

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



MONDAY, DECEMBER 5, 2011

6:00 P.M.

Notice is hereby given of a meeting of the Tomball City Council, to be held on Monday, December 5, 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 Wayne Graumann, Salem Lutheran Church

3.0 Pledges to U.S. and Texas Flags

- Led by Members of the Tomball High School Student Council

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

5.0 Presentations:

- Proclamation - December 5, 2011 is "*Sophomore Tomball Redcats, 2011 Sophomore Super Bowl Champions Day*"

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 – *Christmas on Commerce*

7.0 Approval of Minutes of the November 21, 2011 Regular City Council Meeting

8.0 Old Business:

- 8.1 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 estimated amount of such expenditures for such Project is \$15,750.00.
- 8.2 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")
- 8.3 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.
- 8.4 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

- 8.5 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

9.0 New Business:

- 9.1 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
- 9.2 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
- 9.3 Approve Professional Services Agreement with LJA Engineering, Inc., in the amount of \$1,445,800.00 for Final Design, and Professional Services Agreement with Cobb Fendley & Associates, Inc., in the amount of \$34,600.00 for Professional Services related to Land Acquisition, and Authorize City Manager to Execute Agreements.
- 9.4 Discussion of City Sidewalks (Country Meadows & Spring Pine Estates)
- 9.5 Executive Session: The City Council will meet in Executive Session as Authorized by Title 5, Chapter 551, Government Code, the Texas Open Meetings Act, for the Following Purpose:

- Section 551.071 Consultation with Attorney regarding Litigation

10.0 Adjournment

CERTIFICATION

I hereby certify that the above notice of meeting was posted on the bulletin board of City Hall, City of Tomball, Texas, a place readily accessible to the general public at all times, on the 2nd 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 5, 2011

Topic:

- Proclamation - December 5, 2011 is "*Sophomore Tomball Redcats, 2011 Sophomore Super Bowl Champions Day*"

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:

Proclamation - "Sophomore Tomball Redcats, 2011 Sophomore Super Bowl Champions Day"

Office of the Mayor
Tomball, Texas

Proclamation



- WHEREAS,** the **2011 Sophomore Tomball Redcats** team became the first Tomball team in more than twenty years to bring home the 2011 Sophomore Super Bowl Championship; and
- WHEREAS,** during the 2011 playoffs, the **Redcats** defeated the Rams in the first game of the playoffs, making it into the Divisional Championship game, in which the **Redcats** trailed 6-0 before completing a touchdown and the extra point in the last 30 seconds of the game, winning 7-6 and qualifying for the Super Bowl; and
- WHEREAS,** in a David vs. Goliath match, the **Sophomore Tomball Redcats** faced the Spring Lions, defeating the Spring Lions 13-7, making the **Sophomore Tomball Redcats** the first Tomball team to win the Sophomore Super Bowl Championship in more than twenty years; and
- WHEREAS,** the City Council wishes to congratulate Coaches Danny Petty, Matt Hill, Rick Grassi, David Frey, Clint Johnson, and Cliff Kraner and the members of the **2011 Sophomore Tomball Redcats** team: Shain Beebe, Robert Buniva, Alex Carrillo, Colton Duoto, Cory Faulkner, Tyler Frey, Nicholas Grassi, Hudson Hall, Chase Haner, Caleb Hill, Marshall Ingram, Jake Johnson, Brady Kraner, Justin Lane, Erik Laneave, Chase Lawson, Carter Monrad, Christopher Monrad, Blake Muse, Mason Posinski, Blake Rogers, Nolan Spann, Luke Stafford, Brandon Teague, Adam Terrell, Joshua Wilkins, and Evan Wylie for their tremendous win;

NOW, THEREFORE, by virtue of the authority vested in me as **Mayor of the City of Tomball**, on behalf of the Tomball City Council and all citizens hereof, I do hereby proclaim **December 5, 2011**, as:

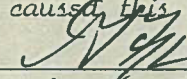
**“SOPHOMORE TOMBALL REDCATS,
2011 SOPHOMORE SUPER BOWL CHAMPIONS DAY”**



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

ATTEST:

DATE:



Doni Spier

December 2, 2011

Regular City Council

Agenda Item

Meeting Date: December 5, 2011

Data Sheet

Topic:

- 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 – *Christmas on Commerce*

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:

Dedication of the Tomball Depot Fountain

Friday, December 9, 2011
5:00 pm

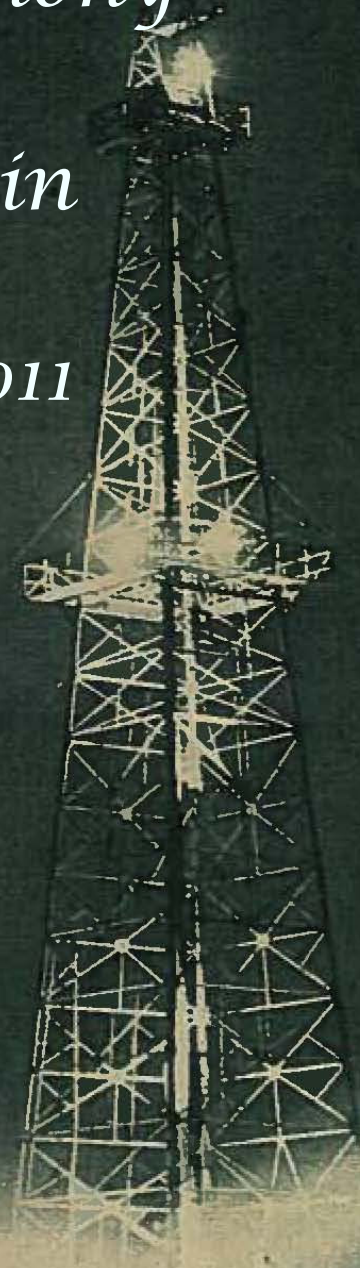
*The Mayor and City Council
would like to invite you
to join them in the*

*Ribbon Cutting Ceremony
for the
New Depot Fountain
on*

*Friday, December 9, 2011
5:00 pm*

*At the corner of
Market Street
and Walnut*

*Please stay and enjoy
the German
Christmas
Market events
after the ceremony!*



Regular City Council
Agenda Item
Data Sheet

Meeting Date: December 5, 2011

Topic:

Approval of Minutes of the November 21, 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 - 11/21/2011 Regular City Council Meeting

MINUTES OF REGULAR CITY COUNCIL MEETING CITY OF TOMBALL, TEXAS



**MONDAY, NOVEMBER 21, 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
Assistant City Secretary – Betsy Gates
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

2.0 The invocation was led by Pastor James Clark, First Baptist Church

3.0 Pledges to U. S. and Texas Flags were led by Members of the Tomball High School Student Council, Sheldon Hodge and Jacob Ready.

4.0 The following public comments were received:

Brad Hallmark 28231 Camille Drive, 77375	- Expressed his opposition to Agenda items 8.9 and 8.10; Zoning Case P11-371 & Zoning Case P11-372 Hildreth properties
Gary Henneke 31210 Stella Lane, 77375	Expressed his opposition to Agenda item 8.10, Zoning Case P11-371
Russell Hill 31207 Alice Lane, 77375	Expressed his opposition to Agenda item 8.10 and potential traffic problems diverted to Alice Lane should it pass
David Wood 28227 Camille Drive, 77375	Expressed his opposition to Agenda items 8.9 and 8.10; Zoning Case P11-371 & Zoning Case P11-372 Hildreth properties
Rhonda Bolton 28111 Camille Drive, 77375	Expressed her opposition to Agenda items 8.9 and 8.10; Zoning Case P11-371 & Zoning Case P11-372 Hildreth properties
Donna Hill 31207 Alice Lane, 77375	Read her opposition to item 8.10, Zoning Case P11-371, into the record
Judy Cooper 31106 Stella Lane, 77375	Read her opposition to Hildreth rezoning into the record
Ken Duncan 17507 Sorrel Ridge, Spring, 77388	Read his opposition to rezoning into the record
Linda Wrentz 31203 Antonia Lane, 77375	Read her opposition to Agenda items 8.9 and 8.10 into the record
John Black 31427 Stella Lane, 77375	Read his opposition to item 8.10 into the record
Joyce Godwin 31330 Alice Lane, 77375	Read her opposition to items 8.9 and 8.10 into the record
Thomas Godwin 31330 Alice Lane, 77375	Read his opposition to items 8.9 and 8.10 into the record
Lorraine Benignus 31202 Antonia Lane, 77375	Read her opposition to items 8.9 and 8.10 into the record

Everett Benignus
31202 Antonia Lane, 77375

Read his opposition to items 8.9 and 8.10 into the record

James Wrentz
31203 Antonia Lane, 77375

Read his opposition to items 8.9 and 8.10 into the record

Wayne Thomas
28223 Camille Drive, 77375

Read his opposition to items 8.9 and 8.10 into the record

Nelson Foehner
31207 Antonia Lane, 77375

Read his opposition to items 8.9 and 8.10 into the record

Helen Burchfield
31122 Antonia Lane, 77375

Read her opposition to items 8.9 and 8.10 into the record

Josephine Leonard
31123 Alice Lane, 77375

Read her opposition to items 8.9 and 8.10 into the record

Deborah Pursell
31223 Antonia Lane, 77375

Read her opposition to items 8.9 and 8.10 into the record

Joy Criner
31419 Stella Lane, 77475

Read her opposition to item 8.10 into the record

Patricia Wilcox
28114 Chris Lane, 77375

Read her opposition to item 8.10 into the record

Bruce Hillegeist
20339 Telge, 77377

Expressed his appreciation for City support in successful Chamber Holiday Parade event and introduced Miss Tomball 2012, Lacy Renee Easley

5.0 Mayor Fagan presented to Jennifer Moffitt:

- Proclamation – “Pancreatic Cancer Awareness Month - November 2011

6.0 Reports and Announcements:

- **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
 - Mike Baxter – November 19, 2011 **Tomball Art Walk**- reported 55 artists and 27 restaurants participated in the very successful final art walk of 2011

- 7.0 Motion was made by Councilman Dodson, second by Councilman Townsend, to approve the minutes of the November 7, 2011 Regular Council Meeting.

Motion carried unanimously.

8.0 New Business:

- 8.1 Mayor Fagan presented the proposed candidates for appointment. Councilman Hudgens nominated Barbara Tague and Mayor Fagan recommended Lori Klein Quinn as candidates to be a Member to the Tomball Economic Development Corporation to fill the unexpired term/vacancy created by resignation of Gary Smith for term expiring May 2, 2012. Vote was as follows:

Councilman Hudgens	–	Barbara Tague
Councilman Stoll	–	Lori Quinn
Councilman Brown	–	Lori Quinn
Councilman Townsend	–	Lori Quinn
Councilman Dodson	–	Lori Quinn

Lori Klein Quinn is appointed to the vacant seat on the Tomball Economic Development Corporation.

- 8.2 Kelly Violette presented an overview of the proposed Project. Motion was made by Councilman Stoll, second by Councilman Townsend, to approve, as a Project of the Corporation, an agreement with Houston Poly Bag I, Ltd, to make direct incentives to or expenditures for equipment expansion for the creation and retention of primary jobs for Houston Poly Bag I, Ltd. The estimated amount of expenditures for such project is an amount not to exceed \$80,000.00.

Motion carried unanimously.

- 8.3 Lori Lakatos presented an overview of the proposed Agreement. Motion was made by Councilman Dodson, second by Councilman Brown, to approve and authorize City Manager to execute Professional Services Agreement with AECOM Technical Services, Inc. (AECOM) for services related to Utilities GIS in the amount of \$150,000.

Motion carried unanimously.

- 8.4 Kelly Violette presented an overview of the proposed Amendment. Motion was made by Councilman Townsend, second by Councilman Stoll, to approve First Amendment to Economic Development Agreement between the Tomball Economic Development Corporation and Stripes L.L.C. for additional funding of \$15,400.

Motion carried unanimously.

- 8.5 Kelly Violette presented an overview of the proposed Resolution. Motion was made by Councilman Brown, second by Councilman Dodson to approve, on First 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 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>

Motion carried, 4 votes Aye to 1 vote Nay.

- 8.6 Mayor Fagan presented the proposed candidates for the Tourism Advisory Committee. Motion was made by Councilman Dodson, second by Councilman Brown to re-appoint Ken Shuman, Holly Cook and Kevin Lala to their respective positions on the Tourism Advisory Committee. Vote was as follows:

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

Motion carried, 4 votes Aye to 1 vote Nay.

- 8.7 Rodney Schmidt presented the staff report for **ZONING CASE P11-360:** Request by First Baptist Church of Tomball to amend the City's Comprehensive Zoning Ordinance to rezone 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 Commercial and Old Town & Mixed Use Districts to the Commercial District.

- Mayor Fagan opened the Public Hearing on **ZONING CASE P11-360** at 6:50 p.m.; the following public comment was received:

Pastor James Clark 15822 Birchview Drive, 77377	- Expressed his appreciation and thanks for the Planning & Zoning Commission and the City Council for helping with the zoning Ordinance for the First Baptist Church
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Mayor Fagan closed the public hearing at 6:51 p.m.

- Motion was made by Councilman Townsend, second by Councilman Brown, to read Ordinance No. 2011-27 by caption only on First Reading.

Motion carried unanimously.

- Motion was made by Councilman Townsend, second by Councilman Stoll, to Adopt on First Reading, Ordinance No. 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 Hudgens	<u>Aye</u>
Councilman Stoll	<u>Aye</u>
Councilman Brown	<u>Aye</u>
Councilman Townsend	<u>Aye</u>
Councilman Dodson	<u>Aye</u>

Motion carried unanimously.

- 8.8 Rodney Schmidt presented the staff report for **ZONING CASE P11-362:** Request by Leslie Lagerquist, on behalf of Catlin Joint Venture, to amend the City's Comprehensive Zoning Ordinance to rezone 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 Commercial District to the Old Town and Mixed Use District.

- Mayor Fagan opened the Public Hearing on **ZONING CASE P11-362** at 6:57 p.m.; the following public comment was received:

Leslie Lagerquist 30711 William Juergens, 77375	- Expressed his appreciation and thanks as this zoning will help facilitate sale of lot that will help their balance sheet
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- Mayor Fagan closed the public hearing at 6:57 p.m.
- Motion was made by Councilman Townsend second by Councilman Stoll, to read Ordinance No. 2011-28 by caption only on First Reading.

Motion carried unanimously.

- Motion was made by Councilman Townsend, second by Councilman Stoll, to Adopt on First Reading, Ordinance No. 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 Stoll	<u>Aye</u>
Councilman Brown	<u>Aye</u>
Councilman Townsend	<u>Aye</u>
Councilman Dodson	<u>Aye</u>
Councilman Hudgens	<u>Aye</u>

Motion carried unanimously.

- 8.9 Rodney Schmidt presented the staff report for **ZONING CASE P11-371**: Request by Peter and Sylvia Hildreth to amend the City's Comprehensive Zoning Ordinance to rezone approximately 6.93 acres of land, legally described as Lots 36, 43, 44, 45, and Reserve D out of the Tomball Hills Addition Plat and Tract 27, Abstract 34, Joseph House Survey, within the City of Tomball, Harris County, Texas, generally located on the easterly side of State Highway 249, northerly of Zion Road, from the Single-Family Residential-9 and Commercial Districts to the General Retail District. (This case will be heard in conjunction with Zoning Case P11-372.)

- Mayor Fagan opened the Public Hearing on **ZONING CASE P11-371** at 7:06 p.m.; the following public comments were received:

- | | |
|--|---|
| Otis Bakke
3220 North Fwy Fort Worth TX,
76111 | - Attorney for Pete Hildreth, has tried to communicate with homeowners and spoke with R. Bolton, HOA President, on November 21, 2011. Mr. Bakke requested the Council table consideration of this item. |
| Linda Wrentz
31203 Antonia Lane, 77375 | - Expressed her opposition to the re-zoning request. |
| Pat Bailey
1319 Dove Trails, 77375 | - Expressed her opposition to Council's tabling consideration of the re-zoning request. |
| Deborah Pursell
31223 Antonia Lane, 77375 | - Expressed her opposition to Council's tabling consideration of the re-zoning request. |
| Dennis Bell
31215 Antonia Lane, 77375 | - Expressed his opposition to Council's tabling consideration of the re-zoning request. |
| Sylvia Hildreth
11126 N. Country Club Green
Drive, 77375 | - This has been an ongoing issue. She is not sure what homeowners want. Trees were removed to allow space for equipment. Hildreths have put up a fence three times and have tried to talk to homeowners but homeowners have been having private meetings. |
| Michael Cook
108 Anna, 77375 | - Pete Hildreth's brother-in-law. No residences could be built on Pete's lots anyway because the land slopes too much. |
| Gary Henneke
31210 Stella Lane, 77375 | - Expressed his concerns regarding lack of trees, erosion and asked what Mr. Hildreth might be putting into Spring Creek. |
| John Black
31427 Stella Lane, 77375 | - Long-time Tomball Hills resident - his land slopes and is perfectly fine. |

- Mayor Fagan closed the public hearing at 7:16 p.m.

Councilman Dodson stated that he would abstain from participation in discussion or action on Items 8.9 and 8.10, based on the Conflict of Interest Affidavit previously filed with the City Secretary.

- Motion was made by Councilman Townsend second by Councilman Stoll, to read Ordinance No. 2011-29 by caption only on First Reading.

Motion carried unanimously.

- Motion was made by Councilman Townsend, second by Councilman Stoll, to Adopt on First Reading, Ordinance No. 2011-29, an Ordinance of the City of Tomball, Texas, Amending its Comprehensive Zoning Ordinance by changing the Zoning District Classification of approximately 6.928 acres of land, legally described as Lots 36, 43, 44, 45, and Reserve D out of the Tomball Hills Addition Plat and Tract 27, Abstract 34, Joseph House Survey, within the City of Tomball, Harris County, Texas, generally located on the easterly side of State Highway 249, northerly of Zion Road, from the SF-Single-Family Residential-9 and C-Commercial Districts to the GR-General Retail 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 Brown	<u>Nay</u>
Councilman Townsend	<u>Nay</u>
Councilman Dodson	<u>Abstain</u>
Councilman Hudgens	<u>Nay</u>
Councilman Stoll	<u>Nay</u>

Motion FAILED unanimously.

- 8.10 In conjunction with Zoning Case P11-371, Rodney Schmidt presented the staff report for **ZONING CASE P11-372** Request by Peter and Sylvia Hildreth for a Conditional Use Permit to operate “Tool and Machinery Rental (with Outdoor Storage)” and “Warehouse” land uses. The property is an approximately 6.93 acre site, legally described as Lots 36, 43, 44, 45, and Reserve D out of the Tomball Hills Addition Plat and Tract 27, Abstract 34, Joseph House Survey, generally located on the easterly side of State Highway 249, northerly of Zion Road. The site is located in the Single-Family Residential-9 and Commercial Districts.

NO action was taken on Item 8.10, due to failure to approve Zoning Case P11-371.

- Conduct a Public Hearing on **ZONING CASE P11-372**
- Adopt on First Reading, Ordinance 2011-30, an Ordinance of the City of Tomball, Texas, Amending its Comprehensive Zoning Ordinance by granting a Conditional Use Permit to Peter and Sylvia Hildreth, to operate a “Tool and Machinery Rental (with outdoor storage)” and “Warehouse” land uses. The property is an approximately 6.93 acre site, legally described as Lots 36, 43, 44, 45, and Reserve

D out of the Tomball Hills Addition Plat and Tract 27, Abstract 34, Joseph House Survey, generally located on the easterly side of State Highway 249, northerly of Zion Road. The site is located in the GR-General Retail Districts; Providing requirements and conditions for this Conditional Use Permit; Containing findings and other provisions relating to the subject; Providing a penalty in an amount not to exceed two thousand dollars for violations hereof; and providing for severability.

- 8.11 The City Council recessed at 7:34 p.m. to meet in Executive Session as authorized by Title 5, Chapter 551, Government Code, the Texas Open Meetings Act, for the Following Purpose(s):

- Sec. 551.072 – Deliberations Regarding Real Property

Upon reconvening into regular session at 7:50 p.m., no action was taken.

- 9.0 Motion was made by Councilman Dodson, second by Councilman Brown, to adjourn.

Motion carried unanimously.

Meeting adjourned.

PASSED AND APPROVED this _____ day of _____ 2011.

Betsy Gates, TRMC
Assistant City Secretary

Gretchen Fagan
Mayor

Regular City Council

Agenda Item

Data Sheet

Meeting Date: December 5, 2011

Topic:

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 estimated amount of such expenditures for such Project is \$15,750.00.

