

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



MONDAY, DECEMBER 19, 2011

6:00 P.M.

Notice is hereby given of a meeting of the Tomball City Council, to be held on Monday, December 19, 2011 at 6:00 P.M., City Hall, 401 Market Street, Tomball, Texas 77375, for the purpose of considering the following agenda items. All agenda items are subject to action. The Tomball City Council reserves the right to meet in a closed session for consultation with attorney on any agenda item should the need arise and if applicable pursuant to authorization by Title 5, Chapter 551, of the Texas Government Code.

1.0 Call to Order

2.0 Invocation

- Led by Pastor Kenny Rodgers, Anointed Faith Family Church

3.0 Pledges to U.S. and Texas Flags

- Led by Randy Parr, Fire Chief, City of Tomball

4.0 Public Comments and Receipt of Petitions *[At this time, anyone will be allowed to speak on any matter other than personnel matters or matters under litigation, for length of time not to exceed three minutes. No Council/Board discussion or action may take place on a matter until such matter has been placed on an agenda and posted in accordance with law.]*

5.0 Presentations:

- Depot Fountain Presentation
- ***“Mayor’s Volunteer of the Year 2011”*** Presentation
- Glenn Windsor – Certificate of Achievement for Excellence in Financial Reporting for fiscal year ending September 30, 2010

6.0 Reports and Announcements

- ***NO Walk Tomball!*** on December 24, 2011
- **Tuesday**, January 3, 2012 – Regular City Council Meeting – 6:00 p.m.
- January 14, 2012 – **2nd Saturday at the Depot** – 5:00 p.m.
- January 24, 2012 – **Annual Boards and Commission Recruitment Reception** – 5:30 p.m.-7:00 p.m. at the Community Center
- Appointments to Board of Adjustments will be on February agenda (terms expiring 3/2/12)
- ***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
 - David Kauffman and Randy Parr - Update on Dead/Dying Trees

7.0 Approve the Minutes of the December 5, 2011 Regular City Council Meeting.

8.0 New Business:

- 8.1 Approve Resolution No. 2011-27, a Resolution of the City Council of the City of Tomball, Texas, Supporting the Annual Baseball Parade, to be held in Tomball on Saturday, March 3, 2012
- 8.2 Approve Resolution No. 2011-28, a Resolution of the City Council of the City of Tomball, Texas, Authorizing the Mayor to Execute a Warranty Deed Conveying 97.5 Acres of Land, Generally Located at the Northwest Corner of Hufsmith-Kohrville and Holderrieth Roads, to the Tomball Industrial Development Corporation (also known as the Tomball Economic Development Corporation).
- 8.3 Receive Recommendation from the Capital Improvement Plan Advisory Committee in Compliance with Chapter 395, Texas Local Government Code.
- 8.4 Approve **REPLAT BARAJAS TRACT NO. 2**: Being a Subdivision of 0.4821 Acre Tract, 21,000.00 square feet, in the Joseph House Survey A-34 in Harris County, Texas, Being a Replat of Lots 23, 24, 25, 26, 27 and 28, Block 69 in the Revised Map of Tomball according to the Map Records in Volume 4, Page 25 of the Map Records of Harris County, Texas.
- 8.5 Approve **ZONING CASE P11-375**: Request by Drachman Interest on behalf of FNR, LLC to amend the City’s Comprehensive Zoning Ordinance to rezone approximately 11.09 acres of land, legally described as Lot 183 and Tracts 179A, 180A, and 184A, Tomball Outlots, within the City of Tomball, Harris County, Texas, generally located on the westerly side of South Cherry Street,

southerly of Agg Road, from the Agricultural District to the Light Industrial District.

- Conduct a Public Hearing on **ZONING CASE P11-375**
- Approve on First Reading, Ordinance 2011-32, an Ordinance of the City of Tomball, Texas, Amending its Comprehensive Zoning Ordinance by changing the Zoning District Classification of approximately 11.09 acres of land, Legally described as Lot 183 and Tracts 179A, 180A, and 184A, Tomball Outlots, Within the City of Tomball, Harris County, Texas, from the Agricultural District to the Light Industrial District; Said property being generally located on the westerly side of South Cherry Street, southerly of Agg Road; Providing for the Amendment of the Official Zoning Map of the City; Providing for severability; Providing for a penalty of an amount not to exceed \$2,000 for each day of violation of any provision hereof, Making findings of fact; and providing for other related matters

8.6 Award Contract for COT Project Bid Number 2012-01, E&P Project Number 2009-10006, Brown Hufsmith Phase II, to Low Bidder, Monarch Civil Constructors, LLC, in the Amount of \$961,487.78.

8.7 Award Contract for COT Project Bid Number 2012-02, E&P Project Number 2011-10003, Brown Road Utility Extension West of SH 249, to Low Bidder, Monarch Civil Constructors, LLC, in the Amount of \$169,053.02

8.8 Approve Amendment to Current Contract between the City of Tomball and AOT Public Safety Corporation for False Alarm Billing and Tracking Services.

9.0 Adjournment

CERTIFICATION

I hereby certify that the above notice of meeting was posted on the bulletin board of City Hall, City of Tomball, Texas, a place readily accessible to the general public at all times, on the 16th day of December 2011 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: December 19, 2011

Topic:

- Depot Fountain Presentation
- *“Mayor’s Volunteer of the Year 2011”* Presentation
- Glenn Windsor – Certificate of Achievement for Excellence in Financial Reporting for fiscal year ending September 30, 2010

Background:

Origination:

Recommendation:

Funding:

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

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

ATTACHMENTS:

CAFR Award for FY2010

Certificate of Achievement for Excellence in Financial Reporting

Presented to

City of Tomball
Texas

For its Comprehensive Annual
Financial Report
for the Fiscal Year Ended
September 30, 2010

A Certificate of Achievement for Excellence in Financial Reporting is presented by the Government Finance Officers Association of the United States and Canada to government units and public employee retirement systems whose comprehensive annual financial reports (CAFRs) achieve the highest standards in government accounting and financial reporting.



Linda C. Danison

President

Jeffrey R. Enen

Executive Director

Regular City Council

Agenda Item

Data Sheet

Meeting Date: December 19, 2011

Topic:

- ***NO Walk Tomball!*** on December 24, 2011
- **Tuesday**, January 3, 2012 – Regular City Council Meeting – 6:00 p.m.
- January 14, 2012 – **2nd Saturday at the Depot** – 5:00 p.m.
- January 24, 2012 – **Annual Boards and Commission Recruitment Reception** – 5:30 p.m.-7:00 p.m. at the Community Center
- Appointments to Board of Adjustments will be on February agenda (terms expiring 3/2/12)
- ***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
 - David Kauffman and Randy Parr - Update on Dead/Dying Trees

Background:

Origination:

Recommendation:

Funding:

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

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

ATTACHMENTS:

2nd Saturday at the Depot - January 14, 2012

Invitation to Board and Commissions Recruitment Reception



2nd Saturday at The Depot!

Showing January, 14th



*Special start
time in
January!
The fun
begins at
4:30 p.m.*

- Games
- Activities
- Food and Family Fun

- Music from Zeddie Frack
- The Movie Starts at Dark!

Admission is Always FREE!

ALL ABOARD!

Please join us for our 3rd Annual
**BOARDS & COMMISSIONS
RECRUITMENT RECEPTION**

Tuesday, January 24, 2012

5:30 to 7:30 p.m.

*Tomball Community Center
221 Market Street, Room B*

Come meet and greet current
Board members and register
to be a potential member of a
Tomball Board yourself!

Don't miss your opportunity to
"Get on a Board" or Commission and serve on
your community "train"!

FREE REGISTRATION AND FOOD



Regular City Council Agenda Item Data Sheet

Meeting Date: December 19, 2011

Topic:

Approve the Minutes of the December 5, 2011 Regular City Council Meeting.

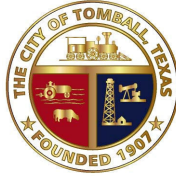
Background:**Origination:****Recommendation:****Funding:****Party(ies) responsible for placing this item on agenda:**

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

ATTACHMENTS:

Draft Minutes - 12/5/2011 Regular City Council Meeting

MINUTES OF REGULAR CITY COUNCIL MEETING CITY OF TOMBALL, TEXAS



**MONDAY, DECEMBER 5, 2011
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 – Loren Smith
Police Chief – Robert Hauck
Finance Director – Glenn Windsor
Fire Chief – Randy Parr
Assistant City Engineer – Lori Lakatos
Assistant City Planner – Rodney Schmidt
Community Events Coordinator – Rosalie Dillon
Chief-NWEMS – Brian Petrilla
Director-TEDC – Kelly Violette
City Attorney – Scott Bounds
First Southwest representative – Joe Morrow
Vinson & Elkins representative – Jonathan Frels

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2.0 The invocation was led by Wayne Graumann, Salem Lutheran Church

3.0 Pledges to U. S. and Texas Flags were led by Members of Boy Scout Troop 469.

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4.0 No public comments were received.

5.0 Mayor Fagan presented a Proclamation declaring December 5, 2011 as “*Sophomore Tomball Redcats, 2011 Sophomore Super Bowl Champions Day*” to the members of the 2011 Sophomore Redcats team and coaching staff.

6.0 Reports and Announcements:

- December 9, 2011 – **Tomball Fire Department** will officially place the new **Engine 1** in service - 4:00 pm at Station 1 on Rudel
- December 9, 2011 – **Dedication of the Depot Plaza Fountain** – 5:00 p.m. at Depot Plaza
- January 7, 2012 – **2nd Saturday at the Depot** – 5:00 p.m.
- January 24, 2012 – **Annual Boards and Commission Recruitment Reception** – 5:30 p.m.-7:00 p.m. at the Community Center
- Appointments to Board of Adjustments will be on February agenda (terms expiring 3/2/12)
- **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
 - Rosalie Dillon presented information regarding **Christmas on Commerce**, which will be held on Saturday, December 10, 2011, in conjunction with the German Christmas Market being held in the Depot Plaza area.
 - Councilman Hudgens announced that Rosalie Dillon was selected as the 2011 Volunteer of the Year for the Greater Tomball Area Chamber of Commerce.

7.0 Motion was made by Councilman Townsend, second by Councilman Stoll, to approve the minutes of the November 21, 2011 Regular Council Meeting.

Motion carried unanimously.

8.0 Old Business:

8.1 Kelly Violette presented the proposed Resolution. Motion was made by Councilman Dodson, second by Councilman Brown, to approve on Second Reading, Resolution No. 2011-24-TEDC, a Resolution of the City Council of the City of Tomball, Texas, authorizing and approving the Tomball Economic Development Corporation’s Project to Expend Funds in accordance with an Economic Development Agreement by and between the Corporation and ValueBank Texas to Make Direct Incentives to, or Expenditures for, relocation and rent assistance for new or expanded business enterprise; Containing Other Provisions Relating to the Subject; and Providing for Severability, Approving, as a Project of the Corporation, an agreement with ValueBank Texas to make direct incentives to, or expenditures for, relocation and rent assistance for new or expanded business enterprise to be located at 990 Village Square, Suite P, Tomball, Texas. The

Draft

estimated amount of such expenditures for such Project is \$15,750.00. Vote was as follows:

Councilman Stoll	<u>Aye</u>
Councilman Brown	<u>Aye</u>
Councilman Townsend	<u>Nay</u>
Councilman Dodson	<u>Aye</u>
Councilman Hudgens	<u>Aye</u>

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Motion carried, 4 votes Aye, 1 vote Nay.

- 8.2 Kelly Violette addressed City Council before the public hearing. Mayor Fagan opened the Public Hearing regarding Proposed Ordinance No. 2011-24, Opting Out of the "Super Freeport Exemption" created by Senate Bill 1 and Providing for the Taxation of Tangible Personal Property in Transit ("Goods-in-Transit") at 6:19 p.m.; no public comments being received, Mayor Fagan closed the public hearing at 6:19 p.m.
- 8.3 Motion was made by Councilman Townsend, second by Councilman Hudgens, to read Ordinance No. 2011-24 by caption only on First Reading.

Motion carried unanimously.

Motion was made by Councilman Stoll, second by Councilman Hudgens, to adopt, on First Reading, Ordinance No. 2011-24, an Ordinance of the City of Tomball, Texas, Providing for the Taxation of Tangible Personal Property in Transit, which would otherwise be Exempt from Taxation Pursuant to Texas Tax Code, Section 11.253; Repealing all Ordinances or Parts of Ordinances Inconsistent or In Conflict Herewith; and Providing for Severability. Vote was as follows:

Councilman Brown	<u>Nay</u>
Councilman Townsend	<u>Nay</u>
Councilman Dodson	<u>Nay</u>
Councilman Hudgens	<u>Nay</u>
Councilman Stoll	<u>Nay</u>

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Motion FAILED unanimously.

- 8.4 Rodney Schmidt presented the proposed ordinance. Motion was made by Councilman Townsend, second by Councilman Dodson, to adopt on Second Reading, Ordinance No. 2011-27, an Ordinance of the City of Tomball, Texas, Amending its Comprehensive Zoning Ordinance by changing the Zoning District Classification of approximately 32.03 acres of land, legally described as Reserve A, Block 1, First Baptist Church of Tomball, within the City of Tomball, Harris County, Texas, generally located southerly of Hicks Street, westerly of Quinn Road, from the C-Commercial and OT/MU-Old Town & Mixed

Use Districts to the C-Commercial District; Providing for the Amendment of the Official Zoning Map of the City; Providing for severability; Providing for a penalty of an amount not to exceed \$2,000 for each day of violation of any provision hereof, Making findings of fact; and providing for other related matters. Vote was as follows:

Councilman Townsend	<u>Aye</u>
Councilman Dodson	<u>Aye</u>
Councilman Hudgens	<u>Aye</u>
Councilman Stoll	<u>Aye</u>
Councilman Brown	<u>Aye</u>

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Motion carried unanimously.

- 8.5 Rodney Schmidt presented the proposed Ordinance. Motion was made by Councilman Townsend, second by Councilman Dodson, to adopt on Second Reading, Ordinance No. 2011-28, an Ordinance of the City of Tomball, Texas, Amending its Comprehensive Zoning Ordinance by changing the Zoning District Classification of approximately 0.17 acres of land, legally described as Lot 9, Block 7, Main Street Addition, within the City of Tomball, Harris County, Texas, generally located northerly of Barbara Street, easterly of Raymond Avenue, from the C-Commercial District to the OT/MU-Old Town and Mixed Use District; Providing for the Amendment of the Official Zoning Map of the City; Providing for severability; Providing for a penalty of an amount not to exceed \$2,000 for each day of violation of any provision hereof, Making findings of fact; and providing for other related matters. Vote was as follows:

Councilman Dodson	<u>Aye</u>
Councilman Hudgens	<u>Aye</u>
Councilman Stoll	<u>Aye</u>
Councilman Brown	<u>Aye</u>
Councilman Townsend	<u>Aye</u>

Draft

Motion carried unanimously.

9.0 New Business:

- 9.1 Doris Speer presented the request by Tomball Art League for City support and sponsorship. Motion was made by Councilman Brown, second by Councilman Dodson to approve Request by Tomball Art League (TAL) for City Sponsorship through In-Kind Services, Including Waiver of Rental Fee and Portion of Personnel Fees for the Use of the Community Center, Tables, Chairs, and Personnel to Open and Close the Building for the TAL Juried Spring and Fall Art Shows, from 1:30 p.m. to 4:00 on Friday, March 9, 2012 and Friday, September 7, 2012 for pre-registration of artwork and from 7:30 a.m. to 5:00 p.m., on Saturday, March 10, 2012 and Saturday, September 8, 2012 for the Juried Art Shows.

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Motion carried unanimously.

- 9.2 Glenn Windsor introduced Joe Morrow, First Southwest, and Jonathan Frels, Vinson & Elkins, to present the proposed information. Motion was made by Councilman Brown, second by Councilman Dodson, to read Ordinance No. 2011-31 by caption only on the first and final ready.

Motion carried unanimously.

Motion was made by Councilman Dodson, second by Councilman Brown, to adopt, on First and Final Reading, Ordinance No. 2011-31, an Ordinance Authorizing the Issuance and Sale of the City of Tomball, Texas, Combination Tax and Revenue Certificates of Obligation, Series 2012; Awarding the Sale Thereof; Levying a Tax and Providing for the Security and Payment Thereof; Approving the Official Statement; Approving the Paying Agent/Registrar Agreement; and Enacting Other Provisions Relating Thereto. Vote was as follows:

Councilman Hudgens	<u>Aye</u>
Councilman Stoll	<u>Aye</u>
Councilman Brown	<u>Aye</u>
Councilman Townsend	<u>Aye</u>
Councilman Dodson	<u>Aye</u>

draft

Motion carried unanimously.

- 9.3 Lori Lakatos presented of the proposed Agreements. Motion was made by Councilman Dodson, second by Councilman Brown, to approve the Professional Services Agreement with LJA Engineering, Inc., in the amount of \$1,445,800.00 for Final Design, and the Professional Services Agreement with Cobb Fendley & Associates, Inc., in the amount of \$34,600.00 for Professional Services related to Land Acquisition, and to authorize City Manager to Execute Agreements.

Motion carried unanimously.

- 9.4 Discussion was held regarding planning, extension, and repair of City Sidewalks (Country Meadows & Spring Pine Estates).

No action taken.

- 9.5 The City Council recessed at 6:53 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 Executive Session, based on the Conflict of Interest Affidavit previously filed with the City Secretary.

Upon reconvening into regular session at 8:28 p.m., no action was taken.

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

Motion carried unanimously.

Meeting adjourned.

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PASSED AND APPROVED this _____ day of _____ 2011.

Doris Speer, TRMC, CMC
City Secretary

Gretchen Fagan
Mayor

Regular City Council

Agenda Item

Meeting Date: December 19, 2011

Data Sheet

Topic:

Approve Resolution No. 2011-27, a Resolution of the City Council of the City of Tomball, Texas, Supporting the Annual Baseball Parade, to be held in Tomball on Saturday, March 3, 2012

Background:

The Tomball Sports Association is requesting a resolution expressing the City's support of the annual baseball parade, which will be held on Saturday, March 3, 2012. This Resolution is required for submission of TSA's Traffic Control Plan to the Texas Department of Transportation.

The parade will begin at the intersection of Buvinhansen and Main Streets (FM 2920) and will continue east on Main Street, turning north onto North Cherry Street, and finishing at the Little League Park in the Wayne Stovall Sports Complex.

As information regarding the cost of City-provided support services, this is considered a short, simple event, using a 'rolling barricade', and costs are approximately 15% of a normal parade event. The estimated cost for the Public Works Department is \$250 and for the Police Department is \$500 for personnel to manage the parade. In addition, the Fire Department takes one or two vehicles out of service to use in the parade as the "rolling barricade," either the tanker and the tower or the tower and the old city pumper. A minimum of two firefighters accompany each vehicle; the estimated total cost of personnel and fuel is \$250.

Origination:

Tomball Sports Association

Recommendation:

Approval of Resolution No. 2011-27

Funding:

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

City Secretary

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

ATTACHMENTS:

TSA Request Letter

Resolution No. 2011-27



TOMBALL SPORTS ASSOCIATION

Tomball Little League
PO BOX 1084
Tomball, TX 77377

November 30, 2011

Honorable Gretchen Fagan
Mayor
City of Tomball
401 Market Street
Tomball, Texas 77375

Dear Mayor Fagan,

This letter is a request for the Tomball City Council to approve a resolution in favor of Tomball Sports Association's Annual Opening Day Parade, to kick off the Spring 2012 baseball season. The parade will be held in Tomball city limits, on Saturday, March 3, 2012 at 9:00am. The parade starts at the intersection of Buvinghausen and Main Street (FM2920) and will continue east on Main Street (FM2920) to turn north onto Cherry Street and finish at the Wayne Stovall Little League baseball park.

We appreciate the City of Tomball's past and ongoing support of our Little League Baseball program. Please contact me with any questions.

Sincerely,

Jennifer Longoria-Walker
Tomball Sports Association
Parent Auxiliary Director
Home: 281.290.6956

cc: Lt. Anthony Soloman, Tomball Police Department
David Kauffman, Director of Public Works

RESOLUTION NO. 2011-27

**A RESOLUTION OF THE CITY COUNCIL OF THE
CITY OF TOMBALL, TEXAS, SUPPORTING THE
ANNUAL BASEBALL PARADE, TO BE HELD IN
TOMBALL ON SATURDAY, MARCH 3, 2012.**

* * * * *

WHEREAS the Tomball Sports Association will undertake its Annual Baseball Parade to kick off the Spring 2012 baseball season, to be held in the City of Tomball at 9:00 a.m. on Saturday, March 3, 2012; and

WHEREAS the purpose of the Annual Baseball Parade is to celebrate the beginning of the baseball season and provide an event for our community and the children who enjoy sports; and

WHEREAS it is a chance for Tomball area merchants and business people to come out and encourage our young people by attending the Annual Baseball Parade; and

WHEREAS the Annual Baseball Parade will begin at the intersection of Buvinghausen and Main Streets (FM 2920) and will continue east on Main Street (FM 2920), turning north on North Cherry Street, and finishing at the Little League Park, located in the Wayne Stovall Sports Complex; and

WHEREAS the Tomball Sports Association desires and requests the support and endorsement of the City of Tomball in this community-wide effort;

NOW, THEREFORE, BE IT RESOLVED that the City of Tomball and its governing body endorses and supports the efforts of the Tomball Sports Association in promoting and undertaking the Annual Baseball Parade and pledge to encourage this effort to celebrate the beginning of baseball season;

**PASSED AND APPROVED AS SET OUT BELOW AT THE MEETING OF THE CITY COUNCIL
HELD ON THE 19TH DAY OF DECEMBER 2011.**

GRETCHEN FAGAN, Mayor

ATTEST:

Doris Speer, City Secretary

Regular City Council

Agenda Item

Meeting Date: December 19, 2011

Data Sheet

Topic:

Approve Resolution No. 2011-28, a Resolution of the City Council of the City of Tomball, Texas, Authorizing the Mayor to Execute a Warranty Deed Conveying 97.5 Acres of Land, Generally Located at the Northwest Corner of Hufsmith-Kohrville and Holderrieth Roads, to the Tomball Industrial Development Corporation (also known as the Tomball Economic Development Corporation).

Background:

At its meeting on July 18, 2011, the Tomball City Council approved the purchase, on Behalf of the Tomball Economic Development Corporation (TEDC), of approximately 97.5 acres of land generally located at the northwest corner of Hufsmith-Kohrville and Holderrieth Roads, in an amount of \$1,605,000 for the Development of a Business Park for Purposes of Projects related to the Creation or Retention of Primary Jobs. The City of Tomball completed the land acquisition on October 24, 2011.

In accordance with the Agreement between the City of Tomball and the Tomball Economic Development Corporation, executed on July, 5, 2011, the City will convey the property to the TEDC and the TEDC will own and develop the property as deemed appropriate by the TEDC Board of Directors to attract and retain business and industry. Upon conveyance, the TEDC will reimburse the City for all costs incurred by the City related to the land acquisition. A breakdown of the costs to be reimbursed is provided below:

Costs to be reimbursed to the City of Tomball by the TEDC:

\$4,400 Appraisal Fees
\$10,000 Earnest Money Contract
\$33,446 CLR Fees for Engineering Services related to preparation of the Due Diligence Report
\$541.25 Stewart Title (Title Report fee)
\$1,612,498.75 Land Acquisition (includes taxes & Title Insurance)

Total: \$1,660,886

Origination:

Tomball Economic Development Corporation

Recommendation:

Approve Resolution No. 2011-28, authorizing the conveyance of the property to the TEDC.

Funding: Yes

Account Number:

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

Kelly Violette

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

ATTACHMENTS:

Resolution 2011-28

General Warranty Deed

RESOLUTION NO. 2011-28

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF
TOMBALL, TEXAS, AUTHORIZING THE MAYOR TO
EXECUTE A WARRANTY DEED CONVEYING PROPERTY
TO THE TOMBALL INDUSTRIAL DEVELOPMENT
CORPORATION.**

* * * * *

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

Section 1. That the City Council of the City of Tomball hereby authorizes the Mayor to execute a General Warranty Deed conveying 97.57 acres of land to the Tomball Industrial Development Corporation (also known as the Tomball Economic Development Corporation), a copy of which is attached hereto as Exhibit "A" and made a part hereof for all purposes.

Section 2. That the City Council hereby authorizes the Mayor to execute said General Warranty Deed for and on behalf of the City.

PASSED, APPROVED, AND RESOLVED this ___ day of _____ 2011.

Gretchen Fagan, Mayor

ATTEST:

Doris Speer, City Secretary

GENERAL WARRANTY DEED

Date: December 20, 2011

Grantor: **CITY OF TOMBALL, TEXAS**, a home-rule municipality located at 401 Market Street, Tomball, Texas 77375.

Grantee: **TOMBALL INDUSTRIAL DEVELOPMENT CORPORATION** (also called the **TOMBALL ECONOMIC DEVELOPMENT CORPORATION**), a Texas non-profit corporation organized under Section 4B the Development Corporation Act of 1979 (now Texas Local Government Code Chapter 501 et seq.), and located at 401 Market Street, Tomball, Texas 77375.

Consideration: Ten Dollars (\$10.00) and other good and valuable consideration as approved by Resolution of City Council of the City of Tomball, Texas, adopted on [MONTH DAY], 2011.

Property (including any improvements): **Being the 97.57 Acres of land located in Elizabeth Smith Survey, Abstract No. 70, Tomball, Harris County, Texas, referred to in a deed from Capital One, National Association to the City of Tomball, Texas, dated October 24, 2011, and recorded under File No. 2011-10447075 of the Harris County Official Public Records of Real Property; the Property being also described as follows:**

A 97.57 acre (4,250,149 square feet) tract of land being all of a called 42.6757 acre tract referred to as "Tract One" and all of a called 54.8961 acre tract referred to as "Tract Two" and described In a deed to Capital One, N.A. as recorded under File No. 20070154643 of the Harris County Official Public Records of Real Property, in the Elizabeth Smith Survey, Abstract No. 70, in Harris County, Texas, said 97.57 acre tract being more particularly described as follows (with bearings referenced to the Texas Coordinate System of 1983, South Central Zone):

BEGINNING at a 5/8-inch iron rod with cap stamped "GS" found on the northerly right-of-way line of the Holderrieth Road (60 feet wide) which marks the southwesterly corner of said 42.6757 acre tract and the southeasterly corner of a called 17.6301 acre tract described In a deed to 2978 Industrial Properties, LLC, as recorded under File No. 20070269548 of the Harris County Official Public Records of Real Property, and from which the southeasterly corner of the plat of Houston Polybag as recorded in Volume 335, Page 108 of the Harris County Map Records bears South 81° 10' 07" West, a distance of 201.93 feet;

THENCE, North 02° 33' 51" West, along the common line between said 17.6301 acre tract and said 42.6757 acre tract, a distance of 23.24 feet to a 5/8-inch iron rod found for an angle point;

THENCE, North 28° 03' 33" West, continuing along the easterly line of said 17.6301 acre tract and the westerly lines of said 42.6757 acre and said 54.8961 acre tracts, a distance of 844.57 feet to a point for the beginning of a tangent curve to the left, from which a found 5/8-inch iron rod with cap stamped "GS" bears South 71° 21' West, 0.31 foot, and a found 3/4-inch iron rod with cap bears South 45° 50' West, 1.22 feet;

THENCE, northwesterly, 880.20 feet, continuing along said common line and along the arc of said curve to the left (central angle = 27° 17' 34"; radius = 1,847.81 feet; chord bearing and distance = North 41° 42' 20" West, 871.90 feet) to a point of reverse curvature, from which a found 5/8-inch iron with cap bears South 43° 13' West, 1.34 feet;

THENCE, northwesterly, 367.82 feet, continuing along said common line and along the arc of said curve to the right (central angle = 33° 44' 02"; radius = 624.73 feet; chord bearing and distance = North 38° 29' 05" West, 362.53 feet) to a 5/8-inch iron rod with cap stamped "GS" found for a point of tangency;

THENCE, North 21° 37' 04" West, continuing along said common line, a distance of 11.92 feet to a 5/8-inch iron rod with cap stamped "AECOM" set for the beginning of a tangent curve to the right;

THENCE, northwesterly, 21.97 feet, continuing along said common line and along the arc of said curve to the right (central angle = 03° 48' 51"; radius = 330.00 feet; chord bearing and distance = North 19° 42' 39" West, 21.96 feet) to a 5/8-inch iron rod with cap stamped "GS" found for the northeasterly corner of said 17.6301 acre tract and the northwesterly corner of said 54.8961 acre tract;

THENCE, North 42° 47' 16" East, along the most northwesterly line of said 54.8961 acre tract, a distance of 706.41 feet to a copperweld found for a northerly corner of said 54.8961 acre tract;

THENCE, South 46° 42' 29" East, along a northeasterly line of said 54.8961 acre tract, a distance of 809.80 feet to a copperweld found for an interior corner of said 54.8961 acre tract;

THENCE, North 42° 46' 13" East, along a northwesterly line of said 54.8961 acre tract, a distance of 1,122.13 feet to a 5/8-inch iron rod with cap stamped "AECOM" set in a southwesterly line of Lot 2 of the plat of Tomball South Commercial as recorded in Film Code No. 632199 of the Harris County Map Records, and from which a found 1/2-inch iron rod bears North 60° 40' West, 4.50 feet;

THENCE, South 47° 13' 47" East, along the common line between said 54.8961 acre tract and said Lot 2, a distance of 54.06 feet to a point for corner, from which a found 5/8-inch iron rod with cap stamped "GS" bears South 80° 05' West, 0.22 foot;

THENCE, North 44° 30' 33" East, continuing along said common line, a distance of 130.94 feet to a 5/8-inch iron rod with cap stamped "GS" found for a northerly corner of

said 54.8961 acre tract and an interior corner of said Lot 2, said point marks the beginning of a non-tangent curve to the right;

THENCE, southeasterly, 23.81 feet along said common line and along the arc of said curve to the right (central angle = $05^{\circ} 03' 09''$; radius = 270.00 feet; chord bearing and distance = South $22^{\circ} 53' 22''$ East, 23.80 feet) to a 5/8-inch iron rod with cap stamped "GS" found for a point of tangency;

THENCE, South $20^{\circ} 21' 47''$ East, continuing along said common line, at 352.52 feet pass a 5/8-inch iron rod with cap stamped "C&C" found for the southwesterly corner of said Lot 2 and the northwesterly corner of Lot 3 of said Tomball South Commercial, and continuing along the westerly line of said Lot 3 for a total distance of 666.52 feet to a 5/8-inch iron rod with cap stamped "GS" found for the southwesterly corner of said Lot 3 and an interior corner of said 64.8961 acre tract;

THENCE, North $69^{\circ} 38' 13''$ East, along the southerly line of said Lot 3 and a northerly line of said 54.8961 acre tract, a distance of 180.00 feet to a 5/8-inch iron rod with cap stamped "GS" found for the northwesterly corner of Lot 4 of said Tomball South Commercial, from which a found 1/2-inch iron rod bears South $74^{\circ} 25'$ West, 0.25 foot;

THENCE, South $20^{\circ} 21' 47''$ East, along the common line between said Lot 4 and the easterly lines of said 54.8961 acre and 42.6757 acre tracts, a distance of 601.10 feet to a 5/8-inch iron rod with cap stamped "GS" found for an angle point;

THENCE, South $15^{\circ} 24' 46''$ East, along the common line between said Lot 4 and said 42.6757 acre tract, a distance of 83.08 feet to a 5/8-inch iron rod with cap stamped "GS" found for an angle point;

THENCE, South $07^{\circ} 16' 45''$ East, continuing along said common line, a distance of 121.02 feet to a 5/8-inch iron rod with cap stamped "AECOM" found for an angle point;

THENCE, South $00^{\circ} 07' 01''$ West, continuing along said common line, a distance of 8.32 feet to a 5/8-inch iron rod with cap stamped "GS" found for the southwesterly corner of said Lot 4 and an interior corner of said 42.6767 acre tract;

THENCE, North $87^{\circ} 40' 39''$ East, along the southerly line of said Lot 4 and a northerly line of said 42.6757 acre tract, a distance of 119.30 feet to a 5/8-inch iron rod with cap stamped "GS" found for the most southerly southeast corner of said Lot 4, said point marks the beginning of a non-tangent curve to the left;

THENCE, northwesterly, 147.92 feet along an easterly line of said Lot 4 and along the arc of said curve to the left (central angle = $09^{\circ} 27' 36''$; radius = 895.92 feet; chord bearing and distance = North $07^{\circ} 03' 10''$ West, 147.76 feet) to a 5/8-inch iron rod with cap stamped "GS" found for an interior corner of said Lot 4;

THENCE, North 80° 08' 10" East, in part along a southerly line of said Lot 4 and along a northerly line of said 42.6757 acre tract, a distance of 220.10 feet to a 5/8-inch iron rod with cap stamped "GS" found on the westerly right-of-way line of Hufsmith-Kohrville Road (width varies) which marks the most easterly northeast corner of said 42.6757 acre tract, said point being on the arc of a non-tangent curve to the right;

THENCE, southeasterly, 224.16 feet along the westerly right-of-way line of said Hufsmith-Kohrville Road and along the arc of said curve to the right (central angle = 11° 30' 33"; radius 1,115.92 feet; chord bearing and distance = South 05° 38' 59" East, 223.78 feet to a 1-inch iron rod found for end of curve;

THENCE, South 00° 07' 01" West, continuing along said westerly right-of-way line, a distance of 604.28 feet to a 5/8-inch iron rod with cap stamped "GS" found for the most easterly southeast corner of said 42.6757 acre tract and the northeasterly corner of a called 2.8316 acre tract described in a deed to YAM Development, Inc. as recorded under File No. Y546849 of the Harris County Official Public Records of Real Property;

THENCE, South 84° 40' 07" West, along a southerly line of said 42.6757 acre tract and the northerly line of said 2.8316 acre tract, a portion of said line also being the northerly line of Unrestricted Reserve "A" of the plat of YAM Plaza as recorded in Film Code No. 594151 of the Harris County Map Records, a distance of 406.60 feet to a point for the northwest corner of said Restricted Reserve "A", from which a found 5/8-inch iron rod with cap bears North 00° 07' West, 0.31 foot;

THENCE, South 08° 49' 53" East, in part along the westerly line of said Restricted Reserve "A" and along the common line between said 42.6757 acre tract and the westerly line of said 2.8316 acre tract, a distance of 335.00 feet to a 5/8- inch iron rod with cap stamped "GS" found on the northerly right-of-way line of said Holderrieth Road which marks the most southerly southeast corner of said 42.6757 acre tract;

THENCE, South 81° 10' 07" West, along the northerly right-of-way line of said Holderrieth Road and the most southerly line of said 42.6757 acre tract, a distance of 1,405.41 feet to the POINT OF BEGINNING and containing a computed area of 97.57 acres (4,250,149 square feet) of land.

Reservations from Conveyance: NONE.

Exceptions to Conveyance and Warranty: All presently recorded and validly existing restrictions, reservations, covenants, conditions, oil and gas leases, mineral interests, and water interests outstanding in persons other than Grantor, and other instruments, other than conveyances of the surface fee estate, that affect the Property.

Grantor for the Consideration and subject to the Reservations from Conveyance and the Exceptions to Conveyance and Warranty, grants, sells, and conveys to Grantee the Property, together with all and singular the rights and appurtenances thereto in any way belonging, to have and to hold it to Grantee and Grantee's successors and assigns

forever. Grantor binds Grantor and Grantor's heirs and successors to warrant and forever defend all and singular the Property to Grantee and Grantee's successors and assigns against every person whomsoever lawfully claiming or to claim the same or any part thereof when the claim is by, through, or under Grantor but not otherwise, except as to the Reservations from Conveyance and the Exceptions to Conveyance and Warranty.

