NOTICE OF REGULAR CITY COUNCIL MEETING
CITY OF TOMBALL, TEXAS

MONDAY, MARCH 5, 2012

6:00 P.M.

Notice is hereby given of a meeting of the Tomball City Council, to be held on Monday, March 5, 2012 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 Brother Paul Michna, Spring Creek Church of Christ

3.0 Pledges to U.S. and Texas Flags

- Led by 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

- March 10, 2012 – **NO Farmers Market**
- March 10, 2012 – **Oilfield Helping Hands Car Show and Motorcycle Rally**, 9:00 a.m.-5:00 p.m. at the Depot
- March 10, 2012 – **2nd Saturday at the Depot** – 5:00 p.m.
- March 19, 2012 – **Candidate Orientation** – 5:00 p.m.
- March 30-April 1, 2012 – **Tomball German Heritage Festival** in the Depot/Downtown Tomball Area
- March 31, 2012 – **NO Farmers Market**
- April 4, 2012 – **City of Tomball Youth Fair – Beckendorf Conference Center – LoneStar College**, 2:00 p.m.-6:00 p.m.
- April 14, 2012 – **4th Annual City of Tomball Bunny Run 5K and Kids 1K**
- April 14, 2012 – ***2nd Day of Healthy Living in Tomball* Expo – Texas Sports Medicine Center**, 9:00 a.m.-2:00 p.m.
- April 14, 2012 – **2nd Saturday at the Depot** – 5:00 p.m.
- April 16, 2012 - Appoint Members to the Tomball Economic Development Board for Terms Expiring May 2, 2012
- April 23-28, 2012 – Annual **Tomball Clean-up Week** – 8:00 a.m.-4:30 p.m. daily
- April 28, 2012 – Annual **Tomball Clean-up Recycling Day – E-Waste and Drug Take-Back Program – Tuesday Morning Parking Lot**
- **Early Voting** for May 12, 2012 General Election – April 30 through May 8, 2012 at City Hall (Monday, Wednesday, and Thursday – 7:45 a.m.-5:00 p.m.) (Tuesday – 7:45 a.m.-7:45 p.m.) and (Friday – 7:45 a.m.-4:00 p.m.)
- Possible Harris County Primary Election Dates – April 17, May 29, or June 5, 2012
- ***Walk Tomball!*** (every Saturday at 9:00 a.m. at the Depot)
- Reports by City staff and members of council about items of community interest on which no action will be taken
    - Lisa Coe – Update regarding the City of Tomball Youth Fair on April 4, 2012

6.0 Approve the Minutes of the February 20, 2012 Regular City Council Meeting and the February 28, 2012 Special City Council Meeting

7.0 New Business:

7.1 Approve Resolution No. 2012-04-TEDC, a Resolution of the City Council of the City of Tomball, Texas, Approving Amended Bylaws of the Tomball Economic Development Corporation; Providing for the Effective Date, and other Related Matters.

7.2 Approve Resolution No. 2012-05-TEDC, a Resolution of the City Council of the City of Tomball, Texas, Restating and Amending the Articles of Incorporation (Certificate of Formation); Authorizing and Directing the Execution and Filing of such Amended and Restated Articles by the Mayor and City Secretary; Authorizing the Corporation to act on behalf of the City for Certain Purposes; Providing for the Effective Date and other Related Matters.

7.3 Consideration and possible action to approve, as a Project of the Corporation, an agreement with Ameresco Solar, to make direct incentives to or expenditures for the creation or retention of primary jobs for Ameresco Solar. The estimated amount of expenditures for such project is an amount not to exceed $36,000.00.

7.4 Approve Request by Mr. Bryan Lyszaz, with Clear Choice LED, LLC, to Allow a Changeable Electronic Variable Message Sign at 425 Holderrieth Boulevard

7.5 Authorize the Removal of Existing Buildings Located at 217 South Walnut Street, Owned by the City

7.6 Approve **FINAL PLAT RESERVE AT SPRING LAKE SECTION ONE**: Being 221.2020 Acres located in the Joseph Miller League, A-50 W.H. Clemens Survey, A-1641, Harris County, Texas, City of Tomball, Texas.

7.7 Consideration and Possible Action regarding Lease Agreement with Bobbi L. Gunter for the Property Located at 24114 Flax Ct., Owned by the City

7.8 Approve Request for Proposals for Independent Audit Services, as Required under Section 8.24 of the City Charter, for the Fiscal Year Ending September 30, 2012 and Two Succeeding Years.

7.9 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:

- Section 551.071 - Consultation with Attorney regarding Litigation

8.0 Adjournment

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

I hereby certify that the above notice of meeting was posted on the bulletin board of City Hall, City of Tomball, Texas, a place readily accessible to the general public at all times, on the 1st day of March 2012 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: March 5, 2012

Topic:

- March 10, 2012 – **NO Farmers Market**
- March 10, 2012 – **Oilfield Helping Hands Car Show and Motorcycle Rally**, 9:00 a.m.-5:00 p.m. at the Depot
- March 10, 2012 – **2nd Saturday at the Depot** – 5:00 p.m.
- March 19, 2012 – **Candidate Orientation** – 5:00 p.m.
- March 30-April 1, 2012 – **Tomball German Heritage Festival** in the Depot/Downtown Tomball Area
- March 31, 2012 – **NO Farmers Market**
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- April 14, 2012 – **4th Annual City of Tomball Bunny Run 5K and Kids 1K**
- April 14, 2012 – ***2nd Day of Healthy Living in Tomball* Expo – Texas Sports Medicine Center**, 9:00 a.m.-2:00 p.m.
- April 14, 2012 – **2nd Saturday at the Depot** – 5:00 p.m.
- April 16, 2012 - Appoint Members to the Tomball Economic Development Board for Terms Expiring May 2, 2012
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- **Early Voting** for May 12, 2012 General Election – April 30 through May 8, 2012 at City Hall (Monday, Wednesday, and Thursday – 7:45 a.m.-5:00 p.m.) (Tuesday – 7:45 a.m.-7:45 p.m.) and (Friday – 7:45 a.m.-4:00 p.m.)
- Possible Harris County Primary Election Dates – April 17, May 29, or June 5, 2012
- ***Walk Tomball!*** (every Saturday at 9:00 a.m. at the Depot)
- Reports by City staff and members of council about items of community interest on which no action will be taken
  - Lisa Coe – Update regarding the City of Tomball Youth Fair on April 4, 2012

Background:

Origination:

Recommendation:

Funding:

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

ACTION TAKEN

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

ATTACHMENTS:

2nd Saturday at the Depot - March 10
Candidate Orientation
Youth Fair - April 4, 2012
4th Annual City of Tomball Bunny Run 5K and Kids 1K
Tomball Recycling Day, E-Waste and Drug Take-Back Program

Tomball's 2nd Saturday at The Depot!

Showing March 10!

- Music from "Soulshine"
- RC Car racing
- View classic cars on display from the Oilfield Helping Car Show held earlier in the day!
- Concessions and more!

The fun begins at 5:00 p.m.

***In the case of rain, the event will be held at the Tomball Community Center, 221 Market Street**

Historic Tomball Depot Plaza
201 South Elm Street
Bring your lawn chairs and blankets!
Call 281-351-5484 for information

Admission is Always Free!

NOTICE OF CANDIDATE ORIENTATION
CITY OF TOMBALL, TEXAS

MONDAY, MARCH 19, 2012
5:00 P.M.

Notice is hereby given of a CANDIDATE ORIENTATION, to be held at 5:00 p.m. on Monday, March 19, 2012 at City Hall, 401 Market Street, Tomball, Texas 77375

A QUORUM OF CITY COUNCIL MEMBERS MAY BE IN ATTENDANCE DURING THE CANDIDATE ORIENTATION; HOWEVER, NO COUNCIL ACTION WILL BE TAKEN.

I. MUNICIPAL GOVERNMENT	George Shackelford, City Manager
a. Council/Manager Form of Municipal Government	Christal Kliewer, Assistant City Manager
b. The Charter	
c. Meetings of the City Council	
d. Council Relations	
e. Organization Chart	
f. Council Relations with Staff	
II. MUNICIPAL BUDGET AND FINANCE	Glenn Windsor, Finance Director
III. CAMPAIGNING	Doris Speer, City Secretary
a. The Election Calendar	
b. Reporting, Political Communications, and Filing	
1. Texas Ethics Commission	
2. Campaign Reports during and after Election Period	
c. Political Signs	
IV. QUESTION AND ANSWER PERIOD	Executive Team Members

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

I hereby certify that the above notice of meeting was posted on the bulletin board of City Hall; City of Tomball, Texas, a place readily accessible to the general public at all times, on the 15th day of March 2012 by 5:00 p.m., and remained posted for at least 72 continuous hours proceeding the scheduled time of said meeting.

Doris Speer
Doris Speer
City Secretary, TRMC

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

Ages 15-21 Welco

kendorf Conference Center

e Star College

55 Tomball Parkway

City of Tomball Bunny Run

Saturday, April 14, 2012
8:00 A.M. – 5K Run/Walk
8:45 A.M. – 1Mile Run/Walk
Tomball Train Depot
281-290-1006

Location
The Historic Tomball Train Depot Plaza located at 201 S. Elm St.

About This Event
The Bunny Run 5K and Kid's 1 Mile are the fourth in a series of Fun Runs to bring families, friends and visitors together to see that Tomball is "Texan" for fun!!!

The Course
USATF-certified 5K course. Flat, major tree-lined streets. No wheels (except wheelchairs) & no pets, please! Baby joggers and carriages OK for 1 MILE WALK ONLY. The 5K race will be professionally managed and utilize timing shoe chips.

Awards
Prizes will be awarded to the top three finishers in each age category for the 5K Run. All kids (10 and under) participating in the 1 mile run will receive a medal.

Packet Pick-up
April 11th, 12th, 13th: 5:30 PM – 7:30 PM at the Tomball Train Depot at 201 S. Elm
Race Day Pick-up & Registration: 7:00 AM – 7:30 AM (No t-shirt guarantee)

Registration
Register online at http://secure.eztoregister.com/ or www.ci.tomball.tx.us

Register in person at Tomball City Hall—401 Market Street, Tomball, TX

To mail or fax registrations, download forms at www.ci.tomball.tx.us and submit to:
City of Tomball, Attn: Mike Baxter, 401 Market St., Tomball, TX 77375.
Fax 281-351-6256 or Email mbaxter@ci.tomball.tx.us .

Event Fees		
Category	On or Before 3/30/2012	After 3/30/2012
5K Run	$15	$20
1 Mile Run/Walk 11 yrs +	$15	$20
1 Mile Run/Walk 10 & under	$10	$12

Saturday, April 14, 2012
8:00 A.M. – 5K Run/Walk
8:45 A.M. – 1Mile Run/Walk
Tomball Train Depot

Registration Form

One registration form per participant

Category: ☐ 5K Run/Walk ☐ 1 Mile Run/Walk ADULT ☐ 1 Mile Run/Walk YOUTH

First Name: ______________________ Last Name: ________________________

Street Address: ____

City: __________________ State: _____ Zip: ________ Phone: (___) _________

Birth Date: _____/______/________ Gender: ☐ F ☐ M

Email Address: ____

Shirt Size: ☐ YS ☐ YM ☐ YL | ☐ S ☐ M ☐ L ☐ XL ☐ XXL

For Credit Card Payments

Name on Card: ________________________ Type: ☐ Visa ☐ MasterCard

Card Number: ______________________ Exp. Date: _____ 3 Digit Sec. Code: ______

Emergency Contact: ______________________ Phone: (____) __________________

Emergency Contact: ______________________ Phone: (____) __________________

Waiver and Release: In consideration of the acceptance of this registration entry, I, the undersigned, assume full & complete responsibility for any injury or accident which may occur during my participation in this race, or while I am on the premises of this event and I hereby release and hold harmless the sponsors, officials and all other persons and entities associated with this event from any and all injury, damages or illness which may directly or indirectly result from participation in this race. I further state that I am in proper physical condition to participate.

___________________________________ ________________

Signature of Participant Date

______________________________________ ________________

Signature of Parent/Guardian if Participant is Minor Date

OFFICE USE ONLY:

Clerk: ____________ Date/Time: _______________ Total: $__________

Method of Payment: ☐ Cash ☐Check ☐Visa ☐MC Auth. # ________________

Your privacy will be respected and no information will be shared with third parties.

Tomball Consolidated Recycling Day

28597 Tomball Parkway

Old Kroger Center Parking Lot at Four Corners

Enter by Shipley's Donuts on SH 249

April 28th from 9am-1pm

Drive Thru and Drop Off the following APPROVED items:

E-Waste (computers and all accessories, Fax machines, laptop batteries, UPS/Lithium/Ni-Cad Batteries, Small kitchen appliances), Prescription Drugs (pill & liquid), Tires (car/truck/atv), Car Battery (Non-Leaking), Used Motor Oil,
Household paper/plastics/glass, Paper Shredding

~~Plastic Bags, Paint, Styrofoam~~

Thanks to our Community Partners and Sponsors!!!

Regular City Council
Agenda Item
Data Sheet

Meeting Date: March 5, 2012

Topic:

Approve the Minutes of the February 20, 2012 Regular City Council Meeting and the February 28, 2012 Special City Council Meeting

Background:

Origination:

Recommendation:

Funding:

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

ACTION TAKEN

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

ATTACHMENTS:

Draft Minutes - 2/20/2012 Regular City Council Meeting
Draft Minutes - 2/28/2012 Special City Council Meeting

NOTICE OF REGULAR CITY COUNCIL MEETING
CITY OF TOMBALL, TEXAS

MONDAY, FEBRUARY 20, 2012
6:00 P.M.

1.0 Call to Order

The Council meeting was called to order by Mayor Gretchen Fagan**.** Other members present were:

Councilman Stoll
Councilman Brown
Councilman Townsend
Councilman Dodson
Councilman Hudgens

Others present:

City Manager – George Shackelford
Assistant City Manager – Christal Weber
City Secretary – Doris Speer
City Attorney – Scott Bounds
Police Chief – Robert Hauck
Director of Public Works – David Kauffman
Assistant City Engineer – Lori Lakatos
Fire Chief – Randy Parr
Finance Director – Glenn Windsor
Marketing Director – Mike Baxter
Assistant City Planner – Rodney Schmidt
Director of Community Development – Narciso Lira
IT Director – Doug Tippey
Community Events Coordinator – Rosalie Dillon
Chief-NWEMS – Brian Petrilla

2.0 Invocation

- Led by Eric Ramsey, Member of Tomball High School Student Council

3.0 Pledges to U. S. and Texas Flags

- Led by E. J. Jones and Matt Thomas, Members of the Tomball High School Student Council

4.0 The following public comments were received:

Jac Horton 1402 S. Cherry, #25-3, 77375	-	Thanked Council for favorable consideration of Items 8.1 and 8.2
Sharon Koschel 1402 S. Cherry, #24, 77375	-	Thanked Council for favorable consideration of Items 8.1 and 8.2
Han Soniat 1402 S. Cherry, #8A, 77375	-	Did not wish to speak but asked that his support for Items 8.1 and 8.2 be read into the record.
Brenda J. Lohr 1402 S. Cherry, #262, 77375	-	Did not wish to speak but asked that her support for Items 8.1 and 8.2 be read into the record.
Billy Fairchild 1402 S. Cherry, #17, 77375	-	Did not wish to speak but asked that his support for Items 8.1 and 8.2 be read into the record.
Cliff Lohr 1402 S. Cherry, #262, 77375	-	Did not wish to speak but asked that his support for Items 8.1 and 8.2 be read into the record.
Mary L. Karnitz 1402 S. Cherry, #37, 77375	-	Did not wish to speak but asked that her support for Items 8.1 and 8.2 be read into the record.
Roy Karnitz 1402 S. Cherry, #37, 77375	-	Did not wish to speak but asked that his support for Items 8.1 and 8.2 be read into the record.
Dave Bacon 1662 SE 135th, 67074	-	Did not wish to speak but asked that his support for Items 8.1 and 8.2 be read into the record.
Twyla Bacon 1662 SE 135th, 67074	-	Did not wish to speak but asked that her support for Items 8.1 and 8.2 be read into the record.
Dave Koschel 1402 S. Cherry, #24, 77375	-	Did not wish to speak but asked that his support for Items 8.1 and 8.2 be read into the record.
Helen Holliday 1402 S. Cherry, #23, 77375	-	Did not wish to speak but asked that her support for Items 8.1 and 8.2 be read into the record.

John F. Holliday 1402 S. Cherry, #23, 77375	-	Did not wish to speak but asked that his support for Items 8.1 and 8.2 be read into the record.
Norma Evans 1402 S. Cherry, #122, 77375	-	Did not wish to speak but asked that her support for Items 8.1 and 8.2 be read into the record.
Charles Cannizzaro 1402 S. Cherry, #4-A, 77375	-	Did not wish to speak but asked that his support for Items 8.1 and 8.2 be read into the record.

5.0 Presentations:

- Eric Ramsey and Cooper Cason, Members of the Tomball High School Student Council, and Mrs. Billie Dio, THS Student Council Advisor gave a PowerPoint presentation, **"Shower for Shane."**

6.0 Reports and Announcements:

- **Farmers Market** – 9 a.m.-1:00 p.m. (Every Saturday)
- February 4 through March 5, 2012 – Dates to File Application for Place on May 12, 2012 Ballot
- February 21, 2012 – **Trail Rider Reception** at the Depot – 12:30 p.m.-2:00 p.m.
- February 22, 2012 – **SH 249 Partnership Meeting** – Magnolia City Hall – 6:30 p.m.
- February 28, 2012 – Workshop to Discuss/Consider Medical Complex Project
- February 29, 2012 – **Tree Dedication** TXU Juergens Park – 2:00 p.m.
- February 29, 2012 – Deadline to Purchase Pavers for the Tomball Depot Fountain
- March 5, 2012 – Last Day to File Application for Place on May 12, 2012 Ballot – 5:00 p.m.
- March 10, 2012 – **2nd Saturday at the Depot** – 5:00 p.m.
- March 15, 2012 – Candidate Orientation (tentative date)
- April 4, 2012 – **City of Tomball Youth Fair** – **Beckendorf Conference Center** at LoneStar College, Time TBA
- April 14, 2012 – **3rd Annual City of Tomball Bunny Run 5K and Kids 1K**
- April 14, 2012 – **2nd Saturday at the Depot** – 5:00 p.m.
- April 23-28, 2012 – Annual **Tomball Clean-up Week** – 8:00 a.m.-4:30 p.m. daily
- April 28, 2012 – Annual **Tomball Clean-up Recycling Day – E-Waste and Drug Take-Back Program**
- Possible Harris County Primary Election Dates – April 17, May 29, or June 5, 2012
- ***Walk Tomball!*** (every Saturday at 9:00 a.m. at the Depot)
- Reports by City staff and members of council about items of community interest on which no action will be taken
  - George Shackelford introduced Narciso Lira, Director of Community Development.

7.0 Motion was made by Councilman Stoll, second by Councilman Townsend, to approve the Minutes of the February 6, 2012 Regular City Council Meeting.

Motion carried unanimously.

8.0 Old Business:

8.1 Motion was made by Councilman Townsend, second by Councilman Dodson, to adopt, on Second Reading, Ordinance No. 2012-01, an Ordinance of the City of Tomball, Texas, Amending its Comprehensive Zoning Ordinance by Amending Section 45.2 ("Definitions") by Revising the Definition of "Recreational Vehicle (RV) Park/Campground" by eliminating the maximum amount of time a recreational vehicle, travel trailer, or similar vehicle can reside, park, or lease space in a recreational vehicle park or campground; Providing for severability; Providing for a penalty of an amount not to exceed $2,000 for each day of violation of any provision hereof; Making findings of fact; and providing for other related matters. Vote was as follows:

Councilman Brown	Aye
Councilman Townsend	Aye
Councilman Dodson	Aye
Councilman Hudgens	Aye
Councilman Stoll	Aye

Motion carried unanimously.

8.2 Motion was made by Councilman Townsend, second by Councilman Brown, to adopt, on Second Reading, Ordinance No. 2012-02, an Ordinance of the City Council of the City of Tomball, Texas, amending Section 46-22 ("Nonconforming Manufactured Home Parks and Recreational Vehicle Parks") of Chapter 46 ("Manufactured Homes, Mobile Dwelling Structures, and Recreational Vehicles") by Removing any reference to Recreational Vehicle Parks; amending Section 46-64 ("Technical and Physical Requirements") of Chapter 46 ("Manufactured Homes, Mobile dwelling Structures, and Recreational Vehicles") by Removing the Minimum Recreational Vehicle Unit Size, Removing the Requirement that Recreational Vehicle Parking Pads be Constructed a Minimum of 20 Feet from an Adjacent Recreational Vehicle Unit Boundary and Replacing it with Language allowing Recreational Vehicle Parking Pads to be a Minimum of 20 Feet Apart, and Removing the Requirement that Walkways be Constructed between the Recreational Vehicle Park Streets to All Community Facilities provided for Park Residents and to All Service Buildings; Providing a Penalty of up to $2,000.00 for Violations with Each Day Constituting a Separate Violation; Providing for the Publication of This Ordinance; and Making Other Findings and Provisions Related Thereto. Vote was as follows:

Councilman Brown	Aye

Councilman Townsend	Aye
Councilman Dodson	Aye
Councilman Hudgens	Nay
Councilman Stoll	Aye

Motion carried, 4 votes Ayes, 1 vote Nay.

9.0 New Business:

9.1 Nathan Krupke, a representative of Belt Harris Pechacek, LLLP, presented the city of Tomball Comprehensive Annual Financial Report (CAFR) for Fiscal Year Ending September 30, 2011. Motion was made by Councilman Dodson, second by Councilman Brown, to accept the Comprehensive Annual Financial Report (CAFR) for Fiscal Year Ending September 30, 2011, as Presented by the CPA firm of Belt Harris Pechacek, LLLP.

Motion carried unanimously.

9.2 Mayor Fagan presented her recommendations regarding appointments/reappointments to the City of Tomball's Board of Adjustment. Motion was made by Councilman Dodson, second by Councilman Hudgens, to re-appoint John Ford, John Lynch, Billy Hemby, and April Gray to their current positions, which terms will expire March 2, 2014, and to appoint Chad Degges to the vacant position of Alternate 2 and Jarmon Wolfe to the position of Alternate 4, which terms will expire March 2, 2013.

Motion carried unanimously.

9.3 Scott Bounds presented information regarding the City's eminent domain authority. Motion was made by Councilman Dodson, second by Councilman Brown, to authorize the Mayor to Issue Letter to the Texas State Comptroller, Submitting Documentation of the City of Tomball's Eminent Domain Authority in Texas to the Texas State Comptroller, Detailing the City of Tomball's Legal Authority to Exercise Eminent Domain in Compliance with Senate Bill 18, enacted by the 82nd Texas Legislature.

Motion carried unanimously.

9.4 Randy Parr presented information regarding the Memorandum of Understanding. Motion was made by Councilman Townsend, second by Councilman Stoll, to approve and authorize the Mayor to Execute a Memorandum of Understanding with Lone Star College-Tomball for the use of the College Parking Lot for a Point of Distribution (POD) Site.

Motion carried unanimously.

9.5 Motion was made by Councilman Dodson, second by Councilman Brown, to approve **REPLAT MARTIN MARIETTA SUBDIVISION**: Being a Subdivision of 31.4759 Acre; Being all of Reserve A, Block 1 and 0.1780 Acre Tract 1.5012 Acre Tract dedicated for road widening to City of Tomball, Martin Marietta Subdivision recorded under Film Code No. 597006, Harris County Map Records, Situated in the William Hurd Survey, Abstract 371 and the Jesse Pruett Survey Abstract 629, City of Tomball, Harris County, Texas.

Motion carried unanimously.

9.6 David Kauffman presented information regarding Phases I and II of the water service conversion. Motion was made by Councilman Dodson, second by Councilman Stoll, to approve Job Order Proposal by KBR for Phase II of Water Service Conversions to the City's New Water Mains in the Downtown area, for a Not to Exceed Cost of $27,925.00.

Motion carried unanimously.

9.7 David Kauffman presented a request to purchase two fleet replacement trucks. Motion was made by Councilman Brown, second by Councilman Townsend, to award Contracts for the Purchase of Two Fleet Replacement Trucks for the Public Works Department to Caldwell Country Chevrolet through the Buy Board Government Contract, for a Total Amount of $51,704.00.

Motion carried unanimously.

9.8 George Shackelford presented the lease agreement request. Motion was made by Councilman Dodson, second by Councilman Townsend to authorize the Mayor to execute a Lease Agreement with Aaron and Sondra Matthews for the Property Located at 24114 Lovett, Owned by the City.

Motion carried unanimously.

9.9 Executive Session: The City Council recessed at 6:44 p.m. to meet in Executive Session as Authorized by Title 5, Chapter 551, Government Code, the Texas Open Meetings Act, for the Following Purpose:

- Section 551.071 - Consultation with Attorney regarding Litigation

Councilman Dodson stated that he would abstain from participation in discussion or action in the first portion of the Executive Session, based on the Conflict of Interest Affidavit previously filed with the City Secretary.

Upon reconvening in regular session at 8:02 p.m., no action was taken.

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

Motion carried unanimously.

Meeting adjourned.

PASSED AND APPROVED this ___5th___ day of ___March___________ 2012.

____
Doris Speer, TRMC, CMC
City Secretary

____
Gretchen Fagan
Mayor

MINUTES OF SPECIAL CITY COUNCIL MEETING
CITY OF TOMBALL, TEXAS

TUESDAY, FEBRUARY 28, 2012

5:00 P.M.

1.0 Call to Order

The Council meeting was called to order by Mayor Gretchen Fagan**.** Other members present were:

Councilman Hudgens
Councilman Stoll
Councilman Brown
Councilman Dodson

Councilmembers absent:

Councilman Townsend - Excused

Others present:

City Manager – George Shackelford
Assistant City Manager – Christal Weber
City Secretary – Doris Speer
Director of Community Development – Narciso Lira
Assistant City Engineer – Lori Lakatos
Dale Conger, Cobb Fendley

2.0 No public comments were received.

3.0 New Business:

3.1 Council entered into a Workshop Session to Discuss/Consider the Medical Complex Drive Extension Project. George Shackelford introduced Dale Conger, Cobb Fendley, who presented a PowerPoint and provided information regarding the five segments involved in the extension of Medical Complex Drive to provide an east-west corridor.

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

Motion carried unanimously.

Meeting adjourned.

PASSED AND APPROVED this ___5th___ day of ___March____ 2012.

_________________________ Doris Speer, TRMC, CMC
City Secretary

___________________ Gretchen Fagan
Mayor

Regular City Council Agenda Item Data Sheet

Meeting Date: March 5, 2012

Topic:

Approve Resolution No. 2012-04-TEDC, a Resolution of the City Council of the City of Tomball, Texas, Approving Amended Bylaws of the Tomball Economic Development Corporation; Providing for the Effective Date, and other Related Matters.

Background:

On February 21, 2012, the Tomball Economic Development Corporation Board of Directors approved changes to the Corporation's Bylaws. The last update to the Bylaws occurred in 2004. The changes approved by the Board of Directors include updating the code references to be current with state law, as well as formally changing the name of the Corporation from the Tomball Industrial Development Corporation to the Tomball Economic Development Corporation. Additional notable changes include updating the principal office address, defining the positions of the Directors with regard to staggered terms, more clearly defining the role of the Executive Director, and removing unnecessary or duplicative references.

The Amended Bylaws will be filed with the Secretary of the State along with the Restated and Amended Articles of Incorporation.

Origination:

Tomball Economic Development Corporation Board of Directors

Recommendation:

Approval of Resolution No. 2012-04-TEDC.

Funding:

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

Kelly Violette, Executive Director

ACTION TAKEN

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

ATTACHMENTS:

Cover Memo
Resolution No. 2012-04-TEDC Bylaws
Amended Bylaws TEDC
Redline Changes TEDC Bylaws
TEDC Bylaws 2004

TO: Board of Directors
Tomball Economic Development Corporation

FROM: Kelly Violette
Executive Director

MEETING DATE: February 21, 2012

SUBJECT: TEDC By-Laws

ITEM TYPE: Action

The TEDC by-laws were last updated in 2004. After reviewing the By-laws and speaking with legal counsel, staff proposes to amend the Bylaws to update the code references to be current with state law, as well as formally change the name of the Corporation from the Tomball Industrial Development Corporation to the Tomball Economic Development Corporation. Additional notable changes include updating the principal office address, defining the positions of the Directors with regard to staggered terms, more clearly defining the role of the Executive Director, and removing unnecessary or duplicative references.

The Bylaws have been reviewed by Olson & Olson and will be presented to City Council for consideration and approval, following Board action. Additionally, the Bylaws will be filed with the Secretary of State.

RESOLUTION NO. 2012-04-TEDC

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF TOMBALL, TEXAS, APPROVING AMENDED BYLAWS OF THE TOMBALL ECONOMIC DEVELOPMENT CORPORATION; PROVIDING FOR THE EFFECTIVE DATE, AND OTHER RELATED MATTERS.

* * * * *

WHEREAS, the TOMBALL ECONOMIC DEVELOPMENT CORPORATION (the "Corporation"), also known as the Tomball Industrial Development Corporation, functions under the auspices of the City of Tomball, Texas, pursuant to the Development Corporation Act, now Chapter 501 through 505 of the Texas Local Government Code, as amended (the "Act"),

WHEREAS, the Corporation has obtained the approval of the City Council and is filing amended, updated and restated Bylaws; and

WHEREAS, the City Council, under whose auspices the Corporation was created, desires to approve the amended Bylaws of the Corporation; **now therefore,**

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

Section 1. The City Council of the City of Tomball, Texas, hereby approves the amended Bylaws of the Tomball Economic Development Corporation, the form of which is attached to this Resolution as **Exhibit" A".**

Section 2. This resolution shall be effective immediately upon its adoption.

PASSED, APPROVED, AND RESOLVED this 5th day of March, 2012.

____
Gretchen Fagan, Mayor

ATTEST:

____
Doris Speer, City Secretary

AMENDED BYLAWS
OF
TOMBALL ECONOMIC DEVELOPMENT CORPORATION

These Bylaws govern the affairs of TOMBALL ECONOMIC DEVELOPMENT CORPORATION (the "Corporation"), an industrial development corporation created pursuant to the Development Corporation Act of 1979, Local Government Code Chapters 501 through 507 (the "Development Corporation Act"), as amended, and other applicable laws.

ARTICLE I

PURPOSE

Public Purpose

1.01. The Corporation is incorporated as a nonprofit corporation for the purpose set forth in the Articles of Incorporation. Its purpose is the promotion and development of the City of Tomball under the Development Corporation Act of enterprises to promote and encourage employment and the public welfare. The Corporation is a nonprofit corporation as defined by the Internal Revenue Code of 1986, as amended, and the applicable rulings of the Internal Revenue Service of the United States prescribed and promulgated thereunder.

Powers

1.02. In the fulfillment of its corporate purpose, the Corporation shall be governed by the Development Corporation Act, and shall have all of the powers set forth and conferred in its Articles of Incorporation, in the Development Corporation Act, and in other applicable law, subject to the limitations prescribed herein.

ARTICLE II

OFFICES

Principal Office

2.01. The Corporation's principal office in Texas is located at 401 Market Street, Tomball, Texas 77375.

Registered Office and Agent

2.02. The Corporation shall maintain a registered office and registered agent in Texas. The registered office may, but need not, be identical with the Corporation's principal office in Texas. The Board of Directors may change the registered office and the registered agent as permitted by law.