Background:

All expenditures of the Tomball Economic Development Corporation (TEDC) sales tax revenue must first be approved as a "Project." At a Special Meeting on October 18, 2011, the TEDC Board of Directors did take formal action to approve, as a Project of the TEDC, an agreement with ValueBank Texas for relocation and rent assistance for new or expanded business enterprise. The City Council of Tomball has final approval authority over all projects and agreements of the TEDC.

Origination:

Tomball Economic Development Corporation Board of Directors

Recommendation:

Approval of the Resolution authorizing, as a Project of the TEDC, an agreement with ValueBank Texas

Funding: Yes

Account Number: Grant Funds Available

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

City Secretary

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

ATTACHMENTS:

Resolution No. 2011-24-TEDC

TEDC Memo

Request Letter

Economic Impact Form

Agreement

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 PROMOTE AND DEVELOP A NEW OR EXPANDED BUSINESS ENTERPRISE; CONTAINING OTHER PROVISIONS RELATING TO THE SUBJECT; AND PROVIDING FOR SEVERABILITY.

* * * * *

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

WHEREAS, the Board of Directors of the TEDC had adopted as a specific project the expenditure of the estimated amount of Fifteen Thousand Seven Hundred and Fifty Dollars (\$15,750.00) found by the Board to be required or suitable to promote a new business enterprise by ValueBank Texas.; and

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

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

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

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

Section 2. The City Council hereby authorizes and approves the adoption, by the Board of Directors of the Tomball Economic Development Corporation, as a specific project for the economic development of the City, an expenditure of the estimated amount of Fifteen Thousand Seven Hundred and Fifty Dollars (\$15,750.00) to ValueBank Texas, in accordance with an economic development agreement by and between the TEDC and ValueBank Texas, to promote and develop a new or expanded business enterprise, to be located at 990 Village Square, Suite P, in Tomball, Texas.

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

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

PASSED AND APPROVED on first reading this 21st day of November, 2011.

PASSED, APPROVED, AND RESOLVED on second and final reading this 5th day of December, 2011.

Gretchen Fagan, Mayor

ATTEST:

Doris Speer, City Secretary



TO: Board of Directors
Tomball Economic Development Corporation

FROM: Kelly Violette
Executive Director

MEETING DATE: October 18, 2011

SUBJECT: ValueBank Texas

On September 27, 2011, TEDC staff received a request letter from Mike Shivers, Executive Vice President of ValueBank Texas, for funding assistance for a new combination Loan Production Office (LPO), Deposit Production Office (DPO), and Remote Servicing Unit (RSU) proposed to be located in a 3,500 square foot leased space at 990 Village Square, Suite P, Tomball, Texas.

ValueBank Texas is an independent community bank that provides a wide-array of financial services to individuals and corporate customers in Texas. ValueBank Texas is headquartered in Corpus Christi and maintains branch locations in Ingleside, Orange Grove, Port Aransas, Aransas Pass, Portland, Rockport and Richmond. ValueBank Texas is a preferred SBA lender with the Small Business Administration.

According to the request letter, ValueBank Texas desires to open a new office location in Tomball to “provide commercial loans and deposit products and services to small and medium sized businesses in the Greater Tomball Area.” The Tomball location will house four employees, including one employee of Catalyst Financial Company of Houston which will lease approximate 300 square feet from ValueBank Texas. The average salary of the employees will be \$118,500. ValueBank Texas proposes to invest approximately \$150,000 in technology and equipment for the Tomball facility.

The proposed incentive package is based upon a rent assistance agreement to fund 25% of the base monthly rent for the first year of operation only. The lease agreement that was submitted in conjunction with the request letter shows a three-year lease commitment with a monthly rent amount of \$5,250 for the first year and a rent reduction in years two and three. The proposed grant amount is \$15,750 payable after the first year of operation

based on landlord verification of rents paid and meeting the performance agreement criteria.

Although this project does not create primary jobs, it does promote the development and expansion of business enterprise, which is considered a permissible project as outlined in Texas Economic Development Legislation. If this project is approved, it will go to the Tomball City Council for final approval by resolution at two separate readings.

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

If the agreement between the TEDC and ValueBank Texas is approved as a Project of the Corporation, the grant funding amount will not exceed \$15,750, based on 25% of the base monthly rent for the first 12 months of operation.



September 27, 2011

Kelly Violette

Executive Director

Tomball Economic Development Corporation

P.O. Box 820

Tomball, Texas 77377-0820

Dear Ms. Violette:

ValueBank Texas, a Texas State Chartered Banking Corporation, headquartered in Corpus Christi, Texas intends to expand its business by opening a combination Loan Productions Office (LPO), Deposit Production Office (DPO), and a Remote Servicing Unit (RSU) as defined in the Texas Banking Code in Tomball, Texas

ValueBank has entered into negotiations to lease office space from Gatewood and Associates at a location known as 990 Village Square, Suite P, Tomball, Texas 77375.

We are leasing 3500 square feet of space under the terms of the specimen lease attached.

Information on ValueBank is as follows:

President and CEO: Scott Heitkamp

Home office address: 3649 Leopard Street, Corpus Christi, Texas 78408

Mailing address: P.O. Box 4958, Corpus Christi, Texas 75469

Main telephone: 361-888-4451

Contact person for project: Steven L. Vaughan, Vice President 281-413-4193

ValueBank Texas is in the business of commercial banking and operates under the NAICS code of 52210. The bank offers commercial and consumer checking accounts, treasury management services, consumer and commercial loans, commercial leasing, and is a preferred SBA lender with the Small Business Administration. Please refer to our website at www.valuebanktx.com for a complete explanation of our total products and services. Our mission in Tomball is to provide commercial loans and deposit products and services to small and medium sized businesses in the Greater Tomball area. By bringing our capital to Tomball, we want to fuel the growth and well being of the business customers there. We intend to apply the latest technologies to our efforts in Tomball so that we can serve our customers through any channel they desire. The locations will not be a full service branch in the classic sense. It will be dedicated to serving businesses and the owners and employees of those businesses.

ValueBank intends to invest over \$150,000 in technology in its Tomball LPO. These include computer servers and workstations, signage, and a unique approach to deposit service known as video banking. Video banking consists of a kiosk located in our LPO/DPO office that can handle any transaction that a

teller can, only the teller can be located anywhere. For a complete explanation and demos, go to http://ugenius.com/learnmore_whatishvbs.php.

ValueBank is also subleasing 300 sq ft to Catalyst Financial Company of Houston who will have an office within the LPO. Catalyst provides commercial factoring and asset based lending and operates under the NAICS code 522298.

We will bring 4 new jobs to Tomball upon opening.

The average wage will be \$118,500.00

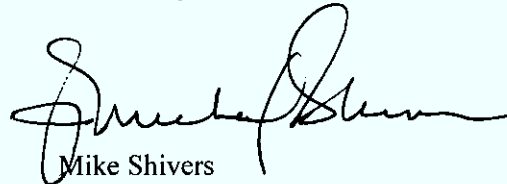
Steven Vaughan has provided you with projected financial information on the project.

We intend to start immediately upon approval of the Texas Banking Department and upon the consideration for a grant from the Tomball Economic Development Corporation. We plan to be open within 60 days of approvals.

Attached please find a copy of the proposed lease and some financial highlights of ValueBank Texas.

Your consideration in this matter is appreciated.

Yours truly,

A handwritten signature in black ink, appearing to read "Mike Shivers", with a stylized, flowing script.

Mike Shivers

Executive Vice President

ValueBank Texas

ValueBank Texas

TOMBALL ECONOMIC DEVELOPMENT CORPORATION

CITY OF TOMBALL ECONOMIC IMPACT MODEL

Average Annual Wage Assessment:

Number of Employees	Average Hourly Wage	Average Weekly Wages	Total Annual Wages (52 wks.per Yr.)
Existing: 0			
Prospective: 4			
TOTAL: 4	57.00	9,120	474,240
Federal Income and FICA Taxes at 28% deducted			132,787
Fixed payments for rent, insurance, etc. at 25%			118,560
Net Disposable Annual Income			222,893

Total Return to Local Government by Annual Payroll:

Local Sales Tax Rate of 2% on Fixed Payments:	2,371
Average Multiplier effect of the Dollar turning over 3.5 times to Calculate the Total Annual Local Sales Tax Impact:	8,299

Annual Sales Tax Impact:

Value of Retail Sales	Sales Tax
0	2.00% 0

Estimated Property Tax Impact:

Value of Property and Improvements	Tomball Tax Rate (per \$100)	
150,000	0.25146	377
Annual Economic Impact of Manufacturing and Maintenance Facility		8,676
Economic Impact over a Five Year Period		43,382

AGREEMENT

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

This Agreement (the “Agreement”) is made and entered into by and between the **Tomball Economic Development Corporation**, an industrial development corporation created pursuant to Tex. Rev. Civ. Stat. Ann. Art. 5190.6, Section 4B, now Chapter 505 of the Texas Local Government Code, located in Harris County, Texas (the “TEDC”), and **ValueBank Texas** (the “Company”), 3649 Leopard Street, Corpus Christi, Texas, 78408.

WITNESSETH:

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

WHEREAS, the Company will be leasing and equipping a 3,500 square foot existing lease space located at 990 Village Square, Suite P, Tomball, Texas 77375 (the “Property”), and more particularly described in Exhibit “A,” attached hereto and made a part hereof; and

WHEREAS, the Company, currently located at 3649 Leopard Street, Corpus Christi, Texas, 78408, proposes to expand its business operations by opening a combination Loan Production Office, Deposit Production Office, and Remote Servicing Unit at the Property, and as part of the process, plans to expend funds, equip, facilitate, and make capital improvements (the “Improvements”), generally described in Exhibit “B,” attached hereto and made a part hereof, as are necessary to acquire and occupy an existing 3,500 square foot lease space; and

WHEREAS, the Company also proposes to create four (4) full-time jobs in Tomball in conjunction with the new location and upgrading of its business operations to the Property; and

WHEREAS, the TEDC agrees to provide to the Company an amount equal to twenty-five percent (25%) of the base monthly rent for the first 12 consecutive months of operation not to exceed Fifteen Thousand Seven Hundred and Fifty Dollars (\$15,750.00), to assist in the construction of the Improvements and the addition of the four (4) new employees at the Property; and

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

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

1.

Except as provided by paragraph 3, the Company covenants and agrees that it will operate and maintain the proposed business for a term of at least three (3) years within the City of Tomball.

2.

The Company also covenants and agrees that construction of the Improvements, the addition of the four (4) new employees, and obtaining all necessary occupancy permits from the City shall occur within twelve (12) months from the Effective Date of this Agreement. Extensions of these deadlines, due to any extenuating circumstance or uncontrollable delay, may be granted at the sole discretion of the Board of Directors of the TEDC.

3.

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

4.

In consideration of the Company's representations, promises, and covenants, TEDC agrees to grant to the Company an amount equal to twenty-five percent (25%) of the base monthly rent for the first 12 consecutive months of operation not to exceed Fifteen Thousand Seven Hundred and Fifty Dollars (\$15,750.00), to fund a portion of the cost of the Improvements and the addition of the four (4) new employees to the Company's business operations on the Property. The TEDC agrees to distribute such funds to the Company within thirty (30) days of receipt of a letter from the Company requesting such payment, which letter shall also include: (a) a copy of the City's occupancy permit for the Improvements to the Property; (b) proof that the Company has added the number of employees indicated above to its business operations on the Property, as evidenced by copies of Texas Workforce Commission form C-3 or Internal Revenue Service Form 941; (c) verification from the City acknowledging that all necessary plats, plans, and specifications have been received, reviewed, and approved; (d) verification that the Improvements have been constructed in accordance with the approved plans and specifications; (e) an affidavit stating that all contractors and subcontractors providing work and/or materials in the construction of the Improvements have been paid and any and all liens and claims regarding such work have been released; and, (f) an affidavit from the landlord of the Property stating that

all rents have been paid in accordance with the terms of the lease agreement for the first twelve consecutive months of operation.

5.

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

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

6.

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

7.

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

If to City:

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

If to Company:

ValueBank Texas
3649 Leopard Street
Corpus Christi, Texas, 78408
Attn: Mike Shivers, Executive Vice President

8.

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

9.

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

10.

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

11.

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

12.

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

IN TESTIMONY OF WHICH, THIS AGREEMENT has been executed by the parties on this _____ day of _____ 2011 (the "Effective Date").

VALUEBANK TEXAS

By: _____

Name: Mike Shivers

Title: Executive Vice President

ATTEST:

By: _____

Name: _____

Title: _____

TOMBALL ECONOMIC DEVELOPMENT CORPORATION

By: _____

Name: Gretchen Fagan

Title: President, Board of Directors

ATTEST:

By: _____

Name: _____

Title: Secretary, Board of Directors

ACKNOWLEDGMENT

THE STATE OF TEXAS §
 §
COUNTY OF HARRIS §

This instrument was acknowledged before me on the ____ day of _____
2011, by Mike Shivers, Executive Vice President of ValueBank Texas, for and on behalf of said
company.

Notary Public in and for the State of Texas

My Commission Expires: _____

(SEAL)

ACKNOWLEDGMENT

THE STATE OF TEXAS §
 §
COUNTY OF HARRIS §

This instrument was acknowledged before me on the ____ day of _____
2011, by Gretchen Fagan, President of the Board of Directors of the Tomball Economic
Development Corporation, for and on behalf of said Corporation.

Notary Public in and for the State of Texas

My Commission Expires: _____

(SEAL)

Exhibit “A”

Legal Description of Property

All that certain tract or parcel containing 2.3352 acres of land, legally described as Reserve “B1”, Block 2 of Tomball Village Square, Harris County, Texas according to the map or plat thereof filed for record in Volume 318, Page 86 of the Harris County Map Records,

Exhibit “B”

Improvements

- Install computers, server, network, video banking equipment and furniture
- Necessary tenant improvements to build-out office space

DRAFT

Regular City Council

Agenda Item

Meeting Date: December 5, 2011

Data Sheet

Topic:

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")

Background:

During the 82nd Legislature, the Texas Legislature passed Senate Bill 1, which included comprehensive changes to the good-in-transit exemption, found in Section 11.253, Tax Code. Harris County Appraisal District has notified all taxing units of the need to hold a public hearing and take official action as a result of the amendment to the Tax Code (see attached).

For a tax year beginning on or after January 1, 2012, a taxing unit may not tax good-in-transit unless the governing body takes official action on or after October 1, 2011 but before January 1, 2012 to provide for the taxation of goods-in-transit. Before acting to tax the exempt property, the governing body must conduct a public hearing as required by the Texas Constitution, Article VIII, Section 1-n(d). The Notice of Public Hearing has been published as required.

"Goods-in-transit" consist of tangible personal property stored under a contract of bailment in a public warehouse that is not owned or controlled by the owner of the personal property for 175 days or less—basically, goods that reside inside the city limits temporarily while awaiting shipment to other locations within or outside of Texas.

Origination:

City Secretary

Recommendation:

N/A

Funding:

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

City Secretary

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

ATTACHMENTS:

Notice of Public Hearing - December 5, 2011

Harris County Appraisal District Notification

**NOTICE OF PUBLIC HEARING AT
REGULAR COUNCIL MEETING
CITY OF TOMBALL, TEXAS**



**MONDAY, DECEMBER 5, 2011
6:00 P.M.**

Notice is hereby given that **PUBLIC HEARING** will be held by the Tomball City Council, as the Governing Body of the City of Tomball, at a Regular Council Meeting on **Monday, December 5, 2011 at 6:00 p.m.**, at City Hall, 401 Market Street, Tomball, Texas 77375, for the purpose of considering the following:

Public Hearing regarding Proposed Ordinance No. 2011-24,
whereby the City of Tomball may opt out of the
“Super Freeport Exemption” created by Senate Bill 1, Section
48.02(j-1), effective September 1, 2011.

Persons interested in the above-proposed Ordinance 2011-24 may speak regarding the City’s consideration of an ordinance to continue to tax tangible personal property in transit which would otherwise be exempt pursuant to Texas Tax Code, Section 11.253, will be given an opportunity to be heard.

CERTIFICATION

I hereby certify that the above notice of meeting was posted on the bulletin board of City Hall, City of Tomball, Texas, a place readily accessible to the general public at all times, on the 29th day of November 2011 by 5:00 p.m., and remained posted for at least 72 continuous hours preceding the scheduled time of said meeting.


Doris Speer
City Secretary, TRMC, CMC

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.



Harris County Appraisal District

13013 Northwest Freeway
Houston TX 77040
Telephone: (713) 812-5800

P.O. Box 920975
Houston TX 77292-0975
Information Center: (713) 957-7800

Office of Chief Appraiser

October 6, 2011

CITY OF TOMBALL
MS. DORIS SPEER
CITY SECRETARY
CITY OF TOMBALL
401 MARKET ST
TOMBALL TX 77375

Board of Directors
Glenn E. Peters, *Chair*
Lawrence Marshall, *Secretary*
Ed Heathcott
Gary W. Stein
Toni Trumbull
Don Sumners

Chief Appraiser
Jim Robinson
Chief Deputy & Chief Legal Officer
Sands L. Stiefer
Assistant Chief Appraisers
Guy Griscom
Teresa S. Terry
Director of Information & Assistance
Roland Altinger

Re: Senate Bill 1, Amendments to Property Tax Code §11.253 for Goods- in-Transit.

Dear Taxing Unit Official:

Please allow this letter to serve as a courtesy notice of certain time constraints within new amendments to Texas Property Tax Code Section 11.253.

Under the new amendments, a taxing unit may not tax otherwise exempt goods-in-transit in a tax year that begins on or after January 1, 2012, unless the governing body of the taxing unit holds a public hearing and takes official action **on or after October 1, 2011 and before January 1st** of the first tax year the unit wishes to tax the goods-in-transit.¹

Please refer to your taxing unit's legal counsel for pertinent tax code interpretations and procedures for tax code compliance. If the appraisal office may be of further assistance in this matter, please do not hesitate to contact the Harris County Appraisal District.

With kindest regards,

Jim Robinson
Chief Appraiser

¹ Acts 2011, 82nd Leg., 1st C.S., ch. 4 (S.B. 1), §48.02, eff. Oct. 1, 2011 (codified at Tex. Prop. Tax Code §11.253 (j-1)).

Regular City Council

Agenda Item

Meeting Date: December 5, 2011

Data Sheet

Topic:

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.

Background:

Earlier this year, the Texas Legislature amended Senate Bill 1, which included comprehensive changes to the "goods-in-transit" exemption, found in Section 11.253 of the Texas Property Tax Code. Subsequently, the Harris County Appraisal District has notified all taxing units of the need to hold a public hearing and take official action in order to tax the "goods-in-transit" in future years.

In a first called session, the legislature added subsection "j-2" to allow cities (taxing units) to continue to tax "goods-in-transit" if the City takes action (via ordinance) to tax the property.

Additionally, the bill made other changes which narrow the definition of "goods-in-transit" to mean tangible personal property stored under a contract of bailment by a public warehouse. (See attached).

Currently, we have one property in Tomball that falls within the new definition of "goods-in-transit". This property has a value of \$7,000 which would generate annual taxes of \$23.91. However, should a public warehouse be constructed in Tomball and store qualifying "goods-in-transit", the tax revenue could be significant.

Once this ordinance is passed, the "goods-in-transit" will be taxed in future years until Council rescinds the ordinance. Adoption of Ordinance No. 2011-24 is necessary to continue and retain the City's ability to tax qualifying "goods-in-transit".

Kelly Violette, Executive Director of the TEDC, is requesting that the City not tax the goods identified as they believe it will be a huge incentive for the upcoming Business Park. She will be at the Council meeting to answer any questions you might have.

Should the Council wish to exempt the taxation this year, we can always go back and reinstate it should the Council wish to do so.

Origination:

Finance

Recommendation:

Adoption of Ordinance No. 2011-24 on First Reading

Funding:

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

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

ATTACHMENTS:

Ordinance No. 2011-24 - Goods-in-Transit
Harris County Appraisal District Notification
Senate Bill 1 - Article 48, Section 48.02(j-1)

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.