When the context requires, singular nouns and pronouns include the plural.

CITY OF TOMBALL, TEXAS

Acting by and through
Gretchen Fagan, Its Mayor

Acknowledgement

STATE OF TEXAS §
 §
COUNTY OF HARRIS §

BEFORE ME, the undersigned authority, on this day personally appeared Gretchen Fagan, Mayor of the City of Tomball, Texas, known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that she executed the same for the purposes and considerations therein expressed and in the capacity therein and herein stated, and as an act and deed of that entity.

GIVEN UNDER MY HAND and seal of office this the ____ day of _____, 2011.

Notary Public, State of Texas

My Commission Expires: _____

Attest:

Doris Speer, City Secretary

Upon Recording Return to:
Doris Speer
City Secretary
401 Market Street
Tomball, Texas 77375

Regular City Council

Agenda Item

Meeting Date: December 19, 2011

Data Sheet

Topic:

Receive Recommendation from the Capital Improvement Plan Advisory Committee in Compliance with Chapter 395, Texas Local Government Code.

Background:

Texas Local Government Code, Chapter 395, Section 395.058(c)(4), requires a semiannual report to be filed with respect to the progress of the capital improvements plan and report to City Council.

The City of Tomball is in compliance with Chapter 395 of the Texas Local Government Code. The Capital Improvement Plan Advisory Committee makes the recommendation that no update of Land Use Assumptions, Capital Improvement Plan, and/or Impacts Fees is needed.

Origination:

Capital Improvement Plan Advisory Committee

Recommendation:

Funding:

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

Engineering and Planning

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

ATTACHMENTS:

Infrastructure Master Plan Update

Infrastructure Master Plan and Impact Fee Determination
2007-2017

Drainage System Cost per Acre							
HCFC Channel No.	Type of Work	2007 Cost	Total Acres Served	Existing 2002 Development	Acreage to Bear Fee	Capital Cost Basis per Acre	Comments
M118	Outfall Ditch C	\$2,600,000	150	57	725	\$3,586.21	Partially completed, Onhold TEDC may partially fund
M118	Detention for Ditch C	\$4,810,000	725	57	725	<u>\$6,634.48</u>	Partially completed, Onhold TEDC may partially fund
						\$10,220.69	
M121 East	East Ditch D	\$2,470,000	719	170	719	\$3,435.33	Design under contract
M121 East	Detention for E. Ditch D	\$5,850,000	719	170	719	<u>\$8,136.30</u>	Design under contract
						\$11,571.63	
M121 West	West Ditch D	\$3,900,000	967	225	967	\$4,033.09	Design under contract and to be constructed
M121 West	Detention for W. Ditch D	\$4,290,000	967	225	967	<u>\$4,436.40</u>	Design under contract and to be constructed
						\$8,469.49	
M125	Outfall Ditch E	\$0					Completed by HCFC
M125	Detention for Ditch E	\$1,320,000	1,318	373	1,318	<u>\$1,001.52</u>	Completed by HCFC
						\$1,001.52	
	Outfall Ditch J (J131-00-00) - Improvement and extension of tributary to Ditch J					\$811,000.00	
	Outfall Ditch B (M116-00-00) - Extension of M116-00-00					\$1,130,000.00	
	Outfall Ditch D and D-1 (M121-00-00) - Drainage channels from Graham street, to W					\$6,370,000.00	
	Outfall G and G-1 (M124-00-00) - Tributary of Ditch M124					\$4,320,000.00	Partially designed
	Outfall Ditch C (M118-00-00) - First improvement of Ditch C					\$2,600,000.00	
	Outfall Ditch E (M125-00-00) - Ditch M125 improvement across SH249					\$0.00	
	Lateral Ditch F - Tributary to Ditch E					\$894,000.00	
	Outfall Ditch N (J132-00-00) Enlargement to serve area near Zion Rd.					\$990,000.00	
	Lateral Ditch K - Tributary of J131-00-00					\$210,000.00	
	Lateral Ditch L - Tributary of J131-00-00					\$204,000.00	
	Detention for Ditch B (M116-00-00)					\$4,719,000.00	
	Detention for Ditch C (M118-00-00)					\$4,810,000.00	
	Detention for Ditch D (M121-00-00)					\$5,850,000.00	
	Detention for Ditch D (M121-00-00)					\$4,290,000.00	
	Detention for Ditch E (M125-00-00)					\$1,320,000.00	
	Detention for Ditch G (M124-00-00)					\$10,621,000.00	Partially designed

Water Projects		Infrastructure Master Plan and Impact Fee Determination		2007-2017			
Proj. No.	Description	Priority (1)	Quantity	Units	Unit Cost	Total Cost	Comments
1	12-inch Water Line along Zion Road and E. Hufsmith Road from Neal Street to F.M. 2978	1	6,500	LF	\$ 114.00	\$741,000	
2	12-inch Water Line along Future Brown-Hufsmith Road from SH 249 to Quinn Road	1	3,000	LF	\$ 114.00	\$342,000	Completed
3	12-inch Water Line along Tomball Cemetery Road North of 2920	1	2,300	LF	\$ 114.00	\$262,200	Completed
4	12-inch Water Line along F.M. 2978 from F.M. 2920 to E. Hufsmith Road	2	6,800	LF	\$ 114.00	\$775,200	
5	12-inch Water Line along E. Hufsmith Road from Ulrich Road to Zion Road	2	7,900	LF	\$ 114.00	\$900,600	Partially Designed
6	12-inch Water Line through new developments between Ulrich Road and Zion Road	2	7,000	LF	\$ 114.00	\$798,000	
7	12-inch Water Line along S. Persimmon Street south of Agg Road to Holderrieth Road	3	5,100	LF	\$ 114.00	\$581,400	
8	12-inch Water Line along S. Persimmon Street from Lizzie Lane to Agg Road	3	3,600	LF	\$ 114.00	\$410,400	
9	8-inch Water Line along S. Pitchford Road	3	3,700	LF	\$ 94.00	\$347,800	
10	8-inch Water Line between S. Pitchford Road and S. Persimmon Street just south of Lizzie Lane	3	1,100	LF	\$ 94.00	\$103,400	
11	12-inch Water Line along Agg Road from S. Pitchford Road to S. Persimmon Street	3	1,100	LF	\$ 114.00	\$125,400	
12	12-inch Water Line along Future Brown-Hufsmith Road from Quinn Road to Baker Drive	3	2,000	LF	\$ 114.00	\$228,000	Bid to Construct
13	12-inch Water Line along Calvert Road and Alice Road from F.M. 2920 to SH 249	3	7,300	LF	\$ 114.00	\$832,200	
14	12-Inch Water Line along Agg Road from Mulberry Street to S. Pitchford Road (includes Railroad Crossing)	3	1,800	LF	\$ 114.00	\$205,200	
15	12-Inch Water Line along the Future Medical Complex Drive from S. Holderrieth to S. Cherry Street	3	3,700	LF	\$ 114.00	\$421,800	Under Design
16	12-Inch Water Line along the Future Bypass from S. Cherry Street along Agg Road	3	2,600	LF	\$ 114.00	\$296,400	
17	12-Inch Water Line along the Future Bypass from S. Persimmon Street to Hufsmith-Kohrville Road	3	2,100	LF	\$ 114.00	\$239,400	
18	8-Inch Water Line along the Future Michel Road extension from Commercial Park Drive to School Street	3	3,100	LF	\$ 47.00	\$145,700	Completed
19	12-Inch Water Line along the Future Bypass east of Hufsmith-Kohrville Road	4	2,500	LF	\$ 114.00	\$285,000	
20	12-inch Water Line along Quinn Road from Baker Drive to Inwood Street	4	2,900	LF	\$ 114.00	\$330,600	Completed
21	8-inch Water Line between Quinn Road and Julia Street of Hunterwood	4	1,400	LF	\$ 94.00	\$131,600	
22	8-inch Water Line between Medical Complex Drive and Commercial Park Drive	5	900	LF	\$ 94.00	\$84,600	
23	12-Inch Water Line along Park Road from FM 2920 to Brown Road	5	4,200	LF	\$ 114.00	\$478,800	
24	12-Inch Water Line along Ulrich Road north of Zion to replace existing 6-inch Water Line	5	4,500	LF	\$ 114.00	\$513,000	
25	8-inch Water Line along Rudolph Road	5	3,500	LF	\$ 94.00	\$329,000	Under Design
26	12-Inch Water Line along Brown Road from Park Road to Orchard Grove Drive	5	4,000	LF	\$ 114.00	\$456,000	Bid to Construct
Totals			94,600			\$10,364,700	
(1) Priority Rating of 1 is highest priority and 5 is lowest priority							
	Additional Water Well Capacity					\$6,250,000	Exceed Required Capacity at this time.
	Additional Booster Pump Capacity					\$700,000	
	Additional Ground Storage Capacity					\$687,500	
	Additional Elevated Storage Capacity					\$1,250,000	
	Water Line costs include the Following:						
	Augering & Roadway Repairs						
	Easement Acquisition						
	Pipeline Relocation						
	Contingencies						
	Engineering & Surveying						

Infrastructure Master Plan and Impact Fee Determination
2007-2017

Sanitary Projects							
Proj. No.	Description	Priority (1)	Quantity	Units	Unit Cost (2)	Total Cost	Comments
1	10-inch Gravity Sanitary Sewer along Future Brown-Hufsmith Road from SH 249 to Quinn Road	1	2,500	LF	\$ 102.00	\$ 255,000.00	Completed
2	18-inch Gravity Sanitary Sewer along Zion Road from Neal Street to Cabotway Road	1	2,600	LF	\$ 162.00	\$ 421,200.00	
3	12-inch Gravity Sanitary Sewer along Tomball Cemetery Road	1	2,200	LF	\$ 122.00	\$ 268,400.00	Completed
4	18-inch Gravity Sanitary Sewer along E. Hufsmith Road from existing 36-inch line to Zion Road	2	3,900	LF	\$ 162.00	\$ 631,800.00	
5	18-inch Gravity Sanitary Sewer along F.M. 2978 from F.M. 2920 to Dement Road	2	2,500	LF	\$ 162.00	\$ 405,000.00	
6	15-inch Gravity Sanitary Sewer along F.M. 2978 north of Dement Road	2	3,500	LF	\$ 132.00	\$ 462,000.00	
7	Lift Station at the corner of F.M. 2978 and F.M. 2920 (Design Flow = 2,200 gpm)	2	1	LS	\$ 562,500.00	\$ 562,500.00	
8	18-inch Gravity Sanitary Sewer along S. Persimmon Street from Agg Road to Holderrieth Road	3	5,100	LF	\$ 162.00	\$ 826,200.00	
9	12-inch Gravity Sanitary Sewer along S. Persimmon Street north of Agg Road	3	3,600	LF	\$ 122.00	\$ 439,200.00	
10	12-inch Gravity Sanitary Sewer along S. Pitchford Road and Agg Road to S. Persimmon Street	3	4,900	LF	\$ 122.00	\$ 597,800.00	
11	18-inch Gravity Sanitary Sewer along Calvert Road and Alice Road from F.M. 2920 to SH 249	3	7,200	LF	\$ 162.00	\$ 1,166,400.00	
12	8-inch Gravity Sanitary Sewer along Future Brown-Hufsmith Road from Quinn Road to Baker Drive	3	1,800	LF	\$ 92.00	\$ 165,600.00	Bid to Construct
13	15-inch Gravity Sanitary Sewer along Zion Road and E. Hufsmith Road from Cabotway Road to Stanolind Road	3	2,600	LF	\$ 132.00	\$ 343,200.00	
14	8-inch Gravity Sanitary Sewer along Ulrich Road	3	3,200	LF	\$ 92.00	\$ 294,400.00	
15	6-inch Force Main along Ulrich Road	3	3,400	LF	\$ 62.00	\$ 210,800.00	
16	Lift Station at the end of Ulrich Road (Design Flow = 375 gpm)	3	1	LS	\$ 312,500.00	\$ 312,500.00	
17	8-inch Gravity Sanitary Sewer along Agg Road east of Mulberry Street	3	1,300	LF	\$ 92.00	\$ 119,600.00	
18	12-inch Gravity Sanitary Sewer along E. Hufsmith Road from Stanolind Road across F.M. 2978	4	2,700	LF	\$ 122.00	\$ 329,400.00	
19	10-inch Gravity Sanitary Sewer along Quinn Road	4	3,500	LF	\$ 102.00	\$ 357,000.00	
20	6-inch Force Main along Quinn Road	4	3,700	LF	\$ 62.00	\$ 229,400.00	
21	Lift Station at the end of Quinn Road (Design Flow = 430 gpm)	4	1	LS	\$ 312,500.00	\$ 312,500.00	
22	10-inch Gravity Sanitary Sewer along the Future Medical Complex Drive west of Cherry Street	4	1,600	LF	\$ 102.00	\$ 163,200.00	Under Design
23	8-inch Gravity Sanitary Sewer along the Future Medical Complex Drive west of School Street	4	1,100	LF	\$ 92.00	\$ 101,200.00	Under Design

Infrastructure Master Plan and Impact Fee Determination
2007-2017

Sanitary Projects							
		Priority (1)	Quantity	Units	Unit Cost (2)	Total Cost	Comments
24	8-inch Gravity Sanitary Sewer along the Future Michel Road extension east of Commercial Park Drive	4	1,100	LF	\$ 92.00	\$ 101,200.00	
25	18-inch Gravity Sanitary Sewer along Park Road from FM 2920 to Brown Road	4	4,300	LF	\$ 162.00	\$ 696,600.00	
26	15-inch Gravity Sanitary Sewer along Brown Road from Park Road to Orchard Grove Drive	4	5,000	LF	\$ 132.00	\$ 660,000.00	Bid to Construct
27	8-inch Force Main along Brown Road from Orchard Drive to Park Road	4	4,800	LF	\$ 72.00	\$ 345,600.00	
28	Lift Station at Brown Road and Orchard Grove Drive (Design Flow = 1,000 gpm)	4	1	LS	\$ 406,250.00	\$ 406,250.00	
29	8-inch Gravity Sanitary Sewer along Rudolph Road north of E. Hufsmith Road	4	1,000	LF	\$ 92.00	\$ 92,000.00	Under Design
30	8-inch Gravity Sanitary Sewer along Rudolph Road south of Zion Road	5	2,100	LF	\$ 92.00	\$ 193,200.00	Under Design
31	10-inch Gravity Sanitary Sewer along the Future Bypass east of Hufsmith-Kohrville Road	5	2,300	LF	\$ 102.00	\$ 234,600.00	
	(1) Priority Rating of 1 is highest priority and 5 is lowest priority		Construction Total			\$11,703,750	
	(2) Unit Price for Gravity Sanitary Sewer Includes Manholes						
	North Wastewater Treatment Plant Expansion					\$11,250,000	Exceed Required Capacity at this time.
	South Wastewater Treatment Plant Expansion					\$11,250,000	
	Lift Stations 2007 CIP					\$1,593,750	
	Trunk Lines 2007 CIP					\$10,110,000	
	Sanitary Line costs include the Following:						
	Augering & Roadway Repairs						
	Easement Acquisition						
	Pipeline Relocation						
	Contingencies						
	Engineering & Surveying						

Regular City Council

Agenda Item

Meeting Date: December 19, 2011

Data Sheet

Topic:

Approve **REPLAT BARAJAS TRACT NO. 2**: Being a Subdivision of 0.4821 Acre Tract, 21,000.00 square feet, in the Joseph House Survey A-34 in Harris County, Texas, Being a Replat of Lots 23, 24, 25, 26, 27 and 28, Block 69 in the Revised Map of Tomball according to the Map Records in Volume 4, Page 25 of the Map Records of Harris County, Texas.

Background:

The Planning and Zoning Commission approved the **REPLAT OF BARAJAS TRACT NO. 2** on Monday, December 12, 2011 with contingencies. Comments have been addressed and the Replat is now being forwarded to City Council for approval consideration.

Origination:

Engineering and Planning

Recommendation:

Engineering and Planning recommends approval.

Funding:

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

Engineering and Planning

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

ATTACHMENTS:

Replat Barajas Tract No. 2

THE STATE OF TEXAS
COUNTY OF HARRIS

We, Jose Barajas and Luz Maria Barajas, Owners, hereinafter referred to as owner of the 0.4821 acre tract described in the above and foregoing plat of BARAJAS TRACT NO. 2, do hereby make and establish of said subdivision property according to all lines, dedications, restrictions and notations on said plat and hereby dedicate to the use of the public forever, all streets, alleys, parks, watercourses, drains, easements and public places shown thereon for the purposes and considerations therein expressed; and do hereby bind myself, my heirs, successors and assigns to warrant and forever defend the title to the land so dedicated.

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

FURTHER, owners do hereby covenant and agree that all of the property 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 of water without backwater and in no instance have a drainage opening of less than one and three quarters square feet (18-diameter) with culvert or bridges to be provided for all private or walkways such drainage facilities.

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 shall hereby be restricted to keep such drainage ways and easements clear of fences, buildings, planting, and other obstructions to the operation 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.

WITNESS OUR HANDS, This 2nd day of December, 2011.

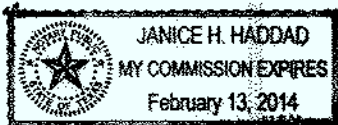
By: [Signature]
Jose Barajas, Owner

By: [Signature]
Luz Maria Barajas, Owner

THE STATE TEXAS
COUNTY OF HARRIS

Before me the undersigned authority, on this day personally appeared, Jose Barajas and Luz Maria Barajas, owners known to me the person whose names are subscribed to the foregoing instrument and acknowledge to me that they executed the same for the purposes and considerations therein expressed and in the capacity therein and herein, and as the act and Deed of said Corporation.

Given under my hand and seal of office this 2nd day of December, 2011.



[Signature]
Notary Public in and for the State of Texas
My Commission expires: 2-13-2014

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

BY: _____
George Shackelford, City Manager

BY: [Signature]
Lori Lakatos, P.E., CFM, Acting City Engineer

This is to certify that the Planning and Zoning Commission of the City of Tomball, Texas has approved this plat and subdivision of BARAJAS TRACT NO. 2 in conformance with the laws of the State of Texas and the ordinance of the City of Tomball as shown authorized the recording of this plat this _____ day of _____, 2011.

BY: _____
Lori Wallace, Chair

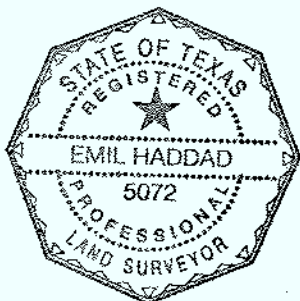
BY: _____
Evelyn Chervenak, Vice Chairman

This is to certify that the City accepts the Planning and Zoning Commission authorized approval and acceptance of all dedicated public easements in conformance with the laws of the State of Texas the ordinance of the City of Tomball as shown hereon and authorized the recording of this plat this _____ day of _____, 2011.

BY: _____
Gretchen Fagan, Mayor

BY: _____
Doris Speer, City Secretary

I, Emil Haddad, 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 (or suitable permanent metal) pipes or rods having an outside diameter of not less than three-quarter inch (3/4") and a length of not less than three feet (3'), and that the plat boundary corners have been tied to the nearest survey corner.



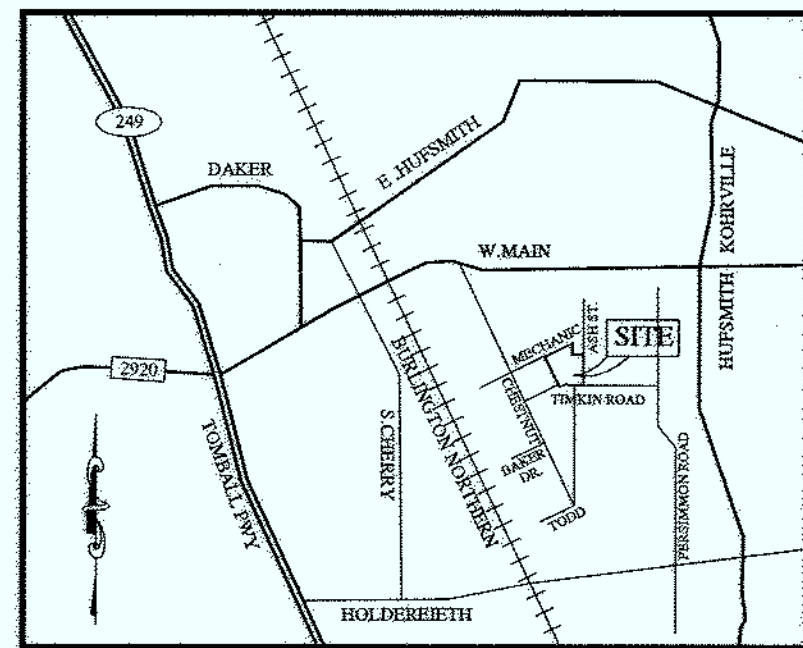
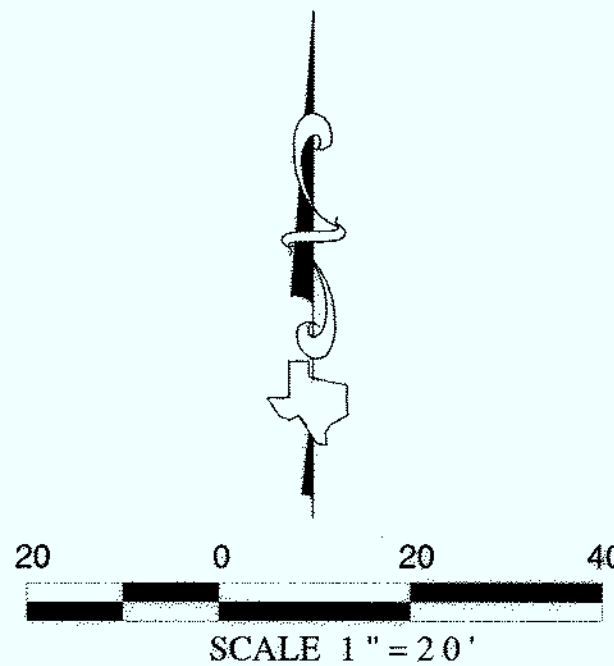
[Signature]
Emil Haddad, R.P.L.S.
Texas Registration No. 5072

I, Stan Stanart, County Clerk of Harris County, do hereby certify that the within instrument with it's certificate of authentication was filed for registration in my office on 201 at _____ o'clock _____, and duly recorded on _____, 201, at _____ o'clock _____, and under film code number _____ of the map records of Harris County for said County.

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

Stan Stanart
County Clerk
of Harris County, Texas

By: _____
DEPUTY



VICINITY MAP
NOT TO SCALE

REPLAT
BARAJAS TRACT NO. 2

BEING A SUBDIVISION OF 0.4821 ACRE TRACT,
21,000.00 SQUARE FEET,
IN THE JOSEPH HOUSE, SURVEY A-34
IN HARRIS COUNTY, TEXAS
BEING A REPLAT OF
LOTS 23, 24, 25, 26, 27 AND 28, BLOCK 69
IN THE REVISED MAP OF TOMBALL
ACCORDING TO THE MAP RECORD IN
VOLUME 4, PAGE 25
OF THE MAP RECORDS OF
HARRIS COUNTY, TEXAS.

(REASON FOR REPLAT IS TO CREATE 3 LOTS)

CONTAINING
3 LOT 1 BLOCK

DE CEMBER 2011

OWNER

JOSE BARAJAS &
LUZ MARIA BARAJAS

14030 BRIDLECHASE LANE
HOUSTON, TEXAS 77014
(713) 410 - 8744

SURVEYOR

E.I.C.SURVEYING COMPANY

17345 JONES ROAD # 270
HOUSTON, TEXAS 77070
(281) 955 - 2772

LEGEND

B.L.	Indicates " Building Line "
U.E.	Indicates " Utility Easement "
R.O.W.	Indicates " Right-of-Way "
AC.	Indicates " Acre "
SQ.FT.	Indicates " Square Feet "
FND.	Indicates " Found "
I.R.	Indicates " Iron Rod "
VOL.	Indicates " Volume "
PG.	Indicates " Page "
H.C.M.R.	Indicates " Harris County Map Records "
H.C.D.R.	Indicates " Harris County Deed Records "
C.F.#	Indicates " Clerk's File Number "
●	Indicates " Found 5/8" Iron Rod with E.I.C. CAP "
○	Indicates " Set 5/8" Iron Rod with E.I.C. CAP "

GENERAL NOTES

- 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.
- According to the FEMA Firm Panel No. 4803150230L (Effective Date June 18, 2007), this property is in Zone "X" and is not in the 0.2% Annual Chance Flood Plain.
- All oil/ gas pipelines or pipeline easements with ownership through the subdivision have been shown.
- All oil/ gas wells with ownership (plugged, abandoned, and/ or active) through the subdivision have been shown.
- 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 setback at a minimum should be 15 feet off centerline of low pressure gas lines, and 30 feet off centerline of high pressure gas line.
- This plat does not attempt to amend or remove any valid covenants or restrictions.
- The building lines shown in 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.

Regular City Council

Agenda Item

Meeting Date: December 19, 2011

Data Sheet

Topic:

Approve **ZONING CASE P11-375**: Request by Drachman Interest on behalf of FNR, LLC to amend the City's Comprehensive Zoning Ordinance to rezone approximately 11.09 acres of land, legally described as Lot 183 and Tracts 179A, 180A, and 184A, Tomball Outlots, within the City of Tomball, Harris County, Texas, generally located on the westerly side of South Cherry Street, southerly of Agg Road, from the Agricultural District to the Light Industrial District.

- Conduct a Public Hearing on **ZONING CASE P11-375**
- Approve on First Reading, Ordinance 2011-32, an Ordinance of the City of Tomball, Texas, Amending its Comprehensive Zoning Ordinance by changing the Zoning District Classification of approximately 11.09 acres of land, Legally described as Lot 183 and Tracts 179A, 180A, and 184A, Tomball Outlots, Within the City of Tomball, Harris County, Texas, from the Agricultural District to the Light Industrial District; Said property being generally located on the westerly side of South Cherry Street, southerly of Agg Road; Providing for the Amendment of the Official Zoning Map of the City; Providing for severability; Providing for a penalty of an amount not to exceed \$2,000 for each day of violation of any provision hereof, Making findings of fact; and providing for other related matters

Background:

On October 28, 2011, the Engineering & Planning Department received a rezoning application for the subject site from the applicant, Drachman Interest. According to their rezoning request letter:

We are currently under contract for the property on S. Cherry Street north of Theiss Lane (LT 183 & TRS 179A 180A & 184A).

It is our intent to relocate our steel fabrication facility from its current location in the Brittmoore Tanner Business Park to this location.

To achieve this, we request your consideration in rezoning this property from its current designation as agricultural to light/heavy industrial, for the use as a structural steel fabrication facility. It is our intent to erect a building to house our steel fabrication facility in addition to our executive offices.

We have been active in the Texas area for over 10 years as a supplier for TX Dot, in addition we produce steel fabrication work for the construction, oil and petrochemical industries. If you visit our website at www.associatedsteelfab.com you will see a sample of the range of projects we perform and have completed.

There is a mixture of land uses in the vicinity. To the north of the subject site is Devasco International and a single-family residence within the Light Industrial and Single-Family 9 Districts, respectively; to the south is BL Technology in the Commercial District; to the east is South Cherry Street and agricultural and residential land uses in the SF-20-E District; and to the west is the City of Tomball's M-121 West drainage channel in the Agricultural District.

On December 12, 2011, the Planning and Zoning Commission, after conducting a public hearing on this request, voted to recommend approval of Zoning Case P11-375. This case is now being forwarded to City Council for consideration and possible action.

Origination:

Drachman Interest on behalf of FNR, LLC

Recommendation:

In its formal recommendation to City Council, the Planning and Zoning Commission voted to recommend approval of Zoning Case P11-375.

Funding:

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

Engineering and Planning

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

ATTACHMENTS:

Notice of Public Hearing
Property Owner Notification Letter
P11-375 Staff Report
Ordinance 2011-32

**NOTICE OF PUBLIC HEARINGS
CITY OF TOMBALL
PLANNING & ZONING COMMISSION
DECEMBER 12, 2011
&
CITY COUNCIL
DECEMBER 19, 2011**



Notice is Hereby Given that Public Hearings will be held by the Planning & Zoning Commission of the City of Tomball on **Monday, December 12, 2011, at 6:00 P.M.**, and by the City Council of the City of Tomball on **Monday, December 19, 2011, at 6:00 P.M.** at Regular Meetings, in the City Council Chambers of the City of Tomball at City Hall, 401 Market Street, Tomball, Texas. On such dates, the Planning & Zoning Commission and City Council will consider the following:

ZONING CASE P11-375: Request by Drachman Interest on behalf of FNR, LLC to amend the City's Comprehensive Zoning Ordinance to rezone approximately 11.09 acres of land, legally described as Lot 183 and Tracts 179A, 180A, and 184A, Tomball Outlots, within the City of Tomball, Harris County, Texas, generally located on the westerly side of South Cherry Street, southerly of Agg Road, from the Agricultural District to the Light Industrial District.

Persons interested in these cases will be given an opportunity to be heard. Action by the Planning and Zoning Commission serves as a recommendation to the City Council and is not a final action on the request. Should the Planning & Zoning Commission vote to table a decision/recommendation on one or more of the above cases, the date and time of a future meeting will be specified and the City Council will not review the subject case until such a decision/recommendation is forwarded to the City Council by the Planning and Zoning Commission. The application is available for public inspection Monday through Friday, holidays excepted, between the hours of 8:00 a.m. and 5:00 p.m. in the Engineering & Planning Department office, located at 501 James Street, Tomball, TX 77375. **Contact Assistant City Planner** Rodney Schmidt, (281) 290-1410, rschmidt@ci.tomball.tx.us

CERTIFICATION

I hereby certify that the above notice of meeting was posted on the bulletin board of City Hall; City of Tomball, Texas, a place readily accessible to the general public at all times, on the 8th day of December 2011 by 5:00 p.m., and remained posted for at least 72 continuous hours preceding the scheduled time of said meeting.

Brandy Pate

Brandy Pate

Senior Administrative Assistant

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



Notice of Public Hearing

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

CASE NUMBER: P11-375

APPLICANT: Drachman Interest on behalf of FNR, LLC

LOCATION: Westerly side of South Cherry Street, southerly of Agg Road

PROPOSAL: Request to amend the City's Comprehensive Zoning Ordinance to rezone approximately 11.09 acres of land, legally described as Lot 183 and Tracts 179A, 180A, and 184A, Tomball Outlots, within the City of Tomball, Harris County, Texas, from the Agricultural District to the Light Industrial District.

* * *

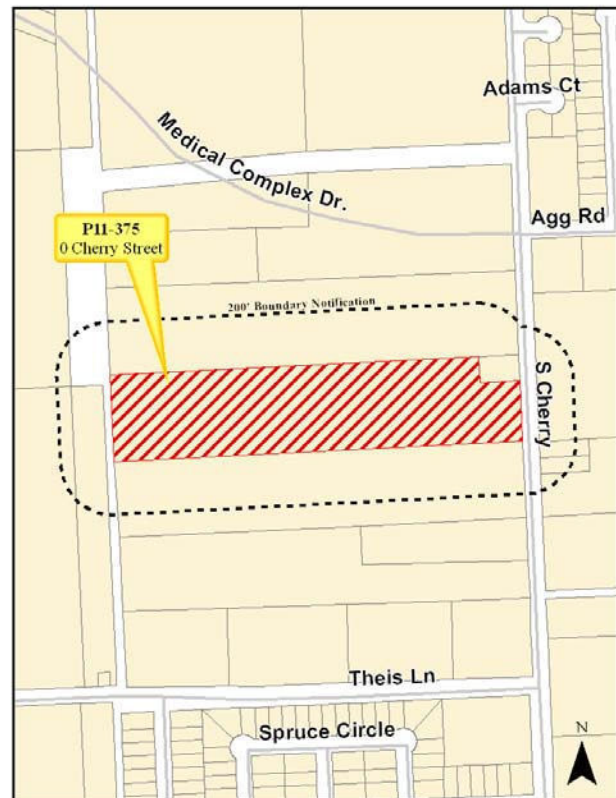
CONTACT PLANNER: Rodney Schmidt

PHONE: (281) 290-1410

E-MAIL: rschmidt@ci.tomball.tx.us

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

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

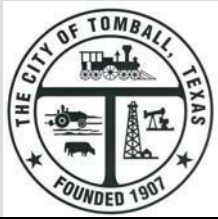


**Planning and Zoning Commission
Public Hearing:
Monday, December 12, 2011, 6:00 PM**

**City Council Public Hearing:
*Monday, December 19, 2011, 6:00 PM**

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

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



Rezoning Staff Report

Planning and Zoning Commission Public Hearing Date: December 12, 2011

Rezoning Case: P11-375
Property Owner(s): FNR, LLC
Applicant(s): Drachman Interest
Legal Description: Lot 183 and Tracts 179A, 180A, and 184A, Tomball Outlots
Location: Generally located westerly of South Cherry Street, southerly of Agg Road
Area: 11.09 acres
Present Zoning and Use: Agricultural District / Undeveloped
Comp Plan Designation: Business / Industrial
Proposed Zoning and Use: Light Industrial District / Steel Fabrication ("Metal Products, Stamping, and Manufacture")

It should be noted, that any use permitted in the proposed district would be allowed at this location if the zoning is changed. Furthermore, the Planning & Zoning Commission may consider zoning classifications other than that sought by the applicant for this property.

Adjacent Zoning & Land Uses:

North: Light Industrial and Single-Family 9 Districts / Devasco International and Single-Family Residence
South: Commercial District / BL Technology
East: SF-20-E District / South Cherry Street, Agricultural, and Residential
West: Agricultural District / M-121 West Drainage Channel

BACKGROUND

The subject site is legally described as Lot 183 and Tracts 179A, 180A, and 184A, Tomball Outlots within the City of Tomball, Harris County, Texas totaling approximately 11.09 acres. The site is generally located westerly of South Cherry Street, southerly of Agg Road, is undeveloped (Exhibit "A"), and is currently zoned Agricultural District (Exhibit "B").

On October 28, 2011, the Engineering & Planning Department received a rezoning application and letter for the subject site (Exhibits "C" and "D") from the applicant, Drachman Interest. According to their rezoning request letter:

We are currently under contract for the property on S. Cherry Street north of Theiss Lane (LT 183 & TRS 179A 180A & 184A).

It is our intent to relocate our steel fabrication facility from its current location in the Brittmoore Tanner Business Park to this location.

To achieve this, we request your consideration in rezoning this property from its current designation as agricultural to light/heavy industrial, for the use as a structural steel fabrication facility. It is our intent to erect a building to house our steel fabrication facility in addition to our executive offices.

We have been active in the Texas area for over 10 years as a supplier for TX Dot, in addition we produce steel fabrication work for the construction, oil and petrochemical industries. If you visit our website at www.associatedsteelfab.com you will see a sample of the range of projects we perform and have completed.

As a matter of information, the Zoning Ordinance's "Metal Products, Stamping, and Manufacture" land use is permitted by right in the Light Industrial District and not permitted in the Agricultural District.

ANALYSIS

According to the Tomball Zoning Ordinance, "The LI, Light Industrial, district is intended primarily for the conduct of light manufacturing, assembling and fabrication activities, and for warehousing, research and development, wholesaling and service operations that do not typically depend upon frequent customer or client visits. Such uses do require accessibility to major thoroughfares, major highways, and/or other means of transportation such as the railroad."

