

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



MONDAY, OCTOBER 19, 2015

6:00 P.M.

Notice is hereby given of a meeting of the Tomball City Council, to be held on Monday, October 19, 2015 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 Gary Aaron, Victory Baptist Church

3.0 Pledges to U.S. and Texas Flags

- Led by Alexis Campbell and Sabrina Hernandez, Members of the Tomball High School Student Council

4.0 Public Comments and Receipt of Petitions *[At this time, anyone will be allowed to speak on any matter other than personnel matters or matters under litigation, for length of time not to exceed three minutes. No Council/Board discussion or action may*

take place on a matter until such matter has been placed on an agenda and posted in accordance with law.]

5.0 Reports and Announcements

- October 24, 2015 – **4th Annual Tomball Bluegrass Festival** – 12:00 Noon-6:00 p.m.
- November 14, 2015 – **7th Annual 5K Tomball Dash** (Woodforest Bank)
- November 14, 2015 – **2nd Saturday at the Depot**
- November 20, 2015 – **Lamp Post Decorating Contest and "Lamp Post Stroll"**
- November 21, 2015 – **50th Annual Holiday Parade**
- November 26-27, 2015 – Thanksgiving Holiday – City Offices Closed
- December 12, 2015 – **Christmas on Commerce** – a 2nd Saturday at the Depot Event
- Reports by City staff and members of Council about items of community interest on which no action will be taken:
 - Mike Baxter/Denise Fiore – Report on the success of the City's annual **"Zomball in Tomball"**
 - Randy Parr – Report on community input regarding proposed changes to parking requirements near the Depot area during festivals and events

6.0 Approve the Minutes of the October 5, 2015 Regular City Council Meeting

7.0 Old Business:

- 7.1 Adopt, on Second Reading, Ordinance No. 2015-20, an Ordinance of the City of Tomball, Texas, amending the Code of Ordinances of the City of Tomball, Texas by Removing therefrom Article III, Auto Wreckers and Towers, of Chapter 48, Vehicles for Hire, in its Entirety, and Substituting in its place a New Article III, Tow Trucks and Tows, Regulating the Operation of Tow Trucks, Vehicle Storage Facilities, the City's Tow Truck Rotation List and Related Regulations; Providing a Penalty in an Amount not to exceed \$2,000 for Each Violation Hereof with Each Day Constituting a Separate Offense; Providing for Severability; and Making Other Findings related Hereto

8.0 New Business:

- 8.1 Presentation regarding Electrical Services Provider for the City of Tomball and Possible Action to Approve Resolution No. 2015-24, a Resolution of the City of Tomball, Texas, Approving the Certificate of Formation and Bylaws of Texas Coalition for Affordable Power ("TCAP"), a Political Subdivision Corporation; Accepting Membership in Said Corporation; Appointing a Representative to Serve on Behalf of the City of Tomball; Approving Payment of an Initial Membership Fee
- 8.2 Approve the Extension of the Current Lease Agreement between the Harris County Tax Assessor-Collector and the City of Tomball for the use of the

Facility located at 101 South Walnut as a Harris County Tax Office for an Additional One-Year Term, from December 1, 2015 to November 30, 2016

- 8.3 Consider Approval of Professional Services Agreement with RG Miller Engineers in the Amount of \$50,000 for Implementation of Permit Year 3 of the City of Tomball's Storm Water Management Program
- 8.4 Consideration to Approve **ZONING CASE P15-107**: Request by Ron Proctor, Jr., on behalf of Rock Materials, to amend Chapter 50 (Zoning) of the Tomball Code of Ordinances by rezoning approximately 7 acres of land, legally described as a tract of land containing seven (7) acres, out of the C.N. Pillot Survey, A-632, in the Country of Harris and State of Texas; and being out of that certain 16.34 acres conveyed to J.W. Fowler by Deed Recorded in Vol. 1042, Page 608 Deed records of said county, within the City of Tomball, Harris County, Texas, generally located on the south side of Theis Ln., west of Commercial Park Rd., from the Agricultural District to the Light Industrial District.
- Conduct Public Hearing on **ZONING CASE P15-107**
 - Adopt, on first reading, Ordinance No. 2015-21, An Ordinance Of The City Of Tomball, Texas, Amending Its Chapter 50 (Zoning) Of The Tomball Code Of Ordinances By Changing The Zoning District Classification Of Approximately 7 Acres Of Land, Legally Described As C.N. Pillot Survey, A-632, Within The City Of Tomball, Harris County, Texas, From The Agricultural District To The Light Industrial District; Said Property Being Generally Located On The South Side Of Theis Ln., West Of Commercial Park Rd.; 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.
- 8.5 Consideration to Approve **ZONING CASE P15-108**: Request by Bill Hightower, on behalf of Hightower Investments, LTD., to amend Chapter 50 (Zoning) of the Tomball Code of Ordinances by rezoning approximately 10 acres of land, legally described as Tract 1, A 2.691 acre tract, H.C.C.F No. S551075; Tract 2, A 3.072 acre tract, H.C.C.R. No. S551078; Tract 3, A 2.684 acre tract, H.C.C.R. No. S551077; and, Tract 4, A 1.852 acre tract, H.C.C.R. No. S551076 located in the Jesse Pruitt Survey, A-629, City of Tomball, Harris County, Texas, generally located at the northwest corner of Cherry Street and Theis Ln., from the Agricultural District to the Commercial District.
- Conduct Public Hearing on **ZONING CASE P15-108**
 - Adopt, on first reading, Ordinance No. 2015-22, an Ordinance Of The City Of Tomball, Texas, Amending Its Chapter 50 (Zoning) Of The Tomball Code Of Ordinances By Changing The Zoning District Classification Of Approximately 10 Acres Of Land, Legally Described As Tract 1, A 2.691 Acre Tract, H.C.C.F No. S551075; Tract 2, A 3.072 Acre Tract, H.C.C.R. No. S551078; Tract 3, A 2.684 Acre Tract, H.C.C.R. No. S551077; And, Tract 4, A 1.852 Acre Tract, H.C.C.R. No. S551076 Located In The Jesse Pruitt Survey, A-629, Within The City Of

Tomball, Harris County, Texas, From The Agricultural District To The Commercial District; Said Property Being Generally Located At The Northwest Corner Of Cherry Street And Theis Ln.; 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.

8.6 Executive Session: The City Council will meet in Executive Session as Authorized by Title 5, Chapter 551, Government Code, the Texas Open Meetings Act, for the Following Purpose(s):

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

8.7 Consideration and Possible Action regarding Amendments to and Extension of the Employment Contract for George Shackelford, City Manager

9.0 Adjournment

CERTIFICATION

I hereby certify that the above notice of meeting was posted on the bulletin board of City Hall, City of Tomball, Texas, a place readily accessible to the general public at all times, on the 15th day of October 2015 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: October 19, 2015

Topic:

- Led by Pastor Gary Aaron, Victory Baptist Church

Background:

Origination:

Recommendation:

Funding:

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

ACTION TAKEN		
APPROVAL	READINGS PASSED	OTHER
☐ YES ☐ NO	☐ 1 ST ☐ 2 ND	

Regular City Council
Agenda Item
Data Sheet

Meeting Date: October 19, 2015

Topic:

- Led by Alexis Campbell and Sabrina Hernandez, Members of the Tomball High School Student Council

Background:

Origination:

Recommendation:

Funding:

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

ACTION TAKEN		
APPROVAL	READINGS PASSED	OTHER
☐ YES ☐ NO	☐ 1 ST ☐ 2 ND	

Regular City Council Agenda Item Data Sheet

Meeting Date: October 19, 2015

Topic:

- October 24, 2015 – **4th Annual Tomball Bluegrass Festival** – 12:00 Noon-6:00 p.m.
- November 14, 2015 – **7th Annual 5K Tomball Dash** (Woodforest Bank)
- November 14, 2015 – **2nd Saturday at the Depot**
- November 20, 2015 – **Lamp Post Decorating Contest and "Lamp Post Stroll"**
- November 21, 2015 – **50th Annual Holiday Parade**
- November 26-27, 2015 – Thanksgiving Holiday – City Offices Closed
- December 12, 2015 – **Christmas on Commerce** – a 2nd Saturday at the Depot Event
- Reports by City staff and members of Council about items of community interest on which no action will be taken:
 - Mike Baxter/Denise Fiore – Report on the success of the City's annual **"Zomball in Tomball"**
 - Randy Parr – Report on community input regarding proposed changes to parking requirements near the Depot area during festivals and events

Background:

Origination:

Various

Recommendation:

N/A

Funding:

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

City Secretary

ACTION TAKEN		
APPROVAL	READINGS PASSED	OTHER
☐ YES ☐ NO	☐ 1 ST ☐ 2 ND	

Regular City Council Agenda Item Data Sheet

Meeting Date: October 19, 2015

Topic:

Approve the Minutes of the October 5, 2015 Regular City Council Meeting

Background:

Origination:

City Secretary

Recommendation:

N/A

Funding:

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

City Secretary

ACTION TAKEN		
APPROVAL	READINGS PASSED	OTHER
☐ YES ☐ NO	☐ 1 ST ☐ 2 ND	

ATTACHMENTS:

Draft Minutes - October 5, 2015 Regular Council Meeting

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



MONDAY, OCTOBER 5, 2015

6:00 P.M.

1.0 Call to Order

The Council meeting was called to order at 6:00 p.m. by Mayor Fagan. Other members present:

Councilman Hudgens
Councilman Stoll
Councilman Klein Quinn
Councilman Townsend

Members absent:

Councilman Degges - excused

Others present:

City Manager – George Shackelford
City Secretary – Doris Speer
City Attorney – Loren Smith
Fire Chief – Randy Parr
Marketing Director – Mike Baxter
Finance Director – Glenn Windsor
Accountant – Christine Brookshire
Public Works Director – David Esquivel
Director of Community Development – Craig Meyers
City Engineer – Lori Lakatos
City Planner – Harold Ellis
Detective – Kenneth Yoho
Police Captain – Rick Grassi

2.0 The invocation was led by Pastor Edward Matthews, Newness of Life Church of God in Christ

3.0 The pledges to U. S. and Texas Flags were led by Madison Pennix and Alexis Gach, Members of the Tomball High School Student Council

4.0 The following public comment was received:

Bruce Hillegeist GTACC 29201 Quinn Road	-	Expressed his appreciation of the City's support for the 50 th Annual Holiday Parade, to be held on November 21, 2015.
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5.0 Reports and Announcements:

- October 10, 2015 – ***Sherine's Stride 5K Run***
- October 10, 2015 – ***"Zomball in Tomball"***
- October 24, 2015 – ***4th Annual Tomball Bluegrass Festival – 12:00 Noon-6:00 p.m.***
- November 7, 2015 – ***7th Annual 5K Tomball Dash (Woodforest Bank)***
- November 14, 2015 – ***2nd Saturday at the Depot***
- November 20 – ***Lamp Post Decorating Contest and "Lamp Post Stroll"***
- November 21, 2015 – ***50th Annual Holiday Parade***
- November 26-27, 2015 – Thanksgiving Holiday – City Offices Closed
- ***Walk Tomball!*** – Every Saturday at ***9:00 a.m.*** at the Depot (***Note: new time***)
- Reports by City staff and members of Council about items of community interest on which no action will be taken:
 - Mike Baxter reported on the success of the ***5th Annual Bugs, Brew & Barbeque Festival***
 - Glenn Windsor reported that the Government Finance Officers Association has again awarded the City of Tomball the Certificate of Achievement for Excellence in Financial Reporting for its Comprehensive Annual Financial Report (CAFR) for the Fiscal Year Ended September 30, 2014 (25th Year).
 - Rick Grass reported on the success of the Drug Take-Back event.

6.0 Motion was made by Councilman Townsend, second by Councilman Klein Quinn, to approve the Minutes of the September 21, 2015 Regular City Council Meeting and the September 28, 2015 Special City Council Meeting.

Motion carried unanimously.

7.0 Old Business:

7.1 Motion was made by Councilman Stoll, second by Councilman Townsend, to adopt, on Second Reading, Ordinance No. 2015-18, an Ordinance of the City of Tomball, Texas, Setting the Total Tax Levy of \$0.341455/\$100 of taxable value for the Year 2015 on all Real and Personal Property located in the City of Tomball, Texas; Providing for Penalty, Interest, and Additional Penalty on

Taxes Not Timely Paid; and Providing Other Matters Relating to the Subject.
Vote was as follows:

Councilman Hudgens	<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.

- 7.2 Motion was made by Councilman Stoll, second by Councilman Townsend, to adopt, on Second Reading, Ordinance No. 2015-19, an Ordinance Of The City Of Tomball, Texas, Amending Its Zoning Ordinance By Amending Section 50-82 (B) (“Use Charts”) By Allowing A “Museum” With A Conditional Use Permit In The Agricultural, Single-Family Estate Residential-20, Single-Family Residential-9, Single-Family Residential-6, Duplex, Multi-Family, And Manufactured Home Park Districts; Providing For A Penalty Of An Amount Not To Exceed \$2,000 For Each Day Of Violation Of Any Provision Hereof; Making Findings Of Fact; And Providing For Other Related Matters. Vote was as follows:

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

Motion carried unanimously.

8.0 New Business:

- 8.1 Motion was made by Councilman Hudgens, second by Councilman Stoll, to approve Resolution No. 2015-20, a Resolution of the City Council of the City of Tomball, Texas, Supporting the Eighth Annual Homecoming Parade and Pep Rally, to be held at the Tomball High School Campus and Stadium, Sponsored by the Tomball Independent School District and the Tomball High School Student Council, on Wednesday, October 7, 2015.

Motion carried unanimously.

- 8.2 Motion was made by Councilman Hudgens, second by Councilman Klein Quinn, to approve Resolution No. Resolution No. 2015-21, a Resolution of the City Council of the City of Tomball, Texas, for the Designation of Its Representative and Alternate for the Houston-Galveston Area Council 2016 General Assembly

and designating Derek Townsend, Council Position 4, as the Representative and Mark Stoll, Council Position 2, as the Alternate Representative.

Motion carried unanimously.

- 8.3 Motion was made by Councilman Townsend, second by Councilman Stoll, to approve Resolution No. 2015-23, a Resolution of the City Council of the City of Tomball, Texas, Supporting the 50th Annual Tomball Holiday Parade, “50 Golden Years of Holiday Spirit”, to be Held in Tomball on Saturday, November 21, 2015 and to Approve Requested Street Closures and In-Kind Services.

Motion carried unanimously.

- 8.4 Motion was made by Councilman Townsend, second by Councilman Hudgens, to approve the Extension of the Current Contract between the City of Tomball and AOT Public Safety Corporation for False Alarm Billing and Tracking Services for an Additional Year and Authorize the Mayor to Execute the Necessary Documents (Cry Wolf).

Motion carried unanimously.

- 8.5 Motion was made by Councilman Hudgens, second by Councilman Stoll, to approve the Extension of the Current Depository Contract between the City of Tomball and Wells Fargo through March 31, 2016.

Motion carried unanimously.

- 8.6 Motion was made by Councilman Townsend, second by Councilman Hudgens, to award the Contract for Bid Number 2015-10 - Janitorial Services to Sparkling Maintenance Service in the Amount of \$61,360.00.

Motion carried unanimously.

- 8.7 Motion was made by Councilman Hudgens, second by Councilman Townsend, to award the Contract for Bid Number 2015-11 - Generator Maintenance & Repairs to Loftin Equipment Co. in the Amount of \$15,715.00 per Year.

Motion carried unanimously.

- 8.8 Motion was made by Councilman Townsend, second by Councilman Klein Quinn, to award Contract for Bid Number 2015-12 - Purchase of Chlorine and Sulfur Dioxide Gas to DXI Industries.

Motion carried unanimously.

- 8.9 Motion was made by Councilman Hudgens, second by Councilman Stoll, to award Contract for Bid Number 2015-13 - Purchase of Liquid Polyphosphate and Zinc Orthophosphate to Water Utility Services.

Motion carried unanimously.

- 8.10 Motion was made by Councilman Townsend, second by Councilman Klein Quinn, to read Ordinance No. 2015-20 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. 2015-20, an Ordinance of the City of Tomball, Texas, amending the Code of Ordinances of the City of Tomball, Texas by Removing therefrom Article III, Auto Wreckers and Towers, of Chapter 48, Vehicles for Hire, in its Entirety, and Substituting in its place a New Article III, Tow Trucks And Tows, Regulating the Operation of Tow Trucks, Vehicle Storage Facilities, the City's Tow Truck Rotation List and Related Regulations; Providing a Penalty in an Amount not to exceed \$2,000 for Each Violation Hereof with Each Day Constituting a Separate Offense; Providing for Severability; and Making Other Findings related Hereto, with the addition of the proposed amendment to Sec. 48-176, describing the contents of the permit to be issued. Vote was as follows:

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

Motion carried unanimously.

- 9.0 Motion was made by Councilman Hudgens, second by Councilman Stoll, to adjourn.

Motion carried unanimously.

Meeting adjourned.

PASSED AND APPROVED this the _____ day of _____ 2015.

Doris Speer, TRMC, CMC
City Secretary

Gretchen Fagan
Mayor

Regular City Council

Agenda Item

Meeting Date: October 19, 2015

Data Sheet

Topic:

Adopt, on Second Reading, Ordinance No. 2015-20, an Ordinance of the City of Tomball, Texas, amending the Code of Ordinances of the City of Tomball, Texas by Removing therefrom Article III, Auto Wreckers and Towers, of Chapter 48, Vehicles for Hire, in its Entirety, and Substituting in its place a New Article III, Tow Trucks and Tows, Regulating the Operation of Tow Trucks, Vehicle Storage Facilities, the City's Tow Truck Rotation List and Related Regulations; Providing a Penalty in an Amount not to exceed \$2,000 for Each Violation Hereof with Each Day Constituting a Separate Offense; Providing for Severability; and Making Other Findings related Hereto

Background:

Article III, Auto Wreckers and Towers, in Chapter 48 of the City's Code of Ordinance has been amended several times to change fee amounts, prohibit the sharing of storage lots, eliminate the Wrecker Appeals Board, and other changes to remain consistent with State law.

City Staff believes that the proposed amendments to Article III of Chapter 48 constitutes an extensive revision, to such an extent that it would be best to delete the current Article III, Auto Wreckers and Towers, and replace it in its entirety with the attached proposed Article III, Tow Trucks and Tows. The proposed changes remove requirements for private and transfer tow trucks, establish a reduction by attrition in the number of towing companies from the current eleven (11) companies to eight (8) companies, after which time the rotation list will not exceed eight (8) companies, still require separate storage lots, located within the City or the City's ETJ, and incorporate other changes to reflect current State law.

The final copy of the proposed Ordinance includes the additional paragraph recommended for Sec. 48-176, describing the contents of the permit to be issued, which was approved by Council on October 5, 2015.

Origination:

Doris Speer, City Secretary

Recommendation:

Adopt Ordinance No. 2015-20 on Second Reading

Funding:

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

City Secretary

ACTION TAKEN		
APPROVAL	READINGS PASSED	OTHER
☐ YES ☐ NO	☐ 1 ST ☐ 2 ND	

ATTACHMENTS:

Ordinance No. 2015-20

ORDINANCE NO. 2015-20

AN ORDINANCE OF THE CITY OF TOMBALL, TEXAS, AMENDING THE CODE OF ORDINANCES OF THE CITY OF TOMBALL, TEXAS BY REMOVING THEREFROM ARTICLE III, AUTO WRECKERS AND TOWERS, OF CHAPTER 48, VEHICLES FOR HIRE, IN ITS ENTIRETY, AND SUBSTITUTING IN ITS PLACE A NEW ARTICLE III, TOW TRUCKS AND TOWS, REGULATING THE OPERATION OF TOW TRUCKS, VEHICLE STORAGE FACILITIES, THE CITY'S TOW TRUCK ROTATION LIST AND RELATED REGULATIONS; PROVIDING A PENALTY IN AN AMOUNT NOT TO EXCEED \$2,000 FOR EACH VIOLATION HEREOF WITH EACH DAY CONSTITUTING A SEPARATE OFFENSE; PROVIDING FOR SEVERABILITY; AND MAKING OTHER FINDINGS RELATED HERETO.

* * * * *

WHEREAS, the City Council of the City of Tomball, Texas finds it to be in the best interest of the health, safety and welfare of its citizens to regulate the operation of tow trucks responding to accident scenes;

WHEREAS, the City Council further finds that the careful regulation of tow truck response to accident scenes aids in the safe and efficient management of such incidents; now, therefore,

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

Section 1. The facts and matters contained in the preamble to this ordinance are hereby found to be true and correct.

Section 2. The Code of Ordinances is hereby amended by deleting in its entirety Article III, Auto Wreckers and Towers, of Chapter 48, Vehicles for Hire, and substituting in its place a new Article III, Tow Trucks and Tows, such new Article III to read as follows:

“ARTICLE III. – TOW TRUCKS AND TOWS

Division 1 – Generally

Section 136. Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Chief of police shall mean the chief of police of the city or his appointed representative, who shall be responsible for administering the provisions of this article.

Consent Tow shall mean any tow of a vehicle in which the tow truck is summoned by the owner or operator of the vehicle or by a person who has possession, custody or control of the vehicle. The term does not include an incident management tow or a private property tow.

Driver shall mean any individual who actually operates and drives a tow truck on the streets of the city, either for his own benefit or as an employee of another.

Drop Fee shall mean a fee that must be offered on a tow where the vehicle is hooked up and is ready for immediate transport. Any vehicle that is not hooked up completely and ready for immediate transport and the owner or operator of the vehicle arrives on the scene the vehicle must be released without a fee.

Incident shall mean an unplanned randomly occurring traffic event that adversely affects normal traffic.

Incident management tow shall mean any tow of a vehicle in which the tow truck is summoned because of a traffic accident or to an incident.

License shall mean permission granted by the city to a tow truck company to tow or operate a tow truck within the city.

Light-duty tow truck shall mean a tow truck with a 15,000 pound gross vehicle weight (GVW) or greater, a boom capacity of 8,000 minimum with dual winches and a wheel lift with at least 4,000 pound capacity and one hundred feet (100') of three eighths inch (3/8") wire rope.

Non-consent tow shall mean any tow of a vehicle that is not a consent tow including:

(1) An incident management tow; and

(2) A private property tow.

Non-owner consent shall mean consent to tow a vehicle when such consent is not given by the registered owner of the vehicle.

Owner shall mean any person engaged in the business of towing motor vehicles for hire or engaged in the business of storing, wrecking or repairing motor vehicles for hire and who owns or is entitled to use any tow truck, and who uses same in the conduct of his business or any part thereof.

Owner consent shall mean permission or a request made to haul or tow a vehicle or motor vehicle to a state-licensed storage lot, to a repair shop, or to any location directed by the owner, which owner consent is given by a registered owner or an authorized person having control of the vehicle or motor vehicle, and which is made prior to the police dispatch for a tow truck in rotation. If conditions permit, the officer at the scene should first inquire if the owner or authorized person has a preference or requests a particular tow truck company that can remove the vehicle promptly; that is, before the conclusion of police activities at the scene, or as safety dictates.