ARTICLE III

BOARD OF DIRECTORS

Management of the Corporation

3.01. The affairs of the Corporation shall be managed by the Board of Directors.

Number, Qualifications and Service of Directors

3.02. The business of the Corporation and all corporate powers shall be executed by or under authority of the Board of Directors (the "Board"), appointed by the governing body of the City of Tomball, and subject to the limitations imposed by the Development Corporation Act, the Texas Nonprofit Corporation Act, the Texas Business Corporation Act, the Articles of Incorporation, and these Bylaws. The Board may, by contract, resolution, or otherwise, give general or limited or special power and authority to the officers and employees of the Corporation to transact the general business or any special business of the Corporation, and may give powers of attorney to agents of the Corporation to transact any special business requiring such authorization. The Board shall consist of seven members appointed by the City Council of the City of Tomball, Texas, for two year terms of office; provided, however, a Director may be appointed to serve additional terms. The terms shall be staggered with position numbers 1, 3, 5, and 7 ending on May 31st of odd-numbered years, and position numbers 2, 4 and 6 ending on May 31st of even-numbered years. Each Director must reside within the City of Tomball, Texas.

Vacancies

3.03. The Board of Directors shall notify the City Council of any vacancy occurring on the Board, and the vacancy will be filled by appointment by City Council for the unexpired term.

Annual Meeting

3.04. The annual meeting of the Board of Directors shall be held during the month of May of each year. The Board shall designate the time and location of the annual meeting which shall be held in the principal offices of the corporation or at such other location as the Board may designate.

Regular Meetings

3.05. The Board of Directors may provide for regular meetings by resolution stating the time and place of such meetings. The meeting shall be held within the City of Tomball, Texas, and, to the extent practical, at the principal offices of the Corporation or at such other location as the Board may designate.

Special Meetings

3.06. Special meetings of the Board of Directors may be called at the request of the president or any two Directors. The person(s) calling the meeting shall fix the time and location of the meeting, which meeting shall be conducted within the City of Tomball, Texas, as provided above for regular meetings. The person(s) calling a special meeting shall notify the secretary of the Corporation of the information required to be included in the notice of the meeting. In addition to the posting of a meeting notice in accordance with these Bylaws, a copy of each such meeting notice shall be delivered to each Director not less than 72 hours before the time of the meeting. A meeting notice shall be deemed delivered to any Director when delivered to the Director in person or deposited in the United States mail addressed to the Director at his or her address as it appears on the records of the Corporation. Such additional notice may be waived in writing by a Director at any time either before or after the time of the meeting and such additional notice shall be deemed waived by attendance.

Notice of Meetings; Open Meetings

3.07. The Board of Directors is subject to the open meetings law, Chapter 551, Government Code.

Quorum

3.08. Four Directors shall constitute a quorum for the transaction of business at any meeting of the Board of Directors. The presence of a Director may not be established by proxy. No business shall be conducted, nor shall any action be taken by the Board, in the absence of a quorum.

Duties of Directors

3.09. Directors shall exercise ordinary business judgment in managing the affairs of the Corporation. In acting in their official capacity as Directors of the Corporation, Directors shall act in good faith and take actions that they reasonably believe to be in the best interests of the Corporation or that would be lawful and shall refrain from actions not in the best interest of the Corporation or that would be unlawful. A Director shall not be liable if, in the exercise of ordinary care, the Director acts in good faith relying on written financial and legal statements provided by an accountant or attorney retained by the Corporation.

Actions of Board of Directors: Proxy Voting Prohibited

3.10. The vote of a majority of Directors present at a meeting at which a quorum is present shall be sufficient to constitute the act of the Board of Directors. The president shall be entitled to vote on all matters before the Board. A Director may not vote by proxy.

Minutes

3.11. The Board of Directors will keep minutes of its meetings, which minutes will constitute the record of such meetings.

Removal of Directors

3.12. The Board of Directors and each member thereof serve at the pleasure of the City Council of the City of Tomball, Texas, which may remove any Director at any time, either with or without cause.

Committees of Directors

3.13. The Board of Directors may by resolution establish one or more special or standing committees of its members. Such committees shall have the powers, duties and responsibilities established by the Board. The committees shall keep regular minutes of their meetings and report the same to the Board when required. The action of such a committee shall not constitute action by the Board.

Compensation

3.14. The duly appointed members of the Board shall serve without compensation, but may be reimbursed for actual or commensurate cost of travel, lodging and incidental expenses while on official business of the Board in accordance with State law and the rules of the Board.

Ex-Officio Directors

3.15. The Mayor and members of the Tomball City Council who are not members of the Corporation shall be ex-officio Directors of the Corporation. In addition, the Mayor and the City Council of Tomball may appoint no fewer than four and no more than seven individuals, to serve as ex-officio Director(s) of the Corporation. Two of these appointments shall be the President of the Greater Tomball Area Chamber of Commerce and the President of Lone Star College-Tomball. Ex-officio Directors shall be given notice of all meetings of the Board, may participate in discussions at Board meetings, but shall not be entitled to vote on matters considered by the Board.

ARTICLE IV

OFFICERS

Officer Positions

4.01. The officers of the Corporation shall be a president, a vice president, a secretary, and a treasurer. The Board of Directors may create additional officer positions, define the authorities and duties of such additional positions and appoint persons to fill such positions. No person may hold more than one such office.

Election and Terms of Officers

4.02. The officers of the Corporation shall be elected annually by the Board of the Directors at the regular annual meeting.

Removal of Officers

4.03. Any officer may be removed by the Board of Directors at any time, with or without cause. The removal of an officer by the Board does not result in the removal of such person as a Director of the Corporation.

Vacancies

4.04. A vacancy in any office may be filled by the Board of Directors for the unexpired portion of the officer's term.

President

4.05. The president shall be the chief executive officer of the Corporation. The president shall supervise and control all of the business and affairs of the Corporation. The president shall preside at all meetings of Board of Directors. When the execution of any contract or installment shall have been authorized by the Board, then the president shall execute same except where such power is expressly delegated to another officer of the Corporation. The president shall perform other duties prescribed by the Board and all duties incident to the office of president.

Vice President

4.06. When the president is absent, is unable to act, or refuses to act, the vice president shall perform the duties of the president. When acting in place of the president, the vice president shall have all the powers and duties as the president and be subject to all of the limitations and restrictions placed upon the president.

Secretary

4.07. The secretary shall oversee that the Corporation staff perform the following duties:

(a) Give all notices as provided in the Bylaws or as required by law.
(b) Take minutes of the meetings of the Board of Directors and keep the minutes as part of the corporate records.

(c) Maintain custody of the corporate records, authenticate corporate documents and affix the seal of the Corporation as required.
(d) Keep a register of the mailing address of each Director and officer of the Corporation.
(e) Perform duties as assigned by the president or Board of Directors.
(f) Perform all duties incident to the office of secretary.

Treasurer

4.08. The treasurer shall oversee that the Corporation staff perform the following duties:

(a) Have charge and custody of and be responsible for all funds and securities of the Corporation.
(b) Receive and give receipts for moneys due and payable to the Corporation from any source.
(c) Deposit all moneys in the name of the Corporation in banks, trust companies, or other depositories as provided by these Bylaws.
(d) Write checks and disburse funds to discharge obligations of the Corporation.
(e) Maintain the financial books and records of the corporation.
(f) Prepare financial reports at least annually.
(g) Perform other duties as assigned by the Board of Directors.
(h) Perform all duties incident to the office of treasurer.

Assistant Officers

4.09. The following assistant officers are created to assist the Board of Directors in the conduct of the affairs of the Corporation. They are the Assistant Treasurer and the Assistant Secretary, who shall assist those officers in their respective duties. The assistant officers are not required to be residents of the City.

Administration; Executive Director

4.10.

The Board shall appoint an administrative and executive officer of the Corporation who shall be responsible to the Board for the administration of all the affairs of the Corporation. The Executive Director shall serve at the will of the Board.

(a) The Executive Director shall perform and direct the daily administrative operations of the Corporation by preparing economic development policy, implementing planning, developing and managing goals and objectives, preparing and administering the budget, providing technical assistance to area businesses and to the City Council and City Manager, meeting with various agencies and the public, attending local organizational meetings, assisting new and existing firms with financing and capital from various sources, attending City Council meetings and preparing reports as required.

(b) The Executive Director shall have the authority to employ, review and terminate individuals to fill staff positions that have been approved by the Board of Directors.

(c) The Executive Director shall be reviewed by the Board of Directors on an annual basis.

(d) The Executive Director shall receive compensation as may be fixed by the Board.

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ARTICLE V

TRANSACTIONS OF THE CORPORATION

Contracts

5.01. The Board of Directors may by formal action or resolution authorize an officer or agent of the Corporation to enter into a contract or execute and deliver any instrument in the name of or on behalf of the Corporation. This authority may be limited to a specific contract or instrument or it may extend to any number and type of contracts and instruments.

Depository

5.02. The Board of Directors of the Corporation shall designate a depository bank. All funds of the Corporation shall be deposited with the depository bank.

Potential Conflicts of Interest; Code of Ethics

5.03. The members of the Board of Directors shall be governed by the Code of Ethics of the City of Tomball, Texas. If a Director has a substantial interest in a business entity or real property that is the subject of deliberation by the Board, the Director shall file an affidavit with the secretary of the corporation stating the nature and extent of the interest. Such affidavit shall be filed prior to any vote of decision upon the matter by the Board, and the interested Director shall abstain from any vote or decision upon the matter.

Transactions of the Corporation; Annual Work Plan and Performance Evaluation

5.04. The Board of Directors shall direct the Corporation staff to research, develop, prepare and submit to the City Council for its approval an annual work plan that shall set out goals and objectives of the Corporation, including but not limited to short-term and long-term goals for the economic development of the City; goals and objectives for the utilization of funds to promote the expansion and development of a sound economic base for and within the City; and any other similar goals and objectives deemed appropriate by the Board and the City

Council. The Board shall review and update the plan each year prior to the submission of the annual budget as required by other provisions of these Bylaws. In addition, the Board shall accompany each subsequent work plan following the initial work plan with a performance evaluation detailing the Board's achievements of its prior goals and objectives during the course of the previous fiscal year. Any reports outlining the activity of the Corporation for that quarter shall be submitted in writing by the Board for review by the City Council as desired by the City Council.

Annual Corporation Budget

5.05. The Board shall prepare a proposed annual budget of expected revenues and proposed expenditures for the next ensuing fiscal year. The budget shall contain such classifications and shall be in such form as may be prescribed from time to time by the City Council. The budget shall not be effective until the same has been approved by the City Council. The proposed budget shall be submitted to the City Council within a time frame to be specified by the City Manager for inclusion in the City's annual budgeting process.

Limitations on Expenditures

5.06. Any expenditure of funds not approved by the City Council in the annual budget must be submitted within 30 days to the City Council for consideration.

Staff Support

5.07. The Corporation may contract with the City to provide legal, financial and other services for the Corporation upon terms, conditions and compensation as mutually agreeable.

Gifts

5.08. The Board of Directors may accept on behalf of the Corporation any gift or bequest provided for the general purposes of or for any special purpose of the Corporation. Special funds shall include all funds from government contracts and gifts designated by a donor for special purposes. All other funds shall be general funds.

Prohibited Acts

5.09. As long as the Corporation is in existence, no director, officer or committee member of the Corporation shall:

(a) Do any act in violation of the Bylaws or bidding obligations of the Corporation.

(b) Do any act with the intention of harming the Corporation or any of its operations.

(c) Do any act that would make it impossible or unnecessarily difficult to carry on the intended or ordinary business of the Corporation.

(d) Receive an improper personal or business benefit from the operation of the Corporation.

(e) Use the assets of the Corporation, directly or indirectly, for any purpose other than carrying on the business of the Corporation.

(f) Wrongfully transfer or dispose of Corporation property, including intangible property such as goodwill.

(g) Use the name of the Corporation (or any substantially similar) or any trademark or trade name adopted by the Corporation, except on behalf of the Corporation in the ordinary course of the Corporation's business.

(h) Disclose any of the Corporation business practices, trade secrets or any other information not generally known to the business community to any person not authorized to receive it.

(i) Commit Corporation funds without the prior approval of the Board of Directors.

ARTICLE VI

BOOKS AND RECORDS

Required Books and Records

6.01. The Corporation shall cause to be kept correct and complete books and records of account. All books and records of the Corporation may be inspected by Directors of the Corporation at any reasonable time. The Corporation's books and records shall include:

(a) A file endorsed copy of all documents filed with the Texas Secretary of State relating to the Corporation, including, but not limited to, the articles of incorporation, any articles of amendment, restated articles, and statement of change of registered office or agent.

(b) A copy of the Bylaws, and any amended versions or amendments to the Bylaws.

(c) Minutes of the proceedings of the Board of Directors.

(d) A list of names and addresses of the Directors and officers of the Corporation.

(e) A financial statement showing the assets, liabilities, and net worth of the Corporation.

(f) A financial statement showing the income and expenses of the Corporation.

(g) All rulings, letters, and other documents relating to the Corporation's federal, state and local tax status.

(h) The Corporation's federal, state and local information or income tax returns for each of the Corporation's tax years.

Public Information

6.02. The Board of Directors is subject to the public information law, Chapter 552, Government Code.

Audits

6.03. The Board of Directors shall provide for an independent annual audit of the Corporation's books; provided, further, that an annual audit by the City Council of the Corporation's books and records in conjunction with the annual audit of the City's books and records shall be sufficient.

ARTICLE VII

FISCAL YEAR

The fiscal year of the corporation shall begin on the first day of October and end on the last day of September.

ARTICLE VIII

AMENDMENTS TO BYLAWS

The Bylaws may be altered, amended, or repealed by the Board of Directors with the consent of the City Council of the City of Tomball, Texas, as evidenced by a resolution of the City Council with the Bylaws attached.

ARTICLE IX

MISCELLANEOUS PROVISIONS

Legal Authorities Governing Construction of Bylaws

9.01. To the greatest extent possible, these Bylaws shall be construed to conform to all legal requirements for obtaining and maintaining all tax exemptions that may be available to nonprofit corporations. Further, the Bylaws shall be constructed in accordance with the laws of the State of Texas. All references in the Bylaws to statutes, regulations, or other sources of legal authority shall refer to the authorities cited, or their successors, as they may be amended from time to time. It is expressly provided that the provisions of the Development Corporation Act applicable to corporations governed under Chapter 505 of the Texas Local Government Code, are incorporated within these Bylaws by reference. In the event of any conflict between the applicable provisions of the Development Corporation Act and these Bylaws, then the applicable provisions of such Act shall control.

Legal Construction

9.02. If any Bylaw provision is held to be invalid, illegal or unenforceable in any respect, the invalidity, illegality or unenforceability shall not affect any other provision and the Bylaws shall be construed as if the invalid, illegal, or unenforceable provision had not been included in the Bylaws.

Headings

9.03. The headings used in the Bylaws are used for convenience and shall not be considered in constructing the terms of the Bylaws.

Seal

9.04. The Board of Directors may provide for a corporate seal. Such seal would contain the words "Tomball Economic Development Corporation".

Parties Bound

9.05. The Bylaws shall be binding upon and inure to the benefit of the Directors, officers and agents of the Corporation and their respective heirs, executors, administrators, legal representatives, successors and assigns except as otherwise provided in the Bylaws.

Effective Date

9.06. These Bylaws, and any subsequent amendments, hereto, shall be effective of and from the date upon which approval has been given both by the Board of Directors and the City Council of the City of Tomball, Texas.

Miscellaneous Provisions

9.07. To the extent permitted by law, the Corporation shall indemnify any Director or officer or former Director or officer of the Corporation for the expenses and costs, including attorney fees, actually and necessarily incurred by said officer or director in connection with any claim asserted against said officer or director by action in court or otherwise by reason of such person being or having been a director or officer, except in relation to matters as to which said person shall have been guilty of negligence or misconduct in respect of the matter in which indemnity is sought.

Corporation May Provide Insurance

9.08. The Corporation may purchase and maintain insurance on behalf of any person who is or was a Director, officer, employee or agent of the Corporation to insure such person against any liability asserted against said person by reason of such person being or having been a director, officer, employee or agent of the Corporation. The premiums for such insurance shall be paid for by the Corporation.

Dissolution of the Corporation

9.09. The Corporation is a nonprofit corporation. Upon dissolution, all of the Corporation's assets shall be distributed to the City of Tomball.

CERTIFICATE OF SECRETARY

I certify that I am the duly elected and acting secretary of the TOMBALL ECONOMIC DEVELOPMENT CORPORATION, and the foregoing Bylaws constitute the Bylaws of the Corporation. These Bylaws were duly adopted at a meeting of the Board of Directors held on the ________ day of ___________________, 2012, and subsequently approved and ratified by the City Council of the City of Tomball, Texas, at a meeting held on the ______day of ____________2012.

Signed this_____day of______________________________, 2012.

____
SECRETARY OF THE CORPORATION

~~Exhibit "A"~~

AMENDED ~~BY-LAWS~~BYLAWS
OF
TOMBALL ~~INDUSTRIAL~~ ECONOMIC DEVELOPMENT CORPORATION

These ~~By-laws~~Bylaws govern the affairs of TOMBALL ~~INDUSTRIAL~~ ECONOMIC DEVELOPMENT CORPORATION (t~~T~~he "Corporation"), an industrial development corporation created pursuant to the Development Corporation Act of 1979, ~~a nonprofit corporation organized under Article 5190.6, Texas Civil Statutes, as amended, the Development Corporation Act of 1979 (the "Act"), and governed by Sec. 4B of the Act.as amended; Tex.~~ Local~~.~~ Governmen~~'~~t~~.~~ Code ~~Ann.~~ Chapters 501 through 507 (the "Development Corporation Act"), as amended, and other applicable laws.

ARTICLE I

PURPOSE~~S~~

Public~~General~~ Purpose~~s~~

1.01. ~~The Corporation acts on behalf of the City of Tomball, Texas, in furtherance of the public purposes of the Act and may engage in any project authorized under Sec. 2(11) or Sec. 4B of the Act.~~ The Corporation is incorporated as a ~~non-profit~~nonprofit corporation for the purposes set forth in the Articles of Incorporation. Its purpose is the promotion and ~~to accomplish~~ development of the City of Tomball under ~~in accordance with~~ the ~~Texas~~ Development Corporation Act ~~of 1979, Chapter 505 of the Texas Local Government Code, as amended (the "Act"), or other applicable laws, and the City of Tomball Ordinance No. 1994-03~~ of enterprises to promote and encourage employment and the public welfare. ~~Its purpose shall include all permissible projects allowed by the Act, including without limitation, promotion and development of commercial, industrial and manufacturing enterprises, parks, park facilities, auditoriums, learning centers, open space improvements, athletic and exhibition facilities, and other related improvements including roads, streets, water and sewer facilities and for maintenance and operating costs of publicly owned and operated projects.~~ The Corporation is a ~~non-profit~~nonprofit corporation as defined by the Internal Revenue Code of 1986, as amended, and the applicable rulings of the Internal Revenue Service of the United States prescribed and promulgated thereunder.

Powers

1.02. ~~The Corporation has all the powers, both express and implied, granted to corporations governed by Sec.4B of the Act.~~ In the fulfillment of its corporate purpose, the Corporation shall be governed by Tex. Loc. Gov't. Code Ann. Chapter 501, and shall have all of the powers set forth and conferred in its Articles of Incorporation, in the Act, and in other applicable law, subject to the limitations prescribed herein.

ARTICLE II

OFFICES

Principal Office

2.01. The Corporation's principal office ~~of the Corporation~~ in ~~the State of~~ Texas is located at 401 ~~W.~~Market Street, ~~Suite C, in~~ Tomball, Texas, 77375. ~~The Governing Body may provide for additional offices or change the location of the office.~~

Registered Office and Agent

2.02. The Corporation shall ~~comply with the requirements of the Act and~~ maintain a registered office and registered agent in Texas. The registered office may, but need not, be identical with the Corporation's principal office in Texas. The Board of Directors may change the registered office and the registered agent as permitted by law~~provided~~.

ARTICLE III

BOARD OF DIRECTORS

Management of the Corporation

3.01. The affairs of the Corporation shall be managed by the Board of Directors.

Number, Qualifications and Service of Directors

3.02. The business of the Corporation and all corporate powers shall be executed by or under authority of the Board of Directors (the "Board"), appointed by the governing body of the City of Tomball, and subject to the limitations imposed by the Development Corporation Act~~ of 1979~~, the Texas ~~Non-Profit~~Nonprofit Corporation Act, the Texas Business Corporation Act, the Articles of Incorporation, and these ~~By-laws~~Bylaws. The Board may, by contract, resolution, or otherwise, give general or limited or special power and authority to the officers and employees of the Corporation to transact the general business or any special business of the Corporation, and may give powers of attorney to agents of the Corporation to transact any special business requiring such authorization. The Board of Directors shall consist of seven (7) members appointed by the City Council of the City of Tomball, Texas, for two (2) year terms of office provided, however, a Director may be appointed to serve additional terms. The terms shall be staggered with positions numbers 1#, #3, #5, and #7 ending on May 31, 2012 , and positions numbers #2, #4 and #6 ending on May 31, 2013 ~~which may be staggered, if so provided for by the Governing Body~~. Each Director must reside within the City of Tomball, Texas.

Vacancies

3.03. ~~A vacancy occurring upon~~ ~~T~~the Board of Directors shall notify the City Council of any vacancy occurring on the Board, and the vacancy will be filled by appointment by ~~the Governing Body~~ City Council ~~of the City~~ for the unexpired term ~~within 60 days~~.

Annual Meeting

3.04. The annual meeting of the Board of Directors shall be held during the month of May of each year. The Board ~~of Directors~~ shall designate the time and location of the annual meeting which shall be held in the principal offices of the corporation or at such other location as the Board ~~of Directors~~ may designate.

Regular Meetings

3.05. The Board of Directors may provide for regular meetings by resolution stating the time and place of such meetings. The meeting shall be held within the City of Tomball, Texas, and, to the extent practical, at the principal offices of the C~~c~~orporation or at such other location as the Board ~~of directors~~ may designate.

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3.06. Special meetings of the Board of Directors may be called at the request of the president or any two Directors. The ~~A person or~~ person(s) calling the meeting shall fix the time and location of the meeting, which meeting shall be conducted within the City of Tomball, Texas, as provided above for regular meetings. The person(s) ~~or persons~~ calling a special meeting shall notify the secretary of the Corporation of the information required to be included in the notice of the meeting. In addition to the posting of a meeting notice in accordance with these ~~By-laws~~Bylaws, a copy of each such meeting notice shall be delivered to each Director not less than seventy two (72) hours before the time of the meeting. A meeting notice shall be deemed delivered to any Director when delivered to the Director in person or deposited in the United States mail addressed to the Director at his or her address as it appears on the records of the Corporation. Such additional notice may be waived in writing by a D~~d~~irector at any time either before or after the time of the meeting and such additional notice shall be deemed waived by attendance.

Notice of Meetings;~~:~~ OpenMeetings

3.07. The Board of Directors is subject to the open meetings law, ~~shall be considered a "governmental body" within the meaning of Texas~~ , Chapter 551, Government Co~~o~~de~~, Sec. 551.001, and notice of each meeting shall be given in accordance with the provisions of Texas Government Code, Chapter 551 (The Texas Open Meetings Act), as amended. The Board shall meet in compliance with the Texas Open Meetings Act~~.

Quorum

3.08. Four (4) Directors shall constitute a quorum for the transaction of business at any meeting of the Board of Directors. The presence of a Director may not be established by proxy. No business shall be conducted, nor shall any action be taken by the Board~~ of Directors~~, in the absence of a quorum.

Duties of Directors

3.09. Directors shall exercise ordinary business judgment in managing the affairs of the Corporation. In acting in their official capacity as Directors of the Corporation, Directors shall act in good faith and take actions they reasonably believe to be in the best interests of the Corporation or which would be lawful and shall refrain from actions not in the best interest of the Corporation or which would be unlawful. A Director shall not be liable if, in the exercise of ordinary care, the Director acts in good faith relying on written financial and legal statements provided by an accountant or attorney retained by the Corporation.

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3.10. The vote of a majority of Directors present at a meeting at which a quorum is present shall be sufficient to constitute the act of the Board of Directors. The president shall be entitled to vote on all matters before the Board. A director may not vote by proxy.

Minutes

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Removal of Directors

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Committees of Directors

3.13. The Board of Directors may by resolution establish one or more special or standing committees of its members. Such committees shall have the powers, duties and responsibilities established by the Board. The committees shall keep regular minutes of their meetings and report the same to the Board~~ of Directors~~ when required. The action of such a committee shall not constitute action by the Board~~ of Directors~~.

Compensation

3.14. ~~Directors shall not receive any salary or compensation for their services except that they shall be reimbursed for their actual expenses incurred in the performance of their duties hereunder. Such expenses shall be paid only upon formal authorization by action of the Board of Directors.~~ The duly appointed members of the Board shall serve without compensation, but may~~shall~~ be reimbursed for actual or commensurate cost of travel, lodging and incidental expenses while on official business of the Board in accordance with State law and the rules of the Board.

Ex-Officio Directors

3.15. The Mayor and members of the Tomball City Council who are not members of the Corporation shall be ex-officio Directors of the Corporation. In addition, t~~T~~he Mayor and the City Council of Tomball may appoint no fewer than four (4) and no more than seven (7) individuals~~ who meet the special qualifications as outlined in Section 3.09~~, to serve as ex-officio Director(s) of the Corporation. Two (2) of these appointments shall be the President of the Greater Tomball Area Chamber of Commerce and the President of Lone Star ~~Tomball~~ College- Tomball. Ex-officio Directors shall be given notice of all meetings of the Board, may participate in discussions at Board meetings, but shall not be entitled to vote on matters considered by the Board.

ARTICLE IV

OFFICERS

Officer Positions

4.01. The officers of the Corporation shall be a president, a vice president, a secretary, and a treasurer. The Board of Directors~~Governing Body~~ may create additional officer positions, define the authorities and duties of such additional positions and appoint persons to fill such positions. No person may hold more than one such office.

Election and Terms of Officers

4.02. The officers of the Corporation shall be elected annually by the Board of the Directors at the regular annual meeting.

Removal of Officers

4.03. Any officer may be removed by the Board of Directors at any time, with or without cause. The removal of an officer by the Board does not ~~also automatically~~ result in the removal of such person as a Director of the Corporation.

Vacancies

4.04. A vacancy in any office may be filled by the Board of Directors for the unexpired portion of the officer's term.

President

4.05. The president shall be the chief executive officer of the Corporation. The president shall supervise and control all of the business and affairs of the Corporation. The president shall preside at all meetings of Board of Directors. When the execution of any contract or installment shall have been authorized by the Board~~ of Directors~~, then the president~~, or the registered agent,~~ shall execute same except where such power is expressly delegated to another officer of the Corporation. The president shall perform other duties prescribed by the Board~~ of Directors~~ and all duties incident to the office of president.

Vice President

4.06. When the president is absent, is unable to act, or refuses to act, the vice president shall perform the duties of the president. When acting in place of the president, the vice president shall have all the powers and duties as the president and be subject to all of the limitations and restrictions placed upon the president.

Secretary

4.07. The secretary shall oversee that the Corporation staff perform the following duties:

(a) Give all notices as provided in the ~~Bby-laws~~Bylaws or as required by law.
(b) Take minutes of the meetings of the Board of Directors and keep the minutes as part of the corporate records.
(c) Maintain custody of the corporate records, authenticate corporate documents and affix the seal of the Corporation as required.
(d) Keep a register of the mailing address of each Director and officer of the Corporation.
(e) Perform duties as assigned by the president or Board of Directors.
(f) Perform all duties incident to the office of secretary.

Treasurer

4.08. The treasurer shall oversee that the Corporation staff perform the following duties:

(a) Have charge and custody of and be responsible for all funds and securities of the Corporation.
(b) Receive and give receipts for moneys due and payable to the Corporation from any source.
(c) Deposit all moneys in the name of the Corporation in banks, trust companies, or other depositories as provided by these ~~Bby-laws~~Bylaws.
(d) Write checks and disburse funds to discharge obligations of the Corporation.
(e) Maintain the financial books and records of the corporation.
(f) Prepare financial reports at least annually.
(g) Perform other duties as assigned by the Board of Directors.
(h) Perform all duties incident to the office of treasurer.

Assistant Officers

4.09. The following assistant officers are created to assist the Board of Directors in the conduct of the affairs of the Corporation. They are the Assistant Treasurer and the Assistant Secretary, who shall assist those officers in their respective duties. The assistant officers are not required to be residents of the City.

~~Executive Director, Corporation Staff, City Administrative Director and Staff Assistants~~Administration

4.10. Executive Director

The Board shall appoint an administrative and executive officer of the Corporation who shall be responsible to the Board for the administration of all the affairs of the Corporation. T~~he compensated corporate staff members are not required to reside in the City of Tomball and shall consist of the following:~~he ~~Board of Directors may employ an~~ Executive Director ~~who shall be responsible to the Board for the administration of all the affairs of the~~ Corporation. ~~The Executive Director~~ shall serve at the will of the Board.

(a) The Executive Director shall perform and direct the daily administrative operations of the Corporation ~~the day to day affairs of the Corporation~~ by preparing economic development policy, implementing planning, developing and managing goals and objectives, preparing and administering the budget, providing technical assistance to area businesses and to the City Council and City Manager, meeting with various agencies and the public, attending local organizational meetings, assisting new and existing firms with financing and capital from various sources, attending City Council meetings and preparing reports as required.

(b) The Executive Director shall have the authority to employ, review and terminate individuals to fill staff positions that have been approved by the Board of Directors.

(c) The Executive Director shall be reviewed by the Board of Directors on an annual basis. ~~Compensated corporate staff members are not required to reside in the City of Tomball.~~

~~(c)~~(d) The Executive Director shall receive compensation as may be fixed by the Board.

~~(d) The assistant shall perform the duties required to assist the Executive Director and the Corporation Board to execute the business of the Corporation.~~

~~(e)~~

~~The non-compensated services staff shall consist of the following:~~

~~The Corporation will permit the City to provide non-compensated services for the Corporation, including:~~

~~a. (a) The City Manager shall perform as the City Administrative Director and direct and monitor the City required content from the salaried staff such as time cards, holidays, benefits, insurance and appropriate city policies. The City Manager shall participate in the evaluation process of the Executive Director.~~

~~(b) The City Finance Director may serve as the assistant Corporation Treasurer and shall report to the Corporation Board Treasurer and the Executive Director.~~

~~b. (c) The City Secretary may serve as the Assistant Corporation Staff Secretary and~~

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~~shall report to the Corporation Board Secretary and the Executive Director.~~

~~Compensation~~

~~4.11.~~ ~~Officers shall not receive any salary or compensation for their services, except that they shall be reimbursed for their actual expenses incurred in the performance of their duties hereunder as defined in the City of Tomball's policies for employees. Such expenses shall be paid only upon formal authorization by action of the Board of Directors~~.

ARTICLE V

TRANSACTIONS OF THE CORPORATION

Contracts

5.01. The Board of Directors may by formal action or resolution authorize an officer or agent of the Corporation to enter into a contract or execute and deliver any instrument in the name of or on behalf of the Corporation. This authority may be limited to a specific contract or instrument or it may extend to any number and type of contracts and instruments.

Depository

5.02. The Board of Directors of the Corporation shall designate a depository bank. All funds of the Corporation shall be deposited with the depository bank.

Potential Conflicts of Interest; Code of Ethics

5.03. The members of the Board of Directors ~~are local public officials within the meaning of Texas Government Code Chapter 171 and~~ shall be governed by the Code of Ethics of the City of Tomball, Texas. If a Director has a substantial interest in a business entity or real property which is the subject of deliberation by the Board~~ of Directors~~, the Director shall file an affidavit with the secretary of the corporation stating the nature and extent of the interest. Such affidavit shall be filed prior to any vote of decision upon the matter by the Board~~ of Directors~~, and the interested Director shall abstain from any vote or decision upon the matter.

Transactions of the Corporation

Annual Work Plan and Performance Evaluation

5.04. The Board of Directors shall direct the Corporation staff to research, develop, prepare and submit to the City Council for its approval an annual work plan which shall set out goals and objectives of the Corporation, including but not limited to short-term and long-term goals for the economic development of the City; goals and objectives for the utilization of funds to promote the expansion and development of a sound economic base for and within the City; and any other similar goals and objectives deemed appropriate by the Board and the City Council. The Board shall review and update the plan each year prior to the submission of the annual budget as required by other provisions of these ~~By-laws~~Bylaws. In addition, the Board shall accompany each subsequent work plan following the initial work plan with a performance evaluation detailing the Board's achievements of its prior goals and objectives during the course of the previous fiscal year. Any reports outlining the activity of the Corporation for that quarter shall be submitted in writing by the Board for review by the City Council as desired by the City Council.