There is a mixture of land uses in the vicinity (Exhibits "A" and "B"). To the north of the subject site is Devasco International and a single-family residence within the Light Industrial and Single-Family 9 Districts, respectively; to the south is BL Technology in the Commercial District; to the east is South Cherry Street and agricultural and residential land uses in the SF-20-E District; and to the west is the City of Tomball's M-121 West drainage channel in the Agricultural District.

The Comprehensive Plan's future land use map identifies the site as "Business/Industrial" (Exhibit "E"). It states the "Business/Industrial" land use classification is "where industrial and intensive employment activities should occur. Activities that will require unenclosed assembly, repair and/or storage and require heavy truck or rail transportation support are acceptable. Also included would be warehousing and distribution facilities, as well as offices and showrooms." The proposed rezoning to the Light Industrial District and "Metal Products, Stamping, and Manufacture" land use are generally consistent with the Comprehensive Plan. **It should be noted that any use permitted in the Light Industrial District would be allowed at this location if the zoning is changed.**

As a matter of information, the future development of this site will require the applicant to comply with the City's platting requirements as well as the use and area regulations outlined in the Zoning Ordinance. A site plan application, which requires civil drawings, including all proposed grading, paving, drainage, and utility plans, building elevations, and landscape plans

are required to be submitted and approved by the Engineering & Planning Department and Fire Marshal's Office prior to a building permit application submittal.

ZONING CONSIDERATIONS

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

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

There is a mixture of land uses in the vicinity (Exhibits "A" and "B"). To the north of the subject site is Devasco International and a single-family residence within the Light Industrial and Single-Family 9 Districts, respectively; to the south is BL Technology in the Commercial District; to the east is South Cherry Street and agricultural and residential land uses in the SF-20-E District; and to the west is the City of Tomball's M-121 West drainage channel in the Agricultural District. See the attached site photos (Exhibit "F").

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

The proposed rezoning is not anticipated to negatively impact public schools, streets, water supply, sanitary sewers, or other utilities to the area.

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

In the immediate vicinity, there are two vacant tracts along Commercial Park Drive zoned Light Industrial.

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

There has been steady development city-wide and within the vicinity in the Light Industrial District.

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

If the proposed zoning change were approved, there should be few if any affects on other areas designated for similar developments.

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

The proposed zone change is not anticipated to adversely affect health, safety, morals, or general welfare.

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

According to the Comprehensive Plan, rezonings are “to conform to the intended future land use pattern shown on the Future Land Use Plan and should occur only when economic, physical, social, and other factors will allow the proposed land use to be developed:

- Within the capacities of existing or funded infrastructure and public facilities and services;
- In a compatible manner with surrounding land uses;
- To standards specified for and appropriate to the proposed land use; and
- In a way that furthers or helps achieve the goals of the Plan.”

The Comprehensive Plan’s future land use map identifies the site as “Business/Industrial” (Exhibit “E”). It states the “Business/Industrial” land use classification is “where industrial and intensive employment activities should occur. Activities that will require unenclosed assembly, repair and/or storage and require heavy truck or rail transportation support are acceptable. Also included would be warehousing and distribution facilities, as well as offices and showrooms.” The proposed rezoning to the Light Industrial District and “Metal Products, Stamping, and Manufacture” land use are generally consistent with the Comprehensive Plan.

PUBLIC COMMENT

Property owners within 200 feet of the project site were mailed notification of this proposal on December 1, 2011 and, as of the writing of this report, no public comment forms were received.

RECOMMENDATION

That the Planning and Zoning Commission recommend:

1. APPROVAL of Zoning Case P11-375 based on the following:
 - a. The proposed zoning of Light Industrial District is compatible with the Tomball Comprehensive Plan.
 - b. The proposed zoning of Light Industrial District will not negatively impact public schools, streets, water supply, sanitary sewers, or other utilities to the area.
 - c. There is sufficient utility capacity to service a light industrial use on this site.
2. APPROVAL of the staff report as the Planning and Zoning Commission’s final recommendation to the City Council.

EXHIBITS

- A. Aerial Photo
- B. Zoning Map
- C. Rezoning Application
- D. Rezoning Request Letter
- E. Comprehensive Plan Future Land Use Map
- F. Site Photos

Exhibit "A"
Aerial Photo



Exhibit "B"
Zoning Map

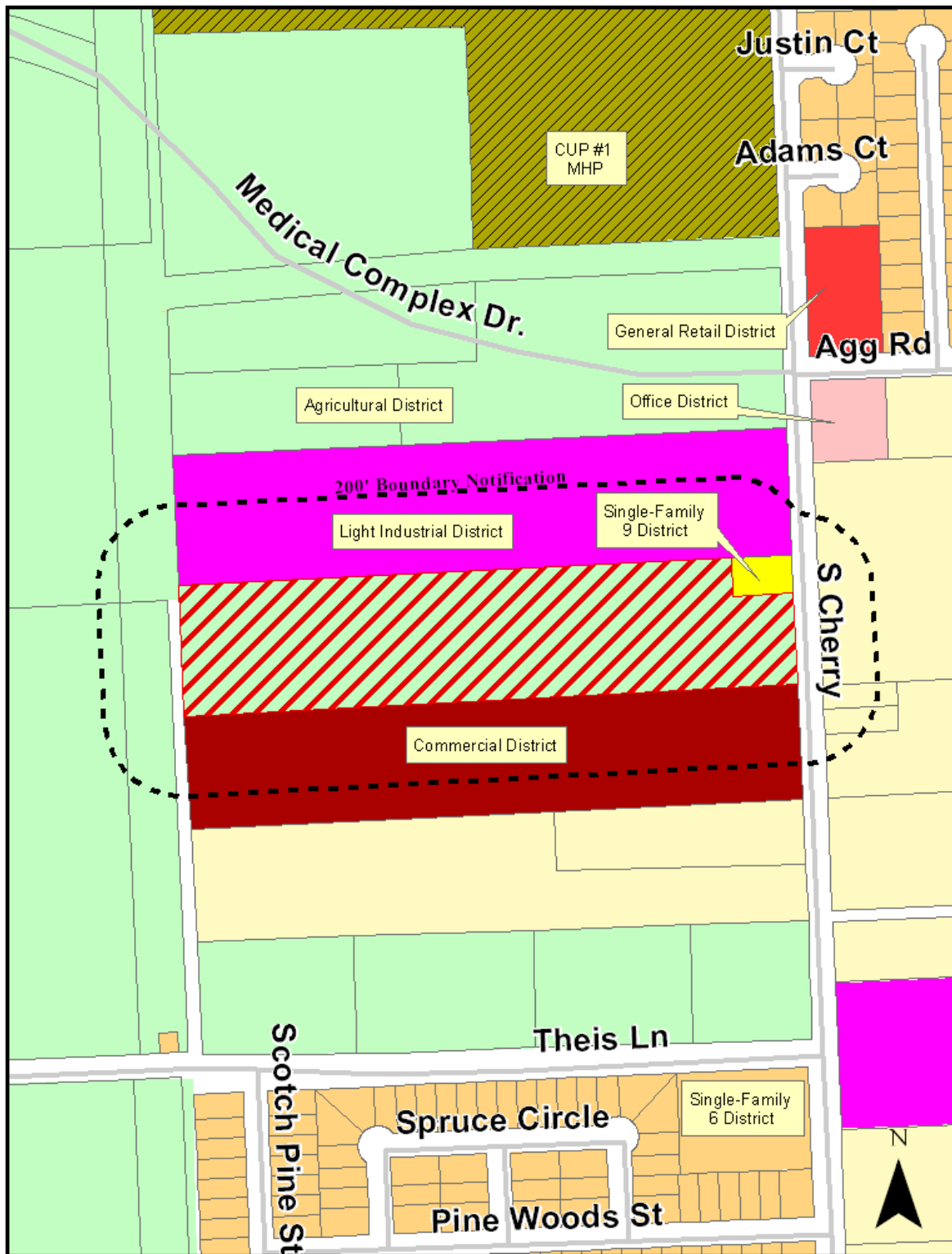
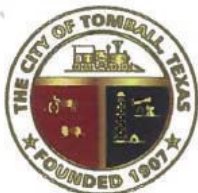


Exhibit "C"
Rezoning Application

Revised 1/20/09



APPLICATION FOR REZONING
Engineering & Planning Department



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

Applicant

Name: Drachman Interest Title: _____
Mailing Address: 5100 Ashley Ct. City: Houston State: TX
Zip: 77041
Phone: (713) 296 1400 Fax: () Email: craig@associatesteelfab.com

Owner

Name: ENR, LLC c/o Wade Houghton Title: _____
Mailing Address: 7020 Portwest Dr. Suite 100 City: Houston State: TX
Zip: 77024 - 1024
Phone: () Fax: () Email: wade.ha@scaly.net.com

Engineer/Surveyor (if applicable)

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

Description of Proposed Project: Steel fabrication shop - Industrial office/Warehouse

Physical Location of Property: S. Cherry St. @ Theirs Ln.
[General Location - approximate distance to nearest existing street corner]

Legal Description of Property: LT 183 1/2 TRS M9A 180A 1/2 184A TOMBALL OUTLOTS
[Survey/Abstract No. and Tracts; or platted Subdivision Name with Lots/Block]

Current Zoning District: AG

Current Use of Property: N/A

Proposed Zoning District: Light Industrial

Proposed Use of Property: Steel Fabrication / Metal Products Manufacture
Structural Steel Fabrication

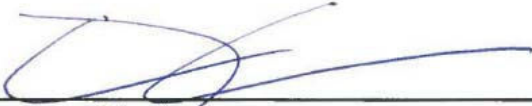
City of Tomball, Texas 501 James Street, Tomball, Texas 77375 Phone: 281-290-1405

www.ci.tomball.tx.us

HCAD Identification Number: 635 286 006 0183 Acreage: 11.08

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

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

X  10-25-11
Signature of Applicant Date

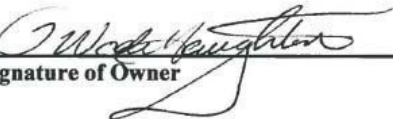
X  10-25-11
Signature of Owner Date

Exhibit "D"
Rezoning Request Letter



ASSOCIATED STEEL FABRICATORS, INC.

5100 Ashley Court
Houston, Texas 77041
(713) 896-1400 FAX (713) 896-1411

We are currently under contract for the property on S. Cherry Street north of Theiss Lane (LT 183 & TRS 179A 180A & 184A).

It is our intent to relocate our steel fabrication facility from its current location in the Brittmoore Tanner Business Park to this location.

To achieve this, we request your consideration in rezoning this property from its current designation as agricultural to light/heavy industrial, for the use as a structural steel fabrication facility. It is our intent to erect a building to house our steel fabrication facility in addition to our executive offices.

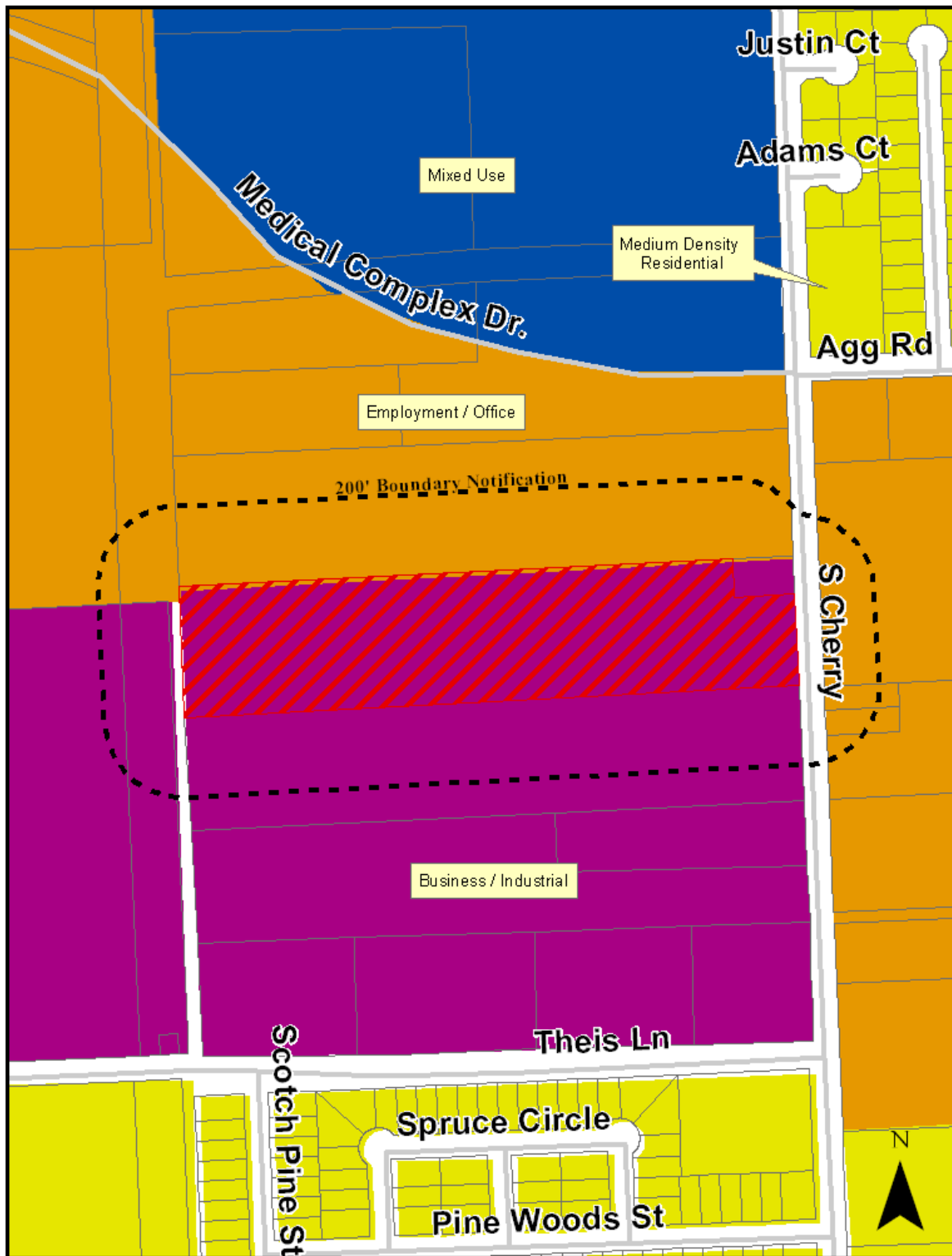
We have been active in the Texas area for over 10 years as a supplier for TX Dot, in addition we produce steel fabrication work for the construction, oil and petrochemical industries. If you visit our website at www.associatedsteelfab.com you will see a sample of the range of projects we perform and have completed.

We ask for your approval at the earliest possible date in this re-zoning so we may proceed with our purchase and development of the site.

Thank you for your attention to this matter.

Craig Drachman

Exhibit "E"
Comprehensive Plan Future Land Use Map



**Exhibit “F”
Site Photos**



Figure 1: Westerly view of subject site.



Figure 2: Devasco International to the north of subject site.



Figure 3: Single-family residence adjacent to subject site.



Figure 4: Agricultural and residential use to the east of subject site.



Figure 5: BL Technology to the south of subject site.



Figure 6: M-121 West drainage channel to the west of subject site.

ORDINANCE NO. 2011-32

AN ORDINANCE OF THE CITY OF TOMBALL, TEXAS, AMENDING ITS COMPREHENSIVE ZONING ORDINANCE BY CHANGING THE ZONING DISTRICT CLASSIFICATION OF APPROXIMATELY 11.09 ACRES OF LAND, LEGALLY DESCRIBED AS LOT 183 AND TRACTS 179A, 180A, AND 184A, TOMBALL OUTLOTS, WITHIN THE CITY OF TOMBALL, HARRIS COUNTY, TEXAS, FROM THE AGRICULTURAL DISTRICT TO THE LIGHT INDUSTRIAL DISTRICT; SAID PROPERTY BEING GENERALLY LOCATED ON THE WESTERLY SIDE OF SOUTH CHERRY STREET, SOUTHERLY OF AGG ROAD; PROVIDING FOR THE AMENDMENT OF THE OFFICIAL ZONING MAP OF THE CITY; PROVIDING FOR SEVERABILITY; PROVIDING FOR A PENALTY OF AN AMOUNT NOT TO EXCEED \$2,000 FOR EACH DAY OF VIOLATION OF ANY PROVISION HEREOF, MAKING FINDINGS OF FACT; AND PROVIDING FOR OTHER RELATED MATTERS

* * * * *

Whereas, the owner(s) of approximately 11.09 acres of land, legally described as Lot 183 and Tracts 179A, 180A, and 184A, Tomball Outlots, generally located on the westerly side of South Cherry Street, southerly of Agg Road, in the City of Tomball, Harris County, Texas, (the "Property"), have requested that the Property be rezoned; and

Whereas, at least fifteen (15) days after publication in the official newspaper of the City of the time and place of a public hearing and at least ten (10) days written notice of that hearing to the owners of land within two hundred feet of the Property in the manner required by law, the Planning & Zoning Commission held a public hearing on the proposal to change the zoning for the Property from the Agricultural District to the Light Industrial District; and

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

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

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

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

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

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

Section 2. The zoning classification of 11.09 acres of land, legally described as Lot 183 and Tracts 179A, 180A, and 184A, Tomball Outlots, within the City of Tomball, Harris County, Texas, is hereby changed from the Agricultural District to the Light Industrial District subject to the regulations, restrictions, and conditions hereafter set forth.

Section 3. The Official Zoning Map of the City of Tomball, Texas-Ordinance 2008-01, ("Zoning District Map"), shall be revised and amended to show the designation of 11.09 acres of land, legally described as Lot 183 and Tracts 179A, 180A, and 184A, Tomball Outlots, generally located on the westerly side of South Cherry Street, southerly of Agg Road, as Light Industrial District, with the appropriate reference thereon to the number and effective date of this Ordinance and a brief description of the nature of the change.

Section 4. This Ordinance shall in no manner amend, change, supplement, or revise any provision of any ordinance of the City of Tomball, save and except the change in zoning classification for 11.09 acres of land, legally described as Lot 183 and Tracts 179A, 180A, and 184A, Tomball Outlots, generally located on the westerly side of South Cherry Street, southerly of Agg Road, to the Light Industrial District as described above.

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

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

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

FIRST READING:

READ, PASSED AND APPROVED AS SET OUT BELOW AT THE MEETING OF THE CITY COUNCIL OF THE CITY OF TOMBALL HELD ON THE 19TH DAY OF DECEMBER 2011.

COUNCILMAN HUDGENS	_____
COUNCILMAN STOLL	_____
COUNCILMAN BROWN	_____
COUNCILMAN TOWNSEND	_____
COUNCILMAN DODSON	_____

SECOND READING:

READ, PASSED AND APPROVED AS SET OUT BELOW AT THE MEETING OF THE CITY COUNCIL OF THE CITY OF TOMBALL HELD ON THE 3RD DAY OF JANUARY 2011.

COUNCILMAN HUDGENS	_____
COUNCILMAN STOLL	_____
COUNCILMAN BROWN	_____
COUNCILMAN TOWNSEND	_____
COUNCILMAN DODSON	_____

ATTEST:

Gretchen Fagan, Mayor

Doris Speer, City Secretary

Regular City Council

Agenda Item

Data Sheet

Meeting Date: December 19, 2011

Topic:

Award Contract for COT Project Bid Number 2012-01, E&P Project Number 2009-10006, Brown Hufsmith Phase II, to Low Bidder, Monarch Civil Constructors, LLC, in the Amount of \$961,487.78.

Background:

City Council approved and budgeted funds for the Capital Improvement Project Brown Hufsmith Road Phase II for \$1,152,000. This project will connect the existing West Hufsmith to Brown-Hufsmith and will provide another east-west corridor for the City.

City Council approved a professional services contract with CLR Inc. on April 20, 2009 to complete the final design. The final design drawings and technical specifications were completed for the bidding purposes in November 2011. The bid package included a 150-day schedule for substantial completion. The bid schedule is summarized as follows:

- November 21, 2011 First Notice Printed
- November 28, 2011 Second Notice Printed
- November 30, 2011 Pre-Bid Meeting (10:00 am)
- December 6, 2011 Bid Opening (2:00 pm)

The consultant estimated a construction cost of approximately 1,050,000.00. The Consultants recommendation and bid tab are included.

Origination:

Engineering and Planning

Recommendation:

Engineering and Planning recommend award of the contract to Monarch Civil Constructors, LLC

Funding: Yes

Account Number: 400-154-6409, 400-613-6409, 400-614-6409, and 400-615-6409

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

Engineering and Planning

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

ATTACHMENTS:

Contract Award Recommendation Letter

Bid Tabulation

Agreement

Supplementary Conditions to Agreement



December 12, 2011

City of Tomball
Public Works Building
501 James Street
Tomball, TX 77375

Attn: Lori Lakatos, P.E.

Re: Concurrence of Low Bid for
Brown Hufsmith Ph II

Dear Ms. Lakatos:

We have reviewed the bid tabulation and low bid and have found no signs of imbalance or significant cause for concern. Therefore, we pose no objection to the recommendation of awarding the construction contract for Brown Hufsmith Ph II to Monarch Civil Constructors, LLC as the low bidder. Our concurrence is based on review of the Bidder's Statement of Residency and Affidavit of Ownership or Control.

If you have any questions please do not hesitate to call.

Sincerely,
CLR, Inc.

David R. Castellano, P.E.

					Engineer's Cost Estimate		Monarch Civil Constructors, LLC		Beyer Construction, LLC		MAR-CON Services, LLC	
B1. BASE UNIT PRICE TABLE - SITE PREPARATION AND EARTHWORK ITEMS:												
ITEM NO.	CONTROL NO.	ITEM DESCRIPTION	UNIT MEASURE	UNIT QUANTITY	UNIT PRICE IN FIGURES (5)	TOTAL IN FIGURES	UNIT PRICE IN FIGURES	TOTAL IN FIGURES	UNIT PRICE IN FIGURES	TOTAL IN FIGURES	UNIT PRICE IN FIGURES	TOTAL IN FIGURES
1	01502	MOBILIZATION (ENTIRE PROJECT)	LS	1	\$50,000.00 ⁽¹⁾	\$50,000.00 ⁽¹⁾	\$50,000.00	\$50,000.00	\$50,000.00	\$50,000.00	\$129,259.50	\$129,259.50
2	02221 02233	Clearing and Grubbing	ACRE	7.1	\$2,600.00	\$18,460.00	\$3,745.00	\$26,589.50	\$5,900.00	\$41,890.00	\$4,440.00	\$31,524.00
3	1740	Restoration of Site Improvements (Existing ROW)	LF	380	\$1.00	\$380.00	\$9.38	\$3,564.40	\$13.00	\$4,940.00	\$1.80	\$684.00
4	DWGS	REMOVE TYPE III BARRICADE	EA	1	\$500.00	\$500.00	\$72.60	\$72.60	\$1.00	\$1.00	\$132.10	\$132.10
TOTAL BASE UNIT PRICES - SITE PREPARATION AND EARTHWORK ITEMS:						\$69,340.00		\$80,226.50		\$96,831.00		\$161,599.60
B2. BASE UNIT PRICE TABLE - SWPPP & SWQMP ITEMS:												
ITEM NO.	CONTROL NO.	ITEM DESCRIPTION	UNIT MEASURE	UNIT QUANTITY	UNIT PRICE IN FIGURES (5)	TOTAL IN FIGURES	UNIT PRICE IN FIGURES	TOTAL IN FIGURES	UNIT PRICE IN FIGURES	TOTAL IN FIGURES	UNIT PRICE IN FIGURES	TOTAL IN FIGURES
5	01570 01410	STORM WATER POLLUTION PREVENTION (MAINTENANCE)	LS	1	\$6,000.00	\$6,000.00	\$968.00	\$968.00	\$1,800.00	\$1,800.00	\$2,941.50	\$2,941.50
6	01573	FILTER FABRIC FENCE	LF	2,580	\$1.25	\$3,225.00	\$1.03	\$2,657.40	\$1.00	\$2,580.00	\$1.00	\$2,580.00
7	01574	REINFORCED FILTER FABRIC FENCE	LF	60	\$2.25	\$135.00	\$1.33	\$79.80	\$2.00	\$120.00	\$2.20	\$132.00
8	DWGS	TEMPORARY TYPE I FILTER DAM (PLACE AND REMOVE)	EA	1	\$1,250.00	\$1,250.00	\$907.50	\$907.50	\$1,500.00	\$1,500.00	\$666.00	\$666.00
9	02921	STABILIZED CONSTRUCTION ACCESS	SY	222	\$13.50	\$2,997.00	\$7.82	\$1,736.04	\$19.00	\$4,218.00	\$11.10	\$2,464.20
10	02922	SODDING	SY	24,129	\$3.00	\$72,387.00	\$2.68	\$64,665.72	\$3.10	\$74,799.90	\$2.70	\$65,148.30
11	DWGS	SWQ TRASH RACK	LS	1	\$1,500.00	\$1,500.00	\$3,267.00	\$3,267.00	\$2,700.00	\$2,700.00	\$1,355.40	\$1,355.40
TOTAL BASE UNIT PRICES - SWPPP & SWQMP ITEMS						\$87,494.00		\$74,281.46		\$87,717.90		\$75,287.40
B3. BASE UNIT PRICE TABLE - PAVING ITEMS:												
ITEM NO.	CONTROL NO.	ITEM DESCRIPTION	UNIT MEASURE	UNIT QUANTITY	UNIT PRICE IN FIGURES (5)	TOTAL IN FIGURES	UNIT PRICE IN FIGURES	TOTAL IN FIGURES	UNIT PRICE IN FIGURES	TOTAL IN FIGURES	UNIT PRICE IN FIGURES	TOTAL IN FIGURES
12	02315	Roadway Excavation	CY	7,650	\$9.00	\$68,850.00	\$5.89	\$45,058.50	\$6.40	\$48,960.00	\$7.20	\$55,080.00
13	02319	Borrow	CY	262	\$6.50	\$1,703.00	\$1.07	\$280.34	\$0.75	\$196.50	\$2.00	\$524.00
14	02337	70% Flyash/30% Lime for Subgrade	TON	184.0	\$142.50	\$26,220.00	\$107.00	\$19,688.00	\$100.00	\$18,400.00	\$88.50	\$16,284.00
15	02337	70% Flyash/30% Lime Stabilized Subgrade, 8-inch	SY	7,651	\$2.25	\$17,214.75	\$1.71	\$13,083.21	\$1.40	\$10,711.40	\$1.60	\$12,241.60
16	02751	8" Reinforced Concrete Pavement	SY	6,607	\$32.00	\$211,424.00	\$35.10	\$231,905.70	\$31.75	\$209,772.25	\$33.00	\$218,031.00
17	02741	2" Asphaltic Concrete Pavement. Complete in place	SY	200	\$9.00	\$1,800.00	\$29.96	\$5,992.00	\$22.25	\$4,450.00	\$28.90	\$5,780.00
18	02711	8" Flexible Base Course	SY	210	\$33.00	\$6,930.00	\$32.10	\$6,741.00	\$38.50	\$8,085.00	\$26.80	\$5,628.00
19	02338	8" Stabilized Subgrade for Asphalt	TON	5.9	\$40.00	\$236.00	\$139.10	\$820.69	\$135.00	\$796.50	\$599.00	\$3,534.10
20	02775	5' Wide Sidewalk (4 1/2" Thickness)	SF	18,515	\$4.25	\$78,688.75	\$3.53	\$65,357.95	\$3.70	\$68,505.50	\$4.00	\$74,060.00
21	02775	Sidewalk Curb Sawcut	EA	3	\$50.00	\$150.00	\$32.10	\$96.30	\$250.00	\$750.00	\$108.80	\$326.40
22	DWGS	Sawcut, Scarify and Overlay 2" Hot Mix 2' into Baker Drive per Plans	LS	1	\$2,000.00	\$2,000.00	\$1,070.00	\$1,070.00	\$500.00	\$500.00	\$2,639.60	\$2,639.60
23	DWGS	Remove and Replace exist. Asphalt at San MH on Baker Drive per Construction Plans	LS	1	\$2,000.00	\$2,000.00	\$2.14	\$2.14	\$4,100.00	\$4,100.00	\$2,140.30	\$2,140.30
TOTAL BASE UNIT PRICES - PAVING ITEMS						\$417,216.50		\$390,095.83		\$375,227.15		\$396,269.00
B4. BASE UNIT PRICE TABLE - STORM SEWER & DETENTION ITEMS:												
ITEM NO.	CONTROL NO.	ITEM DESCRIPTION	UNIT MEASURE	UNIT QUANTITY	UNIT PRICE IN FIGURES (5)	TOTAL IN FIGURES	UNIT PRICE IN FIGURES	TOTAL IN FIGURES	UNIT PRICE IN FIGURES	TOTAL IN FIGURES	UNIT PRICE IN FIGURES	TOTAL IN FIGURES
24	02314	ROADSIDE DITCH W/ 2" BOTTOM	LF	3,410	\$2.00	\$6,820.00	\$2.14	\$7,297.40	\$3.50	\$11,935.00	\$3.10	\$10,571.00
25	02631 02611	24" RCP STORM SEWER, OPEN CUT, ALL DEPTHS, COMPLETE IN PLACE	LF	242	\$45.00	\$10,890.00	\$39.69	\$9,604.98	\$41.00	\$9,922.00	\$49.00	\$11,858.00
26	02631 02611	36" RCP STORM SEWER, OPEN CUT, ALL DEPTHS, COMPLETE IN PLACE	LF	115	\$60.00	\$6,900.00	\$62.32	\$7,166.80	\$50.65	\$5,824.75	\$66.40	\$7,636.00
27	02631 02611	48" RCP STORM SEWER, OPEN CUT, ALL DEPTHS, COMPLETE IN PLACE	LF	265	\$120.00	\$31,800.00	\$89.85	\$23,810.25	\$77.30	\$20,484.50	\$101.20	\$26,818.00
28	02631 02642	30" CMP STORM SEWER, OPEN CUT, ALL DEPTHS, COMPLETE IN PLACE	LF	68	\$105.00	\$7,140.00	\$54.63	\$3,714.84	\$46.30	\$3,148.40	\$61.20	\$4,161.60
29	02631 02642	48" CMP STORM SEWER, OPEN CUT, ALL DEPTHS, COMPLETE IN PLACE	LF	71	\$135.00	\$9,585.00	\$82.38	\$5,848.98	\$73.50	\$5,218.50	\$88.60	\$6,290.60
30	01561	TRENCH SAFETY SYSTEM	LF	761	\$1.00	\$761.00	\$23.78	\$18,096.58	\$0.12	\$91.32	\$0.80	\$608.80
31	02081 02082 02087	PRECAST OR BRICK TYPE C MANHOLE, COMPLETE IN PLACE	EA	4	\$1,300.00	\$5,200.00	\$1,476.20	\$5,904.80	\$2,174.00	\$8,696.00	\$1,996.10	\$7,984.40
32	02081 02082 02087	PRECAST OR BRICK LARGE TYPE C MANHOLE, COMPLETE IN PLACE	EA	2	\$1,400.00	\$2,800.00	\$2,155.31	\$4,310.62	\$3,086.00	\$6,172.00	\$2,507.50	\$5,015.00
33	02633	24" RCP SET (TYP II) (6:1) (P)	EA	6	\$1,000.00	\$6,000.00	\$1,230.17	\$7,381.02	\$758.00	\$4,548.00	\$1,001.50	\$6,009.00
34	02633	24" RCP SET (TYP II) (4:1) (C)	EA	4	\$900.00	\$3,600.00	\$1,079.07	\$4,316.28	\$578.00	\$2,312.00	\$812.80	\$3,251.20
35	02633	36" RCP SET (TYP II) (6:1) (P)	EA	2	\$1,200.00	\$2,400.00	\$3,026.73	\$6,053.46	\$2,715.00	\$5,430.00	\$2,679.80	\$5,359.60
36	DWGS	Remove and Dispose Existing Roadside Culverts along Baker Rd at Proposed Brown-Hufsmith	LS	1	\$1,000.00	\$1,000.00	\$302.50	\$302.50	\$1,325.00	\$1,325.00	\$442.90	\$442.90
37	2314	Berm construction, including gradebreaks, complete in place.	CY	650	\$5.00	\$3,250.00	\$4.54	\$2,951.00	\$3.50	\$2,275.00	\$3.10	\$2,015.00
38	2314	Excavation for detention basin, including grades. Complete in place.	CY	4,061	\$6.00	\$24,366.00	\$6.05	\$24,569.05	\$7.75	\$31,472.75	\$6.80	\$27,614.80
39	2751	5" Concrete Slope Paving at Ditches, 48" Pond Inflow and 24" Pond Outfall at SET, including Toe Walls. Complete in place	SY	225	\$72.00	\$16,200.00	\$100.58	\$22,630.50	\$60.00	\$13,500.00	\$56.50	\$12,712.50
40	2751	12" Wide Pilot Channel, including Toe Walls. Complete in place	LF	328	\$96.00	\$31,488.00	\$74.90	\$24,567.20	\$67.00	\$21,976.00	\$48.10	\$15,776.80
41	DWGS	10' Long 24" Restrictor Section including Grout and Steel Plate & Modified 4:1 SET. Complete in place	LS	1	\$1,500.00	\$1,500.00	\$4,537.50	\$4,537.50	\$15,200.00	\$15,200.00	\$1,403.00	\$1,403.00
42	3315	Extreme Event Overflow Weir Concrete Structure, Including Toe Walls. Complete in place	SY	102	\$72.00	\$7,344.00	\$107.00	\$10,914.00	\$60.00	\$6,120.00	\$59.80	\$6,099.60
43	2378	Rip Rap. Complete in place	SY	40	\$54.00	\$2,160.00	\$51.84	\$2,073.60	\$42.00	\$1,680.00	\$55.10	\$2,204.00
TOTAL BASE UNIT PRICES - STORM SEWER & DETENTION ITEMS						\$181,204.00		\$196,051.36		\$177,331.22		\$163,831.80