Parking facility shall mean any public or private property used, in whole or in part, for restricted and / or paid parking of vehicles. The term includes a restricted space on a portion of an otherwise unrestricted parking facility, a commercial parking lot, a parking garage, and a parking area serving or adjacent to a business, church, school, home, apartment complex, property governed by a property owner's association, or government owned property leased to a private citizen.

Permit shall mean written permission granted by the City of Tomball to a driver to operate or drive a tow truck on the City's tow truck rotation list.

Person shall mean an individual, a corporation, organization, business trust, estate, trust, partnership, joint venture, association, or other legal entity.

Tow shall mean a vehicle transported or carried, a reasonable distance, by a tow truck, from point A by raising no less than two wheels off the ground and setting all wheels on the ground at point B.

Tow business shall mean the business of towing or removing vehicles for compensation, or the expectation of compensation, regardless of whether the purpose of the towing is to remove, repair, wreck, store, trade, or purchase vehicles.

Tow rotation list shall mean a list prepared and maintained by the city police department of tow companies which have requested and qualified to appear thereon.

Tow truck shall mean any motor vehicle, including a wrecker, equipped with a mechanical device used to tow, winch, or otherwise move another vehicle. The term does not include:

- (1) A motor vehicle owned and operated by a governmental entity, including a public school district
- (2) A motor vehicle towing;
 - (a) A race car;
 - (b) A motor vehicle for exhibition; or
 - (c) An antique motor vehicle.
- (3) A recreational vehicle towing another vehicle;
- (4) A motor vehicle that is used in combination with a tow bar, tow dolly, or other mechanical device if the vehicle is not operated in the furtherance of a commercial enterprise;
- (5) A motor vehicle that is controlled or operated by a farmer or rancher and used for towing a farm vehicle;
- (6) A motor vehicle that:
 - (a) Is owned or operated by an entity that the primary business of which is the rental of motor vehicles; and
 - (b) Only tows vehicles rented by the entity.

Towing company shall mean a person operating a tow truck licensed with TDLR (Texas Department of Licensing and Regulation). The term includes the owner, operator, employee or agent of a towing company but does not include a political subdivision of the state.

Unauthorized vehicle shall mean a vehicle parked, stored, or located on a parking facility without the consent of the parking facility owner.

Vehicle shall mean a device in, on, or by which a person or property may be transported on a public roadway. The term includes an operable or inoperable automobile, truck, motorcycle, recreational vehicle, or trailer, but does not include a device moved by human power or used exclusively on a stationary rail or track.

Vehicle storage facility (VSF) shall mean a facility operated by a person licensed under Chapter 2303 of the Texas Occupations Code.

Vehicle storage facility license shall mean the license issued by TDLR (Texas Department of Licensing and Regulation) authorizing a business to store vehicles.

Sec. 48-137. - Liability and property damage insurance requirements.

(a) Before any permit shall be issued under this article to a tow truck owner, or before any renewal of such permit shall be granted, such owner shall procure and keep in full force and effect and shall keep on file with the chief of police or his designee a policy of public liability and property damage insurance or a certificate of insurance in the name of the owner or company by a casualty insurance company which is authorized to do business in the state and in standard form approved by the state board of insurance commissioners, and the coverage provisions insuring the public from any loss or damage that may arise to any person or property by reason of the operation of a tow truck of such owner and providing that the amount of recovery on each tow truck shall be in limits of not less than the sums as currently established or as hereafter adopted by resolution of the city council from time to time.

(b) The insurance policies mentioned in subsection (a) of this section shall contain an endorsement which provides for 30 days' notice to the chief of police or his designee of any material change or cancellation of the policy.

Sec. 48-138. - Equipment requirements for tow trucks on the City's tow truck rotation list.

(a) All tow trucks on the City of Tomball Tow Truck Rotation List must be equipped for light or heavy duty according to the manufacturer's guidelines.

(b) Each tow truck will be inspected by the chief of police or his designee prior to issuance of new company license or renewal of company license.

(c) **Police Inspection.** Any tow truck performing non-consent tows within the city limits, may be inspected by an official of the Tomball Police Department at any time the tow truck is being operated on the public streets as a tow truck. Such inspections may be conducted to ensure required licenses and compliance with this article and state law. Further, upon the request of the chief of police or his/her designee, a tow company performing non-consent tows within the city shall produce records from the VSFs used for non-consent tows to ensure compliance with the maximum rates established under this article and other requirements of this article and state law.

(d) **Equipment and vehicle inspection.** The chief of police or his representative shall make a physical inspection of the equipment and vehicles

covered by this article as frequently as he shall deem necessary. If such inspection of the equipment and vehicles results in a recommendation that the permit be suspended, the owner shall be informed of the existing deficiencies in writing, and shall have ten days in which to correct the deficiencies.

Sec. 48-139. - Storage lot requirements.

(a) All tow truck license holders under this article shall maintain or have access to a vehicle depository located in the corporate limits of the city or located within the extraterritorial jurisdiction of the city, as that term is defined in V.T.C.A., Local Government Code Ch. 42. The chief of police or the chief's designated representative shall make the determination of the limits of the city's territorial jurisdiction upon written request to do so or in connection with any tow truck permit application. Such vehicle depositories maintained or used by tow truck license holders shall be state licensed vehicle storage lots pursuant to the Vehicle Storage Facility Act (V.T.C.A., Occupations Code Ch. 2303).

(b) Any vehicle hauled or towed without the owner's consent shall be taken to a state-licensed storage facility authorized by this section, or to such other location as directed by the owner or authorized person, with the approval of the police officer at the scene. Additionally, each tow truck license holder shall have its own private storage lot. The sharing of storage lots is prohibited.

Sec. 48-140. - Fees for tow truck service.

(a) **Maximum fees to be charged for non-consent tows.** The maximum fees charged by tow companies for non-consent tows are hereby established by the city and reflect fair value of towing services and are included in the Master Fee Schedule, as approved by the City Council. Itemized receipts shall be provided to owners or operators at the time payment of tow related fees are made. Violations of this provision may result in suspension or removal from the tow rotation list, and criminal penalties against the offender. Towing fees may be reviewed by the City of Tomball bi-annually. A towing fee study shall be performed in conjunction with this review.

(b) **Additional service fees to be charged.** Additional service fees that may be charged are included in the Master Fee Schedule, as approved by the City Council.

(c) **Storage fees.** Storage fees are included in the Master Fee Schedule, approved by the City Council.

(d) **Notification fees.** Notification fees and requirements are included in the Master Fee Schedule, approved by the City Council.

Sec. 48-141. - Administrative Penalties for Violations and Appeal of Sanctions.

(a) In addition to the criminal penalties imposed for violations of state law or this article, any tow company on the tow rotation list that violates this article or state law may be subject to sanctions by the chief of police or his designee, depending upon the nature of infraction, number of infractions, and other circumstances. The sanctions shall range from written notification of violation with warning, to removal from the tow rotation list.

(b) An owner, driver or any person who violates any provision of this article shall be deemed in violation of this Code and guilty of a Class C misdemeanor will be punished by a fine or suspension or removal from the tow truck rotation list.

- (1) If a fine is imposed, the rate will be set by the municipal court and shall not exceed the amount provided in section 1-14 for each count.
- (2) If a suspension or removal from the tow truck rotation list is imposed, the chief of police will set the length of time such suspension or removal shall run.
- (3) A fine may not be imposed if the chief of police imposes a suspension or removal from the tow truck rotation list.

(c) **Appeal of sanctions.**

An individual who has been issued a sanction may appeal the Chief of Police's or designee's decision by submitting a written request to the City Manager no later than the tenth day after the effective date of the decision. The individual must include a statement of the grounds for the appeal. The City Manager or his designee shall schedule a hearing no later than the fifteenth day after receipt of the notice of appeal. The City Manager or his designee shall give notice of the time and place set for the hearing to the chief of police and the appellant not less than five days before the hearing.

(d) **Appeal Procedure.**

- (1) At the appeal hearing the Chief of Police and the appellant may present evidence, testimony, and argument.
- (2) The City Manager's or his designees' decision is final.

Sec. 48-142. - Unlawful to tow without owner's consent except after notification of police.

(a) It shall be unlawful for any tow truck owner or tow truck driver to tow or haul or cause to be towed or hauled any vehicle within the city, except by request of the owner of the vehicle, without having first notified the police department dispatcher within one hour after such tow. Any such vehicle towed or hauled without the owner's permission or knowledge shall be stored in a state-licensed vehicle depository within the corporate limits or extraterritorial jurisdiction of the city, as referenced in section 48-139, until released to the vehicle owner or agent.

(b) In any prosecution charging violation of this section, proof that the owner of the vehicle did not consent to the removal of the vehicle, together with proof that the defendant named in the complaint had possession of the vehicle on the date charged, shall constitute in evidence a prima facie presumption that the possessor of the vehicle was the person or company who towed, hauled, or caused to be towed or hauled the vehicle found in his possession on the date of possession. The defendant shall have the right to introduce evidence to show that the vehicle was not towed or hauled as alleged in the complaint.

Secs. 48-143—48-175. - Reserved.

DIVISION 2. TOW TRUCK COMPANY LICENSE

Sec. 48-176. - Required; transferable; expiration date; trade name registration; location of business.

(a) It shall be unlawful for any person to engage in tow truck company service in the city without first obtaining a tow truck company license from the chief of police. A license is assignable or transferable upon approval by the chief of police. The license issued to a tow truck company authorizes the licensee and his bona fide employees to engage in tow truck company services.

All permits for the conduct of a tow truck company business in the city shall be issued and signed by the city secretary and sealed with the seal of that office; it shall be dated on the day of its issuance; shall bear a license number; shall show the name of the permittee and the name of the company; and shall state that the permittee has been authorized by the city to conduct a tow truck business in this city until the expiration of September 29 next following the date of issuance.

(b) It shall be unlawful for any person to drive or operate any tow truck, or allow, permit or cause any person to drive or operate any tow truck unless the following information is clearly and legibly painted in colors, which contrast with

the color of the doors, on the outside of both entrance doors of the vehicle in letters and numbers of at least four-inches in height and one-half inch in stroke width:

(1) The name of the company under which the permit holder is doing business.

(2) The telephone number, which shall be obtainable through directory assistance, and address of the permit holder or his agent where persons can call at any hour the tow truck is in operation to obtain information as to the storage lot to which a vehicle was towed.

(c) Each tow company will maintain its own office within the city limits or the extraterritorial jurisdiction (ETJ) of the City of Tomball.

(d) Truck Permits Required for Rotation Nonconsent Tows.

(1) **Truck permits.** The permit shall be affixed to the front windshield so that it can be read from the exterior of the vehicle. Permits will be issued by the City upon successful inspection of each vehicle according to prescribed standards and/or equipment listed in the application. Permits may be suspended and/or revoked by the chief of police or the designee.

(2) **Issuance or renewal of truck permits.** Permits, unless suspended or revoked, shall be issued/renewed by September 30th of each year and will expire on September 29th the following year. Permits may be issued for tow trucks added to the tow truck business during the course of the year provided all necessary paperwork is completed.

Sec. 48-177. – Tow truck company application; renewal.

(a) Tow Truck Company Application: Any applicant for a tow truck company permit shall submit, on a form supplied by the City of Tomball, a verified application form containing or accompanied by the following:

(1) The true trade name, true owner's name, address, and telephone number of the tow truck company. The company may be a sole proprietorship, partnership or corporation;

(2) Number and types of tow trucks to be operated;

(3) Name, address and telephone number of the owner of the tow truck company, and if a corporation, the names, addresses, telephone numbers of owners holding more than ten percent of the shares of the corporation.;

(4) An agreement that the applicant will participate in the tow truck rotation list;

(5) Proof of ownership, which shall mean the title with the owner's name, by the applicant of the tow truck to be used. Such ownership shall be verified at the time of application and quarterly thereafter by the police department and upon any renewal of insurance;

(6) A detailed description of each tow truck proposed to be operated, including Texas tow truck license plate number;

(7) A copy of the state issued tow truck license (Cab Card);

(8) The original certificate of insurance that lists public liability, property damage, and any and all other amounts as prescribed by the State of Texas which must show the City of Tomball as certificate holder. The original certificate will be returned to the owner after a photocopy has been made;

(9) A photocopy of the vehicle storage facility license issued by the State of Texas which must include the physical address and phone number of the facility to be used. The VSF must be located within the extraterritorial jurisdiction (ETJ) of the City of Tomball and must be publicly listed with local telephone companies; and

(10) Written proof that the VSF meets Texas Accessibility Standards.

(b) The chief of police shall inquire about the criminal convictions of the applicant or the applicant's drivers involving moral turpitude including burglary, theft, robbery, forgery, and perjury or relevant convictions that would reflect on the ability to operate a tow truck.

(c) Only one license may be issued to each tow truck company, and a person, partnership, or corporation may not own a controlling interest in another tow truck company;

(d) An annual license renewal which is applied for at least 20 days prior to the expiration of the license will be granted upon compliance with the provisions of this division. An applicant who has failed to renew or whose license has been revoked under this division is considered an initial applicant.

(e) The chief of police may, at any time, require additional information of an applicant or licensee to clarify items on the application.

(f) Supplemental permit for additional tow trucks.

(1) Where an owner has obtained a wrecker tow truck permit and thereafter desires to increase the number of wreckers tow trucks to be operated, he shall file a supplemental application with the director chief of police, setting forth his permit number and the fact that he desires to operate additional wreckers tow trucks, giving the make, model, vehicle identification number and state license number of each additional wrecker tow truck. He shall also pay a permit fee as currently established or as hereafter adopted by resolution of the city council from time to time for each additional wrecker tow truck and file a new insurance policy meeting the requirements of this article, covering the new wrecker tow truck.

(2) The chief of police shall examine such supplemental tow truck application, fee and policy, and if the same are in order, the chief of police shall issue a supplemental permit covering the new tow truck.

(g) Supplemental permit for substitute tow truck. Whenever an owner wishes to discontinue the use of a tow truck during the period covered by his permit and replace it with another, he shall file an affidavit stating that he has discontinued using the tow truck covered by his permit, and desires to use another tow truck in its place. He shall attach a certificate from his insurer that such insurer has been notified thereof and agrees thereto. The chief of police shall then issue the owner a supplemental permit at a cost as currently established or as hereafter adopted by resolution of the city council from time to time, which will cover the new tow truck and cause the description of the old tow truck to be eliminated from the original permit. In the affidavit, certificate from the insurer, and supplemental permit, the old and new tow truck shall be described by make, model, vehicle identification number and state license number.

(h) Driver Records. Each tow company must submit and maintain a list of operator/drivers, who will be operating the tow trucks included on the company's license, along with their address, phone number, Texas driver's license number and a criminal background for each driver. Drug related offenses, theft, assault, or crimes of moral turpitude can be grounds for denial. Each driver must possess a TDLR incident management license and submit to the city a copy of the license.

Sec. 48-178. - Fee.

(a) The annual fee for a tow truck company license for each tow vehicle is as currently established or as hereafter adopted by resolution of the city council from time to time. The fee will be prorated on the basis of whole months. The fee for issuance of a duplicate license if a license is lost, stolen, destroyed or mutilated is as currently established or as hereafter adopted by resolution of the city council from time to time.

(b) Fees are payable to the City of Tomball upon issuance of the license. No refund of fees will be made.

(c) A tow company licensee may operate more than one tow vehicle; however, he is entitled to only one listing on the tow truck rotation list.

Sec. 48-179 – Prerequisites to issuance.

(a) **Inspection of tow trucks.** Every tow truck to be used by the applicant for incident management tows in the tow truck business shall be inspected annually by the Tomball Police Department delegate prior to the issuance of a permit to ascertain if it has met all state requirements along with the following items:

(1) Current TDLR license (listing all trucks permitted);

(2) Current tow truck license plate registration;

(3) Current safety inspection certificate;

(4) The company name and phone number must be permanently displayed on both sides of the tow truck at least four inches in height;

(5) One fire extinguisher, type ABC dry chemical, at least ten pounds or equivalent. Each extinguisher shall have a number permanently affixed that correlates with the truck it belongs on;

(6) Light set sufficient to provide rear brake/turn lights and taillights for the towed load (tow lights);

(7) Three portable red emergency reflectors or reflective orange safety cones;

(8) Broom and scoop along with a container to contain any and all debris removed from a scene. Each shall have a number permanently affixed that correlates with the truck it belongs on; and

(9) Amber-colored overhead rotating/flashing lights that are to be used only while under the direction of a law enforcement officer at the scene of an accident or while assisting/hooks up to a disabled vehicle on a roadway.

(b) Each licensee shall maintain 24-hour tow truck service and communications.

(c) No vehicles may be towed unless and until the tow truck driver has received a completed police officer tow inventory sheet (POTIS). Such POTIS

shall be completed in triplicate, at the scene, by the police officer and signed by the officer in charge and the tow truck driver. The original of such POTIS shall be retained by the police department. The remaining two copies shall be left with the tow truck driver. The tow truck driver, prior to delivering the vehicle to the owner or representative, shall have the owner/representative sign the remaining two copies and the tow truck driver shall then give one copy to the owner/representative and retain one copy for the tow truck company records.

(d) If issuance of a tow company license is approved, the applicant or licensee shall comply with insurance requirements set forth in section 48-137.

Sec. 48-180. - Refusal to issue or renew.

The chief of police may refuse to issue or renew a tow company license upon notice and hearing, for one or more of the following reasons:

(1) The making of any false statement as to material matters in an application for a license, or license renewal or in a hearing concerning the license;

(2) Revocation of a license, pursuant to this division, of the applicant or any proprietor, partner or corporate officer of the applicant within 18 months preceding the application;

(3) Use by the licensee of a trade name for his tow truck company other than the one registered with the chief of police;

(4) Suspension of the licensee's tow truck company license on three occasions within 12 months for more than two days on each occasion;

(5) Failure to meet the qualifications, service standards, or the rules and regulations established by this article;

(6) A licensee or the owner or holder of more than ten percent of licensee's stock, if the licensee is a corporation, has been convicted of a crime involving moral turpitude including burglary, robbery, perjury, forgery, theft, theft of an automobile or receiving and concealing stolen property, unless five years has lapsed since the date of conviction or the date of release from confinement imposed for the conviction, whichever is the later date; or

(7) If the holder of the license is a corporation, if such corporation fails to furnish a list of the owners or holders of more than ten percent of the issued and outstanding stock in such corporation at the time of application, transfer or renewal.

Sec. 48-181. Report of Towing of Unauthorized Vehicle to Police Dispatcher by Vehicle Storage Facility.

The VSF that receives a vehicle from a tow truck that removed the vehicle from private or public property within city and on a non-consent basis, except on police-generated tows, shall notify the police department dispatch office within one hour of receiving the vehicle. The information to be provided in such notification shall include:

- (1) The general description (brand, model, color) of the vehicle towed, including the state and the license plate, if any;
- (2) The tow company name that towed the vehicle;
- (3) The location/address from which the vehicle was towed and reason;
- (4) The date and time the vehicle was removed from the location;
- (5) The date and time the vehicle was accepted at the VSF; and
- (6) The street address and phone number of the VSF where the vehicle is located.

Such reports shall be made by fax, e-mail or in person. A VSF must release vehicles during the time the VSF accepts vehicles. If the VSF accepts vehicles on a 24-hour-a-day basis, it shall release vehicles on the same basis, with one (1) hours' notice.

Secs. 48-182-48-190. - Reserved.

DIVISION 3. - TOW TRUCK DRIVER'S PERMIT

Sec. 48-191. - Required.

(a) No person shall drive or operate any tow truck for the purpose of making rotation non-consent and/or police directed/initiated tows in the City of Tomball unless such a person possesses a current, valid tow truck driver permit issued by the city nor shall any person allow, permit or cause to be operated any tow truck for the purpose of making rotation non-consent and/or police directed/initiated tows, either on his own account or in the employ of another.

(b) A violation of subsection (a) or (b) of this section shall be a Class C misdemeanor and is punishable as provided in section 1-14 or by suspension.

Sec. 48-192. - Application.

(a) No person shall drive or operate any tow truck for the purpose of making rotation non-consent and or police directed/initiated tows in the City of Tomball unless such a person possesses a current, valid tow truck driver permit issued by the city secretary nor shall any person allow, permit or cause to be operated any tow truck for the purpose of making rotation or police initiated tows, either on his own account or in the employ of another. A violation of subsection of this section shall be a class C misdemeanor and is punishable as provided in section 1-14 of this Code or by suspension.

(b) Each person desiring a tow truck driver permit shall submit an application to the city secretary on a form furnished by the city. On the application the applicant shall set forth:

(1) The name and address of the applicant;

(2) The applicant's date of birth, place of birth, sex and each address where he has resided in the two years immediately preceding his application;

(3) The name and address of each employer of the applicant and any businesses that the applicant has been engaged in during the two years immediately preceding the filing of the application;

(4) Evidence that the applicant has operated a motor vehicle for at least six months immediately prior to the filing of the application;

(5) Whether the applicant has been convicted of any criminal offense in this state or any other state or county preceding his application or has spent any time in jail or prison preceding his application due to a conviction for a criminal offense. If he has been convicted of any such offense or been in jail or prison, he shall set out the offense convicted of, the date of the conviction and the police, court and case numbers of the case. All applicants shall, in their application, authorize the police department to investigate as to whether the applicant has committed any criminal offense;

(6) The applicant shall also show the chief of police evidence that he has a current license valid under state law for vehicles greater than one ton, issued by the state, and shall complete a form allowing the chief of police and the police department to obtain information as to the applicant's driving record from the state and from any state which had issued the applicant a driver's license which was valid at any time within the two years immediately preceding the submission of the application;

(7) Such other information as the chief of police or his designee finds relevant; and

(8) Two current photographs of the applicant.

(b) After the application has been completed, the applicant shall sign the application and shall execute a sworn affidavit that all matters stated in the application are true and correct.

(c) The applicant shall also provide the chief of police or his designee with evidence that he is at least 18 years of age and submit himself to be fingerprinted at a time and place designated by the chief of police or his designee.

Sec. 48-193. - Fee.

Every person desiring a tow truck driver permit shall pay a nonrefundable license fee as currently established or as hereafter adopted by resolution of the city council from time to time at the time he submits his application to the chief of police or his designee.

Sec. 48-194. - Application investigation.

The chief of police or his designee shall issue a tow truck driver permit after submission of an application in accordance with section 48-192, payment of the application fee and completion of the investigation of the criminal and driving records of the applicant, unless he finds that the permit should be denied under section 48-195 or gives notice of a hearing pursuant to section 48-196.

Sec. 48-195. - Application denial; notice.

(a) An application for a tow truck driver permit shall be denied if any information set out in the application was incomplete or false.

(b) If the chief of police or his designee denies the application for a tow truck driver permit, he shall give written notice to the applicant by certified mail, return receipt requested, at the applicant's address as set out in the application. In such notice, the chief of police or his designee shall set out the reason the application was denied.

Sec. 48-196. - Application hearing.