Annual Corporation Budget

5.05. The Board shall prepare a proposed annual budget of expected revenues and proposed expenditures for the next ensuing fiscal year. The budget shall contain such classifications and shall be in such form as may be prescribed from time to time by the City Council. The budget shall not be effective until the same has been approved by the City Council. The proposed budget shall be submitted to the City Council within a time frame to be specified by the City Manager for inclusion in the C~~c~~ity's annual budgeting process.

Limitations on Expenditures

5.06. Any expenditure of funds not approved by the City Council in the annual budget must be submitted within 30 days to the City Council for consideration.

Staff Support

5.07. The Corporation may contract with the City to provide legal, financial and other services for the Corporation upon terms, conditions and compensation as mutually agreeable.

Gifts

5.08. The Board of Directors may accept on behalf of the Corporation any gift or bequest provided for the general purposes of or for any special purpose of the Corporation. Special funds shall include all funds from government contracts and gifts designated by a donor for special purposes. All other funds shall be general funds.

Prohibited Acts

5.09. As long as the Corporation is in existence, no director, officer or committee member of the Corporation shall:

(a) Do any act in violation of the B~~by-laws~~Bylaws or bidding obligations of the Corporation.
(b) Do any act with the intention of harming the Corporation or any of its operations.
(c) Do any act that would make it impossible or unnecessarily difficult to carry on the intended or ordinary business of the Corporation.
(d) Receive an improper personal or business benefit from the operation of the Corporation.
(e) Use the assets of the Corporation, directly or indirectly, for any purpose

other than carrying on the business of the Corporation.

(f) Wrongfully transfer or dispose of Corporation property, including intangible property such as goodwill.

(g) Use the name of the Corporation (or any substantially similar) or any trademark or trade name adopted by the Corporation, except on behalf of the Corporation in the ordinary course of the Corporation's business.

(h) Disclose any of the Corporation business practices, trade secrets or any other information not generally known to the business community to any person not authorized to receive it.

(i) Commit Corporation funds without the prior approval of the Board of Directors.

~~The Corporation shall not have the power to own or operate any project as a business owner except as lessor, seller or lender or pursuant to the requirements of any trust agreement securing the credit transaction. In addition, the user pursuant to any lease, sale or loan agreement relating to a project shall be considered to be the owner of the project for the purposes of the application of any ad valorem, sales and use taxes or any other taxes levied or imposed by the State of Texas or any political subdivision of the State of Texas. The purchase and holding of mortgages, deeds of trust or other security interests and contracting for any services thereof shall not be deemed the operation of a project.~~

ARTICLE VI

BOOKS AND RECORDS

Required Books and Records

6.01. The Corporation shall cause to be kept correct and complete books and records of account. All books and records of the Corporation may be inspected by Directors of the Corporation ~~or his/her agent~~ at any reasonable time. The Corporation's books and records shall include:

(a) A file endorsed copy of all documents filed with the Texas Secretary of State relating to the Corporation, including, but not limited to, the articles of incorporation, any articles of amendment, restated articles, and statement of change of registered office or agent.

(b) A copy of the B~~by-laws~~Bylaws, and any amended versions or amendments to the B~~by-laws~~Bylaws.

(c) Minutes of the proceedings of the Board of Directors.

(d) A list of names and addresses of the Directors and officers of the Corporation.

(e) A financial statement showing the assets, liabilities, and net worth of the Corporation.

(f) A financial statement showing the income and expenses of the

Corporation.

(g) All rulings, letters, and other documents relating to the Corporation's federal, state and local tax status.

(h) The Corporation's federal, state and local information or income tax returns for each of the Corporation's tax years.

~~Records Open to~~ Public Information

6.02. The Board of Directors is subject to the public information law, Chapter 552, ~~corporation shall be considered a "governmental body" within the meaning of Texas~~ Government Code~~, Sec. 552.003 and all records of the corporation shall be made available to the public for inspection or reproduction in accordance with the requirements of Texas Government Code, Chapter 552, and The Texas Open Records Act~~.

Audits

6.03. The Board of Directors shall provide for an independent annual audit of the Corporation's books; provided, further, that an annual audit by ~~An annual independent audit shall be conducted by the Board of Directors. The City Council of the City of Tomball, Texas may at any time require an independent audit of the Corporation's books to be conducted. T~~the City Council ~~shall provide for an annual audit~~ of the Corporation's books and records in conjunction with the annual audit of the City's books and records shall be sufficient.

ARTICLE VII

FISCAL YEAR

The fiscal year of the corporation shall begin on the first day of October and end on the last day of September.

ARTICLE VIII

AMENDMENTS TO ~~BY-LAWS~~BYLAWS

The ~~Bby-laws~~Bylaws may be altered, amended, or repealed by the Board of Directors with the consent of the City Council of the City of Tomball, Texas, as evidenced by a resolution of the City Council with the ~~Bby-laws~~Bylaws attached.

ARTICLE IX

MISCELLANEOUS PROVISIONS

Legal Authorities Governing Construction of ~~By-laws~~Bylaws

9.01. To the greatest extent possible, these Bylaws shall be construed to conform to all legal requirements for obtaining and maintaining all tax exemptions that may be available to nonprofit corporations. Further, t~~T~~he ~~Bby-laws~~Bylaws shall be constructed in accordance with the laws of the State of Texas. All references in the B~~by-laws~~Bylaws to statutes, regulations, or other sources of legal authority shall refer to the authorities cited, or their successors, as they may be amended from time to time. It is expressly provided that the provisions of the Development Corporation Act~~ of 1979,as amended,~~ applicable to corporations governed under Chapter 505 of the Texas Local Government Code~~, as amended Sec. 4B of that Act~~, are incorporated within these B~~by-laws~~Bylaws by reference. In the event of any conflict between the applicable provisions of the Development Corporation~~such~~ Act and these B~~by-laws~~Bylaws, then the applicable provisions of such Act shall control.

Legal Construction

9.02. If any B~~b~~y-law provision is held to be invalid, illegal or unenforceable in any respect, the invalidity, illegality or unenforceability shall not affect any other provision and the B~~by-laws~~Bylaws shall be construed as if the invalid, illegal, or unenforceable provision had not been included in the B~~by-laws~~Bylaws.

Headings

9.03. The headings used in the B~~by-laws~~Bylaws are used for convenience and shall not be considered in constructing the terms of the B~~by-laws~~Bylaws.

Seal

9.04. The Board of Directors may provide for a corporate seal. Such seal would contain the words "Tomball ~~Industrial~~ Economic Development Corporation~~" and "Texas."~~

Parties Bound

9.05. The B~~by-laws~~Bylaws shall be binding upon and inure to the benefit of the Directors, officers and agents of the Corporation and their respective heirs, executors, administrators, legal representatives, successors and assigns except as otherwise provided in the B~~by-laws~~Bylaws.

Effective Date

9.06. These B~~by-laws~~Bylaws, and any subsequent amendments, hereto, shall be effective of and from the date upon which approval has been given both by the Board of Directors and the City Council of the City of Tomball, Texas.

Miscellaneous Provisions

9.07. The Corporation shall indemnify any Director or officer or former Director or officer of the Corporation for the expenses and costs, including attorney fees, actually and necessarily incurred by said officer or director in connection with any claim asserted against said officer or director by action in court or otherwise by reason of such person being or having been a director or officer, except in relation to matters as to which said person shall have been guilty of negligence or misconduct in respect of the matter in which indemnity is sought.

Corporation May Provide Insurance

9.08. The Corporation may purchase and maintain insurance on behalf of any person who is or was a Director, officer, employee or agent of the Corporation to insure such person against any liability asserted against said person by reason of such person being or having been a director, officer, employee or agent of the Corporation. The premiums for such insurance shall be paid for by the Corporation.

Dissolution of the Corporation

9.09. The Corporation is a ~~non-profit~~nonprofit corporation. Upon dissolution, all of the Corporation's assets shall be distributed to the City of Tomball.

CERTIFICATE OF SECRETARY

I certify that I am the duly elected and acting secretary of the TOMBALL ~~INDUSTRIAL~~ ECONOMIC DEVELOPMENT CORPORATION, and the foregoing B~~by-laws~~Bylaws constitute the B~~by-laws~~Bylaws of the Corporation. These B~~by-laws~~Bylaws were duly adopted at a meeting of the Board of Directors held on the ________ day of ________________________, ~~1997~~ 2012, and subsequently approved and ratified by the City Council of the City of Tomball, Texas, at a meeting held on the ______day of ____________~~2004~~2012.

Signed this_____day of__________________________, ~~2004~~2012.

____

SECRETARY OF THE CORPORATION

RESOLUTION NO. 2004-13

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF TOMBALL, TEXAS, APPROVING AMENDED BYLAWS OF THE TOMBALL ECONOMIC DEVELOPMENT CORPORATION; PROVIDING FOR THE EFFECTIVE DATE, AND OTHER RELATED MATTERS.

* * * * * * * *

WHEREAS, the TOMBALL ECONOMIC DEVELOPMENT CORPORATION (the "Corporation") functions under the auspices of the City of Tomball, Texas, pursuant to Section 4B of THE DEVELOPMENT CORPORATION ACT OF 1979, as amended (the "Act"); and

WHEREAS, the Corporation has obtained the approval of the City Council and is filing amended, updated and restated Bylaws; and

WHEREAS, the City Council, under whose auspices the Corporation was created, desires to approve the amended Bylaws of the Corporation; **now therefore,**

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

Section 1. The City Council of the City of Tomball, Texas, hereby approves the amended Bylaws of the Tomball Industrial Development Corporation, the form of which is attached to this Resolution as **Exhibit "A"**.

Section 2. This resolution shall be effective immediately upon its adoption.

PASSED, APPROVED, AND RESOLVED this 21st day of September, 2004.

H. G. (Hap) Harrington, Mayor

ATTEST:

Doris Speer, City Secretary

Exhibit "A"

AMENDED BY-LAWS
OF
TOMBALL INDUSTRIAL DEVELOPMENT CORPORATION

These By-laws govern the affairs of TOMBALL INDUSTRIAL DEVELOPMENT CORPORATION (The "Corporation"), a nonprofit corporation organized under Article 5190.6, Texas Civil Statutes, as amended, the Development Corporation Act of *1979 (the* "Act"), and governed by Sec. 4B of the Act.

ARTICLE I

PURPOSES

General Purposes

1.01. The Corporation acts on behalf of the City of Tomball, Texas, in furtherance of the public purposes of the Act and may engage in any project authorized under Sec. 2(11) or Sec. 4B of the Act.

Powers

1.02. The Corporation has all the powers, both express and implied, granted to corporations governed by Sec.4B of the Act.

ARTICLE II

OFFICES

Principal Office

2.01. The principal office of the Corporation in the State of Texas is located at 401 W. Market Street, Suite C, in Tomball, Texas. The Governing Body may provide for additional offices or change the location of the office.

Registered Office and Agent

2.02. The Corporation shall comply with the requirements of the Act and maintain a registered office and registered agent in Texas. The registered office may, but need not, be identical with the Corporation's principal office in Texas. The Board of Directors may change the registered office and the registered agent as provided.

ARTICLE III

BOARD OF DIRECTORS

Management of the Corporation

3.01. The affairs of the Corporation shall be managed by the Board of Directors.

Number, Qualifications and Service of Directors

3.02. The Board of Directors shall consist of seven (7) members appointed by the City Council of the City of Tomball, Texas, for two (2) year terms of office which may be staggered, if so provided for by the Governing Body. Each Director must reside within the City of Tomball, Texas.

Vacancies

3.03. A vacancy occurring upon the Board of Directors shall be filled by appointment by the Governing Body of the City for the unexpired term within 60 days.

Annual Meeting

3.04. The annual meeting of the Board of Directors shall be held during the month of May of each year. The Board of Directors shall designate the time and location of the annual meeting which shall be held in the principal offices of the corporation or at such other location as the Board of Directors may designate.

Regular Meetings

3.05. The Board of Directors may provide for regular meetings by resolution stating the time and place of such meetings. The meeting shall be held within the City of Tomball, Texas, and, to the extent practical, at the principal offices of the corporation or at such other location as the Board of directors may designate.

Special Meetings

3.06. Special meetings of the Board of Directors may be called at the request of the president or any two Directors. A person or persons calling the meeting shall fix the time and location of the meeting, which meeting shall be conducted within the City of Tomball, Texas, as provided above for regular meetings.

The person or persons calling a special meeting shall notify the secretary of the Corporation of the information required to be included in the notice of the meeting. In addition to the posting of a meeting notice in accordance with these By-laws, a copy of each such meeting notice shall be delivered to each Director not less than seventy two (72) hours before the time of the meeting. A meeting notice shall be deemed delivered to any Director when delivered to the Director in person or deposited in the United States mail addressed to the Director at his or her address as it appears on the records of the Corporation. Such additional notice may be waived in writing by a director at any time either before or after the time of the meeting and such additional notice shall be deemed waived by attendance.

Notice of Meetings: Meetings

3.07. The Board of Directors shall be considered a "governmental body" within the meaning of Texas Government Cede, Sec. 551.001, and notice of each meeting shall be given in accordance with the provisions of Texas Government Code, Chapter 551 (The Texas Open Meetings Act). The Board shall meet in compliance with the Texas Open Meetings Act.

Quorum

3.08. Four (4) Directors shall constitute a quorum for the transaction of business at any meeting of the Board of Directors. The presence of a Director may not be established by proxy. No business shall be conducted, nor shall any action be taken by the Board of Directors, in the absence of a quorum.

Duties of Directors

3.09. Directors shall exercise ordinary business judgment in managing the affairs of the Corporation. In acting in their official capacity as Directors of the Corporation, Directors shall act in good faith and take actions they reasonably believe to be in the best interests of the Corporation or which would be lawful and shall refrain from actions not in the best interest of the Corporation or which would be unlawful. A Director shall not be liable if, in the exercise of ordinary care, the Director acts in good faith relying on written financial and legal statements provided by an accountant or attorney retained by the Corporation.

Actions of Board of Directors: Proxy Voting Prohibited

3.10. The vote of a majority of Directors present at a meeting at which a quorum is present shall be sufficient to constitute the act of the Board of Directors. The president shall be entitled to vote on all matters before the Board.
A director may not vote by proxy.

Minutes

3.11. The Board will keep minutes of its meetings, which minutes will constitute the record of such meetings.

Removal of Directors

3.12. The Board of Directors and each member thereof serve at the pleasure of the City Council of the City of Tomball, Texas, which may remove any Director at any time, either with or without cause.

Committees of Directors

3.13. The Board of Directors may by resolution establish one or more special or standing committees of its members. Such committees shall have the powers, duties and responsibilities established by the Board. The committees shall keep regular minutes of their meetings and report the same to the Board of Directors when required. The action of such a committee shall not constitute action by the Board of Directors.

Compensation

3.14. Directors shall not receive any salary or compensation for their services except that they shall be reimbursed for their actual expenses incurred in the performance of their duties hereunder. Such expenses shall be paid only upon formal authorization by action of the Board of Directors.

Ex-Officio Directors

3.15. The Mayor and members of the Tomball City Council who are not members of the Corporation shall be ex-officio Directors of the Corporation. The Mayor and the City Council of Tomball may appoint no fewer than four (4) and no more than seven (7) individuals who meet the special qualifications as outlined in Section 3.09, to serve as ex-officio Director of the Corporation. Two of these appointments shall be the President of the Tomball Area Chamber of Commerce and the President of Tomball College. Ex-officio Directors shall be given notice of all meetings of the Board, may participate in discussions at Board meetings, but shall not be entitled to vote on matters considered by the Board.

ARTICLE IV

OFFICERS

Officer Positions

4.01. The officers of the Corporation shall be a president, a vice president, a secretary, and a treasurer. The Governing Body may create additional officer positions, define the authorities and duties of such additional positions and appoint persons to fill such positions. No person may hold more than one such office.

Election and Terms of Officers

4.02. The officers of the Corporation shall be elected annually by the Board of the Directors at the regular annual meeting.

Removal of Officers

4.03. Any officer may be removed by the Board of Directors at any time, with or without cause. The removal of an officer does not also automatically result in the removal of such person as a Director of the Corporation.

Vacancies

4.04. A vacancy in any office may be filled by the Board of Directors for the unexpired portion of the officer's term.

President

4.05. The president shall be the chief executive officer of the Corporation. The president shall supervise and control all of the business and affairs of the Corporation. The president shall preside at all meetings of the Board of Directors. When the execution of any contract or installment shall have been authorized by the Board of Directors, the president, or the registered agent, shall execute same except where such power is expressly delegated to another officer of the Corporation. The president shall perform other duties prescribed by the Board of Directors and all duties incident to the office of president.

Vice President

4.06. When the president is absent, is unable to act, or refuses to act, the vice president shall perform the duties of the president. When acting in place of the president, the vice president shall have all the powers and duties as the president and be subject to all of the limitations and restrictions placed upon the president.

Secretary

4.07. The Secretary shall oversee that the Corporation staff perform the following duties:

(a) Give all notices as provided in the by-laws or as required by law.
(b) Take minutes of the meetings of the Board of Directors and keep the minutes as part of the corporate records.
(c) Maintain custody of the corporate records, authenticate corporate documents and affix the seal of the Corporation as required.
(d) Keep a register of the mailing address of each Director and officer of the Corporation.
(e) Perform duties as assigned by the president or Board of Directors.
(f) Perform all duties incident to the office of secretary.

Treasurer

4.08. The treasurer shall oversee that the Corporation staff perform the following duties:

(a) Have charge and custody of and be responsible for all funds and securities of the Corporation.
(b) Receive and give receipts for moneys due and payable to the Corporation from any source.
(c) Deposit all moneys in the name of the Corporation in banks, trust companies, or other depositories as provided by these by-laws.
(d) Write checks and disburse funds to discharge obligations of the Corporation.
(e) Maintain the financial books and records of the corporation.
(f) Prepare financial reports at least annually.
(g) Perform other duties as assigned by the Board of Directors.
(h) Perform all duties incident to the office of treasurer.

Assistant Officers

4.09. The following assistant officers are created to assist the Board of Directors in the conduct of the affairs of the Corporation. They are the Assistant Treasurer, and the Assistant Secretary, who shall assist those officers in their respective duties. The assistant officers are not required to be residents of the City.

Executive Director, Corporation Staff, City Administrative Director and Staff Assistants

4.10. The compensated corporate staff members are not required to reside in the City of Tomball and shall consist of the following:

a. The Executive Director shall perform and direct the day to day affairs of the Corporation by preparing economic development policy, implementing planning, developing and managing goals and objectives, preparing and administering the budget, providing technical assistance to area businesses and to the City Council and City Manager, meeting with various agencies and the public, attending local organizational meetings, assisting new and existing firms with financing and capital from various sources, attending City Council meetings and preparing reports as required.
b. The assistant shall perform the duties required to assist the Executive Director and the Corporation Board to execute the business of the Corporation.

The non-compensated services staff shall consist of the following:

a. The City Manager shall perform as the City Administrative Director and direct and monitor the City required content from the salaried staff such as time cards, holidays, benefits, insurance and appropriate city policies. The City Manager may participate in the evaluation process of the Executive Director.
b. The City Finance Director may serve as the assistant Corporation Treasurer and shall report to the Corporation Board Treasurer and the Executive Director.
c. The City Secretary may serve as the Assistant Corporation Staff Secretary and shall report to the Corporation Board Secretary and the Executive Director.

Compensation

4.11. Officers shall not receive any salary or compensation for their services, except that they shall be reimbursed for their actual expenses incurred in the performance of their duties hereunder. Such expenses shall be paid only upon formal authorization by action of the Board of Directors.

ARTICLE V

TRANSACTIONS OF THE CORPORATION

Contracts

5.01. The Board of Directors may by formal action or resolution authorize an officer or agent of the Corporation to enter into a contract or execute and deliver any instrument in the name of or on behalf of the Corporation. This authority may be limited to a specific contract or instrument or it may extend to any number and type of contracts and instruments.

Depository

5.02. The Board of Directors of the corporation shall designate a depository bank. All funds of the Corporation shall be deposited with the depository bank.

Potential Conflicts of Interest; Code of Ethics

5.03. The members of the Board of Directors are local public officials within the meaning of Texas Government Code Chapter 171 and shall be governed by the Code of Ethics of the City of Tomball, Texas. If a Director has a substantial interest in a business entity or real property which is the subject of deliberation by the Board of Directors, the Director shall file an affidavit with the secretary of the corporation stating the nature and extent of the interest. Such affidavit shall be filed prior to any vote or decision upon the matter by the Board of Directors, and the interested Director shall abstain from any vote or decision upon the matter.

Transactions of the Corporation

Annual Work Plan and Performance Evaluation

5.04. The Board of Directors shall direct the Corporation staff to research, develop, prepare and submit to the City Council for its approval an annual work plan which shall set out goals and objectives of the Corporation, including but not limited to short-term and long-term goals for the economic development of the City; goals and objectives for the utilization of funds to promote the expansion and development of a sound economic base for and within the City; and any other similar goals and objectives deemed appropriate by the Board and the City Council. The Board shall review and update the plan each year prior to the submission of the annual budget as required by other provisions of these By-laws. In addition, the Board shall accompany each subsequent work plan following the initial work plan with a performance evaluation detailing the Board's achievements of its prior goals and objectives during the course of the previous fiscal year. Any reports outlining the activity of the Corporation for that quarter shall be submitted in writing by the Board for review by the City Council as desired by the City Council.

Annual Corporation Budget

5.05. The Board shall prepare a proposed annual budget of expected revenues and proposed expenditures for the next ensuing fiscal year. The budget shall contain such classifications and shall be in such form as may be prescribed from time to time by the City Council. The budget shall not be effective until the same has been approved by the City Council. The proposed budget shall be submitted to the City Council within a time frame to be specified by the City Manager for inclusion in the city's annual budgeting process.

Limitations on Expenditures

5.06. Any expenditure of funds not approved by the City Council in the annual budget must be submitted within 30 days to the City Council for consideration.

Staff Support

5.07. The Corporation may contract with the City to provide legal and financial services for the Corporation upon terms, conditions and compensation as mutually agreeable.

Gifts

5.08. The Board of Directors may accept on behalf of the Corporation any gift or bequest provided for the general purposes of or for any special purpose of the Corporation. Special funds shall include all funds from government contracts and gifts designated by a donor for special purposes. All other funds shall be general funds.

Prohibited Acts

5.09. As long as the Corporation is in existence, no director, officer or committee member of the Corporation shall:

(a) Do any act in violation of the by-laws or bidding obligation of the Corporation.
(b) Do any act with the intention of harming the Corporation or any of its operations.
(c) Do any act that would make it impossible or unnecessarily difficult to carry on the intended or ordinary business of the Corporation.
(d) Receive an improper personal or business benefit from the operation of the Corporation.
(e) Use the assets of the Corporation, directly or indirectly, for any purpose other than carrying on the business of the Corporation.
(f) Wrongfully transfer or dispose of Corporation property, including intangible property such as goodwill.
(g) Use the name of the Corporation (or any substantially similar) or any trademark or trade name adopted by the Corporation, except on behalf of the Corporation in the ordinary course of the Corporation's business.
(h) Disclose any of the Corporation business practices, trade secrets or any other information not generally known to the business community to any person not authorized to receive it.

(i) Commit Corporation funds without the prior approval of the Board of Directors.

The Corporation shall not have the power to own or operate any project as a business owner except as lessor, seller or lender or pursuant to the requirements of any trust agreement securing the credit transaction. In addition, the user pursuant to any lease, sale or loan agreement relating to a project shall be considered to be the owner of the project for the purposes of the application of any ad valorem, sales and use taxes or any other taxes levied or imposed by the State of Texas or any political subdivision of the State of Texas. The purchase and holding of mortgages, deeds of trust or other security interests and contracting for any services thereof shall not be deemed the operation of a project.

ARTICLE VI

BOOKS AND RECORDS

Required Books and Records

6.01. The Corporation shall cause to be kept correct and complete books and records of account. The Corporation's books and records shall include:

(a) A file endorsed copy of all documents filed with the Texas Secretary of State relating to the Corporation, including, but not limited to, the articles of incorporation, any articles of amendment, restated articles, and statement of change of registered office or agent.
(b) A copy of the by-laws, and any amended versions or amendments to the by-laws.
(c) Minutes of the proceedings of the Board of Directors.
(d) A list of names and addresses of the Directors and officers of the Corporation.
(e) A financial statement showing the assets, liabilities, and net worth of the Corporation.
(f) A financial statement showing the income and expenses of the Corporation.
(g) All rulings, letters, and other documents relating to the Corporation's federal, state and local tax status.
(h) The Corporation's federal, state and local information or income tax returns for each of the Corporation's tax years.

Records Open to Public

6.02. The corporation shall be considered a "governmental body" within the meaning of Texas Government Code, Sec. 552.003 and all records of the corporation shall be made available to the public for inspection or reproduction in accordance with the requirements of Texas Government Code, Chapter 552, and The Texas Open Records Act.

Audits

6.03. An annual independent audit shall be conducted by the Board of Directors. The City Council of the City of Tomball, Texas may at any time require an independent audit of the Corporation's books to be conducted.

ARTICLE VII

FISCAL YEAR

The fiscal year of the corporation shall begin on the first day of October and end on the last day of September.

ARTICLE VIII

AMENDMENTS TO BY-LAWS

The by-laws may be altered, amended, or repealed by the Board of Directors with the consent of the City Council of the City of Tomball, Texas, as evidenced by a resolution with the by-laws attached.

ARTICLE IX

MISCELLANEOUS PROVISIONS

Legal Authorities Governing Construction of By-laws

9.01. The by-laws shall be constructed in accordance with the laws of the State of Texas. All references in the by-laws to statutes, regulations, or other sources of legal authority shall refer to the authorities cited, or their successors, as they may be amended from time to time. It is expressly provided that the provisions of the Development Corporation Act of 1979 applicable to corporations governed under Sec. 4B of that Act, are incorporated within these by-laws by reference. In the event of any conflict between the applicable provisions of such Act and these by-laws, then the applicable provisions of such Act shall control.

Legal Construction

9.02. If any by-law provision is held to be invalid, illegal or unenforceable in any respect, the invalidity, illegality or unenforceability shall not affect any other provision and the by-laws shall be construed as if the invalid, illegal, or unenforceable provision had not been included in the by-laws.

Headings

9.03. The headings used in the by-laws are used for convenience and shall not be considered in constructing the terms of the by-laws.

Seal

9.04. The Board of Directors may provide for a corporate seal. Such seal would contain the words "Tomball Industrial Development Corporation" and "Texas."

Parties Bound

9.05. The by-laws shall be binding upon and inure to the benefit of the Directors, officers and agents of the Corporation and their respective heirs, executors, administrators, legal representatives, successors and assigns except as otherwise provided in the by-laws.

Effective Date

9.06. These by-laws, and any subsequent amendments, hereto, shall be effective of and from the date upon which approval has been given both by the Board of Directors and the City Council of the City of Tomball, Texas.

Miscellaneous Provisions

9.07. The Corporation shall indemnify any Director or officer or former Director or officer of the Corporation for the expenses and costs, including attorney fees, actually and necessarily incurred by said officer or director in connection with any claim asserted against said officer or director by action in court or otherwise by reason of such person being or having been a director or officer, except in relation to matters as to which said person shall have been guilty of negligence or misconduct in respect of the matter in which indemnity is sought.

Corporation May Provide Insurance

9.08. The Corporation may purchase and maintain insurance on behalf of any person who is or was a director, officer, employee or agent of the Corporation to insure such person against any liability asserted against said person by reason of such person being or having been a director, officer, employee or agent of the Corporation. The premiums for such insurance shall be paid for by the Corporation.

Dissolution of the Corporation

9.09. The Corporation is a non-profit corporation. Upon dissolution, all of the Corporation's assets shall be distributed to the City of Tomball.

CERTIFICATE OF SECRETARY

I certify that I am the duly elected and acting secretary of the TOMBALL INDUSTRIAL DEVELOPMENT CORPORATION, and the foregoing by-laws constitute the by-laws of the Corporation. These by-laws were duly adopted at a meeting of the Board of Directors held on the 24th day of August, 2004, ~~1997~~, and subsequently approved and ratified by the City Council of the City of Tomball, Texas, at a meeting held on the 21st day of September 2004.

Signed this 25th day of July, 200~~4~~5.

SECRETARY OF THE CORPORATION

Regular City Council Agenda Item Data Sheet

Meeting Date: March 5, 2012

Topic:

Approve Resolution No. 2012-05-TEDC, a Resolution of the City Council of the City of Tomball, Texas, Restating and Amending the Articles of Incorporation (Certificate of Formation); Authorizing and Directing the Execution and Filing of such Amended and Restated Articles by the Mayor and City Secretary; Authorizing the Corporation to act on behalf of the City for Certain Purposes; Providing for the Effective Date and other Related Matters.

Background:

On February 21, 2012, the Tomball Economic Development Corporation Board of Directors approved changes to the Corporation's Articles of Incorporation. The TEDC Articles of Incorporation were last updated on September 19, 1994.

These Restated and Amended Articles of Incorporation include updates to the code references to be current with state law, as well as the formal name change from the Tomball Industrial Development Corporation to the Tomball Economic Development Corporation. Additional notable changes include updating the registered office address, registered agent name, defining that Directors shall serve two-year staggered terms, and removing unnecessary or duplicative references. There are no other substantive changes; however, the placement of particular information and numbering of specific Articles within the Restated and Amended Articles of Incorporation (Certificate of Formation) has been slightly rearranged.

The Amended and Restated Articles of Incorporation will be filed with the Secretary of the State along with the Amended Bylaws.

Origination:

Tomball Economic Development Corporation Board of Directors

Recommendation:

Approval of Resolution No. 2012-05-TEDC

Funding: No

Funds will be transferred from Account: to Account:

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

Kelly Violette, Executive Director

ACTION TAKEN

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

ATTACHMENTS:

Cover Memo

Resolution No. 2012-05-TEDC Articles of Incorporation

Restated and Amended Articles of Incorporation

Form 414 Filing of Restated Articles of Inc.

TEDC Articles of Incorporation 1994

TO: Board of Directors
Tomball Economic Development Corporation

FROM: Kelly Violette
Executive Director

MEETING DATE: February 21, 2012

SUBJECT: Amended and Restated Articles of Incorporation

ITEM TYPE: Action

The TEDC Articles of Incorporation were last updated on September 19, 1994 and included changes relative to state legislative provisions at the time, updates to the Corporation's address and registered agent, the provision for a seven member board (from the previous 5 member board), and various "housekeeping" items.

After reviewing the Articles of Incorporation and speaking with legal counsel, staff proposes to amend the Articles of Incorporation to update the code references to be current with state law, as well as formally change the name of the Corporation from the Tomball Industrial Development Corporation to the Tomball Economic Development Corporation. Additional notable changes include updating the registered office address, registered agent name, defining that Directors shall serve two-year staggered terms, and removing unnecessary or duplicative references. There are no other substantive changes; however, the placement of particular information and numbering of specific Articles within the Restated and Amended Articles of Incorporation (Certificate of Formation) have been slightly rearranged.

The Articles of Incorporation have been reviewed by Olson & Olson and will be presented to City Council for consideration and approval, following Board action. Additionally, the Amended and Restated Articles of Incorporation will be filed with the Secretary of State.

RESOLUTION NO. 2012-05-TEDC

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF TOMBALL, TEXAS, RESTATING AND AMENDING THE ARTICLES OF INCORPORATION (CERTIFICATE OF FORMATION); AUTHORIZING AND DIRECTING THE EXECUTION AND FILING OF SUCH AMENDED AND RESTATED ARTICLES BY THE MAYOR AND CITY SECRETARY; AUTHORIZING THE CORPORATION TO ACT ON BEHALF OF THE CITY FOR CERTAIN PURPOSES; PROVIDING FOR THE EFFECTIVE DATE AND OTHER RELATED MATTERS.

