

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



MONDAY, MAY 21, 2018

6:00 P.M.

Notice is hereby given of a meeting of the Tomball City Council, to be held on Monday, May 21, 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 Greg Jenkins, Tomball Assembly of God

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 Presentations:

- Proclamation – May 20-26, 2018 is **Northwest Community Health – “EMS STRONG: Stronger Together” Tomball, Texas**

- Proclamation – May 20-26, 2018 is "**National Public Works Week - Tomball, Texas**"

6.0 Reports and Announcements

- May 24, 2018 – Economic Development Overview Workshop, hosted by the Tomball Economic Development Corporation – 7:45 a.m.-12:00 p.m., Tomball Marriott Residence Inn
- May 27, 2018 – **“Oil Town USA” Jamboree** at the Depot
- Tomball City Pool – 2018 Swim Season - Jerry Matheson Park Pool will be open Memorial Weekend, May 26-28, then will reopen on June 2 and will operate with normal hours through August 19. From August 20 through September 2, the pool will be open on Saturday and Sunday only. The pool will be closed every Monday during swim season 2018, except Memorial Day (May 28), July 4th, and Labor Day (September 3). Normal pool hours are: Tuesday – Friday: 10 a.m.-6 p.m. and Saturday & Sunday: 12 p.m.-8 p.m.
- June 6, 2018 – **10th Annual Economic Outlook Luncheon** – sponsored by the Tomball Economic Development Corporation at Lone Star College-Tomball – 11:30 a.m.-1:30 p.m.
- **TOMBALL KID'S CLUB** – July 10, 12, 17, 19, 24, 26, and 31; August 2, 7, 9, 14, and 16 from 10:30 a.m.-12:30 p.m., at the **Tomball Community Center**. July 13, 20, and 27; August 3, 10, and 17 from 10:30 a.m.-12:30 p.m. at **LoneStar College-Tomball Community Library**
- **July 4, 2018 – July Fourth Celebration & Street Festival** – Business 249 at FM 2920
- July 7, 2018 – **2nd Saturday at the Depot**
- August 3, 2018 – **Tomball Night**
- Reports by City staff and members of council about items of community interest on which no action will be taken:
 - Robert Hauck – The Finance Department has received the **GFOA Distinguished Budget Award**

7.0 Approve the Minutes of the May 7, 2018 Regular Tomball City Council Meeting and the May 8, 2018 Special Tomball City Council Meeting

8.0 Old Business:

- 8.1 Adopt, on Second Reading, Ordinance No. 2018-12, an Ordinance of the City of Tomball, Texas, Extending the City Limits of Said City to Include all of the Territory within Certain Limits and Boundaries and Annexing to the City of Tomball all of the Territory within Such Limits and Boundaries; Approving a Service Plan for all of the Area within Such Limits and Boundaries; Containing Other Provisions Relating to the Subject; and Providing a Savings and Severability Clause (*374.9 Acres of Land, Located West of SH 249/Tomball Expressway, South of Humble Lake Road, North of a Private Road Forming the Northern Border of Willowcreek Ranch Equestrian Reserve and Boudreaux Estates Section One, and East of Willow Creek Ranch Subdivision, Situated in the Chauncey Goodrich Survey, Abstract Number 305, the Auguste Senechal Survey, Abstract Number 722, and the Sam Lewis Survey, Abstract Number 1704, Harris County, Texas, Being all of a Called 20.000 Acres Tract of Land Conveyed to County of Harris by Jimmy C. Shaw, Et Ux by Deed dated October 17, 2014 and Recorded in County Clerk's File 20140468595 of the Official Public Records of Real Property of Harris County, Texas, Being all of a Called 117.9465 Acres Tract of Land, Described In Six, (6), Tracts, Conveyed to*

County of Harris by Merenco Realty, Inc. by Deed Dated October 17, 2014 and Recorded in County Clerk's File 20140471160 of the Official Public Records of Real Property of Harris County, Texas, Being all of a Called 229.772 Acres Tract, Described in Thirteen, (13), Tracts, Being all of a Called 4.992 Acres Tract and Being all of a Called 2.363 Acres Tract Conveyed to County of Harris by Harris County Improvement District No. 17 by Deed dated September 11, 2017 and Recorded in County Clerk's File RP-2017-402273 of the Official Public Records of Real Property of Harris County, Texas, Save and Except that Certain Portion of Land out of a Called 3.693 Acres, a Called 2.088 Acres, a Called 3.709 Acres, and a Called 148.751 Acres Tracts that Apparently Lies within the Said Lewis Survey) (HCID #17 – Willow Creek Annexation)

- 8.2 Adopt, On Second Reading, Ordinance No. 2018-18, An Ordinance Of The City Of Tomball, Texas, Amending Chapter 50 (Zoning) Of The Tomball Code Of Ordinances By Establishing The Zoning District Of Approximately 374.9 Acres Of Land, Legally Described 374.9 Acres Of Land Situated In The Chauncey Goodrich Survey, Abstract Number 305, The Auguste Senechal Survey, Abstract Number 722, And The Sam Lewis Survey, Abstract Number 1704, Harris County, Texas, Being All Of A Called 20.000 Acres Tract Of Land Conveyed To County Of Harris By Jimmy C. Shaw, Et Ux By Deed Dated October 17, 2014 And Recorded In County Clerk's File 20140468595 Of The Official Public Records Of Real Property Of Harris County, Texas, Being All Of A Called 117.9465 Acres Tract Of Land, Described In Six (6) Tracts, Conveyed To County Of Harris By Merenco Realty, Inc. By Deed Dated October 17, 2014 And Recorded In County Clerk's File 20140471160 Of The Official Public Records Of Real Property Of Harris County, Texas, Being All Of A Called 229.772 Acres Tract, Described In Thirteen, (13), Tracts, Being All Of A Called 4.992 Acres Tract And Being All Of A Called 2.363 Acres Tract Conveyed To County Of Harris By Harris County Improvement District No. 17 By Deed Dated September 11, 2017 And Recorded In County Clerk's File Rp-2017-402273 Of The Official Public Records Of Real Property Of Harris County, Texas, Save And Except That Certain Portion Of Land Out Of A Called 3.693 Acres, A Called 2.088 Acres, A Called 3.709 Acres, And A Called 148.751 Acres Tracts That Apparently Lies Within The Said Lewis Survey, Within The City Of Tomball, Harris County, Texas, To The Commercial District; Said Property Being Generally Located On The West Side Of Sh 249 Between Willow Creek And Alice Road; Providing For The Amendment Of The Official Zoning Map Of The City; Providing For Severability; Providing For A Penalty Of An Amount Not To Exceed \$2,000 For Each Day Of Violation Of Any Provision Hereof, Making Findings Of Fact; And Providing For Other Related Matters.
- 8.3 Adopt, on Second Reading, Ordinance No. 2018-17, an Ordinance of the City Council of Tomball, Texas, Levying an Assessment against Section Three Properties within the City of Tomball Public Improvement District Number Two (Raleigh Creek Subdivision); and Making Certain Findings Related Thereto
- 9.0 New Business:
- 9.1 Approve Interlocal Agreement for the Development, Ownership and Maintenance of Gas and Water Infrastructure in Support of the Harris County Precinct Four, Willow Creek Campus, by and Between Harris County and the City of Tomball
- 9.2 Authorize the Mayor to Issue Letter to Governor Abbott requesting the State to utilize Economic Stabilization Fund, or other state funding sources to participate fully, at 100 percent, in covering local match portion for FEMA 404 Hazard Mitigation Grant Program

- 9.3 Adopt, on First Reading, Ordinance No. 2018-16, an Ordinance of the City of Tomball, Texas, Extending the City Limits of Said City to Include all of the Territory within Certain Limits and Boundaries and Annexing to the City of Tomball all of the Territory within Such Limits and Boundaries; Approving a Service Plan for all of the Area within Such Limits and Boundaries; Containing Other Provisions Relating to the Subject; and Providing a Savings and Severability Clause (*Being a 2.844-Acre Tract of Land in the Jesse Pruitt Survey, Abstract No. 629, Harris County Texas, out of and a part of that Certain 4.8914-Acre Tract of Land described in Deed recorded under Clerk's File No. 2013-0036029 of the Official Public Records of Real Property of Harris County, Texas, Located at 22828 Hufsmith-Kohrville Road*)
- 9.4 Approve Resolution No. 2018-13, a Resolution of the City Council of the City of Tomball, Texas, Supporting the 53rd Annual Tomball Holiday Parade, to be Held in Tomball on Saturday, November 17, 2018 and Approving Requested Street Closures and In-Kind Services
- 9.5 Approve Resolution No. 2018-14, a Resolution of the City Council of the City of Tomball, Texas, Supporting the 46th Annual Tomball Night and Parade, to be Held in Tomball on Friday, August 3, 2018
- 9.6 Consideration and Possible Action Regarding a Request from Russell McKee of PFG Construction, LLC to Provide City Water for Their Facilities, Located Outside the City of Tomball, Without Requiring Annexation
- 9.7 Consideration to Approve **Zoning Case P18-055**: Request By Dorothy And Thomas Wanko To Amend Chapter 50 (Zoning) Of The Tomball Code Of Ordinances By Rezoning Approximately 0.0803 Acres Of Land Legally Described As Lot 18 Block 70 Tomball, Harris County, Texas, Generally Located On The West Side Of Chestnut Street And The North Side Of Mechanic Street, From The Single-Family 6 District To The Old Town & Mixed Use District.
- Conduct Public Hearing On **Zoning Case P18-055**
 - Adopt On First Reading, Ordinance No. 2018-19, 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 0.0803 Acres of Land, Legally Described Lot 18 Block 70 Tomball, within the City of Tomball, Harris County, Texas, from the Single-Family 6 District to the Old Town and Mixed Use District; Said Property being generally located on the West Side of Chestnut Street and the North Side of Mechanic 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
- 9.8 Approve an Amended Development Agreement with LS Development, LLC (Developer of Raleigh Creek Subdivision) for Public Improvement District No. 2 (Raleigh Creek), Containing the Same Terms Provided in Development Agreements for PID 3 and Subsequent City of Tomball PIDs
- 9.9 Approve Change Order No. 1 for City of Tomball Broussard Community Park Improvements, E&P Project No. 2017-10031, to Diffco, LLC, in the Amount of \$91,138.58

10.0 Adjournment

CERTIFICATION

I hereby certify that the above notice of meeting was posted on the bulletin board of City Hall, City of Tomball, Texas, a place readily accessible to the general public at all times, on the 17th day of May 2018 by 5:00 p.m., and remained posted for at least 72 continuous hours preceding the scheduled time of said meeting.

Doris Speer

Doris Speer
City Secretary, TRMC

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

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

Regular City Council
Agenda Item
Data Sheet

Meeting Date: May 21, 2018

Topic:

- Led by Pastor Greg Jenkins, Tomball Assembly of God

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: May 21, 2018

Topic:

- Proclamation – May 20-26, 2018 is **Northwest Community Health – “EMS STRONG: Stronger Together” Tomball, Texas**
- Proclamation – May 20-26, 2018 is "**National Public Works Week - Tomball, Texas**"

Background:

Origination:

City Secretary

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:

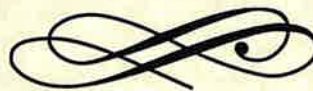
Proclamation – May 20-26, 2018 is Northwest Community Health and National Public Works Week – “EMS STRONG: Stronger Together” Tomball, Texas

Proclamation - May 20-26, 2018 is "National Public Works Week - Tomball, Texas"

Office of the Mayor
Tomball, Texas



Proclamation



- WHEREAS,** emergency medical services is a vital public service that the members of **Northwest Community Health (NCH)**, formerly Northwest Rural Emergency Medical Service, are ready to provide lifesaving care to those in need 24 hours a day, seven days a week; and
- WHEREAS,** access to quality emergency care dramatically improves the survival and recovery rate of those experiencing sudden illness or injury and **Northwest Community Health** plays a critical role in public outreach and injury prevention, and is evolving in its role as an important member of the healthcare community; and
- WHEREAS,** emergency medical responders are supported by emergency medical dispatchers, firefighters, law enforcement officers, educators, administrators, researchers, emergency nurses, emergency physicians and others; and
- WHEREAS,** **Northwest Community Health** responders will be the first to respond to terrorist or natural events and are constantly training to respond to any possible occurrence, benefitting the citizens of Tomball daily through the knowledge and skills of these highly-trained individuals, who, whether career or volunteer, engage in thousands of hours of specialized training and continuing education to enhance their life-saving skills, and the availability of the Texas trauma system; and
- WHEREAS,** it is appropriate for the City of Tomball to recognize the value and the accomplishments of emergency medical services providers, especially **Northwest Community Health**, by designating the **44th Annual Emergency Medical Services Week**;

NOW, THEREFORE, I, GRETCHEN FAGAN, Mayor, on behalf of the City Council of the City of Tomball, Texas, do hereby proclaim the week of May 20-26, 2018 as:

***NORTHWEST COMMUNITY HEALTH, and
NATIONAL EMERGENCY MEDICAL SERVICES
WEEK – “EMS STRONG: Stronger Together” – TOMBALL, TEXAS***



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

[Signature]

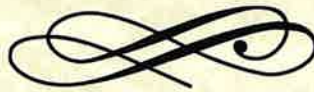
Attest: *[Signature]*

Date: *May 21, 2018*

Office of the Mayor
Tomball, Texas



Proclamation



- WHEREAS,** the support of an understanding and informed citizenry is vital to the efficient operation of public works systems and programs for the health, safety and comfort of this community, such as water, sewer, gas, streets and highways, public buildings, parks, and solid waste collection; and
- WHEREAS,** the health, safety and comfort of Tomball greatly depends on these facilities and services and the quality and effectiveness of Tomball's facilities, as well as their planning, design and construction, is vitally dependent upon the efforts and skill of Public Works officials; and
- WHEREAS,** the public works services provided in Tomball are an integral part of our citizens' everyday lives and the efficiency of the qualified and dedicated personnel who staff Tomball's Public Works Department is materially influenced by people's attitude and understanding of the importance of the work they perform; and
- WHEREAS,** there would be no community without the quality of life Public Works provides, no community to police and protect, no public to lead or represent—this year's theme *"The Power of Public Works"* speaks to the impact the many facets of public works have on modern civilization and society's quality of life, from providing clean water to disposing of solid waste, to building roads and bridges or planning for and implementing mass transit, to removing snow on roadways or devising emergency management strategies to meet natural or manmade disasters; and
- WHEREAS,** 2018 marks the 58th annual National Public Works Week, sponsored by the American Public Works Association and the Tomball City Council wishes to recognize the dedication, talents and contributions made by Tomball Public Works employees;

NOW THEREFORE, I, Gretchen Fagan, Mayor of the City of Tomball, Texas on behalf of the Tomball City Council, do hereby proclaim May 20 through May 26, 2018 as:

"NATIONAL PUBLIC WORKS WEEK – TOMBALL, TEXAS"

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



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

Gretchen Fagan

Attest: *Rain Spur*

Date: *May 21, 2018*

Regular City Council
Agenda Item
Data Sheet

Meeting Date: May 21, 2018

Topic:

- May 24, 2018 – Economic Development Overview Workshop, hosted by the Tomball Economic Development Corporation – 7:45 a.m.-12:00 p.m., Tomball Marriott Residence Inn
- May 27, 2018 – **“Oil Town USA” Jamboree** at the Depot
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- **TOMBALL KID'S CLUB** – July 10, 12, 17, 19, 24, 26, and 31; August 2, 7, 9, 14, and 16 from 10:30 a.m.-12:30 p.m., at the **Tomball Community Center**. July 13, 20, and 27; August 3, 10, and 17 from 10:30 a.m.-12:30 p.m. at **LoneStar College-Tomball Community Library**
- **July 4, 2018 – July Fourth Celebration & Street Festival** – Business 249 at FM 2920
- July 7, 2018 – **2nd Saturday at the Depot**
- August 3, 2018 – **Tomball Night**
- Reports by City staff and members of council about items of community interest on which no action will be taken:
 - Robert Hauck – The Finance Department has received the **GFOA Distinguished Budget Award**

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
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ATTACHMENTS:



Government Finance Officers Association

203 North LaSalle Street, Suite 2700

Chicago, Illinois 60601-1210

312.977.9700 fax: 312.977.4806

April 3, 2018

George Shackelford
City Manager
City of Tomball
401 Market Street
Tomball, TX 77375

Dear Mr. Shackelford:

We are pleased to notify you that City of Tomball, Texas, has received the Distinguished Budget Presentation Award for the current budget from Government Finance Officers Association (GFOA). This award is the highest form of recognition in governmental budgeting and represents a significant achievement by your organization.

When a Distinguished Budget Presentation Award is granted to an entity, a Certificate of Recognition for Budget Presentation is also presented to the individual(s) or department designated as being primarily responsible for its having achieved the award. This has been presented to:

Finance Department

We hope you will arrange for a formal public presentation of the award, and that appropriate publicity will be given to this notable achievement. A press release is enclosed for your use.

We appreciate your participation in GFOA's Budget Awards Program, and we sincerely hope that your example will encourage others to achieve and maintain excellence in governmental budgeting.

Sincerely,

Michele Mark Levine
Director, Technical Services Center

Enclosure

Washington, DC Office

Federal Liaison Center, 660 North Capitol Street, NW, Suite 410 • Washington, DC 20001 • 202.393.8020 fax: 202.393.0780

www.gfoa.org
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Government Finance Officers Association
203 North LaSalle Street, Suite 2700
Chicago, Illinois 60601-1210
312.977.9700 fax: 312.977.4806

FOR IMMEDIATE RELEASE

April 3, 2018

For more information, contact:

Technical Services Center

Phone: (312) 977-9700

Fax: (312) 977-4806

E-mail: budgetawards@gfoa.org

(Chicago, Illinois)--Government Finance Officers Association is pleased to announce that **City of Tomball, Texas**, has received GFOA's Distinguished Budget Presentation Award for its budget.

The award represents a significant achievement by the entity. It reflects the commitment of the governing body and staff to meeting the highest principles of governmental budgeting. In order to receive the budget award, the entity had to satisfy nationally recognized guidelines for effective budget presentation. These guidelines are designed to assess how well an entity's budget serves as:

- a policy document
- a financial plan
- an operations guide
- a communications device

Budget documents must be rated "proficient" in all four categories, and in the fourteen mandatory criteria within those categories, to receive the award.

When a Distinguished Budget Presentation Award is granted to an entity, a Certificate of Recognition for Budget Presentation is also presented to the individual(s) or department designated as being primarily responsible for having achieved the award. This has been presented to **Finance Department**.

There are over 1,600 participants in the Budget Awards Program. The most recent Budget Award recipients, along with their corresponding budget documents, are posted quarterly on GFOA's website. Award recipients have pioneered efforts to improve the quality of budgeting and provide an excellent example for other governments throughout North America.

Government Finance Officers Association is a major professional association servicing the needs of more than 19,000 appointed and elected local, state, and provincial-level government officials and other finance practitioners. It provides top quality publications, training programs, services, and products designed to enhance the skills and performance of those responsible for government finance policy and management. The association is headquartered in Chicago, Illinois, with offices in Washington D.C.

Washington, DC Office

Federal Liaison Center, 660 North Capitol Street, NW, Suite 410 • Washington, DC 20001 • 202.393.8020 fax: 202.393.0780

www.gfoa.org
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Regular City Council
Agenda Item
Data Sheet

Meeting Date: May 21, 2018

Topic:
Approve the Minutes of the May 7, 2018 Regular Tomball City Council Meeting and the May 8, 2018 Special Tomball City Council Meeting

Background:

Origination:
City Secretary

Recommendation:
N/A

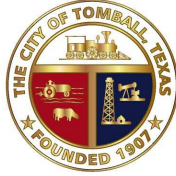
Party(ies) responsible for placing this item on agenda:
City Secretary

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

ATTACHMENTS:

Draft Minutes of the May 7, 2018 Regular Tomball City Council Meeting
Draft Minutes of the May 8, 2018 Special Tomball City Council Meeting

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



**MONDAY, MAY 7, 2018
6:00 P.M.**

1.0 Meeting was called to order by Mayor Fagan at 6:00 p.m. Other members present:

Councilman Ford
Councilman Stoll
Councilman Townsend
Councilman Klein Quinn

Members absent:

Councilman Degges – Excused

Others present:

City Manager – Robert Hauck
Assistant City Manager – David Esquivel
City Secretary – Doris Speer
City Attorney – Loren B. Smith
Chief of Police – Billy Tidwell
Fire Chief – Randy Parr
Marketing Director – Mike Baxter
Finance Director – Glenn Windsor
Director of Community Development – Craig Meyers
Assistant City Planner – Amanda Lindley
Community Center Manager – Rosalie Dillon
Assistant Fire Chief – Jonathon Fontenot
Fire Marshal – Joe Sykora
Assistant City Secretary – Tracy Garcia
Police Captain – Ricky Doerre

2.0 The invocation was led by Pastor Courtney White, Troy Street Church of God in Christ

3.0 Pledges to U. S. and Texas Flags were led by Dylan Morgan, President, Tomball High School Student Council.

4.0 No public comments were received.

5.0 Mayor Fagan made the following presentations:

- Proclamation – May 7, 2018 is ***“Billie Ann Dio, 2018 Mayor’s Citizen of the Year” Day***
- Eagle Scout Letter – **Samuel Matthew Lopez, Troop 471**
- Proclamation – May 6-12, 2018 is **“National Hurricane Preparedness Week – Tomball, Texas”**
- Proclamation – May 6-12, 2018 is the ***“49th Annual Municipal Clerks Week”***
- Proclamation – May 13-19, 2018 is **“Tomball Firefighter Appreciation Week”**
- Proclamation – May 15, 2018 is **“Peace Officers Memorial Day”**
- Proclamation – May 13-19, 2018 is **“Tomball Police Week”**.

6.0 Reports and Announcements:

- May 8, 2018 – Special City Council meeting to Canvass the May 5, 2018 Election - 5:30 p.m.
- May 19, 2018 – ***“Honky Tonk Chili Challenge”*** at the Depot
- **May 27, 2018 – “Oil Town USA” Jamboree** at the Depot
- 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 March 31, 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 March 31, 2018, the City had total cash and cash equivalents in the amount of \$70,534,238.

7.0 Motion was made by Councilman Stoll, second by Councilman Ford, to approve the Minutes of the April 16, 2018 Regular Tomball City Council Meeting and the April 30, 2018 Special Tomball City Council Meeting.

Motion carried unanimously.

8.0 New Business:

8.1 Motion was made by Councilman Townsend, second by Councilman Klein Quinn, to approve Resolution No. 2018-12, a Resolution of the City Council of the City of Tomball, Texas, Supporting the Tenth Annual Homecoming Parade and Pep Rally, to be held at the Tomball Depot, Sponsored by the Tomball Independent School District and the Tomball High School Student Council, on

Wednesday, September 12, 2018.

Motion carried unanimously.

- 8.2 Mayor Fagan called the Public Hearing of the City Council of the City of Tomball to Consider Proposed Assessments against Section Three Properties in the City of Tomball Public Improvement District Number Two (Raleigh Creek Subdivision) Established by City Council Resolution No. 2007-22 to order at 6:31 p.m.

Receiving no public comments, Mayor Fagan closed the Public Hearing at 6:31 p.m.

- 8.3 Motion was made by Councilman Townsend, second by Councilman Stoll, to read Ordinance No. 2018-17 by caption only on First Reading.

Motion carried unanimously.

Motion was made by Councilman Townsend, second by Councilman Klein Quinn, to adopt, on First Reading, Ordinance No. 2018-17, an Ordinance of the City Council of Tomball, Texas, Levying an Assessment against Section Three Properties within the City of Tomball Public Improvement District Number Two (Raleigh Creek Subdivision); and Making Certain Findings Related Thereto. Vote was as follows:

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

Motion carried unanimously.

- 8.4 Motion was made by Councilman Stoll, second by Councilman Ford, to approve Amendment No. 1 to Consultant Services Agreement with MuniServices, LLC to Perform Audit and Administration Services to Assist the City of Tomball with the Collection and Administration of the City of Tomball's Local Hotel Occupancy Tax, and Authorize the City Manager to Execute the Amendment Agreement.

Motion carried unanimously.

- 8.5 Motion was made by Councilman Townsend, second by Councilman Stoll, to read Ordinance No. 2018-12 by caption only on First Reading.

Motion carried unanimously.

Motion was made by Councilman Townsend, second by Councilman Stoll, to adopt, on First Reading, Ordinance No. 2018-12, an Ordinance of the City of Tomball, Texas, Extending the City Limits of Said City to Include all of the Territory within Certain Limits and Boundaries and Annexing to the City of Tomball all of the Territory within Such Limits and Boundaries; Approving a Service Plan for all of the Area within Such Limits and Boundaries; Containing Other Provisions Relating to the Subject; and Providing a Savings and Severability Clause *(374.9 Acres of Land, Located West of SH 249/Tomball Expressway, South of Humble Lake Road, North of a Private Road Forming the Northern Border of Willowcreek Ranch Equestrian Reserve and Boudreaux Estates Section One, and East of Willow Creek Ranch Subdivision, Situated in the Chauncey Goodrich Survey, Abstract Number 305, the Auguste Senechal Survey, Abstract Number 722, and the Sam Lewis Survey, Abstract Number 1704, Harris County, Texas, Being all of a Called 20.000 Acres Tract of Land Conveyed to County of Harris by Jimmy C. Shaw, Et Ux by Deed dated October 17, 2014 and Recorded in County Clerk's File 20140468595 of the Official Public Records of Real Property of Harris County, Texas, Being all of a Called 117.9465 Acres Tract of Land, Described In Six, (6), Tracts, Conveyed to County of Harris by Merenco Realty, Inc. by Deed Dated October 17, 2014 and Recorded in County Clerk's File 20140471160 of the Official Public Records of Real Property of Harris County, Texas, Being all of a Called 229.772 Acres Tract, Described in Thirteen, (13), Tracts, Being all of a Called 4.992 Acres Tract and Being all of a Called 2.363 Acres Tract Conveyed to County of Harris by Harris County Improvement District No. 17 by Deed dated September 11, 2017 and Recorded in County Clerk's File RP-2017-402273 of the Official Public Records of Real Property of Harris County, Texas, Save and Except that Certain Portion of Land out of a Called 3.693 Acres, a Called 2.088 Acres, a Called 3.709 Acres, and a Called 148.751 Acres Tracts that Apparently Lies within the Said Lewis Survey [HCID #17 – Willow Creek Annexation])*. Vote was as follows:

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

Motion carried unanimously.

- 8.6 Consideration to Approve **Zoning Case P18-035**: Request By John Blount, County Engineer, On Behalf Of Harris County, To Amend Chapter 50 (Zoning) Of The Tomball Code Of Ordinances By Zoning Approximately 374.9 Acres Of Land Generally Located On The West Side Of SH 249 Between Willow Creek And Alice Road, As Commercial. The Property Is Legally Described As 374.9

Acres Of Land Situated In The Chauncey Goodrich Survey, Abstract Number 305, The Auguste Senechal Survey, Abstract Number 722, And The Sam Lewis Survey, Abstract Number 1704, Harris County, Texas, Being All Of A Called 20.000 Acres Tract Of Land Conveyed To County Of Harris By Jimmy C. Shaw, Et Ux By Deed Dated October 17, 2014 And Recorded In County Clerk's File 20140468595 Of The Official Public Records Of Real Property Of Harris County, Texas, Being All Of A Called 117.9465 Acres Tract Of Land, Described In Six (6) Tracts, Conveyed To County Of Harris By Merenco Realty, Inc. By Deed Dated October 17, 2014 And Recorded In County Clerk's File 20140471160 Of The Official Public Records Of Real Property Of Harris County, Texas, Being All Of A Called 229.772 Acres Tract, Described In Thirteen, (13), Tracts, Being All Of A Called 4.992 Acres Tract And Being All Of A Called 2.363 Acres Tract Conveyed To County Of Harris By Harris County Improvement District No. 17 By Deed Dated September 11, 2017 And Recorded In County Clerk's File Rp-2017-402273 Of The Official Public Records Of Real Property Of Harris County, Texas, Save And Except That Certain Portion Of Land Out Of A Called 3.693 Acres, A Called 2.088 Acres, A Called 3.709 Acres, And A Called 148.751 Acres Tracts That Apparently Lies Within The Said Lewis Survey.

- Mayor Fagan opened the Public Hearing on **Zoning Case P18-035** at 6:42 p.m.

Receiving no public comments, Mayor Fagan closed the Public Hearing at 6:42 p.m.

- Motion was made by Councilman Klein Quinn, second by Councilman Stoll, to read Ordinance No. 2018-18 by caption only, on First Reading.

Motion carried unanimously.

Motion was made by Councilman Klein Quinn, second by Councilman Townsend, to adopt, on First Reading, Ordinance No. 2018-18, an Ordinance of the City of Tomball, Texas, Amending Chapter 50 (Zoning) of the Tomball Code of Ordinances by Establishing the Zoning District of Approximately 374.9 Acres of Land, Legally Described 374.9 Acres of Land Situated in the Chauncey Goodrich Survey, Abstract Number 305, the Auguste Senechal Survey, Abstract Number 722, and the Sam Lewis Survey, Abstract Number 1704, Harris County, Texas, Being All of a Called 20.000 Acres Tract of Land Conveyed to County of Harris by Jimmy C. Shaw, Et Ux by Deed Dated October 17, 2014 and Recorded in County Clerk's File 20140468595 of the Official Public Records of Real Property of Harris County, Texas, Being All of a Called 117.9465 Acres Tract of Land, Described in Six (6) Tracts, Conveyed to County of Harris by Merenco Realty, Inc. by Deed dated October 17, 2014 and Recorded in County Clerk's File

20140471160 of the Official Public Records of Real Property of Harris County, Texas, Being All of a Called 229.772 Acres Tract, Described in Thirteen, (13), Tracts, Being All of a Called 4.992 Acres Tract and Being All of a Called 2.363 Acres Tract Conveyed to County of Harris by Harris County Improvement District No. 17 by Deed dated September 11, 2017 and Recorded in County Clerk's File RP-2017-402273 of the Official Public Records of Real Property of Harris County, Texas, Save and Except That Certain Portion of Land Out of a Called 3.693 Acres, a Called 2.088 Acres, a Called 3.709 Acres, and a Called 148.751 Acres Tracts that Apparently Lies Within the Said Lewis Survey, Within the City of Tomball, Harris County, Texas, to the Commercial District; Said Property Being Generally Located on the West Side of SH 249 between Willow Creek and Alice Road; Providing for the Amendment of the Official Zoning Map of the City; Providing for Severability; Providing for a Penalty of an Amount Not to Exceed \$2,000 for Each Day of Violation of Any Provision Hereof, Making Findings of Fact; and Providing for Other Related Matters. Vote was as follows:

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

Motion carried unanimously.

- 8.7 Motion was made by Councilman Townsend, second by Councilman Stoll, to approve the request to extend reconsideration of Tabled Item for The Reserve at Spring Lakes Section 2 Rezoning Request from the June 4, 2018 Council Meeting to the July 16, 2018 Council Meeting – Ordinance No. 2017-36. Vote was as follows:

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

Motion carried, 3 votes Aye, 1 vote Nay.

- 8.8 Executive Session: The City Council recessed at 7:22 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. 551.072 – Deliberations Regarding the Purchase, Exchange, Lease, or Value of Real Property

Upon reconvening into regular session, no action was taken.

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

Motion carried unanimously.

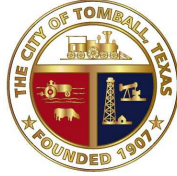
Meeting adjourned.

PASSED AND APPROVED this the 21st day of May 2018.

Doris Speer, TRMC, MMC
City Secretary

Gretchen Fagan
Mayor

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



**TUESDAY, MAY 8, 2018
5:30 P.M.**

1.0 Meeting was called to order by Mayor Fagan at 5:30 p.m. Other members present:

Councilman Ford
Councilman Stoll
Councilman Townsend
Councilman Klein Quinn

Members absent:

Councilman Degges – Excused

Others present:

Assistant City Manager – David Esquivel
City Secretary – Doris Speer

2.0 Canvass of Election

2.1 Canvass of Election
Escrutinio de la Elección
Kiểm Phiếu của Cuộc Bầu Cử
拉票選舉

Resolution No. 2018-06, Canceling the Regular City Officer's Election Scheduled to be held on the 5th Day of May, 2018, in Accordance with Section 2.053(a) of the Texas Election Code; Directing the Giving of Notice of Such Cancellation of Election; and Providing Details Relating to the Cancellation of Such Election as approved by City Council on March 5, 2018, at the Regular Council Meeting. The following actions complete the canvass of the May 5, 2018 Election.

Resolución Nro. 2018-06, cancelando la Elección Regular de Funcionarios de la Ciudad programada para el 5 de mayo de 2018, de acuerdo con la Sección 2.053(a) del Código Electoral de Texas; instruyendo que se de aviso de tal cancelación de elección; y disponiendo los detalles relativos a la cancelación de tal elección como fue aprobada por el Consejo Municipal el 5 de marzo de 2018 en la asamblea ordinaria del Consejo. Las

medidas indicadas a continuación completan el escrutinio de la Elección del 5 de mayo de 2018.

Nghị quyết số 2018-06, Hủy Bỏ Cuộc Bầu Cử Viên Chức Thành Phố Thường Lệ Dự Kiến sẽ được tổ chức vào ngày 5 tháng Năm, 2018 chiếu theo Mục 2.053(a) của Bộ Luật Tuyển Cử Tiểu Bang Texas; Chỉ thị việc Ban Hành Thông Báo Hủy Bỏ Cuộc Bầu Cử; và Cung Cấp Thông Tin Chi Tiết liên quan đến Hủy Bỏ Cuộc Bầu Cử theo phê chuẩn của Hội Đồng Thành Phố vào ngày 5 tháng Ba, 2018 tại Cuộc Họp Hội Đồng Thường Lệ. Các hành động sau đây hoàn tất việc kiểm phiếu ngày 5 tháng Năm, 2018.

第2018-06號決議，根據德克薩斯州選舉法第2.053（a）節取消定於2018年5月5日舉行的正常城市官員選舉；指示給予此類取消選舉通知；並於2018年3月5日在常務委員會會議上提供市議會通過的關於取消此類選舉的細節。以下行為完成了2018年5月5日選舉的畫面。

No action necessary; Resolution No. 2018-06 was adopted on March 5, 2018.

Ninguna acción necesaria; la Resolución el No 2018-06 fue adoptada el 5 de marzo de 2018

Không có hành động cần thiết; Nghị quyết số 2018-06 đã được thông qua ngày 5 tháng 3 năm 2018.

不採取行動的必要；2018年3月5日通過了2018年-06號決議。

- 2.2 The Oath of Office was administered by Mayor Fagan to Mark Stoll as the newly elected Councilman, Position 2 and to Derek Townsend, Sr. as the newly elected Councilman, Position 4.

El Juramento al Cargo fue administrado por la Alcaldesa Fagan a Mark Stoll como nuevo Concejal, Posición 2 y a Derek Townsend, Sr. como nuevo Concejal, Posición 4.

Tuyên Thệ Nhậm Chức đã được tiến hành bởi Thị Trưởng Fagan cho Mark Stoll là Nghị Viên mới được bầu chọn, Vị Trí 2 và cho Derek Townsend, Sr. Nghị Viên mới được bầu chọn, Vị Trí 4.

官員宣誓已由Mayor Fagan支配 Mark Stoll 視為新當選的委員，席位2及 Derek Townsend, Sr. 視為新當選的委員，席位4。

- 2.3 Motion was made by Councilman Klein Quinn, second by Councilman Stoll, to Elect Councilman Ford as Mayor Pro-Tem, in Accordance with Section 6.08 of the City of Tomball Home Rule Charter.

El Concejal Klein Quinn hizo la moción, secundada por el Concejal Stoll, a elegir el Concejal Ford como Alcalde Pro-Tem, de conformidad con la sección 6.08 de la ciudad de Tomball Carta autonómica.

Chuyển động đã được thực hiện bởi Ủy viên Hội đồng Klein Quinn, thứ hai bởi Nghị Stoll, đề cử Ủy viên Hội đồng Ford như Thị trưởng Pro-Tem, phù hợp với mục 6.08 của thành phố Tomball Trang chủ Quy tắc Điều lệ.

動作是由 Klein Quinn Councilman , 第二個依 Councilman Stoll , 以選出 Councilman

Ford 昆因為王 Pro-Tem 符合節 6.08 的城市 Tomball 家庭規則章程

Motion carried unanimously.

Moción aceptada por unanimidad.

Kiến nghị được nhất trí thông qua.

動議無異議地通過。

Councilman Ford was elected Mayor Pro-Tem.

El Concejal Ford fue elegido Alcalde interino.

Nghị Viên Ford được chọn làm Thị Trưởng Tạm Thời.

委員 Ford 已當選為暫時市長。

- 3.0 Motion was made by Councilman Klein Quinn, second by Councilman Stoll, to adjourn.
Motion carried unanimously.
Meeting adjourned.

La moción fue hecha por el Concejal Klein Quinn, segundo por el concejal de Stoll, levantar.

Moción aceptada por unanimidad.

Sesión clausurada.

Chuyển động, được tạo ra bởi ông hội đồng Klein Quinn, bởi ông hội đồng Stoll thứ hai, để adjourn.

Kiến nghị được nhất trí thông qua.

Cuộc họp tòa kết thúc tại đây

運動是由第二屆的委員，委員克萊 Quinn 斯托爾公司休會。

動議無異議地通過。

會議休會

PASSED AND APPROVED this the 21st day of May 2018.

Doris Speer, TRMC, MMC
City Secretary

Gretchen Fagan
Mayor

Regular City Council

Agenda Item

Data Sheet

Meeting Date: May 21, 2018

Topic:

Adopt, on Second Reading, Ordinance No. 2018-12, an Ordinance of the City of Tomball, Texas, Extending the City Limits of Said City to Include all of the Territory within Certain Limits and Boundaries and Annexing to the City of Tomball all of the Territory within Such Limits and Boundaries; Approving a Service Plan for all of the Area within Such Limits and Boundaries; Containing Other Provisions Relating to the Subject; and Providing a Savings and Severability Clause (374.9 Acres of Land, Located West of SH 249/Tomball Expressway, South of Humble Lake Road, North of a Private Road Forming the Northern Border of Willowcreek Ranch Equestrian Reserve and Boudreaux Estates Section One, and East of Willow Creek Ranch Subdivision, Situated in the Chauncey Goodrich Survey, Abstract Number 305, the Auguste Senechal Survey, Abstract Number 722, and the Sam Lewis Survey, Abstract Number 1704, Harris County, Texas, Being all of a Called 20.000 Acres Tract of Land Conveyed to County of Harris by Jimmy C. Shaw, Et Ux by Deed dated October 17, 2014 and Recorded in County Clerk's File 20140468595 of the Official Public Records of Real Property of Harris County, Texas, Being all of a Called 117.9465 Acres Tract of Land, Described In Six, (6), Tracts, Conveyed to County of Harris by Merenco Realty, Inc. by Deed Dated October 17, 2014 and Recorded in County Clerk's File 20140471160 of the Official Public Records of Real Property of Harris County, Texas, Being all of a Called 229.772 Acres Tract, Described in Thirteen, (13), Tracts, Being all of a Called 4.992 Acres Tract and Being all of a Called 2.363 Acres Tract Conveyed to County of Harris by Harris County Improvement District No. 17 by Deed dated September 11, 2017 and Recorded in County Clerk's File RP-2017-402273 of the Official Public Records of Real Property of Harris County, Texas, Save and Except that Certain Portion of Land out of a Called 3.693 Acres, a Called 2.088 Acres, a Called 3.709 Acres, and a Called 148.751 Acres Tracts that Apparently Lies within the Said Lewis Survey) (HCID #17 – Willow Creek Annexation)

Background:

The public hearings, required under Section 43.063 of the Local Government Code, were held on April 2, 2018 and April 16, 2018.

Ordinance No. 2018-12 was adopted on first reading of the ordinance at the regular Council meeting on May 7, 2018.

Origination:

Request by Harris County

Recommendation:

Adopt Ordinance No. 2018-12 on Second Reading.

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

City Secretary

ACTION TAKEN

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

Ordinance No. 2018-12

Map 2 - HCID 17

Map - HCID 17

HCID 17 - Map

HCID 17 - ETJ Map

ORDINANCE NO. 2018-12

AN ORDINANCE OF THE CITY OF TOMBALL, TEXAS, EXTENDING THE CITY LIMITS OF SAID CITY TO INCLUDE ALL OF THE TERRITORY WITHIN CERTAIN LIMITS AND BOUNDARIES AND ANNEXING TO THE CITY OF TOMBALL ALL OF THE TERRITORY WITHIN SUCH LIMITS AND BOUNDARIES; APPROVING A SERVICE PLAN FOR ALL OF THE AREA WITHIN SUCH LIMITS AND BOUNDARIES; CONTAINING OTHER PROVISIONS RELATING TO THE SUBJECT; AND PROVIDING A SAVINGS AND SEVERABILITY CLAUSE (374.9 ACRES OF LAND SITUATED IN THE CHAUNCEY GOODRICH SURVEY, ABSTRACT NUMBER 305, THE AUGUSTE SENECHAL SURVEY, ABSTRACT NUMBER 722, AND THE SAM LEWIS SURVEY, ABSTRACT NUMBER 1704, HARRIS COUNTY, TEXAS, BEING ALL OF A CALLED 20.000 ACRES TRACT OF LAND CONVEYED TO COUNTY OF HARRIS BY JIMMY C. SHAW, ET UX BY DEED DATED OCTOBER 17, 2014 AND RECORDED IN COUNTY CLERK'S FILE 20140468595 OF THE OFFICIAL PUBLIC RECORDS OF REAL PROPERTY OF HARRIS COUNTY, TEXAS, BEING ALL OF A CALLED 117.9465 ACRES TRACT OF LAND, DESCRIBED IN SIX (6) TRACTS, CONVEYED TO COUNTY OF HARRIS BY MERENCO REALTY, INC. BY DEED DATED OCTOBER 17, 2014 AND RECORDED IN COUNTY CLERK'S FILE 20140471160 OF THE OFFICIAL PUBLIC RECORDS OF REAL PROPERTY OF HARRIS COUNTY, TEXAS, BEING ALL OF A CALLED 229.772 ACRES TRACT, DESCRIBED IN THIRTEEN, (13), TRACTS, BEING ALL OF A CALLED 4.992 ACRES TRACT AND BEING ALL OF A CALLED 2.363 ACRES TRACT CONVEYED TO COUNTY OF HARRIS BY HARRIS COUNTY IMPROVEMENT DISTRICT NO. 17 BY DEED DATED SEPTEMBER 11, 2017 AND RECORDED IN COUNTY CLERK'S FILE RP-2017-402273 OF THE OFFICIAL PUBLIC RECORDS OF REAL PROPERTY OF HARRIS COUNTY, TEXAS, SAVE AND EXCEPT THAT CERTAIN PORTION OF LAND OUT OF A CALLED 3.693 ACRES, A CALLED 2.088 ACRES, A CALLED 3.709 ACRES, AND A CALLED 148.751 ACRES TRACTS THAT APPARENTLY LIES WITHIN THE SAID LEWIS SURVEY)

* * * * *

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

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

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

Section 3. If any section or part of this Ordinance be held unconstitutional, illegal, or invalid, or the application thereof ineffective or inapplicable as to any territory, such unconstitutionality, illegality, invalidity, or ineffectiveness of such section or part shall in no wise affect, impair, or invalidate the remaining portion or portions thereof, but as to such remaining portion or portions, the same shall be and remain in full force and effect; and should this Ordinance for any reason be ineffective as to any part of the territory hereby annexed to the City of Tomball, such ineffectiveness of this Ordinance as to any such part or parts of any such territory shall not affect the effectiveness of this ordinance as to all of the remainder of such territory or area, and the City Council hereby declares it to be its purpose to annex to the City of Tomball every part of the territory described in Section 1 of this ordinance, regardless of whether any other part of such described territory is hereby effectively annexed to the City. Provided, further, that if there is included in the general description of territory set out in Section 1 of this Ordinance to be hereby annexed to the City of Tomball any territory which is already a part of and included within the general limits of the City of Tomball, or which is presently part of and included in the limits or extraterritorial jurisdiction of any other city, town, or village, or which is not within the City of Tomball's jurisdiction to annex, the same is hereby excluded and excepted from the territory to be annexed hereby as fully as if such excluded and excepted territory were especially and specifically described herein.

Section 4. Severability. In the event any section, paragraph, subdivision, clause, phrase, provision, sentence, or part of this Ordinance or the application of the same to any person or circumstance shall for any reason be adjudged invalid or held unconstitutional by a court of competent jurisdiction, it shall not affect, impair, or invalidate this Ordinance as a whole or any

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

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 7TH DAY OF MAY 2018.

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

SECOND READING:

READ, PASSED AND APPROVED AS SET OUT BELOW AT THE MEETING OF THE CITY COUNCIL OF THE CITY OF TOMBALL HELD ON THE 21ST DAY OF MAY 2018.

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

GRETCHEN FAGAN, Mayor

ATTEST:

DORIS SPEER, City Secretary

Exhibit “A” – Page 1

CITY OF TOMBALL – WILLOW CREEK ANNEXATION

STATE OF TEXAS)
COUNTY OF HARRIS)

DESCRIPTION of 374.9 acres of land situated in the Chauncey Goodrich Survey, Abstract Number 305, the Auguste Senechal Survey, Abstract Number 722, and the Sam Lewis Survey, Abstract Number 1704, Harris County, Texas, being all of a called 20.000 acres tract of land conveyed to County of Harris by Jimmy C. Shaw, et ux by deed dated October 17, 2014 and recorded in County Clerk's File 20140468595 of the Official Public Records of Real Property of Harris County, Texas, being all of a called 117.9465 acres tract of land, described in six, (6), tracts, conveyed to County of Harris by Merenco Realty, Inc. by deed dated October 17, 2014 and recorded in County Clerk's File 20140471160 of the Official Public Records of Real Property of Harris County, Texas, being all of a called 229.772 acres tract, described in thirteen, (13), tracts, being all of a called 4.992 acres tract and being all of a called 2.363 acres tract conveyed to County of Harris by Harris County Improvement District No. 17 by deed dated September 11, 2017 and recorded in County Clerk's File RP-2017-402273 of the Official Public Records of Real Property of Harris County, Texas, save and except that certain portion of land out of a called 3.693 acres, a called 2.088 acres, a called 3.709 acres, and a called 148.751 acres tracts that apparently lies within the said Lewis Survey and further detailed on the map accompanying this exhibit as I.D. Numbers 8-11, this 374.9 acres tract is more particularly described by metes and bounds as follows, to wit:

NOTE: ALL BEARINGS AND COORDINATES DESCRIBED HEREIN ARE BASED ON THE TEXAS COORDINATE SYSTEM OF 1983 AS DEFINED IN V.T.C.A., NATURAL RESOURCES CODE, §21.071-21.079, NAD83(2011) EPOCH 2010.00. ALL DISTANCES DESCRIBED HEREIN ARE SURFACE, HORIZONTAL, (U.S. SURVEY FEET), AND MAY BE CONVERTED TO GRID BY MULTIPLYING BY A COMBINED SCALE FACTOR OF 0.99994128. REFERENCE IS MADE TO THE MAP OF EVEN DATE ACCOMPANYING THIS METES AND BOUNDS DESCRIPTION.

BEGINNING at an 1 inch iron pipe, found, in the North line of the said Senechal Survey, for the southwest corner of said Lewis Survey, same being the southwest corner of a called 160.3 acres tract conveyed to Sam Lewis by State of Texas by Letter Patent dated January 12, 1934 and recorded in Volume 942 at Page 191 of the Deed Records of Harris County, Texas, same being the southwest corner of a called 158.57 acres tract per field notes recorded in Texas General Land Office Scrap File 13411, for the southeast corner of the said Goodrich Survey, for the southeast corner of a called 73,123 square feet, (1.679 acres), more or less, tract conveyed to Harris County Flood Control District by Texas Commerce Bank N.A., Trustee of the Kaiser-Frapart Irrevocable Trust, et al by deed dated October 21, 1988 and recorded in County Clerk's File L951535 of the Official Public Records of Real Property, and for the southeast corner of said called Tract 4, called 148.751 acres, this beginning corner has a Texas Coordinate System of 1983 value of N = 13,948,447.64, E = 3,034,326.13 and Gamma, (γ) = +01° 39' 03", and from this corner a +/- 2" outside diameter iron pipe with top partially crushed, found, for the southeast corner of said Lewis Survey, same being the southeast corner of said called 160.3 acres tract, same being the southeast corner of said called 158.57 acres tract bears North 86° 13' 28" East, a distance of 1,099.74 feet, from said 1 inch iron pipe, found, a Train Rail, found, for the northwest corner of said Lewis Survey, same being the northwest corner of said called 160.3 acres tract, same being the northwest corner of said called 158.57 acres tract bears North 02° 57' 26" West, a distance of 6,852.38 feet, and from said Train Rail a 2 inch iron pipe with metal cap stamped, "NWCOR S LEWIS", bears South 51° West, a distance of 1.0 foot;

Exhibit "A" – Page 2

Page No. 2

City of Tomball – Willow Creek Annexation

THENCE South 87° 11' 27" West with the South line of said Tract 4, called 148.751 acres, the South line of the said Goodrich Survey, and the North line of said Senechal Survey, at a distance of 66.77 feet, a 2-1/2 inch iron pipe, (bent), found in line, in all a total distance of 689.05 feet to a 5/8 inch iron rod with "BASELINE" cap, found, for the northeast corner of Tract 12, called 16.750 acres;

THENCE South 01° 11' 10" East with the East line of said Tract 12, called 16.750 acres, at a distance of 194.86 feet, a 5/8 inch iron rod with "BASELINE" cap, found in line, in all a total distance of 253.19 feet to a point in the center of Willow Creek and for the southeast corner of said Tract 12, called 16.750 acres;

THENCE with the South line of said Tract 12, called 16.750 acres and the center of said Willow Creek, the following meanders:

South 57° 57' 11" West, a distance of 349.84 feet;

South 79° 08' 42" West, a distance of 131.06 feet;

North 74° 57' 48" West, a distance of 126.53 feet;

South 71° 09' 13" West, a distance of 166.28 feet;

South 81° 38' 12" West, a distance of 55.23 feet;

North 82° 40' 46" West, a distance of 167.31 feet;

North 88° 04' 48" West, a distance of 211.74 feet;

South 68° 12' 12" West, a distance of 82.35 feet;

South 40° 32' 12" West, a distance of 225.68 feet;

South 34° 04' 42" West, a distance of 341.77 feet to a point for the southwest corner of said Tract 12, called 16.750 acres;

THENCE North 02° 58' 20" West with the West line of said Tract 12, called 16.750 acres, at a distance of 743.02 feet an 1 inch iron pipe, found, bears South 87° 01' 40" West, a distance of 0.4 feet, in all a total distance of 872.20 feet to an 1 inch iron pipe, (bent), found, in the South line of said Goodrich Survey, in the South line of said Tract 4, called 148.751 acres, for the northeast corner of Texas General Land Office Mineral File 154694, for the apparent northwest corner of said Senechal Survey, and for the northwest corner of said Tract 12, called 16.750 acres;

THENCE South 87° 11' 27" West with the South line of said Tract 4, called 148.751 acres, the South line of said Goodrich Survey, and the North line of said Mineral File 154694, a distance of 987.37 feet to a point for the southeast corner of a called 171.87 acres tract conveyed to Nabors Property Holdings, II, LLC by Nabors Corporate Services, Inc. by deed dated December 16, 2015 and recorded in County Clerk's File 20160007046 of the Official Public Records of Real Property of Harris County, Texas, and for the southwest corner of said Tract 4, called 148.751 acres, from this corner an 1 inch iron pipe, found, for the apparent southwest corner of said Goodrich Survey bears South 87° 11' 27" West, a distance of 2,008.73 feet;

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THENCE with the common boundary line of said Tract 4, called 148.751 acres, and the East line of said called 171.87 acres tract, the following eight, (8), courses and distances:

- 1) North 02° 48' 33" West, a distance of 470.38 feet;
- 2) North 87° 11' 27" East, a distance of 439.22 feet;
- 3) North 02° 48' 33" West, a distance of 508.37 feet;
- 4) North 19° 54' 49" West, a distance of 281.78 feet;
- 5) South 87° 11' 27" West, a distance of 180.47 feet;
- 6) North 02° 48' 33" West, a distance of 300.00 feet;
- 7) North 87° 11' 27" East, a distance of 170.00 feet;
- 8) North 02° 48' 33" West, a distance of 460.92 feet to a point for the South corner of Tract 7, called 5.087 acres, and for a common corner of said called 171.87 acres tract and said Tract 4, called 148.751 acres;

THENCE with the common boundary line of said Tract 7, called 5.087 acres, and continuing with the East line of said called 171.87 acres tract, the following three, (3), courses and distances:

- 1) North 43° 57' 14" West, a distance of 1,062.68 feet to the point of curvature of a curve;
- 2) 1,166.81 feet along a curve to the right, concave northeast, having a central angle of 32° 36' 41", a radius of 2,050.00 feet, and a chord bearing and distance of North 27° 38' 54" West, 1,151.12 feet to the point of tangency of said curve;
- 3) North 11° 20' 33" West, a distance of 15.00 feet to the point of curvature of a curve, for the northwest corner of said Tract 7, called 5.087 acres, and for an exterior corner of Tract 10, called 10.313 acres;

THENCE with the common boundary line of said Tract 10, called 10.313 acres and continuing with the East and North line of said called 171.87 acres tract, the following six, (6), courses and distances:

- 1) 54.98 feet along a curve to the left, concave southwest, having a central angle of 90° 00' 00", a radius of 35.00 feet, and a chord bearing and distance of North 56° 20' 33" West, 49.50 feet to the point of tangency of said curve;

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- 2) South 78° 39' 27" West, a distance of 71.00 feet to the point of curvature of a curve;
- 3) 127.39 feet along a curve to the left, concave southeast, having a central angle of 07° 40' 59", a radius of 950.00 feet, and a chord bearing and distance of South 74° 48' 58" West, 127.29 feet to the point of tangency of said curve;
- 4) South 70° 58' 28" West, a distance of 522.69 feet to the point of curvature of a curve;
- 5) 311.99 feet along a curve to the right, concave northwest, having a central angle of 17° 01' 29", a radius of 1,050.00 feet, and a chord bearing and distance of South 79° 29' 13" West, 310.85 feet to the point of tangency of said curve;
- 6) South 87° 59' 57" West, a distance of 120.80 feet to a 5/8 inch iron rod with "BASELINE" cap, found, for the southeast corner of a residue of a called 617.6016 acres tract conveyed to CC Telge Road, L.P. by Capital Farm Credit, FLCA by deed dated April 28, 2010 and recorded in County Clerk's File 20100175659 of the Official Public Records of Real Property of Harris County, Texas, for the northeast corner of Willowcreek Ranch, Section 9, Subdivision, filed March 2, 2017 and recorded in Film Code Number 680721 of the Map Records of Harris County, Texas, for the northwest corner of said called 171.87 acres tract and for the southwest corner of said Tract 10, called 10.313 acres;

THENCE North 02° 44' 18" West with the West line of said Tract 10, called 10.313 acres, and the East line of said residue of called 617.6016 acres tract, a distance of 100.01 feet to a 5/8 inch iron rod with "HARRIS COUNTY" cap, found, for the southwest corner of the residue of a called 39.55 acres tract conveyed to Willow Creek Realty, LLC by Merenco Realty, Inc. by deed dated February 24, 2016 and recorded in County Clerk's File RP-2016-81535 of the Official Public Records of Real Property of Harris County, Texas and for the northwest corner of said Tract 10, called 10.313 acres;

THENCE with the common boundary line of said Tract 10, called 10.313 acres, the South or southeast and East line of said residue of called 39.55 acres tract, and the South or southeast and East line of a called 7.092 acres tract conveyed to Harris County Improvement District No. 17 by Willow Creek Realty, LLC by deed dated September 8, 2017 and recorded in County Clerk's File RP-2017-402811 of the Official Public Records of Real Property of Harris County, Texas, the following seven, (7), courses and distances:

- 1) North 87° 59' 57" East, a distance of 122.09 feet to the point of curvature of a curve;
- 2) 282.28 feet with a curve to the left, concave northwest, having a central angle of 17° 01' 29", a radius of 950.00 feet, and a chord bearing and distance of North 79° 29' 13" East, 281.24 feet to the point of tangency of said curve;

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- 3) North 70° 58' 28" East, a distance of 522.69 feet to the point of curvature of a curve;
- 4) 140.80 feet with a curve to the right, concave southeast, having a central angle of 07° 40' 59", a radius of 1,050.00 feet, and a chord bearing and distance of North 74° 48' 58" East, 140.69 feet to the point of tangency of said curve;
- 5) North 78° 39' 27" East, a distance of 71.00 feet to the point of curvature of a curve;
- 6) 54.98 feet along a curve to the left, concave northwest, having a central angle of 90° 00' 00", a radius of 35.00 feet, and a chord bearing and distance of North 33° 39' 27" East, 49.50 feet to the point of tangency of said curve;
- 7) North 11° 20' 33" West, a distance of 15.00 feet to a point for an exterior corner of said Tract 10, called 10.313 acres, for the southwest corner of Tract 8, called 2.932 acres, and for the point of curvature of a curve;

THENCE with the common boundary line of said Tract 8, called 2.932 acres, and continuing with the East line of said called 7.092 acres tract, and the East line of another residue of said called 39.55 acres tract, the following four, (4), courses and distances:

- 1) 622.29 feet along a curve to the right, concave East, having a central angle of 27° 57' 52", a radius of 1,275.00 feet, and a chord bearing and distance of North 02° 38' 23" East, 616.13 feet to the point of tangency of said curve;
- 2) North 16° 37' 19" East, a distance of 175.45 feet to the point of curvature of a curve;
- 3) 389.48 feet along a curve to the left, concave West, having a central angle of 18° 59' 31", a radius of 1,175.00 feet, and a chord bearing and distance of North 07° 07' 34" East, 387.70 feet to the point of tangency of said curve;
- 4) North 02° 22' 12" West, a distance of 97.79 feet to a point for the northeast corner of said residue of called 39.55 acres tract and for the northwest corner of said Tract 8, called 2.932 acres;

THENCE North 87° 37' 45" East with the North line of said Tract 8, called 2.932 acres, a distance of 100.00 feet to a point for the northeast corner of said Tract 8, called 2.932 acres and the northwest corner of a residue of called 606.1394 acres tract conveyed to Merenco Realty Inc. by Tandem Energy Corporation by deed dated April 28, 1999 and recorded in County Clerk's File T693301 of the Official Public Records of Real Property of Harris County, Texas;

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City of Tomball – Willow Creek Annexation

THENCE South 02° 22' 12" East with the East line of said Tract 8, called 2.932 acres, and the West line of said called 606.1394 acres residue tract, a distance of 59.40 feet, more or less to a point for the southwest corner of said called 606.1394 acres residue tract and for an exterior corner of Tract 1, called 75.1117 acres tract;

THENCE North 87° 38' 17" East with an interior line of said Tract 1, called 75.1117 acres, and the South line of said called 606.1394 acres residue tract, a distance of 1223.96 feet to a point for the southeast corner of said called 606.1394 acres residue tract and for an interior corner of said Tract 1, called 75.1117 acres;

THENCE North 02° 21' 43" West with an interior line of said Tract 1, called 75.1117 acres, and the East line of said called 606.1394 acres residue tract, a distance of 60.00 feet to a point for the northeast corner of said called 606.1394 acres residue tract and for an exterior corner of said Tract 1, called 75.1117 acres;

THENCE North 87° 38' 17" East with an exterior line of said Tract 1, called 75.1117 acres, a distance of 2,516.40 feet to a point in the southwest right of way line of State Highway Number 249, (called 350 feet wide right of way), and for an exterior corner of said Tract 1, called 75.1117 acres;

THENCE South 26° 16' 12" East with an exterior line of said Tract 1, called 75.1117 acres, and the southwest right of way line of said State Highway Number 249, a distance of 65.63 feet to a point for the northeast corner of another residue of said called 606.1394 acres tract and for an exterior corner of said Tract 1, called 75.1117 acres;

THENCE South 87° 38' 17" West with an interior line of said Tract 1, called 75.1117 acres, and the North line of said called 606.1394 acres residue tract, a distance of 449.75 feet to a point for the northwest corner of said called 606.1394 acres residue tract and for an interior corner of said Tract 1, called 75.1117 acres;

THENCE South 02° 12' 39" East with an interior line of said Tract 1, called 75.1117 acres, and the West line of said called 606.1394 acres residue tract, a distance of 265.61 feet to a point for the northeast corner of a called 7.7884 acres tract conveyed to Barron Family Properties, LLC by Uretek USA, Inc. by deed dated April 2, 2014 and recorded in County Clerk's File 20140134468 of the Official Public Records of Real Property of Harris County, Texas and for an exterior corner of said Tract 1, called 75.1117 acres;