The chief of police or his designee, if considering denial of an application, shall give the applicant notice that a hearing will be held in regard to his application for a tow truck driver permit if:

(1) The police department has informed the chief of police that the applicant has been convicted of or spent any time in jail or prison for any of the following offenses prior to the issuance of the permit:

- a. Any offense involving moral turpitude, including:
 1. Fraud or theft of any kind;
 2. Forgery;
 3. Burglary;
 4. Robbery; or
 5. Any felony conviction.
- b. An offense relevant and reflecting on the ability of the applicant to operate as a tow truck driver.

The chief of police or his designee shall not, however, deny a permit on the basis of time in jail or prison where there was no conviction or for any conviction which was set aside as invalid.

(2) The applicant has been convicted of three or more moving violations of the traffic laws of this state or of any other state in the one-year period immediately preceding the date of issuance of the permit or has been convicted of seven or more moving violations in the three-year period immediately preceding the date of issuance of the permit.

(3) A tow truck driver permit issued to the applicant by the city had been revoked at any time within five years immediately preceding the submission of the application, had not been renewed, and grounds existed for the revocation of the permit at the time it expired.

Sec. 48-197. - Refusal to issue or revocation.

The chief of police or his designee may refuse to renew a tow truck driver permit and a tow truck driver permit may be revoked at any time if:

(1) The licensee has committed or been convicted of any of the offenses set forth in section 48-196(1);

(2) The licensee has been convicted of three or more moving violations of the traffic laws of this state or of any other state within one year when any of the convictions occurred after the permit was issued;

(3) The licensee has been convicted of driving while intoxicated or driving while under the influence of drugs after the permit was issued;

(4) The licensee has committed or been convicted of any violation of this article or ordinances of the city regulating tow trucks; or

(5) The licensee has violated any of the rules and regulations issued by the chief of police pursuant to this article.

Sec. 48-198. - Expiration; renewal; replacement.

(a) All tow truck driver permits shall expire one year from the date the permit was issued. To renew such a permit the licensee shall file an application on a form designated by the chief of police or his designee setting out such information as the chief of police or his designee finds is reasonably necessary to determine if the applicant's license should be renewed, and shall pay a renewal fee as currently established or as hereafter adopted by resolution of the city council from time to time.

(b) If a tow truck driver's permit is lost or destroyed, he may obtain a replacement permit under the following conditions:

(1) He files an affidavit, sworn to before a notary, stating that his permit has been lost or stolen and setting out the details of how his permit was lost or stolen, setting out the details of where and when he last saw the permit and when he discovered it as lost;

(2) Submitting two photographs with the affidavit; and

(3) Paying a fee for the replacement permit as currently established or as hereafter adopted by resolution of the city council from time to time. A replacement tow truck driver's permit shall expire on the date of expiration for the permit which was lost or stolen.

Secs. 48-199—48-210. - Reserved.

DIVISION 4. - OPERATION

Sec. 48-211. - Powers and duties of the chief of police with respect to tow truck service.

In addition to the powers and duties elsewhere prescribed in this article, the chief of police or his designee are authorized to:

- (1) Administer and enforce all provisions of this article;
- (2) Keep records of all licenses and permits issued, suspended or revoked;
- (3) Keep records of all authorized tow truck vehicles;
- (4) Adopt rules, regulations and penalties after reasonable notice to the permittees and licensees, not inconsistent with the provisions of this article, with respect to the form and content of applications for licenses and permits the receipt thereof, the investigation of applicants, and other matters incidental or appropriate to his power and duties as may be necessary for the proper administration and enforcement of the provisions of this article;
- (5) Conduct, when appropriate, periodic investigations of tow truck companies throughout the city; and
- (6) Require periodic reports as necessary to evaluate each tow truck company's operations.

Sec. 48-212. - Tow Truck rotation lists to be established; contents; qualifications; use.

(a) **Qualifications.** The city police department shall establish and maintain a tow truck rotation list. Each tow truck company is required to complete any and all applications and provide required information necessary to apply for the tow truck rotation list.

To be eligible for the rotation list, each tow truck company is required to comply with all of the following requirements:

- (1) Maintain a 24-hour tow service; have one telephone number which is answered 24 hours a day, seven days a week; and uses a VSF that meets or exceeds the Texas Accessibility Standards ("TAS") accessibility criteria, approved by the United States Department of Justice; and
- (2) Certify in writing that the VSF meets or exceeds the criteria set forth by Texas Accessibility Standards, a copy of which will be provided by the city at the time the tow company applies for inclusion on the tow rotation list.

Only those tow trucks that are included on the tow company's tow truck license and are permitted by the city are authorized to respond to incident management rotation calls. A tow company may not substitute a tow truck from a different tow company to respond to an incident management call.

(b) The tow truck rotation list shall contain the names, in alphabetical order, of all qualified license holders requesting to be on such list.

(c) A license holder is qualified to be on such list if:

(1) He meets the requirements of section 48-177;

(2) He maintains 24-hour tow truck service and has no more than one telephone numbers, which is answered 24 hours a day, seven days a week. The use of a telephone answering service shall be permitted, provided that if such service is used, the failure of a license holder to communicate with the police communications center or its authorized agent within five minutes following a call requesting a dispatch of a certified tow truck, confirming that the license holder shall immediately dispatch a certified tow truck to the desired location, will result in a forfeiture by that license holder of that call; and

(3) His tow trucks are equipped with communications equipment compatible with the radio communications equipment used to dispatch tow trucks on the tow truck rotation list.

(d) When the police officer investigating a collision determines that any vehicle involved in a collision is unable to safely proceed under its own power or, when the police officer determines that the driver of any vehicle involved in a collision is physically unable to safely move the vehicle to a location where it will not create a traffic hazard, such officer shall request the driver to designate the tow truck license holder which he desires to remove the vehicle.

(1) When the designation has been properly made, the police officer shall communicate the name of the designated license holder to the police communications center or its authorized agent.

(2) The police communications center or its authorized agent shall cause the designated license holder to be called and directed to send to the scene of the collision a permitted tow truck.

(3) Any police officer investigating an accident or offense within the city may order the non-consent tow to impound of any vehicle involved therein when, in the judgment of such officer, criminal prosecution will be involved as a result of such event, or when it is necessary to impound such vehicle to secure evidence, or when the owner or occupant of the vehicle is unable or fails to have such vehicle removed, or when the vehicle is stopped for a traffic violation, to effect an arrest, or is involved in an accident on a public roadway or public property and the vehicle's owner or operator fails to show proof of financial responsibility as required under V.T.C.A., Texas Transportation Code, Ch. 601 as

amended. The fees to be charged for impound tows will not exceed the maximum rates allowed under this article or state law.

(e) If the owner of a vehicle involved in a collision is physically unable to designate the permit holder he desires to remove the vehicle, the police officer shall deem this vehicle a non-owner consent tow and the police officer shall communicate that fact immediately to the police communications center or its authorized agent. The police communications center or its authorized agent shall then call the license holder next in line on the tow truck rotation list and request the license holder to tow the vehicle from the scene of the collision to a storage lot as specified in section 48-139. After the last license holder on such list has been called, the next such call shall go to the first license holder on the list. If two or more license holders are called to the scene of a collision, with no designation from vehicle operators, the vehicles to be towed may be selected by the permit holders in order of the tow truck rotation list, unless the police officer in charge requests that vehicles be removed prior to arrival of the selected license holder.

(f) If the license holder after arrival at the scene determines, in conjunction with the police officer in charge, that assistance is needed, then the police officer shall communicate that fact immediately to the police communications center, or its authorized agent, which shall proceed under subsection (e) of this section.

(g) **Forfeiture of calls.** Failure of any tow truck to check in route, by radio or phone, to the designated location within ten minutes of dispatch making contact with the listed phone number of the tow company or arriving at the designated location dispatched by the city within 25 minutes of being called will result in the forfeiture of that call and shall be considered a violation of this article. Three such forfeitures within 12 months may result in temporary removal from the rotation list. Repeat offenses may result in permanent removal for the annual cycle.

(h) If a license holder or his driver is towing a vehicle and receives a tow truck rotation call, the license holder or his driver must complete the original tow before accepting the rotation list call. If the license holder or his driver is unable to complete the original tow within the required response time as referenced in subsection (g) of this section, he must forfeit the call.

(i) **Unneeded calls.** If a tow company is called to respond to a scene by a police officer and subsequently is not needed, that tow company will be placed as "next in line" on the tow rotation list. If a tow truck responds and performs minor service that enables the vehicle to be driven, and for which no fee is charged, that Tow Company will be placed as "next in line" on the tow rotation list.

(j) **Temporary removal from list.** Should a tow company wish to be removed from the tow rotation list for a specific period of time, the tow company shall notify the police department dispatch, in writing, fax or e-mail, if the time

off requested is 24 hours or longer. It shall be the tow company's responsibility to notify dispatch in writing, fax or e-mail, when the tow company wishes to return to the tow rotation list.

(k) **Method of receiving payment.** Each qualified tow company must be able to accept cash or credit/debit card payments for services rendered.

(l) **Maximum Number of Licenses Issued and Placed on City Rotation List.** The eleven (11) permitted towing companies holding a vehicle tow service rotation license as of September 30, 2014, may apply for renewal so long as they remain qualified under the terms of this chapter. The city will issue no other vehicle tow service licenses until and unless the number of licensed towing companies on the city non-consent towing rotation list is eight or less because of attrition. If at any time there are six or fewer licensed towing companies on the city's non-consent towing list, the city will consider applications from other qualified companies. Those applications will be considered in the order in which they were filed, and the city secretary shall issue a license to any qualified towing company based on their application, until such time as there are sufficient qualified licensed tow truck companies on the city's vehicle tow service rotation list. The maximum number of companies, licensed, and on the city's rotation list will be henceforth determined by the Chief of Police or his designee based on service needs.

Sec. 48-213. - Police officer not to influence selection of tow truck service.

A police officer investigating an accident or present at the scene of any wreck or collision shall not directly or indirectly recommend to any person involved in the wreck or collision the name of any permit holder and shall not directly or indirectly recommend or attempt to influence in any manner the decision of any persons in choosing or selecting a permit holder.

Sec. 48-214. - Soliciting business at the scene of an accident; driving tow trucks to scene of an incident prohibited.

(a) All wrecker drivers, owners or agencies are prohibited from soliciting the business of towing, removing or repairing any wrecked or disabled vehicle at the place where the accident has occurred by words, cards, circulars or gestures. A violation of this section shall be a Class C misdemeanor and upon conviction shall be punishable as provided in section 1-14.

(b) **Driving Tow Trucks to Scene of an Incident Prohibited.** No tow company shall drive, or cause to be driven, a tow truck to or near the scene of an incident on a street within the city unless such tow company has been called to the scene by the city police department. A violation of this section shall be a class C

misdemeanor and upon conviction shall be punishable as provided in section 1-14 of this Code.

Sec. 48-215. - Duties of Tow Companies in providing safe and prompt tow truck service.

(a) It shall be the obligation of all license holders under this article to operate tow truck businesses so as to provide safe and prompt removal of wrecked or disabled vehicles from the public streets of the city when properly called upon to do so in accordance with the provisions of this division.

(b) The duty to provide safe and prompt tow truck service upon call includes, but is not limited to the following specific duties:

(1) Taking direction from investigating officer. Upon arrival at the scene of a collision within the city, tow truck operators shall take directions on when to engage or tow from the police officer investigating the collision;

(2) Removing debris of collision. Tow truck operators that engage and tow any vehicle from the scene of a collision within the city shall remove all debris of the collision from the public street. This duty specifically includes the removal of vehicle parts, glass, and other debris. Such debris shall be disposed of in a lawful manner, which will keep it out of the gutters, storm sewers, streams, public rights-of-way, or property not belonging to the tow company;

(3) **Disengaging.** A tow truck that removes a vehicle from the original location shall not disengage from the vehicle until the vehicle has been deposited with the appropriate VSF except when the vehicle is released to the owner or operator or when the owner or operator specifies the location of disengagement. This restriction is enacted to prohibit tow trucks from engaging an unauthorized vehicle in a parking facility and moving it to a close location, then returning for another unauthorized vehicle, ultimately towing all the relocated vehicles to a VSF;

(4) Any license holder on the tow truck rotation list must tow or have towed the damaged vehicle to a repair shop or to a place designated by the owner, unless the owner of the vehicle is disabled by physical injury and is, therefore, unable to designate a location for the vehicle to be towed. The license holder shall then store the vehicle in a state-licensed depository located in the city until released to the vehicle owner or agent. The selling of such right to tow any disabled vehicle is prohibited. The tow truck operator shall sign the Form 319 provided by the police department prior to leaving the scene and shall accept the responsibility of removing the vehicle until relieved of this responsibility. A violation of this section shall subject a license holder to a Class C misdemeanor and fine as set forth in this article; and

(5) **Drops.** A tow truck that has hooked up to a vehicle for towing shall release the vehicle to its owner or operator upon receiving, a drop fee, payment and will not tow the vehicle, except when the vehicle is being taken into custody by a police officer. A vehicle is hooked up" if it is immediately ready for transport. A vehicle is not hooked up" unless it can be legally towed on a public roadway.

Sec. 48-216. - Emergency wrecker service owner's records.

Each emergency wrecker license holder shall keep full and complete books of accounts and other records normally accepted in sound accounting practices, which records shall indicate a complete and accurate record of all expenses and income in connection with the actual operation of the emergency wrecker license and the maintenance of the equipment. The records must be kept so as to accurately reflect the various items of cost of operation and maintenance and must be made available to the director for audit upon request.

Sec. 48-217. - Parking of tow truck at scene of accident.

Whenever a tow truck arrives at the place where a motor vehicle has been disabled by an accident, the tow truck driver shall park his vehicle as close to the street curb as possible and otherwise dispose of it in such a manner as not to interfere with traffic.

Sec. 48-218. - Removal of vehicles from scene of accident.

(a) No tow truck driver shall remove any wrecked or disabled vehicle from the place where the accident has occurred or attach his tow truck to the wrecked or disabled vehicle until the driver of the vehicle has given permission or until the city police officer investigating the accident has completed his investigation.

(b) The fact that no police officer of the city is present at the scene of an accident when a tow truck which has been summoned to the scene by the vehicle owner arrives shall not constitute an exception to this section. It shall be the duty of any tow truck owner or driver desiring to tow or haul any wrecked or disabled vehicle from the accident scene to notify the police department of the accident and to wait for the police officer to arrive and complete his investigation.

(c) If the driver of a wrecked or disabled vehicle has been rendered unable by the accident to give permission to an tow truck driver to remove the wrecked or disabled vehicle, the investigating police officer shall notify the chief of police or other officer in charge of accident investigation of such fact, and such officer shall give such orders as may be necessary to remove the wrecked or disabled vehicle from the street. In any event, with or without the driver's permission, the

investigating police officers are empowered to order any wrecked or disabled vehicle to be moved a distance sufficient to clear the street for traffic or taken to a state-approved storage lot within the city.

Sec. 48-219. – Vehicle storage facility lot requirements-

(a) **Vehicle Storage Facility.** Each tow company performing non-consent tows shall utilize a licensed VSF located in the city limits or within the extra territorial jurisdiction of the city.

(b) **Inspection of Vehicle Storage Facility.** Every VSF to be used by the applicant for vehicle storage shall be inspected annually by the Tomball Police Department delegate prior to the issuance of a permit to ascertain if it has met all state requirements

It shall be unlawful for any permitted tow truck to operate at any time without the required equipment stipulated by state law or this article.

Section 3. Any person who shall intentionally, knowingly, recklessly, or with criminal negligence, violate any provision of this Ordinance, shall be deemed guilty of a misdemeanor and, upon conviction, shall be fined in an amount not to exceed \$2000. Each day of violation shall constitute a separate offense.

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

Section 5. This Ordinance shall take effect immediately from and after its passage and the publication of the caption hereof, as provided by law and the City's Home Rule Charter.

FIRST READING:

READ, PASSED AND APPROVED AS SET OUT BELOW AT THE MEETING OF THE CITY COUNCIL OF THE CITY OF TOMBALL HELD ON THE 5TH DAY OF OCTOBER 2015.

COUNCILMAN HUDGENS	<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 ____ DAY OF _____ 2015.

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

Gretchen Fagan, Mayor

ATTEST:

Doris Speer, City Secretary

Regular City Council

Agenda Item

Meeting Date: October 19, 2015

Data Sheet

Topic:

Presentation regarding Electrical Services Provider for the City of Tomball and Possible Action to Approve Resolution No. 2015-24, a Resolution of the City of Tomball, Texas, Approving the Certificate of Formation and Bylaws of Texas Coalition for Affordable Power ("TCAP"), a Political Subdivision Corporation; Accepting Membership in Said Corporation; Appointing a Representative to Serve on Behalf of the City of Tomball; Approving Payment of an Initial Membership Fee

Background:

This item relates to a presentation regarding the electric service provider for the City of Tomball. We currently have a contract with TXU which runs through April 30, 2016 at a fixed rate of \$ 0.048902/kWh. At this time, the current market rates are below our current contract rate and it is to the City's advantage to review our options regarding electric service beginning on May 1, 2016.

We can enter into a contract now for electric services starting May 1, 2016 at today's market rates. One of the city's options is to join a non-profit Texas political subdivision corporation which is an aggregation of several city governments, much like HGAC.

The Texas Coalition for Affordable Power (TCAP) pools the electric service needs of cities and school districts (over 17,000 accounts) representing an annual capacity of \$ 1.4 billion kWh. The size of TCAP's aggregated load provides clout when it comes time to negotiate supply agreements. As a consequence, TCAP members have experienced long-term savings, especially when compared to historic rates charged by some of the state's most largest and more established electric retailers.

Jay Doegey from TCAP will be at the council meeting to do a presentation on who TCAP is, how it works, how it is governed, and any other issues raised by the council.

At the end of the presentation and discussion, council may choose to take action to approve Resolution No. 2015-24.

Origination:

Finance

Recommendation:

Receive Presentation and Approve Resolution 2015-24 to join TCAP

Funding:

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

Glenn Windsor, CPA Finance Director

ACTION TAKEN		
APPROVAL ☐ YES ☐ NO	READINGS PASSED ☐ 1 ST ☐ 2 ND	OTHER

ATTACHMENTS:

Resolution No. 2015-24

Who Is TCAP

Advantages of TCAP Membership

TCAP Member List

TCAP Member List- Houston Zone

RESOLUTION NO. 2015-24

A RESOLUTION OF THE CITY OF TOMBALL, TEXAS, APPROVING THE CERTIFICATE OF FORMATION AND BYLAWS OF TEXAS COALITION FOR AFFORDABLE POWER ("TCAP"), A POLITICAL SUBDIVISION CORPORATION; ACCEPTING MEMBERSHIP IN SAID CORPORATION; APPOINTING A REPRESENTATIVE TO SERVE ON BEHALF OF THE CITY OF TOMBALL; APPROVING PAYMENT OF AN INITIAL MEMBERSHIP FEE.

* * * * *

WHEREAS, Chapter 304 of the Texas Local Government Code, entitled Energy Aggregation Measures for Local Governments, allows political subdivisions to form a political subdivision corporation to act as an agent to negotiate the purchase of electricity, or to likewise aid or act on behalf of the political subdivisions for which the corporation is created, with respect to their own electricity use for their respective public facilities; and

WHEREAS, Texas Coalition for Affordable Power ("TCAP") is a political subdivision corporation organized under said Chapter; and

WHEREAS, more than one hundred cities and other political subdivisions have joined TCAP since the Texas electric retail market was deregulated January 1, 2002; and

WHEREAS, TCAP members work collaboratively with the assistance of attorneys and procurements experts hired by TCAP to negotiate lower cost, stable, reliable electric power; and

WHEREAS, the negotiation for electricity by the corporation should result in lower, more stable electricity costs to the City of Tomball; and

WHEREAS, the City of Tomball seeks to become a Member of TCAP; and

WHEREAS, TCAP Bylaw Section 9.1 requires an initial membership fee, not to exceed \$14,000, that is the greater of ½ of 1% of the total annual electric bill of the last full year of billing information available prior to membership application or \$00.05 per capita of the resident population of the prospective member.

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

Section 1. The recitals contained in the preamble of this Resolution are determined to be true and correct and are hereby adopted as a part of this Resolution.

Section 2. The Certificate of Formation and Bylaws of TCAP, a political subdivision corporation, attached hereto and incorporated herein for all purposes as Exhibits A and B respectively, are hereby approved.

Section 3. The City of Tomball accepts Membership in TCAP.

Section 4. The City of Tomball approves payment of an initial New Membership Fee assessment equivalent to the greater of \$0.05 per capita of the resident population or ½ of 1% of the total annual electric bill for 12 months of the last full year of billing information available prior to membership application. Such fee shall not exceed \$14,000.

Section 5. The City of Tomball hereby appoints the City Manager, Assistant City Manager, or Finance Director to serve as the City of Tomball's representative to the corporation and to act on the City of Tomball's behalf.

Section 6. All Resolutions and parts thereof in conflict herewith are hereby expressly repealed insofar as they conflict herewith.

Section 7. That if any one or more sections or clauses of this Resolution is adjudged to be unconstitutional or invalid, such judgment shall not affect, impair or invalidate the remaining provisions of this Resolution and the remaining provisions of the Resolution shall be interpreted as if the offending section or clause never existed.

Section 8. This Resolution shall take effect immediately from and after its adoption and it is accordingly so resolved.

Section 9. A copy of this Resolution shall be sent, Attention to: TCAP Executive Director, 15455 Dallas Parkway, Suite 600, Addison, Texas 75001, along with the initial assessment fee.

PASSED AND APPROVED AS SET OUT BELOW AT THE MEETING OF THE CITY COUNCIL HELD ON THE 19TH DAY OF OCTOBER 2015.

GRETCHEN FAGAN
Mayor

ATTEST:

Doris Speer
City Secretary

Information Regarding Texas Coalition for Affordable Power (TCAP)

Who is TCAP?

TCAP is a non-profit Texas political subdivision corporation established in 2010 with the merger of Cities Aggregation Power Project and South Texas Aggregation Project, both of which were created in 2001 by the cities that had been participating in the investor owned electric rate cases before the PUC. CAPP and STAP were created in response to the Texas Legislature's deregulation of the retail electric market that began in 2002. TCAP is owned and operated by its 169 member cities and city-affiliated authorities and special districts.

What does TCAP do?

TCAP pools the electric energy buying needs of its governmental entities with over 17,000 accounts using 1.4 billion kWh annually. It procures and negotiates the terms of its contracts with both retail and wholesale providers. The electricity procured is for the facilities owned by its members. All members take power under the same contract, but prices vary by ERCOT zone, primarily because of transmission constraints on the Texas electric power grid.

How is TCAP Governed?