* * * * *

WHEREAS, the 82nd Texas Legislature, in Special Session, has enacted Senate Bill 1, effective September 1, 2011, which included changes to Texas Tax Code, Section 11.253, effective January 1, 2012 and which provides exemption from taxation certain tangible personal property held temporarily at a location in this state for assembling, storing, manufacturing, processing, or fabricating purposes (goods-in-transit), which property has been subject to taxation in the past; and

WHEREAS, Tex. Tax Code §11.253, as amended in Subsections (e) and (h) and adding Subsections (j-1) and (j-2), allows the governing body of a taxing unit, after conducting a public hearing, to provide for the continued taxation of such goods-in-transit; and

WHEREAS, the City Council of the City of Tomball, Texas, having conducted a public hearing as required by Section 1-n(d), Article VIII, Texas Constitution, is of the opinion that it is in the best interests of the City to continue to tax such goods-in-transit; now, therefore,

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

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

Section 2. The goods-in-transit, as defined in Tex. Tax Code §11.253(a)(2), and as amended by Senate Bill 1, enacted by the 82nd Texas Legislature in Special Session, shall continue to be taxed by the City of Tomball, Texas.

Section 3. All ordinances or parts of inconsistent or in conflict herewith are, to the extent of such inconsistency or conflict, hereby repealed.

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

FIRST READING:

READ, PASSED AND APPROVED AS SET OUT BELOW AT THE MEETING OF THE CITY COUNCIL OF THE CITY OF TOMBALL HELD ON THE 17TH DAY OF OCTOBER 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 7TH DAY OF NOVEMBER 2011.

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

GRETCHEN FAGAN, MAYOR

ATTEST:

DORIS SPEER, CITY SECRETARY



Harris County Appraisal District

13013 Northwest Freeway
Houston TX 77040
Telephone: (713) 812-5800

P.O. Box 920975
Houston TX 77292-0975
Information Center: (713) 957-7800

Office of Chief Appraiser

October 6, 2011

CITY OF TOMBALL
MS. DORIS SPEER
CITY SECRETARY
CITY OF TOMBALL
401 MARKET ST
TOMBALL TX 77375

Board of Directors
Glenn E. Peters, *Chair*
Lawrence Marshall, *Secretary*
Ed Heathcott
Gary W. Stein
Toni Trumbull
Don Sumners

Chief Appraiser
Jim Robinson
Chief Deputy & Chief Legal Officer
Sands L. Stiefer
Assistant Chief Appraisers
Guy Griscom
Teresa S. Terry
Director of Information & Assistance
Roland Altinger

Re: Senate Bill 1, Amendments to Property Tax Code §11.253 for Goods- in-Transit.

Dear Taxing Unit Official:

Please allow this letter to serve as a courtesy notice of certain time constraints within new amendments to Texas Property Tax Code Section 11.253.

Under the new amendments, a taxing unit may not tax otherwise exempt goods-in-transit in a tax year that begins on or after January 1, 2012, unless the governing body of the taxing unit holds a public hearing and takes official action **on or after October 1, 2011 and before January 1st** of the first tax year the unit wishes to tax the goods-in-transit.¹

Please refer to your taxing unit's legal counsel for pertinent tax code interpretations and procedures for tax code compliance. If the appraisal office may be of further assistance in this matter, please do not hesitate to contact the Harris County Appraisal District.

With kindest regards,

Jim Robinson
Chief Appraiser

¹ Acts 2011, 82nd Leg., 1st C.S., ch. 4 (S.B. 1), §48.02, eff. Oct. 1, 2011 (codified at Tex. Prop. Tax Code §11.253 (j-1)).

ARTICLE 48. AD VALOREM TAXATION OF CERTAIN STORED PROPERTY

SECTION 48.01. Amends Section 11.253(a), Tax Code, by amending Subdivision (2) and adding Subdivisions (5) and (6), to redefine "goods-in-transit," and to define "bailee," "warehouse," and "public warehouse operator."

SECTION 48.02. Amends Section 11.253, Tax Code, by amending Subsections (e) and (h) and adding Subsections (j-1) and (j-2), as follows:

(e) Requires the chief appraiser, in determining the market value of goods-in-transit that in the preceding year were stored in this state, rather than in determining the market value of goods-in-transit that in the preceding year were assembled, stored, manufactured, processed, or fabricated in this state, to exclude the cost of equipment, machinery, or materials that entered into and became component parts of the goods-in-transit but were not themselves goods-in-transit or that were not transported to another location in this state or outside this state before the expiration of 175 days after the date they were brought into this state by the property owner or acquired by the property owner in this state.

(h) Authorizes the chief appraiser by written notice delivered to a property owner who claims an exemption under this section to require the property owner to provide copies of property records so the chief appraiser can determine the amount and value of goods-in-transit and that the location in this state where the goods-in-transit were detained for storage, rather than detained for storage assembling, storing, manufacturing, processing, or fabricating purposes, was not owned by or under the control of the owner of the goods-in-transit.

(j-1) Prohibits a taxing unit, notwithstanding Subsection (j) (relating to tangible personal property in transit) or official action that was taken under that subsection before October 1, 2011, to tax goods-in-transit exempt under Subsection (b) (relating to providing that a person is entitled to an exemption from taxation of the appraised value of that portion of the person's property that consists of goods-in-transit) and not exempt under other law, from taxing such goods-in-transit in a tax year that begins on or after January 1, 2012, unless the governing body of the taxing unit takes action on or after October 1, 2011, in the manner required for official action by the governing body, to provide for the taxation of the goods-in-transit. Requires that the official action to tax the goods-in-transit be taken before January 1 of the first tax year in which the governing body proposes to tax goods-in-transit. Requires the governing body of the taxing unit, before acting to tax the exempt property, to conduct a public hearing as required by Section 1-n(d) (relating to authorization to exempt from ad valorem taxation tangible personal property), Article VIII (Taxation and Revenue), Texas Constitution. Provides that if the governing body of a taxing unit provides for the taxation of the goods-in-transit as provided by this subsection, the exemption prescribed by Subsection (b) does not apply to that unit. Provides that the goods-in-transit remain subject to taxation by the taxing unit until the governing body of the taxing unit, in the manner required for official action, rescinds or repeals its previous action to tax goods-in-transit or otherwise determines that the exemption prescribed by Subsection (b) will apply to that taxing unit.

(j-2) Authorizes the tax officials of the taxing unit, notwithstanding Subsection (j-1) to continue to impose the taxes against the goods-in-transit until the debt is discharged, if under Subsection (j) the governing body of a taxing unit, before October 1, 2011, took action to provide for the taxation of goods-in-transit and pledged the taxes imposed on the goods-in-transit for the payment of a debt of the taxing unit, if cessation of the imposition would impair the obligation of the contract by which the debt was created.

SECTION 48.03. Provides that Section 11.253(a)(2), Tax Code, as amended by this article, applies only to an ad valorem tax year that begins on or after January 1, 2012.

SECTION 48.04. (a) Effective date, this article, except as provided by Subsection (b) of this section: January 1, 2012.

(b) Effective date, Section 48.02 of this article: October 1, 2011.

Regular City Council

Agenda Item

Meeting Date: December 5, 2011

Data Sheet

Topic:

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

Background:

On September 9, 2011, the Engineering & Planning Department received a rezoning application from First Baptist Church of Tomball for an entire 32 acre site be rezoned from the Commercial and Old Town & Mixed Use Districts to the Commercial District. The intent of this rezoning is to facilitate the development of their new church campus to include a new worship center, church offices, family/children's ministries, and other church related facilities.

There is a mixture of land uses in the vicinity. To the north of the subject site are Hicks Street right-of-way (ROW) and commercial, undeveloped, and residential land uses within the Commercial, Old Town & Mixed Use, and SF-20-E Districts; to the south are Tomball Fire Station #1 and undeveloped and residential land uses within the Commercial and Old Town & Mixed Use Districts; to the east are Quinn Road ROW, offices, Northwest EMS facility, and undeveloped and multi-family land uses within the Old Town & Mixed Use and Multi-Family Districts; and to the west is State Highway 249 ROW and undeveloped land within the Agricultural District.

On November 14, 2011, the Planning and Zoning Commission, after conducting a public hearing on this request, voted to recommend approval of Zoning Case P11-360. On November 21, 2011, the Council adopted Ordinance No. 2011-27 on First Reading.

Origination:

First Baptist Church of Tomball

Recommendation:

Adopt Ordinance No. 2011-27 on second reading.

Funding:

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

City Secretary

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

ATTACHMENTS:

Ordinance No. 2011-27

Notice of Public Hearing

Notice to Surrounding Property Owners

Zoning Case P11-360 staff Report

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

* * * * *

Whereas, the owner(s) of 32.03 acres of land, legally described as Reserve A, Block 1, First Baptist Church of Tomball, 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.; and

Whereas, at least eight (8) 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 C-Commercial and OT/MU-Old Town & Mixed Use Districts to the C-Commercial District.; and

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

Whereas, the Planning and 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 C-Commercial and OT/MU-Old Town & Mixed Use Districts to the C-Commercial District., the City Council held the public hearing on the proposal to change the zoning for the Property and the City Council considered the final report of the Planning & Zoning Commission regarding the change of zoning district classification, and,

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

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

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

Section 2. The zoning classification of 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, is hereby changed from the AG-Agricultural District to the C-Commercial 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 32.03 acres of land, legally described as Reserve A, Block 1, First Baptist Church of Tomball, generally located southerly of Hicks Street, westerly of Quinn Road, as C-Commercial District, with the appropriate reference thereon to the number and effective date of this Ordinance and a brief description of the nature of the change.

Section 4. This Ordinance shall in no manner amend, change, supplement, or revise any provision of any ordinance of the City of Tomball, save and except the change in zoning classification for 32.03 acres of land, legally described as Reserve A, Block 1, First Baptist Church of Tomball, generally located southerly of Hicks Street, westerly of Quinn Road, to C-Commercial District as described above.

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

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

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 21ST DAY OF
NOVEMBER 2011.

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>

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 5TH DAY OF
DECEMBER 2011.

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

Gretchen Fagan, Mayor

ATTEST:

Doris Speer, City Secretary

**NOTICE OF PUBLIC HEARINGS
CITY OF TOMBALL
PLANNING & ZONING COMMISSION
NOVEMBER 14, 2011
&
CITY COUNCIL
NOVEMBER 21, 2011**



Notice is Hereby Given that Public Hearings will be held by the Planning & Zoning Commission of the City of Tomball on **Monday, November 14, 2011, at 6:00 P.M.**, and by the City Council of the City of Tomball on **Monday, November 21, 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 P11-360: Request by First Baptist Church of Tomball to amend the City's Comprehensive Zoning Ordinance to rezone 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 Commercial and Old Town & Mixed Use Districts to the Commercial District.

ZONING CASE P11-362: Request by Leslie Lagerquist, on behalf of Catlin Joint Venture, to amend the City's Comprehensive Zoning Ordinance to rezone 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 Commercial District to the Old Town and Mixed Use District.

ZONING CASE P11-371: Request by Peter and Sylvia Hildreth to amend the City's Comprehensive Zoning Ordinance to rezone approximately 6.93 acres of land, legally described as Lots 36, 43, 44, 45, and Reserve D out of the Tomball Hills Addition Plat and Tract 27, Abstract 34, Joseph House Survey, within the City of Tomball, Harris County, Texas, generally located on the easterly side of State Highway 249, northerly of Zion Road, from the Single-Family Residential-9 and Commercial Districts to the General Retail District. (This case will be heard in conjunction with Zoning Case P11-372.)

ZONING CASE P11-372: Request by Peter and Sylvia Hildreth for a Conditional Use Permit to operate "Tool and Machinery Rental (with Outdoor Storage)" and "Warehouse"

land uses. The property is an approximately 6.93 acre site, legally described as Lots 36, 43, 44, 45, and Reserve D out of the Tomball Hills Addition Plat and Tract 27, Abstract 34, Joseph House Survey, generally located on the easterly side of State Highway 249, northerly of Zion Road. The site is located in the Single-Family Residential-9 and Commercial Districts. (This case will be heard in conjunction with Zoning Case P11-371.)

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 **10th** day of **November** 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: P11-360

APPLICANT: First Baptist Church of Tomball

LOCATION: Southerly of Hicks Street, westerly of Quinn Road

PROPOSAL: Request to amend the City's Comprehensive Zoning Ordinance to rezone 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, from the Commercial and Old Town & Mixed Use Districts to the Commercial District.

* * *

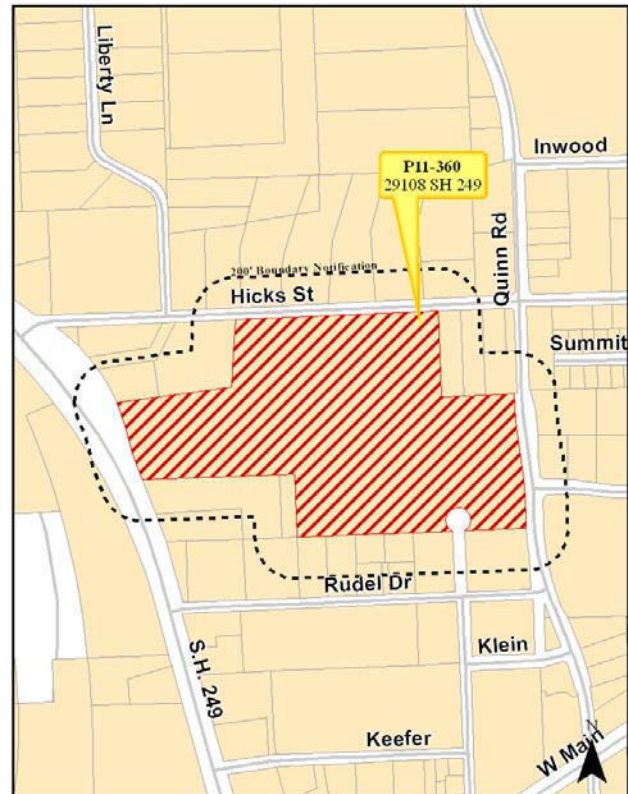
CONTACT PLANNER: Rodney Schmidt

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, November 14, 2011, 6:00 PM**

**City Council Public Hearing:
*Monday, November 21, 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 Hearing Date: November 14, 2011

Rezoning Case: P11-360
Property Owner(s): First Baptist Church of Tomball
Applicant(s): First Baptist Church of Tomball
Legal Description: Reserve A, Block 1, First Baptist Church of Tomball
Location: Generally located southerly of Hicks Street, westerly of Quinn Road
Area: 32.03 acres
Present Zoning and Use: Commercial and Old Town & Mixed Use Districts / Religious (Prayer Chapel)
Comp Plan Designation: Medium Density Residential and Employment/Office
Proposed Zoning and Use: Commercial District / Religious Land Use (First Baptist Church Tomball Campus)

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: Commercial, Old Town & Mixed Use, and SF-20-E Districts / Hicks Street Right-of-Way (ROW), Commercial, Undeveloped, and Residential
South: Commercial and Old Town & Mixed Use Districts / Undeveloped, Residential, and Tomball Fire Station
East: Old Town & Mixed Use and Multi-Family Districts / Quinn Road ROW, Offices, Northwest EMS Station, Undeveloped, and Multi-Family Development
West: Agricultural District / S.H. 249 ROW and Undeveloped

BACKGROUND

The subject site is legally described as Reserve A, Block 1, First Baptist Church of Tomball totaling approximately 32.03 acres. The site is zoned Commercial and Old Town & Mixed Use (Exhibit "A") and is generally located southerly of Hicks Street, westerly of Quinn Road (Exhibit "B"). First Baptist Church is currently in the process of constructing a prayer chapel at this site.

On September 9, 2011, the Engineering & Planning Department received a rezoning application and letter (Exhibits “C” & “D”) for the subject site from the applicant and property owner, First Baptist Church Tomball. The property owner is requesting the entire 32 acre site be rezoned from the Commercial and Old Town & Mixed Use Districts to the Commercial District to facilitate the development of their new church campus. The campus will include a new worship center, church offices, family/children’s ministries, and other church related facilities (Exhibit “E”). The Old Town & Mixed Use District currently has a two story and 27 foot maximum height limit (Section 34.3.A). By rezoning the property to the Commercial District, the applicant would be allowed a maximum building height of 70 feet (Section 30.3.A) for all proposed structures at the new church campus.

As a matter of information, the zoning ordinance’s “Church/Temple/Place of Worship” land use is permitted by right in the Commercial District.

ANALYSIS

According to the Tomball Zoning Ordinance, the Commercial District “is intended to provide a location for commercial and service related establishments, such as wholesale product sales, welding/contractors shops, automotive repair services, upholstery shops, and other similar commercial uses. Some light manufacturing may also be allowed with certain conditions. The uses envisioned for the district will typically utilize smaller sites and have operation characteristics which are generally not compatible with residential uses and some nonresidential uses. Convenient access to thoroughfares and collector streets is also a primary consideration.”

There is a mixture of land uses in the vicinity. To the north of the subject site are Hicks Street right-of-way (ROW) and commercial, undeveloped, and residential land uses within the Commercial, Old Town & Mixed Use, and SF-20-E Districts; to the south are Tomball Fire Station #1 and undeveloped and residential land uses within the Commercial and Old Town & Mixed Use Districts; to the east are Quinn Road ROW, offices, Northwest EMS facility, and undeveloped and multi-family land uses within the Old Town & Mixed Use and Multi-Family Districts; and to the west is State Highway 249 ROW and undeveloped land within the Agricultural District.

The Comprehensive Plan’s future land use map identifies the western portion of the site as “Medium Density Residential” and the eastern portion as “Employment/Office” (Exhibit “F”). The Comp Plan states, “Medium Density Residential includes suburban-type development that is intended to be single family detached residential development. Residential lots sizes range from 6,000 and 20,000 square feet. This designation may also include such supporting land uses as neighborhood shops and services, parks and recreation amenities, religious institutions, small offices and schools to serve local residents where deemed appropriate by the City.” Employment/Office is defined as “where employment uses that are not industrially focused should occur. These uses include corporate headquarters, regional offices, professional offices, light enclosed manufacturing or assembly facilities, office/showrooms, and small business office suites. Some retail activities are permitted in this land use to support offices and employment operations.” Because the anticipated use of the site will be for a religious institution and because it will be used for non-industrially focused employment purposes, the rezoning would be generally consistent with the Comprehensive Plan. **It should be noted that any use permitted in the Commercial 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 use and area regulations outlined in the zoning ordinance. A site plan

application, which require 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 (Exhibit "G"). To the north of the subject site are Hicks Street right-of-way (ROW) and commercial, undeveloped, and residential land uses within the Commercial, Old Town & Mixed Use, and SF-20-E Districts; to the south are Tomball Fire Station #1 and undeveloped and residential land uses within the Commercial and Old Town & Mixed Use Districts; to the east are Quinn Road ROW, offices, Northwest EMS facility, and undeveloped and multi-family land uses within the Old Town & Mixed Use and Multi-Family Districts; and to the west is State Highway 249 ROW and undeveloped land within the Agricultural District.

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.

There is no vacant land currently classified for similar development in the immediate vicinity of the subject site. However, there are several undeveloped properties zoned Commercial District within the immediate vicinity.

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

There has been steady development city-wide in the Commercial District; there has been limited development within the vicinity in the Commercial District.

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

If the proposed 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 western portion of the site as “Medium Density Residential” and the eastern portion as “Employment/Office.” The Comp Plan states, “Medium Density Residential includes suburban-type development that is intended to be single family detached residential development. Residential lots sizes range from 6,000 and 20,000 square feet. This designation may also include such supporting land uses as neighborhood shops and services, parks and recreation amenities, religious institutions, small offices and schools to serve local residents where deemed appropriate by the City.” Employment/Office is defined as “where employment uses that are not industrially focused should occur. These uses include corporate headquarters, regional offices, professional offices, light enclosed manufacturing or assembly facilities, office/showrooms, and small business office suites. Some retail activities are permitted in this land use to support offices and employment operations.” Because the anticipated use of the site will be for a religious institution and because it will be used for non-industrially focused employment purposes, the rezoning would be generally consistent with the Comprehensive Plan.

PUBLIC COMMENT

Property owners within 200 feet of the project site were mailed notification of this proposal on November 3, 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 P11-360 based on the following:
 - a. The proposed zoning of Commercial District is generally compatible with the Tomball Comprehensive Plan.

- b. The proposed zoning of Commercial 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 the proposed religious land use.
- 2. APPROVAL of the staff report as the Planning and Zoning Commission's final recommendation to the City Council.