THENCE South 88° 53' 08" West with an interior line of said Tract 1, called 75.1117 acres, and the North line of said called 7.7884 acres tract, a distance of 574.57 feet to a point for the northwest corner of said called 7.7884 acres tract and for an interior corner of said Tract 1, called 75.1117 acres;

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THENCE South 01° 54' 18" East with an interior line of said Tract 1, called 75.1117 acres, and the West line of said called 7.7884 acres tract, a distance of 363.97 feet to a point for the northeast corner of a called 18.9062 acres tract conveyed to Lone Star College System by Merenco Realty, Inc. by deed dated April 4, 2014 and recorded in County Clerk's File 20140138412 of the Official Public Records of Real Property of Harris County, Texas and for an exterior corner of said Tract 1, called 75.1117 acres;

THENCE with the common boundary line of said Tract 1, called 75.1117 acres, and the Northern and Western lines of said called 18.9062 acres tract, the following six, (6), courses and distances:

- 1) South 87° 34' 22" West, a distance of 439.20 feet;
- 2) North 05° 03' 04" West, a distance of 213.07 feet;
- 3) South 85° 17' 49" West, a distance of 417.30 feet;
- 4) South 02° 21' 53" East, a distance of 487.82 feet;
- 5) North 89° 45' 21" East, a distance of 54.69 feet;
- 6) South 02° 20' 27" East, a distance of 595.97 feet to a 5/8 inch iron rod with "HOVIS" cap, found, for the southwest corner of said called 18.9062 acres tract and for an exterior corner of Tract 5, called 4.969 acres;

THENCE North 87° 59' 59" East with the North line of said Tract 5, called 4.969 acres, the South line of said called 18.9062 acres tract and the South line of said called 7.7884 acres tract, a distance of 864.01 feet to a point for the most Southern, southeast corner of said called 7.7884 acres tract and for the southwest corner of Tract 15, called 2.363 acres;

THENCE North 01° 52' 05" West with the West line of said Tract 15, called 2.363 acres, and an interior line of said called 7.7884 acres tract, a distance of 740.12 feet to a point for an interior corner of said called 7.7884 acres tract and for the northwest corner of said Tract 15, called 2.363 acres;

THENCE North 87° 12' 40" East with the North line of said Tract 15, called 2.363 acres, and an interior line of said called 7.7884 acres tract, a distance of 293.88 feet to a point for the northwest corner of a residue of called 28.68 acres, more or less, tract, conveyed to Humble Oil & Refining Company by Socony Mobil Oil Company, Inc. by deed filed August 10, 1965 and recorded in Volume 6028 at Page 80, (County Clerk's File C139334), of the Deed Records of Harris County, Texas and for the northeast corner of said Tract 15, called 2.363 acres;

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THENCE South $01^{\circ} 55' 05''$ East with the East line of said Tract 15, called 2.363 acres, the East line of Tract 11, called 2.649 acres, and the West line of said residue of called 28.68 acres, more or less, tract, a distance of 744.16 feet to a point in the North line of said Tract 5, called 4.969 acres, for the southwest corner of said residue of called 28.68 acres, more or less, tract, and for the southeast corner of said Tract 11, called 2.649 acres;

THENCE North $87^{\circ} 59' 59''$ East with the North line of said Tract 5, called 4.969 acres, the South line of said residue of called 28.68 acres, more or less, tract, the South line of a called 9.26 acres, more or less, tract conveyed to Humble Oil & Refining Co. by Magnolia Petroleum Company by deed dated September 9, 1937 and recorded in Volume 1063 at Page 557 of the Deed Records of Harris County, Texas, and the South line of a residue of a called 145.78 acres tract conveyed to Ralph Lewis Frapart, et al by Frances Kaiser Frapart by deed dated December 10, 1976 and recorded in County Clerk's File F014298 of the Official Public Records of Real Property of Harris County, Texas, a distance of 777.19 feet to a $\frac{5}{8}$ inch iron rod with "BASELINE" cap, found, for the northeast corner of said Tract 5, called 4.969 acres, and for the northwest corner of said Tract 13, called 1.795 acres;

THENCE North $87^{\circ} 56' 11''$ East with the North line of said Tract 13, called 1.795 acres, the South line of the residue of said called 145.78 acres tract and the South line of a called 61,615 square feet, (1.415 acres), more or less tract, called Parcel "C", described in said County Clerk's File L951535, a distance of 739.97 feet to a point in the southwest line of said State Highway Number 249, (called 350 feet wide right of way), for the southeast corner of a residue of said called 145.78 acres tract and for the northeast corner of said Tract 13, called 1.795 acres;

THENCE with the East or northeast line of said Tract 13, called 1.795 acres, and the southwest right of way line of said State Highway Number 249, a curve to the left, concave northeast, having a central angle of $01^{\circ} 53' 37''$, a radius of 3994.73 feet, an arc length of 132.03 feet and a chord bearing and distance of South $42^{\circ} 49' 17''$ East, 132.02 feet to a point for the northeast corner of the residue of a called 2.180 acres tract of land conveyed to Harris County Flood Control District by Tandem Energy Corporation by deed dated March 15, 2005 and recorded in County Clerk's File Y461230 of the Official Public Records of Real Property of Harris County, Texas, and for the southeast corner of said Tract 13, called 1.795 acres;

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THENCE South 87° 56' 11" West with the South line of said Tract 13, called 1.795 acres, the North line of said residue of called 2.180 acres tract, the North line of a called 1.494 acres tract conveyed to Tortuga Operating Company by Harris County Flood Control District by deed dated March 11, 2010 and recorded in County Clerk's File 20100094479 of the Official Public Records of Real Property of Harris County, Texas, the North line of the residue of a called 64.767 acres tract conveyed to Harris County Flood Control District by Richard Ray Frapart, et al by deed dated May 25, 2005 and recorded in County Clerk's File Y495627 of the Official Public Records of Real Property of Harris County, Texas, the North line of a called 164,385 square feet, (3.774 acres), more or less tract, called Parcel "B", in said County Clerk's File L951535, and the North line of a called 3.2528 acres tract of land conveyed to Nabors Property Holdings II, LLC by Merenco Realty, Inc. by deed dated November 3, 2016 and recorded in County Clerk's File RP-2016-500174 of the Official Public Records of Real Property of Harris County, Texas, a distance of 824.82 feet to a 3/4 inch iron rod with aluminum cap stamped, "PACE", found, for the northwest corner of said called 3.2528 acres tract, for the northeast corner of a called 22.145 acres tract conveyed to Nabors Property Holdings II, LLC by Turner Coatings, LLC by deed dated February 29, 2016 and recorded in County Clerk's File RP-2016-86222 of the Official Public Records of Real Property of Harris County, Texas, for the southwest corner of said Tract 13, called 1.795 acres, and for the southeast corner of said Tract 5, called 4.969 acres;

THENCE South 87° 59' 59" West with the South line of said Tract 5, called 4.969 acres, and the North line of said called 22.145 acres tract a distance of 704.36 feet to a point for the northwest corner of said called 22.145 acres tract and for the northeast corner of said called 20.000 acres tract;

THENCE South 02° 00' 18" East with the East line of said called 20.000 acres tract and the West line of said called 22.145 acres tract, a distance of 194.56 feet to a point for an angle in the West or northwest line of said called 22.145 acres tract and for an angle in the East or southeast line of said called 20.000 acres tract;

THENCE South 34° 15' 24" West with the southeast line of said called 20.000 acres tract and the northwest line of said called 22.145 acres tract, a distance of 822.27 feet to a point for the West or southwest corner of said called 22.145 acres tract and for the North or northwest corner of Tract 5, called 15.0725 acres;

THENCE South 55° 43' 33" East with the North line of said Tract 5, called 15.0725 acres, and the South line of said called 22.145 acres tract, a distance of 333.04 feet to a point for an angle in the South line of said called 22.145 acres tract and for an angle in the North line of said Tract 5, called 15.0725 acres;

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City of Tomball – Willow Creek Annexation

THENCE North 87° 09' 56" East with the North line of said Tract 5, called 15.0725 acres, and the South line of said called 22.145 acres tract, a distance of 841.39 feet to a point in a curve in the West line of a called 266,854 square feet, (6.126 acres), more or less, tract described in Right of Way Easement conveyed to Harris County Flood Control District by Exxon Corporation by instrument dated August 31, 1995 and recorded in County Clerk's File R649324 of the Official Public Records of Real Property of Harris County, Texas;

THENCE with the West line of said called 266,854 square feet, (6.126 acres), more or less, tract, a curve to the right, concave southeast, having a central angle of 06° 53' 36", a radius of 1,275.00 feet, an arc length of 153.39 feet and a chord bearing and distance of North 18° 06' 05" East, 153.30 feet to a point for the point of tangency of said curve in the West line of said called 266,854 square feet, (6.126 acres), more or less tract;

THENCE North 21° 32' 52" East continuing with the West line of said called 266,854 square feet, (6.126 acres), more or less, tract, a distance of 84.76 feet to a point for the most Northern corner of said called 266,854 square feet, (6.126 acres), more or less, tract, the West or southwest corner of said called 164,385 square feet, (3.774 acres), more or less tract, called Parcel "B", in said County Clerk's File L951535, in the East line of said Goodrich Survey and in the West line of said Lewis Survey;

THENCE South 02° 57' 26" East with the East line of said called 266,854 square feet, (6.126 acres), more or less, tract, the most Southern, West line of said called 164,385 square feet, (3.774 acres), more or less tract, called Parcel "B", in said County Clerk's File L951535, the most Northern, West line of a called 102,584 square feet, (2.355 acres), more or less tract, called Parcel "A" in said County Clerk's File L951535, the West line of said called 73,123 square feet, (1.679 acres), more or less tract, the East line of the said Goodrich Survey and the West line of the said Lewis Survey, a distance of 2,779.32 feet to the PLACE OF BEGINNING, and containing within said boundaries 374.9 acres of land.

I, John P. Engle, Registered Professional Land Surveyor Number 5568, do hereby certify that this document was prepared under 22 TAC §663.21, does not reflect the results of an on the ground survey, and is not to be used to convey or establish interests in real property except those rights and interests implied or established by the creation or reconfiguration of the boundary of the political subdivision for which it was prepared.

WITNESS, my hand and seal at Houston, Texas, this the 14th day of February, A.D., 2018.



John P. Engle
Registered Professional
Land Surveyor Number 5568

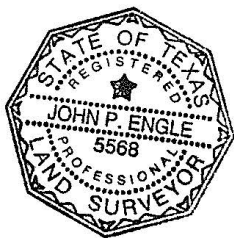


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HCAD Account List and Tract Reference

Called 229.772 acres conveyed to County of Harris by Harris County Improvement District No. 17 by deed dated September 11, 2017 and recorded in County Clerk's File RP-2017-402273 of the Official Public Records of Real Property of Harris County, Texas

Deed Tract	Acreage	Survey ID	Survey	HCAD
1	3.693	8	C. Goodrich, Abstract 305	0421750000177
2	2.088	9	C. Goodrich, Abstract 305	0421750000178
3	3.709	10	C. Goodrich, Abstract 305	0421750000179
4	148.751	11	C. Goodrich, Abstract 305	0421750000180
5	4.969	12	C. Goodrich, Abstract 305	0421750000181
6	2.518	13	C. Goodrich, Abstract 305	0421750000168
7	5.087	14	C. Goodrich, Abstract 305	0421750000169
8	2.932	15	C. Goodrich, Abstract 305	0421750000170
9	24.518	16	C. Goodrich, Abstract 305	0421750000171
10	10.313	17	C. Goodrich, Abstract 305	0421750000172
11	2.649	18	C. Goodrich, Abstract 305	0421750000176
12	16.75	19	Auguste Senechal Survey, Abstract 722	0450260000003
13	1.795	20	Sam Lewis Survey, Abstract 1704	0482410000109
14	4.992	21	C. Goodrich, Abstract 305	0421750000173
15	2.363	22	C. Goodrich, Abstract 305	0421750000009

Called 20.000 acres conveyed to County of Harris by Jimmy C. Shaw, et ux by deed dated October 17, 2014 and recorded in County Clerk's File 20140468595 of the Official Public Records of Real Property of Harris County, Texas

Deed Tract	Acreage	Survey ID	Survey	HCAD
N/A	20	1	C. Goodrich, Abstract 305	0421750000157

Called 117.9465 acres conveyed to County of Harris by Merenco Realty, Inc. by deed dated October 17, 2014 and recorded in County Clerk's File 20140471160 of the Official Public Records of Real Property of Harris County, Texas

Deed Tract	Acreage	Survey ID	Survey	HCAD
1	75.1117	2	C. Goodrich, Abstract 305	0421750000158
2	8.5753	3	C. Goodrich, Abstract 305	0421750000159
3	3.7654	4	C. Goodrich, Abstract 305	0421750000157
4	6.4521	5	C. Goodrich, Abstract 305	0421750000157
5	15.0725	6	C. Goodrich, Abstract 305	0421750000157
6	8.9695	7	C. Goodrich, Abstract 305	0421750000160

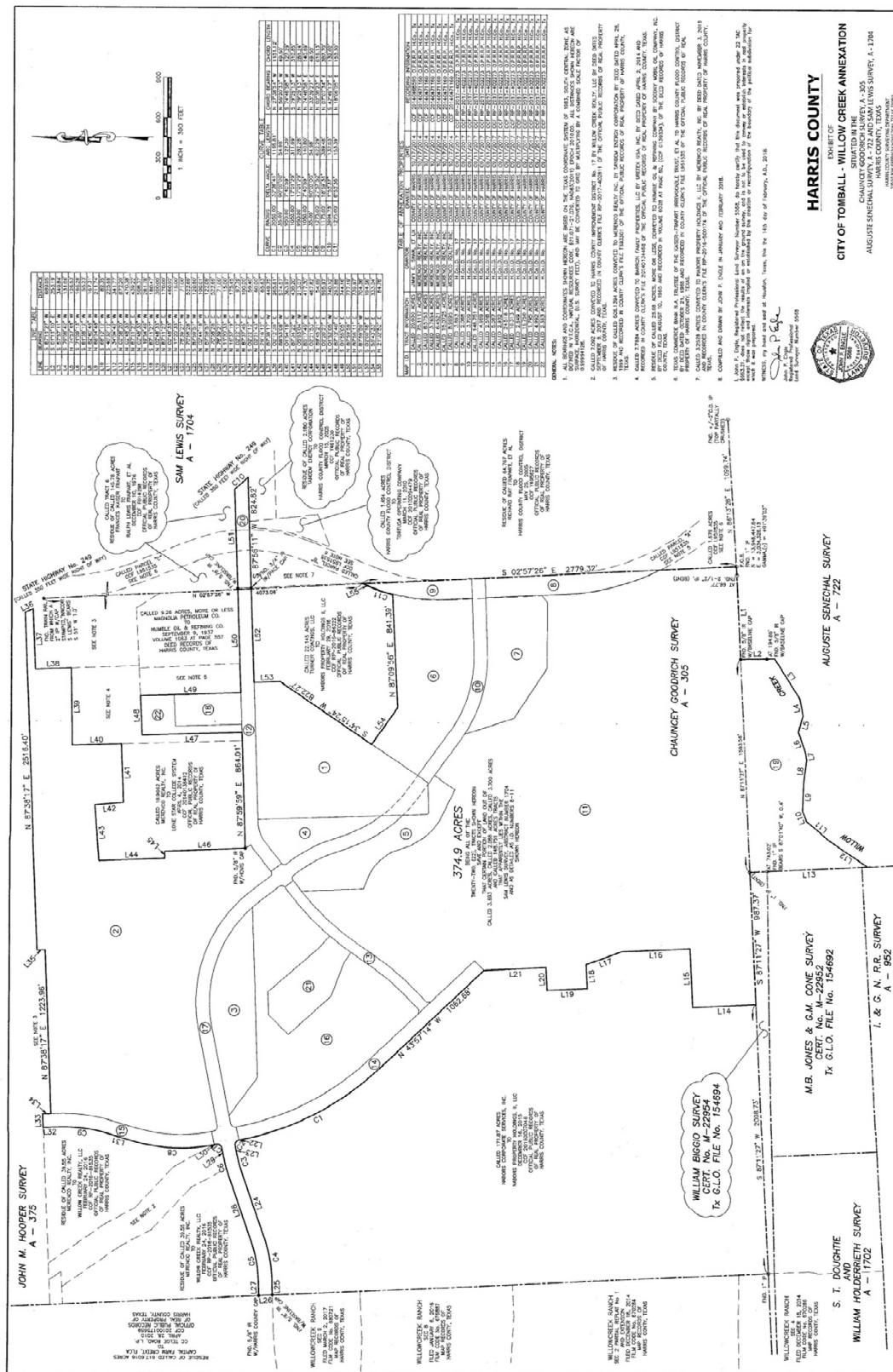


EXHIBIT "B"

CITY OF TOMBALL, TEXAS

MUNICIPAL SERVICE PLAN

I. INTRODUCTION

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

II. EFFECTIVE TERM

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

III. INTENT

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

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

IV. SERVICE PROGRAMS

A. In General.

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

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

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

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

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

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

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

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

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

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

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

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

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

V. AMENDMENT: GOVERNING LAW

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

VI. FORCE MAJEURE

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

VIII. ENTIRE PLAN

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

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

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

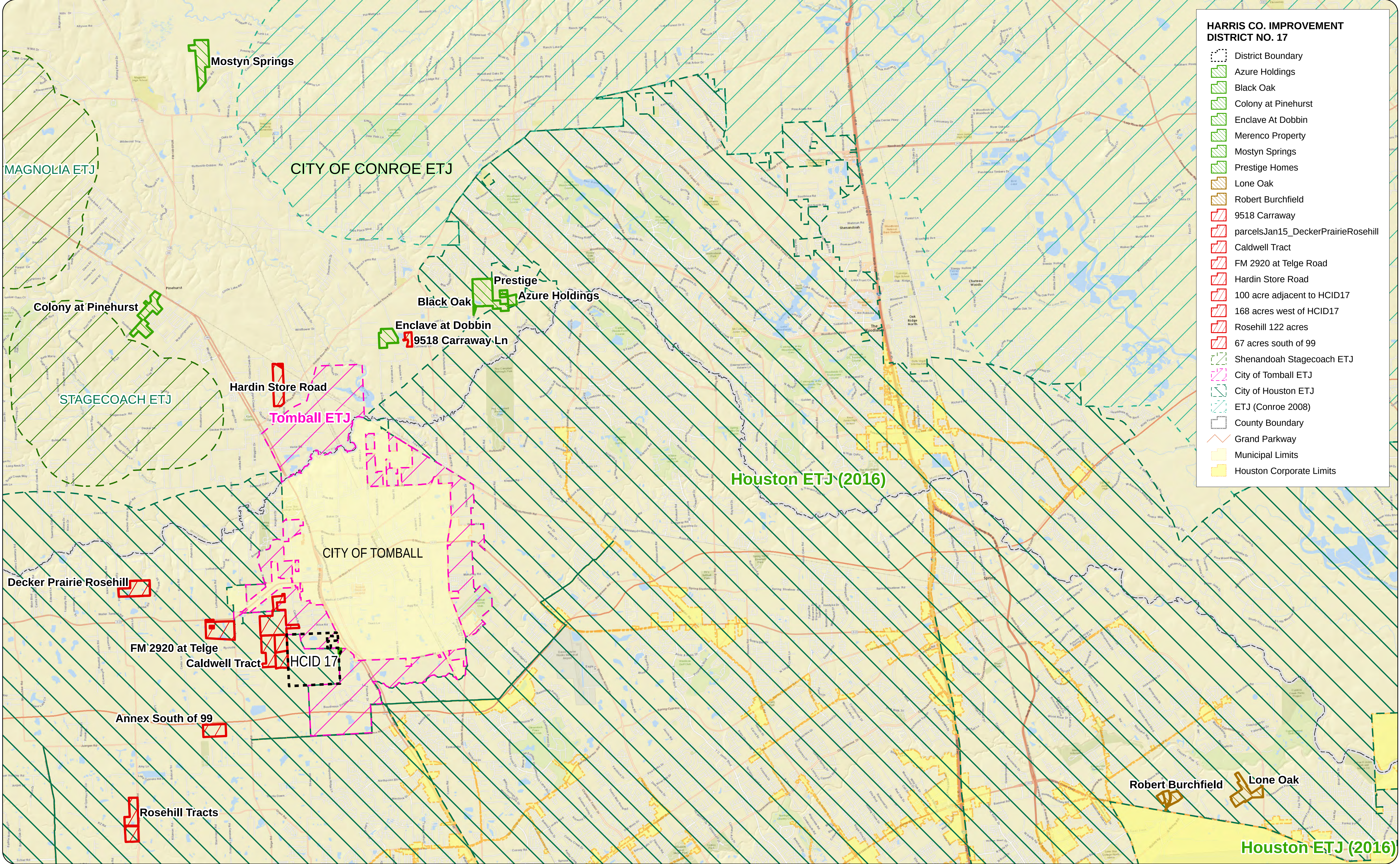
The following information is a summary of the City of Tomball's ("City") policies respecting water, wastewater and gas service extensions. This summary is made in compliance with the Texas Local Government Code, which requires that each annexation plan include a summary of the service extension policy.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

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

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

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

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



HARRIS CO. IMPROVEMENT DISTRICT NO. 17

District Boundary

Azure Holdings

Black Oak

Colony at Pinehurst

Enclave At Dobbin

Merenco Property

Mostyn Springs

Prestige Homes

Lone Oak

Robert Burchfield

9518 Carraway

parcelsJan15_DeckerPrairieRosehill

Caldwell Tract

FM 2920 at Telge Road

Hardin Store Road

100 acre adjacent to HCID17

168 acres west of HCID17

Rosehill 122 acres

67 acres south of 99

Shenandoah Stagecoach ETJ

City of Tomball ETJ

City of Houston ETJ

ETJ (Conroe 2008)

County Boundary

Grand Parkway

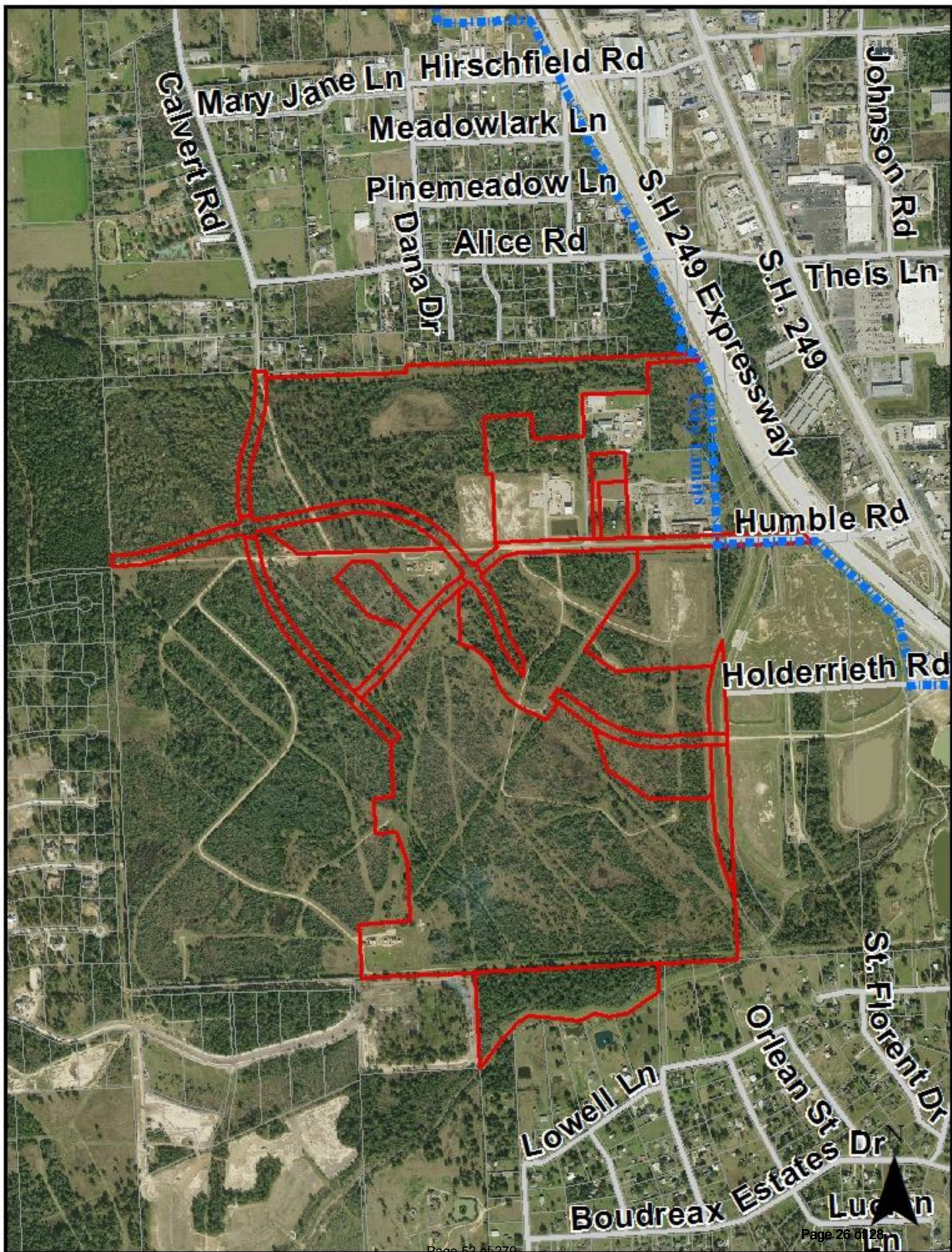
Municipal Limits

Houston Corporate Limits

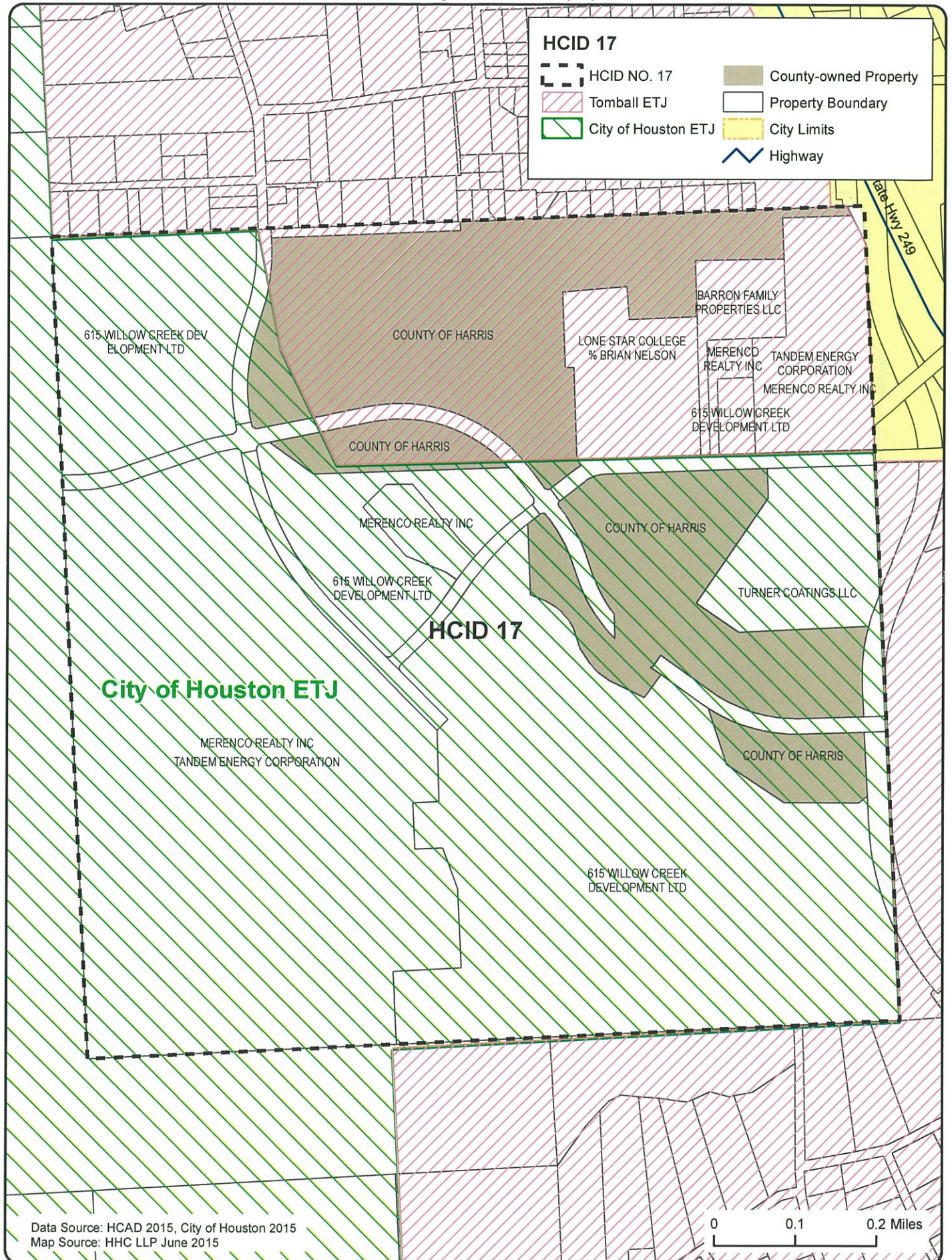


Service Layer Credits: Sources: Esri, DeLorme, NAVTEQ, TomTom, USGS, Intermap, iPC, NRCAN, Esri Japan, METI, Esri China (Hong Kong), Esri (Thailand)

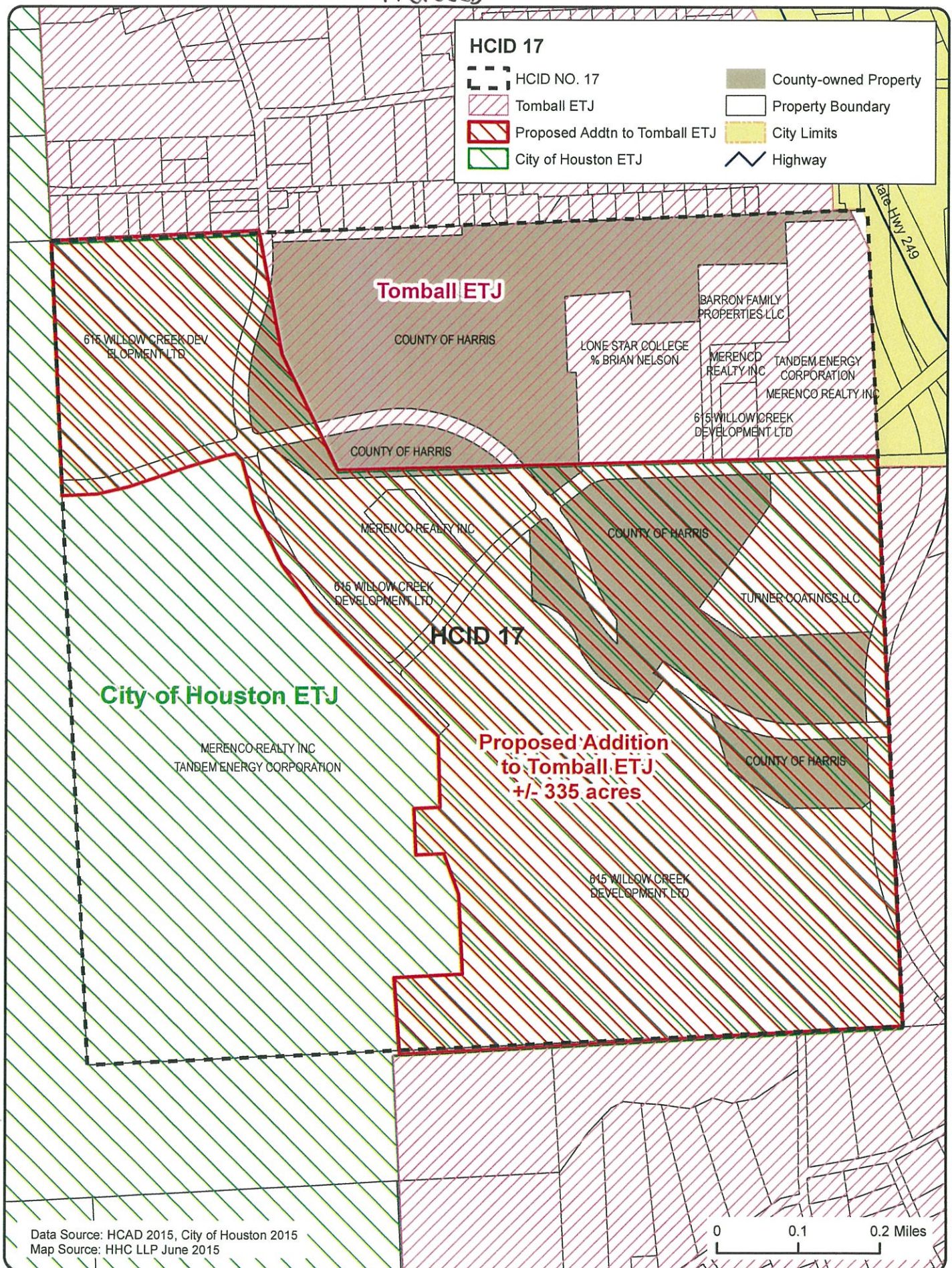
Data Source: HCAD 2016, City of Houston 2016
Map Source: HHC LLP July 2016



CURRENT 2/10/16



PROPOSED



Regular City Council

Agenda Item

Data Sheet

Meeting Date: May 21, 2018

Topic:

Adopt, On Second Reading, Ordinance No. 2018-18, An Ordinance Of The City Of Tomball, Texas, Amending Chapter 50 (Zoning) Of The Tomball Code Of Ordinances By Establishing The Zoning District Of Approximately 374.9 Acres Of Land, Legally Described 374.9 Acres Of Land Situated In The Chauncey Goodrich Survey, Abstract Number 305, The Auguste Senechal Survey, Abstract Number 722, And The Sam Lewis Survey, Abstract Number 1704, Harris County, Texas, Being All Of A Called 20.000 Acres Tract Of Land Conveyed To County Of Harris By Jimmy C. Shaw, Et Ux By Deed Dated October 17, 2014 And Recorded In County Clerk's File 20140468595 Of The Official Public Records Of Real Property Of Harris County, Texas, Being All Of A Called 117.9465 Acres Tract Of Land, Described In Six (6) Tracts, Conveyed To County Of Harris By Merenco Realty, Inc. By Deed Dated October 17, 2014 And Recorded In County Clerk's File 20140471160 Of The Official Public Records Of Real Property Of Harris County, Texas, Being All Of A Called 229.772 Acres Tract, Described In Thirteen, (13), Tracts, Being All Of A Called 4.992 Acres Tract And Being All Of A Called 2.363 Acres Tract Conveyed To County Of Harris By Harris County Improvement District No. 17 By Deed Dated September 11, 2017 And Recorded In County Clerk's File Rp-2017-402273 Of The Official Public Records Of Real Property Of Harris County, Texas, Save And Except That Certain Portion Of Land Out Of A Called 3.693 Acres, A Called 2.088 Acres, A Called 3.709 Acres, And A Called 148.751 Acres Tracts That Apparently Lies Within The Said Lewis Survey, Within The City Of Tomball, Harris County, Texas, To The Commercial District; Said Property Being Generally Located On The West Side Of Sh 249 Between Willow Creek And Alice Road; Providing For The Amendment Of The Official Zoning Map Of The City; Providing For Severability; Providing For A Penalty Of An Amount Not To Exceed \$2,000 For Each Day Of Violation Of Any Provision Hereof, Making Findings Of Fact; And Providing For Other Related Matters.

Background:

Origination:

John Blount, Harris County

Recommendation:

Adopt, on Second Reading

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. 2018-18

Staff Report
Notice of Public Hearing
Property Owner Notification

ORDINANCE NO. 2018-18

AN ORDINANCE OF THE CITY OF TOMBALL, TEXAS, AMENDING CHAPTER 50 (ZONING) OF THE TOMBALL CODE OF ORDINANCES BY ESTABLISHING THE ZONING DISTRICT OF APPROXIMATELY 374.9 ACRES OF LAND, LEGALLY DESCRIBED 374.9 ACRES OF LAND SITUATED IN THE CHAUNCEY GOODRICH SURVEY, ABSTRACT NUMBER 305, THE AUGUSTE SENECHAL SURVEY, ABSTRACT NUMBER 722, AND THE SAM LEWIS SURVEY, ABSTRACT NUMBER 1704, HARRIS COUNTY, TEXAS, BEING ALL OF A CALLED 20.000 ACRES TRACT OF LAND CONVEYED TO COUNTY OF HARRIS BY JIMMY C. SHAW, ET UX BY DEED DATED OCTOBER 17, 2014 AND RECORDED IN COUNTY CLERK'S FILE 20140468595 OF THE OFFICIAL PUBLIC RECORDS OF REAL PROPERTY OF HARRIS COUNTY, TEXAS, BEING ALL OF A CALLED 117.9465 ACRES TRACT OF LAND, DESCRIBED IN SIX (6) TRACTS, CONVEYED TO COUNTY OF HARRIS BY MERENCO REALTY, INC. BY DEED DATED OCTOBER 17, 2014 AND RECORDED IN COUNTY CLERK'S FILE 20140471160 OF THE OFFICIAL PUBLIC RECORDS OF REAL PROPERTY OF HARRIS COUNTY, TEXAS, BEING ALL OF A CALLED 229.772 ACRES TRACT, DESCRIBED IN THIRTEEN, (13), TRACTS, BEING ALL OF A CALLED 4.992 ACRES TRACT AND BEING ALL OF A CALLED 2.363 ACRES TRACT CONVEYED TO COUNTY OF HARRIS BY HARRIS COUNTY IMPROVEMENT DISTRICT NO. 17 BY DEED DATED SEPTEMBER 11, 2017 AND RECORDED IN COUNTY CLERK'S FILE RP-2017-402273 OF THE OFFICIAL PUBLIC RECORDS OF REAL PROPERTY OF HARRIS COUNTY, TEXAS, SAVE AND EXCEPT THAT CERTAIN PORTION OF LAND OUT OF A CALLED 3.693 ACRES, A CALLED 2.088 ACRES, A CALLED 3.709 ACRES, AND A CALLED 148.751 ACRES TRACTS THAT APPARENTLY LIES WITHIN THE SAID LEWIS SURVEY, WITHIN THE CITY OF TOMBALL, HARRIS COUNTY, TEXAS, TO THE COMMERCIAL DISTRICT; SAID PROPERTY BEING GENERALLY LOCATED ON THE WEST SIDE OF SH 249 BETWEEN WILLOW CREEK AND ALICE ROAD; PROVIDING FOR THE AMENDMENT OF THE OFFICIAL ZONING MAP OF THE CITY; PROVIDING FOR SEVERABILITY; PROVIDING FOR A PENALTY OF AN AMOUNT NOT TO EXCEED \$2,000 FOR EACH DAY OF VIOLATION OF ANY PROVISION HEREOF, MAKING FINDINGS OF FACT; AND PROVIDING FOR OTHER RELATED MATTERS.

*** * * * ***

Whereas, John Blount, County Engineer, on behalf of Harris County, has requested that approximately 374.9 acres of land, legally described as 374.9 Acres of Land Situated in the Chauncey Goodrich Survey, Abstract Number 305, the Auguste Senechal Survey, Abstract Number 722, and the Sam Lewis Survey, Abstract Number 1704, Harris County, Texas, Being All of a Called 20.000 Acres Tract of Land Conveyed to County of Harris by Jimmy C. Shaw, Et Ux by Deed dated

October 17, 2014 and Recorded in County Clerk's File 20140468595 of the Official Public Records of Real Property of Harris County, Texas, Being All of a Called 117.9465 Acres Tract of Land, Described in Six (6) Tracts, Conveyed to County of Harris by Merenco Realty, Inc. by Deed dated October 17, 2014 and Recorded in County Clerk's File 20140471160 of the Official Public Records of Real Property of Harris County, Texas, Being All of a Called 229.772 Acres Tract, Described in Thirteen, (13), Tracts, Being All of a Called 4.992 Acres Tract and Being All of a Called 2.363 Acres Tract Conveyed to County of Harris by Harris County Improvement District No. 17 by Deed Dated September 11, 2017 and Recorded in County Clerk's File Rp-2017-402273 of the Official Public Records of Real Property of Harris County, Texas, Save and Except that Certain Portion of Land Out of a Called 3.693 Acres, a Called 2.088 Acres, a Called 3.709 Acres, and a Called 148.751 Acres Tracts that apparently lies within the Said Lewis Survey, generally located on the west side of SH 249 between Willow Creek and Alice Road, in the City of Tomball, Harris County, Texas, (the "Property"), be zoned; 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 City Council held a public hearing on the requested zoning; and

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

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 established as the Commercial District subject to the regulations, restrictions, and conditions hereafter set forth.

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

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

Section 5. In the event any section, paragraph, subdivision, clause, phrase, provision, sentence, or part of this Ordinance or the application of the same to any person or circumstance shall for any reason be adjudged invalid or held unconstitutional by a court of competent jurisdiction, it shall not affect, impair, or invalidate this Ordinance as a whole or any part or provision hereof other any part or provision hereof other than the part declared to be invalid or unconstitutional; and the City Council of Tomball, Texas, declares that it would have passed each and every part of the same notwithstanding the omission of any and every part of the same notwithstanding the omission of any such part thus declared to be invalid or unconstitutional, or whether there be one or more parts.

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

FIRST READING:

READ, PASSED, AND APPROVED AS SET OUT BELOW AT THE MEETING OF THE CITY COUNCIL OF THE CITY OF TOMBALL HELD ON THE 7TH DAY OF MAY 2018.

COUNCILMAN FORD	<u>AYE</u>
COUNCILMAN STOLL	<u>AYE</u>
COUNCILMAN DEGGES	<u>ABSENT</u>
COUNCILMAN TOWNSEND	<u>AYE</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 21ST DAY OF MAY 2018.

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

Gretchen Fagan, Mayor

ATTEST:

Doris Speer, City Secretary



Zoning Staff Report

City Council Public Hearing Date: May 7, 2018

Zoning Case: P18-035

Property Owner(s): Harris County

Applicant(s): John Blount, County Engineer

Legal Description: 374.9 Acres of Land Situated in the Chauncey Goodrich Survey, Abstract Number 305, the Auguste Senechal Survey, Abstract Number 722, and the Sam Lewis Survey, Abstract Number 1704, Harris County, Texas, Being All of a Called 20.000 Acres Tract of Land Conveyed to County of Harris by Jimmy C. Shaw, Et Ux by Deed dated October 17, 2014 and Recorded in County Clerk's File 20140468595 of the Official Public Records of Real Property of Harris County, Texas, Being All of a Called 117.9465 Acres Tract of Land, Described in Six (6) Tracts, Conveyed to County of Harris by Merenco Realty, Inc. by Deed dated October 17, 2014 and Recorded in County Clerk's File 20140471160 of the Official Public Records of Real Property of Harris County, Texas, Being All of a Called 229.772 Acres Tract, Described in Thirteen, (13), Tracts, Being All of a Called 4.992 Acres Tract and Being All of a Called 2.363 Acres Tract Conveyed to County of Harris by Harris County Improvement District No. 17 by Deed Dated September 11, 2017 and Recorded in County Clerk's File Rp-2017-402273 of the Official Public Records of Real Property of Harris County, Texas, Save and Except that Certain Portion of Land Out of a Called 3.693 Acres, a Called 2.088 Acres, a Called 3.709 Acres, and a Called 148.751 Acres Tracts that apparently lies within the Said Lewis Survey

Location: West side of SH 249 between Willow Creek and Alice Road (Exhibit "A")

Area: 374.9 acres

Comp Plan Designation: Commercial, Low Density Residential, Open Space (Exhibit "B")

Present Use: Government Facility (Exhibit "D")

Request: Establish the Zoning designation of approximately 374.9 acres as Commercial for a Governmental Use

Adjacent Zoning & Land Uses:

North: Outside City Limits / Single-family residences

South: Outside City Limits / Single-family residences

West: Outside City Limits / Undeveloped Property

BACKGROUND

The subject site is currently being annexed into the City Limits and therefore requires the establishment of a Zoning District classification. Harris County Precinct 4 facilities are currently under construction and the property is proposed to be used for various governmental activities which may include offices, court facilities, a library parks and storm water detention.

ANALYSIS

The entire property is approximately 375 acres. The property owner, Harris County, is requesting a zoning of Commercial with their concurrent annexation application and desires to expand the Harris County Precinct 4 facilities that are currently under construction.

Surrounding properties are currently outside the Tomball city limits and are partially developed as single-family residences and commercial properties.

Utilities are currently being extended to the County facilities and the adjacent toll road provides adequate access for commercial development in this area.

PUBLIC COMMENT

Property owners within 200 feet of the project site were mailed notification of this proposal on April 27, 2018. The Notice of Public Hearing was published in the paper on April 25, 2018. Any public comment forms will be provided in the City Council packets or during the public hearing.

RECOMMENDATION

City staff recommends APPROVAL of Zoning Case P18-035.

- The property is currently under development as a County regional facility.
- The requested zoning is generally appropriate with the surrounding land uses in the area.
- The requested zoning does not appear to have an adverse impact on the area.

EXHIBITS

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

Exhibit "A"
Aerial Photo

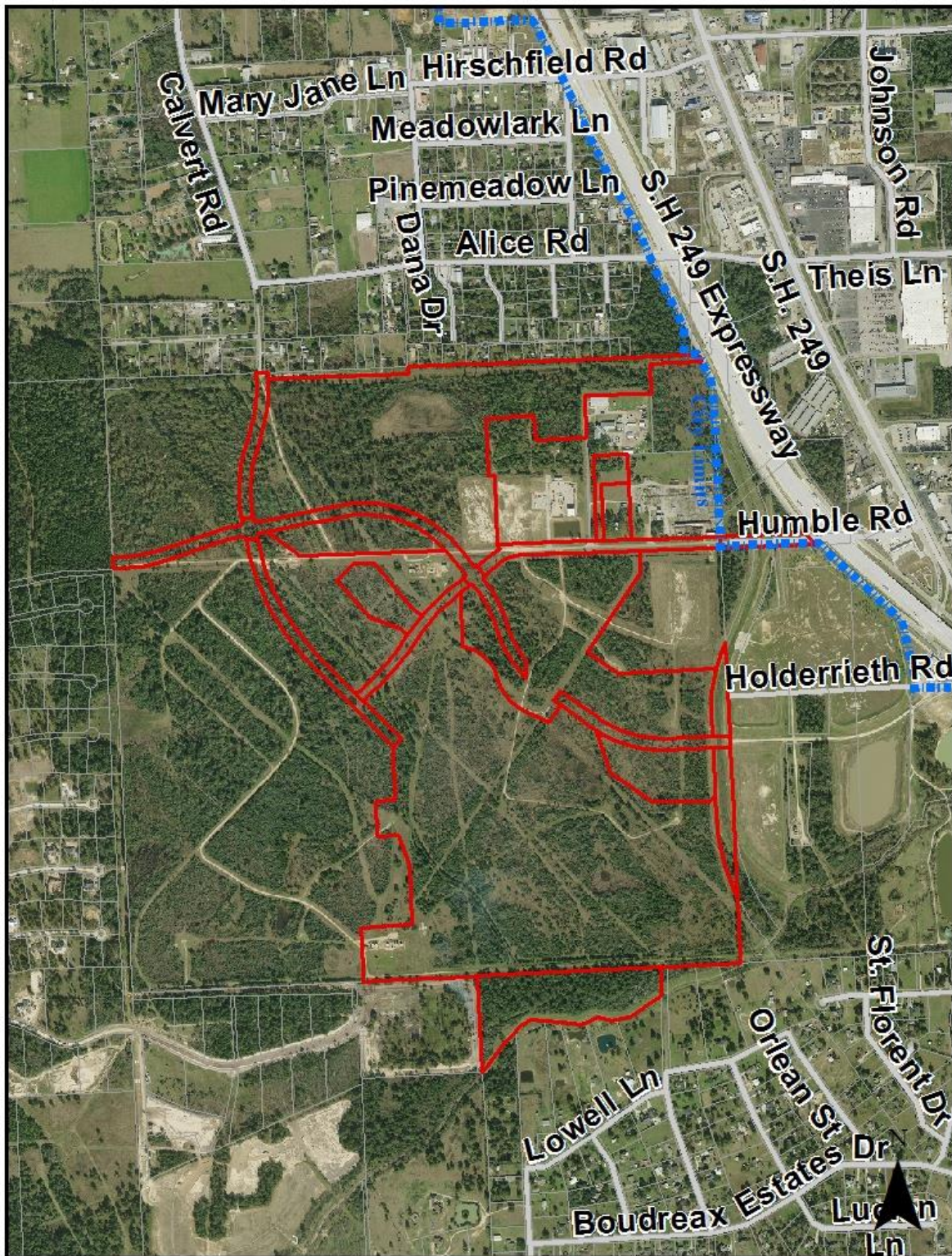


Exhibit "B"
Comprehensive Plan

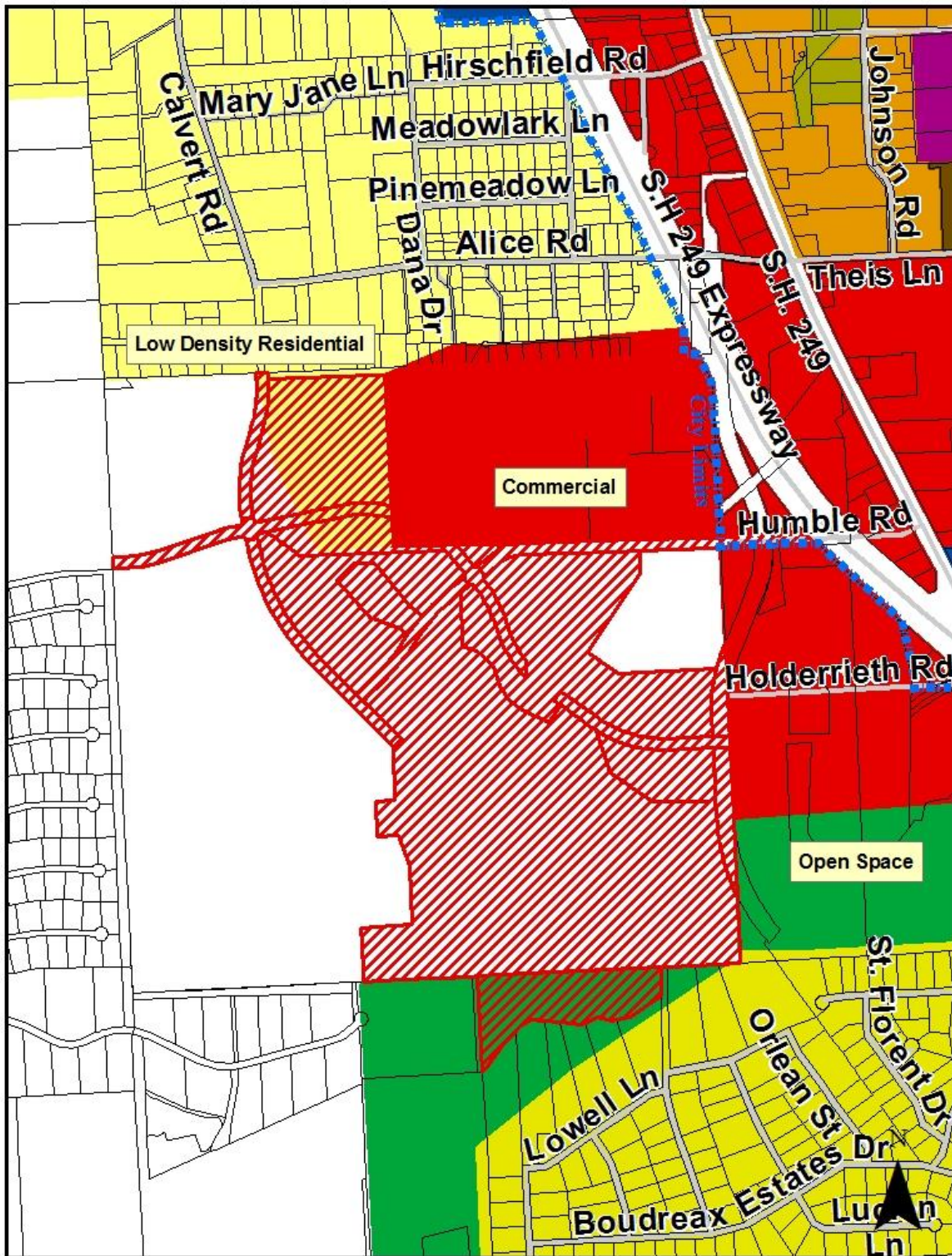
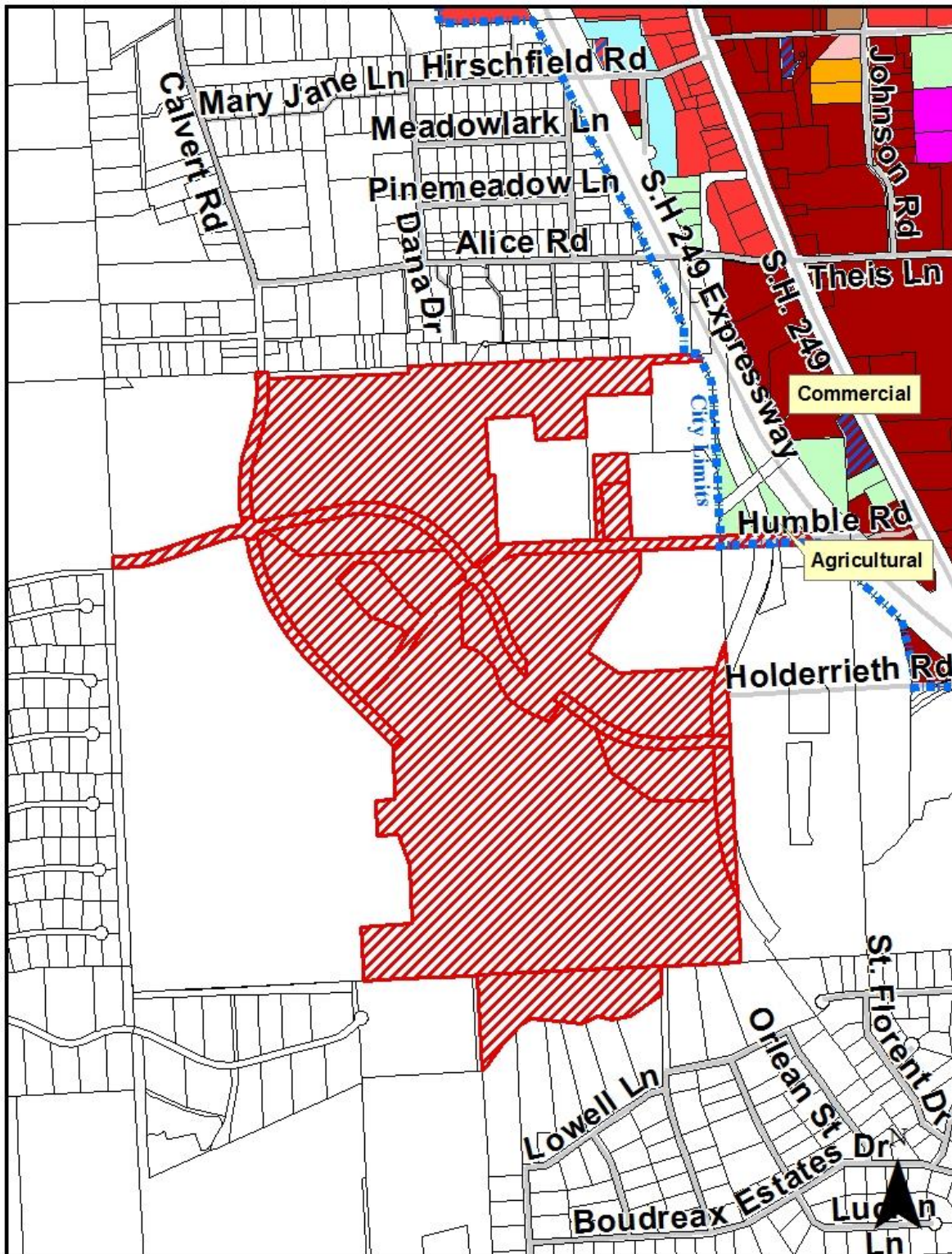


Exhibit "C"
Zoning Map



**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: John Blount Title: County Engineer
Mailing Address: 1001 Preston, Suite 500 City: Houston State: TX
Zip: 77002
Phone: (713) 274-3605 Fax: (713) 755-5295 Email: John.Blount@hcpid.org

Owner

Name: Harris County Title: _____
Mailing Address: 1001 Preston, Suite 500 City: Houston State: TX
Zip: 77002
Phone: (713) 274-3605 Fax: (713) 755-5295 Email: John.Blount@hcpid.org

Engineer/Surveyor (if applicable)

Name: Same as applicant Title: _____
Mailing Address: _____ City: _____ State: _____
Zip: _____
Phone: () _____ Fax: () _____ Email: _____

Description of Proposed Project: Harris County Commissioner Precinct 4 facilities, offices, county courthouse annex, other governmental uses

Physical Location of Property: West of SH 249, north and south of Old Humble Road
[General Location – approximate distance to nearest existing street corner]

Legal Description of Property: See metes and bounds attached
[Survey/Abstract No. and Tracts; or platted Subdivision Name with Lots/Block]

Current Zoning District: Agricultural

Current Use of Property: Governmental use

Proposed Zoning District: Commercial

Proposed Use of Property: Governmental use

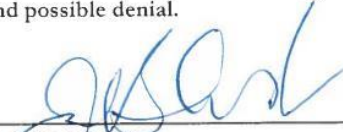
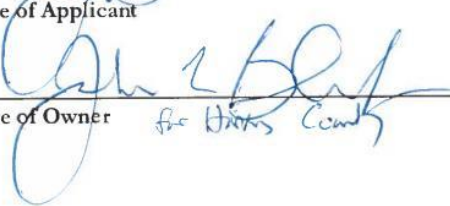
HCAD Identification Number: See attached list Acreage: 374.9

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

Attachment A

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		19 Feb 2018
	Signature of Applicant	Date
X		19 Feb 2018
	Signature of Owner for Harris County	Date

HARRIS COUNTY
ENGINEERING DEPARTMENT

1001 Preston, Suite 500
Houston, Texas 77002
(713) 755-5370

February 19, 2018

City of Tomball
401 W Market St
Tomball, TX 77375

Re: Request for Rezoning 374.9 Acres Owned by Harris County

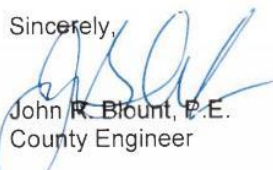
To Whom It May Concern,

Harris County, the owner of 374.9 acres of land being annexed into the City of Tomball city limits, wishes to rezone said land from the default agricultural to ensure compliance with applicable City of Tomball ordinances. The property is not being used for agricultural purposes, nor does Harris County intend to use any portion of the land for such purposes. Harris County Commissioner Precinct 4 facilities are currently under construction, and pending authorization by Harris County Commissioners Court, the property will be used for various governmental activities which may include but not be limited to offices, county court services, a library, parks, and storm water detention. The zoning district Commercial with the land use Governmental will accurately reflect the current and future use of the property.

Please contact Melissa Hamous at 713-274-3638 or Melissa.Hamous@hcpid.org if any additional information or documentation is required.

Thank you very much for your support and consideration.

Sincerely,



John R. Blount, P.E.
County Engineer

cc: Janice Maaskant, P. E.
Mark D. Ables
Ross Hoskett, P. E.