B5. BASE UNIT PRICE TABLE - WATER DISTRIBUTION ITEMS:						Engineer's Cost Estimate		Monarch Civil Constructors, LLC		Beyer Construction, LLC		MAR-CON Services, LLC	
ITEM NO.	CONTROL NO.	ITEM DESCRIPTION	UNIT MEASURE	UNIT QUANTITY	UNIT PRICE IN FIGURES (5)	TOTAL IN FIGURES	UNIT PRICE IN FIGURES	TOTAL IN FIGURES	UNIT PRICE IN FIGURES	TOTAL IN FIGURES	UNIT PRICE IN FIGURES	TOTAL IN FIGURES	
44	02511	12" PVC WATERLINE, ALL CUTS, INCLUDING FITTINGS, COMPLETE IN PLACE	LF	1,854	\$36.00	\$66,744.00	\$22.11	\$40,991.94	\$22.60	\$41,900.40	\$25.70	\$47,647.80	
45	02511	10" PVC WATERLINE, ALL CUTS, INCLUDING FITTINGS, COMPLETE IN PLACE	LF	5	\$36.00	\$180.00	\$49.65	\$248.25	\$17.35	\$86.75	\$30.20	\$151.00	
46	02520	FIRE HYDRANT ASSEMBLY (INCL. FV, 6" GV&B & LEAD)	EA	6	\$2,250.00	\$13,500.00	\$3,776.41	\$22,658.46	\$3,279.00	\$19,674.00	\$3,265.70	\$19,594.20	
47	02521	12" GATE VALVE & BOX	EA	1	\$1,375.00	\$1,375.00	\$1,873.08	\$1,873.08	\$1,810.00	\$1,810.00	\$2,018.50	\$2,018.50	
48	02082 02524	SERVICE MH W/ 2' COMB. ARV ASSEMBLY AND VENT PIPING	EA	1	\$14,750.00	\$14,750.00	\$3,505.37	\$9,723.00	\$9,723.00	\$9,723.00	\$4,861.10	\$4,861.10	
49	02525	10" TS&V, COMPLETE IN PLACE	EA	1	\$2,750.00	\$2,750.00	\$5,055.20	\$5,055.20	\$5,833.00	\$5,833.00	\$5,798.00	\$5,798.00	
50	02525	12" TS&V, COMPLETE IN PLACE	EA	1	\$3,000.00	\$3,000.00	\$6,089.75	\$6,089.75	\$5,912.00	\$5,912.00	\$5,881.20	\$5,881.20	
51	01561	TRENCH SAFETY SYSTEM	LF	1,854	\$0.25	\$463.50	\$0.48	\$889.92	\$0.12	\$222.48	\$0.30	\$556.20	
TOTAL BASE UNIT PRICES - WATER DISTRIBUTION ITEMS						\$ 102,762.50		\$81,311.97		\$85,161.63		\$86,508.00	
B6. BASE UNIT PRICE TABLE - WASTEWATER COLLECTION ITEMS													
ITEM NO.	CONTROL NO.	ITEM DESCRIPTION	UNIT MEASURE	UNIT QUANTITY	UNIT PRICE IN FIGURES (5)	TOTAL IN FIGURES	UNIT PRICE IN FIGURES	TOTAL IN FIGURES	UNIT PRICE IN FIGURES	TOTAL IN FIGURES	UNIT PRICE IN FIGURES	TOTAL IN FIGURES	
52	02082	MANHOLE CONN. TO PROP. 12" SAN. SEWER	LS	1	\$2,500.00	\$2,500.00	\$2,353.45	\$2,353.45	\$5,303.00	\$5,303.00	\$829.70	\$829.70	
53	02082	4-FT DIA. PRECAST CONCRETE MANHOLE (TO 8-FT DEPTH)	EA	6	\$1,250.00	\$7,500.00	\$1,476.20	\$8,857.20	\$1,718.00	\$10,308.00	\$1,835.10	\$11,010.60	
54	02082	EXTRA DEPTH 4-FT DIA. PRECAST CONCRETE MANHOLE	VF	13	\$80.00	\$1,040.00	\$90.75	\$1,179.75	\$111.00	\$1,443.00	\$131.20	\$1,705.60	
55	01561	TRENCH SAFETY SYSTEM	LF	1,587	\$0.50	\$793.50	\$0.48	\$761.76	\$0.12	\$190.44	\$0.80	\$1,269.60	
56	02531	10" DIA. SANITARY SEWER (0' - 8'), OPEN CUT	LF	785	\$27.00	\$21,195.00	\$25.06	\$19,672.10	\$35.00	\$27,475.00	\$23.90	\$18,761.50	
57	02531	10" DIA. SANITARY SEWER (8' - 10'), OPEN CUT	LF	802	\$30.00	\$24,060.00	\$26.05	\$20,892.10	\$37.00	\$29,674.00	\$25.30	\$20,290.60	
58	02531	AUGER 10" DIA. SANITARY SEWER	LF	40	\$120.00	\$4,800.00	\$58.24	\$2,329.60	\$62.00	\$2,480.00	\$169.90	\$6,796.00	
TOTAL BASE UNIT PRICES - WASTEWATER COLLECTION ITEMS						\$61,888.50		\$56,045.96		\$76,873.44		\$60,663.60	
B7. BASE UNIT PRICE TABLE - GAS DISTRIBUTION ITEMS													
ITEM NO.	CONTROL NO.	ITEM DESCRIPTION	UNIT MEASURE	UNIT QUANTITY	UNIT PRICE IN FIGURES (5)	TOTAL IN FIGURES	UNIT PRICE IN FIGURES	TOTAL IN FIGURES	UNIT PRICE IN FIGURES	TOTAL IN FIGURES	UNIT PRICE IN FIGURES	TOTAL IN FIGURES	
59	DWGS	4" POLYETHYLENE GAS	LF	1,871	\$24.00	\$44,904.00	\$11.45	\$21,422.95	\$15.00	\$28,065.00	\$11.90	\$22,264.90	
60	DWGS	AUGER 4" GAS W/ 8" STL CASING (INCL. SEALS & VENT STACKS)	LF	56	\$80.00	\$4,480.00	\$69.55	\$3,894.80	\$77.00	\$4,312.00	\$72.20	\$4,043.20	
61	DWGS	4" GAS VALVE	EA	3	\$300.00	\$900.00	\$791.80	\$2,375.40	\$434.00	\$1,302.00	\$821.40	\$2,464.20	
62	DWGS	4" GAS PLUG	EA	1	\$50.00	\$50.00	\$1,605.00	\$1,605.00	\$32.00	\$32.00	\$1,665.00	\$1,665.00	
63	DWGS	4" TIE TO EXISTING GAS	LS	1	\$350.00	\$350.00	\$3,103.00	\$3,103.00	\$1,060.00	\$1,060.00	\$3,219.00	\$3,219.00	
64	DWGS	ZINC ANODE	EA	3	\$600.00	\$1,800.00	\$66.34	\$199.02	\$372.00	\$1,116.00	\$68.80	\$206.40	
65	DWGS	TEST STATION	EA	2	\$600.00	\$1,200.00	\$80.25	\$160.50	\$372.00	\$744.00	\$83.30	\$166.60	
TOTAL BASE UNIT PRICES - GAS DISTRIBUTION ITEMS						\$53,684.00		\$32,760.67		\$36,631.00		\$34,029.30	
B8. BASE UNIT PRICE TABLE - TRAFFIC CONTROL AND LEFT TURN LANE PAVEMENT MARKING ITEMS													
ITEM NO.	CONTROL NO.	ITEM DESCRIPTION	UNIT MEASURE	UNIT QUANTITY	UNIT PRICE IN FIGURES (5)	TOTAL IN FIGURES	UNIT PRICE IN FIGURES	TOTAL IN FIGURES	UNIT PRICE IN FIGURES	TOTAL IN FIGURES	UNIT PRICE IN FIGURES	TOTAL IN FIGURES	
66	01555	TRAFFIC CONTROL, MAINTENANCE AND REGULATION INCLUDING SIGNS, SIGNALS, TRAFFIC CONTROL DEVICES, FLARES, FLAGMEN, AND APPURTENANCES, IN ACCORDANCE WITH DRAWINGS AND SPECIFICATIONS, COMPLETE IN PLACE	LS	1	\$15,000.00	\$15,000.00	\$3,210.00	\$3,210.00	\$5,671.00	\$5,671.00	\$2,553.00	\$2,553.00	
67	01555	FLAGMEN FOR TRAFFIC CONTROL, COMPLETE IN PLACE	LS	1	\$2,500.00	\$2,500.00	\$535.00	\$535.00	\$1,500.00	\$1,500.00	\$1,598.40	\$1,598.40	
68	02763	THERMOPLASTIC PAVEMENT MARKING, CLASS II, 4" WHITE, SOLID	LF	3,877	\$0.50	\$1,938.50	\$0.59	\$2,287.43	\$0.95	\$3,683.15	\$0.60	\$2,326.20	
69	02763	Thermoplastic Pavement Marking, Class II, 8" White, Solid	LF	240	\$1.25	\$300.00	\$1.18	\$283.20	\$1.90	\$456.00	\$1.10	\$264.00	
70	02763	THERMOPLASTIC PAVEMENT MARKING, CLASS II, 12" WHITE, SOLID	LF	146	\$2.50	\$365.00	\$3.21	\$468.66	\$2.90	\$423.40	\$3.10	\$452.60	
71	02763	THERMOPLASTIC PAVEMENT MARKING, CLASS II, 24" WHITE, SOLID	LF	36	\$7.00	\$252.00	\$5.99	\$215.64	\$5.75	\$207.00	\$6.10	\$219.60	
72	02763	THERMOPLASTIC PAVEMENT MARKING, CLASS II, 4" YELLOW, SOLID	LF	3,026	\$0.50	\$1,513.00	\$0.64	\$1,936.64	\$0.95	\$2,874.70	\$0.60	\$1,815.60	
73	02763	Thermoplastic Pavement Marking, Class II, 4" Yellow, Broken	LF	250	\$0.50	\$125.00	\$0.64	\$160.00	\$0.95	\$237.50	\$0.60	\$150.00	
74	02763	Thermoplastic Pavement Marking, Class II, 24" Yellow, Solid	LF	166	\$7.00	\$1,162.00	\$6.42	\$1,065.72	\$5.75	\$954.50	\$6.10	\$1,012.60	
75	02764	Thermoplastic Pavement Marking, Class II, "ONLY" & Left Turn Arrow for Left Turn Lane	EA	2	\$250.00	\$500.00	\$294.25	\$588.50	\$387.00	\$774.00	\$277.50	\$555.00	
76	02764	Raised Pavement Marker, Type I-C	EA	26	\$4.50	\$117.00	\$5.89	\$153.14	\$4.15	\$107.90	\$5.60	\$145.60	
77	02764	Raised Pavement Marker, Type II-A-A	EA	178	\$4.50	\$801.00	\$5.35	\$952.30	\$4.15	\$738.70	\$5.60	\$996.80	
78	DWGS	TxDOT D1-1 Street Name Sign	EA	4	\$500.00	\$2,000.00	\$64.20	\$256.80	\$57.00	\$228.00	\$277.50	\$1,110.00	
79	DWGS	TxDOT R1-1 Stop Sign, 30"x30"	EA	2	\$500.00	\$1,000.00	\$481.50	\$963.00	\$439.00	\$878.00	\$444.00	\$888.00	
80	DWGS	TxDOT R2-1 Speed Limit Sign, 24"x30"	EA	2	\$500.00	\$1,000.00	\$428.00	\$856.00	\$401.00	\$802.00	\$444.00	\$888.00	
81	DWGS	TxDOT W3-1A Sign, 36"x36"	EA	2	\$750.00	\$1,500.00	\$481.50	\$963.00	\$446.00	\$892.00	\$444.00	\$888.00	
82	DWGS	Remove and Relocate exist. Stop Sign	EA	1	\$750.00	\$750.00	\$107.00	\$107.00	\$250.00	\$250.00	\$279.40	\$279.40	
83	DWGS	TxDOT Object Markers	EA	10	\$200.00	\$2,000.00	\$85.60	\$856.00	\$77.00	\$770.00	\$305.30	\$3,053.00	
84	DWGS	TxDOT Delineators	EA	20	\$150.00	\$3,000.00	\$42.80	\$856.00	\$40.00	\$800.00	\$216.50	\$4,330.00	
TOTAL BASE UNIT PRICES - TRAFFIC CONTROL AND LEFT TURN LANE PAVEMENT MARKING ITEMS						\$35,823.50		\$16,714.03		\$22,247.85		\$23,525.80	
TOTAL BASE UNIT PRICES						\$1,009,413.00		\$927,487.78		\$958,021.19		\$1,001,714.50	

	Bid Form	Bid Tab	Bid Form	Bid Tab	Bid Form	Bid Tab
B1. SITE PREPARATION AND EARTHWORK ITEMS:	\$ 69,340.00	\$ 80,226.50	\$ 96,831.00	\$ 96,831.00	\$ 161,599.60	\$ 161,599.60
B2. SWPPP AND SQMP ITEMS	\$ 87,494.00	\$ 74,281.46	\$ 87,717.90	\$ 87,717.90	\$ 75,287.40	\$ 75,287.40
B3. PAVING ITEMS	\$ 417,216.50	\$ 392,554.69	\$ 390,095.83	\$ 375,227.15	\$ 375,227.15	\$ 396,269.00
B4. STORM SEWER AND DETENTION ITEMS	\$ 181,204.00	\$ 196,051.36	\$ 177,331.22	\$ 177,331.22	\$ 163,831.00	\$ 163,831.00
B5. WATER DISTRIBUTION ITEMS	\$ 102,762.50	\$ 81,311.97	\$ 85,161.63	\$ 85,161.63	\$ 86,508.00	\$ 86,508.00
B6. WASTEWATER COLLECTION ITEMS	\$ 61,888.50	\$ 56,045.96	\$ 76,873.44	\$ 76,873.44	\$ 60,663.60	\$ 60,663.60
B7. GAS DISTRIBUTION ITEMS	\$ 53,684.00	\$ 32,760.67	\$ 36,631.00	\$ 36,631.00	\$ 34,029.30	\$ 34,029.30
B8. TRAFFIC CONTROL AND LEFT TURN LANE PAVEMENT MARKING ITEMS	\$ 35,823.50	\$ 16,714.03	\$ 22,247.85	\$ 22,247.85	\$ 23,525.80	\$ 23,525.80
C. EXTRA UNIT PRICES FOR:	\$ 34,000.00	\$ 34,000.00	\$ 34,000.00	\$ 34,000.00	\$ 37,190.00	\$ 37,190.00
	<u>\$ 1,043,413.00</u>	<u>\$ 963,946.64</u>	<u>\$ 961,487.78</u>	<u>\$ 992,021.19</u>	<u>\$ 1,038,904.50</u>	<u>\$ 1,038,904.50</u>

Difference Low to 2nd Low	\$	30,533.41
Difference Low to High	\$	77,416.72

Document 00520

AGREEMENT

Project: Brown-Hufsmith Phase II

Project Location: Brown-Hufsmith from Quinn Road to Baker Road (Key Map No. 288-G)

E&P Project No: 2009-10006

Project Bid No: 2012-01

The City: The City of Tomball, County of Harris, Texas (the "City")
and

Contractor: Monarch Civil Constructors, LLC

(Address for Written Notice) P.O. Box 268 Willis, Texas

Fax Number: 936-228-2974

City Engineer is: Lori Lakatos, P.E., CFM (Acting City Engineer)

(Address for Written Notice) 501 James St., Tomball, Texas 77375

Fax Number: 281-351-4735

THE CITY AND CONTRACTOR AGREE AS FOLLOWS:

ARTICLE 1

THE WORK OF THE CONTRACT

1.1 Contractor shall perform the Work in accordance with the Contract.

ARTICLE 2

CONTRACT TIME

2.1 Contractor shall achieve Date of Substantial Completion within 150 days after Date of Commencement of the Work, subject to adjustments of Contract Time as provided in the Contract.

2.2 The Parties recognize that time is of the essence for this Agreement and that the City will suffer financial loss if the Work is not completed within the Contract Time. Parties also recognize delays, expense, and difficulties involved in proving in a legal or arbitration proceeding actual loss suffered by the City if the

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Work is not completed on time. Accordingly, instead of requiring any such proof, the Parties agree that as liquidated damages for delay (but not as a penalty), Contractor shall pay the City the amount stipulated in Document 00800 – Supplementary Conditions, for each day beyond Contract Time.

ARTICLE 3

CONTRACT PRICE

3.1 Subject to terms of the Contract, the City will pay Contractor in current funds for Contractor's performance of the Contract, Contract Price of \$961,487.78, which includes Alternates, if any, accepted below.

3.2 The City accepts Alternates as follows:

Alternate No. 1 N/A

ARTICLE 4

PAYMENTS

4.1 The City will make progress payments to Contractor as provided below and in the General Conditions.

4.2 The Period covered by each progress payment is one calendar month ending on the [] 10th, [] 20th, or ☒ last day of the month.

4.3 The Schedule of Values established as provided in paragraph 2.07.A of the General Conditions will serve as the basis for progress payments and will be incorporated into a form of Application for Payment acceptable to Engineer. Progress payments on account of Unit Price Work will be based on the number of units completed. The City will make progress payments on account of the Contract Price on the basis of Contractor's Applications for Payment as provided below in paragraphs 4.3.1 and 4.3.2.

4.3.1 Prior to Substantial Completion, progress payments will be made in an amount equal to the percentage indicated below but, in each case, less the aggregate of payments previously made and less such amounts as Engineer may determine or City may withhold, in accordance with paragraph 14.02 of the General Conditions:

a. For contracts under \$400,000.00, 90% of Work completed (with the balance being retainage).

For contracts over \$400,000.00, 95% of Work completed (with the balance being retainage.)

b. For contracts under \$400,000.00, 90% (with the balance being retainage) and for contracts over \$400,000.00, 95% (with the balance being retainage) of materials and equipment not incorporated in the Work (but delivered, suitably stored and accompanied by documentation satisfactory to the City as provided in paragraph 14.02 of the General Conditions).

4.3.2 Upon Substantial Completion, the City shall pay an amount sufficient to increase total payments to Contractor to 95% of the Work completed, less such amounts as Engineer shall determine in accordance with paragraph 14.02.B.5 of the General Conditions and less 100% of Engineer's estimate of the value of

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11-15-2011

Work to be completed or corrected as shown on the tentative list of items to be completed or corrected attached to the Certificate of Substantial Completion.

4.4 Final payment, constituting entire unpaid balance of Contract Price, will be made by the City to Contractor as provided in the General Conditions.

ARTICLE 5
CONTRACTOR REPRESENTATIONS

5.1 Contractor represents:

5.1.1 Contractor has examined and carefully studied Contract documents and other related data identified in Bid Documents.

5.1.2 Contractor has visited the site and become familiar with and is satisfied as to general, local, and site conditions that may affect cost, progress, and performance of the Work.

5.1.3 Contractor is familiar with and is satisfied as to all federal, state, and local laws and regulations that may affect cost, progress, and performance of the Work.

5.1.4 Contractor has carefully studied all: (1) reports of explorations and tests of subsurface conditions at or contiguous to the site and all drawings of physical conditions in or relating to existing surface or subsurface structures at or contiguous to the site (except Underground Facilities) which have been identified in Contract documents and (2) reports and drawings of a hazardous environmental condition, if any, at the site which has been identified in Contract documents.

5.1.5 Contractor has obtained and carefully studied (or assumes responsibility for having done so) all additional or supplementary examinations, investigations, explorations, tests, studies, and data concerning conditions (surface, subsurface, and Underground Facilities) at or contiguous to the site which may affect cost, progress, or performance of the Work or which relate to any aspect of the means, methods, techniques, sequences, and procedures of construction to be employed by Contractor, including applying specific means, methods, techniques, sequences, and procedures of construction, if any, expressly required by the Contract to be employed by Contractor, and safety precautions and programs incident thereto

5.1.6 Contractor does not consider that any further examinations, investigations, explorations, tests, studies, or data are necessary for performance of the Work at Contract Price, within Contract Time, and in accordance with the Contract.

5.1.7 Contractor is aware of general nature of work to be performed by the City and others at the site that relates to the Work as indicated in Contract documents.

5.1.8 Contractor has correlated information known to Contractor, information and observations obtained from visits to the site, reports and drawings identified in the Contract, and all additional examinations, investigations, explorations, tests, studies, and data with the Contract.

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5.1.9 Contractor has given City Engineer written notice of all conflicts, errors, ambiguities, or discrepancies that Contractor has discovered in the Contract, and written resolution thereof by City Engineer is acceptable to Contractor.

5.1.10 Contract documents are generally sufficient to indicate and convey understanding of all terms and conditions for performance and furnishing of the Work.

ARTICLE 6

MISCELLANEOUS PROVISIONS

6.1 The Contract may be terminated by either Party as provided in Conditions of the Contract.

6.2 The Work may be suspended by the City as provided in Conditions of the Contract.

ARTICLE 7

ENUMERATION OF CONTRACT DOCUMENTS

7.1 The following documents are incorporated into this Agreement:

7.1.1 Document 00700 - General Conditions

7.1.2 Document 00800 - Supplementary Conditions

7.1.3 General Requirements.

7.1.4 Divisions 02 through 16 of Specifications attached hereto or incorporated by reference in Document 00010 - Table of Contents.

7.1.5 Drawings listed in Document 00015 - List of Drawings and bound separately.

7.1.6 Addenda which apply to the Contract, are as follows:

Addendum No. 1, dated [N/A]

Addendum No. 2, dated [N/A]

7.1.7 Other documents:

<u>Document No.</u>	<u>Title</u>
[X] 00410B	Bid Form – Part B
[X] 00500	Form of Business
[X] 00501	Resolution of Corporation (if a corporation)
[X] 00610	Performance Bond
[X] 00611	Statutory Payment Bond
[X] 00612	One-year Maintenance Bond
[X] 00620	Affidavit of Insurance (with the Certificate of Insurance attached)
[X] 00800	Exhibit A, Wage Rates
[] 00821	Wage Rate for Building Construction
[X] 00830	Trench Safety Geotechnical Information (reference 00320)

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ARTICLE 8
SIGNATURES

8.1 This Agreement is executed in two originals and is effective on _____.

CONTRACTOR:

(If Joint Venture)

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

Tax Identification Number: _____

Tax Identification Number: _____

ATTEST/SEAL:

[SEAL]

Attest: _____

Date: _____

CITY OF TOMBALL, TEXAS:

By: _____

City Manager

Date: _____

ATTEST/SEAL:

[SEAL]

Attest: _____

City Secretary

Date: _____

END OF DOCUMENT

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11-15-2011

SUPPLEMENTARY CONDITIONS
SECTION 00800

SUPPLEMENTARY CONDITIONS
(TO ACCOMPANY STANDARD GENERAL CONDITIONS OF THE CONSTRUCTION CONTRACT,
EJCDC NO. C-700 [2007 EDITION] FOR CITY OF TOMBALL CONSTRUCTION PROJECTS)

TABLE OF CONTENTS

PART I AMENDMENTS TO GENERAL CONDITIONS

<u>Article</u>	<u>Title</u>
1	DEFINITIONS
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4	AVAILABILITY OF LANDS; SUBSURFACE AND PHYSICAL CONDITIONS; REFERENCE POINTS
5	BONDS AND INSURANCE
6	CONTRACTOR'S RESPONSIBILITIES
7	OTHER WORK
8	OWNER'S RESPONSIBILITIES
9	ENGINEER'S STATUS DURING CONSTRUCTION
10	CHANGES IN THE WORK; CLAIMS
13	TESTS AND INSPECTIONS; CORRECTION, REMOVAL, OR ACCEPTANCE OF DEFECTIVE WORK
14	PAYMENTS TO CONTRACTOR AND COMPLETION
15	SUSPENSION OF WORK AND TERMINATION
16	DISPUTE RESOLUTION
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PART II	OTHER PROVISIONS
EXHIBIT A	Wage Rates
EXHIBIT B	Worker's Compensation Insurance Coverage
EXHIBIT C	A Listing of the Duties, Responsibilities, and Limitations of Authority of the Resident Project Representative
EXHIBIT D	Addenda (if any)
EXHIBIT E	Change Order (form)
EXHIBIT F	Application for Payment (form)
EXHIBIT G	Storm Water Pollution Prevention Plan
EXHIBIT H	Conflict of Interest Questionnaire

SECTION 00800

SUPPLEMENTARY CONDITIONS

PART I AMENDMENTS TO GENERAL CONDITIONS

These Supplementary Conditions amend or supplement the Standard General Conditions of the Construction Contract (General Conditions) and other provisions of the Contract Documents as indicated below. All provisions which are not so amended or supplemented remain in full force and effect.

ARTICLE 1 DEFINITIONS

SC-1.01

The terms used in these Supplementary Conditions which are defined in the Standard General Conditions of the Construction Contract (General Conditions) have the meanings assigned to them in the General Conditions.

Amend Paragraph 1.01.A.19, Engineer, of the General Conditions by adding the following to the end:

"For this project the following named persons, firms, or corporations have been utilized by ENGINEER to furnish services as a consultant with respect to the project (if blank, none have been utilized by the ENGINEER):

1. _____
2. _____
3. _____"

ARTICLE 2 PRELIMINARY MATTERS

SC-2.02

Amend the first sentence of Paragraph 2.02.A of the General Conditions to read as follows:

"Five sets of the Contract Documents shall be furnished to the CONTRACTOR, at no charge, for construction purposes."

And so amended, Paragraph 2.02 remains in effect.

SC-2.03

Amend the third sentence of Paragraph 2.03.A of the General Conditions to read as follows:

"In no event will the Contract Time commence to run later than 90 days after the day of Bid opening or 30 days after the Effective Date of the Agreement, whichever is earlier, without the written agreement of the Contractor and Owner."

ARTICLE 4 AVAILABILITY OF LANDS; SUBSURFACE AND PHYSICAL CONDITIONS;
HAZARDOUS ENVIRONMENTAL CONDITIONS; REFERENCE POINTS

SC-4.02

In the preparation of Drawings and Specifications, ENGINEER or ENGINEER's Consultants have relied upon:

4.02.A.1 The following reports of exploration and tests of subsurface conditions at the site of the Work (if blank, no reports or tests were used by ENGINEER or ENGINEER's Consultants):

1. _____
2. _____

The technical data contained in such reports upon which the CONTRACTOR may rely is _____.

4.02.A.2 The following drawings of physical conditions in or relating to existing surface and subsurface structures (except Underground Facilities) which are at or contiguous to the site of Work:

1. _____
2. _____
3. _____

All of the information in such drawings constitutes technical data on which CONTRACTOR may rely with the following exceptions: _____

Copies of these reports and drawings that are not included with the Bidding Documents may be examined at the office of the ENGINEER during regular business hours. These reports and drawings are not part of the Contract Documents, but the technical data contained therein upon which CONTRACTOR is entitled to rely as provided in GC-4.02.B and as identified and established above are incorporated therein by reference. CONTRACTOR is not entitled to rely upon other information and data utilized by ENGINEER.

SC-4.06

Delete Paragraph 4.06.G of the General Conditions in its entirety.

ARTICLE 5 BONDS AND INSURANCE

SC-5.01

Delete Paragraphs 5.01.A and 5.01.B of the General Conditions in their entirety and insert the following in their place:

"A. The Successful Bidder must furnish with the executed Contract Documents a Performance Bond and a Payment Bond on the forms furnished with the Contract Documents, each in the amount of 100% of the total Contract Price in accordance with Texas Local Government Code § 252.044 and Texas Government Code Ch. 2253. CONTRACTOR shall also furnish such other Bonds as are required by the Supplementary Conditions. The surety company must be authorized to do business in Texas, which authorization must be recorded in the files of the State Board of Insurance. The surety company must be authorized to issue Payment and Performance Bonds in the amount required for the particular Contract, which authorization must be recorded in the files of the State Board of Insurance. The surety company must have a rating of at least "B" in the current Best's Key Rating Guide, or if the surety company does not have such a rating due to the length of time it has existed, the surety company must be eligible to participate in the surety bond guarantee program of the Small Business Administration and must be an approved surety listed in the current U.S. Department of Treasury Circular 570, and must meet all of the related rules and regulations of the Treasury Department. The person executing the Payment and Performance Bonds must be a licensed Texas local recording agent, and such licensing must be recorded in the files of the State Board of Insurance. The person executing the Payment and Performance Bonds must be authorized by the surety company to execute Payment and Performance Bonds on behalf of the company in the amount required for the Contract, and such authorization must be recorded in the files of the State Board of Insurance. The Contract shall not be in effect until such Bonds have been provided by the CONTRACTOR and accepted by the OWNER."

SC-5.04

The limits of liability for the insurance required by Paragraph 5.04 of the General Conditions shall provide coverage for not less than the following amounts or greater where required by Laws and Regulations:

Worker's Compensation

- | | |
|---|-------------------------|
| (1) State: <u>Statutory</u> | |
| (2) Applicable Federal (e.g., Longshoreman's): <u>Statutory</u> | |
| (3) Employer's Liability: | |
| \$500,000 | Each Accident |
| \$500,000 | Disease - Policy Limit |
| \$500,000 | Disease - Each Employee |

Commercial General Liability

- | | |
|---|-------------|
| (1) General Aggregate Limit (other than products-completed operations) coverage must include Explosion, Collapse, and Underground Coverages | \$1,000,000 |
| (2) Products-Completed Operations Aggregate Limit | \$1,000,000 |
| (3) Each Occurrence Limit | \$ 500,000 |

Commercial Automobile Liability

\$500,000	Any One Loss or Accident
-----------	--------------------------

Umbrella Liability

\$1,000,000	Excess Limit
-------------	--------------

Shortages in coverage in any of the areas listed above may be covered by additional umbrella coverage.

The Contractor shall not commence work on any Contract in the City until the Contractor has obtained all the insurance required under this paragraph and such insurance has been approved by the City.

Workers' Compensation Insurance Coverage - Continued

A. Definitions:

Certificate of coverage ("certificate") - A copy of a certificate of insurance, a certificate of authority to self-insure issued by the commission, or a coverage agreement (DWC-81, DWC-82, DWC-83, or DWC-84), showing statutory workers' compensation insurance coverage for the person's or entity's employees providing services on a project, for the duration of the project.

Duration of the project - includes the time from the beginning of the work on the project until the contractor's/person's work on the project has been completed and accepted by the governmental entity.

Persons providing services on the project ("subcontractor" in 406.096) - includes all persons or entities performing all or part of the services the contractor has undertaken to perform on the project, regardless of whether that person contracted directly with the contractor and regardless of whether that person has employees. This includes, without limitation, independent contractors, subcontractors, leasing companies, motor carriers, owner-operators, employees of any such entity, or employees of any entity which furnished persons to provide services on the project. "Services" include, without limitation, providing, hauling, or delivering equipment or materials, or providing labor, transportation, or other service related to a project. "Services" does not include activities unrelated to the project, such as food/beverage vendors, office supply deliveries, and delivery of portable toilets.

- B. The contractor shall provide coverage, based on proper reporting of classification codes and payroll amounts and filing of any coverage agreements, which meets the statutory requirements of Texas Labor Code, Section 401.011(44) for all employees of the contractor providing services on the project, for the duration of the project.
- C. The contractor must provide a certificate of coverage to the governmental entity prior to being awarded the contract.
- D. If the coverage period shown on the contractor's current certificate of coverage ends during the duration of the project, the contractor must, prior to the end of the coverage period, file a new certificate of coverage with the governmental entity showing that coverage has been extended.
- E. The contractor shall obtain from each person providing services on the project, and provide to the governmental entity:
 - (1) a certificate of coverage, prior to that person beginning work on the project, so the governmental entity will have on file certificates of coverage showing coverage for all persons providing services on the project; and

- (2) no later than seven days after receipt by the contractor, a new certificate of coverage showing extension of coverage, if the coverage period shown on the current certificate of coverage ends during the duration of the project.
- F. The contractor shall retain all required certificates of coverage for the duration of the project and for one year thereafter.
- G. The contractor shall notify the governmental entity in writing by certified mail or personal delivery, within 10 days after the contractor knew or should have known, of any change that materially affects the provision of coverage of any person providing services on the project.
- H. The contractor shall post on each project site a notice, in the text, form and manner prescribed by the Division of Workers' Compensation, Texas Department of Insurance, informing all persons providing services on the project that they are required to be covered, and stating how a person may verify coverage and report lack of coverage.
- I. The contractor shall contractually require each person with whom it contracts to provide services on a project, to:
 - (1) provide coverage, based on proper reporting of classification codes and payroll amounts and filing of any coverage agreements, which meets the statutory requirements of Texas Labor Code, Section 401.011(44) for all of its employees providing services on the project, for the duration of the project;
 - (2) provide to the contractor, prior to that person beginning work on the project, a certificate of coverage showing that coverage is being provided for all employees of the person providing services on the project, for the duration of the project;
 - (3) provide the contractor, prior to the end of the coverage period, a new certificate of coverage showing extension of coverage, if the coverage period shown on the current certificate of coverage ends during the duration of the project;
 - (4) obtain from each other person with whom it contracts, and provide to the contractor:
 - (a) a certificate of coverage, prior to the other person beginning work on the project; and
 - (b) a new certificate of coverage showing extension of coverage, prior to the end of the coverage period, if the coverage period shown on the current certificate of coverage ends during the duration of the project;
 - (5) retain all required certificates of coverage on file for the duration of the project and for one year thereafter;
 - (6) notify the governmental entity in writing by certified mail or personal delivery, within 10 days after the person knew or should have known, of any change that materially affects the provision

of coverage of any person providing services on the project; and

- (7) contractually require each person with whom it contracts, to perform as required by paragraphs (1) - (7), with the certificates of coverage to be provided to the person for whom they are providing services.

- J. By signing this contract or providing or causing to be provided a certificate of coverage, the contractor is representing to the governmental entity that all employees of the contractor who will provide services on the project will be covered by workers' compensation coverage for the duration of the project, that the coverage will be based on proper reporting of classification codes and payroll amounts, and that all coverage agreements will be filed with the appropriate insurance carrier or, in the case of a self-insured, with the commission's Division of Self-Insurance Regulation. Providing false or misleading information may subject the contractor to administrative penalties, criminal penalties, civil penalties, or other civil actions.
- K. The contractor's failure to comply with any of these provisions is a breach of contract by the contractor which entitles the governmental entity to declare the contract void if the contractor does not remedy the breach within ten days after receipt of notice of breach from the governmental entity.

SC-5.06

Delete Paragraphs 5.06, 5.07, and 5.08 of the General Conditions in their entirety.

SC-5.09

Delete Paragraph 5.09 of the General Conditions in its entirety and insert the following in its place:

- "A. If OWNER has any objection to the coverage afforded by or other provisions of the insurance required to be purchased and maintained by CONTRACTOR in accordance with Article 5 on the basis of its not complying with the Contract Documents, OWNER shall notify CONTRACTOR in writing. OWNER and CONTRACTOR shall each provide to the other such information in respect of insurance provided by each as the other may reasonably request."

ARTICLE 6 CONTRACTOR'S RESPONSIBILITIES

SC-6.02

Add Paragraph 6.02.C to the General Conditions to read as follows:

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

SC-6.06

Delete Paragraph 6.06.G of the General Conditions in its entirety and insert the following in its place:

"G. All Work performed for CONTRACTOR by a Subcontractor will be pursuant to an appropriate Agreement between CONTRACTOR and the Subcontractor which specifically binds the Subcontractor to the applicable terms and conditions of the Contract Documents for the benefit of OWNER and ENGINEER."

Add a new paragraph immediately after Paragraph 6.06.G of the General Conditions which is to read as follows:

"6.06.H OWNER or ENGINEER may furnish to any such Subcontractor, Supplier, or other person or organization, to the extent practicable, information about amounts paid to CONTRACTOR in accordance with CONTRACTOR's Applications for Payment on account of the particular Subcontractor's, Supplier's, other person's, or other organization's Work."

SC-6.10

Delete Paragraph 6.10 of the General Conditions in its entirety and insert the following in its place:

"A. The CONTRACTOR's attention is directed to Paragraph No. 3 of Ruling No. 9, Repairmen and Contractors (as amended) issued by the Comptroller of Public Accounts. Reference Article 20.01 (T), Limited Sales, Excise, and Use Tax and to subsequent applicable legislation. The OWNER requires that no sales tax be paid on any materials incorporated into the completed Work on this Project. All Bidders and their respective Subcontractors must comply with Paragraph No. 3 of Ruling No. 9 by obtaining the necessary permit or permits from the State Comptroller allowing the purchase of materials for incorporation into this Project without having to pay the Limited Sales, Excise, and Use Tax at the time of purchase. Total materials cost should not include materials which are used up or consumed in performing the Work, but which do not become a part of this proposed Work."

SC-6.16

Amend the third sentence of Paragraph 6.16 of the General Conditions to read as follows:

"If ENGINEER and OWNER determine that a change in the Contract Documents is required because of the action taken by CONTRACTOR in response to such an emergency, a Work Change Directive or Change Order will be issued."

And so amended, Paragraph 6.16 remains in effect.