TCAP has a 15 member Board of Directors made up of employees or elected public officials of its members. They are elected to 2-year staggered terms. Members nominate candidates for directors annually to ballot places that represent large users (greater than 35 million kWh annually), medium users (15 to 35 million kWh annually), or small users (under 15 million kWh annually). The By Laws require that there be at least one director from each of the four ERCOT zones. There are currently two directors from Houston Zone members—Julie Johnston (Dickinson) and Mike Goodrum (Sugar Land). All members have the same number of votes to cast in each election. TCAP has two employees appointed by the Board—an Executive Director and a Management Assistant. TCAP also has expert energy consultants that it pays on an hourly basis. These consultants provide both TCAP and its members with independent, conflict of interest-free advice and counsel in energy consulting, contracting, member electric account management and billing, electricity budget and governmental reporting assistance, general legal counsel, marketing, communications and public relations.

What are some of the benefits of TCAP membership?

- **Transparent governance**--Any TCAP member can attend and is encouraged to participate in meetings of the Board of Directors.
- **Board membership eligibility**--Any TCAP member can be a candidate for director.

- **Equal voting power**--All TCAP members have the same number of votes to cast for directors.
- **Non-profit status**--TCAP is a non-profit Texas political subdivision corporation.
- **True Aggregator status**--TCAP aggregates its entire 1.4 billion kWh electricity load and uses its clout to negotiate favorable energy supply agreements.
- **Favorable member load profiles**--TCAP members have extremely favorable load profiles as an entity that, when combined as a single load, reduces peak load by more than 20%--something suppliers find attractive.
- **Contracts in retail and wholesale markets**--TCAP can go to both the wholesale and retail markets to contract.
- **Multiple energy supplier capability**--TCAP can contract with multiple energy suppliers with different forms of generation and contract terms.
- **Diverse energy supply options**--TCAP can provide its members with a diverse set of supply options.
- **ERCOT and legislative presence**--TCAP has a substantial presence at ERCOT and at the State Legislature to represent electric ratepayer interests.
- **Accessible experienced independent energy consultants**--TCAP has a team of experienced independent expert consultants with whom members may consult on usage and billing matters at little or no cost.
- **Account portal access**--TCAP provides a portal through which members may track current and historical electric account usage and cost data.

TCAP website--TCAP maintains a state of the art website at www.tcaptx.com to provide current information about TCAP matters and related energy news.

What does TCAP charge for membership?

TCAP charges a one-time New Membership Fee to initially join TCAP. This fee is equal to the greater of 5 cents per capita of resident population, or 0.5% of the prior calendar year's total electric bills, not to exceed \$14,000. This fee for the City of Tomball is estimated to be approximately \$3,200.

An Aggregation Fee is also billed to members through the Retail Electric Provider that is party to the current power supply agreement. The current Aggregation Fee charged to TCAP members in the Houston Zone during 2015 is \$0.0002 per kWh. However, this fee could increase for non-West Zone members in 2016.

Advantages of TCAP Membership

Advantages Summarized

The size of TCAP's aggregated load provides clout when it comes time to negotiate supply agreements. As a consequence, TCAP members have enjoyed considerable long-term savings—especially when compared to historic rates charged by some of the state's largest and most established electric retailers. But perhaps even more meaningful than TCAP's price, which will match or beat that of any political subdivision entering the market during a comparable time period, is the ability to negotiate contract terms that are more beneficial than any single political subdivision can match on its own. Over the past 12 years, TCAP and its predecessor corporations, STAP and CAPP, have provided members with price stability, a voice in the marketplace, advocacy before regulatory agencies and the legislature, access to consultants who can solve technical problems and correct mistakes by suppliers, and state of the art resources to understand accounts, usage patterns and options for supply.



Texas Coalition
for Affordable Power

tcaptx.com

SUPPLY ADVANTAGES

A political subdivision corporation like TCAP has unique privileges under law that any individual political subdivision cannot enjoy. For instance, TCAP has the ability to negotiate contractual agreements in both the wholesale and retail markets within Texas. By contrast, an individual political subdivision acting on its own is compelled to contract only through a retail electric provider (REP). TCAP negotiates agreements in the wholesale market just like a REP, but can achieve supply terms that a REP may not be willing to pass on to end users. This unique relationship has two huge benefits that are likely to grow in importance over time.

First, separate solicitations of bids in the wholesale market and from REPs in the retail market for billing, portal and customer services provide TCAP with greater information regarding costs and margins. This approach provides TCAP with a much broader set of supply options and the ability to negotiate various supply, pricing and REP services provisions than would be otherwise possible if supply options were limited to only REP retail offerings. For example, TCAP's current REP spent months developing a TCAP customized portal to allow members access to their current and historic billing and usage data.

Second, TCAP is able to contract with multiple suppliers with different forms of generation and contract terms and still allow for individual members to be billed by a single REP with one invoice breaking out each account, per month. The possibilities for the future under this unique contracting include: 1) a mixture of short- and long-term supply options and diversification of generation

options; 2) a selection of contract options to capture unique zonal opportunities; 3) permitting members who desire additional renewable energy options to pursue that objective; or 4) the ability to purchase supply from a single generator.

TCAP'S ADVANTAGE OVER OTHER NON-PROFIT GROUPS

The only other political subdivision corporation arranging for electric services to cities is P3. While a few cities have joined P3, the organization was not organized for the benefit of cities. It was organized for the benefit of and is controlled by counties. P3 has not set up the unique contractual relationships similar to those that TCAP enjoys with both the wholesale and retail markets. Apparently, P3 does not negotiate collectively on behalf of all of its members simultaneously and thus cannot provide its membership with the same level of clout that TCAP can provide when negotiating terms and conditions of contracts. Unlike TCAP, P3 does not participate in representation of its members before ERCOT and rarely appears before the Public Utility Commission.

Houston Galveston Area Council (HGAC) and the General Land Office (GLO) are not political subdivision corporations and do not provide true aggregation services. HGAC simply arranges bids for an individual city's load and GLO cooperates with a single retail electric provider and a broker to offer bids when a city is in the market looking for a new power contract. Neither GLO nor HGAC offer benefits associated with unique contract structure, diverse supply options, specialized consultants, or participation in advocacy. In short, any aggregator or similar organization that does not truly aggregate their load into larger packages will not be able to

fully realize their potential market clout in procuring both supplies and services. Only TCAP unites cities in a common cause to improve the competitiveness of the market, protect and stabilize city budgets and benefit city residents.

TCAP is also unique in offering its members direct access to market experts to help members resolve energy related issues. TCAP experts have helped members with contract and legal issues, budgeting issues, project grant applications and a myriad of other items. TCAP's on-call experts make problem resolution simple.

EXPANDED SERVICES

Membership in TCAP also affords many additional services not included in a typical REP contract. TCAP secures a custom Account Management team with the REP so members have direct access to analysts dedicated to serving city needs. Additionally, members are provided a variety of reports annually, including fiscal year budget estimates and the data required for governmental reporting requirements (SB 898, HB 3693, etc.). TCAP members also have access to an advanced interactive web portal that lets them view and download invoices, usage history data, billing reports and many other trend and data reports in Excel format. The TCAP website contains a Members Only section that provides pertinent information and reporting reminders. Members also can opt to receive a monthly newsletter via email which details ongoing TCAP activities as well as general issues relevant in the electric market.

COST SAVINGS AND PRICE STABILITY

Most contracts in the deregulated market are largely dependent upon gas futures contracts. Contract prices for any future term change daily, following changes in prices in the wholesale energy and natural gas markets. Because of its size, TCAP's load can capture the best price for any particular time period. While the economic history of CAPP, STAP, and TCAP contracting continues to reflect overall cost savings in comparison to typical single city efforts, the TCAP Board of Directors has focused more on achieving consistent, long-term price stability to protect city budgets rather than gambling on an attempt to capture the best price in an extremely volatile market. No TCAP member has had to fear the price volatility associated with natural gas prices.

TCAP is also moving forward with offering additional market savings opportunities through demand and usage reduction programs. Starting with a successful pilot program this past summer, TCAP envisions offering these options to all members in the future. TCAP is also investigating and developing other strategies to put additional savings into its members' pockets.

CONCLUSION

TCAP is unique as an organization. It is the only entity in the Texas electric market that is controlled exclusively by cities. It offers more services and more supply options than any other similar organization soliciting city participation.

Background

TCAP was incorporated in December 2010. It was created from the merger of the Cities Aggregation Power Project (CAPP) and the South Texas Aggregation Project (STAP), both of which were created in 2001. TCAP's membership includes 168 political subdivisions with over 16,000 electric accounts, consuming approximately 1.4 billion kWh annually. TCAP is a non-profit corporation controlled by a 15-member board of directors consisting entirely of city employees. All members take power under the same contract, but prices vary by ERCOT zone, primarily because of transmission constraints on the Texas grid.

Abilene	Clyde	Grapevine	Midlothian	Saginaw
Acton MUD	Colleyville	Haltom City	Mission	San Angelo
Addison	Colorado City	Hamilton	Mission Housing Authority	San Juan
Alamo	Comanche	Harker Heights	Missouri City	Seadrift
Alice	Commerce	Harlingen	Murphy	Sherman
Allen	Copperas Cove	Harlingen Housing Authority	North Richland Hills	Sinton
Alton	Corinth	Henrietta	Oak Point	Snyder
Anna	Corpus Christi	Highland Park	Odem	South Padre Island
Aquilla Water Supply	Corpus Christi Housing Authority	Howe	Odessa	South Texas Water Authority
Aransas County MUD	Corpus Christi Regional Transit Authority	Hurst	Orange Grove	Spring Valley
Aransas Pass	Crockett	Ingleside	Ovilla	Springtown
Arlington	Decatur	Ingleside on the Bay	Palestine	Sugar Land
Aubrey	Denison	Johnson County SUD	Palmer	Sunnyvale
Austwell	DeSoto	Kaufman	Pantego	Sweetwater
Bangs	Dickinson	Keller	Paris	Taft
Beeville	Dilley	Kenedy	Pearland	The Colony
Bellmead	Dublin	Kennedale	Plano	Trophy Club
Belton	Duncanville	Kingsville	Pleasanton	University Park
Benbrook	Eastland	La Feria	Point Comfort	Upper Leon
Benbrook Library District	Edgecliff Village	La Marque	Port Aransas	River MWD
Benbrook Water Authority	Edna	Laguna Vista	Port Lavaca	Venus
Bishop	Eules	Lake Jackson	Portland	Vernon
Brownwood	Everman	Lancaster	Premont	Victoria
Burkburnett	Falfurrias	Lewisville	Prosper	Watauga
Burleson	Farmersville	Lorena	Red Oak	Webster
Calhoun Port Authority	Flower Mound	Los Fresnos	Refugio	West Central Texas MWD
Carrizo Springs	Forest Hill	Lovelady	Richland Hills	White Settlement
Cedar Hill	Fort Stockton	Lyford	Rio Grande	Whitney
Celina	Frisco	Mansfield	Roanoke	Wichita Falls
Charlotte	Fulton	Manvel	Robinson	Woodsboro
Cisco	Gainesville	McAllen	Rockport	Woodway
Cleburne	George West	McAllen Housing Authority	Rockwall	Wylie
Clute	Godley	Mercedes	Rotan	
	Grand Prairie	Merkel	Rowlett	
			Royse City	
			Sachse	

Texas Coalition for Affordable Power

Membership in Texas



Abilene
Acton MUD
Addison
Alamo
Alice
Allen
Alton
Anna
Aquila Water Supply
Aransas County MUD
Aransas Pass
Arlington
Aubrey
Austwell
Bangs
Beeville
Bellmead
Belton
Benbrook
Benbrook Library District
Benbrook Water Authority
Bishop
Brownwood
Burkburnett
Burleson
Calhoun Port Authority
Carrizo Springs
Cedar Hill
Celina
Charlotte
Cisco

Cleburne
Clute
Clyde
Colleyville
Colorado City
Comanche
Commerce
Copperas Cove
Corinth
Corpus Christi
Corpus Christi Housing Authority
Corpus Christi Regional
Transit Authority
Crockett
Decatur
Denison
DeSoto
Dickinson
Dilley
Dublin
Duncanville
Eastland
Edgecliff Village
Edna
Euless
Everman
Falfurrias
Farmersville
Flower Mound
Forest Hill
Fort Stockton

Frisco
Fulton
Gainesville
George West
Godley
Grand Prairie
Grapevine
Haltom City
Hamilton
Harker Heights
Harlingen
Harlingen Housing Authority
Henrietta
Highland Park
Howe
Hurst
Ingleside
Ingleside on the Bay
Johnson County SUD
Kaufman
Keller
Kenedy
Kennedale
Kingsville
La Feria
La Marque
Laguna Vista
Lake Jackson
Lancaster
Lewisville
Lorena
Los Fresnos
Lovelady
Lyford
Mansfield
Manvel
McAllen
McAllen Housing Authority
Mercedes
Merkel
Midlothian
Mission
Mission Housing Authority
Missouri City
Murphy
North Richland Hills
Oak Point
Odem
Odessa
Orange Grove
Ovilla
Palestine
Palmer
Pantego

Paris
Pearland
Plano
Pleasanton
Point Comfort
Port Aransas
Port Lavaca
Portland
Premont
Prosper
Red Oak
Refugio
Richland Hills
Rio Grande City
Roanoke
Robinson
Rockport
Rockwall
Rotan
Rowlett
Royse City
Sachse
Saginaw
San Angelo
San Juan
Seadrift
Sherman
Sinton
Snyder
South Padre Island
South Texas Water Authority
Spring Valley Village
Springtown
Sugar Land
Sunnyvale
Sweetwater
Taft
The Colony
Trophy Club
University Park
Upper Leon River MWD
Venus
Vernon
Victoria
Watauga
Webster
West Central Texas MWD
White Settlement
Whitney
Wichita Falls
Willow Park
Woodsboro
Woodway
Wylie



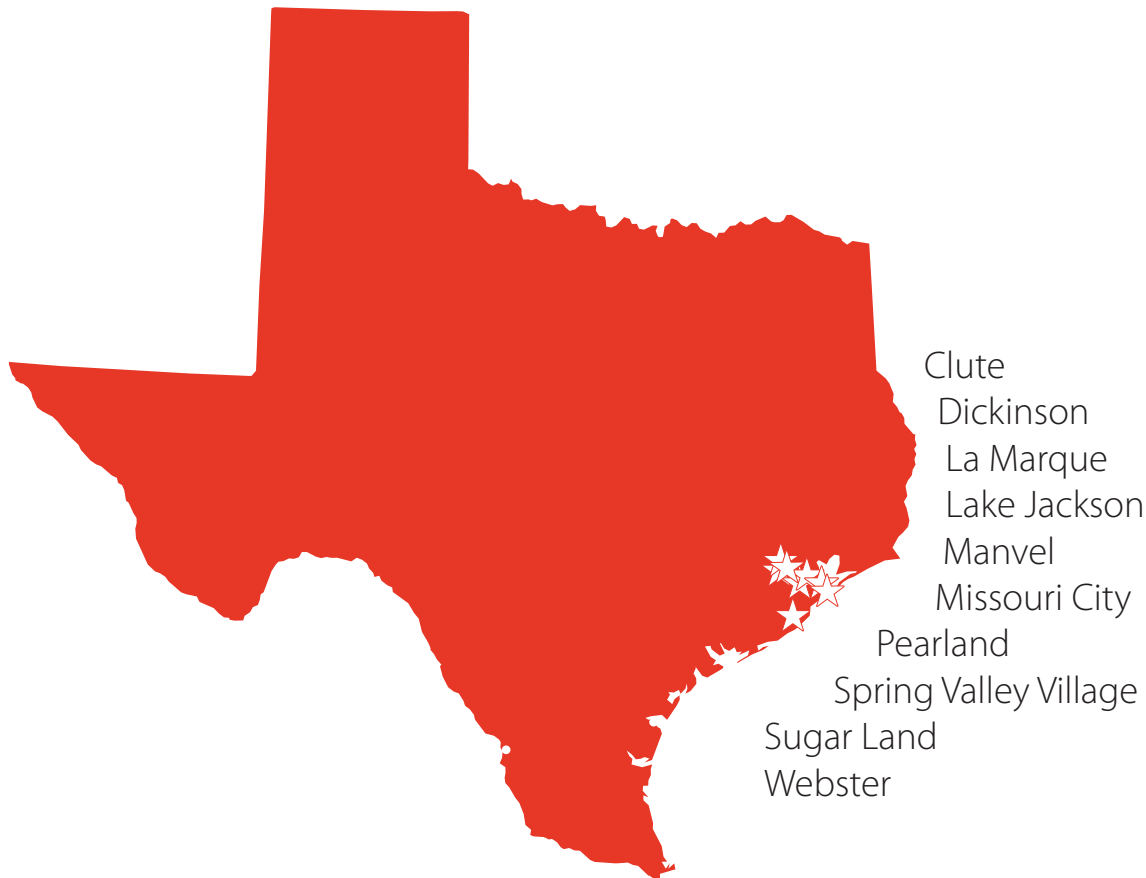
Texas Coalition
for Affordable Power

Contact: Jay Doegey, Executive Director
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tcaptx.com

Texas Coalition for Affordable Power

Membership in Texas: Houston Zone



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Contact: Jay Doegey, Executive Director
jdoegey@tcaptx.com • (972) 764-3136

tcaptx.com

Regular City Council

Agenda Item

Meeting Date: October 19, 2015

Data Sheet

Topic:

Approve the Extension of the Current Lease Agreement between the Harris County Tax Assessor-Collector and the City of Tomball for the use of the Facility located at 101 South Walnut as a Harris County Tax Office for an Additional One-Year Term, from December 1, 2015 to November 30, 2016

Background:

Harris County's Facilities & Property Management (FPM) is in the process of renewing the leases for various County departments, including the lease for the space located at 101 S. Walnut, Tomball Texas for the benefit of the Harris County Tax Assessor-Collector. The current term will expire on November 30, 2015.

Harris County wishes to exercise its option to renew the current lease in accordance with Section XIII., Item (n) of the Lease Agreement (copy attached): "If Tenant does exercise the option under the preceding subparagraph, then and in that event Tenant has the option to re-lease the Premises for a fifteenth term of one year (from December 1, 2015 to November 30, 2016) on the same terms and conditions as are provided for in this Lease. Tenant may exercise this option by giving notice to that effect to Landlord on or before the 15th day of October 2015."

Having the Harris County Tax Office in Tomball has proven very beneficial to the citizens of Tomball and the surrounding area.

Origination:

Harris County Facilities & Property Management (FPM)

Recommendation:

Approve Extension of Lease Agreement

Funding:

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

City Secretary

ACTION TAKEN		
APPROVAL	READINGS PASSED	OTHER
☐ YES ☐ NO	☐ 1 ST ☐ 2 ND	

ATTACHMENTS:

Harris County Facilities & Property Management Letter

Lease Agreement between City of Tomball and Harris County - Tax Office

Harris County
Facilities & Property Management

Willie P. Loston, Director

1310 Prairie Street, Suite 1330 | Houston, Texas 77002 | Main 713.755.5091 Fax 713.755.8802 | WWW.HCFPM.NET



September 29, 2015

Members of Commissioners Court
1001 Preston Street, 9th Floor
Houston, Texas 77002

Attention: Commissioner R. Jack Cagle

Vote of the Court:

	Yes	No	Abstain
Judge Emmett	☐	☐	☐
Comm. Lee	☐	☐	☐
Comm. Morman	☐	☐	☐
Comm. Radack	☐	☐	☐
Comm. Cagle	☐	☐	☐

RE: 101 South Walnut Street, Tomball, Texas; Lease Agreement Annual Renewal; Precinct 4

Dear Court Members:

Facilities & Property Management (FPM) requests approval for the annual renewal of the lease agreement between the City of Tomball and Harris County for the benefit of the Harris County Tax Assessor-Collector's Tomball Branch Office. The original lease term was December 1, 2001 to November 30, 2002. The lease has annual renewal options through November 30, 2016. The monthly lease amount for the current period of December 1, 2014 to November 30, 2015 is \$650.00.

Request is made, therefore, for approval of the annual renewal of the above-referenced lease agreement and that the Purchasing Agent be authorized to issue a new purchase order for the monthly lease amount of \$650.00 (\$7,800 annually), for the period December 1, 2015 to November 30, 2016.

FPM has been advised that funds are available in the budget of the Harris County Tax Assessor-Collector.

Sincerely,

Willie P. Loston
Director

WPL/TS/aa

FPM- copy

cc: DeWight M. Dopslauf, Purchasing Agent
Mike Sullivan, Assessor-Collector
Trevor Smith, FPM
Agenda File

PW-copy

AW-copy

Tax Office-copy

Lance-copy

Presented to Commissioner's Court

SEP 29 2015

APPROVE C/M
Recorded Vol _____ Page _____

15 SEP 22 PM 3:35

HARRIS COUNTY
BUDGET MANAGEMENT
DEPARTMENT

LEASE AGREEMENT

THE STATE OF TEXAS §

COUNTY OF HARRIS §

This Lease Agreement, made and entered into by and between the CITY OF TOMBALL, a municipal corporation situated in Harris County, Texas, hereinafter designated "Landlord," and HARRIS COUNTY, a body corporate and politic under the laws of the State of Texas, hereinafter designated "Tenant,"

WITNESSETH:

WHEREAS, Tenant is desirous of leasing the hereinafter described Premises located at 101 S. Walnut, in the City of Tomball, Harris County, Texas; and

WHEREAS, Landlord is desirous of leasing said premises to Tenant;

NOW, THEREFORE, in consideration of the mutual covenants, agreements, and benefits to both parties, it is agreed as follows:

I.

Subject to the terms and provisions hereinafter set forth, Landlord has rented and leased, and by these presents does rent and lease, unto Tenant, its successors and assigns, for a term of one year, beginning December 1, 2001 and ending November 30, 2002 (unless sooner ended in accordance with the provisions hereof), the following described Premises situated in the City of Tomball, Harris County, Texas, to-wit:

Approximately 2,145 square feet, more or less, of office space in the building located at 101 S. Walnut in the City of Tomball, Harris County, Texas, said area hereby leased being crosshatched in black on the diagram of the floor plan of said building, attached hereto as Exhibit "A" (the "Premises"), said building being located on Lots 11 and 12, in Block 3, of Tomball Townsite, according to the map or plat thereof recorded in Volume 4, Page 25 of the Map Records of Harris County, Texas, together with rights of ingress and egress to S. Walnut and Market Streets.

II.

Prior to December 1, 2001, Landlord will, at its own expense, perform the following in the Premises:

- (a) Have lines for adequate electric current, gas and water supply to the Premises in good operating condition.
- (b) Have heating and air conditioning equipment in the Premises of the size, type, and capacity to properly heat and air condition the Premises.
- (c) Complete in a good and workmanlike manner the finish out of the Premises as set out in the plans and specifications to be prepared by Landlord and signed by Landlord and Tenant for identification and approved by the Director of the County

Facilities and Property Management Department and the County Tax Assessor-Collector. Said finish out will comply with all requirements of the American With Disabilities Act, the Texas Architectural Barriers Act, and all other valid laws, ordinances, regulations, and other requirements of all federal, state, and local governmental bodies and agencies which are applicable to the Premises. Said plans and specifications, upon approval by Landlord and Tenant, are incorporated by reference herein. In the event Tenant and Landlord are unable to agree on plans and specifications, this Lease Agreement will be of no force and effect.