HCAD Account List and Tract Reference

Called 229.772 acres conveyed to County of Harris by Harris County Improvement District No. 17 by deed dated September 11, 2017 and recorded in County Clerk's File RP-2017-402273 of the Official Public Records of Real Property of Harris County, Texas

Deed Tract	Acreage	Survey ID	Survey	HCAD
1	3.693	8	C. Goodrich, Abstract 305	0421750000177
2	2.088	9	C. Goodrich, Abstract 305	0421750000178
3	3.709	10	C. Goodrich, Abstract 305	0421750000179
4	148.751	11	C. Goodrich, Abstract 305	0421750000180
5	4.969	12	C. Goodrich, Abstract 305	0421750000181
6	2.518	13	C. Goodrich, Abstract 305	0421750000168
7	5.087	14	C. Goodrich, Abstract 305	0421750000169
8	2.932	15	C. Goodrich, Abstract 305	0421750000170
9	24.518	16	C. Goodrich, Abstract 305	0421750000171
10	10.313	17	C. Goodrich, Abstract 305	0421750000172
11	2.649	18	C. Goodrich, Abstract 305	0421750000176
12	16.75	19	Auguste Senechal Survey, Abstract 722	0450260000003
13	1.795	20	Sam Lewis Survey, Abstract 1704	0482410000109
14	4.992	21	C. Goodrich, Abstract 305	0421750000173
15	2.363	22	C. Goodrich, Abstract 305	0421750000009

Called 20.000 acres conveyed to County of Harris by Jimmy C. Shaw, et ux by deed dated October 17, 2014 and recorded in County Clerk's File 20140468595 of the Official Public Records of Real Property of Harris County, Texas

Deed Tract	Acreage	Survey ID	Survey	HCAD
N/A	20	1	C. Goodrich, Abstract 305	0421750000157

Called 117.9465 acres conveyed to County of Harris by Merenco Realty, Inc. by deed dated October 17, 2014 and recorded in County Clerk's File 20140471160 of the Official Public Records of Real Property of Harris County, Texas

Deed Tract	Acreage	Survey ID	Survey	HCAD
1	75.1117	2	C. Goodrich, Abstract 305	0421750000158
2	8.5753	3	C. Goodrich, Abstract 305	0421750000159
3	3.7654	4	C. Goodrich, Abstract 305	0421750000157
4	6.4521	5	C. Goodrich, Abstract 305	0421750000157
5	15.0725	6	C. Goodrich, Abstract 305	0421750000157
6	8.9695	7	C. Goodrich, Abstract 305	0421750000160



CITY OF TOMBALL – WILLOW CREEK ANNEXATION

STATE OF TEXAS)
COUNTY OF HARRIS)

DESCRIPTION of 374.9 acres of land situated in the Chauncey Goodrich Survey, Abstract Number 305, the Auguste Senechal Survey, Abstract Number 722, and the Sam Lewis Survey, Abstract Number 1704, Harris County, Texas, being all of a called 20.000 acres tract of land conveyed to County of Harris by Jimmy C. Shaw, et ux by deed dated October 17, 2014 and recorded in County Clerk's File 20140468595 of the Official Public Records of Real Property of Harris County, Texas, being all of a called 117.9465 acres tract of land, described in six, (6), tracts, conveyed to County of Harris by Merenco Realty, Inc. by deed dated October 17, 2014 and recorded in County Clerk's File 20140471160 of the Official Public Records of Real Property of Harris County, Texas, being all of a called 229.772 acres tract, described in thirteen, (13), tracts, being all of a called 4.992 acres tract and being all of a called 2.363 acres tract conveyed to County of Harris by Harris County Improvement District No. 17 by deed dated September 11, 2017 and recorded in County Clerk's File RP-2017-402273 of the Official Public Records of Real Property of Harris County, Texas, save and except that certain portion of land out of a called 3.693 acres, a called 2.088 acres, a called 3.709 acres, and a called 148.751 acres tracts that apparently lies within the said Lewis Survey and further detailed on the map accompanying this exhibit as I.D. Numbers 8-11, this 374.9 acres tract is more particularly described by metes and bounds as follows, to wit:

NOTE: ALL BEARINGS AND COORDINATES DESCRIBED HEREIN ARE BASED ON THE TEXAS COORDINATE SYSTEM OF 1983 AS DEFINED IN V.T.C.A., NATURAL RESOURCES CODE, §21.071-21.079, NAD83(2011) EPOCH 2010.00. ALL DISTANCES DESCRIBED HEREIN ARE SURFACE, HORIZONTAL, (U.S. SURVEY FEET), AND MAY BE CONVERTED TO GRID BY MULTIPLYING BY A COMBINED SCALE FACTOR OF 0.99994128. REFERENCE IS MADE TO THE MAP OF EVEN DATE ACCOMPANYING THIS METES AND BOUNDS DESCRIPTION.

BEGINNING at an 1 inch iron pipe, found, in the North line of the said Senechal Survey, for the southwest corner of said Lewis Survey, same being the southwest corner of a called 160.3 acres tract conveyed to Sam Lewis by State of Texas by Letter Patent dated January 12, 1934 and recorded in Volume 942 at Page 191 of the Deed Records of Harris County, Texas, same being the southwest corner of a called 158.57 acres tract per field notes recorded in Texas General Land Office Scrap File 13411, for the southeast corner of the said Goodrich Survey, for the southeast corner of a called 73,123 square feet, (1.679 acres), more or less, tract conveyed to Harris County Flood Control District by Texas Commerce Bank N.A., Trustee of the Kaiser-Frapart Irrevocable Trust, et al by deed dated October 21, 1988 and recorded in County Clerk's File L951535 of the Official Public Records of Real Property, and for the southeast corner of said called Tract 4, called 148.751 acres, this beginning corner has a Texas Coordinate System of 1983 value of N = 13,948,447.64, E = 3,034,326.13 and Gamma, (γ) = +01° 39' 03", and from this corner a +/- 2" outside diameter iron pipe with top partially crushed, found, for the southeast corner of said Lewis Survey, same being the southeast corner of said called 160.3 acres tract, same being the southeast corner of said called 158.57 acres tract bears North 86° 13' 28" East, a distance of 1,099.74 feet, from said 1 inch iron pipe, found, a Train Rail, found, for the northwest corner of said Lewis Survey, same being the northwest corner of said called 160.3 acres tract, same being the northwest corner of said called 158.57 acres tract bears North 02° 57' 26" West, a distance of 6,852.38 feet, and from said Train Rail a 2 inch iron pipe with metal cap stamped, "NWCOR S LEWIS", bears South 51° West, a distance of 1.0 foot;

THENCE South 87° 11' 27" West with the South line of said Tract 4, called 148.751 acres, the South line of the said Goodrich Survey, and the North line of said Senechal Survey, at a distance of 66.77 feet, a 2-1/2 inch iron pipe, (bent), found in line, in all a total distance of 689.05 feet to a 5/8 inch iron rod with "BASELINE" cap, found, for the northeast corner of Tract 12, called 16.750 acres;

THENCE South 01° 11' 10" East with the East line of said Tract 12, called 16.750 acres, at a distance of 194.86 feet, a 5/8 inch iron rod with "BASELINE" cap, found in line, in all a total distance of 253.19 feet to a point in the center of Willow Creek and for the southeast corner of said Tract 12, called 16.750 acres;

THENCE with the South line of said Tract 12, called 16.750 acres and the center of said Willow Creek, the following meanders:

South 57° 57' 11" West, a distance of 349.84 feet;

South 79° 08' 42" West, a distance of 131.06 feet;

North 74° 57' 48" West, a distance of 126.53 feet;

South 71° 09' 13" West, a distance of 166.28 feet;

South 81° 38' 12" West, a distance of 55.23 feet;

North 82° 40' 46" West, a distance of 167.31 feet;

North 88° 04' 48" West, a distance of 211.74 feet;

South 68° 12' 12" West, a distance of 82.35 feet;

South 40° 32' 12" West, a distance of 225.68 feet;

South 34° 04' 42" West, a distance of 341.77 feet to a point for the southwest corner of said Tract 12, called 16.750 acres;

THENCE North 02° 58' 20" West with the West line of said Tract 12, called 16.750 acres, at a distance of 743.02 feet an 1 inch iron pipe, found, bears South 87° 01' 40" West, a distance of 0.4 feet, in all a total distance of 872.20 feet to an 1 inch iron pipe, (bent), found, in the South line of said Goodrich Survey, in the South line of said Tract 4, called 148.751 acres, for the northeast corner of Texas General Land Office Mineral File 154694, for the apparent northwest corner of said Senechal Survey, and for the northwest corner of said Tract 12, called 16.750 acres;

THENCE South 87° 11' 27" West with the South line of said Tract 4, called 148.751 acres, the South line of said Goodrich Survey, and the North line of said Mineral File 154694, a distance of 987.37 feet to a point for the southeast corner of a called 171.87 acres tract conveyed to Nabors Property Holdings, II, LLC by Nabors Corporate Services, Inc. by deed dated December 16, 2015 and recorded in County Clerk's File 20160007046 of the Official Public Records of Real Property of Harris County, Texas, and for the southwest corner of said Tract 4, called 148.751 acres, from this corner an 1 inch iron pipe, found, for the apparent southwest corner of said Goodrich Survey bears South 87° 11' 27" West, a distance of 2,008.73 feet;

THENCE with the common boundary line of said Tract 4, called 148.751 acres, and the East line of said called 171.87 acres tract, the following eight, (8), courses and distances:

- 1) North 02° 48' 33" West, a distance of 470.38 feet;
- 2) North 87° 11' 27" East, a distance of 439.22 feet;
- 3) North 02° 48' 33" West, a distance of 508.37 feet;
- 4) North 19° 54' 49" West, a distance of 281.78 feet;
- 5) South 87° 11' 27" West, a distance of 180.47 feet;
- 6) North 02° 48' 33" West, a distance of 300.00 feet;
- 7) North 87° 11' 27" East, a distance of 170.00 feet;
- 8) North 02° 48' 33" West, a distance of 460.92 feet to a point for the South corner of Tract 7, called 5.087 acres, and for a common corner of said called 171.87 acres tract and said Tract 4, called 148.751 acres;

THENCE with the common boundary line of said Tract 7, called 5.087 acres, and continuing with the East line of said called 171.87 acres tract, the following three, (3), courses and distances:

- 1) North 43° 57' 14" West, a distance of 1,062.68 feet to the point of curvature of a curve;
- 2) 1,166.81 feet along a curve to the right, concave northeast, having a central angle of 32° 36' 41", a radius of 2,050.00 feet, and a chord bearing and distance of North 27° 38' 54" West, 1,151.12 feet to the point of tangency of said curve;
- 3) North 11° 20' 33" West, a distance of 15.00 feet to the point of curvature of a curve, for the northwest corner of said Tract 7, called 5.087 acres, and for an exterior corner of Tract 10, called 10.313 acres;

THENCE with the common boundary line of said Tract 10, called 10.313 acres and continuing with the East and North line of said called 171.87 acres tract, the following six, (6), courses and distances:

- 1) 54.98 feet along a curve to the left, concave southwest, having a central angle of 90° 00' 00", a radius of 35.00 feet, and a chord bearing and distance of North 56° 20' 33" West, 49.50 feet to the point of tangency of said curve;

- 2) South 78° 39' 27" West, a distance of 71.00 feet to the point of curvature of a curve;
- 3) 127.39 feet along a curve to the left, concave southeast, having a central angle of 07° 40' 59", a radius of 950.00 feet, and a chord bearing and distance of South 74° 48' 58" West, 127.29 feet to the point of tangency of said curve;
- 4) South 70° 58' 28" West, a distance of 522.69 feet to the point of curvature of a curve;
- 5) 311.99 feet along a curve to the right, concave northwest, having a central angle of 17° 01' 29", a radius of 1,050.00 feet, and a chord bearing and distance of South 79° 29' 13" West, 310.85 feet to the point of tangency of said curve;
- 6) South 87° 59' 57" West, a distance of 120.80 feet to a 5/8 inch iron rod with "BASELINE" cap, found, for the southeast corner of a residue of a called 617.6016 acres tract conveyed to CC Telge Road, L.P. by Capital Farm Credit, FLCA by deed dated April 28, 2010 and recorded in County Clerk's File 20100175659 of the Official Public Records of Real Property of Harris County, Texas, for the northeast corner of Willowcreek Ranch, Section 9, Subdivision, filed March 2, 2017 and recorded in Film Code Number 680721 of the Map Records of Harris County, Texas, for the northwest corner of said called 171.87 acres tract and for the southwest corner of said Tract 10, called 10.313 acres;

THENCE North 02° 44' 18" West with the West line of said Tract 10, called 10.313 acres, and the East line of said residue of called 617.6016 acres tract, a distance of 100.01 feet to a 5/8 inch iron rod with "HARRIS COUNTY" cap, found, for the southwest corner of the residue of a called 39.55 acres tract conveyed to Willow Creek Realty, LLC by Merenco Realty, Inc. by deed dated February 24, 2016 and recorded in County Clerk's File RP-2016-81535 of the Official Public Records of Real Property of Harris County, Texas and for the northwest corner of said Tract 10, called 10.313 acres;

THENCE with the common boundary line of said Tract 10, called 10.313 acres, the South or southeast and East line of said residue of called 39.55 acres tract, and the South or southeast and East line of a called 7.092 acres tract conveyed to Harris County Improvement District No. 17 by Willow Creek Realty, LLC by deed dated September 8, 2017 and recorded in County Clerk's File RP-2017-402811 of the Official Public Records of Real Property of Harris County, Texas, the following seven, (7), courses and distances:

- 1) North 87° 59' 57" East, a distance of 122.09 feet to the point of curvature of a curve;
- 2) 282.28 feet with a curve to the left, concave northwest, having a central angle of 17° 01' 29", a radius of 950.00 feet, and a chord bearing and distance of North 79° 29' 13" East, 281.24 feet to the point of tangency of said curve;

- 3) North 70° 58' 28" East, a distance of 522.69 feet to the point of curvature of a curve;
- 4) 140.80 feet with a curve to the right, concave southeast, having a central angle of 07° 40' 59", a radius of 1,050.00 feet, and a chord bearing and distance of North 74° 48' 58" East, 140.69 feet to the point of tangency of said curve;
- 5) North 78° 39' 27" East, a distance of 71.00 feet to the point of curvature of a curve;
- 6) 54.98 feet along a curve to the left, concave northwest, having a central angle of 90° 00' 00", a radius of 35.00 feet, and a chord bearing and distance of North 33° 39' 27" East, 49.50 feet to the point of tangency of said curve;
- 7) North 11° 20' 33" West, a distance of 15.00 feet to a point for an exterior corner of said Tract 10, called 10.313 acres, for the southwest corner of Tract 8, called 2.932 acres, and for the point of curvature of a curve;

THENCE with the common boundary line of said Tract 8, called 2.932 acres, and continuing with the East line of said called 7.092 acres tract, and the East line of another residue of said called 39.55 acres tract, the following four, (4), courses and distances:

- 1) 622.29 feet along a curve to the right, concave East, having a central angle of 27° 57' 52", a radius of 1,275.00 feet, and a chord bearing and distance of North 02° 38' 23" East, 616.13 feet to the point of tangency of said curve;
- 2) North 16° 37' 19" East, a distance of 175.45 feet to the point of curvature of a curve;
- 3) 389.48 feet along a curve to the left, concave West, having a central angle of 18° 59' 31", a radius of 1,175.00 feet, and a chord bearing and distance of North 07° 07' 34" East, 387.70 feet to the point of tangency of said curve;
- 4) North 02° 22' 12" West, a distance of 97.79 feet to a point for the northeast corner of said residue of called 39.55 acres tract and for the northwest corner of said Tract 8, called 2.932 acres;

THENCE North 87° 37' 45" East with the North line of said Tract 8, called 2.932 acres, a distance of 100.00 feet to a point for the northeast corner of said Tract 8, called 2.932 acres and the northwest corner of a residue of called 606.1394 acres tract conveyed to Merenco Realty Inc. by Tandem Energy Corporation by deed dated April 28, 1999 and recorded in County Clerk's File T693301 of the Official Public Records of Real Property of Harris County, Texas;

THENCE South 02° 22' 12" East with the East line of said Tract 8, called 2.932 acres, and the West line of said called 606.1394 acres residue tract, a distance of 59.40 feet, more or less to a point for the southwest corner of said called 606.1394 acres residue tract and for an exterior corner of Tract 1, called 75.1117 acres tract;

THENCE North 87° 38' 17" East with an interior line of said Tract 1, called 75.1117 acres, and the South line of said called 606.1394 acres residue tract, a distance of 1223.96 feet to a point for the southeast corner of said called 606.1394 acres residue tract and for an interior corner of said Tract 1, called 75.1117 acres;

THENCE North 02° 21' 43" West with an interior line of said Tract 1, called 75.1117 acres, and the East line of said called 606.1394 acres residue tract, a distance of 60.00 feet to a point for the northeast corner of said called 606.1394 acres residue tract and for an exterior corner of said Tract 1, called 75.1117 acres;

THENCE North 87° 38' 17" East with an exterior line of said Tract 1, called 75.1117 acres, a distance of 2,516.40 feet to a point in the southwest right of way line of State Highway Number 249, (called 350 feet wide right of way), and for an exterior corner of said Tract 1, called 75.1117 acres;

THENCE South 26° 16' 12" East with an exterior line of said Tract 1, called 75.1117 acres, and the southwest right of way line of said State Highway Number 249, a distance of 65.63 feet to a point for the northeast corner of another residue of said called 606.1394 acres tract and for an exterior corner of said Tract 1, called 75.1117 acres;

THENCE South 87° 38' 17" West with an interior line of said Tract 1, called 75.1117 acres, and the North line of said called 606.1394 acres residue tract, a distance of 449.75 feet to a point for the northwest corner of said called 606.1394 acres residue tract and for an interior corner of said Tract 1, called 75.1117 acres;

THENCE South 02° 12' 39" East with an interior line of said Tract 1, called 75.1117 acres, and the West line of said called 606.1394 acres residue tract, a distance of 265.61 feet to a point for the northeast corner of a called 7.7884 acres tract conveyed to Barron Family Properties, LLC by Uretek USA, Inc. by deed dated April 2, 2014 and recorded in County Clerk's File 20140134468 of the Official Public Records of Real Property of Harris County, Texas and for an exterior corner of said Tract 1, called 75.1117 acres;

THENCE South 88° 53' 08" West with an interior line of said Tract 1, called 75.1117 acres, and the North line of said called 7.7884 acres tract, a distance of 574.57 feet to a point for the northwest corner of said called 7.7884 acres tract and for an interior corner of said Tract 1, called 75.1117 acres;

THENCE South $01^{\circ} 54' 18''$ East with an interior line of said Tract 1, called 75.1117 acres, and the West line of said called 7.7884 acres tract, a distance of 363.97 feet to a point for the northeast corner of a called 18.9062 acres tract conveyed to Lone Star College System by Merenco Realty, Inc. by deed dated April 4, 2014 and recorded in County Clerk's File 20140138412 of the Official Public Records of Real Property of Harris County, Texas and for an exterior corner of said Tract 1, called 75.1117 acres;

THENCE with the common boundary line of said Tract 1, called 75.1117 acres, and the Northern and Western lines of said called 18.9062 acres tract, the following six, (6), courses and distances:

- 1) South $87^{\circ} 34' 22''$ West, a distance of 439.20 feet;
- 2) North $05^{\circ} 03' 04''$ West, a distance of 213.07 feet;
- 3) South $85^{\circ} 17' 49''$ West, a distance of 417.30 feet;
- 4) South $02^{\circ} 21' 53''$ East, a distance of 487.82 feet;
- 5) North $89^{\circ} 45' 21''$ East, a distance of 54.69 feet;
- 6) South $02^{\circ} 20' 27''$ East, a distance of 595.97 feet to a 5/8 inch iron rod with "HOVIS" cap, found, for the southwest corner of said called 18.9062 acres tract and for an exterior corner of Tract 5, called 4.969 acres;

THENCE North $87^{\circ} 59' 59''$ East with the North line of said Tract 5, called 4.969 acres, the South line of said called 18.9062 acres tract and the South line of said called 7.7884 acres tract, a distance of 864.01 feet to a point for the most Southern, southeast corner of said called 7.7884 acres tract and for the southwest corner of Tract 15, called 2.363 acres;

THENCE North $01^{\circ} 52' 05''$ West with the West line of said Tract 15, called 2.363 acres, and an interior line of said called 7.7884 acres tract, a distance of 740.12 feet to a point for an interior corner of said called 7.7884 acres tract and for the northwest corner of said Tract 15, called 2.363 acres;

THENCE North $87^{\circ} 12' 40''$ East with the North line of said Tract 15, called 2.363 acres, and an interior line of said called 7.7884 acres tract, a distance of 293.88 feet to a point for the northwest corner of a residue of called 28.68 acres, more or less, tract, conveyed to Humble Oil & Refining Company by Socony Mobil Oil Company, Inc. by deed filed August 10, 1965 and recorded in Volume 6028 at Page 80, (County Clerk's File C139334), of the Deed Records of Harris County, Texas and for the northeast corner of said Tract 15, called 2.363 acres;

THENCE South $01^{\circ} 55' 05''$ East with the East line of said Tract 15, called 2.363 acres, the East line of Tract 11, called 2.649 acres, and the West line of said residue of called 28.68 acres, more or less, tract, a distance of 744.16 feet to a point in the North line of said Tract 5, called 4.969 acres, for the southwest corner of said residue of called 28.68 acres, more or less, tract, and for the southeast corner of said Tract 11, called 2.649 acres;

THENCE North $87^{\circ} 59' 59''$ East with the North line of said Tract 5, called 4.969 acres, the South line of said residue of called 28.68 acres, more or less, tract, the South line of a called 9.26 acres, more or less, tract conveyed to Humble Oil & Refining Co. by Magnolia Petroleum Company by deed dated September 9, 1937 and recorded in Volume 1063 at Page 557 of the Deed Records of Harris County, Texas, and the South line of a residue of a called 145.78 acres tract conveyed to Ralph Lewis Frapart, et al by Frances Kaiser Frapart by deed dated December 10, 1976 and recorded in County Clerk's File F014298 of the Official Public Records of Real Property of Harris County, Texas, a distance of 777.19 feet to a 5/8 inch iron rod with "BASELINE" cap, found, for the northeast corner of said Tract 5, called 4.969 acres, and for the northwest corner of said Tract 13, called 1.795 acres;

THENCE North $87^{\circ} 56' 11''$ East with the North line of said Tract 13, called 1.795 acres, the South line of the residue of said called 145.78 acres tract and the South line of a called 61,615 square feet, (1.415 acres), more or less tract, called Parcel "C", described in said County Clerk's File L951535, a distance of 739.97 feet to a point in the southwest line of said State Highway Number 249, (called 350 feet wide right of way), for the southeast corner of a residue of said called 145.78 acres tract and for the northeast corner of said Tract 13, called 1.795 acres;

THENCE with the East or northeast line of said Tract 13, called 1.795 acres, and the southwest right of way line of said State Highway Number 249, a curve to the left, concave northeast, having a central angle of $01^{\circ} 53' 37''$, a radius of 3994.73 feet, an arc length of 132.03 feet and a chord bearing and distance of South $42^{\circ} 49' 17''$ East, 132.02 feet to a point for the northeast corner of the residue of a called 2.180 acres tract of land conveyed to Harris County Flood Control District by Tandem Energy Corporation by deed dated March 15, 2005 and recorded in County Clerk's File Y461230 of the Official Public Records of Real Property of Harris County, Texas, and for the southeast corner of said Tract 13, called 1.795 acres;

THENCE South 87° 56' 11" West with the South line of said Tract 13, called 1.795 acres, the North line of said residue of called 2.180 acres tract, the North line of a called 1.494 acres tract conveyed to Tortuga Operating Company by Harris County Flood Control District by deed dated March 11, 2010 and recorded in County Clerk's File 20100094479 of the Official Public Records of Real Property of Harris County, Texas, the North line of the residue of a called 64.767 acres tract conveyed to Harris County Flood Control District by Richard Ray Frapart, et al by deed dated May 25, 2005 and recorded in County Clerk's File Y495627 of the Official Public Records of Real Property of Harris County, Texas, the North line of a called 164,385 square feet, (3.774 acres), more or less tract, called Parcel "B", in said County Clerk's File L951535, and the North line of a called 3.2528 acres tract of land conveyed to Nabors Property Holdings II, LLC by Merenco Realty, Inc. by deed dated November 3, 2016 and recorded in County Clerk's File RP-2016-500174 of the Official Public Records of Real Property of Harris County, Texas, a distance of 824.82 feet to a 3/4 inch iron rod with aluminum cap stamped, "PACE", found, for the northwest corner of said called 3.2528 acres tract, for the northeast corner of a called 22.145 acres tract conveyed to Nabors Property Holdings II, LLC by Turner Coatings, LLC by deed dated February 29, 2016 and recorded in County Clerk's File RP-2016-86222 of the Official Public Records of Real Property of Harris County, Texas, for the southwest corner of said Tract 13, called 1.795 acres, and for the southeast corner of said Tract 5, called 4.969 acres;

THENCE South 87° 59' 59" West with the South line of said Tract 5, called 4.969 acres, and the North line of said called 22.145 acres tract a distance of 704.36 feet to a point for the northwest corner of said called 22.145 acres tract and for the northeast corner of said called 20.000 acres tract;

THENCE South 02° 00' 18" East with the East line of said called 20.000 acres tract and the West line of said called 22.145 acres tract, a distance of 194.56 feet to a point for an angle in the West or northwest line of said called 22.145 acres tract and for an angle in the East or southeast line of said called 20.000 acres tract;

THENCE South 34° 15' 24" West with the southeast line of said called 20.000 acres tract and the northwest line of said called 22.145 acres tract, a distance of 822.27 feet to a point for the West or southwest corner of said called 22.145 acres tract and for the North or northwest corner of Tract 5, called 15.0725 acres;

THENCE South 55° 43' 33" East with the North line of said Tract 5, called 15.0725 acres, and the South line of said called 22.145 acres tract, a distance of 333.04 feet to a point for an angle in the South line of said called 22.145 acres tract and for an angle in the North line of said Tract 5, called 15.0725 acres;

THENCE North 87° 09' 56" East with the North line of said Tract 5, called 15.0725 acres, and the South line of said called 22.145 acres tract, a distance of 841.39 feet to a point in a curve in the West line of a called 266,854 square feet, (6.126 acres), more or less, tract described in Right of Way Easement conveyed to Harris County Flood Control District by Exxon Corporation by instrument dated August 31, 1995 and recorded in County Clerk's File R649324 of the Official Public Records of Real Property of Harris County, Texas;

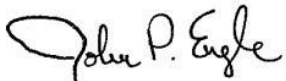
THENCE with the West line of said called 266,854 square feet, (6.126 acres), more or less, tract, a curve to the right, concave southeast, having a central angle of 06° 53' 36", a radius of 1,275.00 feet, an arc length of 153.39 feet and a chord bearing and distance of North 18° 06' 05" East, 153.30 feet to a point for the point of tangency of said curve in the West line of said called 266,854 square feet, (6.126 acres), more or less tract;

THENCE North 21° 32' 52" East continuing with the West line of said called 266,854 square feet, (6.126 acres), more or less, tract, a distance of 84.76 feet to a point for the most Northern corner of said called 266,854 square feet, (6.126 acres), more or less, tract, the West or southwest corner of said called 164,385 square feet, (3.774 acres), more or less tract, called Parcel "B", in said County Clerk's File L951535, in the East line of said Goodrich Survey and in the West line of said Lewis Survey;

THENCE South 02° 57' 26" East with the East line of said called 266,854 square feet, (6.126 acres), more or less, tract, the most Southern, West line of said called 164,385 square feet, (3.774 acres), more or less tract, called Parcel "B", in said County Clerk's File L951535, the most Northern, West line of a called 102,584 square feet, (2.355 acres), more or less tract, called Parcel "A" in said County Clerk's File L951535, the West line of said called 73,123 square feet, (1.679 acres), more or less tract, the East line of the said Goodrich Survey and the West line of the said Lewis Survey, a distance of 2,779.32 feet to the PLACE OF BEGINNING, and containing within said boundaries 374.9 acres of land.

I, John P. Engle, Registered Professional Land Surveyor Number 5568, do hereby certify that this document was prepared under 22 TAC §663.21, does not reflect the results of an on the ground survey, and is not to be used to convey or establish interests in real property except those rights and interests implied or established by the creation or reconfiguration of the boundary of the political subdivision for which it was prepared.

WITNESS, my hand and seal at Houston, Texas, this the 14th day of February, A.D., 2018.



John P. Engle
Registered Professional
Land Surveyor Number 5568



**NOTICE OF PUBLIC HEARING
CITY OF TOMBALL
CITY COUNCIL
MAY 7, 2018**



Notice is Hereby Given that a Public Hearing will be held by the City Council of the City of Tomball on **Monday, May 7, 2018, at 6:00 P.M.** at City Hall, 401 Market Street, Tomball Texas. On such dates, City Council will consider the following:

Zoning Case P18-035: Request by John Blount, County Engineer, on behalf of Harris County, to amend Chapter 50 (Zoning) of the Tomball Code of Ordinances by zoning approximately 374.9 acres of land generally located on the west side of SH 249 between Willow Creek and Alice Road, as Commercial. The property is legally described as *374.9 Acres of Land Situated in the Chauncey Goodrich Survey, Abstract Number 305, the Auguste Senechal Survey, Abstract Number 722, and the Sam Lewis Survey, Abstract Number 1704, Harris County, Texas, Being All of a Called 20.000 Acres Tract of Land Conveyed to County of Harris by Jimmy C. Shaw, Et Ux by Deed dated October 17, 2014 and Recorded in County Clerk's File 20140468595 of the Official Public Records of Real Property of Harris County, Texas, Being All of a Called 117.9465 Acres Tract of Land, Described in Six (6) Tracts, Conveyed to County of Harris by Merenco Realty, Inc. by Deed dated October 17, 2014 and Recorded in County Clerk's File 20140471160 of the Official Public Records of Real Property of Harris County, Texas, Being All of a Called 229.772 Acres Tract, Described in Thirteen, (13), Tracts, Being All of a Called 4.992 Acres Tract and Being All of a Called 2.363 Acres Tract Conveyed to County of Harris by Harris County Improvement District No. 17 by Deed Dated September 11, 2017 and Recorded in County Clerk's File Rp-2017-402273 of the Official Public Records of Real Property of Harris County, Texas, Save and Except that Certain Portion of Land Out of a Called 3.693 Acres, a Called 2.088 Acres, a Called 3.709 Acres, and a Called 148.751 Acres Tracts that apparently lies within the Said Lewis Survey.*

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

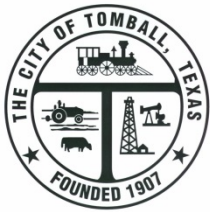
CERTIFICATION

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 **3rd** day of **May 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.



Notice of Public Hearing

YOU ARE INVITED TO ATTEND the Public Hearing before **CITY COUNCIL** of the City of Tomball regarding the following item:

CASE NUMBER: P18-035

APPLICANT/OWNER: Request by John Blount, County Engineer, on behalf of Harris County

LOCATION: Generally located on the west side of SH 249 between Willow Creek and Alice Road

PROPOSAL: To amend Chapter 50 (Zoning) of the Tomball Code of Ordinances by zoning approximately 374.9 acres of land as commercial.

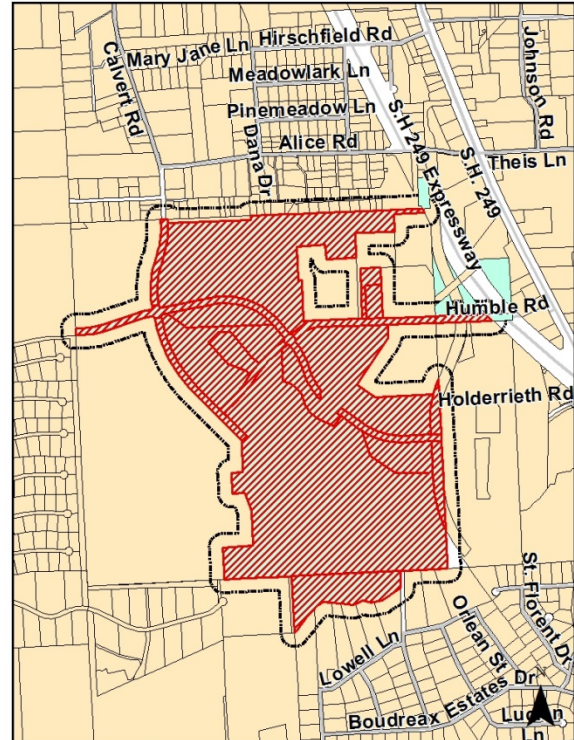
CONTACT: Amelia Lindley, Planner

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.



**City Council Public Hearing:
Monday, May 7, 2018, 6:00 PM**

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

Regular City Council

Agenda Item

Data Sheet

Meeting Date: May 21, 2018

Topic:

Adopt, on Second Reading, Ordinance No. 2018-17, an Ordinance of the City Council of Tomball, Texas, Levying an Assessment against Section Three Properties within the City of Tomball Public Improvement District Number Two (Raleigh Creek Subdivision); and Making Certain Findings Related Thereto

Background:

Public Improvement District Number Two was created in 2007 and comprises the entirety of the Raleigh Creek Subdivision which will ultimately contain 347 single family lots. Assessments were levied on Section One properties in 2014 and earlier this year in Section Two. The developer has completed improvements for Section Three properties and the assessments now need to be levied on those lots.

As with Section One and Two lots, the assessments proposed are on a per lot basis. Based on the public infrastructure costs for the development, the total, one-time assessment \$26,197.39 is proposed which represents the principal amount of the assessment. The annual installment (financed assessment) proposed is \$2,876.33 which is the principal amount of the assessment amortized over 15 years at 7% interest. With the annual administrative cost of \$71.91 per lot, the total annual payment will equal \$2,984.24 per lot.

Home values in Raleigh Creek are expected to average \$350,000. A \$2,984.24 annual assessment installment payment on a \$350,000 home is the equivalent of a \$0.85 property tax rate.

The annual payment, principal, and interest are demonstrated on the attached example amortization schedule which will be kept for each property covered by the assessment. The principal amount of the assessment is payable at any time by each homeowner which would terminate the assessment.

Proper disclosure notices detailing the assessment will be presented to potential homebuyers by the homebuilders and for acknowledgement at closing in the same manner as disclosure notices used in MUDs and other special districts with an ad valorem tax rate.

Future Actions

As with other City Public Improvement Districts, Harris County will collect the PID assessments in the same manner as property taxes and transferred to a City-established PID revenue fund. A report on the reimbursable developer costs will be performed by a qualified CPA firm and the revenues will be disbursed to the developer once a year after administrative costs have been deducted.

Origination:

Scott Bean, Hawes Hill Calderon

Recommendation:

Adopt Ordinance No. 2018-17 on Second Reading

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

Doris Speer, City Secretary

ACTION TAKEN

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

Ordinance No. 2018-17 - PID 2 Assessment Section Three

TPID - Assessment Roll - Section Three

Council Information Sheet - PID 2

PID Primer

Listing of City PIDs Along With Equivalent Tax Rates

ORDINANCE NO. 2018-17

AN ORDINANCE OF THE CITY COUNCIL OF TOMBALL, TEXAS, LEVYING AN ASSESSMENT AGAINST SECTION THREE PROPERTIES WITHIN THE CITY OF TOMBALL PUBLIC IMPROVEMENT DISTRICT NUMBER TWO (RALEIGH CREEK SUBDIVISION); AND MAKING CERTAIN FINDINGS RELATED THERETO.

* * * * *

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 to levy and collect an assessment in furtherance of the purposes thereof; and

WHEREAS, the City has created City of Tomball Public Improvement District Number Two (the “PID”), adopted a Service and Assessment Plan (the “Plan”) for the PID, all in accordance with the applicable provisions of Chapter 372; and

WHEREAS, the City Council filed a proposed assessment roll with the City secretary which roll was available for public inspection, and following notice thereof by mail and publication as required by Chapter 372, the City Council held a public hearing at which written or oral objections to the proposed assessments were considered and passed on by the City Council; and

WHEREAS, the City Council has determined that the levy of a special assessment for and on behalf of the PID is necessary and advisable, and that the proposed assessment roll apportions the cost of the subject improvements in the PID on the basis of special benefits accruing to the property because of the improvement, **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 assessment roll attached hereto is hereby approved and the special assessments described therein are hereby levied on the subject property in accordance with the terms of the Plan, which Plan determines, *inter alia*, the method of payment of the assessments, and makes provision for the payment thereof in periodic installments, interest thereon and the collection thereof. 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. There is hereby created a first and prior lien securing payment of the assessment levied, effective as of the date of this Ordinance as provided in the Plan and Chapter 372.

Section 4. 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 THE MEETING OF THE CITY COUNCIL OF THE CITY OF TOMBALL HELD ON THE 7TH DAY OF MAY 2018.

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

SECOND READING:

READ, PASSED, AND APPROVED AS SET OUT BELOW AT THE MEETING OF THE CITY COUNCIL OF THE CITY OF TOMBALL HELD ON THE 21ST DAY OF MAY 2018.

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

GRETCHEN FAGAN, Mayor

Attest:

DORIS SPEER, City Secretary

Approved as to form:

Loren B. Smith, City Attorney

Public Improvement District Number Two
Raleigh Creek Subdivision
Section Three Assessment Roll
City of Tomball, Harris County, Texas

Owner	Block #	Lot #	Total Assessment	Annual Assessment Installment	Financed Assessment Term	Annual Administrative Cost	Total Annual Payment
LS Development, LLC	1	1	\$ 26,197.39	\$2,876.33	15 years	\$ 71.91	\$ 2,948.24
LS Development, LLC	1	2	\$ 26,197.39	\$2,876.33	15 years	\$ 71.91	\$ 2,948.24
LS Development, LLC	1	3	\$ 26,197.39	\$2,876.33	15 years	\$ 71.91	\$ 2,948.24
LS Development, LLC	1	4	\$ 26,197.39	\$2,876.33	15 years	\$ 71.91	\$ 2,948.24
LS Development, LLC	1	5	\$ 26,197.39	\$2,876.33	15 years	\$ 71.91	\$ 2,948.24
LS Development, LLC	1	6	\$ 26,197.39	\$2,876.33	15 years	\$ 71.91	\$ 2,948.24
LS Development, LLC	1	7	\$ 26,197.39	\$2,876.33	15 years	\$ 71.91	\$ 2,948.24
LS Development, LLC	1	8	\$ 26,197.39	\$2,876.33	15 years	\$ 71.91	\$ 2,948.24
LS Development, LLC	1	9	\$ 26,197.39	\$2,876.33	15 years	\$ 71.91	\$ 2,948.24
LS Development, LLC	1	10	\$ 26,197.39	\$2,876.33	15 years	\$ 71.91	\$ 2,948.24
LS Development, LLC	1	11	\$ 26,197.39	\$2,876.33	15 years	\$ 71.91	\$ 2,948.24
LS Development, LLC	1	12	\$ 26,197.39	\$2,876.33	15 years	\$ 71.91	\$ 2,948.24
LS Development, LLC	1	13	\$ 26,197.39	\$2,876.33	15 years	\$ 71.91	\$ 2,948.24
LS Development, LLC	1	14	\$ 26,197.39	\$2,876.33	15 years	\$ 71.91	\$ 2,948.24
LS Development, LLC	1	15	\$ 26,197.39	\$2,876.33	15 years	\$ 71.91	\$ 2,948.24
LS Development, LLC	1	16	\$ 26,197.39	\$2,876.33	15 years	\$ 71.91	\$ 2,948.24
LS Development, LLC	1	17	\$ 26,197.39	\$2,876.33	15 years	\$ 71.91	\$ 2,948.24
LS Development, LLC	2	18	\$ 26,197.39	\$2,876.33	15 years	\$ 71.91	\$ 2,948.24
LS Development, LLC	2	1	\$ 26,197.39	\$2,876.33	15 years	\$ 71.91	\$ 2,948.24
LS Development, LLC	2	2	\$ 26,197.39	\$2,876.33	15 years	\$ 71.91	\$ 2,948.24
LS Development, LLC	2	3	\$ 26,197.39	\$2,876.33	15 years	\$ 71.91	\$ 2,948.24
LS Development, LLC	2	4	\$ 26,197.39	\$2,876.33	15 years	\$ 71.91	\$ 2,948.24
LS Development, LLC	2	5	\$ 26,197.39	\$2,876.33	15 years	\$ 71.91	\$ 2,948.24
LS Development, LLC	2	6	\$ 26,197.39	\$2,876.33	15 years	\$ 71.91	\$ 2,948.24
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LS Development, LLC	2	15	\$ 26,197.39	\$2,876.33	15 years	\$ 71.91	\$ 2,948.24
LS Development, LLC	2	16	\$ 26,197.39	\$2,876.33	15 years	\$ 71.91	\$ 2,948.24
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LS Development, LLC	2	19	\$ 26,197.39	\$2,876.33	15 years	\$ 71.91	\$ 2,948.24
LS Development, LLC	2	20	\$ 26,197.39	\$2,876.33	15 years	\$ 71.91	\$ 2,948.24
LS Development, LLC	2	21	\$ 26,197.39	\$2,876.33	15 years	\$ 71.91	\$ 2,948.24
LS Development, LLC	2	22	\$ 26,197.39	\$2,876.33	15 years	\$ 71.91	\$ 2,948.24
LS Development, LLC	2	23	\$ 26,197.39	\$2,876.33	15 years	\$ 71.91	\$ 2,948.24

Public Improvement District Number Two
Raleigh Creek Subdivision
Section Three Assessment Roll
City of Tomball, Harris County, Texas

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LS Development, LLC	1	4	\$ 26,197.39	\$2,876.33	15 years	\$ 71.91	\$ 2,948.24
LS Development, LLC	1	5	\$ 26,197.39	\$2,876.33	15 years	\$ 71.91	\$ 2,948.24
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Council Item Information Sheet – Section Three Assessment Roll for Public Improvement District No. 2 (Raleigh Creek Subdivision).

Action Requested

Approval of the Section Three Assessment Roll.

Information

Public Improvement District Number Two was created in 2007 and comprises the entirety of the Raleigh Creek Subdivision which will ultimately contain 347 single family lots. Assessments were levied on Section One properties in 2014 and earlier this year in Section Two. The developer has completed improvements for Section Three properties and the assessments now need to be levied on those lots.

As with Section One and Two lots, the assessments proposed are on a per lot basis. Based on the public infrastructure costs for the development, the total, one-time assessment \$26,197.39 is proposed which represents the principal amount of the assessment. The annual installment (financed assessment) proposed is \$2,876.33 which is the principal amount of the assessment amortized over 15 years at 7% interest. With the annual administrative cost of \$71.91 per lot, the total annual payment will equal \$2,984.24 per lot.

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EXAMPLE AMORTIZATION SCHEDULE

Duration (in years)	15
Interest Rate	7.0 0%
Annual Payment Amount	\$2, 87 6.3 3 \$4
Total Lifetime Payments	3,1 44. 99 \$2
Total Principal	6,1 97. 39 \$1
Total Interest	6,9 47. 60

	Pa ym ent	Pri nci pal	Int ere st	Pa ym ent	Pr inc ip al Ba la nc e
					\$2 6,1 97. 39
		\$1, 04	\$1, 83	\$2, 87	\$2 5,1
		2.5	3.8	6.3	54.
1	2	2	3	87	
		\$1, 11	\$1, 76	\$2, 87	\$2 4,0
		5.4	0.8	6.3	39.
2	9	4	3	38	
		\$1, 19	\$1, 68	\$2, 87	\$2 2,8
		3.5	2.7	6.3	45.
3	8	6	3	81	
		\$1, 27	\$1, 59	\$2, 87	\$2 1,5
		7.1	9.2	6.3	68.
4	3	1	3	68	

	\$1,	\$1,	\$2,	\$2
	36	50	87	0,2
	6.5	9.8	6.3	02.
5	2	1	3	16
	\$1,	\$1,	\$2,	\$1
	46	41	87	8,7
	2.1	4.1	6.3	39.
6	8	5	3	97
	\$1,	\$1,	\$2,	\$1
	56	31	87	7,1
	4.5	1.8	6.3	75.
7	3	0	3	44
	\$1,	\$1,	\$2,	\$1
	67	20	87	5,5
	4.0	2.2	6.3	01.
8	5	8	3	39
	\$1,	\$1,	\$2,	\$1
	79	08	87	3,7
	1.2	5.1	6.3	10.
9	4	0	3	15
	\$1,		\$2,	\$1
	91	\$9	87	1,7
	6.6	59.	6.3	93.
10	2	71	3	53
	\$2,		\$2,	\$9,
	05	\$8	87	74
	0.7	25.	6.3	2.7
11	9	55	3	5
	\$2,		\$2,	\$7,
	19	\$6	87	54
	4.3	81.	6.3	8.4
12	4	99	3	1
	\$2,		\$2,	\$5,
	34	\$5	87	20
	7.9	28.	6.3	0.4
13	4	39	3	6
	\$2,		\$2,	\$2,
	51	\$3	87	68
	2.3	64.	6.3	8.1
14	0	03	3	6
	\$2,		\$2,	
	68	\$1	87	
	8.1	88.	6.3	\$0.
15	6	17	3	00

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\$2	\$1	\$4
6,1	6,9	3,1
97.	47.	44.
39	60	99

Public Improvement District (PID) Primer

What is a PID?

A Public Improvement District (PID) is a public financing tool created under Chapter 372 of the Texas Local Government Code (TLGC). A PID allows a neighborhood or commercial area to apportion the cost of improvements and levy an assessment against property located in the PID, because that property is acquiring a special benefit because of the improvements. In other words, the property that will benefit the most from the improvement pays for the improvement--the burden is not shifted to the entire community. PIDs are intended to promote economic growth by providing the funding mechanism to construct necessary infrastructure or desired amenities that support new developments and encourage redevelopment.

PIDs are a component unit of the City and are governed by the City Council. The Council can create an advisory board for the PID if necessary, but final determinations on establishment, costs, assessments, and budgets must be made by the City Council.

What can a PID finance?

The PID can be designed to help finance the cost of a variety of development costs including:

- water, wastewater, health and sanitation, or drainage improvements;
- street and sidewalk improvements;
- mass transit improvements;
- parking improvements;
- library improvements;
- park, recreation and cultural;
- art installation;
- creation of pedestrian malls; or
- supplemental services. (advertising, extra public safety, etc.)

How does the PID finance the projects?

Project costs can be paid directly by the City or the developer can advance funds. The assessment fees levied on each property fund the project payments. Until the PID has accumulated adequate assessment fee revenue, the City can choose to issue bonds or use general tax revenues for initial payments or developer reimbursements.

Separate fund(s) are created by the City for the administration of the PID. The Council reviews and approves the assessments and district budget each year.

How is a PID created and dissolved?

PID Development Process (minimum steps required by Chapter 372, TLGC):

1. City, County, or affected property owner(s) initiates a petition for creation.
2. If needed, City Council appoints an advisory board to develop the PID improvement plan.
3. City Council holds a public hearing & passes a resolution on the need for the PID.
4. City Council authorizes the establishment of a PID by resolution.
5. Construction of improvements may begin 20-days after the PID's creation.
6. City Council adopts a Service and Assessment Plan (list of projects, costs, debt, & assessment fee) for at least five, ongoing years is developed.
7. City holds a public hearing on the assessment roll (lists each PID property's fee).
8. City Council adopts ordinance to levy the special assessment. (City will also create a special fund(s) for the PID).
9. If necessary, City Council holds public hearing and approves additional assessments to correct omissions or mistakes in the improvement costs.
10. If necessary, City Council holds public hearing & passes a resolution dissolving PID; however, the district remains in effect at least to meet its debt obligations.

Does the City have any additional requirements?

Yes. City of Tomball Administrative Policy No. 18 "Development Policy for Special Financing Districts" requires:

1. Residential Development Size--greater than 125 acres unless the average home value is greater than \$225, 000.
2. Annual Individual Assessment Limit--no more than the equivalent of a \$.50 tax rate on the assessed value of the property.
3. Assessment Term Limit--Not to exceed 10 years. First assessment due 3 years after levy or upon transfer of property from developer to home buyer whichever occurs first.
4. Developer Interest Limit--If bonds are sold, developer earned interest reimbursements will not exceed the net effective interest rate on bonds sold or 8% whichever is less. If bonds are not sold, reimbursement will be calculated according to an indexed-based formula (see Admin Policy 18) or 8% whichever is less.
5. Bidding Requirements--Developers must follow municipal bidding procedures (as outline in Chap 252 TLGC). All bids and awards of contracts must be approved by City Council.
6. District Administration--The City of Tomball will contract with an outside consultant to bill, collect, and track district assessments. This cost will be included in the Service & Assessment Plan and reimbursed from the district.

Other city policies, procedures, and good practices may also effect individual district creation or administration including approval of related contracts and agreements. For example, the City will usually need to enter into a Developer Agreement to detail the responsibilities & obligations of each party related to the Service and Assessment Plan.

Listing of City of Tomball PIDs (Public Improvement Districts)

Equivalent Tax Rates

- | | |
|-------------------------------------|---------|
| 1. PID # 1. Pine Country | \$ 0.42 |
| 2. PID # 2. Raleigh Creek | \$ 0.85 |
| 3. PID # 3. Reserve at Spring Creek | \$ 0.90 |
| 4. PID # 4. Not Assigned | |
| 5. PID # 5. Yaupon Trails | |

Regular City Council

Agenda Item

Data Sheet

Meeting Date: May 21, 2018

Topic:

Approve Interlocal Agreement for the Development, Ownership and Maintenance of Gas and Water Infrastructure in Support of the Harris County Precinct Four, Willow Creek Campus, by and Between Harris County and the City of Tomball

Background:

Harris County (the “County”) is currently in the process of annexing a tract of land consisting of approximately 375 acres of land located west of SH 249, south of Humble Lake Road. Concurrent with their annexation, the County is developing facilities for Precinct Four operations that will include both field and administrative personnel.

As part of this development, the County is required to pay approximately \$170,000 dollars in water impact fees to cover their impact on the City’s utility infrastructure. Staff from both the County and the City has been working together for many months on this project, and all parties feel it would be mutually beneficial to enter into an Interlocal Agreement (“Development Agreement”) allowing for significant infrastructure improvements to be installed by the County during construction, in lieu of the City charging impact fees.

Origination:

City Management

Recommendation:

Approve the Interlocal Agreement

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

Rob Hauck

ACTION TAKEN

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

ATTACHMENTS:

Interlocal Agreement

Exhibit A

Exhibit B

**INTERLOCAL AGREEMENT
FOR THE DEVELOPMENT, OWNERSHIP AND MAINTENANCE OF GAS AND WATER
INFRASTRUCTURE IN SUPPORT OF THE WILLOW CREEK CAMPUS BY AND
BETWEEN HARRIS COUNTY AND CITY OF TOMBALL**

THE STATE OF TEXAS §
 §
COUNTY OF HARRIS §

This Interlocal Agreement for the Development, Ownership and Maintenance of Gas and Water Infrastructure (hereinafter called the "Agreement") is made and entered into by and between HARRIS COUNTY (the "**County**"), a body corporate and politic under the laws of the State of Texas, and the CITY OF TOMBALL, TX (the "**City**"), a Texas home-rule municipal corporation, pursuant to the Interlocal Cooperation Act, Tex. Gov't Code Ch. 791.001, *et seq.* County and City may each be referred to herein collectively as the "Parties" and individually as a "Party."

Recitals

WHEREAS, the County owns a tract of land consisting of approximately 374.9 acres located west of State Highway 249/Tomball Tollway, south of Humble Lake Road, north of a private road forming the northern border of Willowcreek Ranch Equestrian Reserve and Boudreaux Estates, Section One and East of Willow Creek Ranch Subdivision as shown in Exhibit A (the "Site");

WHEREAS, the Site is currently in the process of being annexed into the boundaries of the City;

WHEREAS, the County is developing portions of the Site and the Parties desire to have water and gas utilities provided to the Site in accordance with this Agreement.

WHEREAS, the County proposes, at its sole expense, to install, or cause to be installed a water main that will be looped from the intersection of Holderrieth Road and State Highway 249 to Alice Road and State Highway 249 in two phases, as shown in Exhibit B.

WHEREAS, the County proposed to provide only materials for Phase 1 of the gas main, and proposes to install, or cause to be installed, Phase 2 of the gas main, as shown in Exhibit B. The water main and gas main phases being collectively referred to as the "Improvements".

WHEREAS, The County proposes to obtain a twenty-foot (20') City of Tomball utility easement for the entire length of improvements through the site.

WHEREAS, the City proposes to waive any and all water impact fees, assessed by the City, for the Site in lieu of the County constructing the Improvements. The City proposes to construct (labor and equipment only) Phase 1 of the Gas Line.

WHEREAS, the City desires to annex the Site and provide maintenance for the Improvements located on the Site once the Improvements are completed and accepted by the City.

I. Responsibilities of Parties

A. County Responsibilities.

- i.) Upon execution of this Agreement by the Parties hereto, the County shall:
 - a. Provide, or cause to be provided, engineering and related support services necessary to prepare plans, specifications, and estimates ("PS&E") for the design and construction of the Improvements.
 - b. Submit the PS&E to the City for its review and approval.
 - c. Advertise, award, and manage the construction, including the provision of construction phase engineering services ("CPS"), construction materials testing ("CMT"), and day-to-day inspections for the Improvements within the Site.
 - d. Notify the City of construction timelines and schedule inspections as necessary to comply with the City rules and regulations, and provide all appropriate documentation to the City for acceptance.
 - e. Obtain a twenty-foot (20') City of Tomball utility easement for the water and gas mains through the site.
 - f. At its sole expense, install, or cause to be installed both phases of the water main and Phase 2 of the gas main, as shown in Exhibit B.
 - g. Provide to Tomball the materials for Phase 1 of the 6" gas main, as shown in Exhibit B.
 - h. Obtain any and all necessary permits and approvals and coordinate inspections and reviews with any jurisdictional agencies for the study, design and construction of the Improvements, as applicable.

- i. Contract with the City, of Tomball under a separate agreement, for all water and gas services to be utilized on County properties within the Site ("Service Agreement"), the terms of which shall be set forth therein
- j. Pursue annexation of the Site to the City, including the submission of all related annexation documentation and fees to the City and the filing of the appropriate documentation with the Harris County Clerk in order to annex the Site.

B. City Responsibilities.

- i) Upon execution of this Agreement by the Parties hereto, the City shall:
 - a. Review the PS&E for the Improvements and notify the County of any objections or approval. The City agrees that approval will not be unreasonably withheld.
 - b. Provide inspection services as necessary to ensure gas line and waterline design and construction comply with all applicable laws and regulations. Notify the County of any items that will need correction and, once all constructed infrastructure is within compliance, accept said Improvements.
 - c. Waive any and all water impact fees, assessed by the City for the Site.
 - d. Construct (labor and equipment only) 6" gas line in Phase 1, as shown in Exhibit B.
 - e. Own, operate and maintain the Improvements upon its acceptance by the City.
 - f. Provide water and gas service to the Site in accordance with the future Service Agreement.
 - g. Accept annexation of the Site to the City.

II. County's Right to Allocate Work and Reject Bids

The County may reject all bids and re-advertise for bids. Upon receipt and tabulation of bids for the Project, Harris County Commissioners Court ("Commissioners Court") will determine the lowest and best bid for the construction of the Project. Commissioners Court's determination of the lowest and best bidder is final and conclusive.

III. Contract Award and Administration

The County will administer the award of all contracts related to the Improvements, it initiates on the Site, and will oversee the construction of the Improvements in accordance with usual County procedures for similar projects.

IV. Term and Termination

This Agreement shall commence upon final execution by the Parties and shall remain in full force and effect until the performance of all responsibilities by all the Parties under this Agreement are complete. Once all responsibilities are complete as described above, the Agreement will terminate unless otherwise amended. The Parties may terminate this Agreement at any time by mutual consent.

V. Notice

All notices required to be given under this Agreement ("Notice") will be mailed or delivered to the Parties at the following addresses:

COUNTY: Harris County Engineering Department
1001 Preston Avenue, 7th Floor
Houston, Texas 77002
Attention: Angela Murry

Email: angela.murry@hcpid.org

CITY: City of Tomball
501 James Street,
Tomball, TX 77375
Attention: Robert Hauck

Email: rhauck@tomballtx.gov

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

All other communications may be sent by electronic means or in the same manner as Notices described herein.

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

VI. Assignment

The Parties bind themselves and their successors, executors, administrators, and assigns to the other Parties of this Agreement and to the successors, executors, administrators, and assigns of such other Party, in respect to all covenants of this Agreement. No Party shall assign, sublet, or transfer its interest in this Agreement without the prior written consent of the other Party, which will not be unreasonably withheld.

VII. Entire Agreement and Modifications

This Agreement contains the entire agreement between the Parties relating to the rights herein granted and the obligations herein assumed. This Agreement supersedes and replaces any prior agreement between the Parties pertaining to the rights granted and the obligations assumed herein. This Agreement shall be subject to change or modification only by a subsequent written modification approved and signed by the governing bodies of each Party.

VIII. Counterparts and Electronic Signature

Pursuant to the requirements of the Uniform Electronic Transactions Act in Chapter 322 of the Texas Business and Commerce Code and the Federal Electronic Signatures in Global and National Commerce Act (beginning at 15 U.S.C. Section 7001), the Parties have agreed that the transactions under this Agreement may be conducted by

electronic means. Pursuant to these statutes, this Agreement may not be denied legal effect or enforceability solely because it is in electronic form or because it contains an electronic signature. This Agreement may be executed in duplicate counterparts and with electronic or facsimile signatures with the same effect as if the signatures were on the same document. Each multiple original of this document shall be deemed an original, but all multiple copies together shall constitute one and the same instrument.

IX. Liability of the Parties

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

X. Miscellaneous

- A. Independent Parties. It is expressly understood and agreed by the Parties that nothing contained in this Agreement shall be construed to constitute or create a joint venture, partnership, or other affiliation or like relationship between the Parties, it being specifically agreed that their relationship is and shall remain that of independent parties to a contractual relationship as set forth in this Agreement. The County is an independent contractor and neither it, nor its employees or agents shall be considered to be an employee, agent, partner, or representative of the City for any purpose. The City, nor their employees, officers, or agents shall be considered to be employees, agents, partners or representatives of the County for any purposes. Neither Party has the authority to bind the other Parties.
- B. No Third Party Beneficiaries. The County is not obligated or liable to any party other than the City for the performance of this Agreement. Nothing in the Agreement is intended or shall be deemed or construed to create any additional rights or remedies upon any third party. Further, nothing contained in the Agreement shall be construed to or operate in any manner whatsoever to increase the rights of any third party, or the duties or responsibilities of County with respect to any third party.
- C. Waiver of Breach. A waiver by either Party of a breach or violation of any provision of the Agreement shall not be deemed or construed to be a waiver of any subsequent breach.

D. No Personal Liability; No Waiver of Immunity.

- (1) Nothing in the Agreement is construed as creating any personal liability on the part of any officer, director, employee, or agent of any public body that may be a Party to the Agreement, and the Parties expressly agree that the execution of the Agreement does not create any personal liability on the part of any officer, director, employee, or agent of the County.
- (2) The Parties agree that no provision of this Agreement extends the County's liability beyond the liability provided in the Texas Constitution and the laws of the State of Texas.
- (3) Neither the execution of this Agreement nor any other conduct of either Party relating to this Agreement shall be considered a waiver by the County of any right, defense, or immunity on behalf of itself, its employees or agents under the Texas Constitution or the laws of the State of Texas.

E. Applicable Law and Venue. This Agreement shall be governed by the laws of the State of Texas and the forum for any action under or related to the Agreement is exclusively in a state or federal court of competent jurisdiction in Texas. The exclusive venue for any action under or related to the Agreement is in a state or federal court of competent jurisdiction in Houston, Harris County, Texas.

F. No Binding Arbitration; Right to Jury Trial. The County does not agree to binding arbitration, nor does the County waive its right to a jury trial.

G. Contract Construction.

- (1) This Agreement shall not be construed against or in favor of any Party hereto based upon the fact that the Party did or did not author this Agreement.
- (2) The headings in this Agreement are for convenience or reference only and shall not control or affect the meaning or construction of this Agreement.
- (3) When terms are used in the singular or plural, the meaning shall apply to both.
- (4) When either the male or female gender is used, the meaning shall apply to both.

H. Recitals. The recitals set forth in this Agreement are, by this reference, incorporated into and deemed a part of this Agreement.

I. Severability. The provisions of this Agreement are severable, and if any provision or part of this Agreement or the application thereof to any person, entity, or

circumstance shall ever be held by any court of competent jurisdiction to be invalid or unconstitutional for any reason, the remainder of this Agreement and the application of such provision or part of this Agreement to other persons, entities, or circumstances shall not be affected thereby.

- J. Survival of Terms. Any provision of this Agreement that, by its plain meaning, is intended to survive the expiration or earlier termination of this Agreement including, but not limited to the indemnification provision, shall survive such expiration or earlier termination. If an ambiguity exists as to survival, the provision shall be deemed to survive.
- K. Multiple Counterparts/Execution. This Agreement may be executed in several counterparts. Each counterpart is deemed an original and all counterparts together constitute one and the same instrument. In addition, each Party warrants that the undersigned is a duly authorized representative with the power to execute the Agreement.
- L. Warranty. By execution of this Agreement, the City warrants that the duties accorded to the City in this Agreement are within the powers and authority of the City.

CITY OF TOMBALL

HARRIS COUNTY

By: _____
Gretchen Fagan
Mayor

By: _____
ED EMMETT
County Judge

Attest

APPROVED AS TO FORM:
VINCE RYAN
COUNTY ATTORNEY

By: _____
Doris Speer, City Secretary

By: _____
Pegi S. Block
Assistant County Attorney
C.A. File No.: 18GEN0105

Attest

By: _____

ORDER OF COMMISSIONERS COURT

The Commissioners Court of Harris County, Texas, convened at a meeting of said Court at the Harris County Administration Building in the City of Houston, Texas, on the ____ day of _____, 2018 with all members present except _____.