EXHIBITS

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

Exhibit "A"
Zoning Map

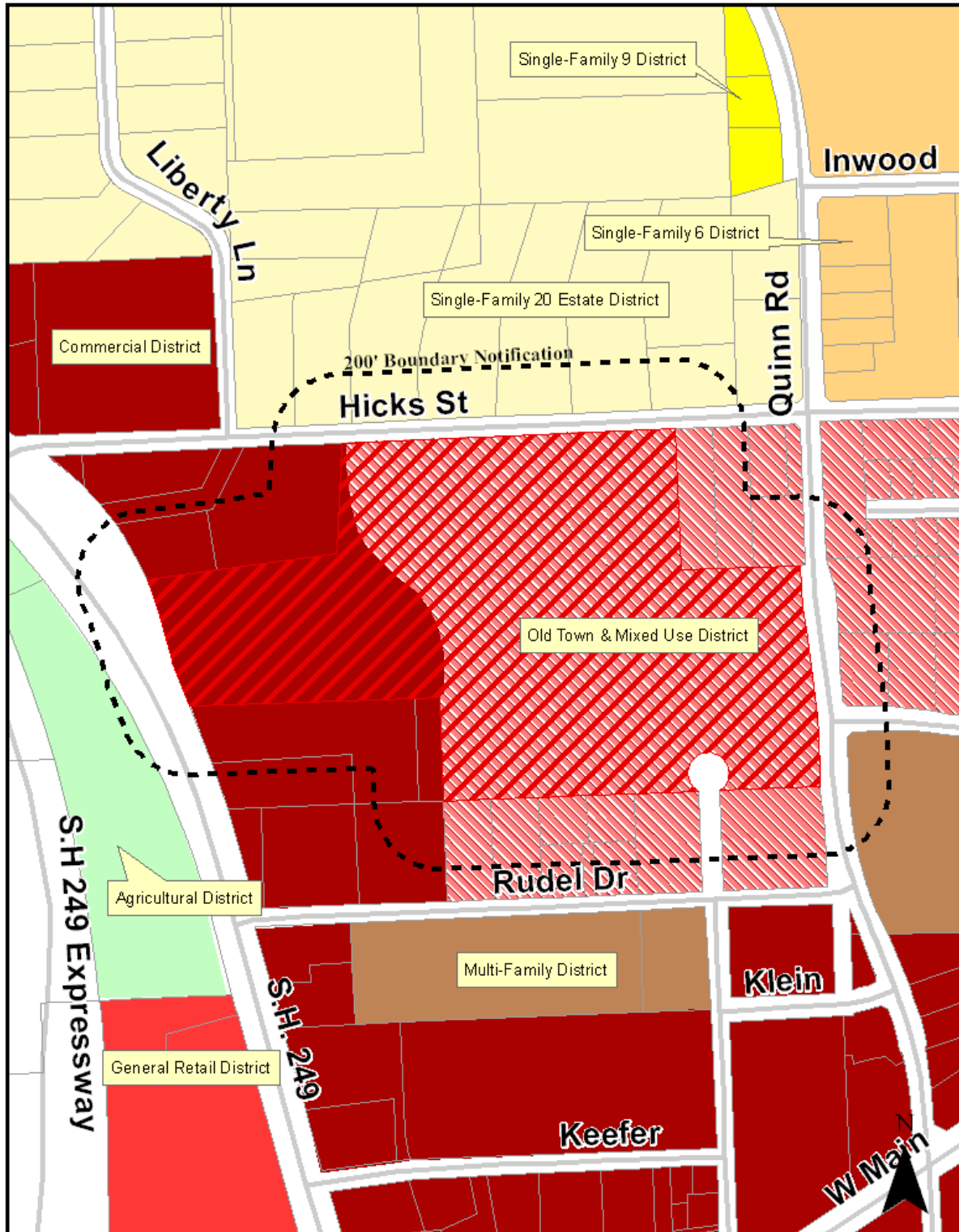


Exhibit "B"
Aerial Photo



Exhibit "C"
Rezoning Application



APPLICATION FOR REZONING
Engineering & Planning Department

Revised 1/20/09



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: First Baptist Church of Tomball Title: Senior Pastor
Mailing Address: 401 Oxford Street City: Tomball State: Texas
Zip: 77375
Phone: (281) 351-4997 Fax: (281) 351-2576 Email: james_clark@fbctomball.org

Owner

Name: First Baptist Church Title: _____
Mailing Address: 401 Oxford St. City: Tomball State: Texas
Zip: 77375
Phone: (281) 351-4997 Fax: (713) 351-2576 Email: james_clark@tomball.org

Engineer/Surveyor (if applicable)

Name: C & C Surveying Company Title: _____
Mailing Address: 7424 FM 1488 Suite A City: Magnolia State: Texas
Zip: 77354
Phone: (281) 356-5172 Fax: (281) 356-1935 Email: _____

Description of Proposed Project: Rezone all 32.028 acres the same

Physical Location of Property: 29108 State Hwy 249 and 1415 Hufsmith Road Tomball Tx 77375

[General Location - approximate distance to nearest existing street corner]
Legal Description of Property: Parcel A, Block 1, First Baptist Church Tomball
Joseph House Survey, Abstract 34, Harris County Tx
[Survey/Abstract No. and Tracts; or platted Subdivision Name with Lots/Block]

Current Zoning District: C (Comercial)-OT & MU (Old Town and Mixed Use District)

Current Use of Property: X3 Religious Exempt 4301 Res. Struct. or Conversion

Proposed Zoning District: C (Comercial)

Proposed Use of Property: X3 Religious Exempt 4620 Religious

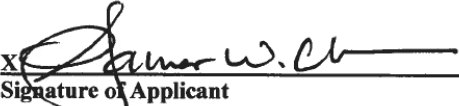
City of Tomball, Texas 501 James Street, Tomball, Texas 77375 Phone: 281-290-1405

www.ci.tomball.tx.us

HCAD Identification Number: 1299550010001 Acreage: 1,395,139 SF

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  _____ 9/9/2011
Signature of Applicant Date

X  _____ 9/9/2011
Signature of Owner Date

Exhibit "D"
Rezoning Request Letter

**FIRST BAPTIST
CHURCH TOMBALL**

September 9, 2011

City of Tomball
Engineering and Planning Department
501 James Street
Tomball, TX 77375

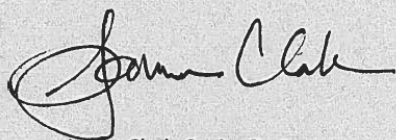
Re: Application for Rezoning

HCAD #1299550010001

First Baptist Church owns 32.028 acres of a single plated property, bordered by State Highway 249/Hicks St./Quinn St./Rudel St., for the purpose of building a new church campus. When zoning was instituted this property was zoned both Commercial and Old Town Mixed Use. We are requesting the entirety of the single plat be zoned as Commercial.

Thank you for helping to correct the mixed zoning of our property and continue with the establishment of a new ministry campus.

Sincerely,



James Clark, Senior Pastor

A | 401 Oxford Street Tomball, TX 77375-4461
T | 281 351 4997
F | 281 351 2576
W | www.fbctomball.org

Exhibit “E”
First Baptist Church Master Plan



Exhibit "F"
Comprehensive Plan Future Land Use Map

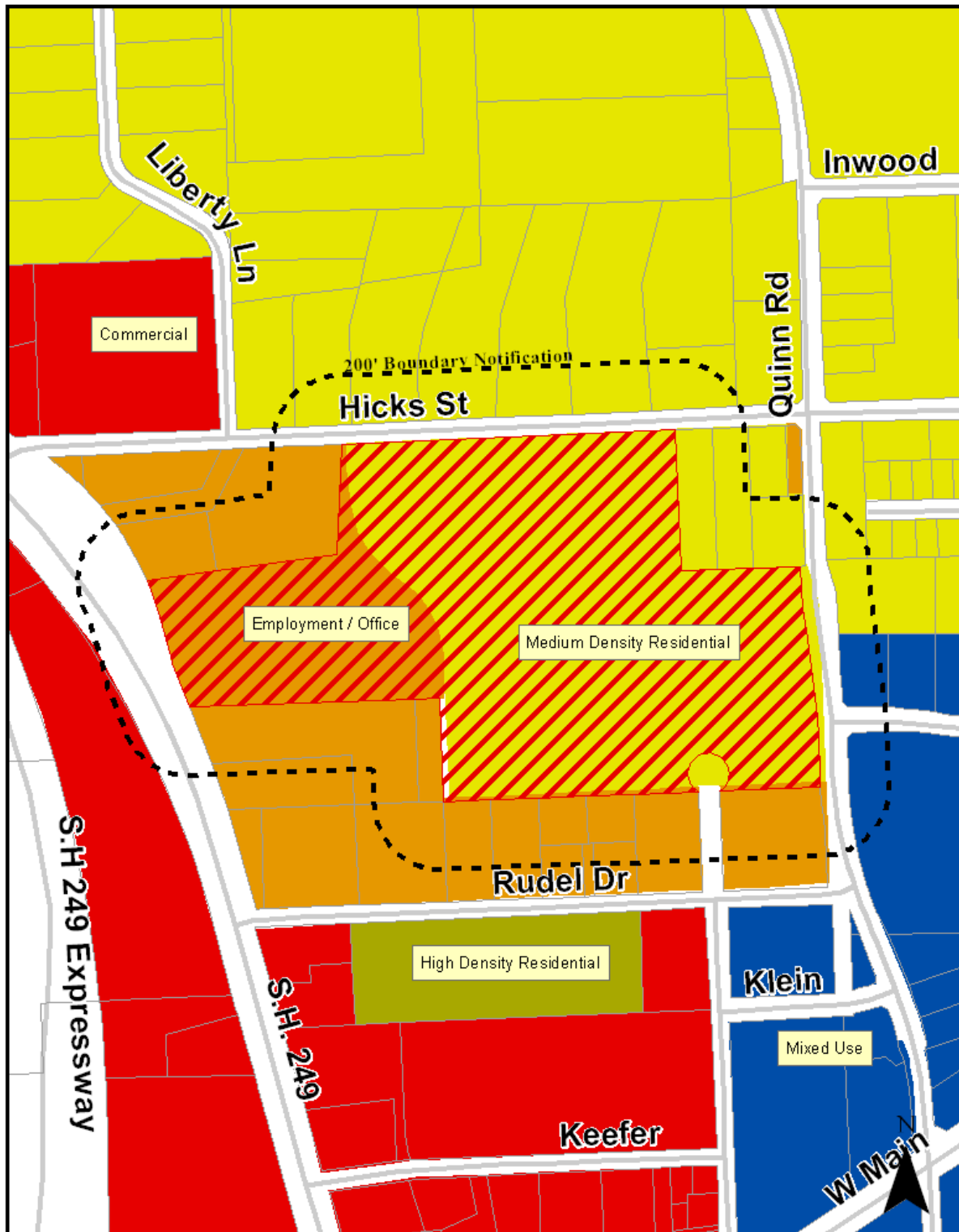


**Exhibit “G”
Site Photos**



Figure 1: Westerly view of subject site.



Figure 2: Tomball FD Station #1 south of subject site.



Figure 3: Residences to the south of subject site.



Figure 4: Apartment complex southeast of subject site.



Figure 5: ESD station and office to the east of subject site.



Figure 6: Residence to the northeast of subject site.



Figure 7: Westerly view up Hicks Street. Subject site on left.



Figure 8: Commercial buildings to the northwest of subject site.

Regular City Council

Agenda Item

Meeting Date: December 5, 2011

Data Sheet

Topic:

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

Background:

On September 19, 2011, the Engineering & Planning Department received a rezoning application from Leslie Lagerquist on behalf of Catlin Joint Venture for the subject site to be rezoned from the Commercial District to the Old Town & Mixed Use District. The intent of this rezoning is to allow for a residential land use on the site.

There is a mixture of land uses in the vicinity. To the north of the site is a medical office in the Commercial District; to the south is the Barbara Street right-of-way (ROW) and residential land uses in the SF-6 District; to the east are residential land uses in the Old Town & Mixed Use District; and to the west is the Raymond Avenue ROW and Tomball Assembly of God Church in the Commercial District.

On November 14, 2011, the Planning and Zoning Commission, after conducting a public hearing on this request, voted to recommend approval of Zoning Case P11-362. On November 21, 2011, Council adopted Ordinance No. 2011-28 on First Reading.

Origination:

Leslie Lagerquist, on behalf of Catlin Joint Venture

Recommendation:

Adopt Ordinance No. 2011-28 on second reading.

Funding:

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

City Secretary

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

ATTACHMENTS:

Ordinance No. 2011-28

Notice of Public Hearing

Property Owner Notification Letter

P11-362 Staff Report

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

* * * * *

Whereas, the owner(s) of 0.17 acres of land, legally described as Lot 9, Block 7, Main Street Addition, 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; and

Whereas, at least eight (8) 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 C-Commercial District to the OT/MU-Old Town and Mixed Use District; and

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

Whereas, the Planning and 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 C-Commercial District to the OT/MU-Old Town and Mixed Use 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 0.17 acres of land, legally described as Lot 9, Block 7, Main Street Addition, within the City of Tomball, Harris County, Texas, is hereby changed from the C-Commercial District to the OT/MU-Old Town and Mixed Use District subject to the regulations, restrictions, and conditions hereafter set forth.

Section 3. The Official Zoning Map of the City of Tomball, Texas-Ordinance 2008-01, (“Zoning District Map”), shall be revised and amended to show the designation of 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, as OT/MU-Old Town and Mixed Use District, with the appropriate reference thereon to the number and effective date of this Ordinance and a brief description of the nature of the change.

Section 4. This Ordinance shall in no manner amend, change, supplement, or revise any provision of any ordinance of the City of Tomball, save and except the change in zoning classification for 0.17 acres of land, legally described as Lot 9, Block 7, Main Street Addition, generally located northerly of Barbara Street, easterly of Raymond Avenue, to OT/MU-Old Town and Mixed Use District as described above.

Section 5. In the event any section, paragraph, subdivision, clause, phrase, provision, sentence, or part of this Ordinance or the application of the same to any person or circumstance shall for any reason be adjudged invalid or held unconstitutional by a court of competent jurisdiction, it shall not affect, impair, or invalidate this Ordinance as a whole or any part or provision hereof other 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 21ST DAY OF NOVEMBER 2011.

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>

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 5TH DAY OF DECEMBER 2011.

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

Gretchen Fagan, Mayor

ATTEST:

Doris Speer, City Secretary

**NOTICE OF PUBLIC HEARINGS
CITY OF TOMBALL
PLANNING & ZONING COMMISSION
NOVEMBER 14, 2011
&
CITY COUNCIL
NOVEMBER 21, 2011**



Notice is Hereby Given that Public Hearings will be held by the Planning & Zoning Commission of the City of Tomball on **Monday, November 14, 2011, at 6:00 P.M.**, and by the City Council of the City of Tomball on **Monday, November 21, 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 P11-360: Request by First Baptist Church of Tomball to amend the City's Comprehensive Zoning Ordinance to rezone 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 Commercial and Old Town & Mixed Use Districts to the Commercial District.

ZONING CASE P11-362: Request by Leslie Lagerquist, on behalf of Catlin Joint Venture, to amend the City's Comprehensive Zoning Ordinance to rezone 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 Commercial District to the Old Town and Mixed Use District.

ZONING CASE P11-371: Request by Peter and Sylvia Hildreth to amend the City's Comprehensive Zoning Ordinance to rezone approximately 6.93 acres of land, legally described as Lots 36, 43, 44, 45, and Reserve D out of the Tomball Hills Addition Plat and Tract 27, Abstract 34, Joseph House Survey, within the City of Tomball, Harris County, Texas, generally located on the easterly side of State Highway 249, northerly of Zion Road, from the Single-Family Residential-9 and Commercial Districts to the General Retail District. (This case will be heard in conjunction with Zoning Case P11-372.)

ZONING CASE P11-372: Request by Peter and Sylvia Hildreth for a Conditional Use Permit to operate "Tool and Machinery Rental (with Outdoor Storage)" and "Warehouse"

land uses. The property is an approximately 6.93 acre site, legally described as Lots 36, 43, 44, 45, and Reserve D out of the Tomball Hills Addition Plat and Tract 27, Abstract 34, Joseph House Survey, generally located on the easterly side of State Highway 249, northerly of Zion Road. The site is located in the Single-Family Residential-9 and Commercial Districts. (This case will be heard in conjunction with Zoning Case P11-371.)

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 **10th** day of **November** 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: P11-362

APPLICANT: Leslie Lagerquist, on behalf of Catlin Joint Venture

LOCATION: Northerly of Barbara Street, easterly of Raymond Avenue

PROPOSAL: Request to amend the City's Comprehensive Zoning Ordinance to rezone approximately 0.17 acres of land, legally described as Lot 9, Block 7, Main Street Addition, within the City of Tomball, Harris County, Texas, from the Commercial District to the Old Town and Mixed Use District.

* * *

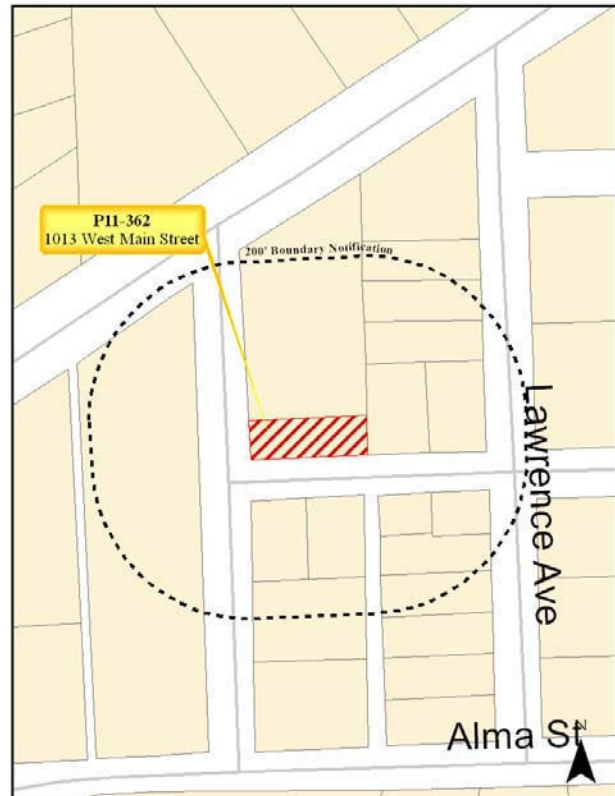
CONTACT PLANNER: Rodney Schmidt

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, November 14, 2011, 6:00 PM**

**City Council Public Hearing:
*Monday, November 21, 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 Hearing Date: November 14, 2011

Rezoning Case: P11-362
Property Owner(s): Catlin Joint Venture
Applicant(s): Leslie Lagerquist
Legal Description: Lot 9, Block 7, Main Street Addition
Location: Generally located northerly of Barbara Street, easterly of Raymond Avenue
Area: 0.17 acres
Present Zoning and Use: Commercial District / Undeveloped
Comp Plan Designation: Mixed Use
Proposed Zoning and Use: Old Town & Mixed Use District / Residential

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: Commercial District / Medical Office
South: SF-6 District / Barbara Street Right-of-Way (ROW) and Residential
East: Old Town & Mixed Use District / Residential
West: Commercial District / Raymond Avenue ROW and Tomball Assembly of God Church

BACKGROUND

The subject site is legally described as Lot 9, Block 7, Main Street Addition totaling approximately 0.17 acres. The site is zoned Commercial District (Exhibit "A") and is generally located northerly of Barbara Street, easterly of Raymond Avenue (Exhibit "B"). Lot 9 is undeveloped, however, Lots 4 through 8 north of the subject site are developed with a medical office building and are also owned by Catlin Joint Venture.

On September 19, 2011, the Engineering & Planning Department received a rezoning application and letter for the subject site from Leslie Lagerquist on behalf of Catlin Joint Venture (Exhibits "C" and "D"). The applicant is requesting the site be rezoned from the Commercial District to the Old Town & Mixed Use District to allow for a residential land use on the site.

As a matter of information, the Old Town & Mixed Use District allows for a number of residential land uses including, but not limited to, multi-family (apartments), quadriplex, duplex, and single-family.

ANALYSIS

According to the Tomball zoning ordinance, “The Old Town and Mixed Use District is intended to provide a zoning mechanism for a variety of uses in the original town site and those areas that have a diverse mixture of uses” (Section 34.1.A). Furthermore, “The Old Town and Mixed Use District is also intended for those areas outside the Old Town Area that either currently have or are suitable for a mixture of retail, commercial and other nonresidential uses, along with single family homes and multiple-family uses and are designated for such mixed use on the adopted Comprehensive Plan” (Section 34.1.C).

There is a mixture of land uses in the vicinity. To the north of the site is a medical office in the Commercial District; to the south is the Barbara Street right-of-way (ROW) and residential land uses in the SF-6 District; to the east are residential land uses in the Old Town & Mixed Use District; and to the west is the Raymond Avenue ROW and Tomball Assembly of God Church in the Commercial District.