* * * * *

WHEREAS, the Tomball Industrial Development Corporation, created pursuant to the Development Corporation Act, now Chapter 501 through 505 of the Texas Local Government Code, as amended (the “Act”), desires to adopt projects and provide incentives to enhance economic development and improve the quality of life within the City; and

WHEREAS, the City Council of the City of Tomball, Texas (“City Council”) has investigated and determined that it is in the best interest of the City of Tomball, Texas (“Tomball”) and its citizens to restate and amend the Articles of Incorporation (Certificate of Formation) of the TOMBALL INDUSTRIAL DEVELOPMENT CORPORATION (the “TIDC”) to comply with the updated laws, change the name to the TOMBALL ECONOMIC DEVELOPMENT CORPORATION (the “TEDC”), change the registered agent and address, and provide for two-year staggered terms of the Board of Directors, to more accurately reflect the intent and purpose of the TEDC; and

WHEREAS, the City Council has investigated and determined that the aforementioned amendments to the Restated and Amended Articles of Incorporation (Certificate of Formation) comply with its Restated Bylaws, the Development Corporation Act, and the Local Government Code; and

WHEREAS, the City Council has further investigated and determined that the aforementioned amendments to the Restated and Amended Articles of Incorporation (Certificate of Formation) should be adopted and that all other related documents, including the Restated Certificate of Formation with New Amendments (Form 414), shall also be completed and executed to reflect same and shall, as necessary, be filed with the Texas Secretary of State; now therefore,

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

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

<u>Section 2</u>. The Restated and Amended Articles of Incorporation (Certificate of Formation) attached hereto as Exhibit "A" are hereby adopted in accordance with the Development Corporation Act and the Local Government Code. The Mayor and City Secretary of the City of Tomball, Texas are hereby authorized and directed to execute multiple original copies of such Restated and Amended Articles of Incorporation (Certificate of Formation) and to cause same to be filed with the Secretary of State in accordance with the provisions of the Act. Prior to execution, the City Secretary is authorized and directed to conform such Restated Articles of Incorporation to include the names and addresses of those persons presently serving as directors of the corporation.

<u>Section 4</u>. The Corporation is hereby expressly authorized to act on behalf of the City in furtherance of the public purposes of the Act and in conformity with such Amended Articles of Incorporation (Certificate of Formation).

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

<u>Section 6</u>. This resolution shall be effective immediately upon its adoption.

PASSED AND APPROVED on this **<u>5th</u>** day of **<u>March</u>** 2012.

____
Gretchen Fagan, Mayor

ATTEST:

____
Doris Speer, City Secretary

Exhibit “A”

Restated and Amended Articles of Incorporation (Certificate of Formation)

RESTATED AND AMENDED ARTICLES OF INCORPORATION (CERTIFICATE OF FORMATION)

OF

TOMBALL ECONOMIC DEVELOPMENT CORPORATION

AS AMENDED ON _______________, 2012

THE STATE OF TEXAS §
§
COUNTY OF HARRIS §

The Board of Directors of the TOMBALL ECONOMIC DEVELOPMENT CORPORATION ("the Corporation"), a nonprofit industrial development corporation organized under the Development Corporation Act of 1979 (the "Act"), Article 5190.6, V.T.C.S., now codified as Local Government Code Chapter 501 et seq., acting herein with the approval and at the direction of the City Council of the City of Tomball, Texas (the "City"), does hereby make and subscribe these Restated and Amended Articles of Incorporation (hereinafter referenced as the "Certificate of Formation") as follows:

ARTICLE I. NAME.

The name of the Corporation is the "Tomball Economic Development Corporation."

ARTICLE II. AUTHORIZATION.

The Corporation is a nonprofit corporation, and is an industrial development corporation organized under the Development Corporation Act, and governed by Chapter 505 of the Act. In the event of any conflict between any provision of this Certificate of Formation and the Act, then the provisions of the Act shall control.

ARTICLE III. DURATION.

The duration of the Corporation shall be perpetual.

ARTICLE IV. PURPOSE; ISSUANCE OF BONDS.

The Corporation is organized and may issue bonds on behalf of the City, and expend the proceeds of any sales and use tax levied for the benefit of the Corporation for the specific public purpose of the promotion and development of commercial, industrial, and manufacturing enterprises to promote and encourage employment and the public welfare, and to promote or develop new or expanded business enterprises, including public facilities, as enumerated in the Development Corporation Act, pursuant to the Act. The Corporation is authorized to act on behalf of the City as provided in this Certificate of Formation; however, the Corporation is not a political subdivision or political corporation of the State of Texas within the meaning of its constitution and laws, including without limitation Article III, Section 52, of said Constitution, and no agreements, bonds, debts or obligations of the Corporation are or shall ever been deemed to be the agreements, bonds, debts or obligations, or the lending of credit, or a grant of public money or thing of value, of or by the City, or any other political corporation, subdivision or agency of the State of Texas, or a pledge of the faith and credit of any of them.

ARTICLE V. NO MEMBERS; NO STOCK.

The Corporation has no members and is a nonstock corporation.

ARTICLE VI. BYLAWS.

The Corporation's internal affairs shall be regulated by a set of Bylaws, not inconsistent with the laws of this State, which have been approved by the City Council of the City, under whose auspices the Corporation is created.

ARTICLE VII. ADDRESS.

The street address of the registered office of the Corporation is 401 Market Street, Tomball, Texas. The name of its registered agent at that address is Kelly Violette, Executive Director.

ARTICLE VIII. BOARD OF DIRECTORS.

The affairs of the Corporation shall be managed by a Board of Directors consisting of seven directors appointed by the City Council of the City for two year terms of office. The terms of the directors may be staggered by the City. These directors shall be persons who are not employees, officers, or members of the City. The names and street addresses of the current directors are as follows:

Name		Address	Expiration of Term
1.	Vince O'Donnell	401 Market Street Tomball, Texas 77375	May 31, 2012
2.	Gretchen Fagan	401 Market Street Tomball, Texas 77375	May 31, 2013
3.	Bill Sumner Jr.	401 Market Street Tomball, Texas 77375	May 31, 2012
4.	Steven L. Vaughan	401 Market Street Tomball, Texas 77375	May 31, 2013
5.	Richard Bruce	401 Market Street Tomball, Texas 77375	May 31, 2012
6.	Brad Hallmark	401 Market Street Tomball, Texas 77375	May 31, 2013
7.	Lori Klein-Quinn	401 Market Street Tomball, Texas 77375	May 31, 2012

Each director must reside within the City. Directors are removable by the City at any time without cause. The directors shall serve as such without compensation, except that they shall be reimbursed for their actual expenses incurred in the performance of their duties as directors. Any vacancy occurring on the Board of Directors through death, resignation, or otherwise shall be filled by appointment by the City to hold office until the expiration of the term.

ARTICLE IX. COUNCIL APPROVAL.

The City Council has specifically authorized the Corporation by Resolution to act on the City's behalf to further the public purposes of the stated in this Resolution and this Certificate of Formation, and the City has by said Resolution approved this Certificate of Formation.

ARTICLE X. MISCELLANEOUS.

No dividends shall ever be paid by the Corporation and no part of its net earnings remaining after payment of its expenses shall be distributed to or inure to the benefit of its directors or officers or any individual, firm, corporation or association, except that in the event the Board of Directors shall determine that sufficient provision has been made for the full payment of the expenses, bonds and other obligations of the Corporation, then any net earnings of the Corporation thereafter accruing shall be paid to the City. No part of the Corporation's activities shall be carrying on propaganda, or otherwise attempting to influence legislation, and it shall not participate in, or intervene in, (including the publishing or distributing of statements), any political campaign on behalf of or in opposition to any candidate for public office.

ARTICLE XI. DISSOLUTION.

If the Corporation ever should be dissolved when it has, or is entitled to, any interest in any funds or property of any kind, real, personal or mixed, such funds or property or rights thereto shall not be transferred to private ownership, but shall be transferred and delivered to the City after satisfaction or provision for satisfaction of debts and claims.

ARTICLE XII. AMENDMENT.

This Certificate of Formation may at any time, and from time to time, be amended by the City Council of the City of Tomball, Texas, subject to such restrictions and in accordance with such procedures as may be provided in Act.

Signed this ____ day of _____________, 2012.

____
Gretchen Fagan, Mayor
City of Tomball, Texas

ATTEST:

____
Doris Speer, City Secretary

STATE OF TEXAS §
§
COUNTY OF HARRIS §

Before me, a notary public, on this day personally appeared Gretchen Fagan and Doris Speer, known to me to be the persons whose names are subscribed to the foregoing document and, being by me first duly sworn, declared that the statements therein contained are true and correct.

Given under my hand and seal of office this ______ day of ____________, 2012.

____
Notary Public, State of Texas

Form 414—General Information
(Restated Certificate of Formation with New Amendments)

The attached form is drafted to meet minimal statutory filing requirements pursuant to the relevant code provisions. *This form and the information provided are not substitutes for the advice and services of an attorney and tax specialist.*

Commentary

Sections 3.057 to 3.063 of the Texas Business Organizations Code (BOC) govern a restated certificate of formation of a Texas filing entity. A filing entity may restate its certificate of formation to:

(1) state the text of the certificate of formation (as amended, corrected, or restated) to include all previous amendments carried forward; or
(2) state the text of the certificate of formation to include all previous amendments and each new amendment to the certificate being restated.

An amendment effected by a restated certificate of formation must comply with the provisions and procedures governing certificates of amendment in title 1, chapter 3 of the BOC and in the title governing the specific entity.

This form is designed to accompany the restated certificate of formation described in statement 2 shown above. *If the restated certificate of formation does not effect any new amendments to the certificate of formation, use Form 415 rather than this form.*

The text of the restated certificate of formation, which is to be attached as an exhibit, may omit the name and address of each organizer. In the case of a limited partnership the restated certificate must include *the name and address of each general partner.* The restated certificate of formation may also omit any other information that may be omitted under the provisions of the BOC applicable to the filing entity.

Procedural Information by Entity Type

Please note that a document on file with the secretary of state is a public record that is subject to public access and disclosure. Do not include confidential information, such as social security numbers. If updating information for directors or governing persons, use a business or post office box address rather than a residence address if privacy concerns are an issue.

For-profit or Professional Corporation

Sections 21.052 to 21.055 of the BOC set forth the procedures for amending the certificate of formation for a for-profit corporation or professional corporation. The board of directors adopts a resolution setting forth the proposed amendment and directing that it be submitted to a vote at a meeting of the shareholders. Written or printed notice setting forth the proposed amendment is given to each shareholder of record entitled to vote not later than the 10th day and not earlier than the 60th day before the date of the meeting, either personally, by electronic transmission, or by mail. (Please refer to chapters 6 and 21 of the BOC for further information.)

Pursuant to section 21.364, the proposed amendment is adopted on receiving the affirmative vote of two-thirds of the outstanding shares entitled to vote. If any class or series of shares is entitled to vote as a class, the amendment must also receive the affirmative vote of two-thirds of the shares within each class or series that is entitled to vote as a class. Any number of amendments may be submitted to the shareholders and voted on at one meeting. Alternatively, amendments may be adopted by unanimous written consent of the shareholders.

If no shares have been issued, the amendment is adopted by a resolution of the board of directors and the provisions for adoption by shareholders do not apply.

In addition to the provisions authorized or required by section 3.059 of the BOC, a restated certificate of formation may update the current number of directors and the names and addresses of the persons serving as directors.

An officer must sign the restated certificate of formation. If no shares have been issued and the amendment was adopted by the board of directors, a majority of the directors may sign the restated certificate of formation.

Professional Association

The provisions of chapters 20 and 21 of the BOC apply to a professional association, unless there is a conflict with a specific provision in title 7. A professional association may amend its certificate of formation by following the procedures set forth in its certificate of formation. If the certificate of formation does not provide a procedure for amending the certificate, the certificate of formation is amended by a two-thirds vote of its members.

In addition to the provisions authorized or required by section 3.059 of the BOC, a restated certificate of formation may update the current number of directors or executive committee members and the names and addresses of each person serving on the board or committee.

An officer must sign the restated certificate of formation.

Nonprofit Corporation

Sections 22.105 to 22.108 of the BOC set forth the procedures for amending the certificate of formation for a nonprofit corporation. If the corporation has members with voting rights, the board of directors adopts a resolution setting forth the proposed amendment and directing that it be submitted to a vote at a meeting of the members, which may be either an annual or special meeting. The proposed amendment is adopted on receiving two-thirds of the votes that members present, in person or by proxy, were entitled to cast (BOC § 22.164). Any number of amendments may be submitted to the members and voted on at one meeting. Alternatively, the amendment may be adopted without a meeting if a written consent, setting forth the action to be taken, is signed by all the members entitled to vote. (Please refer to chapters 6 and 22 of the BOC for further information.)

In addition to the provisions authorized or required by section 3.059, a restated certificate of formation may update the current number of directors and the names and addresses of the persons serving as directors. A nonprofit corporation that is a church in which management is vested in its members under section 22.202 of the BOC must contain a statement to that effect in any restated certificate of formation if the original certificate of formation was not required to contain such statement.

If the corporation has no members or no members with voting rights, an amendment is adopted by a majority vote of the board of directors (BOC § 22.107).

An officer of the nonprofit corporation must sign the restated certificate of formation.

Cooperative Association

Section 251.052 of the BOC sets forth the procedure for amending the certificate of formation of a cooperative association. The board of directors may propose an amendment to the certificate of formation by a two-thirds vote of the board members. Notice of the meeting to consider the proposed amendment must be provided to the members no later than the 31st day before the date of the meeting. To be approved, an amendment must be adopted by the affirmative vote of two-thirds of the members voting on the amendment. The cooperative association must file a certificate of amendment with the secretary of state within thirty (30) days after its adoption by the members.

An officer of the cooperative association must sign the restated certificate of formation.

Limited Liability Company or Professional Limited Liability Company

Chapter 101 of the BOC governs limited liability companies. Pursuant to section 101.356(d), an amendment to the certificate of formation must be approved by the affirmative vote of all of the company's members. If the company has managers, but has yet to admit its initial member, the amendment would be approved by the affirmative vote of the majority of all the company's managers as permitted by section 101.356(e).

If the limited liability company has managers, an authorized manager must sign the restated certificate of formation. If the company does not have managers and is managed by its members, an authorized managing-member must sign the restated certificate of formation.

Limited Partnership

Chapter 153 of the BOC governs limited partnerships. A certificate of limited partnership may be amended at any time for any proper purpose determined by the general partners. However, section 153.051 *requires* a certificate of amendment when there is:

(1) a change of name of the partnership;
(2) an admission of a new general partner; or
(3) the withdrawal of a general partner.

A restated certificate of formation would be approved in the same manner as an amendment to the certificate of formation. The name and address of each general partner must be included in the restated certificate of formation.

Pursuant to section 153.553, at least one general partner must sign the restated certificate of formation. In addition, each general partner designated as a new general partner also must sign the restated certificate of formation. A withdrawing general partner need not sign. The execution of a certificate by a general partner is an oath or affirmation, under a penalty of perjury, that to the best of the executing party's knowledge and belief, the facts contained in the certificate are true and correct (BOC § 153.553(c)).

Instructions for Form

- **Entity Information:** The restated certificate of formation must contain the legal name of the entity. *If the restated certificate of formation effects further amendments that change the name of the entity, the name as it currently appears on the records of the secretary of state should be stated.* It is recommended that the entity type, date of formation and file number assigned by the secretary of state be provided to facilitate processing of the document.

- **Amendments to Certificate of Formation:** A filing entity may amend its certificate of formation in as many respects as may be desired, *as long as the certificate as amended contains only such provisions as could have been included in the original certificate of formation*. A restated certificate of formation that makes further amendments to the certificate of formation must include an identification by reference or description of each added, altered, or deleted provision. Use the check boxes provided for purposes of identifying the provisions that are to be amended. The full text of the provisions as added or altered need not be stated on Form 414. The full text of the amended and altered provisions will be contained in the Restated Certificate of Formation attached to this form as an exhibit.

  Amendment to Entity Name: If the restated certificate of formation changes the name of the entity, the new entity name will be checked for availability upon submission. If the new name of the entity is the same as, deceptively similar to, or similar to the name of an existing domestic or foreign filing entity, or any name reservation or name registration filed with the secretary of state, the document cannot be filed. The administrative rules adopted for determining entity name availability (Texas Administrative Code, title 1, part 4, chapter 79, subchapter C) may be viewed at *www.sos.state.tx.us/tac/index.shtml.* If you wish the secretary of state to provide a preliminary determination on name availability, you may call (512) 463-5555, dial 7-1-1 for relay services, or e-mail your name inquiry to *corpinfo@sos.state.tx.us*. <u>A final determination cannot be made until the document is received and processed by the secretary of state. Do not make financial expenditures or execute documents based on a preliminary clearance. Also note that the preclearance of a name or the issuance of a certificate under a name does not authorize the use of a name in violation of another person's rights to the name.</u>

  Amendment to Registered Agent: Effective January 1, 2010, a person designated as the registered agent of an entity must have consented, either in a written or electronic form, to serve as the registered agent of the entity. Although the consent of the person designated as registered agent is required, a copy of the written or electronic consent need not be submitted with a restated certificate of formation that changes the name of the registered agent. *The liabilities and penalties imposed by sections 4.007 and 4.008 of the BOC apply with respect to a false statement in a filing instrument that names a person as the registered agent of an entity without that person's consent.* (BOC § 5.207)

  Amendment to Registered Office: The registered office address must be located at a street address where service of process may be personally served on the entity's registered agent during normal business hours. Although the registered office is not required to be the entity's principal place of business, the registered office may not be solely a mailbox service or telephone answering service (BOC § 5.201).

- **Other Changes:** This section of the form contains three text areas that may be used to identify changes to provisions in the certificate of formation other than the provisions specifically described next to the check boxes in the section under "Identification of New Amendments." Use the text areas provided to identify by reference or description those provisions to be added or altered or to identify the provisions to be deleted.

  ➢ **Add:** If the amendment is an addition to the certificate of formation, check the "Add" statement and provide an identification or reference for the added provision.

- **Alter:** If the amendment alters or changes an existing article or provision in the certificate of formation, check the "Alter" statement and provide an identification of the article or paragraph number or description of the altered provision.
- **Delete:** If the amendment deletes an existing article or provision in its entirety, check the "Delete" statement and provide a reference to the article number or provision being deleted.

The full text of the provisions as added or altered need not be stated on Form 414. The full text of the amended and altered provisions will be contained in the Restated Certificate of Formation attached to this form as an exhibit.

- **Statement of Approval:** As required by section 3.059 of the BOC, the form includes a statement regarding the approval of the amendments made to the certificate of formation. In general, amendments are adopted and approved in the manner set forth in the title of the BOC governing the entity. General procedural information relevant to each filing entity that may use this form precedes the instructions for completing the form.

- **Required Statements:** This form is designed to provide the statements that are to accompany a restated certificate of formation that makes new amendments to the certificate of formation (BOC § 3.059(d)). The text of the restated certificate of formation, which should be attached as an exhibit to this form, should be identified as "Restated Certificate of Formation of [Name of Entity]."

- **Effectiveness of Filing:** A restated certificate of formation becomes effective when filed by the secretary of state (option A). However, pursuant to sections 4.052 and 4.053 of the BOC the effectiveness of the instrument may be delayed to a date not more than ninety (90) days from the date the instrument is signed (option B). The effectiveness of the instrument also may be delayed on the occurrence of a future event or fact, other than the passage of time (option C). If option C is selected, you must state the manner in which the event or fact will cause the instrument to take effect and the date of the 90th day after the date the instrument is signed. In order for the certificate to take effect under option C, the entity must, within ninety (90) days of the filing of the certificate, file a statement with the secretary of state regarding the event or fact pursuant to section 4.055 of the BOC.

  On the filing of a document with a delayed effective date or condition, the computer records of the secretary of state will be changed to show the filing of the document, the date of the filing, and the future date on which the document will be effective or evidence that the effectiveness was conditioned on the occurrence of a future event or fact.

- **Execution:** Pursuant to section 4.001 of the BOC, the restated certificate of formation must be signed by a person authorized by the BOC to act on behalf of the entity in regard to the filing instrument. Please refer to the procedural information relating to the specific entity type for further information on execution requirements. Generally, a governing person or managerial official of the entity signs a filing instrument.

  The restated certificate of formation need not be notarized. However, before signing, please read the statements on this form carefully. The designation or appointment of a person as the registered agent by a managerial official is an affirmation by that official that the person named in the instrument has consented to serve as registered agent. (BOC § 5.2011, effective January 1, 2010)

  A person commits an offense under section 4.008 of the BOC if the person signs or directs the filing of a filing instrument the person knows is materially false with the intent that the instrument be *delivered to the secretary of state for filing. The offense is a Class A misdemeanor unless the person's intent is to harm or defraud another, in which case the offense is a state jail felony.*

- **Payment and Delivery Instructions**: The filing fee for a restated certificate of formation is **$300**, unless the filing entity is a nonprofit corporation or a cooperative association. The filing fee for a restated certificate of formation for a nonprofit corporation or a cooperative association is **$50**. Fees may be paid by personal checks, money orders, LegalEase debit cards, or American Express, Discover, MasterCard, and Visa credit cards. Checks or money orders must be payable through a U.S. bank or financial institution and made payable to the secretary of state. Fees paid by credit card are subject to a statutorily authorized convenience fee of 2.7 percent of the total fees.

  Submit the completed form in duplicate along with the filing fee. The form may be mailed to P.O. Box 13697, Austin, Texas 78711-3697; faxed to (512) 463-5709; or delivered to the James Earl Rudder Office Building, 1019 Brazos, Austin, Texas 78701. If a document is transmitted by fax, credit card information must accompany the transmission (Form 807). On filing the document, the secretary of state will return the appropriate evidence of filing to the submitter together with a file-stamped copy of the document, if a duplicate copy was provided as instructed.

  Revised 05/11

Form 414
(Revised 05/11)

Submit in duplicate to:
Secretary of State
P.O. Box 13697
Austin, TX 78711-3697
512 463-5555
FAX: 512/463-5709
Filing Fee: See instructions

Restated Certificate of Formation With New Amendments

This space reserved for office use.

Entity Information

The name of the filing entity is:

TOMBALL INDUSTRIAL DEVELOPMENT CORPORATION

State the name of the entity as currently shown in the records of the secretary of state. If the amendment changes the name of the entity, state the old name and not the new name.

The filing entity is a: (Select the appropriate entity type below.)

☐ For-profit Corporation
☒ Nonprofit Corporation
☐ Cooperative Association
☐ Limited Liability Company
☐ Professional Corporation
☐ Professional Limited Liability Company
☐ Professional Association
☐ Limited Partnership

The file number issued to the filing entity by the secretary of state is: 514295-1

The date of formation of the filing entity is: November 28, 1994

Amendments to Certificate of Formation

This restated certificate of formation makes new amendments to the certificate of formation. Provided below is an identification by reference or description of each added, altered, or deleted provision.

Identification of New Amendments

(Indicate the changes that have been made by checking the appropriate box or boxes.)

☒ The entity name has been amended.

☒ The registered agent name or registered office address has changed.

☐ The purpose of the entity has been amended.

☐ The period of duration of the entity has been amended.

☐ A general partner has withdrawn or been admitted to the limited partnership.

Identification of New Amendments (continued)

(Indicate the changes that have been made by checking and completing the appropriate box or boxes.)

☒ **Other changes**. The certificate of formation has been amended as follows:

☐ **Add** Each of the following provisions is added to the certificate of formation. The identification or reference of each added provision is set forth below. The full text of each added provision is contained in the amended and restated certificate of formation attached hereto.

☒ **Alter** The following identified provisions of the certificate of formation are amended. The full text of each amended provision is contained in the amended and restated certificate of formation attached hereto.

Article I (as identified above under Identification of New Amendments) - entity named has changed to "Tomball Economic Development Corporation."

Article VII (as identified above under Identification of New Amendments) - The registered agent name and registered office address have both changed.

Article VIII - The Board of Directors of the Tomball Economic Development Corporation shall serve two-year staggered terms.

There are no other substantive changes; however, the placement of particular information and numbering of specific Articles within the Restated and Amended Articles of Incorporation (Certificate of Formation) have been slightly rearranged.

☐ **Delete** Each of the provisions identified below are deleted from the certificate of formation.

Statement of Approval

Each new amendment has been made in accordance with the provisions of the Texas Business Organizations Code. The amendments to the certificate of formation and the restated certificate of formation have been approved in the manner required by the Code and by the governing documents of the entity.

Required Statements

The restated certificate of formation, which is attached to this form, accurately states the text of the certificate of formation being restated and each amendment to the certificate of formation being restated that is in effect, and as further amended by the restated certificate of formation. The attached restated certificate of formation does not contain any other change in the certificate of formation being restated except for the information permitted to be omitted by the provisions of the Texas Business Organizations Code applicable to the filing entity.

Effectiveness of Filing (Select either A, B, or C.)

A. ☒ This document becomes effective when the document is filed by the secretary of state.

B. ☐ This document becomes effective at a later date, which is not more than ninety (90) days from the date of signing. The delayed effective date is: ______________________

C. ☐ This document takes effect upon the occurrence of the future event or fact, other than the passage of time. The 90th day after the date of signing is: ______________________

The following event or fact will cause the document to take effect in the manner described below:

By adoption of Resolution of the City Council of the City of Tomball, Texas.

Execution

The undersigned affirms that the person designated as registered agent in the restated certificate of formation has consented to the appointment. The undersigned signs this document subject to the penalties imposed by law for the submission of a materially false or fraudulent instrument and certifies under penalty of perjury that the undersigned is authorized under the provisions of law governing the entity to execute the filing instrument.

Date: ____________________

By: ______________________________

____
Signature of authorized person

Gretchen Fagan, Mayor of the City of Tomball, Texas
Printed or typed name of authorized person (see instructions)

Attach the text of the amended and restated certificate of formation to the completed statement form. Identify the attachment as "Restated Certificate of Formation of [Name of Entity]."

The State of Texas

SECRETARY OF STATE

**CERTIFICATE OF RESTATED ARTICLES
OF INCORPORATION
OF**

**TOMBALL INDUSTRIAL DEVELOPMENT CORPORATION
CHARTER NO. 514295-1**

The undersigned, as Secretary of State of Texas, hereby certifies that Restated Articles of Incorporation of the above corporation duly executed pursuant to the provisions of the Texas Non-Profit Corporation Act, have been received in this office and are found to conform to law.

ACCORDINGLY the undersigned, as Secretary of State, and by virtue of the authority vested in the Secretary by law, hereby issues this Certificate of Restated Articles of Incorporation and attaches hereto a copy of the Restated Articles of Incorporation.

Dated: November 28, 1994

THE STATE OF TEXAS

pac

Secretary of State

FILED
In the Office of the
Secretary of State of Texas

NOV 28 1994

Corporations Section

RESOLUTION NO. 94-14

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF TOMBALL, TEXAS, AMENDING AND RESTATING THE ARTICLES OF INCORPORATION OF THE TOMBALL INDUSTRIAL DEVELOPMENT CORPORATION; AUTHORIZING AND DIRECTING THE EXECUTION AND FILING OF SUCH AMENDED AND RESTATED ARTICLES BY THE MAYOR AND CITY SECRETARY; AUTHORIZING THE CORPORATION TO ACT ON BEHALF OF THE CITY FOR CERTAIN PURPOSES; PROVIDING FOR THE EFFECTIVE DATE AND OTHER RELATED MATTERS.

* * * * *

WHEREAS, the TOMBALL INDUSTRIAL DEVELOPMENT CORPORATION ("the corporation") is an industrial development corporation formed under the auspices of the City of Tomball, Texas, pursuant to The Development Corporation Act of 1979, as amended ("the Act"); and

WHEREAS, subsequent to the formation of such corporation, the qualified voters of the City did authorize the imposition of a sales and use tax at the rate of one-half of one percent to be imposed within the City in accordance with the provisions of Section 4B of the Act; and

WHEREAS, the governing body of the City, under whose auspices the corporation was created, is authorized to amend and restate the Articles of Incorporation in order to satisfy the requirements of Section 4B of the Act and to empower the corporation to receive and utilize the proceeds of such tax in conformity with Section 4B of the Act; NOW THEREFORE

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

Section 1. Pursuant to Sec. 17(b) of the Development Corporation Act of 1979, Article II of the Articles of Incorporation of the Tomball Industrial Development Corporation is amended by insertion of the following language in underline text:

{08/31/94}

ARTICLE II

The Corporation is a nonprofit corporation, and is an industrial development corporation organized under the Development Corporation Act of 1979, and governed by Sec. 4B of the Act. In the event of any conflict between any provision of these Articles of Incorporation and the Act, then the provisions of the Act shall control.

Section 2. Pursuant to Sec. 17(b) of the Development Corporation Act of 1979, Article IV of the Articles of Incorporation of the Tomball Industrial Development Corporation is amended by deletion of the following language in strikeout text and insertion of the language in underline text:

ARTICLE IV

The Corporation is organized and may issue bonds on behalf of the ~~Unit~~ City, and expend the proceeds of any sales and use tax levied for the benefit of the Corporation for the specific public purpose of the promotion and development of commercial, industrial, and manufacturing enterprises to promote and encourage employment and the public welfare, and to promote or develop new or expanded business enterprises, including public facilities, as enumerated in the Act, pursuant to Sec. 4B of the Development Corporation Act of 1979. The Corporation is authorized to act on behalf of the City as provided in these Articles of Incorporation; however, the Corporation is not a political subdivision or political corporation of the State of Texas within the meaning of its constitution and laws, including without limitation Article III, Section 52, of said Constitution, and no agreements, bonds, debts or obligations of the Corporation are or shall ever been deemed to be the agreements, bonds, debts or obligations, or the lending of credit, or a grant of public money or thing of value, of or by the City, or any other political corporation, subdivision or agency of the State of Texas, or a pledge of the faith and credit of any of them.

Section 3. Pursuant to Sec. 17(b) of the Development Corporation Act of 1979, Article VII of the Articles of Incorporation of the Tomball Industrial Development Corporation is amended by insertion of the following language in strikeout text and insertion of the language in underline text:

ARTICLE VII

The street address of the ~~initial~~ present registered office of the Corporation is 401 W. Market Street, Suite C, Tomball, Texas, and the name of its ~~initial~~ present registered agent at such address is ~~Shirley England, City Secretary, or her successor~~ Warren Driver, City Manager.

Section 4. Pursuant to Sec. 17(b) of the Development Corporation Act of 1979, Article VIII of the Articles of Incorporation of the Tomball Industrial Development Corporation is amended by deletion of the following language in strikeout text and insertion of the language in underline text:

ARTICLE VIII

The affairs of the Corporation shall be managed by a Board of Directors consisting of seven (7) directors appointed by the Governing Body of the City for two (2) year terms of office. The terms of the directors may be staggered by the Governing Body. Three (3) directors shall be persons who are not employees, officers, or members of the Governing Body of the City. ~~The number of directors constituting the initial Board of Directors of the Corporation is five (5), and~~ The names and street addresses of the persons who ~~are to~~ presently serve as ~~the initial~~ directors and the dates of expiration of their present terms as directors are as follows:

Name	Address	Expiration of Term
________	________ ________	May 2, 1996
________	________ ________	May 2, 1995
________	________ ________	May 2, 1996
________	________ ________	May 2, 1995
________	________ ________	May 2, 1996
________	________ ________	May 2, 1996
________	________ ________	May 2, 1995

Each director must reside within the City. Directors are removable by the Governing Body of the City at any time without cause. The directors shall serve as such without compensation, except that they shall be reimbursed for their actual expenses incurred in the performance of their duties as directors. Any vacancy occurring on the Board of Directors through death, resignation, or otherwise shall be filled by appointment by the Governing Body of the City to hold office until the expiration of the term.

Section 5. Pursuant to Sec. 17(b) of the Development Corporation Act of 1979, Article IX of the Articles of Incorporation of the Tomball Industrial Development Corporation is deleted in its entirety.