A quorum was present. Among other business, the following was transacted:

**ORDER AUTHORIZING EXECUTION OF THE INTERLOCAL AGREEMENT
BETWEEN HARRIS COUNTY AND THE CITY OF TOMBALL
FOR THE DEVELOPMENT, OWNERSHIP AND MAINTENANCE OF GAS AND WATER
INFRASTRUCTURE FOR THE WILLOW CREEK CAMPUS IN HARRIS COUNTY
PRECINCT 4**

Commissioner _____ introduced an order and made a motion that the same be adopted. Commissioner _____ seconded the motion for adoption of the order. The motion, carrying with it the adoption of the order, prevailed by the following vote:

	<u>Yes</u>	<u>No</u>	<u>Abstain</u>
Judge Emmett	☐	☐	☐
Comm. Ellis	☐	☐	☐
Comm. Morman	☐	☐	☐
Comm. Radack	☐	☐	☐
Comm. Cagle	☐	☐	☐

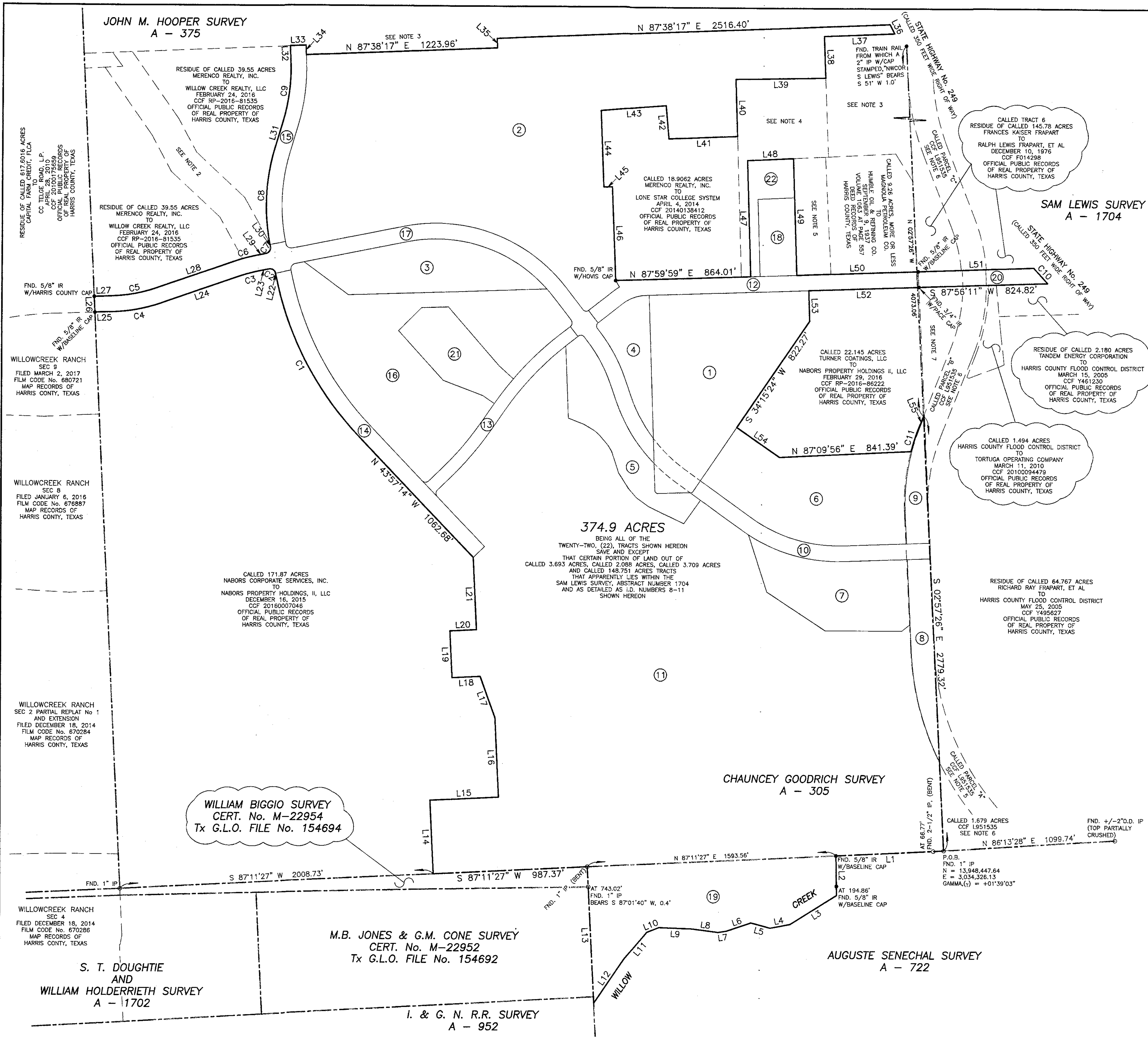
The County Judge thereupon announced that the motion had duly and lawfully carried and that the order had been duly and lawfully adopted. The order thus adopted follows:

IT IS ORDERED that County Judge Ed Emmett be, and he is hereby, authorized to execute for and on behalf of Harris County, an Agreement between Harris County and the City of Tomball for the development, ownership and maintenance of gas and water infrastructure for the Willow Creek Campus in Harris County Precinct 4.

All Harris County officials and employees are authorized to do any and all things necessary or convenient to accomplish the purpose of this Order.

EXHIBIT A

THE SITE



LINE	BEARING	DISTANCE
L1	S 87°11'27" W	689.05'
L2	S 01°11'10" E	253.19'
L3	S 57°57'11" W	349.84'
L4	S 79°08'42" W	131.06'
L5	N 74°57'48" W	126.53'
L6	S 71°09'13" W	166.28'
L7	S 81°38'12" W	55.23'
L8	N 82°40'46" W	167.31'
L9	N 88°04'48" W	211.74'
L10	S 68°12'12" W	82.35'
L11	S 40°52'12" W	225.68'
L12	S 34°04'42" W	341.77'
L13	N 02°58'20" W	872.20'
L14	N 02°48'33" W	470.38'
L15	N 87°11'27" E	439.22'
L16	N 02°48'33" W	508.37'
L17	N 19°54'49" W	281.78'
L18	S 87°11'27" W	180.47'
L19	N 02°48'33" W	300.00'
L20	N 87°11'27" E	170.00'
L21	N 02°48'33" W	460.92'
L22	N 11°20'33" W	15.00'
L23	S 78°39'27" E	71.00'
L24	S 70°58'28" W	522.69'
L25	S 87°59'57" W	120.80'
L26	N 02°44'18" W	100.01'
L27	N 87°59'57" E	122.09'
L28	N 70°58'28" E	522.69'
L29	N 78°39'27" E	71.00'
L30	N 11°20'33" W	15.00'
L31	N 16°37'19" E	175.45'
L32	N 02°22'12" W	87.78'
L33	N 87°37'45" E	100.00'
L34	S 02°22'12" E	59.40'
L35	N 02°21'43" W	60.00'
L36	S 26°16'12" E	65.63'
L37	S 87°38'17" W	449.75'
L38	S 02°22'12" W	85.61'
L39	S 88°53'08" W	574.57'
L40	S 01°54'18" E	363.97'
L41	S 87°34'22" W	439.20'
L42	N 05°03'04" W	213.07'
L43	S 85°17'49" W	417.30'
L44	S 02°21'33" E	487.82'
L45	N 89°45'21" E	54.69'
L46	S 02°20'27" E	595.97'
L47	N 01°52'05" W	740.12'
L48	N 87°12'40" E	293.88'
L49	S 01°55'05" E	744.16'
L50	N 87°59'59" E	777.19'
L51	N 87°56'11" E	739.97'
L52	S 87°59'59" W	704.36'
L53	S 02°00'18" E	194.56'
L54	S 55°43'53" E	333.04'
L55	N 21°32'52" E	84.78'

CURVE	RADIUS	DELTA ANGLE	ARC LENGTH	CHORD BEARING	CHORD LENGTH
C1	2050.00'	32°38'41"	1166.81'	N 27°38'54" W	1151.12'
C2	35.00'	90°00'00"	54.98'	N 56°20'33" W	49.50'
C3	950.00'	7°40'59"	127.39'	S 74°48'58" W	127.29'
C4	1050.00'	17°01'29"	311.89'	S 79°29'13" W	310.85'
C5	950.00'	17°01'29"	282.28'	N 79°29'13" E	281.24'
C6	1050.00'	7°40'59"	140.80'	N 74°48'58" E	140.69'
C7	35.00'	90°00'00"	54.98'	N 33°39'27" E	49.50'
C8	1275.00'	27°57'52"	622.29'	N 02°38'23" E	616.13'
C9	1175.00'	18°59'31"	389.48'	N 07°07'34" E	387.70'
C10	3994.73'	1°53'37"	132.03'	S 42°49'17" E	132.02'
C11	1275.00'	6°53'36"	153.39'	N 18°06'05" E	153.30'

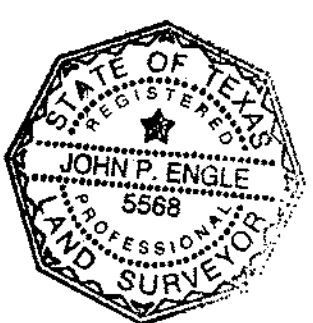
MAP I.D.	TRACT INFORMATION	GRANTOR	GRANTEE	DATE	RECORDING INFORMATION
1	20.000 ACRES	JIMMY C. SHAW, ET UX	COUNTY OF HARRIS	10/17/2014	CCF 20140468595 O.P.R.R.P. H.Co., Tx
2	75.117 ACRES	MERENCO REALTY, INC.	COUNTY OF HARRIS	10/17/2014	CCF 20140471160 O.P.R.R.P. H.Co., Tx
3	8.5753 ACRES	MERENCO REALTY, INC.	COUNTY OF HARRIS	10/17/2014	CCF 20140471160 O.P.R.R.P. H.Co., Tx
4	3.7654 ACRES	MERENCO REALTY, INC.	COUNTY OF HARRIS	10/17/2014	CCF 20140471160 O.P.R.R.P. H.Co., Tx
5	6.4521 ACRES	MERENCO REALTY, INC.	COUNTY OF HARRIS	10/17/2014	CCF 20140471160 O.P.R.R.P. H.Co., Tx
6	15.0725 ACRES	MERENCO REALTY, INC.	COUNTY OF HARRIS	10/17/2014	CCF 20140471160 O.P.R.R.P. H.Co., Tx
7	8.9695 ACRES	MERENCO REALTY, INC.	COUNTY OF HARRIS	10/17/2014	CCF 20140471160 O.P.R.R.P. H.Co., Tx
8	3.653 ACRES	H.CO.I.D. No. 17	COUNTY OF HARRIS	09/11/2017	CCF RP-2017-402273 O.P.R.R.P. H.Co., Tx
9	2.088 ACRES	H.CO.I.D. No. 17	COUNTY OF HARRIS	09/11/2017	CCF RP-2017-402273 O.P.R.R.P. H.Co., Tx
10	3.709 ACRES	H.CO.I.D. No. 17	COUNTY OF HARRIS	09/11/2017	CCF RP-2017-402273 O.P.R.R.P. H.Co., Tx
11	148.751 ACRES	H.CO.I.D. No. 17	COUNTY OF HARRIS	09/11/2017	CCF RP-2017-402273 O.P.R.R.P. H.Co., Tx
12	4.969 ACRES	H.CO.I.D. No. 17	COUNTY OF HARRIS	09/11/2017	CCF RP-2017-402273 O.P.R.R.P. H.Co., Tx
13	2.516 ACRES	H.CO.I.D. No. 17	COUNTY OF HARRIS	09/11/2017	CCF RP-2017-402273 O.P.R.R.P. H.Co., Tx
14	5.087 ACRES	H.CO.I.D. No. 17	COUNTY OF HARRIS	09/11/2017	CCF RP-2017-402273 O.P.R.R.P. H.Co., Tx
15	2.932 ACRES	H.CO.I.D. No. 17	COUNTY OF HARRIS	09/11/2017	CCF RP-2017-402273 O.P.R.R.P. H.Co., Tx
16	24.518 ACRES	H.CO.I.D. No. 17	COUNTY OF HARRIS	09/11/2017	CCF RP-2017-402273 O.P.R.R.P. H.Co., Tx
17	10.313 ACRES	H.CO.I.D. No. 17	COUNTY OF HARRIS	09/11/2017	CCF RP-2017-402273 O.P.R.R.P. H.Co., Tx
18	2.649 ACRES	H.CO.I.D. No. 17	COUNTY OF HARRIS	09/11/2017	CCF RP-2017-402273 O.P.R.R.P. H.Co., Tx
19	18.750 ACRES	H.CO.I.D. No. 17	COUNTY OF HARRIS	09/11/2017	CCF RP-2017-402273 O.P.R.R.P. H.Co., Tx
20	1.795 ACRES	H.CO.I.D. No. 17	COUNTY OF HARRIS	09/11/2017	CCF RP-2017-402273 O.P.R.R.P. H.Co., Tx
21	4.992 ACRES	H.CO.I.D. No. 17	COUNTY OF HARRIS	09/11/2017	CCF RP-2017-402273 O.P.R.R.P. H.Co., Tx
22	2.363 ACRES	H.CO.I.D. No. 17	COUNTY OF HARRIS	09/11/2017	CCF RP-2017-402273 O.P.R.R.P. H.Co., Tx

- GENERAL NOTES:
- ALL BEARINGS AND COORDINATES SHOWN HEREON ARE BASED ON THE TEXAS COORDINATE SYSTEM OF 1983, SOUTH CENTRAL ZONE, AS DEFINED IN V.T.C.A., NATURAL RESOURCES CODE, §21.071-21.079, NAD83(2011) EPOCH 2010.00. ALL DISTANCES SHOWN HEREON ARE SURFACE, HORIZONTAL, (U.S. SURVEY FEET), AND MAY BE CONVERTED TO GRID BY MULTIPLYING BY A COMBINED SCALE FACTOR OF 0.99994128.
 2. CALLED 7.092 ACRES CONVEYED TO HARRIS COUNTY IMPROVEMENT DISTRICT NO. 17 BY WILLOW CREEK REALTY, LLC BY DEED DATED SEPTEMBER 8, 2017 AND RECORDED IN COUNTY CLERK'S FILE RP-2017-402811 OF THE OFFICIAL PUBLIC RECORDS OF REAL PROPERTY OF HARRIS COUNTY, TEXAS.
 3. RESIDUE OF CALLED 608.1384 ACRES CONVEYED TO MERENCO REALTY INC. BY TANDEM ENERGY CORPORATION BY DEED DATED APRIL 28, 1999 AND RECORDED IN COUNTY CLERK'S FILE T693301 OF THE OFFICIAL PUBLIC RECORDS OF REAL PROPERTY OF HARRIS COUNTY, TEXAS.
 4. CALLED 7.7884 ACRES CONVEYED TO BARRON FAMILY PROPERTIES, LLC BY URETEK USA, INC. BY DEED DATED APRIL 2, 2014 AND RECORDED IN COUNTY CLERK'S FILE 20140134468 OF THE OFFICIAL PUBLIC RECORDS OF REAL PROPERTY OF HARRIS COUNTY, TEXAS.
 5. RESIDUE OF CALLED 28.68 ACRES, MORE OR LESS, CONVEYED TO HUMBLE OIL & REFINING COMPANY BY SOCIETY MOBIL OIL COMPANY, INC. BY DEED FILED AUGUST 10, 1965 AND RECORDED IN VOLUME 6028 AT PAGE 80, (CCF C139334), OF THE DEED RECORDS OF HARRIS COUNTY, TEXAS.
 6. TEXAS COMMERCE BANK N.A. TRUSTEE OF THE KAISER-FRAPART IRREVOCABLE TRUST, ET AL TO HARRIS COUNTY FLOOD CONTROL DISTRICT BY DEED DATED OCTOBER 21, 1988 AND RECORDED IN COUNTY CLERK'S FILE L951535 OF THE OFFICIAL PUBLIC RECORDS OF REAL PROPERTY OF HARRIS COUNTY, TEXAS.
 7. CALLED 3.2528 ACRES CONVEYED TO NABORS PROPERTY HOLDINGS II, LLC BY MERENCO REALTY, INC. BY DEED DATED NOVEMBER 3, 2016 AND RECORDED IN COUNTY CLERK'S FILE RP-2016-500174 OF THE OFFICIAL PUBLIC RECORDS OF REAL PROPERTY OF HARRIS COUNTY, TEXAS.
 8. COMPILED AND DRAWN BY JOHN P. ENGLE IN JANUARY AND FEBRUARY 2018.

I, John P. Engle, Registered Professional Land Surveyor Number 5568, do hereby certify that this document was prepared under 22 TAC §663.21, does not reflect the results of an on the ground survey, and is not to be used to convey or establish interests in real property except those rights and interests implied or established by the creation or reconfiguration of the boundary of the political subdivision for which it was prepared.

WITNESS, my hand and seal at Houston, Texas, this the 14th day of February, A.D., 2018.

John P. Engle
Registered Professional
Land Surveyor Number 5568



HARRIS COUNTY
EXHIBIT OF
CITY OF TOMBALL - WILLOW CREEK ANNEXATION
SITUATED IN THE
CHAUNCEY GOODRICH SURVEY, A - 305
AUGUSTE SENECHAL SURVEY, A - 722 AND SAM LEWIS SURVEY, A - 1704
HARRIS COUNTY, TEXAS
HARRIS COUNTY SURVEYING DEPARTMENT
10555 NW FREEWAY HOUSTON, TEXAS 77062
TEL: 713-274-3739

CITY OF TOMBALL – WILLOW CREEK ANNEXATION

STATE OF TEXAS)
COUNTY OF HARRIS)

DESCRIPTION of 374.9 acres of land situated in the Chauncey Goodrich Survey, Abstract Number 305, the Auguste Senechal Survey, Abstract Number 722, and the Sam Lewis Survey, Abstract Number 1704, Harris County, Texas, being all of a called 20.000 acres tract of land conveyed to County of Harris by Jimmy C. Shaw, et ux by deed dated October 17, 2014 and recorded in County Clerk's File 20140468595 of the Official Public Records of Real Property of Harris County, Texas, being all of a called 117.9465 acres tract of land, described in six, (6), tracts, conveyed to County of Harris by Merenco Realty, Inc. by deed dated October 17, 2014 and recorded in County Clerk's File 20140471160 of the Official Public Records of Real Property of Harris County, Texas, being all of a called 229.772 acres tract, described in thirteen, (13), tracts, being all of a called 4.992 acres tract and being all of a called 2.363 acres tract conveyed to County of Harris by Harris County Improvement District No. 17 by deed dated September 11, 2017 and recorded in County Clerk's File RP-2017-402273 of the Official Public Records of Real Property of Harris County, Texas, save and except that certain portion of land out of a called 3.693 acres, a called 2.088 acres, a called 3.709 acres, and a called 148.751 acres tracts that apparently lies within the said Lewis Survey and further detailed on the map accompanying this exhibit as I.D. Numbers 8-11, this 374.9 acres tract is more particularly described by metes and bounds as follows, to wit:

NOTE: ALL BEARINGS AND COORDINATES DESCRIBED HEREIN ARE BASED ON THE TEXAS COORDINATE SYSTEM OF 1983 AS DEFINED IN V.T.C.A., NATURAL RESOURCES CODE, §21.071-21.079, NAD83(2011) EPOCH 2010.00. ALL DISTANCES DESCRIBED HEREIN ARE SURFACE, HORIZONTAL, (U.S. SURVEY FEET), AND MAY BE CONVERTED TO GRID BY MULTIPLYING BY A COMBINED SCALE FACTOR OF 0.99994128. REFERENCE IS MADE TO THE MAP OF EVEN DATE ACCOMPANYING THIS METES AND BOUNDS DESCRIPTION.

BEGINNING at an 1 inch iron pipe, found, in the North line of the said Senechal Survey, for the southwest corner of said Lewis Survey, same being the southwest corner of a called 160.3 acres tract conveyed to Sam Lewis by State of Texas by Letter Patent dated January 12, 1934 and recorded in Volume 942 at Page 191 of the Deed Records of Harris County, Texas, same being the southwest corner of a called 158.57 acres tract per field notes recorded in Texas General Land Office Scrap File 13411, for the southeast corner of the said Goodrich Survey, for the southeast corner of a called 73,123 square feet, (1.679 acres), more or less, tract conveyed to Harris County Flood Control District by Texas Commerce Bank N.A., Trustee of the Kaiser-Frapart Irrevocable Trust, et al by deed dated October 21, 1988 and recorded in County Clerk's File L951535 of the Official Public Records of Real Property, and for the southeast corner of said called Tract 4, called 148.751 acres, this beginning corner has a Texas Coordinate System of 1983 value of N = 13,948,447.64, E = 3,034,326.13 and Gamma, (γ) = +01° 39' 03", and from this corner a +/- 2" outside diameter iron pipe with top partially crushed, found, for the southeast corner of said Lewis Survey, same being the southeast corner of said called 160.3 acres tract, same being the southeast corner of said called 158.57 acres tract bears North 86° 13' 28" East, a distance of 1,099.74 feet, from said 1 inch iron pipe, found, a Train Rail, found, for the northwest corner of said Lewis Survey, same being the northwest corner of said called 160.3 acres tract, same being the northwest corner of said called 158.57 acres tract bears North 02° 57' 26" West, a distance of 6,852.38 feet, and from said Train Rail a 2 inch iron pipe with metal cap stamped, "NWCOR S LEWIS", bears South 51° West, a distance of 1.0 foot;

THENCE South 87° 11' 27" West with the South line of said Tract 4, called 148.751 acres, the South line of the said Goodrich Survey, and the North line of said Senechal Survey, at a distance of 66.77 feet, a 2-1/2 inch iron pipe, (bent), found in line, in all a total distance of 689.05 feet to a 5/8 inch iron rod with "BASELINE" cap, found, for the northeast corner of Tract 12, called 16.750 acres;

THENCE South 01° 11' 10" East with the East line of said Tract 12, called 16.750 acres, at a distance of 194.86 feet, a 5/8 inch iron rod with "BASELINE" cap, found in line, in all a total distance of 253.19 feet to a point in the center of Willow Creek and for the southeast corner of said Tract 12, called 16.750 acres;

THENCE with the South line of said Tract 12, called 16.750 acres and the center of said Willow Creek, the following meanders:

South 57° 57' 11" West, a distance of 349.84 feet;

South 79° 08' 42" West, a distance of 131.06 feet;

North 74° 57' 48" West, a distance of 126.53 feet;

South 71° 09' 13" West, a distance of 166.28 feet;

South 81° 38' 12" West, a distance of 55.23 feet;

North 82° 40' 46" West, a distance of 167.31 feet;

North 88° 04' 48" West, a distance of 211.74 feet;

South 68° 12' 12" West, a distance of 82.35 feet;

South 40° 32' 12" West, a distance of 225.68 feet;

South 34° 04' 42" West, a distance of 341.77 feet to a point for the southwest corner of said Tract 12, called 16.750 acres;

THENCE North 02° 58' 20" West with the West line of said Tract 12, called 16.750 acres, at a distance of 743.02 feet an 1 inch iron pipe, found, bears South 87° 01' 40" West, a distance of 0.4 feet, in all a total distance of 872.20 feet to an 1 inch iron pipe, (bent), found, in the South line of said Goodrich Survey, in the South line of said Tract 4, called 148.751 acres, for the northeast corner of Texas General Land Office Mineral File 154694, for the apparent northwest corner of said Senechal Survey, and for the northwest corner of said Tract 12, called 16.750 acres;

THENCE South 87° 11' 27" West with the South line of said Tract 4, called 148.751 acres, the South line of said Goodrich Survey, and the North line of said Mineral File 154694, a distance of 987.37 feet to a point for the southeast corner of a called 171.87 acres tract conveyed to Nabors Property Holdings, II, LLC by Nabors Corporate Services, Inc. by deed dated December 16, 2015 and recorded in County Clerk's File 20160007046 of the Official Public Records of Real Property of Harris County, Texas, and for the southwest corner of said Tract 4, called 148.751 acres, from this corner an 1 inch iron pipe, found, for the apparent southwest corner of said Goodrich Survey bears South 87° 11' 27" West, a distance of 2,008.73 feet;

THENCE with the common boundary line of said Tract 4, called 148.751 acres, and the East line of said called 171.87 acres tract, the following eight, (8), courses and distances:

- 1) North 02° 48' 33" West, a distance of 470.38 feet;
- 2) North 87° 11' 27" East, a distance of 439.22 feet;
- 3) North 02° 48' 33" West, a distance of 508.37 feet;
- 4) North 19° 54' 49" West, a distance of 281.78 feet;
- 5) South 87° 11' 27" West, a distance of 180.47 feet;
- 6) North 02° 48' 33" West, a distance of 300.00 feet;
- 7) North 87° 11' 27" East, a distance of 170.00 feet;
- 8) North 02° 48' 33" West, a distance of 460.92 feet to a point for the South corner of Tract 7, called 5.087 acres, and for a common corner of said called 171.87 acres tract and said Tract 4, called 148.751 acres;

THENCE with the common boundary line of said Tract 7, called 5.087 acres, and continuing with the East line of said called 171.87 acres tract, the following three, (3), courses and distances:

- 1) North 43° 57' 14" West, a distance of 1,062.68 feet to the point of curvature of a curve;
- 2) 1,166.81 feet along a curve to the right, concave northeast, having a central angle of 32° 36' 41", a radius of 2,050.00 feet, and a chord bearing and distance of North 27° 38' 54" West, 1,151.12 feet to the point of tangency of said curve;
- 3) North 11° 20' 33" West, a distance of 15.00 feet to the point of curvature of a curve, for the northwest corner of said Tract 7, called 5.087 acres, and for an exterior corner of Tract 10, called 10.313 acres;

THENCE with the common boundary line of said Tract 10, called 10.313 acres and continuing with the East and North line of said called 171.87 acres tract, the following six, (6), courses and distances:

- 1) 54.98 feet along a curve to the left, concave southwest, having a central angle of 90° 00' 00", a radius of 35.00 feet, and a chord bearing and distance of North 56° 20' 33" West, 49.50 feet to the point of tangency of said curve;

- 2) South $78^{\circ} 39' 27''$ West, a distance of 71.00 feet to the point of curvature of a curve;
- 3) 127.39 feet along a curve to the left, concave southeast, having a central angle of $07^{\circ} 40' 59''$, a radius of 950.00 feet, and a chord bearing and distance of South $74^{\circ} 48' 58''$ West, 127.29 feet to the point of tangency of said curve;
- 4) South $70^{\circ} 58' 28''$ West, a distance of 522.69 feet to the point of curvature of a curve;
- 5) 311.99 feet along a curve to the right, concave northwest, having a central angle of $17^{\circ} 01' 29''$, a radius of 1,050.00 feet, and a chord bearing and distance of South $79^{\circ} 29' 13''$ West, 310.85 feet to the point of tangency of said curve;
- 6) South $87^{\circ} 59' 57''$ West, a distance of 120.80 feet to a 5/8 inch iron rod with "BASELINE" cap, found, for the southeast corner of a residue of a called 617.6016 acres tract conveyed to CC Telge Road, L.P. by Capital Farm Credit, FLCA by deed dated April 28, 2010 and recorded in County Clerk's File 20100175659 of the Official Public Records of Real Property of Harris County, Texas, for the northeast corner of Willowcreek Ranch, Section 9, Subdivision, filed March 2, 2017 and recorded in Film Code Number 680721 of the Map Records of Harris County, Texas, for the northwest corner of said called 171.87 acres tract and for the southwest corner of said Tract 10, called 10.313 acres;

THENCE North $02^{\circ} 44' 18''$ West with the West line of said Tract 10, called 10.313 acres, and the East line of said residue of called 617.6016 acres tract, a distance of 100.01 feet to a 5/8 inch iron rod with "HARRIS COUNTY" cap, found, for the southwest corner of the residue of a called 39.55 acres tract conveyed to Willow Creek Realty, LLC by Merenco Realty, Inc. by deed dated February 24, 2016 and recorded in County Clerk's File RP-2016-81535 of the Official Public Records of Real Property of Harris County, Texas and for the northwest corner of said Tract 10, called 10.313 acres;

THENCE with the common boundary line of said Tract 10, called 10.313 acres, the South or southeast and East line of said residue of called 39.55 acres tract, and the South or southeast and East line of a called 7.092 acres tract conveyed to Harris County Improvement District No. 17 by Willow Creek Realty, LLC by deed dated September 8, 2017 and recorded in County Clerk's File RP-2017-402811 of the Official Public Records of Real Property of Harris County, Texas, the following seven, (7), courses and distances:

- 1) North $87^{\circ} 59' 57''$ East, a distance of 122.09 feet to the point of curvature of a curve;
- 2) 282.28 feet with a curve to the left, concave northwest, having a central angle of $17^{\circ} 01' 29''$, a radius of 950.00 feet, and a chord bearing and distance of North $79^{\circ} 29' 13''$ East, 281.24 feet to the point of tangency of said curve;

- 3) North 70° 58' 28" East, a distance of 522.69 feet to the point of curvature of a curve;
- 4) 140.80 feet with a curve to the right, concave southeast, having a central angle of 07° 40' 59", a radius of 1,050.00 feet, and a chord bearing and distance of North 74° 48' 58" East, 140.69 feet to the point of tangency of said curve;
- 5) North 78° 39' 27" East, a distance of 71.00 feet to the point of curvature of a curve;
- 6) 54.98 feet along a curve to the left, concave northwest, having a central angle of 90° 00' 00", a radius of 35.00 feet, and a chord bearing and distance of North 33° 39' 27" East, 49.50 feet to the point of tangency of said curve;
- 7) North 11° 20' 33" West, a distance of 15.00 feet to a point for an exterior corner of said Tract 10, called 10.313 acres, for the southwest corner of Tract 8, called 2.932 acres, and for the point of curvature of a curve;

THENCE with the common boundary line of said Tract 8, called 2.932 acres, and continuing with the East line of said called 7.092 acres tract, and the East line of another residue of said called 39.55 acres tract, the following four, (4), courses and distances:

- 1) 622.29 feet along a curve to the right, concave East, having a central angle of 27° 57' 52", a radius of 1,275.00 feet, and a chord bearing and distance of North 02° 38' 23" East, 616.13 feet to the point of tangency of said curve;
- 2) North 16° 37' 19" East, a distance of 175.45 feet to the point of curvature of a curve;
- 3) 389.48 feet along a curve to the left, concave West, having a central angle of 18° 59' 31", a radius of 1,175.00 feet, and a chord bearing and distance of North 07° 07' 34" East, 387.70 feet to the point of tangency of said curve;
- 4) North 02° 22' 12" West, a distance of 97.79 feet to a point for the northeast corner of said residue of called 39.55 acres tract and for the northwest corner of said Tract 8, called 2.932 acres;

THENCE North 87° 37' 45" East with the North line of said Tract 8, called 2.932 acres, a distance of 100.00 feet to a point for the northeast corner of said Tract 8, called 2.932 acres and the northwest corner of a residue of called 606.1394 acres tract conveyed to Merenco Realty Inc. by Tandem Energy Corporation by deed dated April 28, 1999 and recorded in County Clerk's File T693301 of the Official Public Records of Real Property of Harris County, Texas;

THENCE South 02° 22' 12" East with the East line of said Tract 8, called 2.932 acres, and the West line of said called 606.1394 acres residue tract, a distance of 59.40 feet, more or less to a point for the southwest corner of said called 606.1394 acres residue tract and for an exterior corner of Tract 1, called 75.1117 acres tract;

THENCE North 87° 38' 17" East with an interior line of said Tract 1, called 75.1117 acres, and the South line of said called 606.1394 acres residue tract, a distance of 1223.96 feet to a point for the southeast corner of said called 606.1394 acres residue tract and for an interior corner of said Tract 1, called 75.1117 acres;

THENCE North 02° 21' 43" West with an interior line of said Tract 1, called 75.1117 acres, and the East line of said called 606.1394 acres residue tract, a distance of 60.00 feet to a point for the northeast corner of said called 606.1394 acres residue tract and for an exterior corner of said Tract 1, called 75.1117 acres;

THENCE North 87° 38' 17" East with an exterior line of said Tract 1, called 75.1117 acres, a distance of 2,516.40 feet to a point in the southwest right of way line of State Highway Number 249, (called 350 feet wide right of way), and for an exterior corner of said Tract 1, called 75.1117 acres;

THENCE South 26° 16' 12" East with an exterior line of said Tract 1, called 75.1117 acres, and the southwest right of way line of said State Highway Number 249, a distance of 65.63 feet to a point for the northeast corner of another residue of said called 606.1394 acres tract and for an exterior corner of said Tract 1, called 75.1117 acres;

THENCE South 87° 38' 17" West with an interior line of said Tract 1, called 75.1117 acres, and the North line of said called 606.1394 acres residue tract, a distance of 449.75 feet to a point for the northwest corner of said called 606.1394 acres residue tract and for an interior corner of said Tract 1, called 75.1117 acres;

THENCE South 02° 12' 39" East with an interior line of said Tract 1, called 75.1117 acres, and the West line of said called 606.1394 acres residue tract, a distance of 265.61 feet to a point for the northeast corner of a called 7.7884 acres tract conveyed to Barron Family Properties, LLC by Urettek USA, Inc. by deed dated April 2, 2014 and recorded in County Clerk's File 20140134468 of the Official Public Records of Real Property of Harris County, Texas and for an exterior corner of said Tract 1, called 75.1117 acres;

THENCE South 88° 53' 08" West with an interior line of said Tract 1, called 75.1117 acres, and the North line of said called 7.7884 acres tract, a distance of 574.57 feet to a point for the northwest corner of said called 7.7884 acres tract and for an interior corner of said Tract 1, called 75.1117 acres;

THENCE South 01° 54' 18" East with an interior line of said Tract 1, called 75.1117 acres, and the West line of said called 7.7884 acres tract, a distance of 363.97 feet to a point for the northeast corner of a called 18.9062 acres tract conveyed to Lone Star College System by Merenco Realty, Inc. by deed dated April 4, 2014 and recorded in County Clerk's File 20140138412 of the Official Public Records of Real Property of Harris County, Texas and for an exterior corner of said Tract 1, called 75.1117 acres;

THENCE with the common boundary line of said Tract 1, called 75.1117 acres, and the Northern and Western lines of said called 18.9062 acres tract, the following six, (6), courses and distances:

- 1) South 87° 34' 22" West, a distance of 439.20 feet;
- 2) North 05° 03' 04" West, a distance of 213.07 feet;
- 3) South 85° 17' 49" West, a distance of 417.30 feet;
- 4) South 02° 21' 53" East, a distance of 487.82 feet;
- 5) North 89° 45' 21" East, a distance of 54.69 feet;
- 6) South 02° 20' 27" East, a distance of 595.97 feet to a 5/8 inch iron rod with "HOVIS" cap, found, for the southwest corner of said called 18.9062 acres tract and for an exterior corner of Tract 5, called 4.969 acres;

THENCE North 87° 59' 59" East with the North line of said Tract 5, called 4.969 acres, the South line of said called 18.9062 acres tract and the South line of said called 7.7884 acres tract, a distance of 864.01 feet to a point for the most Southern, southeast corner of said called 7.7884 acres tract and for the southwest corner of Tract 15, called 2.363 acres;

THENCE North 01° 52' 05" West with the West line of said Tract 15, called 2.363 acres, and an interior line of said called 7.7884 acres tract, a distance of 740.12 feet to a point for an interior corner of said called 7.7884 acres tract and for the northwest corner of said Tract 15, called 2.363 acres;

THENCE North 87° 12' 40" East with the North line of said Tract 15, called 2.363 acres, and an interior line of said called 7.7884 acres tract, a distance of 293.88 feet to a point for the northwest corner of a residue of called 28.68 acres, more or less, tract, conveyed to Humble Oil & Refining Company by Socony Mobil Oil Company, Inc. by deed filed August 10, 1965 and recorded in Volume 6028 at Page 80, (County Clerk's File C139334), of the Deed Records of Harris County, Texas and for the northeast corner of said Tract 15, called 2.363 acres;

THENCE South 01° 55' 05" East with the East line of said Tract 15, called 2.363 acres, the East line of Tract 11, called 2.649 acres, and the West line of said residue of called 28.68 acres, more or less, tract, a distance of 744.16 feet to a point in the North line of said Tract 5, called 4.969 acres, for the southwest corner of said residue of called 28.68 acres, more or less, tract, and for the southeast corner of said Tract 11, called 2.649 acres;

THENCE North 87° 59' 59" East with the North line of said Tract 5, called 4.969 acres, the South line of said residue of called 28.68 acres, more or less, tract, the South line of a called 9.26 acres, more or less, tract conveyed to Humble Oil & Refining Co. by Magnolia Petroleum Company by deed dated September 9, 1937 and recorded in Volume 1063 at Page 557 of the Deed Records of Harris County, Texas, and the South line of a residue of a called 145.78 acres tract conveyed to Ralph Lewis Frapart, et al by Frances Kaiser Frapart by deed dated December 10, 1976 and recorded in County Clerk's File F014298 of the Official Public Records of Real Property of Harris County, Texas, a distance of 777.19 feet to a 5/8 inch iron rod with "BASELINE" cap, found, for the northeast corner of said Tract 5, called 4.969 acres, and for the northwest corner of said Tract 13, called 1.795 acres;

THENCE North 87° 56' 11" East with the North line of said Tract 13, called 1.795 acres, the South line of the residue of said called 145.78 acres tract and the South line of a called 61,615 square feet, (1.415 acres), more or less tract, called Parcel "C", described in said County Clerk's File L951535, a distance of 739.97 feet to a point in the southwest line of said State Highway Number 249, (called 350 feet wide right of way), for the southeast corner of a residue of said called 145.78 acres tract and for the northeast corner of said Tract 13, called 1.795 acres;

THENCE with the East or northeast line of said Tract 13, called 1.795 acres, and the southwest right of way line of said State Highway Number 249, a curve to the left, concave northeast, having a central angle of 01° 53' 37", a radius of 3994.73 feet, an arc length of 132.03 feet and a chord bearing and distance of South 42° 49' 17" East, 132.02 feet to a point for the northeast corner of the residue of a called 2.180 acres tract of land conveyed to Harris County Flood Control District by Tandem Energy Corporation by deed dated March 15, 2005 and recorded in County Clerk's File Y461230 of the Official Public Records of Real Property of Harris County, Texas, and for the southeast corner of said Tract 13, called 1.795 acres;

THENCE South 87° 56' 11" West with the South line of said Tract 13, called 1.795 acres, the North line of said residue of called 2.180 acres tract, the North line of a called 1.494 acres tract conveyed to Tortuga Operating Company by Harris County Flood Control District by deed dated March 11, 2010 and recorded in County Clerk's File 20100094479 of the Official Public Records of Real Property of Harris County, Texas, the North line of the residue of a called 64.767 acres tract conveyed to Harris County Flood Control District by Richard Ray Frapart, et al by deed dated May 25, 2005 and recorded in County Clerk's File Y495627 of the Official Public Records of Real Property of Harris County, Texas, the North line of a called 164,385 square feet, (3.774 acres), more or less tract, called Parcel "B", in said County Clerk's File L951535, and the North line of a called 3.2528 acres tract of land conveyed to Nabors Property Holdings II, LLC by Merenco Realty, Inc. by deed dated November 3, 2016 and recorded in County Clerk's File RP-2016-500174 of the Official Public Records of Real Property of Harris County, Texas, a distance of 824.82 feet to a 3/4 inch iron rod with aluminum cap stamped, "PACE", found, for the northwest corner of said called 3.2528 acres tract, for the northeast corner of a called 22.145 acres tract conveyed to Nabors Property Holdings II, LLC by Turner Coatings, LLC by deed dated February 29, 2016 and recorded in County Clerk's File RP-2016-86222 of the Official Public Records of Real Property of Harris County, Texas, for the southwest corner of said Tract 13, called 1.795 acres, and for the southeast corner of said Tract 5, called 4.969 acres;

THENCE South 87° 59' 59" West with the South line of said Tract 5, called 4.969 acres, and the North line of said called 22.145 acres tract a distance of 704.36 feet to a point for the northwest corner of said called 22.145 acres tract and for the northeast corner of said called 20.000 acres tract;

THENCE South 02° 00' 18" East with the East line of said called 20.000 acres tract and the West line of said called 22.145 acres tract, a distance of 194.56 feet to a point for an angle in the West or northwest line of said called 22.145 acres tract and for an angle in the East or southeast line of said called 20.000 acres tract;

THENCE South 34° 15' 24" West with the southeast line of said called 20.000 acres tract and the northwest line of said called 22.145 acres tract, a distance of 822.27 feet to a point for the West or southwest corner of said called 22.145 acres tract and for the North or northwest corner of Tract 5, called 15.0725 acres;

THENCE South 55° 43' 33" East with the North line of said Tract 5, called 15.0725 acres, and the South line of said called 22.145 acres tract, a distance of 333.04 feet to a point for an angle in the South line of said called 22.145 acres tract and for an angle in the North line of said Tract 5, called 15.0725 acres;

THENCE North 87° 09' 56" East with the North line of said Tract 5, called 15.0725 acres, and the South line of said called 22.145 acres tract, a distance of 841.39 feet to a point in a curve in the West line of a called 266,854 square feet, (6.126 acres), more or less, tract described in Right of Way Easement conveyed to Harris County Flood Control District by Exxon Corporation by instrument dated August 31, 1995 and recorded in County Clerk's File R649324 of the Official Public Records of Real Property of Harris County, Texas;

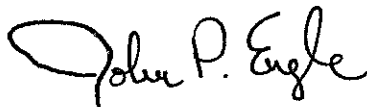
THENCE with the West line of said called 266,854 square feet, (6.126 acres), more or less, tract, a curve to the right, concave southeast, having a central angle of 06° 53' 36", a radius of 1,275.00 feet, an arc length of 153.39 feet and a chord bearing and distance of North 18° 06' 05" East, 153.30 feet to a point for the point of tangency of said curve in the West line of said called 266,854 square feet, (6.126 acres), more or less tract;

THENCE North 21° 32' 52" East continuing with the West line of said called 266,854 square feet, (6.126 acres), more or less, tract, a distance of 84.76 feet to a point for the most Northern corner of said called 266,854 square feet, (6.126 acres), more or less, tract, the West or southwest corner of said called 164,385 square feet, (3.774 acres), more or less tract, called Parcel "B", in said County Clerk's File L951535, in the East line of said Goodrich Survey and in the West line of said Lewis Survey;

THENCE South 02° 57' 26" East with the East line of said called 266,854 square feet, (6.126 acres), more or less, tract, the most Southern, West line of said called 164,385 square feet, (3.774 acres), more or less tract, called Parcel "B", in said County Clerk's File L951535, the most Northern, West line of a called 102,584 square feet, (2.355 acres), more or less tract, called Parcel "A" in said County Clerk's File L951535, the West line of said called 73,123 square feet, (1.679 acres), more or less tract, the East line of the said Goodrich Survey and the West line of the said Lewis Survey, a distance of 2,779.32 feet to the PLACE OF BEGINNING, and containing within said boundaries 374.9 acres of land.

I, John P. Engle, Registered Professional Land Surveyor Number 5568, do hereby certify that this document was prepared under 22 TAC §663.21, does not reflect the results of an on the ground survey, and is not to be used to convey or establish interests in real property except those rights and interests implied or established by the creation or reconfiguration of the boundary of the political subdivision for which it was prepared.

WITNESS, my hand and seal at Houston, Texas, this the 14th day of February, A.D., 2018.



John P. Engle
Registered Professional
Land Surveyor Number 5568

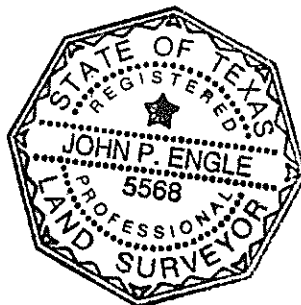
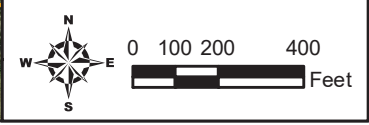


EXHIBIT B
IMPROVEMENTS



Legend

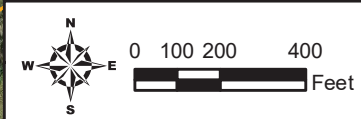
- Gas Phase I
- Gas Phase II
- Gas Main
- Property Boundary





Legend

- WL Phase I
- WL Phase II
- Water Main
- Property Boundary



Regular City Council

Agenda Item

Data Sheet

Meeting Date: May 21, 2018

Topic:

Authorize the Mayor to Issue Letter to Governor Abbott requesting the State to utilize Economic Stabilization Fund, or other state funding sources to participate fully, at 100 percent, in covering local match portion for FEMA 404 Hazard Mitigation Grant Program

Background:

In 2017, the residential and business communities of Tomball were affected by the flooding associated with Hurricane Harvey. Our resources were stretched thin and our budget was negatively impacted.

In an effort to provide for disaster mitigation, we are seeking assistance through the FEMA 404 Hazard Mitigation Grant Program. However, under the present declaration, FEMA will only fund up to 75 percent of the cost of eligible mitigation measures undertaken by local governments. By providing the remaining fund match, the State of Texas will be directly contributing to our flood mitigation efforts, directly saving local taxpayer dollars.

We have made our initial submission of intent to apply for funding to provide for a Citywide flood mitigation study, design, and right-of-way acquisition. We are not committed to anything at this time, but when/if given the go ahead by FEMA, and with Council approval, we estimate our application would be for approximately \$8 million dollars, with a \$2 million dollar City match.

We roughly estimate the entire project (including construction) to be approximately \$30 million dollars, so I feel it would be prudent to limit our submission to \$8 million. However, if the State will pick up the 25% match, we would revise our request to include as much of the construction as possible.

Origination:

Mayor and City Manager

Recommendation:

Authorize the Mayor to sign letter and forward to Governor Abbott.

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

Rob Hauck

ACTION TAKEN

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

Mayor Fagan Letter to Abbott

Emmett and Turner letter requesting support



City of Tomball

Gretchen Fagan
Mayor

Robert S. Hauck
City Manager

May 21, 2018

The Honorable Greg Abbott
Governor, State of Texas
1100 San Jacinto Boulevard
Austin, Texas 78701-1935

Dear Governor Abbott:

I write you on behalf of myself and our entire City Council, requesting that the State of Texas utilize the Economic Stabilization Fund, or other state funding sources to participate fully, at 100 percent, in covering the local match portion of the FEMA 404 Hazard Mitigation Grant Program.

In 2017, the residential and business communities of Tomball were affected by the flooding associated with Hurricane Harvey. Like our neighbors in the City of Houston, other surrounding municipalities, and all of Harris County, our resources were stretched thin and our budget was negatively impacted.

In an effort to provide for disaster mitigation, we are seeking assistance through the FEMA 404 Hazard Mitigation Grant Program. However, under the present declaration, FEMA will only fund up to 75 percent of the cost of eligible mitigation measures undertaken by local governments. By providing the remaining fund match, the State of Texas will be directly contributing to our flood mitigation efforts, directly saving local taxpayer dollars.

Sincerely,

Gretchen Fagan, Mayor
City of Tomball



April 23, 2018

The Honorable Greg Abbott
Governor, State of Texas
1100 San Jacinto Boulevard
Austin, Texas

Dear Governor Abbott,

As local officials of jurisdictions affected by Hurricane Harvey in 2017, the budgets of our jurisdictions have been stretched engaging in direct response and recovery over the past fiscal year. However, if our efforts for recovery do not include disaster mitigation, then the money we have spent is just funding for future failure.

The FEMA 404 Hazard Mitigation Grant Program can assist us with those mitigation efforts, but there is a local match required. We write today to ask the State of Texas to utilize the Economic Stabilization Fund or other state funding source to participate fully, at 100 percent, in covering the local match.

Under the present declaration, FEMA will fund up to 75 percent of the cost of eligible mitigation measures taken by local governments. By providing for the remaining match, the State of Texas will be directly contributing to flood mitigation efforts.

Funding of the local share would allow the State of Texas to directly contribute to flood mitigation projects. By covering the local share, not only would the state directly save local taxpayer dollars, but would equitably fund projects across the impacted area.

The states of Florida, North Carolina, South Carolina, Oklahoma, Virginia, Georgia and Colorado have provided for local matches in situations utilizing HMGP. We ask that the State of Texas make a similar effort in joining local jurisdictions as a partner in flood mitigation.

Sincerely,

Sylvester Turner
Mayor, City of Houston

Ed Emmett
Harris County Judge

Regular City Council

Agenda Item

Data Sheet

Meeting Date: May 21, 2018

Topic:

Adopt, on First Reading, Ordinance No. 2018-16, an Ordinance of the City of Tomball, Texas, Extending the City Limits of Said City to Include all of the Territory within Certain Limits and Boundaries and Annexing to the City of Tomball all of the Territory within Such Limits and Boundaries; Approving a Service Plan for all of the Area within Such Limits and Boundaries; Containing Other Provisions Relating to the Subject; and Providing a Savings and Severability Clause (*Being a 2.844-Acre Tract of Land in the Jesse Pruitt Survey, Abstract No. 629, Harris County Texas, out of and a part of that Certain 4.8914-Acre Tract of Land described in Deed recorded under Clerk's File No. 2013-0036029 of the Official Public Records of Real Property of Harris County, Texas, Located at 22828 Hufsmith-Kohrville Road*)

Background:

Council authorized the public hearings, required under Section 43.063 of the Local Government Code, to be held on April 16, 2018 and April 30, 2018.

The second reading of the ordinance will be adopted at the regular Council meeting on June 4, 2018.

Origination:

Request by Harris County

Recommendation:

Adopt Ordinance No. 2018-12 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. 2018-16

Plat - 22828 Hufsmith Kohrville

Map 1 - 22828 Hufsmith Kohrville

Map 2 - 22828 Hursmith Kohrville

Zoning - 22828 Hufsmith Kohrville

Future Land Use - 22828 Hufsmith Kohrville

ORDINANCE NO. 2018-16

AN ORDINANCE OF THE CITY OF TOMBALL, TEXAS, EXTENDING THE CITY LIMITS OF SAID CITY TO INCLUDE ALL OF THE TERRITORY WITHIN CERTAIN LIMITS AND BOUNDARIES AND ANNEXING TO THE CITY OF TOMBALL ALL OF THE TERRITORY WITHIN SUCH LIMITS AND BOUNDARIES; APPROVING A SERVICE PLAN FOR ALL OF THE AREA WITHIN SUCH LIMITS AND BOUNDARIES; CONTAINING OTHER PROVISIONS RELATING TO THE SUBJECT; AND PROVIDING A SAVINGS AND SEVERABILITY CLAUSE (*BEING A 2.844-ACRE TRACT OF LAND IN THE JESSE PRUITT SURVEY, ABSTRACT NO. 629, HARRIS COUNTY TEXAS, OUT OF AND A PART OF THAT CERTAIN 4.8914-ACRE TRACT OF LAND DESCRIBED IN DEED RECORDED UNDER CLERK'S FILE NO. 2013-0036029 OF THE OFFICIAL PUBLIC RECORDS OF REAL PROPERTY OF HARRIS COUNTY, TEXAS, LOCATED AT 22828 HUFSMITH-KOHRVILLE ROAD*)

* * * * *

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

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

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

Section 3. If any section or part of this Ordinance be held unconstitutional, illegal, or invalid, or the application thereof ineffective or inapplicable as to any territory, such unconstitutionality, illegality, invalidity, or ineffectiveness of such section or part shall in no wise affect, impair, or invalidate the remaining portion or portions thereof, but as to such remaining portion or portions, the same shall be and remain in full force and effect; and should this Ordinance for any reason be ineffective as to any part of the territory hereby annexed to the City of Tomball, such ineffectiveness of this Ordinance as to any such part or parts of any such territory shall not affect the effectiveness of this ordinance as to all of the remainder of such

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

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

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 21ST DAY OF MAY
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 4TH DAY OF JUNE
2018.

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

GRETCHEN FAGAN, Mayor

ATTEST:

DORIS SPEER, City Secretary

Exhibit "A" – Page 1

FIELD NOTES

Being a 2.844 acre tract of land in the Jesse Pruitt Survey, Abstract No. 629, in Harris County, Texas, out of and a part of that certain 4.8914 acre tract of land described in deed recorded under Clerk's File No. 2013-0036029 of the Official Public Records of Real Property of Harris County, Texas, said 2.844 acres is hereafter referred to as "the subject tract" and is more particularly described as follows:

BEGINNING at a 5/8 inch iron rod found lying in the North line of the said 4.8914 acre tract (hereafter called "the parent tract"), in the South line of that certain 93.3743 acre tract of land recorded under Clerk's File No. 2008-0355024, and marking the Northwest corner of the subject tract, and the Northeast corner of that certain twenty-foot-wide strip of land containing 0.1983 acres conveyed to Harris County for the widening of Hufsmith Kohrville Road recorded under Clerk's File No. RP-2016-513692;

THENCE North 87°02'49" East, departing the East right-of-way line of the newly-widened Hufsmith Kohrville Road, and with the South line of the said 93.3743 acre tract, a distance of 446.43 feet to a 1/2 inch iron rod (with yellow plastic cap) found at fence corner marking the Northeast corner of the subject tract and the parent tract, and the Northwest corner of **KLEIN ISD BERNSHAUSEN ELEMENTARY SCHOOL ~ SECTION 3** (Film Code No. 644130, Harris County Map Records);

THENCE South 03°20'21" East, departing the South line of the said 93.3743 acre tract, and with the East line of the parent tract and the West line of **KLEIN ISD BERNSHAUSEN ELEMENTARY SCHOOL ~ SECTION 3**, a distance of 277.90 feet to a 5/8 inch iron rod found marking the Southeast corner of the subject tract, and the Northeast corner of that certain 1.825 acre tract of land conveyed to Harris County Flood Control District recorded under Clerk's File No. RP-2016-450615;

THENCE South 87°51'38" West (Reference Bearing based on deed of 1.825 acre adjoiner to the South), departing the East line of the parent tract and the West line of **KLEIN ISD BERNSHAUSEN ELEMENTARY SCHOOL ~ SECTION 3**, a distance of 455.60 feet to a 5/8 inch iron rod found lying in the East line of the said 0.1983 acre road-widening tract, and marking the Southwest corner of the subject tract, and the Northwest corner of the said 1.825 acre tract;

THENCE North 01°26'00" West, with the newly-widened East line of Hufsmith Kohrville Road, a distance of 73.26 feet to a 5/8 inch iron rod found marking a slight angle point in the West line of the subject tract, and the East line of the said road right-of-way;

THENCE North 01°25'09" West, continuing with the said newly-widened East line of Hufsmith Kohrville Road, a distance of 198.27 feet to the **POINT OF BEGINNING** and containing 2.844 acres of land, upon which is situated a residence whose address is 22828 Hufsmith Kohrville Road, Tomball, TX 77375.



A handwritten signature in black ink, appearing to read "Tony P. Swonke".

Tony P. Swonke
RPLS No. 4767
July 14, 2017

AM SM MFW EWR HW

Exhibit “A” – Page 2

A plot of a 2.844 acre (123,879 Sq. Ft.) tract of land in the Jesse Pruitt Survey, Abstract No. 629, in Harris County, Texas, out of and a part of that certain 4.8914 acre tract of land described in deed recorded under Clerk's File No. 2013-0036029 of the Official Public of Real Property of Harris County, Texas.

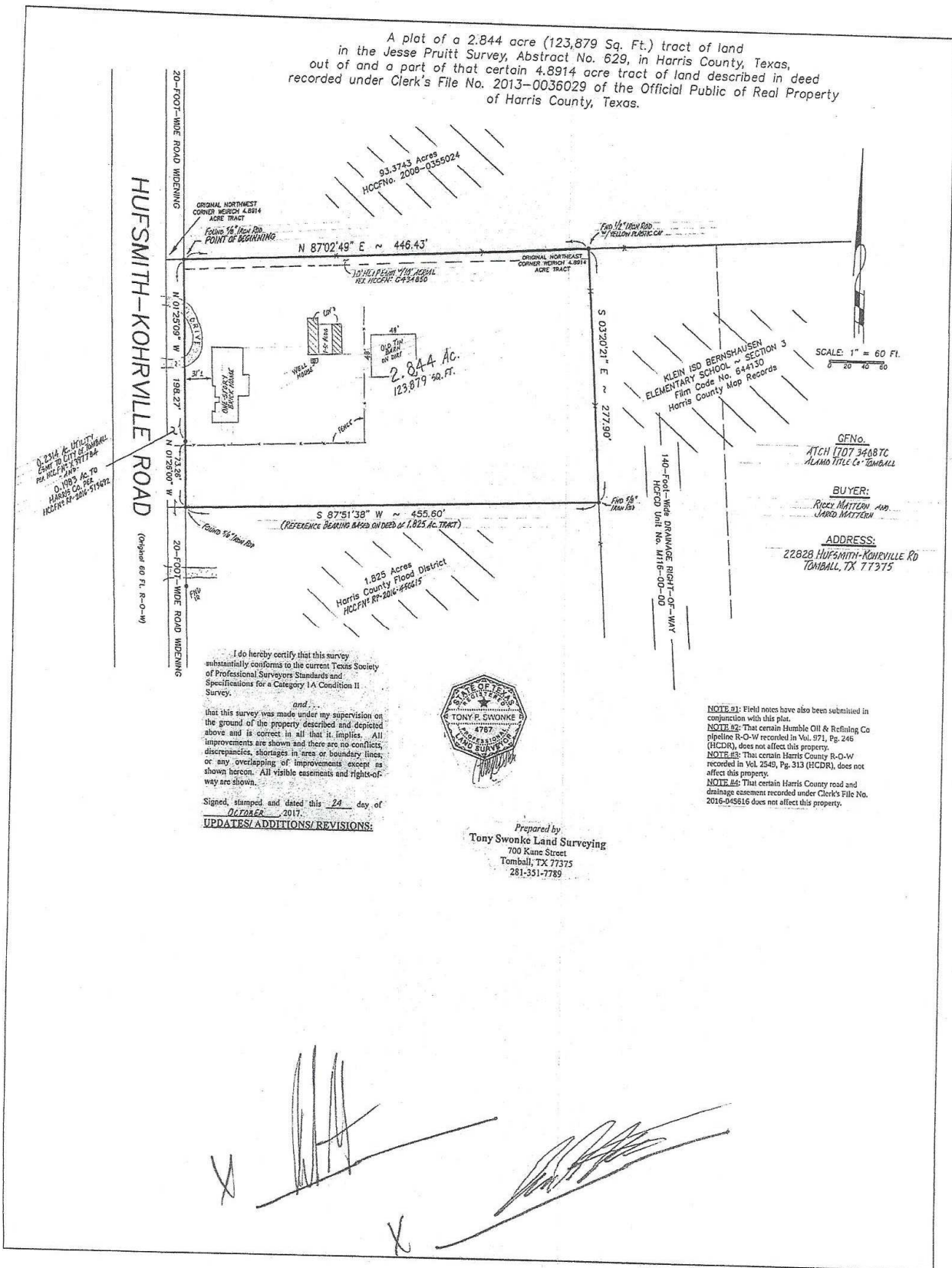


EXHIBIT "B"

CITY OF TOMBALL, TEXAS

MUNICIPAL SERVICE PLAN

I. INTRODUCTION

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

II. EFFECTIVE TERM

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

III. INTENT

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

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

IV. SERVICE PROGRAMS

A. In General.

1. This Plan includes the following service programs: A 60-Day Program and a Capital Improvement Program.

2. As used in this Plan, “providing services” shall include having services provided by any method or means by which the City may extend municipal services to any other area of the City. The City shall provide the area, or cause the area to be provided, with services in accordance with the Plan. This may include, but is not limited to, causing or allowing private utilities, governmental entities, and other public service organizations to provide such services, in whole or in part.

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

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

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

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

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

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

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

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

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

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

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

V. AMENDMENT: GOVERNING LAW

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

VI. FORCE MAJEURE

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

VIII. ENTIRE PLAN

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

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

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

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

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

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

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

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

A plot of a 2.844 acre (123,879 Sq. Ft.) tract of land in the Jesse Pruitt Survey, Abstract No. 629, in Harris County, Texas, out of and a part of that certain 4.8914 acre tract of land described in deed recorded under Clerk's File No. 2013-0036029 of the Official Public of Real Property of Harris County, Texas.

HUFSMITH-KOHRVILLE ROAD

(Original 60 Ft. R-O-W)

20-FOOT-WIDE ROAD WIDENING

ORIGINAL NORTHWEST CORNER HEREIN 4.8914 ACRE TRACT

FOUND 5/8" IRON ROD POINT OF BEGINNING

N 87°02'49" E ~ 446.43'

93.3743 Acres
HCCFNO. 2008-0355024

10' HILL PILE 1/2" IRON ROD
REC. HCCFNO. 0434650

ORIGINAL NORTHEAST CORNER HEREIN 4.8914 ACRE TRACT

END 1/2" IRON ROD
YELLOW PLASTIC CAP

S 03°20'21" E ~ 277.90'

KLEIN ISD BERNSHAUSEN
ELEMENTARY SCHOOL ~ SECTION 3
Film Code No. 644130
Harris County Map Records

SCALE: 1" = 60 FT.
0 20 40 60

GFNO.

