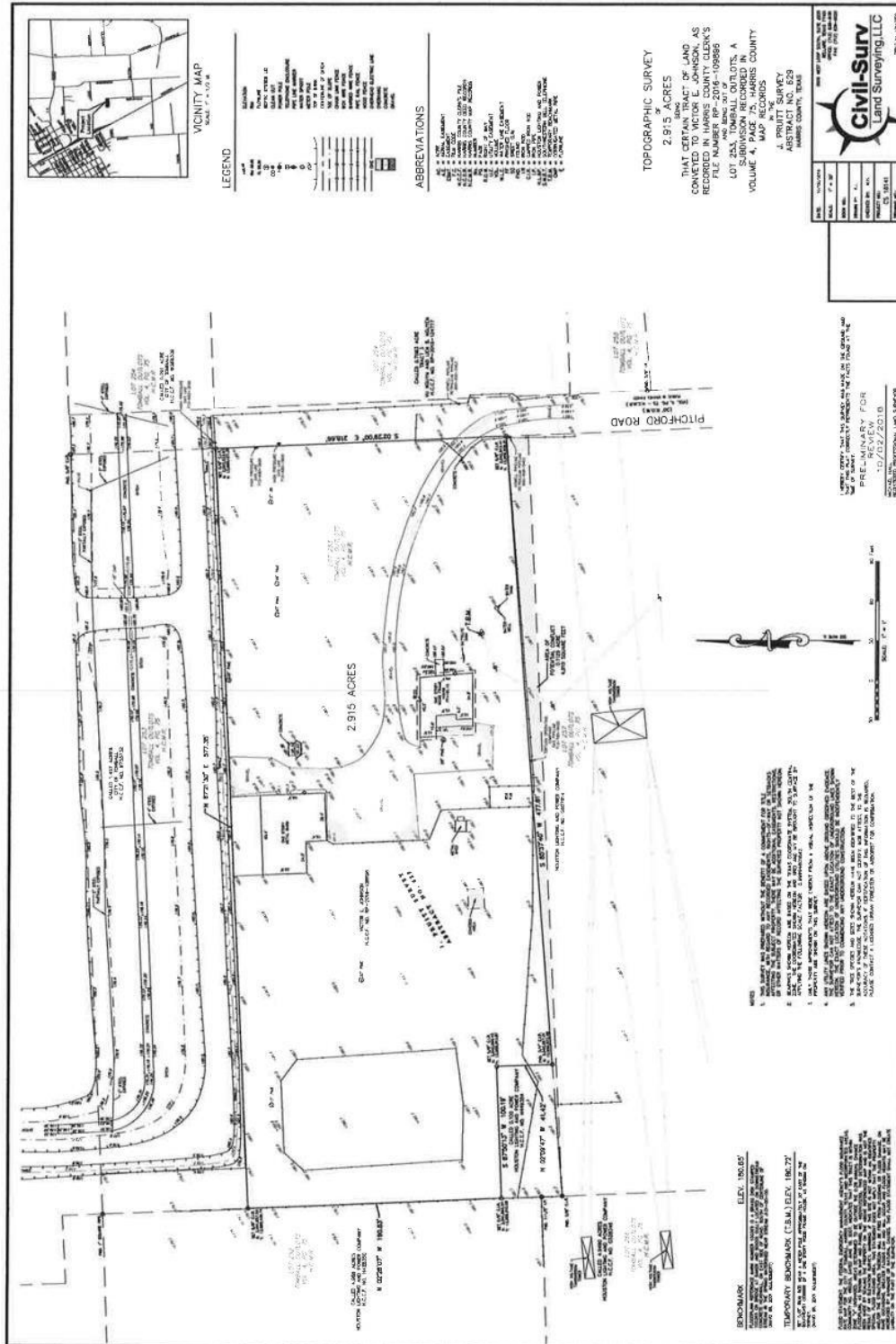
MAP LOCATION



FACET 4871C

1	2	3	4
5	6	7	8
9	10	11	12





TOPOGRAPHIC SURVEY

2.915 ACRES

THIS SURVEY IS A PRELIMINARY SURVEY OF THE LAND SHOWN HEREON, AND IS NOT TO BE USED FOR ANY OTHER PURPOSE. THE SURVEY WAS CONDUCTED IN ACCORDANCE WITH THE HARRIS COUNTY CLERK'S FILE NUMBER BP-2016-109886, LOT 25A, TOMBALL OUTLOTS, A SUBDIVISION OF THE LANDS OF THE STATE OF TEXAS, MAP RECORDS VOLUME 4, PAGE 75, HARRIS COUNTY.

J. PRUITT SURVEY
ABSTRACT NO. 529
HARRIS COUNTY, TEXAS

CIVIL-SURV Land Surveying, LLC	
DATE	10/02/2018
TIME	1:00 PM
BY	J. PRUITT
FOR	PRELIMINARY FOR
PROJECT NO.	10/02/2018
SCALE	1" = 40'

NOTES:
1. THIS SURVEY WAS CONDUCTED IN ACCORDANCE WITH THE HARRIS COUNTY CLERK'S FILE NUMBER BP-2016-109886, LOT 25A, TOMBALL OUTLOTS, A SUBDIVISION OF THE LANDS OF THE STATE OF TEXAS, MAP RECORDS VOLUME 4, PAGE 75, HARRIS COUNTY.
2. THE SURVEY WAS CONDUCTED ON 10/02/2018.
3. THE SURVEY WAS CONDUCTED BY J. PRUITT SURVEY.
4. THE SURVEY WAS CONDUCTED IN ACCORDANCE WITH THE HARRIS COUNTY CLERK'S FILE NUMBER BP-2016-109886, LOT 25A, TOMBALL OUTLOTS, A SUBDIVISION OF THE LANDS OF THE STATE OF TEXAS, MAP RECORDS VOLUME 4, PAGE 75, HARRIS COUNTY.
5. THE SURVEY WAS CONDUCTED IN ACCORDANCE WITH THE HARRIS COUNTY CLERK'S FILE NUMBER BP-2016-109886, LOT 25A, TOMBALL OUTLOTS, A SUBDIVISION OF THE LANDS OF THE STATE OF TEXAS, MAP RECORDS VOLUME 4, PAGE 75, HARRIS COUNTY.

BENCHMARK
ELEV. 100.00'
TEMPORARY BENCHMARK (T.B.M.) ELEV. 100.77'
THE SURVEY WAS CONDUCTED IN ACCORDANCE WITH THE HARRIS COUNTY CLERK'S FILE NUMBER BP-2016-109886, LOT 25A, TOMBALL OUTLOTS, A SUBDIVISION OF THE LANDS OF THE STATE OF TEXAS, MAP RECORDS VOLUME 4, PAGE 75, HARRIS COUNTY.



DFLEX POWER, LLC ("DFlex")
Request for Rezoning
10/3/2018

TO: City of Tomball Texas
501 James St
Tomball, TX 77375
(281) 290-1405

To Whom it May Concern,

Please find attached an application from DFlex to change the zoning of the land parcel located at 902 Pitchford Rd. , Tomball, TX 77375 from Agricultural (AG) to Light Industrial (LI). This change is in keeping with the city's Future Land Use plans (revised Aug 19, 2016) and will provide the proper classification for our intended use.

We are filing this request to help facilitate the development and construction of an electrical power station that will have great benefit to the local community. The station will effectively act as a power stabilizing facility for the local area, helping maintain the reliability of Tomball's electrical power supply while also allowing the community to construct distributed renewable generation facilities without significant upgrades to existing infrastructure.

Further, the facility will have direct economic benefit to the local community in the form of property taxes and natural gas purchases.

We are excited and committed to working with your local planning commission to making this project a success for the City of Tomball and appreciate your consideration of this application.

Regards,

DFLEX POWER, LLC

A handwritten signature in black ink, appearing to read "Tim Hertel".

Print: TIM HERTEL, PARTNER

DFLEX POWER, LLC



Exhibit A: Completed Application Form

DFLEX POWER, LLC



Public Comment Form

(Please type or use black ink)

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

Please return to:

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

CASE NUMBER: P18-161

Name:

SAM & LATRELL SHANNON

(please print)

Address:

833 LIZZIE LN.

TOMBALL, TX 77375

Signature:

Sam & Latrell Shannon

Date:

11-9-2018

I am **FOR** the requested Rezoning as explained on the attached public notice for Zoning Case P18-161. (Please state reasons below)

X

I am **AGAINST** the requested Rezoning as explained on the attached public notice for Zoning Case P18-161. (Please state reasons below)

Date, Location & Time of Planning & Zoning Commission meeting:

Monday, November 12, 2018 6:00 PM

City Council Chambers of the City of Tomball, City Hall
401 Market Street, Tomball, Texas

Date, Location & Time of City Council meeting:

Monday, November 19 2018, 6:00 PM

City Council Chambers of the City of Tomball, City Hall
401 Market Street, Tomball, Texas

COMMENTS:

We have questions regarding exactly what this proposed plant will be doing? Will there be a noise factor? Will it be giving off any toxins in the air? Has D-FLEX Power filled out an application with CenterPoint Energy for an INTERCONNECT? Is there a plan for INTERFACING with Center Point? Is this D-FLEX Power's first attempt in the generating arena? If not, where are their other plants?

You may also comment via email to ALindley@tomballtx.gov.

Please reference the case number in the subject line.

For questions regarding this request please call Amelia Lindley @ 281-290-1410.



Public Comment Form

(Please type or use black ink)

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

Please return to:

City of Tomball

Attn: Amelia Lindley

501 James Street

Tomball, TX 77375

P18-161
CASE NUMBER

Name:

CATHERINE & JERRY CARRINGTON

(please print)

Address:

810 LIZZIE LANE
TOMBALL, TX. 77375

Signature:

Catherine Carrington

Date:

11-9-2018

I am **FOR** the requested Rezoning as explained on the attached public notice for **Zoning Case P18-161**. (Please state reasons below)

☒

I am **AGAINST** the requested Rezoning as explained on the attached public notice for **Zoning Case P18-161**. (Please state reasons below)

Date, Location & Time of **Planning & Zoning Commission** meeting:

Monday, November 12, 2018 6:00 PM

City Council Chambers of the City of Tomball, City Hall

401 Market Street, Tomball, Texas

Date, Location & Time of **City Council** meeting:

Monday, November 19 2018, 6:00 PM

City Council Chambers of the City of Tomball, City Hall

401 Market Street, Tomball, Texas

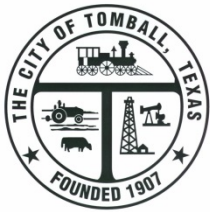
COMMENTS:

I need a clear and better understanding of how this generating plant will be set-up and operated and we have concern about noise.

You may also comment via email to ALindley@tomballtx.gov.

Please reference the case number in the subject line.

For questions regarding this request please call Amelia Lindley @ 281-290-1410.



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: P18-161

APPLICANT/OWNER: Request by Timothy Hertel, on behalf of DFLEX POWER, LLC

LOCATION: Generally located on the west side of Pitchford Road at 902 Pitchford Road

PROPOSAL: To amend Chapter 50 (Zoning) of the Tomball Code of Ordinances by rezoning approximately 3 acres of land legally described as Tract 253A Tomball Outlots, within the City of Tomball, Harris County, Texas, from the Agricultural District to the Light Industrial District.

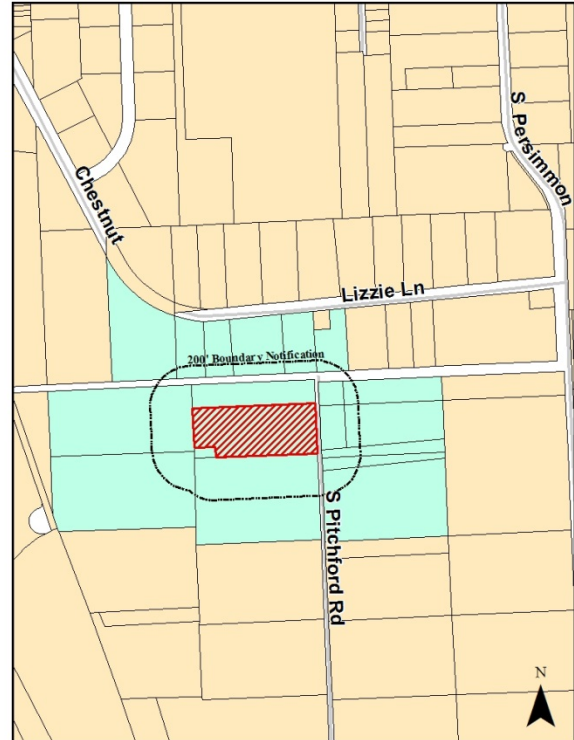
CONTACT: Amelia Lindley, Planner

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, November 12, 2018, 6:00 PM**

**City Council Public Hearing:
*Monday, November 19, 2018, 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.

**NOTICE OF PUBLIC HEARING
CITY OF TOMBALL
PLANNING & ZONING COMMISSION (P&Z)
NOVEMBER 12, 2018
&
CITY COUNCIL
NOVEMBER 19, 2018**



Notice is Hereby Given that a Public Hearing will be held by the P&Z of the City of Tomball on **Monday, November 12, 2018, at 6:00 P.M.**, and by the City Council of the City of Tomball on **Monday, November 19, 2018, 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 P18-161: Request by Timothy Hertel, on behalf of DFLEX POWER, LLC, to amend Chapter 50 (Zoning) of the Tomball Code of Ordinances by rezoning approximately 3 acres of land legally described as Tract 253A Tomball Outlots, within the City of Tomball, Harris County, Texas, generally located on the west side of Pitchford Road at 902 Pitchford Road, from the Agricultural District to the Light Industrial District.

Zoning Case P18-166: Request by Great Oak School to amend Chapter 50 (Zoning) of the Tomball Code of Ordinances by rezoning approximately 10 acres of land legally described as Lot 1 Block 1 Welling Owens Quadrplexes, within the City of Tomball, Harris County, Texas, generally located on the east side of Lovett Street, south of Carrell Street, from the Planned Development 2 District to the Office District.

Zoning Case P18-167: Request by Great Oak School for a Conditional Use Permit to operate a *School, other than public or denominational* on approximately 10 acres of land legally described as Lot 1 Block 1 Welling Owens Quadrplexes, within the City of Tomball, Harris County, Texas. The property is generally located on the east side of Lovett Street, south of Carrell Street, and is zoned Office 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 **8th** day of **November 2018** by 5:00 p.m., and remained posted for at least 72 continuous hours preceding the scheduled time of said meeting.

Elizabeth Jones

Elizabeth Jones

Administrative Assistant

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.

Regular City Council

Agenda Item

Data Sheet

Meeting Date: December 3, 2018

Topic:

Adopt, on Second Reading, Ordinance No. 2018-38, 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 10 Acres Of Land, Legally Described Lot 1 Block 1 Welling Owens Quadruplexes, Within The City Of Tomball, Harris County, Texas, From The Planned Development District To The Office District; Said Property Being Generally Located On The East Side Of Lovett Street, South Of Carrell 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

Background:

On Monday, November 12, 2018, after conducting a public hearing, the Planning and Zoning Commission voted unanimously to recommend Approval of the rezoning request.

Origination:

Great Oak School

Recommendation:

Approval

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

Craig T. Meyers P.E., Community Development Director

ACTION TAKEN

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

Ordinance No. 2018-38

P18-166 Staff Report

P18-166 Response Forms

Property Owner Notification

Notice of Public Hearing

ORDINANCE NO. 2018-38

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 10 ACRES OF LAND, LEGALLY DESCRIBED LOT 1 BLOCK 1 WELLING OWENS QUADRUPLXES, WITHIN THE CITY OF TOMBALL, HARRIS COUNTY, TEXAS, FROM THE PLANNED DEVELOPMENT DISTRICT TO THE OFFICE DISTRICT; SAID PROPERTY BEING GENERALLY LOCATED ON THE EAST SIDE OF LOVETT STREET, SOUTH OF CARRELL 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.

* * * * *

Whereas, Great Oak School has requested that approximately 10 acres of land, legally described as Lot 1 Block 1 Welling Owens Quadruplexes, generally located on the east side of Lovett Street, south of Carrell Street, 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 Office 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 Planned Development District to the Office 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 Office 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 Office 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 19TH DAY OF NOVEMBER 2018.

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

SECOND READING:

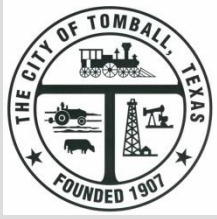
READ, PASSED, AND APPROVED AS SET OUT BELOW AT THE MEETING OF THE CITY COUNCIL OF THE CITY OF TOMBALL HELD ON THE 3RD DAY OF DECEMBER 2018.

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

Gretchen Fagan, Mayor

ATTEST:

Doris Speer, City Secretary



Rezoning Staff Report

Planning & Zoning Commission Public Hearing Date: November 12, 2018
City Council Public Hearing Date: November 19, 2018

Rezoning Case: P18-166
Property Owner(s): 23730 Lovett LLC
Applicant(s): Great Oak School
Legal Description: Lot 1 Block 1 Welling Owens Quadruplexes
Location: East side of Lovett Street, south of Carrell Street (Exhibit "A")
Area: 10 acres
Comp Plan Designation: High Density Residential (Exhibit "B")
Present Zoning and Use: Planned Development District (Exhibit "C") / Undeveloped (Exhibit "D")
Request: Rezone from the Planned Development 2 District to the Office District for the construction of a *school, other than public or denominational*

Adjacent Zoning & Land Uses:

North: Single-Family 9 and Commercial District / Single-family residence and undeveloped land

South: Commercial District / Office/warehouse lease spaces

West: Single-Family 9 and Single-Family 6 District / Single-family residences

East: Commercial District / Snook Lane, multiple non-residential uses, undeveloped land

BACKGROUND

City Staff first met with the applicant in March 2018 to discuss the development of a *school, other than public or denominational*. After multiple discussions, the applicant submitted a Rezoning Application requesting a rezoning to the Office District, as well as a Conditional Use Permit Application for the proposed use.

ANALYSIS

The subject property is 10 acres and has frontage on both Lovett Street and Snook Lane. Properties on Snook Lane in this area are zoned Commercial and there are multiple commercial establishments including a storage facility and office/warehouse facilities. Lovett Street is zoned Single-family 9 and Single-family 6 and has multiple single-family dwellings.

The property is zoned Planned Development 2 and was approved in 2008, when zoning was originally adopted, for the construction of townhomes. The property was platted in 2014, however, there were no plans submitted for the City's review afterward.

The Comprehensive Plan designates the property as High Density Residential. Properties in the area are also designated High Density Residential as well as Medium Density Residential and Mixed Use. The High Density Residential category includes various housing products such as patio homes, townhomes, duplexes and apartments, among others. This category "may also include such supporting land uses as neighborhood shops and services, parks and recreational amenities, religious institutions, and schools". At first glance, it may appear the proposed rezoning request does not meet the intent of the Future Land Use Map, however, many uses allowed in the Office District would include neighborhood shops and services, religious institutions and schools.

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 Office District appear to be appropriate for the immediate area. According to Section 50-75 (Office District), the purpose of the Office Zoning District is to provide "a transition district between residential uses and more intense uses". In the immediate area, the Office District would act as a buffer from the commercial uses on Snook Lane and the residences on Lovett Street.

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 serve this property and the existing streets adjacent to the property can accommodate traffic generated by the proposed development.

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 not a lot of vacant land in the City zoned Office District. In fact, less than 1% of the property in Tomball is zoned Office. 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 not been steady development in the Office District in the City. There has not been any request to the Office District in the vicinity of the proposed change.

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

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 High Density Residential. As mentioned above, the proposed rezoning would be compatible with the High Density Residential classification because the Office District includes land uses that would be supporting land uses for the residential development.

PUBLIC COMMENT

Property owners within 200 feet of the project site were mailed notification of this proposal on October 26, 2018. The Notice of Public Hearing was published in the paper on October 31, 2018. 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 P18-166 for the following reasons:

1. The Office District is the least intense non-residential zoning district and would create a buffer between the intense commercial uses on Snook Lane and the single-family residences on Lovett Street;
2. The request is consistent with the goals of the Comprehensive Plan;
3. There is not a large amount of undeveloped land zoned Office District in the City;
4. The uses allowed in the Office District would be appropriate with the general area and the City as a whole.

EXHIBITS

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

Exhibit "A"
Aerial Photo



Exhibit "B"
Comprehensive Plan

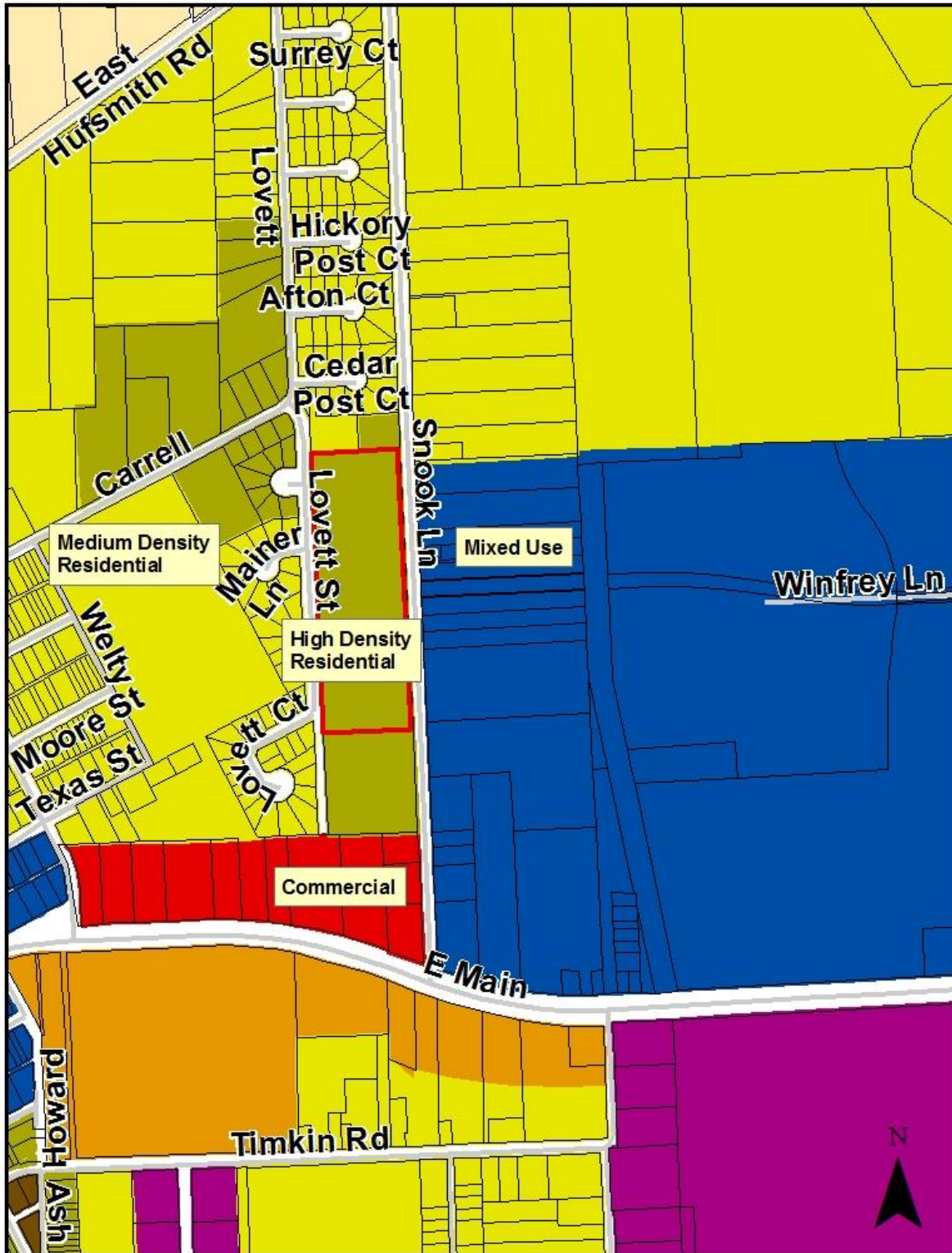
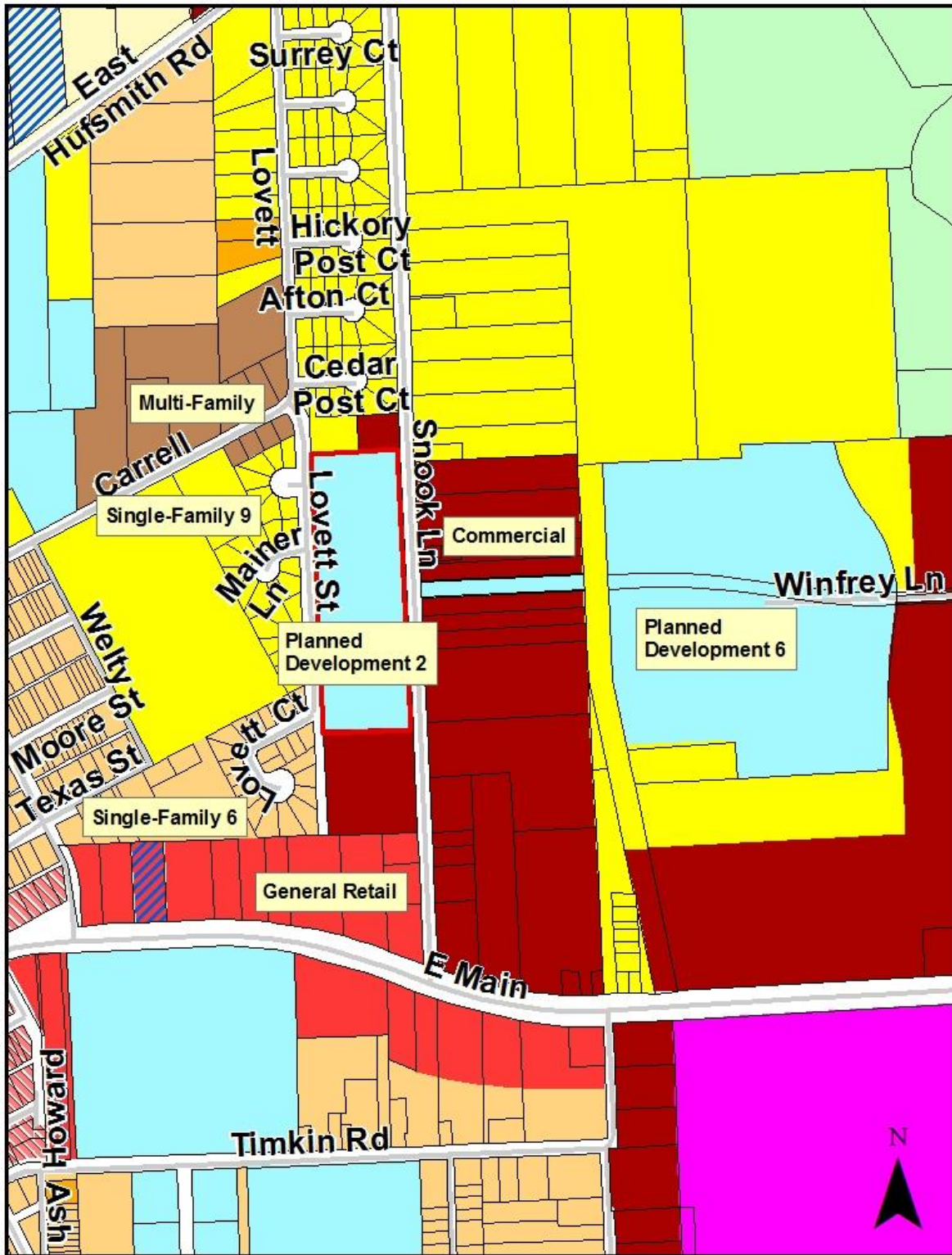


Exhibit "C"
Zoning Map



**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: GREAT OAK SCHOOL Title: _____
Mailing Address: 715 CARRELL ST. City: TOMBALL State: TX
Zip: 77375
Phone: (281) 516-7296 Fax: () _____ Email: ZULANA@GREAT OAK SCHOOL.ORG

Owner
Name: 23730 LOVETT LLC Title: _____
Mailing Address: 888 AVENUE D, STE. B City: KATY State: TX
Zip: 77493
Phone: (281) 391-7365 Fax: (713) 355-4809 Email: SGHUNT@HFPLLC.NET

Engineer/Surveyor (if applicable)
Name: ODYSSEY ENGINEERING GROUP Title: _____
Mailing Address: 2500 TANGLEWILDE ST City: HOUSTON State: TX
Zip: 77063 #480
Phone: (281) 306-0240 Fax: () _____ Email: MGLBERT@ODYSSEYEG.COM

Description of Proposed Project: PRIVATE SCHOOL CAMPUS

Physical Location of Property: 23730 LOVETT ST, TOMBALL, TX 77375
[General Location – approximate distance to nearest existing street corner]

Legal Description of Property: OUTLOT 104, 103 & 98, ALSO 15.01057, ABSTRACT 383
[Survey/Abstract No. and Tracts; or platted Subdivision Name with Lots/Block]

Current Zoning District: PLANNED DEVELOPMENT DISTRICT

Current Use of Property: NOT USED - WOODED

Proposed Zoning District: OFFICE DISTRICT WITH CONDITIONAL USE

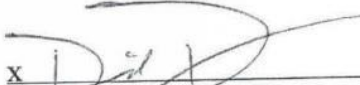
Proposed Use of Property: PRIVATE SCHOOL PERMIT

HCAD Identification Number: 7148539 **Acres:** 10

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  _____ 10-9-18
Signature of Applicant Date

X By: *Stephen Hunt, manager* _____ 10/10/18
Signature of Owner Date



Great Oak School is a private, not for profit Waldorf school. We are the largest Waldorf school in Houston, second largest in Texas. Currently we serve 100 students from preschool through seventh grade, with plans to add eighth grade in 2019-2020. We have 70 families, out of which 15 live in Tomball and more keep moving to Tomball to be closer to the school.



Waldorf education is an educational philosophy founded in Germany in 1919 that focuses on the whole child through a rigorous and developmentally appropriate curriculum. Our students learn by doing and experiencing the world. Beginning in preschool children garden, chop vegetables, knead bread, make soup and play. We teach German, Spanish, knitting and the pentatonic flute in first grade. In third grade kids begin learning a string instrument. Our education style produces confident, caring and creative kids.

Great Oak School has been leasing space from the Episcopal Church of the Good Shepherd at 715 Carrell Street for the last ten years. We love our location in Tomball but are outgrowing our current space. Our kindergartens are full, our pre-school has a waiting list and the church is out of classrooms. We decided to purchase the Lovett property to ensure our school has room to grow, just like our kids.



The Lovett property is an ideal setting for our future campus. As at our current location, we love the beauty of the property with trees and greenery. Modeled after the Austin Waldorf School, our plan for the new campus is to integrate the buildings among the trees and keep the campus aesthetically pleasing and engaging. Large playgrounds, gardens and many trees provide an engaging aesthetic that naturally calms children and prepares them to learn.

Great Oak School requests the Lovett property be rezoned from planned development district to office district with conditional use permit to accommodate our future growth. We're excited about the new property and we're excited about our future in Tomball.

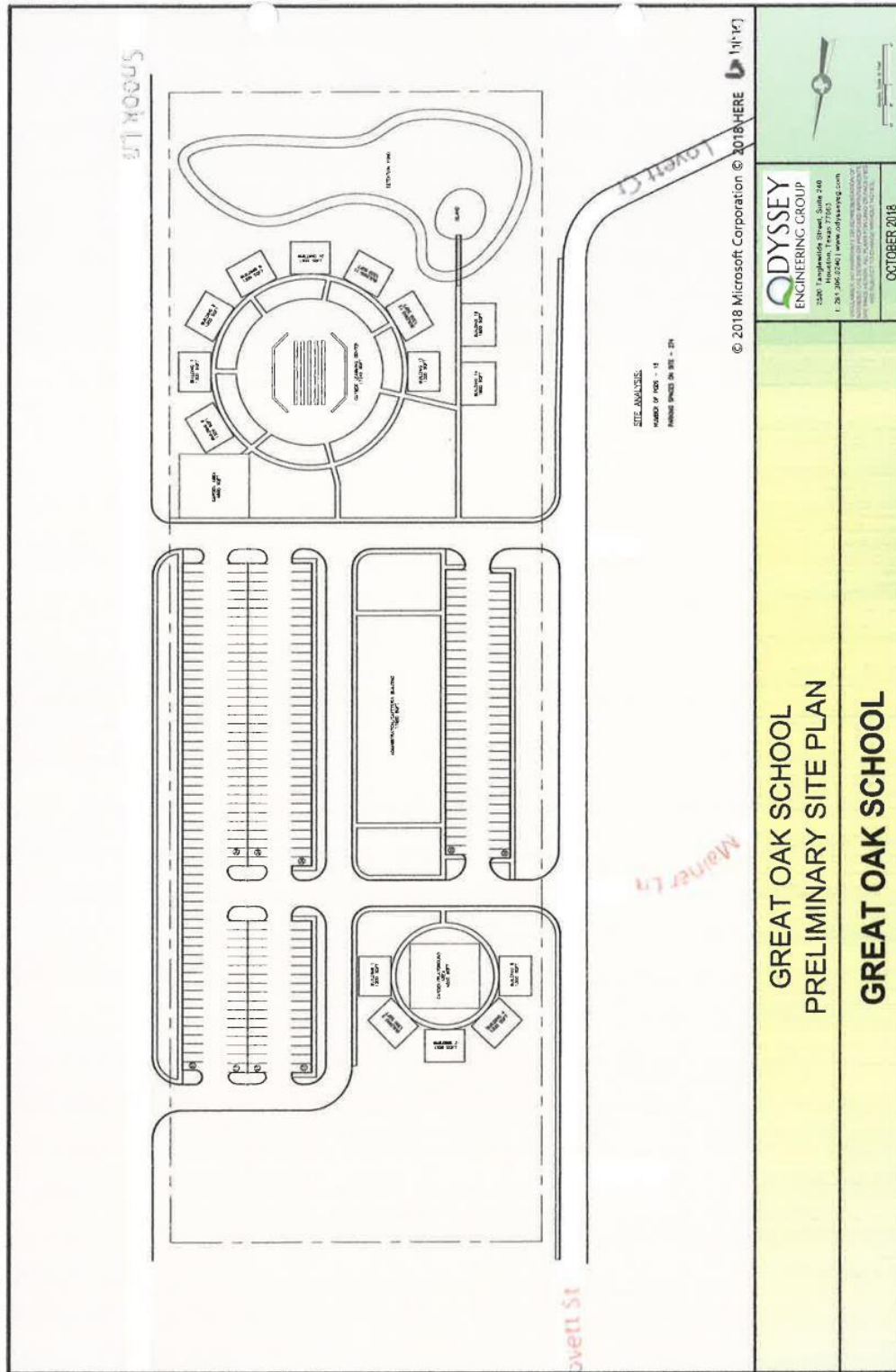
Thank you,

Dave Tegtmeier

Dad of Owen and Elliot

On Behalf of Great Oak School's Board of Trustees

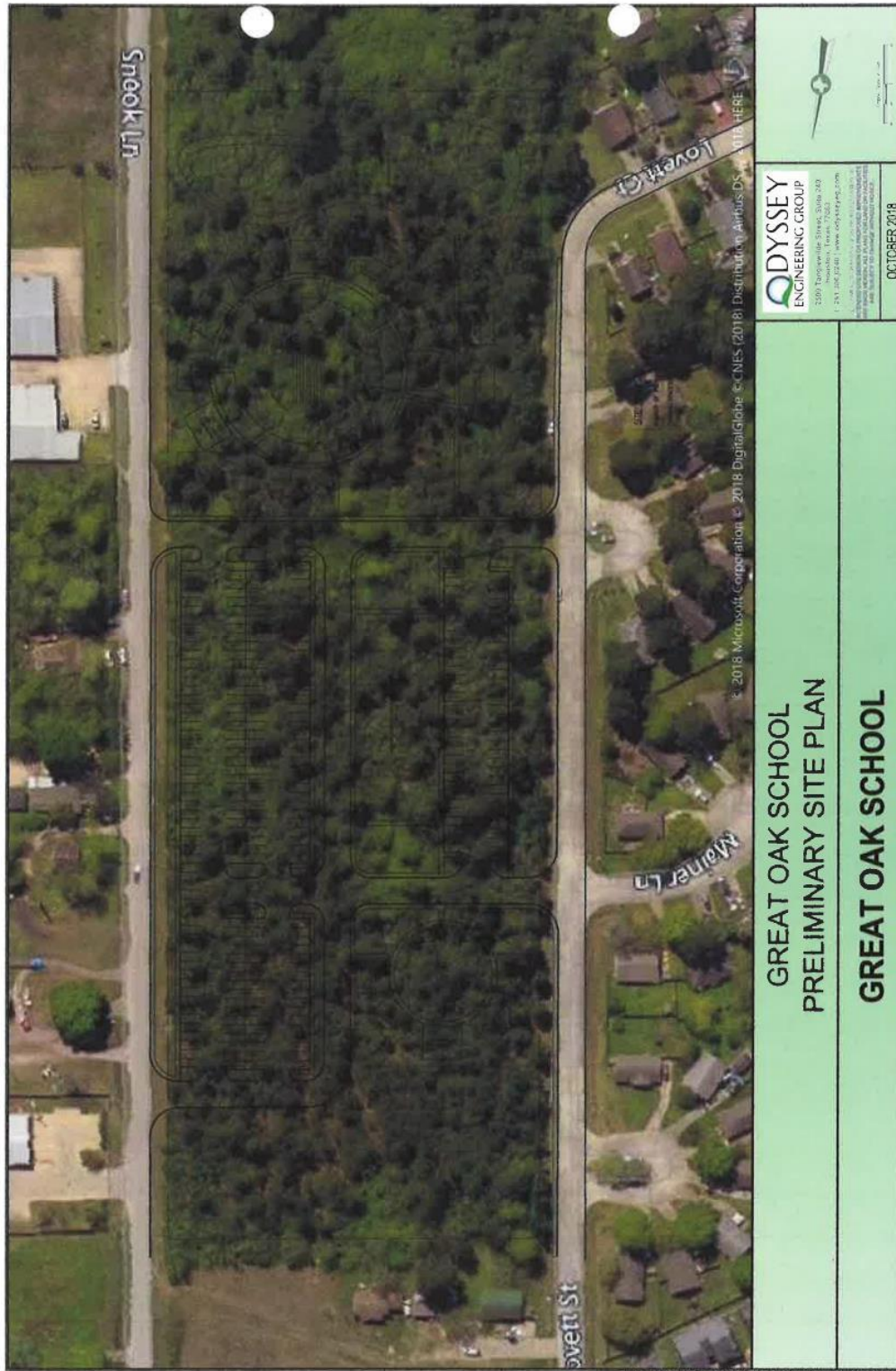
715 CARRELL STREET • TOMBALL, TX 77375 • 281.516.7296 • GREATOAKSCHOOL.ORG



**GREAT OAK SCHOOL
 PRELIMINARY SITE PLAN
 GREAT OAK SCHOOL**

ODYSEY
 ENGINEERING GROUP
 13201 Tanglewood Street, Suite 240
 Houston, Texas 77040
 T 281-306-1246 | www.odyseyeng.com

OCTOBER 2018



GREAT OAK SCHOOL PRELIMINARY SITE PLAN

GREAT OAK SCHOOL

QDYSEY
ENGINEERING GROUP

2309 Tinsleyville Street, Suite 240
Houston, Texas 77057
Tel: 281.244.8800
www.qdysey.com

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OCTOBER 2018



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NOTICE OF CONFIDENTIALITY RIGHTS: IF YOU ARE A NATURAL PERSON, YOU MAY REMOVE OR STRIKE ANY OF THE FOLLOWING INFORMATION FROM THIS INSTRUMENT BEFORE IT IS FILED FOR RECORD IN THE PUBLIC RECORD: YOUR SOCIAL SECURITY NUMBER OR YOUR DRIVER'S LICENSE NUMBER

RIGHT-OF-WAY AGREEMENT

STATE OF TEXAS §
 §
COUNTY OF HARRIS §

For and in consideration of Ten and No/100 Dollars (\$10.00) in hand paid, the receipt and sufficiency of which is hereby acknowledged, the undersigned WOODFOREST NATIONAL BANK (the "Grantor", whether one or more) does hereby GRANT, BARGAIN, SELL and CONVEY to TORTUGA OPERATING COMPANY, INC., its successors and assigns (the "Grantee"), the right, privilege, and unobstructed easement to lay, construct, reconstruct, replace, renew, operate, maintain, repair, change the size of, and remove one or more pipelines for the transportation of oil, petroleum, or any of its products, gas, water, and any other substances thereof, over, though, upon, under and across the right-of-way ranging from thirty (30') to fifty feet (50') in width, on lands of Grantor in the Harris County, Texas, as more particularly described in the metes and bounds attached as Exhibit "B" (the "Easement").

The Grantee shall have all of the rights and benefits necessary or convenient for the full enjoyment or use of the rights herein granted. It is further agreed as follows:

1. Grantor is the owner of the 10 acres described by metes and bounds in attached Exhibit "A" by and through the deed recorded at Clerk's File No. 2011-0253517 of the Real Property Records of Harris County, Texas.
2. Grantor and Grantee agree that this new right-of way agreement modifies and replaces the existing 1944 right-of-way agreement recorded at Volume 1352, page 638 of the Real Property Records of Harris County, Texas, only as to the ten (10) acres described by metes and bounds in the attached Exhibit "A" and that the existing 1944 right-of-way agreement remains in full force and effect as to the other properties effected by such agreement.
3. As a consequence of this modification, Grantee is releasing its right to use, occupy, or possess any portion of the ten (10) acres described by metes and bounds in the attached Exhibit "A" other than the Easement area described in attached Exhibit "B".
4. Grantor agrees that Grantee may abandon in place any pipelines located on the ten (10) acres described by metes and bounds in the attached Exhibit "A" and that it shall be the sole responsibility of the Grantor, its successors and assigns, to remove and dispose of such abandoned pipeline facilities.
5. It is further agreed that Grantor shall have the right to use and enjoy the surface of said Easement described herein, provided such use shall not interfere with the use by Grantee of the Easement for the purposes for which the Easement is granted. Grantor shall not

GF # 126010
06/Kojak
Stewart Title of Montgomery County

ER 040 - 66 - 1483

ER 040 - 66 - 1484

GRANTOR
WOODFOREST NATIONAL BANK 10R

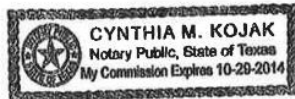
By *Michael H. Richmond*
Michael H. Richmond, Vice-Chairman

GRANTEE
TORTUGA OPERATING COMPANY, INC 1EE

By *Peter L. Turbett*
Peter L. Turbett, President

STATE OF TEXAS
COUNTY OF ~~HARRIS~~ *Montgomery*

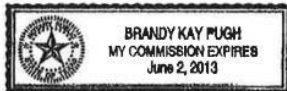
This instrument was acknowledged before me on this 24th January, 2013, by
Michael H. Richmond, Vice-Chairman of WOODFOREST NATIONAL BANK.



Cynthia M. Kojak
Notary Public in and for the State of Texas

STATE OF TEXAS
COUNTY OF HARRIS

This instrument was acknowledged before me on this 20th day of December, 2012, by
Peter L. Turbett, President of TORTUGA OPERATING COMPANY, INC.



Brandy Kay Pugh
Notary Public in and for the State of Texas

RETURN TO:
WOODFOREST NATIONAL BANK
P. O. Box 7889
The Woodlands, Texas 77387-7889

ER 040 - 66 - 1485

EXHIBIT A

METES AND BOUNDS

AUGUST 16, 2005

FIELD NOTES FOR A 10.0010 ACRE TRACT OF LAND, BEING THE SAME 10.0000 ACRE TRACT OF LAND DESCRIBED UNDER HARRIS COUNTY CLERK'S FILE NUMBER J148539, BEING OUT OF AND A PART OF OUTLOT 104, OUTLOT 103 AND OUTLOT 98 OF FIVE ACRE TRACTS TOM BALL TOWNSITE, RECORDED IN VOLUME 2, PAGE 65, MAP RECORDS, HARRIS COUNTY, TEXAS, AND OUT OF AND A PART OF A 15.01057 ACRE TRACT OF LAND DESCRIBED UNDER HARRIS COUNTY CLERK'S FILE NUMBER H288237, SITUATED IN THE RALPH HUBBARD SURVEY, ABSTRACT NUMBER 383, HARRIS COUNTY TEXAS. BEARINGS AND COORDINATES ARE REFERRED TO THE TEXAS COORDINATE SYSTEM OF 1983, SOUTH CENTRAL ZONE, DEFINED IN THE TEXAS NATURAL RESOURCES CODE, SECTION 20.071, ET. SEQ. AND ARE BASED ON THE PUBLISHED POSITION (2001 Adj.) of NOAA/NGS STATION: COOPERATIVE CORS STATION WLA 1, TO CONVERT THE SURFACE DISTANCE TO GRID DISTANCE, MULTIPLY BY A COMBINATION SCALE FACTOR OF 0.999951143, SAID 3.6213 ACRE TRACT OF LAND BEING MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS:

COMMINGING: AT A CALLED AND FOUND 5/8 INCH IRON ROD HAVING COORDINATES OF $X = 3,042,811.469$ And $Y = 13,983,738.467$ IN THE WEST RIGHT OF WAY LINE OF SNOOK LANE, BASED ON 60' WIDTH, IN THE NORTH LINE OF THE JESSE PRUITT SURVEY, ABSTRACT NUMBER 829, OF THE SAID COUNTY AND STATE AND THE SOUTH LINE OF THE SAID RALPH HUBBARD SURVEY, THE SOUTHEAST CORNER OF THE SAID 15.01057 ACRE TRACT OF LAND, THE SOUTHEAST CORNER OF A 3.6230 ACRES OF LAND DESCRIBED UNDER HARRIS COUNTY CLERK'S FILE NUMBER N468840, IN THE SOUTH LINE OF THE SAID OUTLOT 104 AND THE NORTHEAST CORNER OF A 0.04360 ACRES OF LAND DESCRIBED UNDER HARRIS COUNTY CLERK'S FILE NUMBER J153120, AND FROM SAID CORNER A FOUND 2 INCH IRON PIPE FOR THE SOUTHEAST CORNER OF THE SAID RALPH HUBBARD SURVEY AND AN L CORNER OF THE SAID JESSE PRUITT SURVEY BEARS NORTH $87^{\circ} 28' 00''$ EAST, A DISTANCE OF 69.00 FEET;

THENCE: SOUTH $87^{\circ} 28' 00''$ WEST, A DISTANCE OF 378.01 FEET, WITH THE SOUTH LINE OF THE SAID 15.01057 ACRE TRACT OF LAND, THE SOUTH LINE OF THE SAID OUTLOT 104, THE SOUTH LINE OF THE SAID 3.6230 ACRE TRACT OF LAND, THE NORTH LINE OF THE SAID 0.04360 ACRE TRACT OF LAND, THE NORTH LINE OF A 6.83 ACRE TRACT OF LAND, TRACT 5, DESCRIBED IN A DEED RECORDED IN VOLUME 3519 PAGE 548 OF THE DEED RECORDS OF THE SAID COUNTY AND STATE, THE NORTH LINE OF A 1.8778 ACRE TRACT OF LAND DESCRIBED UNDER HARRIS COUNTY CLERK'S FILE NUMBER M816193 AND THE COMMON LINE OF THE SAID SURVEYS, TO A CALLED AND FOUND 5/8 INCH IRON ROD IN THE EAST RIGHT OF WAY LINE OF 30 FOOT DEDICATED ROAD EASEMENT OF THE SAID SUBDIVISION, THE SOUTHWEST CORNER OF THE SAID OUTLOT 104 AND THE SOUTHWEST CORNER OF THE SAID 15.01057 ACRE TRACT OF LAND AND FROM SAID CORNER A FOUND 5/8 INCH IRON ROD BEARS NORTH $44^{\circ} 52' 21''$ WEST, A DISTANCE OF 0.11 FEET;

THENCE: NORTH $02^{\circ} 21' 45''$ WEST, A DISTANCE OF 420.18 FEET, WITH THE EAST LINE OF THE SAID 30 FOOT DEDICATED ROAD EASEMENT, THE WEST LINE OF SAID OUTLOT 104 AND THE WEST LINE OF THE SAID 15.01057 ACRE TRACT OF LAND TO A SET 3/4 INCH IRON ROD WITH A PLASTIC CAP FOR THE SOUTHWEST CORNER OF THE HEREIN DESCRIBED TRACT, THE NORTHWEST CORNER OF THE SAID 3.6230 ACRE TRACT OF LAND, AND ALSO BEING THE PLACE OF BEGINNING AND FROM SAID CORNER A FOUND 1 INCH IRON PIPE BEARS NORTH $19^{\circ} 41' 33''$ WEST, A DISTANCE OF 0.47 FEET;

ER 040 - 66 - 1486

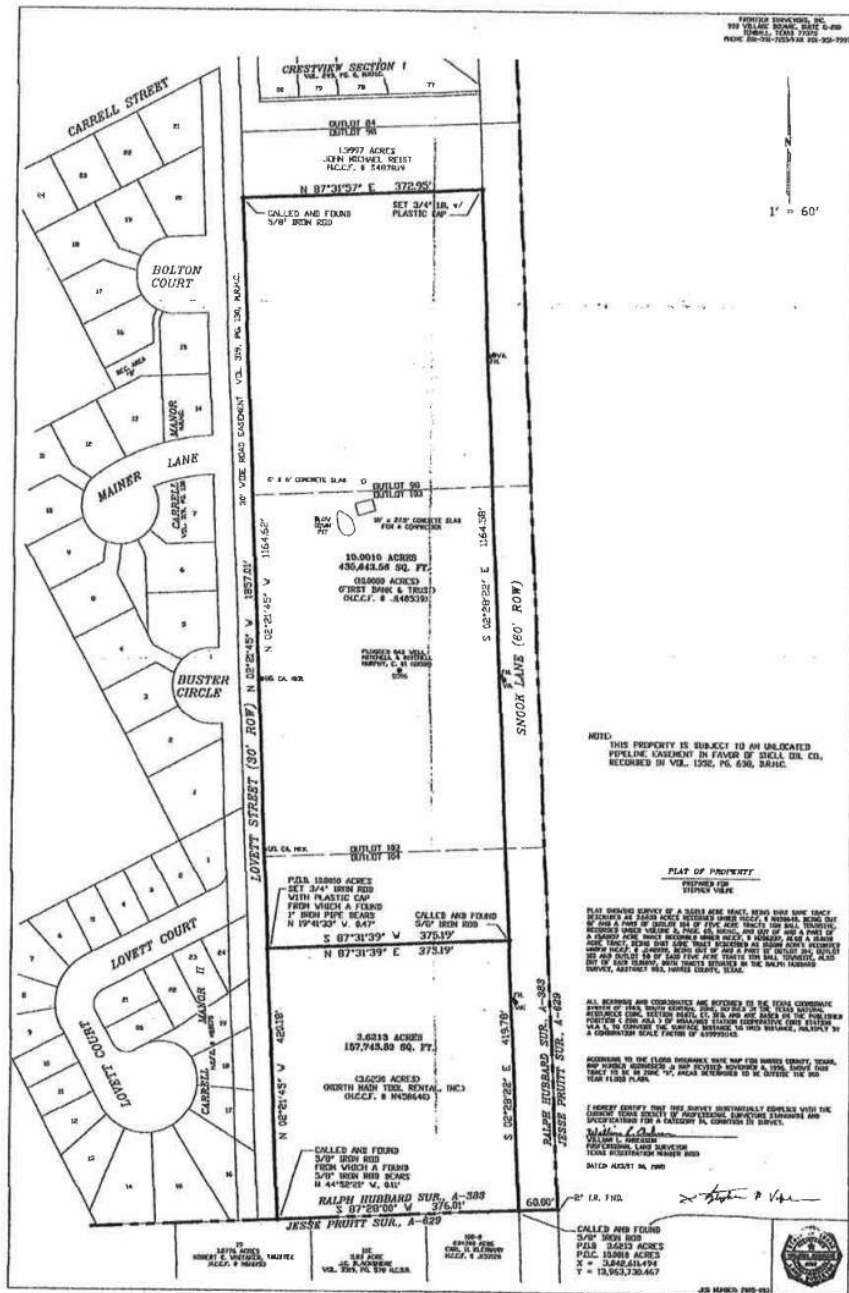
THENCE: NORTH 02° 21' 46" WEST, A DISTANCE OF 1164.82 FEET, CONTINUING WITH THE EAST LINE OF THE SAID 30 FOOT DEDICATED ROAD EASEMENT, THE WEST LINE OF SAID OUTLOT 98, THE WEST LINE OF SAID OUTLOT 103, THE WEST LINE OF SAID OUTLOT 104 AND THE WEST LINE OF THE SAID 15.01057 ACRE TRACT OF LAND, TO A CALLED AND FOUND 5/8 INCH IRON ROD FOR THE NORTHWEST CORNER OF THE HEREIN DESCRIBED TRACT AND THE SOUTHWEST CORNER OF A 1.3997 ACRES OF LAND DESCRIBED UNDER HARRIS COUNTY CLERK'S FILE NUMBER 6487619;

THENCE: NORTH 87° 31' 57" EAST, A DISTANCE OF 372.95 FEET, WITH THE SOUTH LINE OF THE SAID 1.3997 ACRE TRACT OF LAND TO A SET 3/4 INCH IRON ROD WITH A PLASTIC CAP IN THE WEST RIGHT OF WAY LINE OF SAID SNOOK LANE, IN THE EAST LINE OF THE SAID 15.01057 ACRE TRACT OF LAND FOR THE NORTHEAST CORNER OF THE HEREIN DESCRIBED TRACT AND THE SOUTHEAST CORNER OF THE SAID 1.3997 ACRE TRACT OF LAND;

THENCE: SOUTH 02° 28' 22" EAST, A DISTANCE OF 1164.58 FEET, WITH THE WEST RIGHT OF WAY LINE OF SAID SNOOK LANE AND THE EAST LINE OF THE SAID 15.01057 ACRE TRACT OF LAND TO A CALLED AND FOUND 5/8 INCH IRON ROD FOR THE SOUTHEAST CORNER OF THE HEREIN DESCRIBED TRACT AND THE NORTHEAST CORNER OF THE SAID 3.8230 ACRE TRACT OF LAND;

THENCE: SOUTH 87° 31' 39" WEST, A DISTANCE OF 375.19 FEET, WITH THE NORTH LINE OF THE SAID 3.8230 ACRE TRACT OF LAND TO THE PLACE OF BEGINNING AND CONTAINING 10.0010 ACRES OF LAND.

VOLUME 200768



ER 040 - 66 - 1488

EXHIBIT B

DESCRIPTION

30 FOOT AND 50 FOOT PIPELINE EASEMENT

OUT OF A 10.0010 ACRE TRACT OF LAND

RALPH HUBBARD SURVEY A-383,

HARRIS COUNTY, TEXAS

COMMENCING at the southwesterly corner of the said 10.0010 acre tract of land described under Harris County Film Code Number 20110253517, said corner being on the easterly R.O.W. line of Lovett Street and also being the southwesterly corner of the herein described 30 foot and 50 foot pipeline easements:

THENCE N. 02°21'45"W. a distance of 1164.62 feet along the easterly line of the said Lovett Street and westerly line of the said 30 foot pipeline easement to the northwesterly corner of the herein described tract;

THENCE N.87°31'57"E. a distance of 175 feet along the northerly line of the said 10.0010 acre tract of land and the said 50 foot pipeline easement to the most northerly northeast corner of the herein described tract;

THENCE S02°28'03"E., a distance of 50 feet along a easterly line of the said 50 feet pipeline easement to the most northerly southeast corner of the said 30 feet and 50 foot pipeline easements;

THENCE S. 87°31'57" W., a distance of 145.09 feet along the southerly line of the said 50 foot pipeline easement to an interior corner of the said 30 foot and 50 foot pipeline easements;

THENCE S.02°21'45"E., a distance of 1064.62 feet along the easterly line of the said 30 foot pipeline easement to an interior corner of the said 30 foot and 50 foot pipeline easements;

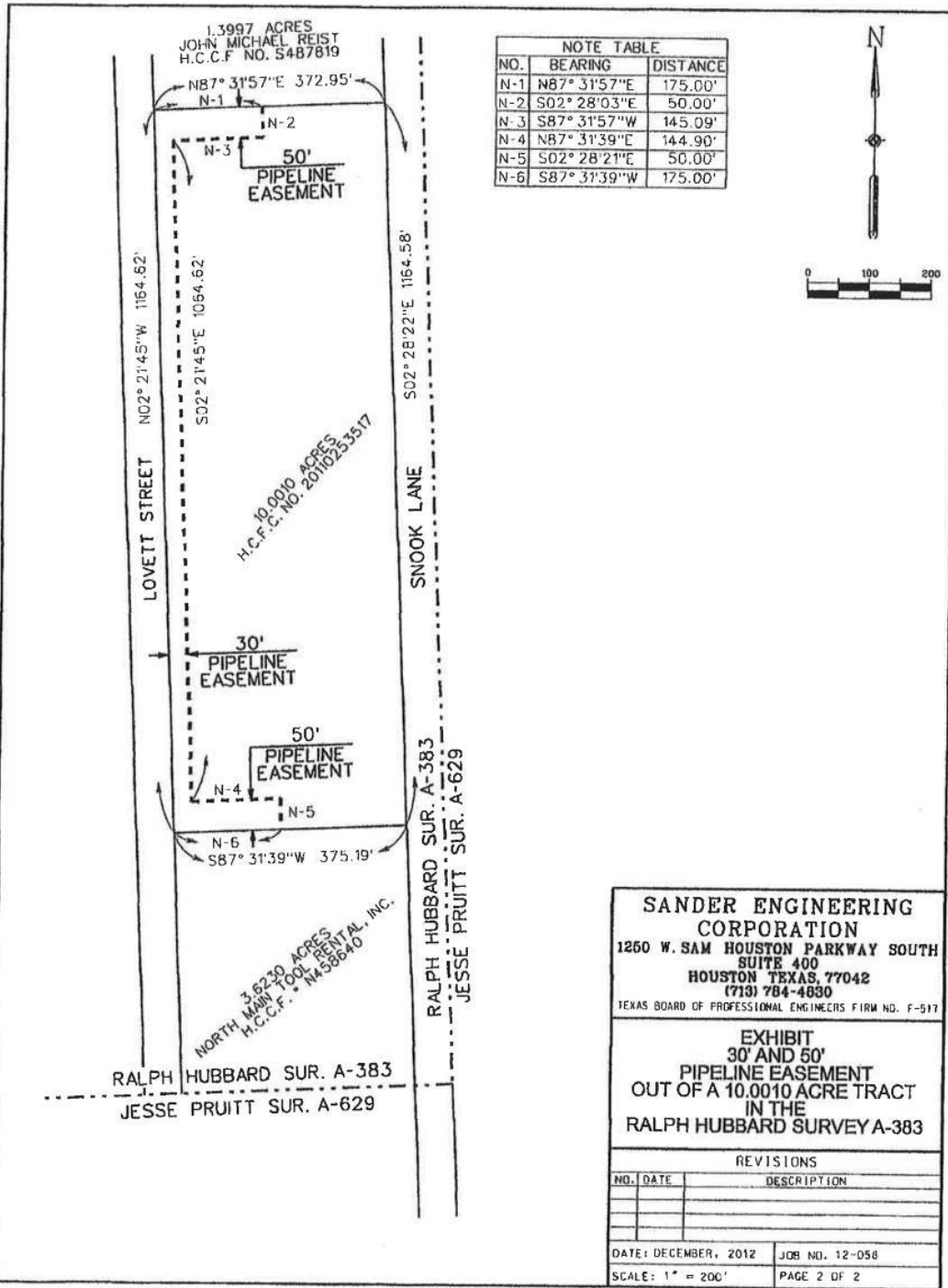
THENCE N.87°31'39"E., a distance of 144.90 feet along a northerly line of the said 50 feet pipeline easement to the most southerly northeast corner of the herein described tract;;

THENCE S.02°28'21"E., a distance of 50 feet along an easterly line of the said 50 foot pipeline easement to the most southerly southeast corner of the herein described tract;

THENCE S.87°31'39"E W., a distance of 175 feet along the southerly line of the said 10.0010 acre tract of land and the 50 foot pipeline easement to the POINT OF BEGINNING and containing 49,438 square feet of land.