Section 6. Pursuant to Sec. 17(b) of the Development Corporation Act of 1979, Article X of the Articles of Incorporation of the Tomball Industrial Development Corporation is renumbered to be Article IX, and said Article IX is amended by deletion of the following language in strikeout text and insertion of the language in underline text:

ARTICLE ~~X~~ IX

The Governing Body of the ~~Unit~~ City has specifically authorized the Corporation by Resolution to act on its behalf to further the ~~specific~~ public purposes ~~of the promotion and development of commercial, industrial, and manufacturing enterprises to promote and encourage employment and the public welfare~~ stated in this Resolution and these Articles of Incorporation, and the City has by said Resolution approved these Articles of Incorporation.

Section 7. Pursuant to Sec. 17(b) of the Development Corporation Act of 1979, the following Article X of the Articles of Incorporation of the Tomball Industrial Development Corporation is added as shown below in underline text:

ARTICLE X

No dividends shall ever be paid by the Corporation and no part of its net earnings remaining after payment of its expenses shall be distributed to or inure to the benefit of its directors or officers or any individual, firm, corporation or association, except that in the event the Board of Directors shall determine that sufficient provision has been made for the full payment of the expenses, bonds and other obligations of the Corporation, then any net earnings of the Corporation thereafter accruing shall be paid to the City. No part of the Corporation's activities shall be carrying on propaganda, or otherwise attempting to influence legislation, and it shall not participate in, or intervene in, (including the publishing or distributing of statements), any political campaign on behalf of or in opposition to any candidate for public office.

Section 8. Pursuant to Sec. 17(b) of the Development Corporation Act of 1979, the following new Article XI of the Articles of Incorporation of the Tomball Industrial Development Corporation is added as shown below in underline text:

ARTICLE XI

If the Corporation ever should be dissolved when it has, or is entitled to, any interest in any funds or property of any kind, real, personal or mixed, such funds or property or rights thereto shall not be transferred to private ownership, but shall be transferred and delivered to the City after satisfaction or provision for satisfaction of debts and claims.

Section 9. Pursuant to Sec. 17(b) of the Development Corporation Act of 1979, Article X of the Articles of Incorporation of the Tomball Industrial Development Corporation is renumbered to be Article XII, and said Article XII is amended by deletion of the following language in strikeout text and insertion of the language in underline text:

ARTICLE XII

These Articles of Incorporation may at any time and from time to time be amended by the ~~Board of Directors or by~~ Governing Body, subject to such restrictions and in accordance with such procedures as may be provided in the ~~Bylaws of the Corporation; so long as the Articles of Incorporation as amended contain only such provisions as are lawful under the~~ Act.

Section 10. The Restated Articles of Incorporation of Tomball Industrial Development Corporation, the form of which is attached hereto as *Exhibit "A"*, are hereby approved and adopted in accordance with the provision of Sec. 20 of the Act, and the Mayor and City Secretary of the City of Tomball, Texas, are hereby authorized and directed to execute multiple original copies of such Restated Articles of Incorporation and to cause same to be filed with the Secretary of State in accordance with the provisions of the Act. Prior to execution, the City Secretary is authorized and directed to conform such Restated Articles of Incorporation to include the names and addresses of those persons presently serving as directors of the corporation.

Section 11. The corporation is hereby expressly authorized to act on behalf of the City in furtherance of the public purposes of the Act and in conformity with such Restated Articles of Incorporation.

Section 12. This resolution shall be effective immediately upon its adoption.

PASSED, APPROVED, AND RESOLVED this 19th day of September, 1994.

H.G. (Hap) Harrington, Mayor

ATTEST:

Mary Reagan, City Secretary

APPROVED AS TO FORM:

Mario L. Dell'Osso
Olson & Olson
Attorneys for the City of Tomball

{08/31/94}

RESTATED ARTICLES OF INCORPORATION

OF

TOMBALL INDUSTRIAL DEVELOPMENT CORPORATION

THE STATE OF TEXAS §
§
COUNTY OF HARRIS §

WE, **H.G. "HAP" HARRINGTON** and **MARY REAGAN**, being the presiding officer and secretary of the Governing Body of the City of Tomball, Texas, (the "City"), the unit of government under whose auspices was heretofore created the **TOMBALL INDUSTRIAL DEVELOPMENT CORPORATION**, ("the Corporation"), a nonprofit industrial development corporation organized under Article 5190.6, V.T.C.S. ("The Development Corporation Act of 1979"), acting herein with the approval and at the direction of the Governing Body of the City, do hereby make and subscribe these Restated Articles of Incorporation as follows:

ARTICLE ONE

Pursuant to Sec. 17(b) and Sec. 20 of the Development Corporation Act of 1979, the Governing Body of the City of Tomball, Texas, hereby adopts Restated Articles of Incorporation for the **TOMBALL INDUSTRIAL DEVELOPMENT CORPORATION** which accurately copy the Articles of Incorporation and all amendments thereto that are in effect to date and as further amended by such Restated Articles of Incorporation as hereinafter set forth and which contain no other change in any provision thereof except that the number, names, and addresses of the persons presently serving as directors of the corporation, as well as the name of the present registered agent of the Corporation have been inserted in lieu of similar information concerning the initial Board of Directors and registered agent, and the names and addresses of the incorporators have been omitted.

ARTICLE TWO

The following amendments to the Articles of Incorporation were adopted by the Governing Body of the City on September 6, 1994.

2.1. Pursuant to Sec. 17(b) of the Development Corporation Act of 1979, Article II of the Articles of Incorporation of the Tomball Industrial Development Corporation was amended by insertion of the following language in underline text:

ARTICLE II

The Corporation is a nonprofit corporation, <u>and is an industrial development corporation organized under the Development Corporation Act of 1979, and governed by Sec. 4B of the Act. In the event of any conflict between any provision of these Articles of Incorporation and the Act, then the provisions of the Act shall control</u>.

2.2. Pursuant to Sec. 17(b) of the Development Corporation Act of 1979, Article IV of the Articles of Incorporation of the Tomball Industrial Development Corporation was amended by deletion of the following language in strikeout text and insertion of the language in underline text:

ARTICLE IV

The Corporation is organized and may issue bonds on behalf of the ~~Unit~~ City, <u>and expend the proceeds of any sales and use tax levied for the benefit of the Corporation</u> for the specific public purpose of the promotion and development of commercial, industrial, and manufacturing enterprises to promote and encourage employment and the public welfare, <u>and to promote or develop new or expanded business enterprises, including public facilities, as enumerated in the Act, pursuant to Sec. 4B of the Development Corporation Act of 1979</u>. <u>The Corporation is authorized to act on behalf of the City as provided in these Articles of Incorporation; however, the Corporation is not a political subdivision or political corporation of the State of Texas within the meaning of its constitution and laws, including without limitation Article III, Section 52, of said Constitution, and no agreements, bonds, debts or obligations of the Corporation are or shall ever been deemed to be the agreements, bonds, debts or obligations, or the lending of credit, or a grant of public money or thing of value, of or by the City, or any other political corporation, subdivision or agency of the State of Texas, or a pledge of the faith and credit of any of them.</u>

2.3. Pursuant to Sec. 17(b) of the Development Corporation Act of 1979, Article VII of the Articles of Incorporation of the Tomball Industrial Development Corporation was amended by insertion of the following language in strikeout text and insertion of the language in underline text:

ARTICLE VII

The street address of the ~~initial~~ <u>present</u> registered office of the Corporation is 401 W. Market Street, <u>Suite C</u>, Tomball, Texas, and the name of its ~~initial~~ <u>present</u> registered agent at such address is ~~Shirley England, City Secretary, or her successor~~ <u>Warren Driver, City Manager.</u>

2.4. Pursuant to Sec. 17(b) of the Development Corporation Act of 1979, Article VIII of the Articles of Incorporation of the Tomball Industrial Development Corporation

was amended by deletion of the following language in strikeout text and insertion of the language in underline text:

ARTICLE VIII

The affairs of the Corporation shall be managed by a Board of Directors consisting of seven (7) directors appointed by the Governing Body of the City for two (2) year terms of office. The terms of the directors may be staggered by the Governing Body. Three (3) directors shall be persons who are not employees, officers, or members of the Governing Body of the City. ~~The number of directors constituting the initial Board of Directors of the Corporation is five (5), and~~ The names and street addresses of the persons who ~~are to~~ presently serve as ~~the initial~~ directors and the dates of expiration of their present terms as directors are as follows:

Name	Address	Expiration of Term
Larry Doerre	506 N. Peach Tomball, Texas 77375	May 16, 1996
H.G. "Hap" Harrington	619 Magnolia Tomball, Texas 77375	May 2, 1995
Stephen Hohl	31111 Alice Tomball, Texas 77375	May 2, 1996
Earle Oldham	610 Inwood Tomball, Texas 77375	May 2, 1995
Steven Vaughan	13322 Wildwood Tomball, Texas 77375	May 2, 1996
Mary Lu Wiley	14120 Carnes Wood Tomball, Texas 77375	May 2, 1996

Each director must reside within the City. Directors are removable by the Governing Body of the City at any time without cause. The directors shall serve as such without compensation, except that they shall be reimbursed for their actual expenses incurred in the performance of their duties as directors. Any vacancy occurring on the Board of Directors through death, resignation, or otherwise shall be filled by appointment by the Governing Body of the City to hold office until the expiration of the term.

2.5 . Pursuant to Sec. 17(b) of the Development Corporation Act of 1979, Article IX of the Articles of Incorporation of the Tomball Industrial Development Corporation was deleted in its entirety.

2.6. Pursuant to Sec. 17(b) of the Development Corporation Act of 1979, Article X of the Articles of Incorporation of the Tomball Industrial Development Corporation was renumbered to be Article IX, and said Article IX was amended by deletion of the following language in strikeout text and insertion of the language in underline text:

ARTICLE ~~X~~ IX

The Governing Body of the ~~Unit~~ City has specifically authorized the Corporation by Resolution to act on its behalf to further the ~~specific~~ public purposes ~~of the promotion and development of commercial, industrial, and manufacturing enterprises to promote and encourage employment and the public welfare~~ stated in this Resolution and these Articles of Incorporation, and the City has by said Resolution approved these Articles of Incorporation.

2.7. Pursuant to Sec. 17(b) of the Development Corporation Act of 1979, the following new Article X of the Articles of Incorporation of the Tomball Industrial Development Corporation was added as shown below in underline text:

ARTICLE X

<u>No dividends shall ever be paid by the Corporation and no part of its net earnings remaining after payment of its expenses shall be distributed to or inure to the benefit of its directors or officers or any individual, firm, corporation or association, except that in the event the Board of Directors shall determine that sufficient provision has been made for the full payment of the expenses, bonds and other obligations of the Corporation, then any net earnings of the Corporation thereafter accruing shall be paid to the City. No part of the Corporation's activities shall be carrying on propaganda, or otherwise attempting to influence legislation, and it shall not participate in, or intervene in, (including the publishing or distributing of statements), any political campaign on behalf of or in opposition to any candidate for public office.</u>

2.8. Pursuant to Sec. 17(b) of the Development Corporation Act of 1979, the following new Article XI of the Articles of Incorporation of the Tomball Industrial Development Corporation was added as shown below in underline text:

ARTICLE XI

<u>If the Corporation ever should be dissolved when it has, or is entitled to, any interest in any funds or property of any kind, real, personal or mixed, such funds or property or rights thereto shall not be transferred to private ownership, but shall be transferred and delivered to the City after satisfaction or provision for satisfaction of debts and claims.</u>

2.9. Pursuant to Sec. 17(b) of the Development Corporation Act of 1979, the original Article X of the Articles of Incorporation of the Tomball Industrial Development Corporation is renumbered to be Article XII, and said Article XII was amended by deletion of the following language in strikeout text and insertion of the language in underline text:

ARTICLE XII

These Articles of Incorporation may at any time and from time to time be amended by the ~~Board of Directors or by~~ Governing Body, subject to such restrictions and in accordance with such procedures as may be provided in the ~~Bylaws of the Corporation; so long as the Articles of Incorporation as amended contain only such provisions as are lawful under the~~ Act.

ARTICLE THREE

The Articles of Incorporation and all amendments and supplements thereto are hereby superseded by the following Restated Articles of Incorporation which accurately copy the entire text thereof and as amended as above set forth.

ARTICLE I

The name of the Corporation is "TOMBALL INDUSTRIAL DEVELOPMENT CORPORATION".

ARTICLE II

The Corporation is a nonprofit corporation, and is an industrial development corporation organized under the Development Corporation Act of 1979, and governed by Sec. 4B of the Act. In the event of any conflict between any provision of these Articles of Incorporation and the Act, then the provisions of the Act shall control.

ARTICLE III

The duration of the Corporation shall be perpetual.

ARTICLE IV

The Corporation is organized and may issue bonds on behalf of the City, and expend the proceeds of any sales and use tax levied for the benefit of the Corporation for the specific public purpose of the promotion and development of commercial, industrial and manufacturing enterprises to promote and encourage employment and the public welfare, and to promote or develop new or expanded business enterprises, including public facilities, as enumerated in the Act, pursuant to Sec. 4B of the Development Corporation Act of 1979. The Corporation is authorized to act on behalf of the City as provided in these Articles of Incorporation; however, the Corporation is not a political subdivision or political corporation of the State of Texas within the meaning of its constitution and laws, including without limitation Article III, Section 52, of said Constitution, and no agreements, bonds, debts or obligations of the Corporation are or shall ever been deemed to be the agreements, bonds, debts or obligations, or the lending of credit, or a grant of public money or thing of value, of or by the City, or any other political corporation, subdivision or agency of the State of Texas, or a pledge of the faith and credit of any of them.

ARTICLE V

The Corporation has no members and is a nonstock corporation.

ARTICLE VI

The Corporation's internal affairs shall be regulated by a set of Bylaws, not inconsistent with the laws of this State, which have been approved by the City Council of the Unit (the

"Governing Body"), under whose auspices the Corporation is created.

ARTICLE VII

The street address of the present registered office of the Corporation is 401 W. Market Street, Suite C, Tomball, Texas, and the name of its present registered agent at such address is Warren Driver, City Manager.

ARTICLE VIII

The affairs of the Corporation shall be managed by a Board of Directors consisting of seven (7) directors appointed by the Governing Body of the City for two (2) year terms of office. The terms of the directors may be staggered by the Governing Body. Three (3) directors shall be persons who are not employees, officers, or members of the Governing Body of the City. The names and street addresses of the persons who presently serve as directors and the dates of expiration of their present terms as directors, are as follows:

Name	Address	Expiration of Term
Larry Doerre	506 N. Peach Tomball, Texas 77375	May 16, 1996
H.G. "Hap" Harrington	619 Magnolia Tomball, Texas 77375	May 2, 1995
Stephen Hohl	31111 Alice Tomball, Texas 77375	May 2, 1996
Earle Oldham	610 Inwood Tomball, Texas 77375	May 2, 1995
Steven Vaughan	13322 Wildwood Tomball, Texas 77375	May 2, 1996

Mary Lu Wiley	14120 Carnes Wood Tomball, Texas 77375	May 2, 1996
Bill Wilson	31222 Stella Lane Tomball, Texas 77375	May 2, 1995

Each director must reside within the City. Directors are removable by the Governing Body of the City at any time without cause. The directors shall serve as such without compensation except that they shall be reimbursed for their actual expenses incurred in the performance of their duties as directors. Any vacancy occurring on the Board of Directors through death, resignation or otherwise shall be filled by appointment by the Governing Body of the City to hold office until the expiration of the term.

ARTICLE IX

The City has specifically authorized the Corporation by Resolution to act on its behalf to further the public purposes stated in said Resolution and these Articles of Incorporation, and the City has by said Resolution approved these Articles of Incorporation.

ARTICLE X

No dividends shall ever be paid by the Corporation and no part of its net earnings remaining after payment of its expenses shall be distributed to or inure to the benefit of its directors or officers or any individual, firm, corporation or association, except that in the event the Board of Directors shall determine that sufficient provision has been made for the full payment of the expenses, bonds and other obligations of the Corporation, then any net earnings of the Corporation thereafter accruing shall be paid to the City. No part of the Corporation's activities shall be carrying on propaganda, or otherwise attempting to influence legislation, and it shall not participate in, or intervene in, (including the publishing or distributing of statements), any political campaign on behalf of or in opposition to any candidate for public office.

ARTICLE XI

If the Corporation ever should be dissolved when it has, or is entitled to, any interest in any funds or property of any kind, real, personal or mixed, such funds or property or rights thereto shall not be transferred to private ownership, but shall be transferred and delivered to the City after satisfaction or provision for satisfaction of debts and claims.

ARTICLE XII

These Articles may at any time and from time to time be amended by the Governing Body, subject to such restrictions and in accordance with such procedures as may be provided in the Act.

Signed this 7th day of November, 1994.

H.G. Harrington

H.G. (Hap) Harrington, Mayor

ATTEST:

Mary Reagan

Mary Reagan, City Secretary

STATE OF TEXAS §
§
COUNTY OF HARRIS §

Before me, a notary public, on this day personally appeared H.G. (HAP) HARRINGTON and MARY REAGAN, known to me to be the persons whose names are subscribed to the foregoing document and, being by me first duly sworn, declared that the statements therein contained are true and correct.

Given under my hand and seal of office this 7th day of November, 1994.

DORIS J. SPEER
Notary Public, State of Texas
My Commission Expires
JUNE 22, 1996

Doris J Speer
Notary Public, State of Texas

RESOLUTION NO. 94-15

A RESOLUTION OF THE CITY OF TOMBALL, TEXAS, APPROVING AMENDED BYLAWS OF THE TOMBALL INDUSTRIAL DEVELOPMENT CORPORATION, PROVIDING FOR THE EFFECTIVE DATE, AND OTHER RELATED MATTERS.

* * * * *

WHEREAS, the TOMBALL INDUSTRIAL DEVELOPMENT CORPORATION (the "Corporation") functions under the auspices of the City of Tomball, Texas, pursuant to Section 4B of THE DEVELOPMENT CORPORATION ACT OF 1979, as amended (the "Act"); and

WHEREAS, the Corporation has obtained the approval of the City Council and is filing amended and restated Articles of Incorporation, and in this connection the Corporation is also updating and amending its Bylaws; and

WHEREAS, the City Council, under whose auspices the Corporation was created, desires to approve the amended Bylaws of the Corporation; NOW THEREFORE,

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

Section 1. The City Council of the City of Tomball, Texas, hereby approves the amended Bylaws of the Tomball Industrial Development Corporation, the form of which is attached to this Resolution as Exhibit "A".

Section 2. This resolution shall be effective immediately upon its adoption.

PASSED, APPROVED, AND RESOLVED this 19th day of September, 1994.

H.G. (Hap) Harrington, Mayor

ATTEST:

Mary Reagan

Mary Reagan, City Secretary

APPROVED AS TO FORM:

Mario L Dell'Osso

Mario L. Dell'Osso
Olson & Olson
Attorneys for the City of Tomball

Regular City Council Agenda Item Data Sheet

Meeting Date: March 5, 2012

Topic:

Consideration and possible action to approve, as a Project of the Corporation, an agreement with Ameresco Solar, to make direct incentives to or expenditures for the creation or retention of primary jobs for Ameresco Solar. The estimated amount of expenditures for such project is an amount not to exceed $36,000.00.

Background:

All expenditures of the Tomball Economic Development Corporation (TEDC) sales tax revenue must first be approved as a "Project." At its regular meeting on February 21, 2012, the TEDC Board of Directors did take formal action to approve, as a Project of the TEDC, an agreement with Ameresco Solar for creation or retention of primary jobs for Ameresco Solar. The City Council of Tomball has final approval authority over all projects and agreements of the TEDC.

Origination:

Tomball Economic Development Corporation Board of Directors

Recommendation:

Approval as a Project of the Corporation, the Performance Agreement with Ameresco Solar.

Funding: Yes

Account Number: Project Grants

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

Kelly Violette, Executive Director

ACTION TAKEN

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

ATTACHMENTS:

Cover Memo

Request Letter

Performance Agreement

Economic Impact Model

TOMBALL
ECONOMIC DEVELOPMENT CORPORATION

TO: Board of Directors
Tomball Economic Development Corporation

FROM: Kelly Violette
Executive Director

MEETING DATE: February 21, 2012

SUBJECT: Ameresco Solar

ITEM TYPE: Action

On May 27, 2008, the TEDC Board of Directors approved a grant agreement with Ameresco Solar for assistance with the relocation of the Company from its previous location at 212 East Main Street to an 18,000 square foot lease space in the Live Oak Business Park at 202 South Live Oak in Tomball. The grant was up to $75,000 based on the retention of 20 existing jobs and the creation of 5 new jobs.

The TEDC funded Ameresco $66,000 on March 12, 2009 after receiving verification that 20 employees had been retained and 2 new employees had been hired.

In December 2011, staff met with representatives from Ameresco Solar to discuss their expansion needs based on a new product line that the Company will be offering. Ameresco Solar informed staff that they had executed an agreement with BP Solar International, Inc. to provide the small area module (SAM) line of solar panels (previously offered by BP Solar International, Inc.). As part of this agreement they will be hiring an additional twelve (12) employees in 2012. These employees would be located both locally and globally with at least half assigned to the Tomball, Texas location. Ameresco Solar currently has 25 employees.

The addition of the new product line as well as increased growth in their business has caused Ameresco Solar to outgrow its existing facility. Colin Gates, Vice President-Sales and Marketing for Ameresco Solar, informed staff that he has had conversations with the adjacent business, Maxpro South, about the possibility of acquiring their lease space due to the likelihood of Maxpro South relocating outside the City of Tomball.

On February 10, 2012, staff received a letter from Colin Gates requesting TEDC assistance with Ameresco Solar's expansion needs. The proposed agreement includes the addition of up to 12 new employees and the acquisition of an additional 6,130 square feet of lease space within the Live Oak Business Park building currently occupied by Maxpro South.

An economic impact model form is included with the agreement to show the five (5) year impact on Tomball's economy with the expansion of this company.

If the agreement between the TEDC and Ameresco Solar is approved as a Project of the Corporation, the grant funding amount will be $3,000 per each new primary job created, not to exceed $36,000.

AMERESCO SOLAR

Date: February 10, 2012

To: TEDC

From: Colin Gates

Reference: Additional Space Requirements

To Whom It May Concern:

Due to our recent agreement with BP Solar and continued growth in our business, we are quickly out growing our current location. We currently seek expansion within this building to hold more product and house more employees. In fact, our plans include hiring an additional 12 employees in 2012. These employees would be located both locally and globally. See attached recent press release for more information on our recent agreement and about us. Thank you for your consideration.

Sincerely,

Colin Gates
Vice President-Sales & Marketing, Ameresco Solar

AMERESCO SOLAR
Green • Clean • Sustainable

202 South Live Oak Suite B Tomball, TX 77375 USA
ph: 281-351-0031 fax: 281-351-8356

AGREEMENT

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

This Agreement (the "Agreement") is made and entered into by and between the **Tomball Economic Development Corporation**, an industrial development corporation created pursuant to Tex. Rev. Civ. Stat. Ann. Art. 5190.6, Section 4B, located in Harris County, Texas (the "TEDC"), and **Ameresco Solar** (the "Company"), 202 South Live Oak Suite B, Tomball, Texas 77375.

W I T N E S S E T H :

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

WHEREAS, the Company is leasing an 18,000 square foot existing lease space located at Live Oak Business Park, 202 South Live Oak Street, Tomball, Texas 77375 (the "Property"), and more particularly described in Exhibit "A," attached hereto and made a part hereof; and

WHEREAS, the Company, proposes to expand its current operation at the Property , and as part of the process, plans to lease and connect an additional 6,130 square feet at Live Oak Business Park (the "Improvements"), generally described in Exhibit "B," attached hereto and made a part hereof, as are necessary to an existing 18,000 square foot lease space; and

WHEREAS, the Company also proposes to create twelve (12) full-time employees to the Property in conjunction with the expansion of its business operations at the Property; and

WHEREAS, the TEDC agrees to provide to the Company the sum of Thirty-Six Thousand Dollars ($36,000) to assist in the expansion of its business operations at the Property and the addition of twelve (12) employees at the Property; and

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

WHEREAS, this expenditure is found by the Board of Directors of the TEDC to be suitable for the relocation and upgrading of the Company's business operation and in furtherance of the retention and creation of primary jobs;

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

1.

The Company covenants and agrees that it will construct the Improvements and operate and maintain the proposed business for a term of at least five (5) years and will, except as provided in paragraph 4 hereof, create and maintain twelve (12) new jobs on the Property at the prevailing wage.

2.

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

3.

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

4.

In consideration of the Company's representations, promises, and covenants, TEDC agrees to grant to the Company the sum of Thirty-Six Thousand Dollars ($36,000) to fund a portion of the cost of the Improvements and the addition of the twelve (12) new employees to the Company's business operations on the Property. The TEDC agrees to distribute such funds to the Company within thirty (30) days of receipt of a letter from the Company requesting such payment, which letter shall also include: (a) a copy of the City's occupancy permit for the Improvements to the Property; (b) proof that the Company has retained and added the number of employees indicated above to its business operations on the Property, as evidenced by copies of Texas Workforce Commission form C-3 or Internal Revenue Service form 941; (c) a copy of a letter from the City acknowledging that all necessary plats, plans, and specifications have been received, reviewed, and approved; and (d) certification that the Improvements have been constructed in accordance with the approved plans and specifications. In the event the number of jobs originally projected is not met or maintained, the amount of the funding provided to the Company by TEDC will be reduced on a pro rata basis to reflect the actual number of jobs at the time of the request for disbursement of funds.

5.

It is understood and agreed by the parties that, in the event of a default by the Company on any of its obligations under this Agreement, the Company shall reimburse the TEDC the full amount paid to the Company by the TEDC, with interest at the rate equal to the 90-day Treasury Bill plus ½% per annum, within 120 days after the TEDC notifies the Company of the default. It is further understood and agreed by the parties that if the Company is convicted of a violation under 8 U.S.C. Section 1324a(f), the Company will reimburse the TEDC the full amount paid to the Company, with interest at the rate equal to the 90-day Treasury Bill plus ½% per annum, within 120 days after the TEDC notifies the Company of the violation. Such reimbursements shall be due and payable thirty (30) days after the Company receives written notice of default or violation.

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

6.

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

7.

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

If to City:	Tomball Economic Development Corporation 401 W. Market Street Tomball, Texas 77375 Attn: President, Board of Directors
If to Company:	Ameresco Solar 202 South Live Oak Suite B Tomball, Texas 77375 Attn: Colin Gates, VP Sales and Marketing

8.

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

9.

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

10.

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

11.

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

12.

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

IN TESTIMONY OF WHICH, THIS AGREEMENT has been executed by the parties on this ______ day of ________________ 2012 (the "Effective Date").

AMERESCO SOLAR

By: ____

Name: Colin Gates

Title: Vice President, Sales and Marketing

ATTEST:

By: ________________________________

Name: ________________________________

Title: ________________________________

TOMBALL ECONOMIC DEVELOPMENT CORPORATION

By: ____

Name: Gretchen Fagan

Title: President, Board of Directors

ATTEST:

By: ________________________________

Name: William E. Sumner Jr.

Title: Secretary, Board of Directors

ACKNOWLEDGMENT

THE STATE OF TEXAS §
§
COUNTY OF HARRIS §

This instrument was acknowledged before me on the _____ day of _________________ 2012, by ___________________________, the President/CEO of Ameresco Solar, for and on behalf of said company.

____
Notary Public in and for the State of Texas

My Commission Expires: __________

(SEAL)

ACKNOWLEDGMENT

THE STATE OF TEXAS §
§
COUNTY OF HARRIS §

This instrument was acknowledged before me on the _____ day of _________________ 2012, by Gretchen Fagan, President of the Board of Directors of the Tomball Economic Development Corporation, for and on behalf of said Corporation.

____
Notary Public in and for the State of Texas

My Commission Expires: __________

(SEAL)

Exhibit A

Legal Description of Property

A tract or parcel containing 5.9908 acres of land, more or less, being all of Unrestricted Reserve "A-1", in Block One (1) of American Superior Feed, a subdivision situated in the William Hurd Survey, Abstract 371, in Harris County, Texas, according to the map or plat recorded in Volume 542, Page 95 of the Map Records of Harris County, Texas, SAVE AND EXCEPT those certain tracts of land being described as 0.3134 acre tract along the westerly side property line of Reserve "A", a 0.0893 acre tract located in the southeasterly corner of Reserve "A" and a 0.2273 acre tract located in the northeasterly corner of Reserve "A" all dedicated to the City of Tomball.

Exhibit B

Description of Improvements

- Connection and build out of the space to include an office

Ameresco Solar

TOMBALL ECONOMIC DEVELOPMENT CORPORATION

CITY OF TOMBALL ECONOMIC IMPACT MODEL

Average Annual Wage Assessment:

Number of Employees		Average Hourly Wage	Average Weekly Wages	Total Annual Wages (52 wks.per Yr.)
Existing:	25			
Prospective:	12			
TOTAL:	37		1,800	93,600

Federal Income and FICA Taxes at 28% deducted	26,208
Fixed payments for rent, insurance, etc. at 25%	23,400
Net Disposable Annual Income	43,992

Total Return to Local Government by Annual Payroll:

Local Sales Tax Rate of 2% on Fixed Payments:	468
Average Multiplier effect of the Dollar turning over 3.5 times to Calculate the Total Annual Local Sales Tax Impact:	1,638

Annual Sales Tax Impact:

Value of Retail Sales	Sales Tax	
2,000,000	2.00%	40,000

Estimated Property Tax Impact:

Value of Property and Improvements	Tomball Tax Rate (per $100)	
15,000	0.34000	51

Annual Economic Impact of Manufacturing and Maintenance Facility	41,689
Economic Impact over a Five Year Period	208,445

Please check this rate. It may need to be revised.

Regular City Council Agenda Item Data Sheet

Meeting Date: March 5, 2012

Topic:

Approve Request by Mr. Bryan Lyszaz, with Clear Choice LED, LLC, to Allow a Changeable Electronic Variable Message Sign at 425 Holderrieth Boulevard

Background:

On February 16, 2012, the City Manager received a request to replace an existing sign at 425 Holderrieth Boulevard with a Changeable Electronic Variable Message Sign (CEVMS). Mr. Bryan Lyszaz with Clear Choice LED, LLC requested, in compliance with Ordinance 2011-14, that City Council approve a CEVMS sign at the proposed location.

Attached is the request letter, including a location map and detail drawing of the proposed sign. If approved, the applicant must submit a completed permit application, in compliance with Chapter 60 and Ordinance 2011-14, with all required documents to City staff for review and approval.

Origination:

Clear Choice LED, LLC

Recommendation:

Funding:

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

Director of Community Development

ACTION TAKEN

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

ATTACHMENTS:

Request Letter from Clear Choice LED, LLC

Location Map & Proposed Sign

Ordinance 2011-14

clearchoiceled
ELECTRONIC MESSAGE CENTERS

February 15, 2012

City of Tomball
George Shackelford
City Manager

Mr. Shackelford,

Enclosed you will find the following documents:

- Drawing of proposed signage for 425 Holderrieth Rd.
- Copy of City of Tomball ordinance with section of reference highlighted.
- Property site map showing location of proposed sign.

On February 15, 2012, I met with David Allen of the city of Tomball and presented this sign proposal, all rules of City of Tomball are met with this design, but the placement and usage of an Electronic Message Center.

According to ordinance no. 2011-14 it states:
"Whereas, the City Council has determined it appropriate to authorize CEVMS for properties not adjacent to State right-of-way upon application to and approval by the City council.

Let this document be in place of application, because no such application exists currently with-in the City of Tomball.

We are asking for approval from the Tomball City Council to approve this CEVMS display to be used with-in the new proposed sign structure to be installed at 425 Holderrieth Rd. We will abide by all regulations set forth by the City of Tomball's CEVMS ordinance no 2011-14. We ask that this be put on the March 5, 2012 agenda for council to approve.