- (d) Obtain a Certificate of Occupancy for the Premises from the City of Tomball, including the making of all repairs, alterations, and modifications, and doing all other things (similar and dissimilar) that may be required or necessary to obtain said Certificate of Occupancy.

If, prior to December 1, 2001, Landlord fails to perform its undertakings and obligations under this Paragraph II to Tenant's satisfaction, then and in that event, Tenant may proceed pursuant to Paragraph XI hereof, and Tenant will be relieved of all obligations to pay rent for the portion of the term of this Lease from the commencement of the term to and including the day on which Landlord completes such performance. If Landlord so delays its performance, and the day following the day on which Landlord completes such performance is a day other than the first day of a calendar month, then the rent for such calendar month is that proportionate part of the monthly rental that the number of days remaining in such calendar month after the day Landlord completes such performance, bears to the total number of days in such calendar month. If Landlord performs its undertakings and obligations under this paragraph, and Tenant takes possession of the leased premises, and Landlord thereafter refuses or fails to perform any one or more of its undertakings or obligations which are to be performed during the term of this Lease, then and in that event, Tenant may proceed under Paragraph XI hereof.

III.

As rental for the use of the Premises, Tenant will pay Landlord the sum of Six Hundred Fifty Dollars (\$650.00) per month. On or about the first day of each calendar month during the term of this Lease, Landlord will submit to Tenant a statement for the rent for such calendar month, and Tenant will pay the same by the twentieth day of such calendar month or the fifteenth day after receipt of the same, whichever is later.

IV.

Landlord will pay utility bills for water, sewer, gas, and electricity incurred by Tenant in its use of the Premises. Landlord has no obligation to pay for telephone service used by Tenant on the Premises.

V.

The Premises are to be used by Tenant for a tax office and other lawful purposes.

VI.

During the term of this Lease, Landlord will, at its own expense, perform the following:

- A. Keep and maintain in good repair the exterior walls, exterior doors, exterior doorways, windows, roof, structural portions, heating, ventilation

and air conditioning equipment, plumbing, lobby, wiring and electrical equipment, interior walls, ceilings, floors, floor covering, interior doors, interior doorways, hallways, restrooms, and all other parts of said building.

- B. Keep and maintain in good repair the driveways, walkways, and entrances on the above described tract or parcel of land and also keep the same neat and clean.
- C. Keep and maintain in good repair and condition the lighting fixtures in the Premises, including, but not limited to, furnishing and installing light producing elements.
- D. Keep other tenants of said building and persons from blocking or obstructing the hallways, restroom doorways, and entrances of said building.
- E. Keep all persons using any part of the above described tract of land from making excessive noise, causing bad odor, or otherwise interfering with Tenant's use and enjoyment of the Premises and the exercise of its rights hereunder.
- F. Operate the air conditioning and heating equipment so as to maintain the air temperature in the Premises between 65 and 75 degrees Fahrenheit between the hours of 7:00 A.M. and 6:00 P.M. of each and every day except Saturdays, Sundays, and County holidays. However, in the event any state, federal, or municipal law, rule, or regulation applicable to the Premises requires the maintenance of the air temperature therein within a range other than that hereinabove specified, then the air temperature range will be maintained as near to the temperature range set forth above as may be permitted under such law, rule, or regulation.
- G. Comply with all requirements of the Americans With Disabilities Act, the Texas Architectural Barriers Act, and all other valid laws, ordinances, regulations, and other requirements, now or hereafter in force, of all federal, state, and local governmental bodies and agencies which are applicable to the Premises and common areas of the building, including, but not limited to, the halls, restrooms, driveways, walkways, and entrances on the above described tract of land, to accommodate Tenant's employees and invitees. Landlord is wholly responsible for all alterations which need to be made to the Premises and common areas described above, to accommodate Tenant's employees and invitees. LANDLORD WILL INDEMNIFY AND HOLD TENANT HARMLESS FROM ANY AND ALL EXPENSES, LIABILITIES, COSTS, AND DAMAGES SUFFERED BY TENANT AS A RESULT OF LANDLORD'S FAILURE TO FULFILL ITS AFORESAID RESPONSIBILITIES REGARDING MAKING SUCH ALTERATIONS REFERENCED IN THE PRECEDING SENTENCE. No provision in this Lease will be construed in any manner as permitting, consenting to, or authorizing Tenant to violate requirements under either such Act, and any provision to the Lease which could arguably be construed as authorizing a violation of either Act will be interpreted in a manner which permits compliance with such Act and is hereby amended to permit such compliance.
- H. Provide adequate janitorial services for the Premises.

- I. Keep and maintain a valid Certificate of Occupancy (issued by the City of Tomball) for said building posted in said building.
- J. Provide adequate parking spaces for Tenant's employees and invitees.

VII.

In the event a dispute arises as to Landlord's right to lease any portion of the Premises, or Landlord's right to receive the rentals herein provided, Tenant may withhold the rent herein provided, but such rent will continue to accrue and will be payable by Tenant to the party or parties entitled thereto, after said dispute is settled either by court action or settlement. LANDLORD WILL INDEMNIFY AND HOLD TENANT HARMLESS AS TO ANY DAMAGES, EXPENSES, OR CLAIMS THAT TENANT MAY SUFFER DUE TO FAILURE OF LANDLORD'S RIGHT TO LEASE THE PREMISES.

VIII.

Should the Premises or the above mentioned building be destroyed or damaged, or the right of ingress and egress be impaired, so that the Premises are thereby rendered unfit for use by Tenant, or should any governmental body, agency, department, or official determine such building to be a fire hazard, or for any other reason whatsoever to be unsuitable for the use or uses for which Tenant contemplates using same, then and in any such event the rent hereinbefore reserved will not be due nor paid by Tenant during the period of destruction or damaged condition, impairment, or unsuitability, and this Lease may be terminated at the option of Tenant. Regardless of whether Tenant exercises its option to terminate the Lease in such event, the rent for any month during which the Premises are unfit or unsuitable for use by Tenant for a portion thereof is equal to the number of days the same was fit for use by Tenant times an amount equal to one-thirtieth (1/30th) of the monthly rental rate, and if the rent for any such month has been paid in advance, then Tenant is entitled to a refund from Landlord of the excess amount paid. However, Tenant is obligated to pay rent for each day Tenant actually uses the premises. The phrase "actually uses," as used in this paragraph, means the use of the Premises for the purpose Tenant contemplates or intends to use same, and does not include any limited use or uses such as, but not limited to, inspecting the Premises, or leaving furniture and other property therein while waiting for repairs of such damage or other action to correct or otherwise remedy such damaged condition, impairment, or unsuitability.

IX.

All fixtures and all personal property created and/or placed in and on the Premises by Tenant may be removed by Tenant at the termination of this Lease, or any extension thereof, even though the same may be attached to the Premises.

X.

In the event Tenant holds over and remains in possession of the Premises herein leased, after the expiration of this Agreement, without any written renewal or extension thereof, such holding over is not deemed to operate as a renewal or extension of this Agreement, but only creates a tenancy from month to month at a monthly rental rate in an amount equal to the monthly rental (hereinabove provided for the month immediately preceding such hold over) which month to month tenancy may be terminated at any time by either Tenant or Landlord, upon thirty (30) days prior written notice.

XI.

If Landlord refuses or fails to perform any one or more of its undertakings or obligations under this Lease Agreement, Tenant has the right, but not the obligation, to perform, or cause to be performed, any one or more of said undertakings or obligations of Landlord, and may deduct all costs and expenses thereof from the rental to be paid hereunder, or this Agreement may be terminated by Tenant, in Tenant's sole discretion, by giving at least fifteen (15) days prior written notice to Landlord. The performance by Tenant of any one or more of the undertakings or obligations of Landlord hereunder will not be construed or held to be a waiver by Tenant of any succeeding refusal or failure to perform such undertaking or obligation of Landlord. Tenant's exercise of any of the rights or options under this paragraph will not in any way prejudice Tenant's right to recover damages which Tenant has sustained as a result of Landlord's refusal or failure to perform, and the rights and options under this paragraph are cumulative with, and not in lieu of, other remedies provided by law.

XII.

Landlord represents and warrants that it has the right and power to lease the Premises for the term hereof and the periods covered by the options hereunder.

XIII.

(a) Tenant has the option to re-lease the Premises for a second term (from December 1, 2002 to November 30, 2003) on the same terms and conditions as are provided for in this Lease. Tenant may exercise this option by giving notice to that effect to Landlord on or before the 15th day of October 2002.

(b) If Tenant does exercise the option under the preceding subparagraph, then and in that event Tenant has the option to re-lease the Premises for a third term of one year (from December 1, 2003 to November 30, 2004) on the same terms and conditions as are provided for in this Lease. Tenant may exercise this option by giving notice to that effect to Landlord on or before the 15th day of October 2003.

(c) If Tenant does exercise the option under the preceding subparagraph, then and in that event Tenant has the option to re-lease the Premises for a fourth term of one year (from December 1, 2004 to November 30, 2005) on the same terms and conditions as are provided for in this Lease. Tenant may exercise this option by giving notice to that effect to Landlord on or before the 15th day of October 2004.

(d) If Tenant does exercise the option under the preceding subparagraph, then and in that event Tenant has the option to re-lease the Premises for a fifth term of one year (from December 1, 2005 to November 30, 2006) on the same terms and conditions as are provided for in this Lease. Tenant may exercise this option by giving notice to that effect to Landlord on or before the 15th day of October 2005.

(e) If Tenant does exercise the option under the preceding subparagraph, then and in that event Tenant has the option to re-lease the Premises for a sixth term of one year (from December 1, 2006 to November 30, 2007) on the same terms and conditions as are provided for in this Lease. Tenant may exercise this option by giving notice to that effect to Landlord on or before the 15th day of October 2006.

(f) If Tenant does exercise the option under the preceding subparagraph, then and in that event Tenant has the option to re-lease the Premises for a seventh term of one year (from December 1, 2007 to November 30, 2008) on the same terms and conditions as are provided for

in this Lease. Tenant may exercise this option by giving notice to that effect to Landlord on or before the 15th day of October 2007.

(g) If Tenant does exercise the option under the preceding subparagraph, then and in that event Tenant has the option to re-lease the Premises for an eighth term of one year (from December 1, 2008 to November 30, 2009) on the same terms and conditions as are provided for in this Lease. Tenant may exercise this option by giving notice to that effect to Landlord on or before the 15th day of October 2008.

(h) If Tenant does exercise the option under the preceding subparagraph, then and in that event Tenant has the option to re-lease the Premises for a ninth term of one year (from December 1, 2009 to November 30, 2010) on the same terms and conditions as are provided for in this Lease. Tenant may exercise this option by giving notice to that effect to Landlord on or before the 15th day of October 2009.

(i) If Tenant does exercise the option under the preceding subparagraph, then and in that event Tenant has the option to re-lease the Premises for a tenth term of one year (from December 1, 2010 to November 30, 2011) on the same terms and conditions as are provided for in this Lease. Tenant may exercise this option by giving notice to that effect to Landlord on or before the 15th day of October 2010.

(j) If Tenant does exercise the option under the preceding subparagraph, then and in that event Tenant has the option to re-lease the Premises for an eleventh term of one year (from December 1, 2011 to November 30, 2012) on the same terms and conditions as are provided for in this Lease. Tenant may exercise this option by giving notice to that effect to Landlord on or before the 15th day of October 2011.

(k) If Tenant does exercise the option under the preceding subparagraph, then and in that event Tenant has the option to re-lease the Premises for a twelfth term of one year (from December 1, 2012 to November 30, 2013) on the same terms and conditions as are provided for in this Lease. Tenant may exercise this option by giving notice to that effect to Landlord on or before the 15th day of October 2012.

(l) If Tenant does exercise the option under the preceding subparagraph, then and in that event Tenant has the option to re-lease the Premises for a thirteenth term of one year (from December 1, 2013 to November 30, 2014) on the same terms and conditions as are provided for in this Lease. Tenant may exercise this option by giving notice to that effect to Landlord on or before the 15th day of October 2013.

(m) If Tenant does exercise the option under the preceding subparagraph, then and in that event Tenant has the option to re-lease the Premises for a fourteenth term of one year (from December 1, 2014 to November 30, 2015) on the same terms and conditions as are provided for in this Lease. Tenant may exercise this option by giving notice to that effect to Landlord on or before the 15th day of October 2014.

(n) If Tenant does exercise the option under the preceding subparagraph, then and in that event Tenant has the option to re-lease the Premises for an fifteenth term of one year (from December 1, 2015 to November 30, 2016) on the same terms and conditions as are provided for in this Lease. Tenant may exercise this option by giving notice to that effect to Landlord on or before the 15th day of October 2015.

(o) Any notice permitted or required to be given to Landlord hereunder may be given by registered or certified United States mail, postage prepaid, return receipt requested, addressed to the City of Tomball, 401 West Market Street, Tomball, Texas 77375, Attention: Mayor and such

option is considered exercised and completed upon Tenant's deposit in a receptacle regularly maintained by the United States Postal Service.

(p) Landlord will give Tenant written notice reminding Tenant of the expiration date of each option hereunder not less than fifteen days nor more than thirty days prior to the expiration of each such option. The failure of Landlord to give Tenant any such notice during said period has the effect of extending the period of the option through the 15th day next after the late notice is given, or October 15, 2015, whichever is earlier. Any notice permitted or required to be given to Tenant hereunder may be given by registered or certified United States mail, postage prepaid, return receipt requested, addressed to County Judge of Harris County, Harris County Administration Building, 1001 Preston, Ninth Floor, Houston, Texas 77002, with a photocopy thereof addressed to Director, Harris County Facilities and Property Management Department, 1310 Prairie, Suite 1330, Houston, Texas 77002. Notice is considered given and completed upon deposit of the notice in a receptacle regularly maintained by the United States Postal Service. Either party may change its address pursuant to this paragraph upon written notice to the other party.

XIV.

Landlord will not take any action or recourse against Tenant for any default in the performance of Tenant's obligations, or any breach of this Lease Agreement by Tenant, until thirty (30) days after Landlord has given Tenant written notice setting out in detail the type and nature of the default or breach, and the failure of Tenant to cure such default or breach within such thirty (30) day period.

XV.

The liability of Tenant under the terms and provisions of this Lease, and all amendments and supplements thereto, is expressly limited to the amount of funds hereinbelow certified available for satisfying Tenant's first lease year obligations under the terms and provisions of this lease, and any additional funds for such purpose which may, from time to time, be certified available for Tenant's obligations by the County Auditor of Harris County. When and if all the funds so certified are expended for the purpose of satisfying Tenant's obligations pursuant to this Agreement, the sole and exclusive remedy of Landlord will be to terminate this Lease.

XVI.

Tenant, upon the several conditions herein set forth and upon payment of the rentals herein provided, and upon continued performance of the covenants and agreements herein contained, will have and occupy the Premises peacefully and quietly for the term herein set forth.

EXECUTED in duplicate originals this _____ day of SEP 25 2001, 2001.

APPROVED AS TO FORM:

MIKE STAFFORD
County Attorney

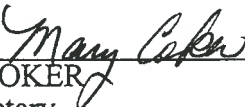
By: M. Scott Bresk
M. SCOTT BRESK
Assistant County Attorney

HARRIS COUNTY

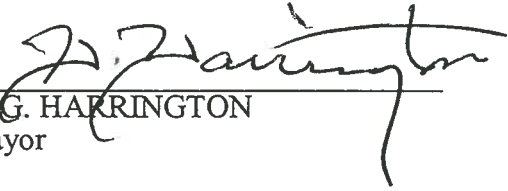
By: RB
ROBERT ECKELS
County Judge

ATTEST:

THE CITY OF TOMBALL



MARY COKER
City Secretary

By: 

H. G. HARRINGTON
Mayor

AUDITOR'S CERTIFICATE

I hereby certify that funds in the amount of \$7,800.00 are available to pay the obligation of Harris County under the foregoing Agreement.



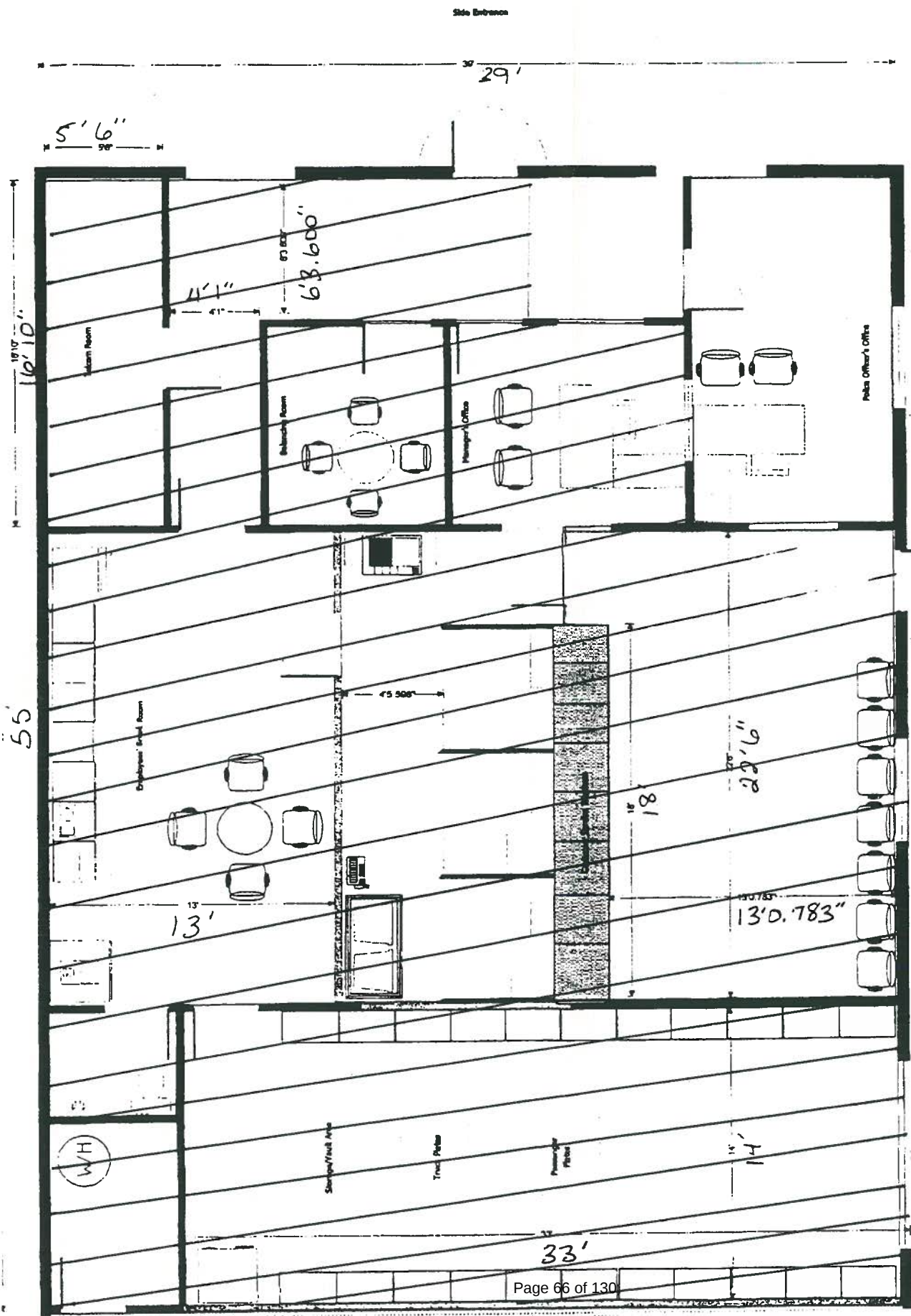
TOMMY J. TOMPKINS, County Auditor

Registered with me this 4th day of October, 2001.



MICHAEL YANCEY, AIA, Director
Harris County Facilities & Property Management Department

EXHIBIT “A”



Tomball Annex

- Legend**
- ☐ Tile
 - ☐ Carpet
 - ☐ Awning

Proposed Tomball Tax Office Annex
 Approved by Special Projects Department

THE STATE OF TEXAS §

COUNTY OF HARRIS §

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 SEP 25 2001, 2001, with the following members present, to-wit:

Robert Eckels
El Franco Lee
James Fonteno
Steve Radack
Jerry Eversole

County Judge
Commissioner, Precinct No. 1
Commissioner, Precinct No. 2
Commissioner, Precinct No. 3
Commissioner, Precinct No. 4

and the following members absent, to-wit: NONE,
constituting a quorum, when among other business, the following was transacted:

ORDER AUTHORIZING THE COUNTY JUDGE TO EXECUTE A LEASE AGREEMENT
BY AND BETWEEN THE CITY OF TOMBALL AND HARRIS COUNTY.

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

AYES:

NAYS:

ABSTENTIONS:

	Yes	No	Abstain
Judge Eckels	☐	☐	☒
Comm. Lee	☐	☐	☐
Comm. Fonteno	☐	☐	☐
Comm. Radack	☐	☐	☐
Comm. Eversole	☐	☐	☐

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:

WHEREAS, Harris County is desirous of leasing from the City of Tomball the hereinafter described Premises located at 101 S. Walnut, in Tomball, Texas; and

WHEREAS, The City of Tomball is desirous of leasing said Premises to Harris County;

NOW, THEREFORE, BE IT ORDERED BY THE COMMISSIONERS COURT OF HARRIS COUNTY, TEXAS, THAT:

Section 1: The recitals set forth in this order are true and correct.

Section 2: The Harris County Judge is hereby authorized to execute for and on behalf of Harris County a Lease Agreement by and between the City of Tomball and Harris County, covering Premises located at 101 S. Walnut, in Tomball, Texas, for the Assessor and Collector of Taxes, for a term of one year, commencing on December 1, 2001, said agreement being incorporated herein by reference and made a part hereof for all intents and purposes as though fully set forth herein word for word.

Section 3: All Harris County officials and employees are authorized to do any and all things necessary or convenient to accomplish the purpose of this Order.

Presented to Commissioner's Court

SEP 25 2001

APPROVE _____

Recorded Vol _____ Page _____

Regular City Council

Agenda Item

Meeting Date: October 19, 2015

Data Sheet

Topic:

Consider Approval of Professional Services Agreement with RG Miller Engineers in the Amount of \$50,000 for Implementation of Permit Year 3 of the City of Tomball's Storm Water Management Program

Background:

The City of Tomball is a regulated small MS4 and is required to secure coverage under Texas Commission on Environmental Quality (TCEQ) Permit No. TXR040000.

The permit requires the City to develop and implement a five year plan known as a Stormwater Management Program (SWMP) which includes the following elements:

- Public Education, Outreach, and Involvement
- Illicit Discharge Detection and Elimination
- Construction Site Stormwater Runoff Control
- Post-Construction Stormwater Management in New Development and Redevelopment
- Pollution Prevention and Good Housekeeping for Municipal Operations
- Focused Controls to Reduce Bacteria Loadings

The SWMP must define selected best management practices (BMPs), measurable goals, legal authority, and deadlines (or frequency of actions) that illustrate that each program will be fully implemented.