ER 040 - 66 - 1489

P:\12-058-PIPELINE-ESMT\12-058.dgn
12/21/2012



ER 040 - 66 - 1490

20130037896
Pages 8
01/25/2013 15:18:48 PM
e-Filed & e-Recorded in the
Official Public Records of
HARRIS COUNTY
STAN STANART
COUNTY CLERK
Fees 40.00

RECORDERS MEMORANDUM

This instrument was received and recorded electronically
and any blackouts, additions or changes were present
at the time the instrument was filed and recorded.

Any provision herein which restricts the sale, rental, or
use of the described real property because of color or
race is invalid and unenforceable under federal law.

THE STATE OF TEXAS

COUNTY OF HARRIS

I hereby certify that this instrument was FILED in
File Number Sequence on the date and at the time stamped
hereon by me; and was duly RECORDED in the Official
Public Records of Real Property of Harris County, Texas.



Stan Stanart
COUNTY CLERK
HARRIS COUNTY, TEXAS



Public Comment Form

(Please type or use black ink)

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

Please return to:

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

Name:

(please print)

Address:

Signature:

Date:

Dorma Rushing

23511 Lovett St
Tomball, TX 77375

Dorma Rushing

11/12/18



I am **FOR** the requested Rezoning as explained on the attached public notice for Zoning Case P18-166. (Please state reasons below)

I am **AGAINST** the requested Rezoning as explained on the attached public notice for Zoning Case P18-166. (Please state reasons below)

Date, Location & Time of **Planning & Zoning Commission** meeting:

Monday, November 12, 2018 6:00 PM

City Council Chambers of the City of Tomball, City Hall
401 Market Street, Tomball, Texas

Date, Location & Time of **City Council** meeting:

Monday, November 19, 2018, 6:00 PM

City Council Chambers of the City of Tomball, City Hall
401 Market Street, Tomball, Texas

COMMENTS:

You may also comment via email to ALindley@tomballtx.gov.

Please reference the case number in the subject line.

For questions regarding this request please call Amelia Lindley @ 281-290-1410.



Public Comment Form

(Please type or use black ink)

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

Please return to:

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

Name:

(please print)

Address:

Signature:

Date:

LYNDA EVANS

922 Bolton Ct

Tomball Tx

Lynda Evans

11-9-18

☒

I am **FOR** the requested Rezoning as explained on the attached public notice for Zoning Case P18-166. (Please state reasons below)

☐

I am **AGAINST** the requested Rezoning as explained on the attached public notice for Zoning Case P18-166. (Please state reasons below)

Date, Location & Time of **Planning & Zoning Commission** meeting:

Monday, November 12, 2018 6:00 PM

City Council Chambers of the City of Tomball, City Hall
401 Market Street, Tomball, Texas

Date, Location & Time of **City Council** meeting:

Monday, November 19, 2018, 6:00 PM

City Council Chambers of the City of Tomball, City Hall
401 Market Street, Tomball, Texas

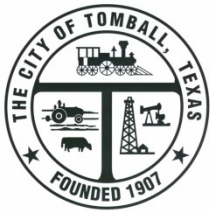
COMMENTS:

I really hope that this 'Rezoning' is going to get rid of the red + the white shawty, drug houses will be condemned.

You may also comment via email to ALindley@tomballtx.gov.

Please reference the case number in the subject line.

For questions regarding this request please call Amelia Lindley @ 281-290-1410.



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: P18-166

APPLICANT/OWNER: Great Oak School

LOCATION: Generally located on the east side of Lovett Street, south of Carrell Street

PROPOSAL: To amend Chapter 50 (Zoning) of the Tomball Code of Ordinances by rezoning approximately 10 acres of land legally described as Lot 1 Block 1 Welling Owens Quadrplexes, within the City of Tomball, Harris County, Texas, from the Planned Development 2 District to the Office District.

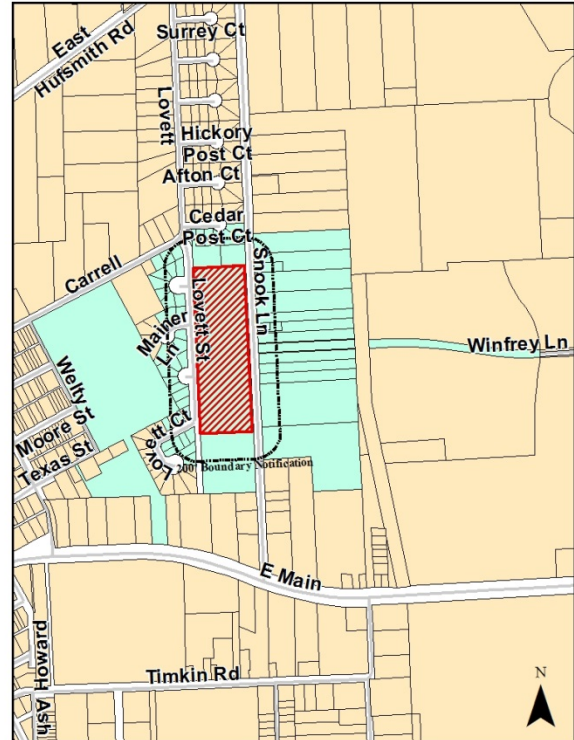
CONTACT: Amelia Lindley, Planner

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, November 12, 2018, 6:00 PM**

**City Council Public Hearing:
*Monday, November 19, 2018, 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.

**NOTICE OF PUBLIC HEARING
CITY OF TOMBALL
PLANNING & ZONING COMMISSION (P&Z)
NOVEMBER 12, 2018
&
CITY COUNCIL
NOVEMBER 19, 2018**



Notice is Hereby Given that a Public Hearing will be held by the P&Z of the City of Tomball on **Monday, November 12, 2018, at 6:00 P.M.**, and by the City Council of the City of Tomball on **Monday, November 19, 2018, 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 P18-161: Request by Timothy Hertel, on behalf of DFLEX POWER, LLC, to amend Chapter 50 (Zoning) of the Tomball Code of Ordinances by rezoning approximately 3 acres of land legally described as Tract 253A Tomball Outlots, within the City of Tomball, Harris County, Texas, generally located on the west side of Pitchford Road at 902 Pitchford Road, from the Agricultural District to the Light Industrial District.

Zoning Case P18-166: Request by Great Oak School to amend Chapter 50 (Zoning) of the Tomball Code of Ordinances by rezoning approximately 10 acres of land legally described as Lot 1 Block 1 Welling Owens Quadrplexes, within the City of Tomball, Harris County, Texas, generally located on the east side of Lovett Street, south of Carrell Street, from the Planned Development 2 District to the Office District.

Zoning Case P18-167: Request by Great Oak School for a Conditional Use Permit to operate a *School, other than public or denominational* on approximately 10 acres of land legally described as Lot 1 Block 1 Welling Owens Quadrplexes, within the City of Tomball, Harris County, Texas. The property is generally located on the east side of Lovett Street, south of Carrell Street, and is zoned Office 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 **8th** day of **November 2018** by 5:00 p.m., and remained posted for at least 72 continuous hours preceding the scheduled time of said meeting.

Elizabeth Jones

Elizabeth Jones

Administrative Assistant

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.

Regular City Council

Agenda Item

Data Sheet

Meeting Date: December 3, 2018

Topic:

Adopt, on Second Reading, Ordinance No. 2018-39, An Ordinance Of The City Of Tomball, Texas, Amending Chapter 50 (Zoning) Of The Tomball Code Of Ordinances By Granting A Conditional Use Permit (CUP) To Great Oak School To Operate A “School, Other Than Public Or Denominational”; Said Property Being Approximately 10 Acres, And Being Legally Described As Lot 1 Block 1 Welling Owens Quadruplexes, Within The City Of Tomball, Harris County, Texas, Generally Located On The East Side Of Lovett Street, South Of Carrell Street And Zoned Office District; Providing Requirements And Conditions For This CUP; Containing Findings And Other Provisions Relating To The Subject; Providing A Penalty In An Amount Not To Exceed \$2,000 For Violations Hereof; And Providing For Severability

Background:

On Monday, November 12, 2018, after conducting a public hearing, the Planning and Zoning Commission voted unanimously to recommend Approval of the Conditional Use Permit with conditions set forth by City Staff.

Origination:

Great Oak School

Recommendation:

Approval

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

Craig T. Meyers P.E., Community Development Director

ACTION TAKEN

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

Ordinance No. 2018-39

P18-167 Staff Report

P18-167 Response Forms

Property Owner Notification

Notice of Public Hearing

ORDINANCE NO. 2018-39

AN ORDINANCE OF THE CITY OF TOMBALL, TEXAS, AMENDING CHAPTER 50 (ZONING) OF THE TOMBALL CODE OF ORDINANCES BY GRANTING A CONDITIONAL USE PERMIT (CUP) TO GREAT OAK SCHOOL TO OPERATE A "SCHOOL, OTHER THAN PUBLIC OR DENOMINATIONAL"; SAID PROPERTY BEING APPROXIMATELY 10 ACRES, AND BEING LEGALLY DESCRIBED AS LOT 1 BLOCK 1 WELLING OWENS QUADRUPLEXES, WITHIN THE CITY OF TOMBALL, HARRIS COUNTY, TEXAS, GENERALLY LOCATED ON THE EAST SIDE OF LOVETT STREET, SOUTH OF CARRELL STREET AND ZONED OFFICE DISTRICT; PROVIDING REQUIREMENTS AND CONDITIONS FOR THIS CUP; CONTAINING FINDINGS AND OTHER PROVISIONS RELATING TO THE SUBJECT; PROVIDING A PENALTY IN AN AMOUNT NOT TO EXCEED \$2,000 FOR VIOLATIONS HEREOF; AND PROVIDING FOR SEVERABILITY.

* * * * *

Whereas, Great Oak School, has requested a CUP to operate a "school, other than public or denominational" on approximately 10 acres of land, legally described as Lot 1 Block 1 Welling Owens Quadruplexes, generally located on the east side of Lovett Street, south of Carrell Street, in the City of Tomball, Harris County, Texas, (the "Property"), and

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

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

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

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

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

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

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

Section 2. A CUP to operate a “school, other than public or denominational” at the Property and subject to the terms and conditions set forth below is hereby granted to Great Oak School.

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

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

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

Section 6. The CUP authorized hereby shall be, and is, subject to the following additional limitations, restrictions and conditions:

- 1) The site shall be developed and operated in substantial compliance with the concept plan (Exhibit “A”);
- 2) The development shall limit driveway entrances/exits on Lovett Street to no more than two and shall design the development so the main entrance to the school is accessed from Snook Lane;
- 3) A 15 foot landscape buffer shall be installed and maintained on the development adjacent to Lovett Street.

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

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

FIRST READING:

READ, PASSED AND APPROVED AS SET OUT BELOW AT THE MEETING OF THE CITY COUNCIL OF THE CITY OF TOMBALL HELD ON THE 19TH DAY OF NOVEMBER 2018.

COUNCILMAN FORD	<u>AYE</u>
COUNCILMAN STOLL	<u>AYE</u>
COUNCILMAN DEGGES	<u>AYE</u>

COUNCILMAN TOWNSEND
COUNCILMAN QUINN

ABSENT
AYE

SECOND READING:

READ, PASSED AND APPROVED AS SET OUT BELOW AT THE MEETING OF THE
CITY COUNCIL OF THE CITY OF TOMBALL HELD ON THE 3RD DAY OF DECEMBER
2018.

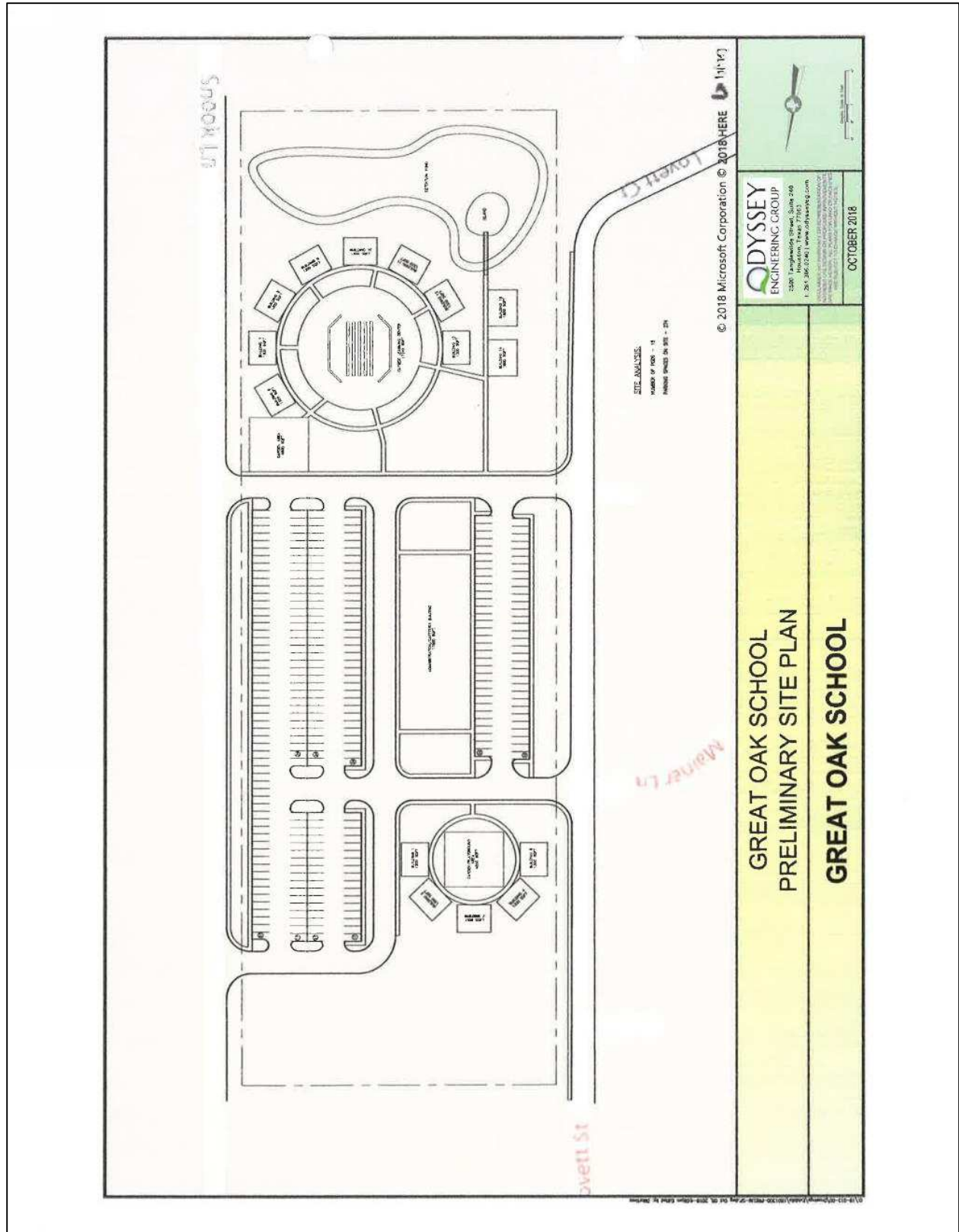
COUNCILMAN FORD
COUNCILMAN STOLL
COUNCILMAN DEGGES
COUNCILMAN TOWNSEND
COUNCILMAN QUINN

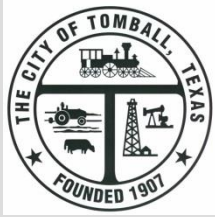
Gretchen Fagan, Mayor

ATTEST:

Doris Speer, City Secretary

Exhibit "A"





Conditional Use Permit (CUP) Staff Report

Planning & Zoning Commission Public Hearing Date: November 12, 2018
City Council Public Hearing Date: November 19, 2018

Rezoning Case: P18-167
Property Owner(s): 23730 Lovett LLC
Applicant(s): Great Oak School
Legal Description: Lot 1 Block 1 Welling Owens Quadruplexes
Location: East side of Lovett Street, south of Carrell Street (Exhibit "A")
Area: 10 acres
Comp Plan Designation: High Density Residential (Exhibit "B")
Present Zoning and Use: Planned Development 2 (Exhibit "C") / Undeveloped property (Exhibit "D")
Proposed Use(s): Great Oak School
Request: Conditional Use Permit (CUP) to allow for the operation of a "school, other than public or denominational"

Adjacent Zoning & Land Uses:

North: Single-Family 9 and Commercial District / Single-family residence and undeveloped land
South: Commercial District / Office/warehouse lease spaces
West: Single-Family 9 and Single-Family 6 District / Single-family residences
East: Commercial District / Snook Lane, multiple non-residential uses, undeveloped land

BACKGROUND

City Staff first met with the applicant in March 2018 to discuss the development of a *school, other than public or denominational*. After multiple discussions, the applicant submitted a Rezoning Application requesting a rezoning to the Office District, as well as a Conditional Use Permit Application for the proposed use.

According to Section 50-2 (Definitions), a *school, other than public or denominational* "means a school under the sponsorship of a private agency or corporation, other than a public or religious agency, which offers a curriculum that is generally equivalent to public elementary and/or secondary schools".

Great Oak School has operated in Tomball for approximately 10 years at The Episcopal Church of the Good Shepherd; however, the school is not affiliated with the church. Great Oak School is looking to purchase property in Tomball for the construction of a new school facility.

ANALYSIS

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

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

The Comprehensive Plan Future Land Use Map identifies the subject site as High Density Residential. The High Density Residential category includes various housing products such as patio homes, townhomes, duplexes and apartments, among others. This category “may also include such supporting land uses as neighborhood shops and services, parks and recreational amenities, religious institutions, and schools”. At first glance, it may appear the proposed use does not meet the Future Land Use Map classification, however, schools are included in the High Density Residential designation and therefore, the proposed use meets the intent of the Comprehensive Plan.

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

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

According to Section 50-75 (Office District), the purpose of the Office District is to provide “a transition district between residential uses and more intense uses”. Uses in the Office District “shall not include uses that create excessive amounts of traffic, noise, trash or late-night business operations”. Any traffic generated by a development in the Office District “shall not be encouraged to travel through residential areas”. A school typically does not generate excessive noise or late-night operations. Traffic impacts can be addressed by adding a condition of approval to the CUP ordinance. It appears the proposed use is consistent with the purpose and intent of the Office District regulations.

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

Should the CUP application be approved by City Council, the applicant will be required to submit site and building plan applications and supporting documents to the City for review and approval. Specific details of site modifications will be shown at the time of plan review. It appears the proposed use will meet all supplemental standards.

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

The proposed use appears to be compatible with the adjacent developments. Properties in the immediate area on Snook Lane are office/warehouse, storage, services and parts shop, and undeveloped. Properties on Lovett Street are residential; however, it is not uncommon for schools to be located in close proximity to residences. Chapter 50 (Zoning) outlines enhanced requirements for nonresidential uses that abut residential zoning districts. These include increased setbacks for buildings, landscape buffers and opaque screening.

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

Staff does not anticipate any adverse effects on surrounding properties.

PUBLIC COMMENT

Property owners within 200 feet of the project site were mailed notification of this proposal on October 26, 2018. A sign was placed on the property and Notice of Public Hearing was published in the paper on October 31, 2018. Any public comment forms received by City Staff will be presented in the Planning & Zoning Commission and City Council packets or delivered during the time of the public meeting.

RECOMMENDATION

Based on the findings outlined in the analysis section of this staff report, City staff recommends approval of Zoning Case P18-167 for the following reasons:

1. The proposed use is appropriate for the location and surrounding uses;
2. The proposed use meets the intent of the Office Zoning District and would create a transition district between Commercial on Snook Lane and Single-Family 6 and Single-Family 9 on Lovett Street;
3. The proposed use meets the goals of the Comprehensive Plan.

City Staff also recommends the following conditions:

1. The site shall be developed and operated in substantial compliance with the concept plan (Exhibit "F");
2. The development shall limit driveway entrances/exits on Lovett Street to no more than two and shall design the development so the main entrance to the school is accessed from Snook Lane;
3. A 15 foot landscape buffer shall be installed and maintained on the development adjacent to Lovett Street.

EXHIBITS

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

Exhibit "A"
Aerial Photo



Exhibit "B"
Comprehensive Plan

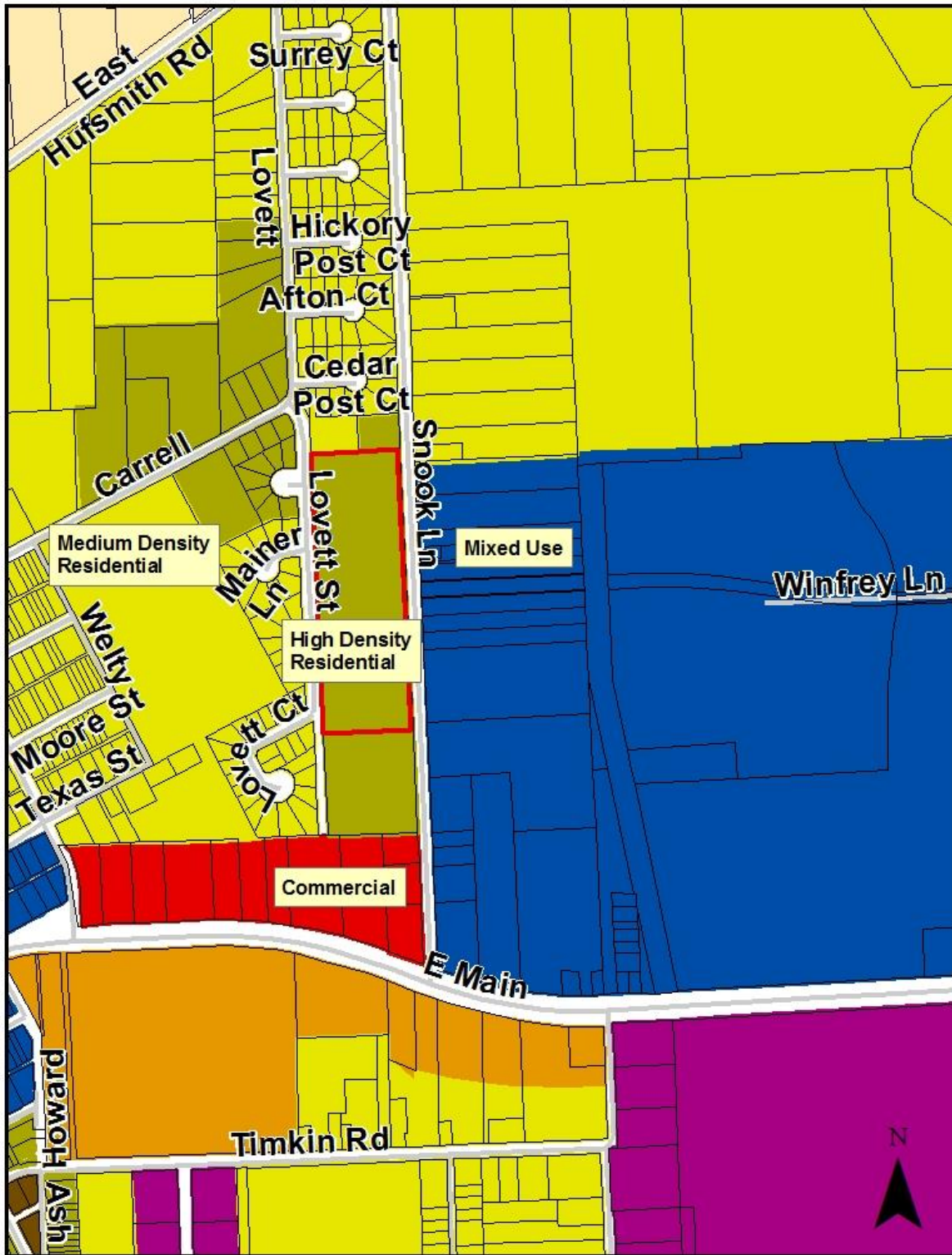
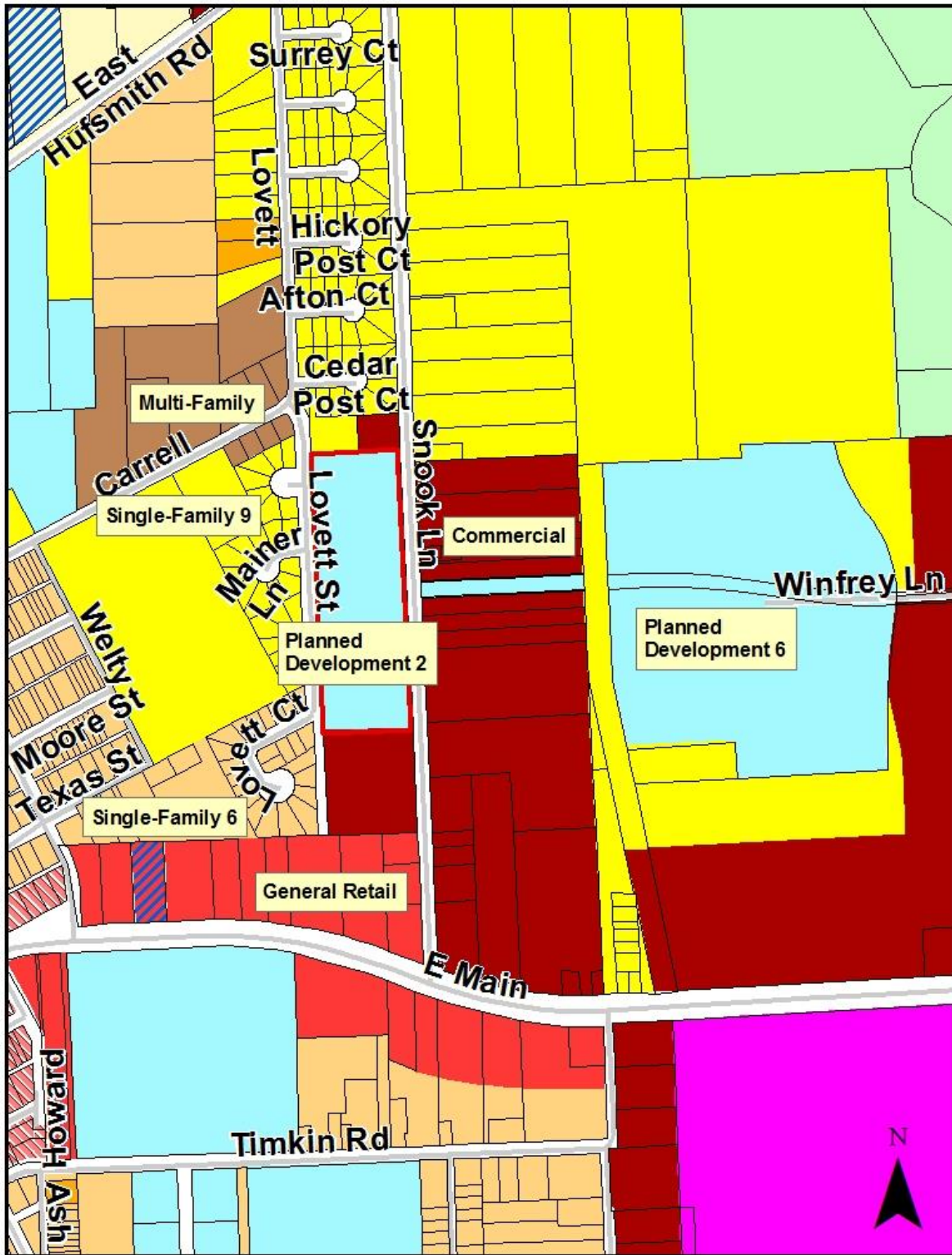


Exhibit "C"
Zoning Map

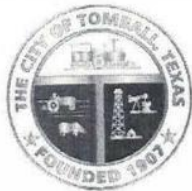


**Exhibit “D”
Site Photo**



Exhibit "E"
CUP Application

Revised 5/19/15



**APPLICATION FOR
CONDITIONAL USE PERMIT**
Community Development Department
Planning Division

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

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

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

Applicant

Name: GREAT OAK SCHOOL Title: _____
Mailing Address: 715 CARRELL ST. City: TOMBALL State: TX
Zip: 77375
Phone: (281) 516-7296 Fax: (____) _____ Email: ZUZANA@GREAT OAK SCHOOL.ORG

Owner

Name: 23730 LOVETT LLC Title: _____
Mailing Address: 888 AVENUE D, STE. B City: KATY State: TX
Zip: 77493
Phone: (281) 391-7365 Fax: (713) 355 4809 Email: SGHVNT@HFPLLC.NET

Engineer/Surveyor (if applicable)

Name: ODYSSEY ENGINEERING GROUP Title: _____
Mailing Address: 2500 TANGLEWILDE ST City: HOUSTON State: TX
Zip: 77063 # 480
Phone: (281) 306-0240 Fax: (____) _____ Email: MGILBERT@ODYSSEYEG.COM
X109

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

www.tomballtx.gov

Description of Proposed Project: PRIVATE SCHOOL CAMPUS
Physical Location of Property: 23730 LOVETT ST, TOMBALL, TX 77375
[General Location - approximate distance to nearest existing street corner]
Legal Description of Property: OUTLOT 104, 103 & 98, ALSO 15.01057 ABSTRACT 383
[Survey/Abstract No. and Tracts; or platted Subdivision Name with Lots/Block]
HCAD Identification Number: 3148539 Acreage: 10
Current Use of Property: NOT USED - WOODED
Proposed Use of Property: PRIVATE SCHOOL

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

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

X [Signature] 10-9-18
Signature of Applicant Date
X By: Stephen Hunt, manager 10/10/18
Signature of Owner Date



Great Oak School is a private, not for profit Waldorf school. We are the largest Waldorf school in Houston, second largest in Texas. Currently we serve 100 students from preschool through seventh grade, with plans to add eighth grade in 2019-2020. We have 70 families, out of which 15 live in Tomball and more keep moving to Tomball to be closer to the school.



Waldorf education is an educational philosophy founded in Germany in 1919 that focuses on the whole child through a rigorous and developmentally appropriate curriculum. Our students learn by doing and experiencing the world. Beginning in preschool children garden, chop vegetables, knead bread, make soup and play. We teach German, Spanish, knitting and the pentatonic flute in first grade. In third grade kids begin learning a string instrument. Our education style produces confident, caring and creative kids.

Great Oak School has been leasing space from the Episcopal Church of the Good Shepherd at 715 Carrell Street for the last ten years. We love our location in Tomball but are outgrowing our current space. Our kindergartens are full, our pre-school has a waiting list and the church is out of classrooms. We decided to purchase the Lovett property to ensure our school has room to grow, just like our kids.



The Lovett property is an ideal setting for our future campus. As at our current location, we love the beauty of the property with trees and greenery. Modeled after the Austin Waldorf School, our plan for the new campus is to integrate the buildings among the trees and keep the campus aesthetically pleasing and engaging. Large playgrounds, gardens and many trees provide an engaging aesthetic that naturally calms children and prepares them to learn.

Great Oak School requests the Lovett property be rezoned from planned development district to office district with conditional use permit to accommodate our future growth. We're excited about the new property and we're excited about our future in Tomball.

Thank you,

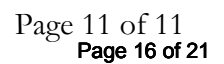
Dave Tegtmeier

Dad of Owen and Elliot

On Behalf of Great Oak School's Board of Trustees

715 CARRELL STREET • TOMBALL, TX 77375 • 281.516.7296 • GREATOAKSCHOOL.ORG

Page 93 of 331





Public Comment Form

(Please type or use black ink)

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

Please return to:

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

Name:

(please print)

Address:

Signature:

Date:

Dorma Rushing

23511 Lovett St
Tomball, TX 77375

Dorma Rushing

11/12/18

☒

I am **FOR** the requested Conditional Use Permit as explained on the attached public notice for Zoning Case P18-167. (Please state reasons below)

☐

I am **AGAINST** the requested Conditional Use Permit as explained on the attached public notice for Zoning Case P18-167. (Please state reasons below)

Date, Location & Time of **Planning & Zoning Commission** meeting:

Monday, November 12, 2018, 6:00 PM

City Council Chambers of the City of Tomball, City Hall
401 Market Street, Tomball, Texas

Date, Location & Time of **City Council** meeting:

Monday, November 19, 2018 6:00 PM

City Council Chambers of the City of Tomball, City Hall
401 Market Street, Tomball, Texas

COMMENTS:

You may also comment via email to ALindley@tomballtx.gov

Please reference the case number in the subject line.

For questions regarding this request please call Amelia Lindley @ 281-290-1410.



Public Comment Form

(Please type or use black ink)

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

Please return to:

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

Name:

(please print)

Address:

Signature:

Date:

LYNDA EVANS

922 Bolton Ct

Tomball TX

Lynnda Evans

11-9-18

I am **FOR** the requested Conditional Use Permit as explained on the attached public notice for Zoning Case P18-167. (Please state reasons below)

I am **AGAINST** the requested Conditional Use Permit as explained on the attached public notice for Zoning Case P18-167. (Please state reasons below)

Date, Location & Time of **Planning & Zoning Commission** meeting:

Monday, November 12, 2018, 6:00 PM

City Council Chambers of the City of Tomball, City Hall
401 Market Street, Tomball, Texas

Date, Location & Time of **City Council** meeting:

Monday, November 19, 2018 6:00 PM

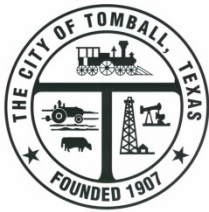
City Council Chambers of the City of Tomball, City Hall
401 Market Street, Tomball, Texas

COMMENTS:

You may also comment via email to ALindley@tomballtx.gov

Please reference the case number in the subject line.

For questions regarding this request please call Amelia Lindley @ 281-290-1410.



Notice of Public Hearing

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

CASE NUMBER: P18-167

APPLICANT/OWNER: Great Oak School

LOCATION: Generally located on the east side of Lovett Street, south of Carrell Street

PROPOSAL: Conditional Use Permit to operate a *School, other than public or denominational* on approximately 10 acres of land legally described as Lot 1 Block 1 Welling Owens Quadruplexes, within the City of Tomball, Harris County, Texas, and is zoned Office District.

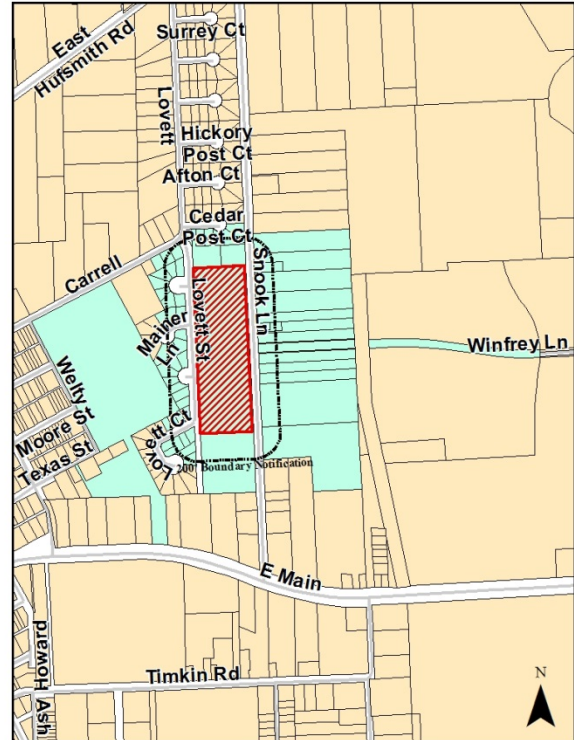
CONTACT: Amelia Lindley

PHONE: (281) 290-1410

E-MAIL: alindley@tomballtx.gov

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

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



**Planning & Zoning Commission
Public Hearing:
Monday, November 12, 2018, 6:00 PM**

**City Council Public Hearing:
*Monday, November 19, 2018, 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.

**NOTICE OF PUBLIC HEARING
CITY OF TOMBALL
PLANNING & ZONING COMMISSION (P&Z)
NOVEMBER 12, 2018
&
CITY COUNCIL
NOVEMBER 19, 2018**



Notice is Hereby Given that a Public Hearing will be held by the P&Z of the City of Tomball on **Monday, November 12, 2018, at 6:00 P.M.**, and by the City Council of the City of Tomball on **Monday, November 19, 2018, 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 P18-161: Request by Timothy Hertel, on behalf of DFLEX POWER, LLC, to amend Chapter 50 (Zoning) of the Tomball Code of Ordinances by rezoning approximately 3 acres of land legally described as Tract 253A Tomball Outlots, within the City of Tomball, Harris County, Texas, generally located on the west side of Pitchford Road at 902 Pitchford Road, from the Agricultural District to the Light Industrial District.

Zoning Case P18-166: Request by Great Oak School to amend Chapter 50 (Zoning) of the Tomball Code of Ordinances by rezoning approximately 10 acres of land legally described as Lot 1 Block 1 Welling Owens Quadrplexes, within the City of Tomball, Harris County, Texas, generally located on the east side of Lovett Street, south of Carrell Street, from the Planned Development 2 District to the Office District.

Zoning Case P18-167: Request by Great Oak School for a Conditional Use Permit to operate a *School, other than public or denominational* on approximately 10 acres of land legally described as Lot 1 Block 1 Welling Owens Quadrplexes, within the City of Tomball, Harris County, Texas. The property is generally located on the east side of Lovett Street, south of Carrell Street, and is zoned Office 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 **8th** day of **November 2018** by 5:00 p.m., and remained posted for at least 72 continuous hours preceding the scheduled time of said meeting.

Elizabeth Jones

Elizabeth Jones

Administrative Assistant

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.

Regular City Council

Agenda Item

Data Sheet

Meeting Date: December 3, 2018

Topic:

Approve, on First Reading, Resolution No. 2018-32-TEDC, a Resolution of the City Council of the City of Tomball, Texas, authorizing and approving the Tomball Economic Development Corporation's Project to Expend Funds in accordance with an Economic Development Agreement by and between the Corporation and Industrial Reserve, LLC, to make direct incentives to, or expenditures for, assistance with infrastructure costs to be required or suitable for the promotion of new or expanded business development related to the development and construction of a office/warehouse building to be located on approximately 1.9890 acres of land in the Jesse Pruitt Survey, Abstract 608, Harris County, Texas, and generally located at the northwest corner of Cherry Street and Theis Lane, Tomball, TX 77375. The estimated amount of expenditures for such Project \$44,650.00.

Background:

All expenditures of the Tomball Economic Development Corporation (TEDC) sales tax revenue must first be approved as a "Project" of the Corporation. At its regular meeting on November 13, 2018, the TEDC Board of Directors did take formal action to approve, as a Project of the TEDC, an agreement with Industrial Reserve LLC for the promotion of new or expanded business development related to the construction of an 25,200 square foot office/warehouse building on a 1.989-acre tract of land generally located at the northwest corner of Cherry Street and Theis Lane. The Tomball City Council has final approval authority over all projects and agreements of the TEDC.

Origination:

John Clint Riley, Partner, Industrial Reserve, LLC

Recommendation:

Approval of Resolution No. 2018-32-TEDC on first reading.

Funding:

Yes

Account Number:Project Grants

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

Kelly Violette, Executive Director, Tomball Economic Development Corporation

ACTION TAKEN

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

ATTACHMENTS:

Resolution No. 2018-32-TEDC

Cover Memo

Request Letter
TEDC Performance Agreement
Economic Impact Analysis

RESOLUTION NO. 2018-32-TEDC

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF TOMBALL, TEXAS, AUTHORIZING AND APPROVING THE TOMBALL ECONOMIC DEVELOPMENT CORPORATION'S PROJECT TO EXPEND FUNDS IN ACCORDANCE WITH AN ECONOMIC DEVELOPMENT AGREEMENT BY AND BETWEEN THE CORPORATION AND INDUSTRIAL RESERVE LLC TO PROMOTE AND DEVELOP A NEW OR EXPANDED BUSINESS ENTERPRISE; CONTAINING OTHER PROVISIONS RELATING TO THE SUBJECT; AND PROVIDING FOR SEVERABILITY.

* * * * *

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

WHEREAS, the Board of Directors of the TEDC had adopted as a specific project the expenditure of the estimated amount of Forty-Four Thousand Six Hundred and Fifty Dollars (\$44,650), found by the Board to be required or suitable to promote a new business development by Industrial Reserve LLC; and

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

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

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

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

Section 2. The City Council hereby authorizes and approves the adoption, by the Board of Directors of the Tomball Economic Development Corporation, as a specific project for the economic development of the City, an expenditure of the estimated amount of Forty-Four Thousand Six Hundred and Fifty Dollars (\$44,650), to Industrial Reserve LLC in accordance with an economic development agreement by and between the TEDC and Industrial Reserve LLC, to promote and develop a new or expanded business enterprise, to be located in the Jesse Pruitt survey, Abstract 608, Harris County, Texas, and generally located at the northwest corner of Cherry Street and Theis Lane, Commercial Park Road, Tomball, TX 77375.

Section 3. In the event any clause, phrase, provision, sentence, or part of this Resolution or the application of the same to any person or circumstance shall for any reason be adjudged invalid or

held unconstitutional by a court of competent jurisdiction, it shall not affect, impair, or invalidate this Resolution as a whole or any part or provision hereof other than the part declared to be invalid or unconstitutional; and the City Council of the City of Tomball, Texas, declares that it would have passed each and every part of the same notwithstanding the omission of any such part thus declared to be invalid or unconstitutional, whether there be one or more parts.

PASSED AND APPROVED on first reading this ____ day of _____, 2018.

PASSED, APPROVED, AND RESOLVED on second and final reading this ____ day of _____, 2018.

Gretchen Fagan, Mayor

ATTEST:

Doris Speer, City Secretary



TO: Honorable Mayor and City Council

FROM: Kelly Violette
Executive Director

MEETING DATE: December 3, 2018

SUBJECT: Industrial Reserve, LLC

ITEM TYPE: Action

The Tomball Economic Development Corporation has received a request from John Clint Riley, Partner of Industrial Reserve, LLC, for assistance with infrastructure costs related to the development of a proposed office/warehouse building.

Industrial Reserve, LLC, proposes to develop approximately 1.989 acres located at the northwest corner of Cherry Street and Theis Lane in Tomball. The development will consist of an approximately 25,200 square-foot office/warehouse building, comprised of 22,782 square feet of warehouse space and 2,418 square feet of showroom, office, and ancillary space. The estimated capital investment for the project is over \$2.8 million.

Industrial Reserve has negotiated a 10-year lease agreement with Goodman Distribution Inc. for use as a showroom and regional distribution center for the company.

The eligible infrastructure improvements include water, sanitary, gas, storm sewer, telecommunications, electric utilities and related site improvements totaling approximately \$446,500.

Targeted infrastructure that will promote the development and expansion of business enterprise is a permissible project as outlined in Texas Economic Development Legislation.

An economic impact analysis is included with the agreement to show the impact of this project on Tomball's economy. Per the analysis, the 5-year net benefit of this project on Tomball's economy is \$163,944.

If the agreement between the TEDC and Industrial Reserve, LLC is approved as a Project of the Corporation, the grant funding amount will not exceed \$44,650, based on the actual expenditures for the eligible infrastructure improvements.

October 30th, 2018

Dear TEDC Board of Directors:

On behalf of Industrial Reserve, LLC, we appreciate the opportunity to request grant funding from TEDC for the completion of Goodman Distribution Center project in Tomball, TX.

It is our goal to help develop Goodman Distribution Center into serving the needs of both new and established businesses, while meeting the requirements for flexible office and warehouse space. The center will open the door for more revenue and employment opportunities in Tomball as well.

Goodman Distribution Center will consist of one 25,200 square foot building and will be located at Thies Street and Cherry Street.

Construction would set to begin in January 2019 and scheduled for completion in August 2019.

We are seeking grant funding for approved installations at our project, including infrastructure, landscaping and signage improvements. Our estimated budget is as follows:

Tenant	Goodman Shreveport Tomball	NNN Lease	Guaranteed by Goodman Global
Size	25,200 Office/Showroom Regional Distribution center		
	25,200 SF	Budget	
Land		\$475,000.00	Based on contracted land cost E Mcneese
Geo/Phase I/Topo		\$10,000.00	
A&E		\$25,000.00	
Civil		\$40,000.00	
Legal		\$10,000.00	
City Fees	tap/Impact	\$25,000.00	
Construction		\$1,817,000.00	
Development Fee		\$100,000.00	
Financing Cost		\$22,000.00	
Carry Costs		\$90,000.00	
Commissions		\$110,000.00	

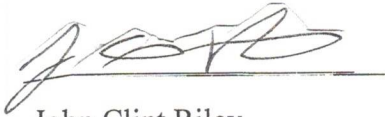
Contingency	\$150,000.00
Total Cost	\$2,874,000.00

Having completed research on the market, our project should complement Tomball and be a valuable business to the existing developments in the area.

Furthering assistance in your consideration, we have enclosed the requested Project Data sheet and Certified survey.

Any questions you may have about the Goodman Distribution Center, feel free to ask. Please contact me by phone at 214-226-4626, for a prompt response. We are grateful for the opportunity for your trust in our development and your assistance. Thank you for your consideration.

Sincerely,

A handwritten signature in black ink, appearing to read "John Clint Riley", written over a horizontal line.

John Clint Riley

Partner

Industrial Reserve, LLC

AGREEMENT

THE STATE OF TEXAS §
 § KNOW ALL MEN BY THESE PRESENTS:
COUNTY OF HARRIS §

This Agreement (the “Agreement”) is made and entered into by and between the Tomball Economic Development Corporation, an industrial development corporation created pursuant to Tex. Rev. Civ. Stat. Ann. Art. 5190.6, Section 4B, located in Harris County, Texas (the “TEDC”), and **Industrial Reserve, LLC** (the “Company”), 738 Armstrong Blvd., Coppel, TX, 75019.

WITNESSETH:

WHEREAS, it is the established policy of the TEDC to adopt such reasonable measures from time-to-time as are permitted by law to endeavor to attract industry, create and retain primary jobs, expand the growth of the City of Tomball (the “City”), and thereby enhance the economic stability and growth of the City; and

WHEREAS, the Company proposes to develop a 1.989-acre tract of land within the City, located in the Jesse Pruitt Survey, Abstract 608, Harris County, Texas and generally located at the northwest corner of Cherry Street and Theis Lane, Tomball, TX 77375 (the “Property”), more particularly described in Exhibit “A,” attached hereto and made a part hereof; and

WHEREAS, such development shall include the construction of a 25,200 square-foot office/warehouse building; and

WHEREAS, the TEDC agrees to provide to the Company the sum of up to Forty-Four Thousand Six Hundred and Fifty Dollars (\$44,650), or an amount equal to ten (10) percent of actual costs if less than the sum stated above, to assist in the construction of infrastructure

improvements (the “Infrastructure Improvements”), identified and described in Exhibit “B,” attached hereto and made a part hereof; and

WHEREAS, the Company has agreed, in exchange and as consideration for the funding, to satisfy and comply with certain terms and conditions; and

NOW, THEREFORE, in consideration of the premises and the mutual benefits and obligations set forth herein, including the recitals set forth above, the TEDC and the Company agree as follows:

1.

The Company covenants and agrees that it will construct and maintain on the Property a 25,200 square-foot office/warehouse building (the “Improvements”) identified and described on Exhibit “C,” attached hereto and made a part hereof. In conjunction with the development of the Property, the Company further agrees to construct the Infrastructure Improvements contemplated by this Agreement, in accordance with the requirements of the ordinances of the City and the plans and specifications approved by the City. The Company further represents and agrees that it will certify the costs of the construction of such Infrastructure Improvements to the TEDC prior to construction.

2.

The construction of the Improvements to the Property, including construction of the Infrastructure Improvements shall be completed, and all necessary occupancy permits from the City shall be obtained, within Eighteen (18) months from the Effective Date of this Agreement. Extensions of these deadlines due to extenuating circumstances or uncontrollable delay may be granted by the Board of Directors of the TEDC at its sole discretion.

3.

The Company further represents and agrees that the Improvements described in Paragraph 1 hereof will be occupied and maintained for a term of at least five (5) years.

4.

The Company further covenants and agrees that the Company or any owner or leasee of the Improvements does not and will not knowingly employ an undocumented worker. An “undocumented worker” shall mean an individual who, at the time of employment, is not (a) lawfully admitted for permanent residence to the United States; or (b) authorized under the law to be employed in that manner in the United States.

5.

In consideration of the Company's representations, promises, and covenants, TEDC agrees to reimburse the Company for the actual cost of the Infrastructure Improvements up to the amount of Forty-Four Thousand Six Hundred and Fifty Dollars (\$44,650), or an amount equal to ten (10) percent of actual costs if less than the sum stated above upon completion of construction and occupancy of the office/warehouse building. The TEDC agrees to reimburse the Company for such amount within thirty (30) days of receipt of a letter from the Company requesting such payment and including: (a) certification of the cost of constructing the Infrastructure Improvements; (b) a copy of the City's occupancy permit for the improvements to the Property; (c) certification that the Infrastructure Improvements have been constructed in accordance with the approved plans and specifications; (d) an affidavit stating that all contractors and subcontractors providing work and/or materials in the construction of the Improvements have been paid and any and all liens and claims regarding such work have been released; and (e) Proof of payment to all vendors, contractors and subcontractors providing work and/or materials in the

construction of the Improvements, proof of payment must include copies of canceled checks and/or credit card receipts and copies of paid invoices from all vendors, contractors and subcontractors.

6.

It is understood and agreed by the parties that, in the event of a default by the Company on any of its obligations under this Agreement, the Company shall reimburse the TEDC the full amount paid to the Company by the TEDC, with interest at the rate equal to the 90-day Treasury Bill plus ½% per annum, within 120 days after the TEDC notifies the Company of the default. It is further understood and agreed by the parties that if the Company, or any owner or lessee of the Improvements, is convicted of a violation under 8 U.S.C. Section 1324a(f), the Company will reimburse the TEDC the full amount paid to the Company, with interest at the rate equal to the 90-day Treasury Bill plus ½% per annum, within 120 days after the TEDC notifies the Company of the violation.

The Company shall also reimburse the TEDC for any and all reasonable attorney's fees and costs incurred by the TEDC as a result of any action required to obtain reimbursement of such funds. Such reimbursement shall be due and payable thirty (30) days after the Company receives written notice of default.

7.

This Agreement shall inure to the benefit of and be binding upon the TEDC and the Company, and upon the Company's successors and assigns, lessees, affiliates, and subsidiaries, and shall remain in force whether the Company sells, leases, assigns, or in any other manner disposes of, either voluntarily or by operation of law, all or any part of the Property and the

agreements herein contained shall be held to be covenants running with the Property for so long as this Agreement, or any extension thereof, remains in effect.

8.

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

If to City:

Tomball Economic Development Corporation
401 W. Market Street
Tomball, Texas 77375
Attn: President, Board of Directors

If to Company:

Industrial Reserve, LLC
738 Armstrong Blvd.
Coppell, TX, 75019
Attn: John Clint Riley, Partner

9.

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

10.

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

11.

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

12.

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

13.

In the event any one or more words, phrases, clauses, sentences, paragraphs, sections, or other parts of this Agreement, or the application thereof to any person, firm, corporation, or circumstance, shall be held by any court of competent jurisdiction to be invalid or unconstitutional for any reason, then the application, invalidity or unconstitutionality of such words, phrases, clauses, sentences, paragraphs, sections, or other parts of this Agreement shall be deemed to be independent of and severable from the remainder of this Agreement, and the validity of the remaining parts of this Agreement shall not be affected thereby.

IN TESTIMONY OF WHICH, THIS AGREEMENT has been executed by the parties on this _____ day of _____ 2018 (the "Effective Date").

INDUSTRIAL RESERVE, LLC

By: _____
Name: John Clint Riley
Title: Partner

ATTEST:

By: _____
Name: _____
Title: _____

**TOMBALL ECONOMIC DEVELOPMENT
CORPORATION**

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

ATTEST:

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

ACKNOWLEDGMENT

THE STATE OF TEXAS §
 §
COUNTY OF HARRIS §

This instrument was acknowledged before me on the ____ day of _____
2018, by John Clint Riley, Partner, Industrial Reserve, LLC for and on behalf of said company.

Notary Public in and for the State of Texas

My Commission Expires: _____

(SEAL)

ACKNOWLEDGMENT

THE STATE OF TEXAS §
 §
COUNTY OF HARRIS §

This instrument was acknowledged before me on the ____ day of _____
2018, by Gretchen Fagan, President of the Board of Directors of the Tomball Economic
Development Corporation, for and on behalf of said Corporation.

Notary Public in and for the State of Texas

My Commission Expires: _____

(SEAL)

Exhibit A
Legal Description of Property

Being a tract or parcel of land containing 1.9890 acres of land or 86,644 square feet, located in the Jesse Pruitt Survey, Abstract 608, Harris County, Texas; Said 1.9890 acre tract being of record in the name of Hightower Investments, Ltd. in Harris County Clerk's File (H.C.C.F.) Number 20150587574, being all of a 1.852 acre tract (Tract 4) described therein and the east twenty feet of a 2.684 acre tract (Tract 3) described therein; Said 1.9890 acre tract being more particularly described as follows (bearings based on the Texas State Plane Coordinate System, South Central Zone (NAD83)):

COMMENCING at a 1/2 inch iron rod found for the northwest corner of a 2.691 acre tract of record in the name of Helen L. Jahn in H.C.C.F. Number S551075, being the southwest corner of a called 8.1984 acre tract of record in the name of Craig Swinghammer in H.C.C.F. Number S016666 and being on the east line of an unimproved thirty (30) foot wide road of record in Volume 2, Page 65 in the Map Records of Harris County (H.C.M.R.), Texas;

THENCE, coincident the north line of aforesaid 2.691 acre tract and the south line of aforesaid 8.1984 acre tract, North 87 degrees 30 minutes 57 seconds East, at a distance of 420.88 feet pass the northeast corner of said 2.691 acre tract and being the northwest corner of a 3.072 acre tract of record in the name of Tracy Lawrence in H.C.C.F. Number S551078, at a distance of 868.83 feet pass the northeast corner of said 3.072 acre tract and being the northwest corner of a 2.684 acre tract of record in the name of Richard Henry Lucas in H.C.C.F. Number S551077, and continue for an overall distance of 1,240.07 feet to a 5/8 inch iron rod with "Gruller" cap set for the northwest corner and POINT OF BEGINNING of the herein described tract;

THENCE, coincident the north line of the herein described tract and the south line of aforesaid 8.1984 acre tract, North 87 degrees 30 minutes 57 seconds East, at a distance of 20.00 feet pass the northeast corner of aforesaid 2.684 acre tract (Tract 3) and the northwest corner of aforesaid 2.691 acre tract (Tract 4), and continue for an overall a distance of 290.05 feet to a 5/8 inch iron rod with "Gruller" cap found for the northeast corner of the herein described tract, being the southeast corner of said 8.1984 acre tract and being on the west Right-of-Way (R.O.W.) line of Cherry Street;

THENCE, coincident the east line of the herein described tract and the west R.O.W. line of aforesaid Cherry Street, South 02 degrees 29 minutes 22 seconds East, a distance of 298.71 feet to a 5/8 inch iron rod with "Gruller" cap found for the southeast corner of the herein described tract and being at the intersection of the west R.O.W. line of said Cherry Street and the north R.O.W. line of Theis Lane (width varies);

THENCE, coincident the south line of the herein described tract and the north R.O.W. line of aforesaid Theis Lane, South 87 degrees 30 minutes 06 seconds West, a distance of 290.00 feet to a 5/8 inch iron rod with "Gruller" cap set for the southwest corner of the herein described tract and being on the south line aforesaid 2.684 acre tract;

THENCE, through and across aforesaid 2.684 acre tract, North 02 degrees 29 minutes 54 seconds West, a distance of 298.78 feet to the POINT OF BEGINNING and containing 1.9890 acres of land.

Exhibit B
Description of Infrastructure Improvements

Sanitary Sewer	\$ 7,500
Storm Drainage	\$ 35,000
Water	\$ 25,000
Gas	\$ 5,000
Site Preparation	\$ 300,000
Telecommunications/Internet	\$ 4,000
Electric	\$ 25,000
Total	\$ 446,500

Exhibit C
Description of Improvements

One 25,200 square foot office/warehouse building on approximately 1.9890 acres of land generally located at the north west corner of Cherry Street and Theis Lane.