The Comprehensive Plan’s future land use map identifies the site as “Mixed Use” (Exhibit “E”). It states the “Mixed Use” land use classification “is intended to include a mix of office, retail/commercial, and high density residential uses in a master planned, integrated manner. These uses may be located within a development, either horizontally or vertically in form. This may be accomplished on single or multiple parcels of land as long as the site is planned and developed as one integrated project. It is envisioned that Mixed Use designations will ultimately be located in areas with multimodal transportation access to support the intensity of development.” The proposed rezoning and land use are generally consistent with the Comprehensive Plan. The proposed Old Town & Mixed Use zoning classification and residential land use will help to further diversify the land uses in this area, thereby helping to realize the vision of the Mixed Use Comp Plan designation and Old Town & Mixed Use zoning district. **It should be noted that any use permitted in the Old Town & Mixed Use District would be allowed at this location if the zoning is changed.**

Additionally, action item LUD 3.5.3 of the Comprehensive Plan seeks to “Allow for mixed use development at varying intensities at selected areas as a means of revitalizing underutilized urban parcels.” Lot 9 is currently underutilized and the proposed rezoning will help to facilitate its future development for residential purposes.

As a matter of information, the future development of this site will require the applicant to comply with the City’s use and area regulations outlined in the zoning ordinance. A site plan application, which require 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 (Exhibit “F”). To the north of the site is a medical office in the Commercial District; to the south is the Barbara Street right-of-way (ROW) and residential land uses in the SF-6 District; to the east are residential land uses in the Old Town & Mixed Use District; and to the west is the Raymond Avenue ROW and Tomball Assembly of God Church in the Commercial District.

- 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.**

There is no vacant land currently classified for similar development in the immediate vicinity of the subject site. However, there are several undeveloped properties zoned Old Town & Mixed District in the City.

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

There has been steady development City-wide in the Old Town & Mixed District; there has been no development within the immediate vicinity in the Old Town & Mixed 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 “Mixed Use.” It states the “Mixed Use” land use classification “is intended to include a mix of office, retail/commercial, and high density residential uses in a master planned, integrated manner. These uses may be located within a development, either horizontally or vertically in form. This may be accomplished on single or multiple parcels of land as long as the site is planned and developed as one integrated project. It is envisioned that Mixed Use designations will ultimately be located in areas with multimodal transportation access to support the intensity of development.” The proposed rezoning and land use are generally consistent with the Comprehensive Plan. The proposed Old Town & Mixed Use zoning classification and residential land use will help to further diversify the land uses in this area, thereby helping to realize the vision of the Mixed Use Comp Plan designation and Old Town & Mixed Use zoning district.

PUBLIC COMMENT

Property owners within 200 feet of the project site were mailed notification of this proposal on November 3, 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 P11-362 based on the following:
 - a. The proposed zoning of Old Town & Mixed Use District is generally compatible with the Tomball Comprehensive Plan.
 - b. The proposed zoning of Old Town & Mixed Use 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 residential use at the site.
2. APPROVAL of the staff report as the Planning and Zoning Commission’s final recommendation to the City Council.

EXHIBITS

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

**Exhibit “A”
Zoning Map**

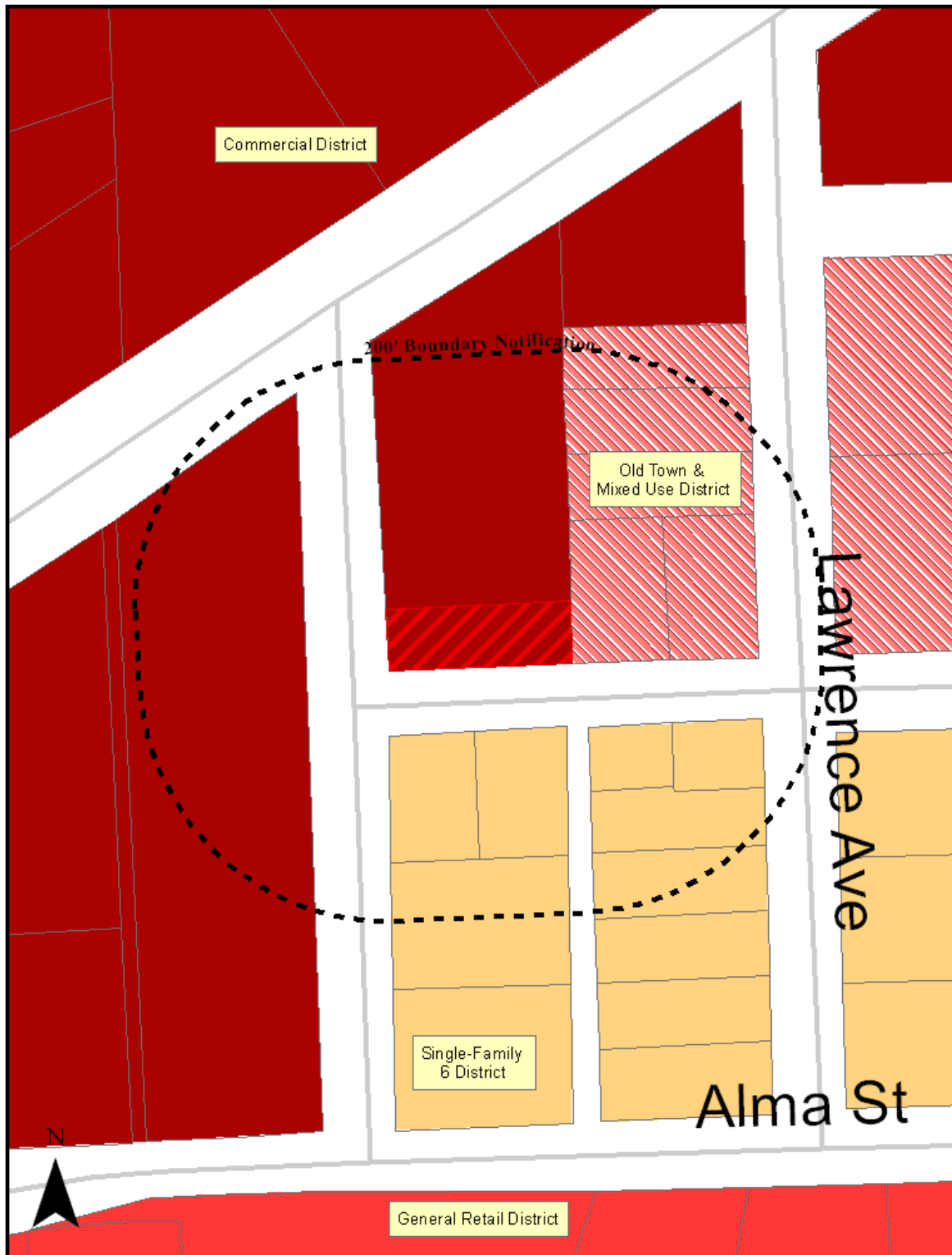


Exhibit “B”
Aerial Photo



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: LESLIE LAGERQUIST OR JAMES GEAR Title: OWNERS
Mailing Address: 30711 Wm. JUERGENS DR City: TOMBALL State: TX
Zip: 77375
Phone: (713) 899 5287 Fax: () Email: TWOOTHDOC@ME.COM

Owner

Name: CATLAN JV VENTURE Title: _____
Mailing Address: 30711 Wm. JUERGENS DR City: TOMBALL State: TX
Zip: 77375
Phone: (713) 899 5287 Fax: () Email: TWOOTHDOC@ME.COM

Engineer/Surveyor (if applicable)

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

Description of Proposed Project: REZONING ONE TOMBALL CITY LOTS FROM COMMERCIAL TO RESIDENTIAL

Physical Location of Property: CORNER N.E. BARBARA + RAYMOND ST. TOMBALL TX
[General Location - approximate distance to nearest existing street corner]

Legal Description of Property: LOT 9 BLK 7 MAIN STREET ADDITION TOMBALL
[Survey/Abstract No. and Tracts; or platted Subdivision Name with Lots/Block]

Current Zoning District: COMMERCIAL DISTRICT

Current Use of Property: NONE

Proposed Zoning District: UNDEVELOPED USE

Proposed Use of Property: RESIDENTIAL

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

www.ci.tomball.tx.us

HCAD Identification Number: 067 099 007 0016 Acreage: 1.04

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 SAME
Signature of Applicant Date

X [Signature]
Signature of Owner Date 9-16-11

Exhibit "D"
Rezoning Request Letter

September 16, 2011

City of Tomball
Zoning and Planning Div.

Re: Application for rezoning

To Whom It May Concern:

This letter is to comply with the requirements for rezoning as follows

The accompanying application requests that one pre-platted city lot be changed from a Commercial zoned entity to a residential status. This lot is not being used. The owners intend to sell the lot in order to improve the balance sheet and ongoing expense issues associated with the remaining commercial property.

The change from Commercial District to Old Town and Mixed Use is in keeping with adjacent properties.

Yours truly,

Catlan Jt. Venture


Leslie L Lagerquist

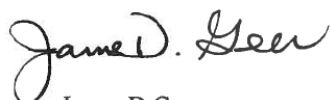

James D Geer

Exhibit "E"
Comprehensive Plan Future Land Use Map

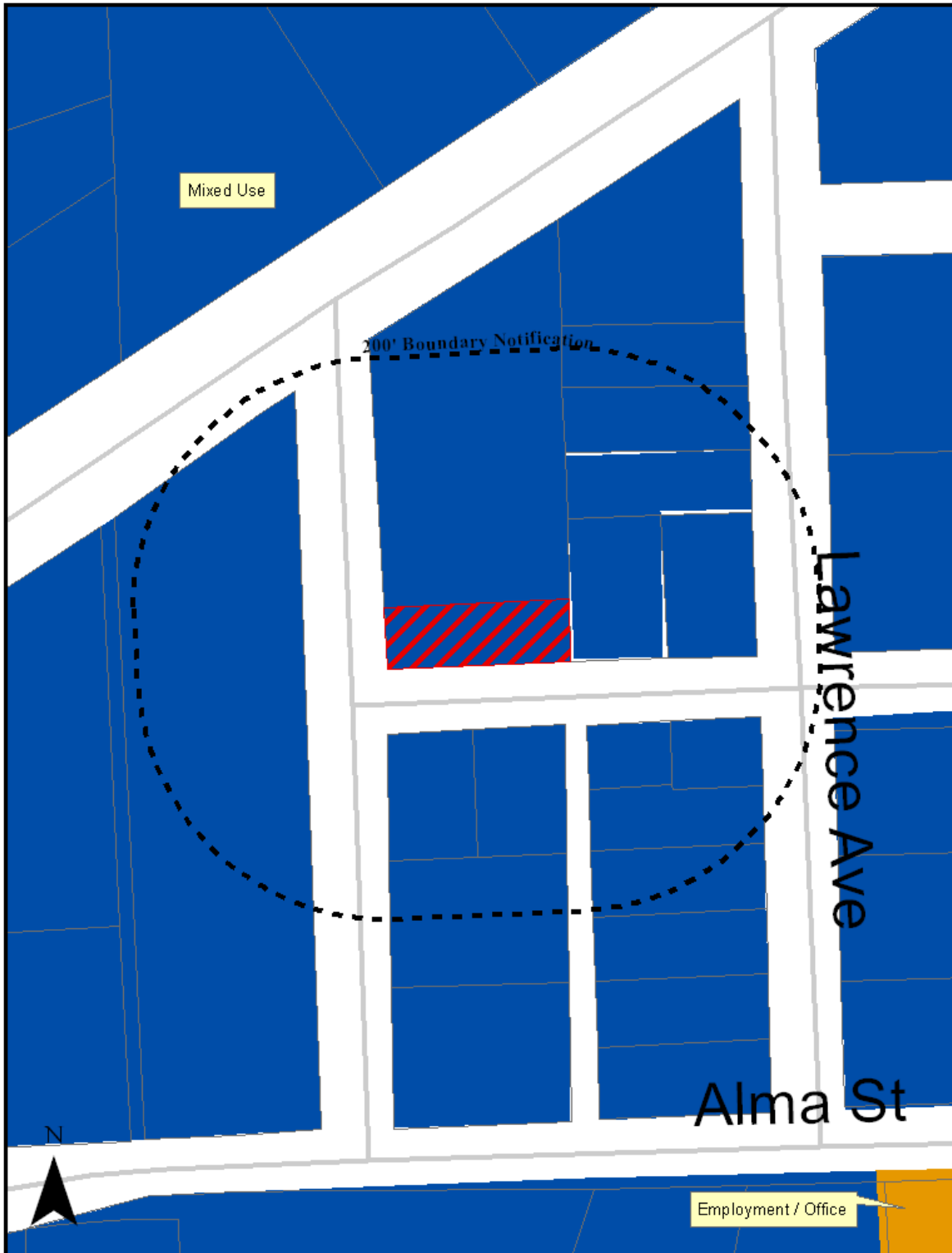


**Exhibit “F”
Site Photos**



Figure 1: Northerly view of subject site and adjacent medical office use.



Figure 2: Residence to the east of subject site.



Figure 3: Residences to the south of subject site.



Figure 4: Church to the west of subject site.

Regular City Council

Agenda Item

Meeting Date: December 5, 2011

Data Sheet

Topic:

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

Background:

The Tomball Art League (TAL) requests City sponsorship of its 2012 Juried Spring and Fall Art Shows, through the use of the Community Center including tables, chairs, and personnel from 1:30 p.m. to 4:00 on Friday, March 8, 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.

TAL also requests a waiver of the rental fee and possibly a portion of the personnel fees; TAL will reimburse the City's personnel costs to open and close the building, up to \$250 for each event.

Estimated cost of in-kind services and waiving of fees by the City is approximately \$1,125 per event:

\$ 250.00 - Personnel (maximum possible charge)
<u>875.00 - Waiver of Rental Fee - Room A</u>
\$1,125.00 - Subtotal
<u>- 250.00 - Less Reimbursement by TAL for Personnel</u>
\$ 875.00 - Total.

These juried events are free and open to the public and promote Tomball; each event is scheduled in conjunction with the City's Second Saturday at the Depot events. These events bring visitors to Tomball, promoting the City's economic development through patronage of local restaurants and retail businesses.

Council has previously granted this request. The Tomball Art League does not currently receive funds from the City of Tomball hotel/motel tax (HOT). Dan Adkisson will be available to answer questions and provide additional information.

Origination:

Dan Adkisson, Tomball Art League

Recommendation:

Staff recommends approval.

Funding:

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

City Secretary

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

ATTACHMENTS:

TAL - Request Letter

Tomball Art League

November 18, 2011

City of Tomball

Attn: City Council

401 W. Market Street

The Tomball Art League (TAL) is preparing for our annual Juried Spring & Fall Art Shows, Saturday March 9, 2012 and September 8, 2012 (2nd Saturday's). The project requires the same consideration that you have extended us in the past several years, which are :

Your waiving the fee for the use of The Community Center and the use of the tables and chairs in order to display and judge art work March 10th & September 8th , 2012, 7:30 AM – 5:00PM; we close the show at approximately 4:00PM and the extra hour allows us to clean and restore the room. We will also need the Friday's (March 9th & September 7th) prior to the Saturday shows from 1:30PM-4:00PM for pre registration of art work.

Tomball Art League will pay \$ 250 for the labor cost of personnel to open and close the building

The City of Tomball to partner the event with The Tomball Art League.

The Tomball Art Leagues believes these Juried Shows will enhance our efforts of providing art education to the community, while at the same time supporting the City of Tomball's goal of expanding tourism in the historical region of downtown Tomball. Tomball Art League will accomplish both by advertising throughout the area, through local & regional news releases, communicating with other art leagues, local schools, art teachers and through internet marketing.

The Tomball Art league does not benefit from the City of Tomball hotel/motel tax, but we believe this event will return the investment back to the city through the following:

Increase in Sales Tax from vendors (restaurants, service stations, etc.) sales. Increase in hotel/motel occupancy through : Overnight stays by participants,, Tourist attending the show; Return visits to local artist for follow up sales, instructional workshops; Create business for local retail establishments.

Tomball Art League is making this an annual event in Tomball and these days are in conjunction with the city's 2nd Saturday at The Depot events. This event is free admission and through opening this show to local schools, encouraging artist to participate that it will become a family event as well.

Thank You for considering our request. Your earliest attention is greatly appreciated

Dan Adkisson; Tomball Art League



Regular City Council

Agenda Item

Meeting Date: December 5, 2011

Data Sheet

Topic:

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

Background:

Representatives from our financial advisors, First Southwest Company, and our bond counsel, Vinson & Elkins, will be in attendance to discuss the results of the competitive sale of the \$ 14,500,000 City of Tomball Series 2012 Certificates of Obligation. Our ratings with Standard & Poors and Moody's were affirmed at AA- and Aa3 respectively.

The sale and subsequent issuance of these Certificates of Obligation will provide the City of Tomball with the funds to pay for the costs associated with the construction of the Medical Complex Drive project and the M121 Drainage channel.

Origination:

Finance

Recommendation:

Funding:

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

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

ATTACHMENTS:

Ordinance No. 2011-31

ORDINANCE NO. 2011-31

AUTHORIZING THE
ISSUANCE OF

CITY OF TOMBALL, TEXAS
COMBINATION TAX AND REVENUE CERTIFICATES OF OBLIGATION
SERIES 2012

Adopted: December 5, 2011

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AN ORDINANCE AUTHORIZING THE ISSUANCE AND SALE OF THE CITY OF TOMBALL, TEXAS, COMBINATION TAX AND REVENUE CERTIFICATES OF OBLIGATION, SERIES 2012; AWARDED 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

THE STATE OF TEXAS §
COUNTIES OF HARRIS AND MONTGOMERY §
CITY OF TOMBALL §

WHEREAS, under the provisions of Subchapter C, Chapter 271, Texas Local Government Code, as amended (the “Act”), the City of Tomball, Texas (the “City”), is authorized to issue certificates of obligation for the purposes specified in this Ordinance and for the payment of all or a portion of the contractual obligations for professional services, including that of engineers, attorneys, and financial advisors in connection therewith, and to sell the same for cash as herein provided; and

WHEREAS, the City is authorized to provide that such obligations will be payable from and secured by the levy of a direct and continuing ad valorem tax, within the limits prescribed by law, against all taxable property within the City, in combination with a limited pledge of a subordinate lien on the net revenues of the City's water and sewer system (the "System") as authorized by the Act and Chapter 1502, Texas Government Code; and

WHEREAS, the City Council has found and determined that it is necessary and in the best interests of the City and its citizens that it issue such certificates of obligation authorized by this Ordinance; and

WHEREAS, pursuant to a resolution heretofore passed by this governing body, notice of intention to issue certificates of obligation of the City payable as provided in this Ordinance was published in a newspaper of general circulation in the City in accordance with the laws of the State of Texas, which notice provided that the principal amount of such certificates of obligation would not exceed \$14,500,000 and the proceeds would be used for the purpose of paying contractual obligations to be incurred for the purposes set forth in Section 3.1 hereof; and

WHEREAS, such notice provided that the City intended to consider the passage of an ordinance authorizing the issuance of the Certificates on December 5, 2011; and

WHEREAS, no petition of any kind has been filed with the City Secretary, any member of the City Council or any other official of the City, protesting the issuance of such certificates of obligation; and

WHEREAS, this City Council is now authorized and empowered to proceed with the issuance of said certificates of obligation and to sell the same for cash; and

WHEREAS, the meeting at which this Ordinance is considered is open to the public as required by law, and public notice of the time, place, and purpose of said meeting was given as required by Chapter 551, Texas Government Code, as amended; therefore,

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

ARTICLE I

DEFINITIONS AND OTHER PRELIMINARY MATTERS

Section 1.1. Definitions.

Unless otherwise expressly provided or unless the context clearly requires otherwise in this Ordinance, the following terms shall have the meanings specified below:

“Bond Counsel” means Vinson & Elkins L.L.P.

“Business Day” means a day that is not a Saturday, Sunday, legal holiday or other day on which banking institutions in the city where the Designated Payment/Transfer Office is located are required or authorized by law or executive order to close.

“Certificate” or “Certificates” means the City’s certificates of obligation entitled, “City of Tomball, Texas, Combination Tax and Revenue Certificates of Obligation, Series 2012” authorized to be issued by Section 3.1 of this Ordinance.

“City” means the City of Tomball, Texas.

“Closing Date” means the date of the initial delivery of and payment for the Certificates.

“Code” means the Internal Revenue Code of 1986, as amended.

“Dated Date” means January 1, 2012.