Under a previous assignment, RG Miller Engineers, Inc. developed the City's SWMP and submitted the SWMP along with application materials to the TCEQ. Under a previous assignment, the City also retained RGME to implement compliance activities from December 13, 2013 through September 30, 2015.

The scope below outlines services to be provided during the period from October 1, 2015 through September 30, 2016.

Origination:

Community Development Department

Recommendation:

Approval

Funding:

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

Community Development Director

ACTION TAKEN

APPROVAL ☐ YES ☐ NO	READINGS PASSED ☐ 1 ST ☐ 2 ND	OTHER
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ATTACHMENTS:

Professional Services Agreement

**PROFESSIONAL SERVICES AGREEMENT
FOR
ENGINEERING SERVICES
RELATED TO
STORMWATER MANAGEMENT PROGRAM FOR THE
SMALL MUNICIPAL SEPARATE STORM SEWER SYSTEM (MS4) PERMIT TXR040000
E&P Project No. 2015-10022**

**THE STATE OF TEXAS §
 §
COUNTY OF HARRIS §**

THIS AGREEMENT made on the _____ day of _____, 20____ entered into, and executed by and between the City of Tomball, Texas (the "City"), a municipal corporation of the State of Texas, and RG Miller Engineers, Inc. ("Engineer").

WITNESSETH:

WHEREAS, the City desires to implement Permit Year 3 of the City's Storm Water Management Program (SWMP) and report to the Texas Commission on Environmental Quality (TCEQ) (the "Project"); and

WHEREAS, the services of a professional engineering firm are necessary to implement Permit Year 3 of the SWMP in compliance with state regulations, and

WHEREAS, the Engineer represents that it is fully capable and qualified to provide professional services to the City related to professional engineering and planning;

NOW, THEREFORE, the City and Engineer, in consideration of the mutual covenants and agreements herein contained, do mutually agree as follows:

**SECTION I
SCOPE OF AGREEMENT**

Engineer agrees to perform certain professional engineering services as defined in Attachment "A" attached hereto and made a part hereof for all purposes, hereinafter sometimes referred to as "Scope of Work," and for having rendered such services, the City agrees to pay Engineer compensation as stated in Section VII.

**SECTION II
CHARACTER AND EXTENT OF SERVICES**

Engineer shall do all things necessary to render the engineering services and perform the Scope of Work in a professional and workmanlike manner. It is expressly understood and agreed that Engineer is an Independent Contractor in the performance

of the services agreed to herein. It is further understood and agreed that Engineer shall not have the authority to obligate or bind the City, or make representations or commitments on behalf of the City or its officers or employees without the express prior approval of the City. The City shall be under no obligation to pay for services rendered not identified in Attachment "A" without prior written authorization from the City.

SECTION III OWNERSHIP OF WORK PRODUCT

Engineer agrees that the City shall have the right to use all exhibits, maps, reports, analyses and other documents prepared or compiled by Engineer pursuant to this Agreement. The City shall be the absolute and unqualified owner of all studies, exhibits, maps, reports, analyses, determinations, recommendations, computer files, and other documents prepared or acquired pursuant to this Agreement with the same force and effect as if the City had prepared or acquired the same.

SECTION IV TIME FOR PERFORMANCE

The time for performance of the Scope of Work is three hundred sixty-five (365) days beginning from the execution date of this Agreement. Upon written request of Engineer, the City may grant time extensions to the extent of any delays caused by the City or other agencies with which the work must be coordinated and over which Engineer has no control.

SECTION V COMPLIANCE AND STANDARDS

Engineer agrees to perform the work hereunder in accordance with generally accepted standards applicable thereto and shall use that degree of care and skill commensurate with the applicable profession to comply with all applicable state, federal, and local laws, ordinances, rules, and regulations relating to the work to be performed hereunder and Engineer's performance.

SECTION VI INDEMNIFICATION

To the fullest extent permitted by Texas Local Government Code Section 271.904, Engineer shall and does hereby agree to indemnify, hold harmless and defend the City, its officers, agents, and employees against liability for damage caused by or resulting from an act of negligence, intentional tort, intellectual property infringement, or failure to pay a subcontractor or supplier committed by the Engineer, the Engineer's agent, consultant under contract, or another entity over which the Engineer exercises control.

SECTION VII ENGINEER'S COMPENSATION

For and in consideration of the services rendered by Engineer pursuant to this Agreement, the City shall pay Engineer only for the actual work performed under the Scope of Work, on the basis set forth in Attachment "A," up to an amount not to exceed \$50,000.00.

SECTION VIII TERMINATION

The City may terminate this Agreement at any time by giving written notice to Engineer. Upon receipt of such notice, Engineer shall discontinue all services in connection with the performance of this Agreement and shall proceed to promptly cancel all existing orders and contracts insofar as such orders or contracts are chargeable to the Agreement. As soon as practicable after receipt of notice of termination, Engineer shall submit a sworn statement, showing in detail the services performed under this Agreement to the date of termination. The City shall then pay Engineer performed under this Agreement bear to the total services called for under this Agreement, less such payments on account of the charges as have been previously made. Copies of all completed or partially completed designs, maps, studies, documents and other work product prepared under this Agreement shall be delivered to the City when and if this Agreement is terminated.

SECTION IX ADDRESSES, NOTICES AND COMMUNICATIONS

All notices and communications under this Agreement shall be mailed by certified mail, return receipt requested, to Engineer at the following address:

RG Miller Engineers, Inc.
16340 Park Ten Place, Suite 350
Houston, Texas 77084
Attn: Michael Bloom

All notices and communications under this Agreement shall be mailed by certified mail, return receipt requested, to the City at the following address:

City of Tomball
501 James St.
Tomball, Texas 77375
Attn: Community Development Director

SECTION X LIMIT OF APPROPRIATION

Prior to the execution of this Agreement, Engineer has been advised by the City and Engineer clearly understands and agrees, such understanding and agreement

being of the absolute essence to this Agreement, that the City shall have available only those sums as expressly provided for under this Agreement to discharge any and all liabilities which may be incurred by the City and that the total compensation that Engineer may become entitled to hereunder and the total sum that the City shall become liable to pay to Engineer hereunder shall not under any conditions, circumstances, or interpretations hereof exceed the amounts as provided for in this Agreement.

SECTION XI SUCCESSORS AND ASSIGNS

The City and Engineer bind themselves and their successors and assigns to the other party of this Agreement and to the successors and assigns of such other party, in respect to all covenants of this Agreement. Engineer shall not assign, sublet, or transfer its interest in this Agreement without the written consent of the City. Nothing herein shall be construed as creating any personal liability on the part of any officer or agent of the City or any public body which may be a party hereto.

SECTION XII MODIFICATIONS

This instrument, including Attachment "A," contains the entire Agreement between the parties relating to the rights herein granted and the obligations herein assumed. To the extent there is a conflict between the provisions of this Agreement and the provisions of Attachment "A," this Agreement shall control. Any oral or written representations or modifications concerning this instrument shall be of no force and effect excepting a subsequent modification in writing signed by both parties hereto.

SECTION XIII ADDITIONAL SERVICES OF ENGINEER

If authorized in writing by the City, Engineer shall furnish, or obtain from others, Additional Services that may be required because of significant changes in the scope, extent or character of the portions of the Project designed or specified by the Engineer, as defined in Attachment "A." These Additional Services, plus reimbursable expenses, will be paid for by the Owner on the basis set forth in Attachment "A," up to the amount authorized in writing by the City.

SECTION XIV CONFLICTS OF INTEREST

Pursuant to the requirements of the Chapter 176 of the Texas Local Government Code, Engineer shall fully complete and file with the City Secretary a Conflict of Interest Questionnaire.

SECTION XV
PAYMENT TO ENGINEER FOR SERVICES AND REIMBURSABLE EXPENSES

Invoices for Basic and Additional Services and reimbursable expenses will be prepared in accordance with Engineer's standard invoicing practices and will be submitted to the City by Engineer at least monthly. Invoices are due and payable thirty (30) days after receipt by the City.

SECTION XVI
INSURANCE

Engineer shall procure and maintain insurance in accordance with the terms and conditions set forth in Attachment "B," for protection from workers' compensation claims, claims for damages because of bodily injury, including personal injury, sickness or disease or death, claims or damages because of injury to or destruction of property including loss of use resulting therefrom, and claims of errors and omissions.

SECTION XVII
MISCELLANEOUS PROVISIONS

A. This Agreement is subject to the provisions of the Texas Prompt Payment Act, Chapter 2250 of the Texas Government Code. The approval or payment of any invoice shall not be considered to be evidence of performance by Engineer or of the receipt of or acceptance by the City of the work covered by such invoice.

B. Venue for any legal actions arising out of this Agreement shall lie exclusively in the federal and state courts of Harris County, Texas.

C. This Agreement is for sole benefit of the City and Engineer, and no provision of this Agreement shall be interpreted to grant or convey to any other person any benefits or rights.

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

IN WITNESS WHEREOF, the City of Tomball has lawfully caused this Agreement to be executed by the City Manager of said City and attested by the City Secretary and _____, acting by and through its duly authorized officer/representative, does now sign, execute, and deliver this instrument.

EXECUTED on this _____ day of _____, 2015.

ENGINEER:

By: _____
Name: _____
Title: _____

CITY OF TOMBALL, TEXAS

George Shackelford, City Manager

ATTEST:

Doris Speer, City Secretary

ATTACHMENT "A"
SCOPE OF SERVICES
AND
BASIS OF COMPENSATION AND REIMBURSABLE EXPENSES

ATTACHMENT "A"

CITY OF TOMBALL

Small Municipal Separate Storm Sewer System (MS4) Permit TXR040000 Implementation Services For FY 2015/16

SCOPE OF WORK

PROJECT UNDERSTANDING

The City of Tomball (the "City") is a regulated small MS4 and is required to secure coverage under Texas Commission on Environmental Quality (TCEQ) Permit No. TXR040000. The permit requires the City to develop and implement a five year plan known as a Stormwater Management Program (SWMP) which includes the following elements:

- Public Education, Outreach, and Involvement
- Illicit Discharge Detection and Elimination
- Construction Site Stormwater Runoff Control
- Post-Construction Stormwater Management in New Development and Redevelopment
- Pollution Prevention and Good Housekeeping for Municipal Operations
- Focused Controls to Reduce Bacteria Loadings

The SWMP must define selected best management practices (BMPs), measurable goals, legal authority, and deadlines (or frequency of actions) that illustrate that each program will be fully implemented.

Under a previous assignment, R. G. Miller Engineers, Inc. (RGME) developed the City's SWMP and submitted the SWMP along with application materials to the TCEQ. Under a previous assignment, the City also retained RGME to implement compliance activities from December 13, 2013 through September 30, 2015. The scope below outlines services to be provided during the period from October 1, 2015 through September 30, 2016.

SCOPE OF SERVICES

RGME will conduct the following tasks to assist the City in its SWMP implementation efforts:

- Task 1 – Administration
- Task 2 – Public Education and Outreach
- Task 3 – Illicit Discharge Detection and Elimination
- Task 4 – Construction Site Runoff Control
- Task 5 – Post-Construction Runoff Control
- Task 6 – Pollution Prevention/Good Housekeeping
- Task 7 – Focused Controls to Reduce Bacteria Loadings

Each proposed task is outlined below and fall into two categories for budgeting purposes. First, some identified tasks must occur for compliance reasons and are not dependent on field conditions or other variables outside of the control of RGME or the City. Our estimate includes funding for these identified tasks as part of a "base budget" amount. This is noted after each task by "BB." Second, some tasks will only be conducted under certain circumstances and depend upon field conditions or other variables outside of the control of RGME and the City. Our estimate includes funding for those potential tasks as part of a "contingency budget" amount. This is noted after each task by "CB."

Task 1 – Administration

- Provide project management and TCEQ coordination from October 1, 2015 to September 30, 2016 (BB).
- Prepare and submit Annual Report covering Permit Year 2 (calendar year 2015) (BB).

Task 2 – Public Education and Outreach

- Staff compliant hotline from October 1, 2015 to September 30, 2016 (BB). Document stormwater quality complaints and calls and follow-up with City staff as required.
- Design two educational utility bill insert flyers by September 30, 2016 for distribution by the City (BB).
- Prepare two educational website articles by September 30, 2016 (BB).

Task 3 – Illicit Discharge Detection and Elimination

- Maintain log of litter and dumping sites during permit year three, based on city staff reports (BB).
- Maintain log of litter and dumping abatement activities during permit year three, based on city staff reports (BB).
- Update storm sewer system map once before September 30, 2016 (BB).
- Develop draft ordinance for illicit discharge before September 30, 2015 (BB).

Task 4 – Construction Site Runoff Control

- Review existing ordinances relating to construction site runoff controls by September 30, 2016 (BB).
- Draft construction runoff control ordinance by September 30, 2016 (BB).
- Evaluate construction site controls criteria manual and draft memo by September 30, 2016 (BB).
- Develop construction site inspection procedures and checklists by September 30, 2016 (BB).

Task 5 – Post-Construction Runoff Control

- Evaluate existing criteria manuals and material relating to new development and significant redevelopment by September 30, 2016 (BB).

Task 6 – Pollution Prevention/Good Housekeeping

- Audit City facilities for presence of spill response kits once by September 30, 2016 (BB).
- Train employees for all program areas once by September 30, 2016 (BB).
- Develop good housekeeping SOP manual by September 30, 2016 (BB).
- Develop new standard contracting language by September 30, 2016 (BB).
- Evaluate operations and maintenance activities at city owned facilities by September 30, 2016 (BB).
- Identify pollutants of concern at City facilities by September 30, 2016 (BB).

Task 7 – Focused Controls to Reduce Bacteria Loadings

- Prepare map of septic systems, sanitary sewer, and land by June 2016 (BB).
- Identify priority areas on septic system map by September 30, 2016 (BB).

SCHEDULE

Services will be performed in accord with the deadlines noted above. Dates noted above reflect revisions to SWMP to be submitted to TCEQ.

COMPENSATION

The City will compensate RGME on a ***lump sum / percent complete basis*** for an amount not to exceed **\$50,000.00** for Permit Year 3 (2016). Compensation amounts will be tracked and invoiced at the Task level.

ATTACHMENT “B”

INSURANCE

Regular City Council

Agenda Item

Meeting Date: October 19, 2015

Data Sheet

Topic:

Consideration to Approve **ZONING CASE P15-107**: Request by Ron Proctor, Jr., on behalf of Rock Materials, to amend Chapter 50 (Zoning) of the Tomball Code of Ordinances by rezoning approximately 7 acres of land, legally described as a tract of land containing seven (7) acres, out of the C.N. Pillot Survey, A-632, in the Country of Harris and State of Texas; and being out of that certain 16.34 acres conveyed to J.W. Fowler by Deed Recorded in Vol. 1042, Page 608 Deed records of said county, within the City of Tomball, Harris County, Texas, generally located on the south side of Theis Ln., west of Commercial Park Rd., from the Agricultural District to the Light Industrial District.

- Conduct Public Hearing on **ZONING CASE P15-107**
- Adopt, on first reading, Ordinance No. 2015-21, An Ordinance Of The City Of Tomball, Texas, Amending Its Chapter 50 (Zoning) Of The Tomball Code Of Ordinances By Changing The Zoning District Classification Of Approximately 7 Acres Of Land, Legally Described As C.N. Pillot Survey, A-632, Within The City Of Tomball, Harris County, Texas, From The Agricultural District To The Light Industrial District; Said Property Being Generally Located On The South Side Of Theis Ln., West Of Commercial Park Rd.; 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, October 12, 2015, the Planning and Zoning Commission voted to recommend approval of Zoning Case P15-107. The motion was carried unanimously.

Origination:

Recommendation:

Approval

Funding:

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

Community Development Department

ACTION TAKEN		
APPROVAL	READINGS PASSED	OTHER
☐ YES ☐ NO	☐ 1 ST ☐ 2 ND	

ATTACHMENTS:

P15-107 - Ordinance

P15-107 - Notice of Public Hearing

P15-107 - Property Owner Notification Letter

P15-107 - Staff Report

ORDINANCE NO. 2015-21

AN ORDINANCE OF THE CITY OF TOMBALL, TEXAS, AMENDING ITS CHAPTER 50 (ZONING) OF THE TOMBALL CODE OF ORDINANCES BY CHANGING THE ZONING DISTRICT CLASSIFICATION OF APPROXIMATELY 7 ACRES OF LAND, LEGALLY DESCRIBED AS C.N. PILLOT SURVEY, A-632, WITHIN THE CITY OF TOMBALL, HARRIS COUNTY, TEXAS, FROM THE AGRICULTURAL DISTRICT TO THE LIGHT INDUSTRIAL DISTRICT; SAID PROPERTY BEING GENERALLY LOCATED ON THE SOUTH SIDE OF THEIS LN., WEST OF COMMERCIAL PARK RD.; 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, Ron Proctor Jr., on behalf of Rock Materials, has requested that approximately 7 acres of land, legally described as C.N. Pilot Survey, A-632, generally located on the south side of Theis Ln., west of Commercial Park Rd., in the City of Tomball, Harris County, Texas, (the "Property"), be rezoned; and

Whereas, at least fifteen (15) days after publication in the official newspaper of the City of the time and place of a public hearing and at least ten (10) days written notice of that hearing 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 proposal to change the zoning for the Property from the Agricultural District to the Light Industrial District; and

Whereas, the public hearing was held at least forty (40) calendar days after the City's receipt of the request for rezoning; and

Whereas, the Planning & Zoning Commission recommended in its final report that City Council approve such proposed change in the zoning district classification of the Property; and

Whereas, at least fifteen (15) days after publication in the official newspaper of the City of the time and place of a public hearing on the proposal to change the zoning district classification for the Property from the Agricultural District to the Light Industrial District, the City Council held the public hearing on the proposal to change the zoning for the Property and the City Council considered the final report of the Planning & Zoning Commission regarding the change of zoning district classification; and

Whereas, the City Council deems it appropriate to grant such proposed change in the zoning district classification of the Property.

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

Section 1. The City Council finds that the facts and matters set forth in the preamble of this Ordinance are true and correct.

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

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

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

Section 5. In the event any section, paragraph, subdivision, clause, phrase, provision, sentence, or part of this Ordinance or the application of the same to any person or circumstance shall for any reason be adjudged invalid or held unconstitutional by a court of competent jurisdiction, it shall not affect, impair, or invalidate this Ordinance as a whole or any part or provision hereof other 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.

Section 7. City Council finds and determines that the meeting at which this Ordinance is passed was open to the public as required and that public notice of the time, place, and purpose of said meeting was given as required by the Texas Open Meetings Act, Tex.Gov't. Code Ch. 551.

FIRST READING:

READ, PASSED AND APPROVED AS SET OUT BELOW AT THE MEETING OF THE CITY COUNCIL OF THE CITY OF TOMBALL HELD ON THE 19TH DAY OF OCTOBER 2015.

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

SECOND READING:

READ, PASSED AND APPROVED AS SET OUT BELOW AT THE MEETING OF THE CITY COUNCIL OF THE CITY OF TOMBALL HELD ON THE 2ND DAY OF NOVEMBER 2015.

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

Gretchen Fagan, Mayor

ATTEST:

Doris Speer, City Secretary

**NOTICE OF PUBLIC HEARING
CITY OF TOMBALL
PLANNING & ZONING COMMISSION (P&Z)
OCTOBER 12, 2015
&
CITY COUNCIL
OCTOBER 19, 2015**



Notice is Hereby Given that a Public Hearing will be held by the P&Z of the City of Tomball on **Monday, October 12, 2015, at 6:00 P.M.**, and by the City Council of the City of Tomball on **Monday, October 19, 2015, 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 P15-107: Request by Ron Proctor, Jr., on behalf of Rock Materials, to amend Chapter 50 (Zoning) of the Tomball Code of Ordinances by rezoning approximately 7 acres of land, legally described as a tract of land containing seven (7) acres, out of the C.N. Pillot Survey, A-632, in the Country of Harris and State of Texas; and being out of that certain 16.34 acres conveyed to J.W. Fowler by Deed Recorded in Vol. 1042, Page 608 Deed records of said county, within the City of Tomball, Harris County, Texas, generally located on the south side of Theis Ln., west of Commercial Park Rd., from the Agricultural District to the Light Industrial District.

ZONING CASE P15-108: Request by Bill Hightower, on behalf of Hightower Investments, LTD., to amend Chapter 50 (Zoning) of the Tomball Code of Ordinances by rezoning approximately 10 acres of land, legally described as Tract 1, A 2.691 acre tract, H.C.C.F No. S551075; Tract 2, A 3.072 acre tract, H.C.C.R. No. S551078; Tract 3, A 2.684 acre tract, H.C.C.R. No. S551077; and, Tract 4, A 1.852 acre tract, H.C.C.R. No. S551076 located in the Jesse Pruitt Survey, A-629, City of Tomball, Harris County, Texas, generally located at the northwest corner of Cherry Street and Theis Ln., from the Agricultural District to the Commercial District.

At the public hearings, parties of interest and citizens will have the opportunity to be heard. All citizens of the City of Tomball, and any other interested parties, are invited to attend. Applications are available for public inspection Monday through Friday, except holidays, at the Public Works Building, located at 501 James Street, Tomball, TX 77375. Further information may be obtained by contacting the Assistant City Planner, Amelia Vasquez, at (281) 290-1410 or at avasquez@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 8th day of October 2015 by 5:00 p.m., and remained posted for at least 72 continuous hours preceding the scheduled time of said meeting.

Amelia Vasquez

Amelia Vasquez

Secretary of the Board

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



Notice of Public Hearing

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

CASE NUMBER: P15-107

APPLICANT/OWNER: Ron Proctor Jr. – Rock Materials / Charles E. Durow

LOCATION: South side of Theis Ln., west of Commercial Park Rd.

PROPOSAL: Request to amend Chapter 50 (Zoning) of the Tomball Code of Ordinances by rezoning approximately 7 acres of land, legally described as a tract of land containing seven (7) acres, out of the C.N. Pillot Survey, A-632, in the Country of Harris and State of Texas; and being out of that certain 16.34 acres conveyed to J.W. Fowler by Deed Recorded in Vol. 1042, Page 608 Deed records of said county, within the City of Tomball, Harris County, Texas, from the Agricultural District to the Light Industrial District.