SC-6.22

Amend Article 6 of the General Conditions by inserting the following Paragraph 6.22:

"6.22 LOSSES FROM NATURAL CAUSES:

- A. All loss or damage to the CONTRACTOR arising out of the nature of the Work to be done, or from the action of the elements, or from any unforeseen circumstance in the prosecution of the same, or from unusual obstructions or difficulties which may be encountered in the prosecution of the Work, shall be sustained and borne by the CONTRACTOR at his own cost and expense."

ARTICLE 7 OTHER WORK AT THE SITE

SC-7.02

Delete Paragraphs 7.02.A and 7.02.B of the General Conditions in their entirety and insert the following in its place:

- "A. If OWNER contracts with others for the performance of other Work on the Project at the site, the person or organization who will have authority and responsibility for coordination of the activities among the various prime contractors shall be the OWNER's Representative. The extent of the authority and responsibility of the OWNER's Representative will be as specified in the Contract Documents."
- "B. Should CONTRACTOR cause damage to work or property of any separate contractor at the site, or should any claim arising out of CONTRACTOR'S performance of the Work at the site be made by any separate contractor against CONTRACTOR, OWNER, ENGINEER, ENGINEER'S Consultants, the Construction Coordinator, or any other person, CONTRACTOR shall promptly attempt to settle with such other contractor by agreement, or otherwise resolve the dispute by arbitration or at law. CONTRACTOR shall, to the fullest extent permitted by Laws and Regulations, indemnify and hold OWNER, ENGINEER, ENGINEER's Consultants, and the Construction Coordinator harmless from and against all claims, damages, losses, and expenses (including, but not limited to, fees of engineers, architects, attorneys and other professionals, and court and arbitration costs) arising directly, indirectly or consequentially out of any action, legal or equitable, brought by any separate contractor against OWNER, ENGINEER, ENGINEER's Consultants or the Construction Coordinator to the extent based on a claim arising out of CONTRACTOR's performance of the Work. Should a separate contractor cause damage to the Work or property of CONTRACTOR or should the performance of Work by any separate contractor at the site give rise to any other claim, CONTRACTOR shall not institute any action, legal or equitable, against OWNER, ENGINEER, ENGINEER's Consultants, or the Construction Coordinator or permit any action against any of them to be maintained and continued in its name or for its benefit in any court or before any arbiter which seeks to impose liability on or to recover damages from OWNER, ENGINEER, ENGINEER's Consultants, or the Construction Coordinator on account of any such damage or claim. If CONTRACTOR is delayed at any time in performing or furnishing Work by any act or neglect of a separate contractor and OWNER and CONTRACTOR are unable to agree as to the extent of any adjustment in Contract Times attributable thereto, CONTRACTOR may make a claim for an extension of times in accordance with Article 12. An extension of the Contract Times shall be CONTRACTOR's exclusive remedy with respect to OWNER, ENGINEER, ENGINEER's Consultants, and Construction Coordinator for any delay, disruption, interference, or hindrance caused by any separate contractor. This paragraph does not prevent recovery from OWNER, ENGINEER, ENGINEER's Consultant, or Construction Coordinator for activities that are their respective responsibilities."

ARTICLE 8 OWNER'S RESPONSIBILITIES

SC-8.02

Amend Paragraph 8.02 of the General Conditions to read as follows:

"In case of termination of the employment of ENGINEER, OWNER shall appoint an engineer whose status under the Contract Documents shall be that of the former ENGINEER."

And so amended, Paragraph 8.02 remains in effect.

SC-8.06

Delete Paragraph 8.06 of the General Conditions in its entirety.

ARTICLE 9 ENGINEER'S STATUS DURING CONSTRUCTION

SC-9.01

Amend the second sentence of Paragraph 9.01 of the General Conditions to read as follows:

"The duties and responsibilities and the limitations of authority of ENGINEER as OWNER's representative during construction are set forth in the Contract Documents and will not be changed except by written direction of OWNER."

And so amended, Paragraph 9.01 remains in effect.

SC-9.04

Delete the third sentence of Paragraph 9.04, Authorized Variations in Work, of the General Conditions in its entirety, and so amended, Paragraph 9.04 remains in effect.

ARTICLE 10 CHANGES IN THE WORK; CLAIMS

SC-10.03

Amend the first sentence of Paragraph 10.03.A of the General Conditions to read as follows:

"OWNER and CONTRACTOR shall, when appropriate, execute Change Orders recommended by ENGINEER (or Written Amendments) covering:"

And so amended, Paragraph 10.03 remains in effect.

SC-10.05

Amend the first sentence of Paragraph 10.05.B., Claims – Notice, of the General Conditions shall be amended by changing "30 days" to read "fourteen (14) calendar days"

Amend Paragraph 10.05.E by deleting it in its entirety.

And so amended, Paragraph 10.05 remains in effect.

ARTICLE 13 TESTS AND INSPECTIONS; CORRECTION, REMOVAL, OR ACCEPTANCE OF DEFECTIVE WORK

SC-13.04

Amend the first sentence of Paragraph 13.04.B of the General Conditions to read as follows:

"If ENGINEER considers it necessary or advisable that covered Work be observed by ENGINEER or inspected or tested by others, CONTRACTOR, at ENGINEER's request and with OWNER's written approval, shall uncover, expose, or otherwise make available for observation, inspection, or testing as ENGINEER may require, that portion of the Work in question, furnishing all necessary labor, material, and equipment."

And so amended, Paragraph 13.04 remains in effect.

SC-13.07

Delete Paragraph 13.07.D of the General Conditions in its entirety and insert the following in its place:

"D. Notwithstanding any other provision of this section or the Contract Documents to the contrary, this provision shall not serve to limit any causes of action which the OWNER may have against the CONTRACTOR for Defective Work or for otherwise failing to fulfill CONTRACTOR's obligations under the Contract Documents; nor shall this provision serve to limit the time in which such causes of action shall be asserted."

SC-13.09

Amend the second sentence of Paragraph 13.09.B of the General Conditions to read as follows:

"In connection with such corrective and remedial action, OWNER may exclude CONTRACTOR from all or part of the Site, take possession of all or part of the Work and suspend CONTRACTOR's services related thereto, and incorporate in the Work all materials and equipment stored at the Site or for which OWNER has paid CONTRACTOR but which are stored elsewhere."

And so amended, Paragraph 13.09 remains in effect.

ARTICLE 14 PAYMENTS TO CONTRACTOR AND COMPLETION

SC-14.02

Amend Paragraph 14.02.D.1.b of the General Conditions to read as follows:

"Claims or Liens have been filed in connection with the Work, except where CONTRACTOR has delivered a specific Bond satisfactory to OWNER to secure the satisfaction and discharge of such Liens;"

Add Paragraph 14.02.D.1.e to the General Conditions to read as follows:

"OWNER concludes that one or more of the events enumerated in Paragraph 14.02.B.2.a through 14.02.B.2.c have not occurred."

And so amended, Paragraph 14.02 remains in effect.

SC-14.03

Amend Paragraph 14.03.A of the General Conditions to read as follows:

"CONTRACTOR warrants and guarantees that title to all Work, materials, and equipment covered by any Application for Payment, whether incorporated in the Project or not, will pass to OWNER no later than the time of payment free and clear of all Liens or Claims."

And so amended, Paragraph 14.03 remains in effect.

SC-14.04

Insert prior to the first sentence of Paragraph 14.04.A of the General Conditions the following:

"Substantial completion is the stage in the progress of the Work when the Work or designated portion thereof is sufficiently complete in accordance with the Contract Documents so that the OWNER can occupy or utilize the Work for its intended use."

And so amended, Paragraph 14.04 remains in effect.

SC-14.07

Amend Paragraph 14.07.A.2(d) of the General Conditions to read as follows:

"complete and legally effective releases or waivers (satisfactory to OWNER) of all Claim or Lien rights arising out of or Claims or Liens filed in connection with the Work."

Amend Paragraph 14.07.A.3 of the General Conditions to read as follows:

"In lieu of the releases or waivers of Liens and Claims specified in Paragraph 14.07.A.2 and as approved by OWNER, CONTRACTOR may furnish receipts or releases in full and an affidavit of CONTRACTOR that: (i) the releases and receipts include all labor, services, material, and equipment for which a Lien or Claim could be filed; and (ii) all payrolls, material and equipment bills, and other indebtedness connected with the Work for which OWNER or OWNER's property might in any way be responsible have been paid or otherwise satisfied. If any Subcontractor or Supplier fails to furnish such a release or receipt in full, CONTRACTOR may furnish a Bond or other collateral satisfactory to OWNER to indemnify OWNER against any Lien or Claim."

Amend Paragraph 14.07.C.1 of the General Conditions to read as follows:

"If OWNER concurs with ENGINEER's recommendation, thirty days after the presentation to OWNER of the Application for Payment and accompanying documentation, the amount recommended by ENGINEER will become due and, when due, will be paid by OWNER to CONTRACTOR."

And so amended, Paragraph 14.07 remains in effect.

SC-14.09

Amend Paragraph 14.09.A.1 of the General Conditions to read as follows:

"a waiver of all Claims by OWNER against CONTRACTOR, except Claims arising from unsettled Liens or Claims of laborers and materialmen, from defective Work appearing after final inspection pursuant to Paragraph 14.06, from failure to comply with the Contract Documents or the terms of any special guarantees specified therein, or from CONTRACTOR's continuing obligations under the Contract Documents; and"

And so amended, Paragraph 14.09 remains in effect.

ARTICLE 15 SUSPENSION OF WORK AND TERMINATION

SC-15.02

Amend Paragraph 15.02.A.1 of the General Conditions to read as follows:

"CONTRACTOR's failure to perform the Work in accordance with the Contract Documents (including, but not limited to, failure to supply sufficient skilled workers or suitable materials or equipment or failure to adhere to the progress schedule established under Paragraph 2.07 as adjusted from time to time pursuant to Paragraph 6.04);"

Amend the first sentence of Paragraph 15.02.B of the General Conditions to read as follows:

"If one or more of the events identified in Paragraph 15.02.A occur, OWNER may, after giving CONTRACTOR (and the surety, if any) seven days written notice, terminate the services of CONTRACTOR, exclude CONTRACTOR from the Site and take possession of the Work, incorporate in the Work all materials and equipment stored at the Site or for which OWNER has paid CONTRACTOR but which are stored elsewhere, and finish the Work as OWNER may deem expedient."

And so amended, Paragraph 15.02 remains in effect.

ARTICLE 16 DISPUTE RESOLUTION

SC-16.01

Amend Paragraph 16.01 A. of the General Conditions by deleting the second and third sentences in their entirety.

Amend Paragraph 16.01 B. of the General Conditions by deleting it in its entirety.

ARTICLE 17 MISCELLANEOUS

Amend "ARTICLE 17 MISCELLANEOUS PROVISIONS of the General Conditions to add the following provisions:

- 17.07 WAGE RATES. The prevailing wage rates for this project are included as Exhibit A to the Supplementary Conditions and are hereby made a part of the Contract Documents by reference. Wages not less than these rates must be paid on this project, including fringe benefits. The CONTRACTOR shall post the Prevailing Wage Rate Determination in a prominent and easily accessible location at the project site and shall abide by all associated laws and regulations pertaining thereto.
- 17.08 LIQUIDATED DAMAGES. The Owner will suffer financial loss in an amount that is difficult to quantify if the Project is not Substantially Completed on the date set forth in the Contract Documents. The Owner may assess liquidated damages against the Contractor (and its surety) in an amount equal to .5% of the Contract per week for each project, as fixed, agreed and liquidated damages and not a penalty, for each calendar day of delay until the Work is Substantially Completed. In the event liquidated damages are caused by the Contractor and another entity, the Owner may reasonably apportion damages. The right to assess liquidated damages is in addition to, and not in limitation of, any right or remedy available to the Owner."
- 17.09 VENUE. This Agreement is governed by the laws of the State of Texas. The parties agree that venue for any litigation arising out of this Agreement shall lie exclusively in the State and Federal Courts in Harris County, Texas.
- 17.10 NO THIRD PARTY BENEFICIARIES The signing parties to this agreement do not intend to confer any rights upon any persons not a party to this Contract; accordingly this contract shall not be construed to create any third party beneficiaries."

(SPACE INTENTIONAL)

PART II OTHER PROVISIONS

The following additional items are attached to this section.

1. Exhibit A, Wage Rates
2. Exhibit B, Worker's Compensation Insurance Coverage
3. Exhibit C, A Listing of the Duties, Responsibilities, and Limitations of Authority of the Resident Project Representative
4. Exhibit D, Addenda (if any)
5. Exhibit E, Change Order (form)
6. Exhibit F, Application for Payment (form)
7. Exhibit G, Storm Water Pollution Prevention Plan
8. Exhibit H, Conflict of Interest Questionnaire

END OF SECTION 00800

EXHIBIT B
MEMORDANDUM

4/28/2008

Date: April 28, 2008
To: City of Tomball Contract Insurance Requirements
From: Mark A. McClure, P.E. *mm*
Director of Engineering & Planning
City of Tomball
Re: Certificate of Insurance Explanations

Effective immediately, to facilitate the processing of Contracts, the Engineering & Planning Department is requesting the following information be submitted with each Certificate of Insurance. A sample insurance form is attached, matching the numbered listings below:

1. Certificate must not be more than 12 months old.
2. Name and address of producer writing coverage.
3. Name of insurance company providing coverage as listed in Best's Key Rating Guide or on company's Certificate of Authority on file with Texas Department of Insurance. Company must have rating of B+ or better; provided, however, that this requirement will be waived for workers compensation coverage if the coverage is placed with a company that participates in the State of Texas Workers' Compensation Assigned Risk Pool.
4. Name and address of insured, as shown on policy.
5. Must reference the insurer of the policy being described.
6. Must be a policy number, no binders.
7. Date policy became effective.
8. Expiration date must be at least 60 days from date of deliver of certificate.
9. Check limits of liability against contract.
10. Must check either; 1) Any Auto, or 2) All Owned, Hired, and Non-Owned Autos.
11. Statutory limits must be checked per our ordinance.
12. Must name the City as Additional Insured on Commercial General Liability and Automobile Liability. Must have a Waiver of Subrogation in favor of the City on Commercial General Liability, Automobile Liability, and Workers' Compensation/Employers' Liability.
13. Name and file number of project.
14. Address of the City of Tomball and the name of the project manager (as a suggestion either project applicable Department Director or Assistant City Manager).
15. Cancellation clause of the underlying policy must endorsed to provide that , "should any of the above described policies be canceled before the expiration date thereof, the issuing company will mail 30 days written notice to the certificate holder named."
16. Signature or facsimile signature of authorized representative of producer.

UNLESS OTHERWISE SPECIFIED:

Minimum Insurance Requirements: Small contracts (less than \$50,000.00)-Workers compensation insurance and Automobile Liability Insurance required by law.

Minimum Insurance Requirements: All other contracts-

1. Commercial General Liability: \$500,000 per occurrence for bodily injury, personal injury and property damage. \$1,000,000 Aggregate Policy will include coverage for a) Premises - Operations; b) Broad Form Contractual Liability; c) Products and Completed Operations; d) Use of Contractors and Subcontractors; e) Personal Injury; f) Broad Form Property Damage; g) Explosion Collapse and Underground (XCU) Coverage (when applicable), Fire Damage, Medical Expense. NOTE: The aggregate loss limit applies to each project.
2. Workers' Compensation and Employer's Liability: Workers' Compensation limits as required by the Labor Code of the State of Texas and Statutory Employer's Liability Limits.
3. Automobile Liability - \$500,000 per occurrence; 1,000,000 Aggregate if contract involves road construction projects.

J:\Engineering\Administrative\Forms & Standard Documents\Contract & Agreement Documents\COTAcceptedAttorneyInsurance Memo sb 04-28-08.doc

CERTIFICATE OF LIABILITY INSURANCE

1 DATE (MM/DD/YYYY)

PRODUCER 2	THIS CERTIFICATION IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW.	
INSURED 4	INSURERS AFFORDING COVERAGE INSURER A: INSURER B: INSURER C: INSURER D: INSURER E:	NAIC #

COVERAGES

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

INSR	ADD'L	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YY)	POLICY EXPIRATION DATE (MM/DD/YY)	LIMITS															
5		GENERAL LIABILITY ☐ COMMERCIAL GENERAL LIABILITY ☐ CLAIMS MADE ☐ OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: ☐ POLICY ☐ PRO-JECT ☐ LOC	6	7	8	EACH OCCURRENCE \$ DAMAGE TO RENTED PREMISES (Ea occurrence) \$ MED EXP (Any one person) \$ PERSONAL & ADV INJURY \$ GENERAL AGGREGATE \$ PRODUCTS - COMP/OP AGG \$ \$															
		AUTOMOBILE LIABILITY ☐ ANY AUTO ☐ ALL OWNED AUTOS ☐ SCHEDULED AUTOS ☐ HIRED AUTOS ☐ NON-OWNED AUTOS				COMBINED SINGLE LIMIT (Ea accident) \$ BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$															
		GARAGE LIABILITY ☐ ANY AUTO				AUTO ONLY - EA ACCIDENT \$ OTHER THAN EA ACC \$ AUTO ONLY: AGG \$															
		EXCESS/UMBRELLA LIABILITY ☐ OCCUR ☐ CLAIMS MADE ☐ DEDUCTIBLE ☐ RETENTION \$				EACH OCCURRENCE \$ AGGREGATE \$ \$ \$ \$															
		WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? If yes, describe under SPECIAL PROVISIONS below				<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 10%;">WC STATU-TORY LIMITS</td> <td style="width: 10%;">OTH-ER</td> <td style="width: 80%;"></td> </tr> <tr> <td colspan="2"></td> <td style="text-align: right;">11</td> </tr> <tr> <td colspan="2">E.L. EACH ACCIDENT</td> <td>\$</td> </tr> <tr> <td colspan="2">E.L. DISEASE - EA EMPLOYEE</td> <td>\$</td> </tr> <tr> <td colspan="2">E.L. DISEASE - POLICY LIMIT</td> <td>\$</td> </tr> </table>	WC STATU-TORY LIMITS	OTH-ER				11	E.L. EACH ACCIDENT		\$	E.L. DISEASE - EA EMPLOYEE		\$	E.L. DISEASE - POLICY LIMIT		\$
WC STATU-TORY LIMITS	OTH-ER																				
		11																			
E.L. EACH ACCIDENT		\$																			
E.L. DISEASE - EA EMPLOYEE		\$																			
E.L. DISEASE - POLICY LIMIT		\$																			
		OTHER PROFESSIONAL LIABILITY				PER CLAIM \$ AGGREGATE \$															

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES / EXCLUSIONS ADDED BY ENDORSEMENT / SPECIAL PROVISIONS

GENERAL LIABILITY AND AUTOMOBILE LIABILITY POLICIES ENDORSED TO INCLUDE CITY OF TOMBALL

PROJECT DESCRIPTION:

CERTIFICATE HOLDER

City of Tomball
501 James Street
Tomball, Texas 77377

CANCELLATION

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING INSURER WILL ENDEAVOR TO MAIL 30 DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT, BUT FAILURE TO DO SO SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE INSURER, ITS AGENTS OR REPRESENTATIVES.

AUTHORIZED REPRESENTATIVE

EXHIBIT C**A Listing of the Duties, Responsibilities, and Limitations to Authority of the Resident Project Representative (RPR)****A. General**

RPR as Owner's agent at the site, will act as directed by and under the supervision of the Owner, and will confer with ENGINEER regarding RPR's actions. RPR's dealings in matters pertaining to the on-site Work shall in general be with ENGINEER and CONTRACTOR keeping OWNER advised as necessary. RPR's dealings with subcontractors shall only be through or with the full knowledge and approval of CONTRACTOR. RPR shall generally communicate with OWNER with the knowledge of and under the direction of ENGINEER.

B. Duties and Responsibilities of RPR**1. Schedules:**

Review the progress schedule, schedule of Shop Drawing submittals, and other required schedules prepared by CONTRACTOR and consult with ENGINEER concerning acceptability.

2. Conferences and Meetings:

Attend meetings with CONTRACTOR, such as preconstruction conferences, progress meetings, job conferences, and other Project-related meetings, and prepare and circulate copies of minutes thereof.

3. Liaison:

- a. Serve as ENGINEER's liaison with CONTRACTOR, working principally through CONTRACTOR's superintendent, and assist in understanding of the Contract Documents, and assist ENGINEER in serving as OWNER's liaison with CONTRACTOR when CONTRACTOR's operations affect OWNER's on-site operations.
- b. Assist in obtaining from OWNER additional details or information when required for proper execution of the Work.

4. Shop Drawings and Samples:

- a. Record date of receipt of Shop Drawings and samples.
- b. Receive samples, which are furnished at the site by CONTRACTOR, and notify ENGINEER of availability of samples for examination.
- c. Advise ENGINEER and CONTRACTOR of the commencement of any Work requiring a Shop Drawing or sample if the submittal has not been approved by ENGINEER.

5. Review of Work, Rejection of Defective Work, Inspections, and Tests:

- a. Conduct on-site observations of the Work in progress to assist ENGINEER in determining if the Work is in general proceeding in accordance with the Contract Documents.
- b. Report to ENGINEER whenever RPR believes that any Work is unsatisfactory, faulty or defective, or does not conform to the Contract Documents, or has been damaged, or does not meet the requirements of any inspection, test, or approval required to be made; and advise ENGINEER of Work that RPR believes should be corrected or rejected, or should be uncovered for observation, or requires special testing, inspection, or approval.
- c. Verify that tests, equipment, and systems start-up and operating and maintenance training are conducted in the presence of appropriate personnel, and that CONTRACTOR maintains adequate records thereof; and observe, record, and report to ENGINEER appropriate details relative to the test procedures and start-ups.
- d. Accompany visiting inspectors, other than the OWNER's, representing public or other agencies having jurisdiction over the Project, record the result of these inspections, and report to ENGINEER.

6. Interpretation of Contract Documents:

Report to ENGINEER when clarifications and interpretations of the Contract Documents are needed and transmit to Contract clarifications and interpretations as issued by the ENGINEER.

7. Modifications:

Consider and evaluate CONTRACTOR's suggestions, for modifications in Drawings or Specifications and report with RPR's recommendations to ENGINEER. Transmit to CONTRACTOR decisions as issued by ENGINEER.

8. Records:

- a. Maintain at the job site orderly files for correspondence, reports of job conferences, Shop Drawings and samples, reproductions of original Contract Documents including all Work Directive Changes, Addenda, Change Orders, Field Orders, additional Drawings issued subsequent to the execution of the Contract, ENGINEER's clarification and interpretations of the Contract Documents, progress reports, and other Project-related documents.
- b. Keep a diary or log book recording CONTRACTOR hours on the job site, weather conditions, data relative to questions of Work Directive Changes, Change Orders or changed conditions, list of job site visitors, daily activities, decisions, observations in general, and specific observations in more detail as in the case of observing test procedures, and send copies to ENGINEER.

- c. Record names, addresses, and telephone numbers of all contractors, subcontractors, and major Suppliers of materials and equipment.

9. Reports:

- a. Furnish ENGINEER periodic reports as required of progress of the Work and of CONTRACTOR's compliance with the progress schedule and schedule of Shop Drawings and sample submittals.
- b. Consult with ENGINEER in advance of schedule of major tests, inspections, or start of important phases of the Work.
- c. Draft proposed Change Orders and Work Directive Changes, obtaining back-up material from CONTRACTOR, and recommend to ENGINEER Change Orders, Work Directive Changes, and Field Orders.
- d. Report immediately to OWNER and ENGINEER upon the occurrence of any accident.

10. Payment Requests:

Review Applications for Payment with CONTRACTOR for compliance with the established procedure for their submission and forward with recommendations to ENGINEER, noting particularly the relationship of the payment requested to the schedule of items, Work completed, and materials and equipment delivered at the site but not incorporated in the Work.

11. Certificates, Maintenance and Operation Manuals:

During the course of the Work, verify that certificates, maintenance and operation manuals, and other data required to be assembled and furnished by CONTRACTOR are applicable to the items actually installed and in accordance with the Contract Documents, and have this material delivered to ENGINEER for review and forwarding to OWNER prior to final payment for Work.

12. Completion:

- a. Before ENGINEER issues a Certificate of Substantial Completion, submit to CONTRACTOR a list of observed items requiring completion of correction.
- b. Conduct final inspection in the company of ENGINEER, OWNER, and CONTRACTOR, and prepare a final list of items to be completed or corrected.
- c. Observe that all items on final list have been completed or corrected and make recommendations to ENGINEER concerning acceptance.

C. Limitations of Authority

Resident Project Representative:

1. Shall not authorize any deviation from the Contract Documents or substitution of materials or equipment unless authorized by ENGINEER.
2. Shall not exceed limitations of authority as set forth in the Agreement or the Contract Documents.
3. Shall not undertake any of the responsibilities of CONTRACTOR, subcontractor, or CONTRACTOR's superintendent.
4. Shall not advise on, issue directions relative to, or assume control over any aspect of the means, methods, techniques, sequences, or procedures of construction unless such advice or directions are specifically required by the Contract Documents.
5. Shall not advise on, issue directions regarding, or assume control over safety precautions and programs in connection with the Work.
6. Shall not accept Shop Drawing or sample submittals from anyone other than CONTRACTOR.
7. Shall not authorize OWNER to occupy the Project in whole or in part.
8. Shall not participate in specialized field or laboratory tests or inspections conducted by others except as specifically authorized by Owner.

EXHIBIT D

EXHIBIT D

Attach any and all Addendums

Project No. _____

EXHIBIT E
CHANGE ORDER

Document 00941

CHANGE ORDER / C.O. No. _____

PROJECT:
CONTRACT No.: _____ PROJECT No.: _____

TO: [Contractor's Company Name]
Contractor and [Contractor's Address]
Address for Written Notice _____

REFERENCE RFIs/RFPs: _____

1.01 DESCRIPTION OF CHANGES

	CONTRACT CHANGE	
	AMOUNT	TIME
ITEM 1 SCOPE: <i>[Description of first change order item]</i>	\$0.00	0 Days
JUSTIFICATION: <i>[Justification for adding or deleting work described in "Item 1 Scope"]</i>		
ITEM 2 SCOPE:	\$0.00	0 Days
JUSTIFICATION:		
ITEM 3 SCOPE:	\$0.00	6 Days
JUSTIFICATION:		
TOTALS:	\$0.00	6 Days

1.02 ACCEPTANCE BY CONTRACTOR

Contractor agrees to perform change(s) included in this Change Order for the price and time indicated. The prices for changes include all costs associated with this Change Order.

Contractor Signature and Title

Date

1.03 ACCEPTANCE BY THE CITY

Project Manager Date

[Director – Required for COs to Council] Date

[Intermediate Authority, if needed] Date

[Mayor – Required for COs to Council] Date

[Intermediate Authority, if needed] Date

City Engineer Date

END OF DOCUMENT

cc: *[Design Consultant], [Owning Dept. Director], [Other Copy Addressees], [File(s)]*

00941-1
02-01-08

EXECUTIVE SUMMARYC.O. No. _____ Contract No.: _____ Proj. No.: [File No.]

1.01	CONTRACT PRICE SUMMARY	DOLLAR AMOUNT	PERCENT
A.	Original Contract Price	\$1,000,000.00	100.00%
B.	Previous Change Orders	\$0.00	0.00%
C.	This Change Order	\$0.00	0.00%
D.	Contract Price	\$1,000,000.00	100.00%

Date of Commencement of the Work: Monday, September 30, 2002

1.02	CONTRACT TIME SUMMARY	DURATION	COMPLETION DATE
A.	Original Contract Time	180 Days	Friday, March 28, 2003
B.	Previous Change Orders	0 Days	Friday, March 28, 2003
C.	This Change Order	0 Days	
D.	Contract Time	180 Days	Friday, March 28, 2003

- 1.03 TOTAL VALUE OF INCREASES OUTSIDE OF GENERAL SCOPE OF WORK
- A. Including this Change Order, the following table is provided to track conditions related to Paragraph 7.1.2.3 of Document 00700 - General Conditions.

<u>CHANGE ORDER</u> <u>No.</u>	<u>AMOUNT ADDED</u>	PERCENT OF ORIGINAL <u>CONTRACT</u> <u>PRICE</u>
[1]	[\$0.00]	[0%]
TOTALS	\$0.00	0.0%

END OF SUMMARY

INSTRUCTIONS

PURPOSE: Change Orders are used to affect Modifications to the Contract. Prior to final payment, previously approved Work Change Directives can be combined into a summary Change Order to reconcile project cost accounting. When signed and dated by Contractor and City Engineer, document becomes an approved Change Order.

APPLICATION: This form is applicable to agreed on Modifications to the Contract including, but not limited to the following:

- . Additions or reductions (including deletions) of existing bid item quantities.
- . Increases or decreases in construction Contract Time.
- . Change in methods, material, etc., not covered by existing bid item quantities.
- . New work not covered by existing bid item quantities.
- . Price or schedule consideration for conditions not indicated by the Contract.

INSTRUCTIONS: Project Manager or Design Consultant prepares this form. The Executive Summary is for use by the City in analyzing the Change Order but is not a part of the Change Order. This form has two MS Excel tables imbedded in the MS Word document (Paragraphs 1.01 and 1.02 in the Executive Summary). Double click on any cell in these tables to make entries in spreadsheet mode. Click anywhere outside the spreadsheet to return to wordprocessing mode. Other tables in the Change Order and Executive Summary are MS Word tables, not imbedded Excel spreadsheets. Red colored text and numerals represent input fields. Black text and numerals are in cells with formulas or fixed text. Do not make entries in these cells. Following instructions correspond to blanks requiring input and paragraph numbers on form. Paragraph 1.02 of the Change Order form is completed by Contractor. All other items are completed by the City or Design Consultant. Paragraph 1.03 of the Change Order form is completed by administrative and approving authorities. Contractor shall provide all backup material to justify the costs of items enumerated in Paragraph 1.01 of the Change Order form.

CHANGE ORDER FORM:

1. Insert Change Order number and Contract number for the Project at the top of each page, following page one, if the Change Order must be longer than one page.
2. Insert Project name exactly as stated in the Agreement.
3. Insert Project number and other identifying numbers (e.g. CIP, Proj. No., AIP, File No.) for the Project.
4. Insert name of Contractor performing the Work and Contractor's address for notices. Address should be as shown in the Agreement unless changed by proper notice.
5. Insert applicable references to related RFIs and RFPs.
6. Paragraph 1.01: Insert brief descriptions of the changes, including reference to applicable Work Change Directives. Give justification to support change, cost of making change, and adjustment in Contract Time warranted by change. If more than one item is included, number each item. Extend the table to additional pages if necessary. Formulas are imbedded for totals but check the math when extending the table length.
7. Paragraph 1.02: Project Manager signs and dates and has other administrative authorities or representatives sign and date where indicated. Project Manager will substitute actual titles of these persons where red bracketed instructions are shown. Mayor's and Contracting Department Director's signature (and date) are only needed when the Change Order must go to City Council for funding prior to approval. City Engineer for Contracting Department (should be the same person designated in the Agreement) will only sign and date Paragraph 1.03 when funds are approved and in place for payment of additional work. City Engineer's signature and date signify approval of Change Order and is the only authorized approval authority of the City according to Document 00700 – General Conditions.
8. Insert appropriate list of "copy to" persons and file. Delete brackets and instructions. Change color of remaining text to black.

00941-3
02-01-08

EXECUTIVE SUMMARY:

1. Paragraph 1.01: Insert (A) Original Contract Price, (B) cost of previous Change Orders and (C) cost of this Change Order in the price summary block. Other amounts and percentages in block are calculated by formula. Cost of this Change Order is calculated at the bottom of the table in Paragraph 1.01 of the Change Order form, when all items have been filled in BUT it does not automatically change the amount in Paragraph 1.01 C.
2. Paragraph 1.02: Insert Date of Commencement of Work (from Notice to Proceed), (A) original Contract Time, (B) additional days added from previous Change Orders and (C) days required for this Change Order in the time summary block. Other days and dates in block are calculated by formula. Days for this Change Order are calculated at the bottom of the table in Paragraph 1.01 of the Change Order form, when all items have been filled in BUT it does not automatically change the amount in Paragraph 1.02 C.
3. Paragraph 1.03 A: Project Manager will provide information from all previous Change Orders for this table (i.e. number, amount and percentage of Original Contract Price) so that it can be determined if Council Action is necessary. *NOTE: The conditions of Paragraph 7.1.2.3 of Document 00700 - General Conditions may make Council Action necessary even if funding is already available and even if the 5% contingency threshold has not yet been reached.*

Document 00643 (sample form)
(Contractor required to submit final form utilized for approval)

ESTIMATE AND CERTIFICATE FOR PAYMENT, UNIT PRICE WORK

Project Name: _____ Estimate No. _____
Contractor: [Contractor's Company Name] Cut off Date: _____
Address: [Contractor's Company Address] Estimate Date: _____
Contract No.: [Contract Number]
Project No.: _____
Ordinance No.: [Contract Ordinance Number]

Contract Date: _____
Start Date: _____
Current Contract Completion Date: _____
Substantial Completion Date: _____
Percentage: By Time 0.00% In Place 0.00%

CONTRACT TIME IN CALENDER DAYS

Original Contract Time: _____ Days
Approved Extensions: _____ Days
Total Contract Time: _____ Days
Days Used to Date: _____ Days
Days Remaining to Date: _____ Days

Date Insurance Exp. _____ Drug Policy Due _____

Current _____ Schedule Update Received _____

CONTRACT AMOUNT TO DATE:

1. Original Contract Price:		<u>\$0.00</u>
2. Approved Change Orders: <u>No./Description</u>	<u>Amount</u>	
_____	<u>\$0.00</u>	
_____	<u>\$0.00</u>	
_____	<u>\$0.00</u>	
_____	<u>\$0.00</u>	
_____	<u>\$0.00</u>	
_____	<u>\$0.00</u>	
Total Change Orders to Date: _____ +/-	<u>\$0.00</u>	<u>\$0.00</u>
TOTAL CONTRACT AMOUNT:		<u>\$0.00</u>

A. EARNINGS TO DATE:

1. Work Completed to Date: <u>0.00%</u> Complete	<u>\$0.00</u>
2. Materials Stored on Site: _____	<u>\$0.00</u>
3. Materials Stored in Place: _____	<u>\$0.00</u>
4. Balance - Materials Accepted, Not in Work: _____	<u>\$0.00</u>
TOTAL EARNINGS TO DATE:	<u>\$0.00</u>

B. DEDUCTIONS:

1. Retainage: <u>0.00%</u> of <u>\$0.00</u>	<u>\$0.00</u>
2. Add: Retainage Deduction: _____	<u>\$0.00</u>
3. Total Retainage: _____	<u>\$0.00</u>
4. Liquidated Damages: _____ Days @ _____	<u>\$0.00</u>
5. Quality Control Retest Cost: _____	<u>\$0.00</u>
6. Sunday/Holiday Overtime Cost: _____	<u>\$0.00</u>
TOTAL DEDUCTIONS:	<u>\$0.00</u>

C. AMOUNT DUE THIS PERIOD:

1. Total Earnings to Date: _____	<u>\$0.00</u>
2. Total Deductions: _____	<u>\$0.00</u>
3. Total Payments Due: _____	<u>\$0.00</u>
4. Less Previous Payments: _____	<u>\$0.00</u>
5. Restoration Adjustment: _____	<u>\$0.00</u>
TOTAL AMOUNT DUE THIS DATE:	<u>\$0.00</u>

Prepared By: _____ Date: _____ Checked By: _____ Date: _____

Submitted By: _____ Date: _____ Approved: _____ Date: _____

Approved: _____ Date: _____

Director, [Contracting Department]

END OF DOCUMENT

00643-1
02-01-08

EXHIBIT G

Storm Water Pollution Prevention Plan

Refer to Plans and Specifications



EXHIBIT "H"
Section 00800
Conflict of Interest Questionnaire

City of Tomball

Gretchen Fagan
Mayor

February 7, 2008

Attention: Vendors, Agents, Contractors, Prospective Bidders, Etc.