“Designated Payment/Transfer Office” means (i) with respect to the initial Paying Agent/Registrar named in this Ordinance, the Designated Payment/Transfer Office as designated in the Paying Agent/Registrar Agreement, or at such other location designated by the Paying Agent/Registrar and (ii) with respect to any successor Paying Agent/Registrar, the office of such successor designated and located as may be agreed upon by the City and such successor.

“DTC” means The Depository Trust Company of New York, New York, or any successor securities depository.

“DTC Participant” shall mean brokers and dealers, banks, trust companies, clearing corporations and certain other organizations on whose behalf DTC was created to hold securities to facilitate the clearance and settlement of securities transactions among DTC Participants.

“EMMA” means the Electronic Municipal Market Access system.

“Fiscal Year” means such fiscal year as shall from time to time be set by the City Council.

“Initial Certificate” means the initial certificate authorized by Section 3.4 of this Ordinance.

“Interest and Sinking Fund” means the interest and sinking fund established by Section 2.2 of this Ordinance.

“Interest Payment Date” means the date or dates upon which interest on the principal of the Certificates is scheduled to be paid until their respective dates of maturity or prior redemption, such dates being February 15 and August 15 of each year, commencing on August 15, 2012.

“MSRB” means the Municipal Securities Rulemaking Board.

“Net Revenues” means the revenues to be derived from the System, after the payment of all operation and maintenance expenses thereof.

“Ordinance” as used herein and in the Certificates means this ordinance authorizing the Certificates.

“Owner” means the person who is the registered owner of a Certificate or Certificates, as shown in the Register.

“Paying Agent/Registrar” means initially Wells Fargo Bank, National Association, or any successor thereto as provided in this Ordinance.

“Paying Agent Registrar Agreement” means the Paying Agent/Registrar Agreement between the Paying Agent/Registrar and the City relating to the Certificates.

“Purchaser” means the purchaser of the Certificates identified in Section 7.1.

“Record Date” means the close of business on the last Business Day of the month next preceding an Interest Payment Date.

“Register” means the Register specified in Section 3.6(a) of this Ordinance.

“Representation Letter” means the Blanket Letter of Representations between the City and DTC.

“Rule” means SEC Rule 15c2-12, as amended from time to time.

“SEC” means the United States Securities and Exchange Commission.

“System” as used in this Ordinance means the City’s water and sewer system.

“Unclaimed Payments” means money deposited with the Paying Agent/Registrar for the payment of principal, redemption premium, if any, or interest on the Certificates as the same

becomes due and payable or money set aside for the payment of Certificates duly called for redemption prior to maturity and remaining unclaimed by the Owners of such Certificates for ninety (90) days after the applicable payment or redemption date.

Section 1.2. Findings.

The declarations, determinations, and findings declared, made, and found in the preamble to this Ordinance are hereby adopted, restated, and made a part of the operative provisions hereof.

Section 1.3. Table of Contents, Titles, and Headings.

The table of contents, titles, and headings of the Articles and Sections of this Ordinance have been inserted for convenience of reference only and are not to be considered a part hereof and shall not in any way modify or restrict any of the terms or provisions hereof and shall never be considered or given any effect in construing this Ordinance or any provision hereof or in ascertaining intent, if any question of intent should arise.

Section 1.4. Interpretation.

(a) Unless the context requires otherwise, words of the masculine gender shall be construed to include correlative words of the feminine and neuter genders and vice versa, and words of the singular number shall be construed to include correlative words of the plural number and vice versa.

(b) This Ordinance and all the terms and provisions hereof shall be liberally construed to effectuate the purposes set forth herein.

ARTICLE II

TAX LEVY; INTEREST AND SINKING FUND; PLEDGE OF REVENUES

Section 2.1. Tax Levy.

(a) While the Certificates or any part of the principal thereof or interest thereon remain outstanding and unpaid, there is hereby levied and there shall be annually levied, assessed and collected in due time, form and manner, and at the same time other City taxes are levied, assessed and collected, in each year, a continuing direct annual ad valorem tax, within the limits prescribed by law, upon all taxable property in the City sufficient to pay the current interest on the Certificates as the same becomes due, and to provide and maintain a sinking fund adequate to pay the principal of the Certificates as such principal matures, but never less than two percent (2%) of the original principal amount of the Certificates each year, full allowance being made for delinquencies and costs of collection, and such taxes when collected shall be applied to the payment of the interest on and principal of the Certificates and to no other purpose. The proceeds from all taxes levied, assessed and collected for and on account of the Certificates authorized by this Ordinance shall be deposited into the Interest and Sinking Fund created pursuant to Section 2.2 herein.

(b) To pay the debt service coming due on the Certificates prior to receipt of the taxes levied to pay such debt service, there is hereby appropriated from current funds on hand, which are hereby certified to be on hand and available for such purpose, an amount sufficient to pay such debt service, and such amount shall be used for no other purpose.

Section 2.2. Interest and Sinking Fund.

(a) The City hereby establishes a special fund or account to be designated the “City of Tomball, Texas, Combination Tax and Revenue Certificates of Obligation, Series 2012, Interest and Sinking Fund” (the “Interest and Sinking Fund”) with said fund to be maintained at an official depository bank of the City separate and apart from all other funds and accounts of the City.

(b) Money on deposit in or required by this Ordinance to be deposited to the Interest and Sinking Fund shall be used solely for the purpose of paying the interest on and principal of the Certificates when and as due and payable in accordance with their terms and this Ordinance.

Section 2.3. Pledge of Revenues.

The Net Revenues to be derived from the operation of the System in an amount not to exceed Ten Thousand Dollars (\$10,000) are hereby pledged to the payment of the principal of and interest on the Certificates as the same come due; provided, however, that such pledge is and shall be junior and subordinate in all respects to the pledge of the Net Revenues to the payment of all outstanding obligations of the City and any obligation of the City, whether authorized heretofore or hereafter, which the City designates as having a pledge senior to the pledge of the Net Revenues to the payment of the Certificates. The City also reserves the right to issue, for any lawful purpose at any time, in one or more installments, bonds, certificates of obligation and other obligations of any kind payable in whole or in part from the Net Revenues, secured by a pledge of the Net Revenues that may be prior and superior in right to, on a parity with, or junior and subordinate to the pledge of Net Revenues securing the Certificates.

ARTICLE III

AUTHORIZATION; GENERAL TERMS AND PROVISIONS REGARDING THE CERTIFICATES

Section 3.1. Authorization.

The “City of Tomball, Texas, Combination Tax and Revenue Certificates of Obligation, Series 2012” are hereby authorized to be issued and delivered in accordance with the Constitution and laws of the State of Texas, specifically Subchapter C, Chapter 271, Texas Local Government Code, as amended, and the City’s Home-Rule Charter. The Certificates shall be issued in the aggregate principal amount of \$14,500,000 for (i) the costs associated with the construction of streets, sidewalks and related drainage improvements, including right-of-way acquisition for the Medical Center Drive project, the construction of drainage improvements, including right-of-way acquisition for the M121 West Drainage project, (ii) the cost of

professional services incurred in connection therewith and (iii) the costs of issuing the Certificates..

Section 3.2. Date, Denomination, Maturities, and Interest.

(a) The Certificates shall be dated the Dated Date. The Certificates shall be in fully registered form, without coupons, in the denomination of \$5,000 or any integral multiple thereof and shall be numbered separately from one upward, except the Initial Certificate, which shall be numbered I-1.

(b) The Certificates shall mature on February 15 in the years and in the principal amounts set forth in the following schedule:

<u>Maturity (February 15)</u>	<u>Principal Amount</u>	<u>Interest Rate</u>
2013	\$565,000	_____ %
2014	\$575,000	_____ %
2015	\$585,000	_____ %
2016	\$595,000	_____ %
2017	\$610,000	_____ %
2018	\$620,000	_____ %
2019	\$635,000	_____ %
2020	\$650,000	_____ %
2021	\$670,000	_____ %
2022	\$690,000	_____ %
2023	\$710,000	_____ %
2024	\$730,000	_____ %
2025	\$755,000	_____ %
2026	\$780,000	_____ %
2027	\$810,000	_____ %
2028	\$840,000	_____ %
2029	\$870,000	_____ %
2030	\$900,000	_____ %
2031	\$935,000	_____ %
2032	\$975,000	_____ %

(c) Interest shall accrue and be paid on each Certificate respectively until the principal amount thereof has been paid or provision for such payment has been made, from the later of the Dated Date or the most recent Interest Payment Date to which interest has been paid or provided for at the rate per annum for each respective maturity specified in the schedule contained in subsection (b) above. Such interest shall be payable semiannually on each Interest Payment Date, computed on the basis of a 360-day year composed of twelve 30-day months.

Section 3.3. Medium, Method, and Place of Payment.

(a) The principal of and interest on the Certificates shall be paid in lawful money of the United States of America.

(b) Interest on the Certificates shall be paid by check dated as of the Interest Payment Date, and sent United States mail, first class, postage prepaid, by the Paying Agent/Registrar to each Owner, as shown in the Register at the close of business on the Record Date, at the address of each such Owner as such appears in the Register or by such other customary banking arrangements acceptable to the Paying Agent/Registrar and the person to whom interest is to be paid; provided, however, that such person shall bear all risk and expense of such other customary banking arrangements.

(c) The principal of each Certificate shall be paid to the Owner thereof on the Maturity Date or upon prior redemption upon presentation and surrender of such Bond at the Designated Payment/Transfer Office of the Paying Agent/Registrar.

(d) If the date for the payment of the principal of or interest on the Certificates is not a Business Day, the date for such payment shall be the next succeeding Business Day, and payment on such date shall for all purposes be deemed to have been made on the due date thereof as specified in this Section.

(e) In the event of a nonpayment of interest on a scheduled payment date, and for thirty (30) days thereafter, a new record date for such interest payment (a "Special Record Date") will be established by the Paying Agent/Registrar, if and when funds for the payment of such interest have been received from the City. Notice of the Special Record Date and of the special payment date of the past due interest (the "Special Payment Date," which shall be fifteen (15) days after the Special Record Date) shall be sent at least five Business Days prior to the Special Record Date by United States mail, first class, postage prepaid, to the address of each Owner of a Bond appearing on the books of the Paying Agent/Registrar at the close of business on the fifteenth day next preceding the date of mailing of such notice.

(f) Unclaimed Payments shall be segregated in a special account and held in trust, uninvested by the Paying Agent/Registrar, for the account of the Owner of the Certificates to which the Unclaimed Payments pertain. Subject to Title 6, Texas Property Code, Unclaimed Payments remaining unclaimed by the Owners entitled thereto for three (3) years after the applicable payment or redemption date shall be applied to the next payment or payments on the Certificates thereafter coming due and, to the extent any such money remains after the retirement of all outstanding Certificates, shall be paid to the City to be used for any lawful purpose. Thereafter, neither the City, the Paying Agent/Registrar nor any other person shall be liable or responsible to any holders of such Certificates for any further payment of such unclaimed moneys or on account of any such Certificates, subject to Title 6, Texas Property Code.

Section 3.4. Execution and Registration of Certificates.

(a) The Certificates shall be executed on behalf of the City by the Mayor and the City Secretary, by their manual or facsimile signatures, and the official seal of the City shall be impressed or placed in facsimile thereon. Such facsimile signatures on the Certificates shall

have the same effect as if each of the Certificates had been signed manually and in person by each of said officers, and such facsimile seal on the Certificates shall have the same effect as if the official seal of the City had been manually impressed upon each of the Certificates.

(b) In the event that any officer of the City whose manual or facsimile signature appears on the Certificates ceases to be such officer before the authentication of such Certificates or before the delivery thereof, such manual or facsimile signature nevertheless shall be valid and sufficient for all purposes as if such officer had remained in such office.

(c) Except as provided below, no Certificate shall be valid or obligatory for any purpose or be entitled to any security or benefit of this Ordinance unless and until there appears thereon the Certificate of Paying Agent/Registrar substantially in the form provided herein, duly authenticated by manual execution by an officer or duly authorized signatory of the Paying Agent/Registrar. It shall not be required that the same officer or authorized signatory of the Paying Agent/Registrar sign the Certificate of Paying Agent/Registrar on all of the Certificates. In lieu of the executed Certificate of Paying Agent/Registrar described above, the Initial Certificate delivered at the Closing Date shall have attached thereto the Comptroller's Registration Certificate substantially in the form provided herein, manually executed by the Comptroller of Public Accounts of the State of Texas, or by his duly authorized agent, which certificate shall be evidence that the Initial Certificate has been duly approved by the Attorney General of the State of Texas and that it is a valid and binding obligation of the City, and has been registered by the Comptroller of Public Accounts of the State of Texas.

(d) On the Closing Date, the Initial Certificate, representing the entire principal amount of the Certificates, payable in stated installments to the Purchaser or its designee, executed by manual or facsimile signature of the Mayor and the City Secretary of the City, approved by the Attorney General of Texas, and registered and manually signed by the Comptroller of Public Accounts of the State of Texas, will be delivered to the Purchaser or its designee. Upon payment for the Initial Certificate, the Paying Agent/Registrar shall cancel such Initial Certificate and deliver to DTC on behalf of the Purchaser registered definitive Certificates as described in Section 3.9.

Section 3.5. Ownership.

(a) The City, the Paying Agent/Registrar and any other person may treat the Owner as the absolute owner of such Certificate for the purpose of making and receiving payment of the interest thereof, for the purpose of making and receiving payment of the interest thereon (subject to the provisions herein that the interest is to be paid to the person in whose name the Certificate is registered on the Record Date), and for all other purposes, whether or not such Certificate is overdue, and neither the City nor the Paying Agent/Registrar shall be bound by any notice or knowledge to the contrary.

(b) All payments made to the Owner of a Certificate shall be valid and effectual and shall discharge the liability of the City and the Paying Agent/Registrar upon such Certificate to the extent of the sums paid.

Section 3.6. Registration, Transfer, and Exchange.

(a) So long as any Certificates remain outstanding, the City shall cause the Paying Agent/Registrar to keep at its Designated Payment/Transfer Office a Register in which, subject to such reasonable regulations as it may prescribe, the Paying Agent/Registrar shall provide for the registration and transfer of Certificates in accordance with this Ordinance.

(b) The ownership of a Certificate may be transferred only upon the presentation and surrender of the Certificate to the Paying Agent/Registrar at the Designated Payment/Transfer Office with such endorsement or other instrument of transfer and assignment as is acceptable to the Paying Agent/Registrar. No transfer of any Certificate shall be effective until entered in the Register.

(c) The Certificates shall be exchangeable upon the presentation and surrender thereof at the Designated Payment/Transfer Office for a Certificate or Certificates of the same maturity and interest rate and in any denomination or denominations of any integral multiple of \$5,000, and in an aggregate principal amount equal to the unpaid principal amount of the Certificates presented for exchange.

(d) The Paying Agent/Registrar is hereby authorized to authenticate and deliver Certificates transferred or exchanged in accordance with this Section. A new Certificate or Certificates will be delivered by the Paying Agent/Registrar, in lieu of the Certificate being transferred or exchanged, at the Designated Payment/Transfer Office, or sent by United States mail, first class, postage prepaid, to the Owner or his designee. Each Certificate delivered by the Paying Agent/Registrar in accordance with this Section shall constitute an original contractual obligation of the City and shall be entitled to the benefits and security of this Ordinance to the same extent as the Certificate or Certificates in lieu of which such Certificate is delivered.

(e) No service charge shall be made to the Owner for the initial registration, subsequent transfer, or exchange for a different denomination of any of the Certificates. The Paying Agent/Registrar, however, may require the Owner to pay a sum sufficient to cover any tax or other governmental charge that is authorized to be imposed in connection with the registration, transfer, or exchange of a Certificate.

(f) Neither the City nor the Paying Agent/Registrar shall be required to transfer or exchange any Certificate called for redemption within forty-five (45) days of the date fixed for redemption; provided, however, such limitation shall not be applicable to an exchange by the registered Owner of the uncalled balance of a Certificate.

Section 3.7. Cancellation.

All Certificates paid or redeemed before scheduled maturity in accordance with this Ordinance, and all Certificates in lieu of which exchange Certificates or replacement Certificates are authenticated and delivered in accordance with this Ordinance, shall be cancelled and proper records made regarding such payment, redemption, exchange, or replacement. The Paying Agent/Registrar shall then return such cancelled Certificates to the City or may in accordance with law destroy such cancelled Certificates and periodically furnish the City with certificates of destruction of such Certificates.

Section 3.8. Replacement Certificates.

(a) Upon the presentation and surrender to the Paying Agent/Registrar of a mutilated Certificate, the Paying Agent/Registrar shall authenticate and deliver in exchange therefor a replacement Certificate of like tenor and principal amount, bearing a number not contemporaneously outstanding. The City or the Paying Agent/Registrar may require the Owner of such Certificate to pay a sum sufficient to cover any tax or other governmental charge that is authorized to be imposed in connection therewith and any other expenses connected therewith.

(b) In the event that any Certificate is lost, apparently destroyed or wrongfully taken, the Paying Agent/Registrar, pursuant to the applicable laws of the State of Texas and in the absence of notice or knowledge that such Certificate has been acquired by a bona fide purchaser, shall authenticate and deliver a replacement Certificate of like tenor and principal amount, bearing a number not contemporaneously outstanding, provided that the Owner first complies with the following requirements:

(i) furnishes to the Paying Agent/Registrar satisfactory evidence of his or her ownership of and the circumstances of the loss, destruction, or theft of such Certificate;

(ii) furnishes such security or indemnity as may be required by the Paying Agent/Registrar to save it and the City harmless;

(iii) pays all expenses and charges in connection therewith, including, but not limited to, printing costs, legal fees, fees of the Paying Agent/Registrar, and any tax or other governmental charge that is authorized to be imposed; and

(iv) satisfies any other reasonable requirements imposed by the City and the Paying Agent/Registrar.

(c) If, after the delivery of such replacement Certificate, a bona fide purchaser of the original Certificate in lieu of which such replacement Certificate was issued presents for payment such original Certificate, the City and the Paying Agent/Registrar shall be entitled to recover such replacement Certificate from the person to whom it was delivered or any person taking therefrom, except a bona fide purchaser, and shall be entitled to recover upon the security or indemnity provided therefor to the extent of any loss, damage, cost, or expense incurred by the City or the Paying Agent/Registrar in connection therewith.

(d) In the event that any such mutilated, lost, apparently destroyed, or wrongfully taken Certificate has become or is about to become due and payable, the Paying Agent/Registrar, in its discretion, instead of issuing a replacement Certificate, may pay such Certificate when it becomes due and payable.

(e) Each replacement Certificate delivered in accordance with this Section shall constitute an original additional contractual obligation of the City and shall be entitled to the

benefits and security of this Ordinance to the same extent as the Certificate or Certificates in lieu of which such replacement Certificate is delivered.

Section 3.9. Book-Entry-Only System.

(a) The definitive Certificates shall be initially issued in the form of a separate single fully registered Certificate for each maturity. Upon initial issuance, the ownership of each such Certificate shall be registered in the name of Cede & Co., as nominee of DTC, and except as provided in Section 3.10 hereof, all of the outstanding Certificates shall be registered in the name of Cede & Co., as nominee of DTC.

(b) With respect to Certificates registered in the name of Cede & Co., as nominee of DTC, the City and the Paying Agent/Registrar shall have no responsibility or obligation to any DTC Participant or to any person on behalf of whom such a DTC Participant holds an interest in the Certificates, except as provided in this Ordinance. Without limiting the immediately preceding sentence, the City and the Paying Agent/Registrar shall have no responsibility or obligation with respect to (i) the accuracy of the records of DTC, Cede & Co. or any DTC Participant with respect to any ownership interest in the Certificates, (ii) the delivery to any DTC Participant or any other person, other than an Owner, as shown on the Register, of any notice with respect to the Certificates, including any notice of redemption, or (iii) the payment to any DTC Participant or any other person, other than an Owner, as shown in the Register of any amount with respect to principal of, premium, if any, or interest on the Certificates. Notwithstanding any other provision of this Ordinance to the contrary, the City and the Paying Agent/Registrar shall be entitled to treat and consider the person in whose name each Certificate is registered in the Register as the absolute Owner of such Certificate for the purpose of payment of principal of, premium, if any, and interest on the Certificates, for the purpose of giving notices of redemption and other matters with respect to such Certificate, for the purpose of registering transfer with respect to such Certificate, and for all other purposes whatsoever. The Paying Agent/Registrar shall pay all principal of, premium, if any, and interest on the Certificates only to or upon the order of the respective Owners, as shown in the Register as provided in this Ordinance, or their respective attorneys duly authorized in writing, and all such payments shall be valid and effective to fully satisfy and discharge the City's obligations with respect to payment of principal of, premium, if any, and interest on the Certificates to the extent of the sum or sums so paid. No person other than an Owner, as shown in the Register, shall receive a certificate evidencing the obligation of the City to make payments of amounts due pursuant to this Ordinance. Upon delivery by DTC to the Paying Agent/Registrar of written notice to the effect that DTC has determined to substitute a new nominee in place of Cede & Co., and subject to the provisions in this Ordinance with respect to interest checks or drafts being mailed to the registered Owner at the close of business on the Record Date, the word "Cede & Co." in this Ordinance shall refer to such new nominee of DTC.