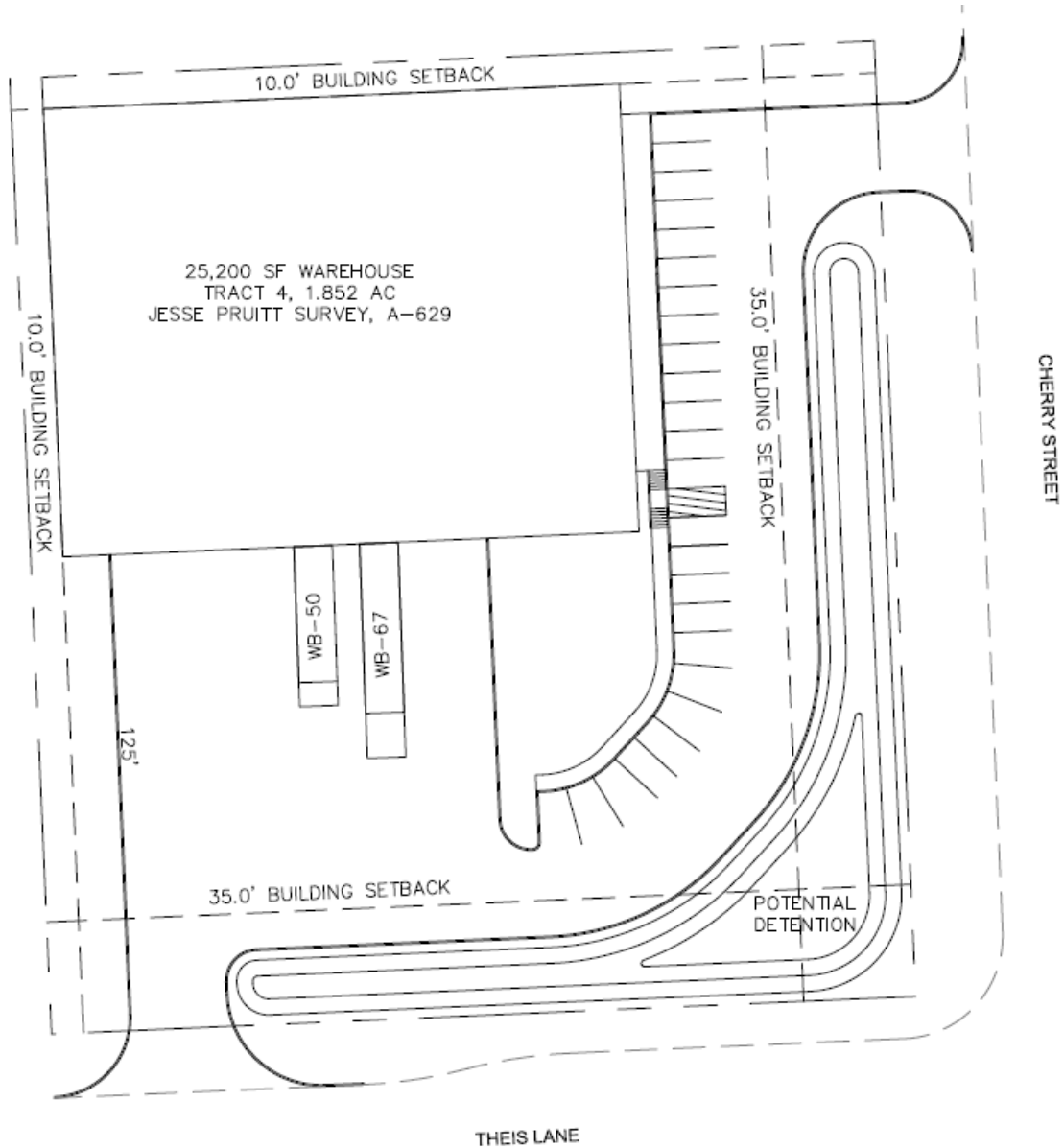
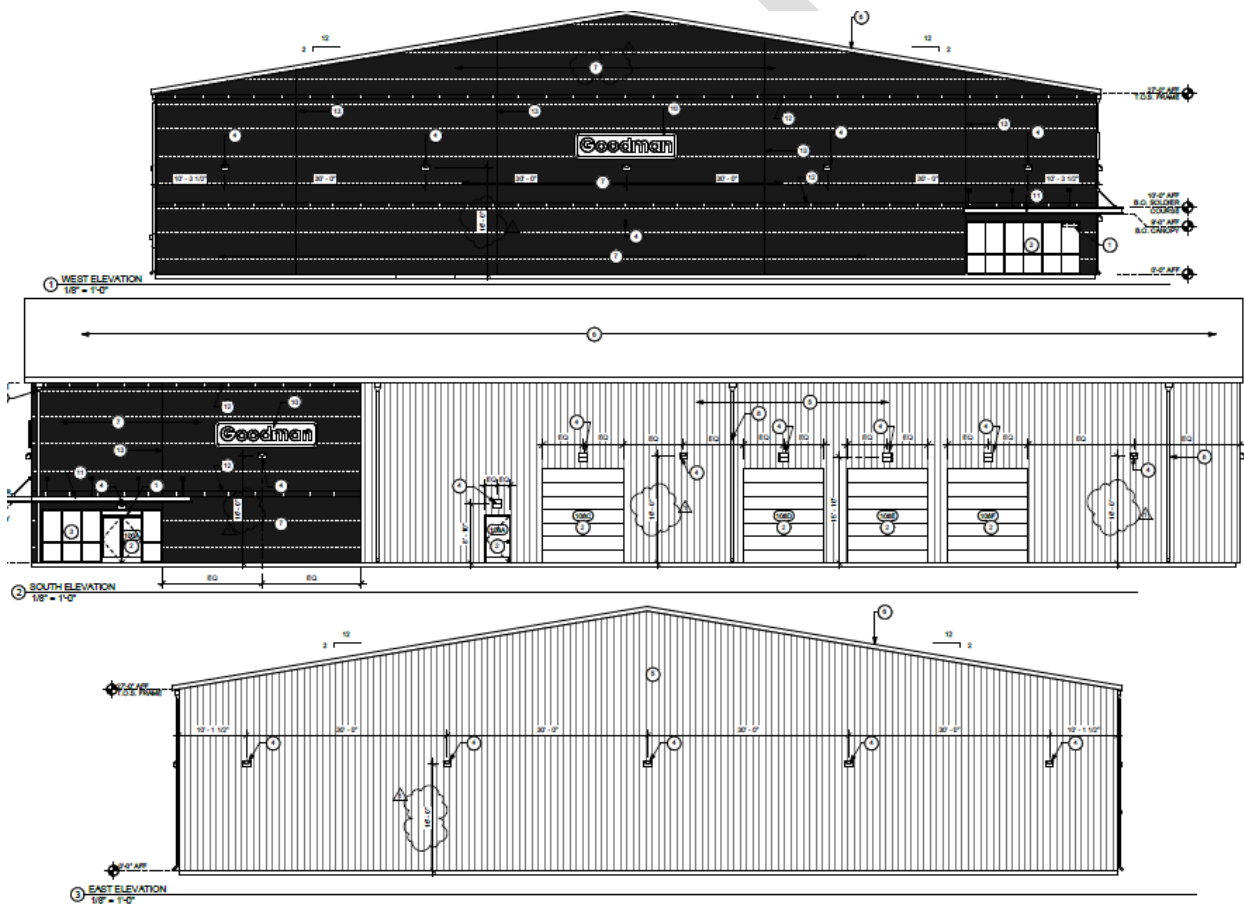


Exhibit C Continued
Description of Improvements



EXECUTIVE SUMMARY

A REPORT OF THE ECONOMIC IMPACT OF INDUSTRIAL RESERVE LLC IN TOMBALL, TX

November 9, 2018

Prepared by:

Tomball Economic Development Corporation

29201 Quinn Rd., Suite B

Tomball, Texas 77375



Prepared using Total Impact



PURPOSE & LIMITATIONS

This report presents the results of an analysis undertaken by the Tomball Economic Development Corporation using Total Impact, an economic and fiscal impact analysis tool developed and supported by the Austin, TX based economic consulting firm, Impact DataSource.

The Total Impact model is a customized software program licensed to the Tomball Economic Development Corporation. The model includes estimates, assumptions, and other information developed by Impact DataSource from its independent research effort detailed in Tomball Economic Development Corporation's Total Impact User Guide.

The analysis relies on prospective estimates of business activity that may not be realized. Tomball Economic Development Corporation made reasonable efforts to ensure that the project-specific data entered into the Total Impact model reflects realistic estimates of future activity.

No warranty or representation is made by Tomball Economic Development Corporation or Impact DataSource that any of the estimates or results contained in this study will actually be achieved.



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Introduction

This report presents the results of an economic impact analysis performed using Total Impact, a model developed by Impact DataSource. The report estimates the impact that a potential project in the City of Tomball will have on the local economy and estimates the costs and benefits for local taxing districts over a 10-year period.

Description of the Project

Construction of a 25,200 s.f. office/warehouse facility to be utilized as a Goodman Distribution Center. The warehouse will be approximately 22,782 s.f. and the showroom, offices, and ancillary spaces will be approximately 2,418 s.f.

Economic Impact Overview

The Project's operations will support employment and other economic impacts in the community. The 8.0 workers directly employed by the Project will earn approximately \$60,000 per year on average over the next 10 years. This direct activity will support 6.6 indirect and induced workers in the community earning \$49,000 on average over the next 10 years. The total additional payroll or workers' earnings associated with the Project is estimated to be approximately \$7.8 million over the next 10 years.

On average, the Project will generate \$3.2 million in direct economic output over the next 10 years. Spin-off businesses in the community will produce \$1.3 million in economic output per year as a result of the Project. In total, the Project will support \$4.5 million in economic output per year on average. Economic output is the value of goods and services produced in the economy and can be thought of as revenues for businesses. The economic output calculations in this report were estimated using the RIMS II economic impact model and the Project's employment estimates.

Accounting for various taxable sales and purchases, including activity associated with the Project, worker spending, and visitors' spending in the community, the Project is estimated to support approximately \$7.4 million in taxable sales over the next 10 years.

Table 1. Economic Impact Over the Next 10 Years

	Direct	Indirect & Induced	Total
Number of permanent direct, indirect, and induced jobs to be created	8.0	6.6	14.6
Salaries to be paid to direct, indirect, and induced workers	\$4,652,878	\$3,115,567	\$7,768,445
Economic output generated by direct, indirect, and induced activity	\$32,188,041	\$13,042,594	\$45,230,635
Taxable sales and purchases expected in the City	\$7,350,565	\$84,120	\$7,434,685

The Project may result in new residents moving to the community and potentially new residential properties being constructed as summarized below.

Table 2. Population Impacts Over the Next 10 Years

	Direct	Indirect & Induced	Total
Number of direct, indirect, and induced workers who will move to the City	0.5	0.3	0.8
Number of new residents in the City	1.3	0.8	2.1
Number of new residential properties to be built in the City	0.1	0.0	0.1
Number of new students expected to attend local school district	0.3	0.2	0.5

The Project is estimated to support an average of approximately \$4.8 million in new non-residential taxable property each year over the next 10 years. The taxable value of property supported by the Project over the 10-year period is shown in the following table.

Table 3. Value of Taxable Property Supported by the Project Over the Next 10 Years

Year	New Residential Property	The Project's Property				Subtotal Nonresidential Property	Total Residential & Nonresidential Property
		Land	Buildings & Other Real Prop. Improvements	Furniture, Fixtures, & Equipment	Inventories		
1	\$16,867	\$475,000	\$1,825,000	\$200,000	\$2,000,000	\$4,500,000	\$4,516,867
2	\$17,205	\$484,500	\$1,861,500	\$180,000	\$2,040,000	\$4,566,000	\$4,583,205
3	\$17,549	\$494,190	\$1,898,730	\$160,000	\$2,080,800	\$4,633,720	\$4,651,269
4	\$17,900	\$504,074	\$1,936,705	\$140,000	\$2,122,416	\$4,703,194	\$4,721,094
5	\$18,258	\$514,155	\$1,975,439	\$120,000	\$2,164,864	\$4,774,458	\$4,792,716
6	\$18,623	\$524,438	\$2,014,947	\$100,000	\$2,208,162	\$4,847,547	\$4,866,170
7	\$18,995	\$534,927	\$2,055,246	\$80,000	\$2,252,325	\$4,922,498	\$4,941,494
8	\$19,375	\$545,626	\$2,096,351	\$60,000	\$2,297,371	\$4,999,348	\$5,018,724
9	\$19,763	\$556,538	\$2,138,278	\$40,000	\$2,343,319	\$5,078,135	\$5,097,898
10	\$20,158	\$567,669	\$2,181,044	\$40,000	\$2,390,185	\$5,178,898	\$5,199,056

The taxable value of residential property represents the value of properties that may be constructed as a result of new workers moving to the community.

This analysis assumes the residential real property appreciation rate to be 2.0% per year. The Project's real property is assumed to appreciate at a rate of 2.0% per year. The analysis assumes the Project's furniture, fixtures, and equipment will depreciate over time according to the depreciation schedule shown in Appendix A.

Temporary Construction Impact

The Project will include an initial period of construction where \$1.8 million will be spent to construct new buildings and other real property improvements. It is assumed that 50.0% of the construction expenditure will be spent on materials and 50.0% on labor. The temporary construction activity will support temporary economic impacts in the community in the form of temporary construction employment and sales for local construction firms.

Table 4. Spending and Estimated Direct Employment Impact of Project-Related Construction Activity

	Amount
Total construction expenditure	\$1,825,000
Materials	\$912,500
Labor	\$912,500
Temporary Construction Workers Supported (Average Earnings = \$51,300)	17.8

The following table presents the temporary economic impacts resulting from the construction.

Table 5. Temporary Economic Impact of Project-Related Construction Activity

	Direct	Indirect & Induced	Total
Number of temporary direct, indirect, and induced job years to be supported*	17.8	12.4	30.2
Salaries to be paid to direct, indirect, and induced workers	\$912,500	\$462,273	\$1,374,773
Revenues or sales for businesses related to construction	\$1,825,000	\$1,572,785	\$3,397,785

* A job year is defined as full employment for one person for 2080 hours in a 12-month span.

Sales tax calculations related to construction activity are presented in the following table. The sales tax revenue generated from construction-period taxable spending is included in the fiscal impact for affected districts in Year 1 of this analysis.

Table 6. Construction-Related Taxable Spending

	Estimate
Expenditure for Materials	\$912,500
Percent of Materials subject to local tax	50.0%
<u>Subtotal Taxable Materials</u>	<u>\$456,250</u>
Expenditure for Labor / Paid to construction workers	\$912,500
Percent of gross earnings spent on taxable goods and services	24.0%
Percent of taxable spending done locally	10.0%
<u>Subtotal Taxable Construction Worker Spending</u>	<u>\$21,900</u>
Expenditure for Furniture, Fixtures, & Equipment (FF&E)	\$200,000
Percent of FF&E subject to local tax	10.0%
<u>Subtotal Taxable FF&E Purchases</u>	<u>\$20,000</u>
<u>Total Construction-Related Taxable Spending</u>	<u>\$498,150</u>

The above construction analysis focuses on the impact resulting from the Project's construction investments identified in Year 1. If construction will be phased in over several years or an expansion is planned in a later year, parallel calculations will be performed for those years.

Fiscal Impact Overview

The Project will generate additional benefits and costs for the City. Overall, the City will receive approximately \$326,000 in net benefits over the 10-year period. The table below displays the estimated additional benefits, costs, and net benefits to be received by the City over the next 10 years of the Project. Appendix C contains the year-by-year calculations.

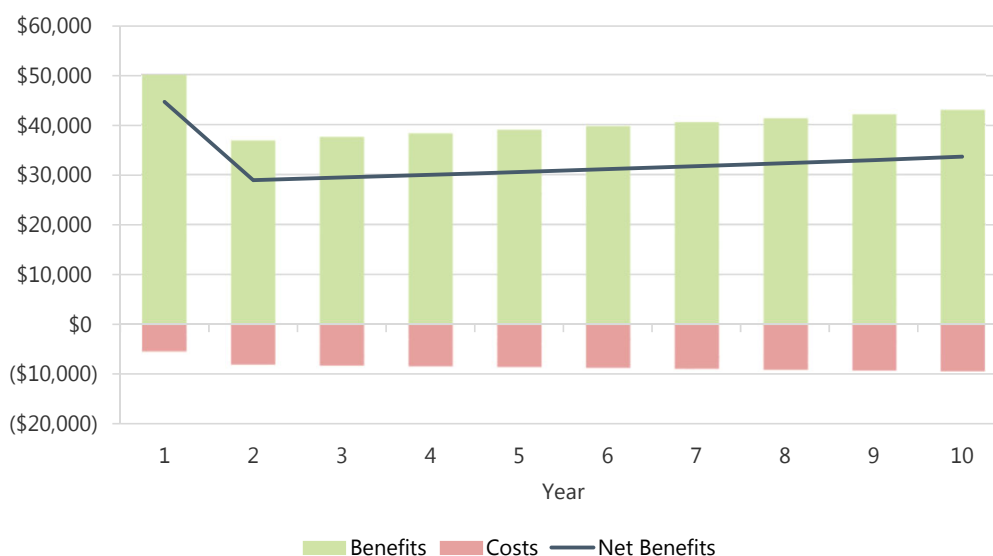
Table 7. City of Tomball: Benefits, Costs, and Net Benefits Over the Next 10 Years

	Amount
Sales Taxes	\$148,694
Property Taxes - Project	\$164,594
Property Taxes - New Residential	\$631
Utility Revenue	\$58,828
Utility Franchise Fees	\$5,668
Building Permits and Fees	\$6,465
Hotel Occupancy Taxes	\$4,851
Miscellaneous Taxes & User Fees	\$18,891
<u>Subtotal Benefits</u>	<u>\$408,622</u>
Cost of Providing Municipal Services	(\$20,828)
Cost of Providing Utility Services	(\$61,769)
<u>Subtotal Costs</u>	<u>(\$82,597)</u>
Net Benefits	\$326,024
<i>Present Value (5% discount rate)</i>	<i>\$252,896</i>

Table 8. Year-by-Year Benefits, Costs, and Net Benefits for the City of Tomball

Year	Benefits	Costs	Net Benefits	Cumulative Net Benefits
1	\$50,071	(\$5,326)	\$44,745	\$44,745
2	\$36,915	(\$7,921)	\$28,993	\$73,738
3	\$37,601	(\$8,080)	\$29,521	\$103,259
4	\$38,305	(\$8,241)	\$30,064	\$133,323
5	\$39,027	(\$8,406)	\$30,621	\$163,944
6	\$39,767	(\$8,574)	\$31,193	\$195,137
7	\$40,527	(\$8,746)	\$31,781	\$226,918
8	\$41,306	(\$8,921)	\$32,386	\$259,303
9	\$42,106	(\$9,099)	\$33,007	\$292,310
10	\$42,995	(\$9,281)	\$33,714	\$326,024
Total	\$408,622	(\$82,597)	\$326,024	

Figure 1. Annual Fiscal Net Benefits for the City of Tomball



Impact from Project and Workers

The City will receive benefits from the activity, spending, and investments associated with (1) the Project and (2) the workers. These benefits, associated costs, and resulting net benefits for the next 10 years are shown below for these two categories.

Table 9: Net Benefits to the City from the Project and Workers

	The Project	Workers	Total
Sales Taxes	\$144,499	\$4,195	\$148,694
Real Property Taxes	\$85,993	\$0	\$85,993
FF&E Property Taxes	\$3,824	\$0	\$3,824
Inventory Property Taxes	\$74,777	\$0	\$74,777
New Residential Property Taxes	\$0	\$631	\$631
Utility Revenue	\$46,307	\$12,520	\$58,828
Utility Franchise Fees	\$4,848	\$821	\$5,668
Building Permits and Fees	\$6,465	\$0	\$6,465
Hotel Occupancy Taxes	\$4,851	\$0	\$4,851
Miscellaneous Taxes & User Fees	\$14,974	\$3,917	\$18,891
Subtotal Benefits	\$386,538	\$22,084	\$408,622
Cost of Providing Municipal Services	(\$16,497)	(\$4,331)	(\$20,828)
Cost of Providing Utility Services	(\$48,623)	(\$13,146)	(\$61,769)
Subtotal Costs	(\$65,119)	(\$17,478)	(\$82,597)
Net Benefits	\$321,419	\$4,606	\$326,024
<i>Percent of Total Net Benefits</i>	<i>98.6%</i>	<i>1.4%</i>	

Non-Tax Incentives

At the request of the firm, The City of Tomball may consider abating taxes on the firm's property. The table below identifies the type of firm property for which the city may consider abating taxes.

Table 14. Incentives Under Consideration

Year	Enter Incentive Description
1	\$44,650
2	\$0
3	\$0
4	\$0
5	\$0
6	\$0
7	\$0
8	\$0
9	\$0
10	\$0
Total	\$44,650

These financial incentives may be considered an investment in the Project made by the EDC and/or City. Four calculations analyzing possible investments were made:

1. Net Benefits - detailed above
2. Present Value of Net Benefits - detailed above
3. Rate of Return on Investment - discussed and detailed below
4. Payback Period - discussed and detailed below

The rate of return on investment calculates the average annual rate of return to the city, treating the incentives as the initial investment and the net benefits to the city as the return on investment. The payback period is the number of years that it will take the city to recover the cost of incentives from the additional revenues that it will receive as a result of the Project.

The table below shows an analysis of these incentives, including a calculation of incentives per job, rate of return, and payback period.

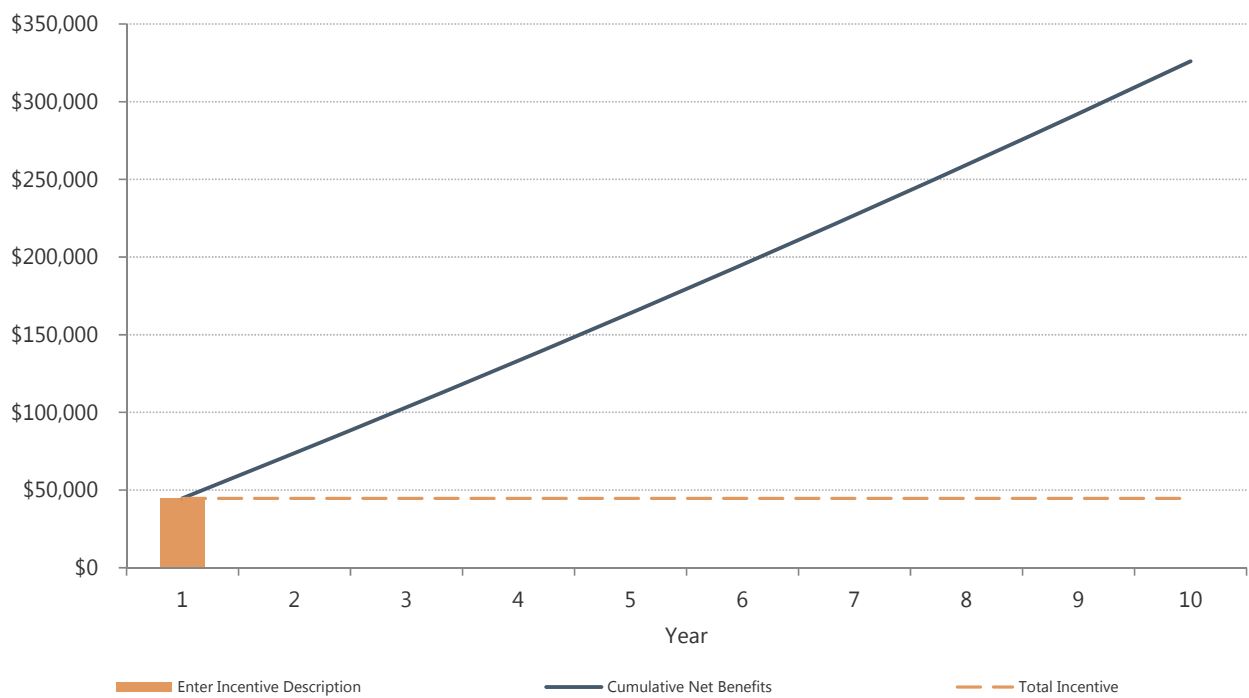
Table 15. Analysis of Incentives

Total Non-Tax Incentive	\$44,650
Rate of Return - 5 Years	73.4%
Rate of Return - 10 Years	73.0%
Payback period (years)	1.0

Note: The Rate of Return and Payback Period are calculated based on the sum of annual incentives, not the present value of the incentives.

The graph below depicts the total incentives currently under consideration versus the cumulative net benefits to the City. The intersection indicates the length of time until the incentives are paid back.

Figure 2. Incentives Under Consideration



Overview of Methodology

This report presents the results of an analysis undertaken by the Tomball Economic Development Corporation using Total Impact, an economic and fiscal impact analysis tool developed and supported by the Austin, TX based economic consulting firm, Impact DataSource.

The Total Impact model combines project-specific attributes with community data, tax rates, and assumptions to estimate the economic impact of the Project and the fiscal impact for local taxing districts over a 10-year period.

The economic impact as calculated in this report can be categorized into two main types of impacts. First, the direct economic impacts are the jobs and payroll directly created by the Project. Second, this economic impact analysis calculates the indirect and induced impacts that result from the Project. Indirect jobs and salaries are created in new or existing area firms, such as maintenance companies and service firms, that may supply goods and services for the Project. In addition, induced jobs and salaries are created in new or existing local businesses, such as retail stores, gas stations, banks, restaurants, and service companies that may supply goods and services to new workers and their families.

The economic impact estimates in this report are based on the Regional Input-Output Modeling System (RIMS II), a widely used regional input-output model developed by the U. S. Department of Commerce, Bureau of Economic Analysis. The RIMS II model is a standard tool used to estimate regional economic impacts. The economic impacts estimated using the RIMS II model are generally recognized as reasonable and plausible assuming the data input into the model is accurate or based on reasonable assumptions. Impact DataSource utilizes county-level multipliers to estimate the impact occurring at the sub-county level.

Two types of regional economic multipliers were used in this analysis: an employment multiplier and an earnings multiplier. An employment multiplier was used to estimate the number of indirect and induced jobs created or supported in the area. An earnings multiplier was used to estimate the amount of salaries to be paid to workers in these new indirect and induced jobs. The employment multiplier shows the estimated number of total jobs created for each direct job. The earnings multiplier shows the estimated amount of total salaries paid to these workers for every dollar paid to a direct worker. The multipliers used in this analysis are listed below:

333415 Air conditioning, refrigeration, and warm air heating equipment manufa		City	County
Employment Multiplier	(Type II Direct Effect)	1.8222	2.6345
Earnings Multiplier	(Type II Direct Effect)	1.6696	2.3313

The fiscal impacts calculated in this report are detailed in Appendix C. Most of the revenues estimated in this study result from calculations relying on (1) attributes of the Project, (2) assumptions to derive the value of associated taxable property or sales, and (3) local tax rates. In some cases, revenues are estimated on a per new household, per new worker, or per new school student basis.

The company or Project developer was not asked, nor could reasonably provide data for calculating some other revenues. For example, while the city will likely receive revenues from fines paid on speeding tickets given to new workers, the company does not know the propensity of its workers to speed. Therefore, some revenues are calculated using an average revenue approach. This approach uses relies on two assumptions:

1. The taxing entity has two general revenue sources: revenues from residents and revenues from businesses.
2. The taxing entity will collect (a) about the same amount of miscellaneous taxes and user fees from each new household that results from the Project as it currently collects from existing households on average, and (b) the same amount of miscellaneous taxes and user fees from the new business (on a per worker basis) will be collected as it collects from existing businesses.

In the case of the school district, some additional state and federal revenues are estimated on a per new school student basis consistent with historical funding levels.

Additionally, this analysis sought to estimate the additional expenditures faced by the city and county to provide services to new households and new businesses. A marginal cost approach was used to calculate these additional costs. This approach relies on two assumptions:

1. The taxing entity spends money on services for two general groups: revenues from residents and revenues from businesses.
2. The taxing entity will spend slightly less than its current average cost to provide local government services (police, fire, EMS, etc.) to (a) new residents and (b) businesses on a per worker basis.

In the case of the school district, the marginal cost to educate new students was estimated based on a portion of the school's current expenditures per student and applied to the headcount of new school students resulting from the Project.

Additionally, this analysis seeks to calculate the impact on the school district's finances from the Project by generally, and at a summary level, mimicking the district's school funding formula.

According to the Texas Education Agency, any property added to local tax rolls, and the local taxes that this generates, reduces the amount of state funding equivalent to local taxes collected for maintenance and operations. The school district retains local taxes received for debt services and the corresponding state funding is not reduced.

However, according to the Texas Education Agency, the school district will receive state aid for each new child that moves to the District. The additional revenues for the school district are calculated in this analysis.

About Impact DataSource

Impact DataSource is an Austin economic consulting, research, and analysis firm founded in 1993. The firm has conducted over 2,500 economic impact analyses of firms, projects, and activities in most industry groups in Texas and more than 30 other states.

Regular City Council

Agenda Item

Data Sheet

Meeting Date: December 3, 2018

Topic:

Approve, on First Reading, Resolution No. 2018-33-TEDC, a Resolution of the City Council of the City of Tomball, Texas, authorizing and approving the Tomball Economic Development Corporation's Project to Expend Funds in accordance with an Economic Development Agreement by and between the Corporation and Shri Vinayak LLC, to make direct incentives to, or expenditures for, assistance with infrastructure costs for the promotion of new or expanded business enterprise related to the construction of a Days Inn & Suites hotel to be located at 15525 FM 2920 Road, Tomball, Texas, 77377. The estimated amount of expenditures for such Project is \$149,750.00.

Background:

All expenditures of the Tomball Economic Development Corporation (TEDC) sales tax revenue must first be approved as a "Project" of the Corporation. At its regular meeting on November 13, 2018, the TEDC Board of Directors did take formal action to approve, as a Project of the TEDC, an agreement with Shri Vinayak LLC, for assistance with infrastructure costs related to the development of a proposed two-story, 45 room Days Inn & Suites hotel to be located at 15525 FM 2920 Road. The Tomball City Council has final approval authority over all projects and agreements of the TEDC.

Origination:

Minesh Bhakta, President, Shri Vinayak LLC

Recommendation:

Approval of Resolution No. 2018-33-TEDC on first reading

Funding:

Yes

Account Number: Project Grants

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

Kelly Violette, Executive Director, Tomball Economic Development Corporation

ACTION TAKEN

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

ATTACHMENTS:

Resolution 2018-33-TEDC

Cover Memo

Request Letter

Days Inn Rendering

TEDC Performance Agreement

RESOLUTION NO. 2015-33-TEDC

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF TOMBALL, TEXAS, AUTHORIZING AND APPROVING THE TOMBALL ECONOMIC DEVELOPMENT CORPORATION'S PROJECT TO EXPEND FUNDS IN ACCORDANCE WITH AN ECONOMIC DEVELOPMENT AGREEMENT BY AND BETWEEN THE CORPORATION AND SHRI VINAYAK LLC TO PROMOTE AND DEVELOP A NEW OR EXPANDED BUSINESS ENTERPRISE; CONTAINING OTHER PROVISIONS RELATING TO THE SUBJECT; AND PROVIDING FOR SEVERABILITY.

* * * * *

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

WHEREAS, the Board of Directors of the TEDC has adopted, as a specific project, the expenditure of the estimated amount of One Hundred Forty-Nine Thousand Seven Hundred and Fifty Dollars (\$149,750), found by the Board to be required or suitable to promote a new business development by Shri Vinayak LLC; and

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

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

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

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

Section 2. The City Council hereby authorizes and approves the adoption, by the Board of Directors of the Tomball Economic Development Corporation, as a specific project for the economic development of the City, an expenditure of the estimated amount of One Hundred Forty-Nine Thousand Seven Hundred and Fifty Dollars (\$149,750.00), in accordance with an economic development agreement by and between the TEDC and Shri Vinayak LLC, to promote and develop a new or expanded business enterprise, namely the construction of a Days Inn & Suites hotel to be located at 15525 FM 2920 Road, Tomball, Texas 77377;

Section 3. In the event any clause, phrase, provision, sentence, or part of this Resolution or the application of the same to any person or circumstance shall for any reason be

adjudged invalid or held unconstitutional by a court of competent jurisdiction, it shall not affect, impair, or invalidate this Resolution as a whole or any part or provision hereof other than the part declared to be invalid or unconstitutional; and the City Council of the City of Tomball, Texas, declares that it would have passed each and every part of the same notwithstanding the omission of any such part thus declared to be invalid or unconstitutional, whether there be one or more parts.

PASSED AND APPROVED on first reading this ____ day of _____, 2018.

PASSED, APPROVED, AND RESOLVED on second and final reading this ____ day of _____, 2018.

Gretchen Fagan, Mayor

ATTEST:

Doris Speer, City Secretary



TO: Honorable Mayor and City Council

FROM: Kelly Violette
Executive Director

MEETING DATE: December 3, 2018

SUBJECT: Shri Vinayak, LLC
Days Inn Hotel & Suites

ITEM TYPE: Action

The Tomball Economic Development Corporation has received a request from Minesh Bhakta, President of Shri Vinayak LLC, for assistance with infrastructure costs related to the development of a proposed 45-room Days Inn & Suites hotel to be located at 15525 FM 2920 Rd, Tomball, TX 77377. The proposed 28,000 square foot facility will be constructed on approximately 2.1879 acres of land and will include an indoor pool, workout room, and outdoor gazebo with BBQ grill and putting green.

The project will bring 6-8 full time jobs and 3-5 part time positions to the community. The estimated value of the property and improvements is \$4,300,000.

Mr. Bhakta is requesting grant funding assistance with infrastructure costs that are necessary to develop this project. The eligible infrastructure improvements include water, sewer, and gas utilities, storm drainage, electrical service, and related site improvements totaling approximately \$599,000.

Although this project does not create primary jobs, it does promote the development and expansion of business enterprise, which is considered a permissible project as outlined in Texas Economic Development Legislation.

An economic impact analysis is included with the agreement to show the impact of this project on Tomball's economy. Per the analysis, the projected 5-year net benefit of this project on the City of Tomball is \$3,476,925.

If the agreement between the TEDC and Shri Vinayak LLC is approved as a Project of the Corporation, the grant funding amount will not exceed \$149,750, based upon the actual expenditures for the eligible infrastructure improvements.

Shri Vinayak LLC

1421 N Broadway St, Wichita KS 67214
316-377-6075
Minesh2811@gmail.com

Date : Nov 2nd, 2018

Dear Tomball, Economic Development Board,

Shri Vinayak LLC has the intention of building a 45 room Indoor Days Inn & Suite inn Tomball. We feel Tomball is a terrific growing community and in the need of a world class lodging destination for both the corporate and leisure traveler. The facility will have features that some hotel has in Tomball like Kitchenet, a large indoor heated swimming pool, large workout room and outside Gazebo with BBQ Grill & putting green. Days INN & Suite is midscale Daily and Extended Motel that specially for traveler staying five night or more and families that need more than just a hotel room. It is perfect addition to Tomball corporate and upcoming packers project as well as all the wedding and sports tournaments the area hosts.

We would like to start the project in Early Jan/Feb 2019 with 9-12-month construction schedule.

President: Minesh Bhakta, 1421 N Broadway St, Wichita Ks 67214

Cell: 316-377-6075 Email: Minesh2811@gmail.com

Location: 15525 FM2920 Rd, Tomball, TX 77377

Property: 45 Rooms, Approximate 28000 Square feet

Valuation: Approx. \$ 4,300,000.00

Job creation: 6-8 full time and 3-5 part time

Average wage after opening: Salaried - \$ 45,000 (1-3) and Hourly \$ 9.50 to \$ 11.50 per hour (6-8)

Thank you for the opportunity to work with the city of Tomball. We look forward to a long and prosperous partnership. We have the desire to develop more project in Tomball as the city grows. if you have question please do not hesitate to reach out to me at (316-377-6075) or Minesh2811@gmail.com.

Warm regards,

Minesh Bhakta



AGREEMENT

THE STATE OF TEXAS §
 § KNOW ALL MEN BY THESE PRESENTS:
COUNTY OF HARRIS §

This Agreement (the “Agreement”) is made and entered into by and between the **Tomball Economic Development Corporation**, an industrial development corporation created pursuant to the Development Corporation Act, now Chapter 501 et seq. of the Texas Local Government Code, located in Harris County, Texas (the “TEDC”), and **Shri Vinayak LLC** (the “Company”), 1421 N Broadway Street, Wichita, Kansas 67214.

WITNESSETH:

WHEREAS, it is the established policy of the TEDC to adopt such reasonable measures from time-to-time as are permitted by law to endeavor to attract industry, create and retain primary jobs, expand the growth of the City of Tomball (the “City”), and thereby enhance the economic stability and growth of the City; and

WHEREAS, the Company proposes to develop a 2.1879-acre tract of land within the City, located at 15525 FM 2920 Rd, Tomball, TX 77377 (the “Property”), and more particularly described in Exhibit “A,” attached hereto and made a part hereof; and

WHEREAS, such development shall be an internationally known franchise hotel, required and suitable for use for tourist purposes and events; and

WHEREAS, the TEDC agrees to provide to the Company funding in an amount not to exceed One Hundred Forty-Nine Thousand Seven Hundred and Fifty Dollars (\$149,750), as assistance in the construction of approved infrastructure and site preparation necessary to promote and develop a new business enterprise on the Property; and

WHEREAS, the approved infrastructure, which is found by the Board of Directors of TEDC to be required or suitable to develop the Property, is water, sewer, gas, drainage, and site preparation (the “Improvements”), identified and described in Exhibit “B,” attached hereto and made a part hereof; and

WHEREAS, the Company has agreed, in exchange and as consideration for the funding, to satisfy and comply with certain terms and conditions;

NOW, THEREFORE, in consideration of the premises and the mutual benefits and obligations set forth herein, including the recitals set forth above, the TEDC and the Company agree as follows:

1.

The Company covenants and agrees that it will construct and maintain on the Property a two-story, Forty-Five (45) room Days Inn & Suites hotel (the “Hotel”). In conjunction with development of the Property, the Company further agrees to construct the Improvements contemplated by this Agreement, in accordance with the requirements of the ordinances of the City and the plans and specifications approved by the City. The Company further represents and agrees that it will certify the final estimated costs of the construction of such Improvements to the TEDC prior to construction.

2.

Development of the Property, including construction of the Improvements, and the obtaining of all necessary occupancy permits from the City must occur within eighteen (18) months from the Effective Date of this Agreement. Extensions of these deadlines, due to extenuating circumstances or uncontrollable delay, may be granted at the sole discretion of the Board of Directors of the TEDC.

3.

The Company further represents and agrees that the development described in Paragraph 1 hereof will be operated and maintained for a term of at least five (5) years.

4.

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

5.

In consideration of the Company's representations, promises, and covenants, TEDC agrees to reimburse the Company for the actual cost of the Improvements in an amount not to exceed One Hundred Forty-Nine Thousand Seven Hundred and Fifty Dollars (\$149,750) or an amount equal to Twenty-Five Percent (25%) of actual Improvement costs if Improvement costs are less than the sum stated above. The TEDC agrees to reimburse the Company for such amount within thirty (30) days of receipt of a letter from the Company requesting such payment and including: (a) certification of the actual cost of constructing the Improvements; (b) a copy of the City's occupancy permit for the Hotel constructed on the Property; (c) verification that the Infrastructure Improvements have been constructed in accordance with the approved plans and specifications; (d) an affidavit stating that all contractors and subcontractors providing work and/or materials in the construction of the Infrastructure Improvements have been paid and any and all liens and claims regarding such work have been released; and, (e) Proof of payment to all contractors and subcontractors providing work and/or materials in the construction of the

Infrastructure Improvements, proof of payment must include copies of canceled checks and/or credit card receipts and copies of paid invoices from all contractors and subcontractors.

6.

It is understood and agreed by the parties that, in the event of a default by the Company on any of its obligations under this Agreement, the Company shall reimburse the TEDC the full amount paid to the Company by the TEDC, with interest at the rate equal to the 90-day Treasury Bill plus one-half percent ($\frac{1}{2}\%$) per annum, within thirty (30) days after the TEDC notifies the Company of the default. It is further understood and agreed by the parties that if the Company, or any owner or lessee of the Improvements, is convicted of a violation under 8 U.S.C. Section 1324a(f), the Company will reimburse the TEDC the full amount paid to the Company, with interest at the rate equal to the 90-day Treasury Bill plus one-half percent ($\frac{1}{2}\%$) per annum, within thirty (30) days after the TEDC notifies the Company of the violation.

The Company shall also reimburse the TEDC for any and all reasonable attorney's fees and costs incurred by the TEDC as a result of any action required to obtain reimbursement of such funds. Such reimbursement shall be due and payable thirty (30) days after the Company receives written notice of default. It is understood and agreed by the parties that, in the event of a default by the TEDC on any of its obligations under this Agreement, the Company's sole and exclusive remedy shall be limited to either a) the termination of this Agreement or b) a suit for specific performance.

7.

Personal Liability of Public Officials: To the extent permitted by law, no director, officer, employee or agent of the TEDC, and no officer, employee or agent of the City of

Tomball, shall be personally responsible for any liability arising under or growing out of this Agreement.

8.

This Agreement shall inure to the benefit of and be binding upon the TEDC and the Company, and upon the Company's successors and assigns, affiliates, and subsidiaries, and shall remain in force whether the Company sells, assigns, or in any other manner disposes of, either voluntarily or by operation of law, all or any part of the Property and the agreements herein contained shall be held to be covenants running with the Property for so long as this Agreement, or any extension thereof, remains in effect.

9.

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

If to City:	Tomball Economic Development Corporation 401 W. Market Street Tomball, Texas 77375 Attn: President, Board of Directors
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If to Company:	Shri Vinayak LLC 1421 N Broadway Street Wichita, Kansas 67214 Attn: Minesh Bhakta, President
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10.

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

11.

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

12.

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

13.

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

14.

In the event any one or more words, phrases, clauses, sentences, paragraphs, sections, or other parts of this Agreement, or the application thereof to any person, firm, corporation, or circumstance, shall be held by any court of competent jurisdiction to be invalid or unconstitutional for any reason, then the application, invalidity or unconstitutionality of such words, phrases, clauses, sentences, paragraphs, sections, or other parts of this Agreement shall be

deemed to be independent of and severable from the remainder of this Agreement, and the validity of the remaining parts of this Agreement shall not be affected thereby.

IN TESTIMONY OF WHICH, THIS AGREEMENT has been executed by the parties on this _____ day of _____ 201____ (the “Effective Date”).

Shri Vinayak LLC

By: _____

Name: Minesh Bhakta

Title: President

ATTEST:

By: _____

Name: Tiffani Wooten

Title: Assistant Director

TOMBALL ECONOMIC DEVELOPMENT CORPORATION

By: _____

Name: Gretchen Fagan

Title: President, Board of Directors

ATTEST:

By: _____

Name: William E. Sumner

Title: Secretary, Board of Directors

ACKNOWLEDGMENT

THE STATE OF TEXAS §
 §
COUNTY OF HARRIS §

This instrument was acknowledged before me on the ____ day of _____
201__, by Minesh Bhakta, President of Shri Vinayak, on behalf of said Company.

Notary Public in and for the State of Texas

My Commission Expires: _____

(SEAL)

ACKNOWLEDGMENT

THE STATE OF TEXAS §
 §
COUNTY OF HARRIS §

This instrument was acknowledged before me on the ____ day of _____
2018, by Gretchen Fagan, President of the Board of Directors of the Tomball Economic
Development Corporation, for and on behalf of said Corporation.

Notary Public in and for the State of Texas

My Commission Expires: _____

(SEAL)

EXHIBIT A

Legal Description of Property

Property address: 15525 F.M. 2920 Tomball, TX 77375

2.1879 ACRE TRACT OF LAND, SITUATED IN THE CHAUNCEY GOODRICH SURVEY ABSTRACT NO. 311 BEING ALL OF LOT 1, BLOK 1 OF THE FINAL PLAT OF DIXIE PROPERTIES AS RECORDED IN FILM CODE NO. 606208 H.C.M.R. IN HARRIS COUNTY, TEXAS.

EXHIBIT B

The Improvements

Sanitary Sewer	\$160,000.00
Storm Drainage	\$65,000.00
Water	\$140,000.00
Gas	\$35,000
Site Preparation	\$117,000.00
Telecommunications/Internet	\$22,000.00
Electric	\$60,000.00
Total	\$599,000.00

EXECUTIVE SUMMARY

A REPORT OF THE ECONOMIC IMPACT OF DAYS INN & SUITES IN TOMBALL, TX

November 9, 2018

Prepared by:

Tomball Economic Development Corporation

29201 Quinn Rd., Suite B

Tomball, Texas 77375



Prepared using Total Impact



PURPOSE & LIMITATIONS

This report presents the results of an analysis undertaken by the Tomball Economic Development Corporation using Total Impact, an economic and fiscal impact analysis tool developed and supported by the Austin, TX based economic consulting firm, Impact DataSource.

The Total Impact model is a customized software program licensed to the Tomball Economic Development Corporation. The model includes estimates, assumptions, and other information developed by Impact DataSource from its independent research effort detailed in Tomball Economic Development Corporation's Total Impact User Guide.

The analysis relies on prospective estimates of business activity that may not be realized. Tomball Economic Development Corporation made reasonable efforts to ensure that the project-specific data entered into the Total Impact model reflects realistic estimates of future activity.

No warranty or representation is made by Tomball Economic Development Corporation or Impact DataSource that any of the estimates or results contained in this study will actually be achieved.



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Introduction

This report presents the results of an economic impact analysis performed using Total Impact, a model developed by Impact DataSource. The report estimates the impact that a potential project in the City of Tomball will have on the local economy and estimates the costs and benefits for local taxing districts over a 10-year period.

Description of the Project

Construction of a two-story 45-room Days Inn & Suites on approximately 2.1879 acres of land located at 15525 FM2920 Rd, Tomball, TX 77377.

Economic Impact Overview

The Project's operations will support employment and other economic impacts in the community. The 10.0 workers directly employed by the Project will earn approximately \$49,000 per year on average over the next 10 years. This direct activity will support 2.7 indirect and induced workers in the community earning \$62,000 on average over the next 10 years. The total additional payroll or workers' earnings associated with the Project is estimated to be approximately \$6.6 million over the next 10 years.

On average, the Project will generate \$1.4 million in direct economic output over the next 10 years. Spin-off businesses in the community will produce \$0.5 million in economic output per year as a result of the Project. In total, the Project will support \$1.9 million in economic output per year on average. Economic output is the value of goods and services produced in the economy and can be thought of as revenues for businesses. The economic output calculations in this report were estimated using the RIMS II economic impact model and the Project's employment estimates.

Accounting for various taxable sales and purchases, including activity associated with the Project, worker spending, and visitors' spending in the community, the Project is estimated to support approximately \$42.4 million in taxable sales over the next 10 years.

Table 1. Economic Impact Over the Next 10 Years

	Direct	Indirect & Induced	Total
Number of permanent direct, indirect, and induced jobs to be created	10.0	2.7	12.7
Salaries to be paid to direct, indirect, and induced workers	\$4,927,375	\$1,661,017	\$6,588,392
Economic output generated by direct, indirect, and induced activity	\$13,765,889	\$4,899,280	\$18,665,168
Taxable sales and purchases expected in the City	\$42,379,367	\$44,847	\$42,424,214

The Project may result in new residents moving to the community and potentially new residential properties being constructed as summarized below.

Table 2. Population Impacts Over the Next 10 Years

	Direct	Indirect & Induced	Total
Number of direct, indirect, and induced workers who will move to the City	0.5	0.1	0.6
Number of new residents in the City	1.3	0.3	1.6
Number of new residential properties to be built in the City	0.1	0.0	0.1
Number of new students expected to attend local school district	0.3	0.0	0.3

The Project is estimated to support an average of approximately \$5.0 million in new non-residential taxable property each year over the next 10 years. The taxable value of property supported by the Project over the 10-year period is shown in the following table.

Table 3. Value of Taxable Property Supported by the Project Over the Next 10 Years

Year	New Residential Property	The Project's Property				Subtotal Nonresidential Property	Total Residential & Nonresidential Property
		Land	Buildings & Other Real Prop. Improvements	Furniture, Fixtures, & Equipment	Inventories		
1	\$16,867	\$535,000	\$3,100,000	\$600,000	\$600,000	\$4,835,000	\$4,851,867
2	\$17,205	\$545,700	\$3,162,000	\$540,000	\$612,000	\$4,859,700	\$4,876,905
3	\$17,549	\$556,614	\$3,225,240	\$480,000	\$624,240	\$4,886,094	\$4,903,643
4	\$17,900	\$567,746	\$3,289,745	\$420,000	\$636,725	\$4,914,216	\$4,932,116
5	\$18,258	\$579,101	\$3,355,540	\$360,000	\$649,459	\$4,944,100	\$4,962,358
6	\$18,623	\$590,683	\$3,422,650	\$300,000	\$662,448	\$4,975,782	\$4,994,405
7	\$18,995	\$602,497	\$3,491,103	\$240,000	\$675,697	\$5,009,298	\$5,028,293
8	\$19,375	\$614,547	\$3,560,926	\$180,000	\$689,211	\$5,044,684	\$5,064,059
9	\$19,763	\$626,838	\$3,632,144	\$120,000	\$702,996	\$5,081,977	\$5,101,740
10	\$20,158	\$639,375	\$3,704,787	\$120,000	\$717,056	\$5,181,217	\$5,201,375

The taxable value of residential property represents the value of properties that may be constructed as a result of new workers moving to the community.

This analysis assumes the residential real property appreciation rate to be 2.0% per year. The Project's real property is assumed to appreciate at a rate of 2.0% per year. The analysis assumes the Project's furniture, fixtures, and equipment will depreciate over time according to the depreciation schedule shown in Appendix A.

Temporary Construction Impact

The Project will include an initial period of construction where \$3.1 million will be spent to construct new buildings and other real property improvements. It is assumed that 50.0% of the construction expenditure will be spent on materials and 50.0% on labor. The temporary construction activity will support temporary economic impacts in the community in the form of temporary construction employment and sales for local construction firms.

Table 4. Spending and Estimated Direct Employment Impact of Project-Related Construction Activity

	Amount
Total construction expenditure	\$3,100,000
Materials	\$1,550,000
Labor	\$1,550,000
Temporary Construction Workers Supported (Average Earnings = \$51,300)	30.2

The following table presents the temporary economic impacts resulting from the construction.

Table 5. Temporary Economic Impact of Project-Related Construction Activity

	Direct	Indirect & Induced	Total
Number of temporary direct, indirect, and induced job years to be supported*	30.2	21.0	51.2
Salaries to be paid to direct, indirect, and induced workers	\$1,550,000	\$785,230	\$2,335,230
Revenues or sales for businesses related to construction	\$3,100,000	\$2,671,580	\$5,771,580

* A job year is defined as full employment for one person for 2080 hours in a 12-month span.

Sales tax calculations related to construction activity are presented in the following table. The sales tax revenue generated from construction-period taxable spending is included in the fiscal impact for affected districts in Year 1 of this analysis.

Table 6. Construction-Related Taxable Spending

	Estimate
Expenditure for Materials	\$1,550,000
Percent of Materials subject to local tax	50.0%
<u>Subtotal Taxable Materials</u>	<u>\$775,000</u>
Expenditure for Labor / Paid to construction workers	\$1,550,000
Percent of gross earnings spent on taxable goods and services	24.0%
Percent of taxable spending done locally	10.0%
<u>Subtotal Taxable Construction Worker Spending</u>	<u>\$37,200</u>
Expenditure for Furniture, Fixtures, & Equipment (FF&E)	\$600,000
Percent of FF&E subject to local tax	10.0%
<u>Subtotal Taxable FF&E Purchases</u>	<u>\$60,000</u>
<u>Total Construction-Related Taxable Spending</u>	<u>\$872,200</u>

The above construction analysis focuses on the impact resulting from the Project's construction investments identified in Year 1. If construction will be phased in over several years or an expansion is planned in a later year, parallel calculations will be performed for those years.

Fiscal Impact Overview

The Project will generate additional benefits and costs for the City. Overall, the City will receive approximately \$8,060,700 in net benefits over the 10-year period. The table below displays the estimated additional benefits, costs, and net benefits to be received by the City over the next 10 years of the Project. Appendix C contains the year-by-year calculations.

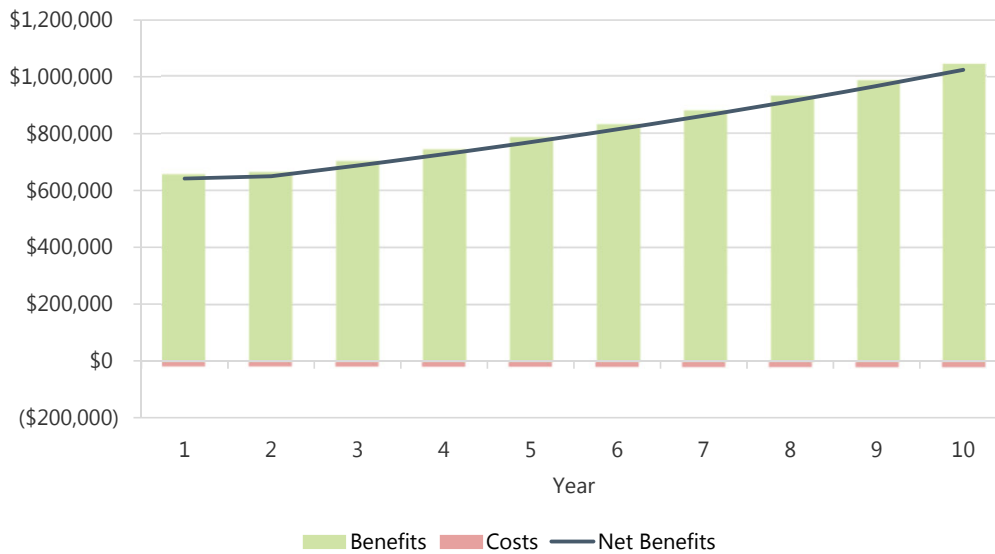
Table 7. City of Tomball: Benefits, Costs, and Net Benefits Over the Next 10 Years

	Amount
Sales Taxes	\$848,484
Property Taxes - Project	\$169,813
Property Taxes - New Residential	\$631
Utility Revenue	\$145,500
Utility Franchise Fees	\$11,651
Building Permits and Fees	\$10,290
Hotel Occupancy Taxes	\$7,029,368
Miscellaneous Taxes & User Fees	\$22,423
<u>Subtotal Benefits</u>	<u>\$8,238,159</u>
Cost of Providing Municipal Services	(\$24,716)
Cost of Providing Utility Services	(\$152,775)
<u>Subtotal Costs</u>	<u>(\$177,491)</u>
Net Benefits	\$8,060,669
<i>Present Value (5% discount rate)</i>	<i>\$6,089,181</i>

Table 8. Year-by-Year Benefits, Costs, and Net Benefits for the City of Tomball

Year	Benefits	Costs	Net Benefits	Cumulative Net Benefits
1	\$658,080	(\$16,210)	\$641,870	\$641,870
2	\$666,301	(\$16,534)	\$649,768	\$1,291,638
3	\$704,417	(\$16,864)	\$687,552	\$1,979,190
4	\$744,823	(\$17,202)	\$727,621	\$2,706,812
5	\$787,659	(\$17,546)	\$770,113	\$3,476,925
6	\$833,071	(\$17,897)	\$815,175	\$4,292,100
7	\$881,216	(\$18,255)	\$862,961	\$5,155,061
8	\$932,259	(\$18,620)	\$913,639	\$6,068,700
9	\$986,376	(\$18,992)	\$967,383	\$7,036,084
10	\$1,043,957	(\$19,372)	\$1,024,585	\$8,060,669
Total	\$8,238,159	(\$177,491)	\$8,060,669	

Figure 1. Annual Fiscal Net Benefits for the City of Tomball



Impact from Project and Workers

The City will receive benefits from the activity, spending, and investments associated with (1) the Project and (2) the workers. These benefits, associated costs, and resulting net benefits for the next 10 years are shown below for these two categories.

Table 9: Net Benefits to the City from the Project and Workers

	The Project	Workers	Total
Sales Taxes	\$844,927	\$3,558	\$848,484
Real Property Taxes	\$135,907	\$0	\$135,907
FF&E Property Taxes	\$11,473	\$0	\$11,473
Inventory Property Taxes	\$22,433	\$0	\$22,433
New Residential Property Taxes	\$0	\$631	\$631
Utility Revenue	\$135,777	\$9,723	\$145,500
Utility Franchise Fees	\$11,014	\$637	\$11,651
Building Permits and Fees	\$10,290	\$0	\$10,290
Hotel Occupancy Taxes	\$7,029,368	\$0	\$7,029,368
Miscellaneous Taxes & User Fees	\$19,381	\$3,042	\$22,423
Subtotal Benefits	\$8,220,569	\$17,591	\$8,238,159
Cost of Providing Municipal Services	(\$21,352)	(\$3,364)	(\$24,716)
Cost of Providing Utility Services	(\$142,565)	(\$10,210)	(\$152,775)
Subtotal Costs	(\$163,917)	(\$13,573)	(\$177,491)
Net Benefits	\$8,056,651	\$4,018	\$8,060,669
<i>Percent of Total Net Benefits</i>	<i>100.0%</i>	<i>0.0%</i>	

Non-Tax Incentives

At the request of the firm, The City of Tomball may consider abating taxes on the firm's property. The table below identifies the type of firm property for which the city may consider abating taxes.

Table 14. Incentives Under Consideration

Year	Enter Incentive Description
1	\$149,750
2	\$0
3	\$0
4	\$0
5	\$0
6	\$0
7	\$0
8	\$0
9	\$0
10	\$0
Total	\$149,750

These financial incentives may be considered an investment in the Project made by the EDC and/or City. Four calculations analyzing possible investments were made:

1. Net Benefits - detailed above
2. Present Value of Net Benefits - detailed above
3. Rate of Return on Investment - discussed and detailed below
4. Payback Period - discussed and detailed below

The rate of return on investment calculates the average annual rate of return to the city, treating the incentives as the initial investment and the net benefits to the city as the return on investment. The payback period is the number of years that it will take the city to recover the cost of incentives from the additional revenues that it will receive as a result of the Project.

The table below shows an analysis of these incentives, including a calculation of incentives per job, rate of return, and payback period.

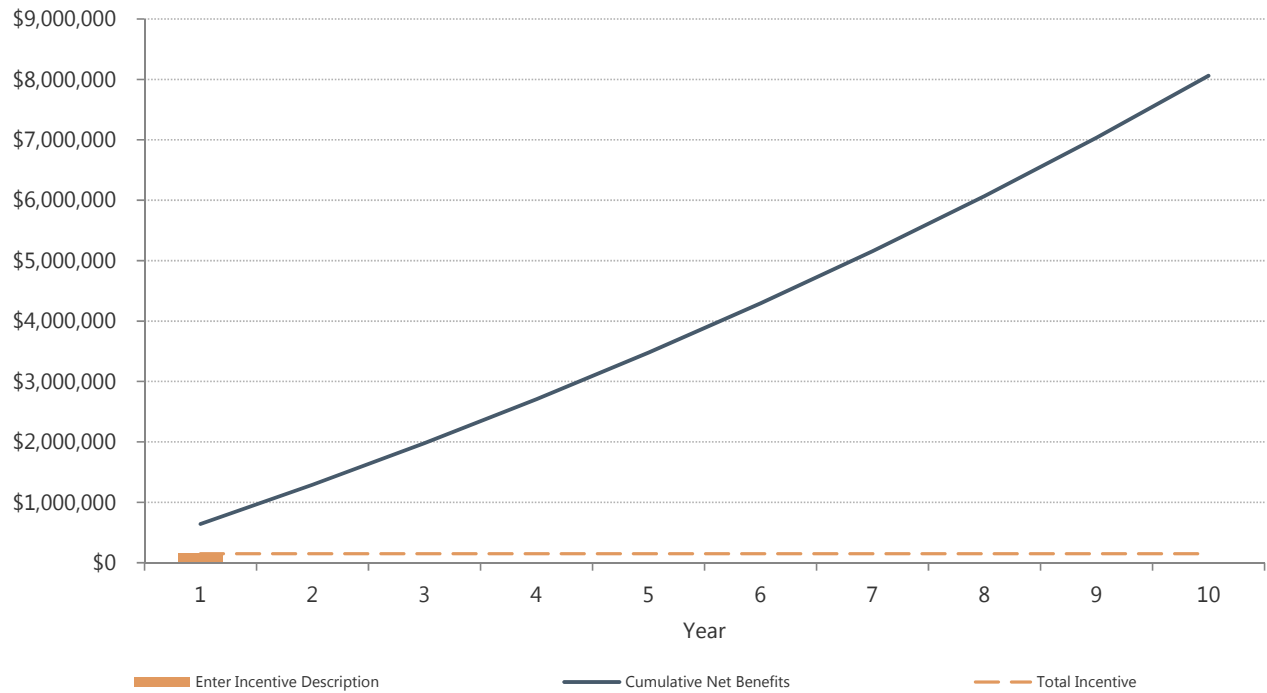
Table 15. Analysis of Incentives

Total Non-Tax Incentive	\$149,750
Incentive Per Job	\$14,975
Rate of Return - 5 Years	464.4%
Rate of Return - 10 Years	538.3%
Payback period (years)	0.2

Note: The Rate of Return and Payback Period are calculated based on the sum of annual incentives, not the present value of the incentives.