Re: House Bill 914 – Adding Chapter 176.2 to the Local Government Code

In the 2005 Regular Session, the Texas Legislature passed House Bill 914, which requires the disclosure and availability of information concerning certain local government entities, local government officials, and vendors or other persons, agencies, corporations, or entities contracting or seeking to contract with the City of Tomball for the sale or purchase of property, goods or services.

As a courtesy, enclosed is a copy of the Conflict of Interest Questionnaire (CIQ), a copy of HB 914, and a list of all City officials, as defined under Chapter 176 of the Local Government Code. Please complete this questionnaire and return to the City Secretary as soon as possible at the following address:

CIQ
Attention: City Secretary
City of Tomball
401 Market Street
Tomball, Texas 77375.

If you need additional information regarding the new requirements, please contact your attorney for additional instructions. You may also contact me at 281-290-1002 or dspeer@ci.tomball.tx.us.

Sincerely,

Doris Speer
City Secretary

Enclosure

CONFLICT OF INTEREST QUESTIONNAIRE

FORM CIQ

For vendor or other person doing business with local governmental entity

This questionnaire reflects changes made to the law by H.B. 1491, 80th Leg., Regular Session.

This questionnaire is being filed in accordance with Chapter 176, Local Government Code by a person who has a business relationship as defined by Section 176.001(1-a) with a local governmental entity and the person meets requirements under Section 176.006(a).

By law this questionnaire must be filed with the records administrator of the local governmental entity not later than the 7th business day after the date the person becomes aware of facts that require the statement to be filed. See Section 176.006, Local Government Code.

A person commits an offense if the person knowingly violates Section 176.006, Local Government Code. An offense under this section is a Class C misdemeanor.

OFFICE USE ONLY

Date Received

1 Name of person who has a business relationship with local governmental entity.

2 ☐ Check this box if you are filing an update to a previously filed questionnaire.

(The law requires that you file an updated completed questionnaire with the appropriate filing authority not later than the 7th business day after the date the originally filed questionnaire becomes incomplete or inaccurate.)

3 Name of local government officer with whom filer has employment or business relationship.

Name of Officer

This section (item 3 including subparts A, B, C & D) must be completed for each officer with whom the filer has an employment or other business relationship as defined by Section 176.001(1-a), Local Government Code. Attach additional pages to this Form CIQ as necessary.

A. Is the local government officer named in this section receiving or likely to receive taxable income, other than investment income, from the filer of the questionnaire?

☐ Yes ☐ No

B. Is the filer of the questionnaire receiving or likely to receive taxable income, other than investment income, from or at the direction of the local government officer named in this section AND the taxable income is not received from the local governmental entity?

☐ Yes ☐ No

C. Is the filer of this questionnaire employed by a corporation or other business entity with respect to which the local government officer serves as an officer or director, or holds an ownership of 10 percent or more?

☐ Yes ☐ No

D. Describe each employment or business relationship with the local government officer named in this section.

4

Signature of person doing business with the governmental entity

Date

Regular City Council

Agenda Item

Meeting Date: December 19, 2011

Data Sheet

Topic:

Award Contract for COT Project Bid Number 2012-02, E&P Project Number 2011-10003, Brown Road Utility Extension West of SH 249, to Low Bidder, Monarch Civil Constructors, LLC, in the Amount of \$169,053.02

Background:

On February 22, 2011 the Tomball Economic Development Corporation (TEDC) approved funding a Utility Extension along Brown Road, westerly of SH249 to easterly of Spring Creek Estates. The utility extension includes right-of-way and utility easement acquisition, approximately 1,300 lineal feet for 4" gas, 12" water, and 10" sanitary lines construction. Attached is an exhibit, Brown Road Utility Extension, of the proposed area. The extension of the utilities will provide services to future commercial developments within the area.

In addition to the utilities funded by the TEDC the City will extend the 4" gas service to loop the system with the deadend line in Spring Creek Estates. This will prevent any loss of service to the subdivision should there be a break in the gas line along FM 2920.

City Council approved a professional services contract with CLR Inc. on March 21, 2011 to prepare the final design. The final design drawings and technical specifications were completed for the bidding purposes in November 2011. The bid package included a 60-day schedule for substantial completion. The bid schedule is summarized as follows:

- November 21, 2011 First Notice Printed
- November 28, 2011 Second Notice Printed
- November 30, 2011 Pre-Bid Meeting (10:00 am)
- December 6, 2011 Bid Opening (2:00 pm)

The consultant estimated a construction cost of approximately \$234,000.00. The Consultants recommendation and bid tab are included.

Origination:

Engineering and Planning

Recommendation:

Engineering and Planning recommend award of the contract to Monarch Civil Constructors, LLC

Funding: No

Funds will be transferred from Account: To be funded by TEDC Grant to Account:

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

Engineering and Planning

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

ATTACHMENTS:

Construction Award Recommendation Letter

Bid Tabulation

Agreement

Supplementary Conditions to Agreement



December 12, 2011

City of Tomball
Public Works Building
501 James Street
Tomball, TX 77375

Attn: Lori Lakatos, P.E.

Re: Concurrence of Low Bid for
Brown Road Utility Extension West of SH249

Dear Ms. Lakatos:

We have reviewed the bid tabulation and low bid and have found no signs of imbalance or significant cause for concern. Therefore, we pose no objection to the recommendation of awarding the construction contract for Brown Road Utility Extension West of SH249 to Monarch Civil Constructors, LLC as the low bidder. Our concurrence is based on review of the Bidder's Statement of Residency and Affidavit of Ownership or Control.

If you have any questions please do not hesitate to call.

Sincerely,

CLR, Inc.

David R. Castellano, P.E.

SCHEDULE OF UNIT PRICE WORK (ENGINEER'S OPINION OF COST)														
This Document, consisting of ____ pages, constitutes a Supplement to Form of Proposal for City of Tomball Bid No. 2012-02, E&P Project No. 2011-10003, titled, "Brown Rd Utility Extension West of SH 249". When a Contract is awarded, this Document becomes a supplement to the Standard Form of Agreement between the Owner and Contractor.														
BASE UNIT PRICES FOR:					Engineer			Monarch Civil Constructors, LLC		Scohil Construction Services, LLC		Statewide Services, Inc.		
ITEM NO.	SECTION NO.	ITEM DESCRIPTION	UNIT	UNIT QTY.	UNIT PRICE IN FIGURES ⁽⁵⁾		TOTAL IN FIGURES		UNIT PRICE IN FIGURES	TOTAL IN FIGURES	UNIT PRICE IN FIGURES	TOTAL IN FIGURES	UNIT PRICE IN FIGURES	TOTAL IN FIGURES
A. GENERAL PROJECT ITEMS														
1	01502	MOBILIZATION	LS	1	\$9,000.00 ⁽¹⁾		\$9,000.00 ⁽¹⁾		\$9,000.00	\$9,000.00	\$9,000.00	\$9,000.00	\$9,000.00	\$9,000.00
2	01555	TRAFFIC CONTROL PLAN AND IMPLEMENTATION	LS	1	\$2,000.00		\$2,000.00		\$5,445.00	\$5,445.00	\$1,250.00	\$1,250.00	\$10,000.00	\$10,000.00
3	1578	TRENCH DEWATERING	LF	450	\$26.00		\$11,700.00		\$5.00	\$2,250.00	\$2.00	\$900.00	\$20.00	\$9,000.00
4	01740	RESTORATION OF SITE IMPROVEMENTS	LF	1,800	\$5.00 ⁽²⁾		\$9,000.00 ⁽²⁾		\$5.00	\$9,000.00	\$5.00	\$9,000.00	\$5.00	\$9,000.00
TOTAL BASE UNIT PRICES - A. GENERAL PROJECT ITEMS							\$31,700.00			\$25,695.00		\$20,150.00		\$37,000.00
B. WATER DISTRIBUTION SYSTEM ITEMS														
5	02511 02506	12" DIA. PVC WATER, OPEN CUT	LF	1,100	\$45.00		\$49,500.00		\$27.32	\$30,052.00	\$64.00	\$70,400.00	\$61.00	\$67,100.00
6	02511 02502 02447	12" DIA. PVC WATER, BY TRENCHLESS METHOD	LF	114	\$100.00		\$11,400.00		\$61.07	\$6,961.98	\$85.00	\$9,690.00	\$110.00	\$12,540.00
7	02520	FIRE HYDRANT ASSEMBLY (INCL. FV, 6" GV&B & LEAD)	EA	1	\$2,800.00		\$2,800.00		\$4,001.47	\$4,001.47	\$3,975.00	\$3,975.00	\$3,400.00	\$3,400.00
8	02521	12 " GATE VALVE & BOX W/LID	EA	3	\$1,500.00		\$4,500.00		\$1,926.32	\$5,778.96	\$2,451.00	\$7,353.00	\$2,550.00	\$7,650.00
9	02511	12" x 12" TAPPING SLEEVE & VALVE W/ BOX & LID	EA	1	\$3,000.00		\$3,000.00		\$6,382.75	\$6,382.75	\$5,800.00	\$5,800.00	\$8,000.00	\$8,000.00
10	02513	CONNECT PROPOSED 12" WATERLINE TO 12" EXIST.	EA	2	\$500.00		\$1,000.00		\$644.51	\$1,289.02	\$1,650.00	\$3,300.00	\$1,000.00	\$2,000.00
11	02260	TRENCH SAFETY SYSTEM	LF	1,100	\$1.00		\$1,100.00		\$1.21	\$1,331.00	\$0.10	\$110.00	\$0.12	\$132.00
TOTAL BASE UNIT PRICES - B. WATER DISTRIBUTION SYSTEM ITEMS							\$73,300.00			\$55,797.18		\$100,628.00		\$100,822.00

BASE UNIT PRICES FOR:					Engineer				Monarch Civil Constructors, LLC		Scohil Construction Services, LLC		Statewide Services, Inc.	
ITEM NO.	SECTION NO.	ITEM DESCRIPTION	UNIT	UNIT QTY.	UNIT PRICE IN FIGURES ⁽⁵⁾		TOTAL IN FIGURES		UNIT PRICE IN FIGURES	TOTAL IN FIGURES	UNIT PRICE IN FIGURES	TOTAL IN FIGURES	UNIT PRICE IN FIGURES	TOTAL IN FIGURES
C. WASTEWATER COLLECTION SYSTEM ITEMS														
12	02082	4-FT DIA. PRECAST CONCRETE MANHOLE (ALL DEPTH)	EA	5	\$2,250.00		\$11,250.00		\$1,476.20	\$7,381.00	\$3,450.00	\$17,250.00	\$2,250.00	\$11,250.00
13	02260	TRENCH SAFETY SYSTEM	LF	809	\$1.00		\$809.00		\$1.21	\$978.89	\$0.10	\$80.90	\$0.10	\$80.90
14	02531 02502 02448	10 " DIA SANITARY SEWER IN 18" STEEL CASING, ALL METHODS, (ALL DEPHS)	LF	96	\$125.00		\$12,000.00		\$90.93	\$8,729.28	\$210.00	\$20,160.00	\$104.00	\$9,984.00
15	02531 02502	10 " DIA SANITARY SEWER IN 18" STEEL CASING, TRENCHLESS	LF	35	\$200.00		\$7,000.00		\$167.80	\$5,873.00	\$210.00	\$7,350.00	\$155.00	\$5,425.00
16	02531	10 " DIA SANITARY SEWER (ALL DEPTHS) OPEN CUT	LF	809	\$45.00		\$36,405.00		\$28.89	\$23,372.01	\$82.00	\$66,338.00	\$55.00	\$44,495.00
TOTAL BASE UNIT PRICES - C. WASTEWATER COLLECTION SYSTEM ITEMS							\$67,464.00			\$46,334.18		\$111,178.90		\$71,234.90
BASE UNIT PRICES FOR:														
D. GAS DISTRIBUTION SYSTEM ITEMS														
17	02685	4" POLYETHYLENE GAS LINE, OPEN CUT (INCLUDING TRACER	LF	1,491	\$25.00		\$37,275.00		\$12.31	\$18,354.21	\$17.00	\$25,347.00	\$46.00	\$68,586.00
18	02685 02448 02502	AUGER 4" GAS W/ 8" STL CASING (INCL. SEALS & VENT STACKS)	LF	125	\$65.00		\$8,125.00		\$74.75	\$9,343.75	\$88.00	\$11,000.00	\$120.00	\$15,000.00
19	02685	4" GAS POLY VALVE	EA	2	\$700.00		\$1,400.00		\$851.00	\$1,702.00	\$1,280.00	\$2,560.00	\$1,250.00	\$2,500.00
20	02685	ZINC ANODE	EA	4	\$375.00		\$1,500.00		\$71.30	\$285.20	\$225.00	\$900.00	\$800.00	\$3,200.00
21	02685	PIPE LINE MARKERS	EA	4	\$100.00		\$400.00		\$51.75	\$207.00	\$180.00	\$720.00	\$650.00	\$2,600.00
22	02685	CATHODIC PROTECTION TEST STATION	EA	2	\$375.00		\$750.00		\$86.25	\$172.50	\$210.00	\$420.00	\$1,000.00	\$2,000.00
TOTAL BASE UNIT PRICES - D. GAS DISTRIBUTION SYSTEM ITEMS							\$49,450.00			\$30,064.66		\$40,947.00		\$93,886.00

BASE UNIT PRICES FOR:					Engineer				Monarch Civil Constructors, LLC		Scohil Construction Services, LLC		Statewide Services, Inc.	
ITEM NO.	SECTION NO.	ITEM DESCRIPTION	UNIT	UNIT QTY.	UNIT PRICE IN FIGURES ⁽⁵⁾		TOTAL IN FIGURES		UNIT PRICE IN FIGURES	TOTAL IN FIGURES	UNIT PRICE IN FIGURES	TOTAL IN FIGURES	UNIT PRICE IN FIGURES	TOTAL IN FIGURES
E. STORMWATER POLLUTION PREVENTION PLAN ITEMS;														
23	01570 01410	STORMWATER POLLUTION PREVENTION	LS	1	\$2,000.00		\$2,000.00		\$968.00	\$968.00	\$600.00	\$600.00	\$1,250.00	\$1,250.00
24	01574	REINFORCED FILTER FABRIC FENCE	LF	1,800	\$1.50		\$2,700.00		\$1.33	\$2,394.00	\$1.10	\$1,980.00	\$1.35	\$2,430.00
TOTAL BASE UNIT PRICES - E. SWPPP ITEMS							\$4,700.00			\$3,362.00		\$2,580.00		\$3,680.00
F. EXTRA ITEMS:														
25	02318	EXTRA UNIT PRICE WORK FOR	CY	200	\$_____		\$_____		\$_____	\$_____	\$_____	\$_____	\$_____	\$_____
	02320	FOR EXCAVATION & BACKFILL			\$18.00 ⁽²⁾		\$3,600.00 ⁽²⁾		\$18.00	\$3,600.00	\$18.00	\$3,600.00	\$18.00	\$3,600.00
26	02922	EXTRA SOD	SY	1,000	\$_____		\$_____		\$_____	\$_____	\$_____	\$_____	\$_____	\$_____
					\$2.00 ⁽²⁾		\$2,000.00 ⁽²⁾		\$2.00	\$2,000.00	\$2.00	\$2,000.00	\$2.00	\$2,000.00
27	02321	EXTRA CEMENT STABILIZED	CY	100	\$_____		\$_____		\$_____	\$_____	\$_____	\$_____	\$_____	\$_____
					\$22.00 ⁽²⁾		\$2,200.00 ⁽²⁾		\$22.00	\$2,200.00	\$22.00	\$2,200.00	\$22.00	\$2,200.00
TOTAL BASE UNIT PRICES - F. EXTRA ITEMS:							\$7,800.00			\$7,800.00		\$7,800.00		\$7,800.00
TOTAL BASE UNIT PRICES							\$234,414.00			\$169,053.02		\$283,283.90		\$314,422.90
									Bid Form	Bid Tab	Bid Form	Bid Tab	Bid Form	Bid Tab
			A. GENERAL PROJECT ITEMS				\$ 31,700.00		\$ 25,695.00	\$ 25,695.00	\$ 20,150.00	\$ 20,150.00	\$ 37,000.00	\$ 37,000.00
			B. WATER DISTRIBUTION SYSTEM ITEMS				\$ 73,300.00		\$ 55,797.18	\$ 55,797.18	\$ 100,628.00	\$ 100,628.00	\$ 100,822.00	\$ 100,822.00
			C. WASTEWATER COLLECTION SYSTEM ITEMS				\$ 67,464.00		\$ 46,334.18	\$ 46,334.18	\$ 111,178.90	\$ 111,178.90	\$ 71,234.90	\$ 71,234.90
			D. GAS DISTRIBUTION SYSTEM ITEMS				\$ 49,450.00		\$ 30,064.66	\$ 30,064.66	\$ 40,947.00	\$ 40,947.00	\$ 93,886.00	\$ 93,886.00
			E. STORMWATER POLLUTION PREVENTION PLAN ITEMS;				\$ 4,700.00		\$ 3,362.00	\$ 3,362.00	\$ 2,580.00	\$ 2,580.00	\$ 3,680.00	\$ 3,680.00
					F. EXTRA ITEMS:		\$ 7,800.00		\$ 7,800.00	\$ 7,800.00	\$ 7,800.00	\$ 7,800.00	\$ 7,800.00	\$ 7,800.00
							\$ 234,414.00		\$ 169,053.02	\$ 169,053.02	\$ 283,283.90	\$ 283,283.90	\$ 314,422.90	\$ 314,422.90

Document 00520

AGREEMENT

Project: Brown Rd Utility Extension West of SH 249

Project Location: Brown Road, Tomball, TX Key Map No.288 A,B & E

E&P Project No: 2011-10003

Project Bid No: 2012-02

The City: The City of Tomball, County of Harris, Texas (the "City")
and

Contractor: Monarch Civil Constructors, LLC

(Address for Written Notice) P.O. Box 268 Willis, Texas

Fax Number: 936-228-2974

City Engineer is: _____

(Address for Written Notice) _____

Fax Number: _____

THE CITY AND CONTRACTOR AGREE AS FOLLOWS:

ARTICLE 1

THE WORK OF THE CONTRACT

1.1 Contractor shall perform the Work in accordance with the Contract.

ARTICLE 2

CONTRACT TIME

2.1 Contractor shall achieve Date of Substantial Completion within 60 days after Date of Commencement of the Work, subject to adjustments of Contract Time as provided in the Contract.

2.2 The Parties recognize that time is of the essence for this Agreement and that the City will suffer financial loss if the Work is not completed within the Contract Time. Parties also recognize delays, expense, and difficulties involved in proving in a legal or arbitration proceeding actual loss suffered by the City if the

00520-1
11-15-2011

Work is not completed on time. Accordingly, instead of requiring any such proof, the Parties agree that as liquidated damages for delay (but not as a penalty), Contractor shall pay the City the amount stipulated in Document 00800 – Supplementary Conditions, for each day beyond Contract Time.

ARTICLE 3

CONTRACT PRICE

3.1 Subject to terms of the Contract, the City will pay Contractor in current funds for Contractor's performance of the Contract, Contract Price of \$ 169,053.02, which includes Alternates, if any, accepted below.

3.2 The City accepts Alternates as follows:

Alternate No. 1 N/A

ARTICLE 4
PAYMENTS

4.1 The City will make progress payments to Contractor as provided below and in the General Conditions.

4.2 The Period covered by each progress payment is one calendar month ending on the [] 10th, [] 20th, or ☒ last day of the month.

4.3 The Schedule of Values established as provided in paragraph 2.07.A of the General Conditions will serve as the basis for progress payments and will be incorporated into a form of Application for Payment acceptable to Engineer. Progress payments on account of Unit Price Work will be based on the number of units completed. The City will make progress payments on account of the Contract Price on the basis of Contractor's Applications for Payment as provided below in paragraphs 4.3.1 and 4.3.2.

4.3.1 Prior to Substantial Completion, progress payments will be made in an amount equal to the percentage indicated below but, in each case, less the aggregate of payments previously made and less such amounts as Engineer may determine or City may withhold, in accordance with paragraph 14.02 of the General Conditions:

a. For contracts under \$400,000.00, 90% of Work completed (with the balance being retainage).

For contracts over \$400,000.00, 95% of Work completed (with the balance being retainage.)

b. For contracts under \$400,000.00, 90% (with the balance being retainage) and for contracts over \$400,000.00, 95% (with the balance being retainage) of materials and equipment not incorporated in the Work (but delivered, suitably stored and accompanied by documentation satisfactory to the City as provided in paragraph 14.02 of the General Conditions).

4.3.2 Upon Substantial Completion, the City shall pay an amount sufficient to increase total payments to Contractor to 95% of the Work completed, less such amounts as Engineer shall determine in accordance with paragraph 14.02.B.5 of the General Conditions and less 100% of Engineer's estimate of the value of

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Work to be completed or corrected as shown on the tentative list of items to be completed or corrected attached to the Certificate of Substantial Completion.

4.4 Final payment, constituting entire unpaid balance of Contract Price, will be made by the City to Contractor as provided in the General Conditions.

ARTICLE 5
CONTRACTOR REPRESENTATIONS

5.1 Contractor represents:

5.1.1 Contractor has examined and carefully studied Contract documents and other related data identified in Bid Documents.

5.1.2 Contractor has visited the site and become familiar with and is satisfied as to general, local, and site conditions that may affect cost, progress, and performance of the Work.

5.1.3 Contractor is familiar with and is satisfied as to all federal, state, and local laws and regulations that may affect cost, progress, and performance of the Work.

5.1.4 Contractor has carefully studied all: (1) reports of explorations and tests of subsurface conditions at or contiguous to the site and all drawings of physical conditions in or relating to existing surface or subsurface structures at or contiguous to the site (except Underground Facilities) which have been identified in Contract documents and (2) reports and drawings of a hazardous environmental condition, if any, at the site which has been identified in Contract documents.

5.1.5 Contractor has obtained and carefully studied (or assumes responsibility for having done so) all additional or supplementary examinations, investigations, explorations, tests, studies, and data concerning conditions (surface, subsurface, and Underground Facilities) at or contiguous to the site which may affect cost, progress, or performance of the Work or which relate to any aspect of the means, methods, techniques, sequences, and procedures of construction to be employed by Contractor, including applying specific means, methods, techniques, sequences, and procedures of construction, if any, expressly required by the Contract to be employed by Contractor, and safety precautions and programs incident thereto

5.1.6 Contractor does not consider that any further examinations, investigations, explorations, tests, studies, or data are necessary for performance of the Work at Contract Price, within Contract Time, and in accordance with the Contract.

5.1.7 Contractor is aware of general nature of work to be performed by the City and others at the site that relates to the Work as indicated in Contract documents.

5.1.8 Contractor has correlated information known to Contractor, information and observations obtained from visits to the site, reports and drawings identified in the Contract, and all additional examinations, investigations, explorations, tests, studies, and data with the Contract.

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5.1.9 Contractor has given City Engineer written notice of all conflicts, errors, ambiguities, or discrepancies that Contractor has discovered in the Contract, and written resolution thereof by City Engineer is acceptable to Contractor.

5.1.10 Contract documents are generally sufficient to indicate and convey understanding of all terms and conditions for performance and furnishing of the Work.

ARTICLE 6

MISCELLANEOUS PROVISIONS

6.1 The Contract may be terminated by either Party as provided in Conditions of the Contract.

6.2 The Work may be suspended by the City as provided in Conditions of the Contract.

ARTICLE 7

ENUMERATION OF CONTRACT DOCUMENTS

7.1 The following documents are incorporated into this Agreement:

7.1.1 Document 00700 - General Conditions

7.1.2 Document 00800 - Supplementary Conditions

7.1.3 General Requirements.

7.1.4 Divisions 02 through 16 of Specifications attached hereto or incorporated by reference in Document 00010 - Table of Contents.

7.1.5 Drawings listed in Document 00015 - List of Drawings and bound separately.

7.1.6 Addenda which apply to the Contract, are as follows:

Addendum No. 1, dated [December 2, 2011]

Addendum No. 2, dated [N/A]

7.1.7 Other documents:

<u>Document No.</u>	<u>Title</u>
[X] 00410B	Bid Form – Part B
[X] 00500	Form of Business
[X] 00501	Resolution of Corporation (if a corporation)
[X] 00610	Performance Bond
[X] 00611	Statutory Payment Bond
[X] 00612	One-year Maintenance Bond
[X] 00620	Affidavit of Insurance (with the Certificate of Insurance attached)
[X] 00800	Exhibit A, Wage Rates
[] 00821	Wage Rate for Building Construction
[X] 00830	Trench Safety Geotechnical Information (reference 00320)

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ARTICLE 8
SIGNATURES

8.1 This Agreement is executed in two originals and is effective on _____.

CONTRACTOR:

(If Joint Venture)

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

Tax Identification Number: _____

Tax Identification Number: _____

ATTEST/SEAL:

[SEAL]

Attest: _____

Date: _____

CITY OF TOMBALL, TEXAS:

By: _____

City Manager

Date: _____

ATTEST/SEAL:

[SEAL]

Attest: _____

City Secretary

Date: _____

END OF DOCUMENT

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SUPPLEMENTARY CONDITIONS
SECTION 00800

SUPPLEMENTARY CONDITIONS
(TO ACCOMPANY STANDARD GENERAL CONDITIONS OF THE CONSTRUCTION CONTRACT,
EJCDC NO. C-700 [2007 EDITION] FOR CITY OF TOMBALL CONSTRUCTION PROJECTS)

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EXHIBIT F	Application for Payment (form)
EXHIBIT G	Storm Water Pollution Prevention Plan
EXHIBIT H	Conflict of Interest Questionnaire

SECTION 00800

SUPPLEMENTARY CONDITIONS

PART I AMENDMENTS TO GENERAL CONDITIONS

These Supplementary Conditions amend or supplement the Standard General Conditions of the Construction Contract (General Conditions) and other provisions of the Contract Documents as indicated below. All provisions which are not so amended or supplemented remain in full force and effect.

ARTICLE 1 DEFINITIONS

SC-1.01

The terms used in these Supplementary Conditions which are defined in the Standard General Conditions of the Construction Contract (General Conditions) have the meanings assigned to them in the General Conditions.

Amend Paragraph 1.01.A.19, Engineer, of the General Conditions by adding the following to the end:

"For this project the following named persons, firms, or corporations have been utilized by ENGINEER to furnish services as a consultant with respect to the project (if blank, none have been utilized by the ENGINEER):

1. _____
2. _____
3. _____"

ARTICLE 2 PRELIMINARY MATTERS

SC-2.02

Amend the first sentence of Paragraph 2.02.A of the General Conditions to read as follows:

"Five sets of the Contract Documents shall be furnished to the CONTRACTOR, at no charge, for construction purposes."

And so amended, Paragraph 2.02 remains in effect.

SC-2.03

Amend the third sentence of Paragraph 2.03.A of the General Conditions to read as follows:

"In no event will the Contract Time commence to run later than 90 days after the day of Bid opening or 30 days after the Effective Date of the Agreement, whichever is earlier, without the written agreement of the Contractor and Owner."

ARTICLE 4 AVAILABILITY OF LANDS; SUBSURFACE AND PHYSICAL CONDITIONS;
HAZARDOUS ENVIRONMENTAL CONDITIONS; REFERENCE POINTS

SC-4.02

In the preparation of Drawings and Specifications, ENGINEER or ENGINEER's Consultants have relied upon:

4.02.A.1 The following reports of exploration and tests of subsurface conditions at the site of the Work (if blank, no reports or tests were used by ENGINEER or ENGINEER's Consultants):

1. _____
2. _____

The technical data contained in such reports upon which the CONTRACTOR may rely is _____.

4.02.A.2 The following drawings of physical conditions in or relating to existing surface and subsurface structures (except Underground Facilities) which are at or contiguous to the site of Work:

1. _____
2. _____
3. _____

All of the information in such drawings constitutes technical data on which CONTRACTOR may rely with the following exceptions: _____

Copies of these reports and drawings that are not included with the Bidding Documents may be examined at the office of the ENGINEER during regular business hours. These reports and drawings are not part of the Contract Documents, but the technical data contained therein upon which CONTRACTOR is entitled to rely as provided in GC-4.02.B and as identified and established above are incorporated therein by reference. CONTRACTOR is not entitled to rely upon other information and data utilized by ENGINEER.

SC-4.06

Delete Paragraph 4.06.G of the General Conditions in its entirety.

ARTICLE 5 BONDS AND INSURANCE

SC-5.01

Delete Paragraphs 5.01.A and 5.01.B of the General Conditions in their entirety and insert the following in their place:

"A. The Successful Bidder must furnish with the executed Contract Documents a Performance Bond and a Payment Bond on the forms furnished with the Contract Documents, each in the amount of 100% of the total Contract Price in accordance with Texas Local Government Code § 252.044 and Texas Government Code Ch. 2253. CONTRACTOR shall also furnish such other Bonds as are required by the Supplementary Conditions. The surety company must be authorized to do business in Texas, which authorization must be recorded in the files of the State Board of Insurance. The surety company must be authorized to issue Payment and Performance Bonds in the amount required for the particular Contract, which authorization must be recorded in the files of the State Board of Insurance. The surety company must have a rating of at least "B" in the current Best's Key Rating Guide, or if the surety company does not have such a rating due to the length of time it has existed, the surety company must be eligible to participate in the surety bond guarantee program of the Small Business Administration and must be an approved surety listed in the current U.S. Department of Treasury Circular 570, and must meet all of the related rules and regulations of the Treasury Department. The person executing the Payment and Performance Bonds must be a licensed Texas local recording agent, and such licensing must be recorded in the files of the State Board of Insurance. The person executing the Payment and Performance Bonds must be authorized by the surety company to execute Payment and Performance Bonds on behalf of the company in the amount required for the Contract, and such authorization must be recorded in the files of the State Board of Insurance. The Contract shall not be in effect until such Bonds have been provided by the CONTRACTOR and accepted by the OWNER."

SC-5.04

The limits of liability for the insurance required by Paragraph 5.04 of the General Conditions shall provide coverage for not less than the following amounts or greater where required by Laws and Regulations:

Worker's Compensation

- | | |
|---|-------------------------|
| (1) State: <u>Statutory</u> | |
| (2) Applicable Federal (e.g., Longshoreman's): <u>Statutory</u> | |
| (3) Employer's Liability: | |
| \$500,000 | Each Accident |
| \$500,000 | Disease - Policy Limit |
| \$500,000 | Disease - Each Employee |

Commercial General Liability

- | | |
|---|-------------|
| (1) General Aggregate Limit (other than products-completed operations) coverage must include Explosion, Collapse, and Underground Coverages | \$1,000,000 |
| (2) Products-Completed Operations Aggregate Limit | \$1,000,000 |
| (3) Each Occurrence Limit | \$ 500,000 |

Commercial Automobile Liability

\$500,000	Any One Loss or Accident
-----------	--------------------------

Umbrella Liability

\$1,000,000	Excess Limit
-------------	--------------

Shortages in coverage in any of the areas listed above may be covered by additional umbrella coverage.

The Contractor shall not commence work on any Contract in the City until the Contractor has obtained all the insurance required under this paragraph and such insurance has been approved by the City.

Workers' Compensation Insurance Coverage - Continued

A. Definitions:

Certificate of coverage ("certificate") - A copy of a certificate of insurance, a certificate of authority to self-insure issued by the commission, or a coverage agreement (DWC-81, DWC-82, DWC-83, or DWC-84), showing statutory workers' compensation insurance coverage for the person's or entity's employees providing services on a project, for the duration of the project.

Duration of the project - includes the time from the beginning of the work on the project until the contractor's/person's work on the project has been completed and accepted by the governmental entity.

Persons providing services on the project ("subcontractor" in 406.096) - includes all persons or entities performing all or part of the services the contractor has undertaken to perform on the project, regardless of whether that person contracted directly with the contractor and regardless of whether that person has employees. This includes, without limitation, independent contractors, subcontractors, leasing companies, motor carriers, owner-operators, employees of any such entity, or employees of any entity which furnished persons to provide services on the project. "Services" include, without limitation, providing, hauling, or delivering equipment or materials, or providing labor, transportation, or other service related to a project. "Services" does not include activities unrelated to the project, such as food/beverage vendors, office supply deliveries, and delivery of portable toilets.

- B. The contractor shall provide coverage, based on proper reporting of classification codes and payroll amounts and filing of any coverage agreements, which meets the statutory requirements of Texas Labor Code, Section 401.011(44) for all employees of the contractor providing services on the project, for the duration of the project.
- C. The contractor must provide a certificate of coverage to the governmental entity prior to being awarded the contract.
- D. If the coverage period shown on the contractor's current certificate of coverage ends during the duration of the project, the contractor must, prior to the end of the coverage period, file a new certificate of coverage with the governmental entity showing that coverage has been extended.
- E. The contractor shall obtain from each person providing services on the project, and provide to the governmental entity:
 - (1) a certificate of coverage, prior to that person beginning work on the project, so the governmental entity will have on file certificates of coverage showing coverage for all persons providing services on the project; and

- (2) no later than seven days after receipt by the contractor, a new certificate of coverage showing extension of coverage, if the coverage period shown on the current certificate of coverage ends during the duration of the project.
- F. The contractor shall retain all required certificates of coverage for the duration of the project and for one year thereafter.
- G. The contractor shall notify the governmental entity in writing by certified mail or personal delivery, within 10 days after the contractor knew or should have known, of any change that materially affects the provision of coverage of any person providing services on the project.
- H. The contractor shall post on each project site a notice, in the text, form and manner prescribed by the Division of Workers' Compensation, Texas Department of Insurance, informing all persons providing services on the project that they are required to be covered, and stating how a person may verify coverage and report lack of coverage.
- I. The contractor shall contractually require each person with whom it contracts to provide services on a project, to:
 - (1) provide coverage, based on proper reporting of classification codes and payroll amounts and filing of any coverage agreements, which meets the statutory requirements of Texas Labor Code, Section 401.011(44) for all of its employees providing services on the project, for the duration of the project;
 - (2) provide to the contractor, prior to that person beginning work on the project, a certificate of coverage showing that coverage is being provided for all employees of the person providing services on the project, for the duration of the project;
 - (3) provide the contractor, prior to the end of the coverage period, a new certificate of coverage showing extension of coverage, if the coverage period shown on the current certificate of coverage ends during the duration of the project;
 - (4) obtain from each other person with whom it contracts, and provide to the contractor:
 - (a) a certificate of coverage, prior to the other person beginning work on the project; and
 - (b) a new certificate of coverage showing extension of coverage, prior to the end of the coverage period, if the coverage period shown on the current certificate of coverage ends during the duration of the project;
 - (5) retain all required certificates of coverage on file for the duration of the project and for one year thereafter;
 - (6) notify the governmental entity in writing by certified mail or personal delivery, within 10 days after the person knew or should have known, of any change that materially affects the provision

of coverage of any person providing services on the project; and

- (7) contractually require each person with whom it contracts, to perform as required by paragraphs (1) - (7), with the certificates of coverage to be provided to the person for whom they are providing services.

- J. By signing this contract or providing or causing to be provided a certificate of coverage, the contractor is representing to the governmental entity that all employees of the contractor who will provide services on the project will be covered by workers' compensation coverage for the duration of the project, that the coverage will be based on proper reporting of classification codes and payroll amounts, and that all coverage agreements will be filed with the appropriate insurance carrier or, in the case of a self-insured, with the commission's Division of Self-Insurance Regulation. Providing false or misleading information may subject the contractor to administrative penalties, criminal penalties, civil penalties, or other civil actions.
- K. The contractor's failure to comply with any of these provisions is a breach of contract by the contractor which entitles the governmental entity to declare the contract void if the contractor does not remedy the breach within ten days after receipt of notice of breach from the governmental entity.