(c) The Representation Letter previously executed and delivered by the City, and applicable to the City's obligations delivered in book entry only form to DTC as securities depository, is hereby ratified and approved for the Certificates.

Section 3.10. Successor Securities Depository; Transfer Outside Book-Entry-Only System.

In the event that the City determines that it is in the best interest of the City and the beneficial owners of the Certificates that they be able to obtain certificated Certificates, or in the event DTC discontinues the services described herein, the City shall (i) appoint a successor securities depository, qualified to act as such under Section 17(a) of the Securities and Exchange Act of 1934, as amended, notify DTC and DTC Participants of the appointment of such successor securities depository and transfer one or more separate Certificates to such successor securities depository; or (ii) notify DTC and DTC Participants of the availability through DTC of certificated Certificates and cause the Paying Agent/Registrar to transfer one or more separate registered Certificates to DTC Participants having Certificates credited to their DTC accounts. In such event, the Certificates shall no longer be restricted to being registered in the Register in the name of Cede & Co., as nominee of DTC, but may be registered in the name of the successor securities depository, or its nominee, or in whatever name or names Owners transferring or exchanging Certificates shall designate, in accordance with the provisions of this Ordinance.

Section 3.11. Payments to Cede & Co.

Notwithstanding any other provision of this Ordinance to the contrary, so long as the Certificates are registered in the name of Cede & Co., as nominee of DTC, all payments with respect to principal of, premium, if any, and interest on such Certificates, and all notices with respect to such Certificates shall be made and given, respectively, in the manner provided in the Representation Letter of the City to DTC.

ARTICLE IV

REDEMPTION OF CERTIFICATES BEFORE MATURITY

Section 4.1. Limitation on Redemption.

The Certificates shall be subject to redemption before scheduled maturity only as provided in this Article IV.

Section 4.2. Optional Redemption.

The City has reserved the right to redeem the Certificates maturing on and after February 15, 2021 in whole or from time to time in part before their respective scheduled maturity dates, on February 15, 2020 or on any date thereafter, at a redemption price equal to the principal amount thereof plus accrued interest to the date of redemption. If less than all of the Certificates are to be redeemed, the City shall determine the maturity or maturities and the amounts thereof to be redeemed and shall direct the Paying Agent/Registrar to call by lot, or other customary method that results in random selection, the Certificates, or portions thereof, within such maturity and in such principal amounts, for redemption.

Section 4.3. [Mandatory Sinking Fund Redemption]

(a) The Certificates designated as “Term Certificates” in the Section 6.2(a) (“Term Certificates”), are subject to scheduled mandatory redemption and will be redeemed by the City, in part at a price equal to the principal amount thereof, without premium, plus accrued interest to the redemption date, out of moneys available for such purpose in the Interest and Sinking Fund, on the dates and in the respective principal amounts as set forth in Section 6.2(a).

(b) Prior to each scheduled mandatory redemption date, the Paying Agent/Registrar shall select for redemption by lot, or by any other customary method that results in a random selection, a principal amount of Term Certificates equal to the aggregate principal amount of such Term Certificates to be redeemed, shall call such Term Certificates for redemption on such scheduled mandatory redemption date, and shall give notice of such redemption, as provided in Section 4.5.

(c) The principal amount of the Term Certificates required to be redeemed on any redemption date pursuant to subparagraph (a) of this Section 4.3 shall be reduced, at the option of the City, by the principal amount of any Term Certificates which, at least forty-five (45) days prior to the mandatory sinking fund redemption date (i) shall have been acquired by the City at a price not exceeding the principal amount of such Term Certificates plus accrued interest to the date of purchase thereof, and delivered to the Paying Agent/Registrar for cancellation, or (ii) shall have been redeemed pursuant to the optional redemption provisions hereof and not previously credited to a mandatory sinking fund redemption.]

Section 4.4. Partial Redemption.

(a) If less than all of the Certificates are to be redeemed pursuant to Section 4.2 hereof, the City shall determine the maturity or maturities and the amounts thereof to be redeemed and shall direct the Paying Agent/Registrar to call by lot, or other customary method that results in random selection, the Certificates, or portions thereof, within such maturity or maturities and in such principal amounts for redemption.

(b) A portion of a single Certificate of a denomination greater than \$5,000 may be redeemed, but only in a principal amount equal to \$5,000 or any integral multiple thereof. If such a Certificate is to be partially redeemed, the Paying Agent/Registrar shall treat each \$5,000 portion of the Certificate as though it were a single Certificate for purposes of selection for redemption.

(c) Upon surrender of any Certificate for redemption in part, the Paying Agent/Registrar, in accordance with Section 3.6 of this Ordinance, shall authenticate and deliver an exchange Certificate or Certificates in an aggregate principal amount equal to the unredeemed portion of the Certificate so surrendered, such exchange being without charge.

(d) The Paying Agent/Registrar shall promptly notify the City in writing of the principal amount to be redeemed of any Certificate as to which only a portion thereof is to be redeemed.

Section 4.5. Notice of Redemption to Owners.

(a) The Paying Agent/Registrar shall give notice of any redemption of Certificates by sending notice by first class United States mail, postage prepaid, not less than thirty (30) days before the date fixed for redemption, to the Owner of each Certificate (or part thereof) to be redeemed, at the address shown on the Register at the close of business on the Business Day next preceding the date of mailing such notice.

(b) The notice shall state the redemption date, the redemption price, the place at which the Certificates are to be surrendered for payment, and, if less than all the Certificates outstanding are to be redeemed and subject to Section 3.12 hereof, an identification of the Certificates or portions thereof to be redeemed.

(c) Any notice given as provided in this Section shall be conclusively presumed to have been duly given, whether or not the Owner receives such notice.

Section 4.6. Payment Upon Redemption.

(a) Before or on each redemption date, the City shall deposit with the Paying Agent/Registrar money sufficient to pay all amounts due on the redemption date and the Paying Agent/ Registrar shall make provision for the payment of the Certificates to be redeemed on such date by setting aside and holding in trust such amounts as are received by the Paying Agent/Registrar from the City and shall use such funds solely for the purpose of paying the principal of, redemption premium, if any, and accrued interest on the Certificates being redeemed.

(b) Upon presentation and surrender of any Certificate called for redemption at the Designated Payment/Transfer Office of the Paying Agent/Registrar on or after the date fixed for redemption, the Paying Agent/Registrar shall pay the principal of, redemption premium, if any, and accrued interest on such Certificate to the date of redemption from the money set aside for such purpose.

Section 4.7. Effect of Redemption.

(a) Notice of redemption having been given as provided in Section 4.5 of this Ordinance, and subject to any conditions or rights reserved by the City under Section 4.8, the Certificates or portions thereof called for redemption shall become due and payable on the date fixed for redemption and, unless the City defaults in its obligation to make provision for the payment of the principal thereof, redemption premium, if any, or accrued interest thereon, such Certificates or portions thereof shall cease to bear interest from and after the date fixed for redemption, whether or not such Certificates are presented and surrendered for payment on such date.

(b) If the City shall fail to make provision for payment of all sums due on a redemption date, then any Certificate or portion thereof called for redemption shall continue to bear interest at the rate stated on the Certificate until due provision is made for the payment of same by the City.

Section 4.8. Conditional Notice of Redemption.

The City reserves the right to give notice of its election or direction to redeem Certificates pursuant to Section 4.2 conditioned upon the occurrence of subsequent events. Such notice may state (i) that the redemption is conditioned upon the deposit of moneys and/or authorized securities, in an amount equal to the amount necessary to effect the redemption, with the Paying Agent/Registrar, or such other entity as may be authorized by law, no later than the redemption date, or (ii) that the City retains the right to rescind such notice at any time on or prior to the scheduled redemption date if the City delivers a certificate of the City to the Paying Agent/Registrar instructing the Paying Agent/Registrar to rescind the redemption notice and such notice and redemption shall be of no effect if such moneys and/or authorized securities are not so deposited or if the notice is rescinded. The Paying Agent/Registrar shall give prompt notice of any such rescission of a conditional notice of redemption to the affected Owners. Any Certificates subject to conditional redemption and such redemption has been rescinded shall remain Outstanding and the rescission of such redemption shall not constitute an event of default. Further, in the case of a conditional redemption, the failure of the City to make moneys and or authorized securities available in part or in whole on or before the redemption date shall not constitute an event of default

ARTICLE V

PAYING AGENT/REGISTRAR

Section 5.1. Appointment of Initial Paying Agent/Registrar.

(a) The City hereby appoints Wells Fargo Bank, National Association, Dallas, Texas, as its initial registrar and transfer agent (the "Paying Agent/Registrar") to keep such books or records and make such transfers and registrations under such reasonable regulations as the City and the Paying Agent/Registrar may prescribe; and the Paying Agent/Registrar shall make such transfer and registrations as herein provided. It shall be the duty of the Paying Agent/Registrar to obtain from the Owners and record in the Register the address of such Owner of each Certificate to which payments with respect to the Certificates shall be mailed, as provided herein. The City or its designee shall have the right to inspect the Register during regular business hours of the Paying Agent/Registrar, but otherwise the Paying Agent/Registrar shall keep the Registration Books confidential and, unless otherwise required by law, shall not permit their inspection by any other entity.

(b) The City hereby further appoints the Paying Agent/Registrar to act as the paying agent for paying the principal of and interest on the Certificates. The Paying Agent/Registrar shall keep proper records of all payments made by the City and the Paying Agent/Registrar with respect to the Certificates, and of all conversions, exchanges and replacements of such Certificates, as provided in the Ordinance.

(c) The City Council hereby approves and the Mayor and the City Secretary are hereby authorized to execute and deliver a Paying Agent/Registrar Agreement, specifying the duties and responsibilities of the City and the Paying Agent/Registrar.

Section 5.2. Qualifications.

Each Paying Agent/Registrar shall be a commercial bank or trust company organized under the laws of the State, or any other entity duly qualified and legally authorized to serve as and perform the duties and services of paying agent and registrar for the Certificates.

Section 5.3. Maintaining Paying Agent/Registrar.

(a) At all times while any Certificates are outstanding, the City will maintain a Paying Agent/Registrar that is qualified under Section 5.2 of this Ordinance.

(b) If the Paying Agent/Registrar resigns or otherwise ceases to serve as such, the City will promptly appoint a replacement.

Section 5.4. Termination.

The City reserves the right to terminate the appointment of any Paying Agent/Registrar by delivering to the entity whose appointment is to be terminated (i) forty-five (45) days written notice of the termination of the appointment and of the Paying Agent/Registrar Agreement, stating the effective date of such termination, and (ii) appointing a successor Paying Agent/Registrar; provided, that, no such termination shall be effective until a successor Paying Agent/Registrar has assumed the duties of Paying Agent/Registrar for the Certificates.

Section 5.5. Notice of Change to Owners.

Promptly upon each change in the entity serving as Paying Agent/Registrar, the City will cause notice of the change to be sent to each Owner by United States mail, first class, postage prepaid, at the address in the Register, stating the effective date of the change and the name and mailing address of the replacement Paying Agent/Registrar.

Section 5.6. Agreement to Perform Duties and Functions.

By accepting the appointment as Paying Agent/Registrar, the Paying Agent/Registrar is deemed to have agreed to the provisions of this Ordinance and that it will perform the duties and functions of Paying Agent/Registrar prescribed hereby and under the Paying Agent/Registrar Agreement.

Section 5.7. Delivery of Records to Successor.

If a Paying Agent/Registrar is replaced, such Paying Agent/Registrar, promptly upon the appointment of the successor, will deliver the Register (or a copy thereof) and all other pertinent books and records relating to the Certificates to the successor Paying Agent/Registrar

ARTICLE VI

FORM OF THE CERTIFICATES

Section 6.1. Form Generally.

(a) The Certificates, including the Registration Certificate of the Comptroller of Public Accounts of the State of Texas, the Certificate of the Paying Agent/Registrar, and the Assignment form to appear on each of the Certificates, (i) shall be substantially in the form set forth in this Article, with such appropriate insertions, omissions, substitutions, and other variations as are permitted or required by this Ordinance, and (ii) may have such letters, numbers, or other marks of identification (including identifying numbers and letters of the Committee on Uniform Securities Identification Procedures of the American Bankers Association) and such legends and endorsements (including any reproduction of an opinion of counsel) thereon as, consistently herewith, may be determined by the City or by the officers executing such Certificates, as evidenced by their execution thereof.

(b) Any portion of the text of any Certificates may be set forth on the reverse side thereof, with an appropriate reference thereto on the face of the Certificates.

(c) The definitive Certificates, if any, shall be typewritten, photocopied, printed, lithographed, or engraved, and may be produced by any combination of these methods or produced in any other similar manner, all as determined by the officers executing such Certificates, as evidenced by their execution thereof.

(d) The Initial Certificate submitted to the Attorney General of the State of Texas may be typewritten and photocopied or otherwise reproduced.

Section 6.2. Form of the Certificates.

The form of the Certificates, including the form of the Registration Certificate of the Comptroller of Public Accounts of the State of Texas, the form of Certificate of the Paying Agent/Registrar and the form of Assignment appearing on the Certificates, shall be substantially as follows:

(a) Form of Certificate.

REGISTERED
NO. _____

REGISTERED
\$ _____

UNITED STATES OF AMERICA
STATE OF TEXAS
COUNTIES OF HARRIS AND MONTGOMERY

CITY OF TOMBALL, TEXAS
COMBINATION TAX AND REVENUE CERTIFICATE OF OBLIGATION
SERIES 2012

<u>INTEREST RATE:</u>	<u>MATURITY DATE:</u>	<u>DATED DATE:</u>	<u>CUSIP NUMBER:</u>
_____ %	February 15, 20__	January 1, 2012	_____

The City of Tomball (the "City"), in Harris and Montgomery Counties, State of Texas, for value received, hereby promises to pay to

or registered assigns, on the maturity date specified above, the sum of

_____ DOLLARS

and to pay interest on such principal amount from the later of the Dated Date specified above or the most recent interest payment date to which interest has been paid or provided for until payment of such principal amount has been paid or provided for, at the per annum rate of interest specified above, computed on the basis of a 360-day year of twelve 30-day months, such interest to be paid semiannually on February 15 and August 15 of each year, commencing on August 15, 2012.

The principal of this Certificate shall be payable without exchange or collection charges in lawful money of the United States of America upon presentation and surrender of this Certificate at the corporate trust office of Wells Fargo Bank, National Association, Dallas, Texas, or such other location designated by the Paying Agent/Registrar (the "Designated Payment/Transfer Office"), of the Paying Agent/ Registrar or, with respect to a successor Paying Agent/Registrar, at the Designated Payment/Transfer Office of such successor. Interest on this Certificate is payable by check dated as of the interest payment date, and will be mailed by the Paying Agent/Registrar to the registered owner at the address shown on the registration books kept by the Paying Agent/Registrar or by such other customary banking arrangement acceptable to the Paying Agent/Registrar and the registered owner; provided, however, such registered owner shall bear all risk and expenses of such customary banking arrangement. For the purpose

of the payment of interest on this Certificate, the registered owner shall be the person in whose name this Certificate is registered at the close of business on the "Record Date," which shall be the fifteenth day of the month next preceding such interest payment date.

If the date for the payment of the principal of or interest on this Certificate shall be a Saturday, Sunday, legal holiday, or day on which banking institutions in the city where the Designated Payment/Transfer Office of the Paying Agent/Registrar is located are required or authorized by law or executive order to close, the date for such payment shall be the next succeeding day that is not a Saturday, Sunday, legal holiday, or day on which banking institutions are required or authorized to close, and payment on such date shall have the same force and effect as if made on the original date payment was due.

This Certificate is one of a series of fully registered certificates specified in the title hereof issued in the aggregate principal amount of \$14,500,000 (herein referred to as the "Certificates"), issued pursuant to a certain ordinance of the City (the "Ordinance") for the costs associated with the construction of streets, sidewalks and related drainage improvements, including right-of-way acquisition for the Medical Center Drive project, the construction of drainage improvements, including right-of-way acquisition for the M121 West Drainage project, the cost of professional services incurred in connection therewith and the costs of issuance for the Certificates.

The City has reserved the right to redeem the Certificates maturing on and after February 15, 2021, in whole or from time to time in part before their respective scheduled maturity dates, on February 15, 2020, or on any date thereafter, at a redemption price equal to the principal amount thereof plus accrued interest to the date of redemption. If less than all of the Certificates are to be redeemed, the City shall determine the maturity or maturities and the amounts thereof to be redeemed and shall direct the Paying Agent/Registrar to call by lot the Certificates, or portions thereof, within such maturity and in such principal amounts, for redemption.

[Certificates maturing on February 15, 20__ (the "Term Certificates") are subject to mandatory sinking fund redemption prior to their scheduled maturity, and will be redeemed by the City, in part at a redemption price equal to the principal amount thereof, without premium, plus interest accrued to the redemption date, on the dates and in the principal amounts shown in the following schedule:

<u>\$_____ Term Certificates Maturing February 1, 20__</u>	
<u>Redemption Date</u>	<u>Principal Amount</u>
February 15, 20__	\$ _____
February 15, 20__ (Maturity)	\$ _____

The Paying Agent/Registrar will select by lot or by any other customary method that results in a random selection the specific Term Certificates (or with respect to Term Certificates having a denomination in excess of \$5,000, each \$5,000 portion thereof) to be redeemed by mandatory redemption. The principal amount of Term Certificates required to be redeemed on any redemption date pursuant to the foregoing mandatory sinking fund redemption provisions

hereof shall be reduced, at the option of the City, by the principal amount of any Term Certificates which, at least forty-five (45) days prior to the mandatory sinking fund redemption date (i) shall have been acquired by the City at a price not exceeding the principal amount of such Term Certificates plus accrued interest to the date of purchase thereof, and delivered to the Paying Agent/Registrar for cancellation, or (ii) shall have been redeemed pursuant to the optional redemption provisions hereof and not previously credited to a mandatory sinking fund redemption.]

Notice of such redemption or redemptions shall be given by first class mail, postage prepaid, not less than thirty (30) days before the date fixed for redemption, to the registered owner of each of the Certificates to be redeemed in whole or in part. Notice having been so given, the Certificates or portions thereof designated for redemption shall become due and payable on the redemption date specified in such notice; from and after such date, notwithstanding that any of the Certificates or portions thereof so called for redemption shall not have been surrendered for payment, interest on such Certificates or portions thereof shall cease to accrue.

The City reserves the right to give notice of its election or direction to redeem Certificates pursuant to an optional redemption conditioned upon the occurrence of subsequent events. Such notice may state (i) that the redemption is conditioned upon the deposit of moneys and/or authorized securities, in an amount equal to the amount necessary to effect the redemption, with the Paying Agent/Registrar, or such other entity as may be authorized by law, no later than the redemption date, or (ii) that the City retains the right to rescind such notice at any time on or prior to the scheduled redemption date if the City delivers a certificate of the City to the Paying Agent/Registrar instructing the Paying Agent/Registrar to rescind the redemption notice and such notice and redemption shall be of no effect if such moneys and/or authorized securities are not so deposited or if the notice is rescinded. The Paying Agent/Registrar shall give prompt notice of any such rescission of a conditional notice of redemption to the affected Owners. Any Certificates subject to conditional redemption and such redemption has been rescinded shall remain Outstanding and the rescission of such redemption shall not constitute an event of default. Further, in the case of a conditional redemption, the failure of the City to make moneys and or authorized securities available in part or in whole on or before the redemption date shall not constitute an event of default.

As provided in the Ordinance, and subject to certain limitations therein set forth, this Certificate is transferable upon surrender of this Certificate for transfer at the designated office of the Paying Agent/Registrar with such endorsement or other evidence of transfer as is acceptable to the Paying Agent/Registrar; thereupon, one or more new fully registered Certificates of the same stated maturity, of authorized denominations, bearing the same rate of interest, and for the same aggregate principal amount will be issued to the designated transferee or transferees.