The graph below depicts the total incentives currently under consideration versus the cumulative net benefits to the City. The intersection indicates the length of time until the incentives are paid back.

Figure 2. Incentives Under Consideration



Overview of Methodology

This report presents the results of an analysis undertaken by the Tomball Economic Development Corporation using Total Impact, an economic and fiscal impact analysis tool developed and supported by the Austin, TX based economic consulting firm, Impact DataSource.

The Total Impact model combines project-specific attributes with community data, tax rates, and assumptions to estimate the economic impact of the Project and the fiscal impact for local taxing districts over a 10-year period.

The economic impact as calculated in this report can be categorized into two main types of impacts. First, the direct economic impacts are the jobs and payroll directly created by the Project. Second, this economic impact analysis calculates the indirect and induced impacts that result from the Project. Indirect jobs and salaries are created in new or existing area firms, such as maintenance companies and service firms, that may supply goods and services for the Project. In addition, induced jobs and salaries are created in new or existing local businesses, such as retail stores, gas stations, banks, restaurants, and service companies that may supply goods and services to new workers and their families.

The economic impact estimates in this report are based on the Regional Input-Output Modeling System (RIMS II), a widely used regional input-output model developed by the U. S. Department of Commerce, Bureau of Economic Analysis. The RIMS II model is a standard tool used to estimate regional economic impacts. The economic impacts estimated using the RIMS II model are generally recognized as reasonable and plausible assuming the data input into the model is accurate or based on reasonable assumptions. Impact DataSource utilizes county-level multipliers to estimate the impact occurring at the sub-county level.

Two types of regional economic multipliers were used in this analysis: an employment multiplier and an earnings multiplier. An employment multiplier was used to estimate the number of indirect and induced jobs created or supported in the area. An earnings multiplier was used to estimate the amount of salaries to be paid to workers in these new indirect and induced jobs. The employment multiplier shows the estimated number of total jobs created for each direct job. The earnings multiplier shows the estimated amount of total salaries paid to these workers for every dollar paid to a direct worker. The multipliers used in this analysis are listed below:

721000 Accommodation		City	County
Employment Multiplier	(Type II Direct Effect)	1.2698	1.5364
Earnings Multiplier	(Type II Direct Effect)	1.3371	1.6702

The fiscal impacts calculated in this report are detailed in Appendix C. Most of the revenues estimated in this study result from calculations relying on (1) attributes of the Project, (2) assumptions to derive the value of associated taxable property or sales, and (3) local tax rates. In some cases, revenues are estimated on a per new household, per new worker, or per new school student basis.

The company or Project developer was not asked, nor could reasonably provide data for calculating some other revenues. For example, while the city will likely receive revenues from fines paid on speeding tickets given to new workers, the company does not know the propensity of its workers to speed. Therefore, some revenues are calculated using an average revenue approach. This approach uses relies on two assumptions:

1. The taxing entity has two general revenue sources: revenues from residents and revenues from businesses.
2. The taxing entity will collect (a) about the same amount of miscellaneous taxes and user fees from each new household that results from the Project as it currently collects from existing households on average, and (b) the same amount of miscellaneous taxes and user fees from the new business (on a per worker basis) will be collected as it collects from existing businesses.

In the case of the school district, some additional state and federal revenues are estimated on a per new school student basis consistent with historical funding levels.

Additionally, this analysis sought to estimate the additional expenditures faced by the city and county to provide services to new households and new businesses. A marginal cost approach was used to calculate these additional costs. This approach relies on two assumptions:

1. The taxing entity spends money on services for two general groups: revenues from residents and revenues from businesses.
2. The taxing entity will spend slightly less than its current average cost to provide local government services (police, fire, EMS, etc.) to (a) new residents and (b) businesses on a per worker basis.

In the case of the school district, the marginal cost to educate new students was estimated based on a portion of the school's current expenditures per student and applied to the headcount of new school students resulting from the Project.

Additionally, this analysis seeks to calculate the impact on the school district's finances from the Project by generally, and at a summary level, mimicking the district's school funding formula.

According to the Texas Education Agency, any property added to local tax rolls, and the local taxes that this generates, reduces the amount of state funding equivalent to local taxes collected for maintenance and operations. The school district retains local taxes received for debt services and the corresponding state funding is not reduced.

However, according to the Texas Education Agency, the school district will receive state aid for each new child that moves to the District. The additional revenues for the school district are calculated in this analysis.

About Impact DataSource

Impact DataSource is an Austin economic consulting, research, and analysis firm founded in 1993. The firm has conducted over 2,500 economic impact analyses of firms, projects, and activities in most industry groups in Texas and more than 30 other states.

Regular City Council

Agenda Item

Data Sheet

Meeting Date: December 3, 2018

Topic:

Consideration and possible action to approve, as a Project of the TEDC Corporation, an agreement with Houston Poly Bag I, LTD to make direct incentives to or expenditures for equipment expansion for the creation and retention of primary jobs for Houston Poly Bag I, LTD. The estimated amount of expenditures for such Project is an amount not to exceed \$110,369.00.

Background:

All expenditures of the Tomball Economic Development Corporation (TEDC) sales tax revenue must first be approved as a "Project." At its meeting on November 13, 2018, the TEDC Board of Directors did take formal action to approve, as a Project of the TEDC, an agreement with Houston Poly Bag for the creation or retention of primary jobs associated with the expansion of its equipment and operations. The City Council of Tomball has final approval authority over all projects and agreements of the TEDC.

Origination:

William E. Sumner, III, General Manager, Houston Poly Bag I, LTD

Recommendation:

Approve, as a Project of the Corporation, the Performance Agreement with Houston Poly Bag I, LTD

Funding:

Yes

Account Number:Project Grants

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

Kelly Violette, Executive Director, Tomball Economic Development Corporation

ACTION TAKEN

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

ATTACHMENTS:

Cover Memo

Request Letter

Draft TEDC Performance Agreement

Economic Impact Analysis



TO: Honorable Mayor and City Council

FROM: Kelly Violette
Executive Director

MEETING DATE: December 3, 2018

SUBJECT: Houston Poly Bag I, Ltd.

ITEM TYPE: Action

Houston Poly Bag I, Ltd. (HPB) is a custom manufacturer of polyethylene products used for packaging, including bags, films, sheeting, and liners. HPB has been in business since 1979 and is located within a 50,000 square foot facility at 11726 Holderrieth Rd., Tomball, Texas 77375.

As per the attached grant funding request letter from William E. Sumner, III, General Manager of HPB, the company is at a point where it needs to expand its operations once again. Mr. Sumner plans to purchase eight new bag processing machines, install a three-layer manufacturing line, and expand the facility's roof by constructing a 36' x 37' cupola addition to the building's existing 40' tower.

The additional machines and improvements will enable HPB to manufacture biodegradable plastic film thereby expanding its business opportunities in the industry. It will also create approximately 11 new employment positions at the company.

The estimated cost for this expansion project is \$1,351,516.

An economic impact analysis is included with the agreement to show the impact of this project on Tomball's economy. Per the analysis, the 5-year net benefit of this project on the City of Tomball is \$367,896. The proposed incentive is \$110,369, based upon 30% of the five-year net benefit.



Houston Poly Bag I, Ltd.

11726 Holderrieth Road
Tomball, Texas 77375
WES SUMNER, GM

Telephone (800) 992-7659 (281) 351-1726
Fax (800) 446-9329 (281) 351-9329

November 6, 2018

Ms. Kelly Violette
Tomball Economic Development Corporation
P.O. Box 820
Tomball, Texas 77375

Dear Ms. Violette,

Houston Poly Bag is requesting funding help from the TEDC under the Job Creation/ Retention Program. Houston Poly Bag is now undergoing expansion for the third time in the last five years. Our expansion is a three-part process; purchasing eight new bag processing machines, installing a three-layer manufacturing line, and a 36' x 37' cupola addition to our 'tower'.

Purchasing eight new high technology bag processing machines will allow Houston Poly Bag to retain current business. Without the purchase of these new machines, HPB will no longer hold a competitive position to retain and accrual new business, resulting in reducing staff.

The new multi-layer line addition will strictly manufacture biodegradable plastic film, allowing Houston Poly Bag to venture into new business realms. To install this new manufacturing line Houston Poly Bag must expand warehouse space and update electrical supply. The most efficient way to accomplish this is to install a 36' x 37' cupola addition to our current 40' tower.

These additions will provide growth for Houston Poly Bag's current business and will open new opportunities for growth. If you need any further information, please contact me at the number below.

Thank you for your consideration,

William E Sumner III

General Manager
NAICS Code 326.11
281-351-1726
Houston Poly Bag I, Ltd.
wsumner@houstonpolybag.com

AGREEMENT

THE STATE OF TEXAS §
 § KNOW ALL MEN BY THESE PRESENTS:
COUNTY OF HARRIS §

This Agreement (the “Agreement”) is made and entered into by and between the Tomball Economic Development Corporation, an industrial development corporation created pursuant to Tex. Rev. Civ. Stat. Ann. Art. 5190.6, Section 4B, located in Harris County, Texas (the “TEDC”), and **Houston Poly Bag I, Ltd.** (the “Company”), 11726 Holderrieth Road, Tomball, Texas, 77375.

WITNESSETH:

WHEREAS, it is the established policy of the TEDC to adopt such reasonable measures from time-to-time as are permitted by law to endeavor to attract industry, create and retain primary jobs, expand the growth of the City of Tomball (the “City”), and thereby enhance the economic stability and growth of the City; and

WHEREAS, the Company owns a 5-acre tract of land within the City, located at 11726 Holderrieth Road, Tomball, Texas, 77375 (the “Property”), and more particularly described in Exhibit “A,” attached hereto and made a part hereof; and

WHEREAS, the Company proposes to expand its current operations at the Property, and as part of the process, plans to expend funds to add additional machinery and equipment and make other capital improvements (as described in Exhibit “B”) necessary to expand its manufacturing process in order to increase its current level of production.; and

WHEREAS, the Company also proposes to maintain the current sixty-five (65) jobs and to create eleven (11) new jobs in conjunction with the expansion of its business operations at the Property; and

WHEREAS, the TEDC agrees to fund a portion of the cost of the Improvements up to the amount of One Hundred Ten Thousand Three Hundred and Sixty-Nine Dollars (\$110,369) to assist in the purchase and installation of the equipment and create and retain employment positions at the Property; and

WHEREAS, the Company has agreed, in exchange and as consideration for the funding, to satisfy and comply with certain terms and conditions; and

WHEREAS, this expenditure is found by the Board of Directors of the TEDC to be suitable for the expansion of the business operations at the Property and the creation and retention of primary jobs at the Property;

NOW, THEREFORE, in consideration of the premises and the mutual benefits and obligations set forth herein, including the recitals set forth above, the TEDC and the Company agree as follows:

1.

The Company covenants and agrees that it will construct the Improvements and operate and maintain the proposed business on the Property for a term of at least five (5) years, and will for such term, except as provided by paragraph 4 hereof, maintain seventy-six (76) employees on the Property.

2.

The Company also covenants and agrees that construction of the Improvements and obtaining all necessary permits from the City shall occur within twelve (12) months from the Effective Date of this Agreement. Extensions of these deadlines, due to any extenuating circumstance or uncontrollable delay, may be granted at the sole discretion of the Board of Directors of the TEDC.

3.

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

4.

In consideration of the Company's representations, promises, and covenants, TEDC agrees to grant to the Company One Hundred Ten Thousand Three Hundred and Sixty-Nine Dollars (\$110,369) to fund a portion of the cost of the Improvements, the retention of sixty-five (65) jobs and the addition of eleven (11) new employees at the Property. The TEDC agrees to distribute such funds to the Company within thirty (30) days of receipt of a letter from the Company requesting such payment, which letter shall also include: The TEDC agrees to distribute such funds to the Company within thirty (30) days of receipt of a letter from the Company requesting such payment, which letter shall also include: (a) a copy of the City's occupancy permit or certification of completion for the Improvements to the Property; (b) proof that the company has added the number of employees indicated above to the Tomball operation as evidenced by copies of Texas Workforce Commission form C-3 or Internal Revenue Service form 941; (c) certification that the Improvements have been constructed in accordance with the approved plans and specifications; (d) an affidavit stating that all contractors and subcontractors providing work and/or materials in the construction of the Improvements have been paid and any and all liens and claims regarding such work have been released; and (e) Proof of payment to all vendors, contractors and subcontractors providing work and/or materials in the construction of

the Improvements, proof of payment must include copies of canceled checks and/or credit card receipts and copies of paid invoices from all vendors, contractors and subcontractors.

In the event the number of jobs originally projected is not met or maintained, the amount of the funding provided to the Company by TEDC will be reduced on a pro-rata basis to reflect the actual number of jobs at the time of the request for disbursement of funds.

5.

It is understood and agreed by the parties that, in the event of a default by the Company on any of its obligations under this Agreement, the Company shall reimburse the TEDC the full amount paid to the Company by the TEDC, with interest at the rate equal to the 90-day Treasury Bill plus $\frac{1}{2}$ % per annum, within thirty (30) days after the TEDC notifies the Company of the default. It is further understood and agreed by the parties that if the Company is convicted of a violation under 8 U.S.C. Section 1324a(f) (engaging in a pattern or practice of employing unauthorized aliens), the Company will reimburse the TEDC the full amount paid to the Company, with interest at the rate equal to the 90-day Treasury Bill plus $\frac{1}{2}$ % per annum, within thirty (30) days after the TEDC notifies the Company of the violation.

The Company shall also reimburse the TEDC for any and all reasonable attorney's fees and costs incurred by the TEDC as a result of any action required to obtain reimbursement of such funds.

6.

This Agreement shall inure to the benefit of, and be binding upon, both the TEDC and the Company, and upon the Company's successors and assigns, affiliates, and subsidiaries, and shall remain in force whether the Company sells, assigns, or in any other manner disposes of, either voluntarily or by operation of law, all or any part of the Property and the agreements herein

contained shall be held to be covenants running with the Property for so long as this Agreement, or any extension thereof, remains in effect.

7.

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

If to City:	Tomball Economic Development Corporation 401 W. Market Street Tomball, Texas 77375 Attn: President, Board of Directors
If to Company:	Houston Poly Bag I, Ltd. 11726 Holderrieth Road Tomball, Texas 77375 Attn: William E. Sumner, III – General Manager

8.

This Agreement shall be performable and enforceable in Harris County, Texas, and shall be construed in accordance with the laws of the State of Texas. Venue for any action arising under this Agreement shall lie exclusively in the state and federal courts in Harris County, Texas.

9.

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

10.

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

11.

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

12.

In the event any one or more words, phrases, clauses, sentences, paragraphs, sections, or other parts of this Agreement, or the application thereof to any person, firm, corporation, or circumstance, shall be held by any court of competent jurisdiction to be invalid or unconstitutional for any reason, then the application, invalidity or unconstitutionality of such words, phrases, clauses, sentences, paragraphs, sections, or other parts of this Agreement shall be deemed to be independent of and severable from the remainder of this Agreement, and the validity of the remaining parts of this Agreement shall not be affected thereby.

IN TESTIMONY OF WHICH, THIS AGREEMENT has been executed by the parties on this _____ day of _____ 201_ (the "Effective Date").

HOUSTON POLY BAG I, LTD.

By: _____

Name: William E. Sumner, III

Title: General Manager

ATTEST:

By: _____

Name: Tiffani Wooten

Title: Assistant Director

**TOMBALL ECONOMIC DEVELOPMENT
CORPORATION**

By: _____

Name: Gretchen Fagan

Title: President, Board of Directors

ATTEST:

By: _____

Name: Steven Vaughan

Title: Vice President, Board of Directors

ACKNOWLEDGMENT

THE STATE OF TEXAS §
 §
COUNTY OF HARRIS §

This instrument was acknowledged before me on the _____ day of _____ 201_, by William E. Sumner, III, General Manager, Houston Poly Bag I, Ltd. for and on behalf of said company.

Notary Public in and for the State of Texas

My Commission Expires: _____

(SEAL)

ACKNOWLEDGMENT

THE STATE OF TEXAS §
 §
COUNTY OF HARRIS §

This instrument was acknowledged before me on the _____ day of _____ 2018, by Gretchen Fagan, President of the Board of Directors of the Tomball Economic Development Corporation, for and on behalf of said Corporation.

Notary Public in and for the State of Texas

My Commission Expires: _____

(SEAL)

Exhibit “A”

Legal Description of Property

HOUSTON POLY BAG PLAT, BEING A 5 ACRE TRACT IN THE C.N. PILLOT SURVEY, ABSTRACT NO. 632, IN TOMBALL, HARRIS COUNTY, TEXAS, RECORDED IN VOL. 335, PG. 108.

Exhibit “B”

Description of Improvements

Purchase and install new bag machines with updated electronics, construct a new roof cupola to accommodate the addition of a new extruder and auxiliary equipment for bag making, add a new extrusion line to manufacture biodegradable film and bags, add an engineered power quality solution as well as a new 100 HP Compressor, and all electrical work required for our expansion and upgrade.

EXECUTIVE SUMMARY

A REPORT OF THE ECONOMIC IMPACT OF HOUSTON POLY BAG IN TOMBALL, TX

November 9, 2018

Prepared by:

Tomball Economic Development Corporation

29201 Quinn Rd., Suite B

Tomball, Texas 77375



Prepared using Total Impact



PURPOSE & LIMITATIONS

This report presents the results of an analysis undertaken by the Tomball Economic Development Corporation using Total Impact, an economic and fiscal impact analysis tool developed and supported by the Austin, TX based economic consulting firm, Impact DataSource.

The Total Impact model is a customized software program licensed to the Tomball Economic Development Corporation. The model includes estimates, assumptions, and other information developed by Impact DataSource from its independent research effort detailed in Tomball Economic Development Corporation's Total Impact User Guide.

The analysis relies on prospective estimates of business activity that may not be realized. Tomball Economic Development Corporation made reasonable efforts to ensure that the project-specific data entered into the Total Impact model reflects realistic estimates of future activity.

No warranty or representation is made by Tomball Economic Development Corporation or Impact DataSource that any of the estimates or results contained in this study will actually be achieved.



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Introduction

This report presents the results of an economic impact analysis performed using Total Impact, a model developed by Impact DataSource. The report estimates the impact that a potential project in the City of Tomball will have on the local economy and estimates the costs and benefits for local taxing districts over a 10-year period.

Description of the Project

Houston Poly Bag intends to purchase and install new bag machines with updated electronics, construct a new roof cupola to accommodate the addition of a new extruder and auxiliary equipment for bag making, add a new extrusion line to manufacture biodegradable film and bags, add an engineered power quality solution as well as a new 100 HP Compressor, and all electrical work required for our expansion and upgrade.

Existing & Expanded Operations

The Project under analysis represents the expansion of an existing company in the City of Tomball. The existing operations currently support 67.0 direct jobs in the community and 69.2 indirect and induced jobs. The direct workers earn \$28,000 per year and the company supports \$33.7 million per year in taxable sales and spending in the community. Additionally, the company supports taxable property valued at \$4.9 million annually.

The table below illustrates the company's economic impact over the next 10 years - including both the existing and expanded operations.

Table 1. Economic Impact of Existing and Expanded Operations Over the Next 10 Years

	Existing Operations	Expansion	Existing & Expanded Ops
Jobs			
Direct	67.0	11.0	78.0
Indirect & Induced	69.2	11.4	80.6
Total	136.2	22.4	158.6
Salaries			
Direct	\$20,541,677	\$4,358,218	\$24,899,895
Indirect & Induced	\$21,671,468	\$4,597,920	\$26,269,388
Total	\$42,213,145	\$8,956,138	\$51,169,283
Taxable Sales			
Direct	\$336,494,677	\$36,213,173	\$372,707,850
Indirect & Induced	\$671,816	\$142,536	\$814,351
Total	\$337,166,492	\$36,355,709	\$373,522,201

The table below illustrates the company's fiscal impact - the net benefits for local taxing districts - over the next 10 years - including both the existing and expanded operations.

Table 2. Fiscal Impact of Existing and Expanded Operations Over the Next 10 Years

	Net Benefits		
	Existing Operations	Expansion	Existing & Expanded Ops
City of Tomball	\$6,893,133	\$775,873	\$7,669,006

The remainder of this report will focus on only the economic and fiscal impact associated with the expanded operations.

Economic Impact Overview

The Project's operations will support employment and other economic impacts in the community. The 11.0 workers directly employed by the Project will earn approximately \$40,000 per year on average over the next 10 years. This direct activity will support 11.4 indirect and induced workers in the community earning \$40,000 on average over the next 10 years. The total additional payroll or workers' earnings associated with the Project is estimated to be approximately \$9.0 million over the next 10 years.

On average, the Project will generate \$4.4 million in direct economic output over the next 10 years. Spin-off businesses in the community will produce \$3.0 million in economic output per year as a result of the Project. In total, the Project will support \$7.4 million in economic output per year on average. Economic output is the value of goods and services produced in the economy and can be thought of as revenues for businesses. The economic output calculations in this report were estimated using the RIMS II economic impact model and the Project's employment estimates.

Accounting for various taxable sales and purchases, including activity associated with the Project, worker spending, and visitors' spending in the community, the Project is estimated to support approximately \$36.4 million in taxable sales over the next 10 years.

Table 3. Economic Impact Over the Next 10 Years

	Direct	Indirect & Induced	Total
Number of permanent direct, indirect, and induced jobs to be created	11.0	11.4	22.4
Salaries to be paid to direct, indirect, and induced workers	\$4,358,218	\$4,597,920	\$8,956,138
Economic output generated by direct, indirect, and induced activity	\$44,442,591	\$29,754,315	\$74,196,906
Taxable sales and purchases expected in the City	\$36,213,173	\$142,536	\$36,355,709

The Project may result in new residents moving to the community and potentially new residential properties being constructed as summarized below.

Table 4. Population Impacts Over the Next 10 Years

	Direct	Indirect & Induced	Total
Number of direct, indirect, and induced workers who will move to the City	0.6	0.6	1.2
Number of new residents in the City	1.6	1.5	3.1
Number of new residential properties to be built in the City	0.1	0.1	0.2
Number of new students expected to attend local school district	0.3	0.3	0.6

The Project is estimated to support an average of approximately \$1.3 million in new non-residential taxable property each year over the next 10 years. The taxable value of property supported by the Project over the 10-year period is shown in the following table.

Table 5. Value of Taxable Property Supported by the Project Over the Next 10 Years

Year	New Residential Property	The Project's Property				Subtotal Nonresidential Property	Total Residential & Nonresidential Property
		Land	Buildings & Other Real Prop. Improvements	Furniture, Fixtures, & Equipment	Inventories		
1	\$33,735	\$0	\$123,000	\$1,228,516	\$450,000	\$1,801,516	\$1,835,251
2	\$34,409	\$0	\$126,690	\$1,105,664	\$459,000	\$1,691,354	\$1,725,764
3	\$35,097	\$0	\$130,491	\$982,813	\$468,180	\$1,581,484	\$1,616,581
4	\$35,799	\$0	\$134,405	\$859,961	\$477,544	\$1,471,910	\$1,507,710
5	\$36,515	\$0	\$138,438	\$737,110	\$487,094	\$1,362,642	\$1,399,157
6	\$37,246	\$0	\$142,591	\$614,258	\$496,836	\$1,253,685	\$1,290,931
7	\$37,991	\$0	\$146,868	\$491,406	\$506,773	\$1,145,048	\$1,183,039
8	\$38,750	\$0	\$151,274	\$368,555	\$516,909	\$1,036,738	\$1,075,488
9	\$39,525	\$0	\$155,813	\$245,703	\$527,247	\$928,763	\$968,288
10	\$40,316	\$0	\$160,487	\$245,703	\$537,792	\$943,982	\$984,298

The taxable value of residential property represents the value of properties that may be constructed as a result of new workers moving to the community.

This analysis assumes the residential real property appreciation rate to be 2.0% per year. The Project's real property is assumed to appreciate at a rate of 2.0% per year. The analysis assumes the Project's furniture, fixtures, and equipment will depreciate over time according to the depreciation schedule shown in Appendix A.

Temporary Construction Impact

The Project will include an initial period of construction where \$0.1 million will be spent to construct new buildings and other real property improvements. It is assumed that 60.0% of the construction expenditure will be spent on materials and 40.0% on labor. The temporary construction activity will support temporary economic impacts in the community in the form of temporary construction employment and sales for local construction firms.

Table 6. Spending and Estimated Direct Employment Impact of Project-Related Construction Activity

	Amount
Total construction expenditure	\$123,000
Materials	\$73,800
Labor	\$49,200
Temporary Construction Workers Supported (Average Earnings = \$51,300)	1

The following table presents the temporary economic impacts resulting from the construction.

Table 7. Temporary Economic Impact of Project-Related Construction Activity

	Direct	Indirect & Induced	Total
Number of temporary direct, indirect, and induced job years to be supported*	1.0	0.7	1.7
Salaries to be paid to direct, indirect, and induced workers	\$49,200	\$24,925	\$74,125
Revenues or sales for businesses related to construction	\$123,000	\$106,001	\$229,001

* A job year is defined as full employment for one person for 2080 hours in a 12-month span.

Sales tax calculations related to construction activity are presented in the following table. The sales tax revenue generated from construction-period taxable spending is included in the fiscal impact for affected districts in Year 1 of this analysis.

Table 8. Construction-Related Taxable Spending

	Estimate
Expenditure for Materials	\$73,800
Percent of Materials subject to local tax	50.0%
<u>Subtotal Taxable Materials</u>	<u>\$36,900</u>
Expenditure for Labor / Paid to construction workers	\$49,200
Percent of gross earnings spent on taxable goods and services	24.0%
Percent of taxable spending done locally	10.0%
<u>Subtotal Taxable Construction Worker Spending</u>	<u>\$1,181</u>
Expenditure for Furniture, Fixtures, & Equipment (FF&E)	\$1,228,516
Percent of FF&E subject to local tax	10.0%
<u>Subtotal Taxable FF&E Purchases</u>	<u>\$122,852</u>
<u>Total Construction-Related Taxable Spending</u>	<u>\$160,932</u>

The above construction analysis focuses on the impact resulting from the Project's construction investments identified in Year 1. If construction will be phased in over several years or an expansion is planned in a later year, parallel calculations will be performed for those years.

Fiscal Impact Overview

The Project will generate additional benefits and costs for the City. Overall, the City will receive approximately \$775,900 in net benefits over the 10-year period. The table below displays the estimated additional benefits, costs, and net benefits to be received by the City over the next 10 years of the Project. Appendix C contains the year-by-year calculations.

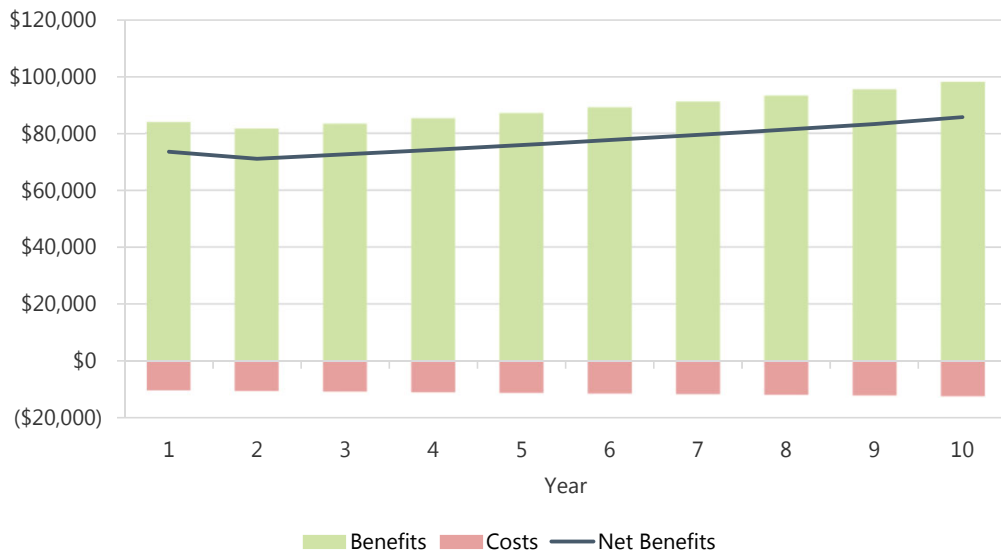
Table 9. City of Tomball: Benefits, Costs, and Net Benefits Over the Next 10 Years

	Amount
Sales Taxes	\$727,114
Property Taxes - Project	\$45,131
Property Taxes - New Residential	\$1,261
Utility Revenue	\$79,809
Utility Franchise Fees	\$6,851
Building Permits and Fees	\$794
Hotel Occupancy Taxes	\$1,525
Miscellaneous Taxes & User Fees	\$27,403
<u>Subtotal Benefits</u>	<u>\$889,888</u>
Cost of Providing Municipal Services	(\$30,215)
Cost of Providing Utility Services	(\$83,800)
<u>Subtotal Costs</u>	<u>(\$114,015)</u>
Net Benefits	\$775,873
<i>Present Value (5% discount rate)</i>	<i>\$594,370</i>

Table 10. Year-by-Year Benefits, Costs, and Net Benefits for the City of Tomball

Year	Benefits	Costs	Net Benefits	Cumulative Net Benefits
1	\$84,076	(\$10,413)	\$73,664	\$73,664
2	\$81,777	(\$10,621)	\$71,156	\$144,820
3	\$83,551	(\$10,833)	\$72,718	\$217,538
4	\$85,388	(\$11,050)	\$74,338	\$291,876
5	\$87,290	(\$11,271)	\$76,019	\$367,896
6	\$89,259	(\$11,496)	\$77,763	\$445,658
7	\$91,296	(\$11,726)	\$79,570	\$525,228
8	\$93,404	(\$11,961)	\$81,444	\$606,672
9	\$95,585	(\$12,200)	\$83,385	\$690,057
10	\$98,260	(\$12,444)	\$85,816	\$775,873
Total	\$889,888	(\$114,015)	\$775,873	

Figure 1. Annual Fiscal Net Benefits for the City of Tomball



Impact from Project and Workers

The City will receive benefits from the activity, spending, and investments associated with (1) the Project and (2) the workers. These benefits, associated costs, and resulting net benefits for the next 10 years are shown below for these two categories.

Table 11: Net Benefits to the City from the Project and Workers

	The Project	Workers	Total
Sales Taxes	\$721,561	\$5,553	\$727,114
Real Property Taxes	\$4,815	\$0	\$4,815
FF&E Property Taxes	\$23,491	\$0	\$23,491
Inventory Property Taxes	\$16,825	\$0	\$16,825
New Residential Property Taxes	\$0	\$1,261	\$1,261
Utility Revenue	\$60,363	\$19,447	\$79,809
Utility Franchise Fees	\$5,577	\$1,275	\$6,851
Building Permits and Fees	\$794	\$0	\$794
Hotel Occupancy Taxes	\$1,525	\$0	\$1,525
Miscellaneous Taxes & User Fees	\$21,319	\$6,084	\$27,403
Subtotal Benefits	\$856,269	\$33,619	\$889,888
Cost of Providing Municipal Services	(\$23,487)	(\$6,728)	(\$30,215)
Cost of Providing Utility Services	(\$63,381)	(\$20,419)	(\$83,800)
Subtotal Costs	(\$86,868)	(\$27,147)	(\$114,015)
Net Benefits	\$769,401	\$6,472	\$775,873
<i>Percent of Total Net Benefits</i>	<i>99.2%</i>	<i>0.8%</i>	

Non-Tax Incentives

At the request of the firm, The City of Tomball may consider abating taxes on the firm's property. The table below identifies the type of firm property for which the city may consider abating taxes.

Table 16. Incentives Under Consideration

Year	Enter Incentive Description
1	\$110,369
2	\$0
3	\$0
4	\$0
5	\$0
6	\$0
7	\$0
8	\$0
9	\$0
10	\$0
Total	\$110,369

These financial incentives may be considered an investment in the Project made by the EDC and/or City. Four calculations analyzing possible investments were made:

1. Net Benefits - detailed above
2. Present Value of Net Benefits - detailed above
3. Rate of Return on Investment - discussed and detailed below
4. Payback Period - discussed and detailed below

The rate of return on investment calculates the average annual rate of return to the city, treating the incentives as the initial investment and the net benefits to the city as the return on investment. The payback period is the number of years that it will take the city to recover the cost of incentives from the additional revenues that it will receive as a result of the Project.

The table below shows an analysis of these incentives, including a calculation of incentives per job, rate of return, and payback period.

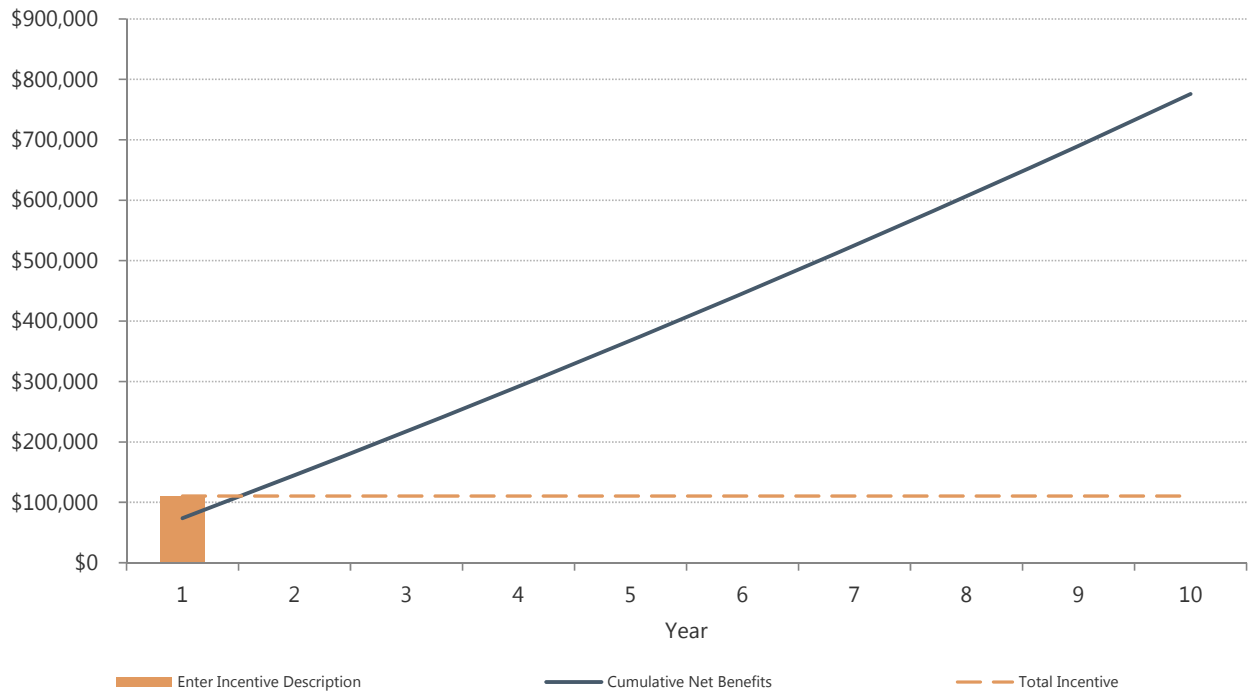
Table 17. Analysis of Incentives

Total Non-Tax Incentive	\$110,369
Incentive Per Job	\$10,034
Rate of Return - 5 Years	66.7%
Rate of Return - 10 Years	70.3%
Payback period (years)	1.5

Note: The Rate of Return and Payback Period are calculated based on the sum of annual incentives, not the present value of the incentives.

The graph below depicts the total incentives currently under consideration versus the cumulative net benefits to the City. The intersection indicates the length of time until the incentives are paid back.

Figure 2. Incentives Under Consideration



Overview of Methodology

This report presents the results of an analysis undertaken by the Tomball Economic Development Corporation using Total Impact, an economic and fiscal impact analysis tool developed and supported by the Austin, TX based economic consulting firm, Impact DataSource.

The Total Impact model combines project-specific attributes with community data, tax rates, and assumptions to estimate the economic impact of the Project and the fiscal impact for local taxing districts over a 10-year period.

The economic impact as calculated in this report can be categorized into two main types of impacts. First, the direct economic impacts are the jobs and payroll directly created by the Project. Second, this economic impact analysis calculates the indirect and induced impacts that result from the Project. Indirect jobs and salaries are created in new or existing area firms, such as maintenance companies and service firms, that may supply goods and services for the Project. In addition, induced jobs and salaries are created in new or existing local businesses, such as retail stores, gas stations, banks, restaurants, and service companies that may supply goods and services to new workers and their families.

The economic impact estimates in this report are based on the Regional Input-Output Modeling System (RIMS II), a widely used regional input-output model developed by the U. S. Department of Commerce, Bureau of Economic Analysis. The RIMS II model is a standard tool used to estimate regional economic impacts. The economic impacts estimated using the RIMS II model are generally recognized as reasonable and plausible assuming the data input into the model is accurate or based on reasonable assumptions. Impact DataSource utilizes county-level multipliers to estimate the impact occurring at the sub-county level.

Two types of regional economic multipliers were used in this analysis: an employment multiplier and an earnings multiplier. An employment multiplier was used to estimate the number of indirect and induced jobs created or supported in the area. An earnings multiplier was used to estimate the amount of salaries to be paid to workers in these new indirect and induced jobs. The employment multiplier shows the estimated number of total jobs created for each direct job. The earnings multiplier shows the estimated amount of total salaries paid to these workers for every dollar paid to a direct worker. The multipliers used in this analysis are listed below:

326110 Plastics packaging materials and unlaminated film and sheet manufactu	City	County
Employment Multiplier (Type II Direct Effect)	2.0326	3.0528
Earnings Multiplier (Type II Direct Effect)	2.0550	3.0975

The fiscal impacts calculated in this report are detailed in Appendix C. Most of the revenues estimated in this study result from calculations relying on (1) attributes of the Project, (2) assumptions to derive the value of associated taxable property or sales, and (3) local tax rates. In some cases, revenues are estimated on a per new household, per new worker, or per new school student basis.

The company or Project developer was not asked, nor could reasonably provide data for calculating some other revenues. For example, while the city will likely receive revenues from fines paid on speeding tickets given to new workers, the company does not know the propensity of its workers to speed. Therefore, some revenues are calculated using an average revenue approach. This approach uses relies on two assumptions:

1. The taxing entity has two general revenue sources: revenues from residents and revenues from businesses.
2. The taxing entity will collect (a) about the same amount of miscellaneous taxes and user fees from each new household that results from the Project as it currently collects from existing households on average, and (b) the same amount of miscellaneous taxes and user fees from the new business (on a per worker basis) will be collected as it collects from existing businesses.

In the case of the school district, some additional state and federal revenues are estimated on a per new school student basis consistent with historical funding levels.

Additionally, this analysis sought to estimate the additional expenditures faced by the city and county to provide services to new households and new businesses. A marginal cost approach was used to calculate these additional costs. This approach relies on two assumptions:

1. The taxing entity spends money on services for two general groups: revenues from residents and revenues from businesses.
2. The taxing entity will spend slightly less than its current average cost to provide local government services (police, fire, EMS, etc.) to (a) new residents and (b) businesses on a per worker basis.

In the case of the school district, the marginal cost to educate new students was estimated based on a portion of the school's current expenditures per student and applied to the headcount of new school students resulting from the Project.

Additionally, this analysis seeks to calculate the impact on the school district's finances from the Project by generally, and at a summary level, mimicking the district's school funding formula.

According to the Texas Education Agency, any property added to local tax rolls, and the local taxes that this generates, reduces the amount of state funding equivalent to local taxes collected for maintenance and operations. The school district retains local taxes received for debt services and the corresponding state funding is not reduced.

However, according to the Texas Education Agency, the school district will receive state aid for each new child that moves to the District. The additional revenues for the school district are calculated in this analysis.

About Impact DataSource

Impact DataSource is an Austin economic consulting, research, and analysis firm founded in 1993. The firm has conducted over 2,500 economic impact analyses of firms, projects, and activities in most industry groups in Texas and more than 30 other states.

Regular City Council

Agenda Item

Data Sheet

Meeting Date: December 3, 2018

Topic:

Consideration and Possible Action to Approve First Amendment to Economic Development Agreement between the Tomball Economic Development Corporation and Houston Poly Bag, Ltd. for Additional Funding of \$12,752.00

Background:

On November 22, 2014, William Sumner III, General Manager of Houston Poly Bag I, Ltd., submitted a request to amend the agreement between the Tomball Economic Development Corporation (TEDC) and Houston Poly Bag I, Ltd., which was approved by the TEDC Board of Directors on November 14, 2017 and by the Tomball City Council on December 4, 2017.

The agreement provided for up to \$95,000 in grant funding assistance for the purchase and installation of new equipment, machinery, racking systems, and retrofitting and converting an existing production line. The improvements were planned in order to meet the standards of the Global Food Safety Initiative certification, increase production capacity, and retain existing customers and employees.

In conjunction with the project, Houston Poly Bag planned to make improvements to its fire suppression system. The original quote received for the improvements was approximately \$60,000, which was included in the estimated total capital expenditure of \$236,151.73 for the project. However, in order to meet current standards, the existing fire suppression system will need to be removed and replaced with a new system designed to meet the requirements for rack storage. The additional cost for the fire suppression system is \$194,856.18.

The proposed amendment provides additional funding in the amount of \$12,752, for a total grant amount not to exceed \$107,752. The Tomball Economic Development Corporation Board of Directors approved the amendment at its meeting on November 13, 2018.

An economic impact analysis is included with the amendment to show the impact of this project on Tomball's economy. The estimated 5-year net benefit to the City of Tomball is \$354,562.

Since the amendment involves the expenditure of additional grant funds, City Council approval is required.

Origination:

William E. Sumner III, General Manager, Houston Poly Bag I, Ltd.

Recommendation:

Approval of the Amendment to the Performance Agreement with Houston Poly Bag I, Ltd.

Funding:

Yes

Account Number: Project Grants

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

Kelly Violette, Executive Director, Tomball Economic Development Corporation

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

ATTACHMENTS:

- Request Letter
- Suppression Quote
- Agreement Amendment
- Economic Impact Analysis
- HPB 2017 Executed Agreement



Houston Poly Bag I, Ltd.

11726 Holderrieth Road
Tomball, Texas 77375
WES SUMNER, GM

Telephone (800) 992-7659 (281) 351-1726
Fax (800) 446-9329 (281) 351-9329

November 9, 2018

Ms. Kelly Violette
Tomball Economic Development Corporation
P.O. Box 820
Tomball, Texas 77375

Dear Ms. Violette,

In 2017, Houston Poly Bag requested funding from the TEDC under the Job Creation/ Retention Program. The purpose of this request was to purchase new equipment to retrofit and convert a production line and upgrade and expand our racking system to maximize efficiency in our plant. These improvements were necessary to retain and grow our business and employees.

As of today, the new equipment and the new racking system have been installed, which has improved Houston Poly Bag's quality to produce product for the Form Fill and Seal industry and store more product for all Houston Poly Bag's customers.

The original estimated cost for the improvements was \$236,151.73, which included a new fire suppression system. However, after new developments, the new fire suppression system now requires an additional \$194,856.18.

Houston Poly Bag is requesting an amendment to our original grant request from 2017 to include the additional cost of the fire suppression system. The new system is a requirement not only for business improvement, but for the safety of all personnel working at Houston Poly Bag.

If you need any further information, please contact me at the number below.

Thank you for your consideration,

William E Sumner III

General Manager
NAICS Code 326.11
281-351-1726
Houston Poly Bag I, Ltd.
wsumner@houstonpolybag.com



1580 Boggs Rd. Suite 100
Duluth, GA 30096
Tel: 844-638-4887
Fax: 800-806-7455
www.warehousecubed.com

Quotation

Please refer to this quotation by number and date in all correspondence.

To **HOUSTON POLY**
11726 HOLDERRIETH RD
TOMBALL, TX 77375

ATTN: WES SUMNER

Date
October 5, 2018

Quotation No.
854587.102

New over head sprinkler system



QTY	DESCRIPTION	COST	COST EXT.
1	Scope of Work: FireTron to remove existing sprinkler system piping and install new system at the same time, it will be new riser manifold with (2) wet pipe systems and be feed by existing fire pump. The new sprinkler system will be designed with the proper design criteria-based on Harris County and NFPA 13 requirements for rack storage. All piping and fittings to meet NFPA 13 basic methods and materials.	N/A	\$179,101.18
1	PYROCHEM SUPPRESSION FOR 27' D X 20'W X 20'H ROOM	N/A	\$15,755.00
Project Total			\$194,856.18

****Price Does Not Include Applicable Sales Tax****

****IF PAID BY THANKSGIVING THERE WILL BE A 2.5% DISCOUNT****

Subject to acceptance by buyer and seller within 30 days from the date hereof and only in accordance with the terms and conditions printed on the reverse, which form a part of this quotation.

Prices quoted are based upon quantities specified above.
If HOUSTON POLY cannot accept merchandise at time of shipment from our supplier, HOUSTON POLY will be invoiced and normal terms will apply.

Above prices subject to all state and local taxes.
All orders are subject to acceptance by WCCG.
Terms: **30% down, 50% on shipment, 20% net 30**
Thank You. We hope we can be of service to you.

WAREHOUSE CUBED

HOUSTON POLY

Adam Wellborn

By: _____

Title: _____ Date: _____

NOTE: BIDS ARE BASED ON THE FOLLOWING CRITERIA:

- 1. Due to the volatility in the steel markets, final pricing may vary due to "steel surcharges" that are applied to orders by steel producers. These prices are based upon the ship date of material. The customer is responsible for covering any and/or all increases unless specifically noted in writing. We will do our best to notify you of any changes in a timely manner.**
- 2. Acceptance of Material: It shall be the responsibility of the customer to examine & inspect the material delivered, and to notify Warehouse Cubed @ Ph# (770) 638-4887 within 48 hours of delivery as to any complaint that relates to the merchandise. Also to note on deliverer's bill of lading any damages or shortages.**
- 3. Non-union labor of our choice (unless specified) done during normal business hours Monday-Friday, 8:00am - 5:00pm. Area for installation must be free and clear of equipment, machinery, or other obstructions and must be well lit, water-tight, ambient temperature (50+ degrees), and with electrical power available for workmen to proceed without delay in a sequential manner. Quote is based on non-interference of customer's employees or other trade personnel. If work is to be performed outside of normal business hours, these restrictions can be accommodated.**
- 4. Warehouse Cubed will not be held responsible for damage to unmarked utilities that are in the concrete floors and/or walls during the anchoring process.**
- 5. Packaging, strapping, dunnage, unused material & miscellaneous debris associated with installation will be placed in a trash receptacle. Trash container to be furnished and removed by the customer.**
- 6. If outside staging or storage of material is required, Warehouse Cubed will not be held responsible for any mud, dust, dirt, and/or rust on material nor any mudtracks on floor as a result and will not incur any expense to clean, wipe, repaint, or cover material.**
- 7. Most materials are shipped on a flatbed trailer. Thus, WCCG will not be liable for mud, dirt, salt, moisture, and/or rust caused by weather conditions during shipment. At customers request, WCCG can tarp the load for an additional cost.**
- 8. Delays will be billed at \$55.00 per man hour.**
- 9. Installation crew will repair deep chips and gouges in concrete floor caused by crew. However, we will not be held liable for surface scratches & abrasions to the floor as a result of normal installation of the material handling equipment.**
- 10. Approval drawing must be signed prior to installation. It is the customer's responsibility to verify the layout against any construction drawing we have been provided to ensure proper clearances are met in relation to building columns, doors, lights, pipes, HVAC units, etc. Alterations during installation (which include, but not limited to: reprofiling beam or shelf elevations, layout change, redesign, etc.) must be approved by signing on appropriate documents and may be subject to additional charges.**
- 11. Any costs for building or high-pile permits, performance bonds, licenses, taxes, seismic or registered engineering fees that may be required by state, county, city, or local authorities are not included unless otherwise spelled out in the body of the quote. If permits or registered calculations are required, they are the responsibility of the customer prior to installation unless specified in the quote. WCCG can assist in obtaining submittal information.**

If any of the above terms and conditions cannot be adhered to, kindly inform us and we will quote accordingly.

INSTALLATION GUIDELINES

NOTE: INSTALLATION PRICING IS BASED ON THE FOLLOWING CRITERIA
(unless otherwise noted in body of the quote or terms & conditions page)

- All material to be installed in accordance and with the guidelines recommended by the manufacturer and approval drawings.
- Any work other than material installation must be clearly stated in information supplied to Warehouse Cubed. (i.e. knock down existing equipment, relocating machinery or inventory, etc.)
- Safety Procedures: The installation crew will be in compliance to the safety procedures of the installers' safety guideline policy. If the customer's facility has any safety requirements that we must adhere to such as hard hats, steel toe boots, safety glasses, safety harness, etc., we must be notified of these requirements prior to installation. The work crew is required to attend facility safety training or video classes. This additional time is included in the labor quote above. Any special equipment or safety requirements by the customer may also effect the cost and will be billed accordingly.
- Additional man hours or return trips due to site conditions, interruptions, changes, customer delays, or interference issues by other contractors will necessitate additional charges at our prevailing rates for labor, time, and travel expenses.
- Work stoppage, overtime, weekend work, and additional trips to the job site, which are at customer's request, will be subject to additional charges.
- Restrooms or portable facilities shall be available for our use.
- Installer is responsible to off-load the rack material only. Additional miscellaneous material (i.e. strip doors, column protectors, etc) that arrive before the rack material is the responsibility of the customer to unload and store until the rack material is installed. Any material that arrives during the installation shall be unloaded by the installer. The customer must allow space to stage rack material at or near the worksite, unless other arrangements have been made.
- The work crew is to be responsible to off-load rack material. An adequate staging area must be available at or near the work site. The following conditions will apply:
 - a) one fully functional dock leveler or dock plate to facilitate unloading closed trailers at a standard dock door, on a paved surface.
 - b) flatbed trailer unloading inside the building whenever possible
 - c) flatbed unloading outside requires ample space on a paved surface to unload, stage, and maneuver materials in order to enter a standard dock or ramp door.
 - d) loading docks and levelers to be available on the same floor level as work area.
- Provide necessary access road to installation site and dock areas suitable for receiving and unloading equipment. Roads and parking lots must be hard surface.

- If a delay in the project occurs, any material that is scheduled into manufacturing process or later must be ship to the customer's location and stored inside. If the customer requests the material to be stored at the manufacturing facility, it may be placed outside in the elements. Warehouse Cubed nor the manufacturer will be responsible for wiping, cleaning, or repainting the material due to dirt, dust, mud, and/or rust. If customer would like the rack stored inside a warehouse, please contact Warehouse Cubed to discuss options and additional associated costs.
- Price includes broom swept floors only. Specialized clean-up requirements are the customer's responsibility unless otherwise noted.
- Removal of dust accumulation during and after installation is not the responsibility of Warehouse Cubed Consulting Group.
- Installation does not include cleaning or wiping down of rack or materials.
- Lift truck(s) and/or Scissor lift(s) are included in the quote.
- Customer to provide the lift equipment for unloading, it must be available exclusively for seller's crew. Drivers supplied by installer (unless noted).
- Electrical supply wiring and hook-ups are the responsibility of the customer.
- Customer's responsibility to verify the capacity of the concrete slab to support all proposed structures & equipment under fully loaded conditions.
- Warehouse Cubed is not responsible for fire protection systems.
- If drilling of metal parts is required, the metal shavings produced as a result will be broom swept only. Special wipe down, vacuuming, or specialized clean-up is not included in the quote.
- Specialized or non-returnable material can not be restocked. Any standard or returnable material which is not used may be restocked, but it will be subject to a restock fee plus any associated freight costs.
- Coordination of other trades is the responsibility of the customer.
- A customer representative must be available to sign off the job at the time of completion.
- A secure and convenient storage area for the materials, tools, and equipment must be provided.
- Any additional insurance coverage required by customer will increase installation cost.
- Warehouse Cubed/installer shall not be held responsible for any injuries to persons or property; or for any delays in the completion of the work, by reason of unforeseeable causes beyond our control and its fault or negligence.

NOTE: If any of the above guidelines cannot be adhered to, kindly inform us in advance and we will advise of any price increase (if any) in the contract price.

A purchase order is required to secure scheduling of project and is understood to be in agreement with this quote in its entirety (including terms and conditions sheet). Any changes in drawings, layouts, or material will constitute a re-quote of this project.

ACCEPTED BY:_____ **DATE:**_____

**FIRST AMENDMENT
TO
ECONOMIC DEVELOPMENT AGREEMENT
BETWEEN
THE TOMBALL ECONOMIC DEVELOPMENT CORPORATION
AND
HOUSTON POLY BAG I, LTD.**

THE STATE OF TEXAS §
 § KNOW ALL MEN BY THESE PRESENTS:
COUNTY OF HARRIS §

This First Amendment to Economic Development Agreement (“First Amendment”) is made by and between the **Tomball Economic Development Corporation**, an industrial development corporation created pursuant to the Development Corporation Act, now Chapter 501 et seq of the Texas Local Government Code, located in Harris County, Texas (the “TEDC”), and **Houston Poly Bag I, Ltd.** (the “Company”), 11726 Holderrieth Road, Tomball, Texas, 77375.

RECITALS:

WHEREAS, the Tomball Economic Development Corporation entered into an economic development agreement (the “Agreement”), and the Tomball City Council approved such agreement on November 20, 2017, to grant Houston Poly Bag I, Ltd. up to Ninety-Five Thousand Dollars (\$95,000.00) to assist with capital improvements necessary to convert and update its manufacturing process and create and retain employment positions at 11726 Holderrieth Road, Tomball, Texas, 77375 (the “Property”); and

WHEREAS, the Tomball Economic Development Corporation and Houston Poly Bag I, Ltd. desire to amend the Agreement to provide additional incentives to assist with the upgrading and installation of the fire suppression system at the site; and

WHEREAS, all other terms and conditions of the Agreement, not in conflict with this Amendment, shall remain in full force and effect; and

NOW, THEREFORE, in consideration of the foregoing, the Tomball Economic Development Corporation and Houston Poly Bag I, Ltd. hereby agree to amend the Agreement as follows:

The grant amount shall be increased by an additional Twelve Thousand Seven Hundred and Fifty-Two Dollars (\$12,752), for an amount not to exceed \$107,752, or an amount equal to Twenty-Five Percent (25%) of actual construction costs if less than the sum stated above, to assist in the purchase and installation of the equipment and create and retain employment positions at the Property. The improvements found by the Board of Directors of the TEDC to be required to develop the Property include the upgrading and installation of the fire suppression system at the site (the “Improvements”), identified and described in Exhibit “A,” attached hereto and made a part hereof.

IN TESTIMONY OF WHICH, THIS AGREEMENT has been executed by the parties on
this _____ day of _____ 2018.

HOUSTON POLY BAG I, LTD.

By: _____
Name: William E. Sumner, III
Title: General Manager

ATTEST:

By: _____
Name: _____
Title: _____

**TOMBALL ECONOMIC DEVELOPMENT
CORPORATION**

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

ATTEST:

By: _____
Name: _____
Title: Vice President, Board of Directors

ACKNOWLEDGMENT

THE STATE OF TEXAS §
 §
COUNTY OF HARRIS §

This instrument was acknowledged before me on the _____ day of _____
2018, by William E. Sumner, III, General Manager, Houston Poly Bag I, Ltd. for and on behalf of
said company.

Notary Public in and for the State of Texas

My Commission Expires: _____

(SEAL)

ACKNOWLEDGMENT

THE STATE OF TEXAS §
 §
COUNTY OF HARRIS §

This instrument was acknowledged before me on the _____ day of _____
2018, by _____, President of the Board of Directors of the Tomball
Economic Development Corporation, for and on behalf of said Corporation.

Notary Public in and for the State of Texas

My Commission Expires: _____

(SEAL)

Exhibit “A”
Description of Improvements

- Remove existing sprinkler system piping and install new system with new riser manifold with (2) wet pipe systems fed by existing fire pump. The new sprinkler system will be designed with the proper design criteria-based on Harris County and NFPA 13 requirements for rack storage. All piping and fittings to meet NFPA 13 basic methods and materials.
- PYROCHEM SUPPRESSION FOR 27' D X 20'W X 20'H ROOM

EXECUTIVE SUMMARY

A REPORT OF THE ECONOMIC IMPACT OF HOUSTON POLY BAG IN TOMBALL, TX

November 9, 2018

Prepared by:

Tomball Economic Development Corporation

29201 Quinn Rd., Suite B

Tomball, Texas 77375



Prepared using Total Impact



PURPOSE & LIMITATIONS

This report presents the results of an analysis undertaken by the Tomball Economic Development Corporation using Total Impact, an economic and fiscal impact analysis tool developed and supported by the Austin, TX based economic consulting firm, Impact DataSource.

The Total Impact model is a customized software program licensed to the Tomball Economic Development Corporation. The model includes estimates, assumptions, and other information developed by Impact DataSource from its independent research effort detailed in Tomball Economic Development Corporation's Total Impact User Guide.

The analysis relies on prospective estimates of business activity that may not be realized. Tomball Economic Development Corporation made reasonable efforts to ensure that the project-specific data entered into the Total Impact model reflects realistic estimates of future activity.

No warranty or representation is made by Tomball Economic Development Corporation or Impact DataSource that any of the estimates or results contained in this study will actually be achieved.



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Introduction

This report presents the results of an economic impact analysis performed using Total Impact, a model developed by Impact DataSource. The report estimates the impact that a potential project in the City of Tomball will have on the local economy and estimates the costs and benefits for local taxing districts over a 10-year period.

Description of the Project

Houston Poly Bag (HPB) is engaged in making packaging for a variety of products, including FDA/Pharmaceutical Packaging and FFS film (Form Fill and Seal). These areas are important to HPB and provide the best future growth opportunities. HPB is currently in process for a Global Food Safety Initiative approved Certification. The company is working on FSSC 22000 certification to comply with GFSI. If HPB does not achieve this, the company jeopardizes losing 60% of its current business. In order to comply with the regulations and increase production capacity, the company will be adding new machinery, installing new racking systems, and retrofitting and converting an existing production line to produce additional FFS film.

Existing & Expanded Operations

The Project under analysis represents the expansion of an existing company in the City of Tomball. The existing operations currently support 60.0 direct jobs in the community and 62.0 indirect and induced jobs. The direct workers earn \$28,000 per year and the company supports \$33.7 million per year in taxable sales and spending in the community. Additionally, the company supports taxable property valued at \$4.9 million annually.

The table below illustrates the company's economic impact over the next 10 years - including both the existing and expanded operations.

Table 1. Economic Impact of Existing and Expanded Operations Over the Next 10 Years

	Existing Operations	Expansion	Existing & Expanded Ops
Jobs			
Direct	60.0	7.0	67.0
Indirect & Induced	62.0	7.2	69.2
Total	122.0	14.2	136.2
Salaries			
Direct	\$18,395,532	\$2,146,145	\$20,541,677
Indirect & Induced	\$19,407,287	\$2,264,183	\$21,671,470
Total	\$37,802,819	\$4,410,328	\$42,213,147
Taxable Sales			
Direct	\$336,341,687	\$33,372,391	\$369,714,078
Indirect & Induced	\$621,033	\$72,454	\$693,487
Total	\$336,962,720	\$33,444,845	\$370,407,565

The table below illustrates the company's fiscal impact - the net benefits for local taxing districts - over the next 10 years - including both the existing and expanded operations.