ATCH 1707 34687C
ALAMO TITLE Co. - TOMBALL

BUYER:

RICKEY MATTERN AND
JARED MATTERN

ADDRESS:

22828 HUFSMITH-KOHRVILLE RD
TOMBALL, TX 77375

140-FOOT-WIDE DRAINAGE RIGHT-OF-WAY
HCCFNO Unit No. M116-00-00

S 87°51'38" W ~ 455.60'
(REFERENCE BEARING BASED ON DEED OF 1.825 AC. TRACT)

1.825 Acres
Harris County Flood District
HCCFNO. RP-2016-456615

I do hereby certify that this survey substantially conforms to the current Texas Society of Professional Surveyors Standards and Specifications for a Category 1A Condition II Survey.

and... that this survey was made under my supervision on the ground of the property described and depicted above and is correct in all that it implies. All improvements are shown and there are no conflicts, discrepancies, shortages in area or boundary lines, or any overlapping of improvements except as shown hereon. All visible easements and rights-of-way are shown.

Signed, stamped and dated this 24 day of OCTOBER, 2017.

UPDATES/ ADDITIONS/ REVISIONS:



Prepared by
Tony Swonke Land Surveying
700 Kane Street
Tomball, TX 77375
281-351-7789

NOTE #1: Field notes have also been submitted in conjunction with this plat.
NOTE #2: That certain Humble Oil & Refining Co pipeline R-O-W recorded in Vol. 971, Pg. 246 (HCCR), does not affect this property.
NOTE #3: That certain Harris County R-O-W recorded in Vol. 2549, Pg. 313 (HCCR), does not affect this property.
NOTE #4: That certain Harris County road and drainage easement recorded under Clerk's File No. 2016-045616 does not affect this property.

HUFSMITH-KOHRVILLE

22828 Hufsmith Kohrville



E MAIN

FM 2920

Shell Gas Station

BJ Services

22828 Hufsmith Kohrville

Bernshausen Elementary

WEIRICH LN

HUFSMITH-KOHRVILLE

MAHAFFEY RD

Smitty's Meat Market

Light Industrial

Light Industrial

HUFSMITH-KOHRVILLE

22828 Hufsmith Kohrville

Agricultural

Light Industrial

Agricultural

Light Industrial

Commercial

Agricultural

WEIRICH LN

Industrial

Industrial

Industrial

Industrial

Industrial

Industrial

Industrial

22828 Hufsmith Kohrville

**Low Density
Residential**

**Low Density
Residential**

**Low Density
Residential**

**Low Density
Residential**

Regular City Council

Agenda Item

Data Sheet

Meeting Date: May 21, 2018

Topic:

Approve Resolution No. 2018-13, a Resolution of the City Council of the City of Tomball, Texas, Supporting the 53rd Annual Tomball Holiday Parade, to be Held in Tomball on Saturday, November 17, 2018 and Approving Requested Street Closures and In-Kind Services

Background:

The Chamber of Commerce must request approval from TxDOT to close FM 2920 for the annual Holiday Parade; the request must include a Resolution from the City of Tomball supporting the parade.

This is the City's customary resolution supporting and endorsing the annual Chamber-sponsored Tomball Holiday Parade, scheduled to take place on Saturday, November 17, 2018.

In addition to closing FM 2920 from FM 2978 to Business 249 from 9:15 a.m. until 12:30 p.m. for the parade, the Chamber is requesting closure of the following streets on Saturday, November 18, from 7:00 a.m. until noon:

- North Elm between Main Street and Hufsmith Road
- North Walnut between Main and Epps Streets
- 100 and 200 Blocks of Commerce Street
- 100 and 200 Blocks of Houston Street
- 100 and 200 Blocks of Oxford Street
- South Elm between Main Street and Market Streets
- South Walnut between Main Street and Fannin Streets
- 100 and 200 Blocks of Market Street
- Parking lot at the corner of Main Street and South Walnut.

The Chamber also requests the use of Tomball Police, Fire and Public Works personnel; the estimated cost for the use of City personnel/support services is \$6,000-\$6,500.

The annual Holiday Parade is extremely popular with the local community and brings visitors from the surrounding areas who often remain to shop, eat, and enjoy our city's amenities. We anticipate large crowds before, during, and following the event, meeting the City's Strategic Plan goal of building our economy.

Origination:

Greater Tomball Area Chamber of Commerce

Recommendation:

Approve Resolution No. 2018-13

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:

Resolution No. 2018-13

GTACC Request Letter

Parade Map

GTACC Special Event Application

GTACC Certificate of Insurance

RESOLUTION NO. 2018-13

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY
OF TOMBALL, TEXAS, SUPPORTING THE 53RD
ANNUAL TOMBALL HOLIDAY PARADE, TO BE HELD
IN TOMBALL ON SATURDAY, NOVEMBER 17, 2018,
AND TO APPROVE REQUESTED STREET CLOSURES
AND IN-KIND SERVICES.**

* * * * *

WHEREAS the Greater Tomball Area Chamber of Commerce will undertake the **53rd Annual Tomball Holiday Parade**, to be held in the City of Tomball at 10:00 a.m. on Saturday, November 17, 2018; and

WHEREAS the purpose of the **53rd Annual Tomball Holiday Parade** is to celebrate our quality of life and to create an avenue for others outside to come to our fair City to enjoy fun, food and good cheer; and

WHEREAS it is a chance for Tomball area merchants and business people to gain a new customer base through monies spent by those attending the **53rd Annual Tomball Holiday Parade**; and

WHEREAS activities celebrating the **53rd Annual Tomball Holiday Parade** will include the annual parade, food, crafts, and hometown merchants selling from their businesses; and

WHEREAS the Greater Tomball Area Chamber of Commerce desires and requests the support and endorsement of the City of Tomball in this community-wide effort;

NOW, THEREFORE, BE IT RESOLVED that the City of Tomball and its governing body endorses and supports the efforts of the Greater Tomball Area Chamber of Commerce in promoting and undertaking the **53rd Annual Tomball Holiday Parade** and pledge to encourage this effort to celebrate our heritage and promote our future betterment.

PASSED AND APPROVED AS SET OUT BELOW AT THE MEETING OF THE CITY COUNCIL HELD ON THE 21st DAY OF May, 2018.

GRETCHEN FAGAN, Mayor

ATTEST:

DORIS SPEER, City Secretary



May 10, 2017

City of Tomball
Mr. Rob Hauck
401 Market Street
Tomball, Texas 77375

RE: Tomball Holiday Parade

Dear Mr. Hauck,

We are anticipating a fabulous Tomball Holiday Parade at 10 a.m. on Saturday, November 17, 2018 with help from our city, police and fire departments, as well as from numerous volunteers. The popular attraction is a Tomball tradition and is celebrating 53 years. We are looking forward again to the expertise of the Tomball Police Department for crowd control and as visual deterrents from any negative activity.

To insure the safety of the many visitors and Parade participants who will be in Tomball on November 17, we are asking for street closures for the following streets on Saturday morning only from 7:00 a.m. until noon:

- North Elm between Main Street and Hufsmith Rd.
- North Walnut between Main Street and Epps
- 100 & 200 block of Commerce
- 100 & 200 block of Houston
- 100 & 200 block of Oxford
- South Elm between Main Street and Market Street
- South Walnut between Main Street and Fannin
- 100 & 200 block of Market Street
- Parking lot at corner of Main and South Walnut

From 9:15 a.m. until 12:30 p.m.

- FM 2920 from FM 2978 to Business 249

Enclosed is a map for your review. Residents of these streets will still have access to and from their homes.

We appreciate the City of Tomball, its special partnership with the chamber and the assistance always offered for our events. Should you have any questions or concerns, please contact Brandy Beyer or myself at 281-351-7222.

Sincerely,

A handwritten signature in black ink, appearing to read "Bruce Hillegeist".

Bruce Hillegeist
President

Encl: Map



SPECIAL EVENT APPLICATION

CITY OF TOMBALL, TEXAS | 401 Market Street | Tomball, Texas 77375 | 281-351-5484

An application to stage an event within the City of Tomball shall be filed with the Community Events Coordinator at least 180 days prior to the event. This application is not to be construed as authorizing or agreeing to any event until formally approved by Tomball City Council.

Date: 11/17/2018

Is this event Co-City sponsored? Yes ___ Yes ___

Request for permission to use a public venue for the following type of event (please check one):

Festival ___ Community Event X Arts & Crafts Event ___ Music Event ___ Other (specify) ___

1. Event title: Tomball Holiday Parade
2. Sponsoring entity: Greater Tomball Area Chamber of Commerce
3. Is this organization based in Tomball: Yes X No ___ *we are a 501 c 6
4. Is this organization *non-profit* X or *for-profit* ___ *Attach 501 (c) (3) tax exemption if applicable
5. Contact: Brandy Beyer Phone: 281.351.7222
6. Contact address: 29201 Quinn Road, Ste. B
7. Contact email: bbeyer@tomballchamber.org
8. Event date: 11/17/2018
9. Event times: Start 10am Finish 12pm Set-up 8am Breakdown 12pm
10. Is this event for charity? Yes X No ___
11. If yes, what charity? Greater Tomball Area Chamber of Commerce Tax ID 74-1495125
12. If yes, what percentage of net proceeds will be donated to the charity? 100%
13. On-site contact: Brandy Beyer Mobile Phone: 713.594.3449
14. Estimated number of attendees: 25,000
15. Detailed site map in attached: Yes X No ___
16. Is this event open to the public: Yes X No ___
17. Admission fee: \$ ___ Free X
18. Time at which event staff will begin to arrive: 6:30am
19. The applicant will defend and hold harmless the City of Tomball from all claims, demands, actions or causes of action, of whatsoever nature or character, arising out of or by reason of the conduct of the activity authorized by such application including attorney fees and expenses.
Initial BB
20. The applicant will provide proof of general liability insurance for the event naming the City of Tomball as additional insured.
Initial BB
21. Name of insurance carrier: Ins. Assoc. of the S.W., LLC
22. Organization has secured date with the Public Works Dept. and has paid deposit. _____

Signature: [Signature]

FOR OFFICIAL USE - Fee Required: Yes ___ No ___ Amount Due: \$ _____



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

5/10/2018

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an **ADDITIONAL INSURED**, the policy(ies) must have **ADDITIONAL INSURED** provisions or be endorsed. If **SUBROGATION** IS **WAIVED**, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER Higginbotham IAS Group PO Box 441767 Houston TX 77244	CONTACT NAME: Conny Vadovsky	FAX (A/C, No): 281-558-4765	
	PHONE (A/C, No, Ext): 281-558-6363	E-MAIL ADDRESS: cvadovsky@higginbotham.net	
INSURED Greater Tomball Area Chamber of Commerce 29201 Quinn, Suite B Tomball TX 77375	INSURER(S) AFFORDING COVERAGE		NAIC #
	INSURER A: Hartford Lloyds Insurance Co		38253
	INSURER B:		
	INSURER C:		
	INSURER D:		
	INSURER E:		
INSURER F:			

COVERAGES**CERTIFICATE NUMBER:** 212939238**REVISION NUMBER:**

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	☒ COMMERCIAL GENERAL LIABILITY ☐ CLAIMS-MADE ☒ OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: ☐ POLICY ☐ PRO-JECT ☒ LOC ☐ OTHER:	Y	Y	61SBAVM8139	12/20/2017	12/20/2018	EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 300,000 MED EXP (Any one person) \$ 10,000 PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 2,000,000 PRODUCTS - COMP/OP AGG \$ 2,000,000 \$
A	☐ AUTOMOBILE LIABILITY ☐ ANY AUTO ☐ OWNED AUTOS ONLY ☐ SCHEDULED AUTOS ☒ HIRED AUTOS ONLY ☒ NON-OWNED AUTOS ONLY	Y	Y	61SBAVM8139	12/20/2017	12/20/2018	COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ \$
	☐ UMBRELLA LIAB ☐ OCCUR ☐ EXCESS LIAB ☐ CLAIMS-MADE ☐ DED ☐ RETENTION \$						EACH OCCURRENCE \$ AGGREGATE \$ \$
	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	Y / N	N / A				PER STATUTE ☐ OTH-ER ☐ E.L. EACH ACCIDENT \$ E.L. DISEASE - EA EMPLOYEE \$ E.L. DISEASE - POLICY LIMIT \$

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

Attachments:
Certificate holder notice Revised Updated.pdf
SS0008-0405.pdf

CERTIFICATE HOLDER**CANCELLATION**

City of Tomball
401 Market Street
Tomball TX 77375

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE

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NOTICE TO CERTIFICATE HOLDERS

In keeping with our client's request, we are providing you with a Certificate of Insurance using the latest ACORD 25-Certificate of Liability Insurance (2010/05) form. Prior editions have been withdrawn by ACORD and are no longer available. Since these are copyrighted forms we use under licensing agreements, we must follow ACORD's usage instructions.

1. There are major differences in the form now being used:
2. The cancellation box has been changed to provide notice of cancellation to the certificate holder in accordance with policy provisions. The former language is no longer available and the new edition of the certificate cannot be altered because of copyright law.
3. The certificate holder's status as an Additional Insured is now shown by placing an "X" in the box to the right of the column titled "Type of Insurance."
4. If a Waiver of Subrogation is being given, it will also be shown by placing an "X" in the box to the right of the Additional Insured box.
5. The space on the certificate for the Description of Operations/Locations/Vehicle has now been reserved for that use, and we are no longer allowed to insert wording that indicates status as an additional insured, waiver of subrogation, primary and non-contributory, etc. We are allowed to insert the name and number of the policy forms granting those extensions. Copies are attached for your review. We are also permitted to show a project name, lease #, contract #, etc.

As the agent for the insured, we are here to try to make this transition as transparent and easy as possible. If you have a question or problem with the certificate you have received, please call Courtney Futch at (281) 531-2062. We will try to resolve your issue if possible.

After January 1, 2012, all certificate forms used in Texas have to be approved by the Texas Department of Insurance. For further information, you may contact the Public Information Office, Texas Department of Insurance, P. O. Box 149104, Austin, Texas 78714.

For further information as to ACORD requirements, you may contact Acord by visiting their website at www.acord.org.

BUSINESS LIABILITY COVERAGE FORM

**QUICK REFERENCE
BUSINESS LIABILITY COVERAGE FORM
READ YOUR POLICY CAREFULLY**

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BUSINESS LIABILITY COVERAGE FORM

Various provisions in this policy restrict coverage. Read the entire policy carefully to determine rights, duties and what is and is not covered.

Throughout this policy the words "you" and "your" refer to the Named Insured shown in the Declarations. The words "we", "us" and "our" refer to the stock insurance company member of The Hartford providing this insurance.

The word "insured" means any person or organization qualifying as such under Section **C. - Who Is An Insured**.

Other words and phrases that appear in quotation marks have special meaning. Refer to Section **G. - Liability And Medical Expenses Definitions**.

A. COVERAGES

1. BUSINESS LIABILITY COVERAGE (BODILY INJURY, PROPERTY DAMAGE, PERSONAL AND ADVERTISING INJURY)

Insuring Agreement

- a. We will pay those sums that the insured becomes legally obligated to pay as damages because of "bodily injury", "property damage" or "personal and advertising injury" to which this insurance applies. We will have the right and duty to defend the insured against any "suit" seeking those damages. However, we will have no duty to defend the insured against any "suit" seeking damages for "bodily injury", "property damage" or "personal and advertising injury" to which this insurance does not apply.

We may, at our discretion, investigate any "occurrence" or offense and settle any claim or "suit" that may result. But:

- (1) The amount we will pay for damages is limited as described in Section **D. - Liability And Medical Expenses Limits Of Insurance**; and
- (2) Our right and duty to defend ends when we have used up the applicable limit of insurance in the payment of judgments, settlements or medical expenses to which this insurance applies.

No other obligation or liability to pay sums or perform acts or services is covered unless explicitly provided for under Coverage Extension - Supplementary Payments.

- b. This insurance applies:

- (1) To "bodily injury" and "property damage" only if:

- (a) The "bodily injury" or "property damage" is caused by an "occurrence" that takes place in the "coverage territory";

- (b) The "bodily injury" or "property damage" occurs during the policy period; and

- (c) Prior to the policy period, no insured listed under Paragraph **1.** of Section **C. - Who Is An Insured** and no "employee" authorized by you to give or receive notice of an "occurrence" or claim, knew that the "bodily injury" or "property damage" had occurred, in whole or in part. If such a listed insured or authorized "employee" knew, prior to the policy period, that the "bodily injury" or "property damage" occurred, then any continuation, change or resumption of such "bodily injury" or "property damage" during or after the policy period will be deemed to have been known prior to the policy period.

- (2) To "personal and advertising injury" caused by an offense arising out of your business, but only if the offense was committed in the "coverage territory" during the policy period.

- c. "Bodily injury" or "property damage" will be deemed to have been known to have occurred at the earliest time when any insured listed under Paragraph **1.** of Section **C. - Who Is An Insured** or any "employee" authorized by you to give or receive notice of an "occurrence" or claim:

- (1) Reports all, or any part, of the "bodily injury" or "property damage" to us or any other insurer;

BUSINESS LIABILITY COVERAGE FORM

- (2) Receives a written or verbal demand or claim for damages because of the "bodily injury" or "property damage"; or
 - (3) Becomes aware by any other means that "bodily injury" or "property damage" has occurred or has begun to occur.
- d. Damages because of "bodily injury" include damages claimed by any person or organization for care, loss of services or death resulting at any time from the "bodily injury".
- e. **Incidental Medical Malpractice**

- (1) "Bodily injury" arising out of the rendering of or failure to render professional health care services as a physician, dentist, nurse, emergency medical technician or paramedic shall be deemed to be caused by an "occurrence", but only if:
 - (a) The physician, dentist, nurse, emergency medical technician or paramedic is employed by you to provide such services; and
 - (b) You are not engaged in the business or occupation of providing such services.
- (2) For the purpose of determining the limits of insurance for incidental medical malpractice, any act or omission together with all related acts or omissions in the furnishing of these services to any one person will be considered one "occurrence".

2. MEDICAL EXPENSES

Insuring Agreement

- a. We will pay medical expenses as described below for "bodily injury" caused by an accident:
- (1) On premises you own or rent;
 - (2) On ways next to premises you own or rent; or
 - (3) Because of your operations;
- provided that:
- (1) The accident takes place in the "coverage territory" and during the policy period;
 - (2) The expenses are incurred and reported to us within three years of the date of the accident; and
 - (3) The injured person submits to examination, at our expense, by physicians of our choice as often as we reasonably require.

- b. We will make these payments regardless of fault. These payments will not exceed the applicable limit of insurance. We will pay reasonable expenses for:

- (1) First aid administered at the time of an accident;
- (2) Necessary medical, surgical, x-ray and dental services, including prosthetic devices; and
- (3) Necessary ambulance, hospital, professional nursing and funeral services.

3. COVERAGE EXTENSION - SUPPLEMENTARY PAYMENTS

- a. We will pay, with respect to any claim or "suit" we investigate or settle, or any "suit" against an insured we defend:
- (1) All expenses we incur.
 - (2) Up to \$1,000 for the cost of bail bonds required because of accidents or traffic law violations arising out of the use of any vehicle to which Business Liability Coverage for "bodily injury" applies. We do not have to furnish these bonds.
 - (3) The cost of appeal bonds or bonds to release attachments, but only for bond amounts within the applicable limit of insurance. We do not have to furnish these bonds.
 - (4) All reasonable expenses incurred by the insured at our request to assist us in the investigation or defense of the claim or "suit", including actual loss of earnings up to \$500 a day because of time off from work.
 - (5) All costs taxed against the insured in the "suit".
 - (6) Prejudgment interest awarded against the insured on that part of the judgment we pay. If we make an offer to pay the applicable limit of insurance, we will not pay any prejudgment interest based on that period of time after the offer.
 - (7) All interest on the full amount of any judgment that accrues after entry of the judgment and before we have paid, offered to pay, or deposited in court the part of the judgment that is within the applicable limit of insurance.

Any amounts paid under (1) through (7) above will not reduce the limits of insurance.

b. If we defend an insured against a "suit" and an indemnitee of the insured is also named as a party to the "suit", we will defend that indemnitee if all of the following conditions are met:

- (1) The "suit" against the indemnitee seeks damages for which the insured has assumed the liability of the indemnitee in a contract or agreement that is an "insured contract";
- (2) This insurance applies to such liability assumed by the insured;
- (3) The obligation to defend, or the cost of the defense of, that indemnitee, has also been assumed by the insured in the same "insured contract";
- (4) The allegations in the "suit" and the information we know about the "occurrence" are such that no conflict appears to exist between the interests of the insured and the interest of the indemnitee;
- (5) The indemnitee and the insured ask us to conduct and control the defense of that indemnitee against such "suit" and agree that we can assign the same counsel to defend the insured and the indemnitee; and
- (6) The indemnitee:
 - (a) Agrees in writing to:
 - (i) Cooperate with us in the investigation, settlement or defense of the "suit";
 - (ii) Immediately send us copies of any demands, notices, summonses or legal papers received in connection with the "suit";
 - (iii) Notify any other insurer whose coverage is available to the indemnitee; and
 - (iv) Cooperate with us with respect to coordinating other applicable insurance available to the indemnitee; and
 - (b) Provides us with written authorization to:
 - (i) Obtain records and other information related to the "suit"; and
 - (ii) Conduct and control the defense of the indemnitee in such "suit".

So long as the above conditions are met, attorneys' fees incurred by us in the defense of that indemnitee, necessary litigation expenses incurred by us and necessary litigation expenses incurred by the indemnitee at our request will be paid as Supplementary Payments.

Notwithstanding the provisions of Paragraph **1.b.(b)** of Section **B.** – Exclusions, such payments will not be deemed to be damages for "bodily injury" and "property damage" and will not reduce the Limits of Insurance.

Our obligation to defend an insured's indemnitee and to pay for attorneys' fees and necessary litigation expenses as Supplementary Payments ends when:

- (1) We have used up the applicable limit of insurance in the payment of judgments or settlements; or
- (2) The conditions set forth above, or the terms of the agreement described in Paragraph (6) above, are no longer met.

B. EXCLUSIONS

1. Applicable To Business Liability Coverage

This insurance does not apply to:

a. Expected Or Intended Injury

- (1) "Bodily injury" or "property damage" expected or intended from the standpoint of the insured. This exclusion does not apply to "bodily injury" or "property damage" resulting from the use of reasonable force to protect persons or property; or
- (2) "Personal and advertising injury" arising out of an offense committed by, at the direction of or with the consent or acquiescence of the insured with the expectation of inflicting "personal and advertising injury".

b. Contractual Liability

- (1) "Bodily injury" or "property damage"; or
- (2) "Personal and advertising injury"

for which the insured is obligated to pay damages by reason of the assumption of liability in a contract or agreement.

This exclusion does not apply to liability for damages because of:

- (a) "Bodily injury", "property damage" or "personal and advertising injury" that the insured would have in the absence of the contract or agreement; or

BUSINESS LIABILITY COVERAGE FORM

(b) "Bodily injury" or "property damage" assumed in a contract or agreement that is an "insured contract", provided the "bodily injury" or "property damage" occurs subsequent to the execution of the contract or agreement. Solely for the purpose of liability assumed in an "insured contract", reasonable attorneys' fees and necessary litigation expenses incurred by or for a party other than an insured are deemed to be damages because of "bodily injury" or "property damage" provided:

- (i) Liability to such party for, or for the cost of, that party's defense has also been assumed in the same "insured contract", and
- (ii) Such attorneys' fees and litigation expenses are for defense of that party against a civil or alternative dispute resolution proceeding in which damages to which this insurance applies are alleged.

c. Liquor Liability

"Bodily injury" or "property damage" for which any insured may be held liable by reason of:

- (1) Causing or contributing to the intoxication of any person;
- (2) The furnishing of alcoholic beverages to a person under the legal drinking age or under the influence of alcohol; or
- (3) Any statute, ordinance or regulation relating to the sale, gift, distribution or use of alcoholic beverages.

This exclusion applies only if you are in the business of manufacturing, distributing, selling, serving or furnishing alcoholic beverages.

d. Workers' Compensation And Similar Laws

Any obligation of the insured under a workers' compensation, disability benefits or unemployment compensation law or any similar law.

e. Employer's Liability

"Bodily injury" to:

- (1) An "employee" of the insured arising out of and in the course of:
 - (a) Employment by the insured; or

(b) Performing duties related to the conduct of the insured's business, or

- (2) The spouse, child, parent, brother or sister of that "employee" as a consequence of (1) above.

This exclusion applies:

- (1) Whether the insured may be liable as an employer or in any other capacity; and
- (2) To any obligation to share damages with or repay someone else who must pay damages because of the injury.

This exclusion does not apply to liability assumed by the insured under an "insured contract".

f. Pollution

- (1) "Bodily injury", "property damage" or "personal and advertising injury" arising out of the actual, alleged or threatened discharge, dispersal, seepage, migration, release or escape of "pollutants":

(a) At or from any premises, site or location which is or was at any time owned or occupied by, or rented or loaned to any insured. However, this subparagraph does not apply to:

(i) "Bodily injury" if sustained within a building and caused by smoke, fumes, vapor or soot produced by or originating from equipment that is used to heat, cool or dehumidify the building, or equipment that is used to heat water for personal use, by the building's occupants or their guests;

(ii) "Bodily injury" or "property damage" for which you may be held liable, if you are a contractor and the owner or lessee of such premises, site or location has been added to your policy as an additional insured with respect to your ongoing operations performed for that additional insured at that premises, site or location and such premises, site or location is not and never was owned or occupied by, or rented or loaned to, any insured, other than that additional insured; or

- (iii) "Bodily injury" or "property damage" arising out of heat, smoke or fumes from a "hostile fire";
 - (b) At or from any premises, site or location which is or was at any time used by or for any insured or others for the handling, storage, disposal, processing or treatment of waste;
 - (c) Which are or were at any time transported, handled, stored, treated, disposed of, or processed as waste by or for:
 - (i) Any insured; or
 - (ii) Any person or organization for whom you may be legally responsible;
 - (d) At or from any premises, site or location on which any insured or any contractors or subcontractors working directly or indirectly on any insured's behalf are performing operations if the "pollutants" are brought on or to the premises, site or location in connection with such operations by such insured, contractor or subcontractor. However, this subparagraph does not apply to:
 - (i) "Bodily injury" or "property damage" arising out of the escape of fuels, lubricants or other operating fluids which are needed to perform the normal electrical, hydraulic or mechanical functions necessary for the operation of "mobile equipment" or its parts, if such fuels, lubricants or other operating fluids escape from a vehicle part designed to hold, store or receive them. This exception does not apply if the "bodily injury" or "property damage" arises out of the intentional discharge, dispersal or release of the fuels, lubricants or other operating fluids, or if such fuels, lubricants or other operating fluids are brought on or to the premises, site or location with the intent that they be discharged, dispersed or released as part of the operations being performed by such insured, contractor or subcontractor;
 - (ii) "Bodily injury" or "property damage" sustained within a building and caused by the release of gases, fumes or vapors from materials brought into that building in connection with operations being performed by you or on your behalf by a contractor or subcontractor; or
 - (iii) "Bodily injury" or "property damage" arising out of heat, smoke or fumes from a "hostile fire"; or
 - (e) At or from any premises, site or location on which any insured or any contractors or subcontractors working directly or indirectly on any insured's behalf are performing operations if the operations are to test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of, "pollutants".
- (2) Any loss, cost or expense arising out of any:
- (a) Request, demand, order or statutory or regulatory requirement that any insured or others test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of, "pollutants"; or
 - (b) Claim or suit by or on behalf of a governmental authority for damages because of testing for, monitoring, cleaning up, removing, containing, treating, detoxifying or neutralizing, or in any way responding to, or assessing the effects of, "pollutants".
- However, this paragraph does not apply to liability for damages because of "property damage" that the insured would have in the absence of such request, demand, order or statutory or regulatory requirement, or such claim or "suit" by or on behalf of a governmental authority.

g. Aircraft, Auto Or Watercraft

"Bodily injury" or "property damage" arising out of the ownership, maintenance, use or entrustment to others of any aircraft, "auto" or watercraft owned or operated by or rented or loaned to any insured. Use includes operation and "loading or unloading".

This exclusion applies even if the claims against any insured allege negligence or other wrongdoing in the supervision, hiring, employment, training or monitoring of others by that insured, if the "occurrence" which caused the "bodily injury" or "property damage" involved the ownership, maintenance, use or entrustment to others of any aircraft, "auto" or watercraft that is owned or operated by or rented or loaned to any insured.

This exclusion does not apply to:

- (1) A watercraft while ashore on premises you own or rent;
- (2) A watercraft you do not own that is:
 - (a) Less than 51 feet long; and
 - (b) Not being used to carry persons for a charge;
- (3) Parking an "auto" on, or on the ways next to, premises you own or rent, provided the "auto" is not owned by or rented or loaned to you or the insured;
- (4) Liability assumed under any "insured contract" for the ownership, maintenance or use of aircraft or watercraft;
- (5) "Bodily injury" or "property damage" arising out of the operation of any of the equipment listed in Paragraph **f.(2)** or **f.(3)** of the definition of "mobile equipment"; or
- (6) An aircraft that is not owned by any insured and is hired, chartered or loaned with a paid crew. However, this exception does not apply if the insured has any other insurance for such "bodily injury" or "property damage", whether the other insurance is primary, excess, contingent or on any other basis.

h. Mobile Equipment

"Bodily injury" or "property damage" arising out of:

- (1) The transportation of "mobile equipment" by an "auto" owned or operated by or rented or loaned to any insured; or

- (2) The use of "mobile equipment" in, or while in practice or preparation for, a prearranged racing, speed or demolition contest or in any stunting activity.

i. War

"Bodily injury", "property damage" or "personal and advertising injury", however caused, arising, directly or indirectly, out of:

- (1) War, including undeclared or civil war;
- (2) Warlike action by a military force, including action in hindering or defending against an actual or expected attack, by any government, sovereign or other authority using military personnel or other agents; or
- (3) Insurrection, rebellion, revolution, usurped power, or action taken by governmental authority in hindering or defending against any of these.

j. Professional Services

"Bodily injury", "property damage" or "personal and advertising injury" arising out of the rendering of or failure to render any professional service. This includes but is not limited to:

- (1) Legal, accounting or advertising services;
- (2) Preparing, approving, or failing to prepare or approve maps, shop drawings, opinions, reports, surveys, field orders, change orders, designs or drawings and specifications;
- (3) Supervisory, inspection, architectural or engineering activities;
- (4) Medical, surgical, dental, x-ray or nursing services treatment, advice or instruction;
- (5) Any health or therapeutic service treatment, advice or instruction;
- (6) Any service, treatment, advice or instruction for the purpose of appearance or skin enhancement, hair removal or replacement or personal grooming;
- (7) Optical or hearing aid services including the prescribing, preparation, fitting, demonstration or distribution of ophthalmic lenses and similar products or hearing aid devices;

- (8) Optometry or optometric services including but not limited to examination of the eyes and the prescribing, preparation, fitting, demonstration or distribution of ophthalmic lenses and similar products;
- (9) Any:
 - (a) Body piercing (not including ear piercing);
 - (b) Tattooing, including but not limited to the insertion of pigments into or under the skin; and
 - (c) Similar services;
- (10) Services in the practice of pharmacy; and
- (11) Computer consulting, design or programming services, including web site design.

Paragraphs (4) and (5) of this exclusion do not apply to the Incidental Medical Malpractice coverage afforded under Paragraph 1.e. in Section A. - Coverages.

k. Damage To Property

"Property damage" to:

- (1) Property you own, rent or occupy, including any costs or expenses incurred by you, or any other person, organization or entity, for repair, replacement, enhancement, restoration or maintenance of such property for any reason, including prevention of injury to a person or damage to another's property;
- (2) Premises you sell, give away or abandon, if the "property damage" arises out of any part of those premises;
- (3) Property loaned to you;
- (4) Personal property in the care, custody or control of the insured;
- (5) That particular part of real property on which you or any contractors or subcontractors working directly or indirectly on your behalf are performing operations, if the "property damage" arises out of those operations; or
- (6) That particular part of any property that must be restored, repaired or replaced because "your work" was incorrectly performed on it.

Paragraphs (1), (3) and (4) of this exclusion do not apply to "property damage" (other than damage by fire) to premises, including the contents of such premises, rented to you for a period of 7 or fewer consecutive days. A separate Limit of Insurance applies to Damage To Premises Rented To You as described in Section D. - Limits Of Insurance.

Paragraph (2) of this exclusion does not apply if the premises are "your work" and were never occupied, rented or held for rental by you.

Paragraphs (3) and (4) of this exclusion do not apply to the use of elevators.

Paragraphs (3), (4), (5) and (6) of this exclusion do not apply to liability assumed under a sidetrack agreement.

Paragraphs (3) and (4) of this exclusion do not apply to "property damage" to borrowed equipment while not being used to perform operations at a job site.

Paragraph (6) of this exclusion does not apply to "property damage" included in the "products-completed operations hazard".

l. Damage To Your Product

"Property damage" to "your product" arising out of it or any part of it.

m. Damage To Your Work

"Property damage" to "your work" arising out of it or any part of it and included in the "products-completed operations hazard".

This exclusion does not apply if the damaged work or the work out of which the damage arises was performed on your behalf by a subcontractor.

n. Damage To Impaired Property Or Property Not Physically Injured

"Property damage" to "impaired property" or property that has not been physically injured, arising out of:

- (1) A defect, deficiency, inadequacy or dangerous condition in "your product" or "your work"; or
- (2) A delay or failure by you or anyone acting on your behalf to perform a contract or agreement in accordance with its terms.

This exclusion does not apply to the loss of use of other property arising out of sudden and accidental physical injury to "your product" or "your work" after it has been put to its intended use.

o. Recall Of Products, Work Or Impaired Property

Damages claimed for any loss, cost or expense incurred by you or others for the loss of use, withdrawal, recall, inspection, repair, replacement, adjustment, removal or disposal of:

- (1) "Your product";
- (2) "Your work"; or
- (3) "Impaired property";

if such product, work or property is withdrawn or recalled from the market or from use by any person or organization because of a known or suspected defect, deficiency, inadequacy or dangerous condition in it.

p. Personal And Advertising Injury

"Personal and advertising injury":

- (1) Arising out of oral, written or electronic publication of material, if done by or at the direction of the insured with knowledge of its falsity;
- (2) Arising out of oral, written or electronic publication of material whose first publication took place before the beginning of the policy period;
- (3) Arising out of a criminal act committed by or at the direction of the insured;
- (4) Arising out of any breach of contract, except an implied contract to use another's "advertising idea" in your "advertisement";
- (5) Arising out of the failure of goods, products or services to conform with any statement of quality or performance made in your "advertisement";
- (6) Arising out of the wrong description of the price of goods, products or services;
- (7) Arising out of any violation of any intellectual property rights such as copyright, patent, trademark, trade name, trade secret, service mark or other designation of origin or authenticity.

However, this exclusion does not apply to infringement, in your "advertisement", of

- (a) Copyright;
- (b) Slogan, unless the slogan is also a trademark, trade name, service mark or other designation of origin or authenticity; or

(c) Title of any literary or artistic work;

(8) Arising out of an offense committed by an insured whose business is:

- (a) Advertising, broadcasting, publishing or telecasting;
- (b) Designing or determining content of web sites for others; or
- (c) An Internet search, access, content or service provider.

However, this exclusion does not apply to Paragraphs **a.**, **b.** and **c.** under the definition of "personal and advertising injury" in Section **G.** – Liability And Medical Expenses Definitions.

For the purposes of this exclusion, placing an "advertisement" for or linking to others on your web site, by itself, is not considered the business of advertising, broadcasting, publishing or telecasting;

- (9) Arising out of an electronic chat room or bulletin board the insured hosts, owns, or over which the insured exercises control;
- (10) Arising out of the unauthorized use of another's name or product in your e-mail address, domain name or metatags, or any other similar tactics to mislead another's potential customers;
- (11) Arising out of the violation of a person's right of privacy created by any state or federal act.

However, this exclusion does not apply to liability for damages that the insured would have in the absence of such state or federal act;

(12) Arising out of:

- (a) An "advertisement" for others on your web site;
- (b) Placing a link to a web site of others on your web site;
- (c) Content from a web site of others displayed within a frame or border on your web site. Content includes information, code, sounds, text, graphics or images; or
- (d) Computer code, software or programming used to enable:
 - (i) Your web site; or
 - (ii) The presentation or functionality of an "advertisement" or other content on your web site;

- (13) Arising out of a violation of any anti-trust law;
- (14) Arising out of the fluctuation in price or value of any stocks, bonds or other securities; or
- (15) Arising out of discrimination or humiliation committed by or at the direction of any "executive officer", director, stockholder, partner or member of the insured.

q. Electronic Data

Damages arising out of the loss of, loss of use of, damage to, corruption of, inability to access, or inability to manipulate "electronic data".

r. Employment-Related Practices

"Bodily injury" or "personal and advertising injury" to:

- (1) A person arising out of any:
 - (a) Refusal to employ that person;
 - (b) Termination of that person's employment; or
 - (c) Employment-related practices, policies, acts or omissions, such as coercion, demotion, evaluation, reassignment, discipline, defamation, harassment, humiliation or discrimination directed at that person; or
- (2) The spouse, child, parent, brother or sister of that person as a consequence of "bodily injury" or "personal and advertising injury" to the person at whom any of the employment-related practices described in Paragraphs (a), (b), or (c) above is directed.

This exclusion applies:

- (1) Whether the insured may be liable as an employer or in any other capacity; and
- (2) To any obligation to share damages with or repay someone else who must pay damages because of the injury.

s. Asbestos

- (1) "Bodily injury", "property damage" or "personal and advertising injury" arising out of the "asbestos hazard".
- (2) Any damages, judgments, settlements, loss, costs or expenses that:

- (a) May be awarded or incurred by reason of any claim or suit alleging actual or threatened injury or damage of any nature or kind to persons or property which would not have occurred in whole or in part but for the "asbestos hazard";
- (b) Arise out of any request, demand, order or statutory or regulatory requirement that any insured or others test for, monitor, clean up, remove, encapsulate, contain, treat, detoxify or neutralize or in any way respond to or assess the effects of an "asbestos hazard"; or
- (c) Arise out of any claim or suit for damages because of testing for, monitoring, cleaning up, removing, encapsulating, containing, treating, detoxifying or neutralizing or in any way responding to or assessing the effects of an "asbestos hazard".

t. Violation Of Statutes That Govern E-Mails, Fax, Phone Calls Or Other Methods Of Sending Material Or Information

"Bodily injury", "property damage", or "personal and advertising injury" arising directly or indirectly out of any action or omission that violates or is alleged to violate:

- (1) The Telephone Consumer Protection Act (TCPA), including any amendment of or addition to such law;
- (2) The CAN-SPAM Act of 2003, including any amendment of or addition to such law; or
- (3) Any statute, ordinance or regulation, other than the TCPA or CAN-SPAM Act of 2003, that prohibits or limits the sending, transmitting, communicating or distribution of material or information.

Damage To Premises Rented To You – Exception For Damage By Fire, Lightning or Explosion

Exclusions c. through h. and k. through o. do not apply to damage by fire, lightning or explosion to premises rented to you or temporarily occupied by you with permission of the owner. A separate Limit of Insurance applies to this coverage as described in Section D. - Liability And Medical Expenses Limits Of Insurance.

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2. Applicable To Medical Expenses Coverage

We will not pay expenses for "bodily injury":

a. Any Insured

To any insured, except "volunteer workers".

b. Hired Person

To a person hired to do work for or on behalf of any insured or a tenant of any insured.

c. Injury On Normally Occupied Premises

To a person injured on that part of premises you own or rent that the person normally occupies.

d. Workers' Compensation And Similar Laws

To a person, whether or not an "employee" of any insured, if benefits for the "bodily injury" are payable or must be provided under a workers' compensation or disability benefits law or a similar law.

e. Athletics Activities

To a person injured while practicing, instructing or participating in any physical exercises or games, sports or athletic contests.

f. Products-Completed Operations Hazard

Included with the "products-completed operations hazard".

g. Business Liability Exclusions

Excluded under Business Liability Coverage.

C. WHO IS AN INSURED

1. If you are designated in the Declarations as:

- a.** An individual, you and your spouse are insureds, but only with respect to the conduct of a business of which you are the sole owner.
- b.** A partnership or joint venture, you are an insured. Your members, your partners, and their spouses are also insureds, but only with respect to the conduct of your business.
- c.** A limited liability company, you are an insured. Your members are also insureds, but only with respect to the conduct of your business. Your managers are insureds, but only with respect to their duties as your managers.
- d.** An organization other than a partnership, joint venture or limited liability company, you are an insured. Your "executive officers" and directors are insureds, but only with respect to their duties as your officers or directors. Your stockholders are also insureds, but only with respect to their liability as stockholders.

- e.** A trust, you are an insured. Your trustees are also insureds, but only with respect to their duties as trustees.

2. Each of the following is also an insured:

a. Employees And Volunteer Workers

Your "volunteer workers" only while performing duties related to the conduct of your business, or your "employees", other than either your "executive officers" (if you are an organization other than a partnership, joint venture or limited liability company) or your managers (if you are a limited liability company), but only for acts within the scope of their employment by you or while performing duties related to the conduct of your business.

However, none of these "employees" or "volunteer workers" are insureds for:

(1) "Bodily injury" or "personal and advertising injury":

- (a)** To you, to your partners or members (if you are a partnership or joint venture), to your members (if you are a limited liability company), or to a co-"employee" while in the course of his or her employment or performing duties related to the conduct of your business, or to your other "volunteer workers" while performing duties related to the conduct of your business;
- (b)** To the spouse, child, parent, brother or sister of that co-"employee" or that "volunteer worker" as a consequence of Paragraph **(1)(a)** above;
- (c)** For which there is any obligation to share damages with or repay someone else who must pay damages because of the injury described in Paragraphs **(1)(a)** or **(b)** above; or
- (d)** Arising out of his or her providing or failing to provide professional health care services.

If you are not in the business of providing professional health care services, Paragraph **(d)** does not apply to any nurse, emergency medical technician or paramedic employed by you to provide such services.

(2) "Property damage" to property:

- (a)** Owned, occupied or used by,

- (b) Rented to, in the care, custody or control of, or over which physical control is being exercised for any purpose by you, any of your "employees", "volunteer workers", any partner or member (if you are a partnership or joint venture), or any member (if you are a limited liability company).

b. Real Estate Manager

Any person (other than your "employee" or "volunteer worker"), or any organization while acting as your real estate manager.

c. Temporary Custodians Of Your Property

Any person or organization having proper temporary custody of your property if you die, but only:

- (1) With respect to liability arising out of the maintenance or use of that property; and
- (2) Until your legal representative has been appointed.

d. Legal Representative If You Die

Your legal representative if you die, but only with respect to duties as such. That representative will have all your rights and duties under this insurance.

e. Unnamed Subsidiary

Any subsidiary and subsidiary thereof, of yours which is a legally incorporated entity of which you own a financial interest of more than 50% of the voting stock on the effective date of this Coverage Part.

The insurance afforded herein for any subsidiary not shown in the Declarations as a named insured does not apply to injury or damage with respect to which an insured under this insurance is also an insured under another policy or would be an insured under such policy but for its termination or upon the exhaustion of its limits of insurance.

3. Newly Acquired Or Formed Organization

Any organization you newly acquire or form, other than a partnership, joint venture or limited liability company, and over which you maintain financial interest of more than 50% of the voting stock, will qualify as a Named Insured if there is no other similar insurance available to that organization. However:

- a. Coverage under this provision is afforded only until the 180th day after you acquire or form the organization or the end of the policy period, whichever is earlier; and

- b. Coverage under this provision does not apply to:

- (1) "Bodily injury" or "property damage" that occurred; or
- (2) "Personal and advertising injury" arising out of an offense committed before you acquired or formed the organization.

4. Operator Of Mobile Equipment

With respect to "mobile equipment" registered in your name under any motor vehicle registration law, any person is an insured while driving such equipment along a public highway with your permission. Any other person or organization responsible for the conduct of such person is also an insured, but only with respect to liability arising out of the operation of the equipment, and only if no other insurance of any kind is available to that person or organization for this liability. However, no person or organization is an insured with respect to:

- a. "Bodily injury" to a co-"employee" of the person driving the equipment; or
- b. "Property damage" to property owned by, rented to, in the charge of or occupied by you or the employer of any person who is an insured under this provision.

5. Operator of Nonowned Watercraft

With respect to watercraft you do not own that is less than 51 feet long and is not being used to carry persons for a charge, any person is an insured while operating such watercraft with your permission. Any other person or organization responsible for the conduct of such person is also an insured, but only with respect to liability arising out of the operation of the watercraft, and only if no other insurance of any kind is available to that person or organization for this liability.

However, no person or organization is an insured with respect to:

- a. "Bodily injury" to a co-"employee" of the person operating the watercraft; or
- b. "Property damage" to property owned by, rented to, in the charge of or occupied by you or the employer of any person who is an insured under this provision.

6. Additional Insureds When Required By Written Contract, Written Agreement Or Permit

The person(s) or organization(s) identified in Paragraphs a. through f. below are additional insureds when you have agreed, in a written

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contract, written agreement or because of a permit issued by a state or political subdivision, that such person or organization be added as an additional insured on your policy, provided the injury or damage occurs subsequent to the execution of the contract or agreement, or the issuance of the permit.

A person or organization is an additional insured under this provision only for that period of time required by the contract, agreement or permit.

However, no such person or organization is an additional insured under this provision if such person or organization is included as an additional insured by an endorsement issued by us and made a part of this Coverage Part, including all persons or organizations added as additional insureds under the specific additional insured coverage grants in Section F. – Optional Additional Insured Coverages.

a. Vendors

Any person(s) or organization(s) (referred to below as vendor), but only with respect to "bodily injury" or "property damage" arising out of "your products" which are distributed or sold in the regular course of the vendor's business and only if this Coverage Part provides coverage for "bodily injury" or "property damage" included within the "products-completed operations hazard".

- (1) The insurance afforded to the vendor is subject to the following additional exclusions:

This insurance does not apply to:

- (a) "Bodily injury" or "property damage" for which the vendor is obligated to pay damages by reason of the assumption of liability in a contract or agreement. This exclusion does not apply to liability for damages that the vendor would have in the absence of the contract or agreement;
- (b) Any express warranty unauthorized by you;
- (c) Any physical or chemical change in the product made intentionally by the vendor;
- (d) Repackaging, except when unpacked solely for the purpose of inspection, demonstration, testing, or the substitution of parts under instructions from the manufacturer, and then repackaged in the original container;

(e) Any failure to make such inspections, adjustments, tests or servicing as the vendor has agreed to make or normally undertakes to make in the usual course of business, in connection with the distribution or sale of the products;

(f) Demonstration, installation, servicing or repair operations, except such operations performed at the vendor's premises in connection with the sale of the product;

(g) Products which, after distribution or sale by you, have been labeled or relabeled or used as a container, part or ingredient of any other thing or substance by or for the vendor; or

(h) "Bodily injury" or "property damage" arising out of the sole negligence of the vendor for its own acts or omissions or those of its employees or anyone else acting on its behalf. However, this exclusion does not apply to:

(i) The exceptions contained in Subparagraphs (d) or (f); or

(ii) Such inspections, adjustments, tests or servicing as the vendor has agreed to make or normally undertakes to make in the usual course of business, in connection with the distribution or sale of the products.

- (2) This insurance does not apply to any insured person or organization from whom you have acquired such products, or any ingredient, part or container, entering into, accompanying or containing such products.

b. Lessors Of Equipment

- (1) Any person or organization from whom you lease equipment; but only with respect to their liability for "bodily injury", "property damage" or "personal and advertising injury" caused, in whole or in part, by your maintenance, operation or use of equipment leased to you by such person or organization.

- (2) With respect to the insurance afforded to these additional insureds, this insurance does not apply to any "occurrence" which takes place after you cease to lease that equipment.

c. Lessors Of Land Or Premises

- (1) Any person or organization from whom you lease land or premises, but only with respect to liability arising out of the ownership, maintenance or use of that part of the land or premises leased to you.
- (2) With respect to the insurance afforded to these additional insureds, this insurance does not apply to:
 - (a) Any "occurrence" which takes place after you cease to lease that land or be a tenant in that premises; or
 - (b) Structural alterations, new construction or demolition operations performed by or on behalf of such person or organization.

d. Architects, Engineers Or Surveyors

- (1) Any architect, engineer, or surveyor, but only with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" caused, in whole or in part, by your acts or omissions or the acts or omissions of those acting on your behalf:
 - (a) In connection with your premises; or
 - (b) In the performance of your ongoing operations performed by you or on your behalf.
- (2) With respect to the insurance afforded to these additional insureds, the following additional exclusion applies:
 This insurance does not apply to "bodily injury", "property damage" or "personal and advertising injury" arising out of the rendering of or the failure to render any professional services by or for you, including:
 - (a) The preparing, approving, or failure to prepare or approve, maps, shop drawings, opinions, reports, surveys, field orders, change orders, designs or drawings and specifications; or
 - (b) Supervisory, inspection, architectural or engineering activities.

e. Permits Issued By State Or Political Subdivisions

- (1) Any state or political subdivision, but only with respect to operations performed by you or on your behalf for which the state or political subdivision has issued a permit.
- (2) With respect to the insurance afforded to these additional insureds, this insurance does not apply to:
 - (a) "Bodily injury", "property damage" or "personal and advertising injury" arising out of operations performed for the state or municipality; or
 - (b) "Bodily injury" or "property damage" included within the "products-completed operations hazard".

f. Any Other Party

- (1) Any other person or organization who is not an insured under Paragraphs **a.** through **e.** above, but only with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" caused, in whole or in part, by your acts or omissions or the acts or omissions of those acting on your behalf:
 - (a) In the performance of your ongoing operations;
 - (b) In connection with your premises owned by or rented to you; or
 - (c) In connection with "your work" and included within the "products-completed operations hazard", but only if
 - (i) The written contract or written agreement requires you to provide such coverage to such additional insured; and
 - (ii) This Coverage Part provides coverage for "bodily injury" or "property damage" included within the "products-completed operations hazard".
- (2) With respect to the insurance afforded to these additional insureds, this insurance does not apply to:
 "Bodily injury", "property damage" or "personal and advertising injury" arising out of the rendering of, or the failure to render, any professional architectural, engineering or surveying services, including:

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- (a) The preparing, approving, or failure to prepare or approve, maps, shop drawings, opinions, reports, surveys, field orders, change orders, designs or drawings and specifications; or
- (b) Supervisory, inspection, architectural or engineering activities.

The limits of insurance that apply to additional insureds are described in Section **D. – Limits Of Insurance**.

How this insurance applies when other insurance is available to an additional insured is described in the Other Insurance Condition in Section **E. – Liability And Medical Expenses General Conditions**.

No person or organization is an insured with respect to the conduct of any current or past partnership, joint venture or limited liability company that is not shown as a Named Insured in the Declarations.

D. LIABILITY AND MEDICAL EXPENSES LIMITS OF INSURANCE

1. The Most We Will Pay

The Limits of Insurance shown in the Declarations and the rules below fix the most we will pay regardless of the number of:

- a. Insureds;
- b. Claims made or "suits" brought; or
- c. Persons or organizations making claims or bringing "suits".

2. Aggregate Limits

The most we will pay for:

- a. Damages because of "bodily injury" and "property damage" included in the "products-completed operations hazard" is the Products-Completed Operations Aggregate Limit shown in the Declarations.
- b. Damages because of all other "bodily injury", "property damage" or "personal and advertising injury", including medical expenses, is the General Aggregate Limit shown in the Declarations.

This General Aggregate Limit applies separately to each of your "locations" owned by or rented to you.

"Location" means premises involving the same or connecting lots, or premises whose connection is interrupted only by a street, roadway or right-of-way of a railroad.

This General Aggregate limit does not apply to "property damage" to premises while rented to you or temporarily occupied by you with permission of the owner, arising out of fire, lightning or explosion.

3. Each Occurrence Limit

Subject to **2.a.** or **2.b.** above, whichever applies, the most we will pay for the sum of all damages because of all "bodily injury", "property damage" and medical expenses arising out of any one "occurrence" is the Liability and Medical Expenses Limit shown in the Declarations.

The most we will pay for all medical expenses because of "bodily injury" sustained by any one person is the Medical Expenses Limit shown in the Declarations.

4. Personal And Advertising Injury Limit

Subject to **2.b.** above, the most we will pay for the sum of all damages because of all "personal and advertising injury" sustained by any one person or organization is the Personal and Advertising Injury Limit shown in the Declarations.

5. Damage To Premises Rented To You Limit

The Damage To Premises Rented To You Limit is the most we will pay under Business Liability Coverage for damages because of "property damage" to any one premises, while rented to you, or in the case of damage by fire, lightning or explosion, while rented to you or temporarily occupied by you with permission of the owner.

In the case of damage by fire, lightning or explosion, the Damage to Premises Rented To You Limit applies to all damage proximately caused by the same event, whether such damage results from fire, lightning or explosion or any combination of these.

6. How Limits Apply To Additional Insureds

The most we will pay on behalf of a person or organization who is an additional insured under this Coverage Part is the lesser of:

- a. The limits of insurance specified in a written contract, written agreement or permit issued by a state or political subdivision; or
- b. The Limits of Insurance shown in the Declarations.

Such amount shall be a part of and not in addition to the Limits of Insurance shown in the Declarations and described in this Section.

If more than one limit of insurance under this policy and any endorsements attached thereto applies to any claim or "suit", the most we will pay under this policy and the endorsements is the single highest limit of liability of all coverages applicable to such claim or "suit". However, this paragraph does not apply to the Medical Expenses limit set forth in Paragraph 3. above.

The Limits of Insurance of this Coverage Part apply separately to each consecutive annual period and to any remaining period of less than 12 months, starting with the beginning of the policy period shown in the Declarations, unless the policy period is extended after issuance for an additional period of less than 12 months. In that case, the additional period will be deemed part of the last preceding period for purposes of determining the Limits of Insurance.

E. LIABILITY AND MEDICAL EXPENSES GENERAL CONDITIONS

1. Bankruptcy

Bankruptcy or insolvency of the insured or of the insured's estate will not relieve us of our obligations under this Coverage Part.

2. Duties In The Event Of Occurrence, Offense, Claim Or Suit

a. Notice Of Occurrence Or Offense

You or any additional insured must see to it that we are notified as soon as practicable of an "occurrence" or an offense which may result in a claim. To the extent possible, notice should include:

- (1) How, when and where the "occurrence" or offense took place;
- (2) The names and addresses of any injured persons and witnesses; and
- (3) The nature and location of any injury or damage arising out of the "occurrence" or offense.

b. Notice Of Claim

If a claim is made or "suit" is brought against any insured, you or any additional insured must:

- (1) Immediately record the specifics of the claim or "suit" and the date received; and
- (2) Notify us as soon as practicable.

You or any additional insured must see to it that we receive a written notice of the claim or "suit" as soon as practicable.

c. Assistance And Cooperation Of The Insured

You and any other involved insured must:

- (1) Immediately send us copies of any demands, notices, summonses or legal papers received in connection with the claim or "suit";
- (2) Authorize us to obtain records and other information;
- (3) Cooperate with us in the investigation, settlement of the claim or defense against the "suit"; and
- (4) Assist us, upon our request, in the enforcement of any right against any person or organization that may be liable to the insured because of injury or damage to which this insurance may also apply.

d. Obligations At The Insured's Own Cost

No insured will, except at that insured's own cost, voluntarily make a payment, assume any obligation, or incur any expense, other than for first aid, without our consent.

e. Additional Insured's Other Insurance

If we cover a claim or "suit" under this Coverage Part that may also be covered by other insurance available to an additional insured, such additional insured must submit such claim or "suit" to the other insurer for defense and indemnity.

However, this provision does not apply to the extent that you have agreed in a written contract, written agreement or permit that this insurance is primary and non-contributory with the additional insured's own insurance.

f. Knowledge Of An Occurrence, Offense, Claim Or Suit

Paragraphs **a.** and **b.** apply to you or to any additional insured only when such "occurrence", offense, claim or "suit" is known to:

- (1) You or any additional insured that is an individual;
- (2) Any partner, if you or an additional insured is a partnership;
- (3) Any manager, if you or an additional insured is a limited liability company;
- (4) Any "executive officer" or insurance manager, if you or an additional insured is a corporation;
- (5) Any trustee, if you or an additional insured is a trust; or
- (6) Any elected or appointed official, if you or an additional insured is a political subdivision or public entity.

BUSINESS LIABILITY COVERAGE FORM

This Paragraph **f.** applies separately to you and any additional insured.

3. Financial Responsibility Laws

- a. When this policy is certified as proof of financial responsibility for the future under the provisions of any motor vehicle financial responsibility law, the insurance provided by the policy for "bodily injury" liability and "property damage" liability will comply with the provisions of the law to the extent of the coverage and limits of insurance required by that law.
- b. With respect to "mobile equipment" to which this insurance applies, we will provide any liability, uninsured motorists, underinsured motorists, no-fault or other coverage required by any motor vehicle law. We will provide the required limits for those coverages.

4. Legal Action Against Us

No person or organization has a right under this Coverage Form:

- a. To join us as a party or otherwise bring us into a "suit" asking for damages from an insured; or
- b. To sue us on this Coverage Form unless all of its terms have been fully complied with.

A person or organization may sue us to recover on an agreed settlement or on a final judgment against an insured; but we will not be liable for damages that are not payable under the terms of this insurance or that are in excess of the applicable limit of insurance. An agreed settlement means a settlement and release of liability signed by us, the insured and the claimant or the claimant's legal representative.

5. Separation Of Insureds

Except with respect to the Limits of Insurance, and any rights or duties specifically assigned in this policy to the first Named Insured, this insurance applies:

- a. As if each Named Insured were the only Named Insured; and
- b. Separately to each insured against whom a claim is made or "suit" is brought.

6. Representations

a. When You Accept This Policy

By accepting this policy, you agree:

- (1) The statements in the Declarations are accurate and complete;
- (2) Those statements are based upon representations you made to us; and

- (3) We have issued this policy in reliance upon your representations.

b. Unintentional Failure To Disclose Hazards

If unintentionally you should fail to disclose all hazards relating to the conduct of your business at the inception date of this Coverage Part, we shall not deny any coverage under this Coverage Part because of such failure.

7. Other Insurance

If other valid and collectible insurance is available for a loss we cover under this Coverage Part, our obligations are limited as follows:

a. Primary Insurance

This insurance is primary except when **b.** below applies. If other insurance is also primary, we will share with all that other insurance by the method described in **c.** below.

b. Excess Insurance

This insurance is excess over any of the other insurance, whether primary, excess, contingent or on any other basis:

(1) Your Work

That is Fire, Extended Coverage, Builder's Risk, Installation Risk or similar coverage for "your work";

(2) Premises Rented To You

That is fire, lightning or explosion insurance for premises rented to you or temporarily occupied by you with permission of the owner;

(3) Tenant Liability

That is insurance purchased by you to cover your liability as a tenant for "property damage" to premises rented to you or temporarily occupied by you with permission of the owner;

(4) Aircraft, Auto Or Watercraft

If the loss arises out of the maintenance or use of aircraft, "autos" or watercraft to the extent not subject to Exclusion **g.** of Section **A.** – Coverages.

(5) Property Damage To Borrowed Equipment Or Use Of Elevators

If the loss arises out of "property damage" to borrowed equipment or the use of elevators to the extent not subject to Exclusion **k.** of Section **A.** – Coverages.

(6) When You Are Added As An Additional Insured To Other Insurance

That is other insurance available to you covering liability for damages arising out of the premises or operations, or products and completed operations, for which you have been added as an additional insured by that insurance; or

(7) When You Add Others As An Additional Insured To This Insurance

That is other insurance available to an additional insured.

However, the following provisions apply to other insurance available to any person or organization who is an additional insured under this Coverage Part:

(a) Primary Insurance When Required By Contract

This insurance is primary if you have agreed in a written contract, written agreement or permit that this insurance be primary. If other insurance is also primary, we will share with all that other insurance by the method described in **c.** below.

(b) Primary And Non-Contributory To Other Insurance When Required By Contract

If you have agreed in a written contract, written agreement or permit that this insurance is primary and non-contributory with the additional insured's own insurance, this insurance is primary and we will not seek contribution from that other insurance.

Paragraphs **(a)** and **(b)** do not apply to other insurance to which the additional insured has been added as an additional insured.

When this insurance is excess, we will have no duty under this Coverage Part to defend the insured against any "suit" if any other insurer has a duty to defend the insured against that "suit". If no other insurer defends, we will undertake to do so, but we will be entitled to the insured's rights against all those other insurers.