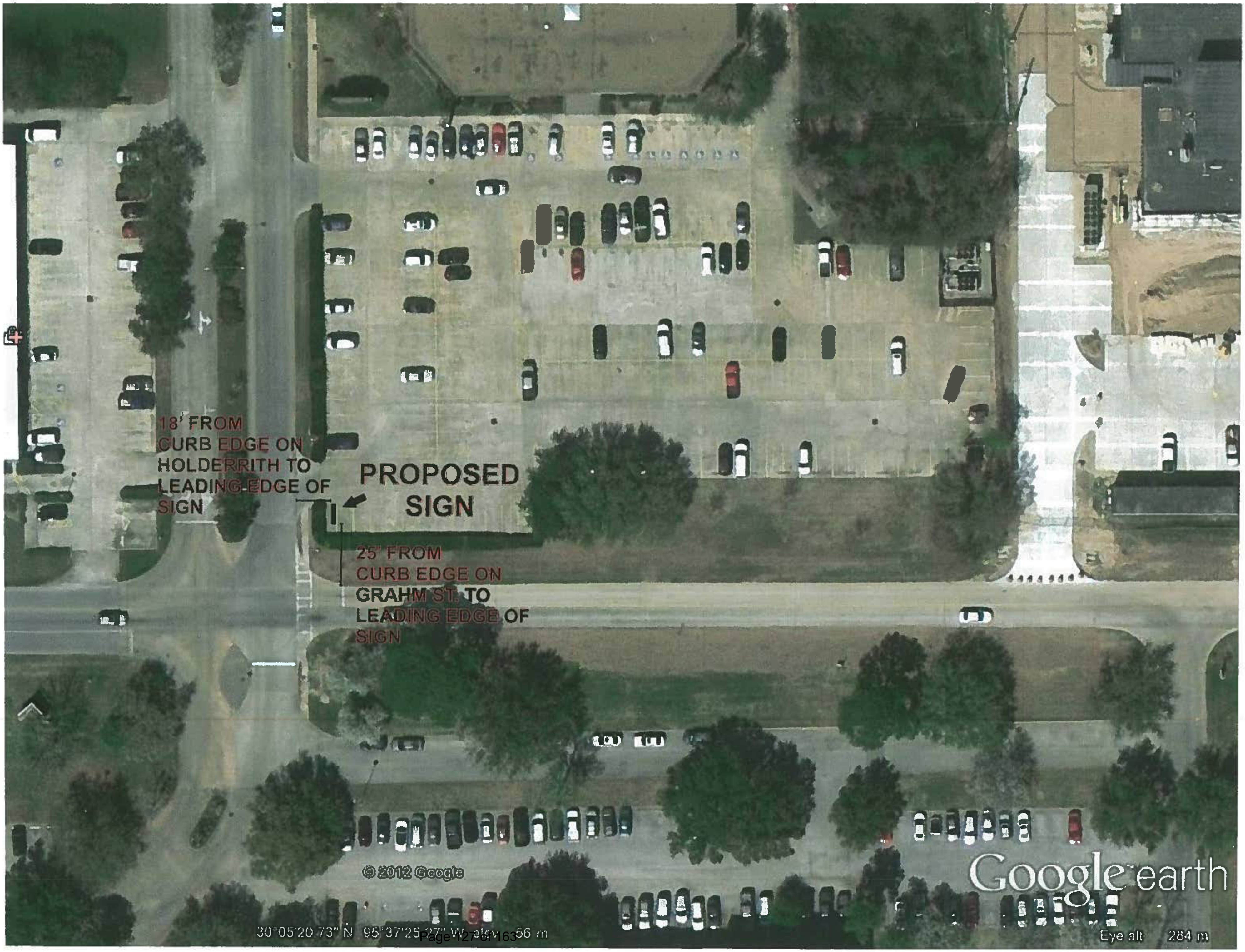
Please contact me at 281.541.1931 with any questions or to confirm our placement on the agenda.

We do feel this sign give the medical district a new, upscale and professional look to the tenants of 425 Holderrrieth Rd. Medical Plaza. As the City of Tomball's, medical district is ever growing and is a major attraction to what the City of Tomball has to offer.

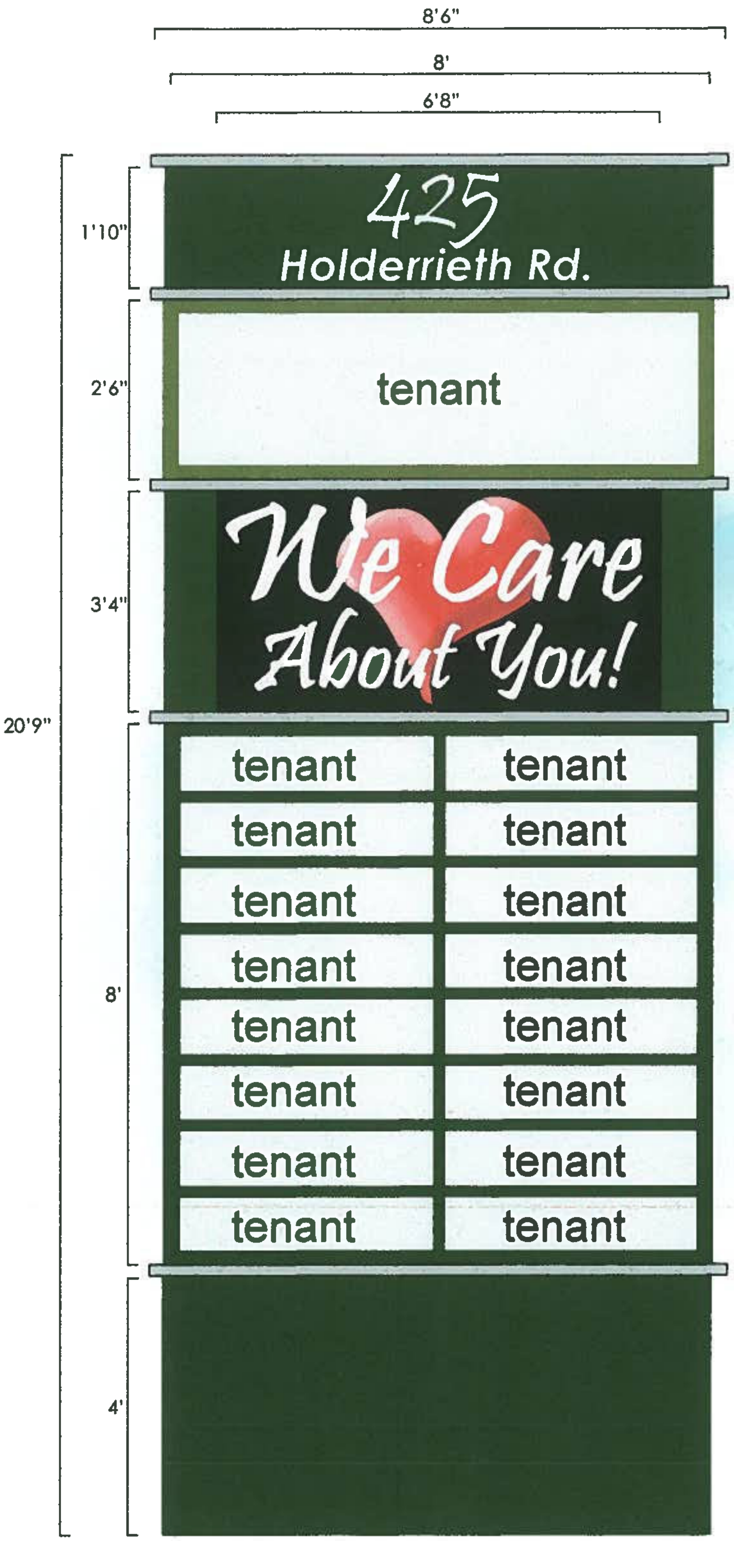
Sincerely,

Bryan Lyszaz
Sales Manager
Clear Choice LED, LLC

SITE MAP



18' FROM CURB EDGE ON HOLDERRITH TO LEADING EDGE OF SIGN
PROPOSED SIGN
25' FROM CURB EDGE ON GRAHM ST. TO LEADING EDGE OF SIGN
© 2012 Google
Google earth
30°05'20.73" N 95°37'25.27" W
Eye alt 284 m



IDENTIFICATION CABINET INTERNALLY ILLUMINATED
COMPLETE ALUMINUM CONSTRUCTION
.125 BRONZE MATTE BRONZE FINISH FACES WITH
ROUTED SMOKE ACRYLIC LETTERS ATTACHED BACKSIDE

INTERNALLY ILLUMINATED CABINET
ALUMINUM CONSTRUCTION
ACRYLIC FACES WITH 3M BRONZE VINYL
OUTSIDE SURFACE GRAPHICS

LED MESSAGE CENTER
16MM RGB FULL COLOR DISPLAY
64 X 128 MATRIX
TIME & TEMPERATURE
WIRELESS COMMUNICATION
5 YEAR COMPLETE WARRANTY
MASTER / SLAVE CONFIGURATION

INTERNALLY ILLUMINATED CABINET
ALUMINUM CONSTRUCTION
2" DIVIDER BARS
SMOKED ACRYLIC FACES WITH
3M BRONZE VINYL APPLIED
OUTSIDE SURFACE

*INDIVIDUAL PANELS ARE REMOVABLE

*EACH TENANTS VIEWABLE OPENING
10" X 45"

2" SQUARE TUBING DECOR BARS
PAINTED TO MATCH SMOKE ACRYLIC

NONOILLUMINATED ALUMINUM BASE
ALUMINUM CONSTRUCTION

clearchoiceled
ELECTRONIC MESSAGE CENTERS
www.clearchoiceled.com

Sales Rep: Bryan Lyszaz
Phone: 281.541.1931
Email: bryan@clearchoiceled.com

Client: Healthcare Reit

Street: 425 Holderrieth Rd.

City: Tomball
Texas
Zip Code:
Phone: 713.839.1280

Drawing Version: 001

Drawing Date: 11.21.11

Artwork Approval:

X______________________________

Date______________________________

*All signs are of 110v Power unless otherwise stated. All power required must be at sign location prior to installation for electrical connection at installation. Any additional trips by Clear Choice LED may result in additional fees.

*All signs will be permitted by Clear Choice LED with any City or County Jurisdiction. It is clients responsiblity to inform Clear Choice LED of any HOA or other Organizations that govern there signage requirements.

Power Required: (2) 20 amp 110V

Production Time: 4-54 Weeks

ORDINANCE NO. 2011-14

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF TOMBALL, TEXAS, AMENDING SECTION 60-11, CHANGEABLE ELECTRONIC VARIABLE MESSAGE SIGNS (CEVMS), OF CHAPTER 60, SIGNS, OF THE CITY'S CODE OF ORDINANCES RELATING TO CHANGEABLE ELECTRONIC VARIABLE MESSAGE SIGNS TO ALLOW CEVMS AS ON PREMISE SIGNS ON PROPERTIES LOCATED ADJACENT TO ALL STATE RIGHTS-OF-WAYS; TO ALLOW CEVMS ON PROPERTIES NOT LOCATED ADJACENT TO A STATE RIGHT-OF-WAY UPON APPLICATION AND APPROVAL BY THE CITY COUNCIL; PROVIDING REGULATIONS FOR SUCH CEVMS; PROVIDING A PENALTY OF UP TO $2,000.00 FOR VIOLATIONS WITH EACH DAY CONSTITUTING A SEPARATE VIOLATION; PROVIDING FOR THE PUBLICATION OF THIS ORDINANCE; AND MAKING OTHER FINDINGS AND PROVISIONS RELATED THERETO.

* * * * * * * * * *

WHEREAS the City Council is authorized to regulate signage within its city limits and extraterritorial jurisdiction pursuant to Texas Local Government Code Chapter 216;

WHEREAS, the City Council has determined that in order to preserve and enhance the City as a desirable community in which to live and do business, a pleasing, visually attractive environment is of foremost importance; and these regulations are a highly contributive means by which to achieve this desired end and have been prepared with the intent of enhancing the visual environment of the City and promoting safety and continued well-being;

WHEREAS, the City Council has determined it appropriate to authorize CEVMS for properties adjacent to all State rights-of-way;

WHEREAS, the City Council has determined it appropriate to authorize CEVMS for properties not adjacent to a State right-of-way upon application to and approval by the City council;

WHEREAS, the City Council has determined it appropriate that no image or message on a CEVMS may be displayed for less than eight (8) seconds;

WHEREAS, the City Council has determined it appropriate that CEVMS message transitions shall be limited to one (1) second;

WHEREAS, the City Council has determined CEVMS faces or displays should not be required to be placed toward a public right-of-way;

WHEREAS, the City Council has determined brightness limits for CEVMS shall be set at a maximum of 0.3 foot candle illumination from a distance of 250 feet between sunset and sunrise, and each CEVMS shall be fitted with a qualified light sensing device to automatically adjust the brightness;

WHEREAS, the City Council has determined that CEVMS shall be limited to 32 square feet for a single-business or use and 50 square feet for a multi-tenant business or use;

WHEREAS, the City Council has determined that CEVMS shall require a usage permit with annual fee;

WHEREAS, the City Council has determined that if a CEVMS is found to be operating incorrectly, it must be turned off until it is repaired and inspected by the City of Tomball;

WHEREAS, the City Council has determined the images displayed on the CEVMS must be directly related to the on-premise business(s) with the exception of messages relating to time, temperature, national news, local news, sporting events, or upcoming events for the City of Tomball; and

WHEREAS, the City Council has determined CEVMS shall only be permitted as on-premise signs;

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. Section 60-11, Changeable Electronic Variable Message Signs, of Chapter 60, Signs, of the Code of Ordinances of the City of Tomball, Texas is hereby deleted in its entirety and a new Section 60-11, Changeable Electronic Variable Message Signs, is hereby added with the new Section 60-11 to read as follows:

"**Sec. 60-11. Changeable Electronic Variable Message Signs.**

(a) Changeable electronic variable message signs (CEVMS) shall be prohibited within the corporate limits and the extraterritorial jurisdiction of the City, except that changeable electronic variable message signs shall permitted for properties adjacent to all State rights-of-ways and for public tax-supported schools to provide public information. Changeable electronic variable message signs may be permitted on properties not adjacent to a State right-of-way upon application to and approval by the City Council. No new permit shall be issued for the installation, erection, or replacement of a CEVMS, including any conversion or modification of an existing sign to a CEVMS, within the corporate limits or the extraterritorial jurisdiction of the City, except as provided herein.

(b) Changeable Electronic Variable Message Sign (CEVMS) Regulations:

(1) Images or messages shall be static in nature and shall not blink, flash, scroll or be animated in such a manner as to constitute a distraction to passing motorists.

(2) No image or message may be displayed for less than eight (8) seconds.

(3) Message transitions shall be limited to one (1) second.

(4) The brightness of any CEVMS shall not exceed 0.3 foot candle illumination from a distance of 250 feet between sunset and sunrise, and each sign shall be fitted with a qualified light sensing device to automatically adjust the brightness in accordance with these standards.

(5) All CEVM signs shall be limited to 32 square feet for a single-business or use and 50 square feet for a multi-tenant business or use.

(6) All CEVMS shall require a usage permit with annual fee. The annual fee shall be established by resolution of the City Council

(7) If a CEVMS is found to be operating incorrectly, it must be turned off until it is repaired and inspected by the City of Tomball.

(8) The images displayed on the CEVMS must be directly related to the on-premise business with the exception of messages relating to time, temperature, national news, local news, sporting events, or upcoming events for the City of Tomball.

(c) CEVMS shall only be permitted as on-premise signs."

Section 3. All provisions of any ordinance in conflict with this Ordinance are hereby repealed, but such repeal shall not abate any pending prosecution for violation of the repealed ordinance, nor shall the repeal prevent a prosecution from being commenced for any violation if occurring prior to the repeal of the ordinance. Any remaining portions of said ordinance shall remain in full force and effect.

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

Section 5. Any person who shall 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 6. This Ordinance shall become effective fourteen days after the final reading and adoption of this Ordinance when the caption hereof is caused to be published once in the official newspaper of the City, by the City Secretary, as required by law. The City Secretary is directed to publish the caption of this Ordinance in the City's official newspaper within 14 days after the passage of the ordinance.

FIRST READING:

READ, PASSED AND APPROVED AS SET OUT BELOW AT THE MEETING OF THE CITY COUNCIL OF THE CITY OF TOMBALL HELD ON JULY 18, 2011.

COUNCILMAN HUDGENS	AYE
COUNCILMAN STOLL	AYE
COUNCILMAN BROWN	AYE
COUNCILMAN TOWNSEND	AYE
COUNCILMAN DODSON	AYE

SECOND READING:

READ, PASSED AND ADOPTED AS SET OUT BELOW AT THE MEETING OF THE CITY COUNCIL OF THE CITY OF TOMBALL HELD ON JULY 26, 2011.

COUNCILMAN HUDGENS	AYE
COUNCILMAN STOLL	AYE
COUNCILMAN BROWN	AYE
COUNCILMAN TOWNSEND	NAY
COUNCILMAN DODSON	AYE

Gretchen Fagan
Gretchen Fagan, Mayor

ATTEST:

Doris Speer
Doris Speer, City Secretary

Regular City Council
Agenda Item
Data Sheet

Meeting Date: March 5, 2012

Topic:
Authorize the Removal of Existing Buildings Located at 217 South Walnut Street, Owned by the City

Background:
Staff will discuss and present Council with options for existing buildings at 217 South Walnut, which is the southwest corner of the Depot Plaza.

Origination:
Public Works

Recommendation:

Funding:

Party(ies) responsible for placing this item on agenda:
Director of Public Works

ACTION TAKEN

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

Regular City Council Agenda Item Data Sheet

Meeting Date: March 5, 2012

Topic:

Approve **FINAL PLAT RESERVE AT SPRING LAKE SECTION ONE**: Being 221.2020 Acres located in the Joseph Miller League, A-50 W.H. Clemens Survey, A-1641, Harris County, Texas, City of Tomball, Texas.

Background:

The Reserve at Spring Lake Section One Preliminary Plat was approved with contingencies by the Planning and Zoning Commission on January 9, 2012. Comments were addressed and the Reserve at Spring Lake Section One Final Plat was presented and approved with contingencies by the Planning and Zoning Commission on February 13, 2012. The Final Plat is now being forwarded to City Council for approval consideration.

Origination:

Engineering and Planning

Recommendation:

Funding:

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

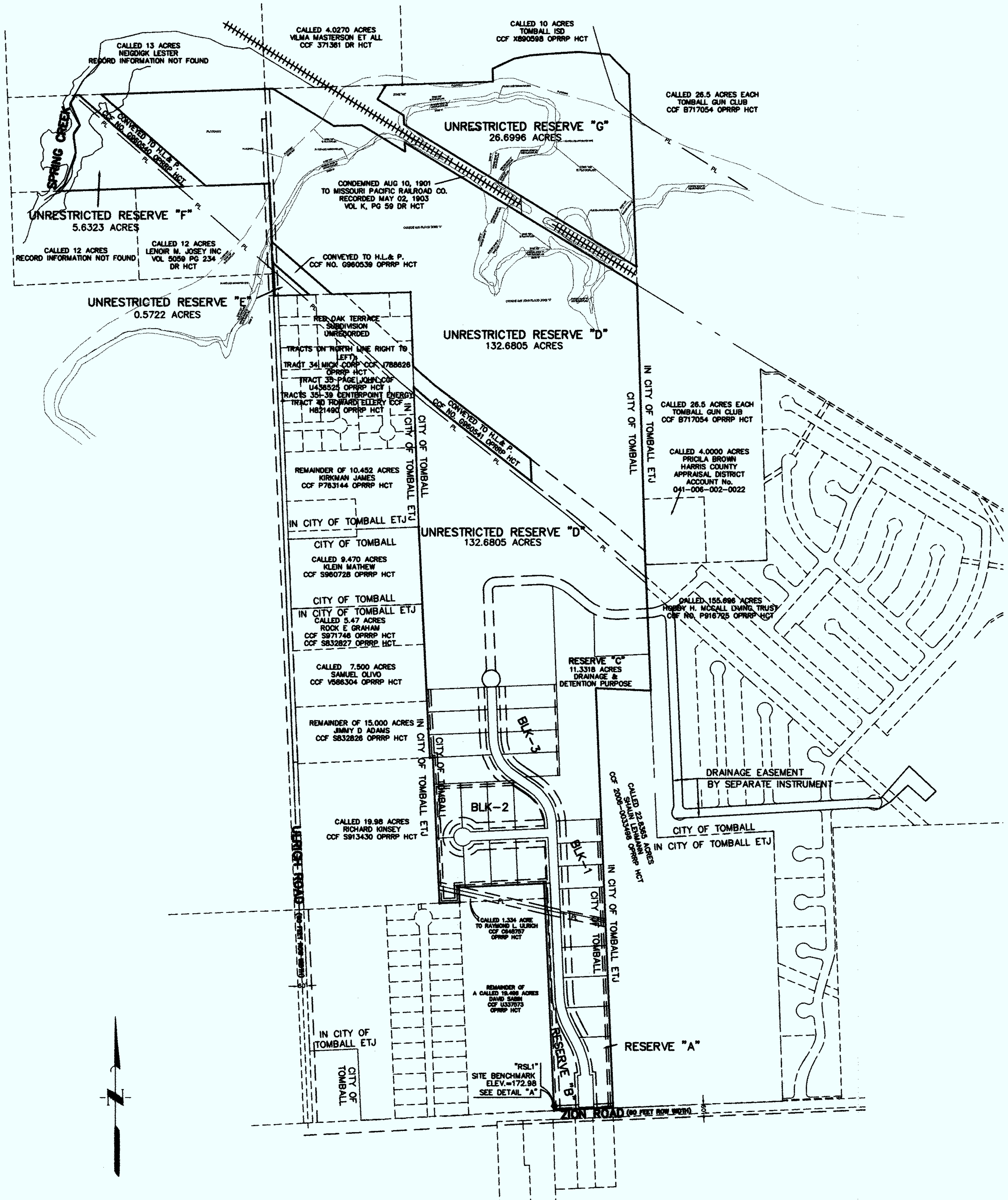
Engineering and Planning

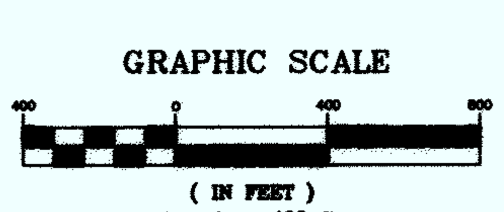
ACTION TAKEN

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

ATTACHMENTS:

Reserve at Spring Lake Section One Final Plat Pg. 1 of 6
Reserve at Spring Lake Section One Final Plat Pg. 2 of 6
Reserve at Spring Lake Section One Final Plat Pg. 3 of 6
Reserve at Spring Lake Section One Final Plat Pg. 4 of 6
Reserve at Spring Lake Section One Final Plat Pg. 5 of 6
Reserve at Spring Lake Section One Final Plat Pg. 6 of 6





GENERAL NOTES:

1. All oil/gas pipelines or pipeline easements with ownership through the subdivision have been shown.

2. All oil/gas wells with ownership (plugged, abandoned, and/or active) through the subdivision have been shown.

3. No building or structure shall be constructed across any pipelines, building lines , and/or easements. Building setback lines will be required adjacent to oil/gas pipelines. The setbacks at a minimum should be 15 feet off centerline of low pressure gas lines and 30 feet off centerline of high pressure gas lines.

4. This plat does not attempt to amend or remove any valid covenants or restrictions.

5. The building lines shown on this plat shall be in addition to, and shall not limit or replace, any building lines required by the City of Tomball Code of Ordinances at the time of the development of the property.

6. Bearings based on Texas South Central State Plane Coordinates (Nad 83).

7. Unless otherwise indicated, the building line (B.L.), whether one or more, shown on this plat are established to evidence compliance with the applicable provisions of Chapter 14, Code of Ordinances, City of Tomball, Texas, in effect at the time this plat was approved, which may be amended from time to time.

8. The coordinates shown hereon are Texas South Central Zone No. 4204 State Plane Grid Coordinates (Nad83) and may be brought from surface by applying the following combined scale factor of .99992227

9. All corners are set 5/8 inch iron rods w/cap unless otherwise shown or noted.

10. There is a One-foot reserve dedicated as a buffer separation between the side or end of streets where such streets abut adjacent property, the condition of this dedication being that when the adjacent property is subdivided or re-subdivided in a recorded subdivision plat, the one-foot reserve shall thereupon become vested for street right-of-way purposes.

11. Private Access Easement dedicated for use as temporary road until street is extended in a recorded plat.

12. Gas and Water lines are located along Ulrich Road.

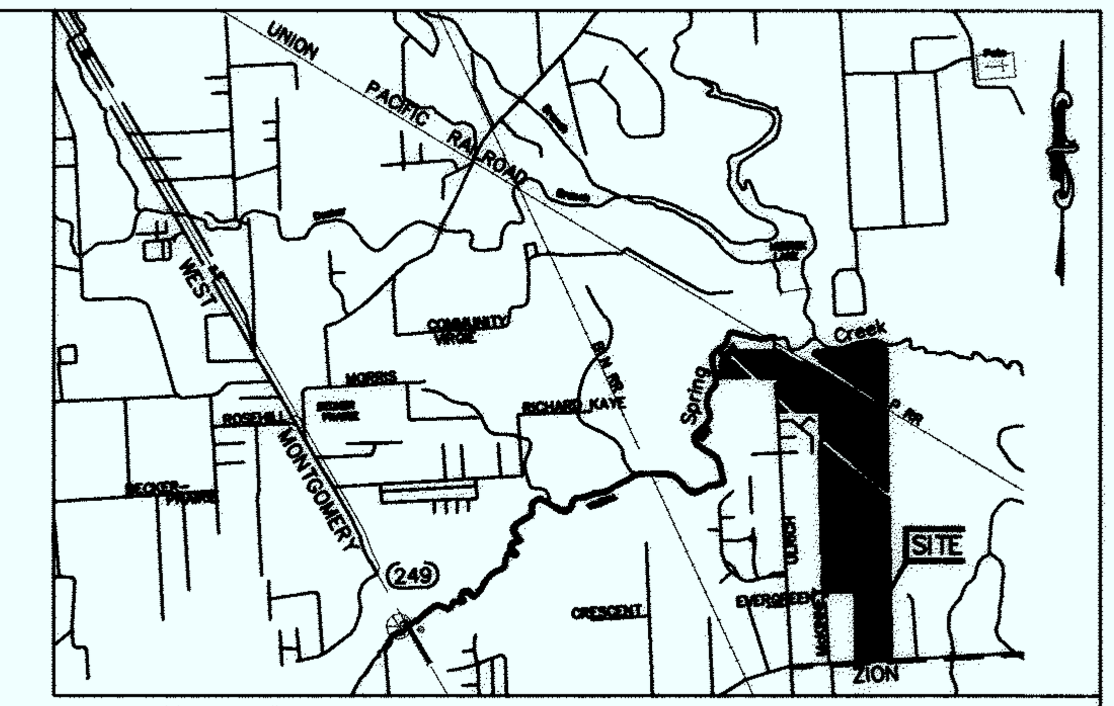
13. Magnolia Pipeline Company Easement recorded in Volume 1554, Page 135, Volume 1554, Page 136 and Volume 1546, Page 296, Humble Oil Refining Company Easement recorded in Volume 1663, Page 389 and Teppco Crude Pipeline, L.P. recorded in Volume 941, Page 258 of the Deed Records of Harris County, Texas are blanket easements.

14. Right-of-Way and easement for pipeline purposes, as granted to Humble Oil and Refining Company, now known as Exxon Corporation by instruments recorded in Volume 2844, Page 672 and Volume 3496, Page 459, both of the Deed Records of Harris County, Texas amended and defined by instrument filed for record under Harris County Clerk's File No. K547140. It Does not affect subject property.

15. Public easements denoted on this plat are hereby dedicated to the public forever. Any public utility, including the City of Tomball, shall have the right at all times, of ingress and egress to and from and upon said easements for the purpose of construction, reconstruction, inspection, patrolling, maintaining and adding to or removing all or part of its respective systems without the necessity of any time of procuring the permission of the property owner. Any public utility, including the City of Tomball, shall have the right to move and keep moved all or part of any building, fences, trees, shrubs, other growths or improvements that in any way endanger or interfere with the construction, maintenance or efficiency of it's respective systems on any of the easements shown on this plat. Neither the City of Tomball nor any other public utility shall be responsible for any damages to property within an easement arising out of the removal or relocation of any obstruction in the public easement.

SUMMARY TABLE OF LOT(S)			FLOODPLAIN AREA	
BLOCK 1			1%	0.2%
LOT	SQ. FT.	ACRE(S)	ACRE(S)	ACRE(S)
1	50172.80	1.1518	0.0000	0.0000
2	58485.67	1.3426	0.0000	0.0000
3	58850.86	1.3510	0.0000	0.0000
4	59253.77	1.3603	0.0000	0.0000
5	54892.57	1.2602	0.0000	0.0000
6	44397.39	1.0192	0.0000	0.0000
7	44466.56	1.0208	0.0000	0.0000
8	44537.77	1.0225	0.0000	0.0000
BLOCK 2			FLOODPLAIN AREA	
LOT	SQ. FT.	ACRE(S)	1%	0.2%
1	64287.56	1.4758	0.0000	0.0000
2	52609.42	1.2077	0.0000	0.0000
3	51403.41	1.1824	0.0000	0.0000
4	67292.6	1.5678	0.0000	0.0000
5	59583.48	1.3678	0.0000	0.0000
6	55947.76	1.2844	0.0000	0.0000
7	57052.29	1.3097	0.0000	0.0000
8	50101.18	1.1502	0.0000	0.0000
9	78659.54	1.8058	0.0000	0.0000
10	60037.84	1.3783	0.0000	0.0000
11	60061.27	1.3788	0.0000	0.0000
12	60273.11	1.3837	0.0000	0.0000
BLOCK 3			FLOODPLAIN AREA	
LOT	SQ. FT.	ACRE(S)	1%	0.2%
1	50724.45	1.1645	0.0000	0.0000
2	57628.83	1.3230	0.0000	0.0000
3	60473.1	1.3883	0.0000	0.0000
4	60010.03	1.3776	0.0000	0.0000

SUMMARY TABLE OF RESERVE(S)				FLOODPLAIN AREA	
				1%	0.2%
RESERVE(S)	SQ. FT.	ACRES	PURPOSE	ACRE(S)	ACRE(S)
A	69323.25	1.5914	LANDSCAPE	0.0000	0.0000
B	126474.57	2.9035	LANDSCAPE	0.0000	0.0000
C	493613.88	11.3318	DRAINAGE & DET.	0.0000	0.0000
D	5779548.33	132.6805	UNRESTRICTED	20.0993	4.0269
E	24924.97	0.5722	UNRESTRICTED	0.0000	0.0000
F	245341.94	5.6323	UNRESTRICTED	5.6323	0.0000
G	1293715.11	26.6996	UNRESTRICTED	19.6222	3.5288



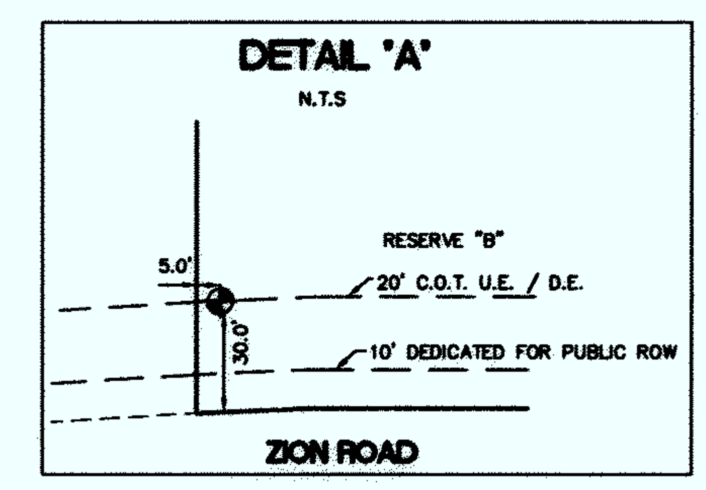
VICINITY MAP
NOT TO SCALE

FLOOD STATEMENT

According to FEMA Firm Panel No. 48201C0230L & 48201C0265L (Effective Date June 18, 2007), part of this property is in Zone "AE" and is within the 1% Annual Chance Flood Plain. The 1% annual chance flood (100-year flood), is also known as the base flood, is the flood that has a 1% chance of being equaled or exceeded in any given year. The Special Flood Hazard Area is the area subject to flooding by the 1% annual chance flood. Areas of Special Flood Elevation is the water surface elevation of the 1% annual chance flood.