Table 2. Fiscal Impact of Existing and Expanded Operations Over the Next 10 Years

	Net Benefits		
	Existing Operations	Expansion	Existing & Expanded Ops
City of Tomball	\$6,889,679	\$740,912	\$7,630,591

The remainder of this report will focus on only the economic and fiscal impact associated with the expanded operations.

Economic Impact Overview

The Project's operations will support employment and other economic impacts in the community. The 7.0 workers directly employed by the Project will earn approximately \$31,000 per year on average over the next 10 years. This direct activity will support 7.2 indirect and induced workers in the community earning \$31,000 on average over the next 10 years. The total additional payroll or workers' earnings associated with the Project is estimated to be approximately \$4.4 million over the next 10 years.

On average, the Project will generate \$2.8 million in direct economic output over the next 10 years. Spin-off businesses in the community will produce \$1.9 million in economic output per year as a result of the Project. In total, the Project will support \$4.7 million in economic output per year on average. Economic output is the value of goods and services produced in the economy and can be thought of as revenues for businesses. The economic output calculations in this report were estimated using the RIMS II economic impact model and the Project's employment estimates.

Accounting for various taxable sales and purchases, including activity associated with the Project, worker spending, and visitors' spending in the community, the Project is estimated to support approximately \$33.4 million in taxable sales over the next 10 years.

Table 3. Economic Impact Over the Next 10 Years

	Direct	Indirect & Induced	Total
Number of permanent direct, indirect, and induced jobs to be created	7.0	7.2	14.2
Salaries to be paid to direct, indirect, and induced workers	\$2,146,145	\$2,264,183	\$4,410,328
Economic output generated by direct, indirect, and induced activity	\$28,173,428	\$18,862,110	\$47,035,538
Taxable sales and purchases expected in the City	\$33,372,391	\$72,454	\$33,444,845

The Project may result in new residents moving to the community and potentially new residential properties being constructed as summarized below.

Table 4. Population Impacts Over the Next 10 Years

	Direct	Indirect & Induced	Total
Number of direct, indirect, and induced workers who will move to the City	0.4	0.4	0.8
Number of new residents in the City	1.0	1.1	2.1
Number of new residential properties to be built in the City	0.1	0.0	0.1
Number of new students expected to attend local school district	0.2	0.2	0.4

The Project is estimated to support an average of approximately \$2.0 million in new non-residential taxable property each year over the next 10 years. The taxable value of property supported by the Project over the 10-year period is shown in the following table.

Table 5. Value of Taxable Property Supported by the Project Over the Next 10 Years

Year	New Residential Property	The Project's Property				Subtotal Nonresidential Property	Total Residential & Nonresidential Property
		Land	Buildings & Other Real Prop. Improvements	Furniture, Fixtures, & Equipment	Inventories		
1	\$16,867	\$0	\$194,856	\$236,152	\$1,500,000	\$1,931,008	\$1,947,875
2	\$17,205	\$0	\$200,702	\$212,537	\$1,530,000	\$1,943,238	\$1,960,443
3	\$17,549	\$0	\$206,723	\$188,921	\$1,560,600	\$1,956,244	\$1,973,793
4	\$17,900	\$0	\$212,924	\$165,306	\$1,591,812	\$1,970,043	\$1,987,942
5	\$18,258	\$0	\$219,312	\$141,691	\$1,623,648	\$1,984,651	\$2,002,909
6	\$18,623	\$0	\$225,892	\$118,076	\$1,656,121	\$2,000,089	\$2,018,711
7	\$18,995	\$0	\$232,668	\$94,461	\$1,689,244	\$2,016,373	\$2,035,368
8	\$19,375	\$0	\$239,648	\$70,846	\$1,723,029	\$2,033,522	\$2,052,898
9	\$19,763	\$0	\$246,838	\$47,230	\$1,757,489	\$2,051,557	\$2,071,320
10	\$20,158	\$0	\$254,243	\$47,230	\$1,792,639	\$2,094,112	\$2,114,270

The taxable value of residential property represents the value of properties that may be constructed as a result of new workers moving to the community.

This analysis assumes the residential real property appreciation rate to be 2.0% per year. The Project's real property is assumed to appreciate at a rate of 2.0% per year. The analysis assumes the Project's furniture, fixtures, and equipment will depreciate over time according to the depreciation schedule shown in Appendix A.

Temporary Construction Impact

The Project will include an initial period of construction where \$0.2 million will be spent to construct new buildings and other real property improvements. It is assumed that 60.0% of the construction expenditure will be spent on materials and 40.0% on labor. The temporary construction activity will support temporary economic impacts in the community in the form of temporary construction employment and sales for local construction firms.

Table 6. Spending and Estimated Direct Employment Impact of Project-Related Construction Activity

	Amount
Total construction expenditure	\$194,856
Materials	\$116,914
Labor	\$77,942
Temporary Construction Workers Supported (Average Earnings = \$51,300)	1.5

The following table presents the temporary economic impacts resulting from the construction.

Table 7. Temporary Economic Impact of Project-Related Construction Activity

	Direct	Indirect & Induced	Total
Number of temporary direct, indirect, and induced job years to be supported*	1.5	1.0	2.5
Salaries to be paid to direct, indirect, and induced workers	\$77,942	\$39,486	\$117,428
Revenues or sales for businesses related to construction	\$194,856	\$167,927	\$362,783

* A job year is defined as full employment for one person for 2080 hours in a 12-month span.

Sales tax calculations related to construction activity are presented in the following table. The sales tax revenue generated from construction-period taxable spending is included in the fiscal impact for affected districts in Year 1 of this analysis.

Table 8. Construction-Related Taxable Spending

	Estimate
Expenditure for Materials	\$116,914
Percent of Materials subject to local tax	50.0%
<u>Subtotal Taxable Materials</u>	<u>\$58,457</u>
Expenditure for Labor / Paid to construction workers	\$77,942
Percent of gross earnings spent on taxable goods and services	24.0%
Percent of taxable spending done locally	10.0%
<u>Subtotal Taxable Construction Worker Spending</u>	<u>\$1,871</u>
Expenditure for Furniture, Fixtures, & Equipment (FF&E)	\$236,152
Percent of FF&E subject to local tax	10.0%
<u>Subtotal Taxable FF&E Purchases</u>	<u>\$23,615</u>
<u>Total Construction-Related Taxable Spending</u>	<u>\$83,943</u>

The above construction analysis focuses on the impact resulting from the Project's construction investments identified in Year 1. If construction will be phased in over several years or an expansion is planned in a later year, parallel calculations will be performed for those years.

Fiscal Impact Overview

The Project will generate additional benefits and costs for the City. Overall, the City will receive approximately \$740,900 in net benefits over the 10-year period. The table below displays the estimated additional benefits, costs, and net benefits to be received by the City over the next 10 years of the Project. Appendix C contains the year-by-year calculations.

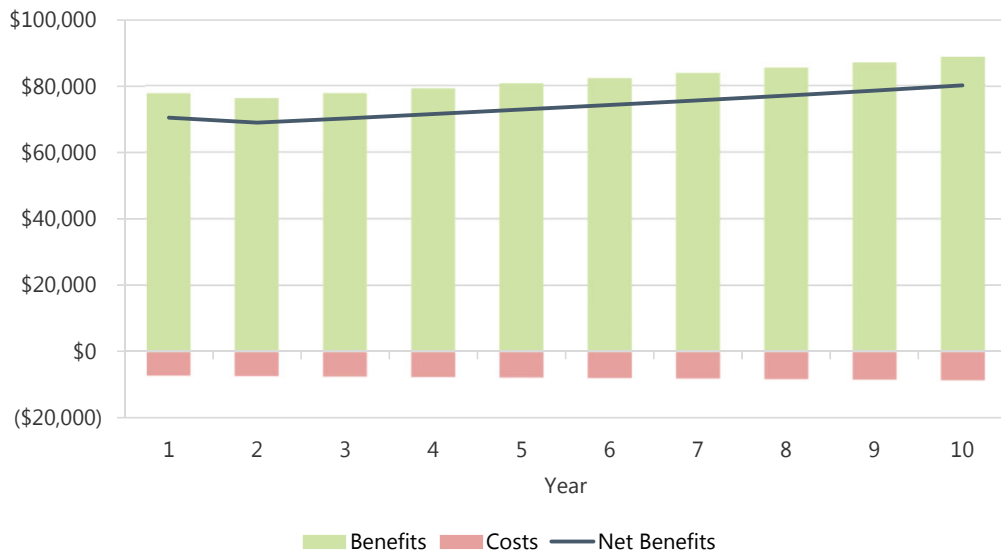
Table 9. City of Tomball: Benefits, Costs, and Net Benefits Over the Next 10 Years

	Amount
Sales Taxes	\$668,897
Property Taxes - Project	\$68,226
Property Taxes - New Residential	\$631
Utility Revenue	\$56,155
Utility Franchise Fees	\$5,134
Building Permits and Fees	\$1,117
Hotel Occupancy Taxes	\$1,525
Miscellaneous Taxes & User Fees	\$17,622
<u>Subtotal Benefits</u>	<u>\$819,307</u>
Cost of Providing Municipal Services	(\$19,431)
Cost of Providing Utility Services	(\$58,963)
<u>Subtotal Costs</u>	<u>(\$78,394)</u>
Net Benefits	\$740,912
<i>Present Value (5% discount rate)</i>	<i>\$568,338</i>

Table 10. Year-by-Year Benefits, Costs, and Net Benefits for the City of Tomball

Year	Benefits	Costs	Net Benefits	Cumulative Net Benefits
1	\$77,720	(\$7,159)	\$70,560	\$70,560
2	\$76,334	(\$7,303)	\$69,032	\$139,592
3	\$77,774	(\$7,449)	\$70,326	\$209,917
4	\$79,245	(\$7,598)	\$71,647	\$281,565
5	\$80,747	(\$7,750)	\$72,997	\$354,562
6	\$82,281	(\$7,905)	\$74,376	\$428,938
7	\$83,847	(\$8,063)	\$75,785	\$504,723
8	\$85,447	(\$8,224)	\$77,223	\$581,946
9	\$87,081	(\$8,388)	\$78,692	\$660,639
10	\$88,830	(\$8,556)	\$80,274	\$740,912
Total	\$819,307	(\$78,394)	\$740,912	

Figure 1. Annual Fiscal Net Benefits for the City of Tomball



Impact from Project and Workers

The City will receive benefits from the activity, spending, and investments associated with (1) the Project and (2) the workers. These benefits, associated costs, and resulting net benefits for the next 10 years are shown below for these two categories.

Table 11: Net Benefits to the City from the Project and Workers

	The Project	Workers	Total
Sales Taxes	\$666,074	\$2,823	\$668,897
Real Property Taxes	\$7,627	\$0	\$7,627
FF&E Property Taxes	\$4,516	\$0	\$4,516
Inventory Property Taxes	\$56,083	\$0	\$56,083
New Residential Property Taxes	\$0	\$631	\$631
Utility Revenue	\$43,191	\$12,964	\$56,155
Utility Franchise Fees	\$4,285	\$850	\$5,134
Building Permits and Fees	\$1,117	\$0	\$1,117
Hotel Occupancy Taxes	\$1,525	\$0	\$1,525
Miscellaneous Taxes & User Fees	\$13,567	\$4,056	\$17,622
Subtotal Benefits	\$797,983	\$21,323	\$819,307
Cost of Providing Municipal Services	(\$14,946)	(\$4,485)	(\$19,431)
Cost of Providing Utility Services	(\$45,350)	(\$13,613)	(\$58,963)
Subtotal Costs	(\$60,297)	(\$18,098)	(\$78,394)
Net Benefits	\$737,687	\$3,225	\$740,912
<i>Percent of Total Net Benefits</i>	<i>99.6%</i>	<i>0.4%</i>	

Non-Tax Incentives

At the request of the firm, The City of Tomball may consider abating taxes on the firm's property. The table below identifies the type of firm property for which the city may consider abating taxes.

Table 16. Incentives Under Consideration

Year	Enter Incentive Description
1	\$12,752
2	\$0
3	\$0
4	\$0
5	\$0
6	\$0
7	\$0
8	\$0
9	\$0
10	\$0
Total	\$12,752

These financial incentives may be considered an investment in the Project made by the EDC and/or City. Four calculations analyzing possible investments were made:

1. Net Benefits - detailed above
2. Present Value of Net Benefits - detailed above
3. Rate of Return on Investment - discussed and detailed below
4. Payback Period - discussed and detailed below

The rate of return on investment calculates the average annual rate of return to the city, treating the incentives as the initial investment and the net benefits to the city as the return on investment. The payback period is the number of years that it will take the city to recover the cost of incentives from the additional revenues that it will receive as a result of the Project.

The table below shows an analysis of these incentives, including a calculation of incentives per job, rate of return, and payback period.

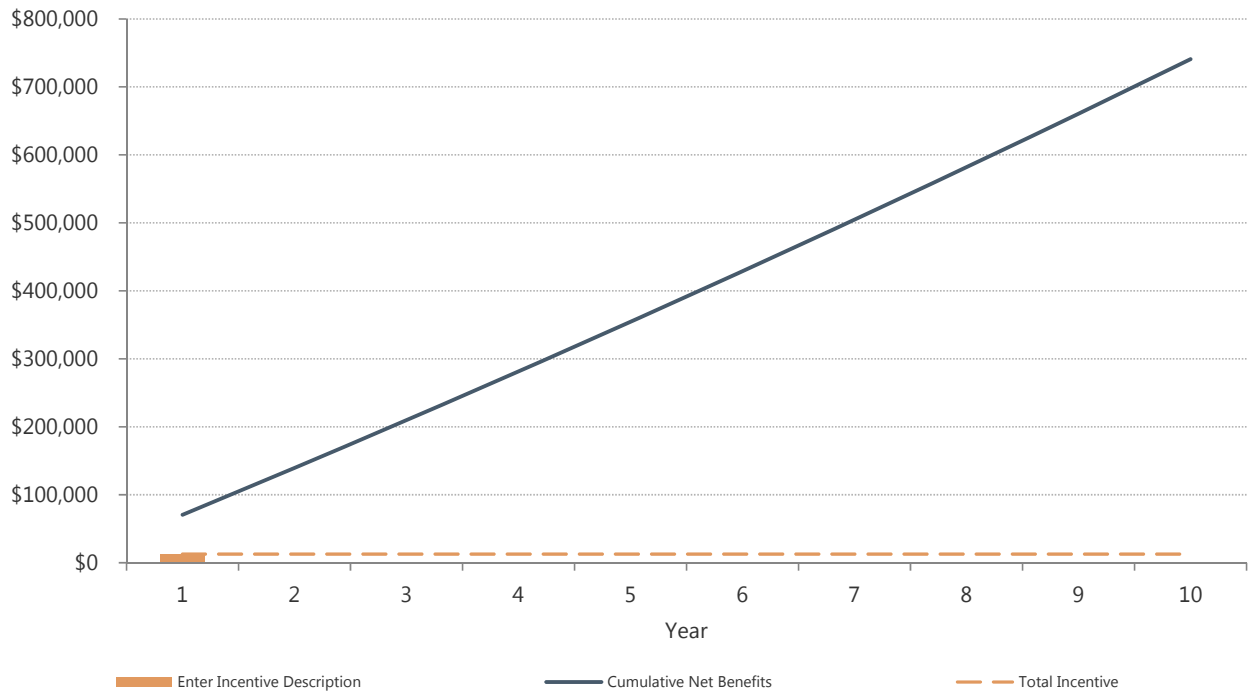
Table 17. Analysis of Incentives

Total Non-Tax Incentive	\$12,752
Incentive Per Job	\$1,822
Rate of Return - 5 Years	556.1%
Rate of Return - 10 Years	581.0%
Payback period (years)	0.2

Note: The Rate of Return and Payback Period are calculated based on the sum of annual incentives, not the present value of the incentives.

The graph below depicts the total incentives currently under consideration versus the cumulative net benefits to the City. The intersection indicates the length of time until the incentives are paid back.

Figure 2. Incentives Under Consideration



Overview of Methodology

This report presents the results of an analysis undertaken by the Tomball Economic Development Corporation using Total Impact, an economic and fiscal impact analysis tool developed and supported by the Austin, TX based economic consulting firm, Impact DataSource.

The Total Impact model combines project-specific attributes with community data, tax rates, and assumptions to estimate the economic impact of the Project and the fiscal impact for local taxing districts over a 10-year period.

The economic impact as calculated in this report can be categorized into two main types of impacts. First, the direct economic impacts are the jobs and payroll directly created by the Project. Second, this economic impact analysis calculates the indirect and induced impacts that result from the Project. Indirect jobs and salaries are created in new or existing area firms, such as maintenance companies and service firms, that may supply goods and services for the Project. In addition, induced jobs and salaries are created in new or existing local businesses, such as retail stores, gas stations, banks, restaurants, and service companies that may supply goods and services to new workers and their families.

The economic impact estimates in this report are based on the Regional Input-Output Modeling System (RIMS II), a widely used regional input-output model developed by the U. S. Department of Commerce, Bureau of Economic Analysis. The RIMS II model is a standard tool used to estimate regional economic impacts. The economic impacts estimated using the RIMS II model are generally recognized as reasonable and plausible assuming the data input into the model is accurate or based on reasonable assumptions. Impact DataSource utilizes county-level multipliers to estimate the impact occurring at the sub-county level.

Two types of regional economic multipliers were used in this analysis: an employment multiplier and an earnings multiplier. An employment multiplier was used to estimate the number of indirect and induced jobs created or supported in the area. An earnings multiplier was used to estimate the amount of salaries to be paid to workers in these new indirect and induced jobs. The employment multiplier shows the estimated number of total jobs created for each direct job. The earnings multiplier shows the estimated amount of total salaries paid to these workers for every dollar paid to a direct worker. The multipliers used in this analysis are listed below:

326110 Plastics packaging materials and unlaminated film and sheet manufactu	City	County
Employment Multiplier (Type II Direct Effect)	2.0326	3.0528
Earnings Multiplier (Type II Direct Effect)	2.0550	3.0975

The fiscal impacts calculated in this report are detailed in Appendix C. Most of the revenues estimated in this study result from calculations relying on (1) attributes of the Project, (2) assumptions to derive the value of associated taxable property or sales, and (3) local tax rates. In some cases, revenues are estimated on a per new household, per new worker, or per new school student basis.

The company or Project developer was not asked, nor could reasonably provide data for calculating some other revenues. For example, while the city will likely receive revenues from fines paid on speeding tickets given to new workers, the company does not know the propensity of its workers to speed. Therefore, some revenues are calculated using an average revenue approach. This approach uses relies on two assumptions:

1. The taxing entity has two general revenue sources: revenues from residents and revenues from businesses.
2. The taxing entity will collect (a) about the same amount of miscellaneous taxes and user fees from each new household that results from the Project as it currently collects from existing households on average, and (b) the same amount of miscellaneous taxes and user fees from the new business (on a per worker basis) will be collected as it collects from existing businesses.

In the case of the school district, some additional state and federal revenues are estimated on a per new school student basis consistent with historical funding levels.

Additionally, this analysis sought to estimate the additional expenditures faced by the city and county to provide services to new households and new businesses. A marginal cost approach was used to calculate these additional costs. This approach relies on two assumptions:

1. The taxing entity spends money on services for two general groups: revenues from residents and revenues from businesses.
2. The taxing entity will spend slightly less than its current average cost to provide local government services (police, fire, EMS, etc.) to (a) new residents and (b) businesses on a per worker basis.

In the case of the school district, the marginal cost to educate new students was estimated based on a portion of the school's current expenditures per student and applied to the headcount of new school students resulting from the Project.

Additionally, this analysis seeks to calculate the impact on the school district's finances from the Project by generally, and at a summary level, mimicking the district's school funding formula.

According to the Texas Education Agency, any property added to local tax rolls, and the local taxes that this generates, reduces the amount of state funding equivalent to local taxes collected for maintenance and operations. The school district retains local taxes received for debt services and the corresponding state funding is not reduced.

However, according to the Texas Education Agency, the school district will receive state aid for each new child that moves to the District. The additional revenues for the school district are calculated in this analysis.

About Impact DataSource

Impact DataSource is an Austin economic consulting, research, and analysis firm founded in 1993. The firm has conducted over 2,500 economic impact analyses of firms, projects, and activities in most industry groups in Texas and more than 30 other states.

AGREEMENT

THE STATE OF TEXAS §
 § KNOW ALL MEN BY THESE PRESENTS:
COUNTY OF HARRIS §

This Agreement (the "Agreement") is made and entered into by and between the Tomball Economic Development Corporation, an industrial development corporation created pursuant to Tex. Rev. Civ. Stat. Ann. Art. 5190.6, Section 4B, located in Harris County, Texas (the "TEDC"), and **Houston Poly Bag I, Ltd.** (the "Company"), 11726 Holderrieth Road, Tomball, Texas, 77375.

WITNESSETH:

WHEREAS, it is the established policy of the TEDC to adopt such reasonable measures from time-to-time as are permitted by law to endeavor to attract industry, create and retain primary jobs, expand the growth of the City of Tomball (the "City"), and thereby enhance the economic stability and growth of the City; and

WHEREAS, the Company owns a 5-acre tract of land within the City, located at 11726 Holderrieth Road, Tomball, Texas, 77375 (the "Property"), and more particularly described in Exhibit "A," attached hereto and made a part hereof; and

WHEREAS, the Company proposes to expand its current operations at the Property, and as part of the process, plans to expend funds to add additional equipment necessary to convert and update its manufacturing process in order to maintain and expand its current level of production and make other capital improvements (the "Improvements"), more particularly described in Exhibit "B" attached hereto and made a part hereof; and

WHEREAS, the Company also proposes to maintain the current sixty (60) jobs at the Property in conjunction with the expansion of its business operations at the Property; and

WHEREAS, the TEDC agrees to fund a portion of the cost of the Improvements up to the amount of Ninety-Five Thousand Dollars (\$95,000.00) to assist in the purchase and installation of the equipment and create and retain employment positions at the Property; and

WHEREAS, the Company has agreed, in exchange and as consideration for the funding, to satisfy and comply with certain terms and conditions; and

WHEREAS, this expenditure is found by the Board of Directors of the TEDC to be suitable for the expansion of the business operations at the Property and the creation and retention of primary jobs at the Property;

NOW, THEREFORE, in consideration of the premises and the mutual benefits and obligations set forth herein, including the recitals set forth above, the TEDC and the Company agree as follows:

1.

The Company covenants and agrees that it will construct the Improvements and operate and maintain the proposed business on the Property for a term of at least five (5) years, and will for such term, except as provided by paragraph 4 hereof, maintain sixty (60) employees on the Property at the prevailing wage.

2.

The Company also covenants and agrees that construction of the Improvements and obtaining all necessary permits from the City shall occur within twelve (12) months from the Effective Date of this Agreement. Extensions of these deadlines, due to any extenuating circumstance or uncontrollable delay, may be granted at the sole discretion of the Board of Directors of the TEDC.

3.

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

4.

In consideration of the Company's representations, promises, and covenants, TEDC agrees to reimburse the Company for the actual cost of the Improvements up to the amount of Ninety-Five Thousand Dollars (\$95,000.00) in order to convert and update its manufacturing process and retain the existing sixty (60) jobs at the Property. The TEDC agrees to distribute such funds to the Company within thirty (30) days of receipt of a letter from the Company requesting such payment, which letter shall also include: (a) a copy of the City's occupancy permit for the Property; (b) proof that the Company has maintained the number of employees indicated above to its business operations on the Property, as evidenced by copies of Texas Workforce Commission form C-3 or Internal Revenue Service Form 941; (c) verification from the City acknowledging that all necessary plats, plans, permits, and specifications have been received, reviewed, and approved; (d) verification that the Improvements have been constructed in accordance with the approved plans and specifications; and, (e) an affidavit stating that all contractors and subcontractors providing work and/or materials in the construction of the Improvements have been paid and any and all liens and claims regarding such work have been released; and (f) Proof of payment to all vendors, contractors and subcontractors providing work and/or materials in the construction of the Improvements, proof of payment must include copies

of canceled checks and/or credit card receipts and copies of paid invoices from all vendors, contractors and subcontractors.

In the event the number of jobs originally projected is not met or maintained, the amount of the funding provided to the Company by TEDC will be reduced on a pro-rata basis to reflect the actual number of jobs at the time of the request for disbursement of funds.

5.

It is understood and agreed by the parties that, in the event of a default by the Company on any of its obligations under this Agreement, the Company shall reimburse the TEDC the full amount paid to the Company by the TEDC, with interest at the rate equal to the 90-day Treasury Bill plus $\frac{1}{2}$ % per annum, within thirty (30) days after the TEDC notifies the Company of the default. It is further understood and agreed by the parties that if the Company is convicted of a violation under 8 U.S.C. Section 1324a(f) (engaging in a pattern or practice of employing unauthorized aliens), the Company will reimburse the TEDC the full amount paid to the Company, with interest at the rate equal to the 90-day Treasury Bill plus $\frac{1}{2}$ % per annum, within thirty (30) days after the TEDC notifies the Company of the violation.

The Company shall also reimburse the TEDC for any and all reasonable attorney's fees and costs incurred by the TEDC as a result of any action required to obtain reimbursement of such funds.

6.

This Agreement shall inure to the benefit of, and be binding upon, both the TEDC and the Company, and upon the Company's successors and assigns, affiliates, and subsidiaries, and shall remain in force whether the Company sells, assigns, or in any other manner disposes of, either voluntarily or by operation of law, all or any part of the Property and the agreements herein

contained shall be held to be covenants running with the Property for so long as this Agreement, or any extension thereof, remains in effect.

7.

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

If to City: Tomball Economic Development Corporation
401 W. Market Street
Tomball, Texas 77375
Attn: President, Board of Directors

If to Company: Houston Poly Bag I, Ltd.
11726 Holderrieth Road
Tomball, Texas 77375
Attn: William E. Sumner, III – General Manager

8.

This Agreement shall be performable and enforceable in Harris County, Texas, and shall be construed in accordance with the laws of the State of Texas. Venue for any action arising under this Agreement shall lie exclusively in the state and federal courts in Harris County, Texas.

9.

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

10.

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

11.

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

12.

In the event any one or more words, phrases, clauses, sentences, paragraphs, sections, or other parts of this Agreement, or the application thereof to any person, firm, corporation, or circumstance, shall be held by any court of competent jurisdiction to be invalid or unconstitutional for any reason, then the application, invalidity or unconstitutionality of such words, phrases, clauses, sentences, paragraphs, sections, or other parts of this Agreement shall be deemed to be independent of and severable from the remainder of this Agreement, and the validity of the remaining parts of this Agreement shall not be affected thereby.

IN TESTIMONY OF WHICH, THIS AGREEMENT has been executed by the parties on this

7 day of January 2018 (the "Effective Date").

HOUSTON POLY BAG I, LTD.

By: William E. Sumner III

Name: William E. Sumner, III

Title: General Manager

ATTEST:

By: Tiffani Wooten

Name: Tiffani Wooten

Title: Assistant Director

TOMBALL ECONOMIC DEVELOPMENT CORPORATION

By: Gretchen Fagan

Name: Gretchen Fagan

Title: President, Board of Directors

ATTEST:

By: Lori Klein Quinn

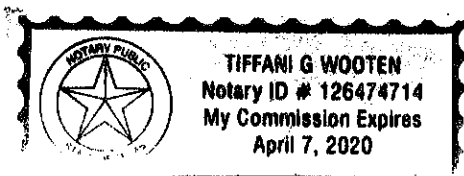
Name: Lori Klein Quinn

Title: Vice President, Board of Directors

ACKNOWLEDGMENT

THE STATE OF TEXAS §
 §
COUNTY OF HARRIS §

This instrument was acknowledged before me on the 11 day of January 2018, by William E. Sumner, III, General Manager, Houston Poly Bag I, Ltd. for and on behalf of said company.



(SEAL)

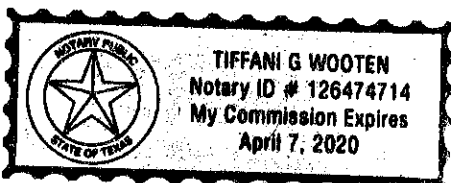
Tiffani Wooten
Notary Public in and for the State of Texas

My Commission Expires: April 7, 2020

ACKNOWLEDGMENT

THE STATE OF TEXAS §
 §
COUNTY OF HARRIS §

This instrument was acknowledged before me on the 14 day of November 2017, by Gretchen Fagan, President of the Board of Directors of the Tomball Economic Development Corporation, for and on behalf of said Corporation.



(SEAL)

Tiffani Wooten
Notary Public in and for the State of Texas

My Commission Expires: April 7, 2020

Exhibit "A"

Legal Description of Property

HOUSTON POLY BAG PLAT, BEING A 5 ACRE TRACT IN THE C.N. PILLOT SURVEY, ABSTRACT NO. 632, IN TOMBALL, HARRIS COUNTY, TEXAS, RECORDED IN VOL. 335, PG. 108.

Exhibit “B”

Description of Improvements

Purchase and install new equipment including new machinery, new racking systems, and retrofitting and converting an existing production line to produce additional FFS film.

Regular City Council

Agenda Item

Data Sheet

Meeting Date: December 3, 2018

Topic:

Appoint/Reappoint Members to Positions 2, 5, and 8 of the Tourism Advisory Committee Board, for Terms expiring December 5, 2018

Background:

The Tourism Advisory Committee (TAC) consists of nine (9) positions. City residents were appointed to Positions 1, 2, and 3, city business owners or employees were appointed to Positions 4, 5, and 6, and members of the hotel industry were appointed to Positions 7, 8, and 9.

The appointments in each category are 3-year terms; terms now expiring on December 5, 2018 for which appointments/reappointments must be made are:

- Representing Tomball Residents: Mary Harvey - Position 2
- Representing Businesses located within Tomball: Cindy Vincik - Position 5
- Representing a Hotel or Motel located within Tomball: Prakash Patel - Position 8

The current members wish to continue serving on the Tourism Advisory Committee. We have also received an application for a Hotel or Motel position from Raymond Francois, General Manager, Hampton Inn Suites for consideration.

As Mayor, I would like to recommend reappointment of Mary Harvey and Cindy Vincik to their respective positions, and the appointment of Raymond Francois to Position 8. Nominations for these positions will also be accepted at the Council meeting.

Origination:

Mayor

Recommendation:

N/A

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

City Secretary

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

ATTACHMENTS:

Attendance Record 2015-2018

Mary Harvey Application

Cindy Vincik Application

Prakash Patel Application
Raymond Francois Application

As discussed the TAC Board is supposed to meet quarterly, however if we need to postpone we and eventually do conduct the meeting, hence why some of the dates are off. In addition, if there are no matters requiring a meeting, it is canceled.

The data I am providing you, goes as far back as January 2015, in order to provide you with sufficient data.

01/27/15

Ronald Tocci
Mary Harvey
Jeffie Cappadonna
Steve Hughes
Prakash Patel
Rodney Hutson
Laura Wilson

Members absent:

Kevin Lala

5/11/2015

Paige Cassel
Mary Harvey
Kevin Lala
Laura Wilson

Members absent:

Jeffie Cappadonna
Steve Hughes
Rodney Hutson
Prakash Patel

7/28/15

Rodney Hutson
Mary Harvey
Jeffie Cappadonna
Steven Hughes
Paige Cassel

Members absent:

Kevin Lala
Prakash Patel
Laura Wilson

10/27/15

Mary Harvey
Jeffie Cappadonna
Paige Cassel
Steve Hughes
Rodney Hutson
Laura Wilson

Members absent:

Kevin Lala
Prakash Patel

1/26/16

Rodney Hutson
Mary Harvey
Steven Hughes
Paige Cassel

Members absent:

Kevin Lala - excused
Prakash Patel-excused
Laura Wilson
Jeffie Cappadonna

8/30/16

Rodney Hutson
Mary Harvey
Steven Hughes
Kevin Lala
Prakash Patel
Jeffie Cappadonna
Cindy Vincik

Members absent:

Paige Cassel

10/25/2016

Paige Cassel
Mary Harvey
Steven Hughes
Jeffie Cappadonna

Members absent:

Rodney Hutson
Kevin Lala
Prakash Patel
Cindy Vincik

8/22/17

All members were present.

10/24/17

Paige Cassel
Steve Hughes
Jeffie Cappadonna
Cindy Vincik
Rodney Hutson
Kevin Lala
Prakash Patel

Members Absent:

Mary Harvey

10/23/18

Canceled Due to Lack of Quorum

11/5/2018 - Special

Mary Harvey

Paige Cassel

Steve Hughes

Jeffie Cappadonna

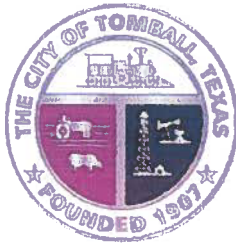
Rodney Hutson

Melanie Sutton

Members Absent:

Cindy Vincik

Prakash Patel



CITY OF TOMBALL

APPLICATION FOR CITY BOARDS/COMMISSIONS/COMMITTEES

As an Applicant for a City Board, Commission, or Committee, your application will be available to the public. You will be contacted before any action is taken on your appointment to confirm your continued interest in serving. All appointments are made by the Tomball City Council. Incumbents whose terms expire are automatically considered for reappointment unless they indicate non-interest or have been appointed to two (2) consecutive terms. A member who is absent for more than 25% of called meetings in any twelve consecutive months or absent from more than two consecutive meetings, for other than medical reasons, will be automatically removed from service. Applicant must be a citizen of the United States and must reside within the city limits of Tomball unless otherwise stated in the position announcement. Applications will be kept on file for two years and will expire at the end of two years; for instance, an application dated in 2011 will expire in 2013.

Please Type or Print Clearly:

Date: 2/15/11

Name: MARY HARVEY

Phone: _____

Address: 405 S. WALNUT

Phone: 2813518903 (Home)

City/State/Zip Tomball TX 77375

Phone: _____ (Work)
Cell: _____

Email: GRANNYS KORNER TOMBALL@hotmail.com

I have lived in Tomball 15 years.

I am ☒ am not ☐ a U.S. Citizen

Occupation: OWN ANTIQUE BUSINESS

Professional and/or Community Activities: Chamber

Additional Pertinent Information/References: _____

Applications for the following Council-appointed Boards, Commissions, and Committees will be kept on file in the City Secretary's office (281-290-1002) for one year.

If you are interested in serving on more than one board, please indicate your preference by numbering in order of preference (i.e., 1, 2, 3, etc.)

Decision-Making Boards and Commissions

- () Planning & Zoning Commission
() Board of Adjustments

Meeting Information

Second Monday each month, 6 p.m.
To Be Announced; Evenings

Separate Legal Entities

- () Tomball Economic Development Corporation

- () Tomball Hospital Board

Meeting Information

First Wednesday of January, April, July & October, 9 a.m. (special meetings may be called)
Fourth Wednesday each month, 4 p.m.

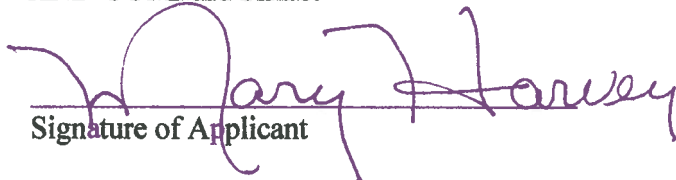
Ad Hoc/Advisory Committees

- ☒ Downtown Tomball Advisory Committee

Meeting Information

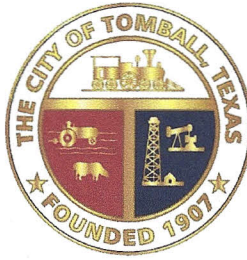
As called

I AM INTERESTED IN SERVING ON THE ABOVE-INDICATED BOARDS, COMMISSIONS, AND COMMITTEES.


Signature of Applicant

Please return this application to:

City Secretary
City of Tomball
401 Market Street
Tomball, TX 77375



CITY OF TOMBALL
2013 APPLICATION
FOR THE
TOURISM ADVISORY COMMITTEE

As an Applicant for the **Tourism Advisory Committee**, your application will be available to the public. All appointments are made by the Tomball City Council. Incumbents whose terms expire are automatically considered for reappointment unless they indicate non-interest or have been appointed to two (2) consecutive terms. A member who is absent for more than 25% of called meetings in any twelve consecutive months or absent from more than two consecutive meetings, for other than medical reasons, will be automatically removed from service. Applicant must be a citizen of the United States and must reside within the city limits of Tomball unless otherwise stated in the position announcement. 2013 applications expire on December 31, 2015; a new application will be required in 2016.

Please Type or Print Clearly:

Date: 3-14-15

Name: CINDY VINCIK

Phone: 281-351-4972

Address: [REDACTED]

(Home)
Phone: 281-255-2455
(Work)

Email: WHISTLESTOPTomball@gmail.com

I have lived in Tomball years.

I am ☒ am not ☐ a U.S. Citizen

I am applying as (please check all that apply):

☒

a Tomball Resident, residing within the city limits of Tomball
an Owner, Officer or Director of a business, other than a hotel or motel,
with offices within the city limits of Tomball

☐

an Employee or Officer of a hotel or motel located in the
city limits of Tomball

Occupation: OWNER AND OPERATOR OF THE WHISTLE
STOP TEA ROOM IN TOMBALL SINCE 8/2001.
IT WOULD BE A COMPLETE HONOR TO
SERVE ON THIS COMMITTEE. THE PAST +
PRESENT FESTIVALS + EVENTS HAVE
POSITIVELY IMPACTED MY BUSINESS.

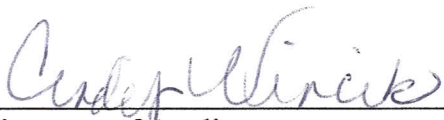
Professional and/or Community Activities: _____

VOLUNTEER AT SAWYER LUTHERAN CHURCH
TOMBALL, TX

Additional Pertinent Information/References: _____

Applications for the Tourism Advisory Committee will be kept on file in the City Secretary's office (281-290-1002) for two years.

I AM INTERESTED IN SERVING ON THE TOURISM ADVISORY COMMITTEE.


Signature of Applicant

Please return this application to:

City Secretary
City of Tomball
401 Market Street
Tomball, TX 77375
dspeer@ci.tomball.tx.us
fax: 281-351-6256



Board Member Election on Disclosure

An appointed Board Member may choose whether or not to allow public access to the information in the custody of the City relating to the Board Member's home address, home telephone number, cellular and pager numbers (if not paid for by City), emergency contact information, personal email address, and information that reveals whether the person has family members.

Each Board Member shall state his/her choice in writing to the City Secretary's Office. If a Board Member elects not to allow public access to this information, the information is protected by Sections 552.024 and 552.117 of the Public Information Act and rulings of the Texas Attorney General. If a Board Member fails to report his/her choice, the information may be subject to public access.

If during the course of their term a Board Member wishes to close or open public access to the information, the individual may request in writing to the City Secretary's Office to close or open access as the case may be. A Board Member may request to close or open public access to the information by submitting a written request to the City Secretary's Office. Only the City Secretary's Office is allowed to disclose the information listed above.

(Please strike through any information that you do not wish to be made accessible to the public)

Please complete the information below and return
to the City Secretary's Office within fourteen days of receipt.

☐ I **DO** elect public access to my: (please indicate items you would like available, if any)

___ home address

___ home telephone number

___ personal email address

___ cell or pager numbers not paid for by the City

___ emergency contact information

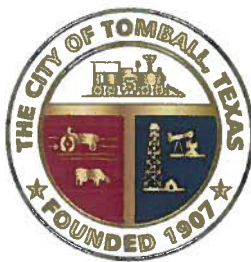
___ information that reveals whether I have family members.

☒ I **DO NOT** elect public access to my home address, home telephone number, cell or pager numbers, emergency contact information, or any information that reveals whether I have family members.

Cindy Vincik
Board Member's Signature

3-14-16
Date

CINDY VINCIK
Board Member's Printed Name



CITY OF TOMBALL

2010 APPLICATION FOR THE TOURISM ADVISORY COMMITTEE

As an Applicant for the **Tourism Advisory Committee**, your application will be available to the public. All appointments are made by the Tomball City Council. Incumbents whose terms expire are automatically considered for reappointment unless they indicate non-interest or have been appointed to two (2) consecutive terms. A member who is absent for more than 25% of called meetings in any twelve consecutive months or absent from more than two consecutive meetings, for other than medical reasons, will be automatically removed from service. Applicant must be a citizen of the United States and must reside within the city limits of Tomball unless otherwise stated in the position announcement. 2010 applications expire on December 31, 2012; a new application will be required in 2013.

Please Type or Print Clearly:

Date: 11.8.2010

Name: Prakash Patel

Phone: [REDACTED]

Address: 603. W. MAIN STREET TOMBALL, TX 77375

Phone: 281.797.5378 (Home)

Email: [REDACTED]

(Work)

I have lived in Tomball 30 years.

I am ☒ am not ☐ a U.S. Citizen

I am applying as (please check all that apply):

☒
☐
☐

a Tomball Resident, residing within the city limits of Tomball
an Employee, Owner, Officer or Director of a business, other than
a hotel or motel, with offices within the city limits of Tomball
an Employee, Owner, or Officer of a hotel or motel located in the
city limits of Tomball

Occupation: RESTAURANT OWNER DENNY'S - TOMBALL

Professional and/or Community Activities: _____

Additional Pertinent Information/References: _____

Applications for the Tourism Advisory Committee will be kept on file in the City Secretary's office (281-290-1002) for two years.

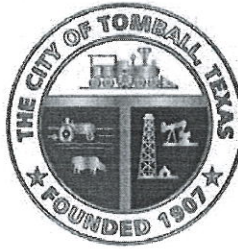
I AM INTERESTED IN SERVING ON THE TOURISM ADVISORY COMMITTEE.



Signature of Applicant

Please return this application to:

City Secretary
City of Tomball
401 Market Street
Tomball, TX 77375
dspeer@ci.tomball.tx.us
fax: 281-351-6256



CITY OF TOMBALL

APPLICATION FOR THE TOURISM ADVISORY COMMITTEE

As an Applicant for the **Tourism Advisory Committee**, your application will be available to the public. All appointments are made by the Tomball City Council. Incumbents whose terms expire are automatically considered for reappointment unless they indicate non-interest or have been appointed to two (2) consecutive terms. A member who is absent for more than 25% of called meetings in any twelve consecutive months or absent from more than two consecutive meetings, for other than medical reasons, will be automatically removed from service. Applicant must be a citizen of the United States and must reside within the city limits of Tomball unless otherwise stated in the position announcement. 2013 applications expire on December 31, 2015; a new application will be required in 2016.

Please Type or Print Clearly:

Date: 11/20/18

Name: Raymond Francois

Phone: _____

Address: _____

(Home)

Phone: 281-357-1500

(Work)

City/State/Zip Tomball TX 77375

Cell: _____

Email: raymond.francois@hilton.com

I have lived in Tomball 1 years.

I am ☒ am not ☐ a U.S. Citizen

I am applying as (please check all that apply):

☒

a Tomball Resident, residing within the city limits of Tomball
an Owner, Officer or Director of a business, other than a hotel or motel,
with offices within the city limits of Tomball

☒

an Employee or Officer of a hotel or motel located in the
city limits of Tomball

Occupation: General Manager Hampton Inn Suites

Professional and/or Community Activities: Chamber ambassador

Additional Pertinent Information/References: _____

Applications for the Tourism Advisory Committee will be kept on file in the City Secretary's office (281-290-1002) for two years.

I AM INTERESTED IN SERVING ON THE TOURISM ADVISORY COMMITTEE.



Signature of Applicant

Please return this application to:

City Secretary
City of Tomball
401 Market Street
Tomball, TX 77375
dspeer@ci.tomball.tx.us
fax: 281-351-6256



Board Member Election on Disclosure

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Each Board Member shall state his/her choice in writing to the City Secretary's Office. If a Board Member elects not to allow public access to this information, the information is protected by Sections 552.024 and 552.117 of the Public Information Act and rulings of the Texas Attorney General. If a Board Member fails to report his/her choice, the information may be subject to public access.

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(Please strike through any information that you do not wish to be made accessible to the public)

Please complete the information below and return
to the City Secretary's Office within fourteen days of receipt.

☐ I **DO** elect public access to my: (please indicate items you would like available, if any)

___ home address

___ home telephone number

___ personal email address

___ cell or pager numbers not paid for by the City

___ emergency contact information

___ information that reveals whether I have family members.

☒ I **DO NOT** elect public access to my home address, home telephone number, cell or pager numbers, emergency contact information, or any information that reveals whether I have family members.

Board Member's Signature

Date

Board Member's Printed Name

Regular City Council

Agenda Item

Data Sheet

Meeting Date: December 3, 2018

Topic:

Presentation by Hines Real Estate regarding Funding Options for Their Proposed Residential Subdivision in Tomball, Located at the Northeast Corner of Agg Road and Persimmon Street

Background:

In August, Hines Real Estate met with the Community Development Department to discuss a proposed 105 acre residential development in the City limits of Tomball. The proposed development is located at the northeast corner of Agg Road and Persimmon Street. Hines desires to utilize PID Bonds to finance the necessary infrastructure for the proposed residential development.

Origination:

Brian Stidham, Hines

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

Craig T. Meyers, Community Development Director

ACTION TAKEN

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

ATTACHMENTS:

Site



1,155

1,120

575

575

545

485

385

475

805

545

415

555

475

1,150

S Persimmon St

3,790

Agg Rd

Medical Complex Rd

Hufsmith-Kohville Rd

Medical Complex Dr

Tomball Country Club

Regular City Council

Agenda Item

Data Sheet

Meeting Date: December 3, 2018

Topic:

Approve Abandonment of a Drainage Right-of-Way and Adopt, on First Reading, Ordinance No. 2018-40, an Ordinance of the City of Tomball, Texas, Finding and Determining that Public Convenience and Necessity No Longer Require the Continued Existence of a Drainage Right-of-Way situated within The Tomball 2920 Subdivision, Harris County, Texas, and as Recorded in the Map Records of Harris County, Texas; Vacating, Abandoning, and Closing Said Drainage Right-of-Way; Providing for Severability; and Containing Other Provisions Relating to the Subject

Background:

This right-of-way was acquired years ago during the platting process, and at the time it was believed to be necessary for a future City of Tomball drainage channel. Subsequent to being acquired, the drainage project was taken over by Harris County Flood Control and they are using a different alignment, so this right-of-way is no longer needed.

Origination:

Craig T. Meyers, Community Development Director

Recommendation:

Approval

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

Craig T. Meyers, Community Development Director

ACTION TAKEN

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

ATTACHMENTS:

Ordinance No. 2018-40

ORDINANCE NO. 2018-40

AN ORDINANCE OF THE CITY OF TOMBALL, TEXAS, FINDING AND DETERMINING THAT PUBLIC CONVENIENCE AND NECESSITY NO LONGER REQUIRE THE CONTINUED EXISTENCE OF A DRAINAGE RIGHT-OF-WAY SITUATED WITHIN THE TOMBALL 2920 SUBDIVISION, HARRIS COUNTY, TEXAS, AND AS RECORDED IN THE MAP RECORDS OF HARRIS COUNTY, TEXAS; VACATING, ABANDONING, AND CLOSING SAID DRAINAGE RIGHT-OF-WAY; PROVIDING FOR SEVERABILITY; AND CONTAINING OTHER PROVISIONS RELATING TO THE SUBJECT.

* * * * *

WHEREAS, the City Council of the City of Tomball, Texas finds that public convenience and necessity no longer require the continued existence of the drainage right-of-way described below and that it should be vacated, abandoned, and closed for the reason that the same is no longer needed; now, therefore;

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

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

Section 2. The City Council of the City of Tomball, Texas, hereby finds and determines that public convenience and necessity no longer require the continued existence of a drainage right-of-way described in Section 3 hereof.

Section 3. The drainage right-of-way, more particularly described as M124-00-00 (West) and M124-00-00 (East) as shown on in Exhibit “A” attached hereto and made a part hereof for all purposes, located within the City of Tomball, Harris County, Texas, is hereby vacated, abandoned, and closed.

Section 4. In the event any section, paragraph, subdivision, clause, phrase, provision, sentence, or part of this ordinance or the application of the same to any person or circumstance shall for any reason be adjudged invalid or held unconstitutional by a court of competent

jurisdiction, it shall not affect, impair, or invalidate this ordinance as a whole or any part or provision hereof other than the part declared to be invalid or unconstitutional; and the City Council of the City of Tomball, Texas, declares that it would have passed each and every part of the same notwithstanding the omission of any such part thus declared to be invalid or unconstitutional, or whether there be one or more parts.

FIRST READING:

READ, PASSED AND APPROVED AS SET OUT BELOW AT THE MEETING OF THE CITY COUNCIL OF THE CITY OF TOMBALL HELD ON THE 3RD DAY OF DECEMBER, 2018.

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

SECOND READING:

READ, PASSED AND APPROVED AS SET OUT BELOW AT THE MEETING OF THE CITY COUNCIL OF THE CITY OF TOMBALL HELD ON THE 17TH DAY OF DECEMBER, 2018.

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

Gretchen Fagan, Mayor
City of Tomball

ATTEST:

Doris Speer, City Secretary

Exhibit A

STATE OF TEXAS
COUNTY OF HARRIS

We, PAR REAL ESTATE HOLDINGS, LLC, owners, hereinafter referred to as owners of the 59.790 acre tract described in the above and foregoing plat of TOMBALL 2920, do hereby make and establish said subdivision of said property according to all laws, dedications, restrictions, and notations on said plat and hereby dedicate to the use of the public forever, all streets, alleys, parks, watercourses, drains, easements, and public places shown thereon for the purposes and considerations therein expressed; and do hereby bind ourselves our heirs, successors and assigns to warrant and forever defend the title to the land so dedicated.

FURTHER, owners have dedicated and by these presents do dedicate to the use of the public for public utility purposes forever an unobstructed aerial easement five feet in width from a plane twenty feet (20') above the ground level upward, located adjacent to all public utility easements shown hereon.

FURTHER, owners do hereby covenant and agree that all of the property with the boundaries of this plat and adjacent to any drainage easement, ditch, gully, creek or natural drainage way shall hereby be restricted to keep such drainage ways and easements clear of fences, buildings, plantings, and other obstructions to the operation and maintenance of the drainage facility and that such abutting property shall not be permitted to drain directly in this easement except by means of an approved drainage structure.

This Dedication is made and accepted subject to the following exceptions:

- all presently recorded and validly existing oil and/or gas pipeline easements; and
- all rights of parties granted pursuant to documents presently recorded in the Real Property Records of Harris County.

IN TESTIMONY WHEREOF, the PAR REAL ESTATE HOLDINGS, LLC has caused these presents to be signed by
Michael H. Richmond, thereunto authorized, attested by
and its common seal hereunto affixed this 23 day of January, 2012.

PAR REAL ESTATE HOLDINGS, LLC

BY: Michael H. Richmond
NAME: Michael H. Richmond
TITLE: President

ATTEST:
BY: Charles A. Vernon
NAME: Charles A. Vernon
TITLE: Executive Vice President

STATE OF TEXAS
COUNTY OF HARRIS

BEFORE ME, the undersigned authority, on this day personally appeared Michael H. Richmond and Charles A. Vernon known to me to be the persons whose names are subscribed to the foregoing instrument and acknowledged to me that they executed the same for the purposes and considerations therein expressed and in the capacity therein and herein stated, and as the act and deed of said PAR REAL ESTATE HOLDINGS, LLC.

Notary Public in and for the State of Texas
My commission expires March 24, 2015

This is to certify that the Planning and Zoning Commission of the City of Tomball, Texas has approved this plat and subdivision of TOMBALL 2920 in conformance with the laws of the State of Texas and the ordinances of the City of Tomball as shown hereon and authorize the recording of this plat this 13th day of February, 2012.

By: Lon Wallace By: Emily T. Chervanek
Lon Wallace, Chairman Emily T. Chervanek, Vice Chairman

We, the City Manager and City Engineer for the City of Tomball, Texas, do hereby certify that the plat of TOMBALL 2920 is in conformance with the City of Tomball ordinances.

George Shackelford Lon Wallace
City Manager Acting City Engineer

This is to certify that the City accepts the Planning and Zoning Commission's authorized approval and acceptance of all the dedicated public easements and conformance with the laws of the State of Texas and the ordinances of the City of Tomball as shown hereon and authorized the recording of this plat this 13th day of February, 2012.

Gretchen Fagan Doris Speer
Mayor City Secretary

Motes and Bounds Description

Being a Tract of land containing 59.790 acres (2,604,435 square feet), situated in the Joseph House Survey, Abstract No. 34, Harris County, Texas, and consisting of 4 tracts of land as described in that certain Special Warranty Deed from Woodforest National Bank to Par Real Estate Holdings, LLC as recorded under Harris County Clerk File Number (H.C.C.F. No.) 20090504626 in the Official Public Records of Real Property of Harris County, (O.P.R.R.P.H.C.), Texas as follows: a called 13.97 acre tract of land being the same tract of land described under Harris County Clerk File (H.C.C.F. No.) Y284790, a called 37.024 acre tract of land being the same tract of land described under H.C.C.F. No. Y199045, a called 8.383 acre tract of land being the same tract of land described under H.C.C.F. No. X939568, and a called 0.528 acre tract of land being the same tract of land described under H.C.C.F. No. Y731248 all as recorded in the O.P.R.R.P.H.C., Texas. Said 59.790 acre tract of land being more particularly described by metes and bounds as follows:

BEGINNING at a found 1/2-inch iron rod in the north right-of-way line of FM 2920 also known as Waller-Tomball Road, based on 120 foot wide right-of-way, having coordinates X=3,029,587.39, Y=13,956,658.28, Texas State Plane Coordinate System, South Central Zone, North American Datum of 1983 (N.A.D. 83), and being the southwest corner of said 13.97 acre tract, said corner point also being the northwest corner of said 13.97 acre tract of land and the southwest corner of Reserve "A" of Spring Creek Estates Subdivision Replat, as recorded under Harris County Film Code No. 520108 of the Map Records of Harris County (M.R.H.C.), Texas;

THENCE North 02° 11' 24" West, a distance of 1941.48 feet with west line of the said 13.97 acre tract of land common with the west line of the herein described tract and the east line of the said 40.0 acre tract of land to a point for the most westerly northwest corner of the herein described tract of land from which bears North 02° 11' 24" West a distance of 0.36 feet a found 5/8-inch iron rod, said corner point also being the northwest corner of said 13.97 acre tract of land and the southwest corner of Reserve "A" of Spring Creek Estates Subdivision Replat, as recorded under Harris County Film Code No. 520108 of the Map Records of Harris County (M.R.H.C.), Texas;

THENCE North 87° 02' 41" East, a distance of 337.29 feet (called 337.82 feet) with the north line of said 13.97 acre tract of land and the south line of said Reserve "A" to a point for corner in the herein described tract also being the southeast corner of said Reserve "A" and being in the west line of a called 2.9051 acre tract of land described under H.C.C.F. No. X939568 of the O.P.R.R.P.H.C., Texas, and being in the east line of the said 13.97 acre tract of land and continuing another 500.94 feet for a total distance of 724.36 feet to a found 5/8-inch iron rod marking the northwest corner of said 2.9051 acre tract of land and the southeast corner of a called 1.790 acre tract of land described under H.C.C.F. No. Y811765 of the O.P.R.R.P.H.C., Texas;

THENCE South 02° 04' 18" East, a distance of 223.42 feet pass a found 5/8-inch iron rod marking the southwest corner of the said 2.9051 acre tract of land and the northwest corner of a certain called 3.8630 acre tract of land described under H.C.C.F. No. X939568 of the O.P.R.R.P.H.C., Texas, and being in the east line of the said 13.97 acre tract of land and continuing another 500.94 feet for a total distance of 724.36 feet to a found 5/8-inch iron rod marking a re-entrant corner in the herein described tract, same being common with the southwest corner of the said 3.8630 acre tract of land, and the northwest corner of said 3.8630 acre tract of land;

THENCE North 87° 32' 18" East, a distance of 335.79 feet (called 335.86 feet) with the north line of the said 3.8630 acre tract of land and the south line of the said 3.8630 acre tract of land to a found 5/8-inch iron rod in the west line of the said 37.024 acre tract of land marking a re-entrant corner in the herein described tract of land, also being the southeast corner of the said 3.8630 acre tract of land and the northeast corner of the said 0.528 acre tract of land;

THENCE North 02° 02' 24" West, a distance of 1109.78 feet (called 1109.63 feet) with the east line of the said 3.8630 acre tract of land, the east line of the said 2.9051 acre tract of land, and the east line of said 1.790 acre tract of land, and the west line of the said 37.024 acre tract of land to a found 5/8-inch iron rod with a plastic cap marking an angle point in the west line of the said 37.024 acre tract of land, same marking the common corner in the said Replat of Spring Creek Estates Subdivision and said 1.790 acre tract of land;

THENCE North 02° 14' 28" West, a distance of 2710.81 feet (called 2711.14 feet) with the east line of the said Spring Creek Estates Subdivision and the west line of the said 37.024 acre tract of land to a found 5/8-inch iron rod in a curve to the right, in the south right-of-way line of Brown Road, based on 80' width as recorded under Volume 3196 Page 441, and Volume 3486, Page 443 in the Deed Record of Harris County, Texas, for a corner in the herein described tract, also marking the northeast corner of the said Replat of Spring Creek Estates Subdivision and the northeast corner of the said 37.024 acre tract of land;

THENCE along the south right-of-way line of Brown Road, a distance of 341.46 feet along the arc of a curve to the right and having a radius of 1115.92 feet, an central angle of 17° 31' 55", a chord bearing of North 77° 29' 29" East, a chord distance of 340.13 feet to a found 5/8-inch iron rod with cap for the northeast corner of the herein described tract, also marking the northeast corner of the said 37.024 acre tract of land and the northwest corner of a called 4.858 acre tract of land described under H.C.C.F. No. 20090584081 of the O.P.R.R.P.H.C., Texas;

THENCE South 02° 04' 57" East, a distance of 790.41 feet with the east line of the said 37.024 acre tract of land and the west line of the said 4.858 acre tract of land to a found 1/2-inch iron rod marking an angle point in the east line of the said 37.024 acre tract of land, and the southwest corner of the said 4.858 acre tract of land and the northwest corner of a called 24.615 acre tract described under H.C.C.F. No. 20090584079 of the O.P.R.R.P.H.C., Texas same being the Unrestricted Reserve "B" of Tomball Center III subdivision as recorded under Film Code Number 551080 H.C.M.R.;

THENCE South 02° 08' 21" East, a distance of 4212.26 feet along the west line of said 24.615 acre Unrestricted Reserve "B" and the east line of said 37.024 acre tract of land and continuing along west lines of Tomball Center 111-B2 Replat No. 2 recorded under Film Code 635089 H.C.M.R. and Reserve "A-1" of Tomball Center 111-A recorded under Film Code No. 589253 H.C.M.R., to the southwest corner of said Reserve "A-1" of Tomball Center 111-A, and the southeast corner of said 37.024 acre tract of land, to a point in a power pole in the north right-of-way line of said F.M. 2920 to the southeast corner of the herein described tract;

THENCE South 87° 41' 32" West, a distance of 214.55 feet (called 214.75 feet) with the north right-of-way line of said F.M. 2920 to found 5/8-inch iron rod for a corner in the herein described tract and the southeast corner of a called 0.8556 acre tract of land described under H.C.C.F. No. 2417949 of the O.P.R.R.P.H.C., Texas;

THENCE North 02° 04' 43" West, a distance of 363.67 feet with the east line of the said 0.8556 acre tract of land to a found 5/8-inch iron rod with cap for a re-entrant corner in the herein described tract and the northeast corner of the said 0.8556 acre tract of land;

THENCE South 87° 41' 32" West, a distance of 102.50 feet pass the northwest corner of said 0.8556 acre tract and continuing another 7.50 feet along a 7.50 foot wide remainder of a called 37.942 acre tract described in the deed to Ken D. Parr, as recorded under H.C.C.F. No. U499904 of the Deed Records of Harris County, Texas for a total distance of 110.00 feet to a point for a re-entrant corner in the herein described tract of land;

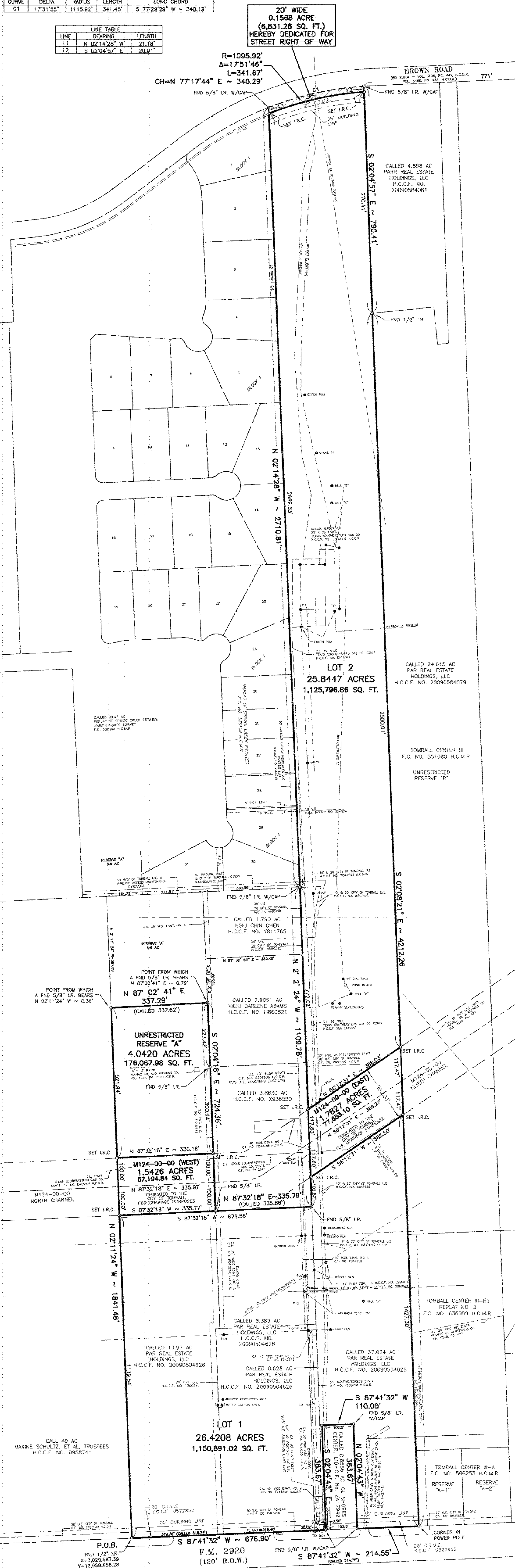
THENCE South 02° 04' 43" West, a distance of 363.67 feet with the west line of the said 7.50 foot wide remainder to a point for corner in herein described tract in the north right-of-way line of FM 2920 from which bears North 87° 41' 32" East a distance of 7.50 feet a found 5/8-inch iron rod with cap in the north right-of-way line of said F.M. 2920 marking the southwest corner of said 0.8556 acre tract;

THENCE South 87° 41' 32" West, along the north right-of-way line of said F.M. 2920 at 7.62 feet pass a found 5/8-inch iron rod with cap marking the southeast corner of said 0.528 acre tract of land, at 30.02 feet pass a found 5/8-inch iron rod marking the southwest corner of the said 0.528 acre tract of land and continuing another 319.48 feet pass a found 5/8-inch iron rod marking the common southwest corner of said 8.383 acre tract of land and the southeast corner of said 13.97 acre tract of land and continuing another 319.78 feet (called 319.74 feet) for a total of 676.90 feet to the southwest corner of the said 13.97 acre tract of land, same being the southeast corner of said 40.00 acre tract of land for the southwest corner and the **POINT OF BEGINNING** of the herein described tract and containing 59.790 acres (2,604,435 square feet) of land.