* * *

CONTACT: Amelia Vasquez

PHONE: (281) 290-1410

E-MAIL: avasquez@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, October 12, 2015, 6:00 PM**

**City Council Public Hearing:
*Monday, October 19, 2015, 6:00 PM**

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

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



Rezoning Staff Report

Planning and Zoning Commission Hearing Date: October 12, 2015

City Council Public Hearing Date: October 19, 2015

Zoning Case: P15-107

Property Owner(s): Charles E. Durow

Applicant(s): Ron Proctor Jr. – Rock Materials

Legal Description: C.N. Pillot Survey, A-632

Location: South side of Theis Ln., west of Commercial Park Rd.
(Exhibit “A”)

Area: Approximately seven (7) acres

Present Zoning and Use: Agricultural (AG) District (Exhibit “B”) / Residence (Exhibit “C”)

Comp Plan Designation: Medium Density Residential (Exhibit “D”)

Proposed Zoning and Use: Light Industrial District¹ / Office and Warehouse

Adjacent Zoning and Use:

- North:** Light Industrial and Commercial Districts / Commercial Business Park
- South:** Agricultural and Commercial Districts / Undeveloped
- West:** Commercial Districts / Retail
- East:** Light Industrial and Agricultural Districts/ Undeveloped

BACKGROUND

On August 31, 2015, the applicant met with City Staff to discuss relocating their business, Rock Materials, from Spring, Texas to Tomball. The proposal included an approximate 15,000 square foot building with a warehouse. Staff informed the applicant that the property in question would require a zone change to allow for their proposed operations. On September 2, 2015 the applicant turned in a rezoning application requesting the property’s zoning classification be changed from the Agricultural (AG) District to the Light Industrial (LI) District to accommodate the development of an office and warehouse with paved outdoor storage and parking.

¹ Any use permitted in the proposed district would be allowed at this location if the zoning is changed. The Planning and Zoning Commission and City Council may consider zoning classifications other than that sought by the applicant for this property.

ANALYSIS

The applicant is requesting that the property be rezoned from the Agricultural District to the Light Industrial District. According to Section 50-78 of the Tomball Code of Ordinances, the Light Industrial District *“is intended primarily for the conduct of light manufacturing, assembling and fabrication activities, and for warehousing, research and development, wholesaling and services operations that do not typically depend upon frequent customer or client visits.”*

There are multiple non-residential land uses in the vicinity of the subject site. To the north there is a Commercial Business Park with businesses such as Inline Services, Jamison Products, Hole Specialists, Inc., ChemValve, 365 Machine, all of which are industrial businesses. Properties to the south and east are undeveloped, property to the west is retail (Walmart).

The Comprehensive Plan designates the subject site as Medium Density Residential. The surrounding areas are designated Business/Industrial, Parks, and Employment to the North; Medium Density Residential and Commercial to the South; Commercial to the West; Business/Industrial and Medium Density Residential to the East. Although the Future Land Use designates the site Medium Density Residential, the map is not meant to be parcel specific but rather serve as a general guide for future development in the area. When looking at the area in its entirety, the request is generally compliant based on the current build form of the area and anticipated future development. Furthermore, when looking at the current built form of the area, development in strict accordance with the Comprehensive Plan, medium density residential, would not be cohesive with existing development in the area.

Chapter 9 of the Comprehensive Plan addresses Deviations from the Plan, and indicates *“At times, the City will likely encounter development proposals that do not directly reflect the purpose and intent of the Comprehensive Plan. The Planning and Zoning Commission and City Council may find that a request for a Zoning Amendment is not consistent with the Future Land Use Plan but should be approved due to changed circumstances or additional, relevant information affecting the appropriate use of the parcel.”* The applicant has addressed the considerations listed in the Comprehensive Plan, and they are attached as Exhibit “F”.

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.**

Directly to the North of the subject site are multiple Light Industrial and Commercial zoned parcels which currently allows similar uses that would be permitted by the rezoning.

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

The proposed rezoning is not anticipated to negatively impact any existing or proposed plans for providing public schools, streets, water supply, sanitary sewers, and other utilities to the area.

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

There are vacant properties in the vicinity and elsewhere in the City zoned Light Industrial District.

- 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 City-wide in the Light Industrial District.

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

If the proposed rezoning is approved, few, if any effects on other areas designated for similar developments are anticipated.

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

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.**

Based on existing development and anticipated future development, as well as surrounding zoning districts, this request could be considered to be consistent with the Comprehensive Plan.

PUBLIC COMMENT

The Notice of Public Hearing was posted in the Tribune on September 28, 2015. Property owners within 200 feet of the project site were mailed notification of this proposal on October 1, 2015. No public comment forms have been received as of October 8, 2015.

RECOMMENDATION

Based on the findings outlined in the analysis and zoning considerations sections of this staff report, City staff recommends **APPROVAL** of Zoning Case P15-107.

EXHIBITS

- A. Aerial Photo
- B. Zoning Map
- C. Site Photo(s)
- D. Comprehensive Plan Map
- E. Rezoning Application
- F. Deviations from the Comprehensive Plan

Exhibit "A"
Aerial Photo



Exhibit "B"
Zoning Map



**Exhibit “C”
Site Photo(s)**



Facing south towards the property on Theis Ln.



Looking East across the property on Theis Ln.

Exhibit "D"
Comprehensive Plan Map



Exhibit "E"
Rezoning Application

Revised 1/20/09



APPLICATION FOR REZONING
Engineering & Planning Department

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: Ron Proctor Jr - Rock Materials Title: Vice President of Finance & Operations
Mailing Address: 2610 Spring Cypress Rd City: Spring State: TX
Zip: 77388
Phone: (281) 363-3100 Fax: (281) 528-6081 Email: rproctorjr@rockmaterials.com

Owner

Name: Charles E. Durso Title: Owner
Mailing Address: P.O. Box 1337 City: Tomball State: TX
Zip: 77377
Phone: () Fax: () None Email: None

Engineer/Surveyor (If applicable)

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

Description of Proposed Project: 15,000 sq ft of office/warehouse building, stone façade, +/- 5 acres for paved storage and parking

Physical Location of Property: 0 Thais Ln., Tomball, TX 77375 - right behind Walmart to the east
[General Location - approximate distance to nearest existing street corner]

Legal Description of Property: PT TR 19 ABST 632 C N PILLOT
[Survey/Abstract No. and Tract; or platted Subdivision Name with Lots/Block]

Current Zoning District: AG - Agriculture District

Current Use of Property: Personal Property with excess land

Proposed Zoning District: LI - Light Industrial District

Proposed Use of Property: Office/Warehouse with paved outdoor storage and parking

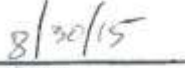
City of Tomball, Texas 501 James Street, Tomball, Texas 77375 Phone: 281-290-1405 www.ci.tomball.tx.us

HCAD Identification Number: 0610770000080 Acreage: +/- 7 Acres

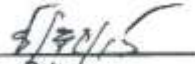
Please note: A courtesy notification sign will be placed on the subject property during the public hearing process and will be removed when the case has been processed.

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.


Signature of Applicant


Date


Signature of Owner


Date



Option 1

Jacob White
CONSTRUCTION COMPANY

HEITKAMP SWIFT
ARCHITECTS
Architecture • Interiors • Planning



Option 1

Jacob White
CONSTRUCTION COMPANY

HEITKAMP SWIFT
ARCHITECTS
Architecture • Interiors • Planning

053-99-8170

082-00-1251

EXHIBIT "A"

A tract of land containing Seven (7) acres, out of the C.W. Fillet Survey, A-632, in the County of Harris and State of Texas; and being out of that certain 16.34 acres conveyed to J.W. Fowler by deed recorded in Vol. 1042, Page 608 Deed Records of said County; being more particularly described as follows:

BEGINNING at the Southwest corner of the Christine Holdsworth 85 acre tract described in deed recorded in Vol. 928, Page 329, Deed Records; same also being the Southwest corner of the aforesaid 16.34 acres;

THENCE N 0° 04' 00" E along the West line of said 16.34 acre tract 1501.40 feet to a 2" iron rod (found) in the centerline of the Humble Oil & Refining Co. 60 foot wide private road; for Northwest corner and **PLACE OF BEGINNING**;

THENCE N 89° 59' 00" E along the center of said road 474.40 feet to a 3" iron pipe (found) for the Northeast corner;

THENCE E 0° 04' 00" W along the East line of the aforesaid 16.34 acre tract, a distance of 642.80 feet to a 1" iron pipe (found) for the Southeast corner;

THENCE S 89° 59' 00" W, a distance of 474.40 feet to a 2" iron pipe (found) in the West line of said 16.34 acre tract, for the Southwest corner;

THENCE N 0° 04' 00" E, a distance of 642.80 feet to the Place of Beginning and containing 7 acres of land.

RECORDING INFORMATION
At the time of recording, this instrument was found to be in compliance with the provisions of the Act of March 1, 1909, Chapter 13, Section 1, of the Laws of the State of Texas, and was duly recorded in the Public Records of said County of Harris, Texas, on the date hereinafter set forth and recorded.

[Signature]
[Signature]

STATE OF TEXAS
COUNTY OF HARRIS

I hereby certify that this instrument was filed in the Public Records on the date and at the hour specified herein by me and was duly recorded, in the Public Records of said County of Harris, Texas, on

MAY 23 1984



[Signature]
COUNTY CLERK,
HARRIS COUNTY, TEXAS

STATE OF TEXAS
COUNTY OF HARRIS

I hereby certify that this instrument was filed in the Public Records on the date and at the hour specified herein by me and was duly recorded, in the Public Records of said County of Harris, Texas, on

JUL 8 1983

[Signature]
COUNTY CLERK, HARRIS COUNTY, TEXAS



September 1, 2015

City of Tomball, Texas
501 James Street
Tomball, TX 77375

Re: Rezoning Request and Application pertaining to approximately 7.0 acres of land located at 0 Theis Ln., Tomball, TX 77375, further described per HCAD as PT TR 19 ABST 632 C N PILLOT, Harris County, Texas (APN: 0610770000080)

Planning Staff:

As the applicant to this rezoning request, Rock Materials is respectfully requesting rezoning from AG – Agriculture District to LI – (Light Industrial District) for the approximate 7.0 acre tract on the south side of Theis Lane, and behind Wal-Mart to the east.

We are proposing to move our operations from Spring, Texas to the City of Tomball. We would be building an approximate 15,000 SF rock/stone façade building with a high quality metal warehouse. We feel it would lend itself as an addition to the neighboring industrial business park located right across the street and bring more jobs and tax revenue to the City of Tomball.

We would appreciate your positive consideration of our rezoning request. Should you need additional information or have questions regarding our rezoning request, please contact me at (281) 353-3100 or via email at rproctorjr@rockmaterials.com

Sincerely,

A handwritten signature in black ink, appearing to read 'R Proctor'.

Ron Proctor, Jr.
VP Finance & Operations

2610 Spring Cypress Road
Spring, TX 77388

pc: 281.353.3100 | f: 281.528.6081 | www.rockmaterials.com

Exhibit “F”
Deviations from the Comprehensive Plan

Tomball Comprehensive Plan
Deviations from the Plan

- **Will the proposed development enhance the City economically?**
Yes; Rock Materials will employ 35 plus employees in the city of Tomball. We receive 8-10 inbound freight trucks daily. These drivers will undoubtedly be purchasing fuel and food locally in Tomball. Additionally, Tomball will benefit from sales tax revenue it collects on all taxable sales made by Rock Materials. The majority of our work is done with local and national home builders, home owners, and commercial contractors. By relocating from Spring to Tomball, we will be conveniently located in the heart of Tomball and will be able to outsource much needed services and resources to local business and individuals.
- **Will the proposed development enhance the City aesthetically?**
Yes; the development plan includes a high quality metal office building with beautiful stone façade. An abundant amount of landscaping and trees are important to Rock Materials, and will be heavily implemented in our development plan. Additionally, we will follow the direction of the 249 & FM 2920 aesthetics guidelines and meet those requirements. Furthermore, our business's purpose is to increase the aesthetics of someone's home or business center so we are very excited and take great pride in the opportunity to showcase our future facility to current and future clients and residents in the City of Tomball.
- **Is the proposed development consistent with the City's Goals, Objectives, and Actions?**
Yes; our goal with relocating our company is to provide a strong beneficial working environment for our employees and clients to thrive in. We chose to locate our company here because we are focused on growing our business in a city that focuses on strategic economic growth and enabling businesses to develop within the community. We will also be focused on being a part of the community in any way we can partake. We also hope to join the City's Chamber of Commerce and collaborate with other local businesses.
- **Is the proposed development a better use of land/property, both for the owner/developer and the City, than that recommended by the Plan?**
Yes; the tax revenue for the City will immediately increase with our company's taxable sales under "Light Industrial" zoning as opposed to the future classification of "Medium Density Residential". Also, re-zoning to "Light Industrial" is consistent with land use directly across the street (contiguous industrial park).
- **Will the proposed development impact adjacent residential areas in a positive or negative manner?**
Currently the adjacent areas next to this property are an industrial park and a Wal-Mart Supercenter, neither of which are residential. Nearby residential areas can benefit from our retail presence as a stone/landscape materials provider. Our presence will be complementing with the Wal-Mart Supercenter, extending on the home improvement sector for the local residents. We would also be a positive resource for local homebuilders needing materials for their standard and specialized projects.
- **Will the proposed development have adequate access; have considerations been made for roadway capacity, ingress and egress, traffic impact?**
Yes; we will incorporate extra-wide driveways, per city guidelines, to maximize truck-flow efficiency into and out of our property. The development plan also includes adequate gate setback to allow for any possible early truck arrival. Additionally, the development will provide more than enough on-site space for inbound freight parking/staging.
- **Are uses adjacent to the proposed development similar in nature in terms of appearance, hours of operation, and other general aspects of compatibility?**
Yes; Rock Materials business hours, currently 7:30am – 4:00pm Monday through Friday, coincide with typical business hours in the City. Property appearance will be similar to other businesses in the "Light Industrial"-zoned business park directly across the street from the property.
- **Does the proposed development present a significant benefit to the public health, safety, and welfare of the community?**
Yes; the welfare of the community will benefit greatly from the tax revenue generated on all taxable sales. We are building a state-of-the-art facility, and our business does not involve any manufacturing or health endangering processes to the public.

Regular City Council

Agenda Item

Meeting Date: October 19, 2015

Data Sheet

Topic:

Consideration to Approve **ZONING CASE P15-108**: Request by Bill Hightower, on behalf of Hightower Investments, LTD., to amend Chapter 50 (Zoning) of the Tomball Code of Ordinances by rezoning approximately 10 acres of land, legally described as Tract 1, A 2.691 acre tract, H.C.C.F No. S551075; Tract 2, A 3.072 acre tract, H.C.C.R. No. S551078; Tract 3, A 2.684 acre tract, H.C.C.R. No. S551077; and, Tract 4, A 1.852 acre tract, H.C.C.R. No. S551076 located in the Jesse Pruitt Survey, A-629, City of Tomball, Harris County, Texas, generally located at the northwest corner of Cherry Street and Theis Ln., from the Agricultural District to the Commercial District.

- Conduct Public Hearing on **ZONING CASE P15-108**
- Adopt, on first reading, Ordinance No. 2015-22, an Ordinance Of The City Of Tomball, Texas, Amending Its Chapter 50 (Zoning) Of The Tomball Code Of Ordinances By Changing The Zoning District Classification Of Approximately 10 Acres Of Land, Legally Described As Tract 1, A 2.691 Acre Tract, H.C.C.F No. S551075; Tract 2, A 3.072 Acre Tract, H.C.C.R. No. S551078; Tract 3, A 2.684 Acre Tract, H.C.C.R. No. S551077; And, Tract 4, A 1.852 Acre Tract, H.C.C.R. No. S551076 Located In The Jesse Pruitt Survey, A-629, Within The City Of Tomball, Harris County, Texas, From The Agricultural District To The Commercial District; Said Property Being Generally Located At The Northwest Corner Of Cherry Street And Theis Ln.; 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, October 12, 2015, the Planning and Zoning Commission voted to recommend approval of Zoning Case P15-108. The motion was carried unanimously.

Origination:

Recommendation:

Approval

Funding:

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

Community Development Department

ACTION TAKEN		
APPROVAL	READINGS PASSED	OTHER
☐ YES ☐ NO	☐ 1 ST ☐ 2 ND	

ATTACHMENTS:

P15-108 - Ordinance

P15-108 - Notice of Public Hearing

P15-108 - Property Owner Notification

P15-108 - Staff Report

ORDINANCE NO. 2015-22

AN ORDINANCE OF THE CITY OF TOMBALL, TEXAS, AMENDING ITS CHAPTER 50 (ZONING) OF THE TOMBALL CODE OF ORDINANCES BY CHANGING THE ZONING DISTRICT CLASSIFICATION OF APPROXIMATELY 10 ACRES OF LAND, LEGALLY DESCRIBED AS TRACT 1, A 2.691 ACRE TRACT, H.C.C.F NO. S551075; TRACT 2, A 3.072 ACRE TRACT, H.C.C.R. NO. S551078; TRACT 3, A 2.684 ACRE TRACT, H.C.C.R. NO. S551077; AND, TRACT 4, A 1.852 ACRE TRACT, H.C.C.R. NO. S551076 LOCATED IN THE JESSE PRUITT SURVEY, A-629, WITHIN THE CITY OF TOMBALL, HARRIS COUNTY, TEXAS, FROM THE AGRICULTURAL DISTRICT TO THE COMMERCIAL DISTRICT; SAID PROPERTY BEING GENERALLY LOCATED AT THE NORTHWEST CORNER OF CHERRY STREET AND THEIS LN.; 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, Bill Hightower, on behalf of Hightower Investments, has requested that approximately 10 acres of land, legally described as Tract 1, A 2.691 acre tract, H.C.C.F No. S551075; Tract 2, A 3.072 acre tract, H.C.C.R. No. S551078; Tract 3, A 2.684 acre tract, H.C.C.R. No. S551077; and, Tract 4, A 1.852 acre tract, H.C.C.R. No. S551076 located in the Jesse Pruitt Survey, A-629, generally located at the northwest corner of Cherry Street and Theis Ln., in the City of Tomball, Harris County, Texas, (the "Property"), be rezoned; and

Whereas, at least fifteen (15) days after publication in the official newspaper of the City of the time and place of a public hearing and at least ten (10) days written notice of that hearing 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 proposal to change the zoning for the Property from the Agricultural District to the Commercial District; and

Whereas, the public hearing was held at least forty (40) calendar days after the City's receipt of the request for rezoning; and

Whereas, the Planning & Zoning Commission recommended in its final report that City Council approve such proposed change in the zoning district classification of the Property; and

Whereas, at least fifteen (15) days after publication in the official newspaper of the City of the time and place of a public hearing on the proposal to change the zoning district classification for the Property from the Agricultural District to the Commercial District, the City Council held the public hearing on the proposal to change the zoning for the Property and the City Council considered the final report of the Planning & Zoning Commission regarding the change of zoning district classification; and

Whereas, the City Council deems it appropriate to grant such proposed change in the zoning district classification of the Property.

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

Section 1. The City Council finds that the facts and matters set forth in the preamble of this Ordinance are true and correct.

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

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

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

Section 5. In the event any section, paragraph, subdivision, clause, phrase, provision, sentence, or part of this Ordinance or the application of the same to any person or circumstance shall for any reason be adjudged invalid or held unconstitutional by a court of competent jurisdiction, it shall not affect, impair, or invalidate this Ordinance as a whole or any part or provision hereof other 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.

Section 7. City Council finds and determines that the meeting at which this Ordinance is passed was open to the public as required and that public notice of the time, place, and purpose of said meeting was given as required by the Texas Open Meetings Act, Tex.Gov't. Code Ch. 551.

FIRST READING:

READ, PASSED AND APPROVED AS SET OUT BELOW AT THE MEETING OF THE CITY COUNCIL OF THE CITY OF TOMBALL HELD ON THE 19TH DAY OF OCTOBER 2015.

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

SECOND READING:

READ, PASSED AND APPROVED AS SET OUT BELOW AT THE MEETING OF THE CITY COUNCIL OF THE CITY OF TOMBALL HELD ON THE 2ND DAY OF NOVEMBER 2015.

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

Gretchen Fagan, Mayor

ATTEST:

Doris Speer, City Secretary

**NOTICE OF PUBLIC HEARING
CITY OF TOMBALL
PLANNING & ZONING COMMISSION (P&Z)
OCTOBER 12, 2015
&
CITY COUNCIL
OCTOBER 19, 2015**



Notice is Hereby Given that a Public Hearing will be held by the P&Z of the City of Tomball on **Monday, October 12, 2015, at 6:00 P.M.**, and by the City Council of the City of Tomball on **Monday, October 19, 2015, 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 P15-107: Request by Ron Proctor, Jr., on behalf of Rock Materials, to amend Chapter 50 (Zoning) of the Tomball Code of Ordinances by rezoning approximately 7 acres of land, legally described as a tract of land containing seven (7) acres, out of the C.N. Pillot Survey, A-632, in the Country of Harris and State of Texas; and being out of that certain 16.34 acres conveyed to J.W. Fowler by Deed Recorded in Vol. 1042, Page 608 Deed records of said county, within the City of Tomball, Harris County, Texas, generally located on the south side of Theis Ln., west of Commercial Park Rd., from the Agricultural District to the Light Industrial District.

ZONING CASE P15-108: Request by Bill Hightower, on behalf of Hightower Investments, LTD., to amend Chapter 50 (Zoning) of the Tomball Code of Ordinances by rezoning approximately 10 acres of land, legally described as Tract 1, A 2.691 acre tract, H.C.C.F No. S551075; Tract 2, A 3.072 acre tract, H.C.C.R. No. S551078; Tract 3, A 2.684 acre tract, H.C.C.R. No. S551077; and, Tract 4, A 1.852 acre tract, H.C.C.R. No. S551076 located in the Jesse Pruitt Survey, A-629, City of Tomball, Harris County, Texas, generally located at the northwest corner of Cherry Street and Theis Ln., from the Agricultural District to the Commercial District.

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

CERTIFICATION

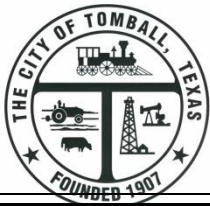
I hereby certify that the above notice of meeting was posted on the bulletin board of City Hall; City of Tomball, Texas, a place readily accessible to the general public at all times, on the 8th day of October 2015 by 5:00 p.m., and remained posted for at least 72 continuous hours preceding the scheduled time of said meeting.

Amelia Vasquez

Amelia Vasquez

Secretary of the Board

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



Notice of Public Hearing

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

CASE NUMBER: P15-108

APPLICANT/OWNER: Bill Hightower on behalf of Hightower Investments / Tracey and Lee Lawrence Family Limited Partnership LTD

LOCATION: Northwest corner of Cherry Street and Theis Ln.

PROPOSAL: Request to amend Chapter 50 (Zoning) of the Tomball Code of Ordinances by rezoning approximately 10 acres of land, legally described as Tract 1, A 2.691 acre tract, H.C.C.F No. S551075; Tract 2, A 3.072 acre tract, H.C.C.R. No. S551078; Tract 3, A 2.684 acre tract, H.C.C.R. No. S551077; and, Tract 4, A 1.852 acre tract, H.C.C.R. No. S551076 located in the Jesse Pruitt Survey, A-629, City of Tomball, Harris County, Texas, from the Agricultural District to the Commercial District.