SC-5.06

Delete Paragraphs 5.06, 5.07, and 5.08 of the General Conditions in their entirety.

SC-5.09

Delete Paragraph 5.09 of the General Conditions in its entirety and insert the following in its place:

- "A. If OWNER has any objection to the coverage afforded by or other provisions of the insurance required to be purchased and maintained by CONTRACTOR in accordance with Article 5 on the basis of its not complying with the Contract Documents, OWNER shall notify CONTRACTOR in writing. OWNER and CONTRACTOR shall each provide to the other such information in respect of insurance provided by each as the other may reasonably request."

ARTICLE 6 CONTRACTOR'S RESPONSIBILITIES

SC-6.02

Add Paragraph 6.02.C to the General Conditions to read as follows:

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

SC-6.06

Delete Paragraph 6.06.G of the General Conditions in its entirety and insert the following in its place:

"G. All Work performed for CONTRACTOR by a Subcontractor will be pursuant to an appropriate Agreement between CONTRACTOR and the Subcontractor which specifically binds the Subcontractor to the applicable terms and conditions of the Contract Documents for the benefit of OWNER and ENGINEER."

Add a new paragraph immediately after Paragraph 6.06.G of the General Conditions which is to read as follows:

"6.06.H OWNER or ENGINEER may furnish to any such Subcontractor, Supplier, or other person or organization, to the extent practicable, information about amounts paid to CONTRACTOR in accordance with CONTRACTOR's Applications for Payment on account of the particular Subcontractor's, Supplier's, other person's, or other organization's Work."

SC-6.10

Delete Paragraph 6.10 of the General Conditions in its entirety and insert the following in its place:

"A. The CONTRACTOR's attention is directed to Paragraph No. 3 of Ruling No. 9, Repairmen and Contractors (as amended) issued by the Comptroller of Public Accounts. Reference Article 20.01 (T), Limited Sales, Excise, and Use Tax and to subsequent applicable legislation. The OWNER requires that no sales tax be paid on any materials incorporated into the completed Work on this Project. All Bidders and their respective Subcontractors must comply with Paragraph No. 3 of Ruling No. 9 by obtaining the necessary permit or permits from the State Comptroller allowing the purchase of materials for incorporation into this Project without having to pay the Limited Sales, Excise, and Use Tax at the time of purchase. Total materials cost should not include materials which are used up or consumed in performing the Work, but which do not become a part of this proposed Work."

SC-6.16

Amend the third sentence of Paragraph 6.16 of the General Conditions to read as follows:

"If ENGINEER and OWNER determine that a change in the Contract Documents is required because of the action taken by CONTRACTOR in response to such an emergency, a Work Change Directive or Change Order will be issued."

And so amended, Paragraph 6.16 remains in effect.

SC-6.22

Amend Article 6 of the General Conditions by inserting the following Paragraph 6.22:

"6.22 LOSSES FROM NATURAL CAUSES:

- A. All loss or damage to the CONTRACTOR arising out of the nature of the Work to be done, or from the action of the elements, or from any unforeseen circumstance in the prosecution of the same, or from unusual obstructions or difficulties which may be encountered in the prosecution of the Work, shall be sustained and borne by the CONTRACTOR at his own cost and expense."

ARTICLE 7 OTHER WORK AT THE SITE

SC-7.02

Delete Paragraphs 7.02.A and 7.02.B of the General Conditions in their entirety and insert the following in its place:

- "A. If OWNER contracts with others for the performance of other Work on the Project at the site, the person or organization who will have authority and responsibility for coordination of the activities among the various prime contractors shall be the OWNER's Representative. The extent of the authority and responsibility of the OWNER's Representative will be as specified in the Contract Documents."
- "B. Should CONTRACTOR cause damage to work or property of any separate contractor at the site, or should any claim arising out of CONTRACTOR'S performance of the Work at the site be made by any separate contractor against CONTRACTOR, OWNER, ENGINEER, ENGINEER'S Consultants, the Construction Coordinator, or any other person, CONTRACTOR shall promptly attempt to settle with such other contractor by agreement, or otherwise resolve the dispute by arbitration or at law. CONTRACTOR shall, to the fullest extent permitted by Laws and Regulations, indemnify and hold OWNER, ENGINEER, ENGINEER's Consultants, and the Construction Coordinator harmless from and against all claims, damages, losses, and expenses (including, but not limited to, fees of engineers, architects, attorneys and other professionals, and court and arbitration costs) arising directly, indirectly or consequentially out of any action, legal or equitable, brought by any separate contractor against OWNER, ENGINEER, ENGINEER's Consultants or the Construction Coordinator to the extent based on a claim arising out of CONTRACTOR's performance of the Work. Should a separate contractor cause damage to the Work or property of CONTRACTOR or should the performance of Work by any separate contractor at the site give rise to any other claim, CONTRACTOR shall not institute any action, legal or equitable, against OWNER, ENGINEER, ENGINEER's Consultants, or the Construction Coordinator or permit any action against any of them to be maintained and continued in its name or for its benefit in any court or before any arbiter which seeks to impose liability on or to recover damages from OWNER, ENGINEER, ENGINEER's Consultants, or the Construction Coordinator on account of any such damage or claim. If CONTRACTOR is delayed at any time in performing or furnishing Work by any act or neglect of a separate contractor and OWNER and CONTRACTOR are unable to agree as to the extent of any adjustment in Contract Times attributable thereto, CONTRACTOR may make a claim for an extension of times in accordance with Article 12. An extension of the Contract Times shall be CONTRACTOR's exclusive remedy with respect to OWNER, ENGINEER, ENGINEER's Consultants, and Construction Coordinator for any delay, disruption, interference, or hindrance caused by any separate contractor. This paragraph does not prevent recovery from OWNER, ENGINEER, ENGINEER's Consultant, or Construction Coordinator for activities that are their respective responsibilities."

ARTICLE 8 OWNER'S RESPONSIBILITIES

SC-8.02

Amend Paragraph 8.02 of the General Conditions to read as follows:

"In case of termination of the employment of ENGINEER, OWNER shall appoint an engineer whose status under the Contract Documents shall be that of the former ENGINEER."

And so amended, Paragraph 8.02 remains in effect.

SC-8.06

Delete Paragraph 8.06 of the General Conditions in its entirety.

ARTICLE 9 ENGINEER'S STATUS DURING CONSTRUCTION

SC-9.01

Amend the second sentence of Paragraph 9.01 of the General Conditions to read as follows:

"The duties and responsibilities and the limitations of authority of ENGINEER as OWNER's representative during construction are set forth in the Contract Documents and will not be changed except by written direction of OWNER."

And so amended, Paragraph 9.01 remains in effect.

SC-9.04

Delete the third sentence of Paragraph 9.04, Authorized Variations in Work, of the General Conditions in its entirety, and so amended, Paragraph 9.04 remains in effect.

ARTICLE 10 CHANGES IN THE WORK; CLAIMS

SC-10.03

Amend the first sentence of Paragraph 10.03.A of the General Conditions to read as follows:

"OWNER and CONTRACTOR shall, when appropriate, execute Change Orders recommended by ENGINEER (or Written Amendments) covering:"

And so amended, Paragraph 10.03 remains in effect.

SC-10.05

Amend the first sentence of Paragraph 10.05.B., Claims – Notice, of the General Conditions shall be amended by changing "30 days" to read "fourteen (14) calendar days"

Amend Paragraph 10.05.E by deleting it in its entirety.

And so amended, Paragraph 10.05 remains in effect.

ARTICLE 13 TESTS AND INSPECTIONS; CORRECTION, REMOVAL, OR ACCEPTANCE OF DEFECTIVE WORK

SC-13.04

Amend the first sentence of Paragraph 13.04.B of the General Conditions to read as follows:

"If ENGINEER considers it necessary or advisable that covered Work be observed by ENGINEER or inspected or tested by others, CONTRACTOR, at ENGINEER's request and with OWNER's written approval, shall uncover, expose, or otherwise make available for observation, inspection, or testing as ENGINEER may require, that portion of the Work in question, furnishing all necessary labor, material, and equipment."

And so amended, Paragraph 13.04 remains in effect.

SC-13.07

Delete Paragraph 13.07.D of the General Conditions in its entirety and insert the following in its place:

"D. Notwithstanding any other provision of this section or the Contract Documents to the contrary, this provision shall not serve to limit any causes of action which the OWNER may have against the CONTRACTOR for Defective Work or for otherwise failing to fulfill CONTRACTOR's obligations under the Contract Documents; nor shall this provision serve to limit the time in which such causes of action shall be asserted."

SC-13.09

Amend the second sentence of Paragraph 13.09.B of the General Conditions to read as follows:

"In connection with such corrective and remedial action, OWNER may exclude CONTRACTOR from all or part of the Site, take possession of all or part of the Work and suspend CONTRACTOR's services related thereto, and incorporate in the Work all materials and equipment stored at the Site or for which OWNER has paid CONTRACTOR but which are stored elsewhere."

And so amended, Paragraph 13.09 remains in effect.

ARTICLE 14 PAYMENTS TO CONTRACTOR AND COMPLETION

SC-14.02

Amend Paragraph 14.02.D.1.b of the General Conditions to read as follows:

"Claims or Liens have been filed in connection with the Work, except where CONTRACTOR has delivered a specific Bond satisfactory to OWNER to secure the satisfaction and discharge of such Liens;"

Add Paragraph 14.02.D.1.e to the General Conditions to read as follows:

"OWNER concludes that one or more of the events enumerated in Paragraph 14.02.B.2.a through 14.02.B.2.c have not occurred."

And so amended, Paragraph 14.02 remains in effect.

SC-14.03

Amend Paragraph 14.03.A of the General Conditions to read as follows:

"CONTRACTOR warrants and guarantees that title to all Work, materials, and equipment covered by any Application for Payment, whether incorporated in the Project or not, will pass to OWNER no later than the time of payment free and clear of all Liens or Claims."

And so amended, Paragraph 14.03 remains in effect.

SC-14.04

Insert prior to the first sentence of Paragraph 14.04.A of the General Conditions the following:

"Substantial completion is the stage in the progress of the Work when the Work or designated portion thereof is sufficiently complete in accordance with the Contract Documents so that the OWNER can occupy or utilize the Work for its intended use."

And so amended, Paragraph 14.04 remains in effect.

SC-14.07

Amend Paragraph 14.07.A.2(d) of the General Conditions to read as follows:

"complete and legally effective releases or waivers (satisfactory to OWNER) of all Claim or Lien rights arising out of or Claims or Liens filed in connection with the Work."

Amend Paragraph 14.07.A.3 of the General Conditions to read as follows:

"In lieu of the releases or waivers of Liens and Claims specified in Paragraph 14.07.A.2 and as approved by OWNER, CONTRACTOR may furnish receipts or releases in full and an affidavit of CONTRACTOR that: (i) the releases and receipts include all labor, services, material, and equipment for which a Lien or Claim could be filed; and (ii) all payrolls, material and equipment bills, and other indebtedness connected with the Work for which OWNER or OWNER's property might in any way be responsible have been paid or otherwise satisfied. If any Subcontractor or Supplier fails to furnish such a release or receipt in full, CONTRACTOR may furnish a Bond or other collateral satisfactory to OWNER to indemnify OWNER against any Lien or Claim."

Amend Paragraph 14.07.C.1 of the General Conditions to read as follows:

"If OWNER concurs with ENGINEER's recommendation, thirty days after the presentation to OWNER of the Application for Payment and accompanying documentation, the amount recommended by ENGINEER will become due and, when due, will be paid by OWNER to CONTRACTOR."

And so amended, Paragraph 14.07 remains in effect.

SC-14.09

Amend Paragraph 14.09.A.1 of the General Conditions to read as follows:

"a waiver of all Claims by OWNER against CONTRACTOR, except Claims arising from unsettled Liens or Claims of laborers and materialmen, from defective Work appearing after final inspection pursuant to Paragraph 14.06, from failure to comply with the Contract Documents or the terms of any special guarantees specified therein, or from CONTRACTOR's continuing obligations under the Contract Documents; and"

And so amended, Paragraph 14.09 remains in effect.

ARTICLE 15 SUSPENSION OF WORK AND TERMINATION

SC-15.02

Amend Paragraph 15.02.A.1 of the General Conditions to read as follows:

"CONTRACTOR's failure to perform the Work in accordance with the Contract Documents (including, but not limited to, failure to supply sufficient skilled workers or suitable materials or equipment or failure to adhere to the progress schedule established under Paragraph 2.07 as adjusted from time to time pursuant to Paragraph 6.04);"

Amend the first sentence of Paragraph 15.02.B of the General Conditions to read as follows:

"If one or more of the events identified in Paragraph 15.02.A occur, OWNER may, after giving CONTRACTOR (and the surety, if any) seven days written notice, terminate the services of CONTRACTOR, exclude CONTRACTOR from the Site and take possession of the Work, incorporate in the Work all materials and equipment stored at the Site or for which OWNER has paid CONTRACTOR but which are stored elsewhere, and finish the Work as OWNER may deem expedient."

And so amended, Paragraph 15.02 remains in effect.

ARTICLE 16 DISPUTE RESOLUTION

SC-16.01

Amend Paragraph 16.01 A. of the General Conditions by deleting the second and third sentences in their entirety.

Amend Paragraph 16.01 B. of the General Conditions by deleting it in its entirety.

ARTICLE 17 MISCELLANEOUS

Amend "ARTICLE 17 MISCELLANEOUS PROVISIONS of the General Conditions to add the following provisions:

- 17.07 WAGE RATES. The prevailing wage rates for this project are included as Exhibit A to the Supplementary Conditions and are hereby made a part of the Contract Documents by reference. Wages not less than these rates must be paid on this project, including fringe benefits. The CONTRACTOR shall post the Prevailing Wage Rate Determination in a prominent and easily accessible location at the project site and shall abide by all associated laws and regulations pertaining thereto.
- 17.08 LIQUIDATED DAMAGES. The Owner will suffer financial loss in an amount that is difficult to quantify if the Project is not Substantially Completed on the date set forth in the Contract Documents. The Owner may assess liquidated damages against the Contractor (and its surety) in an amount equal to .5% of the Contract per week for each project, as fixed, agreed and liquidated damages and not a penalty, for each calendar day of delay until the Work is Substantially Completed. In the event liquidated damages are caused by the Contractor and another entity, the Owner may reasonably apportion damages. The right to assess liquidated damages is in addition to, and not in limitation of, any right or remedy available to the Owner."
- 17.09 VENUE. This Agreement is governed by the laws of the State of Texas. The parties agree that venue for any litigation arising out of this Agreement shall lie exclusively in the State and Federal Courts in Harris County, Texas.
- 17.10 NO THIRD PARTY BENEFICIARIES The signing parties to this agreement do not intend to confer any rights upon any persons not a party to this Contract; accordingly this contract shall not be construed to create any third party beneficiaries."

(SPACE INTENTIONAL)

PART II OTHER PROVISIONS

The following additional items are attached to this section.

1. Exhibit A, Wage Rates
2. Exhibit B, Worker's Compensation Insurance Coverage
3. Exhibit C, A Listing of the Duties, Responsibilities, and Limitations of Authority of the Resident Project Representative
4. Exhibit D, Addenda (if any)
5. Exhibit E, Change Order (form)
6. Exhibit F, Application for Payment (form)
7. Exhibit G, Storm Water Pollution Prevention Plan
8. Exhibit H, Conflict of Interest Questionnaire

END OF SECTION 00800

EXHIBIT B
MEMORDANDUM

4/28/2008

Date: April 28, 2008
To: City of Tomball Contract Insurance Requirements
From: Mark A. McClure, P.E. *mm*
Director of Engineering & Planning
City of Tomball
Re: Certificate of Insurance Explanations

Effective immediately, to facilitate the processing of Contracts, the Engineering & Planning Department is requesting the following information be submitted with each Certificate of Insurance. A sample insurance form is attached, matching the numbered listings below:

1. Certificate must not be more than 12 months old.
2. Name and address of producer writing coverage.
3. Name of insurance company providing coverage as listed in Best's Key Rating Guide or on company's Certificate of Authority on file with Texas Department of Insurance. Company must have rating of B+ or better; provided, however, that this requirement will be waived for workers compensation coverage if the coverage is placed with a company that participates in the State of Texas Workers' Compensation Assigned Risk Pool.
4. Name and address of insured, as shown on policy.
5. Must reference the insurer of the policy being described.
6. Must be a policy number, no binders.
7. Date policy became effective.
8. Expiration date must be at least 60 days from date of deliver of certificate.
9. Check limits of liability against contract.
10. Must check either; 1) Any Auto, or 2) All Owned, Hired, and Non-Owned Autos.
11. Statutory limits must be checked per our ordinance.
12. Must name the City as Additional Insured on Commercial General Liability and Automobile Liability. Must have a Waiver of Subrogation in favor of the City on Commercial General Liability, Automobile Liability, and Workers' Compensation/Employers' Liability.
13. Name and file number of project.
14. Address of the City of Tomball and the name of the project manager (as a suggestion either project applicable Department Director or Assistant City Manager).
15. Cancellation clause of the underlying policy must endorsed to provide that , "should any of the above described policies be canceled before the expiration date thereof, the issuing company will mail 30 days written notice to the certificate holder named."
16. Signature or facsimile signature of authorized representative of producer.

UNLESS OTHERWISE SPECIFIED:

Minimum Insurance Requirements: Small contracts (less than \$50,000.00)-Workers compensation insurance and Automobile Liability Insurance required by law.

Minimum Insurance Requirements: All other contracts-

1. Commercial General Liability: \$500,000 per occurrence for bodily injury, personal injury and property damage. \$1,000,000 Aggregate Policy will include coverage for a) Premises - Operations; b) Broad Form Contractual Liability; c) Products and Completed Operations; d) Use of Contractors and Subcontractors; e) Personal Injury; f) Broad Form Property Damage; g) Explosion Collapse and Underground (XCU) Coverage (when applicable), Fire Damage, Medical Expense. NOTE: The aggregate loss limit applies to each project.
2. Workers' Compensation and Employer's Liability: Workers' Compensation limits as required by the Labor Code of the State of Texas and Statutory Employer's Liability Limits.
3. Automobile Liability - \$500,000 per occurrence; 1,000,000 Aggregate if contract involves road construction projects.

J:\Engineering\Administrative\Forms & Standard Documents\Contract & Agreement Documents\COTAcceptedAttorneyInsurance Memo sb 04-28-08.doc

CERTIFICATE OF LIABILITY INSURANCE

1 DATE (MM/DD/YYYY)

PRODUCER 2	THIS CERTIFICATION IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW.	
INSURED 4	INSURERS AFFORDING COVERAGE INSURER A: INSURER B: INSURER C: INSURER D: INSURER E:	NAIC #

COVERAGES

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

INSR	ADD'L	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YY)	POLICY EXPIRATION DATE (MM/DD/YY)	LIMITS								
5		GENERAL LIABILITY ☐ COMMERCIAL GENERAL LIABILITY ☐ CLAIMS MADE ☐ OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: ☐ POLICY ☐ PRO-JECT ☐ LOC	6	7	8	EACH OCCURRENCE \$ DAMAGE TO RENTED PREMISES (Ea occurrence) \$ MED EXP (Any one person) \$ PERSONAL & ADV INJURY \$ GENERAL AGGREGATE \$ PRODUCTS - COMP/OP AGG \$ \$								
		AUTOMOBILE LIABILITY ☐ ANY AUTO ☐ ALL OWNED AUTOS ☐ SCHEDULED AUTOS ☐ HIRED AUTOS ☐ NON-OWNED AUTOS				COMBINED SINGLE LIMIT (Ea accident) \$ BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$								
		GARAGE LIABILITY ☐ ANY AUTO				AUTO ONLY - EA ACCIDENT \$ OTHER THAN EA ACC \$ AUTO ONLY: AGG \$								
		EXCESS/UMBRELLA LIABILITY ☐ OCCUR ☐ CLAIMS MADE ☐ DEDUCTIBLE ☐ RETENTION \$				EACH OCCURRENCE \$ AGGREGATE \$ \$ \$ \$								
		WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? If yes, describe under SPECIAL PROVISIONS below				<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 60%;">WC STATUTORY LIMITS</td> <td style="width: 40%;">OTH-ER</td> </tr> <tr> <td>E.L. EACH ACCIDENT</td> <td>\$</td> </tr> <tr> <td>E.L. DISEASE - EA EMPLOYEE</td> <td>\$</td> </tr> <tr> <td>E.L. DISEASE - POLICY LIMIT</td> <td>\$</td> </tr> </table>	WC STATUTORY LIMITS	OTH-ER	E.L. EACH ACCIDENT	\$	E.L. DISEASE - EA EMPLOYEE	\$	E.L. DISEASE - POLICY LIMIT	\$
WC STATUTORY LIMITS	OTH-ER													
E.L. EACH ACCIDENT	\$													
E.L. DISEASE - EA EMPLOYEE	\$													
E.L. DISEASE - POLICY LIMIT	\$													
		OTHER PROFESSIONAL LIABILITY				PER CLAIM \$ AGGREGATE \$								

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES / EXCLUSIONS ADDED BY ENDORSEMENT / SPECIAL PROVISIONS

GENERAL LIABILITY AND AUTOMOBILE LIABILITY POLICIES ENDORSED TO INCLUDE CITY OF TOMBALL

PROJECT DESCRIPTION:

CERTIFICATE HOLDER

City of Tomball
501 James Street
Tomball, Texas 77377

CANCELLATION

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING INSURER WILL ENDEAVOR TO MAIL 30 DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT, BUT FAILURE TO DO SO SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE INSURER, ITS AGENTS OR REPRESENTATIVES.

AUTHORIZED REPRESENTATIVE

EXHIBIT C**A Listing of the Duties, Responsibilities, and Limitations to Authority of the Resident Project Representative (RPR)****A. General**

RPR as Owner's agent at the site, will act as directed by and under the supervision of the Owner, and will confer with ENGINEER regarding RPR's actions. RPR's dealings in matters pertaining to the on-site Work shall in general be with ENGINEER and CONTRACTOR keeping OWNER advised as necessary. RPR's dealings with subcontractors shall only be through or with the full knowledge and approval of CONTRACTOR. RPR shall generally communicate with OWNER with the knowledge of and under the direction of ENGINEER.

B. Duties and Responsibilities of RPR**1. Schedules:**

Review the progress schedule, schedule of Shop Drawing submittals, and other required schedules prepared by CONTRACTOR and consult with ENGINEER concerning acceptability.

2. Conferences and Meetings:

Attend meetings with CONTRACTOR, such as preconstruction conferences, progress meetings, job conferences, and other Project-related meetings, and prepare and circulate copies of minutes thereof.

3. Liaison:

- a. Serve as ENGINEER's liaison with CONTRACTOR, working principally through CONTRACTOR's superintendent, and assist in understanding of the Contract Documents, and assist ENGINEER in serving as OWNER's liaison with CONTRACTOR when CONTRACTOR's operations affect OWNER's on-site operations.
- b. Assist in obtaining from OWNER additional details or information when required for proper execution of the Work.

4. Shop Drawings and Samples:

- a. Record date of receipt of Shop Drawings and samples.
- b. Receive samples, which are furnished at the site by CONTRACTOR, and notify ENGINEER of availability of samples for examination.
- c. Advise ENGINEER and CONTRACTOR of the commencement of any Work requiring a Shop Drawing or sample if the submittal has not been approved by ENGINEER.

5. Review of Work, Rejection of Defective Work, Inspections, and Tests:

- a. Conduct on-site observations of the Work in progress to assist ENGINEER in determining if the Work is in general proceeding in accordance with the Contract Documents.
- b. Report to ENGINEER whenever RPR believes that any Work is unsatisfactory, faulty or defective, or does not conform to the Contract Documents, or has been damaged, or does not meet the requirements of any inspection, test, or approval required to be made; and advise ENGINEER of Work that RPR believes should be corrected or rejected, or should be uncovered for observation, or requires special testing, inspection, or approval.
- c. Verify that tests, equipment, and systems start-up and operating and maintenance training are conducted in the presence of appropriate personnel, and that CONTRACTOR maintains adequate records thereof; and observe, record, and report to ENGINEER appropriate details relative to the test procedures and start-ups.
- d. Accompany visiting inspectors, other than the OWNER's, representing public or other agencies having jurisdiction over the Project, record the result of these inspections, and report to ENGINEER.

6. Interpretation of Contract Documents:

Report to ENGINEER when clarifications and interpretations of the Contract Documents are needed and transmit to Contract clarifications and interpretations as issued by the ENGINEER.

7. Modifications:

Consider and evaluate CONTRACTOR's suggestions, for modifications in Drawings or Specifications and report with RPR's recommendations to ENGINEER. Transmit to CONTRACTOR decisions as issued by ENGINEER.

8. Records:

- a. Maintain at the job site orderly files for correspondence, reports of job conferences, Shop Drawings and samples, reproductions of original Contract Documents including all Work Directive Changes, Addenda, Change Orders, Field Orders, additional Drawings issued subsequent to the execution of the Contract, ENGINEER's clarification and interpretations of the Contract Documents, progress reports, and other Project-related documents.
- b. Keep a diary or log book recording CONTRACTOR hours on the job site, weather conditions, data relative to questions of Work Directive Changes, Change Orders or changed conditions, list of job site visitors, daily activities, decisions, observations in general, and specific observations in more detail as in the case of observing test procedures, and send copies to ENGINEER.

- c. Record names, addresses, and telephone numbers of all contractors, subcontractors, and major Suppliers of materials and equipment.

9. Reports:

- a. Furnish ENGINEER periodic reports as required of progress of the Work and of CONTRACTOR's compliance with the progress schedule and schedule of Shop Drawings and sample submittals.
- b. Consult with ENGINEER in advance of schedule of major tests, inspections, or start of important phases of the Work.
- c. Draft proposed Change Orders and Work Directive Changes, obtaining back-up material from CONTRACTOR, and recommend to ENGINEER Change Orders, Work Directive Changes, and Field Orders.
- d. Report immediately to OWNER and ENGINEER upon the occurrence of any accident.

10. Payment Requests:

Review Applications for Payment with CONTRACTOR for compliance with the established procedure for their submission and forward with recommendations to ENGINEER, noting particularly the relationship of the payment requested to the schedule of items, Work completed, and materials and equipment delivered at the site but not incorporated in the Work.

11. Certificates, Maintenance and Operation Manuals:

During the course of the Work, verify that certificates, maintenance and operation manuals, and other data required to be assembled and furnished by CONTRACTOR are applicable to the items actually installed and in accordance with the Contract Documents, and have this material delivered to ENGINEER for review and forwarding to OWNER prior to final payment for Work.

12. Completion:

- a. Before ENGINEER issues a Certificate of Substantial Completion, submit to CONTRACTOR a list of observed items requiring completion of correction.
- b. Conduct final inspection in the company of ENGINEER, OWNER, and CONTRACTOR, and prepare a final list of items to be completed or corrected.
- c. Observe that all items on final list have been completed or corrected and make recommendations to ENGINEER concerning acceptance.

C. Limitations of Authority

Resident Project Representative:

1. Shall not authorize any deviation from the Contract Documents or substitution of materials or equipment unless authorized by ENGINEER.
2. Shall not exceed limitations of authority as set forth in the Agreement or the Contract Documents.
3. Shall not undertake any of the responsibilities of CONTRACTOR, subcontractor, or CONTRACTOR's superintendent.
4. Shall not advise on, issue directions relative to, or assume control over any aspect of the means, methods, techniques, sequences, or procedures of construction unless such advice or directions are specifically required by the Contract Documents.
5. Shall not advise on, issue directions regarding, or assume control over safety precautions and programs in connection with the Work.
6. Shall not accept Shop Drawing or sample submittals from anyone other than CONTRACTOR.
7. Shall not authorize OWNER to occupy the Project in whole or in part.
8. Shall not participate in specialized field or laboratory tests or inspections conducted by others except as specifically authorized by Owner.

EXHIBIT D

EXHIBIT D

Attach any and all Addendums

Project No. _____

EXHIBIT E
CHANGE ORDER

Document 00941

CHANGE ORDER / C.O. No. _____

PROJECT:
CONTRACT No.: _____ PROJECT No.: _____

TO: [Contractor's Company Name]
Contractor and [Contractor's Address]
Address for Written Notice _____

REFERENCE RFIs/RFPs: _____

1.01 DESCRIPTION OF CHANGES

	CONTRACT CHANGE	
	AMOUNT	TIME
ITEM 1 SCOPE: <i>[Description of first change order item]</i>	\$0.00	0 Days
JUSTIFICATION: <i>[Justification for adding or deleting work described in "Item 1 Scope"]</i>		
ITEM 2 SCOPE:	\$0.00	0 Days
JUSTIFICATION:		
ITEM 3 SCOPE:	\$0.00	6 Days
JUSTIFICATION:		
TOTALS:	\$0.00	6 Days

1.02 ACCEPTANCE BY CONTRACTOR

Contractor agrees to perform change(s) included in this Change Order for the price and time indicated. The prices for changes include all costs associated with this Change Order.

Contractor Signature and Title

Date

1.03 ACCEPTANCE BY THE CITY

Project Manager Date

[Director – Required for COs to Council] Date

[Intermediate Authority, if needed] Date

[Mayor – Required for COs to Council] Date

[Intermediate Authority, if needed] Date

City Engineer Date

END OF DOCUMENT

cc: *[Design Consultant], [Owning Dept. Director], [Other Copy Addressees], [File(s)]*

00941-1
02-01-08

EXECUTIVE SUMMARYC.O. No. _____ Contract No.: _____ Proj. No.: [File No.]

1.01	CONTRACT PRICE SUMMARY	DOLLAR AMOUNT	PERCENT
A.	Original Contract Price	\$1,000,000.00	100.00%
B.	Previous Change Orders	\$0.00	0.00%
C.	This Change Order	\$0.00	0.00%
D.	Contract Price	\$1,000,000.00	100.00%

Date of Commencement of the Work: Monday, September 30, 2002

1.02	CONTRACT TIME SUMMARY	DURATION	COMPLETION DATE
A.	Original Contract Time	180 Days	Friday, March 28, 2003
B.	Previous Change Orders	0 Days	Friday, March 28, 2003
C.	This Change Order	0 Days	
D.	Contract Time	180 Days	Friday, March 28, 2003

- 1.03 TOTAL VALUE OF INCREASES OUTSIDE OF GENERAL SCOPE OF WORK
 A. Including this Change Order, the following table is provided to track conditions related to Paragraph 7.1.2.3 of Document 00700 - General Conditions.

<u>CHANGE ORDER</u> <u>No.</u>	<u>AMOUNT ADDED</u>	<u>PERCENT OF</u> <u>ORIGINAL CONTRACT</u> <u>PRICE</u>
[1]	[\$0.00]	[0%]
TOTALS	\$0.00	0.0%

END OF SUMMARY

INSTRUCTIONS

PURPOSE: Change Orders are used to affect Modifications to the Contract. Prior to final payment, previously approved Work Change Directives can be combined into a summary Change Order to reconcile project cost accounting. When signed and dated by Contractor and City Engineer, document becomes an approved Change Order.

APPLICATION: This form is applicable to agreed on Modifications to the Contract including, but not limited to the following:

- . Additions or reductions (including deletions) of existing bid item quantities.
- . Increases or decreases in construction Contract Time.
- . Change in methods, material, etc., not covered by existing bid item quantities.
- . New work not covered by existing bid item quantities.
- . Price or schedule consideration for conditions not indicated by the Contract.

INSTRUCTIONS: Project Manager or Design Consultant prepares this form. The Executive Summary is for use by the City in analyzing the Change Order but is not a part of the Change Order. This form has two MS Excel tables imbedded in the MS Word document (Paragraphs 1.01 and 1.02 in the Executive Summary). Double click on any cell in these tables to make entries in spreadsheet mode. Click anywhere outside the spreadsheet to return to wordprocessing mode. Other tables in the Change Order and Executive Summary are MS Word tables, not imbedded Excel spreadsheets. Red colored text and numerals represent input fields. Black text and numerals are in cells with formulas or fixed text. Do not make entries in these cells. Following instructions correspond to blanks requiring input and paragraph numbers on form. Paragraph 1.02 of the Change Order form is completed by Contractor. All other items are completed by the City or Design Consultant. Paragraph 1.03 of the Change Order form is completed by administrative and approving authorities. Contractor shall provide all backup material to justify the costs of items enumerated in Paragraph 1.01 of the Change Order form.

CHANGE ORDER FORM:

1. Insert Change Order number and Contract number for the Project at the top of each page, following page one, if the Change Order must be longer than one page.
2. Insert Project name exactly as stated in the Agreement.
3. Insert Project number and other identifying numbers (e.g. CIP, Proj. No., AIP, File No.) for the Project.
4. Insert name of Contractor performing the Work and Contractor's address for notices. Address should be as shown in the Agreement unless changed by proper notice.
5. Insert applicable references to related RFIs and RFPs.
6. Paragraph 1.01: Insert brief descriptions of the changes, including reference to applicable Work Change Directives. Give justification to support change, cost of making change, and adjustment in Contract Time warranted by change. If more than one item is included, number each item. Extend the table to additional pages if necessary. Formulas are imbedded for totals but check the math when extending the table length.
7. Paragraph 1.02: Project Manager signs and dates and has other administrative authorities or representatives sign and date where indicated. Project Manager will substitute actual titles of these persons where red bracketed instructions are shown. Mayor's and Contracting Department Director's signature (and date) are only needed when the Change Order must go to City Council for funding prior to approval. City Engineer for Contracting Department (should be the same person designated in the Agreement) will only sign and date Paragraph 1.03 when funds are approved and in place for payment of additional work. City Engineer's signature and date signify approval of Change Order and is the only authorized approval authority of the City according to Document 00700 – General Conditions.
8. Insert appropriate list of "copy to" persons and file. Delete brackets and instructions. Change color of remaining text to black.