CURVE TABLE				
CURVE	DELTA	RADIUS	LENGTH	LONG CHORD
01	1731.50°	1115.82	341.46'	S 77°29'29" W ~ 340.13'

LINE TABLE		
LINE	BEARING	LENGTH
L1	N 02°14'28" W	21.18
L2	S 02°04'57" E	20.01

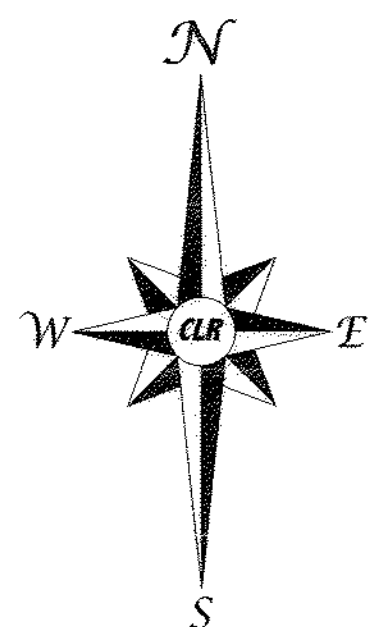
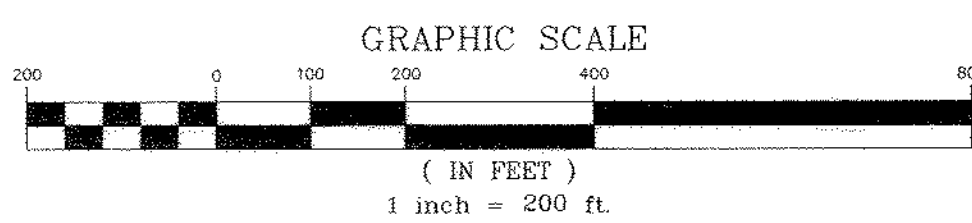
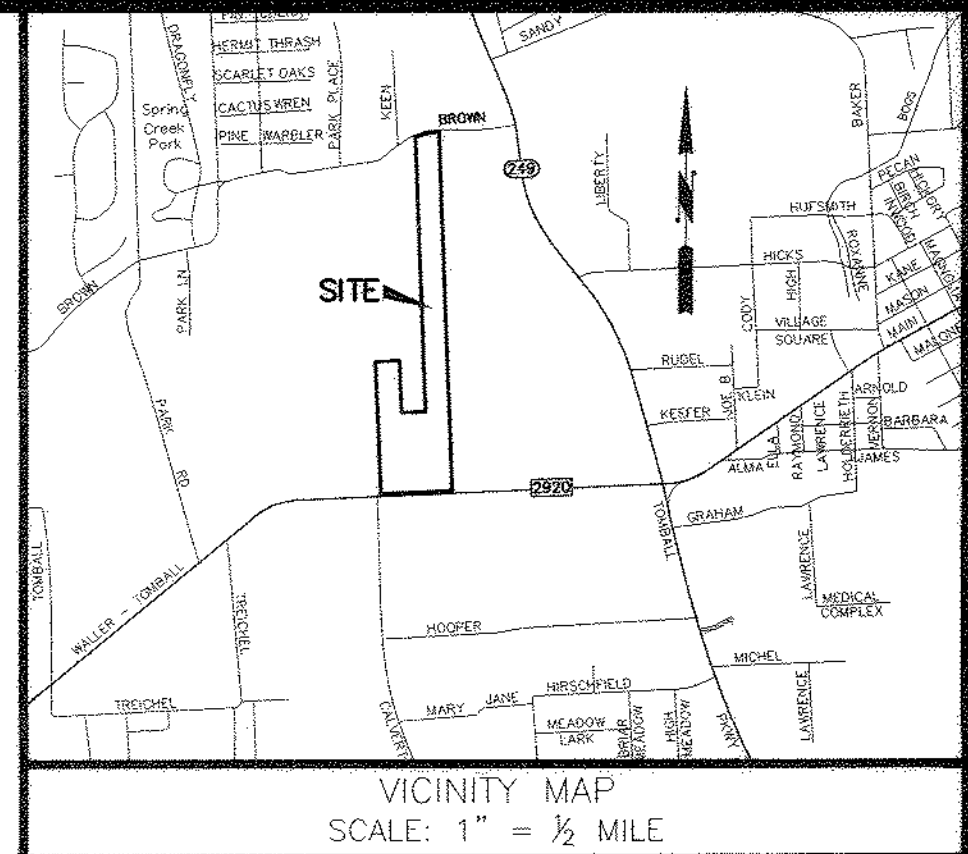
R=1095.92'
Δ=17°31'55"
L=341.46'
CH=N 77°17'44" E ~ 340.29'
FND 5/8" I.R. W/CAP



AREA SUMMARY			
DESCRIPTION	SQ. FT.	ACRES	
LOT 1	1,150,891.02	26.4208	
LOT 2	1,125,796.86	25.8447	
UNRESTRICTED RESERVE A	176,067.98	4.0420	
ROW-EAST	77,653.10	1.7827	
ROW-WEST	67,194.84	1.5426	
BROWN ROAD DEDICATION	6,831.26	0.1568	
TOTAL	2,604,435.06	59.7896	

LEGEND
U.E. - UTILITY EASEMENT
C.T.U.E. - CITY OF TOMBALL UTILITY EASEMENT
B.L. - BOUNDARY LINE
H.C.C.F. - HARRIS COUNTY CLERK'S FILE
H.C.M.R. - HARRIS COUNTY MAP RECORD
H.C.D.R. - HARRIS COUNTY DEED RECORD

RECORDER'S MEMORANDUM
At the time of recording, this instrument was found to be inadequate for the best photographic reproduction because of illegibility, carbon or photo copy, discolored paper, etc. All handwritten additions and changes were present at the time the instrument was filed and recorded.



NOTES:

Flood Information:
According to FEMA Firm Panel No. 48201C0210L (effective date June 18, 2007), this property is in Zone "X" and is not in the 0.2% Annual Chance Flood Plain.

Public Easements:

Public easements denoted on this plat are hereby dedicated to the public forever. Any public utility, including the City of Tomball, shall have the right at all times, of ingress and egress to and from and upon said easements for the purpose of construction, reconstruction, inspection, patrolling, maintaining and adding to or removing all or part of its respective systems without the necessity of any time of procuring the permission of the property owner. Subject to the Exceptions in the Dedication, any public utility, including the City of Tomball, shall have the right to move and keep moved all or part of any building, fences, trees, shrubs, other growths or improvements that in any way endanger or interfere with the construction, maintenance or efficiency of its respective systems on any of the easements shown on this plat; and neither the City of Tomball nor any public utility shall be responsible for the replacing or reimbursing the property owner due to removal or relocation of any obstruction on the public easements.

- The building lines shown on this plat shall be in addition to, and shall not limit or replace, any building lines required by the City of Tomball Code of Ordinances at the time of the development of the property.
- Bearings shown hereon are based on the Texas State Plane Coordinate System, South Central Zone, NAD 83. The surface coordinates and distances shown may be converted to grid by multiplying by a factor of 0.999947.
- All property corners found are as noted "SET I.R.C." and set corners for drainage easement are 3/4-inch iron rod with plastic cap marked "JAG ENG 5945".
- There is hereby dedicated an unobstructed aerial easement 30 feet wide from a plane 16 feet above the ground level upward, centered on all 14-foot wide utility easements (14' U.E.) and an unobstructed aerial easement 20 feet wide from a plane 16 feet above the ground level on all 14-foot wide perimeter utility easements, shown hereon.
- The City of Tomball shall permit up to two vehicular crossings over the M124 Channel right-of-way being dedicated on this plat. Crossing location(s) shall be coordinated and mutually agreed between the City and the Property Owner(s). Crossings shall be designed and constructed in accordance with applicable City of Tomball design criteria and specifications.

I, John A. Guajardo, am authorized by the State of Texas to practice the profession of surveying and hereby certify that the above subdivision is true and correct; was prepared from an actual survey of the property made under my supervision on the ground; that all boundary corners, angle points, points of curvature, and other points of reference have been marked with iron rods having an outside diameter of not less than three-fourths (3/4) inch and a length of not less than three (3) feet; and that the plat boundary corners have been tied to the nearest survey corner.

John A. Guajardo 1-20-2012
John A. Guajardo, RPLS
Registered Professional Land Surveyor No. 5945
JAG Engineering, Inc.



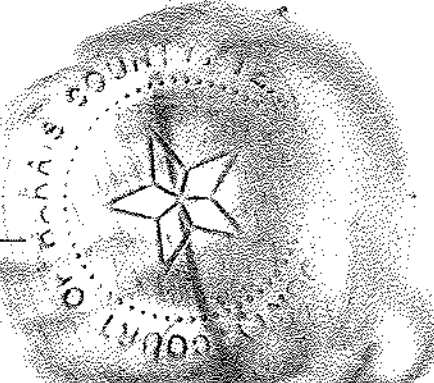
STATE OF TEXAS
COUNTY OF HARRIS

I, Stan Stanart, County Clerk of Harris County, Texas, do hereby certify that the written instrument with its certificate of authentication was filed for registration in my office on Feb. 14 2012, at 2:49 o'clock P. M. and at Film Code 644185 of the Map Records of Harris County for said county and duly recorded on Feb. 15 2012, at 10:30 o'clock A. M.

Witness my hand and seal of office, at Harris County, Texas, the day and date last above written.

STAN STANART
Stan Stanart
County Clerk
Harris County, Texas

By: Edwina V. Mack
Deputy EDWINA V. MACK



FINAL PLAT TOMBALL 2920

A 59.790 ACRE (2,604,435 SQ. FT) TRACT OF LAND BEING ALL OF A
CALLED 13.97 ACRE TRACT, A CALLED 37.024 ACRE TRACT, A
CALLED 8.383 ACRE TRACT, AND A CALLED 0.528 ACRE TRACT
RECORDED IN HARRIS COUNTY CLERK'S FILE NO. 20090504626 OF
THE OFFICIAL PUBLIC RECORDS OF HARRIS COUNTY
IN THE JOSEPH HOUSE SURVEY, ABSTRACT NO. 34, CITY OF
TOMBALL, HARRIS COUNTY, TEXAS

OWNER:

SURVEYOR/ENGINEER:

PAR Real Estate Holdings, LLC
1330 Lake Robbins Dr., Suite 100
The Woodlands, TX 77380
832-375-2520

CLR, Inc.
Engineers • Surveyors • GIS
19530 FM-362, Waller, Texas 77484
Phone: (713) 462-0993 Fax: (713) 462-2732

2 LOTS 1 RESERVE

SCALE: 1"=200' JANUARY, 2012

Regular City Council

Agenda Item

Data Sheet

Meeting Date: December 3, 2018

Topic:

Adopt, on First Reading, Ordinance No. 2018-41, an Ordinance of the City Council of the City of Tomball, Texas, Approving the 2018 Updated Service and Assessment Plan for the City of Tomball Public Improvement District Number Three (PID No. 3), for The Reserve at Spring Lake Subdivision

Background:

It is requested that City Council Adopt Ordinance No.. 2018-41, approving the proposed 2018 updated service and assessment plan for TPID 3 and approve an amended development agreement with Zion Road Properties, LLC (the developer of The Reserve at Spring Lake Subdivision). Both amended documents remove the 50% of eligible cost limitation that is not contained in more recent PID development agreements.

This action will not increase the assessments that have already been levied in Sections 1 and 2, which are well below the 90 cent equivalent tax rate cap contained in the development agreement. It was originally estimated that the standard \$4,500 annual Lot Category 1 assessment would apply to the average home in the subdivision, estimated in 2012 to have a taxable value of \$500,000. This equates to a 90 cent tax rate. More up-to-date information shows that the average home value in the subdivision is closer to \$750,000 meaning the true equivalent tax rate is closer to 60 cents.

Background

The original service and assessment plan was approved in 2012 and the original development agreement for PID 3 was executed in 2010. At that time, it was estimated that the developer would only be able to recover 50% of the eligible costs plus interest under the 90 cent equivalent tax rate cap. Due to lower development costs on certain items, the latest estimates show that the developer will be able to recover more than 50% of eligible costs through the assessment rate that has already been levied on Sections 1 and 2.

Both documents have been updated to remove the 50% limitation on eligible costs which is in line with more recent PIDs. The 90 cent equivalent tax rate cap remains in both documents.

Origination:

Bob Allen, Owner, Zion Road Properties, LLC

Recommendation:

Adopt Ordinance No. 2018-41 on First Reading

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

City Secretary

ACTION TAKEN

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

Ordinance No. 2018-41
Proposed Amended Development Agreement

ORDINANCE NO. 2018-41

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF
TOMBALL, TEXAS, APPROVING THE 2018 UPDATED SERVICE AND
ASSESSMENT PLAN FOR THE CITY OF TOMBALL PUBLIC
IMPROVEMENT DISTRICT NUMBER THREE (PID NO. 3), FOR THE
RESERVE AT SPRING LAKE SUBDIVISION**

* * * * *

WHEREAS, the City of Tomball (the “City”) is authorized pursuant to TEX. LOCAL GOV’T CODE, ch. 372, as amended (“Chapter 372”) to create public improvement districts for the purposes described therein; and

WHEREAS, the City received a petition (the “Petition”) requesting the creation of the City of Tomball Public Improvement District Number Three (the “PID”), held a public hearing, and created the PID in accordance with the applicable provisions of Chapter 372; and

WHEREAS, the City passed and adopted Resolution No. 2009-28 on October 19, 2009, establishing the City of Tomball Public Improvement District Number Three, and Ordinance No. 2012-15 on July 2, 2012, Approving the Service and Assessment Plan; and

WHEREAS, the City Council wishes to adopt the 2018 Updated Service and Assessment Plan with respect to the PID; **NOW THEREFORE**,

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

Section 1. The facts recited in the preamble hereto are found to be true and correct.

Section 2. The 2018 Updated Service and Assessment Plan attached to this Ordinance as Exhibit A is hereby approved and adopted on behalf of the PID, and the Mayor, City Secretary, and any other appropriate officials of the City are hereby authorized to take all necessary actions on behalf of the City to implement the terms thereof in accordance therewith.

Section 3. It is hereby found, determined and declared that a sufficient written notice of the date, hour, place and subject of this meeting of the City Council was posted at a place convenient to the public at the City Hall of the City for the time required by law preceding this meeting, as required by the Open Meetings Law, Chapter 551, Texas Government Code, and that this meeting has been open to the public as required by law at all times during which this Ordinance and the subject matter thereof has been discussed, considered and formally acted upon. City Council further ratifies, approves and confirms such written notice and the contents and posting thereof.

FIRST READING:

READ, PASSED AND APPROVED AS SET OUT BELOW AT A REGULAR MEETING OF THE CITY COUNCIL OF THE CITY OF TOMBALL, HELD ON THE 3RD DAY OF DECEMBER 2018.

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

SECOND READING:

READ, PASSED AND APPROVED AS SET OUT BELOW AT A REGULAR MEETING OF THE CITY COUNCIL OF THE CITY OF TOMBALL, HELD ON THE 17TH DAY OF DECEMBER 2018.

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

GRETCHEN FAGAN, MAYOR
City of Tomball

ATTEST:

DORIS SPEER, City Secretary
City of Tomball

EXHIBIT A

2018 Updated Service and Assessment Plan Public Improvement District Number Three City of Tomball, Harris County, Texas

1. Introduction

This Service and Assessment Plan (the "Plan") is prepared and adopted in conformance with the Public Improvement District Assessment Act, codified as Chapter 372, Texas Local Government Code (the "Act"), and pursuant to Resolution No. 2009-28 creating the Public Improvement District Number Three (the "PID" or the "District"), City of Tomball (the "City"), Harris County, Texas. The creation of the PID was initiated by a petition (the "Creation Petition") submitted by property owners within the PID boundaries in compliance with the requirements of Section 372.005 of the Act.

2. Boundaries

The boundaries of the PID are as indicated in Exhibit A and Exhibit B.

3. Administration of the District

Administration of the District is the responsibility of the City Council of the City of Tomball, Texas but to the extent allowed by law, the City may contract with a private sector company to carry out all or part of the City responsibilities as well as day-to-day operations and administration of the District.

4. Public Improvements

The Public Improvements to be financed and constructed hereby (the "Public Improvements") serve to promote the construction of single-family units ("SFU"). The Public Improvements included in the Plan will confer a special benefit to properties within the Public Improvement District and will consist of the construction of detention, water lines, sanitary sewer lines, storm sewers, gas lines, open space and amenities, paving erosion control, contingency provisions, engineering services, financing costs, and administrative and legal services for the PID. The Public Improvements will be pre-funded by the developer of the residential subdivision within the PID (the "Developer") under an approved development agreement. Under the Development Agreement executed between the Developer and the City, the Developer will be entitled to receive reimbursement of the Public Improvement costs subject to the limitations contained in the Agreement.

A. Reserve at Spring Lake

The Reserve at Spring Lake Subdivision is being developed by Zion Road Properties, LLC and will ultimately contain approximately 95 single-family residential lots within the Public Improvement District. The Public Improvements authorized under this Plan for The Reserve at Spring Lake, and the estimated costs thereof, are described below:

Reserve at Spring Lake
PID COSTS

PUBLIC IMPROVEMENT	ESTIMATED COST	Updated Est. Costs
Water Distribution Facilities	\$673,400	\$633,292
Sanitary Sewer Facilities	\$796,050	\$1,092,517
Storm Sewer Facilities	\$49,500	\$306,498
Gas Distribution Facilities	\$339,930	\$255,376
Roadway Paving	\$1,399,960	\$2,319,444
Land Reserved for Green Space/Amenities	\$1,759,560	\$2,221,596
Clearing	\$340,000	\$125,850
Detention Pond and Facilities	\$1,640,408	\$548,865
Pipeline Conflicts	\$150,000	\$100,000
Contingency (10%)	\$714,880	\$0
Engineering, Surveying (15%)	\$1,179,553	\$300,000
Subtotal	\$9,043,241	\$7,903,438
Financing Cost		\$4,015,737
PID Administration Expenses		\$358,850
TOTAL		\$12,278,025

The estimated total costs above will be used to set the assessments for residential properties in the PID as detailed later in this document.

5. Construction of Public Improvements

The Plan will be reviewed annually in accordance with the provisions of Chapter 372 of the Local Government Code and will include a review of the expenditures and revenues of the District. Additionally, the Plan will be reviewed for the purpose of establishing the installments for assessments based upon the costs for Public Improvements and the financial needs of the District.

6. Conveyance of Improvements to the City

Upon completion of the improvements, and final inspection and acceptance of the Public Improvements by the City, the Developers will convey all rights to the improvements to the City or homeowner's association as applicable, subject to the Developer's rights of reimbursement described in the Development Agreement executed between the Developer and the City.

7. Authorized Improvements

The area within the PID that is covered by this Service and Assessment Plan will be developed as single family residential. This Plan designates the Public Improvements required for the growth and development of the land within the PID. The goal of this Plan is to provide sufficient certainty for the owners of land within the PID to proceed with the financing and construction of the necessary Public

Improvements, while allowing for sufficient flexibility to meet the needs of the PID over the life of the development of residential properties within the PID.

The construction of the Public Improvements authorized herein began in calendar year 2012. The actual costs of the Public Improvements will be determined by an independent accountant report of the developer's costs.

8. Advance Financing by Developer

The Developer will advance the funds for construction of the Public Improvements and will be entitled to repayment pursuant to the Development Agreement executed between the City and the Developer.

9. Apportionment of Costs

Payment of assessments, if any, on property owned by exempt jurisdictions other than the City shall be established by contract.

10. Levy of Assessments

The assessment year shall be concurrent with the City's tax year. The assessments against property may be paid in annual installments based on an amortization of not more than fifteen (15) years plus the period between the effective date of the assessment ordinance and the date of the first installment. The interest rate on financed assessments is five and ¼ percent (5.25%) per annum.

The assessments shall be based upon the actual cost of the Public Improvements plus those related costs as deemed reimbursable by the City. The cost of the Public Improvements will consist of the costs to construct detention, storm sewers, water lines, sanitary sewers, gas, open space and amenities, erosion control, and paving for each development phase, related professional design and engineering fees, administrative and legal services and interest payable to the Developer pursuant to the Development Agreement. The assessment necessary to finance 100% of the PID Improvement Costs is in excess of the 90 cent equivalent tax rate cap contained in the Development Agreement, therefore, the assessments will be capped at a rate and amount necessary to comply with the equivalent tax rate cap.

A. Reserve at Spring Lake

The Plan estimates the following assessments for residential properties in the PID according to the cost of the Public Improvements and the equivalent tax rate cap established under the Development Agreement. The total assessment can be paid upfront at the time the residential property is purchased or at any time thereafter. The assessment can also be financed and paid in equal annual installments over fifteen (15) years as prescribed below.

<u>Reserve at Spring Lake Lot Categories (By Size)</u>	<u>Total Assessment: (Principal)</u>	<u>Financed Assessment (Annual Payment)</u>
1.) Up to 1.5 Acres	\$45,929.08	\$4,500.00
2.) 1.5 Acres to 2.0 Acres	\$68,893.62	\$6,750.00
3.) 2.0 Acres to 3.0 Acres	\$91,858.15	\$9,000.00
4.) 3.0 Acres and Larger	\$114,822.69	\$11,250.00

B. Levy and collection.

The assessment will be levied by the City upon commencement of the construction of the improvements (or a portion of the improvements) and the platting and subdividing of property into residential lots. The first installment of an assessment against a particular lot shall be due with respect to the calendar year following the earlier of: (i) the date such residential lot has been improved with a habitable structure and conveyed to a home purchaser as evidenced by Harris County Appraisal District records, or (ii) the second anniversary of the date the residential lot was conveyed from the Developer to a home purchaser regardless of any improvements on the property. Lots improved with homes used for marketing purposes (e.g. "model homes") will be exempt from the assessment until the calendar year following the date the home is conveyed to home purchaser. The City will invoice each owner of property for the installment payment in conjunction with the City's annual property tax bill, and the installments shall be due and payable, and incur penalty and interest for unpaid installments in the same manner as provided for the City's property taxes. Thereafter, subsequent installments shall be due in the same manner in each succeeding calendar year until the assessment together with interest as provided herein has been paid in full. The owner of assessed property may pay at any time the entire assessment then due on each property, with interest accrued on the assessment through the date of payment. Financed assessments shall bear interest at five and ¼ percent (5.25%) per annum. Failure of an owner to receive an invoice shall not relieve the owner of the responsibility of for the assessment.

A lien will be established against the property assessed effective as of the date of the ordinance levying the assessment, privileged above all other liens, including prior mortgage liens, to the extent allowed by Section 372.018(b) of the Local Government Code. Assessment installments shall be considered delinquent on the same date as the City's property taxes. Delinquent assessments or installments shall incur the costs of collection. If practicable, the assessment shall be included on the City property tax statement. Notwithstanding the above, the assessment lien shall be perfected immediately as to the entire assessment, but may be executed only with respect to the amounts then due or past due for current or prior installments or final payment. Assessments are personal obligations of the person owning the property assessed in the year an installment payment becomes due, and only to the extent of such installment(s).

The owner of assessed property may pay at any time the entire assessment then due on each property, with interest accrued on the assessment through the date of payment.

EXHIBIT A

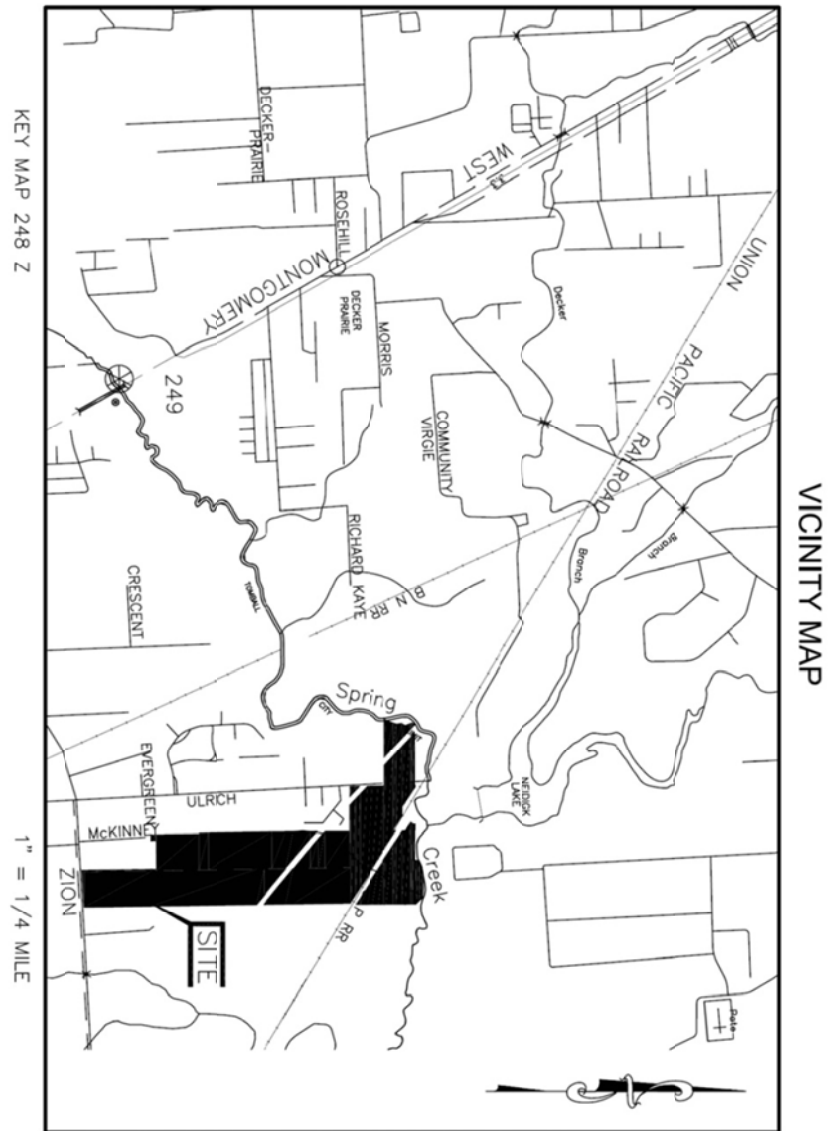


EXHIBIT B

**METES AND BOUNDS DESCRIPTION
232.8801 ACRE (10,144,254 SQUARE FEET)
ALL OF A CALLED 164.7078 ACRES TRACT
AND ALL OF A CALLED 68.1723 ACRES TRACT
IN THE JOSEPH MILLER LEAGUE, A-50
AND THE W H CLEMENS SURVEY, A-1641
HARRIS COUNTY, TEXAS**

Being 232.8801 acre (10,144,254 square feet) of land, being all of a called 164.7078 acres tract, conveyed to Yaupon Ranch, Ltd. by deed recorded under County Clerk's File Number (CCF) 2007-0138375 of the Official Public Records of Real Property of Harris County, Texas (OPRRP HCT), and all of a called 68.1723 acres tract, conveyed to Yaupon Ranch, Ltd. by deed recorded under CCF Z236940 OPRRP HCT. Said 232.8801 acres tract lying in the Joseph Miller League, Abstract 50 and W H Clemens Survey, A-1641 and being more particularly described by metes and bounds, with bearings based on the North line of said 164.7078 acres tract, called "East", as follows:

BEGINNING at a found 1 inch iron pipe, next to a three inch iron pipe in the Southwest corner of a called 10 acres tract referenced in deed to Tomball ISD recorded under CCF X890598 OPRRP HCT, being the same as the remainder of a called 10 acres tract conveyed to Vilma Masterson et al by deed recorded under CCF 371361 DR HCT, said iron pipe also marking the Southeast corner of a called 13 acre tract conveyed to Neigdick Lester, record information not found;

THENCE East, basis of bearings, along the common South line of said 10 acre tract, a distance of 912.36 feet to a found 3 inch iron pipe in the South line of a called 10 acre tract conveyed to Vilma Masterson et al, by deed recorded under CCF 371361 DR HCT, being the same further conveyed under Tax Suite Sale to Tomball Independent School District, by deed recorded under CCF X890598 OPRRP HCT;

THENCE North 89°55'38" East, in part along the South line of said called 10-acre tract, a distance of 600.70 feet to a set 5/8 inch iron rod. Said iron rod set in a point from which a 5/8 inch iron rod with;

THENCE North 00°43'17" West, a distance of 87.16 feet, to a point in the centerline of Spring Creek (the dividing line between the Counties of Harris and Montgomery);

THENCE along said centerline of said Spring Creek, the following courses:

North 67°07'18" East, a distance of 154.67 feet;

North 80°22'28" East, a distance of 113.12 feet;

North 87°09'19" East, a distance of: 110.50 feet;

North 87°53'00" East, a distance of: 210.89 feet;

South 83°18'22" East, a distance of 202.76 feet;

South 42°35'23" East, a distance of 169.62 feet;

And South 56°06'19" East a distance of 15.97 feet, to a point in said centerline for the Northeast corner of the herein described tract, also being the Northwest corner of a called 26.5 acre tract conveyed to Tomball Gun Club by deed recorded under CCF B717054 OPRRP HCT;

THENCE South 00°26'02" East, along the West line of said 26.5 acre tract, pass at a distance of 91.93 feet a found 5/8 inch iron rod with cap, in said West line, on the High bank of said Spring creek and continuing to a total distance of 1271.15 feet, to a found 5/8 inch iron rod with cap in the North right-of-way line (ROW) of the G N R R Company (now Missouri Pacific RR Co.) 100 feet wide ROW;

City of Tomball Public Improvement District Number THREE

6

THENCE North 56°52'59" West, along said North ROW, a distance of 896.47 feet, to a set 5/8 inch iron rod in the West line of said 21.118-acre tract, also being the East line of said 90.63 acre tract, for an internal corner of the herein described tract;

THENCE South 00°43'15" East, across said ROW, a distance of 120.38 feet to a set 5/8 inch iron rod with cap in the South ROW of said G N RR Company (now Missouri Pacific RR Co.) and an internal corner of the herein described tract;

THENCE South 56°52'15" East, along said South ROW, a distance of 852.06 feet, to a found 5/8 inch iron rod with cap, in the North line of said 68.1723 acres tract;

THENCE South 56°54'33" East, along said cutback and the Southwest line of said I. & G.N. Railroad, a distance of 44.05 feet to a found 5/8 inch iron with cap, marking the Northwest corner of a called 15.6463 acre tract conveyed to Tomball Gun Club, Inc. by deed recorded under CCF No. L547016 OPRRP HCT;

THENCE South 00°03'08" West, along the West line of said 15.6463 acres tract and a called 4.0000 acres tract to Pricila Brown Estate as shown in Harris County Appraisal District, Account No. 041-006-002-0022, a distance of 1759.27 feet to a found 1/2 inch iron rod in the Northeast corner of a called 2.7859 acre easement tract to Houston Lighting and Power Company recorded under CCF No. G985469 OPRRP HCT;

THENCE South 00°04'29" West, along the West line of said 4.0000 acres tract and the East line of said 2.7859 acre easement tract, a distance of 90.20 feet to a set 5/8 inch iron rod, marking the Southwest corner of said 4.0000 acre tract, and the Northwest corner of a called 155.696 acre tract conveyed to Hobby H. McCall Living Trust, recorded under CCF No. P916725 OPRRP HCT;

THENCE South 00°47'42" East, along the West line of said 155.696 acre tract, a distance of 84.46 feet to a found 5/8 inch iron rod in the Southeast corner of said 2.7859 acre easement tract;

THENCE South 00°44'33" East, continuing along said 155.696 acre tract, a distance of 748.41 feet to a found 1/2 inch iron rod with cap, marking the Northeast corner of a called 22.8365 acre tract conveyed to Jack Frey Properties by deed recorded under CCF No. J585122 OPRRP HCT and the most Easterly Southeast corner of the herein described tract;

THENCE North 85°40'01" West, along the North line of said 22.8365 acre tract, a distance of 363.82 feet, to a set 5/8 inch iron rod for the Northwest corner of said 22.8365 acre tract and the internal corner of the herein described tract;

THENCE South 00°38'14" East, along the West line of said 22.8365 acre tract, a distance of 2775.27 feet to a found 1/2 inch iron rod, marking the Southwest corner of said 22.8365 acre tract and the most Southerly Southeast corner of the herein described tract, being in the North ROW line of said Zion Road;

THENCE South 89°29'18" West, along the North ROW line of said Zion Road, a distance of 351.35 feet to a found 1/2 inch pipe, marking the Southeast corner of said 164.7078 acres tract, said pipe being in the North right-of-way (ROW) line of Zion Road, 60' wide ROW);

THENCE South 87°13'11" West, along said ROW, a distance of 39.59 feet to a found 1 inch iron pipe for corner;

THENCE North 00°48'47" West a distance of 1402.26 to a set 5/8 inch iron rod, said point being the Southeast corner of a called 1.334 acre tract conveyed to Raymond L Ulrich by CCF C648757 OPRRP HCT, and now being part of said 19.496 acre tract;

THENCE North 00°53'58" West, along the East line of said 1.334 acre tract, a distance of 99.79 feet, to a found 3 inch iron pipe for corner;

THENCE South 89°12'11" West, along the North line of said 1.334 acre tract, a distance of 565.59 feet, to a found 1 1/2 inch iron pipe for corner;

THENCE South 01°15'42" East, along the West line of said 1.334 acre tract, a distance of 100.16 feet, to a found 1 1/2 inch iron pipe for corner marking the Northeast corner of McKinney PL Subdivision an unrecorded Subdivision;

THENCE South 89°45'36" West, along the North line of said McKinney PL Subdivision, a distance of 134.11 feet to a found 5/8 inch iron rod marking the Southeast corner of a called 19.98 acre tract conveyed to Richard Kinsey by deed recorded under CCF No. S913430 OPRRP HCT;

THENCE North 00°51'43" West, along the East line of said 19.98 acre tract, a distance of 962.95 feet to a found 5/8 inch iron rod marking the Northeast corner of said 19.98 acre tract and an internal corner of the herein described tract;

THENCE South 88°35'00" West, along the North line of said 19.98 acre tract, a distance of 20.10 feet to a found 1 1/2 inch iron rod marking the Southeast corner of the remainder of a called 15.000 acre tract conveyed to Jimmy Adams by deed recorded under CCF No. S832826 OPRRP HCT;

THENCE North 01°29'11" West, along the East line of said 15.000 acre tract, pass at a distance of 2.81 feet a found 5/8 inch iron rod with cap, pass at a distance of 9.77 feet a found 5/8 inch iron rod with cap, and continuing to a total distance of 191.51 feet to a found 5/8 inch iron rod with cap for angle point;

THENCE North 01°01'18" West, along the East line of said 15.000 acre tract, a called 7.500 acre tract conveyed to Samuel Olivo by deed recorded under CCF No. V586304 OPRRP HCT, a called 5.47 acre tract conveyed to Rock Graham by deed recorded under CCF No(s). S971746 and S832827 OPRRP HCT, a called 9.470 acre tract conveyed to Mathew Klein by deed recorded under CCF No. S960728 OPRRP HCT, pass at a distance of 182.21 feet a found 5/8 inch iron with cap in the Southeast corner of said 7.500 acre tract, a distance of 1334.94 feet to a found 2 inch iron pipe marking the Southeast corner of a remainder of a called 10.452 acre tract conveyed to James Kirkman by deed recorded under CCF No. P763144 OPRRP HCT;

THENCE North 00°17'31" West, along the East line of said remainder of a called 10.452 acre tract and Red Oak Terrace an unrecorded subdivision, pass at a distance of 525.61 feet a found 2 inch pipe next to a 5/8 inch iron rod marking the Southeast corner of said Red Oak Terrace Subdivision, pass at a distance of 924.40 feet the Southwest corner of said 2.4546 acre tract, pass at a distance of 1061.61 feet the Northwest corner of said 2.4546 acre tract, and continuing along the West line of said 51.706 acre tract, to a total distance of 1549.51 feet to a found 2 inch iron pipe for the Northeast corner of said unrecorded subdivision, also being the Southeast corner of said 28.7386 acre tract;

THENCE North 89°35'33" West, along the North line of said Red Oak Terrace Subdivision and the South line of said 28.7386 acre tract, pass at a distance of 141.02 a found 1/2 inch iron rod marking the common North corner of tract 34 of said Red Oak Terrace conveyed to Mick Corporation by deed

recorded under CCF J788626 OPRRP HCT and tract 35 conveyed to John W and Connie Page by deed recorded under CCF U436525 OPRRP HCT, pass at a distance of 439.22 a found 3/4 inch iron rod marking the Northwest corner of said tract 35 and a Centerpoint Energy tract, pass at a distance of 521.30 feet the Southeast corner of said 0.9722 acre tract, pass at a distance of 669.38 feet the Southwest corner of said 0.9722 acre tract, pass at a distance of 751.46 feet a found 5/8 inch iron rod marking the common North corner of said Centerpoint Energy tract and tract 40 conveyed to Howard Ellery Gene by deed recorded under CCF H821490 OPRRP HCT, pass at a distance of 870.00 feet a set 5/8 inch iron rod in the East right of way line of Ulrich Road, a 30.00 feet easement recorded in Volume 2379, Page 677 and Volume 2379, Page 657 of the Deed Records of Harris County, Texas, and continuing a total distance of 900.00 feet to a point in the centerline of said Ulrich Road for corner;

THENCE North 01°00'56" West, along the center line of said Ulrich Road a distance of 740.73 feet to a found 2 inch iron pipe for the Southeast corner of said 24.56 acre tract;

THENCE South 89°43'54" West, along the South line of said 24.56 acre tract, along the North line of a called 12 acres tract, conveyed to Lenoir M. Josey Inc., by deed recorded in Volume 5059, Page 234 DR HCT, and a called 12 acres recording information not found a distance of 1404.44 feet to a point from which a found 3 inch pipe bears South 89°43'54" West, 20.00 feet, being in the centerline of Spring Creek;

THENCE the following calls along the centerline of Spring Creek;

North 49°11'52" East, a distance of 64.65 feet to an angle point;

North 21°16'10" East, a distance of 220.98 feet to an angle point;

North 05°08'59" West, a distance of 119.99 feet to an angle point;

North 35°37'40" East, a distance of 75.85 feet to an angle point;

North 21°46'34" West, a distance of 157.84 feet to an angle point;

North 33°54'38" East, a distance of 63.77 feet to a point for corner, being in the South line of said 13 acre tract;

THENCE North 89°51'55" East, along the South line of said 13 acre tract, a distance of 1254.53 feet to the POINT OF BEGINNING and containing a computed 232.8801 acres (10,144,254 square feet) of land.

Prepared by:
Town and Country Surveyors
25307 North Freeway, IH 45 N
The Woodlands TX, 77380
Phone (281) 465-8730
Fax (281) 465-8731

David J. Strauss, RPLS 4833
Job No. 0451-0001
September 21, 2007

AMENDED DEVELOPMENT AGREEMENT

This Amended Development Agreement (this “*Agreement*”) is made as of _____, 2018, by and between the **CITY OF TOMBALL**, a municipal corporation and a home-rule city in the State of Texas (the “*City*”), and **ZION ROAD PROPERTIES, LLC**, a Texas limited liability company (the “*Developer*”).

RECITALS

WHEREAS, in accordance with the provisions of Chapter 372, TEX. LOCAL GOV’T CODE, and Resolution 2009-28, the City Council of the City of Tomball created the Public Improvement District Number Three (the “*PID*”) pursuant to the petition for creation from the owner thereof; and

WHEREAS, the City Council of the City has determined that it is in the 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 eligible project costs described in Exhibit C subject to the limitations contained in Section 3.03 of this agreement.

3.03 General terms of the Plan. The Plan has not yet been adopted by the City. The Parties anticipate that the Plan, at a minimum, will include the PID Improvements described above to serve the land within the PID, and such other facilities as may be agreed upon by the Parties, and that the Assessments shall be assessed in phases to affect only the portions of the PID directly benefited by the PID improvements to be financed by each Assessment. The Assessments shall be based upon the agreed-upon percentage of estimated costs of the Public Improvements as reflected in Exhibit C, plus those related costs as deemed reimbursable by the City; however, the Assessments in the Plan shall be formulated in a manner that generally conforms to the equivalent of a \$0.90 tax rate for properties covered by the Plan on a project-wide basis, and a maximum fifteen (15) year payment term for each property covered by the Plan.

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

ARTICLE 4 DUTIES AND RESPONSIBILITIES OF THE DEVELOPER

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

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

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

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

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

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

ARTICLE 5
PROJECT FINANCING AND FUNDING

5.01. The Developer Advances.

a. In connection with the construction of the PID Improvements the Developer has determined are required to 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 six and three-quarter percent (6.75%) annual rate, compounded annually, whether such costs, fees, or expenses are paid or incurred before or after the effective date of this Agreement. Interest shall be calculated on the basis of a year of 360 days and the actual days elapsed (including the first day but excluding the last day) occurring in the period for which such interest is payable, unless such calculation would result in a usurious rate, in which case interest shall be calculated on the per annum basis of a year of 365 or 366 days, as applicable, and the actual days elapsed (including the first day but excluding the last day).

5.02. Repayment of Developer Advances.

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

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

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

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

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

ARTICLE 6 DEFAULT

6.01. Default.

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

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

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

ARTICLE 7 GENERAL

7.01. Inspections, audits. The Developer agrees to keep such operating records with respect to the PID Improvements and other activities contemplated by this Agreement and all costs associated therewith as may be required by the City, or by State and federal law or regulation. The Developer shall allow the City access to, and the City shall have a right at all reasonable times to audit, all documents and records in the Developer's possession, custody or control relating to the PID Improvements that the City deems necessary to assist the City in determining the Developer's compliance with this Agreement.

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

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

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

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

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

Mr. Robert M. Allen
Zion Road Properties, LLC
9977 W. Sam Houston Parkway N.,#150
Tomball, Texas 77064

Each party may change its address by written notice in accordance with this section. Any communication addressed and mailed in accordance with this section shall be deemed to be given when so mailed, any notice so sent by electronic or facsimile transmission shall be deemed to be given when receipt of such transmission is acknowledged, and any communication so delivered in person shall be deemed to be given when receipted for by, or actually received by the City, or the Developer, as the case may be.

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

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

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

Developer shall be deemed released from such obligations. If any assignment of the obligations by the Developer hereunder is deemed ineffective or invalid, the Developer shall remain liable hereunder.

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

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

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

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

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

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

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

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

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

[EXECUTION PAGE FOLLOWS]

IN WITNESS WHEREOF, the parties hereto have caused this instrument to be duly executed as of _____, 2018.

CITY OF TOMBALL, TEXAS

By: _____
Name: _____
Title: _____

ZION ROAD PROPERTIES, LLC

Robert M. Allen
Title: Manager

EXHIBIT A

**METES AND BOUNDS DESCRIPTION
232.8801 ACRE (10,144,254 SQUARE FEET)
ALL OF A CALLED 164.7078 ACRES TRACT
AND ALL OF A CALLED 68.1723 ACRES TRACT
IN THE JOSEPH MILLER LEAGUE, A-50
AND THE W H CLEMENS SURVEY, A-1641
HARRIS COUNTY, TEXAS**

Being 232.8801 acre (10,144,254 square feet) of land, being all of a called 164.7078 acres tract, conveyed to Yaupon Ranch, Ltd. by deed recorded under County Clerk's File Number (CCF) 2007-0138375 of the Official Public Records of Real Property of Harris County, Texas (OPRRP HCT), and all of a called 68.1723 acres tract, conveyed to Yaupon Ranch, Ltd. by deed recorded under CCF Z236940 OPRRP HCT. Said 232.8801 acres tract lying in the Joseph Miller League, Abstract 50 and W H Clemens Survey, A-1641 and being more particularly described by metes and bounds, with bearings based on the North line of said 164.7078 acres tract, called "East", as follows:

BEGINNING at a found 1 inch iron pipe, next to a three inch iron pipe in the Southwest corner of a called 10 acres tract referenced in deed to Tomball ISD recorded under CCF X890598 OPRRP HCT, being the same as the remainder of a called 10 acres tract conveyed to Vilma Masterson et al by deed recorded under CCF 371361 DR HCT, said iron pipe also marking the Southeast corner of a called 13 acre tract conveyed to Neigdick Lester, record information not found;

THENCE East, basis of bearings, along the common South line of said 10 acre tract, a distance of 912.36 feet to a found 3 inch iron pipe in the South line of a called 10 acre tract conveyed to Vilma Masterson et al, by deed recorded under CCF 371361 DR HCT, being the same further conveyed under Tax Suite Sale to Tomball Independent School District, by deed recorded under CCF X890598 OPRRP HCT;

THENCE North 89°55'38" East, in part along the South line of said called 10-acre tract, a distance of 600.70 feet to a set 5/8 inch iron rod. Said iron rod set in a point from which a 5/8 inch iron rod with;

THENCE North 00°43'17" West, a distance of 87.16 feet, to a point in the centerline of Spring Creek (the dividing line between the Counties of Harris and Montgomery);

THENCE along said centerline of said Spring Creek, the following courses:

North 67°07'18" East, a distance of 154.67 feet;

North 80°22'28" East, a distance of 113.12 feet;

North 87°09'19" East, a distance of: 110.50 feet;

North 87°53'00" East, a distance of: 210.89 feet;

South 83°18'22" East, a distance of 202.76 feet;

South 42°35'23" East, a distance of 169.62 feet;

And South 56°06'19" East a distance of 15.97 feet, to a point in said centerline for the Northeast corner of the herein described tract, also being the Northwest corner of a called 26.5 acre tract conveyed to Tomball Gun Club by deed recorded under CCF B717054 OPRRP HCT;

THENCE South 00°26'02" East, along the West line of said 26.5 acre tract, pass at a distance of 91.93 feet a found 5/8 inch iron rod with cap, in said West line, on the High bank of said Spring creek and continuing to a total distance of 1271.15 feet, to a found 5/8 inch iron rod with cap in the North right-of-way line (ROW) of the G N R R Company (now Missouri Pacific RR Co.) 100 feet wide ROW;

THENCE North 56°52'59" West, along said North ROW, a distance of 896.47 feet, to a set 5/8 inch iron rod in the West line of said 21.118-acre tract, also being the East line of said 90.63 acre tract, for an internal corner of the herein described tract;

THENCE South 00°43'15" East, across said ROW, a distance of 120.38 feet to a set 5/8 inch iron rod with cap in the South ROW of said G N RR Company (now Missouri Pacific RR Co.) and an internal corner of the herein described tract;

THENCE South 56°52'15" East, along said South ROW, a distance of 852.06 feet, to a found 5/8 inch iron rod with cap, in the North line of said 68.1723 acres tract;

THENCE South 56°54'33" East, along said cutback and the Southwest line of said I. & G.N. Railroad, a distance of 44.05 feet to a found 5/8 inch iron with cap, marking the Northwest corner of a called 15.6463 acre tract conveyed to Tomball Gun Club, Inc. by deed recorded under CCF No. L547016 OPRRP HCT;

THENCE South 00°03'08" West, along the West line of said 15.6463 acres tract and a called 4.0000 acres tract to Pricila Brown Estate as shown in Harris County Appraisal District, Account No. 041-006-002-0022, a distance of 1759.27 feet to a found 1/2 inch iron rod in the Northeast corner of a called 2.7859 acre easement tract to Houston Lighting and Power Company recorded under CCF No. G985469 OPRRP HCT;

THENCE South 00°04'29" West, along the West line of said 4.0000 acres tract and the East line of said 2.7859 acre easement tract, a distance of 90.20 feet to a set 5/8 inch iron rod, marking the Southwest corner of said 4.0000 acre tract, and the Northwest corner of a called 155.696 acre tract conveyed to Hobby H. Mccall Living Trust, recorded under CCF No. P916725 OPRRP HCT;

THENCE South 00°47'42" East, along the West line of said 155.696 acre tract, a distance of 84.46 feet to a found 5/8 inch iron rod in the Southeast corner of said 2.7859 acre easement tract;

THENCE South 00°44'33" East, continuing along said 155.696 acre tract, a distance of 748.41 feet to a found 1/2 inch iron rod with cap, marking the Northeast corner of a called 22.8365 acre tract conveyed to Jack Frey Properties by deed recorded under CCF No. J585122 OPRRP HCT and the most Easterly Southeast corner of the herein described tract;

THENCE North 85°40'01" West, along the North line of said 22.8365 acre tract, a distance of 363.82 feet, to a set 5/8 inch iron rod for the Northwest corner of said 22.8365 acre tract and the internal corner of the herein described tract;

THENCE South 00°38'14" East, along the West line of said 22.8365 acre tract, a distance of 2775.27 feet to a found 1/2 inch iron rod, marking the Southwest corner of said 22.8365 acre tract and the most Southerly Southeast corner of the herein described tract, being in the North ROW line of said Zion Road;

THENCE South 89°29'18" West, along the North ROW line of said Zion Road, a distance of 351.35 feet to a found 1/2 inch pipe, marking the Southeast corner of said 164.7078 acres tract, said pipe being in the North right-of-way (ROW) line of Zion Road, 60' wide ROW);

THENCE South 87°13'11" West, along said ROW, a distance of 39.59 feet to a found 1 inch iron pipe for corner;

THENCE North 00°48'47" West a distance of 1402.26 to a set 5/8 inch iron rod, said point being the Southeast corner of a called 1.334 acre tract conveyed to Raymond L Ulrich by CCF C648757 OPRRP HCT, and now being part of said 19.496 acre tract;

THENCE North 00°53'58" West, along the East line of said 1.334 acre tract, a distance of 99.79 feet, to a found 3 inch iron pipe for corner;

THENCE South 89°12'11" West, along the North line of said 1.334 acre tract, a distance of 565.59 feet, to a found 1 1/2 inch iron pipe for corner;

THENCE South 01°15'42" East, along the West line of said 1.334 acre tract, a distance of 100.16 feet, to a found 1 1/2 inch iron pipe for corner marking the Northeast corner of McKinney PL Subdivision an

unrecorded Subdivision;

THENCE South 89°45'36" West, along the North line of said McKinney PL Subdivision, a distance of 134.11 feet to a found 5/8 inch iron rod marking the Southeast corner of a called 19.98 acre tract conveyed to Richard Kinsey by deed recorded under CCF No. S913430 OPRRP HCT;

THENCE North 00°51'43" West, along the East line of said 19.98 acre tract, a distance of 962.95 feet to a found 5/8 inch iron rod marking the Northeast corner of said 19.98 acre tract and an internal corner of the herein described tract;

THENCE South 88°35'00" West, along the North line of said 19.98 acre tract, a distance of 20.10 feet to a found 1 1/2 inch iron rod marking the Southeast corner of the remainder of a called 15.000 acre tract conveyed to Jimmy Adams by deed recorded under CCF No. S832826 OPRRP HCT;

THENCE North 01°29'11" West, along the East line of said 15.000 acre tract, pass at a distance of 2.81 feet a found 5/8 inch iron rod with cap, pass at a distance of 9.77 feet a found 5/8 inch iron rod with cap, and continuing to a total distance of 191.51 feet to a found 5/8 inch iron rod with cap for angle point;

THENCE North 01°01'18" West, along the East line of said 15.000 acre tract, a called 7.500 acre tract conveyed to Samuel Olivo by deed recorded under CCF No. V586304 OPRRP HCT, a called 5.47 acre tract conveyed to Rock Graham by deed recorded under CCF No(s). S971746 and S832827 OPRRP HCT, a called 9.470 acre tract conveyed to Mathew Klein by deed recorded under CCF No. S960728 OPRRP HCT, pass at a distance of 182.21 feet a found 5/8 inch iron with cap in the Southeast corner of said 7.500 acre tract, a distance of 1334.94 feet to a found 2 inch iron pipe marking the Southeast corner of a remainder of a called 10.452 acre tract conveyed to James Kirkman by deed recorded under CCF No. P763144 OPRRP HCT;

THENCE North 00°17'31" West, along the East line of said remainder of a called 10.452 acre tract and Red Oak Terrace an unrecorded subdivision, pass at a distance of 525.61 feet a found 2 inch pipe next to a 5/8 inch iron rod marking the Southeast corner of said Red Oak Terrace Subdivision, pass at a distance of 924.40 feet the Southwest corner of said 2.4546 acre tract, pass at a distance of 1061.61 feet the Northwest corner of said 2.4546 acre tract, and continuing along the West line of said 51.706 acre tract, to a total distance of 1549.51 feet to a found 2 inch iron pipe for the Northeast corner of said unrecorded subdivision, also being the Southeast corner of said 28.7386 acre tract;

THENCE North 89°35'33" West, along the North line of said Red Oak Terrace Subdivision and the South line of said 28.7386 acre tract, pass at a distance of 141.02 a found 1/2 inch iron rod marking the common North corner of tract 34 of said Red Oak Terrace conveyed to Mick Corporation by deed recorded under CCF J788626 OPRRP HCT and tract 35 conveyed to John W and Connie Page by deed recorded under CCF U436525 OPRRP HCT, pass at a distance of 439.22 a found 3/4 inch iron rod marking the Northwest corner of said tract 35 and a Centerpoint Energy tract, pass at a distance of 521.30 feet the Southeast corner of said 0.9722 acre tract, pass at a distance of 669.38 feet the Southwest corner of said 0.9722 acre tract, pass at a distance of 751.46 feet a found 5/8 inch iron rod marking the common North corner of said Centerpoint Energy tract and tract 40 conveyed to Howard Ellery Gene by deed recorded under CCF H821490 OPRRP HCT, pass at a distance of 870.00 feet a set 5/8 inch iron rod in the East right of way line of Ulrich Road, a 30.00 feet easement recorded in Volume 2379, Page 677 and Volume 2379, Page 657 of the Deed Records of Harris County, Texas, and continuing a total distance of 900.00 feet to a point in the centerline of said Ulrich Road for corner;

THENCE North 01°00'56" West, along the center line of said Ulrich Road a distance of 740.73 feet to a found 2 inch iron pipe for the Southeast corner of said 24.56 acre tract;

THENCE South 89°43'54" West, along the South line of said 24.56 acre tract, along the North line of a called 12 acres tract, conveyed to Lenoir M. Josey Inc., by deed recorded in Volume 5059, Page 234 DR HCT, and a called 12 acres recording information not found a distance of 1404.44 feet to a point from which a found 3 inch pipe bears South 89°43'54" West, 20.00 feet, being in the centerline of Spring Creek;

THENCE the following calls along the centerline of Spring Creek;

North 49°11'52" East, a distance of 64.65 feet to an angle point;

North 21°16'10" East, a distance of 220.98 feet to an angle point;

North 05°08'59" West, a distance of 119.99 feet to an angle point;

North 35°37'40" East, a distance of 75.85 feet to an angle point;

North 21°46'34" West, a distance of 157.84 feet to an angle point;

North 33°54'38" East, a distance of 63.77 feet to a point for corner, being in the South line of said 13 acre tract;

THENCE North 89°51'55" East, along the South line of said 13 acre tract, a distance of 1254.53 feet to the **POINT OF BEGINNING** and containing a computed 232.8801 acres (10,144,254 square feet) of land.