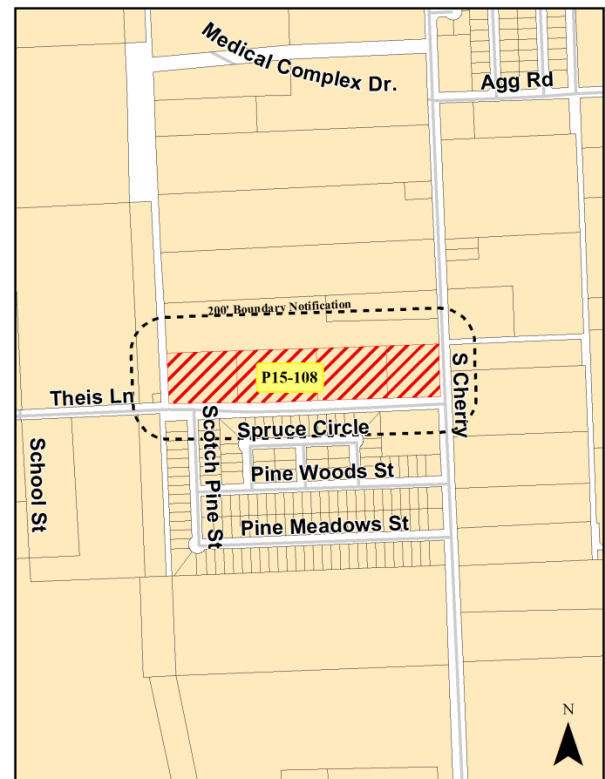
CONTACT: Amelia Vasquez

PHONE: (281) 290-1410

E-MAIL: avasquez@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, October 12, 2015, 6:00 PM**

**City Council Public Hearing:
*Monday, October 19, 2015, 6:00 PM**

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

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



Rezoning Staff Report

Planning and Zoning Commission Hearing Date: October 12, 2015

City Council Public Hearing Date: October 19, 2015

Zoning Case: P15-108

Property Owner(s): Tracy and Lee Lawrence Family Limited Partnership LTD

Applicant(s): Bill Hightower / Hightower Investments

Legal Description: Tract 1, A 2.691 acre tract, H.C.C.F No. S551075; Tract 2, A 3.072 acre tract, H.C.C.R. No. S551078; Tract 3, A 2.684 acre tract, H.C.C.R. No. S551077; and, Tract 4, A 1.852 acre tract, H.C.C.R. No. S551076 located in the Jesse Pruitt Survey, A-629

Location: Northwest corner of Cherry Street and Theis Ln. (Exhibit "A")

Area: Approximately ten (10) acres

Present Zoning and Use: Agricultural (AG) District (Exhibit "B")/Vacant (Exhibit "C")

Comp Plan Designation: Business/Industrial (Exhibit "D")

Proposed Zoning and Use: Commercial District¹/Commercial Office/Warehouse and Retail Use

Adjacent Zoning and Use:

- North:** Single Family 20 Estate District/Residential
- South:** Single Family 6 District/Pine Meadows neighborhood
- West:** Agricultural District/Vacant
- East:** Light Industrial and Single Family 20 Estate Districts/Residential

BACKGROUND

On September 2, 2015 the applicant turned in a rezoning application requesting the property's zoning classification be changed from the Agricultural (AG) District to the Commercial (C) District to accommodate a proposed Commercial Office/Warehouse and Retail development. The property consists of approximately 10 acres and is undeveloped.

¹ Any use permitted in the proposed district would be allowed at this location if the zoning is changed. The Planning and Zoning Commission and City Council may consider zoning classifications other than that sought by the applicant for this property.

ANALYSIS

The applicant is requesting that the property be rezoned from the Agricultural District to the Commercial District. According to Section 50-77 of the Tomball Code of Ordinances, the Commercial District *“is intended to provide a location for commercial and service-related establishments, such as wholesale product sales, welding/contractors shops, automotive repair services, upholstery shops, and other similar commercial uses.”*

In December 2009, City Council adopted the Comprehensive Plan to use as a guide for the City’s future growth and redevelopment. The Comprehensive Plan designates the subject site as Business/Industrial. The surrounding areas are designated Business/Industrial to the north and west, Employment to the east and Medium Density Residential to the south.

Correlating zoning districts for that Business/Industrial designation include Commercial and Light Industrial. As the applicant is requesting the Commercial zoning district, the request is consistent with the Comprehensive Plan. Additionally, the property is located at the intersection of two arterial streets, making new non-residential development accessible to main thoroughfares within the City. There are also Light Industrial uses and districts generally to the west, and north, and Light Industrial zoning to the east (currently being used as residential).

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 subject site is primarily surrounded by residential zoning districts, with the exception of a Light Industrial zoned parcel to the East.

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

The proposed rezoning is not anticipated to negatively impact any existing or proposed plans for providing public schools, streets, water supply, sanitary sewers, and other utilities to the area.

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

There are vacant properties in the vicinity and elsewhere in the City zoned Commercial District.

- 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 City-wide in the Commercial District.

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

If the proposed rezoning is approved, few, if any effects on other areas designated for similar developments are anticipated.

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

The proposed rezoning does not appear to negatively affect the public health, safety, morals, or general welfare. There are other Light Industrial and Commercial zoned properties in the general area. Chapter 50 (Zoning) addresses regulations for Commercial Districts that abut Residential Districts. These regulations will help mitigate any potentially adverse impacts on the existing surrounding residences.

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

The Comprehensive Plan indicates Business/Industrial as a future land use for the subject property. Correlating zoning districts for that Business/Industrial designation include Commercial and Light Industrial. As the applicant is requesting the Commercial zoning district, the request is consistent with the Comprehensive Plan.

PUBLIC COMMENT

The Notice of Public Hearing was posted in the Tribune on September 28, 2015. Property owners within 200 feet of the project site were mailed notification of this proposal on October 1, 2015. No public comment forms have been received as of October 8, 2015.

RECOMMENDATION

Based on the findings outlined in the analysis and zoning considerations sections of this staff report, City staff recommends **APPROVAL** of Zoning Case P15-108.

EXHIBITS

- A. Aerial Photo
- B. Zoning Map
- C. Site Photo(s)
- D. Comprehensive Plan Map
- E. Rezoning Application

Exhibit "A"
Aerial Photo



Exhibit "B"
Zoning Map



**Exhibit “C”
Site Photo(s)**



Looking north across property from Theiss Ln.



Looking northwest across property from N. Cherry Ln.

Exhibit "D"
Comprehensive Plan Map



Exhibit "E"
Rezoning Application

Revised 1/20/09



APPLICATION FOR REZONING
Engineering & Planning Department

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: Bill Hightower / Hightower Investments Title: Owner
Mailing Address: 6115 Theale City: Houston State: TX
Zip: 77064
Phone: (281) 440-4125 Fax: () Email: hightower@earthlink.net

Owner

Name: Tracy and Lee Lawrence Family Unsubd Plot Title:
Mailing Address: 7519 Woodlawn Place Court City: Houston State: TX
Zip: 77055
Phone: () Fax: () Email:

Engineer/Surveyor (if applicable)

Name: Kyle A. Bertrand, P.E. Title:
Mailing Address: 61161 Sawing, Ste 500 City: Houston State: TX
Zip: 77036
Phone: (713) 541-3530 Fax: (713) 541-0032 Email: KBertrand@quadacorp.com

Description of Proposed Project: Construction of a new location for Hightower Electric Co. and a high end office warehouse development.

Physical Location of Property: Northwest Corner of Cherry and Theale
[General Location - approximate distance to nearest existing street corner]

Legal Description of Property: Tracts 1-4 HOLF No. 5551076 located in the
Jesse Pruitt Survey, A-624 [Survey/Abstract No. and Tracts; or platted Subdivision Name with Lots/Block]
City of Tomball Harris County, Texas

Current Zoning District: A-66

Current Use of Property: Raw wooded land

Proposed Zoning District: Commercial

Proposed Use of Property: High end Commercial office/warehouse & Retail use

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

www.ci.tomball.tx.us

035-286-000-0187
035-286-000-0196
035-286-000-0195
035-286-000-0208

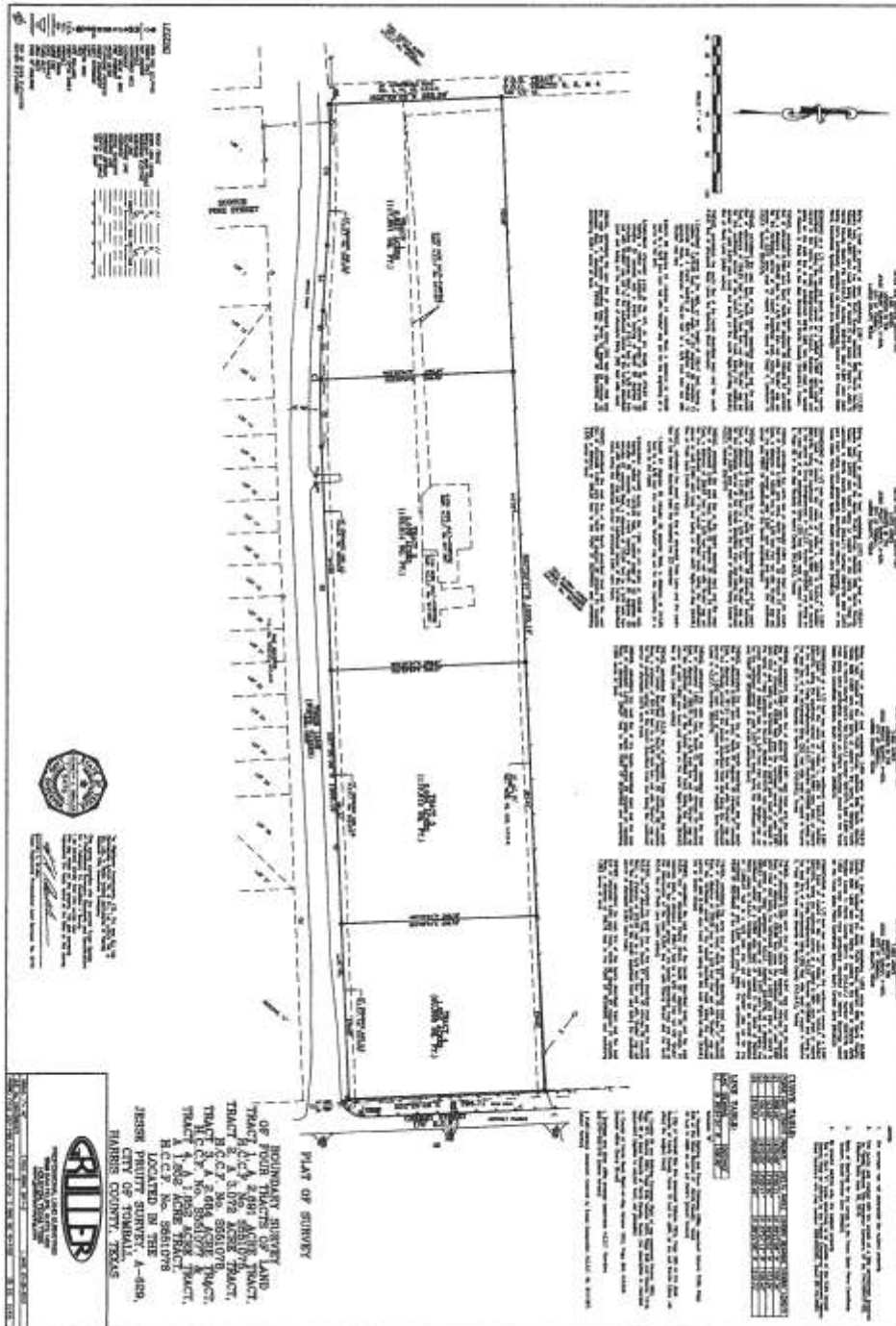
HCAD Identification Number: 035-286-000-0208 Acreage: 10.299

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 Walter Krumm 9-2-2015
Signature of Applicant Date

X Lori Dmanson 9/01/2015
Signature of Owner Date



HIGHTOWER INVESTMENTS, LTD.

6115 THEALL, HOUSTON, TEXAS 77066

281-440-4405

FAX 281-440-4990

September 1, 2015

City of Tomball
501 James Street
Tomball, TX 77375

Attn: Harold Ellis

Re: Northwest Corner of Cherry & Theiss, Tomball, TX

Dear Mr. Ellis,

I would like to request development of the above referenced land for relocation/construction of my business, Hightower Electric, electrical contractor. Proposed use of property would be a high end commercial office/warehouse development and retail use.

Thank you for your consideration and I look forward to hearing from you.

Sincerely,



Bill Hightower, Owner
Hightower Investments, LTD.

TRACT 1
METES AND BOUNDS DESCRIPTION
2.691 ACRES
LOCATED IN THE
JESSE PRUITT SURVEY, A-629,
CITY OF TOMBALL,
HARRIS COUNTY, TEXAS

Being a tract or parcel of land containing 2.691 acres of land or 117,221 square feet, located in the Jesse Pruitt Survey, Abstract 608, Harris County, Texas; Said 2.691 acre tract being of record in the name of Helen L. Jahn in Harris County Clerk's File (H.C.C.F.) Number S551075; Said 2.691 acre tract being more particularly described as follows (bearings based on the Texas State Plane Coordinate System, South Central Zone (NAD83)):

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

THENCE, coincident the north line of the herein described tract and the south line of aforesaid 8.1984 acre tract, North 87 degrees 30 minutes 57 seconds East, a distance of 420.88 feet to a 5/8 inch iron rod with "Gruller" cap set for the northeast corner of the herein described tract, being the northwest corner of a 3.072 acre tract of record in the name of Tracy N. Lawrence in H.C.C.F. Number S551078;

THENCE, coincident the east line of the herein described tract and the west line of aforesaid 3.072 acre tract, South 02 degrees 29 minutes 54 seconds East, a distance of 296.29 feet to a 5/8 inch iron rod with "Gruller" cap set for the southeast corner of the herein described tract, being the southwest corner of said 3.072 acre tract and being on the north Right-of-Way (R.O.W.) line of Theis Lane (width varies)

THENCE, coincident the south line of the herein described tract and the north R.O.W. line of aforesaid Theis Lane, the following three courses:

1. Coincident a curve to the right, an arc length of 106.41 feet, having a radius of 1,970.00 feet, a central angle of 03 degrees 05 minutes 41 seconds and a chord bearing of North 87 degrees 57 minutes 13 seconds West, a distance of 106.40 feet to a 5/8 inch iron rod with "Gruller" cap set;
2. North 86 degrees 24 minutes 24 seconds West, a distance of 100.00 feet to a 5/8 inch iron rod with "Gruller" cap set for the beginning of a curve to the left;
3. Coincident aforesaid curve to the left, an arc length of 215.83 feet, having a radius of 2,030.00 feet, a central angle of 06 degrees 05 minutes 30 seconds and a chord bearing of North 89 degrees 27 minutes 08 seconds West, a distance of 215.73 feet to a 5/8 inch iron rod with "Gruller" cap set for the southwest corner of the herein described tract and being on the east line of aforesaid thirty (30) foot wide road;

THENCE, coincident the east line of aforesaid thirty (30) foot wide road and the west line of the herein described tract, North 02 degrees 29 minutes 22 seconds West, a distance of 265.89 feet to the **POINT OF BEGINNING** and containing 2.691 acres of land.

TRACT 2
METES AND BOUNDS DESCRIPTION
3.072 ACRES
LOCATED IN THE
JESSE PRUITT SURVEY, A-629,
CITY OF TOMBALL,
HARRIS COUNTY, TEXAS

Being a tract or parcel of land containing 3.072 acres of land or 133,814 square feet, located in the Jesse Pruitt Survey, Abstract 608, Harris County, Texas; Said 3.072 acre tract being of record in the name of Tracy N. Lawrence in Harris County Clerk's File (H.C.C.F.) Number S551078; Said 3.072 acre tract being more particularly described as follows (bearings based on the Texas State Plane Coordinate System, South Central Zone (NAD83)):

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

THENCE, coincident the north line of aforesaid 2.691 acre tract and the south line of aforesaid 8.1984 acre tract, North 87 degrees 30 minutes 57 seconds East, a distance of 420.88 feet to a 5/8 inch iron rod with "Gruller" cap set for the northeast corner of said 2.691 acre tract and being the northwest corner and **POINT OF BEGINNING** of the herein described tract;

THENCE, coincident the north line of the herein described tract and the south line of aforesaid 8.1984 acre tract, North 87 degrees 30 minutes 57 seconds East, a distance of 447.95 feet to a 5/8 inch iron rod with "Gruller" cap set for the northeast corner of the herein described tract and being the northwest corner of a 2.684 acre tract of record in the name of Richard Henry Lucas in H.C.C.F. Number S551077;

THENCE, coincident the east line of the herein described tract and the west line of aforesaid 2.684 acre tract, South 02 degrees 29 minutes 54 seconds East, a distance of 298.87 feet to a 5/8 inch iron rod with "Gruller" cap set for the southeast corner of the herein described tract, being the southwest corner of said 2.684 acre tract and being on the north Right-of-Way (R.O.W.) line of Theis Lane (width varies);

THENCE, coincident the north R.O.W. line of aforesaid Theis Lane and the south line of the herein described tract the following two (2) courses:

1. South 87 degrees 30 minutes 06 seconds West, a distance of 344.95 feet to a 5/8 inch iron rod with "Gruller" cap set for the beginning of a curve to the right;
2. Coincident aforesaid curve to the right, an arc length of 103.05 feet, having a radius of 1,970.00 feet, a central angle of 02 degrees 59 minutes 50 seconds and a chord bearing of North 89 degrees 00 minutes 02 seconds West, a distance of 103.04 feet to a 5/8 inch iron rod with "Gruller" cap set for the southwest corner of the herein described tract, being the southeast corner of aforesaid 2.691 acre tract;

THENCE, coincident the west line of the herein described tract and the east line of aforesaid 2.691 acre tract, North 02 degrees 29 minutes 54 seconds West, a distance of 296.29 feet to the **POINT OF BEGINNING** and containing 3.072 acres of land.

TRACT 3
METES AND BOUNDS DESCRIPTION
2.684 ACRES
LOCATED IN THE
JESSE PRUITT SURVEY, A-629,
CITY OF TOMBALL,
HARRIS COUNTY, TEXAS

Being a tract or parcel of land containing 2.684 acres of land or 116,912 square feet, located in the Jesse Pruitt Survey, Abstract 608, Harris County, Texas; Said 2.684 acre tract being of record in the name of Richard Henry Lucas in Harris County Clerk's File (H.C.C.F.) Number S551077; Said 2.684 acre tract being more particularly described as follows (bearings based on the Texas State Plane Coordinate System, South Central Zone (NAD83)):

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

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

THENCE, coincident the north line of the herein described tract and the south line of aforesaid 8.1984 acre tract, North 87 degrees 30 minutes 57 seconds East, a distance of 391.24 feet to a 5/8 inch iron rod with "Gruller" cap set for the northeast corner of the herein described tract and being the northwest corner of a 1.852 acre tract of record in the name of Virginia Doris Newton Lucas in H.C.C.F. Number S551076;

THENCE, coincident the east line of the herein described tract and the west line of aforesaid 1.852 acre tract, South 02 degrees 29 minutes 54 seconds East, a distance of 298.78 feet to a 5/8 inch iron rod with "Gruller" cap set for the southeast corner of the herein described tract, being the southwest corner of said 1.852 acre tract and being on the north Right-of-Way (R.O.W.) line of Theis Lane (width varies);

THENCE, coincident the north R.O.W. line of aforesaid Theis Lane and the south line of the herein described tract, South 87 degrees 30 minutes 06 seconds West, a distance of 391.24 feet to a 5/8 inch iron rod with "Gruller" cap set for the southwest corner of the herein described tract and being the southeast corner of aforesaid 3.072 acre tract;

THENCE, coincident the west line of the herein described tract and the east line of aforesaid 3.072 acre tract, North 02 degrees 29 minutes 54 seconds West, a distance of 298.87 feet to the **POINT OF BEGINNING** and containing 2.684 acres of land.

TRACT 4
METES AND BOUNDS DESCRIPTION
1.852 ACRES
LOCATED IN THE
JESSE PRUITT SURVEY, A-629,
CITY OF TOMBALL,
HARRIS COUNTY, TEXAS

Being a tract or parcel of land containing 1.852 acres of land or 80,668 square feet, located in the Jesse Pruitt Survey, Abstract 608, Harris County, Texas; Said 1.852 acre tract being of record in the name of Virginia Doris Newton Lucas in Harris County Clerk's File (H.C.C.F.) Number S551076; Said 1.852 acre tract being more particularly described as follows (bearings based on the Texas State Plane Coordinate System, South Central Zone (NAD83)):

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

THENCE, coincident the north line of aforesaid 2.691 acre tract and the south line of aforesaid 8.1984 acre tract, North 87 degrees 30 minutes 57 seconds East, at a distance of 420.88 feet pass the northeast corner of said 2.691 acre tract and being the northwest corner of a 3.072 acre tract of record in the name of Tracy Lawrence in H.C.C.F. Number S551078, at a distance of 868.83 feet pass the northeast corner of said 3.072 acre tract and being the northwest corner of a 2.684 acre tract of record in the name of Richard Henry Lucas in H.C.C.F. Number S551077, and continue for an overall distance of 1,260.07 feet to a 5/8 inch iron rod with "Gruller" cap set for the northeast corner of said 2.684 acre tract, being the northwest corner and **POINT OF BEGINNING** of the herein described tract;

THENCE, coincident the north line of the herein described tract and the south line of aforesaid 8.1984 acre tract, North 87 degrees 30 minutes 57 seconds East, a distance of 270.05 feet to a 5/8 inch iron rod with "Gruller" cap set for the northeast corner of the herein described tract, being the southeast corner of said 8.1984 acre tract and being on the west Right-of-Way (R.O.W.) line of Cherry Street;

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

THENCE, coincident the south line of the herein described tract and the north R.O.W. line of aforesaid Theis Lane, South 87 degrees 30 minutes 06 seconds West, a distance of 270.00 feet to a 5/8 inch iron rod with "Gruller" cap set for the southwest corner of the herein described tract and being the southeast corner of aforesaid 2.684 acre tract;

THENCE, coincident the west line of the herein described tract and the east line of aforesaid 2.684 acre tract, North 02 degrees 29 minutes 54 seconds West, a distance of 298.78 feet to the **POINT OF BEGINNING** and containing 1.852 acres of land.

Regular City Council Agenda Item Data Sheet

Meeting Date: October 19, 2015

Topic:

Executive Session: The City Council will meet in Executive Session as Authorized by Title 5, Chapter 551, Government Code, the Texas Open Meetings Act, for the Following Purpose(s):

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

Background:**Origination:**

City Manager

Recommendation:

N/A

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

City Secretary

ACTION TAKEN		
APPROVAL	READINGS PASSED	OTHER
☐ YES ☐ NO	☐ 1 ST ☐ 2 ND	

Regular City Council Agenda Item Data Sheet

Meeting Date: October 19, 2015

Topic:

Consideration and Possible Action regarding Amendments to and Extension of the Employment Contract for George Shackelford, City Manager

Background:

Origination:

Council

Recommendation:

N/A

Funding:

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

City Secretary, HR Director

ACTION TAKEN		
APPROVAL	READINGS PASSED	OTHER
☐ YES ☐ NO	☐ 1 ST ☐ 2 ND	