When this insurance is excess over other insurance, we will pay only our share of the amount of the loss, if any, that exceeds the sum of:

- (1)** The total amount that all such other insurance would pay for the loss in the absence of this insurance; and
- (2)** The total of all deductible and self-insured amounts under all that other insurance.

We will share the remaining loss, if any, with any other insurance that is not described in this Excess Insurance provision and was not bought specifically to apply in excess of the Limits of Insurance shown in the Declarations of this Coverage Part.

c. Method Of Sharing

If all the other insurance permits contribution by equal shares, we will follow this method also. Under this approach, each insurer contributes equal amounts until it has paid its applicable limit of insurance or none of the loss remains, whichever comes first.

If any of the other insurance does not permit contribution by equal shares, we will contribute by limits. Under this method, each insurer's share is based on the ratio of its applicable limit of insurance to the total applicable limits of insurance of all insurers.

8. Transfer Of Rights Of Recovery Against Others To Us

a. Transfer Of Rights Of Recovery

If the insured has rights to recover all or part of any payment, including Supplementary Payments, we have made under this Coverage Part, those rights are transferred to us. The insured must do nothing after loss to impair them. At our request, the insured will bring "suit" or transfer those rights to us and help us enforce them. This condition does not apply to Medical Expenses Coverage.

b. Waiver Of Rights Of Recovery (Waiver Of Subrogation)

If the insured has waived any rights of recovery against any person or organization for all or part of any payment, including Supplementary Payments, we have made under this Coverage Part, we also waive that right, provided the insured waived their rights of recovery against such person or organization in a contract, agreement or permit that was executed prior to the injury or damage.

F. OPTIONAL ADDITIONAL INSURED COVERAGES

If listed or shown as applicable in the Declarations, one or more of the following Optional Additional Insured Coverages also apply. When any of these Optional Additional Insured Coverages apply, Paragraph 6. (Additional Insureds When Required by Written Contract, Written Agreement or Permit) of Section C., Who Is An Insured, does not apply to the person or organization shown in the Declarations. These coverages are subject to the terms and conditions applicable to Business Liability Coverage in this policy, except as provided below:

1. Additional Insured - Designated Person Or Organization

WHO IS AN INSURED under Section C. is amended to include as an additional insured the person(s) or organization(s) shown in the Declarations, but only with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" caused, in whole or in part, by your acts or omissions or the acts or omissions of those acting on your behalf:

- a. In the performance of your ongoing operations; or
- b. In connection with your premises owned by or rented to you.

2. Additional Insured - Managers Or Lessors Of Premises

- a. WHO IS AN INSURED under Section C. is amended to include as an additional insured the person(s) or organization(s) shown in the Declarations as an Additional Insured - Designated Person Or Organization; but only with respect to liability arising out of the ownership, maintenance or use of that part of the premises leased to you and shown in the Declarations.
- b. With respect to the insurance afforded to these additional insureds, the following additional exclusions apply:

This insurance does not apply to:

- (1) Any "occurrence" which takes place after you cease to be a tenant in that premises; or
- (2) Structural alterations, new construction or demolition operations performed by or on behalf of such person or organization.

3. Additional Insured - Grantor Of Franchise

WHO IS AN INSURED under Section C. is amended to include as an additional insured the person(s) or organization(s) shown in the Declarations as an Additional Insured - Grantor Of Franchise, but only with respect to their liability as grantor of franchise to you.

4. Additional Insured - Lessor Of Leased Equipment

- a. WHO IS AN INSURED under Section C. is amended to include as an additional insured the person(s) or organization(s) shown in the Declarations as an Additional Insured – Lessor of Leased Equipment, but only with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" caused, in whole or in part, by your maintenance, operation or use of equipment leased to you by such person(s) or organization(s).
- b. With respect to the insurance afforded to these additional insureds, this insurance does not apply to any "occurrence" which takes place after you cease to lease that equipment.

5. Additional Insured - Owners Or Other Interests From Whom Land Has Been Leased

- a. WHO IS AN INSURED under Section C. is amended to include as an additional insured the person(s) or organization(s) shown in the Declarations as an Additional Insured – Owners Or Other Interests From Whom Land Has Been Leased, but only with respect to liability arising out of the ownership, maintenance or use of that part of the land leased to you and shown in the Declarations.
- b. With respect to the insurance afforded to these additional insureds, the following additional exclusions apply:

This insurance does not apply to:

- (1) Any "occurrence" that takes place after you cease to lease that land; or
- (2) Structural alterations, new construction or demolition operations performed by or on behalf of such person or organization.

6. Additional Insured - State Or Political Subdivision – Permits

- a. WHO IS AN INSURED under Section C. is amended to include as an additional insured the state or political subdivision shown in the Declarations as an Additional

Insured – State Or Political Subdivision - Permits, but only with respect to operations performed by you or on your behalf for which the state or political subdivision has issued a permit.

- b.** With respect to the insurance afforded to these additional insureds, the following additional exclusions apply:

This insurance does not apply to:

- (1)** "Bodily injury", "property damage" or "personal and advertising injury" arising out of operations performed for the state or municipality; or
- (2)** "Bodily injury" or "property damage" included in the "product-completed operations" hazard.

7. Additional Insured – Vendors

- a.** WHO IS AN INSURED under Section **C.** is amended to include as an additional insured the person(s) or organization(s) (referred to below as vendor) shown in the Declarations as an Additional Insured - Vendor, but only with respect to "bodily injury" or "property damage" arising out of "your products" which are distributed or sold in the regular course of the vendor's business and only if this Coverage Part provides coverage for "bodily injury" or "property damage" included within the "products-completed operations hazard".
- b.** The insurance afforded to the vendor is subject to the following additional exclusions:

- (1)** This insurance does not apply to:

- (a)** "Bodily injury" or "property damage" for which the vendor is obligated to pay damages by reason of the assumption of liability in a contract or agreement. This exclusion does not apply to liability for damages that the vendor would have in the absence of the contract or agreement;
- (b)** Any express warranty unauthorized by you;
- (c)** Any physical or chemical change in the product made intentionally by the vendor;
- (d)** Repackaging, unless unpacked solely for the purpose of inspection, demonstration, testing, or the substitution of parts under instructions from the manufacturer, and then repackaged in the original container;

- (e)** Any failure to make such inspections, adjustments, tests or servicing as the vendor has agreed to make or normally undertakes to make in the usual course of business, in connection with the distribution or sale of the products;

- (f)** Demonstration, installation, servicing or repair operations, except such operations performed at the vendor's premises in connection with the sale of the product;

- (g)** Products which, after distribution or sale by you, have been labeled or relabeled or used as a container, part or ingredient of any other thing or substance by or for the vendor; or

- (h)** "Bodily injury" or "property damage" arising out of the sole negligence of the vendor for its own acts or omissions or those of its employees or anyone else acting on its behalf. However, this exclusion does not apply to:

- (i)** The exceptions contained in Subparagraphs **(d)** or **(f)**; or

- (ii)** Such inspections, adjustments, tests or servicing as the vendor has agreed to make or normally undertakes to make in the usual course of business, in connection with the distribution or sale of the products.

- (2)** This insurance does not apply to any insured person or organization from whom you have acquired such products, or any ingredient, part or container, entering into, accompanying or containing such products.

8. Additional Insured – Controlling Interest

WHO IS AN INSURED under Section **C.** is amended to include as an additional insured the person(s) or organization(s) shown in the Declarations as an Additional Insured – Controlling Interest, but only with respect to their liability arising out of:

- a.** Their financial control of you; or
- b.** Premises they own, maintain or control while you lease or occupy these premises.

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This insurance does not apply to structural alterations, new construction and demolition operations performed by or for that person or organization.

9. Additional Insured – Owners, Lessees Or Contractors – Scheduled Person Or Organization

a. WHO IS AN INSURED under Section C. is amended to include as an additional insured the person(s) or organization(s) shown in the Declarations as an Additional Insured – Owner, Lessees Or Contractors, but only with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" caused, in whole or in part, by your acts or omissions or the acts or omissions of those acting on your behalf:

- (1) In the performance of your ongoing operations for the additional insured(s); or
- (2) In connection with "your work" performed for that additional insured and included within the "products-completed operations hazard", but only if this Coverage Part provides coverage for "bodily injury" or "property damage" included within the "products-completed operations hazard".

b. With respect to the insurance afforded to these additional insureds, this insurance does not apply to "bodily injury", "property damage" or "personal an advertising injury" arising out of the rendering of, or the failure to render, any professional architectural, engineering or surveying services, including:

- (1) The preparing, approving, or failure to prepare or approve, maps, shop drawings, opinions, reports, surveys, field orders, change orders, designs or drawings and specifications; or
- (2) Supervisory, inspection, architectural or engineering activities.

10. Additional Insured – Co-Owner Of Insured Premises

WHO IS AN INSURED under Section C. is amended to include as an additional insured the person(s) or Organization(s) shown in the Declarations as an Additional Insured – Co-Owner Of Insured Premises, but only with respect to their liability as co-owner of the premises shown in the Declarations.

The limits of insurance that apply to additional insureds are described in Section D. – Limits Of Insurance.

How this insurance applies when other insurance is available to an additional insured is described in the Other Insurance Condition in Section E. – Liability And Medical Expenses General Conditions.

G. LIABILITY AND MEDICAL EXPENSES DEFINITIONS

1. "Advertisement" means the widespread public dissemination of information or images that has the purpose of inducing the sale of goods, products or services through:

- a. (1) Radio;
- (2) Television;
- (3) Billboard;
- (4) Magazine;
- (5) Newspaper;

b. The Internet, but only that part of a web site that is about goods, products or services for the purposes of inducing the sale of goods, products or services; or

c. Any other publication that is given widespread public distribution.

However, "advertisement" does not include:

a. The design, printed material, information or images contained in, on or upon the packaging or labeling of any goods or products; or

b. An interactive conversation between or among persons through a computer network.

2. "Advertising idea" means any idea for an "advertisement".

3. "Asbestos hazard" means an exposure or threat of exposure to the actual or alleged properties of asbestos and includes the mere presence of asbestos in any form.

4. "Auto" means a land motor vehicle, trailer or semi-trailer designed for travel on public roads, including any attached machinery or equipment. But "auto" does not include "mobile equipment".

5. "Bodily injury" means physical:

- a. Injury;
- b. Sickness; or
- c. Disease

sustained by a person and, if arising out of the above, mental anguish or death at any time.

6. "Coverage territory" means:

- a. The United States of America (including its territories and possessions), Puerto Rico and Canada;
- b. International waters or airspace, but only if the injury or damage occurs in the course of travel or transportation between any places included in **a.** above;
- c. All other parts of the world if the injury or damage arises out of:
 - (1) Goods or products made or sold by you in the territory described in **a.** above;
 - (2) The activities of a person whose home is in the territory described in **a.** above, but is away for a short time on your business; or
 - (3) "Personal and advertising injury" offenses that take place through the Internet or similar electronic means of communication

provided the insured's responsibility to pay damages is determined in the United States of America (including its territories and possessions), Puerto Rico or Canada, in a "suit" on the merits according to the substantive law in such territory, or in a settlement we agree to.

- 7. "Electronic data" means information, facts or programs:
 - a. Stored as or on;
 - b. Created or used on; or
 - c. Transmitted to or from computer software, including systems and applications software, hard or floppy disks, CD-ROMS, tapes, drives, cells, data processing devices or any other media which are used with electronically controlled equipment.
- 8. "Employee" includes a "leased worker". "Employee" does not include a "temporary worker".
- 9. "Executive officer" means a person holding any of the officer positions created by your charter, constitution, by-laws or any other similar governing document.
- 10. "Hostile fire" means one which becomes uncontrollable or breaks out from where it was intended to be.
- 11. "Impaired property" means tangible property, other than "your product" or "your work", that cannot be used or is less useful because:
 - a. It incorporates "your product" or "your work" that is known or thought to be defective, deficient, inadequate or dangerous; or

- b. You have failed to fulfill the terms of a contract or agreement;

if such property can be restored to use by:

- a. The repair, replacement, adjustment or removal of "your product" or "your work"; or
- b. Your fulfilling the terms of the contract or agreement.

12. "Insured contract" means:

- a. A contract for a lease of premises. However, that portion of the contract for a lease of premises that indemnifies any person or organization for damage by fire, lightning or explosion to premises while rented to you or temporarily occupied by you with permission of the owner is subject to the Damage To Premises Rented To You limit described in Section **D. – Liability and Medical Expenses Limits of Insurance.**
- b. A sidetrack agreement;
- c. Any easement or license agreement, including an easement or license agreement in connection with construction or demolition operations on or within 50 feet of a railroad;
- d. Any obligation, as required by ordinance, to indemnify a municipality, except in connection with work for a municipality;
- e. An elevator maintenance agreement; or
- f. That part of any other contract or agreement pertaining to your business (including an indemnification of a municipality in connection with work performed for a municipality) under which you assume the tort liability of another party to pay for "bodily injury" or "property damage" to a third person or organization, provided the "bodily injury" or "property damage" is caused, in whole or in part, by you or by those acting on your behalf. Tort liability means a liability that would be imposed by law in the absence of any contract or agreement.

Paragraph **f.** includes that part of any contract or agreement that indemnifies a railroad for "bodily injury" or "property damage" arising out of construction or demolition operations within 50 feet of any railroad property and affecting any railroad bridge or trestle, tracks, road-beds, tunnel, underpass or crossing.

However, Paragraph **f.** does not include that part of any contract or agreement:

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- (1) That indemnifies an architect, engineer or surveyor for injury or damage arising out of:
- (a) Preparing, approving or failing to prepare or approve maps, shop drawings, opinions, reports, surveys, field orders, change orders, designs or drawings and specifications; or
 - (b) Giving directions or instructions, or failing to give them, if that is the primary cause of the injury or damage; or
- (2) Under which the insured, if an architect, engineer or surveyor, assumes liability for an injury or damage arising out of the insured's rendering or failure to render professional services, including those listed in (1) above and supervisory, inspection, architectural or engineering activities.
13. "Leased worker" means a person leased to you by a labor leasing firm under an agreement between you and the labor leasing firm, to perform duties related to the conduct of your business. "Leased worker" does not include a "temporary worker".
14. "Loading or unloading" means the handling of property:
- a. After it is moved from the place where it is accepted for movement into or onto an aircraft, watercraft or "auto";
 - b. While it is in or on an aircraft, watercraft or "auto"; or
 - c. While it is being moved from an aircraft, watercraft or "auto" to the place where it is finally delivered;
- but "loading or unloading" does not include the movement of property by means of a mechanical device, other than a hand truck, that is not attached to the aircraft, watercraft or "auto".
15. "Mobile equipment" means any of the following types of land vehicles, including any attached machinery or equipment:
- a. Bulldozers, farm machinery, forklifts and other vehicles designed for use principally off public roads;
 - b. Vehicles maintained for use solely on or next to premises you own or rent;
 - c. Vehicles that travel on crawler treads;
 - d. Vehicles, whether self-propelled or not, on which are permanently mounted:
- (1) Power cranes, shovels, loaders, diggers or drills; or
 - (2) Road construction or resurfacing equipment such as graders, scrapers or rollers;
- e. Vehicles not described in a., b., c., or d. above that are not self-propelled and are maintained primarily to provide mobility to permanently attached equipment of the following types:
- (1) Air compressors, pumps and generators, including spraying, welding, building cleaning, geophysical exploration, lighting and well servicing equipment; or
 - (2) Cherry pickers and similar devices used to raise or lower workers;
- f. Vehicles not described in a., b., c., or d. above maintained primarily for purposes other than the transportation of persons or cargo.
- However, self-propelled vehicles with the following types of permanently attached equipment are not "mobile equipment" but will be considered "autos":
- (1) Equipment, of at least 1,000 pounds gross vehicle weight, designed primarily for:
 - (a) Snow removal;
 - (b) Road maintenance, but not construction or resurfacing; or
 - (c) Street cleaning;
 - (2) Cherry pickers and similar devices mounted on automobile or truck chassis and used to raise or lower workers; and
 - (3) Air compressors, pumps and generators, including spraying, welding, building cleaning, geophysical exploration, lighting and well servicing equipment.
16. "Occurrence" means an accident, including continuous or repeated exposure to substantially the same general harmful conditions.
17. "Personal and advertising injury" means injury, including consequential "bodily injury", arising out of one or more of the following offenses:
- a. False arrest, detention or imprisonment;
 - b. Malicious prosecution;

- c. The wrongful eviction from, wrongful entry into, or invasion of the right of private occupancy of a room, dwelling or premises that the person occupies, committed by or on behalf of its owner, landlord or lessor;
 - d. Oral, written or electronic publication of material that slanders or libels a person or organization or disparages a person's or organization's goods, products or services;
 - e. Oral, written or electronic publication of material that violates a person's right of privacy;
 - f. Copying, in your "advertisement", a person's or organization's "advertising idea" or style of "advertisement";
 - g. Infringement of copyright, slogan, or title of any literary or artistic work, in your "advertisement"; or
 - h. Discrimination or humiliation that results in injury to the feelings or reputation of a natural person.
- 18. "Pollutants"** means any solid, liquid, gaseous or thermal irritant or contaminant, including smoke, vapor, soot, fumes, acids, alkalis, chemicals and waste. Waste includes materials to be recycled, reconditioned or reclaimed.
- 19. "Products-completed operations hazard";**
- a. Includes all "bodily injury" and "property damage" occurring away from premises you own or rent and arising out of "your product" or "your work" except:
 - (1) Products that are still in your physical possession; or
 - (2) Work that has not yet been completed or abandoned. However, "your work" will be deemed to be completed at the earliest of the following times:
 - (a) When all of the work called for in your contract has been completed.
 - (b) When all of the work to be done at the job site has been completed if your contract calls for work at more than one job site.
 - (c) When that part of the work done at a job site has been put to its intended use by any person or organization other than another contractor or subcontractor working on the same project.
- Work that may need service, maintenance, correction, repair or replacement, but which is otherwise complete, will be treated as completed.
- The "bodily injury" or "property damage" must occur away from premises you own or rent, unless your business includes the selling, handling or distribution of "your product" for consumption on premises you own or rent.
- b. Does not include "bodily injury" or "property damage" arising out of:
 - (1) The transportation of property, unless the injury or damage arises out of a condition in or on a vehicle not owned or operated by you, and that condition was created by the "loading or unloading" of that vehicle by any insured; or
 - (2) The existence of tools, uninstalled equipment or abandoned or unused materials.
- 20. "Property damage"** means:
- a. Physical injury to tangible property, including all resulting loss of use of that property. All such loss of use shall be deemed to occur at the time of the physical injury that caused it; or
 - b. Loss of use of tangible property that is not physically injured. All such loss of use shall be deemed to occur at the time of "occurrence" that caused it.
- As used in this definition, "electronic data" is not tangible property.
- 21. "Suit"** means a civil proceeding in which damages because of "bodily injury", "property damage" or "personal and advertising injury" to which this insurance applies are alleged. "Suit" includes:
- a. An arbitration proceeding in which such damages are claimed and to which the insured must submit or does submit with our consent; or
 - b. Any other alternative dispute resolution proceeding in which such damages are claimed and to which the insured submits with our consent.
- 22. "Temporary worker"** means a person who is furnished to you to substitute for a permanent "employee" on leave or to meet seasonal or short-term workload conditions.
- 23. "Volunteer worker"** means a person who:
- a. Is not your "employee";

BUSINESS LIABILITY COVERAGE FORM

- b. Donates his or her work;
- c. Acts at the direction of and within the scope of duties determined by you; and
- d. Is not paid a fee, salary or other compensation by you or anyone else for their work performed for you.

24. "Your product":

a. Means:

- (1) Any goods or products, other than real property, manufactured, sold, handled, distributed or disposed of by:
 - (a) You;
 - (b) Others trading under your name; or
 - (c) A person or organization whose business or assets you have acquired; and
- (2) Containers (other than vehicles), materials, parts or equipment furnished in connection with such goods or products.

b. Includes:

- (1) Warranties or representations made at any time with respect to the fitness, quality, durability, performance or use of "your product"; and

- (2) The providing of or failure to provide warnings or instructions.

- c. Does not include vending machines or other property rented to or located for the use of others but not sold.

25. "Your work":

a. Means:

- (1) Work or operations performed by you or on your behalf; and
- (2) Materials, parts or equipment furnished in connection with such work or operations.

b. Includes:

- (1) Warranties or representations made at any time with respect to the fitness, quality, durability, performance or use of "your work"; and
- (2) The providing of or failure to provide warnings or instructions.

Regular City Council

Agenda Item

Data Sheet

Meeting Date: May 21, 2018

Topic:

Approve Resolution No. 2018-14, a Resolution of the City Council of the City of Tomball, Texas, Supporting the 46th Annual Tomball Night and Parade, to be Held in Tomball on Friday, August 3, 2018

Background:

The Greater Tomball Area Chamber of Commerce requests the support and endorsement of the City of Tomball for the Chamber's 46th Annual Tomball Night and Parade, to be held on Friday, August 3, 2018. The estimated number of attendees is 10,000 visitors.

The Chamber requests the assistance of the Tomball Fire, Police, and Public Works Department personnel; furnishing of electric service from the Tax office on Walnut Street, by the Depot, at the 100 and 200 blocks of Market Street, the alley on the south side of Main between Cherry and Oak, and at 200 South Walnut, and closure of the following streets on Friday night only:

- from 12:00 p.m. until 11:00 p.m. – the 100, 200, and 300 blocks of Market Street and the 100 block of South Elm;
- from 3:00 p.m. until 11:00 p.m. – the 100 block of North Walnut, between Commerce and Main Streets, and the 100 block of Commerce Street; and
- from 5:00 p.m. until 11:00 p.m. – South Walnut, between Market and Main Streets, and Sycamore, from Main Street south.

Tomball Night will begin at 2:00 p.m. on Friday with a night parade, fireworks, and other festivities on Friday night and extended shopping sales events through Sunday. The Health and Wellness Fair continues this year, in the Tomball Community Center, from 4:00 p.m. to 8:00 p.m. on August 3.

The Chamber also requests permission from the City of Tomball to ignite fireworks out of season, under the insurance and guidance of Illumination Fireworks, LLC, and approval for the use, with waiver of fees, of the Tomball Community Center, both as a "cool zone" and for the Health and Wellness Fair.

The Chamber's request, a map of the requested street closures, Illumination Fireworks' permit, and GTACC's insurance certificate are presented, along with Resolution No. 2018-11.

Fire Department expenses are minimal, approximately \$100 in fuel and support provided by volunteer firefighters. Public Works expenses to support Tomball Night include personnel time, refuse management, and fuel, approximately \$1,300. Waiver of the rental fee and personnel expenses for the use of the Community Center for the Health and Wellness Fair and as a "cool zone" after hours is approximately \$500-\$600, depending on the number of hours the Chambers uses the facility. Police Department expenses should also be minimal.

This project aligns with the City's Strategic Plan goals of building our economy through partnerships with tourism and marketing organizations, such as the GTACC.

Origination:

Greater Tomball Area Chamber of Commerce

Recommendation:

Approval of Resolution No. 2018-11

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

City Secretary

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

ATTACHMENTS:

Resolution No. 2018-14

GTACC Request

Map

Illumination Fireworks' Permit

GTACC Certificate of Insurance

RESOLUTION NO. 2018-14

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF
TOMBALL, TEXAS, SUPPORTING THE 46TH ANNUAL TOMBALL
NIGHT AND PARADE, TO BE HELD IN TOMBALL ON FRIDAY,
AUGUST 3, 2018.**

* * * * *

WHEREAS the Greater Tomball Area Chamber of Commerce will present the 46th *Annual Tomball Night* on Friday, August 3, 2018, beginning at 2:00 p.m., including a Health and Wellness Fair and “cool zone” in the Tomball Community Center, and ending with a night parade and fireworks display under the direction of Illumination Fireworks’ highly trained and licensed pyrotechnicians; and

WHEREAS *Tomball Night* is a unique way to showcase Tomball’s many attractions and an opportune time to encourage citizens to shop Tomball throughout the rest of the year; and

WHEREAS *Tomball Night* has become Tomball’s biggest shopping night, drawing shoppers from surrounding areas including Magnolia, Spring, Houston and The Woodlands to enjoy the sales, discounts, other great values and many planned activities sponsored by Tomball’s retail community; and

WHEREAS *Tomball Night* includes many cash and merchandise prizes from participating Tomball businesses for *Tomball Night* shoppers; and

WHEREAS the Greater Tomball Area Chamber of Commerce desires and requests the support and endorsement of the City of Tomball in this city-wide effort, through the assistance of the Tomball Fire, Tomball Police, and Tomball Public Works Department personnel; furnishing of electrical service from the Harris County Tax Assessor-Collector’s office on Walnut Street, by the Depot, at the 100 and 200 blocks of Market Street, the alley on the south side of Main between Cherry and Oak, and at 200 South Walnut; and the closure of the following streets on Friday night only:

- * from 12:00 p.m. until 11:00 p.m. – the 100, 200, and 300 blocks of Market Street and the 100 block of South Elm Street;
- * from 3:00 p.m. until 11:00 p.m. – adding the 100 block of North Walnut, between Commerce and Main Streets, and the 100 block of Commerce Street; and

- * from 5:00 p.m. until 11:00 p.m. – adding South Walnut, between Market and Main Streets, and Sycamore Street, from Main Street south; and

WHEREAS the Chamber also requests permission from the City of Tomball to ignite fireworks out of season, under the insurance and guidance of Illumination Fireworks, and use of electricity on Walnut Street, by the Depot, the 100 and 200 blocks of Market Street, the alley on the south side of Main between Cherry and Oak, and at 200 South Walnut; and

WHEREAS the Chamber also requests the use of the Tomball Community Center, both as a “cool zone” to offset some of the heat-related issues of past years and for the new Health and Wellness Fair, to be held from 4 p.m. to 8 p.m., and requests waiver of the rental fee;

NOW, THEREFORE, BE IT RESOLVED that the City of Tomball and its governing body endorses and supports the efforts of the Greater Tomball Area Chamber of Commerce in promoting and undertaking the *46th Annual Tomball Night* and pledges to encourage this effort to showcase Tomball;

PASSED AND APPROVED AS SET OUT BELOW AT THE MEETING OF THE CITY COUNCIL HELD ON THE 21ST DAY OF MAY, 2018.

GRETCHEN FAGAN, Mayor

ATTEST:

Doris Speer, City Secretary



May 10, 2018

City of Tomball
401 Market Street
Tomball, Texas 77375

RE: Tomball Night Street Closures, Electricity and Community Center Usage

Dear Rob,

We are anticipating a fabulous 46th Annual *Tomball Night*, Friday, August 3, 2018 with help from our city, police and fire departments, as well as from numerous volunteers. The popular attraction of a night parade with a fireworks display ending the night's festivities has been met with overwhelming enthusiasm over the past several years. This year we are planning to add a Health and Wellness Fair to the festivities. We are looking forward again to the expertise of the Tomball Police Department for crowd control and as visual deterrents from any negative activity.

The Greater Tomball Area Chamber of Commerce is requesting permission from the City of Tomball to ignite fireworks out of season, under the insurance and guidance of Illumination Fireworks, a highly trained and licensed pyrotechnician.

To insure the safety of the many visitors that will be in Tomball on Friday, August 3, 2018 and the multiple number of vendors we are expecting, we are asking for street closures for the following streets on Friday night only from

12:00 p.m. until 11:00 p.m.

- Market St. – 100, 200 and 300 blocks
- S. Elm – 100 Block

From 3:00 p.m. until 11:00 p.m.

- 100 N. Walnut – between Commerce and Main St.
- 100 block Commerce St.

And from 5:00 p.m. until 11:00 p.m.

- S. Walnut – between Market and Main
- Sycamore from Main St. South

Enclosed is a map for your review. We are also requesting permission for the use of electricity on Walnut Street, by the Depot, 100 & 200 blocks of Market Street, the alley on south side of Main between Cherry and Oak and at 200 S. Walnut.

Finally, we would like to use the Tomball Community Center as a “cool zone” and for the Health and Wellness Fair. The Health and Wellness Fair would take place from 4pm to 8pm. The Chamber’s committee, the Health and Wellness Alliance, will be working in conjunction with the Tomball Community Center staff, Chamber staff and the Tomball Night committee to coordinate both events. Any proceeds received from the Health & Wellness Fair will go to the Chamber to continue its mission.

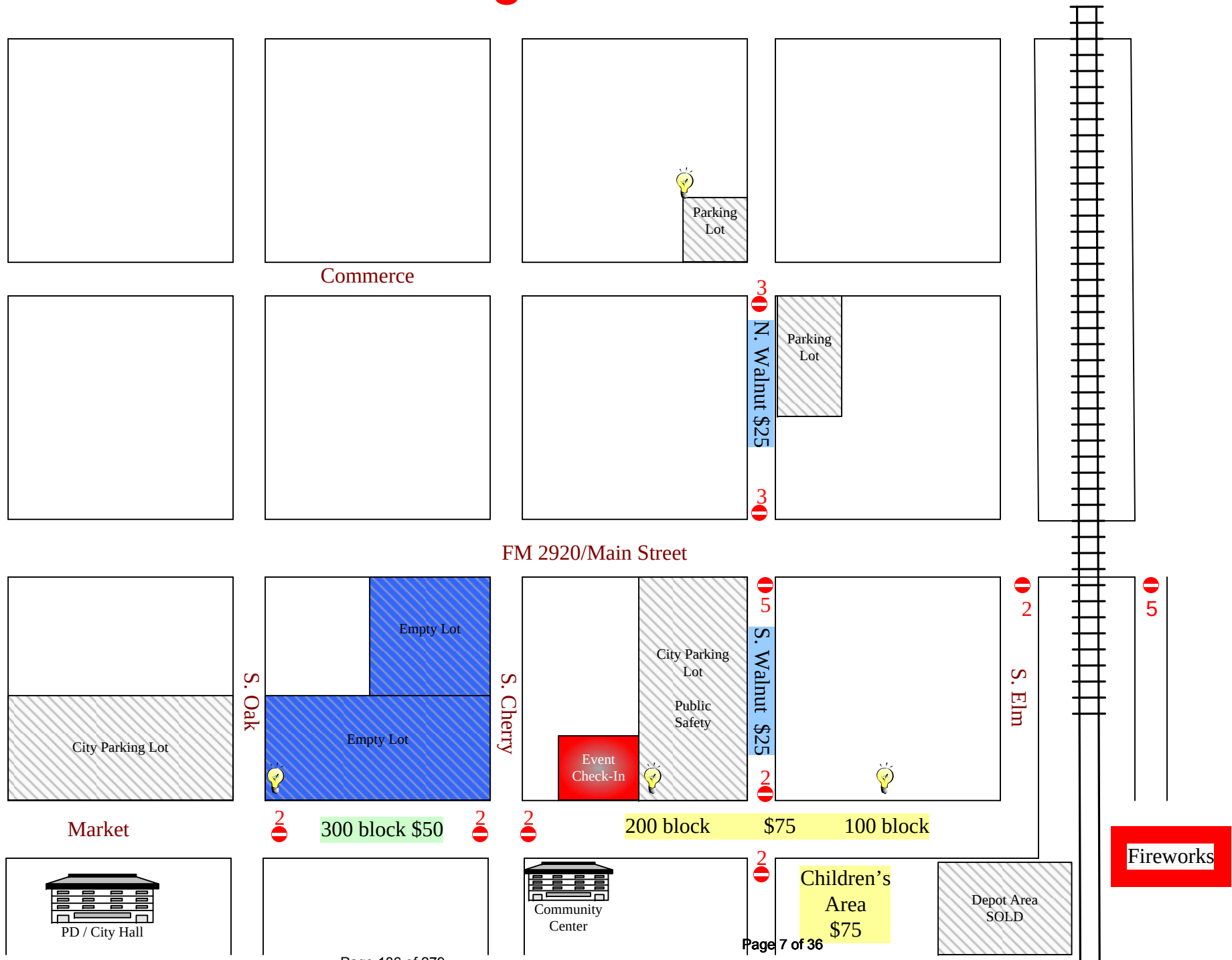
We appreciate the City of Tomball, its special partnership with the chamber and the assistance always offered for our events. Should you have any questions or concerns, please contact Brandy Beyer or myself at 281-351-7222.

Sincerely,



Bruce Hillegeist
President

Tomball Night Downtown



In accordance with the provisions of Title XI, Organized Crime Control Act of 1970, and the regulations issued thereunder (27 CFR Part 555), you may engage in the activity specified in this license or permit within the limitations of Chapter 40, Title 18, United States Code and the regulations issued thereunder, until the expiration date shown. **THIS LICENSE IS NOT TRANSFERABLE UNDER 27 CFR 555.53.** See "WARNINGS" and "NOTICES" on reverse.

Direct ATF
Correspondence To
ATF - Chief, FELC
244 Needy Road
Martinsburg, WV 25405-9431

License/Permit
Number

5-TX-113-50-9J-01710

Chief, Federal Explosives Licensing Center (FELC)

Expiration
Date

September 1, 2019

Name

ILLUMINATION FIREWORKS LLC

Premises Address (Changes? Notify the FELC at least 10 days before the move.)

1605 CRESCENT CIRCLE
CARROLLTON, TX 75006-

Type of License or Permit

50-MANUFACTURER OF EXPLOSIVES

Purchasing Certification Statement

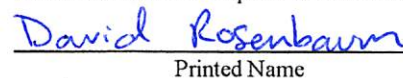
The licensee or permittee named above shall use a copy of this license or permit to assist a transferor of explosives to verify the identity and the licensed status of the licensee or permittee as provided by 27 CFR Part 555. The signature on each copy must be an original signature. A faxed, scanned or e-mailed copy of the license or permit with a signature intended to be an original signature is acceptable. The signature must be that of the Federal Explosives Licensee (FEL) or a responsible person of the FEL. I certify that this is a true copy of a license or permit issued to the licensee or permittee named above to engage in the business or operations specified above under "Type of License or Permit."

Mailing Address (Changes? Notify the FELC of any changes.)

ILLUMINATION FIREWORKS LLC
1605 CRESCENT CIRCLE
CARROLLTON, TX 75006-


Licensee/Permittee Responsible Person Signature


President
Position/Title


Printed Name

11-21-16
Date

Previous Edition is Obsolete ILLUMINATION FIREWORKS LLC:1605 CRESCENT CIRCLE:75006-5-TX-113-50-9J-01710:September 1, 2019:50-MANUFACTURER OF EXPLOSIVES

ATF Form 5400.14/5400.15 Part I
Revised October 2011

Federal Explosives License (FEL) Customer Service Information

Federal Explosives Licensing Center (FELC)
244 Needy Road
Martinsburg, WV 25405-9431

Toll-free Telephone Number: (877) 283-3352
Fax Number: (304) 616-4401
E-mail: FELC@atf.gov

ATF Homepage: www.atf.gov

Change of Address (27 CFR 555.54(a)(1)). Licensees or permittees may during the term of their current license or permit remove their business or operations to a new location at which they intend regularly to carry on such business or operations. The licensee or permittee is required to give notification of the new location of the business or operations not less than 10 days prior to such removal with the Chief, Federal Explosives Licensing Center. The license or permit will be valid for the remainder of the term of the original license or permit. (The Chief, FELC, shall, if the licensee or permittee is not qualified, refer the request for amended license or permit to the Director of Industry Operations for denial in accordance with § 555.54.)

Right of Succession (27 CFR 555.59). (a) Certain persons other than the licensee or permittee may secure the right to carry on the same explosive materials business or operations at the same address shown on, and for the remainder of the term of, a current license or permit. Such persons are: (1) The surviving spouse or child, or executor, administrator, or other legal representative of a deceased licensee or permittee; and (2) A receiver or trustee in bankruptcy, or an assignee for benefit of creditors. (b) In order to secure the right provided by this section, the person or persons continuing the business or operations shall furnish the license or permit for for that business or operations for endorsement of such succession to the Chief, FELC, within 30 days from the date on which the successor begins to carry on the business or operations.

(Continued on reverse side)

Cut Here ✂

Federal Explosives License/Permit (FEL) Information Card

License/Permit Name: ILLUMINATION FIREWORKS LLC

Business Name:

License/Permit Number: 5-TX-113-50-9J-01710

License/Permit Type: 50-MANUFACTURER OF EXPLOSIVES

Expiration: September 1, 2019

Please Note: Not Valid for the Sale or Other Disposition of Explosives.



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

5/10/2018

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an **ADDITIONAL INSURED**, the policy(ies) must have **ADDITIONAL INSURED** provisions or be endorsed. If **SUBROGATION** IS **WAIVED**, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER Higginbotham IAS Group PO Box 441767 Houston TX 77244		CONTACT NAME: Conny Vadovsky PHONE (A/C, No, Ext): 281-558-6363 E-MAIL ADDRESS: cvadovsky@higginbotham.net		FAX (A/C, No): 281-558-4765
		INSURER(S) AFFORDING COVERAGE		NAIC #
		INSURER A : Hartford Lloyds Insurance Co		38253
INSURED Greater Tomball Area Chamber of Commerce 29201 Quinn, Suite B Tomball TX 77375		INSURER B :		
		INSURER C :		
		INSURER D :		
		INSURER E :		
		INSURER F :		

COVERAGES**CERTIFICATE NUMBER:** 212939238**REVISION NUMBER:**

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	☒ COMMERCIAL GENERAL LIABILITY ☐ CLAIMS-MADE ☒ OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: ☐ POLICY ☐ PRO-JECT ☒ LOC ☐ OTHER:	Y	Y	61SBAVM8139	12/20/2017	12/20/2018	EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 300,000 MED EXP (Any one person) \$ 10,000 PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 2,000,000 PRODUCTS - COMP/OP AGG \$ 2,000,000 \$
A	☐ AUTOMOBILE LIABILITY ☐ ANY AUTO ☐ OWNED AUTOS ONLY ☐ SCHEDULED AUTOS ☒ HIRED AUTOS ONLY ☒ NON-OWNED AUTOS ONLY	Y	Y	61SBAVM8139	12/20/2017	12/20/2018	COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ \$
	☐ UMBRELLA LIAB ☐ OCCUR ☐ EXCESS LIAB ☐ CLAIMS-MADE ☐ DED ☐ RETENTION \$						EACH OCCURRENCE \$ AGGREGATE \$ \$
	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	Y / N ☐	N / A				PER STATUTE ☐ OTH-ER ☐ E.L. EACH ACCIDENT \$ E.L. DISEASE - EA EMPLOYEE \$ E.L. DISEASE - POLICY LIMIT \$

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

Attachments:

Certificate holder notice Revised Updated.pdf

SS0008-0405.pdf

CERTIFICATE HOLDER**CANCELLATION**City of Tomball
401 Market Street
Tomball TX 77375

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE

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NOTICE TO CERTIFICATE HOLDERS

In keeping with our client's request, we are providing you with a Certificate of Insurance using the latest ACORD 25-Certificate of Liability Insurance (2010/05) form. Prior editions have been withdrawn by ACORD and are no longer available. Since these are copyrighted forms we use under licensing agreements, we must follow ACORD's usage instructions.

1. There are major differences in the form now being used:
2. The cancellation box has been changed to provide notice of cancellation to the certificate holder in accordance with policy provisions. The former language is no longer available and the new edition of the certificate cannot be altered because of copyright law.
3. The certificate holder's status as an Additional Insured is now shown by placing an "X" in the box to the right of the column titled "Type of Insurance."
4. If a Waiver of Subrogation is being given, it will also be shown by placing an "X" in the box to the right of the Additional Insured box.
5. The space on the certificate for the Description of Operations/Locations/Vehicle has now been reserved for that use, and we are no longer allowed to insert wording that indicates status as an additional insured, waiver of subrogation, primary and non-contributory, etc. We are allowed to insert the name and number of the policy forms granting those extensions. Copies are attached for your review. We are also permitted to show a project name, lease #, contract #, etc.

As the agent for the insured, we are here to try to make this transition as transparent and easy as possible. If you have a question or problem with the certificate you have received, please call Courtney Futch at (281) 531-2062. We will try to resolve your issue if possible.

After January 1, 2012, all certificate forms used in Texas have to be approved by the Texas Department of Insurance. For further information, you may contact the Public Information Office, Texas Department of Insurance, P. O. Box 149104, Austin, Texas 78714.

For further information as to ACORD requirements, you may contact Acord by visiting their website at www.acord.org.

BUSINESS LIABILITY COVERAGE FORM

**QUICK REFERENCE
BUSINESS LIABILITY COVERAGE FORM
READ YOUR POLICY CAREFULLY**

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BUSINESS LIABILITY COVERAGE FORM

Various provisions in this policy restrict coverage. Read the entire policy carefully to determine rights, duties and what is and is not covered.

Throughout this policy the words "you" and "your" refer to the Named Insured shown in the Declarations. The words "we", "us" and "our" refer to the stock insurance company member of The Hartford providing this insurance.

The word "insured" means any person or organization qualifying as such under Section **C. - Who Is An Insured**.

Other words and phrases that appear in quotation marks have special meaning. Refer to Section **G. - Liability And Medical Expenses Definitions**.

A. COVERAGES

1. BUSINESS LIABILITY COVERAGE (BODILY INJURY, PROPERTY DAMAGE, PERSONAL AND ADVERTISING INJURY)

Insuring Agreement

- a. We will pay those sums that the insured becomes legally obligated to pay as damages because of "bodily injury", "property damage" or "personal and advertising injury" to which this insurance applies. We will have the right and duty to defend the insured against any "suit" seeking those damages. However, we will have no duty to defend the insured against any "suit" seeking damages for "bodily injury", "property damage" or "personal and advertising injury" to which this insurance does not apply.

We may, at our discretion, investigate any "occurrence" or offense and settle any claim or "suit" that may result. But:

- (1) The amount we will pay for damages is limited as described in Section **D. - Liability And Medical Expenses Limits Of Insurance**; and
- (2) Our right and duty to defend ends when we have used up the applicable limit of insurance in the payment of judgments, settlements or medical expenses to which this insurance applies.

No other obligation or liability to pay sums or perform acts or services is covered unless explicitly provided for under Coverage Extension - Supplementary Payments.

- b. This insurance applies:

- (1) To "bodily injury" and "property damage" only if:

- (a) The "bodily injury" or "property damage" is caused by an "occurrence" that takes place in the "coverage territory";

- (b) The "bodily injury" or "property damage" occurs during the policy period; and

- (c) Prior to the policy period, no insured listed under Paragraph **1.** of Section **C. - Who Is An Insured** and no "employee" authorized by you to give or receive notice of an "occurrence" or claim, knew that the "bodily injury" or "property damage" had occurred, in whole or in part. If such a listed insured or authorized "employee" knew, prior to the policy period, that the "bodily injury" or "property damage" occurred, then any continuation, change or resumption of such "bodily injury" or "property damage" during or after the policy period will be deemed to have been known prior to the policy period.

- (2) To "personal and advertising injury" caused by an offense arising out of your business, but only if the offense was committed in the "coverage territory" during the policy period.

- c. "Bodily injury" or "property damage" will be deemed to have been known to have occurred at the earliest time when any insured listed under Paragraph **1.** of Section **C. - Who Is An Insured** or any "employee" authorized by you to give or receive notice of an "occurrence" or claim:

- (1) Reports all, or any part, of the "bodily injury" or "property damage" to us or any other insurer;

BUSINESS LIABILITY COVERAGE FORM

- (2) Receives a written or verbal demand or claim for damages because of the "bodily injury" or "property damage"; or
 - (3) Becomes aware by any other means that "bodily injury" or "property damage" has occurred or has begun to occur.
- d. Damages because of "bodily injury" include damages claimed by any person or organization for care, loss of services or death resulting at any time from the "bodily injury".
- e. **Incidental Medical Malpractice**

- (1) "Bodily injury" arising out of the rendering of or failure to render professional health care services as a physician, dentist, nurse, emergency medical technician or paramedic shall be deemed to be caused by an "occurrence", but only if:
 - (a) The physician, dentist, nurse, emergency medical technician or paramedic is employed by you to provide such services; and
 - (b) You are not engaged in the business or occupation of providing such services.
- (2) For the purpose of determining the limits of insurance for incidental medical malpractice, any act or omission together with all related acts or omissions in the furnishing of these services to any one person will be considered one "occurrence".

2. MEDICAL EXPENSES

Insuring Agreement

- a. We will pay medical expenses as described below for "bodily injury" caused by an accident:
- (1) On premises you own or rent;
 - (2) On ways next to premises you own or rent; or
 - (3) Because of your operations;
- provided that:
- (1) The accident takes place in the "coverage territory" and during the policy period;
 - (2) The expenses are incurred and reported to us within three years of the date of the accident; and
 - (3) The injured person submits to examination, at our expense, by physicians of our choice as often as we reasonably require.

- b. We will make these payments regardless of fault. These payments will not exceed the applicable limit of insurance. We will pay reasonable expenses for:

- (1) First aid administered at the time of an accident;
- (2) Necessary medical, surgical, x-ray and dental services, including prosthetic devices; and
- (3) Necessary ambulance, hospital, professional nursing and funeral services.

3. COVERAGE EXTENSION - SUPPLEMENTARY PAYMENTS

- a. We will pay, with respect to any claim or "suit" we investigate or settle, or any "suit" against an insured we defend:
- (1) All expenses we incur.
 - (2) Up to \$1,000 for the cost of bail bonds required because of accidents or traffic law violations arising out of the use of any vehicle to which Business Liability Coverage for "bodily injury" applies. We do not have to furnish these bonds.
 - (3) The cost of appeal bonds or bonds to release attachments, but only for bond amounts within the applicable limit of insurance. We do not have to furnish these bonds.
 - (4) All reasonable expenses incurred by the insured at our request to assist us in the investigation or defense of the claim or "suit", including actual loss of earnings up to \$500 a day because of time off from work.
 - (5) All costs taxed against the insured in the "suit".
 - (6) Prejudgment interest awarded against the insured on that part of the judgment we pay. If we make an offer to pay the applicable limit of insurance, we will not pay any prejudgment interest based on that period of time after the offer.
 - (7) All interest on the full amount of any judgment that accrues after entry of the judgment and before we have paid, offered to pay, or deposited in court the part of the judgment that is within the applicable limit of insurance.

Any amounts paid under (1) through (7) above will not reduce the limits of insurance.

b. If we defend an insured against a "suit" and an indemnitee of the insured is also named as a party to the "suit", we will defend that indemnitee if all of the following conditions are met:

- (1) The "suit" against the indemnitee seeks damages for which the insured has assumed the liability of the indemnitee in a contract or agreement that is an "insured contract";
- (2) This insurance applies to such liability assumed by the insured;
- (3) The obligation to defend, or the cost of the defense of, that indemnitee, has also been assumed by the insured in the same "insured contract";
- (4) The allegations in the "suit" and the information we know about the "occurrence" are such that no conflict appears to exist between the interests of the insured and the interest of the indemnitee;
- (5) The indemnitee and the insured ask us to conduct and control the defense of that indemnitee against such "suit" and agree that we can assign the same counsel to defend the insured and the indemnitee; and
- (6) The indemnitee:
 - (a) Agrees in writing to:
 - (i) Cooperate with us in the investigation, settlement or defense of the "suit";
 - (ii) Immediately send us copies of any demands, notices, summonses or legal papers received in connection with the "suit";
 - (iii) Notify any other insurer whose coverage is available to the indemnitee; and
 - (iv) Cooperate with us with respect to coordinating other applicable insurance available to the indemnitee; and
 - (b) Provides us with written authorization to:
 - (i) Obtain records and other information related to the "suit"; and
 - (ii) Conduct and control the defense of the indemnitee in such "suit".

So long as the above conditions are met, attorneys' fees incurred by us in the defense of that indemnitee, necessary litigation expenses incurred by us and necessary litigation expenses incurred by the indemnitee at our request will be paid as Supplementary Payments.

Notwithstanding the provisions of Paragraph **1.b.(b)** of Section **B.** – Exclusions, such payments will not be deemed to be damages for "bodily injury" and "property damage" and will not reduce the Limits of Insurance.

Our obligation to defend an insured's indemnitee and to pay for attorneys' fees and necessary litigation expenses as Supplementary Payments ends when:

- (1) We have used up the applicable limit of insurance in the payment of judgments or settlements; or
- (2) The conditions set forth above, or the terms of the agreement described in Paragraph (6) above, are no longer met.

B. EXCLUSIONS

1. Applicable To Business Liability Coverage

This insurance does not apply to:

a. Expected Or Intended Injury

- (1) "Bodily injury" or "property damage" expected or intended from the standpoint of the insured. This exclusion does not apply to "bodily injury" or "property damage" resulting from the use of reasonable force to protect persons or property; or
- (2) "Personal and advertising injury" arising out of an offense committed by, at the direction of or with the consent or acquiescence of the insured with the expectation of inflicting "personal and advertising injury".

b. Contractual Liability

- (1) "Bodily injury" or "property damage"; or
- (2) "Personal and advertising injury"

for which the insured is obligated to pay damages by reason of the assumption of liability in a contract or agreement.

This exclusion does not apply to liability for damages because of:

- (a) "Bodily injury", "property damage" or "personal and advertising injury" that the insured would have in the absence of the contract or agreement; or

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(b) "Bodily injury" or "property damage" assumed in a contract or agreement that is an "insured contract", provided the "bodily injury" or "property damage" occurs subsequent to the execution of the contract or agreement. Solely for the purpose of liability assumed in an "insured contract", reasonable attorneys' fees and necessary litigation expenses incurred by or for a party other than an insured are deemed to be damages because of "bodily injury" or "property damage" provided:

- (i) Liability to such party for, or for the cost of, that party's defense has also been assumed in the same "insured contract", and
- (ii) Such attorneys' fees and litigation expenses are for defense of that party against a civil or alternative dispute resolution proceeding in which damages to which this insurance applies are alleged.

c. Liquor Liability

"Bodily injury" or "property damage" for which any insured may be held liable by reason of:

- (1) Causing or contributing to the intoxication of any person;
- (2) The furnishing of alcoholic beverages to a person under the legal drinking age or under the influence of alcohol; or
- (3) Any statute, ordinance or regulation relating to the sale, gift, distribution or use of alcoholic beverages.

This exclusion applies only if you are in the business of manufacturing, distributing, selling, serving or furnishing alcoholic beverages.

d. Workers' Compensation And Similar Laws

Any obligation of the insured under a workers' compensation, disability benefits or unemployment compensation law or any similar law.

e. Employer's Liability

"Bodily injury" to:

- (1) An "employee" of the insured arising out of and in the course of:
 - (a) Employment by the insured; or

(b) Performing duties related to the conduct of the insured's business, or

- (2) The spouse, child, parent, brother or sister of that "employee" as a consequence of (1) above.

This exclusion applies:

- (1) Whether the insured may be liable as an employer or in any other capacity; and
- (2) To any obligation to share damages with or repay someone else who must pay damages because of the injury.

This exclusion does not apply to liability assumed by the insured under an "insured contract".

f. Pollution

- (1) "Bodily injury", "property damage" or "personal and advertising injury" arising out of the actual, alleged or threatened discharge, dispersal, seepage, migration, release or escape of "pollutants":

(a) At or from any premises, site or location which is or was at any time owned or occupied by, or rented or loaned to any insured. However, this subparagraph does not apply to:

- (i) "Bodily injury" if sustained within a building and caused by smoke, fumes, vapor or soot produced by or originating from equipment that is used to heat, cool or dehumidify the building, or equipment that is used to heat water for personal use, by the building's occupants or their guests;

- (ii) "Bodily injury" or "property damage" for which you may be held liable, if you are a contractor and the owner or lessee of such premises, site or location has been added to your policy as an additional insured with respect to your ongoing operations performed for that additional insured at that premises, site or location and such premises, site or location is not and never was owned or occupied by, or rented or loaned to, any insured, other than that additional insured; or

- (iii) "Bodily injury" or "property damage" arising out of heat, smoke or fumes from a "hostile fire";
 - (b) At or from any premises, site or location which is or was at any time used by or for any insured or others for the handling, storage, disposal, processing or treatment of waste;
 - (c) Which are or were at any time transported, handled, stored, treated, disposed of, or processed as waste by or for:
 - (i) Any insured; or
 - (ii) Any person or organization for whom you may be legally responsible;
 - (d) At or from any premises, site or location on which any insured or any contractors or subcontractors working directly or indirectly on any insured's behalf are performing operations if the "pollutants" are brought on or to the premises, site or location in connection with such operations by such insured, contractor or subcontractor. However, this subparagraph does not apply to:
 - (i) "Bodily injury" or "property damage" arising out of the escape of fuels, lubricants or other operating fluids which are needed to perform the normal electrical, hydraulic or mechanical functions necessary for the operation of "mobile equipment" or its parts, if such fuels, lubricants or other operating fluids escape from a vehicle part designed to hold, store or receive them. This exception does not apply if the "bodily injury" or "property damage" arises out of the intentional discharge, dispersal or release of the fuels, lubricants or other operating fluids, or if such fuels, lubricants or other operating fluids are brought on or to the premises, site or location with the intent that they be discharged, dispersed or released as part of the operations being performed by such insured, contractor or subcontractor;
 - (ii) "Bodily injury" or "property damage" sustained within a building and caused by the release of gases, fumes or vapors from materials brought into that building in connection with operations being performed by you or on your behalf by a contractor or subcontractor; or
 - (iii) "Bodily injury" or "property damage" arising out of heat, smoke or fumes from a "hostile fire"; or
 - (e) At or from any premises, site or location on which any insured or any contractors or subcontractors working directly or indirectly on any insured's behalf are performing operations if the operations are to test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of, "pollutants".
- (2) Any loss, cost or expense arising out of any:
- (a) Request, demand, order or statutory or regulatory requirement that any insured or others test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of, "pollutants"; or
 - (b) Claim or suit by or on behalf of a governmental authority for damages because of testing for, monitoring, cleaning up, removing, containing, treating, detoxifying or neutralizing, or in any way responding to, or assessing the effects of, "pollutants".
- However, this paragraph does not apply to liability for damages because of "property damage" that the insured would have in the absence of such request, demand, order or statutory or regulatory requirement, or such claim or "suit" by or on behalf of a governmental authority.

g. Aircraft, Auto Or Watercraft

"Bodily injury" or "property damage" arising out of the ownership, maintenance, use or entrustment to others of any aircraft, "auto" or watercraft owned or operated by or rented or loaned to any insured. Use includes operation and "loading or unloading".

This exclusion applies even if the claims against any insured allege negligence or other wrongdoing in the supervision, hiring, employment, training or monitoring of others by that insured, if the "occurrence" which caused the "bodily injury" or "property damage" involved the ownership, maintenance, use or entrustment to others of any aircraft, "auto" or watercraft that is owned or operated by or rented or loaned to any insured.

This exclusion does not apply to:

- (1) A watercraft while ashore on premises you own or rent;
- (2) A watercraft you do not own that is:
 - (a) Less than 51 feet long; and
 - (b) Not being used to carry persons for a charge;
- (3) Parking an "auto" on, or on the ways next to, premises you own or rent, provided the "auto" is not owned by or rented or loaned to you or the insured;
- (4) Liability assumed under any "insured contract" for the ownership, maintenance or use of aircraft or watercraft;
- (5) "Bodily injury" or "property damage" arising out of the operation of any of the equipment listed in Paragraph **f.(2)** or **f.(3)** of the definition of "mobile equipment"; or
- (6) An aircraft that is not owned by any insured and is hired, chartered or loaned with a paid crew. However, this exception does not apply if the insured has any other insurance for such "bodily injury" or "property damage", whether the other insurance is primary, excess, contingent or on any other basis.

h. Mobile Equipment

"Bodily injury" or "property damage" arising out of:

- (1) The transportation of "mobile equipment" by an "auto" owned or operated by or rented or loaned to any insured; or

- (2) The use of "mobile equipment" in, or while in practice or preparation for, a prearranged racing, speed or demolition contest or in any stunting activity.

i. War

"Bodily injury", "property damage" or "personal and advertising injury", however caused, arising, directly or indirectly, out of:

- (1) War, including undeclared or civil war;
- (2) Warlike action by a military force, including action in hindering or defending against an actual or expected attack, by any government, sovereign or other authority using military personnel or other agents; or
- (3) Insurrection, rebellion, revolution, usurped power, or action taken by governmental authority in hindering or defending against any of these.

j. Professional Services

"Bodily injury", "property damage" or "personal and advertising injury" arising out of the rendering of or failure to render any professional service. This includes but is not limited to:

- (1) Legal, accounting or advertising services;
- (2) Preparing, approving, or failing to prepare or approve maps, shop drawings, opinions, reports, surveys, field orders, change orders, designs or drawings and specifications;
- (3) Supervisory, inspection, architectural or engineering activities;
- (4) Medical, surgical, dental, x-ray or nursing services treatment, advice or instruction;
- (5) Any health or therapeutic service treatment, advice or instruction;
- (6) Any service, treatment, advice or instruction for the purpose of appearance or skin enhancement, hair removal or replacement or personal grooming;
- (7) Optical or hearing aid services including the prescribing, preparation, fitting, demonstration or distribution of ophthalmic lenses and similar products or hearing aid devices;

- (8) Optometry or optometric services including but not limited to examination of the eyes and the prescribing, preparation, fitting, demonstration or distribution of ophthalmic lenses and similar products;
- (9) Any:
 - (a) Body piercing (not including ear piercing);
 - (b) Tattooing, including but not limited to the insertion of pigments into or under the skin; and
 - (c) Similar services;
- (10) Services in the practice of pharmacy; and
- (11) Computer consulting, design or programming services, including web site design.

Paragraphs (4) and (5) of this exclusion do not apply to the Incidental Medical Malpractice coverage afforded under Paragraph 1.e. in Section A. - Coverages.

k. Damage To Property

"Property damage" to:

- (1) Property you own, rent or occupy, including any costs or expenses incurred by you, or any other person, organization or entity, for repair, replacement, enhancement, restoration or maintenance of such property for any reason, including prevention of injury to a person or damage to another's property;
- (2) Premises you sell, give away or abandon, if the "property damage" arises out of any part of those premises;
- (3) Property loaned to you;
- (4) Personal property in the care, custody or control of the insured;
- (5) That particular part of real property on which you or any contractors or subcontractors working directly or indirectly on your behalf are performing operations, if the "property damage" arises out of those operations; or
- (6) That particular part of any property that must be restored, repaired or replaced because "your work" was incorrectly performed on it.

Paragraphs (1), (3) and (4) of this exclusion do not apply to "property damage" (other than damage by fire) to premises, including the contents of such premises, rented to you for a period of 7 or fewer consecutive days. A separate Limit of Insurance applies to Damage To Premises Rented To You as described in Section D. - Limits Of Insurance.

Paragraph (2) of this exclusion does not apply if the premises are "your work" and were never occupied, rented or held for rental by you.

Paragraphs (3) and (4) of this exclusion do not apply to the use of elevators.

Paragraphs (3), (4), (5) and (6) of this exclusion do not apply to liability assumed under a sidetrack agreement.

Paragraphs (3) and (4) of this exclusion do not apply to "property damage" to borrowed equipment while not being used to perform operations at a job site.

Paragraph (6) of this exclusion does not apply to "property damage" included in the "products-completed operations hazard".

l. Damage To Your Product

"Property damage" to "your product" arising out of it or any part of it.

m. Damage To Your Work

"Property damage" to "your work" arising out of it or any part of it and included in the "products-completed operations hazard".

This exclusion does not apply if the damaged work or the work out of which the damage arises was performed on your behalf by a subcontractor.

n. Damage To Impaired Property Or Property Not Physically Injured

"Property damage" to "impaired property" or property that has not been physically injured, arising out of:

- (1) A defect, deficiency, inadequacy or dangerous condition in "your product" or "your work"; or
- (2) A delay or failure by you or anyone acting on your behalf to perform a contract or agreement in accordance with its terms.

This exclusion does not apply to the loss of use of other property arising out of sudden and accidental physical injury to "your product" or "your work" after it has been put to its intended use.

o. Recall Of Products, Work Or Impaired Property

Damages claimed for any loss, cost or expense incurred by you or others for the loss of use, withdrawal, recall, inspection, repair, replacement, adjustment, removal or disposal of:

- (1) "Your product";
- (2) "Your work"; or
- (3) "Impaired property";

if such product, work or property is withdrawn or recalled from the market or from use by any person or organization because of a known or suspected defect, deficiency, inadequacy or dangerous condition in it.

p. Personal And Advertising Injury

"Personal and advertising injury":

- (1) Arising out of oral, written or electronic publication of material, if done by or at the direction of the insured with knowledge of its falsity;
- (2) Arising out of oral, written or electronic publication of material whose first publication took place before the beginning of the policy period;
- (3) Arising out of a criminal act committed by or at the direction of the insured;
- (4) Arising out of any breach of contract, except an implied contract to use another's "advertising idea" in your "advertisement";
- (5) Arising out of the failure of goods, products or services to conform with any statement of quality or performance made in your "advertisement";
- (6) Arising out of the wrong description of the price of goods, products or services;
- (7) Arising out of any violation of any intellectual property rights such as copyright, patent, trademark, trade name, trade secret, service mark or other designation of origin or authenticity.