Prepared by:

Town and Country Surveyors

25307 North Freeway, IH 45 N

The Woodlands TX, 77380

Phone (281) 465-8730

Fax (281) 465-8731

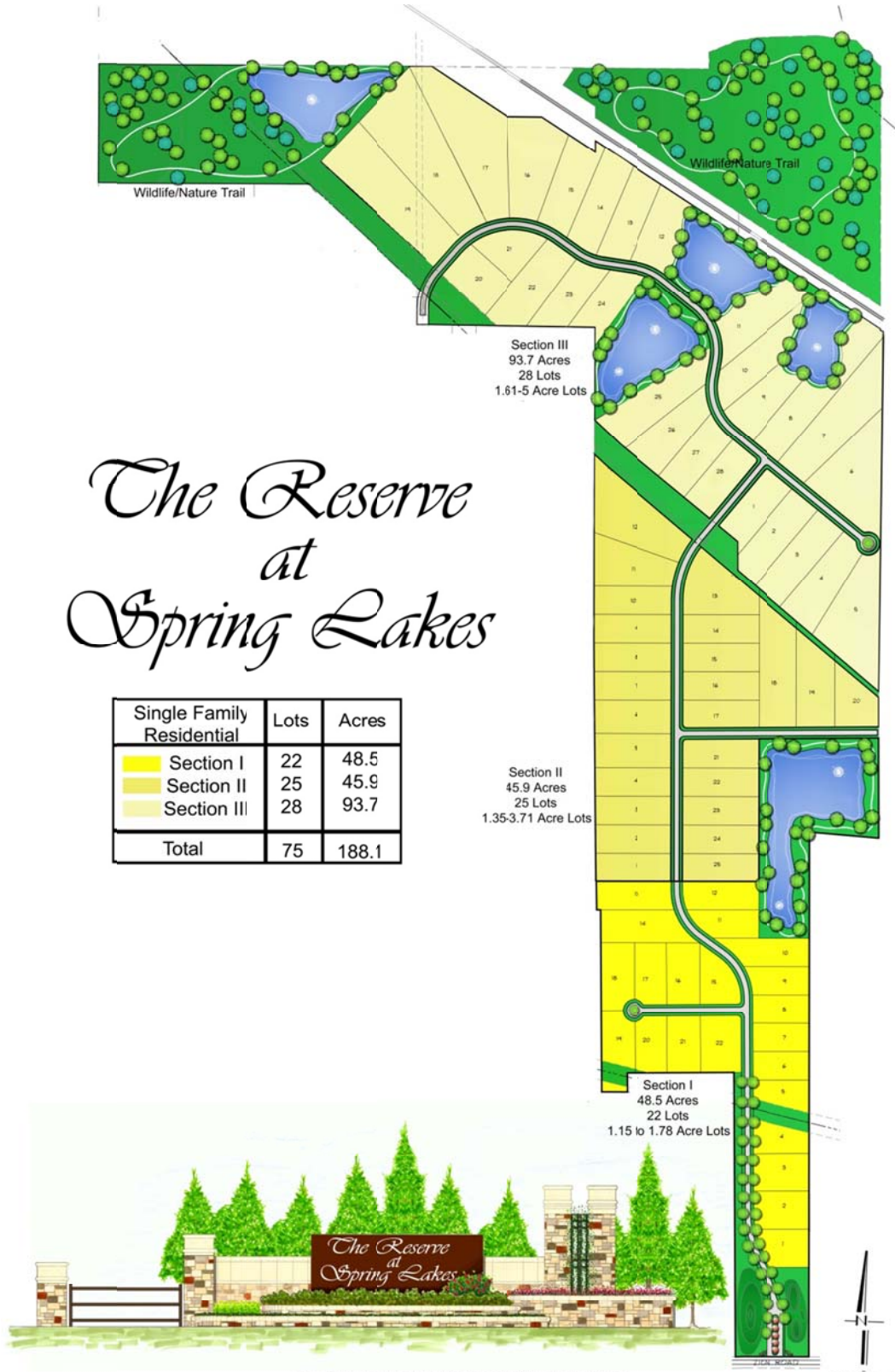
David J. Strauss, RPLS 4833

Job No. 0451-0001

September 21, 2007

EXHIBIT B

Description of Residential Development



This information represents artist's rendering of some of the proposed elements of The Reserve at Spring Lakes community. It is an effort to improve the Reserve at Spring Lakes community. The Developer is in sole discretion and without notice may change the rendering and construct these elements in a manner that is different than depicted. This rendering is not intended to show all elements and some of the elements on this rendering may not be constructed as shown. Nothing contained herein shall be construed as either an express or implied representation or warranty by the developer.

EXHIBIT C

The PID Improvements

Tomball Acreage Development Preliminary Construction Estimate Section One

Roadway and Utilities 3312 LF

Total Lots 22

ACRES 48.5

Storm Quantities

	Unit	Quantity	Unit Price	Total Amount
18"	LF	-	\$40.00	\$0.00
24"	LF	-	\$50.00	\$0.00
30"	LF	-	\$75.00	\$0.00
36"	LF	250	\$90.00	\$22,500.00
Inlets	EA	-	\$2,000.00	\$0.00
MH	EA	-	\$3,000.00	\$0.00
Approximate Total for Storm Drainage System				\$22,500.00

Water Distribution Quantities

	Unit	Quantity	Unit Price	Total Amount
6" WL	LF	-	\$30.00	\$0.00
8" WL	LF	3,312	\$40.00	\$132,480.00
10" WL	LF	-	\$50.00	\$0.00
Service Connections	EA	16	\$1,500.00	\$24,000.00
Water Valves	EA	4	\$2,500.00	\$10,000.00
Fire Hydrants	EA	12	\$3,000.00	\$36,000.00
Approximate Total for Water Distribution				\$202,480.00

Sanitary Sewer Quantities

	Unit	Quantity	Unit Price	Total Amount
8" San Swr	LF	3,312	\$50.00	\$165,600.00
10" San Swr extension	LF	1,500	\$75.00	\$112,500.00
6" Leads	EA	16	\$2,000.00	\$32,000.00
San Swr MH	EA	12	\$3,000.00	\$36,000.00
4" Force Main	LF	-	\$30.00	\$0.00
WW Lift Station	EA	-	\$150,000.00	\$0.00
Approximate Total for San Swr				\$346,100.00

Gas Distribution Quantities

	Unit	Quantity	Unit Price	Total Amount
2" Gas Line	LF	3,312	\$30.00	\$99,360.00
Approximate Total for Gas Distribution				\$99,360.00

Roadway Quantities

	Unit	Quantity	Unit Price	Total Amount
5' Concrete Roadway	SY	12,238	\$40.00	\$489,520.00
Stop Signs with Street Names	EA	2	\$1,000.00	\$2,000.00
Approximate Total for Roadway				\$491,520.00

Detention and Parkland

	Unit	Quantity	Unit Price	Total Amount
Land Reserved for greenspace and amenity areas	AC	15.33	\$30,000.00	\$459,900.00
Clearing	AC	25.00	\$5,000.00	\$125,000.00
Detention Excavation	CY	58685	\$4.50	\$264,082.50
Pond Lining	SY	20000	\$4.50	\$90,000.00
Storm Water Pump	LS	0	\$100,000.00	\$0.00
Rip Rap	SY	500	\$50.00	\$25,000.00
Emergency Overflow	LS	1	\$50,000.00	\$50,000.00
36" RCP	LF	200	\$90.00	\$18,000.00
Approximate total cost for Detention Pond Area				\$1,032,042.50

Misc Costs

	Unit	Quantity	Unit Price	Total Amount
Pipeline Conflicts	EA	1	\$50,000.00	\$50,000.00
Approximate total cost for Misc Items				\$50,000.00

Construction Totals				\$2,244,002.50
Contingency	10%			\$224,400.25
Overall Construction Costs				\$2,468,402.75

Engineering, Surveying, Platting and Construction Phase Services 15% **\$370,260.41**

Total Development Costs \$ 2,838,663.16

OVERALL LOT COST \$129,030.14

Tomball Acreage Development **Preliminary Construction Estimate Section TWO**

Roadway and Utilities 2896 LF
Total Lots 25
ACRES 45.9

Storm Quantities

	Unit	Quantity	Unit Price	Total Amount
18"	LF	-	\$40.00	\$0.00
24"	LF	-	\$50.00	\$0.00
30"	LF	-	\$75.00	\$0.00
36"	LF	100	\$90.00	\$9,000.00
Inlets	EA	-	\$2,000.00	\$0.00
MH	EA	-	\$3,000.00	\$0.00
Approximate Total for Storm Drainage System				\$9,000.00

Water Distribution Quantities

	Unit	Quantity	Unit Price	Total Amount
6" WL	LF	-	\$30.00	\$0.00
8" WL	LF	2,896	\$40.00	\$115,840.00
10" WL	LF	-	\$50.00	\$0.00
Service Connections	EA	16	\$1,500.00	\$24,000.00
Water Valves	EA	3	\$2,500.00	\$7,500.00
Fire Hydrants	EA	12	\$3,000.00	\$36,000.00
Approximate Total for Water Distribution				\$183,340.00

Sanitary Sewer Quantities

	Unit	Quantity	Unit Price	Total Amount
8" San Swr	LF	2,896	\$50.00	\$144,800.00
10" San Swr extension	LF	-	\$75.00	\$0.00
6" Leads	EA	16	\$2,000.00	\$32,000.00
San Swr MH	EA	10	\$3,000.00	\$30,000.00
4" Force Main	LF	-	\$30.00	\$0.00
WW Lift Station	EA	-	\$150,000.00	\$0.00
Approximate Total for San Swr				\$206,800.00

Gas Distribution Quantities

	Unit	Quantity	Unit Price	Total Amount
2" Gas Line	LF	2,896	\$30.00	\$86,880.00
Approximate Total for Gas Distribution				\$86,880.00

Roadway Quantities

	Unit	Quantity	Unit Price	Total Amount
6" Concrete Roadway	SY	9,009	\$40.00	\$360,360.00
Stop Signs with Street Names	EA	1	\$1,000.00	\$1,000.00
Approximate Total for Roadway				\$361,360.00

Detention and Parkland

	Unit	Quantity	Unit Price	Total Amount
Land Reserved for greenspace and amenity areas	AC	-	\$30,000.00	\$0.00
Clearing	AC	13.00	\$5,000.00	\$65,000.00
Detention Excavation	CY	55539	\$4.50	\$249,925.50
Pond Lining	SY	20000	\$4.50	\$90,000.00
Storm Water Pump	LS	0	\$100,000.00	\$0.00
Rip Rap	SY	200	\$50.00	\$10,000.00
Emergency Overflow	LS	0	\$50,000.00	\$0.00
36" RCP	LF	-	\$90.00	\$0.00
Approximate total cost for Detention Pond Area				\$414,925.50

Misc Costs

	Unit	Quantity	Unit Price	Total Amount
Pipeline Conflicts	EA	0	\$50,000.00	\$0.00
Approximate total cost for Misc Items				\$0.00

Construction Totals				\$1,262,305.50
Contingency	10%			\$126,230.55
Overall Construction Costs				\$1,388,536.05

Engineering, Surveying, Platting and Construction Phase Services 15% \$208,280.41

Total Development Costs \$ 1,596,816.46

OVERALL LOT COST \$63,872.66

Tomball Acreage Development

Preliminary Construction Estimate Section Three

Roadway and Utilities 4123 LF
 Total Lots 28
 ACRES 93.7

Storm Quantities

	Unit	Quantity	Unit Price	Total Amount
18"	LF	-	\$40.00	\$0.00
24"	LF	-	\$50.00	\$0.00
30"	LF	-	\$75.00	\$0.00
36"	LF	200	\$90.00	\$18,000.00
Inlets	EA	-	\$2,000.00	\$0.00
MH	EA	-	\$3,000.00	\$0.00
Approximate Total for Storm Drainage System				\$18,000.00

Water Distribution Quantities

	Unit	Quantity	Unit Price	Total Amount
6" WL	LF	-	\$30.00	\$0.00
8" WL	LF	4,752	\$40.00	\$190,080.00
10" WL	LF	-	\$50.00	\$0.00
Service Connections	EA	25	\$1,500.00	\$37,500.00
Water Valves	EA	6	\$2,500.00	\$15,000.00
Fire Hydrants	EA	15	\$3,000.00	\$45,000.00
Approximate Total for Water Distribution				\$287,580.00

Sanitary Sewer Quantities

	Unit	Quantity	Unit Price	Total Amount
8" San Swr	LF	3,623	\$50.00	\$181,150.00
10" San Swr extension	LF	-	\$75.00	\$0.00
6" Leads	EA	16	\$2,000.00	\$32,000.00
San Swr MH	EA	10	\$3,000.00	\$30,000.00
4" Force Main	LF	-	\$30.00	\$0.00
WW Lift Station	EA	-	\$150,000.00	\$0.00
Approximate Total for San Swr				\$243,150.00

Gas Distribution Quantities

	Unit	Quantity	Unit Price	Total Amount
2" Gas Line	LF	5,123	\$30.00	\$153,690.00
Approximate Total for Gas Distribution				\$153,690.00

Roadway Quantities

	Unit	Quantity	Unit Price	Total Amount
6" Concrete Roadway	SY	13,627	\$40.00	\$545,080.00
Stop Signs with Street Names	EA	2	\$1,000.00	\$2,000.00
Approximate Total for Roadway				\$547,080.00

Detention and Parkland

	Unit	Quantity	Unit Price	Total Amount
Land Reserved for greenspace and amenity areas	AC	43.32	\$30,000.00	\$1,299,600.00
Clearing	AC	30.00	\$5,000.00	\$150,000.00
Detention Excavation	CY	113400	\$4.50	\$510,300.00
Pond Lining	SY	30000	\$4.50	\$135,000.00
Storm Water Pump	LS	0	\$100,000.00	\$0.00
Rip Rap	SY	600	\$50.00	\$30,000.00
Emergency Overflow	LS	3	\$50,000.00	\$150,000.00
36" RCP	LF	200	\$90.00	\$18,000.00
Approximate total cost for Detention Pond Area				\$2,292,900.00

Misc Costs

	Unit	Quantity	Unit Price	Total Amount
Pipeline Conflicts	EA	2	\$50,000.00	\$100,000.00
Approximate total cost for Misc Items				\$100,000.00

Overall Construction Costs \$4,006,640.00

Engineering, Surveying, Platting and Construction Phase Services 15% **\$600,996.00**

Total Development Costs \$ 4,607,636.00

OVERALL LOT COST \$164,558.43

Regular City Council

Agenda Item

Data Sheet

Meeting Date: December 3, 2018

Topic:

Approve Software License and Service Agreement with Zuercher Technologies for Replacement of Computer Aided Dispatch System (CAD) and Police Records Management (RMS) for the Tomball Police Department, in the Amount of \$247,811.00

Background:

Memo is attached with written summary.

- Existing CAD and RMS is 15 plus years old and is based on COBOL programming architecture.
- The CAD software vendor has stop developing improvements and enhancements to focus on their newer platforms.
- The CAD software vendor will be announcing an End of Support for our CAD version.
- Training new employees will be easier with modern software.
- Report writing will be built in instead of having to pay a report writer.
- 4 different CAD systems were evaluated by subject matter experts for The Police Department, Fire Department, and IT.
- The Zuercher CAD system is designed for small to medium agencies. This keeps the cost down as we won't have to pay for many unused features and enhancements that may be required by a larger agencies. The CAD systems we looked designed for larger agencies cost \$500 to \$600K.

Origination:

Information Technology

Recommendation:

Approve contract

Funding:

Yes

Account Number:100-117-6999

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

Doug Tippey

ACTION TAKEN

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

Zuercher Agreement

Memo



Software License and Service Agreement

Tomball Police Department

This Software License and Service Agreement (this “Agreement”) entered into as of this ____ day of _____ 20__ by and between City of Tomball Police Department (“Customer”), having its principal place of business at 400 Fannin Street, Tomball, TX 77375, and Zuercher Technologies LLC (“Zuercher”), having its principal place of business at 4509 West 58th Street, Sioux Falls, South Dakota 57108. Customer and Zuercher may also be referred to herein individually as a “Party” or collectively as the “Parties”.

This Agreement details the responsibilities of Zuercher and Customer with regard to the public safety software, hardware, and related services to be provided by Zuercher under this Agreement.

Now, therefore, in consideration of the mutual covenants and promises contained in this Agreement, the Parties agree as follows:

1.0 Exhibits and Order of Precedence

The following Exhibits are incorporated into this Agreement:

1. Exhibit A: Statement of Work
2. Exhibit B: Pricing Detail
3. Exhibit C: Payment Schedule
4. Exhibit D: Maintenance Agreement
5. Exhibit E: Community Data Platform Membership Agreement

In the event of any inconsistency among the various documents that comprise this Agreement, the order of precedence shall be as follows: (i) the Agreement, followed by (ii) the Exhibits to the Agreement in the order in which they appear in *1.0, Exhibits and Order of Precedence*.

2.0 License

2.1 Grant of the License

In consideration of Customer’s payment of the license fees set forth in *Exhibit B: Pricing Detail*, and subject to the terms and conditions set forth herein, Zuercher hereby grants to Customer, and Customer accepts, a perpetual, non-transferable and non-exclusive license to use certain Zuercher software (the “Software”) identified in *Exhibit B: Pricing Detail* only for Customer’s own business purposes in object code format.

2.2 Copies and Modifications

Customer may make a copy of the Software solely for backup or archival purposes. No Zuercher identifying marks, copyright or proprietary right notices may be deleted from any copies of the Software made by Customer. Customer shall not decompile, or create by reverse engineering or otherwise, the source codes from the object code supplied hereunder, or adapt the Software in any way or use it to create a derivative work. Zuercher shall not be responsible in any way for Software performance if the Software has been modified, except as modified by Zuercher.

2.3 Restrictions on Usage

Customer shall not allow any party, other than Zuercher, to add, update, or delete database records or

file system objects directly to or on the server or database except as provided for in the Zuercher Documentation.

Customer shall not access any Server Hardware except as provided in the Zuercher Documentation or cause any software except the Software provided under this Agreement to be installed on or executed on the Server Hardware.

2.4 Infringement

Zuercher will at its expense defend against any claim, action or proceeding by a third party ("Action" herein) for infringement by the Zuercher Software of copyright or trade secrets, provided that Customer immediately notifies Zuercher in writing of such Action and cooperates fully with Zuercher and its legal counsel in the defense thereof. Zuercher may in its discretion (i) contest, (ii) settle, (iii) procure for Customer the right to continue using the Zuercher Software, or (iv) modify or replace the Zuercher Software so that it no longer infringes (as long as the functionality and performance described in the Specifications substantially remains following such modification or replacement.) Customer may participate in the defense of such Action at its own expense. If Zuercher concludes in its sole judgment that none of the foregoing options are commercially reasonable, and Customer's use of the Zuercher Software is permanently enjoined as a result of a judgment of a court of competent jurisdiction in such Action, then Zuercher will return to Customer the Zuercher Software license fee(s) paid by Customer under this Agreement less a prorated portion of said fee(s) for Customer's use of the Zuercher Software (calculated by multiplying the ratio of the number of months of actual use in live operations to thirty-six (36) months times the license fees paid) and the licenses granted in this Agreement shall terminate. In addition, in the event such Action results in a money judgment against Customer which does not arise, wholly or in part, from the actions or omissions of Customer, its officers, directors, employees, contractors, agents, or elected officials, or a third party, Zuercher will, subject to Section 5.0 herein, indemnify Customer therefrom.

Notwithstanding the above, Zuercher shall have no duty under this Section 2.4 with respect to any claim, action or proceeding arising from or related to infringements (i) by Third Party Software, including operating system software, or hardware, (ii) arising out of modifications to the Zuercher Software and/or Documentation not made by Zuercher, (iii) resulting from use of the Zuercher Software to practice any method or process which does not occur wholly within the Zuercher Software, or (iv) resulting from modifications to the Zuercher Software or Documentation prepared pursuant to specifications or other material furnished by or on behalf of Customer. This Section 2.4 states the entire obligation of Zuercher regarding infringement of intellectual property rights, and it will survive the termination of this Agreement.

3.0 Delivery, Fees and Payments

3.1 Delivery of Software to Customer

The Software shall be delivered in executable object code form only. Zuercher shall initially deliver and install copies of the Software as set forth in *Exhibit A: Statement of Work*, in the quantities set forth in

Exhibit B: Pricing Detail. Except as stated in *Exhibit D: Maintenance Agreement*, Zuercher shall not be responsible for providing any updates, enhancements, modifications, revisions, additions, replacements, conversions or maintenance to the Software.

3.2 Delivery of Hardware to Customer

Zuercher shall ship Hardware provided under this Agreement as set forth in *Exhibit B: Pricing Detail* to Customer's location at a mutually agreeable time in the project timeline. Items shipped via commercial carrier are FOB destination at the fixed price stated in *Exhibit B: Pricing Detail*. It shall be Customer's responsibility to install all Hardware and to perform proper facility preparation (such as appropriate uninterrupted power, air conditioning, space, electrical drops, security, network equipment, network drops, etc.) not specified in this Agreement as being provided by Zuercher, but necessary to accommodate equipment as specified in the Statement of Work before, during, and/or after installation.

3.3 Delivery of Services to Customer

Zuercher will provide Services as set forth in *Exhibit A: Statement of Work*.

3.4 Fees

Customer will pay Zuercher the fees, without deduction or offset, on the dates set forth in *Exhibit C: Payment Schedule*.

3.5 Late Payment

If Customer fails to pay any amount due within thirty (30) days of invoice date, Customer shall pay late charges of one and one half percent (1.5%) or the highest allowed by law, whichever is lower, per month on such balance, together with all of Zuercher's expenses, collection costs and reasonable attorneys' fees incurred in enforcing this Agreement.

3.6 System Acceptance

Customer acknowledges that the System shall be deemed accepted on the date of Go Live. In the event that a Customer notifies Zuercher of a material non-conformity in the Software as compared with the Statement of Work, Zuercher shall use commercially reasonable efforts to correct the reported non-conformity in accordance with the support provisions set forth in *Exhibit D: Maintenance Agreement*.

3.7 Additional Components

Other components (hardware and/or software, collectively "Third Party Components") may be desired for use with the System. Zuercher assumes no responsibility under this Agreement for obtaining and/or supporting any Third Party Components except as expressly agreed herein. This includes, but is not limited to, networking equipment, workstations, servers for third-party systems, mobile networking equipment, and mobile workstations, laptops, or tablets.

3.8 Third-Party Costs

Except as expressly agreed herein, Zuercher assumes no responsibility for any third-party costs related to

implementation of the System. This includes, but is not limited to, any third-party costs associated with the implementation of Interfaces as defined in *Exhibit A: Statement of Work*.

4.0 Rights and Obligations

4.1 Proprietary Rights

Zuercher represents that it is the owner of or otherwise has the rights to the Software and that it has the right to grant the License. Zuercher retains title to the Software and its associated Documentation, including, without limitation, all copies and audiovisual aspects thereof and all rights to patents, copyrights, trademarks, trade secrets and other intellectual property rights inherent therein and appurtenant thereto. Customer shall not, by virtue of this Agreement or otherwise, acquire any proprietary rights whatsoever in the Software or its associated Documentation, which shall be confidential information of Zuercher and the sole and exclusive property of Zuercher. Zuercher hereby expressly reserves any right not expressly granted to Customer by this Agreement. No identifying marks, copyright or proprietary right notices may be deleted from any copy of the Software provided to or made by Customer. All right and title to any third party software provided by Zuercher under this Agreement shall remain with the applicable vendor thereof. Nothing in this Agreement shall be construed as conveying title in the Software, its associated Documentation, or any third party software to Customer.

4.2 Trademarks and Trade Names

Any and all trademarks and trade names, which Zuercher uses in connection with the License granted hereunder, are and shall remain the exclusive property of Zuercher. Nothing contained in this Agreement shall be deemed to give Customer any right, title or interest in any trademark or trade name of Zuercher.

4.3 Confidentiality

Except as otherwise provided in this Agreement, Customer shall not sell, transfer, publish, disclose or otherwise make available any portion of the Software or its associated Documentation to others. Customer shall use its reasonable best efforts to cooperate with and assist Zuercher in identifying and preventing any unauthorized use, copying or disclosure of the Software or any portion thereof or any of the algorithms or logic contained therein or any other deliverables.

4.3.1 Zuercher agrees to maintain Customer's confidential business information and confidential data, including patient identifying data, to which Zuercher gains access in confidence and to not disclose such information except as required to perform hereunder or as required by law. Customer will use reasonable efforts to identify or designate information or data as confidential at or within five (5) business days of disclosure. Notwithstanding the above, Zuercher shall own the copyrights, trade secrets, patent rights and other proprietary rights in and may use without restriction knowledge, information, ideas, methods, know-how, and copyrightable expression learned or acquired (including without limitation any feedback, suggestions, or other information or materials) as a result of or in connection with this Agreement to make modifications and enhancements to the Zuercher Software or Documentation. Customer shall acquire no intellectual property ownership rights to the Zuercher Software or Documentation as a result of such use, whether as author, joint author, or

otherwise. Confidential information does not include any information which (a) is generally available to the public or becomes generally known to the public through no act or omission of Zuercher or any violation of confidentiality; (b) is disclosed to Zuercher by third parties without breach of confidentiality obligations; (c) is already in the lawful or rightful possession of Zuercher prior to receipt of the confidential information or (d) is developed independently by Zuercher without use of the confidential information.

4.3.1.1 Zuercher maintains a security program for managing access to customer data – particularly HIPAA and CJIS information (“Security Approved Personnel”). This includes 1) a pre-employment background check; 2) security training required by Federal CJIS regulations; and 3) criminal background checks/fingerprints required by Federal or State regulations. Zuercher will work with the Customer to provide reasonably required documentation (such as the CJIS Security Addendum Certification form and VPN documents).

4.3.1.2 If required by the Customer, Zuercher will provide paper fingerprint cards for such Security Approved personnel with the fingerprinting performed in the state of the Zuercher staff’s job assignment. If the Customer requires fingerprints submitted in a form other than paper prints (such as Live Scan) or that such fingerprints be performed at the Customer’s site, the Customer will reimburse Zuercher for the cost of Zuercher Security Approved Personnel traveling to the Customer’s site or for a vendor (such as Live Scan) to travel to the applicable Zuercher office location. This provision will apply during the installation of the Project and for the duration of the Customer’s Maintenance Agreement.

4.4 Termination for Breach

Zuercher may immediately terminate this Agreement, including all license rights granted herein, in the event Customer breaches any of its material confidentiality obligations regarding the Software and its associated Documentation.

4.5 Non-Confidential Information

Confidentiality obligations of the Parties shall not extend to information that:

- (a) is, as of the time of its disclosure, or thereafter becomes part of the public domain through a source other than the receiving party;
- (b) was known to the receiving party at the time of its disclosure and such knowledge can be proven by documentation;
- (c) is independently developed by the receiving party;
- (d) is subsequently learned from a third party not under a confidentiality obligation to the providing party; or
- (e) is required to be disclosed pursuant to court order, subpoena, or government authority, whereupon the receiving party shall provide notice to the other party prior to such disclosure.

4.6 Limited Warranties

4.6.1 Software Warranties

Zuercher warrants that: (i) it owns or otherwise has the rights in the Software and has the right to license the Software as described in this Agreement. Zuercher further warrants that for a period of twelve (12) months from the date of Go Live (the "Warranty Period"), the Zuercher Software will perform in conformance with the Zuercher Documentation and any applicable specifications set forth in *Exhibit A: Statement of Work*. Zuercher's sole obligation or liability during the Warranty Period shall be to use commercially reasonable efforts to correct the Software upon receipt of written notice of a warranty defect from Customer, in a reasonable time in accordance with the provisions of *Exhibit D: Maintenance Agreement*. In the event Zuercher fails to remedy material defects in the Software under this warranty, Customer's sole remedy and Zuercher's sole liability shall be to receive a refund of any fee paid hereunder for the portion of the Software, if any, which contains an uncorrected material defect.

4.6.1.1 Wireless Service Limitations

Problems in the Zuercher software or transmission of data caused by wireless services, including cell phone carriers, cell phone devices and operating systems, and any personal settings on the devices are not warranted by Zuercher, or covered under the terms of this Agreement. The Customer's use of services provided by wireless service providers or carrier, or transmission of data from cell phone carriers, cell phones and operating systems, and the security, privacy, or accuracy of any data provided via such services is at the Customer's sole risk.

4.6.2 Hardware and Third-Party Software Warranties

Zuercher warrants that, at the time of delivery, the Hardware will be new and unused. In addition, Zuercher warrants that upon payment of the applicable fees, Customer will acquire good and clear title to the Hardware, free and clear of all liens and encumbrances.

All Hardware and Third-Party Software warranties provided by the manufacturer will be passed through to Customer. Zuercher will be solely responsible for processing and managing of all Hardware and Third-Party Software warranty claims that may be necessary during the term of this Agreement.

ZUERCHER EXPRESSLY DISCLAIMS, AND CUSTOMER HEREBY EXPRESSLY WAIVES, ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

4.7 Legal Relationship

It is expressly understood by Customer and Zuercher that Zuercher shall not be construed to be, and is not, an employee of Customer. Zuercher shall provide services to Customer as an independent contractor with control over the time, means and methods for accomplishing the services outlined in this Agreement. Zuercher further acknowledges that it is not entitled to such benefits as holiday time, vacation time, sick leave, retirement benefits, health benefits, or other benefits usually associated with employment.

4.8 Insurance Provision

Zuercher, at all times during the term of this Agreement, shall obtain and maintain in force insurance

coverage of the types and with the limits as follows:

- (a) Commercial General Liability Insurance: Commercial general liability insurance with a limit of \$1,000,000 for each occurrence; \$2,000,000 in the aggregate.
- (b) Professional Liability Insurance: Professional liability insurance with a limit of \$5,000,000 each claim; \$5,000,000 in the aggregate.
- (c) Business Automobile Liability Insurance: Business automobile liability insurance or equivalent form with a limit of not less than \$1,000,000 for each accident. Such insurance shall include coverage for owned, hired and non-owned vehicles.

At Customer's request, Zuercher shall provide properly executed Certificates of Insurance which shall clearly evidence all insurance required in this Agreement and which provide that such insurance may not be canceled, except on 30 days prior written notice to Customer.

5.0 Indemnification and Limitation of Liability

Zuercher shall indemnify, defend and hold harmless Customer from any and all claims, lawsuits or liability, including attorneys' fees and costs, allegedly arising out of, in connection with, or incident to any loss, damage or injury to persons or property or arising from a wrongful or negligent act, error or omission of Zuercher, its employees, agents, contractors, or any subcontractor as a result of Zuercher's or any subcontractor's performance pursuant to this Agreement; however, Zuercher shall not be required to indemnify Customer for any claims or actions caused to the extent of the negligence or wrongful act of Customer, its employees, agents, or contractors. Notwithstanding anything to the contrary in the foregoing, if a claim, lawsuit or liability results from or is contributed to by the actions or omissions of Customer, or its employees, agents or contractors, Zuercher's obligations under this provision shall be reduced to the extent of such actions or omissions based upon the principle of comparative fault.

Notwithstanding the foregoing, the aggregate liability of Zuercher for any reason and upon any cause of action of claim, including, without limitation, Zuercher's obligation to indemnify and hold harmless under this agreement, shall be limited to direct damages which shall not exceed (i) the amount of the fees paid for the portion of the System giving rise to such claims in the aggregate, including, without limitation, breach of contract, breach of warranty, indemnity, negligence, strict liability, misrepresentations, and other torts; or (ii) for claims arising under annual maintenance, the amount of the maintenance fees paid for the term in which the claim arises.

IN NO EVENT SHALL ZUERCHER, ITS SUBCONTRACTORS OR SUPPLIERS BE LIABLE WHETHER IN CONTRACT OR IN TORT FOR LOST PROFITS, LOST SAVINGS, LOST DATA, LOST OR DAMAGED SOFTWARE, OR ANY OTHER CONSEQUENTIAL OR INCIDENTAL DAMAGES ARISING OUT OF, OR OTHERWISE RELATED TO THIS AGREEMENT, REGARDLESS OF WHETHER ZUERCHER HAS NOTICE OF THE POSSIBILITY OF ANY SUCH LOSS OR DAMAGE.

6.0 Termination

6.1 By Zuercher for Cause

In addition to various other express rights of Zuercher to terminate this Agreement set forth herein, Zuercher shall also have the right to terminate this Agreement upon thirty (30) day's prior written notice and cancel any unfulfilled portion of it by written notice to Customer due to Customer's failure to comply with any material terms or conditions of this Agreement, or in other cases if: (i) Customer becomes bankrupt or insolvent or enters into any arrangement or composition with its creditors or if a receiver is appointed to direct the business of Customer, or (ii) Customer sells or assigns its rights, duties or obligations under this Agreement to any person or entity, in whole or in part, whether by assignment, merger, transfer or assets, sale of stock, operation of law or otherwise, without the express written permission of Zuercher or (iii) upon Customer's breach of the License or confidentiality and nondisclosure provisions contained herein, or (iv) upon a violation of Zuercher's proprietary rights hereunder. The termination of this Agreement shall automatically terminate and extinguish the License.

Zuercher may exercise any rights available to it under Texas State law to terminate for cause upon the failure of Customer to comply with the terms and conditions of this Agreement; provided that Zuercher shall give Customer written notice specifying Customer's failure and a reasonable opportunity for Customer to cure the defect.

6.2 By Customer for Cause

Customer may terminate this Agreement for cause based upon the failure of Zuercher to comply with any material terms and/or conditions of the Agreement, provided that Customer shall give Zuercher thirty (30) days' written notice specifying Zuercher's failure. If within thirty (30) days after receipt of such notice, Zuercher shall not have either corrected such failure or, in the case of failure which cannot be corrected in thirty (30) days, begun in good faith to correct said failure and thereafter proceeded diligently to complete such correction, then Customer may, at its option, place Zuercher in default and the Agreement shall terminate on the date specified in such notice.

6.3 Termination without Cause

After the fifth anniversary of the System Go Live date, this Agreement and the Software license granted herein may be terminated by either party by providing notice one-hundred eighty (180) days prior to the date the next annual maintenance payment is due.

6.4 Post-Termination Obligations

All provisions hereof relating to Zuercher's proprietary rights, confidentiality, non-disclosure and non-solicitation shall survive the termination or expiration of this Agreement. Any fees due as per *Exhibit C: Payment Schedule* for work completed prior to termination shall still be paid by Customer. In the event of termination of this Agreement prior to implementation of the Zuercher Software, or termination due to Customer's breach of Zuercher's intellectual property rights, the license to the Zuercher Software granted under this Agreement shall also terminate and Customer shall remove all Zuercher Software from its

computer system and at Zuercher's direction, either return or destroy the Software and its associated Documentation.

7.0 Customer Responsibilities

Customer shall provide one primary Project Manager to be the main point of contact for Zuercher. Duties of the Project Manager are outlined in *Exhibit A: Statement of Work*.

8.0 Miscellaneous

8.1 Force Majeure

Neither party shall be liable to the other for any delay or failure to perform any of the services or obligations set forth in this Agreement due to causes beyond its reasonable control. Performance times shall be considered extended for a period of time equivalent to the time lost because of such delay.

8.2 Governing Law

This Agreement and performance hereunder shall be governed by the law of the State of Texas, without giving effect to the principles of conflict of law of such state or international treaties.

8.3 Forum Selection

The Parties hereby submit to the exclusive jurisdiction and venue of Texas State, or federal courts with respect to any action between the Parties relating to this Agreement.

8.4 Assignment

This Agreement shall apply to, inure to the benefit of, and be binding upon the Parties hereto and upon their permitted successors in interest and permitted assigns. Customer may not assign, without the prior written consent of Zuercher, which consent shall not be unreasonably withheld, Customer's rights, duties or obligations under this Agreement to any person or entity, in whole or in part, whether by assignment, merger, transfer of assets, sale of stock, operation of law or otherwise, and any attempt to do so shall be deemed a material breach of this Agreement.

8.5 Notice

Any notice provided pursuant to this Agreement, if specified to be in writing, shall be in writing and shall be deemed given (i) if by hand delivery, upon receipt hereof; (ii) if mailed, 7 days after deposit in the U.S. mails, postage prepaid, certified mail, return receipt requested. All notices shall be addressed to the Parties at the addresses set forth on the first page hereof.

8.6 Survival

All provisions of this Agreement relating to proprietary rights, confidentiality, non-disclosure and to payment of fees by Customer shall survive the termination of this Agreement.

8.7 No Waiver

The waiver or failure of either party to exercise any right in any respect provided for herein shall not be

deemed a waiver of any further right hereunder.

8.8 Enforceability

If for any reason a court of competent jurisdiction finds any provision of this Agreement, or portion thereof, to be unenforceable, that provision shall be enforced to the maximum extent permissible so as to affect the intent of the Parties, and the remainder of this Agreement shall continue in full force and effect.

8.9 Remedies

Unless otherwise specified herein, the rights and remedies of the Parties set forth in this Agreement are not exclusive and are in addition to any other rights and remedies available at law or in equity.

8.10 Headings

The headings of the sections of this Agreement are inserted for convenience only and shall not constitute a part hereof or affect in any way the meaning or interpretation of this Agreement.

8.11 No Third-Party Beneficiaries

The Parties agree that this Agreement is for the benefit of the Parties hereto and is not intended to confer any rights or benefits on any third party, and that there are no third-party beneficiaries as to this Agreement or any part or specific provision of this Agreement.

8.12 Limitation of Actions

No action, regardless of form, arising out of or relating to this Agreement or the subject matter hereof may be brought by either party more than two (2) years after the cause of action has initially arisen, with the exception of either Party's breach of its confidentiality or non-disclosure obligations herein or Customer's violation of Zuercher's proprietary rights in the Software or any other software owned or licensed by Zuercher.

8.13 Taxes

Customer shall, in addition to the payments required hereunder, pay all applicable sales, use, transfer or other taxes and all duties, whether international, national, state or local, however designated, which are levied or imposed by reason of the transactions contemplated hereby, excluding, however, income taxes on net profits which may be levied against Zuercher. Customer shall reimburse Zuercher for the amount of any such taxes or duties paid or accrued directly by Zuercher as a result of this transaction. If Customer is a tax-exempt organization, Customer will provide Zuercher with documentation required by the taxing authority to support such exemption at the time of Execution of this Agreement.

8.14 Non-Discrimination

Zuercher agrees to abide by the requirements of the following as applicable: Title VI of the Civil Rights Act of 1964 and Title VII of the Civil Rights Act of 1964, as amended by the Equal Employment Opportunity Act of 1972, Federal Executive Order 11246 as amended, the Rehabilitation Act of 1973, as amended, the

Vietnam Era Veteran's Readjustment Assistance Act of 1974, Title IX of the Education Amendments of 1972, the Age Discrimination Act of 1975, the Fair Housing Act of 1968 as amended, and Zuercher agrees to abide by the requirements of the Americans with Disabilities Act of 1990. Zuercher agrees not to discriminate in its employment practices, and will render services under this Agreement without regard to race, color, religion, sex, national origin, veteran status, political affiliation, disabilities, or because of an individual's sexual orientation. Any act of discrimination committed by Zuercher, or failure to comply with these obligations when applicable shall be grounds for termination of this Agreement.

8.15 Change Orders

Change orders and out-of-scope work will be defined by written agreement.

8.16 Entire Agreement

This Agreement, and any Exhibits specifically incorporated therein by reference, constitutes the entire agreement between the Parties with respect to the subject matter. These documents supersede and merge all previous proposals of sale, communications, representations, understandings and agreements, whether oral or written, between the Parties with respect to the subject hereof.

This Agreement may not be modified except by a writing subscribed to by authorized representatives of both Parties.

9.0 Definitions

- (a) **Documentation:** All written, electronic, or recorded end user and system administrator documentation and functional descriptions therein that describe the uses, features, and functional capabilities of the System, and that are published or provided to Customer by Zuercher.
- (b) **Executable Object Code:** Software code which has been compiled for use by the computer and is no longer directly readable or modifiable by humans.
- (c) **Execution of Agreement:** Date Agreement is signed by all enumerated Parties.
- (d) **Hardware:** All hardware, equipment, and other tangible non-Software items supplied to Customer by Zuercher under this Agreement.
- (e) **Go Live:** The use of the System as a live, non-test-bed system. This can be exhibited by events such as the completion of the first real-world booking, the taking of the first real-world call for service, the entry of the first real-world case report, or a similar event dealing with real-world use.
- (f) **Software:** Any computer programs in object code form and any updates, enhancements, modifications, revisions, additions, replacements or conversions thereof owned by Zuercher and set forth or identified in *Exhibit B: Pricing Detail* or subsequently licensed to Customer. Software specifically excludes any Third-Party Software.
- (g) **Server Hardware:** All hardware, equipment, and other tangible non-Software items supplied to Customer by Zuercher under this Agreement listed as "Server Hardware" in *Exhibit B:*

Pricing Detail.

- (h) **Services:** All project management, training, data conversion, and other services to be provided by Zuercher under this Agreement.
- (i) **SSH:** Secure Shell. A cryptographic protocol for securing data which it transmitted over an insecure network.
- (j) **System:** The collective whole of all Software, Hardware, and Services to be purchased, developed, licensed, supplied, installed, configured, or implemented by Zuercher under this Agreement.
- (k) **Third-Party Software:** Any software to be supplied by Zuercher under this agreement that is purchased or licensed from any source external to Zuercher for use with or integration into the System.

EACH PARTY'S ACCEPTANCE HEREOF IS EXPRESSLY LIMITED TO THE TERMS OF THIS AGREEMENT, INCLUDING ITS EXHIBITS, AND NO DIFFERENT OR ADDITIONAL TERMS CONTAINED IN ANY PURCHASE ORDER, CONFIRMATION OR OTHER WRITING SHALL HAVE ANY FORCE OR EFFECT UNLESS EXPRESSLY AGREED TO IN WRITING BY THE PARTIES.

City of Tomball Police Department

Signer's Name: _____

Signer's Title: _____

Signature

Date

Zuercher Technologies, LLC

Blake Clark

CFO

Signature

Date

Exhibit A: Statement of Work

Zuercher will provide Software, Hardware and Services substantially similar to those outlined below, in the quantities specified in *Exhibit B: Pricing Detail*.

1.0 Software

The software detailed in the following sections includes, but is not limited to, the listed functionality.

Zuercher Suite Base	• Operating system software • Database software • Master name index • Master address index • Master vehicle index	• Secure intra-Customer messaging • Configurable dashboard • Web address links • No duplicate data entry • Authentication
Administration (Core)	• Equipment • Fleet Management • Inventory Management • Purchase Requisitions	• Service Dogs • Policy Manual • Full audit trail • Custom Forms
CAD (Core)	• Command-line entry • Bulletins • Configurable CAD Windows • Inactivity Alarms • Rip and Run • Full audit trail	• Command Log • Triple I • Custom CAD Commands • Unit Alarms • ANI/ALI
CAD (Advanced)	• Alarm Billing • Alarm Calls • Nurse Calls • Scheduled and Recurring Scheduled Calls • Tow Calls • Custom Forms	• NCIC Automation • Basic Paging • Run Cards and Unit Recommendation • Unit Specialties • Web windows

Mapping (Core) – Server Based	• Command-line entry • Drag and drop commands • Visual status alerts • User-configurable map layers • GIS functions with map window closed • Quickest path unit recommendation	• Active calls for service • Call for service click-through • Custom map markers • Address verification • Faster map functions (compared with non-server version) • Required for 15 or more AVL units
Mapping AVL	• Vehicle locations on map	• Call for service integration
Mapping AVL Playback	• Displays on the map • View by time, by unit, by CFS	• Print or export playback data
Jail (Short Term Holding Only)	• Booking and Release Wizard • Cell Occupancy Log • Activities • Basic Bank • Issued Property • Medicine	• Inmate Property • Victim Notification • Visitor logging • Jail Log • Shift Log • Full audit trail
Mobile Core	• Grants access to the Zuercher Mobile application	
Mobile AVL	• Vehicles shown on map	• Call for service integration
Mobile CAD	• User-configurable layouts • Day/Night mode • Instant messaging	• Silent dispatch • Bulletins/BOLOS • NCIC queries
Mobile Mapping	• Active calls for service • Map Markers • Visual status alerts	• User configurable map layers • Route from current location to CFS location

Mobile Records	• Cases • Warrants	• Master index access (including mug shots and alerts)
Personnel (Core)	• Personnel Log	• Full audit trail
Personnel (Advanced)	• Commendations • Disciplinary Actions • Positions • Promotions	• Service History • Training • Citizen Feedback
Personnel – Agency Site Licenses	• Allows agencies named herein to access and use Customer's Zuercher Personnel system	

Note: Many items are configurable by agency. All other configuration must be agreed upon between Customer and Additional Agency.

Portal (Community Involvement)	• Read-only access • Public access to Inmates, Sex Offenders, Warrants, Civil Papers, and Calls for Service • Agency-defined permissions	• Data sharing with other Customers • Media reports • Extra Patrol requests • Public tip submission
Portal (Remote CFS View)	• Read-only access • Web access to CFS Data	• Agency-defined permissions
Portal (Attorney Case View)	• Web access to Case Report data for attorneys	• Agency-defined permissions
Records (Core)	• Case Reports • NIBRS/UCR Submission • Master Record Notes • Protection Orders • Warrants • Juvenile Referral List	• Pawn Property • Pistol Permits • Citations and Warnings • Sex Offenders • Full audit trail

Records (Advanced)	• Field Identifications • Expungement • Intelligence Cases • Investigative Leads • Form Requirements	• Tow Calls • Basic Accident Reports • Bicycle Registrations • Parking Tickets • Custom Forms
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Reporting (Core)	• Pre-defined reports • Custom reports • Ad-hoc reports • Drag and drop report building • Export to PDF, XLS, XML, TXT	• Custom data filters • Statistical analysis • Scheduled reports • COMSTAT compatible • Emailed reports
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Community Data Platform (CDP)	• Search engine for Zuercher Suite CAD and RMS Data • Up to 10 concurrent users supported	• National data sharing with IQ Search • Includes IQ Crimemapping.com
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1.1 Interfaces

All costs related to Zuercher's implementation of the following interfaces is represented in *Exhibit B: Pricing Detail*. Any third-party costs or charges incurred related to the implementation of the following interfaces will be the responsibility of Customer.

Any interfaces that cannot be deployed as part of System go-live due to Customer or a third-party vendor not being ready for deployment shall not delay System Acceptance.

Customer shall not allow any party, other than Zuercher, to add, update, or delete database records or file system objects directly to or on the server or database except as provided for in the Zuercher Documentation.

Customer shall not access any Server Hardware except as provided in the Zuercher Documentation or cause any software except the Software provided under this Agreement to be installed on or executed on the Server Hardware.

Refer to *Exhibit A: Statement of Work: 3.2 Implementation Process* overview for interface implementation information.

1.1.1 CAD – Basic Paging Interface (SMTP/Email) (Export)

This is a one-way interface from Zuercher CAD. Pages are sent via email, SMTP, and/or CAP codes from Zuercher CAD. Zuercher enables the paging functionality in CAD.

Customer is responsible for configuring paging groups, templates, and trigger events for this interface.

1.1.2 CAD – E911 (ANI/ALI) Interface (Import)

This is a one-way interface from the 911 service provider to Zuercher CAD. It prepopulates calls for service by parsing raw spill data from the 911 service and importing it.

Customer is responsible for ensuring that:

- (a) 911 service provider sets up the serial connection from the 911 controller to Zuercher CAD.*
- (b) 911 spill data can be pushed to Zuercher CAD at a decided upon frequency.*
- (c) ALI data meets NENA standards*
- (a) ALI data meets NENA standards*

1.1.3 CAD – EvenTide Voice Recorder Interface

This is a two-way interface between the voice recorder system and Zuercher CAD. Zuercher Suite sends call for service (CFS) data to the Voice Recorder system via an API provided by EvenTide. The Voice Recorder system assigns the CFS data to the recording. Assigned voice recordings may be accessed with a link in the CFS screen which calls the EvenTide API for the recording. Playback is handled in accordance with workstation settings for the audio player.

1.1.4 CAD – FIREHOUSE RMS Interface (Export)

This is a one-way interface from Zuercher CAD to Firehouse. Upon completion of a call for service (CFS) in CAD, an XML file is written to a network file share which is watched by the Firehouse CAD Monitor. In addition, users may send current CFS information to the network share by using a custom command in

CAD regardless of whether the call has been completed or not. Information is then imported into Firehouse via a process managed entirely by that application. Zuercher sets up the export of data from CAD to the network file share.

Customer is required to have Firehouse CAD Monitor for this interface.

1.1.5 CAD – ProQA Platinum-Certified Interface (Import and Export)

This is a two-way interface between Zuercher CAD and ProQA. From a call for service (CFS) in CAD, the ProQA application is launched manually or automatically from configured incident codes. CAD sends CFS data to ProQA. CAD users select the appropriate ProQA discipline (Law, Fire, or Medical), and follow the scripted call dialog within ProQA. When triggered by ProQA, CAD imports the call details, including the Responder Summary, to the CFS and updates the incident code if necessary.

1.1.6 CAD – Rip and Run Interface (Fax/Email)

This is a one-way interface from CAD to fax and email services. Completed Calls for Service (CFS) from CAD are output (printed) to the services. Zuercher provides the connection from Zuercher Suite to the SMTP server.

Customer will provide Zuercher with SMTP information for setup and will manage all user configurations.

1.1.7 CAD – Data Export Interface (First IN)

This is a one-way interface from Zuercher CAD to export a CSV, XML, or JSON file with specified completed calls for service (CFS) data via a RESTful interface. First IN will then access the data provided through the interface and import into its system via a process completely external to Zuercher Suite.

1.1.8 Jail – Livescan/AFIS Interface (Export)

This is a one-way interface from Zuercher Jail to the AFIS network. When an inmate is booked into Jail, a NIST file is sent to the AFIS Livescan device. Zuercher Technologies creates the web service which sends the NIST file to AFIS.

1.1.9 Records – eCitations Interface (Import) (Brazos)

This is a one-way interface from Brazos eCitations to Zuercher Records. Brazos will export eCitations data as XML to a network share hosted by Contractor, using the Zuercher XML schema for the exported eCitations data. eCitations data will be imported automatically into Zuercher Records via a process which requires review and approval of each eCitations by a user before the eCitations data is saved to the master citations list in Records.

1.1.10 Records – N-DEx Adapter (IA IEPD)

This is an adapter that produces XML that is conformant to the N-DEx Incident/Arrest (IA) IEPD. Zuercher Suite transmits data to the N-DEx web service via Zuercher's existing N-DEx WSDL. Data transmission does not include all fields defined in the IEPD.

1.1.11 Records – TX Crime Reporting (TIBRS) Interface

This is a one-way interface from Zuercher Records to TX NIBRS. Customer is able to select cases in Zuercher Records and manually export those cases to a text file on the local file system. From there, Customer provides the file to the state system. Zuercher creates functionality to support the text file export from Zuercher Records.

1.1.12 Records – Warrants Interface (Import) (Tyler Incode)

This is a one-way interface from Tyler Technologies' Incode system to Zuercher Records. Every 15 minutes, the Incode Court system will send new warrants and warrant status updates to a network share. Zuercher will process the files from this share and place them into Records. Master name records in Zuercher Suite with an exact match on first name, last name and date of birth will be selected for new warrants. If an exact match is not found, a new master name record will be created. The court's network share is maintained by the Court IT administrator. This interface is dependent on Tyler Technologies' ability to provide the specified functionality.

1.1.13 Zuercher Suite – TLETS/NCIC Interface (Basic Queries)

This is a two-way interface between Zuercher Suite and the Zuercher-provided NCIC server. The following basic queries will be generated by Zuercher Suite and passed to the NCIC server: QA (Article), QB (Boat), KQ (Driver History), QW (Driver's License), QG (Gun), QV (Vehicle Insurance), RQ (Vehicle Registration), and Data Mining (TX only). The Zuercher-provided NCIC server then sends the queries on to NCIC and collects the results. Those query results are then sent back to Zuercher Suite.

Customer is responsible for providing a network connection and the necessary authentication to the state message switch from the NCIC server. NCIC data mining results will only be returned for the state in which Customer is located.

1.1.14 Zuercher Suite – Time Synchronization Interface

This is a one-way interface that uses NTP to keep all Zuercher server's clocks in sync.

1.2 Data Conversion

Zuercher will provide data conversion services for Customer's current GIS map data and from Customer's current software database vendors to Zuercher software. The contents of the data conversion will be determined by the Data Conversion Specification and GIS Specification documents.

Zuercher was not provided a data sample of Customer's current data sources requiring conversion. Therefore, Zuercher is unable to accurately estimate the level and scope of effort associated with the data conversion. Once provided a data sample, Zuercher will discuss with Customer any changes to the scope or price of this implementation.

The listed data conversion services and their associated costs are based on Zuercher's understanding of Customer's needs and current system. Any modules not explicitly listed in this section are not a part of the current project scope and will not be included in implementation. If additional module conversions are required, each one will come at an additional cost based on the scope of the work required for each.

Customer shall work with its existing vendors to obtain unencrypted data for conversion in one of the following compatible formats:

- (a) MS SQL .bak files with database version and credential information
- (b) MySQL .dump or .sql files with database version and credential information
- (c) PostgreSQL .sql files with database version and credential information
- (d) MS Access 2003 or newer .mdb files

- (e) CSV files with column headers and relationship mapping documentation
- (f) Oracle 10g or newer backup files

1.2.1 VisionAIR CAD

Data will be converted into the Zuercher CAD module from the VisionAIR CAD database and data will be provided in one of the formats listed above.

1.2.2 VisionAIR RMS

Data will be converted into the Zuercher Records module from the VisionAIR RMS database and data will be provided in one of the formats listed above.

1.2.3 GIS Data Conversion (One-time Set Up)

In Zuercher's efforts to make sure that Customer-supplied GIS data is working to the best of its abilities, Zuercher will run a series of tests to ensure that the GIS data is ready for first installation. In addition, the data will be set up with the proper configuration and loaded into an ArcGIS map document that is required for the software to operate. Address locator and network dataset files will be created and updated for proper geocoding and routing abilities.

A thorough GIS data review by Customer is imperative for an effective and organized Zuercher software Go Live.

Zuercher cannot make any guarantees for the spatial nor the tabular accuracy of Customer-supplied GIS data as it pertains to geocoding results, routing, and searching. Customer understands that there are several steps involved to make the GIS data sufficiently perform the abovementioned functions. If Customer is unable to make these corrections on its end, a GIS data contract can be set up with Zuercher to ensure the data is built according to the desired specifications.

2.0 Customer Hardware, Network and Power Requirements

Zuercher is not responsible for installation or networking of the computer hardware required for operating Zuercher Software.

Unless otherwise specified, Customer will be responsible for providing the following to meet the hardware, network and power requirements for the System.

2.1 Server Hardware

1. Two (2) rack-mount servers will be purchased by Customer as part of this agreement.
2. They will be configured as Zuercher Suite Servers as follows:
 - (a) One (1) Production Server with Lantronix remote access device
 - (b) One (1) Testing/Training server
3. The servers will be installed at Tomball Police Department.
4. In addition to the standard Zuercher Suite operating environment, the Production Server will have the capability of running the following on a virtual machine:
 - (a) One (1) virtual NCIC server (message switch)

(b) One (1) virtual GIS server

5. Ten (10) inches of rack space is required at the primary server location for one (1) Zuercher Suite Production rack-mounted server (3.5”), one (1) Zuercher Suite Testing/Training rack-mounted server (3.5”), and one (1) Lantronix remote access device (3.0”).

2.2 Production and Testing/Training Server Network Requirements

1. Six (6) open Ethernet cables and ports to be used by one (1) Zuercher Suite Production rack-mounted server, one (1) Zuercher Suite Testing/Training rack-mounted server, and one (1) Lantronix remote access device.
2. Static IP addresses that include four (4) for the Zuercher Suite Production rack-mounted server, three (3) for the Zuercher Suite Testing/Training rack-mounted server, and one (1) for the Lantronix remote access device.
3. Network access that maintains low-latency and high bandwidth that includes a Virtual Private Network (VPN) to support remote users per the requirements that are set forth in the *Network Requirement Specifications* and *Server Requirement Specification* documents provided by Zuercher.

2.3 Production and Testing/Training Server Power Requirements

1. One (1) uninterrupted power supply (UPS) that support 1000 watts.
2. Power supply that will handle dual 720 watts for one (1) Zuercher Suite Production rack-mounted server, one (1) Zuercher Suite Testing/Training rack-mounted server, and one (1) Lantronix remote access device.
3. Server cooling that will ensure the appropriate temperatures for one (1) Zuercher Suite Production rack-mounted server, one (1) Zuercher Suite Testing/Training rack-mounted server, and one (1) Lantronix remote access device.

2.4 Peripheral Hardware

2.4.1 Jail – Mugshot Camera Package – TPD

This contract will provide for one (1) mugshot camera package that will include one (1) Canon EOS Rebel Body, one (1) EF-S 38-55mm lens, one (1) strap, one (1) video cable, one (1) USB interface cable, one (1) battery pack, one (1) battery charger, one (1) Canon AC Adapter Kit, and one (1) InPhoto ID SLR license.

2.4.2 Jail – Electronic Signature Pad (Topaz)—TPD

This contract will provide for one (1) electronic signature pad package that will include one (1) SignatureGem LCD 1x5 pad with attached pen and one (1) USB cord.

2.4.3 Mobile – GPS Receiver (Garmin) – TPD

This contract will provide for fifteen (15) GPS receivers. These GPS receivers are the Garmin 18x USB model.

2.4.4 Mobile – GPS Receiver (Garmin) – TFD

This contract will provide for ten (10) GPS receivers. These GPS receivers are the Garmin 18x USB model.

2.4.5 Records – Property & Evidence Barcode Scanner and Printer Package (Wasp) – TPD

This contract will provide for one (1) property and evidence barcode scanner and printer package that will include one (1) wireless Wasp WWS550i barcode scanner, one (1) Wasp WPL305 label printer, and four (4) rolls of labels.

2.4.6 Records – Electronic Signature Pad (Topaz) – TPD

This contract will provide for one (1) electronic signature pad package that will include one (1) SignatureGem LCD 1x5 pad with attached pen and one (1) USB cord.

3.0 Services

3.1 Project Management

3.1.1 Customer Project Manager

Customer shall provide one primary Project Manager to be the main point of contact for Zuercher.

A single, dedicated Project Manager will be assigned to manage the project for all Customers included in this installation.

Customer will identify a Zuercher Build Team. With assistance from Zuercher Implementation Analysts, Customer's Build Team is responsible for the configuration of Zuercher software. The Build Team should expect to devote 10-20% of each week of implementation to Zuercher configuration work.