Warning: Part of this site is within an identified Special Flood Hazard Area, this statement does not imply that the property and/or the structures thereon will be free from flooding or flood damage. This determination has been made by scaling the property on the referenced map and is not the result of an elevation survey. This flood statement shall not create liability on the part of the surveyor.

Floodplain	Acreage (approximate)
Floodway	27.6102 acres
1% Floodplain	24.3363 acres
0.2% Floodplain	9.4758 acres
Zone "X" Floodplain (outside 0.2%)	173.4190 acres



SITE BENCHMARK – SET BRASS DISK IN CONCRETE STAMPED "RSL1" LOCATED NEAR THE SOUTHWEST CORNER OF THE SUBDIVISION, 30 FEET NORTH OF ZION ROAD, AND 5 FEET EAST OF PROPERTY LINE AS SHOWN. ELEVATION=172.98

OWNER\DEVELOPER:
ZION ROAD PROPERTIES
ROBERT M. ALLEN, PRESIDENT
9977 N. SAM HOUSTON PKWY W., #150
HOUSTON, TX 77064
PH: 281-477-8688

LIENHOLDER:
JSRA PROPERTY INVESTMENT
ROBERT M. ALLEN, PARTNER
9977 W. SAM HOUSTON PARKWAY N.,
SUITE #150
HOUSTON TEXAS 77064
PH: 281-477-8688

ENGINEER:
DAVID P. KELLY II, P.E.
DPK ENGINEERING, LLC
32719 WINDSOR TERRACE
FULSHEAR, TX 77441
PH: 281-346-2616

LIENHOLDER:
KOLKHORST & KOLKHORST, CPAs
GARY KOLKHORST, PARTNER
9977 W. SAM HOUSTON PARKWAY N.,
SUITE #150
HOUSTON TEXAS 77064
PH: 281-477-9100

LIENHOLDER:
PREFERRED BANK
DON NAJVAR, PRESIDENT
11757 KATY FREEWAY, SUITE #100
HOUSTON TEXAS 77079
PH: 281-556-6443

LIENHOLDER:
ICON BANK
__________, ________
7908 N. SAM HOUSTON PARKWAY W.,
SUITE #100
HOUSTON TEXAS 77064
PH: 281-517-2400

SURVEYOR:

TOWN & COUNTRY SURVEYORS, LLC

FINAL PLAT
RESERVE AT SPRING LAKE SECTION ONE

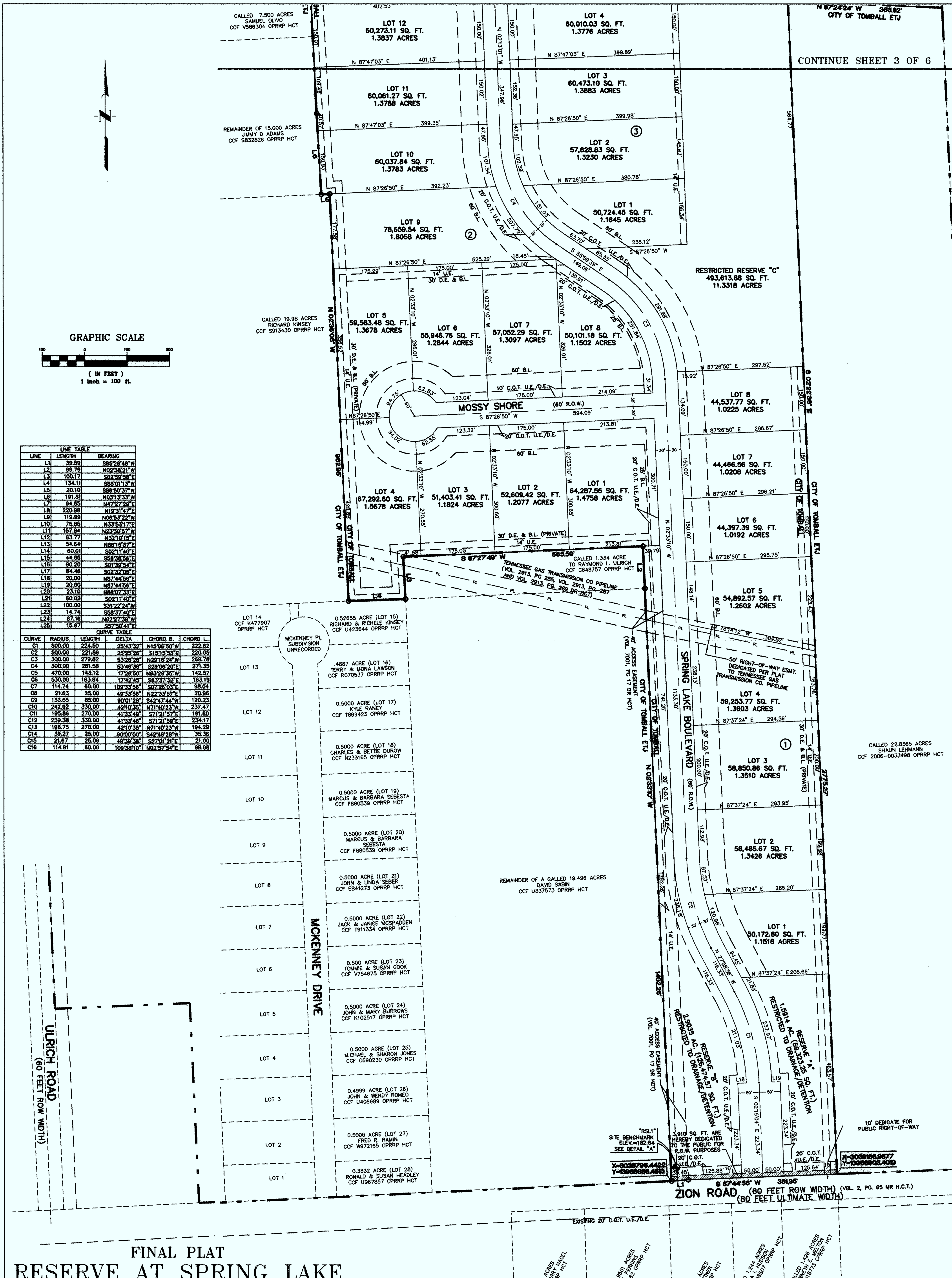
221.2020 ACRES (9,901,026.51 SQ. FT.)
LOCATED IN THE
JOSEPH MILLER LEAGUE, A-50
W.H. CLEMENS SURVEY, A-1641
HARRIS COUNTY, TEXAS
CITY OF TOMBALL, TEXAS

3 BLOCKS 24 LOTS 7 RESERVES

JANUARY 2012

LEGEND:

BUILDING LINE	B.L.
UTILITY EASEMENT	U.E.
AERIAL EASEMENT	A.E.
CITY OF TOMBALL UTILITY EASEMENT/DRAINAGE EASEMENT (PUBLIC)	C.O.T. U.E./D.E.
DRAINAGE EASEMENT (PRIVATE)	D.E.
FOUND 5/8 INCH IRON RODS	◎
BLOCK NUMBER	①
SURVEY LINE	



LINE TABLE		
LINE	LENGTH	BEARING
L1	39.59	S85°28'48"W
L2	99.79	N02°38'21"W
L3	100.17	S02°59'58"E
L4	134.11	S88°01'13"W
L5	20.10	S86°50'37"W
L6	191.51	N03°13'33"W
L7	64.65	N47°27'29"E
L8	220.98	N19°31'47"E
L9	119.99	N06°53'22"W
L10	75.85	N33°53'17"E
L11	157.84	N23°30'57"W
L12	63.77	N32°10'15"E
L13	54.64	N88°15'37"E
L14	60.01	S02°11'40"E
L15	44.05	S58°38'56"E
L16	90.20	S01°39'54"E
L17	84.46	S02°32'05"E
L18	20.00	N87°44'56"E
L19	20.00	N87°44'56"E
L20	23.10	N88°07'33"E
L21	60.02	S02°11'40"E
L22	100.00	S31°22'24"W
L23	14.74	S58°37'40"E
L24	87.16	N02°27'39"W
L25	15.97	S57°50'41"E

CURVE TABLE					
CURVE	RADIUS	LENGTH	DELTA	CHORD B.	CHORD L.
C1	500.00	224.50	25°43'32"	N15°06'50"W	222.62
C2	500.00	221.86	25°25'26"	S15°15'53"E	220.05
C3	300.00	279.82	53°26'28"	N29°16'24"W	269.78
C4	300.00	281.58	53°46'38"	S29°06'20"E	271.35
C5	470.00	143.12	17°26'50"	N83°29'35"W	142.57
C6	530.00	163.84	17°42'45"	S83°37'32"E	163.19
C7	114.74	60.00	109°33'56"	S07°26'03"E	98.04
C8	21.63	25.00	49°33'56"	N22°33'57"E	20.96
C9	133.55	85.00	90°01'28"	S42°47'44"W	120.23
C10	242.92	330.00	42°10'35"	N71°40'23"W	237.47
C11	195.86	270.00	41°33'49"	S71°21'57"E	191.60
C12	239.38	330.00	41°33'46"	S71°21'59"E	234.17
C13	198.75	270.00	42°10'35"	N71°40'23"W	194.29
C14	39.27	25.00	90°00'00"	S42°46'28"W	35.36
C15	21.67	25.00	49°39'38"	S27°01'21"E	21.00
C16	114.81	60.00	109°38'10"	N02°57'54"E	98.08

FINAL PLAT
RESERVE AT SPRING LAKE
SECTION ONE
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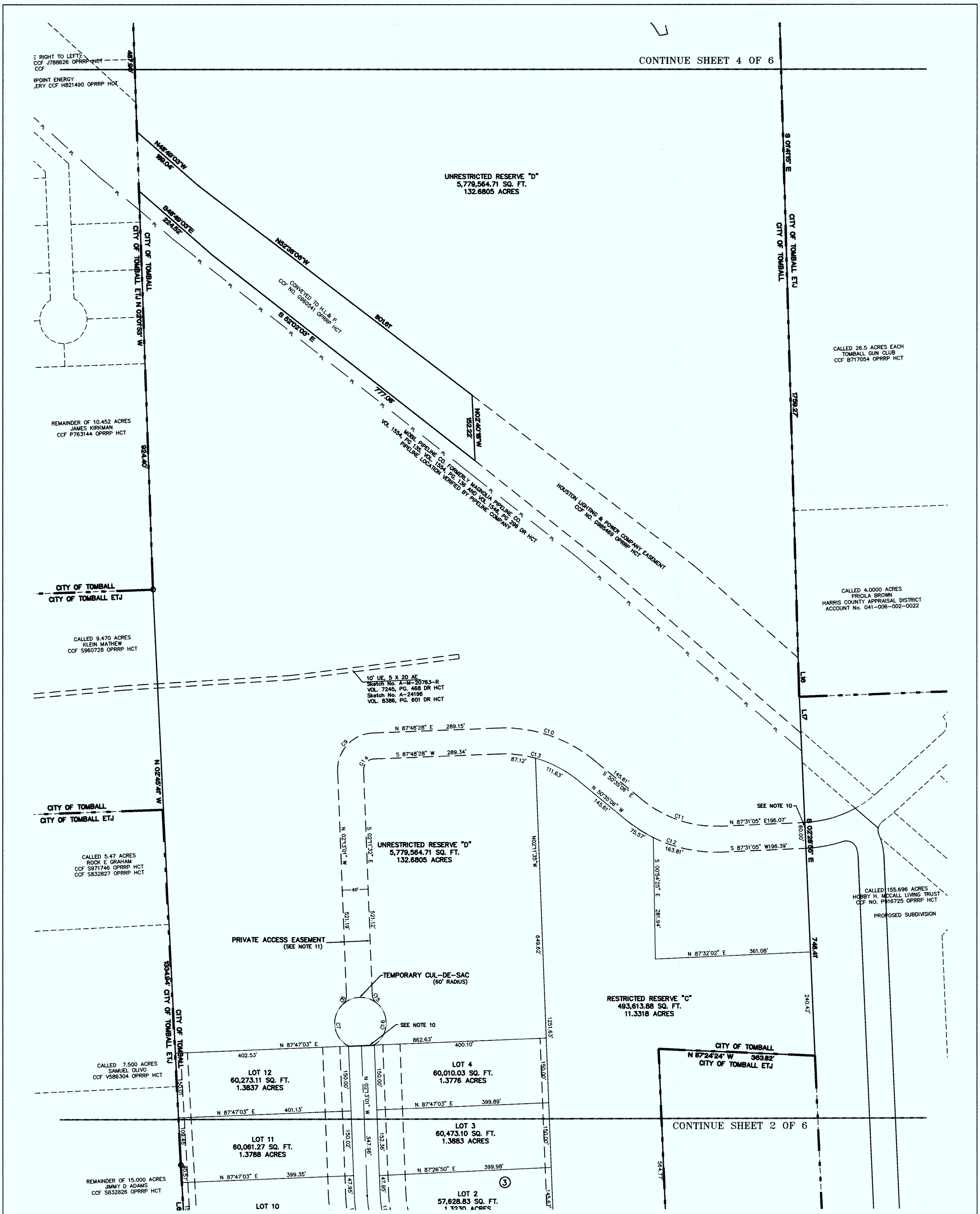
W.H. CLEMENS SURVEY, A-1641
HARRIS COUNTY, TEXAS
CITY OF TOMBALL, TEXAS
3 BLOCKS 24 LOTS 7 RESERVES
JANUARY 2012

TOWN & COUNTRY SURVEYORS, LLC
25307 NORTH FREEWAY, SUITE 100
THE WOODLANDS, TX 77380
(281)465-8730
FAX (281)465-8731

SHEET 2 OF 6
JOB No. 0451-0004
CT/DJS



FINAL PLAT

RESERVE AT SPRING LAKE

SECTION ONE

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3 BLOCKS 24 LOTS 7 RESERVES
JANUARY 2012

GRAPHIC SCALE
(IN FEET)
1 inch = 100 ft.

TOWN & COUNTRY SURVEYORS, LLC
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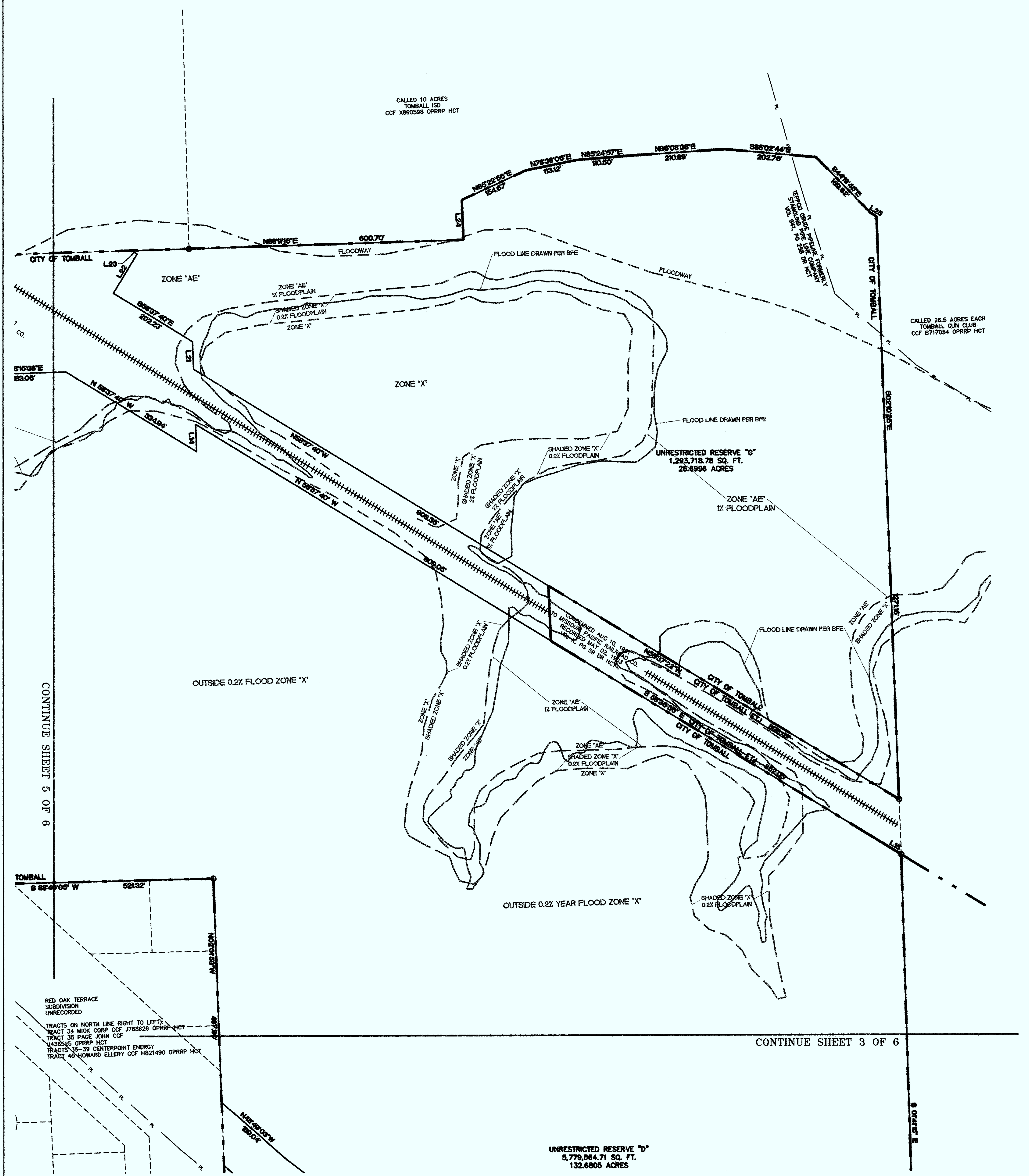
JOB No. 0451-0004

SHEET 3 OF 6



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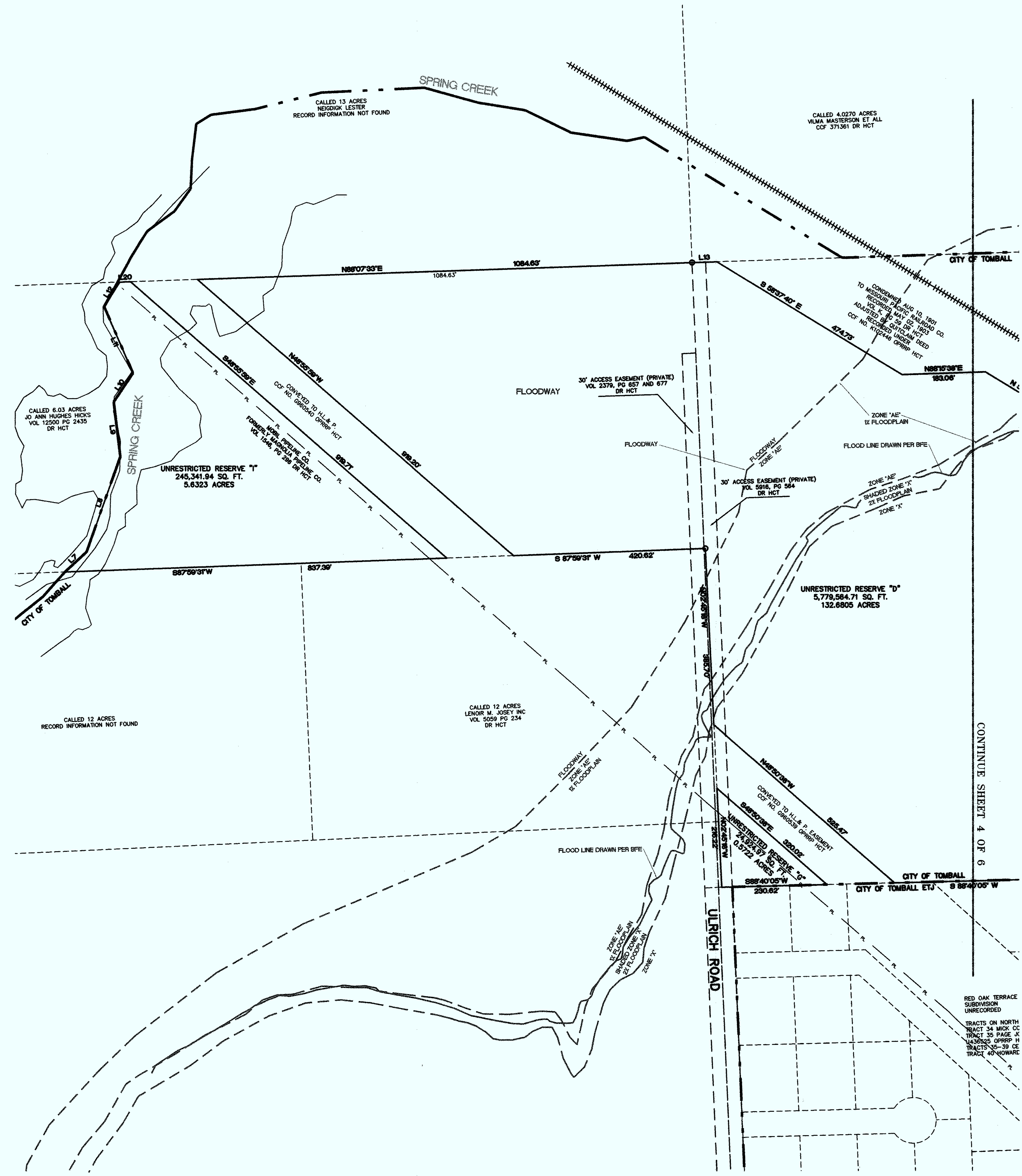
SHEET 4 OF 6
JOB No. 0451-0004



FINAL PLAT

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CITY OF TOMBALL, TEXAS

3 BLOCKS 24 LOTS 7 RESERVES
JANUARY 2012

GRAPHIC SCALE
(IN FEET)
1 inch = 100 ft.

TOWN & COUNTRY SURVEYORS, LLC
25307 NORTH FREEWAY, SUITE 100
THE WOODLANDS, TX 77380
(281)465-8730
FAX (281)465-8731

SHEET 5 OF 6
JOB No. 0451-0004

STATE OF TEXAS

COUNTY OF HARRIS

WE, Zion Road Properties, LLC, acting by and through Robert M. Allen, General Manager, being officer of Zion Properties, LLC, hereinafter referred to as owners of the 221.2020 acre tract described in the above and foregoing plat of RESERVE AT SPRING LAKE SECTION ONE, do hereby make and establish said subdivision and development plat of said property according to all liens, dedications, restrictions and notations on said maps or plat and hereby dedicate to the use of the public forever, all streets (except those streets designated as private streets, or permanent access easements), alleys, parks, water courses, drains, easements and public places shown thereon for the purpose and considerations therein expressed; and do hereby bind ourselves, our heirs, successors and assigns to warrant and forever defend the title on the land so dedicated.

FURTHER, owners have dedicated and by these presents do dedicate to the use of the public for public utility purposes forever an unobstructed aerial easements, five (5) feet in width from a plane twenty (20) feet above the ground level upward, located adjacent to all public utility easements shown hereon.

FURTHER, owners do hereby covenant and agree that all of the property within the boundaries of this plat shall be restricted to provide that drainage structures under private driveways shall have a net drainage opening area of sufficient size to permit the free flow of water without backwater and in no instance have a drainage opening of less than one and three quarters square feet (18-inch diameter) with culverts or bridges to be provided for all private driveways or walkways crossing such drainage facilities.

FURTHER, Owners do hereby dedicate to the public a strip of land fifteen (15) feet wide on each side of the center line of any and all bayous, creeks, gullies, ravines, draws, sloughs, or other natural drainage courses located in said plat, as easements for drainage purposes, giving the City of Tomball, Harris County, or any other governmental agency, the right to enter upon said easement at any times for the purpose of construction and maintenance of drainage facilities and structures.

FURTHER, Owners do hereby covenant and agree that all of the property within the boundaries of this plat and adjacent to any drainage easement, ditch, gully, creek or natural drainage way is hereby restricted to keep such drainage ways and easements clear of fences, buildings, planting and other obstructions to the operations and maintenance of the drainage facility and that such abutting property shall not be permitted to drain directly into this easement except by means of an approved drainage structure.

IN TESTIMONY WHEREOF, Zion Road Properties, LLC. has caused these presents to be signed by Robert M. Allen, its General Manager, thereunto authorized, attested by its Secretary, Gary Kolkhorst, and its common seal hereunto affixed this 21st day of February, 2012.

Zion Road Properties, LLC

By: Robert M. Allen
Robert M. Allen, General Manager

Attest:
By: Gary Kolkhorst
Gary Kolkhorst, Secretary

STATE OF TEXAS

COUNTY OF HARRIS

BEFORE ME, the undersigned authority, on this day personally appeared Robert M. Allen and Gary Kolkhorst General Manager of Zion Properties, LLC, known to me to be the persons whose name is subscribed to the foregoing instrument and acknowledgment to me that they executed the same for the purposes and considerations therein expressed and in the capacity therein and herein stated, and as the act and deed of said corporation.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, this 21st day of February, 2012

Betty J. Pennington
Notary Public in and for the State of Texas

BETTY J. PENNINGTON
Notary Public, State of Texas
My Commission Expires
March 20, 2015

Print name: Betty J. Pennington

My Commission expires: March 20, 2015

THE STATE OF TEXAS

COUNTY OF HARRIS

We, Preferred Bank, owners and holders of a lien against the property described in the plat known as Reserve at Spring Lake Section One, said lien being evidenced by instrument of record in Clerk's File Nos. 2008-0535712, 2008-0535106 and 20080535713, 20090285857, 20090571287, 20100231584, 20100399219, and 20110131824 of the Mortgage Records of Harris County, Texas, do hereby in all things subordinate our interest in said property to the purposes and effects of said plat and the dedications and restrictions shown herein to said plat and we hereby confirm that we are the present owners of said lien and have not assigned the same nor any part thereof.

Preferred Bank
Donald J. Najvar
11757 Katy Freeway Suite 100
Houston TX 77079

THE STATE OF TEXAS

COUNTY OF HARRIS

BEFORE ME, the undersigned authority, on this day personally appeared ~~Thomas B. Anderson,~~ Donald J. Najvar, known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the same for the purposes and considerations therein expressed and in the capacity therein and herein stated, and as the act and deed of said corporation.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this 21 day of February, 2012.

Janis L. Divin
Notary Public in and for the State of Texas

JANNIS L. DIVIN
Notary Public, State of Texas
My Commission Expires
November 04, 2014

My Commission Expires: 11/4/2014

THE STATE OF TEXAS

COUNTY OF HARRIS

We, Icon Bank, owners and holders of a lien against the property described in the plat known as Reserve at Spring Lake Section One, said lien being evidenced by instrument of record in Clerk's File Nos 20090498444, 20110211277, 20110184190, 20110184197, 20110463812, 20090285835, and 20090512582 of the Mortgage Records of Harris County, Texas, do hereby in all things subordinate our interest in said property to the purposes and effects of said plat and the dedications and restrictions shown herein to said plat and we hereby confirm that we are the present owners of said lien and have not assigned the same nor any part thereof.

Icon Bank
Mitchell Schulman
23123 Cinco Ranch Blvd.
Katy, Texas 77494

THE STATE OF TEXAS

COUNTY OF HARRIS

BEFORE ME, the undersigned authority, on this day personally appeared Mitchell Schulman, known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the same for the purposes and considerations therein expressed and in the capacity therein and herein stated, and as the act and deed of said corporation.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this 21 day of Feb., 2012

Kay Kuhn
Notary Public in and for the State of Texas

KAY KUHN
Notary Public, State of Texas
My Commission Expires
May 02, 2016

My Commission Expires:

THE STATE OF TEXAS

COUNTY OF HARRIS

We, JSRA Property Investments, owners and holders of a lien against the property described in the plat known as Reserve at Spring Lake Section One, said lien being evidenced by instrument of record in Clerk's File Nos 20090285835 and 20090498450 of the Property Records of Harris County, Texas, do hereby in all things subordinate our interest in said property to the purposes and effects of said plat and the dedications and restrictions shown herein to said plat and we hereby confirm that we are the present owners of said lien and have not assigned the same nor any part thereof.

JSRA Property Investments
Robert M. Allen
9977 W. Sam Houston Parkway N.
Houston, TX 77064

THE STATE OF TEXAS

COUNTY OF HARRIS

BEFORE ME, the undersigned authority, on this day personally appeared Robert Allen, known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the same for the purposes and considerations therein expressed and in the capacity therein and herein stated, and as the act and deed of said corporation.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this 21st day of February, 2012

Betty J. Pennington
Notary Public in and for the State of Texas

BETTY J. PENN[illegible]
Notary Public, St[illegible]
My Commissi[illegible]
March 20.

My Commission Expires: 3-20-2015

OWNER\DEVELOPER:
ZION ROAD PROPERTIES
ROBERT M. ALLEN, PRESIDENT
9977 W. SAM HOUSTON PKWY N., #150
HOUSTON, TX 77064
PH: 281-477-8688

ENGINEER:
DAVID P. KELLY II, P.E.
DPK ENGINEERING, LLC
32719 WINDSOR TERRACE
FULSHEAR, TX 77441
PH: 281-346-2616

LIENHOLDER:
JSRA PROPERTY INVESTMENT
ROBERT M. ALLEN, PARTNER
9977 W. SAM HOUSTON PARKWAY N.,
SUITE #150
HOUSTON TEXAS 77064
PH: 281-477-8688

LIENHOLDER:
PREFERRED BANK
DON NAJVAR, PRESIDENT
11757 KATY FREEWAY, SUITE #100
HOUSTON TEXAS 77079
PH: 281-556-6443

LIENHOLDER:
ICON BANK
Mitchell Schulman
7908 N. SAM HOUSTON PARKWAY W.,
SUITE #100
HOUSTON TEXAS 77064
PH: 281-517-2400

LIENHOLDER:
KOLKHORST & KOLKHORST, CPAs
GARY KOLKHORST, PARTNER
9977 W. SAM HOUSTON PARKWAY N.,
SUITE #150
HOUSTON TEXAS 77064
PH: 281-477-9100

THE STATE OF TEXAS

COUNTY OF HARRIS

We, K&K Investments, owners and holders of a lien against the property described in the plat known as Reserve at Spring Lake Section One, said lien being evidenced by instrument of record in Clerk's File Nos 20090285835 and 20090512582 of the Mortgage Records of Harris County, Texas, do hereby in all things subordinate our interest in said property to the purposes and effects of said plat and the dedications and restrictions shown herein to said plat and we hereby confirm that we are the present owners of said lien and have not assigned the same nor any part thereof.

Gary Kolkhorst
K&K Investments
Gary Kolkhorst, Partner
9977 W. Sam Houston Parkway N., Suite 150
Houston Texas 77064
Ph: 281-477-9100

THE STATE OF TEXAS

COUNTY OF HARRIS

BEFORE ME, the undersigned authority, on this day personally appeared Gary Kolkhorst, Partner, known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the same for the purposes and considerations therein expressed and in the capacity therein and herein stated, and as the act and deed of said corporation.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this 21 day of ____________.

Valerie Ann Richey
Notary Public in and for the State of Texas

VALERIE ANN RICHEY
Notary Public, State of Texas
My Commission Expires
September 14, 2012

My Commission Expires: 2012

I, David Strauss, am registered under the laws of the State of Texas to practice the profession of surveying and hereby certify that the above subdivision is true and correct; was prepared from an actual survey of the property made under my supervision on the ground; that all boundary corners, angle points, points of curvature, and other points of reference have been marked with iron pipes or rods having an outside diameter of not less than five-eigths inch (5/8") and a length of not less than three feet (3'); and that the plat boundary corners have been tied to the nearest survey corner.