However, this exclusion does not apply to infringement, in your "advertisement", of

- (a) Copyright;
- (b) Slogan, unless the slogan is also a trademark, trade name, service mark or other designation of origin or authenticity; or

(c) Title of any literary or artistic work;

(8) Arising out of an offense committed by an insured whose business is:

- (a) Advertising, broadcasting, publishing or telecasting;
- (b) Designing or determining content of web sites for others; or
- (c) An Internet search, access, content or service provider.

However, this exclusion does not apply to Paragraphs **a.**, **b.** and **c.** under the definition of "personal and advertising injury" in Section **G.** – Liability And Medical Expenses Definitions.

For the purposes of this exclusion, placing an "advertisement" for or linking to others on your web site, by itself, is not considered the business of advertising, broadcasting, publishing or telecasting;

- (9) Arising out of an electronic chat room or bulletin board the insured hosts, owns, or over which the insured exercises control;
- (10) Arising out of the unauthorized use of another's name or product in your e-mail address, domain name or metatags, or any other similar tactics to mislead another's potential customers;
- (11) Arising out of the violation of a person's right of privacy created by any state or federal act.

However, this exclusion does not apply to liability for damages that the insured would have in the absence of such state or federal act;

(12) Arising out of:

- (a) An "advertisement" for others on your web site;
- (b) Placing a link to a web site of others on your web site;
- (c) Content from a web site of others displayed within a frame or border on your web site. Content includes information, code, sounds, text, graphics or images; or
- (d) Computer code, software or programming used to enable:
 - (i) Your web site; or
 - (ii) The presentation or functionality of an "advertisement" or other content on your web site;

- (13) Arising out of a violation of any anti-trust law;
- (14) Arising out of the fluctuation in price or value of any stocks, bonds or other securities; or
- (15) Arising out of discrimination or humiliation committed by or at the direction of any "executive officer", director, stockholder, partner or member of the insured.

q. Electronic Data

Damages arising out of the loss of, loss of use of, damage to, corruption of, inability to access, or inability to manipulate "electronic data".

r. Employment-Related Practices

"Bodily injury" or "personal and advertising injury" to:

- (1) A person arising out of any:
 - (a) Refusal to employ that person;
 - (b) Termination of that person's employment; or
 - (c) Employment-related practices, policies, acts or omissions, such as coercion, demotion, evaluation, reassignment, discipline, defamation, harassment, humiliation or discrimination directed at that person; or
- (2) The spouse, child, parent, brother or sister of that person as a consequence of "bodily injury" or "personal and advertising injury" to the person at whom any of the employment-related practices described in Paragraphs (a), (b), or (c) above is directed.

This exclusion applies:

- (1) Whether the insured may be liable as an employer or in any other capacity; and
- (2) To any obligation to share damages with or repay someone else who must pay damages because of the injury.

s. Asbestos

- (1) "Bodily injury", "property damage" or "personal and advertising injury" arising out of the "asbestos hazard".
- (2) Any damages, judgments, settlements, loss, costs or expenses that:

- (a) May be awarded or incurred by reason of any claim or suit alleging actual or threatened injury or damage of any nature or kind to persons or property which would not have occurred in whole or in part but for the "asbestos hazard";
- (b) Arise out of any request, demand, order or statutory or regulatory requirement that any insured or others test for, monitor, clean up, remove, encapsulate, contain, treat, detoxify or neutralize or in any way respond to or assess the effects of an "asbestos hazard"; or
- (c) Arise out of any claim or suit for damages because of testing for, monitoring, cleaning up, removing, encapsulating, containing, treating, detoxifying or neutralizing or in any way responding to or assessing the effects of an "asbestos hazard".

t. Violation Of Statutes That Govern E-Mails, Fax, Phone Calls Or Other Methods Of Sending Material Or Information

"Bodily injury", "property damage", or "personal and advertising injury" arising directly or indirectly out of any action or omission that violates or is alleged to violate:

- (1) The Telephone Consumer Protection Act (TCPA), including any amendment of or addition to such law;
- (2) The CAN-SPAM Act of 2003, including any amendment of or addition to such law; or
- (3) Any statute, ordinance or regulation, other than the TCPA or CAN-SPAM Act of 2003, that prohibits or limits the sending, transmitting, communicating or distribution of material or information.

Damage To Premises Rented To You – Exception For Damage By Fire, Lightning or Explosion

Exclusions c. through h. and k. through o. do not apply to damage by fire, lightning or explosion to premises rented to you or temporarily occupied by you with permission of the owner. A separate Limit of Insurance applies to this coverage as described in Section D. - Liability And Medical Expenses Limits Of Insurance.

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2. Applicable To Medical Expenses Coverage

We will not pay expenses for "bodily injury":

a. Any Insured

To any insured, except "volunteer workers".

b. Hired Person

To a person hired to do work for or on behalf of any insured or a tenant of any insured.

c. Injury On Normally Occupied Premises

To a person injured on that part of premises you own or rent that the person normally occupies.

d. Workers' Compensation And Similar Laws

To a person, whether or not an "employee" of any insured, if benefits for the "bodily injury" are payable or must be provided under a workers' compensation or disability benefits law or a similar law.

e. Athletics Activities

To a person injured while practicing, instructing or participating in any physical exercises or games, sports or athletic contests.

f. Products-Completed Operations Hazard

Included with the "products-completed operations hazard".

g. Business Liability Exclusions

Excluded under Business Liability Coverage.

C. WHO IS AN INSURED

1. If you are designated in the Declarations as:

- a.** An individual, you and your spouse are insureds, but only with respect to the conduct of a business of which you are the sole owner.
- b.** A partnership or joint venture, you are an insured. Your members, your partners, and their spouses are also insureds, but only with respect to the conduct of your business.
- c.** A limited liability company, you are an insured. Your members are also insureds, but only with respect to the conduct of your business. Your managers are insureds, but only with respect to their duties as your managers.
- d.** An organization other than a partnership, joint venture or limited liability company, you are an insured. Your "executive officers" and directors are insureds, but only with respect to their duties as your officers or directors. Your stockholders are also insureds, but only with respect to their liability as stockholders.

- e.** A trust, you are an insured. Your trustees are also insureds, but only with respect to their duties as trustees.

2. Each of the following is also an insured:

a. Employees And Volunteer Workers

Your "volunteer workers" only while performing duties related to the conduct of your business, or your "employees", other than either your "executive officers" (if you are an organization other than a partnership, joint venture or limited liability company) or your managers (if you are a limited liability company), but only for acts within the scope of their employment by you or while performing duties related to the conduct of your business.

However, none of these "employees" or "volunteer workers" are insureds for:

(1) "Bodily injury" or "personal and advertising injury":

- (a)** To you, to your partners or members (if you are a partnership or joint venture), to your members (if you are a limited liability company), or to a co-"employee" while in the course of his or her employment or performing duties related to the conduct of your business, or to your other "volunteer workers" while performing duties related to the conduct of your business;
- (b)** To the spouse, child, parent, brother or sister of that co-"employee" or that "volunteer worker" as a consequence of Paragraph **(1)(a)** above;
- (c)** For which there is any obligation to share damages with or repay someone else who must pay damages because of the injury described in Paragraphs **(1)(a)** or **(b)** above; or
- (d)** Arising out of his or her providing or failing to provide professional health care services.

If you are not in the business of providing professional health care services, Paragraph **(d)** does not apply to any nurse, emergency medical technician or paramedic employed by you to provide such services.

(2) "Property damage" to property:

- (a)** Owned, occupied or used by,

- (b) Rented to, in the care, custody or control of, or over which physical control is being exercised for any purpose by you, any of your "employees", "volunteer workers", any partner or member (if you are a partnership or joint venture), or any member (if you are a limited liability company).

b. Real Estate Manager

Any person (other than your "employee" or "volunteer worker"), or any organization while acting as your real estate manager.

c. Temporary Custodians Of Your Property

Any person or organization having proper temporary custody of your property if you die, but only:

- (1) With respect to liability arising out of the maintenance or use of that property; and
- (2) Until your legal representative has been appointed.

d. Legal Representative If You Die

Your legal representative if you die, but only with respect to duties as such. That representative will have all your rights and duties under this insurance.

e. Unnamed Subsidiary

Any subsidiary and subsidiary thereof, of yours which is a legally incorporated entity of which you own a financial interest of more than 50% of the voting stock on the effective date of this Coverage Part.

The insurance afforded herein for any subsidiary not shown in the Declarations as a named insured does not apply to injury or damage with respect to which an insured under this insurance is also an insured under another policy or would be an insured under such policy but for its termination or upon the exhaustion of its limits of insurance.

3. Newly Acquired Or Formed Organization

Any organization you newly acquire or form, other than a partnership, joint venture or limited liability company, and over which you maintain financial interest of more than 50% of the voting stock, will qualify as a Named Insured if there is no other similar insurance available to that organization. However:

- a. Coverage under this provision is afforded only until the 180th day after you acquire or form the organization or the end of the policy period, whichever is earlier; and

- b. Coverage under this provision does not apply to:

- (1) "Bodily injury" or "property damage" that occurred; or
- (2) "Personal and advertising injury" arising out of an offense committed before you acquired or formed the organization.

4. Operator Of Mobile Equipment

With respect to "mobile equipment" registered in your name under any motor vehicle registration law, any person is an insured while driving such equipment along a public highway with your permission. Any other person or organization responsible for the conduct of such person is also an insured, but only with respect to liability arising out of the operation of the equipment, and only if no other insurance of any kind is available to that person or organization for this liability. However, no person or organization is an insured with respect to:

- a. "Bodily injury" to a co-"employee" of the person driving the equipment; or
- b. "Property damage" to property owned by, rented to, in the charge of or occupied by you or the employer of any person who is an insured under this provision.

5. Operator of Nonowned Watercraft

With respect to watercraft you do not own that is less than 51 feet long and is not being used to carry persons for a charge, any person is an insured while operating such watercraft with your permission. Any other person or organization responsible for the conduct of such person is also an insured, but only with respect to liability arising out of the operation of the watercraft, and only if no other insurance of any kind is available to that person or organization for this liability.

However, no person or organization is an insured with respect to:

- a. "Bodily injury" to a co-"employee" of the person operating the watercraft; or
- b. "Property damage" to property owned by, rented to, in the charge of or occupied by you or the employer of any person who is an insured under this provision.

6. Additional Insureds When Required By Written Contract, Written Agreement Or Permit

The person(s) or organization(s) identified in Paragraphs a. through f. below are additional insureds when you have agreed, in a written

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contract, written agreement or because of a permit issued by a state or political subdivision, that such person or organization be added as an additional insured on your policy, provided the injury or damage occurs subsequent to the execution of the contract or agreement, or the issuance of the permit.

A person or organization is an additional insured under this provision only for that period of time required by the contract, agreement or permit.

However, no such person or organization is an additional insured under this provision if such person or organization is included as an additional insured by an endorsement issued by us and made a part of this Coverage Part, including all persons or organizations added as additional insureds under the specific additional insured coverage grants in Section F. – Optional Additional Insured Coverages.

a. Vendors

Any person(s) or organization(s) (referred to below as vendor), but only with respect to "bodily injury" or "property damage" arising out of "your products" which are distributed or sold in the regular course of the vendor's business and only if this Coverage Part provides coverage for "bodily injury" or "property damage" included within the "products-completed operations hazard".

- (1) The insurance afforded to the vendor is subject to the following additional exclusions:

This insurance does not apply to:

- (a) "Bodily injury" or "property damage" for which the vendor is obligated to pay damages by reason of the assumption of liability in a contract or agreement. This exclusion does not apply to liability for damages that the vendor would have in the absence of the contract or agreement;
- (b) Any express warranty unauthorized by you;
- (c) Any physical or chemical change in the product made intentionally by the vendor;
- (d) Repackaging, except when unpacked solely for the purpose of inspection, demonstration, testing, or the substitution of parts under instructions from the manufacturer, and then repackaged in the original container;

- (e) Any failure to make such inspections, adjustments, tests or servicing as the vendor has agreed to make or normally undertakes to make in the usual course of business, in connection with the distribution or sale of the products;

- (f) Demonstration, installation, servicing or repair operations, except such operations performed at the vendor's premises in connection with the sale of the product;

- (g) Products which, after distribution or sale by you, have been labeled or relabeled or used as a container, part or ingredient of any other thing or substance by or for the vendor; or

- (h) "Bodily injury" or "property damage" arising out of the sole negligence of the vendor for its own acts or omissions or those of its employees or anyone else acting on its behalf. However, this exclusion does not apply to:

- (i) The exceptions contained in Subparagraphs (d) or (f); or

- (ii) Such inspections, adjustments, tests or servicing as the vendor has agreed to make or normally undertakes to make in the usual course of business, in connection with the distribution or sale of the products.

- (2) This insurance does not apply to any insured person or organization from whom you have acquired such products, or any ingredient, part or container, entering into, accompanying or containing such products.

b. Lessors Of Equipment

- (1) Any person or organization from whom you lease equipment; but only with respect to their liability for "bodily injury", "property damage" or "personal and advertising injury" caused, in whole or in part, by your maintenance, operation or use of equipment leased to you by such person or organization.

- (2) With respect to the insurance afforded to these additional insureds, this insurance does not apply to any "occurrence" which takes place after you cease to lease that equipment.

c. Lessors Of Land Or Premises

- (1) Any person or organization from whom you lease land or premises, but only with respect to liability arising out of the ownership, maintenance or use of that part of the land or premises leased to you.
- (2) With respect to the insurance afforded to these additional insureds, this insurance does not apply to:
 - (a) Any "occurrence" which takes place after you cease to lease that land or be a tenant in that premises; or
 - (b) Structural alterations, new construction or demolition operations performed by or on behalf of such person or organization.

d. Architects, Engineers Or Surveyors

- (1) Any architect, engineer, or surveyor, but only with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" caused, in whole or in part, by your acts or omissions or the acts or omissions of those acting on your behalf:
 - (a) In connection with your premises; or
 - (b) In the performance of your ongoing operations performed by you or on your behalf.
- (2) With respect to the insurance afforded to these additional insureds, the following additional exclusion applies:
 This insurance does not apply to "bodily injury", "property damage" or "personal and advertising injury" arising out of the rendering of or the failure to render any professional services by or for you, including:
 - (a) The preparing, approving, or failure to prepare or approve, maps, shop drawings, opinions, reports, surveys, field orders, change orders, designs or drawings and specifications; or
 - (b) Supervisory, inspection, architectural or engineering activities.

e. Permits Issued By State Or Political Subdivisions

- (1) Any state or political subdivision, but only with respect to operations performed by you or on your behalf for which the state or political subdivision has issued a permit.
- (2) With respect to the insurance afforded to these additional insureds, this insurance does not apply to:
 - (a) "Bodily injury", "property damage" or "personal and advertising injury" arising out of operations performed for the state or municipality; or
 - (b) "Bodily injury" or "property damage" included within the "products-completed operations hazard".

f. Any Other Party

- (1) Any other person or organization who is not an insured under Paragraphs **a.** through **e.** above, but only with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" caused, in whole or in part, by your acts or omissions or the acts or omissions of those acting on your behalf:
 - (a) In the performance of your ongoing operations;
 - (b) In connection with your premises owned by or rented to you; or
 - (c) In connection with "your work" and included within the "products-completed operations hazard", but only if
 - (i) The written contract or written agreement requires you to provide such coverage to such additional insured; and
 - (ii) This Coverage Part provides coverage for "bodily injury" or "property damage" included within the "products-completed operations hazard".
- (2) With respect to the insurance afforded to these additional insureds, this insurance does not apply to:
 - "Bodily injury", "property damage" or "personal and advertising injury" arising out of the rendering of, or the failure to render, any professional architectural, engineering or surveying services, including:

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- (a) The preparing, approving, or failure to prepare or approve, maps, shop drawings, opinions, reports, surveys, field orders, change orders, designs or drawings and specifications; or
- (b) Supervisory, inspection, architectural or engineering activities.

The limits of insurance that apply to additional insureds are described in Section **D. – Limits Of Insurance**.

How this insurance applies when other insurance is available to an additional insured is described in the Other Insurance Condition in Section **E. – Liability And Medical Expenses General Conditions**.

No person or organization is an insured with respect to the conduct of any current or past partnership, joint venture or limited liability company that is not shown as a Named Insured in the Declarations.

D. LIABILITY AND MEDICAL EXPENSES LIMITS OF INSURANCE

1. The Most We Will Pay

The Limits of Insurance shown in the Declarations and the rules below fix the most we will pay regardless of the number of:

- a. Insureds;
- b. Claims made or "suits" brought; or
- c. Persons or organizations making claims or bringing "suits".

2. Aggregate Limits

The most we will pay for:

- a. Damages because of "bodily injury" and "property damage" included in the "products-completed operations hazard" is the Products-Completed Operations Aggregate Limit shown in the Declarations.
- b. Damages because of all other "bodily injury", "property damage" or "personal and advertising injury", including medical expenses, is the General Aggregate Limit shown in the Declarations.

This General Aggregate Limit applies separately to each of your "locations" owned by or rented to you.

"Location" means premises involving the same or connecting lots, or premises whose connection is interrupted only by a street, roadway or right-of-way of a railroad.

This General Aggregate limit does not apply to "property damage" to premises while rented to you or temporarily occupied by you with permission of the owner, arising out of fire, lightning or explosion.

3. Each Occurrence Limit

Subject to **2.a.** or **2.b.** above, whichever applies, the most we will pay for the sum of all damages because of all "bodily injury", "property damage" and medical expenses arising out of any one "occurrence" is the Liability and Medical Expenses Limit shown in the Declarations.

The most we will pay for all medical expenses because of "bodily injury" sustained by any one person is the Medical Expenses Limit shown in the Declarations.

4. Personal And Advertising Injury Limit

Subject to **2.b.** above, the most we will pay for the sum of all damages because of all "personal and advertising injury" sustained by any one person or organization is the Personal and Advertising Injury Limit shown in the Declarations.

5. Damage To Premises Rented To You Limit

The Damage To Premises Rented To You Limit is the most we will pay under Business Liability Coverage for damages because of "property damage" to any one premises, while rented to you, or in the case of damage by fire, lightning or explosion, while rented to you or temporarily occupied by you with permission of the owner.

In the case of damage by fire, lightning or explosion, the Damage to Premises Rented To You Limit applies to all damage proximately caused by the same event, whether such damage results from fire, lightning or explosion or any combination of these.

6. How Limits Apply To Additional Insureds

The most we will pay on behalf of a person or organization who is an additional insured under this Coverage Part is the lesser of:

- a. The limits of insurance specified in a written contract, written agreement or permit issued by a state or political subdivision; or
- b. The Limits of Insurance shown in the Declarations.

Such amount shall be a part of and not in addition to the Limits of Insurance shown in the Declarations and described in this Section.

If more than one limit of insurance under this policy and any endorsements attached thereto applies to any claim or "suit", the most we will pay under this policy and the endorsements is the single highest limit of liability of all coverages applicable to such claim or "suit". However, this paragraph does not apply to the Medical Expenses limit set forth in Paragraph 3. above.

The Limits of Insurance of this Coverage Part apply separately to each consecutive annual period and to any remaining period of less than 12 months, starting with the beginning of the policy period shown in the Declarations, unless the policy period is extended after issuance for an additional period of less than 12 months. In that case, the additional period will be deemed part of the last preceding period for purposes of determining the Limits of Insurance.

E. LIABILITY AND MEDICAL EXPENSES GENERAL CONDITIONS

1. Bankruptcy

Bankruptcy or insolvency of the insured or of the insured's estate will not relieve us of our obligations under this Coverage Part.

2. Duties In The Event Of Occurrence, Offense, Claim Or Suit

a. Notice Of Occurrence Or Offense

You or any additional insured must see to it that we are notified as soon as practicable of an "occurrence" or an offense which may result in a claim. To the extent possible, notice should include:

- (1) How, when and where the "occurrence" or offense took place;
- (2) The names and addresses of any injured persons and witnesses; and
- (3) The nature and location of any injury or damage arising out of the "occurrence" or offense.

b. Notice Of Claim

If a claim is made or "suit" is brought against any insured, you or any additional insured must:

- (1) Immediately record the specifics of the claim or "suit" and the date received; and
- (2) Notify us as soon as practicable.

You or any additional insured must see to it that we receive a written notice of the claim or "suit" as soon as practicable.

c. Assistance And Cooperation Of The Insured

You and any other involved insured must:

- (1) Immediately send us copies of any demands, notices, summonses or legal papers received in connection with the claim or "suit";
- (2) Authorize us to obtain records and other information;
- (3) Cooperate with us in the investigation, settlement of the claim or defense against the "suit"; and
- (4) Assist us, upon our request, in the enforcement of any right against any person or organization that may be liable to the insured because of injury or damage to which this insurance may also apply.

d. Obligations At The Insured's Own Cost

No insured will, except at that insured's own cost, voluntarily make a payment, assume any obligation, or incur any expense, other than for first aid, without our consent.

e. Additional Insured's Other Insurance

If we cover a claim or "suit" under this Coverage Part that may also be covered by other insurance available to an additional insured, such additional insured must submit such claim or "suit" to the other insurer for defense and indemnity.

However, this provision does not apply to the extent that you have agreed in a written contract, written agreement or permit that this insurance is primary and non-contributory with the additional insured's own insurance.

f. Knowledge Of An Occurrence, Offense, Claim Or Suit

Paragraphs **a.** and **b.** apply to you or to any additional insured only when such "occurrence", offense, claim or "suit" is known to:

- (1) You or any additional insured that is an individual;
- (2) Any partner, if you or an additional insured is a partnership;
- (3) Any manager, if you or an additional insured is a limited liability company;
- (4) Any "executive officer" or insurance manager, if you or an additional insured is a corporation;
- (5) Any trustee, if you or an additional insured is a trust; or
- (6) Any elected or appointed official, if you or an additional insured is a political subdivision or public entity.

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This Paragraph **f.** applies separately to you and any additional insured.

3. Financial Responsibility Laws

- a. When this policy is certified as proof of financial responsibility for the future under the provisions of any motor vehicle financial responsibility law, the insurance provided by the policy for "bodily injury" liability and "property damage" liability will comply with the provisions of the law to the extent of the coverage and limits of insurance required by that law.
- b. With respect to "mobile equipment" to which this insurance applies, we will provide any liability, uninsured motorists, underinsured motorists, no-fault or other coverage required by any motor vehicle law. We will provide the required limits for those coverages.

4. Legal Action Against Us

No person or organization has a right under this Coverage Form:

- a. To join us as a party or otherwise bring us into a "suit" asking for damages from an insured; or
- b. To sue us on this Coverage Form unless all of its terms have been fully complied with.

A person or organization may sue us to recover on an agreed settlement or on a final judgment against an insured; but we will not be liable for damages that are not payable under the terms of this insurance or that are in excess of the applicable limit of insurance. An agreed settlement means a settlement and release of liability signed by us, the insured and the claimant or the claimant's legal representative.

5. Separation Of Insureds

Except with respect to the Limits of Insurance, and any rights or duties specifically assigned in this policy to the first Named Insured, this insurance applies:

- a. As if each Named Insured were the only Named Insured; and
- b. Separately to each insured against whom a claim is made or "suit" is brought.

6. Representations

a. When You Accept This Policy

By accepting this policy, you agree:

- (1) The statements in the Declarations are accurate and complete;
- (2) Those statements are based upon representations you made to us; and

- (3) We have issued this policy in reliance upon your representations.

b. Unintentional Failure To Disclose Hazards

If unintentionally you should fail to disclose all hazards relating to the conduct of your business at the inception date of this Coverage Part, we shall not deny any coverage under this Coverage Part because of such failure.

7. Other Insurance

If other valid and collectible insurance is available for a loss we cover under this Coverage Part, our obligations are limited as follows:

a. Primary Insurance

This insurance is primary except when **b.** below applies. If other insurance is also primary, we will share with all that other insurance by the method described in **c.** below.

b. Excess Insurance

This insurance is excess over any of the other insurance, whether primary, excess, contingent or on any other basis:

(1) Your Work

That is Fire, Extended Coverage, Builder's Risk, Installation Risk or similar coverage for "your work";

(2) Premises Rented To You

That is fire, lightning or explosion insurance for premises rented to you or temporarily occupied by you with permission of the owner;

(3) Tenant Liability

That is insurance purchased by you to cover your liability as a tenant for "property damage" to premises rented to you or temporarily occupied by you with permission of the owner;

(4) Aircraft, Auto Or Watercraft

If the loss arises out of the maintenance or use of aircraft, "autos" or watercraft to the extent not subject to Exclusion **g.** of Section **A.** – Coverages.

(5) Property Damage To Borrowed Equipment Or Use Of Elevators

If the loss arises out of "property damage" to borrowed equipment or the use of elevators to the extent not subject to Exclusion **k.** of Section **A.** – Coverages.

(6) When You Are Added As An Additional Insured To Other Insurance

That is other insurance available to you covering liability for damages arising out of the premises or operations, or products and completed operations, for which you have been added as an additional insured by that insurance; or

(7) When You Add Others As An Additional Insured To This Insurance

That is other insurance available to an additional insured.

However, the following provisions apply to other insurance available to any person or organization who is an additional insured under this Coverage Part:

(a) Primary Insurance When Required By Contract

This insurance is primary if you have agreed in a written contract, written agreement or permit that this insurance be primary. If other insurance is also primary, we will share with all that other insurance by the method described in **c.** below.

(b) Primary And Non-Contributory To Other Insurance When Required By Contract

If you have agreed in a written contract, written agreement or permit that this insurance is primary and non-contributory with the additional insured's own insurance, this insurance is primary and we will not seek contribution from that other insurance.

Paragraphs **(a)** and **(b)** do not apply to other insurance to which the additional insured has been added as an additional insured.

When this insurance is excess, we will have no duty under this Coverage Part to defend the insured against any "suit" if any other insurer has a duty to defend the insured against that "suit". If no other insurer defends, we will undertake to do so, but we will be entitled to the insured's rights against all those other insurers.

When this insurance is excess over other insurance, we will pay only our share of the amount of the loss, if any, that exceeds the sum of:

- (1)** The total amount that all such other insurance would pay for the loss in the absence of this insurance; and
- (2)** The total of all deductible and self-insured amounts under all that other insurance.

We will share the remaining loss, if any, with any other insurance that is not described in this Excess Insurance provision and was not bought specifically to apply in excess of the Limits of Insurance shown in the Declarations of this Coverage Part.

c. Method Of Sharing

If all the other insurance permits contribution by equal shares, we will follow this method also. Under this approach, each insurer contributes equal amounts until it has paid its applicable limit of insurance or none of the loss remains, whichever comes first.

If any of the other insurance does not permit contribution by equal shares, we will contribute by limits. Under this method, each insurer's share is based on the ratio of its applicable limit of insurance to the total applicable limits of insurance of all insurers.

8. Transfer Of Rights Of Recovery Against Others To Us

a. Transfer Of Rights Of Recovery

If the insured has rights to recover all or part of any payment, including Supplementary Payments, we have made under this Coverage Part, those rights are transferred to us. The insured must do nothing after loss to impair them. At our request, the insured will bring "suit" or transfer those rights to us and help us enforce them. This condition does not apply to Medical Expenses Coverage.

b. Waiver Of Rights Of Recovery (Waiver Of Subrogation)

If the insured has waived any rights of recovery against any person or organization for all or part of any payment, including Supplementary Payments, we have made under this Coverage Part, we also waive that right, provided the insured waived their rights of recovery against such person or organization in a contract, agreement or permit that was executed prior to the injury or damage.

F. OPTIONAL ADDITIONAL INSURED COVERAGES

If listed or shown as applicable in the Declarations, one or more of the following Optional Additional Insured Coverages also apply. When any of these Optional Additional Insured Coverages apply, Paragraph 6. (Additional Insureds When Required by Written Contract, Written Agreement or Permit) of Section C., Who Is An Insured, does not apply to the person or organization shown in the Declarations. These coverages are subject to the terms and conditions applicable to Business Liability Coverage in this policy, except as provided below:

1. Additional Insured - Designated Person Or Organization

WHO IS AN INSURED under Section C. is amended to include as an additional insured the person(s) or organization(s) shown in the Declarations, but only with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" caused, in whole or in part, by your acts or omissions or the acts or omissions of those acting on your behalf:

- a. In the performance of your ongoing operations; or
- b. In connection with your premises owned by or rented to you.

2. Additional Insured - Managers Or Lessors Of Premises

- a. WHO IS AN INSURED under Section C. is amended to include as an additional insured the person(s) or organization(s) shown in the Declarations as an Additional Insured - Designated Person Or Organization; but only with respect to liability arising out of the ownership, maintenance or use of that part of the premises leased to you and shown in the Declarations.

- b. With respect to the insurance afforded to these additional insureds, the following additional exclusions apply:

This insurance does not apply to:

- (1) Any "occurrence" which takes place after you cease to be a tenant in that premises; or
- (2) Structural alterations, new construction or demolition operations performed by or on behalf of such person or organization.

3. Additional Insured - Grantor Of Franchise

WHO IS AN INSURED under Section C. is amended to include as an additional insured the person(s) or organization(s) shown in the Declarations as an Additional Insured - Grantor Of Franchise, but only with respect to their liability as grantor of franchise to you.

4. Additional Insured - Lessor Of Leased Equipment

- a. WHO IS AN INSURED under Section C. is amended to include as an additional insured the person(s) or organization(s) shown in the Declarations as an Additional Insured – Lessor of Leased Equipment, but only with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" caused, in whole or in part, by your maintenance, operation or use of equipment leased to you by such person(s) or organization(s).

- b. With respect to the insurance afforded to these additional insureds, this insurance does not apply to any "occurrence" which takes place after you cease to lease that equipment.

5. Additional Insured - Owners Or Other Interests From Whom Land Has Been Leased

- a. WHO IS AN INSURED under Section C. is amended to include as an additional insured the person(s) or organization(s) shown in the Declarations as an Additional Insured – Owners Or Other Interests From Whom Land Has Been Leased, but only with respect to liability arising out of the ownership, maintenance or use of that part of the land leased to you and shown in the Declarations.

- b. With respect to the insurance afforded to these additional insureds, the following additional exclusions apply:

This insurance does not apply to:

- (1) Any "occurrence" that takes place after you cease to lease that land; or
- (2) Structural alterations, new construction or demolition operations performed by or on behalf of such person or organization.

6. Additional Insured - State Or Political Subdivision – Permits

- a. WHO IS AN INSURED under Section C. is amended to include as an additional insured the state or political subdivision shown in the Declarations as an Additional

Insured – State Or Political Subdivision - Permits, but only with respect to operations performed by you or on your behalf for which the state or political subdivision has issued a permit.

- b.** With respect to the insurance afforded to these additional insureds, the following additional exclusions apply:

This insurance does not apply to:

- (1)** "Bodily injury", "property damage" or "personal and advertising injury" arising out of operations performed for the state or municipality; or
- (2)** "Bodily injury" or "property damage" included in the "product-completed operations" hazard.

7. Additional Insured – Vendors

- a.** WHO IS AN INSURED under Section **C.** is amended to include as an additional insured the person(s) or organization(s) (referred to below as vendor) shown in the Declarations as an Additional Insured - Vendor, but only with respect to "bodily injury" or "property damage" arising out of "your products" which are distributed or sold in the regular course of the vendor's business and only if this Coverage Part provides coverage for "bodily injury" or "property damage" included within the "products-completed operations hazard".
- b.** The insurance afforded to the vendor is subject to the following additional exclusions:

- (1)** This insurance does not apply to:

- (a)** "Bodily injury" or "property damage" for which the vendor is obligated to pay damages by reason of the assumption of liability in a contract or agreement. This exclusion does not apply to liability for damages that the vendor would have in the absence of the contract or agreement;
- (b)** Any express warranty unauthorized by you;
- (c)** Any physical or chemical change in the product made intentionally by the vendor;
- (d)** Repackaging, unless unpacked solely for the purpose of inspection, demonstration, testing, or the substitution of parts under instructions from the manufacturer, and then repackaged in the original container;

- (e)** Any failure to make such inspections, adjustments, tests or servicing as the vendor has agreed to make or normally undertakes to make in the usual course of business, in connection with the distribution or sale of the products;

- (f)** Demonstration, installation, servicing or repair operations, except such operations performed at the vendor's premises in connection with the sale of the product;

- (g)** Products which, after distribution or sale by you, have been labeled or relabeled or used as a container, part or ingredient of any other thing or substance by or for the vendor; or

- (h)** "Bodily injury" or "property damage" arising out of the sole negligence of the vendor for its own acts or omissions or those of its employees or anyone else acting on its behalf. However, this exclusion does not apply to:

- (i)** The exceptions contained in Subparagraphs **(d)** or **(f)**; or

- (ii)** Such inspections, adjustments, tests or servicing as the vendor has agreed to make or normally undertakes to make in the usual course of business, in connection with the distribution or sale of the products.

- (2)** This insurance does not apply to any insured person or organization from whom you have acquired such products, or any ingredient, part or container, entering into, accompanying or containing such products.

8. Additional Insured – Controlling Interest

WHO IS AN INSURED under Section **C.** is amended to include as an additional insured the person(s) or organization(s) shown in the Declarations as an Additional Insured – Controlling Interest, but only with respect to their liability arising out of:

- a.** Their financial control of you; or
- b.** Premises they own, maintain or control while you lease or occupy these premises.

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This insurance does not apply to structural alterations, new construction and demolition operations performed by or for that person or organization.

9. Additional Insured – Owners, Lessees Or Contractors – Scheduled Person Or Organization

a. WHO IS AN INSURED under Section C. is amended to include as an additional insured the person(s) or organization(s) shown in the Declarations as an Additional Insured – Owner, Lessees Or Contractors, but only with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" caused, in whole or in part, by your acts or omissions or the acts or omissions of those acting on your behalf:

- (1) In the performance of your ongoing operations for the additional insured(s); or
- (2) In connection with "your work" performed for that additional insured and included within the "products-completed operations hazard", but only if this Coverage Part provides coverage for "bodily injury" or "property damage" included within the "products-completed operations hazard".

b. With respect to the insurance afforded to these additional insureds, this insurance does not apply to "bodily injury", "property damage" or "personal an advertising injury" arising out of the rendering of, or the failure to render, any professional architectural, engineering or surveying services, including:

- (1) The preparing, approving, or failure to prepare or approve, maps, shop drawings, opinions, reports, surveys, field orders, change orders, designs or drawings and specifications; or
- (2) Supervisory, inspection, architectural or engineering activities.

10. Additional Insured – Co-Owner Of Insured Premises

WHO IS AN INSURED under Section C. is amended to include as an additional insured the person(s) or Organization(s) shown in the Declarations as an Additional Insured – Co-Owner Of Insured Premises, but only with respect to their liability as co-owner of the premises shown in the Declarations.

The limits of insurance that apply to additional insureds are described in Section D. – Limits Of Insurance.

How this insurance applies when other insurance is available to an additional insured is described in the Other Insurance Condition in Section E. – Liability And Medical Expenses General Conditions.

G. LIABILITY AND MEDICAL EXPENSES DEFINITIONS

1. "Advertisement" means the widespread public dissemination of information or images that has the purpose of inducing the sale of goods, products or services through:

- a. (1) Radio;
- (2) Television;
- (3) Billboard;
- (4) Magazine;
- (5) Newspaper;

b. The Internet, but only that part of a web site that is about goods, products or services for the purposes of inducing the sale of goods, products or services; or

c. Any other publication that is given widespread public distribution.

However, "advertisement" does not include:

a. The design, printed material, information or images contained in, on or upon the packaging or labeling of any goods or products; or

b. An interactive conversation between or among persons through a computer network.

2. "Advertising idea" means any idea for an "advertisement".

3. "Asbestos hazard" means an exposure or threat of exposure to the actual or alleged properties of asbestos and includes the mere presence of asbestos in any form.

4. "Auto" means a land motor vehicle, trailer or semi-trailer designed for travel on public roads, including any attached machinery or equipment. But "auto" does not include "mobile equipment".

5. "Bodily injury" means physical:

- a. Injury;
- b. Sickness; or
- c. Disease

sustained by a person and, if arising out of the above, mental anguish or death at any time.

6. "Coverage territory" means:

- a. The United States of America (including its territories and possessions), Puerto Rico and Canada;
- b. International waters or airspace, but only if the injury or damage occurs in the course of travel or transportation between any places included in **a.** above;
- c. All other parts of the world if the injury or damage arises out of:
 - (1) Goods or products made or sold by you in the territory described in **a.** above;
 - (2) The activities of a person whose home is in the territory described in **a.** above, but is away for a short time on your business; or
 - (3) "Personal and advertising injury" offenses that take place through the Internet or similar electronic means of communication

provided the insured's responsibility to pay damages is determined in the United States of America (including its territories and possessions), Puerto Rico or Canada, in a "suit" on the merits according to the substantive law in such territory, or in a settlement we agree to.

- 7. "Electronic data" means information, facts or programs:
 - a. Stored as or on;
 - b. Created or used on; or
 - c. Transmitted to or from computer software, including systems and applications software, hard or floppy disks, CD-ROMS, tapes, drives, cells, data processing devices or any other media which are used with electronically controlled equipment.
- 8. "Employee" includes a "leased worker". "Employee" does not include a "temporary worker".
- 9. "Executive officer" means a person holding any of the officer positions created by your charter, constitution, by-laws or any other similar governing document.
- 10. "Hostile fire" means one which becomes uncontrollable or breaks out from where it was intended to be.
- 11. "Impaired property" means tangible property, other than "your product" or "your work", that cannot be used or is less useful because:
 - a. It incorporates "your product" or "your work" that is known or thought to be defective, deficient, inadequate or dangerous; or

- b. You have failed to fulfill the terms of a contract or agreement;

if such property can be restored to use by:

- a. The repair, replacement, adjustment or removal of "your product" or "your work"; or
- b. Your fulfilling the terms of the contract or agreement.

12. "Insured contract" means:

- a. A contract for a lease of premises. However, that portion of the contract for a lease of premises that indemnifies any person or organization for damage by fire, lightning or explosion to premises while rented to you or temporarily occupied by you with permission of the owner is subject to the Damage To Premises Rented To You limit described in Section **D. – Liability and Medical Expenses Limits of Insurance.**
- b. A sidetrack agreement;
- c. Any easement or license agreement, including an easement or license agreement in connection with construction or demolition operations on or within 50 feet of a railroad;
- d. Any obligation, as required by ordinance, to indemnify a municipality, except in connection with work for a municipality;
- e. An elevator maintenance agreement; or
- f. That part of any other contract or agreement pertaining to your business (including an indemnification of a municipality in connection with work performed for a municipality) under which you assume the tort liability of another party to pay for "bodily injury" or "property damage" to a third person or organization, provided the "bodily injury" or "property damage" is caused, in whole or in part, by you or by those acting on your behalf. Tort liability means a liability that would be imposed by law in the absence of any contract or agreement.

Paragraph **f.** includes that part of any contract or agreement that indemnifies a railroad for "bodily injury" or "property damage" arising out of construction or demolition operations within 50 feet of any railroad property and affecting any railroad bridge or trestle, tracks, road-beds, tunnel, underpass or crossing.

However, Paragraph **f.** does not include that part of any contract or agreement:

BUSINESS LIABILITY COVERAGE FORM

- (1) That indemnifies an architect, engineer or surveyor for injury or damage arising out of:
- (a) Preparing, approving or failing to prepare or approve maps, shop drawings, opinions, reports, surveys, field orders, change orders, designs or drawings and specifications; or
 - (b) Giving directions or instructions, or failing to give them, if that is the primary cause of the injury or damage; or
- (2) Under which the insured, if an architect, engineer or surveyor, assumes liability for an injury or damage arising out of the insured's rendering or failure to render professional services, including those listed in (1) above and supervisory, inspection, architectural or engineering activities.
13. "Leased worker" means a person leased to you by a labor leasing firm under an agreement between you and the labor leasing firm, to perform duties related to the conduct of your business. "Leased worker" does not include a "temporary worker".
14. "Loading or unloading" means the handling of property:
- a. After it is moved from the place where it is accepted for movement into or onto an aircraft, watercraft or "auto";
 - b. While it is in or on an aircraft, watercraft or "auto"; or
 - c. While it is being moved from an aircraft, watercraft or "auto" to the place where it is finally delivered;
- but "loading or unloading" does not include the movement of property by means of a mechanical device, other than a hand truck, that is not attached to the aircraft, watercraft or "auto".
15. "Mobile equipment" means any of the following types of land vehicles, including any attached machinery or equipment:
- a. Bulldozers, farm machinery, forklifts and other vehicles designed for use principally off public roads;
 - b. Vehicles maintained for use solely on or next to premises you own or rent;
 - c. Vehicles that travel on crawler treads;
 - d. Vehicles, whether self-propelled or not, on which are permanently mounted:
- (1) Power cranes, shovels, loaders, diggers or drills; or
 - (2) Road construction or resurfacing equipment such as graders, scrapers or rollers;
- e. Vehicles not described in a., b., c., or d. above that are not self-propelled and are maintained primarily to provide mobility to permanently attached equipment of the following types:
- (1) Air compressors, pumps and generators, including spraying, welding, building cleaning, geophysical exploration, lighting and well servicing equipment; or
 - (2) Cherry pickers and similar devices used to raise or lower workers;
- f. Vehicles not described in a., b., c., or d. above maintained primarily for purposes other than the transportation of persons or cargo.
- However, self-propelled vehicles with the following types of permanently attached equipment are not "mobile equipment" but will be considered "autos":
- (1) Equipment, of at least 1,000 pounds gross vehicle weight, designed primarily for:
 - (a) Snow removal;
 - (b) Road maintenance, but not construction or resurfacing; or
 - (c) Street cleaning;
 - (2) Cherry pickers and similar devices mounted on automobile or truck chassis and used to raise or lower workers; and
 - (3) Air compressors, pumps and generators, including spraying, welding, building cleaning, geophysical exploration, lighting and well servicing equipment.
16. "Occurrence" means an accident, including continuous or repeated exposure to substantially the same general harmful conditions.
17. "Personal and advertising injury" means injury, including consequential "bodily injury", arising out of one or more of the following offenses:
- a. False arrest, detention or imprisonment;
 - b. Malicious prosecution;

- c. The wrongful eviction from, wrongful entry into, or invasion of the right of private occupancy of a room, dwelling or premises that the person occupies, committed by or on behalf of its owner, landlord or lessor;
 - d. Oral, written or electronic publication of material that slanders or libels a person or organization or disparages a person's or organization's goods, products or services;
 - e. Oral, written or electronic publication of material that violates a person's right of privacy;
 - f. Copying, in your "advertisement", a person's or organization's "advertising idea" or style of "advertisement";
 - g. Infringement of copyright, slogan, or title of any literary or artistic work, in your "advertisement"; or
 - h. Discrimination or humiliation that results in injury to the feelings or reputation of a natural person.
- 18. "Pollutants"** means any solid, liquid, gaseous or thermal irritant or contaminant, including smoke, vapor, soot, fumes, acids, alkalis, chemicals and waste. Waste includes materials to be recycled, reconditioned or reclaimed.
- 19. "Products-completed operations hazard";**
- a. Includes all "bodily injury" and "property damage" occurring away from premises you own or rent and arising out of "your product" or "your work" except:
 - (1) Products that are still in your physical possession; or
 - (2) Work that has not yet been completed or abandoned. However, "your work" will be deemed to be completed at the earliest of the following times:
 - (a) When all of the work called for in your contract has been completed.
 - (b) When all of the work to be done at the job site has been completed if your contract calls for work at more than one job site.
 - (c) When that part of the work done at a job site has been put to its intended use by any person or organization other than another contractor or subcontractor working on the same project.
- Work that may need service, maintenance, correction, repair or replacement, but which is otherwise complete, will be treated as completed.
- The "bodily injury" or "property damage" must occur away from premises you own or rent, unless your business includes the selling, handling or distribution of "your product" for consumption on premises you own or rent.
- b. Does not include "bodily injury" or "property damage" arising out of:
 - (1) The transportation of property, unless the injury or damage arises out of a condition in or on a vehicle not owned or operated by you, and that condition was created by the "loading or unloading" of that vehicle by any insured; or
 - (2) The existence of tools, uninstalled equipment or abandoned or unused materials.
- 20. "Property damage" means:**
- a. Physical injury to tangible property, including all resulting loss of use of that property. All such loss of use shall be deemed to occur at the time of the physical injury that caused it; or
 - b. Loss of use of tangible property that is not physically injured. All such loss of use shall be deemed to occur at the time of "occurrence" that caused it.
- As used in this definition, "electronic data" is not tangible property.
- 21. "Suit"** means a civil proceeding in which damages because of "bodily injury", "property damage" or "personal and advertising injury" to which this insurance applies are alleged. "Suit" includes:
- a. An arbitration proceeding in which such damages are claimed and to which the insured must submit or does submit with our consent; or
 - b. Any other alternative dispute resolution proceeding in which such damages are claimed and to which the insured submits with our consent.
- 22. "Temporary worker"** means a person who is furnished to you to substitute for a permanent "employee" on leave or to meet seasonal or short-term workload conditions.
- 23. "Volunteer worker"** means a person who:
- a. Is not your "employee";

BUSINESS LIABILITY COVERAGE FORM

- b. Donates his or her work;
- c. Acts at the direction of and within the scope of duties determined by you; and
- d. Is not paid a fee, salary or other compensation by you or anyone else for their work performed for you.

24. "Your product":

a. Means:

- (1) Any goods or products, other than real property, manufactured, sold, handled, distributed or disposed of by:
 - (a) You;
 - (b) Others trading under your name; or
 - (c) A person or organization whose business or assets you have acquired; and
- (2) Containers (other than vehicles), materials, parts or equipment furnished in connection with such goods or products.

b. Includes:

- (1) Warranties or representations made at any time with respect to the fitness, quality, durability, performance or use of "your product"; and

- (2) The providing of or failure to provide warnings or instructions.

- c. Does not include vending machines or other property rented to or located for the use of others but not sold.

25. "Your work":

a. Means:

- (1) Work or operations performed by you or on your behalf; and
- (2) Materials, parts or equipment furnished in connection with such work or operations.

b. Includes:

- (1) Warranties or representations made at any time with respect to the fitness, quality, durability, performance or use of "your work"; and
- (2) The providing of or failure to provide warnings or instructions.

Regular City Council
Agenda Item
Data Sheet

Meeting Date: May 21, 2018

Topic:

Consideration and Possible Action Regarding a Request from Russell McKee of PFG Construction, LLC to Provide City Water for Their Facilities, Located Outside the City of Tomball, Without Requiring Annexation

Background:

The City of Tomball received a letter request from Mr. McKee requesting City of Tomball water for their facilities located at the northeast corner of Park Place Drive and Brown Road. A 12-inch City of Tomball water main exists across Brown Road from the property and is adequately sized for their needs.

It has traditionally been the policy to provide utility services to only in-city customers or those agreeing to annex into the Tomball city limits. Mr. McKee was informed of the City's policy during a previous meeting, but he has chosen to not move forward with an annexation at this time. If City Council desires to approve the out-of-city water request without annexation, an out-of-city customer utility billing rate could be considered.

Origination:

Russell McKee, PFG Construction, LLC

Recommendation:

Denial

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:

Letter Request
Site Map



Houston PFG Inc.
P.O. BOX 2003
CYPRESS, TX. 77410
713-827-2295

Date: May 8, 2018

Mr. Meyers,

I am writing this letter regarding water service at 14600 Brown Road. I would like to request water service from The City of Tomball at this location. The property is in Tomball ETJ and is right across the street from Tomball City water lines on Brown road. However, at this time we cannot receive Tomball sewer services because the Tomball sewer lines cannot access (by easement) the property. Therefore, it does not make it practical to be annexed into The City of Tomball. I would agree to being annexed once sewer lines could be provided.

I originally drilled a well behind the 1st building on the Northwest corner of the property. This was approved and permitted by Harris County. I currently have a tenant renting this facility. After I had the 2nd building permitted by Harris County and proceeded to erect the building, Harris County called me and told me, they made a mistake and should not have permitted the 2nd building because my septic fell in a Tomball easement on Park Place drive (Private road) and also that they should not have permitted the 1st building because of the location and usage of the well (Which they and the TECQ approved prior). Therefore, I have had to stop construction of my 2nd building to get these two issues resolved. The septic has been resolved because The City of Tomball has been gracious to give back that easement on the private road. However, over the last 3 months I haven't been able to resolve the well issue with Harris County.

I was told my existing well could be upgraded, but I would now have to purchase or get granted an easement from the land owner behind (North side) the property.

The land owner will not grant an easement. I tried purchasing the property. I paid for a survey and had a contract, but that fell through, because we were told the property cannot be used for commercial use. It is tied to an HOA in the residential area on the North side of the property.

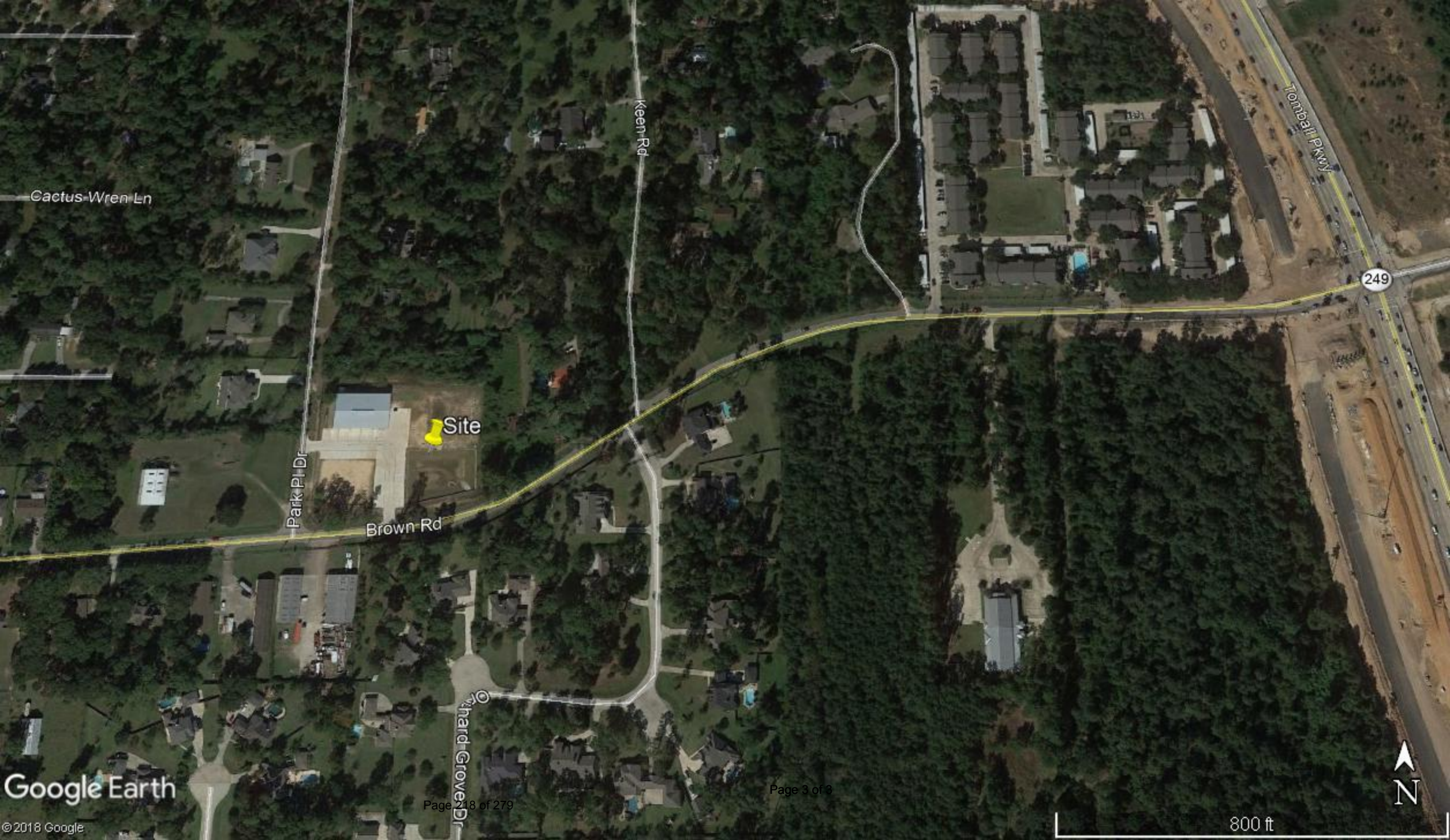
I am down to only two options. I will have to cap my existing well and drill a new well somewhere in the center of the property as well as re-route my existing water lines and build a new well house or get water service from The City of Tomball.

Since I have been down this road with Harris County on this property twice before (Where they permitted my project only to come back and tell me they made a mistake, but I had to incur the cost, which has cost me literally hundreds of thousands of dollars in dirt work and drainage.) I am not confident they won't do it again even though I have their permit. I estimate my initial cost will be about the same, rather I receive water from The City of Tomball or re-do the well. However, because they will now require the well to be a public well, the long-term cost and maintenance will be much higher. It will also take longer for re-permitting both the well (Approximately 6 to 8 months) and the construction, which extends the time until it is rented. Because of the placement of the well, it will also restrict the size of the 3rd building.

I greatly appreciate your consideration in this matter to grant access to Tomball City water. Please call or email me with any questions.

Thank you,

Russell McKee
President
PO Box 2003
Cypress, Texas 77433
Cell: 713-539-8430
Office: 713-827-2295
Email: rumckee@pfgcompanies.com



Regular City Council

Agenda Item

Data Sheet

Meeting Date: May 21, 2018

Topic:

Consideration to Approve **Zoning Case P18-055**: Request By Dorothy And Thomas Wanko To Amend Chapter 50 (Zoning) Of The Tomball Code Of Ordinances By Rezoning Approximately 0.0803 Acres Of Land Legally Described As Lot 18 Block 70 Tomball, Harris County, Texas, Generally Located On The West Side Of Chestnut Street And The North Side Of Mechanic Street, From The Single-Family 6 District To The Old Town & Mixed Use District.

- Conduct Public Hearing On **Zoning Case P18-055**
- Adopt On First Reading, Ordinance No. 2018-19, 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 0.0803 Acres of Land, Legally Described Lot 18 Block 70 Tomball, within the City of Tomball, Harris County, Texas, from the Single-Family 6 District to the Old Town and Mixed Use District; Said Property being generally located on the West Side of Chestnut Street and the North Side of Mechanic 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, May 14, 2018, after conducting a public hearing, the Planning and Zoning Commission recommended approval of the rezoning request with a 3-2 vote.

Origination:

Dorothy and Thomas Wanko

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. 2018-19
Notice of Public Hearing
Property Owner Notification
Public Comment Forms
Staff Report

ORDINANCE NO. 2018-19

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 0.0803 ACRES OF LAND, LEGALLY DESCRIBED LOT 18 BLOCK 70 TOMBALL, WITHIN THE CITY OF TOMBALL, HARRIS COUNTY, TEXAS, FROM THE SINGLE-FAMILY 6 DISTRICT TO THE OLD TOWN AND MIXED USE DISTRICT; SAID PROPERTY BEING GENERALLY LOCATED ON THE WEST SIDE OF CHESTNUT STREET AND THE NORTH SIDE OF MECHANIC 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, Dorothy and Thomas Wanko have requested that approximately 0.0803 acres of land, legally described as Lot 18 Block 70, Tomball, generally located on the west side of Chestnut Street and the north side of Mechanic Street, 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 Old Town & Mixed Use 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 Single-Family 6 District to the Old Town & Mixed Use 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 Old Town & Mixed Use 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 Old Town & Mixed Use 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 21ST DAY OF MAY 2018.

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

SECOND READING:

READ, PASSED, AND APPROVED AS SET OUT BELOW AT THE MEETING OF THE CITY COUNCIL OF THE CITY OF TOMBALL HELD ON THE 4TH DAY OF JUNE 2018.

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

ATTEST:

Gretchen Fagan, Mayor

Doris Speer, City Secretary

**NOTICE OF PUBLIC HEARING
CITY OF TOMBALL
PLANNING & ZONING COMMISSION (P&Z)
MAY 14, 2018
&
CITY COUNCIL
MAY 21, 2018**



Notice is Hereby Given that a Public Hearing will be held by the P&Z of the City of Tomball on **Monday, May 14, 2018, at 6:00 P.M.**, and by the City Council of the City of Tomball on **Monday, May 21, 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 P18-055: Request by Dorothy and Thomas Wanko to amend Chapter 50 (Zoning) of the Tomball Code of Ordinances by rezoning approximately 0.0803 acres of land legally described as Lot 18 Block 70 Tomball, Harris County, Texas, generally located on the west side of Chestnut Street and the north side of Mechanic Street, from the Single-Family 6 District to the Old Town & Mixed Use District.

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

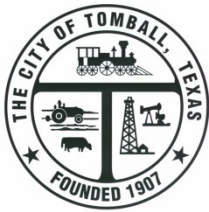
C E R T I F I C A T I O N

I hereby certify that the above notice of meeting was posted on the bulletin board of City Hall; City of Tomball, Texas, a place readily accessible to the general public at all times, on the **10th** day of **May 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.



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: P18-055

APPLICANT/OWNER: Dorothy and Thomas Wanko

LOCATION: Generally located on the west side of Chestnut Street and the north side of Mechanic Street

PROPOSAL: To amend Chapter 50 (Zoning) of the Tomball Code of Ordinances by rezoning approximately 0.0803 acres of land legally described as Lot 18 Block 70 Tomball, Harris County, Texas, from the Single-Family 6 District to the Old Town & Mixed Use District.

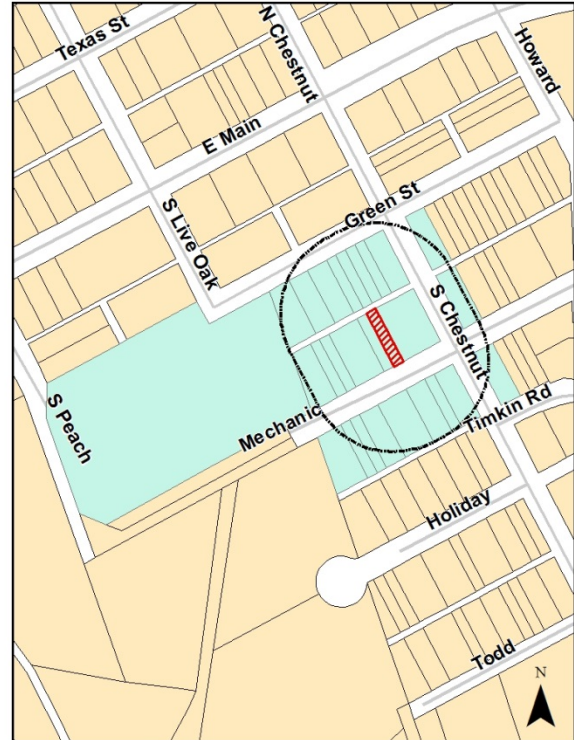
CONTACT: Amelia Lindley, Planner

PHONE: (281) 290-1410

E-MAIL: alindley@tomballtx.gov

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

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



**Planning & Zoning Commission
Public Hearing:
Monday, May 14, 2018, 6:00 PM**

**City Council Public Hearing:
*Monday, May 21, 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.

Amelia Lindley

From: Margie Matthews <diva14angel@gmail.com>
Sent: Sunday, May 13, 2018 7:37 PM
To: Amelia Lindley
Subject: Fwd: Public Comment Form

----- Forwarded message -----

From: **Margie Matthews** <diva14angel@gmail.com>
Date: Sun, May 13, 2018 at 7:03 PM
Subject: Public Comment Form
To: ALindley@tomballtx.gov

Ref: Case # P18-055

I am AGAINST the requested Rezoning as explained on the attached public notice for Zoning Case P18-055.

COMMENTS; We do not want any more business in our neighborhood. Driving up our taxes. When does it stop. None of these business would want us to place a business i their neighborhood and we do not want any more in our neighborhood. We just had a meeting last year changing the name to Single Family 6 District now you want to change it again. How do we go about getting on the books to stop business from building in our neighborhood? Will wait for your e-mail.

Kind regards,
Henry Matthews



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:

TOM CROFOOT

1430 NEAL DR.

TOMBALL 77375

Tom Crofoot

5/03/2018



I am **FOR** the requested Rezoning as explained on the attached public notice for Zoning Case P18-055. (Please state reasons below)



I am **AGAINST** the requested Rezoning as explained on the attached public notice for Zoning Case P18-055. (Please state reasons below)

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

Monday, May 14, 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, May 21, 2018, 6:00 PM

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

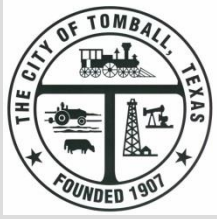
COMMENTS:

I have no issue with this proposed change.

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.