Customer's Project Manager and Build Team will work within standard business hours (7:00 AM CST to 6:00 PM CST, Monday through Friday) to enable mutual availability to work with Zuercher on configuration and project activities.

Customer's Dedicated Project Manager

3.1.1.1 Customer's Dedicated Project Manager Responsibilities

1. Have the authority to speak for Customer from a project perspective.
2. Designate people responsible for specific roles as needed, examples below:
 - (a) Module Subject Matter Experts (SMEs)
 - (b) Hardware Project Manager
 - (c) Zuercher Build Team Members
 - (d) Data Conversion Review Team Members
 - (e) Interface points of contact at Customer (assigned per interface)
3. Involve Customer decision makers when needed
4. Escalate issues to the Zuercher project manager
5. Eliminate roadblocks for completing project on schedule

6. Sign various project documents and ensuring signoff documents and deliverables are provided to Zuercher project manager in a timely manner
7. Organize training schedules, training rooms, and training equipment
8. Provide real world scenarios for testing and review

3.1.2 Zuercher Project Manager and Project Team

From the start of the project, a Zuercher project manager will work with Customer as the single point of contact for implementation of the Zuercher Suite system. The project manager will develop and manage the implementation schedule and will coordinate with Customer to keep the project on track and on schedule. The project manager will conduct weekly status meetings to provide Customer with project updates.

The Zuercher project team, under the direction of the project manager, will visit pertinent areas of Customer and will meet with key Customer personnel to understand Customer's operational needs and business rules. Team members will observe Customer's daily operations first-hand and use that information to identify how the Zuercher Suite system would best be configured to match and enhance Customer's workflows. The project team will train Customer system administrators on configuration options and code table setup.

3.2 Implementation Process Overview

Zuercher uses a multi-phase approach to ensure a successful implementation for each Customer. Trained and experienced members of the Zuercher implementation team move through the process with Customers to ensure successful outcomes. Timelines will be discussed with Customer's project manager and will be mutually agreed upon as part of the CMD Approval process to ensure a successful Go Live.

3.2.1 Kickoff Meeting

Upon contract signature, a kickoff meeting is scheduled to initiate the implementation process, setting up a statement work, server installations and scheduling the Business Practice Review (BPR).

3.2.2 Business Practice Review

During this meeting, the Zuercher project team works with Customer's build team to determine the contents of the Configuration Management Document (CMD). All product needs and requests are reviewed, and the Zuercher project team documents in the CMD how the software currently meets those needs or how Zuercher plans to develop additional functionality to fulfill them.

3.2.3 CMD Approval

After the CMD is composed, the Zuercher project team reviews it with Customer's project manager and build team and to ensure that all aspects of the initial proposal have been satisfied.

3.2.4 Configuration, Conversion, and Interfaces

After the CMD is approved and signed, work begins on the steps outlined in it, including the necessary configuration, data conversions, and interfaces.

3.2.4.1 Configuration

Customer plays a large part in the configuration and setup of the final system. Configuration of Zuercher

software is guided by Implementation Analysts, via in-person or remote online sessions, but is considered a Customer responsibility to complete.

3.2.4.2 Data Conversion and GIS Data Conversion

Data not contained in systems listed in *Exhibit A: Statement of Work: 1.2 Data Conversion* will not be converted. Code tables, data mapping, and other system configuration will be entered by Customer with the assistance of a Zuercher Implementation Analyst. Code tables will not be part of the converted data.

A major part of data conversion is review of data that has been converted to Zuercher software. Customer plays a key role in this data review.

A thorough data conversion review by Customer is imperative for an effective and organized Zuercher software Go Live. Customer should expect to devote 10-20% of each week of the data conversion process to Zuercher configuration work. Each module converted will require participation of SMEs.

See *Exhibit A: Statement of Work: 1.2 GIS Data Conversion* for information regarding the GIS data conversion process.

3.2.4.3 Interfaces

See *Exhibit A: Statement of Work: 1.1 Interfaces* for a list of included interfaces.

Customer tasks related to interfaces will start immediately after the initial Zuercher kickoff meeting. Customer will set up conference calls with Zuercher and each interface vendor within two weeks of contract signing or one week of kickoff call. Interfaces to and from Zuercher software are created and tested internally before being available for Customer testing.

Customer is responsible for initiating and facilitating the relationship(s) between Zuercher and the third-party interface vendor(s).

Zuercher software interface specifications must be clearly defined in the CMD and thoroughly tested by Customer before Go Live.

3.2.5 Final System Review

Throughout the project, implementation analysts from Zuercher will schedule sessions with Customer's Build Team and end users to review any questions or concerns.

3.2.6 Train-the-Trainer and/or End User Training

Zuercher offers several options for end user training. All of the training options provide hands-on use of the software with real-world examples. Class sizes are limited to ensure that each individual has sufficient time to practice using the system. When the go live date arrives, users are well-prepared to begin using the new software.

3.2.7 Go Live

Zuercher provides on-site and/or remote support the day that the new system goes live. Any questions that arise are addressed immediately by the team, ensuring that the first day(s) using the new system goes smoothly.

3.3 Training and Go Live Support

3.3.1 Training

Zuercher staff will provide on-site or remote training.

The number of days specified for 'on-site' services herein may include travel days in addition to actual days on site at Customer's location(s). Zuercher will make a good faith effort to minimize the travel time which is necessary for a project by working with Customer to most efficiently plan and schedule the delivery of on-site services.

3.3.1.1 System Configuration and Training

The first portion of training will be performed by the Zuercher project team. Team members will train and guide Customer's Build Team in configuring the Zuercher Suite system, setting up and maintaining code tables, managing users and user rights, among other options. Through Zuercher-guided configuration of the system, the Build Team becomes well versed in the Zuercher software system administration.

3.3.1.2 Train-the-Trainer and/or End User Training

Trainers will conduct detailed courses for each of Customer's user groups (such as dispatchers or officers). The content of each course will be tailored to the features and functionality in Zuercher software that each group needs to know and use.

3.3.1.3 Refresher Training

Zuercher will provide follow-up training (after successful implementation) to refresh existing personnel on best practices with regard to using Zuercher Suite.

3.3.2 Training Resources

Training will be scheduled within standard business hours (7:00 AM CST to 6:00 PM CST, Monday through Friday).

The training facilities and equipment will be provided by Customer based on the following:

3.3.2.1 Trainer Resources

1. One (1) computer with a network connection
2. Most recent Zuercher Suite version installed and tested (includes login)
3. Two (2) projectors and two (2) screens set up and tested
4. One (1) podium or desk for trainer

3.3.2.2 Trainee Resources

1. Five (5) to ten (10) computers with network connections two (2) monitors required (three (3) monitors are suggested)
2. One (1) supervisor will attend every class to address policy questions
3. No more than ten (10) trainees in each class
4. Most recent Zuercher Suite version installed and tested (includes login)
5. All third-party devices (i.e., printers, scanners, barcode reader, mugshot camera) connected and tested

3.3.3 Go Live Support

Zuercher staff will assist users with questions that arise during Go Live and will reinforce skills learned during the training sessions. Zuercher staff will be on site or remote for Go Live.

Exhibit B: Pricing Detail

Software and Servers	Comments	Unit	Qty	Price	Total
Zuercher Suite Production Server (Dell Server, OS, DBMS, Installation & Testing)	Includes up to 4TB of disk.		1	\$ 13,720	\$ 13,720
Zuercher Suite Training/Testing Server (Dell Server, OS, DBMS, Installation & Testing)	Includes up to 4TB of disk.		1	\$ 8,480	\$ 8,480
Zuercher Suite Production NCIC Server (Virtualized Server, OS, Installation & Testing)			1	Included	Included
Zuercher Suite Production GIS Server (Virtualized Server, OS, Software, Analytics, Installation & Testing)			1	Included	Included
Esri Server License (Esri ArcGIS for Server Workgroup Standard)			1	\$ 5,000	\$ 5,000
Esri Analyst License (Esri ArcGIS Network Analyst for Server)			1	\$ 5,000	\$ 5,000
Administration Core			1	\$ 4,000	\$ 4,000
Administration Core (Agency Site License)	Tomball PD		1	\$ 1,820	\$ 1,820
CAD Core			1	\$ 15,000	\$ 15,000
CAD Core (Agency Site License)	Tomball PD		1	\$ 16,875	\$ 16,875
CAD Advanced (Agency Site License)	Tomball PD		1	\$ 5,625	\$ 5,625
CAD - Basic Paging Interface (SMTP/Email)			1	Included	Included
CAD - E911 (ANI/ALI) Interface			1	Included	Included
CAD - EvenTide Voice Recorder Interface			1	\$ 9,500	\$ 9,500
CAD - FIREHOUSE RMS Interface (Export)			1	\$ 5,500	\$ 5,500
CAD - ProQA Platinum-Certified Interface (Import and Export)			1	\$ 14,000	\$ 14,000
CAD - Rip and Run (Fax/Email) Interface			1	Included	Included
CAD - Data Export Interface	First IN		1	\$ 7,500	\$ 7,500
Mapping Core			1	\$ 10,000	\$ 10,000
Mapping Core (Agency Site License) for Full-Time CAD Workstations	Tomball PD	Per Agency	1	\$ 7,500	\$ 7,500
Mapping AVL (Agency Site License) for Full-Time CAD Workstations	Tomball PD	Per Agency	1	\$ 7,500	\$ 7,500
Mapping AVL Playback (Agency Site License) for Full-Time CAD Workstations	Tomball PD	Per Agency	1	\$ 4,500	\$ 4,500
Jail Short Term Holding Only	Tomball PD		1	\$ 10,000	\$ 10,000
Jail Short Term Holding Only (Agency Site License)	Tomball PD		1	\$ 788	\$ 788
Jail - Livescan/AFIS Interface (Export)			1	\$ 6,060	\$ 6,060
Mobile Core			1	\$ 5,000	\$ 5,000
Mobile AVL	Tomball PD	Per Unit	15	\$ 200	\$ 3,000
Mobile AVL	Tomball Fire Dpt	Per Unit	15	\$ 200	\$ 3,000
Mobile CAD	Tomball PD	Per Unit	15	\$ 450	\$ 6,750
Mobile CAD	Tomball Fire Dpt	Per Unit	10	\$ 450	\$ 4,500
Mobile Mapping	Tomball PD	Per Unit	15	\$ 550	\$ 8,250
Mobile Mapping	Tomball Fire Dpt	Per Unit	10	\$ 550	\$ 5,500
Mobile NCIC	Tomball PD	Per Unit	15	Included	Included
Mobile Records	Tomball PD	Per Unit	15	\$ 950	\$ 14,250
Personnel Core			1	Included	Included
Personnel Core (Agency Site License)	Tomball PD		1	Included	Included
Personnel Core (Agency Site License)	Tomball Fire Dpt		1	Included	Included
Personnel Advanced (Agency Site License)	Tomball PD		1	\$ 2,256	\$ 2,256

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Portal - Community Involvement Pack			1	\$	4,465	\$	4,465	
Portal - Remote CFS View Pack			1	\$	4,465	\$	4,465	
Portal - Attorney Case View			1	\$	4,465	\$	4,465	
Records Core			1	\$	7,500	\$	7,500	
Records Core (Agency Site License)	Tomball PD		1	\$	15,600	\$	15,600	
Records Advanced (Agency Site License)	Tomball PD		1	\$	5,200	\$	5,200	
Records - eCitations Interface (Import)	Brazos		1	\$	9,000	\$	9,000	
Records - N-DEx Adapter (IA IEPD)			1		Included		Included	
Records - TX Crime Reporting (TIBRS) Interface			1		Included		Included	
Records - Warrants Interface (Import)	Tyler Incode		1	\$	12,000	\$	12,000	
Reporting Core			1		Included		Included	
Reporting Universal Interface Engine			1		Included		Included	
Zuercher Suite - TLETS/NCIC Interface (Basic Queries)	Queries needed		1	\$	10,000	\$	10,000	
Zuercher Suite - Time Synchronization Interface			1		Included		Included	
Software and Servers Pre-Discount Subtotal						\$	283,569	
Software and Servers Discount						\$	(124,909)	
Software and Servers Total						\$	158,659	
Subscriptions		Comments	Unit	Qty	Price	Total		
Community Data Platform Subscription	Includes Crimemapping.com			1	Included		Included	
Subscriptions Total						\$	-	
Peripheral Hardware		Comments	Unit	Qty	Price	Total		
Jail - Mugshot Camera Package (Canon EOS Rebel)	Tomball PD			1	\$	1,396	\$	1,396
Jail - Electronic Signature Pad (Topaz)	Tomball PD			1	\$	403	\$	403
Mobile - GPS Receiver (Garmin)	Tomball PD			15	\$	88	\$	1,326
Mobile - GPS Receiver (Garmin)	Tomball Fire Dpt			10	\$	88	\$	884
Records - Property & Evidence Barcode Scanner and Printer Package (Wasp)	Tomball PD			1	\$	949	\$	949
Records - Electronic Signature Pad (Topaz)	Tomball PD			1	\$	403	\$	403
Peripheral Hardware Total						\$	5,361	

Services	Comments	Unit	Qty	Price	Total
Project Manager					
3 round-trips anticipated		Per Project	1	\$ 29,593	\$ 29,593
Configuration and Business Process Review (BPR)					
2 round-trips anticipated		Per Project	1	\$ 10,595	\$ 10,595
Training					
- Administration					
- CAD					
- Jail					
- Mobile					
- Records					
- Refresher					
3 round-trips anticipated		Per Project	1	\$ 15,098	\$ 15,098
Go-live Support					
2 round-trips anticipated		Per Project	1	\$ 9,005	\$ 9,005
Mapping - One-time GIS Data Set Up			1	\$ 4,500	\$ 4,500
Data Conversion	VisionAIR CAD	Per Module	1	\$ 7,500	\$ 7,500
Data Conversion	VisionAIR RMS	Per Module	1	\$ 7,500	\$ 7,500
Services Total					\$ 83,791
TOTALS					
Software and Servers Pre-Discount Subtotal					\$ 283,569
Software and Servers Discount					\$ (124,909)
Software and Servers Total					\$ 158,659
Subscriptions Total					\$ -
Peripheral Hardware Total					\$ 5,361
Services Total					\$ 83,791
TOTAL					\$ 247,811
Recurring (Subscriptions & Maintenance)					
Subscriptions (Year 1)					Prepaid
Subscriptions (Year 2)			1		Included
Subscriptions (Year 3)			1		Included
Subscriptions (Year 4)			1		Included
Subscriptions (Year 5)			1		Included
Maintenance & Support (Year 1)			1		Included
Maintenance & Support (Year 2)			1		\$ 47,483
Maintenance & Support (Year 3)			1		\$ 49,857
Maintenance & Support (Year 4)			1		\$ 52,350
Maintenance & Support (Year 5)			1		\$ 54,967
Taxes are not included in the pricing.					

Exhibit C: Payment Schedule

The total amount of this contract is \$247,811.

The amounts due under this contract are as follows:

On October 1, 2018	\$150,000.00
On October 1, 2019 (pending project completion)	\$97,811.00

Commencing one year after the System reaches “Go Live,” an annual maintenance fee of \$47,483 will be due. Thereafter, the annual maintenance fee shall increase by an amount not to exceed 5% from the prior year.

These amounts do not include any taxes. See Agreement section [8.13 Taxes](#) for more information.

Exhibit D: Maintenance Agreement

1.0 Term

The initial term of annual Maintenance under this Exhibit D begins on the date of Go Live and ends twelve (12) months thereafter. The fee for the initial term is included as a line item in the pricing set forth in *Exhibit B: Pricing Detail*. Maintenance is renewable on an annual basis upon payment of the applicable maintenance and support fee. Zuercher will invoice Customer prior to the end of each annual maintenance term.

2.0 Software Updates

While this Agreement has not expired, Zuercher will maintain the Software by providing software updates and enhancements to Customer. All software updates provided to Customer by Zuercher pursuant to the terms of this Agreement shall be subject to the terms and conditions of Section 2.0 License of this Agreement.

At a time mutually acceptable to both parties, Zuercher will install software updates remotely.

2.1 Included Updates

Updates will be provided on an as-available basis and include the items listed below:

1. Bug fixes;
2. Enhancements to products licensed by Customer under this Agreement;

2.2 Not-Included Updates

Updates do not include:

1. Platform extensions including product extensions to different hardware platforms, different windowing system platforms, or different operating system platforms
2. New functions such as new modules, components, products, or applications.

3.0 Support

3.1 General Support

Zuercher shall provide phone and email support for the Software licensed under this agreement and shall maintain a support center database to track any reported issues. No support will be provided for Software more than two versions back from the most recently released version.

Support does not include custom programming services or training.

Support is available 24 hours a day, seven days a week for Zuercher Suite customers.

3.2 Server Hardware Maintenance

Zuercher will maintain the Server Hardware necessary to host the Software. This does not include any Hardware except Server Hardware.

3.3 Customer Responsibilities

3.3.1 Access to Premises

Customer shall provide Zuercher with reasonable and timely access to the sites and personnel necessary for Zuercher to perform its obligations under this Agreement.

3.3.2 Zuercher Server Access

Customer will ensure that all Zuercher Suite servers are directly network accessible to Zuercher at all times via SSH. There shall be no additional authorization or equipment required except as requested by Zuercher.

3.3.3 System Administrator

Customer is responsible for naming one or more System Administrators to serve as a primary point of contact between Customer and Zuercher. At least one System Administrator must be available at all times. Customer will ensure that the System Administrators possesses the appropriate technology and public safety knowledge and skills to perform this role sufficiently.

3.3.4 Security

Customer is responsible for providing all physical security. The customer is responsible for securing their network.

3.3.5 System Updates

Customer shall work in good faith to allow Zuercher to install System updates as requested by Zuercher.

Exhibit E: Community Data Platform Membership Agreement

Client: Tomball Police Department

Membership

- A. TriTech offers qualifying Member Agencies access to IQ Search and CrimeMapping.com limited services (the Software and Services) as defined in this Agreement.
- B. Clients who wish to qualify as a Member Agency must:
- a. Be a CJIS compliant Law Enforcement Agency
 - b. Agree to contribute data to the Community Data Platform including:
 - i. CAD
 - ii. RMS Incidents
 - iii. RMS Arrests
 - iv. RMS Warrants
 - v. RMS Master Names
 - c. Agree to allow TriTech to share their data with other Member Agencies and third parties as provided in this Agreement
- C. The Member Agency (also referred to herein as "Client") will receive the following benefits:

Free subscription to IQ Search for up to 10 Concurrent Users, limited to the following:			
	Your Contributed Data	Your State's Participating Agencies	National Participating Agencies
RMS Incidents			
Quickview (Date of Occurrence, Location, Incident Type Description, Case Status, RMS Case Number, Agency)	YES	YES	
CAD Call for Service			
QuickView	YES		

Free subscription to CrimeMapping.com
Public access to:
Radius searches of crime data from a specified location
Map-based summary of RMS Incident statistics based on crime type, description, location, agency, date
Register for alerts on RMS Incident activity within a certain radius of a location and/or crime type
Map-based citizen/public access to categorized RMS Incidents

A free 90-day trial to the national IQ Search service which includes full detailed searches.

- D. The Member Agency will receive up to 10 concurrent user licenses to the Community Data Platform.
- E. In consideration of the free subscription to IQ Search and CrimeMapping.com as defined above, Client understands and agrees that TriTech will process and anonymize data from the IQ Community Data Platform (the "Aggregate Data") to provide further commercial services for its clients and third parties as described below.
- F. Full search concurrent user licenses can be purchased to increase concurrent user access and search/query builder capabilities.

License

Membership includes a limited non-exclusive, non-transferable license to use the Software and Services, located on TriTech's servers, through Client's computer(s).

The Software and Services provide users an effective set of tools for conducting investigations, monitoring regional crime trends, and increasing transparency to the community.

Client is expressly prohibited from sublicensing, selling, renting, leasing, providing service bureau or timeshare services, distributing or otherwise making the Software and Services available to third parties.

Access and Passwords

- A. Access to IQ Search by Client's authorized end users ("Authorized Users") will require the use of a password. Client is responsible for management and control of passwords for its end users.
- B. Client acknowledges (i) that the protection of passwords issued to Authorized Users is an integral part of TriTech's security and data protection process and procedures and, (ii) that TriTech will rely on Client utilizing and maintaining proper password control obligations and procedures. In the event that Client has reasonable cause to believe that a password is being improperly used by an Authorized User or used by an unauthorized person, Client shall promptly notify TriTech. TriTech reserves the right to deactivate a compromised password immediately upon notice from Client without further notice to Client or the affected Authorized User. TriTech shall have the right, at its sole cost and expense, to utilize an independent certified accounting firm, to verify the number of passwords that have been issued for use by Authorized Users of the Client and use of these passwords within Client's organization in compliance with the terms of this Agreement.

Termination

- A. This Agreement may be terminated by TriTech upon thirty (30) days' written notice due to a material breach by Client.
- B. Either Party may terminate this Agreement for convenience upon thirty (30) days' written notice to the other Party.

Client Responsibilities

- A. Client will assign a Client Administrator to manage end user access and passwords.
- B. Client is responsible for providing hardware, operating system and browser software that meets TriTech's technical specifications, as well as providing and maintaining a fast, stable, high speed connection and remote connectivity for data contribution services as well as individual client user access.
- C. Client is solely responsible for the integrity of all data and information that is provided to TriTech under this Agreement (i.e., the Client Information), including completeness, accuracy, validity, authorization for use and integrity over time, regardless of form and format, and whether or not such data is used in conjunction with the Subscription Services.
- D. Client shall not attempt to decode, disassemble, copy, transmit, transfer or otherwise reverse engineer the Services, including, without limitation, the Software.
- E. Client is responsible for maintaining an active e-mail account for correspondence with TriTech.
- F. Client is responsible for proper firewall maintenance allowing for data to move from their on-premise data contributing system to the applicable IQ application.

Confidentiality

- A. In association with the execution of this Agreement and TriTech's participation in the use and support of the Software and Services, Client has obtained, will have access to, or will obtain confidential information regarding intellectual property of TriTech, the Software and Services and its contents, sales and marketing plans and other similar information (hereinafter referred to as "Confidential Information"). Client acknowledges that the Software and Services itself represents and embodies certain trade secrets and confidential information of TriTech. Client hereby agrees that, for itself and its shareholders, officers, directors, employees, and agents, Client shall not disclose any of TriTech's trade secrets or Confidential Information without TriTech's prior written consent for any such disclosure.
- B. In association with the execution of this Agreement and the participation of TriTech in the support of the Software and Services, TriTech has obtained or will obtain confidential information of Client regarding the business of Client or its customers ("Client Information"). TriTech shall not use any Client Information except as expressly set forth in this Agreement.
- C. Confidential Information of either Party shall not include any information that is (i) already known to the receiving Party at the time of the disclosure; (ii) publicly known at the time of the disclosure or becomes publicly known through no wrongful act or failure of the receiving Party; (iii) subsequently disclosed to receiving Party on a non-confidential basis by a third party not having a confidential relationship with the other Party hereto that rightfully acquired such information; (iv) communicated to a third party by receiving Party with the express written consent of the other Party hereto; or (v)

legally compelled to be disclosed pursuant to a subpoena, summons, order or other judicial or governmental process, provided the receiving Party provides prompt notice of any such subpoena, order, etc. to the other Party so that such Party will have the opportunity to obtain a protective order.

- D. Each Party agrees to restrict access to the Confidential Information or Client Information of the other Party to those employees or agents who require access in order to use or support the Software and Services, acknowledging that certain Confidential Information or Client Information of each Party may be disclosed to Authorized Users as a necessary function of the Software and Services; and, except as otherwise provided, neither Party shall make Confidential Information or Client Information available to any other person or entity without the prior written consent of the other Party.
- E. Notwithstanding the foregoing, Client understands and agrees that TriTech may transfer Client Information to a third party hosting entity for the purposes of providing the communications infrastructure, hosting services and/or related support and other operations necessary to deliver all or certain portions of the Services; provided that TriTech, in turn, binds such third party to confidentiality and non-disclosure terms that are at least as protective of TriTech's and Client's interests as the terms stated herein. In addition, TriTech may also access and use Client Information and results or data, in a de-identified form, for data or analysis purposes (including for the purpose of preparing the Aggregate data and for crime data reporting), and may distribute the results of such analysis or data summaries to other Member Agencies or third parties provided no personally identifying information in the Client Information is disclosed. Client acknowledges that TriTech shall have no responsibility or liability for unauthorized access to or dissemination of Client Information by Authorized Users or other third parties, whether as a result of breach of data security, misappropriation or misuse of passwords or any other cause.

Ownership and Rights

- A. TriTech owns all rights and title in and to the Software and Services. Further, Client agrees that the Software screens and any output of the Software, excepting the Client Information, are the property of TriTech and subject to United States and other patent, copyright, trademark, trade secret and other applicable laws and treaties and Client agrees that it shall not remove, alter or obstruct any ownership or use legends that TriTech places on any such screens or output of the Services. Nothing contained in this Agreement shall be construed as granting Client any rights in or to the Software and Services (including, without limitation, the Software and output of the Services), the deliverables from the implementation or additional services or related Confidential Information, other than the right to use the Software and Services and any applicable Confidential Information of TriTech during the Term, in accordance with this Agreement.
- B. Clients who elect to participate in the Membership Program contribute to a database of information utilized by members to conduct investigations, monitor regional crime trends, and increase transparency to their communities. Notwithstanding anything to the contrary herein, excluding CJIS data, or personally identifying data, Client agrees that TriTech has and retains all rights to use any data and information relating to the Software and Services that is uploaded, inputted, or otherwise submitted by Client for any commercial purposes during or after the term of this Agreement; and any

information that constitutes, or results in, an improvement or other modification to the Software and Services. TriTech shall retain all rights and ownership to the Aggregate Data.

- C. As between the parties, TriTech agrees that all Client Information provided to TriTech under this Agreement for TriTech's use in connection with the Software and Services is the property of Client; provided, however, TriTech shall have the right to retain Client Information in accordance with its obligations under the terms of this Agreement in the event that the return or the destruction of any Client Information is infeasible, and in any event may use and retain Client Information as provided in Section E of the "Confidentiality" section above.
- D. The term "Developments" shall mean all programs, upgrades, updates or other enhancements or modifications to the Software, if any, and all Documentation or other materials developed and/or delivered by TriTech in the course of providing technical support or otherwise, under this Agreement.
- E. Client will not have the ability to copy the Client Information entered onto the Software. Rather, TriTech shall retain the physical copy of the Software, title, right and interest in and to the Software, including upgrades, updates, and/or other enhancements or modifications to the Software in any medium, including but not limited to all copyrights, patents, trade secrets, trademarks, and other proprietary rights.
- F. TriTech reserves the right to provide free cloud storage only for those data items viewable as part of the Limited Search Capabilities. Additional data attached to contributions such as video, images, and other document types may induce optional storage fees for cloud retention.

Liability

- A. THE SERVICES, SOFTWARE AND ANY DOCUMENTATION ARE MADE AVAILABLE FOR CLIENT'S USE "AS IS" AND EXCEPT AS OTHERWISE SPECIFICALLY STATED HEREIN, WITHOUT WARRANTY OF ANY KIND, EITHER EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.
- B. TRITECH DOES NOT WARRANT THAT THE SOFTWARE WILL OPERATE UNINTERRUPTED OR ERROR-FREE. CLIENT AGREES TO INDEMNIFY TRITECH AGAINST ANY SUCH LIABILITY TO CLIENT, REGARDING THE CLIENT'S USE OF THE SERVICES, THE SOFTWARE AND ANY DOCUMENTATION OR OTHERWISE. IN NO EVENT SHALL TRITECH BE LIABLE TO CLIENT OR ANY THIRD PARTY, WHETHER IN CONTRACT, TORT, OR OTHERWISE FOR INCIDENTAL, SPECIAL, INDIRECT, GENERAL, OR CONSEQUENTIAL DAMAGE OR LOSS OF ANY NATURE, INCLUDING BUT NOT LIMITED TO LOSS OF BUSINESS PROFITS, INCOME, LOSS OR USE OF DATA, WHICH MAY ARISE IN CONNECTION WITH THIS AGREEMENT OR THE USE OF OR INABILITY TO USE THE SERVICES, SOFTWARE AND ANY DOCUMENTATION EVEN IF TRITECH HAD BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THIS CLAUSE SHALL SURVIVE

FAILURE OF AN EXCLUSIVE REMEDY.

- C. TRITECH DISCLAIMS ALL LIABILITY FOR THE ACCURACY AND/OR COMPLETENESS OF DATA, INCLUDING BUT NOT LIMITED TO DATA SUPPLIED WITH THE SOFTWARE OR AS ADDED OR MODIFIED BY CLIENT OR ANY THIRD PARTY, OR DATA AS PROCESSED ON CLIENT'S OR TRITECH'S COMPUTER NETWORK. CLIENT BEARS THE ENTIRE RESPONSIBILITY FOR ITS COMPUTER NETWORK, INCLUDING CLIENT'S USE OF THE SOFTWARE, THE PERFORMANCE OF THE SERVICES AND THE SOFTWARE AND THE BEHAVIOR OF THE DATA ON EITHER CLIENT'S OR TRITECH'S COMPUTER NETWORK.
- D. TRITECH REPRESENTS AND WARRANTS TO CLIENT THAT, TO TRITECH'S CURRENT AND ACTUAL KNOWLEDGE, THE SOFTWARE, WHEN USED IN ACCORDANCE WITH THIS AGREEMENT, DOES NOT VIOLATE ANY EXISTING U.S. COPYRIGHTS, PATENTS, TRADEMARKS, OR OTHER INTELLECTUAL PROPERTY RIGHTS OF ANY THIRD PARTY AS OF THE DATE OF THIS AGREEMENT. TRITECH SHALL INDEMNIFY AND HOLD CLIENT HARMLESS FROM AND AGAINST ANY AND ALL ACTIONS, SUITS, PROCEEDINGS, CLAIMS, DEMANDS, LOSSES, LIABILITIES, COSTS AND EXPENSES, INCLUDING REASONABLE ATTORNEYS FEES, INCURRED BY CLIENT ARISING OUT OF ANY BREACH OF THIS WARRANTY ON THE PART OF TRITECH.
- E. IN NO EVENT SHALL TRITECH'S TOTAL CUMULATIVE LIABILITY HEREUNDER, FROM ALL CAUSES OF ACTION OF ANY KIND, WHETHER ARISING UNDER CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, BREACH OF WARRANTY OR OTHERWISE, EXCEED THE VALUE OF ONE ANNUAL TERM OF THE SUBSCRIPTION FEES FOR IQ SEARCH AND CRIMEMAPPING.COM.

Assignment

Client shall not transfer or assign any of its rights or obligations under this Agreement to any other person or entity without the express written permission of TriTech, which permission shall not be unreasonably withheld. Any assignment without such express written permission of TriTech shall result in the automatic termination of this Agreement.

Notices

Written notices required or permitted to be given under this Agreement shall be made to the parties at the following addresses and shall be presumed to have been received by the other party (i) (three) 3 days after mailing by the party when notices are sent by First Class Mail, postage prepaid; (ii) upon transmission (if sent via facsimile with a confirmed transmission report); or (iii) upon receipt (if sent by hand delivery or courier service).

To Client:		To TriTech:
City of Tomball Police Department		TriTech Software Systems
Attn:		Attn: Contracts
400 Fannin Street		9477 Waples Street, Suite 100
Tomball, TX 77375		San Diego, CA 92121

Governing Law

Except to the extent that this Agreement is governed by the laws of the United States, this Agreement shall be governed, interpreted and enforced in accordance with the laws of the State of Texas, without regard to its conflict of law provisions.

Support Services

Support will be provided in accordance with Attachment A.

This Agreement does not include any other TriTech subscription services. Additional subscription services purchased by Client will be subject to applicable fees.

**CITY OF TOMBALL POLICE
DEPARTMENT**

TRITECH SOFTWARE SYSTEMS

Accepted By (Signature)

Accepted By (Signature)

Printed Name

Printed Name

Title

Title

Date

Date

Schedule A

TECHNICAL SUPPORT

This Schedule describes the terms and conditions relating to technical support that TriTech will provide to Client during the Term of the Agreement.

Technical Support Services:

Email Assistance. Client may contact TriTech via email for issues with IQ Search at: CH_ClientServicesTriage@tritech.com; and for CrimeMapping: omega-support@tritech.com during normal Customer Service hours, (between 7:30am and 7:30pm Central Time) on regular business days, excluding TriTech holidays, to consult with TriTech technical support staff concerning problem resolution, bug reporting, documentation clarification, and general technical guidance. Assistance may include remote connectivity, modem, or electronic bulletin board.

Software Problem Reporting. Client may submit requests to TriTech identifying potential problems in the Software. Requests should be in writing and directed to TriTech by e-mail,. TriTech retains the right to determine in its sole discretion the final disposition of all requests, and will inform Client of the disposition of each request. If TriTech decides in its sole judgment to act upon a request, it will do so by providing a bug fix as described above.

Scheduled Maintenance. IQ applications may be unavailable periodically for system maintenance. Regular system maintenance includes installation of the IQ Updates, operating system updates/patches and updates to other third party applications as needed. Clients are notified of maintenance periods via an email message.

Exclusions from Technical Support Services:

TriTech shall have no support obligations with respect to any third party hardware or software product ("Nonqualified Product"). If TriTech provides support services for a problem caused by a Nonqualified Product, or if TriTech's service efforts are increased as a result of a Nonqualified Product, TriTech will charge time and materials for extra service at its current published rates for custom software services. If, in TriTech's opinion, performance of technical support is made more difficult or impaired because of a Nonqualified Product, TriTech shall so notify Client, and Client will immediately remove the Nonqualified Product at its own risk and expense during any efforts to render technical support under this Agreement. Client shall be solely responsible for the compatibility and functioning of Nonqualified Products with the Software.

Client Responsibilities:

In connection with TriTech's provision of technical support as described herein, Client acknowledges that Client has the responsibility to do each of the following:

- 1) Provide hardware, operating system and browser software that meets TriTech's technical specifications, as well as a fast, stable, high speed connection and remote connectivity.
- 2) Maintain the designated computer system and associated peripheral equipment in good working order in accordance with the manufacturers' specifications, and ensure that any problems reported to TriTech are not due to hardware malfunction;

- 3) Maintain the designated computer system at the latest code revision level deemed necessary by TriTech for proper operation of the Software;
- 4) Supply TriTech with access to and use of all information and facilities determined to be necessary by TriTech to render the technical support described herein;
- 5) Perform any test or procedures recommended by TriTech for the purpose of identifying and/or resolving any problems;
- 6) At all times follow routine operator procedures as specified in the Documentation or any policies of TriTech posted on the TriTech website;
- 7) Other than TriTech's confidentiality obligations with respect to Client Information as set forth in this Agreement, Client shall remain solely responsible at all times for the safeguarding of Client's proprietary, confidential, and classified information; and
- 8) Ensure that the designated computer system is isolated from any process links or anything else that could cause harm before requesting or receiving remote support assistance.

Tomball PD/Fire (Computer Aided Dispatch)

Our current Computer Aided Dispatch (CAD) system has been in place for approximately 15 years. This system was purchased through a vendor called Visionair. Approximately 5 years ago, Visionair was purchased by Tri-Tech Software Systems who is also a CAD vendor with their own version of software. Tri-Tech made the decision a year ago to stop developing new features and options for the Vision CAD version we are using because of its older platform. The end of support will be announced at some point so we have started the process of evaluating a new CAD system for the City of Tomball.

The Police Departments Records Management System (RMS) was purchased at the same time through Visionair and is under the same timeframe to be end of service. Currently there are a lot of reporting requirements that are completed by exporting data from our RMS system to spreadsheets so that the data can be presented in a usable form. Vendor services are required to assist us using Crystal Reports to program a custom report if needed. The new RMS programs we have been evaluating use simple drop down menus to build a custom report which will improve our efficiency and perform functions that we cannot do with our current software.

We attended a conference of CAD providers and were able to view demonstrations of 4 different systems. One system stood out as having the best features, options, usability, and cost for an agency of our size. We then sent representatives from PD Dispatch, PD Records, PD Evidence, and the Fire Department to their user conference where they were able to talk with other agencies already using this system to gather feedback. Our group was also able to go to an agency that has used this system for 5 years to see it operate in a live setting.

We were able to get cost estimates from 3 vendors. We asked that these estimates include the software (CAD/RMS), installation, migration of our historical data into the new system, and training. Based on the current data and evaluations we have completed, we are estimating this project to cost \$300,000.

Regular City Council

Agenda Item

Data Sheet

Meeting Date: December 3, 2018

Topic:

Approve the Execution of an Agreement for Professional Services with Freese & Nichols for the Completion of a Water and Wastewater Impact Fee Study in the Amount of \$59,100.00

Background:

The last Impact Fee Study was completed in 2007 and was good for ten years from the date of completion. We are nearing the end of the ten years for that study a new study is now required in order to determine the impact fees to be accessed for the next five (5) years.

Staff is recommending awarding a Professional Services Agreement to Freese & Nichols, completion of the study which will include development of a ten year land use projection to identify the service areas for impact fees and selection of Capital Improvement Projects that will service the projected growth during that period all of these decisions will be facilitated by the Capital Improvements Advisory Committee. A public hearing will also be conducted as well as a presentation of all findings to Council before adoption.

Origination:

City Manager's Office

Recommendation:

Staff recommends approval to execute an agreement with Freese & Nichols for a Water and Wastewater Impact Fee Study for a total amount of \$59,100.00.

Funding:

Yes

Account Number: 730-731-6691 & 740-741-6691

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

Meagan Mageo, Project Coordinator

ACTION TAKEN

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

Agreement for Professional Services - Freese & Nichols

AGREEMENT FOR PROFESSIONAL SERVICES

STATE OF TEXAS §

COUNTY OF TARRANT §

This Agreement is entered into the City of Tomball, Texas hereinafter called "Owner" and Freese and Nichols, Inc., hereinafter called "FNI." In consideration of the Agreements herein, the parties agree as follows:

- I. **EMPLOYMENT OF FNI:** In accordance with the terms of this Agreement: Owner agrees to employ FNI; FNI agrees to perform professional services in connection with the Project; Owner agrees to pay to FNI compensation. The Project is described as follows: **Water and Wastewater Impact Fees.**
- II. **SCOPE OF SERVICES:** FNI shall render professional services in connection with Project as set forth in Attachment SC - Scope of Services and Responsibilities of Owner which is attached to and made a part of this Agreement.
- III. **COMPENSATION:** Owner agrees to pay FNI for all professional services rendered under this Agreement. FNI shall perform professional services as outlined in the "Scope of Services" for a lump sum fee of \$59,100.00, in accordance with Attachment CO-Compensation which is attached hereto and made a part of this Agreement.

If FNI's services are delayed or suspended by Owner, or if FNI's services are extended for more than 60 days through no fault of FNI, FNI shall be entitled to equitable adjustment of rates and amounts of compensation to reflect reasonable costs incurred by FNI in connection with such delay or suspension and reactivation and the fact that the time for performance under this Agreement has been revised.

- IV. **TERMS AND CONDITIONS OF Agreement:** The Terms and Conditions of Agreement as set forth as Attachment TC shall govern the relationship between the Owner and FNI.

Nothing under this Agreement shall be construed to give any rights or benefits in this Agreement to anyone other than Owner and FNI, and all duties and responsibilities undertaken pursuant to this Agreement will be for the sole and exclusive benefit of Owner and FNI and not for the benefit of any other party.

This Agreement constitutes the entire Agreement between Owner and FNI and supersedes all prior written or oral understandings.

This contract is executed in two counterparts.

IN TESTIMONY HEREOF, they have executed this Agreement, the _____ day of _____, 2018.

ATTEST:

City of Tomball, Texas
(Owner)

By: _____

Print Name and Title

ATTEST:

Freese and Nichols, Inc.
(FNI)

By: Richard Weatherly

Principal

Print Name and Title

Eric R. Potts

SCOPE OF SERVICES AND RESPONSIBILITIES OF OWNER

Project Understanding:

Freese and Nichols, Inc. (FNI) will update the City of Tomball's (City) Water and Wastewater Impact Fee per the requirements of Chapter 395 of the Texas Local Government Code. FNI will utilize the water and wastewater capital improvement plan (CIP) projects developed in the City's *2017 Wastewater Master Plan* and *2018 Water Master Plan*. This project will include two phases:

A. Develop Land Use Assumptions and Impact Fee CIP

- This phase develops 10-year land use projections and service unit equivalents, identifies the service areas for the Impact Fee, and selects the CIP projects that will serve projected growth over the next 10 years.

B. Impact Fee Analysis, CIAC Presentations, and Public Hearing

- This phase calculates the maximum allowable impact fee. Additionally, a public process facilitated through a Capital Improvements Advisory Committee (CIAC) will assist to guide the preparation of the land use assumptions and capital improvement plans as well as provide recommendations to the City Council on water and wastewater impact fees. A public hearing will conclude the study and the water and wastewater impact fee update for Tomball.

ARTICLE I

BASIC SERVICES: FNI shall render the following professional services in connection with the development of the Project, described as: Water and Wastewater Impact Fee Study.

PHASE A: DEVELOP LAND USE ASSUMPTIONS & IMPACT FEE CAPITAL IMPROVEMENT PLAN

A1. Project Kickoff Meeting

FNI will meet with the City of Tomball (City) staff to review scope and schedule of the project and critical project milestones. FNI will present a memorandum outlining data needed for the water and wastewater impact fee study and capital improvements plan (CIP) projects development.

A2. Data Collection

FNI will coordinate with City staff on obtaining data required for the impact fee study.

A3. Develop Impact Fee Land Use Assumptions

FNI will develop 10-year land use assumptions as required in Chapter 395 of the Texas Local Government Code. The basis of the land use projections will be the information in the City's *2017 Wastewater Master Plan* and *2018 Water Master Plan*. FNI will update these projections with more recent information from City staff.

A4. Develop Service Unit Projections

FNI will utilize the future population projections and the projected land use to calculate the 10-year growth in service units. FNI will develop equivalency factors for commercial, multi-family, and industrial connections as compared to a single-family connection.

- A5. Identify Proposed Water and Wastewater Improvements Eligible for Impact Fees**
FNI will identify which of the proposed water and wastewater CIP projects are eligible for impact fees. These are the projects that will serve the projected 10-year growth. FNI will also review recently completed water and wastewater improvements and determine which projects are eligible for future cost recovery from growth.
- A6. Progress Meeting No. 1 – Review Impact Fee Land Use, Service Units, and Capital Improvements**
FNI will meet with City staff to review the projected land use and service units, and the proposed water and wastewater system improvements identified to be included in the impact fee analysis.

PHASE B: IMPACT FEE ANALYSIS, CIAC PRESENTATION, AND PUBLIC HEARING

- B1. Conduct Water and Wastewater Impact Fee Capacity Analysis for Existing Recently Completed Capital Improvements Projects for 10-Year Projected Growth**
FNI will utilize water and wastewater models to analyze the existing recently completed projects for remaining capacity for impact fee cost recovery for 10-year projected growth
- B2. Conduct Water and Wastewater Impact Fee Capacity Analysis for New Capital Improvement Projects**
FNI will utilize water and wastewater models to analyze the identified water and wastewater CIP improvements for eligible capacity for impact fee cost recovery for 10-year projected growth and associated financing costs.
- B3. Calculate Water and Wastewater Capital Project Costs Eligible for Impact Fee Cost Recovery**
FNI will calculate the portion of the water and wastewater capital project's costs eligible for impact fee cost recovery based on the portion of the project's capacity required to serve growth in the 10-year planning period.
- B4. Calculate Maximum Allowable Impact Fees**
FNI will develop maximum allowable water and wastewater impact fees in accordance with Chapter 395 of the Texas Local Government Code using the 50% credit method based on the existing and proposed capital improvement plan costs to support 10-year growth conditions.
- B5. Conduct Survey of Benchmark Cities for Current Water and Wastewater Impact Fees**
FNI will conduct a survey of benchmarked cities and obtain their latest water and wastewater impact fees and compare with proposed Tomball Impact Fee recommendations.
- B6. Progress Meeting No. 2 – Review Impact Fee Calculations**
FNI will meet with City staff to review the water and wastewater impact fee calculations.
- B7. Develop Draft Water and Wastewater Impact Fee Report**
FNI will prepare a Draft Water and Wastewater CIP Update and Impact Fee Report showing land use assumptions, water and wastewater impact fee eligible capital improvement costs, and maximum allowable water and wastewater impact fees. An electronic PDF copy will be delivered to City staff for review. FNI will incorporate City staff comments.
- B8. Present Impact Fee Analysis Results to Capital Improvements Advisory Committee (CIAC)**
Following review by City Staff, FNI will conduct one presentation of results of the water and

wastewater impact fee analysis results and recommendations to the Capital Improvements Advisory Committee (CIAC).

B9. Public Hearing on Land Use Assumptions, CIPs and Impact Fee Calculations

FNI will assist the City in preparing the presentation material for the public hearing. FNI will attend one (1) Public Hearing on Impact Fees and be available to answer questions. Costs associated with Public Hearings Notices are not included in the FNI budget.

B10. Finalize Water and Wastewater Impact Fee Report

FNI will prepare a Final Water and Wastewater Impact Fee Study Report and deliver an electronic PDF copy and five (5) hard copies to the City

Summary of Presentations

- One (1) Presentations to the Capital Improvements Advisory Committee (CIAC)
- One (1) Public Hearing on Land Use Assumptions, CIP and Impact Fees

Summary of Deliverables

- Draft Water and Wastewater Impact Fee Study Report
- Final Water and Wastewater Impact Fee Study Report

ARTICLE II

ADDITIONAL SERVICES: Additional Services to be performed by FNI, if authorized by Owner, which are not included in the above described basic services, are described as follows:

- A. Field surveying required for the preparation of designs and drawings.
- B. GIS mapping services or assistance with these services.
- C. Making property, boundary and right-of-way surveys, preparation of easement and deed descriptions, including title search and examination of deed records.
- D. Providing services to investigate existing conditions or facilities, or to make measured drawings thereof, or to verify the accuracy of drawings or other information furnished by Owner.
- E. Making revisions to drawings, specifications or other documents when such revisions are 1) not consistent with approvals or instructions previously given by Owner or 2) due to other causes not solely within the control of FNI.
- F. Investigations involving consideration of operation, maintenance and overhead expenses, and the preparation of rate schedules, earnings and expense statements, feasibility studies, appraisals, evaluations, assessment schedules, and material audits or inventories required for certification of force account construction performed by Owner.
- G. Preparing applications and supporting documents for government grants, loans, or planning advances and providing data for detailed applications.
- H. Preparing data and reports for assistance to Owner in preparation for hearings before regulatory agencies, courts, arbitration panels or any mediator, giving testimony, personally or by

deposition, and preparations therefore before any regulatory agency, court, arbitration panel or mediator.

- I. Assisting Owner in preparing for, or appearing at litigation, mediation, arbitration, dispute review boards, or other legal and/or administrative proceedings in the defense or prosecution of claims disputes with Contractor(s).
- J. Assisting Owner in the defense or prosecution of litigation in connection with or in addition to those services contemplated by this Agreement. Such services, if any, shall be furnished by FNI on a fee basis negotiated by the respective parties outside of and in addition to this Agreement.
- K. Providing environmental support services including the design and implementation of ecological baseline studies, environmental monitoring, impact assessment and analyses, permitting assistance, and other assistance required to address environmental issues.
- L. Design, contract modifications, studies or analysis required to comply with local, State, Federal or other regulatory agencies that become effective after the date of this agreement.
- M. Visits to the site in excess of the number of trips included in Article I for periodic site visits, coordination meetings, or contract completion activities.
- N. Any services required as a result of default of the contractor(s) or the failure, for any reason, of the contractor(s) to complete the work within the contract time.
- O. Providing services made necessary because of unforeseen, concealed, or differing site conditions or due to the presence of hazardous substances in any form.
- P. Providing services to review or evaluate construction contractor(s) claim(s), provided said claims are supported by causes not within the control of FNI.
- Q. Providing value engineering studies or reviews of cost savings proposed by construction contractors after bids have been submitted.
- R. Preparing statements for invoicing or other documentation for billing other than for the standard invoice for services attached to this professional services agreement.

ARTICLE III

TIME OF COMPLETION: FNI is authorized to commence work on the Project upon execution of this Agreement and agrees to complete the services for the Water and Wastewater Impact Fee in accordance with the following schedule:

- Draft Water and Wastewater Impact Fee Report – 180 days after NTP
- Final Water and Wastewater Impact Fee Report – 15 days after receiving City comments

If FNI's services are delayed through no fault of FNI, FNI shall be entitled to adjust contract schedule consistent with the number of days of delay. These delays may include but are not limited to delays in Owner or regulatory reviews, delays on the flow of information to be provided to FNI, governmental approvals, etc. These delays may result in an adjustment to compensation as outlined on the face of this Agreement and in Attachment CO.

ARTICLE IV

RESPONSIBILITIES OF Owner: Owner shall perform the following in a timely manner so as not to delay the services of FNI:

- A. Designate in writing a person to act as Owner's representative with respect to the services to be rendered under this Agreement. Such person shall have contract authority to transmit instructions, receive information, interpret and define Owner's policies and decisions with respect to FNI's services for the Project.
- B. Provide all criteria and full information as to Owner's requirements for the Project, including design objectives and constraints, space, capacity and performance requirements, flexibility and expandability, and any budgetary limitations; and furnish copies of all design and construction standards which Owner will require to be included in the drawings and specifications.
- C. Assist FNI by placing at FNI's disposal all available information pertinent to the Project including previous reports and any other data relative to design or construction of the Project.
- D. Arrange for access to and make all provisions for FNI to enter upon public and private property as required for FNI to perform services under this Agreement.
- E. Examine all studies, reports, sketches, drawings, specifications, proposals and other documents presented by FNI, obtain advice of an attorney, insurance counselor and other consultants as Owner deems appropriate for such examination and render in writing decisions pertaining thereto within a reasonable time so as not to delay the services of FNI.
- F. Furnish approvals and permits from all governmental authorities having jurisdiction over the Project and such approvals and consents from others as may be necessary for completion of the Project.
- G. Owner shall make or arrange to have made all subsurface investigations, including but not limited to borings, test pits, soil resistivity surveys, and other subsurface explorations. Owner shall also make or arrange to have made the interpretations of data and reports resulting from such investigations. All costs associated with such investigations shall be paid by Owner.
- H. Give prompt written notice to FNI whenever Owner observes or otherwise becomes aware of any development that affects the scope or timing of FNI's services
- I. Furnish, or direct FNI to provide, Additional Services as stipulated in Attachment SC, Article II of this Agreement or other services as required.
- J. Bear all costs incident to compliance with the requirements of this Article IV.

ARTICLE V

DESIGNATED REPRESENTATIVES: FNI and Owner designate the following representatives:

Owner's Designated Representative:

David Esquivel, P.E.
Assistant City Manager
City of Tomball
501 James Street
Tomball, Texas 77375
Phone: (281) 290-1415
Fax: (281) 351-4735
desquivel@tomballtx.gov

FNI's Designated Representative:

Richard Weatherly, P.E.
11200 Broadway Street, Suite 2320
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FNI's Accounting Representative:

Jana Collier
4055 International Plaza, Suite 200
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COMPENSATION

Compensation to FNI for Basic Services described in Attachment SC shall be the lump sum of Fifty-Nine Thousand One Hundred Dollars (\$59,100.00). If FNI sees the Scope of Services changing so that Additional Services are needed, including but not limited to those services described as Additional Services in Attachment SC, FNI will notify OWNER for OWNER's approval before proceeding. Additional Services shall be computed based on the Schedule of Charges.

Schedule of Charges:

<u>Position</u>	<u>Rate</u>
Professional - 1	107
Professional - 2	130
Professional - 3	146
Professional - 4	169
Professional - 5	197
Professional - 6	225
Construction Manager - 1	85
Construction Manager - 2	111
Construction Manager - 3	131
Construction Manager - 4	164
CAD Technician/Designer - 1	91
CAD Technician/Designer - 2	117
CAD Technician/Designer - 3	145
Corporate Project Support - 1	87
Corporate Project Support - 2	105
Corporate Project Support - 3	139
Intern/ Coop	53
Senior Advisor	175

Rates for In-House Services**Technology Charge**

\$8.50 per hour

Bulk Printing and Reproduction**Travel**

Standard IRS Rates

	<u>B&W</u>	<u>Color</u>
Small Format (per copy)	\$0.10	\$0.25
Large Format (per sq. ft.)		
Bond	\$0.25	\$0.75
Glossy / Mylar	\$0.75	\$1.25
Vinyl / Adhesive	\$1.50	\$2.00
Mounting (per sq. ft.)	\$2.00	
Binding (per binding)	\$0.25	

OTHER DIRECT EXPENSES:

Other direct expenses are reimbursed at actual cost times a multiplier of 1.15. They include outside printing and reproduction expense, communication expense, travel, transportation and subsistence away from the FNI office and other miscellaneous expenses directly related to the work, including costs of laboratory analysis, test, and other work required to be done by independent persons other than staff members. For Resident Representative services performed by non-FNI employees and CAD services performed In-house by non-FNI employees where FNI provides workspace and equipment to perform such services, these services will be billed at cost times a multiplier of 2.0. This markup approximates the cost to FNI if an FNI employee was performing the same or similar services.

These rates will be adjusted annually in February. Last updated February 2018.

1022015

Regular City Council

Agenda Item

Data Sheet

Meeting Date: December 3, 2018

Topic:

Award Contract for Project No. 2018-20 – E&P Project 2018-10026, Pine Street Ground Storage Tank Rehabilitation, to NG Painting, L.P., in the Amount of \$139,000.00

Background:

The Pine Street Ground Storage Tank Rehabilitation contract will include repairs to the tank located behind the Public Works Building including replacing the access ladder, the overflow flap valve, existing sealant at the foundation and chime junction, existing liquid level indicator, maintenance to existing ventilation system and touch-up exterior coatings after needed welding repairs.

In order to obtain the most favorable pricing, sealed bids were solicited and a total of five (5) responsive bids were received, three (3) bids were excluded due to being received after the required time. After review of all bids, NG Painting, L.P. was determined to be the responsive low bidder. The Engineer's recommendation is attached and recommendation is to award the contract for completion of the ground storage tank rehabilitation to NG Painting, L.P. in the amount of \$139,000.00.

Origination:

Public Works Department

Recommendation:

Staff recommends award of the contract to NG Painting, L.P. in the amount of \$139,000.00.

Funding:

Yes

Account Number:600-613-6219

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

Meagan Mageo, Project Coordinator

ACTION TAKEN

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

Engineer's Recommendation

Bid Tabulation

November 27, 2018

Ms. Meagan Mageo
City of Tomball
Via email to: MMageo@TomballTX.gov.

Re: Recommendation of Contractor for Pine Street GST Rehabilitation
Project No. 2018-10026

The purpose of this letter is to recommend a contractor for the above referenced project. A bid tabulation from the November 27th, 2018 public bid opening is attached. This project involves the repair and repainting of a 400,000-gallon welded steel water storage tank in the city of Tomball, TX.

1. Bid Tabulation Sheet – Eight (8) contractors participated in the bidding process. However, three (3) were received after the closing time and therefore rejected as non-responsive. The five (5) bids received by the closing time were checked for mathematical errors and/or bid irregularities. The project was bid with a Base Bid, and one (1) Alternate Bid item. Copy of bid tabulation attached.
2. Qualifications and References – The lowest responsive and responsible bidder, N.G. Painting, L.P., of Kerrville, Texas provided an acceptable list of qualifications and references.

The lowest, responsive and responsible bidder, N.G. Painting, L.P. is recommended for award for a total contract price not to exceed \$139,000.00. A copy of the Bidder's Proposal is attached. Dunham Engineering has interviewed N.G. Painting's Project Manager, and reviewed submitted references for similar projects, and has found all to be satisfactory.

If you should have any questions regarding the above recommendations, please feel free to call anytime.

Sincerely,



Travis C. Tatum, P.E.

Pine Street GST Rehabilitation
City of Tomball, Texas
Bids opened November 27, 2018 at 10:30am

Contractor	Base Bid	Alternate		
NG Painting, LP	\$ 139,000	NB		
CFG Industries LLC	\$ 141,500	NB		
Cherokee Painting & Sandblasting, Inc.	\$ 176,000	NB		
Viking Painting, LLC	\$ 178,500	NB		
T&G Services	\$ 252,000	NB		
Bids Rejected - Received Late:				
Horizon Brothers Painting Corporation				
M.K. Painting, Inc				
DRM Tank, LLC				

Regular City Council

Agenda Item

Data Sheet

Meeting Date: December 3, 2018

Topic:

Approve Fixed Pricing for Natural Gas Acquisitions for the City's North Gate Natural Gas Purchases from EDF Trading, for a Fixed Price of \$4.09/MMBtu from December 2018 through November 2019

Background:

The City of Tomball owns and operates two natural gas supply receiving gates where the City's daily natural gas supplies are received, metered, odorized, and distributed to the City's residential and commercial customers via the City's natural gas distribution system. The two receiving gates are referred to as the North and South Gates.

The City's North Gate is located on the east of Ulrich Road, just north of Zion Road. This gate is served by an interstate (crosses multiple state borders) pipeline owned by Tennessee's Pipeline. The gas supplied to the City at this gate is purchased and transported to the City by EDF Trading North America (EDF). The City's South Gate is located off of Humble Road, west of SH 249. This gate is served by an intrastate (Texas only) pipeline connection owned and operated by Eagle Rock Midstream L.P. (Eagle Rock). The gas supplied to the City at this gate is purchased and transported to the City by Eagle Rock from an upstream pipeline owned by Kinder-Morgan.

Under the existing natural gas acquisition agreement with EDF, the City has had the option to lock-in a "fixed" daily price/ MMBtu or the City may purchase its daily gas supply for the North Gate at the daily "Spot Gas" pricing per MMBtu, which would be a varying purchase price per day and rates are currently increasing.

The City's "fixed" price with EDF for 2017-2018 was \$3.35 / MMBtu. For December 2018 thru November 2019, EDF is proposing a "fixed" price of \$4.09/ MMBtu, while "Spot Gas" rates are varying up to \$4.50/ MMBtu; a difference of \$0.41/MMBtu above projected Market Value.

Based on the instability of the current natural gas market for Spot Gas and the projected varying pricing received, staff recommends that the City purchase its natural gas supply for the North Gate at the proposed maximum fixed rate of \$4.09/ MMBtu for a one-year term.

Origination:

City Managers Office

Recommendation:

Staff recommends approving the negotiations of purchase of its natural gas supply for the North Gate at a proposed fixed price of \$4.09/ MMBtu, for the period beginning December 2018 and ending November 2019.

Funding:

Yes

Account Number:600-615-6129

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

Meagan Mageo, Project Coordinator

ACTION TAKEN

Approval ☐ Yes ☐ No	Readings Passed ☐ 1 st ☐ 2 nd	Other
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Regular City Council
Agenda Item
Data Sheet

Meeting Date: December 3, 2018

Topic:

Executive Session: The City Council will meet in Executive Session as Authorized by Title 5, Chapter 551, Government Code, the Texas Open Meetings Act, for the Following Purpose(s):

- Sec. 551.072 – Deliberations Regarding the Purchase, Exchange, Lease, or Value of Real Property

Background:

Origination:

City Manager

Recommendation:

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

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