David Strauss, Registered Professional Land Surveyor
Texas Registration No. 4833

STATE OF TEXAS
REGISTERED
DAVID A. STRAUSS
4833
PROFESSIONAL
LAND SURVEYOR

We, the City Manager and the City Engineer for the City of Tomball, do hereby certify that this plat complies with the City of Tomball's Ordinances.

By: ____________________
George Shackelford
City Manager

By: Lori Lakatos
Lori Lakatos, P.E.
Acting City Engineering

This is to certify that the Planning & Zoning Commission of the City of Tomball, Texas, has approved this plat and subdivision of Reserve at Spring Lake Section One in conformance with the laws of the State of Texas and the ordinances of the City of Tomball as shown hereon and authorized the recording of this plat this _____ day of ______________, 2012.

By: ____________________
Lori Wallace, Chair

By: ____________________
Evelyn Chervenak, Vice-Chair

CITY OF TOMBALL

This is to certify that the City accepts the Planning & Zoning Commission's authorized approval and acceptance of all dedicated public easements and rights-of-way in conformance with the laws of the State of Texas and the ordinances of the City of Tomball as shown hereon and authorized the recording of this plat this _____ day of 2012.

By: ____________________
Gretchen Fagan, Mayor

By: ____________________
Doris Speer, City Secretary

I, Stan Stanart, County Clerk of Harris County, Texas, do hereby certify that the within instrument with its certificate of authentication was filed for registration in my office on ___________, _____, 2012, at _______ o'clock, and duly recorded on ___________, 2012, at _______ o'clock, and in Film Code Number _________ of the Map Records of Harris County for said county.

Witness my hand and seal of office, at Harris County, the day and date last above written.

Stan Stanart
County Clerk
of Harris County, Texas

By: ____________________
Deputy

FINAL PLAT
RESERVE AT SPRING LAKE SECTION ONE
221.2020 ACRES (9,901,026.51 SQ. FT.)
LOCATED IN THE
JOSEPH MILLER LEAGUE, A-50
W.H. CLEMENS SURVEY, A-1641
HARRIS COUNTY, TEXAS
CITY OF TOMBALL, TEXAS

3 BLOCKS 24 LOTS 7 RESERVES

JANUARY 2012

SURVEYOR:

TOWN & COUNTRY SURVEYORS, LLC
25307 NORTH FREEWAY, SUITE 100
THE WOODLANDS, TX 77380
(281)465-8730
FAX (281)465-8731

SHEET 6 OF 6

CT/DJS JOB No. 0451-0004

Regular City Council Agenda Item Data Sheet

Meeting Date: March 5, 2012

Topic:

Consideration and Possible Action regarding Lease Agreement with Bobbi L. Gunter for the Property Located at 24114 Flax Ct., Owned by the City

Background:

The property located at 24114 Flax Ct. was purchased by the City of Tomball for the Hufsmith Road extension.

Cobb Fendley, the City's land purchasing agent, agreed to allow a 60-day move-out period.

A lease agreement is attached.

Origination:

City Manager

Recommendation:

Funding:

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

Engineering and Planning

ACTION TAKEN

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

ATTACHMENTS:

Gunter Lease Agreement

Lease

Basic Terms

Date: ______________________

Landlord: City of Tomball

Landlord's Address: 401 Market St., Tomball, TX 77375

Tenant: Bobbi L. Gunter

Tenant Address: 24114 Flax Ct., Tomball, TX 77375

Premises: 24114 Flax Ct., Tomball, TX 77375

Term: Sixty (60) days

Commencement Date: _______________

Termination Date: __________________

Base Rent (monthly): $1.00

Lease Agreement: Landlord agrees to lease the Premises to Tenant and Tenant agrees to leave the Premises from Landlord on an "as-is" "where is" basis for the entire Term beginning on the Commencement Date and ending on the Termination Date.

Tenant Obligations: Tenant agrees to keep the Premises in good order, repair, and condition, at Tenant's sole cost and expense. Tenant shall pay all charges incurred for the use of utility services at the Premises including without limitation gas, electricity, water, sanitary sewer, telephone, cable television and all matters related thereto.

Holdover: Tenant agrees to vacate the Premises, and cause any persons to whom Tenant has leased the Premises to vacate the Premises, at the end of the Term.

Tenant's Indemnification of Landlord: Tenant agrees to indemnify and save Landlord harmless against any and all fines, suits, actions, claims, losses, demands, liabilities, damages, costs, expenses, injury or death that may occur, or be claimed by or in respect of any person, persons, corporation, property or chattels, including reasonable attorney's fees for the defense thereof, arising from the use by any person of the Leased Premises, the conduct, operation or management of the business conducted by Tenant in the Leased Premises, or for any breach or default on the part of Tenant in the performance of any covenant or agreement on the part of Tenant to be performed pursuant to the terms of this Lease, or from any act of negligence of Tenant, Tenant's agents, contractors, servants, employees, subtenants, concessionaires, or licensees, in or about the Leased Premises. In case of any action or proceeding brought against

Landlord by reason of any such claim, upon notice from Landlord, Tenant covenants to defend such action or proceeding by counsel reasonably satisfactory to Landlord.

Insurance : Tenant, at its own expense, shall maintain during the term of this Lease an insurance policy or policies of commercial general liability, bodily injury, and property damage insurance, with coverage for premises, operations, independent contractors, broad form contractual in support of Tenant's indemnities under this Lease, and personal injury liability with liability limits not less than $500,000 per occurrence, and $1,000,000 in the general aggregate for property damage, personal injuries, or deaths of persons occurring in or about the Leased Premises.

CITY OF TOMBALL

By______________________________
Gretchen Fagan, Mayor

Attest:

____
Doris Speer, City Secretary

____
Bobbi L. Gunter

STATE OF TEXAS §
COUNTY OF HARRIS §

This instrument was acknowledged before me on this ______ day of ______________, 2012, by Gretchen Fagan, as Mayor of the **CITY OF TOMBALL,** a Texas municipality.

SEAL

____
Notary Public, State of Texas

STATE OF TEXAS §
COUNTY OF HARRIS §

This instrument was acknowledged before me on this ______ day of ______________, 2012, by **Bobbi L. Gunter**.

SEAL

____
Notary Public, State of Texas

Regular City Council Agenda Item Data Sheet

Meeting Date: March 5, 2012

Topic:

Approve Request for Proposals for Independent Audit Services, as Required under Section 8.24 of the City Charter, for the Fiscal Year Ending September 30, 2012 and Two Succeeding Years.

Background:

This item is for the presentation to council and request for approval to move forward with the Request for Proposals (RFPs) for the independent auditing services for the fiscal year ending September 30, 2012 and the two succeeding fiscal years. Section 8.24 of the City Charter requires that prior to the end of the fiscal year, the Council designate a certified public accountant to make an independent audit and submit a report to the Council within 120 days from the closing of the fiscal year, which for this coming year-end will be January 28, 2013 or no later than the regularly scheduled council meeting on January 21, 2013.

The last RFP was approved by Council at the March 16, 2009 meeting and was for the fiscal years of 2009, 2010, and 2011. The firm of Belt, Harris, Pechacek had performed the audit for fiscal 2007 and 2008 and then was awarded the contract for the three years of 2009, 2010, and 2011.

The recommended "best practice" of the Government Finance Officers Association of the United States and Canada is to change firms after each five year period. This practice serves to enhance the independence of the firm performing the audit. Staff recommendation is to issue an RFP and award the contract for a period of three years with each year being subject to review and re-appointment by council and at the end of three years, then review the possibility of a two year extension with the firm doing the audit at that time.

Origination:

Finance

Recommendation:

Staff recommends approval of the Request for Proposal of audit services for the fiscal year ending September 30, 2012.

Funding:

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

Glenn Windsor, CPA Finance Director

ACTION TAKEN

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

ATTACHMENTS:

Audit ARP for Fiscal Year Ending 2012

GFOA Best Practice-Audit Procurement

CITY OF TOMBALL, TEXAS

Request for Proposal (RFP)

Independent Audit Services

Proposal No. 2012-04

March 5, 2012

George Shackelford
City Manager

Glenn Windsor, CPA
Finance Director

MAYOR

Gretchen Fagan

CITY COUNCIL

F.S. "Field" Hudgens, Position One | **Derek Townsend, Sr., Position 4**

Mark Stoll, Position Two | **Preston L. Dodson, Position 5**

Rick Brown – Position Three

City of Tomball, Texas
Request for Proposal

Independent Audit Services

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1. INTRODUCTION

1.1 The City of Tomball, Texas (the City) is soliciting requests for proposal (RFP) from qualified firms of certified public accountants to audit its financial statements. The term of the audit contract will be for three (3) years, with an optional renewal for one (1) two-year term, not to exceed a maximum contract period of five (5) years. These audits are to be performed in accordance with generally accepted auditing standards, the standards set forth for financial audits in the U.S. General Accounting Office's *Government Auditing Standards* (2011), the provisions of the federal Single Audit Act of 1984, as amended, and U.S. Office of Management and Budget (OMB) Circular A-133, *Audits of States, Local Governments, and Non-Profit Organizations.*

1.2 There is no expressed or implied obligation for the City to reimburse responding firms for any expenses incurred in preparing proposals to respond to this request.

1.3 During the evaluation process, the City reserves the right, where it may serve the City's best interest, to request additional information or clarifications from proposers, or to allow corrections of errors or omissions. At the discretion of the City, firms submitting proposals may be requested to make oral presentations as part of the evaluation process.

1.4 The City reserves the right to retain all proposals submitted and to use any ideas in a proposal regardless of whether that proposal is selected. Submission of a proposal indicates acceptance by the firm of the conditions contained in this RFP, unless clearly and specifically noted in the proposal submitted and confirmed in the contract between the City and the firm selected.

1.5 It is anticipated that selection of a firm will be completed by May 2, 2012.

1.6 **Term of engagement.** A three year contract, with an optional one-time two-year extension, is contemplated, subject to the annual review and recommendation of the Finance Director, the satisfactory negotiation of terms (including a price acceptable to both the City and the selected firm), and concurrence of the City Council and the annual availability of appropriation. The total term of the engagement will not exceed five (5) years.

2. CALENDAR OF EVENTS

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

Date Completed	Description of Events
Wednesday, April 4, 2012	Receive proposals at 2:00 p.m. at Purchasing Agent's Office, Public Works Adm. Bldg., 501 James St.; opening in Training Room at 2:15 p.m.
Thursday, April 12, 2012	Conduct interviews with firms if necessary
Monday, May 7, 2012	Recommendation to City Council for award of the contract.

3. CRITERIA FOR EVALUATION

3.1 The City staff will review the submitted proposals very carefully. The recommendation will be based on the proposal determined to be most advantageous on behalf of the City and the taxpayers.

3.2 Proposals will be evaluated by the Finance Department. The best firm(s) will then, if deemed necessary, be interviewed by the City Staff and the City Manager.

3.3 While the City desires to achieve a cost effective audit, the emphasis is on quality, not low fees. However, the estimated fees and proposed hourly rates will be a major factor in determining which firm to recommend to the City Council.

3.4 The following additional evaluation criteria will be considered in the evaluation process:

3.4.1 The audit firm is independent and licensed to practice in the State of Texas;

3.4.2 The audit firm's professional personnel have received adequate continuing professional education within the preceding two years;

3.4.3 The firm has no conflict of interest with regard to any other work performed by the firm for the City.

4. SCOPE OF AUDIT SERVICES REQUIRED

4.1 The City desires the auditor to express an opinion on the fair presentation of the City's general purpose financial statements in conformity with generally accepted accounting principles.

4.2 The City also desires the auditor to express an opinion on the fair presentation of its financial statements in conformity with generally accepted accounting principles. The auditor is not required to audit the statistical section of the report.

4.3 The auditor is responsible for assisting the City with the preparation of a Comprehensive Annual Financial Report (CAFR).

4.4 To meet the requirements of this RFP, the audit shall be performed in accordance with Generally Accepted Auditing Standards (GAAS) as set forth by the American Institute of Certified Public Accountants, the standards for financial audits set forth in the U.S. General Accounting Office's *Government Auditing Standards* (2011), the provisions of the Single Audit Act of 1984 and the provisions of U.S. Office of Management and Budget (OMB) Circular A-133, *Audits of States, Local Governments, and Non-Profit Organizations*. Additionally, the single audit work will be conducted in accordance with generally accepted governmental auditing standards to meet all federal grant audit requirements.

4.5 The auditors should submit a list of requested client-prepared schedules to the City's Finance Director/Senior Accountant at an agreed upon date to facilitate the efficient and timely completion of the field work process. Because the accounting division is staffed at only a maintenance level and must carry on its normal operations during the audit, much of the time necessary for preparing schedules may require staff overtime. This time constraint should be taken into account in preparing the proposal.

4.6 The financial statements for the Tomball Economic Development Corporation are included as a component unit of the City. The Tomball Economic Development Corporation is included within the scope of the City's annual audit.

4.7 **<u>Comprehensive Annual Financial Report (CAFR).</u>** The City will send its CAFR to the Government Finance Officers Association of the United States and Canada for review in its Certificate of Achievement for Excellence in Financial Reporting program. It is anticipated that the auditor will be required to provide special assistance to meet the requirements of that program.

4.7.1 The City has received the Certificate of Achievement for Excellence in Financial Reporting for over twenty consecutive years, and it is anticipated that the City will again receive the certificate for the FY2011 CAFR. The City therefore searches for a firm that actively participates in technically assisting clients that have previously been awarded the certificate.

4.7.2 The auditor agrees to provide print-ready financial statements and audit opinion to the City on or before January 21, 2013.

4.7.3 The auditor also agrees to provide the City with a print-ready version of the CAFR in .pdf format to facilitate the printing of additional copies and posting the CAFR on the City's website.

4.7.4 The introductory and statistical sections of the CAFR will be prepared by the auditors, with assistance from City staff.

4.7.5 The auditor will compile and prepare all financial statements and schedules in the financial section of the CAFR.

4.7.6 The notes to the financial statements will be a joint effort of the City and the auditors, and will be prepared by the auditor.

4.7.7 The financial section of the CAFR will be prepared by the auditor.

4.8 **<u>Working Paper Retention and Access to Working Papers.</u>** All working papers and reports must be retained, at the auditor's expense, for a minimum of five (5) years, unless the firm is notified in writing by the City of the need to extend the retention period.

5. DESCRIPTION OF THE CITY

5.1 **Inquiries.** The City's day-to-day working relationship with the independent auditors will be coordinated by Glenn Windsor, CPA, Finance Director, and/or Kacie Richardson, CGFO, Senior Accountant. Inquiries regarding the RFP may be addressed by phone at (281) 290-1417 or by e-mail at gwindsor@ci.tomball.tx.us. Inquiries should be conducted during normal business hours, Monday through Friday. Inquiries to any person other than the person so named in this RFP may result in elimination of the proposal from any further consideration.

5.2 The City's population is 10,753 based upon the latest census information. The City's fiscal year begins on October 1 and ends on September 30 of the following year. Tomball is approximately 11.7 square miles and located along State HW 249 28 miles Northwest of downtown Houston.

5.3 More detailed information about the City and its finances can be found in prior CAFRs and Budgets. These, along with other information, are available on the City's website at www.ci.tomball.tx.us

5.4 **Fund Structure.** As of March 5, 2012, the City's fund structure is as follows:

Fund Type/Account Group	Number of Individual Funds	Number with Legally Adopted Annual Budgets
General fund	1	1
Special revenue funds	6	6
Debt service funds	1	1
Capital projects funds	1	1
Enterprise funds	1	1
Internal service funds	2	2
Agency funds	0	0
Pension trust funds	0	0

5.5 The City prepares its budget on the modified accrual basis of accounting for all funds. Depreciation is not budgeted in enterprise and internal service funds, and capital outlay is budgeted as an expense in enterprise funds.

5.6 During the fiscal year(s) to be audited, the City may receive grants from the Department of Justice, other federal as well as state agencies.

5.7 **Pension plans**. The City participates in the Texas Municipal Retirement System and the IRS Section 457 deferred compensation plans offered by the International City Manager's Association (ICMA).

5.8 **Component units.** The City reporting entity currently includes the Tomball Economic Development Corporation (TEDC) as component unit in its CAFR. The primary reason for inclusion of this component unit is the City's ability to designate management of these organizations. The Governing Body of the City appoints all seven (7) members of the TEDC. Since the composition of the board of this organization is significantly influenced by the City, this organization is included as a component unit of the City.

5.9 **GASB 45 (OPEB).** The City has engaged the services of an outside firm to provide management advice and an actuarial estimate on its Other Post Employment Benefits as it relates to GASB 45.

5.10 **Availability of Prior Audit Reports and Working Papers**. Interested proposers who wish to review prior years' audit reports and management letters should contact the person so named in this RFP. The City will use its best efforts to make prior audit reports and supporting working papers available to proposers to aid their response to this RFP.

6. SUPPLEMENTARY INFORMATION

6.1 **Implementing New Accounting Standards.** The auditor's assistance and consultation will be required in implementing new GASB and FASB statements at the earliest possible date, even if prior to the required effective date.

6.2 **Report On Internal Controls**

6.2.1 The auditor shall communicate in a letter to management any suggestions for improvements or deficiencies in internal controls noted during the audit that do not rise to the level of significant deficiencies or material weaknesses that would require reporting as part of *the auditors' report* on Internal Control over Financial Reporting and on Compliance and Other Matters Based on an Audit of Financial Statements Performed in Accordance With Government Auditing Standards**.** A deficiency in internal control exists when the design or operation of a control does not allow management or employees, in the normal course of performing their assigned functions, to prevent, or detect and correct misstatements on a timely basis. A material weakness is a deficiency, or a combination of deficiencies, in internal control such that there is a reasonable possibility that a material misstatement of the entity's financial statements will not be prevented, or detected and corrected on a timely basis. A significant deficiency is a deficiency, or a combination of deficiencies, in internal control that is less severe than a material weakness, yet important enough to merit attention by those charged with governance.

6.2.2 The *Report on Internal Controls* will be presented on or before January 21, 2013 to the City's Management. However, all significant management recommendations should be discussed with the Finance Director as they are discovered, so that the City can ensure immediate correction of any problems.

6.5 **Single Audit.** The single audit, if required, will cover all federal and state grants and/or funding. For the past few years, the City has not had to provide a Single Audit report. Final products will include:

6.5.1 Supplemental schedule of Federal and State Awards, financial assistance;

6.5.2 A*uditors' report* on Internal Control over Financial Reporting and on Compliance and Other Matters Based on an Audit of Financial Statements Performed in Accordance With Government Auditing Standards

6.5.3 Independent Auditor's Report on Compliance With Requirements That Could Have a Direct And Material Effect on Each Major Program and on Internal Control Over Compliance in Accordance With OMB Circular A-133.

7. AUDIT QUALIFICATIONS & QUESTIONS

7.1 The City realizes that the audit firm may have local government audit and consulting expertise nationally. While this is important, the City is most interested in local government expertise available in the "local office." The local office is defined as the office from which the audit engagement will be managed and primarily staffed.

7.2 The following items should be answered and/or discussed in the RFP:

7.2.1 Your Firm:

7.2.1.1 What are your firm's strengths?
7.2.1.2 What are your local office's strengths?

7.2.1.3 How large is your firm?
7.2.1.4 How many offices do you have?
7.2.1.5 How many partners and staff are in the local office - audit, tax, management advisory service, etc.?

7.2.2 What is your local office strategy for the future?

7.2.3 The proposer should provide a list of local government clients served by the local office in the past five years and give a contact name, telephone and e-mail address for each. Please designate which are current clients.

7.2.4 What major clients and what local government clients (if not major) have you gained/lost in the local office in the past three years? Why?

7.2.5 Describe all major pending and settled litigation of the firm during the past three years. Please identify any litigation involving the local office.

7.2.6 Describe any disciplinary action imposed on the local office by the AICPA, state board, state society, or SEC during the past three years.

7.2.7 Describe the results of your firm's and local office's most recent peer review and its status under the AICPA peer review program.

7.2.8 Why would the City be important to your firm and to the local office as a client?

7.2.9 **Your Service:**

7.2.9.1 Which local office would be assigned to the City engagement?

7.2.9.2 What is the number of clients served from the local office?

7.2.10 Which partners, managers, audit, and management advisory service, will be assigned to the City engagement? Describe the experience of personnel who will be assigned to the City audit. Please be brief and include resumes as an appendix.

7.2.11 Do any relationships exist between the City and its management and members of your firm which might impair your firm's independence? If so, please explain.

7.2.12 What is your firm's policy in rotating partners and/or managers?

7.2.13 How much audit staff turnover has occurred in the local office due to resignations or terminations in the past 24 months?

7.2.14 What are your policies regarding staff education and development?

7.2.15 What commitments will your firm make with respect to accessibility of the partners and managers assigned to our engagement to the City's senior officers and key financial employees?

7.2.16 How will fees for the above services be calculated? Will the City receive any discount from the firm's standard rates? If so, how much?

7.2.17 If proposer is a joint venture, the qualifications of each firm comprising the joint venture should be separately identified and the firm that is to serve as the principal auditor should be noted.

7.3 <u>The Audit:</u>

7.3.1 Describe what your firm's philosophy will be with respect to the audit of the City.

7.3.2 Outline your audit plans for future fiscal years.

7.3.3 What will your maximum estimated fee be for the audit? Please include a time budget by employee classification for the audit. How did you determine the fee?

7.3.4 What is your philosophy regarding the management letter content and use?

7.3.5 Indicate the firm's agreement with respect to the Scope of Audit Services section. Any disagreement or deviation with these terms should be expressed in the proposal, as the City plans to incorporate the proposal into a final contract by reference.

8. PROPOSAL INSTRUCTIONS/REQUIREMENTS

8.1 <u>Filing.</u> Two (2) copies of sealed proposals, along with one (1) unbound original copy, suitable for reproduction by the City, clearly marked "Independent Audit Services Proposal" should be delivered to the following office by 2:00 p.m., April 4, 2012.

Purchasing Agent
City of Tomball
501 James Street
Tomball, TX 77375

NO PROPOSAL WILL BE RECEIVED AFTER 2:00 P.M. LATE PROPOSALS WILL BE RETURNED UNOPENED TO THE PROPOSER.

8.2 **Responses.** The proposing firm uses this RFP form as the OFFICIAL PROPOSAL to submit information and to answer questions. Any alterations, changes or deletions to this RFP may be grounds for the City to disregard and reject the entire proposal. Attachments are acceptable and recommended if specifically identifiable and appended.

8.3 **Additional Information.** The City reserves the right to request additional information or to meet with representatives from proposing organizations to discuss points in the proposal before and after submission, any and all of which may be used in forming a recommendation.

8.4 **Rejections.** The City reserves the right to reject any and all proposals and to accept the proposal deemed most advantageous to the City.

8.5 The first page of the proposal should indicate the name and address of the local office and the name and phone number of a person(s) to contact with questions and to set up an interview.

8.6 Proposals must contain a table of contents and should include the answers to each question in the Auditor Qualification and Questions section.

8.7 Please number the answers corresponding to the questions and/or requests in this RFP.

8.8 The resumes of key personnel should be included as an appendix to the proposal. The proposing firm will designate and commit individuals to perform the audit work. At a minimum, the following levels should be provided in the proposal:

- Audit Partner
- Manager
- Site Supervisor
- Direct support staff

8.9 No replacements or substitutions of the above positions shall be permitted without the City's knowledge and consent.

8.10 Any additional data may be included in the proposal at the proposer's discretion. Please include such material as an appendix or bind separately.

8.11 Appointment. The final appointment of an audit firm will be made by the Tomball City Council.

8.12 Specific audit approach. The proposal should set forth a work plan, including explanation of the audit methodology to be followed, to perform the services as specified in this RFP. In developing the work plan, reference should be made to such sources of information as the City's budget and related materials, organizational charts, manuals and programs, and financial and other management information systems. In addition, proposers are required to provide the following information on their audit approach:

8.12.1 Proposed segmentation of the engagement;

8.12.2 Level of staff and number of hours to be assigned to each proposed segment of the engagement;

8.12.3 Sample sizes and the extent to which statistical sampling is to be used in the engagement;

8.12.4 Extent of the use of EDP software in the engagement;

8.12.5 Type and extent of analytical procedures to be used in the engagement;

8.12.6 Approach to be taken to gain and document an understanding of the City's internal control structure;

8.12.7 Approach to be taken in determining laws and regulations that will be subject to audit test work; and

8.12.8 Approach to be taken in drawing audit samples for purposes of tests of compliance.

8.13 Sealed dollar cost proposal. The sealed dollar cost proposal should contain all pricing information relative to performing the audit engagement as described in this RFP. The cost to perform the Single Audit (if applicable) should be shown separately from the cost to audit the general purpose financial statements. The total all-inclusive (not to exceed) maximum price to be proposed is to contain all direct and indirect costs, including all out-of-pocket expenses.

8.14 Rates for additional professional services. If it should become necessary for the City to request the auditor to render any additional services to either supplement the services requested in this RFP or to perform additional work as a result of the specific recommendations included in any report issued on this engagement, then such additional work shall be performed only if set forth in an addendum to the contract between the City and the firm. Any such additional work agreed to between the City and the firm shall be performed at the same rates as specified herein.

8.15 **<u>Method of payment.</u>** Progress payments will be made on the basis of hours of work completed during the course of the engagement and out-of-pocket expenses incurred in accordance with the firm's cost proposal. Interim billings shall cover a period of not less than a calendar month.

8.16 The City will provide the opportunity for the proposers to visit the City Finance Department and review official documents. However, interviews in excess of one hour are discouraged.

8.17 The contents of the proposals will be considered confidential information by the City, during the evaluation process. However, upon final award of the contract by City Council, all proposals will be available to the public for review and inspection.

8.18 **<u>Work area, telephones, photocopying and facsimile machines.</u>** The City will provide the auditor with reasonable work space that will allow for confidential discussions to take place, desk(s) and chairs. The auditor will also be provided reasonable access to appropriate telephones, photocopying and facsimile machines.

8.19 **<u>Warranties.</u>**

8.19.1 Proposer warrants that it is willing and able to obtain an errors and omission insurance policy providing a prudent amount of coverage for the willful or negligent acts, or omissions of any officers, employee or agencies thereof.

8.19.2 Proposer warrants that it will not delegate or subcontract its responsibilities under an agreement without the express prior written permission of the City.

APPENDIX

<u>Work Schedule</u>

Date Completed	Description of Events
September 30, 2012	End of City's fiscal year.
November 16-30, 2012	Initial financial statements available to auditor; General ledger closed by the City.
December 19-31,2012	Completion of audit field work and proposed adjusting entries submitted to the City.

January 11, 2013	Audit opinion, CAFR draft completed by auditor.
January 21, 2013	CAFR presented to City Council.
February 15, 2013	GFOA Certificate of Achievement for Excellence in Financial Reporting review checklist complete and responses to prior year review comments complete and provided to the City.

PUBLIC NOTICE

The City of Tomball, Texas is soliciting requests for proposal (RFP) from qualified firms or individuals of certified public accountants to audit its financial statements. It is anticipated that the term of the audit agreement will be for three (3) years, with an optional renewal for one (1) two-year term, not to exceed a maximum contract period of five (5) years. The audits are to be performed in accordance with generally accepted auditing standards, the standards set forth for financial audits in the U.S. General Accounting Office's *Government Auditing Standards* (2011), the provisions of the federal Single Audit Act of 1984, and U.S. Office of Management and Budget (OMB) Circular A-133, *Audits of States, Local Governments, and Non-Profit Organizations.* There is no expressed or implied obligation for the City to reimburse responding firms for any expenses incurred in preparing proposals to respond to this request. During the evaluation process, the City reserves the right, where it may serve the City's best interest, to request additional information or clarifications from proposers, or to allow corrections of errors or omissions. The City reserves the right to retain all proposals submitted and to use any ideas in a proposal regardless of whether that proposal is selected.

TWO (2) COPIES OF SEALED PROPOSALS, ALONG WITH ONE (1) UNBOUND ORIGINAL COPY, SUITABLE FOR REPRODUCTION BY THE CITY, CLEARLY MARKED "INDEPENDENT AUDIT SERVICES PROPOSAL No. 2012-04" SHOULD BE DELIVERED TO THE FOLLOWING OFFICE BY 2:00 P.M. (LOCAL TIME), April 4, 2012.

PURCHASING AGENT
CITY OF TOMBALL
501 JAMES STREET
TOMBALL, TEXAS 77375

NO PROPOSAL WILL BE ACCEPTED AFTER 2:00 P.M. LATE PROPOSALS WILL BE RETURNED UNOPENED TO THE PROPOSER.

Proposals may be obtained at the above address during normal working hours.

BEST PRACTICE

Audit Procurement (1996 and 2002)

Background. The Government Finance Officers Association (GFOA) has long recommended that state and local governmental entities obtain independent audits of their financial statements performed in accordance with the appropriate professional auditing standards. Properly performed audits play a vital role in the public sector by helping to preserve the integrity of the public finance functions and by maintaining citizens' confidence in their elected leaders.

Recommendation. GFOA makes the following recommendations regarding the selection of auditing services:

- The scope of the independent audit should encompass not only the fair presentation of the basic financial statements, but also the fair presentation of the financial statements of individual funds and component units. The cost of extending full audit coverage to the financial statements of individual funds and component units can be justified by the additional degree of assurance provided. Nevertheless, the selection of the appropriate scope of the independent audit ultimately remains a matter of professional judgment. Accordingly, those responsible for securing independent audits should make their decision concerning the appropriate scope of the audit engagement based upon their particular government's specific needs and circumstances, consistent with applicable legal requirements.

- Governmental entities should require in their audit contracts that the auditors of their financial statements conform to the independence standard promulgated in the General Accounting Office's *Government Auditing Standards* even for audit engagements that are not otherwise subject to generally accepted government auditing standards.

- Governmental entities should enter into multiyear agreements of at least five years in duration when obtaining the services of independent auditors. Such multiyear agreements can take a variety of different forms (e.g., a series of single-year contracts), consistent with applicable legal requirements. Such agreements allow for greater continuity and help to minimize the potential for disruption in connection with the independent audit. Multiyear agreements can also help to reduce audit costs by allowing auditors to recover certain "startup" costs over several years, rather than over a single year.

- Governmental entities should undertake a full-scale competitive process for the selection of independent auditors at the end of the term of each audit contract, consistent with applicable legal requirements. Ideally, auditor independence would be enhanced by a policy requiring that the independent auditor be replaced at the end of the audit contract, as is often the case in the private sector. Unfortunately, the frequent lack of competition among audit firms fully qualified to perform public-sector audits could make a policy of mandatory auditor rotation counterproductive. In such cases, it is recommended that a governmental entity actively seek the participation of all qualified firms, including the current auditors, assuming that the past performance of the current auditors has proven satisfactory. Except in cases where a multiyear agreement has taken the form of a series of single-year contracts, a contractual provision for the automatic renewal of the audit contract (e.g., an automatic second term for the auditor upon satisfactory performance) is inconsistent with this recommendation.

- Professional standards allow independent auditors to perform certain types of nonaudit services for their audit clients. Any significant nonaudit services should always be approved in advance by a governmental entity's audit committee. Furthermore, governmental entities should routinely explore the possibility of alternative service providers before making a decision to engage their independent auditors to perform significant nonaudit services.

- The audit procurement process should be structured so that the principal factor in the selection of an independent auditor is the auditor's ability to perform a quality audit. In no case should price be allowed to serve as the sole criterion for the selection of an independent auditor.

References

- *CPA Audit Quality: A Framework for Procuring Audit Services*, General Accounting Office, August 1987.
- *Audit Management Handbook*, Stephen J. Gauthier, GFOA, 1989.
- *An Elected Official's Guide to Auditing*, Stephen J. Gauthier, GFOA, 1992.
- *Governmental Accounting, Auditing and Financial Reporting (GAAFR)*, Stephen J. Gauthier, GFOA.
- Model Audit RFP Diskette, GFOA.

Approved by the GFOA's Executive Board, October 25, 2002

Regular City Council Agenda Item Data Sheet

Meeting Date: March 5, 2012

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:

- Section 551.071 - Consultation with Attorney regarding Litigation

Background:

Origination:

Recommendation:

Funding:

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

ACTION TAKEN

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