Rezoning Staff Report

Planning & Zoning Commission Public Hearing Date: May 14, 2018

City Council Public Hearing Date: May 21, 2018

Rezoning Case: P18-055
Property Owner(s): Dorothy and Thomas Wanko
Applicant(s): Dorothy and Thomas Wanko
Legal Description: Lot 18 Block 70 Tomball
Location: West side of Chestnut Street and the north side of Mechanic Street (Exhibit "A")
Area: 0.0803 acres
Comp Plan Designation: Mixed Use (Exhibit "B")
Present Zoning and Use: Single-Family 6 District (Exhibit "C") / Undeveloped (Exhibit "D")
Request: Rezone from the Single-Family 6 District to the Old Town & Mixed District

Adjacent Zoning & Land Uses:

North: Old Town & Mixed Use District / Undeveloped

South: Single-Family 6 District / Single family residences

West: Single-Family 6 District / Undeveloped

East: Old Town & Mixed Use District / Undeveloped

BACKGROUND

In July 2016, City Council approved a rezoning request for the applicant's 0.32 acres on the northwest corner of Mechanic Street and Chestnut Street. The applicants met with City Staff in March 2018 to discuss the development of the newly rezoned lot, as well as an adjacent lot that they purchased. City Staff explained that in order for the 0.0803 acre lot to be used as part of a non-residential development, a rezoning would be required.

ANALYSIS

The property immediately abuts the Old Town & Mixed Use District to the north and east and the Single-Family 6 District to the west and south. The proposed rezoning would generally blend with the surrounding zoning districts.

There are different uses in the area. On Chestnut Street, there are multiple auto service companies, a Mobile Food Court and a City Park. On Mechanic Street there are two single-family homes and a distribution company. For adjacent properties zoned Single-Family 6,

Chapter 50 (Zoning) outlines regulations to protect any future residences such as screening and buffering requirements and greater setbacks.

The Comprehensive Plan designates the property as Mixed Use. Properties to the north, east and west are also designated as Mixed Use and properties to the south are High Density Residential. The Mixed Use designation is intended for a mixture of office, retail and commercial, and certain high density residential uses. 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.**

The uses permitted in the Old Town & Mixed Use District appear to be appropriate for the immediate area. The established land uses in the area include single-family residences, mechanic shops, a restaurant and a City Park. The nature of the Old Town & Mixed Use District is a mixture of nonresidential and residential uses integrated together throughout the district.

- 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 an Old Town & Mixed Use District 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 vacant land in the City zoned Old Town & Mixed Use. There does not appear to be any special circumstances which may make a substantial part of any vacant land unavailable for development.

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

There has been steady development in the Old Town & Mixed Use District in the City.

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

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

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

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

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

The Future Land Use Map designates the property as Mixed Use which is intended for “a mix of office, retail/commercial, dense commercial uses, a civic core, and high density residential”. The request appears to be consistent with the Future Land Use Map. The Comprehensive Plan also endorses the continuation of the mixture of uses and specifically states that retail, office, single-family, duplex, and multifamily are the most appropriate uses in this area.

PUBLIC COMMENT

Property owners within 200 feet of the project site were mailed notification of this proposal on April 27, 2018. The Notice of Public Hearing was published in the paper on May 2, 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 P18-055 for the following reasons:

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

EXHIBITS

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

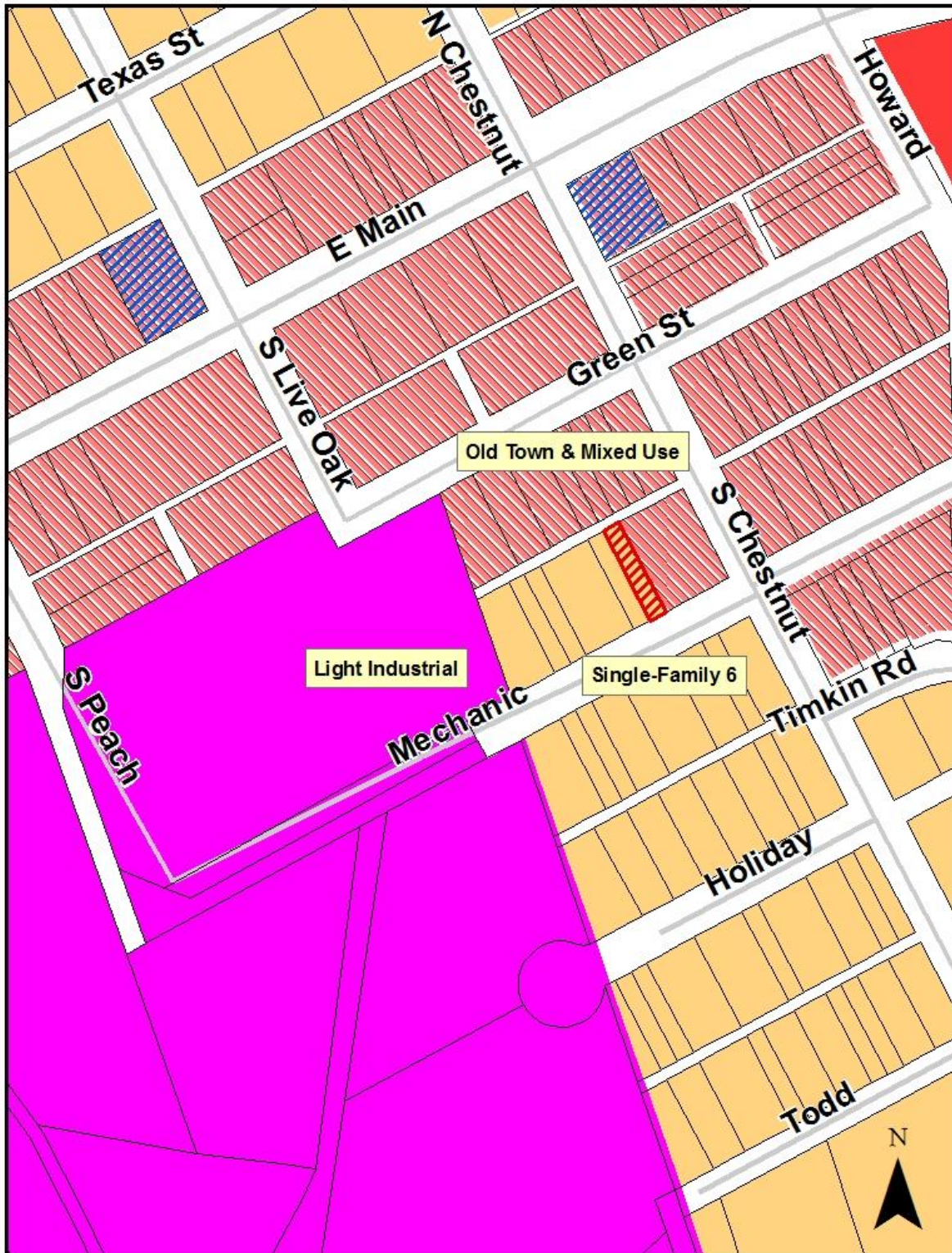
Exhibit "A"
Aerial Photo



Exhibit "B"
Comprehensive Plan



Exhibit "C"
Zoning Map



**Exhibit “D”
Site Photos**



Exhibit "E"
Application

Revised 5/19/15



P18-055

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: Dorothy Wanko Title: _____
Mailing Address: 16303 N Greenfield City: Spring State: TX
Zip: 77379
Phone: (832) 818-3559 Fax: (866) 658-6509 Email: DotW@TEXdotPropertyMgmt.com

Owner

Name: Thomas J. Wanko Title: _____
Mailing Address: 16303 N Greenfield City: Spring State: TX
Zip: 77379
Phone: (713) 408-4893 Fax: (866) 658-6509 Email: Tom@TEXdotPropertyMgmt.com

Engineer/Surveyor (if applicable)

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

Description of Proposed Project: Home Office

Physical Location of Property: Mechanic St.

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

Legal Description of Property: HCAD # 0352730700018 LT 18 BLK 70 TOMBALL

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

Current Zoning District: SF-6

Current Use of Property: Vacant Lot

Proposed Zoning District: Old Town Mixed Use

Proposed Use of Property: Home Office

HCAD Identification Number: 0352730700018 Acreage: 0.0803

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 Dorothy Wanko March 29, 2018
Signature of Applicant Date

X [Signature] 3/29/18
Signature of Owner Date

CITY OF TOMBALL
281-351-5484

REC#: 01023576 4/02/2018 4:11 PM
OPER: LC TERM: 005
REF#: M1195

TRAN: 130.0000 PLANNING AND ZONING
DOROTHY WANKO
MECHANIC STREET
100-5441
REZONING APPLICATIO 410.00CR

TENDERED: 410.00 CHECK
APPLIED: 410.00-

CHANGL: 0.00



March 29, 2018

Dear Tomball Zoning Commission,

Please accept my application to rezone the land located on Mechanic St., near South Chestnut Street. You were kind enough to grant the rezoning of our adjacent property in 2016. Enclosed please find:

1. Completed application form
2. Copy of recorded/final plat from Harris County
3. Check in the amount of \$410

This vacant lot is currently zoned SF 6. I would like to have the land rezoned to OT & MU in order to accommodate a home office for our corporations TEXdot Realtors, Inc. and TEXdot Property Management, Inc. These corporations are separate, but often function hand in hand with the same client.

We are not aware of any issues relating to this request.

Thank you for your consideration.

Sincerely,

A handwritten signature in blue ink that reads "Dorothy J. Wanko, Pres.".

Dorothy J. Wanko, President

Enclosures

16303 N. Greenfield, Spring, TX 77379 * Cell/Text 832-818-3559 * E-Fax 1-866-658-6509
Email: info@TEXdotRealtors.com * Web: www.TEXdotRealtors.com

Regular City Council

Agenda Item

Data Sheet

Meeting Date: May 21, 2018

Topic:

Approve an Amended Development Agreement with LS Development, LLC (Developer of Raleigh Creek Subdivision) for Public Improvement District No. 2 (Raleigh Creek), Containing the Same Terms Provided in Development Agreements for PID 3 and Subsequent City of Tomball PIDs

Background:

It is requested that City Council approve an amended development agreement with LS Development, LLC (the developer of Raleigh Creek Subdivision), PID 2, that contains the same up-to-date terms as contained in development agreements for PID 3 and later PIDs.

The original development agreement for PID 2 was executed in 2007. At that time, the City asked that service plans for PIDs require that they not exceed a ten- (10) year assessment payment term for each property covered by assessments, and the equivalent of a \$0.50 tax rate on annual payments. Those provisions are contained in the original development agreement for PID 2; the agreement also limited the developer to 50% reimbursement of eligible costs.

Development agreements and service plans for PID 3 and other later PIDs have allowed for up to fifteen (15) year payment terms and higher equivalent tax rates to make the residential projects competitive with MUDs located in the City's ETJ. The attached development agreement for PID 2 has been amended to reflect the more recent terms found in subsequent PIDs (up to 15-year payments terms and a higher equivalent tax rate) and the 50% limitation on eligible costs have been removed.

When this agreement was entered into in 2007, Ben Griffin was insistent that PIDs not exceed 10 years. Subsequently in 2012, we did a workshop for City Council during the course of PID 3 beginning and demonstrated that PIDs could have longer payment terms and higher equivalent tax rates and still have a lower combined tax rates than MUDs in the City's ETJ. Since then, PID 3 and later PIDs have been allowed to have 15-year terms and up to a \$0.90 equivalent tax rate.

The old PID 2 development agreement contained the old restrictions, and the amended one brings the agreement in line with PID 3 and subsequent PIDs by allowing a 15-year term and higher equivalent tax rate.

Origination:

Finance

Recommendation:

Adoption of the Amended Development Agreement

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

Glenn Windsor, CPA Finance Director

ACTION TAKEN

Approval	Readings Passed	Other
☐ Yes ☐ No		

ATTACHMENTS:

COT-PID 2 Dev. Agmt. Amended

Council Information- Amended Develop. Agreement

Original PID 2 Agreement

PID Guidelines

AMENDED DEVELOPMENT AGREEMENT

This 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 **LS DEVELOPMENT, 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 2007-22, the City Council of the City of Tomball created the Public Improvement District Number Two (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; and

WHEREAS, the Developer and the City entered into a Development Agreement in 2007 and now wish to amend certain provisions of the 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 capitalized 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 A and 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 B, 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 for the project costs described in Exhibit B subject to the limitations contained in Section 3.03 of this agreement.

3.03 General terms of the Plan. The Plan has been adopted by the City. The Plan includes 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 estimated costs of the Public Improvements as reflected in Exhibit B, 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 \$0.85 tax rate for each property covered by the Plan 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, all costs incurred in connection with obtaining governmental approvals, certificates or permits required as a part of any contracts entered into in accordance with this Agreement, and all related legal fees and out-of-pocket expenses incurred on behalf of the City in connection therewith. Developer Advances shall further include any amounts advanced by the Developer in connection with the administration of the PID and the design and construction of the PID Improvements.

b. Interest on each Developer Advance shall accrue at a seven percent (7%) 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 (1) the amount due the Developer for the Developer Advances being repaid with interest calculated thereon, and (2) that funds are available to make such payment. 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 auditor'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 made after notice of such default has been provided to the Developer in writing 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 PARTIES SHALL INDEMNIFY AND SAVE HARMLESS EACH OTHER AND THEIR 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 SUCH PARTY, 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. Jim Spurlin
LS DEVELOPMENT, LLC
10423 Huffsmith
Tomball, Texas 77375

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 Authority, 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 an assignment to a successor developer of the Land if such assignee specifically assumes all of the obligations of the Developer hereunder or 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 Land 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

By: _____

Name: _____

Title: _____

LS DEVELOPMENT, LLC

Jim Spurlin

Title: _____

EXHIBIT A
LEGAL DESCRIPTION
Job #35093

Description of a 142.770 acre tract of land in the Joseph Miller Survey, Abstract No. 50 in Harris County, Texas, being a portion of a called 153.45 acre tract described in deed recorded in Harris County Clerk's File No. C-817579 being all of a called 7.3765 acre tract described in deed recorded in Harris County Clerk's File No. S-040074, and being all of a called 8.7325 acre tract described in deed recorded in Harris County Clerk's File No. S-040076, and said 142.770 acre tract being more fully described as follows (with bearings referenced to the Southwesterly right-of-way line of the I. & G.N. Railroad right-of-way as South 56° 30' 48" East):

BEGINNING at a ½ inch iron rod set for the Southwest corner of the above referenced 7.3765 acre tract in the North right-of-way line of Zion Road (60 feet wide) and being also the Southeast corner of a called 0.5264 acre tract recorded in Harris County Clerk's File No. V-471789, and from which a found ½ inch iron rod bears North 82° 21' 48" East, 15.33 feet and a found ¾ inch iron pipe bears North 82° 34' 12" East, 15.20 feet;

THENCE North 00° 04' 01" East, along the East line of said 0.5264 acre tract, the East line of a called 2.29 acre tract recorded in Harris County Clerk's File No. R-006483, the East line of a called 1.224 acre tract recorded in Harris County Clerk's File No. R-404456, the East line of a called File No. R-404456, the East line of a called 1.0354 acre tract recorded in Harris County Clerk's File No. S-053503, and the East line of another called 1.0354 acre tract recorded in Harris County Clerk's File No. P-336468, 1777.49 feet to a ½ inch iron rod set for the Northwest corner of the aforementioned 8.7325 acre tract in the South line of the aforementioned called 153.45 acre tract, from which a found ¾ inch iron pipe bears North 15° 01' 09" West, 3.16 feet, and a found ¾ inch iron pipe bears North 28° 46' 23" West, 0.70 feet;

THENCE South 88° 50' 47" West, along the South line of said 153.45 acre tract and the North line of the aforementioned 1.0354 acre tract, 150.09 feet to a 2 inch iron pipe found for its Northwest corner and an angle point in the upper South line of this tract;

THENCE South 88° 48' 41" West, along the South line of said 153.45 acre tract and the North line of a called 3.4015 acre and a called 0.7718 acre tract, both recorded in Harris County Clerk's File No. S-398301, 623.36 feet to a fence corner found for the upper Southwest corner of this tract in the East line of a called 22.8140 acre tract recorded in Harris County Clerk's File No. U-623541;

THENCE North 00° 27' 22" West, along the East line of said 22.8140 acre tract and the East line of a called 68 acre tract recorded in Harris County Clerk's File No. U-139153, 1805.55 feet to a ½ inch iron rod found for the most Westerly Northwest corner of this tract and the Southwest corner of a called 15.6463 acre tract recorded in Harris County Clerk's File No. L-547016, and from which a found ½ inch iron rod bears South 00° 23' 12" East, 84.64 feet, and a found ½ inch iron rod bears North 00° 19' 15" East, 90.25 feet;

THENCE South 89° 56' 50" East, along the South line of said 15.6463 acre tract, passing a one inch iron rod found for its Southeast corner and the Southwest corner of a called 13.476 acre tract recorded in Harris County Clerk's File No. U-002476 at 403.01 feet and continuing for a total distance of 805.79 feet to a ½ inch iron rod found for the Southeast corner of said 13.476 acre tract and an interior corner of this tract;

THENCE North 00° 01' 04" East, along the East line of said 13.476 acre tract, 1263.73 feet to a ½ inch iron rod set for the Northwest corner of this tract in the Southwesterly line of the I. & G. N. Railroad right-of-way as recorded in Volume 140, Page 486 of the Harris County Deed Records, and from which a found 1 inch iron rod bears North 00° 01' 04" East, 59.94 feet;

THENCE South 56° 30' 48" East, along the Southwesterly right-of-way line of said I. & G. N. Railroad, 41.04 feet to a ½ inch iron rod set for an angle point;

THENCE South 89° 24' 47" East, along the Southwesterly right-of-way line of said I. & G. N. Railroad, 92.05 feet to a ½ inch iron rod set for an angle point;

THENCE South 56° 30' 48" East, continuing along the Southwesterly right-of-way line of said I. & G. N. Railroad, 1780.39 feet to a railroad tie fence corner for the Northeast corner of the herein described tract in the West line of a called 44.1 acre tract recorded in Harris County Clerk's File No. U-330857;

THENCE South 01° 39' 12" West, along the West line of said 44.1 acre tract the West line of a called 2.934 acre tract recorded in Harris County Clerk's File No. U-822429, and the West line of a called 2.00 acre tract recorded in Harris County Clerk's File No. U-140795, 2048.02 feet to a fence corner post for the upper Southeast corner of this tract and being a point in the North line of a called 48 acre tract recorded in Volume 915, Page 177 of the Harris County Deed Records;

THENCE North 89° 35' 19" West, along the North line of said 48 acre tract, 1177.80 feet to an axle found for an interior corner of this tract and the Northeast corner of the aforementioned 8.7325 acre tract;

THENCE South 00° 06' 23" West, along the West line of said 48 acre tract and the East line of the aforementioned 8.7325 acre and 7.3765 acre tracts, 1782.90 feet to a ½ inch iron rod set for the Southeast corner of the herein described tract in the North right-of-way line of Zion Road, and from which a found ¾ inch iron rod bears North 47° 50' 10" West, 73.98 feet, and a found ¾ inch iron rod bears South 89° 35' 31" West, 129.16 feet;

THENCE South 89° 38' 14" West, along the North right-of-way line of Zion Road, 391.58 feet to the POINT OF BEGINNING and containing 142.770 acres of land.

This description is based on a ground survey and plat prepared by Marion R. Clark, R.P.L.S. and dated November 28, 2005.



Marion R. Clark
Marion R. Clark
Registered Professional Land Surveyor
Texas Registration No. 1881
November 29, 2005

Exhibit B
The PID Improvements

PUBLIC IMPROVEMENT	ESTIMATED COSTS
Water, sewer, storm sewer, streets, detention including land costs, gas, off-site utility extensions, amenities, engineering, design fees, landscaping, PID creation	\$9,090,494
Financing Costs (15 years)	\$5,880,816
Total Improvements	\$14,971,310
Administration (2.5%)	\$374,283
Total Costs (15 years)	\$15,345,593

**Council Item Information Sheet – Amended Development Agreement for Public Improvement
District Number Two (Raleigh Creek)**

Council Action Requested

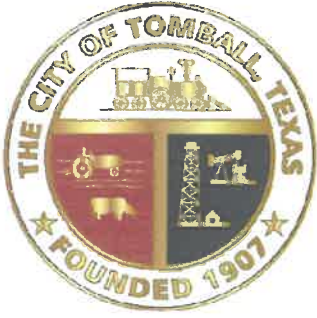
It is requested that City Council approve an amended development agreement with LS Development, LLC (the developer of Raleigh Creek Subdivision) that contains more up to date terms as contained in development agreements for PID 3 and later PIDs.

Background

The original development agreement for PID 2 was executed in 2007. At that time, the City was asking that the service plans for PIDs require that they not exceed a ten (10) year assessment payment term for each property covered by assessments, and the equivalent of a \$0.50 tax rate on annual payments. Those provisions are contained in the original development agreement for PID 2. The agreement also limited the developer to 50% reimbursement of eligible costs.

Development agreements and service plans for PID 3 and other later PIDs have allowed for up to fifteen (15) year payment terms and higher equivalent tax rates to make the residential projects competitive with MUDs located in the City's ETJ.

The attached development agreement for PID 2 has been amended to reflect the more recent terms (up to 15 year payments terms and a high equivalent tax rate) and the 50% limitation on eligible costs have been removed.



City of Tomball

GRETCHEN FAGAN
MAYOR



June 6, 2007

Scott Bean
PID Contract Administrator
Hawes Hill Calderon, LLP
P. O. Box 22167
Houston, TX 77092

RE: Development Agreement - City of Tomball and LS Development

Dear Mr. Bean:

Enclosed is an executed original of the Development Agreement between the City of Tomball and LS Development, LLC, along with copies of the executed Resolutions for Public Utility District Number Two. Mr. Spurlin has his original of the Development Agreement and Resolutions.

If you have any questions or need additional information, please contact me at dspeer@ci.tomball.tx.us or 281-290-1002.

Sincerely,

Doris Speer
City Secretary

Enclosures

DEVELOPMENT AGREEMENT

This Development Agreement (this "*Agreement*") is made as of May 7, 2007, by and between the **CITY OF TOMBALL**, a municipal corporation and a home-rule city in the State of Texas (the "*City*"), and **LS DEVELOPMENT, 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 2007-22, the City Council of the City of Tomball created the Public Improvement District Number Two (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 wishes to finance and construct certain PID projects; and

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

AGREEMENT

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

ARTICLE 1 GENERAL TERMS

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

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

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

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

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

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

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

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

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

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

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

ARTICLE 2 REPRESENTATIONS

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

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

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

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

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

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

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

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

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

ARTICLE 3 THE PLAN AND PID IMPROVEMENTS

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

3.02 PID Improvements description. The PID Improvements consist of acquisition, construction and development of the public improvements within the portion of the PID comprising the Project, as more fully described in Exhibit C, and as described in the Plan. The PID Improvements will be developed pursuant to a schedule consistent with the pace of development of the Project that is mutually agreeable to the Parties. The PID Improvements shall include all engineering, legal and other consultant fees and expenses related to such PID Improvements. The Developer shall be entitled to reimbursement of up to 50% of the project costs described in Exhibit C subject to the limitations contained in Section 3.03 of this agreement.

3.03 General terms of the Plan. The Plan has not yet been adopted by the City. The Parties anticipate that the Plan, at a minimum, will include the PID Improvements described above to serve the land within the PID, and such other facilities as may be agreed upon by the Parties, and that the Assessments shall be assessed in phases to affect only the portions of the PID directly benefited by the PID improvements to be financed by each Assessment. The Assessments shall be based upon the agreed-upon percentage of estimated costs of the Public Improvements as reflected in Exhibit C, plus those related costs as deemed reimbursable by the City; however, the Assessments in the Plan shall be formulated in a manner that generally

conforms to the equivalent of a \$0.50 tax rate for each property covered by the Plan and a maximum ten (10) 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 seven percent (7%) 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 (1) the amount due the Developer for the Developer Advances being repaid with interest calculated thereon, and (2) that funds are available to make such payment. 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 auditor'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. Jim Spurlin
LS DEVELOPMENT, LLC
10423 Huffsmith
Tomball, Texas 77375

Each party may change its address by written notice in accordance with this section. Any communication addressed and mailed in accordance with this section shall be deemed to be given when so mailed, any notice so sent by electronic or facsimile transmission shall be deemed to be given when receipt of such transmission is acknowledged, and any communication so delivered in person shall be deemed to be given when receipted for by, or actually received by the City, or the Developer, as the case may be.

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

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

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

Developer shall be deemed released from such obligations. If any assignment of the obligations by the Developer hereunder is deemed ineffective or invalid, the Developer shall remain liable hereunder.

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

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

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

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

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

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

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

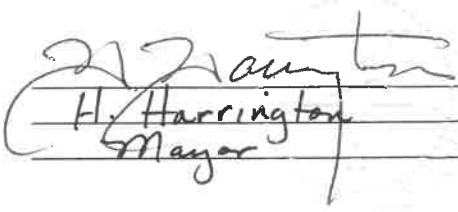
7.15 Legal costs. If any Party hereto is the prevailing party in any legal proceedings against another Party brought under or with relation to this Agreement, such prevailing Party shall additionally be entitled to recover court costs and reasonable attorneys' fees from the non-prevailing Party to such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

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

[EXECUTION PAGE FOLLOWS]

IN WITNESS WHEREOF, the parties hereto have caused this instrument to be duly executed as of May 31, 2007.

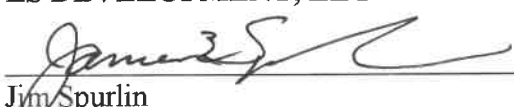
CITY OF TOMBALL, TEXAS

By: 

Name: H. Harrington

Title: Mayor

LS DEVELOPMENT, LLC


Jim Spurlin

Title: Owner

EXHIBIT A

LEGAL DESCRIPTION

Job #35093

Description of a 142.770 acre tract of land in the Joseph Miller Survey, Abstract No. 50 in Harris County, Texas, being a portion of a called 153.45 acre tract described in deed recorded in Harris County Clerk's File No. C-817579 being all of a called 7.3765 acre tract described in deed recorded in Harris County Clerk's File No. S-040074, and being all of a called 8.7325 acre tract described in deed recorded in Harris County Clerk's File No. S-040076, and said 142.770 acre tract being more fully described as follows (with bearings referenced to the Southwesterly right-of-way line of the I. & G.N. Railroad right-of-way as South 56° 30' 48" East):

BEGINNING at a ½ inch iron rod set for the Southwest corner of the above referenced 7.3765 acre tract in the North right-of-way line of Zion Road (60 feet wide) and being also the Southeast corner of a called 0.5264 acre tract recorded in Harris County Clerk's File No. V-471789, and from which a found ½ inch iron rod bears North 82° 21' 48" East, 15.33 feet and a found ¾ inch iron pipe bears North 82° 34' 12" East, 15.20 feet;

THENCE North 00° 04' 01" East, along the East line of said 0.5264 acre tract, the East line of a called 2.29 acre tract recorded in Harris County Clerk's File No. R-006483, the East line of a called 1.224 acre tract recorded in Harris County Clerk's File No. R-404456, the East line of a called File No. R-404456, the East line of a called 1.0354 acre tract recorded in Harris County Clerk's File No. S-053503, and the East line of another called 1.0354 acre tract recorded in Harris County Clerk's File No. P-336468, 1777.49 feet to a ½ inch iron rod set for the Northwest corner of the aforementioned 8.7325 acre tract in the South line of the aforementioned called 153.45 acre tract, from which a found ¾ inch iron pipe bears North 15° 01' 09" West, 3.16 feet, and a found ¾ inch iron pipe bears North 28° 46' 23" West, 0.70 feet;

THENCE South 88° 50' 47" West, along the South line of said 153.45 acre tract and the North line of the aforementioned 1.0354 acre tract, 150.09 feet to a 2 inch iron pipe found for its Northwest corner and an angle point in the upper South line of this tract;

THENCE South 88° 48' 41" West, along the South line of said 153.45 acre tract and the North line of a called 3.4015 acre and a called 0.7718 acre tract, both recorded in Harris County Clerk's File No. S-398301, 623.36 feet to a fence corner found for the upper Southwest corner of this tract in the East line of a called 22.8140 acre tract recorded in Harris County Clerk's File No. U-623541;

THENCE North 00° 27' 22" West, along the East line of said 22.8140 acre tract and the East line of a called 68 acre tract recorded in Harris County Clerk's File No. U-139153, 1805.55 feet to a ½ inch iron rod found for the most Westerly Northwest corner of this tract and the Southwest corner of a called 15.6463 acre tract recorded in Harris County Clerk's File No. L-547016, and from which a found ½ inch iron rod bears South 00° 23' 12" East, 84.64 feet, and a found ½ inch iron rod bears North 00° 19' 15" East, 90.25 feet;

THENCE South 89° 56' 50" East, along the South line of said 15.6463 acre tract, passing a one inch iron rod found for its Southeast corner and the Southwest corner of a called 13.476 acre tract recorded in Harris County Clerk's File No. U-002476 at 403.01 feet and continuing for a total distance of 805.79 feet to a ½ inch iron rod found for the Southeast corner of said 13.476 acre tract and an interior corner of this tract;

THENCE North 00° 01' 04" East, along the East line of said 13.476 acre tract, 1263.73 feet to a ½ inch iron rod set for the Northwest corner of this tract in the Southwesterly line of the I. & G. N. Railroad right-of-way as recorded in Volume 140, Page 486 of the Harris County Deed Records, and from which a found 1 inch iron rod bears North 00° 01' 04" East, 59.94 feet;

THENCE South 56° 30' 48" East, along the Southwesterly right-of-way line of said I. & G. N. Railroad, 41.04 feet to a ½ inch iron rod set for an angle point;

THENCE South 89° 24' 47" East, along the Southwesterly right-of-way line of said I. & G. N. Railroad, 92.05 feet to a ½ inch iron rod set for an angle point;

THENCE South 56° 30' 48" East, continuing along the Southwesterly right-of-way line of said I. & G. N. Railroad, 1780.39 feet to a railroad tie fence corner for the Northeast corner of the herein described tract in the West line of a called 44.1 acre tract recorded in Harris County Clerk's File No. U-330857;

THENCE South 01° 39' 12" West, along the West line of said 44.1 acre tract the West line of a called 2.934 acre tract recorded in Harris County Clerk's File No. U-822429, and the West line of a called 2.00 acre tract recorded in Harris County Clerk's File No. U-140795, 2048.02 feet to a fence corner post for the upper Southeast corner of this tract and being a point in the North line of a called 48 acre tract recorded in Volume 915, Page 177 of the Harris County Deed Records;

THENCE North 89° 35' 18" West, along the North line of said 48 acre tract, 1177.80 feet to an axle found for an interior corner of this tract and the Northeast corner of the aforementioned 8.7325 acre tract;

THENCE South 00° 06' 23" West, along the West line of said 48 acre tract and the East line of the aforementioned 8.7325 acre and 7.3765 acre tracts, 1782.90 feet to a ½ inch iron rod set for the Southeast corner of the herein described tract in the North right-of-way line of Zion Road, and from which a found ¾ inch iron rod bears North 47° 50' 10" West, 73.98 feet, and a found ¾ inch iron rod bears South 89° 35' 31" West, 129.16 feet;

THENCE South 89° 38' 14" West, along the North right-of-way line of Zion Road, 391.58 feet to the POINT OF BEGINNING and containing 142.770 acres of land.

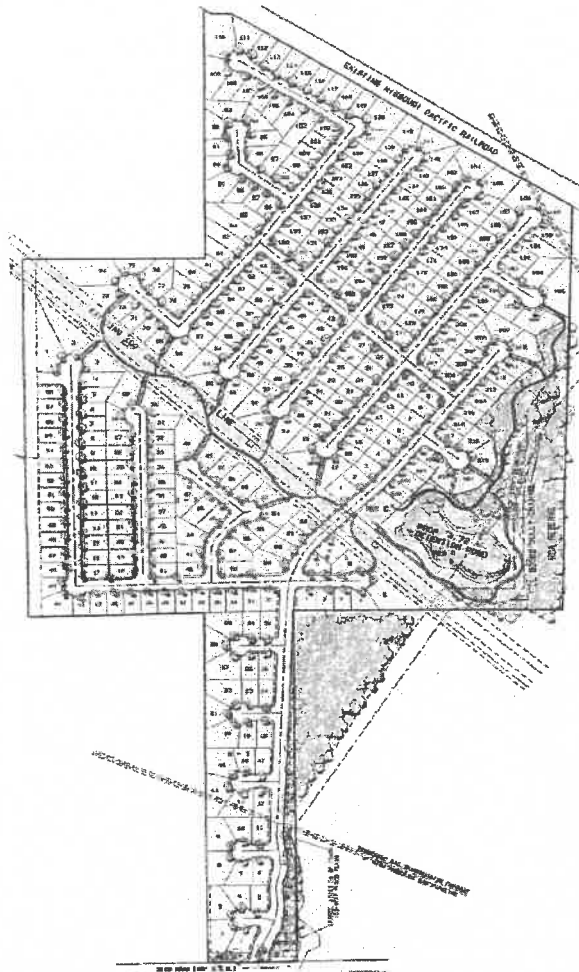
This description is based on a ground survey and plat prepared by Marion R. Clark, R.P.L.S. and dated November 28, 2005.



Marion R. Clark
Registered Professional Land Surveyor
Texas Registration No. 1881
November 29, 2005

EXHIBIT B

Description of Residential Development



Master Plan

Scale 1" = 200'



Entry Elevation

Scale 1/2" = 1' - 0"

RALEIGH CREEK

I-S Development



Town Center Landscape Inc.
Landscape Architecture
P.O. Box 1000
Tomball, TX 77357
Phone: 281.291.1000
Fax: 281.291.1001
www.towncenterlandscape.com

EXHIBIT C

The PID Improvements

Project	Estimated Cost
Water Lines	\$480,000
Sanitary Sewer	\$750,000
Storm Sewer & Drainage	\$2,100,000
Storm Water Detention	\$375,000
Street Paving and Sidewalks	\$3,080,000
Engineering & Contingencies (15%)	\$1,017,759
TOTAL	\$7,802,750

CITY OF TOMBALL
DEVELOPMENT POLICY
SPECIAL FINANCING DISTRICTS

The City of Tomball has established this policy as a guideline to those developer seeking incentives from the City for development projects utilizing tax increment financing (TIF/TIRZ) and/or public improvement districts (PID). This policy is not intended to address all aspects of development costs. Those costs not specifically addressed in this policy will be considered on an individual project basis.

Limitation on Size of Development

1. To receive consideration by and approval from the City for PID financing to facilitate a residential development, the proposed boundaries of the development shall be no less than 125 acres. If the proposed boundaries of the development are less than 125 acres, the average value of homes built in the district shall be no less than \$225,000. This home value will be adjusted each year by the Consumer Price Index (CPI) to convert the \$225K benchmark value to current year prices.
2. To receive consideration by and approval from the City for TIF financing to facilitate a mixed-use development, the proposed boundaries of the commercial component of the development shall be no less than 45% of the total acreage. If the commercial component is less than 45% of the total acreage, the City will consider granting approval of TIF financing if:
 - a. There is no issuance of debt in the tax increment zone
 - b. The development facilitates the completion of projects outlined in the City's Capital Improvement Plan for transportation, drainage, water, wastewater, and parks improvements.
 - c. The project facilitates the economic development desires of City Council.
3. Tax increment financing will not be extended to new residential development.

Limitation on PID Assessment

The annual assessment to property owners within the district shall be no more than the equivalent of a \$.50 tax rate on the assessed value of their property.

Limitation on Assessment Term

The maximum term of a PID assessment is not to exceed 10 years. The date the first assessment installment becomes due is either 3 years from the date of the levy or the date that the real property is transferred to the home buyer; whichever occurs first.

Zone/District Administration

The City of Tomball will contract with an outside consultant to administer the zone and to bill, collect, and track district assessments. This cost will be considered a reimbursable project cost and should be included in the zone/district Project Plan.

Limitation on Developer Interest

Developer earned interest will be reimbursed at an amount not to exceed the net effective interest rate on bonds sold or 8% whichever is less. If zone/district bonds are not sold, reimbursement will be calculated at 50 basis points over the average interest reported by the Bond Buyer in its "20 Bond Index" for general obligation bonds during the interest accrual period or 8% whichever is less.

Bidding of Project Improvements

Developers will be required to follow municipal bidding procedures on all project improvements as outlined in Chapter 252 of the Texas Local Government Code. Bid tabulations and a recommendation for award of contracts will be brought before City Council for approval. This process will be required of both TIRZ's and PID's.

Regular City Council

Agenda Item

Data Sheet

Meeting Date: May 21, 2018

Topic:

Approve Change Order No. 1 for City of Tomball Broussard Community Park Improvements, E&P Project No. 2017-10031, to Diffco, LLC, in the Amount of \$91,138.58

Background:

On March 19, 2018 City Council awarded a contract to Diffco, LLC for the construction of improvements to Broussard Community Park. This project included construction of the drive entrance to the park, access road, parking lots, grading of soccer fields, site grading for drainage, fishing pond grading and other items for the development of the park.

The site conditions encountered once the contract commenced has revealed extremely poor soil conditions that require a modification of the specifications of the soil preparation and processing. This change in the specification requires the removal of approximately 4 feet of soil and replacing it with suitable soil stabilized with fly ash for the first 2 feet. A geo-textile fabric will be installed to further stabilize before the addition of the additional 2 feet of suitable soil. Additionally, underneath all of the paved areas will be 6" lime stabilization.

In an effort to reduce the costs of this needed change order, Gunda Corp and city staff reviewed the contract and either eliminated bid items or reduced the quantities of certain line items. Sod quantities are recommended to be limited to only the soccer fields and drainage swale areas. Other bid items are incorporated into the new proposed added construction items, reducing the additional costs. Costs are also reduced by utilizing the acceptable excavated soil material from the M121 Theis Lane box culvert crossing project.

All necessary changes listed in the change order would increase the current contract price by \$91,138.58 in order to address the poor soil conditions subgrade stabilization at the paved areas.

Origination:

Public Works Department

Recommendation:

Staff recommends approval of Change Order No. 1 for the poor soil conditions subgrade stabilization at the paved areas in the amount of \$91,138.58

Funding:

Yes

Account Number:400-153-6409

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

David Esquivel

ACTION TAKEN

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

ATTACHMENTS:

Signed CO1

Grading, sod and Hdyroseed exhibit

Change order sketch

Diffco change order request

Document 00941

CHANGE ORDER / C.O. No. 1

PROJECT: Broussard Community Park Improvements
CONTRACT No.: 2018-01 PROJECT No.: 2017-10031

TO: DIFFCO, LLC
PO Box 178, Cypress, Tx 77410

REFERENCE RFIs/RFPs: Option 3A Subgrade stabilization for work Poor Soil Conditions at Paving Area

1.01 DESCRIPTION OF CHANGES

			CONTRACT CHANGE	
			AMOUNT	TIME
ITEM 47 (NEW):	Parking Lot & Entrance Road Excavation – Additional 2'Depth Cut below Pavement Excavation (Contractor to coordinate Removal of Excavation Materials from Site with City), 2' each side of Pavement; 3,540 CY cut at \$5.34 Unit Cost		\$18,903.60	45 Days
Main Driveway STA 1+60 to 6+76 Subgrade	1,070	CY	\$ 5.34	\$ 5,713.80
East Parking Lot A Subgrade	1,250	CY	\$ 5.34	\$ 6,675.00
Central Parking Lot B Subgrade	600	CY	\$ 5.34	\$ 3,204.00
West Parking Lot C Subgrade	620	CY	\$ 5.34	\$ 3,310.80
Totals	3,540	CY	\$ 5.34	\$ 18,903.60

JUSTIFICATION: Replaces materials field determined to be unsuitable for subgrade - used as needed

ITEM 48 (NEW):	Parking Lot and Entrance Road Stabilization Subgrade Prep (8% Fly Ash) - 2' Depth, 2' outside each side of Pavement; 5,300 SY Addition at \$6.68 Unit cost (4 X 6" bid item 9 depth)		\$35,404.00	0 Days
Main Driveway STA 1+60 to 6+76 Subgrade	1,605	SY	\$ 6.68	\$ 10,721.40
East Parking Lot A Subgrade	1,870	SY	\$ 6.68	\$ 12,491.60
Central Parking Lot B Subgrade	900	SY	\$ 6.68	\$ 6,012.00
West Parking Lot C Subgrade	925	SY	\$ 6.68	\$ 6,179.00
Totals	5,300	SY	\$ 6.68	\$ 35,404.00

JUSTIFICATION: Replaces materials field determined to be unsuitable for subgrade - used as needed

ITEM 11 Additional Bid Item 11, Fly Ash @ 8% \$57,946.50 0 Days
Addition: increased 328 Tons; Quantified as an Additional 425 Tons for volume in 2' subgrade depth and decrease of 97 Tons for volume in 6" subgrade depth removed, at \$177.75 Unit Cost

Additional Fly Ash @ 8%

Main Driveway STA 1+60 to 6+76 Subgrade	130	Ton	\$ 177.75	\$ 23,107.50
East Parking Lot A Subgrade	150	Ton	\$ 177.75	\$ 26,662.50
Central Parking Lot B Subgrade	70	Ton	\$ 177.75	\$ 12,442.50
West Parking Lot C Subgrade	75	Ton	\$ 177.75	\$ 12,975.75
Fly Ash Removed from 6" subgrade				
Main Driveway STA 1+60 to 6+76 Subgrade	(28)	Ton	\$ 177.75	\$ (4,977.00)
East Parking Lot A Subgrade	(35)	Ton	\$ 177.75	\$ (6,221.25)
Central Parking Lot B Subgrade	(17)	Ton	\$ 177.75	\$ (3,021.75)
West Parking Lot C Subgrade	(17)	Ton	\$ 177.75	\$ (3,021.75)
Totals	328	Ton	\$ 177.75	\$ 57,946.50

JUSTIFICATION: Replaces materials field determined to be unsuitable for subgrade - used as needed

ITEM 49 NEW: Parking Lot and Entrance Road Geo-textile between select fill and 2' fly ash subgrade, complete in place; 5,300 SY at \$5.65 per SY Unit cost \$29,945.00 0 Days

Main Driveway STA 1+60 to 6+76 Subgrade	1,605	SY	\$ 5.65	\$ 9,068.25
East Parking Lot A Subgrade	1,870	SY	\$ 5.65	\$ 10,565.50
Central Parking Lot B Subgrade	900	SY	\$ 5.65	\$ 5,085.00
West Parking Lot C Subgrade	925	SY	\$ 5.65	\$ 5,226.25
Totals	5,300	SY	\$ 5.65	\$ 29,945.00

JUSTIFICATION: Replaces materials field determined to be unsuitable for subgrade - used as needed

ITEM 50 NEW: Parking Lot and Entrance Road Select Fill Borrow, Complete in Place - Place 2' of Select Fill 4' outside of Pavement (City to provide Fill Materials to Site; Contractor to coordinate delivery); 3,540 CY Addition at \$5.34 Unit Cost \$18,903.60 0 Days

Main Driveway STA 1+60 to 6+76 Subgrade	1,070	CY	\$ 5.34	\$ 5,713.80
East Parking Lot A Subgrade	1,250	CY	\$ 5.34	\$ 6,675.00
Central Parking Lot B Subgrade	600	CY	\$ 5.34	\$ 3,204.00
West Parking Lot C Subgrade	620	CY	\$ 5.34	\$ 3,310.80
Totals	3,540	CY	\$ 5.34	\$ 18,903.60

JUSTIFICATION: Replaces materials field determined to be unsuitable for subgrade - used as needed

ITEM 6	Bid Item 6 Reduction, Solid Sodding for Site,	(\$50,788.40)	0 Days
Reduction:	Complete in Place; Areas limited to Soccer Fields and Drainage Swales; 19,534 SY Reduction at \$2.60 Unit Cost		
JUSTIFICATION:	Quantity Reduced from 38,950 to 19,416 SY		
ITEM 7	Bid Item 46 Reduction, Extra Hydro-Mulch, 2.4	(\$6,086.40)	0 Days
Reduction:	Acre Reduction at \$2,536.00 Unit Cost		
JUSTIFICATION:	Quantity Correction from 8.1 to 5.7 Acres		
E.1 Alternate A	E.1 Alternate A. East Parking Lot Bid Item 2	(\$2,957.57)	0 Days
ITEM 2 Delete:	Reduction, 6-Inch Lime-Fly Ash Stabilized Subgrade Preparation, Including Proof Rolling, Mixing, and Compaction to 95% per ASTM D698, Complete in Place - 1771 SY Reduction at \$1.67 Unit Cost		
JUSTIFICATION:	Stabilized Subgrade Preparation duplicated by bid item 9		
E.1 Alternate A	E.1 Alternate A. East Parking Lot Bid Item 3	(\$6,754.50)	0 Days
ITEM 3 Delete:	Reduction, Lime (8%), Complete in Place – 38 Ton Reduction at \$177.75 Unit Cost		
JUSTIFICATION:	Stabilized Subgrade Preparation duplicated by bid item 10		
E.1 Alternate A	E.1 Alternate A. East Parking Lot Bid Item 4	(\$3,377.25)	0 Days
ITEM 4 Delete:	Reduction, Fly Ash (4%), Complete in Place – 19 Ton Reduction at \$177.75 Unit Cost		
JUSTIFICATION:	Stabilized Subgrade Preparation duplicated by bid item 11		
TOTALS:		\$91,138.58	45 Days

Field Directions:

1. Contractor is reminded that Parking Lot use of above stabilization items 1-5 is to be field determined by construction materials testing by GET and approved by the designated City Representative. See Additional Subgrade Option 3A - Cross Section Exhibit.
2. For planning purposes, a lime content of 4% (dry weight basis) will be used for the 6" subgrade stabilization directly under pavement. Actual stabilization requirements should be determined in the laboratory by trial.
3. For planning purposes, fly-ash content of 8% (dry weight basis) will be used for the bottom 2' subgrade stabilization. Actual stabilization requirements should be determined in the laboratory by trial.
4. The 6" subgrade stabilization directly under pavement is 6-inches outside the pavement for a 25' total width.
5. The 2' Depth Fly Ash subgrade stabilization below the Select fill is 2 feet outside pavement for a 28' total width.
6. TerraTex HPG-57 by Hanes Geo Components is acceptable as an equivalent to Mirafi geo-textile.
7. See Sod and Hydromulch Areas Exhibit for Item 6 & 7 Quantities, Limits & Locations.

1.02 ACCEPTANCE BY CONTRACTOR

Contractor agrees to perform change(s) included in this Change Order for the price and time indicated. The prices for changes include all costs associated with this Change Order.

James Schuery PM
Contractor Signature and Title

5-17-18
Date

1.03 ACCEPTANCE BY THE CITY

Project Manager _____ Date _____

David Castellano 5-17-18
[Intermediate Authority, if needed] Date
Consultant - Gunda Corp

[City Manager – Required for COs to Council] _____ Date _____

[Mayor – Required for COs to Council] _____ Date _____

[Intermediate Authority, if needed] _____ Date _____

Director/City Engineer - Lori Lakatos _____ Date _____

END OF DOCUMENT

cc: Kyle A. Bertrand, P.E. – Gunda Corporation

EXECUTIVE SUMMARY

C.O. No. 1 Contract No.: 2018-01 Proj. No.: 2017-10031

1.01	CONTRACT PRICE SUMMARY	DOLLAR AMOUNT	PERCENT
A.	Original Contract Price	\$853,616.52	100.00%
B.	Previous Change Orders	\$0.00	0.00%
C.	This Change Order	\$91,138.58	10.68%
D.	Contract Price	\$944,755.10	110.68%

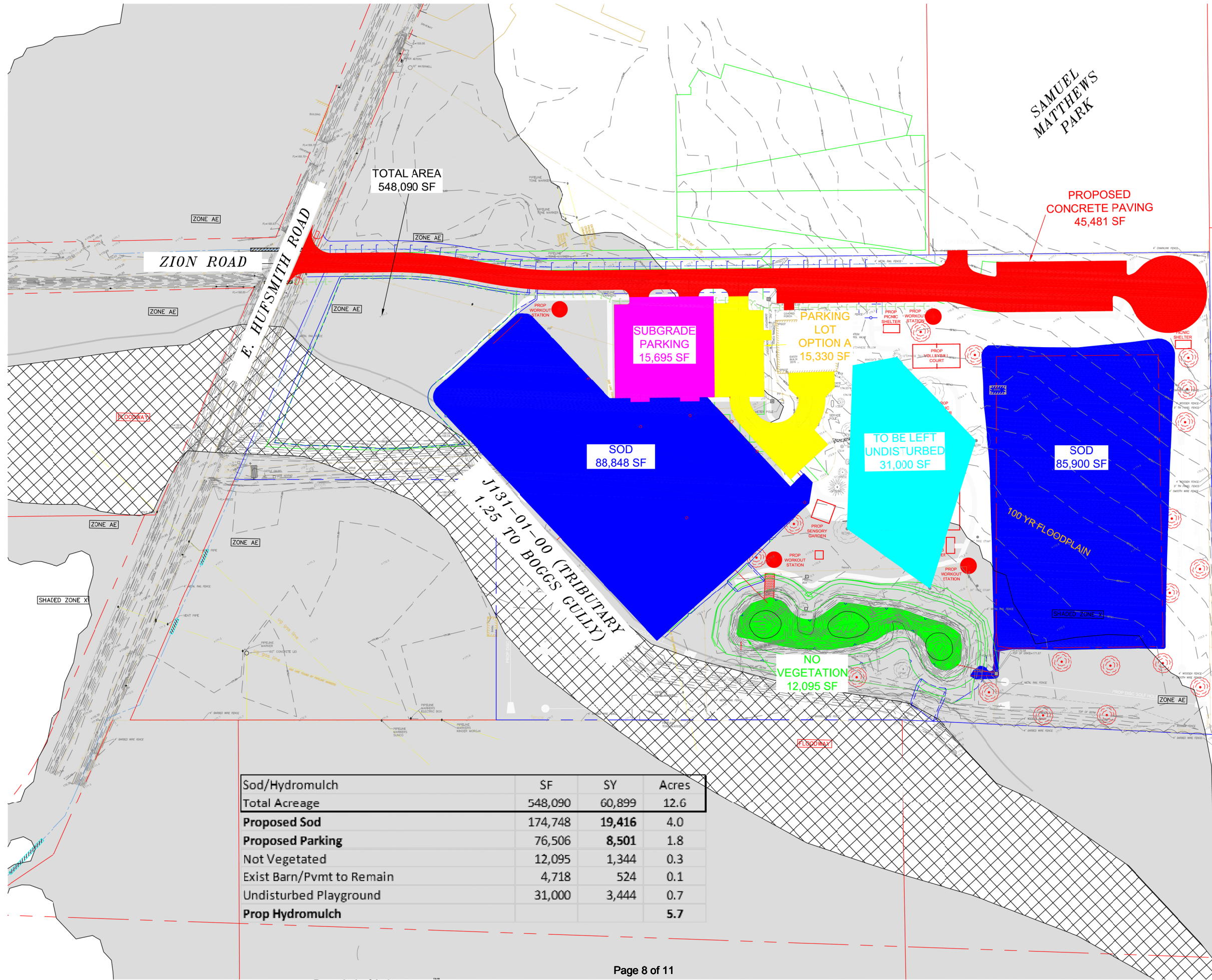
Date of Commencement of the Work: Wednesday, March 21, 2018

1.02	CONTRACT TIME SUMMARY	DURATION	COMPLETION DATE
A.	Original Contract Time	120 Days	Wednesday, July 18, 2018
B.	Previous Change Orders	0 Days	Wednesday, July 18, 2018
C.	Approved Rain Delays	15 Days	
D.	This Change Order	45 Days	
E.	Contract Time	180 Days	Sunday, September 16, 2018

- 1.03 TOTAL VALUE OF INCREASES OUTSIDE OF GENERAL SCOPE OF WORK
 A. Including this Change Order, the following table is provided to track conditions related to Paragraph 7.1.2.3 of Document 00700 - General Conditions.

CHANGE ORDER No.	AMOUNT ADDED	PERCENT OF ORIGINAL CONTRACT PRICE
1	\$91,138.58	10.68%
TOTALS	\$91,138.58	10.68%

END OF SUMMARY



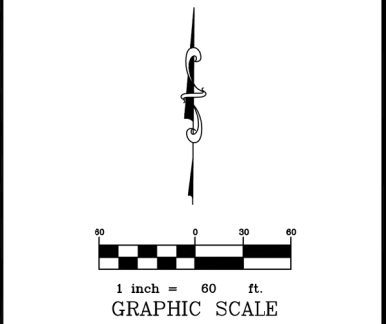
Sod/Hydromulch	SF	SY	Acres
Total Acreage	548,090	60,899	12.6
Proposed Sod	174,748	19,416	4.0
Proposed Parking	76,506	8,501	1.8
Not Vegetated	12,095	1,344	0.3
Exist Barn/Pvmt to Remain	4,718	524	0.1
Undisturbed Playground	31,000	3,444	0.7
Prop Hydromulch			5.7



VICINITY MAP
SCALE: 1" = 1/2 MILE

BENCHMARKS:

TSARP RM No. 100380 Elevation = 172.89' (NAVD88 2001 adj.)
Brass cap stamped "RM 100380" set in south end of headwall along the east side of Huffsmith road, approximately 220 feet south of Zion Road.



No.	Date	Revisions	App.

QUALITY CONTROL	APPROVED
DATE	DATE



TO ARRANGE FOR LINES TO BE TURNED OFF OR MOVED, CALL CENTERPOINT AT 713.207.2222
NOTICE:
For your safety, you are required by Texas Law to call 811 at least 48 hours before you dig so that underground lines can be marked. This verification does not fulfill your obligation to call 811.

VERIFICATION OF PRIVATE UTILITY LINES

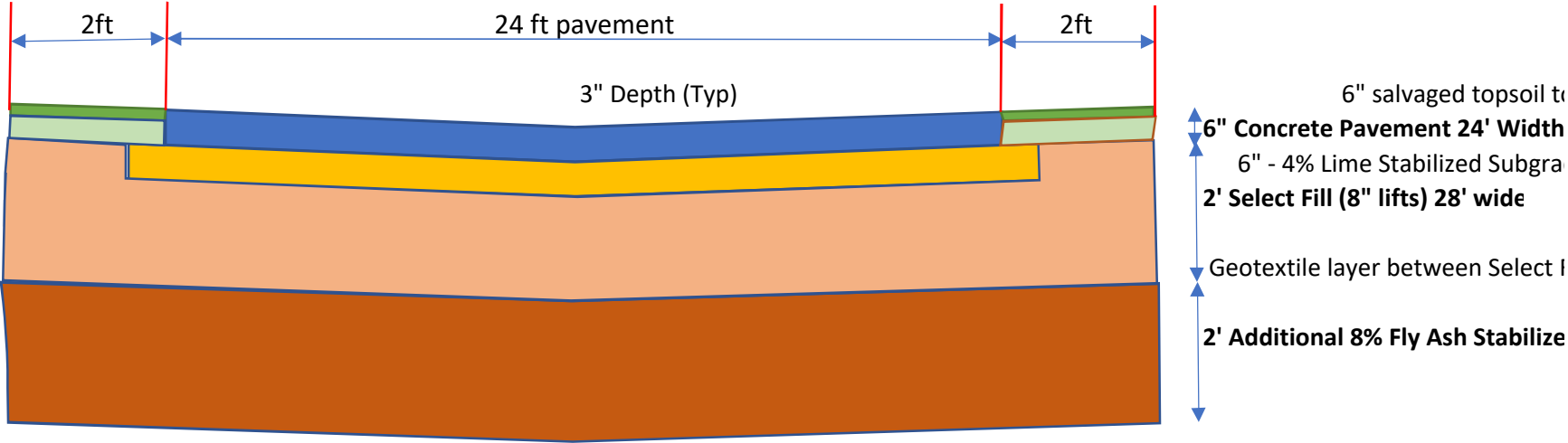


CITY OF TOMBALL
BROUSSARD COMMUNITY PARK
SOD AND
HYDROMULCH
AREAS EXHIBIT

HORZ: 1"=60'	
VERT:	
SHEET No:	

City of Tomball - Broussard Community Park Improvements

Additional Subgrade Option 3A - Cross Section Exhibit



o be hydromulched

de under Pavement 25' Width

Fill & 2' Fly Ash Stabilization

ed Subgrade 28'ft wide

Date: 5/16/2018

To: **Gunda Corporation**

Attention: **David Castellano**
Via E-mail: dcastellano@gundacorp.com

Project: **City of Tomball Broussard Community Park**
DIFFCO Job No.:

Subject: **Request for Change Order No.: 1**

RCO Description: **Option 3A Poor Soil Conditions at Paving Area (STA 1+60 to STA 6+76)**

The proposed cost break down is as follows:

Phase	Item No.	Description	Quantity	UM	Unit	Total
	47	Main Driveway STA 1+60 to 6+76 Subgrade	1070	CY	5.34	5,713.80
	47	East Parking Lot A Subgrade	1250	CY	5.34	6,675.00
	47	Central Parking Lot B Subgrade	600	CY	5.34	3,204.00
	47	West Parking Lot	620	CY	5.34	3,310.80
	47	Total	3540	CY	5.34	18,903.60
	48	Main Driveway STA 1+60 to 6+76 Subgrade	1605	SY	\$6.68	\$10,721.40
	48	East Parking Lot A Subgrade	1870	SY	\$6.68	\$12,491.60
	48	Central Parking Lot B Subgrade	900	SY	\$6.68	\$6,012.00
	48	West Parking Lot	925	SY	\$6.68	\$6,179.00
	48	Total	5300	SY	\$6.68	\$35,404.00
	49	Main Driveway STA 1+60 to 6+76 Subgrade	1605	SY	\$5.65	\$9,068.25
	49	East Parking Lot A Subgrade	1870	SY	\$5.65	\$10,565.50
	49	Central Parking Lot B Subgrade	900	SY	\$5.65	\$5,085.00
	49	West Parking Lot	925	SY	\$5.65	\$5,226.25
	49	Total	5300	SY	\$5.65	\$29,945.00
	50	Main Driveway STA 1+60 to 6+76 Subgrade	1070	SY	\$5.34	\$5,713.80
	50	East Parking Lot A Subgrade	1250	SY	\$5.34	\$6,675.00
	50	Central Parking Lot B Subgrade	600	SY	\$5.34	\$3,204.00
	50	West Parking Lot	620	SY	\$5.34	\$3,310.80
	50	Total	3540	SY	\$5.34	\$18,903.60
	11	Additional Flyash @ 8%				
	11	Main Driveway STA 1+60 to 6+76 Subgrade	130	Ton	\$177.75	\$23,107.50
	11	East Parking Lot A Subgrade	150	Ton	\$177.75	\$26,662.50
	11	Central Parking Lot B Subgrade	70	Ton	\$177.75	\$12,442.50
	11	West Parking Lot	75	Ton	\$177.75	\$12,975.75
	11	Flyash Removed from 6" Subgrade				
	11	Main Driveway STA 1+60 to 6+76 Subgrade	-28	Ton	\$177.75	-\$4,977.00
	11	East Parking Lot A Subgrade	-35	Ton	\$177.75	-\$6,221.25
	11	Central Parking Lot B Subgrade	-17	Ton	\$177.75	-\$3,021.75
	11	West Parking Lot	-17	Ton	\$177.75	-\$3,021.75
	11	Total	328	Ton	\$177.75	\$57,946.50
	6	Bid Item 6 Reduction, Solid Sod fo Site	-19534	SY	\$2.60	-\$50,788.40
	7	Bid Item 46 Reduction Hydro Mulch	-2.4	Acre	\$2,536.00	-\$6,086.40
	E.1 Alt. A Item 2 delete	E.1 Alternate A East Parking Lot Bid Item 2 Reduction	-1771	SY	\$1.67	-\$2,957.57
	E.1 Alt. A Item 3 delete	E.1 Alternate A East Parking Lot Bid Item 3 Reduction	-38	Ton	177.75	-6,754.50
	E.1 Alt. A Item 4 delete	E.1 Alternate A East Parking Lot Bid Item 4 Reduction	-19	Ton	177.75	-3,377.25
		TOTAL				91,138.58

Notes:

Diffco would request additional 30 days to complete changes outlined in this RFI. In additionplease include additional delay wok stoppage days from notification date of 4/12 in this change order. Which amount to 80 days from 4/12 to RFI 1 work starting back up.

Pricing includes TerraTex HPG-57 by Hanes Geo Components to be utilized as geo-textile.

Select backfill will be provided by others.

If wet site conditions are seasonal Diffco will request rain days when site conditions are not workable.

All areas will be proof rolled prior to paving.

Item 6 Flyash removal will only be attainable if select fill is provided to backfill. If no select fill is avaiable then stabilization will be required

Please issue a Change Order at your earliest convenience.

Sincerely,

DIFFCO LLC

Jaime Schwarz
Project Manager