00941-3
02-01-08

EXECUTIVE SUMMARY:

1. Paragraph 1.01: Insert (A) Original Contract Price, (B) cost of previous Change Orders and (C) cost of this Change Order in the price summary block. Other amounts and percentages in block are calculated by formula. Cost of this Change Order is calculated at the bottom of the table in Paragraph 1.01 of the Change Order form, when all items have been filled in BUT it does not automatically change the amount in Paragraph 1.01 C.
2. Paragraph 1.02: Insert Date of Commencement of Work (from Notice to Proceed), (A) original Contract Time, (B) additional days added from previous Change Orders and (C) days required for this Change Order in the time summary block. Other days and dates in block are calculated by formula. Days for this Change Order are calculated at the bottom of the table in Paragraph 1.01 of the Change Order form, when all items have been filled in BUT it does not automatically change the amount in Paragraph 1.02 C.
3. Paragraph 1.03 A: Project Manager will provide information from all previous Change Orders for this table (i.e. number, amount and percentage of Original Contract Price) so that it can be determined if Council Action is necessary. *NOTE: The conditions of Paragraph 7.1.2.3 of Document 00700 - General Conditions may make Council Action necessary even if funding is already available and even if the 5% contingency threshold has not yet been reached.*

Document 00643 (sample form)
(Contractor required to submit final form utilized for approval)

ESTIMATE AND CERTIFICATE FOR PAYMENT, UNIT PRICE WORK

Project Name: _____ Estimate No. _____
Contractor: [Contractor's Company Name] Cut off Date: _____
Address: [Contractor's Company Address] Estimate Date: _____
Contract No.: [Contract Number]
Project No.: _____
Ordinance No.: [Contract Ordinance Number]

Contract Date: _____
Start Date: _____
Current Contract Completion Date: _____
Substantial Completion Date: _____
Percentage: By Time 0.00% In Place 0.00%

CONTRACT TIME IN CALENDER DAYS

Original Contract Time: _____ Days
Approved Extensions: _____ Days
Total Contract Time: _____ Days
Days Used to Date: _____ Days
Days Remaining to Date: _____ Days

Date Insurance Exp. _____ Drug Policy Due _____

Current _____ Schedule Update Received _____

CONTRACT AMOUNT TO DATE:

1. Original Contract Price:			<u>\$0.00</u>
2. Approved Change Orders: <u>No./Description</u>	<u>Amount</u>		
_____	<u>\$0.00</u>		
_____	<u>\$0.00</u>		
_____	<u>\$0.00</u>		
_____	<u>\$0.00</u>		
_____	<u>\$0.00</u>		
_____	<u>\$0.00</u>		
Total Change Orders to Date: _____ +/-	<u>\$0.00</u>		<u>\$0.00</u>
TOTAL CONTRACT AMOUNT:			<u>\$0.00</u>

A. EARNINGS TO DATE:

1. Work Completed to Date: <u>0.00%</u> Complete		<u>\$0.00</u>
2. Materials Stored on Site:	<u>\$0.00</u>	
3. Materials Stored in Place:	<u>\$0.00</u>	
4. Balance - Materials Accepted, Not in Work:	<u>\$0.00</u>	
TOTAL EARNINGS TO DATE:		<u>\$0.00</u>

B. DEDUCTIONS:

1. Retainage: <u>0.00%</u> of <u>\$0.00</u>	<u>\$0.00</u>	
2. Add: Retainage Deduction:	<u>\$0.00</u>	
3. Total Retainage:	<u>\$0.00</u>	
4. Liquidated Damages: _____ Days @ _____	<u>\$0.00</u>	
5. Quality Control Retest Cost:	<u>\$0.00</u>	
6. Sunday/Holiday Overtime Cost:	<u>\$0.00</u>	
TOTAL DEDUCTIONS:		<u>\$0.00</u>

C. AMOUNT DUE THIS PERIOD:

1. Total Earnings to Date:	<u>\$0.00</u>	
2. Total Deductions:	<u>\$0.00</u>	
3. Total Payments Due:		<u>\$0.00</u>
4. Less Previous Payments:		<u>\$0.00</u>
5. Restoration Adjustment:		<u>\$0.00</u>
TOTAL AMOUNT DUE THIS DATE:		<u>\$0.00</u>

Prepared By: _____ Date: _____ Checked By: _____ Date: _____

Submitted By: _____ Date: _____ Approved: _____ Date: _____

Approved: _____ Date: _____
Director, [Contracting Department]

END OF DOCUMENT

00643-1
02-01-08

EXHIBIT G

Storm Water Pollution Prevention Plan

Refer to Plans and Specifications



EXHIBIT "H"
Section 00800
Conflict of Interest Questionnaire

City of Tomball

Gretchen Fagan
Mayor

February 7, 2008

Attention: Vendors, Agents, Contractors, Prospective Bidders, Etc.

Re: House Bill 914 – Adding Chapter 176.2 to the Local Government Code

In the 2005 Regular Session, the Texas Legislature passed House Bill 914, which requires the disclosure and availability of information concerning certain local government entities, local government officials, and vendors or other persons, agencies, corporations, or entities contracting or seeking to contract with the City of Tomball for the sale or purchase of property, goods or services.

As a courtesy, enclosed is a copy of the Conflict of Interest Questionnaire (CIQ), a copy of HB 914, and a list of all City officials, as defined under Chapter 176 of the Local Government Code. Please complete this questionnaire and return to the City Secretary as soon as possible at the following address:

CIQ
Attention: City Secretary
City of Tomball
401 Market Street
Tomball, Texas 77375.

If you need additional information regarding the new requirements, please contact your attorney for additional instructions. You may also contact me at 281-290-1002 or dspeer@ci.tomball.tx.us.

Sincerely,

Doris Speer
City Secretary

Enclosure

CONFLICT OF INTEREST QUESTIONNAIRE

FORM CIQ**For vendor or other person doing business with local governmental entity**

This questionnaire reflects changes made to the law by H.B. 1491, 80th Leg., Regular Session.

This questionnaire is being filed in accordance with Chapter 176, Local Government Code by a person who has a business relationship as defined by Section 176.001(1-a) with a local governmental entity and the person meets requirements under Section 176.006(a).

By law this questionnaire must be filed with the records administrator of the local governmental entity not later than the 7th business day after the date the person becomes aware of facts that require the statement to be filed. See Section 176.006, Local Government Code.

A person commits an offense if the person knowingly violates Section 176.006, Local Government Code. An offense under this section is a Class C misdemeanor.

OFFICE USE ONLY

Date Received

1 Name of person who has a business relationship with local governmental entity.

2 ☐ Check this box if you are filing an update to a previously filed questionnaire.

(The law requires that you file an updated completed questionnaire with the appropriate filing authority not later than the 7th business day after the date the originally filed questionnaire becomes incomplete or inaccurate.)

3 Name of local government officer with whom filer has employment or business relationship.

Name of Officer

This section (item 3 including subparts A, B, C & D) must be completed for each officer with whom the filer has an employment or other business relationship as defined by Section 176.001(1-a), Local Government Code. Attach additional pages to this Form CIQ as necessary.

A. Is the local government officer named in this section receiving or likely to receive taxable income, other than investment income, from the filer of the questionnaire?

☐ Yes

☐ No

B. Is the filer of the questionnaire receiving or likely to receive taxable income, other than investment income, from or at the direction of the local government officer named in this section AND the taxable income is not received from the local governmental entity?

☐ Yes

☐ No

C. Is the filer of this questionnaire employed by a corporation or other business entity with respect to which the local government officer serves as an officer or director, or holds an ownership of 10 percent or more?

☐ Yes

☐ No

D. Describe each employment or business relationship with the local government officer named in this section.

4

Signature of person doing business with the governmental entity

Date

Regular City Council

Agenda Item

Meeting Date: December 19, 2011

Data Sheet

Topic:

Approve Amendment to Current Contract between the City of Tomball and AOT Public Safety Corporation for False Alarm Billing and Tracking Services.

Background:

On December 6, 2010, the City of Tomball entered into a three-year contract, for false alarm and billing services, with AOT Public Safety Corporation. At the time the contract was signed there was a good faith expectation by the implementation team members (made up of personnel from the AOT Public Safety Corporation, Tomball Police Department, Tomball Fire Department, Finance Department, and Northwest EMS), that the complete implementation process would take approximately one month to complete.

Once the implementation process began the team identified a series of protocol, software, and administrative issues that needed to be addressed to ensure a seamless rollout. From the onset the entire team agreed that it was appropriate to delay the "go-live" date in favor of doing it right. To accomplish this, all identified issues were address, comprehensive tests were conducted, and system went live on November 1, 2011.

Origination:

Robert S. Hauck, Chief of Police

Recommendation:

It is recommended that City Council approve amendment to the current contract between the City of Tomball and AOT Public Safety Corporation for false alarm billing and tracking services, changing the commencement date from December 6, 2010, to November 1, 2011.

Funding: No

Funds will be transferred from Account: to Account:

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

Robert S. Hauck, Chief of Police

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

ATTACHMENTS:

Amendment and Original Contract

AMENDMENT

Tomball and PSC have agreed to amend the Contract for False Alarm Billing and Tracking Services (Contract #40738 dated November 2010) in order to provide Tomball and PSC the full three year initial Contract term set forth in Section 1.

Mutually agreed upon delays in program implementation resulted in a delay in the start of live program operation until November 1, 2011. This Amendment restarts the initial three year Contract term on the date live program operation actually commenced (November 1, 2011).

As further set forth in Section 1, Tomball shall also have the right at its option to extend the Agreement for additional periods of one (1) year each upon the same terms and conditions. The total contract period shall not exceed five (5) years from November 1, 2011. The option shall be deemed exercised in each successive year upon written notice by Tomball to the Contractor. The notice shall not be later than the October 1st prior to the expiration of the then effective remaining term.

WHEREAS, the individuals representing the parties are both authorized and have executed this Amendment effective as of the date last written below.

Tomball, Texas

By: _____
Mayor Gretchen Fagan

Date: _____

ATTEST BY:

City Secretary

AOT Public Safety Corporation

By: _____
Les Greenberg, Chief Executive Officer

Date: _____

ATTEST BY:

**TOMBALL FIRE DEPARTMENT
1200 RUDEL
TOMBALL, TEXAS 77375**

MEMORANDUM

Date: December 8, 2010

To: Doris Speer, City Secretary
Glenn Windsor, Finance Director
Rob Hauck, Chief of Police ✓
Doug Sanguedolce, Fire Marshal

From: Randy Parr

Subject: Contract for False Alarm Billing and Tracking Services

Attached is a copy of the executed contract for the false alarm billing project. We will be meeting with AOT Public Safety representatives in the near future to kickoff the program.

In the interim, similar to the Red Light Camera program, a separate bank account should be established into which the permit and false alarm payments will be deposited.

Fire and police agencies need to establish the incident code to be used as the one that will be tracked by the contractor and from which he will bill for false alarms. Once this is determined, PD and FD employees will need to be trained to utilize only that code for false alarm incidents.

I will advise you as soon as we have the meeting date set.

CONTRACT FOR FALSE ALARM BILLING AND TRACKING SERVICES

THIS CONTRACT FOR FALSE ALARM TRACKING AND BILLING SERVICES (this "Agreement") made and entered into this 6th day of December, 2010, by and between the City of Tomball, a home-rule Texas municipal corporation ("Tomball") and AOT Public Safety Corporation ("Contractor" or "PSC"), a corporation of the State of Maryland with its principal offices located in Waldorf, Maryland.

WITNESSETH:

Whereas, on July 6, 2010, the Tomball City Council adopted an Ordinance (No. 2010-06) amending Chapter 26 of the "Emergency Services" Code related to alarm systems and false alarms effective July 6, 2010 ("Alarm Ordinance"); and

Whereas, the goal of Tomball is to encourage more responsible use of alarm systems and to reduce the number of false alarms to which fire and peace officers must respond by accurately tracking false alarm instances and assessing fees and penalties as required by the Alarm Ordinance; and

Whereas, in its implementation of the Ordinance, Tomball desires to use PSC for False Alarm Administration Services ("RFP") to provide the management of the False Alarm Ordinance so that property owners who utilize alarm systems can be held accountable for multiple false alarms through a system of permit, false alarm and related fees;

Whereas, PSC created and markets the proprietary and patented (U.S. Patent No. 6,856,246) software system called CryWolf® ("Software"), an integrated suite of software applications operating in a Windows-based environment, designed to assist false alarm reduction managers and planners in government agencies and industry in accessing information relevant to false alarms, and that has been developed at PSC's private expense for the commercial marketplace and is not in the public domain; and

Whereas, the Contractor has submitted the most favorable solution for the design, implementation and management of administration services for false alarms ("Quote") using its proprietary commercial off-the-shelf false alarm Software;

Whereas, Tomball has accepted the quote by the Contractor that was responsive to the desires to engage the Contractor to perform the false alarm billing and tracking services described in the Ordinance and outlined in Attachment A; and

Whereas, the Contractor desires to accept such engagement.

Now, Therefore, the parties agree as follows:

1. Term.

The term of this Agreement shall commence on the date first written above (the "Effective Date") and unless terminated as herein provided shall exist and continue for an initial term of three (3) years.

Tomball shall have the right at its option to extend the Agreement for additional periods of one (1) year each upon the same terms and conditions. The total contract period shall not exceed five (5) years from the Effective Date. The option shall be deemed exercised in each successive year upon written notice by Tomball to the Contractor. The notice shall not be later than the October 1st prior to the expiration of the then effective remaining term.

2 . Contract Documents and Order of Precedence.

The contract documents consist of the following Attachments that are incorporated into the Agreement by this reference:

A. **Attachment A**, describes the Scope of Services to be provided by the Contractor and the City's operational responsibilities; **Attachment B**, Payment Terms;

B. The Order of Precedence shall be as follows: (1) this Agreement; (2) Attachments A and B.

3 . Alarm Management Scope of Services.

A. The Contractor shall provide the False Alarm Administration Services (FAAS) in accordance with the **Scope of FAAS Services described In Attachment A**.

B. The Scope of FAAS Services shall assist Tomball in managing its Alarm Ordinance to include, without limitation, registration of responsible persons (including individuals, businesses and government agencies) who use alarm systems, issuance and notification of alarm permits and permit fees, issuance and notification of false alarm penalties in accordance with the Alarm Ordinance and at the direction and under the supervision of Tomball's Alarm Administrator, maintenance of a database of registered persons who use alarm systems, management of false alarm occurrences, collection of fees the collection and enforcement of penalties for violations, generating performance and outcome reports and assuring the availability to Tomball of false alarm information, all as more specifically described in **Attachment A - Scope of FAAS Services**.

4 . Software license.

Tomball shall be licensed and authorized to use the Software and any additional specific customization and development provided as part of the FAAS Services, all in accordance with **Attachment A**. The license shall cover all the Software, including, without limitation, software interfaces and software modifications. The scope of the license is non-transferable and non-exclusive and is authorized by PSC for use by Tomball to access its false alarm information.

5 . Duration of the Software License.

Tomball shall have the right to use the Software in accordance with **Attachment A** for so long as the Contractor provides FAAS Services to Tomball or in accordance with the Termination provisions in this Agreement. This license shall apply for the duration of the Agreement and any extensions provided for herein or agreed to in writing by the parties. In the event the business relationship with PSC is terminated or ended for any reason, Tomball license rights to use the Software shall likewise terminate except as provided for in this Agreement, including **Attachment B**.

6. Modification of the Software.

A. Modifications or adaptations of the Software shall be limited to creating interfaces between the Software and Tomball's computer systems required to import or export data in order to implement the Software. Software "customization" includes, without limitation, adaptations necessary to meet the requirements established by Tomball for reasonable program, technical, and/or legislative changes.

B. Tomball shall retain a nonexclusive License to use the modified and/or "customized" interfaces with the Software, *provided, however*, the use of the original Software with such adaptations in any projects other than the management of the Alarm Ordinance shall be subject to additional compensation to PSC in an amount and subject to terms to be determined by the parties in writing prior to any such additional use.

7. Protecting Confidential Information.

The proprietary information of both parties, PSC and Tomball, is and shall remain the valuable intellectual property of each respective party. Except as required by law, neither party shall disclose any such information to any third party for any reason without the express written consent of the other party and shall only use proprietary information for internal purposes to facilitate and assist PSC and Tomball staff in the administration of the Alarm Ordinance. In addition, the parties shall provide reasonable safeguards to protect their respective software, hardware systems and data from unauthorized intrusion by third parties.

Names, addresses, type of alarm, identification information of any alarm monitoring company, or identification information of any person cited under the Alarm Ordinance shall not be released, exhibited or sold to a third party by PSC.

All data received hereunder shall be made a part of the Tomball's permanent records and files and preserved therein for a period in accordance with the requirements of Texas law, Tomball will inform PSC of the required retention time in writing as soon as that information is released by the Texas Secretary of State.

8. Reproduction and Copyright.

A. The Software is protected under the Copyright and Patent laws of the United States, and as extended by treaty, with Canada. Tomball may not copy, or allow anyone else to copy or otherwise reproduce, any part of the Software without the prior written consent of PSC, except to store and/or install a copy of the Software on a storage device, such as a network server, used only to run the Software on other computers over an internal network and except for two copies for back-up or archive purposes.

B. Tomball may copy the licensed Software as necessary to its hard disks or other such storage medium to efficiently operate the Software on Tomball's single-user system, multiple-user system, or network. The Software shall be copied as a whole, and the use of the copies shall be governed by this Agreement. All other copying is prohibited.

9. Limitations on the Use of the Software.

Tomball may not reverse engineer, decompile, or disassemble the Software. The Software is licensed as a single product. Its component parts may not be separated.

10. Notices of Intellectual Property Rights.

Tomball shall assure that PSC's notices of intellectual property (e.g., patent, trademark, and copyright notices) provided by PSC, if any, shall remain visible on the Software when displayed electronically, or when output created by it, is printed.

11. Payment.

Tomball shall pay the Contractor for the FAAS Services described, in accordance with **Attachment B ("Payment Terms")**. Tomball is a Texas public entity and all financial obligations extending beyond the current fiscal year are subject to funds being budgeted and appropriated therefore.

12. Collection of Fines.

Tomball shall support the collection of false alarm fees and fines in accordance with the Alarm Ordinance and at the direction of the Alarm Administrator. If Tomball directs PSC to engage a third-party collection organization for delinquent amounts, Tomball shall cause the necessary legislative and administrative procedures to be enacted and/or adopted in order to delegate to the Contractor the authority to collect unpaid fees on behalf of Tomball.

13. Confidentiality of Tomball False Alarm Data.

Any false alarm collection data provided to the Contractor during the performance of the FAAS Services shall be used only in a manner consistent with this Agreement, and no false alarm collection data shall be disclosed without the prior written consent of Tomball. If such disclosure is compelled or required in any judicial or administrative proceeding, the Contractor shall, before disclosing such information, first notify Tomball and give Tomball an opportunity to object to the disclosure.

In the event Tomball objects to such disclosure, it shall notify the Contractor that it will indemnify it for any costs and expense incurred, including, without limitation, the cost of attorney fees expended in the defense of any action or proceeding, or relating to the refusal to disclose such information.

14. Tomball Responsibilities.

A. Tomball shall cooperate with and assist the Contractor by providing management decisions affecting implementation of the FAAS Services within five (5) business days of receipt of Contractor's request for a decision, as well as providing personnel, information, approvals, and acceptances in accordance with a mutually-agreed Implementation Plan to be developed by PSC and Tomball at the start of the Alarm Management Services. This Implementation Plan will define the detailed tasks and schedule necessary to achieve the following program milestones:

- 1) Commence FAAS program implementation activities on the Effective Date;
- 2) Begin collecting and processing alarm permit information via PSC hosted Tomball alarm program website within forty-five (45) days of the Effective Date. The initial

permit registration process shall be substantially complete within 90 days of the Effective Date;

- 3) Train the Tomball Alarm Administrator and other selected staff to access alarm data and reports online within 60 days of the effective date; and
- 4) Update an online Alarm Class within 120 days of the effective date.

The Implementation Plan shall be agreed to in writing by both parties and upon execution by both parties shall be incorporated into this Agreement by reference.

B. Tomball shall provide the Contractor with CAD Records, appeals records and other alarm incident information in accordance with the terms of a mutually-agreed implementation plan and in a mutually-agreed format, as necessary and proper, to allow the Contractor to effectively provide the services needed to enforce the Alarm Ordinance.

15. Tomball Alarm Administrator.

To facilitate effective communication between Tomball and the Contractor, and in accordance with the Alarm Ordinance, Tomball shall designate an Alarm Administrator. The Alarm Administrator shall have the power and authority to make decisions relating to the FAAS Services. A secondary Alarm Administrator will also be designated to act on behalf of the Alarm Administrator when the primary Alarm Administrator is unavailable. The Alarm Administrators shall be designated by the Chief of Fire and Police.

16. Resolution of Disputes.

A. *Mediation.* In the event of a dispute between the parties concerning any matter arising under this Agreement, the parties shall proceed to good-faith mediation of the dispute. The mediation venue shall be Tomball, Texas. The cost of mediation shall be shared equally.

17. Termination.

A. *By Tomball.* Tomball may terminate this Agreement for any reason and at any time by giving at least sixty (60) days written notice to the Contractor of such termination and specifying the effective date thereof. If the Agreement is terminated by Tomball, the Contractor will be paid for any services already performed; provided, further, that in no event shall the City be liable for consequential damages, exemplary damages, or damages for unabsorbed home office overhead. The Contractor shall be liable to Tomball for any damages sustained by Tomball by virtue of any breach of the Agreement by the Contractor. In addition, to other remedies it may have in law or equity, Tomball may withhold payments to the Contractor for the purpose of setoff until such time as the exact amount of damages due Tomball from the Contractor is determined.

B. *Termination Within First Two Years.* If this Agreement is terminated by Tomball during the first two years, for any reason other than breach by the Contractor, the Contractor shall be entitled to receive its initial startup costs as specified in Attachment B, in addition to any FAAS Services fees owed the Contractor as described in Paragraph 18 – Rights upon Termination.

C. *By the Contractor for Cause.* If Tomball substantially changes the Alarm Ordinance by reducing or eliminating the system of false alarm fees collected through its administrative process, the Contractor shall provide thirty (30) days prior written notice that false alarm fee collections have not been made in accordance with this Agreement. If enforcement

procedures and/or collection obligations are not changed to the reasonable satisfaction of the Contractor, the Contractor may terminate this Agreement after a further thirty (30) day written notice to Tomball.

18. Rights upon Termination.

A. If the Contractor is entitled to terminate this Agreement, the Contractor shall offer Tomball an option, which must be exercised within thirty (30) calendar days after the Notice of Termination, to purchase a conditional, uninterrupted, non-exclusive and non-transferable license to use the proprietary FAAS Software, CryWolf[®], as necessary to support and administer Tomball's Alarm Ordinance conditional on the payment of initial and annual license and services fees at the Contractor's then prevailing rates. Payment of the fees shall be within thirty (30) calendar days of the expiration of each prior paid year.

B. If Tomball terminates this Agreement or if the Contractor terminates for cause, Tomball, in addition to payment of false alarm collections owed to the Contractor through the date of termination, shall undertake good faith efforts to collect any FAAS Service fees and civil penalties for Ordinance violations billed, but not yet collected, through the date of termination, in order to pay the Contractor, all amounts due the Contractor as a result of efforts engaged in by the Contractor on Tomball's behalf.

19. Indemnification.

A. The Contractor shall indemnify, hold harmless, and defend Tomball, its elected and appointed officials, employees, agents and successors in interest from all claims, damages, losses and expenses including attorneys fees, arising out of or resulting, directly or indirectly, from the Contractor's (or Contractor's subcontractors, if any) performance or breach of the Agreement provided that such claim, damage, loss, or expense is not caused by the negligent act or omission or willful misconduct of Tomball or its elected and appointed officials and employees acting within the scope of their employment. This Hold Harmless and Indemnification provision shall in no way be limited by any financial responsibility or insurance requirements and shall survive the termination of this Agreement.

B. To the extent permitted by law, in the event that a claim is made against the Contractor that arises out of the negligence or willful misconduct of Tomball or any of Tomball's employees, the City of Tomball shall indemnify the Contractor to the extent Tomball is liable under the law.

C. Any party seeking indemnification shall promptly notify the other party of its discovery of any matter-giving rise to a claim of indemnity. For each individual claim, the indemnifying party shall have no obligation to the other or to any third party with respect to any expenses incurred by or on behalf of the other or its assumption of control of the defense of the claim, or with respect to any compromise or settlement made, without the prior written consent of both parties.

20. Patent Infringement.

The Contractor shall indemnify Tomball, its elected and appointed officials, officers, employees, agents, and successors in interest from and against all damages and expenses resulting from any infringement action brought against the Contractor, or against Tomball to the extent that any such action is predicated on the use of Contractor's software, during the term of

this Agreement. This Hold Harmless and Indemnification provision shall in no way be limited by any financial responsibility or insurance and shall survive termination of this Agreement.

21. Limitation of Liability.

In no event shall either Party be liable to the other for consequential, special, or incidental damages arising out of or relating to performance and nonperformance. This limitation shall apply regardless of the form of action, whether in contract or in tort, including negligence or misrepresentation.

22. Insurance

This Contractor shall provide and maintain in full force and effect at no additional cost to Tomball for the duration of the Agreement commercial general liability insurance or comprehensive general liability insurance with a minimum limit of \$1,000,000 per occurrence for bodily injury and damage to property including contractual liability, premises/operations, products/completed operations, independent contractors, broad form property damage, and personal injury coverage and a minimum aggregate amount of \$1,000,000 or commercial/comprehensive general liability insurance plus additional excess umbrella liability insurance to meet these limits.

The Contractor agrees that it shall add Tomball, its elected and appointed officials, officers, employees, agents, and successors in interest to the Contractor's liability insurance policies as additional insureds. The Contractor shall require its insurance carrier or agent to certify that this requirement has been satisfied on all Insurance Certificates issued under this Agreement.

Before any work is initiated and before any invoices are paid for work performed under this Agreement, the Contractor shall provide written proof of compliance with the above insurance requirements by delivering to:

City of Tomball
Attention: Lisa Coe
401 Market Street
Tomball, Texas 77375; and

City of Tomball
Attention: Chief Randy Parr
401 Market Street
Tomball, Texas 77375

a copy of a certificate or certificates of insurance completed by its insurance carrier or agent certifying that minimum insurance coverages as required above are in effect and that the coverage will not be canceled or changed until thirty (30) days after written notice is given to Tomball. The Contractor shall maintain, update, and renew the Certificate(s) for the term of this Agreement.

23. Assignment.

This Agreement shall not be assigned to any third party without prior written consent, which may be withheld in the sole and absolute discretion of either party.

24. Attorney's Fees.

Should the parties or either of them employ an attorney to enforce by litigation in a court of competent jurisdiction, any of the Agreement provisions because of a disputed matter arising under this Agreement, to assert damages for the breach of the Agreement, or in order to obtain injunctive relief, then the prevailing party shall be entitled to recover reasonable and necessary attorney's fees that are equitable and just.

25. Notices.

Wherever under this Contract one party is required or permitted to give notice to the other, such notice shall be deemed given when delivered in hand or when mailed, by United States mail, certified, return receipt requested, postage prepaid, and addressed as follows:

In the case of the Contractor:

Public Safety Corporation
103 Paul Mellon Court
Waldorf, Maryland 20602
Attention: Contract Administration

In the case of Tomball:

City of Tomball
Attention: City Secretary
401 Market Street
Tomball, Texas 77375

26. Governing Law.

The substantive laws of the State of Texas shall govern this Agreement without regard to the law of conflicts. Venue shall lie exclusively in any court of jurisdiction in Harris County, Texas. Such actions shall neither be commenced in nor removed to federal court.

27. Severability.

If any provision of this Agreement is held invalid or otherwise unenforceable, the enforceability of the remaining provisions shall not be impaired.

28. No Waiver.

The failure by any party to exercise any right stated in this Agreement shall not be deemed a waiver of the right.

29. Complete Agreement.

This Agreement when signed by both parties sets forth the entire understanding of the parties as to its subject matter, conditions and obligations and may not be modified except by further written agreement.

30. Independent Contractors.

In performing the work under this Agreement, the Contractor acts as an independent contractor and is solely responsible for necessary and adequate worker's compensation insurance, personal injury and property damage insurance, as well as errors and omissions insurance. The Contractor, as an independent contractor, is obligated to pay federal and state income tax on moneys earned. The personnel employed by the Contractor are not and shall not become employees, agents or servants of Tomball because of the performance of any work by this Agreement.

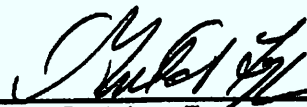
31. No Third Party Beneficiaries.

This Agreement only inures to the benefit of, and may only be enforced by, the Parties or their legal Assignees. No other person or entity shall have any right, title, or interest under this Agreement or otherwise be deemed to be a third-party beneficiary of this IDDA.

[Remainder of Page Intentionally Left Blank]

WHEREAS, the individuals representing the parties are both authorized and have executed this Agreement effective as of on the date first written above.

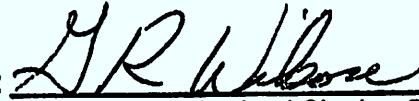
Tomball, Texas

By: 
Mayor Gretchen Fagan

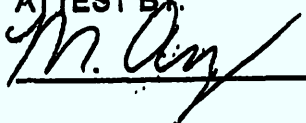
ATTEST BY:


City Secretary

AOT Public Safety Corporation

By: 
[Authorized Signing Officer]
George R. Wilson - V. P.
[Name and Title - please print]

ATTEST BY:



ATTACHMENT A FAAS Scope of Services

Purpose

The purpose of this Scope of Services is to summarize the duties and responsibilities of AOT Public Safety Corporation ("PSC"), and the City of Tomball, Texas ("Tomball")

PSC Responsibilities

PSC will be responsible for the daily operation of the Program. This will include:

1. Initially importing electronically into PSC's alarm processing system (CryWolf®) database alarm system registration / permit data obtained from Tomball, Tomball Alarm Users and/or alarm companies, as authorized by Tomball;
2. Registering and updating alarm permits in accordance with the Tomball Alarm Ordinance ("Ordinance"). Permit registrations may be processed by mail and online;
3. Importing daily into the PSC alarm billing system, false alarm incident data (in formats prescribed by PSC) extracted from Tomball's CAD System;
4. Initializing, maintaining, securing and backing up Program databases including alarm registration and incident data, alarm-related financial transactions and accounts receivable information. PSC will comply with the provisions of the Ordinance, and update Program business rules to comply with any Ordinance changes;
5. Processing false alarm incident data, including the matching of false alarm incidents with the security alarm registration / permit database maintained by PSC;
6. Billing and corresponding with alarm users in accordance with the Alarm Ordinance provisions. This will include but may not be limited to notifications of false alarms, invoices, and delinquent payment notices;
7. Providing Tomball specific information to include a checklist on false alarm reduction and Ordinance requirements in the first false alarm notice / warning letter sent to alarm users;
8. Answering telephone inquiries from Tomball alarm users that are placed to a false alarm program toll-free customer service number;
9. Assisting Tomball in establishing an appeal process that is user friendly to the public to include notifying Tomball of any appeals, providing a City Alarm Program representative with documentation supporting noticing/billing decisions; and updating the system with the disposition of any City hearing results;
10. Providing and maintaining computer equipment, software, mailing equipment and furniture at the Program processing facilities in Waldorf, Maryland;
11. Providing Tomball secure, online, on-demand access to alarm management information and access to reports including, but not limited to, alarm account transaction history, weekly registration/permit and suspension information, and weekly collections and deposits with format and

content specified by the CryWolf® Alarm Management System and the designated Bank, and agreed on between Tomball and PSC; and,

12. Performing special collection functions as approved by Tomball such as retaining third party collection agency, providing delinquent account information to other City agencies and / or filing property liens (if permitted by law).

PSC is responsible for all costs of carrying out these responsibilities including, but not limited to, the costs of staff, facilities, equipment and consumable supplies. Only credit card fees, third party collection costs (if any), e.g. collection agency fee, citizen overpayments and any special mailing costs (above U.S. First Class postage) will be paid from gross collections.

Tomball Responsibilities

1. Appointing a Tomball Alarm Administrator ("Administrator") who will be the primary point of contact between PSC and Tomball. The Administrator is responsible for overseeing PSC's operation of the False Alarm Management Services Program ("Program") and accessing Program Information, as needed, via PSC provided online access;
2. Requesting Alarm Companies to provide alarm system registration information and supporting PSC, as needed, to ensure that Alarm Companies comply with alarm system information requests;
3. Making any and all decisions about alarm call response, determining whether calls are false alarms, providing any on-scene communication of alarm related information to alarm users, and for documenting alarm related information within the Tomball CAD system;
4. Extracting false alarm incident data from the CAD System and transferring this data electronically to PSC (via email or PSC FTP site). Tomball staff are also responsible for entering, or causing to be entered, into the CAD System any false alarm related information that Tomball may choose to display to CAD System operators through the CAD System;
5. Processing fee / penalty payments mailed to Tomball and deposited by Tomball in a separate alarm program bank account and received from other payment channels, e.g. online, as agreed on by PSC and Tomball, and applying these payments to alarm accounts using a PSC provided online payment application website;
6. Scheduling, conducting and making appeal decisions for any false alarm hearings;
7. Conducting, after consulting assistance from PSC, any general public education programs on false alarms; and,
8. Transferring any and all financial information from the Program generated alarm reports to other Tomball financial systems, as needed.

Tomball is responsible for all costs of carrying out these responsibilities, including, but not limited to the costs of staff, facilities, computer equipment and consumable supplies.

ATTACHMENT B

PAYMENT TERMS

1. Revenue Sharing Percentage

For the provision of all services and technology outlined in this Agreement, PSC shall obtain payment exclusively from the revenues PSC helps generate. There shall be no upfront systems development, licensing, conversion, equipment, travel or other costs. PSC shall purchase, configure, install, and customize all systems and processes PSC requires to provide the False Alarm Management Services described herein. The Revenue Sharing schedule is as follows:

PSC's Percentage Share of Collected Revenue



Revenue Source	PSC's Percentage Share
Alarm User Overpayments, if any;	100%
Special mailing costs, if any, in excess of U.S. Post Office first class rates; and,	100%
Third-party credit card processing charges, if any.	100%

The First Revenue Year shall begin when revenue collections begin. The only amounts that shall be paid from the total collected revenue and subtracted from the total collected revenue before the revenue sharing percentages are applied are:

1. Alarm user overpayments, if any;
2. Special mailing costs, if any, in excess of U.S. Post Office first class rates; and,
3. Third-party credit card processing charges, if any.

The percentages in the Option Years are proposed targets and are predicated on Tomball extending the Agreement term to additional Program years. The percentages are also based on several assumptions over which PSC has little or no control:

- The Ordinance fee and fine schedules remain at levels equal to or greater than in Revenue Years 1 through 3;
- Tomball adopts a fair, but firm approach to granting appeals; and
- Tomball actively supports enforcement of the Alarm Ordinance, including support of reasonable measures to collect all amounts due for violations of the Ordinance.

Payment Terms

Tomball and PSC agree as follows:

1. All alarm permit and false alarm fee collections from any payment method, including but not limited to bank lockbox and online credit card, shall be deposited by Tomball, as

soon as practical, in a False Alarm Bank Account ("False Alarm Account") to be established at the City's depository bank;

2. Tomball and PSC agree to maintain a positive balance of available funds ("Minimum Balance") at all times in the False Alarm Account;
3. At the beginning of each month, PSC will reconcile the alarm related deposits for the most recent completed month and report the same to Tomball. Upon Tomball's approval, Tomball and PSC shall authorize and cause the issuance of electronic (ACH) transfers to Tomball and to PSC as follows:
 - a. With regard to the transfer to PSC, the amount will be calculated for PSC based on the Revenue Share Table above. That amount, not to exceed 50% of the revenue collected during the preceding month, shall be transferred to a bank and account authorized by PSC; and,
 - b. The remaining balance, not to exceed 50% of the revenue collected during the preceding month, shall be transferred to a bank and account authorized by Tomball.
4. At the termination of this Agreement, any remaining balance shall be transferred to PSC and to Tomball on the same prorata basis, 50% and 50% respectively.
5. Tomball is a Texas public entity and all financial obligations extending beyond the current fiscal year are subject to funds being budgeted and appropriated therefore.

Delinquent Account Terms

The parties shall define a mutually agreeable process and methods for collecting amounts due from delinquent accounts. If organizations other than Tomball and PSC are retained to collect overdue amounts, the parties agree that the collection costs shall be borne by the parties on a pro-rata basis as follows: PSC 50% and Tomball 50%.

Tomball Payment Upon Early Termination (Per Paragraph 17)

If, within the first two (2) years of the effective date, this Agreement is terminated by Tomball for convenience under 17A, or is terminated by PSC for cause as defined in Paragraph 17C, PSC shall be due a one time Program Termination fee, not to exceed \$14,400.00, to reimburse PSC for startup costs. This fee shall be in addition to any other amounts due PSC under the Agreement. The \$14,400.00 shall be amortized (reduced) monthly on a straight-line basis over the initial two year period.