Neither the City nor the Paying Agent/Registrar shall be required to issue, transfer or exchange any Certificate called for redemption where such redemption is scheduled to occur within forty-five (45) calendar days of the transfer or exchange date; provided, however, such limitation shall not be applicable to an exchange by the registered owner of the uncalled principal balance of a Certificate.

The City, the Paying Agent/Registrar, and any other person may treat the person in whose name this Certificate is registered as the owner hereof for the purpose of receiving payment as herein provided (except interest shall be paid to the person in whose name this Certificate is registered on the Record Date) and for all other purposes, whether or not this Certificate be overdue, and neither the City nor the Paying Agent/Registrar shall be affected by notice to the contrary.

IT IS HEREBY certified, recited and covenanted that this Certificate has been duly and validly issued and delivered; that all acts, conditions and things required or proper to be performed, to exist and to be done precedent to or in the issuance and delivery of this Certificate have been performed, exist and have been done in accordance with law; and that annual ad valorem taxes, within the limits prescribed by law, sufficient to provide for the payment of the interest on and principal of this Certificate, as such interest comes due and such principal matures, have been levied and ordered to be levied against all taxable property in the City.

IT IS FURTHER certified, recited and represented that the revenues to be derived from the operation of the City's water and sewer system, after the payment of all operation and maintenance expenses thereof (the "Net Revenues"), are pledged to the payment of the principal of and interest on the Certificates in an amount not to exceed \$10,000; provided, however, that such pledge is junior and subordinate in all respects to the pledge of the Net Revenues to the payment of all outstanding obligations of the City and any obligation of the City, whether authorized heretofore or hereafter, which the City designates as having a pledge senior to the pledge of the Net Revenues to the payment of the Certificates. The City also reserves the right to issue, for any lawful purpose at any time, in one or more installments, bonds, certificates of obligation and other obligations of any kind payable in whole or in part from the Net Revenues, secured by a pledge of the Net Revenues that may be prior and superior in right to, on a parity with, or junior and subordinate to the pledge of the Net Revenues securing the Certificates.

IN WITNESS WHEREOF, the City has caused this Certificate to be executed by the manual or facsimile signature of the Mayor of the City and countersigned by the manual or facsimile signature of the City Secretary, and the official seal of the City has been duly impressed or placed in facsimile on this Certificate.

City Secretary
City of Tomball, Texas

Mayor
City of Tomball, Texas

[SEAL]

(b) Form of Comptroller's Registration Certificate.

The following Comptroller's Registration Certificate may be deleted from the definitive Certificates if such certificate on the Initial Certificate is fully executed.

OFFICE OF THE COMPTROLLER
OF PUBLIC ACCOUNTS
OF THE STATE OF TEXAS

§
§
§

REGISTER NO. _____

I hereby certify that there is on file and of record in my office a certificate of the Attorney General of the State of Texas to the effect that this Certificate has been examined by him as required by law, that he finds that it has been issued in conformity with the Constitution and laws of the State of Texas, and that it is a valid and binding obligation of the City of Tomball, Texas; and that this Certificate has this day been registered by me.

Witness my hand and seal of office at Austin, Texas, _____.

Comptroller of Public Accounts
of the State of Texas

[SEAL]

(c) Form of Certificate of Paying Agent/Registrar.

The following Certificate of Paying Agent/Registrar may be deleted from the Initial Certificate if the Comptroller's Registration Certificate appears thereon.

CERTIFICATE OF PAYING AGENT/REGISTRAR

The records of the Paying Agent/Registrar show that the Initial Certificate of this series of certificates of obligation was approved by the Attorney General of the State of Texas and registered by the Comptroller of Public Accounts of the State of Texas, and that this is one of the Certificates referred to in the within-mentioned Ordinance.

WELLS FARGO BANK NATIONAL
ASSOCIATION
as Paying Agent/Registrar

Dated: _____

By: _____
Authorized Signatory

(d) Form of Assignment.

ASSIGNMENT

FOR VALUE RECEIVED, the undersigned hereby sells, assigns, and transfers unto (print or typewrite name, address and Zip Code of transferee): _____

(Social Security or other identifying number: _____) the within Certificate and all rights hereunder and hereby irrevocably constitutes and appoints _____ attorney to transfer the within Certificate on the books kept for registration hereof, with full power of substitution in the premises.

Dated: _____

Signature Guaranteed By:

Authorized Signatory

NOTICE: The signature on this Assignment must correspond with the name of the registered owner as it appears on the face of the within Certificate in every particular and must be guaranteed in a manner acceptable to the Paying Agent/Registrar.

(e) The Initial Certificate shall be in the form set forth in paragraphs (a), (b) and (d) of this Section, except for the following alterations:

(i) immediately under the name of the Certificate the headings "INTEREST RATE" and "MATURITY DATE" shall both be completed with the expression "As Shown Below" and "CUSIP NUMBER: _____" deleted;

(ii) in the first paragraph of the Certificate, the words "on the maturity date specified above" shall be deleted and the following will be inserted: "on February 15 in each of the years, in the principal installments and bearing interest at the per annum rates set forth in the following schedule:

(Information to be inserted from schedule in Section 3.2 of the Ordinance)

(iii) the Initial Certificate shall be numbered I-1.

Section 6.3. CUSIP Registration.

The City may secure identification numbers through the CUSIP Service Bureau Division of Standard & Poor's, a Standard & Poor's Financial Services LLC business, New York, New York, and may authorize the printing of such numbers on the face of the Certificates. It is expressly provided, however, that the presence or absence of CUSIP numbers on the Certificates shall be of no significance or effect in regard to the legality thereof and neither the City nor the attorneys approving said Certificates as to legality are to be held responsible for CUSIP numbers incorrectly printed on the Certificates.

Section 6.4. Legal Opinion.

The approving legal opinion of Bond Counsel may be attached to or printed on the reverse side of each Certificate over the certification of the City Secretary of the City, which may be executed in facsimile.

Section 6.5. Bond Insurance.

Information pertaining to bond insurance, if any, may be printed on each Certificate.

ARTICLE VII

SALE AND DELIVERY OF CERTIFICATES; DEPOSIT OF PROCEEDS

Section 7.1. Sale of Certificates; Official Statement.

(a) The Certificates, having been duly advertised and offered for sale at competitive bid, are hereby officially sold and awarded to _____ (the "Purchaser") for a purchase price equal to the principal amount thereof, plus a cash premium of \$_____, plus interest accrued thereon from the Dated Date to the Closing Date, being the bid which produced the lowest true interest cost. The Initial Certificate shall be registered in the name of the Purchaser or its designee. The Mayor and all other officers, agents and representatives of the City are hereby authorized to do any and all things necessary or desirable to satisfy the conditions set out therein and to provide for the issuance and delivery of the Certificates.

(b) The form and substance of the Preliminary Official Statement, and any addenda, supplement or amendment thereto, are hereby in all respects ratified and approved and the Preliminary Official Statement is hereby deemed final as of its date within the meaning and for the purposes of paragraph (b)(1) of Rule 15c2-12 under the Securities Exchange Act of 1934, as amended. The final Official Statement (the "Official Statement") presented to and considered at this meeting is hereby in all respects approved and adopted and the Mayor and the City Secretary of the City are hereby authorized and directed to execute the same and deliver appropriate numbers of executed copies thereof to the Purchaser. The Official Statement as thus approved, executed and delivered, with such appropriate variations as shall be approved by the Mayor of the City and the Purchaser, may be used by the Purchaser in the public offering and sale thereof. The City Secretary is hereby authorized and directed to include and maintain a copy of the Official Statement and any addenda, supplement or amendment thereto thus approved among the permanent records of this meeting. The use and distribution of the Preliminary Official Statement, and the preliminary public offering of the Certificates by the Purchaser, is hereby ratified, approved and confirmed. All officers of the City are authorized to execute such certificates with respect to the Official Statement as may be necessary in order to consummate the sale and delivery of the Certificates.

(c) All officers of the City are authorized to execute such documents, certificates and receipts, and to make such elections with respect to the tax-exempt status of the Certificates, as they may deem appropriate in order to consummate the delivery of the Certificates.

(d) The obligation of the Purchaser to accept delivery of the Certificates is subject to the Purchaser being furnished with the final, approving opinion of Bond Counsel to the City, which opinion shall be dated and delivered the Closing Date.

Section 7.2. Control and Delivery of Certificates.

(a) The Mayor of the City is hereby authorized to have control of the Initial Certificate and all necessary records and proceedings pertaining thereto pending investigation, examination, and approval of the Attorney General of the State of Texas, registration by the Comptroller of Public Accounts of the State of Texas and registration with, and initial exchange or transfer by, the Paying Agent/Registrar.

(b) After registration by the Comptroller of Public Accounts, delivery of the Certificates shall be made to the Representative under and subject to the general supervision and direction of the Mayor, against receipt by the City of all amounts due to the City under the terms of sale.

Section 7.3. Deposit of Proceeds.

(a) First: All amounts received on the Closing Date as accrued interest on the Certificates from the Dated Date to the Closing Date shall be deposited to the Interest and Sinking Fund.

(b) Second: Proceeds from the Certificates shall, promptly upon receipt by the City, be applied as follows:

- (i) Proceeds of the Certificates in the amount of \$_____ shall be used for the purposes set forth in Section 3.1(i) and (ii) hereof.
- (ii) Proceeds of the Certificates in the amount of \$_____ shall be used to pay the costs of issuance.
- (iii) Any proceeds remaining after the accomplishment of such purposes shall be transferred to the Interest and Sinking Fund.

ARTICLE VIII

PARTICULAR REPRESENTATIONS AND COVENANTS

Section 8.1. Payment of the Certificates.

On or before each Interest Payment Date while any of the Certificates are outstanding and unpaid, there shall be made available to the Paying Agent/Registrar, out of the Interest and Sinking Fund, money sufficient to pay such interest on and principal of, redemption premium, if any, and interest on the Certificates as will accrue or mature on the applicable Interest Payment Date or date of prior redemption.

Section 8.2. Other Representations and Covenants.

(a) The City will faithfully perform, at all times, any and all covenants, undertakings, stipulations, and provisions contained in this Ordinance and in each Certificate; the City will promptly pay or cause to be paid the principal of, redemption premium, if any, and interest on each Certificate on the dates and at the places and manner prescribed in such Certificate; and the City will, at the times and in the manner prescribed by this Ordinance, deposit or cause to be deposited the amounts of money specified by this Ordinance.

(b) The City is duly authorized under the laws of the State of Texas to issue the Certificates; all action on its part for the creation and issuance of the Certificates has been duly and effectively taken; and the Certificates in the hands of the Owners thereof are and will be valid and enforceable obligations of the City in accordance with their terms.

Section 8.3. Provisions Concerning Federal Income Tax Exclusion.

(a) General. The City intends that the interest on the Certificates will be excludable from gross income for purposes of federal income taxation pursuant to sections 103 and 141 through 150 of the Code, and the applicable regulations promulgated thereunder (the “Regulations”). The City covenants and agrees not to take any action, or knowingly omit to take any action within its control, that if taken or omitted, respectively, would cause the interest on the Certificates to be includable in the gross income, as defined in section 61 of the Code, of the holders thereof for purposes of federal income taxation. In particular, the City covenants and agrees to comply with each requirement of this Section 10.3; provided, however, that the City will not be required to comply with any particular requirement of this Section 10.3 if the City has received an opinion of nationally recognized bond counsel (“Counsel’s Opinion”) that (i) such noncompliance will not adversely affect the exclusion from gross income for federal income tax purposes of interest on the Certificates or (ii) compliance with some other requirement set forth in this Section 9.3 will satisfy the applicable requirements of the Code, in which case compliance with such other requirement specified in such Counsel’s Opinion will constitute compliance with the corresponding requirement specified in this Section 10.3.

(b) No Private Use or Payment and No Private Loan Financing. The City will certify, through an authorized officer, employee or agent, that, based upon all facts and estimates known or reasonably expected to be in existence on the date the Certificates are delivered, the proceeds of the Certificates will not be used in a manner that would cause the Certificates to be “private activity bonds” within the meaning of section 141 of the Code and the Regulations. The City covenants and agrees that it will make such use of the proceeds of the Certificates, including interest or other investment income derived from Certificate proceeds, regulate the use of property financed, directly or indirectly, with such proceeds, and take such other and further action as may be required so that the bonds will not be “private activity bonds” within the meaning of section 141 of the Code and the Regulations.

(c) No Federal Guaranty. The City covenants and agrees not to take any action, or knowingly omit to take any action within its control, that, if taken or omitted, respectively, would cause the Certificates to be “federally guaranteed” within the meaning of section 149(b) of

the Code and the Regulations, except as permitted by section 149(b)(3) of the Code and the Regulations.

(d) Certificates Are Not Hedge Bonds. The City covenants and agrees not to take any action, or knowingly omit to take any action, and has not knowingly omitted and will not knowingly omit to take any action, within its control, that, if taken or omitted, respectively, would cause the Certificates to be “hedge bonds” within the meaning of section 149(g) of the Code and the Regulations.

(e) No-Arbitrage Covenant. The City will certify, through an authorized officer, employee or agent, that, based upon all facts and estimates known or reasonably expected to be in existence on the date the Certificates are delivered, that the proceeds of the Certificates will not be used in a manner that would cause the Certificates to be “arbitrage bonds” within the meaning of section 148(a) of the Code and the Regulations. Moreover, the City covenants and agrees that it will make such use of the proceeds of the Certificates including interest or other investment income derived from Certificate proceeds, regulate investments of proceeds of the Certificates, and take such other and further action as may be required so that the Certificates will not be “arbitrage bonds” within the meaning of section 148(a) of the Code and the Regulations.

(f) Arbitrage Rebate. If the City does not qualify for an exception to the requirements of Section 148(f) of the Code, the City will take all necessary steps to comply with the requirement that certain amounts earned by the City on the investment of the “gross proceeds” of the Certificates (within the meaning of section 148(f)(6)(B) of the Code), be rebated to the federal government. Specifically, the City will (i) maintain records regarding the investment of the gross proceeds of the Certificates as may be required to calculate the amount earned on the investment of the gross proceeds of the Certificates separately from records of amounts on deposit in the funds and accounts of the City allocable to other bond issues of the City or moneys which do not represent gross proceeds of any Certificates of the City, (ii) calculate at such times as are required by the Regulations, the amount earned from the investment of the gross proceeds of the Certificates that is required to be rebated to the federal government, and (iii) pay, not less often than every fifth anniversary date of the delivery of the Certificates or on such other dates as may be permitted under the Regulations, all amounts required to be rebated to the federal government. Further, the City will not indirectly pay any amount otherwise payable to the federal government pursuant to the foregoing requirements to any person other than the federal government by entering into any investment arrangement with respect to the gross proceeds of the Certificates that might result in a reduction in the amount required to be paid to the federal government because such arrangement results in a smaller profit or a larger loss than would have resulted if the arrangement had been at arm’s length and had the yield on the issue not been relevant to either party.

(g) Information Reporting. The City covenants and agrees to file or cause to be filed with the Secretary of the Treasury, not later than the 15th day of the second calendar month after the close of the calendar quarter in which the Certificates are issued, an information statement concerning the Certificates, all under and in accordance with section 149(e) of the Code and the Regulations.

(h) Record Retention. The City will retain all pertinent and material records relating to the use and expenditure of the proceeds of the Certificates until three years after the last Certificate is redeemed, or such shorter period as authorized by subsequent guidance issued by the Department of Treasury, if applicable. All records will be kept in a manner that ensures their complete access throughout the retention period. For this purpose, it is acceptable that such records are kept either as hardcopy books and records or in an electronic storage and retrieval system, provided that such electronic system includes reasonable controls and quality assurance programs that assure the ability of the City to retrieve and reproduce such books and records in the event of an examination of the Certificates by the Internal Revenue Service.

(i) Registration. The Certificates will be issued in registered form.

(j) Continuing Obligation. Notwithstanding any other provision of this Ordinance, the City's obligations under the covenants and provisions of this Section 10.3 will survive the defeasance and discharge of the Certificates for as long as such matters are relevant to the exclusion from gross income of interest on the Certificates for federal income tax purposes.

ARTICLE IX

DISCHARGE

Section 9.1. Discharge.

The Certificates may be defeased, discharged or refunded in any manner permitted by applicable law.

ARTICLE X

CONTINUING DISCLOSURE UNDERTAKING

Section 10.1. Annual Reports.

The City agrees to provide to the MSRB, in electronic format, accompanied by identifying information as prescribed by the MSRB, within six (6) months after the end of each fiscal year, financial information and operating data with respect to the City and the System of the general type included in the final Official Statement in Tables 1 through 6 and 8 through 14. The information will also include the audited financial statements of the City, if the City commissions an audit and it is completed within the required time. If audited financial statements are not available by the required time, the City will provide audited financial statements when and if the audit report becomes available. Any financial statements so to be provided shall be prepared in accordance with the accounting principles the City may be required to employ from time to time pursuant to State law or regulation. If the audit of such financial statements is not complete within such period, then the City will provide unaudited financial statements within such six month period to the MSRB, and audited financial statements if and when the audit report on such statements becomes available. All such information and operating data shall be provided to the MSRB, in an electronic format, accompanied by identifying information, as prescribed by the MSRB, and will be available via the EMMA at www.emma.msrb.org.

(a) If the City changes its fiscal year, it will notify the MSRB of the change (and of the date of the new fiscal year end) prior to the next date by which the City otherwise would be required to provide financial information and operating data pursuant to this Section.

(b) The financial information and operating data to be provided pursuant to this Section may be set forth in full in one or more documents or may be included by specific reference to any document (including an official statement or other offering document, if it is available from the MSRB) that theretofore has been provided to the MSRB or filed with the SEC.

Section 10.2. Material Event Notices.

(a) The City shall provide the following to the MSRB, in an electronic format as prescribed by the MSRB, in a timely manner not in excess of ten (10) business days after the occurrence of the event, notice of any of the following events with respect to the Certificates:

- (1) Principal and interest payment delinquencies;
- (2) Non-payment related defaults, if material;
- (3) Unscheduled draws on debt service reserves reflecting financial difficulties;
- (4) Unscheduled draws on credit enhancements reflecting financial difficulties;
- (5) Substitution of credit or liquidity providers, or their failure to perform;
- (6) Adverse tax opinions, the issuance by the Internal Revenue Service of proposed or final determinations of taxability, Notices of Proposed Issue (IRS Form 5701-TEB) or other material notices or determinations with respect to the tax status of Certificates, or other material events affecting the tax status of the Certificates;
- (7) Modifications to rights of the holders of the Certificates, if material;
- (8) Certificate calls, if material, and tender offers;
- (9) Defeasances;
- (10) Release, substitution, or sale of property securing repayment of the Certificates, if material;
- (11) Rating changes;
- (12) Bankruptcy, insolvency, receivership or similar event of the City;

Note to paragraph 12: For the purposes of the event identified in paragraph 12 of this section, the event is considered to occur when any of

the following occur: the appointment of a receiver, fiscal agent or similar officer for the City in a proceeding under the U.S. Bankruptcy Code or in any other proceeding under state or federal law in which a court or governmental authority has assumed jurisdiction over substantially all of the assets or business of the City, or if such jurisdiction has been assumed by leaving the existing governing body and officials or officers in possession but subject to the supervision and orders of a court or governmental authority, or the entry of an order confirming a plan of reorganization, arrangement or liquidation by a court or governmental authority having supervision or jurisdiction over substantially all of the assets or business of the City.

- (13) The consummation of a merger, consolidation, or acquisition involving the City or the sale of all or substantially all of the assets of the City, other than in the ordinary course of business, the entry into a definitive agreement to undertake such an action or the termination of a definitive agreement relating to any such actions, other than pursuant to its terms, if material; and
- (14) Appointment of successor or additional trustee or the change of name of a paying agent/registrar, if material.

Section 10.3. Limitations, Disclaimers and Amendments.

(a) The City shall be obligated to observe and perform the covenants specified in this Article for so long as, but only for so long as, the City remains an “obligated person” with respect to the Certificates within the meaning of the Rule, except that the City in any event will give notice of any redemption calls and any defeasances that cause the City to be no longer an “obligated person.”

(b) The provisions of this Article are for the sole benefit of the Owners and beneficial owners of the Certificates, and nothing in this Article, express or implied, shall give any benefit or any legal or equitable right, remedy, or claim hereunder to any other person. The City undertakes to provide only the financial information, operating data, financial statements, and notices which it has expressly agreed to provide pursuant to this Article and does not hereby undertake to provide any other information that may be relevant or material to a complete presentation of the City’s financial results, condition, or prospects or hereby undertake to update any information provided in accordance with this Article or otherwise, except as expressly provided herein. The City does not make any representation or warranty concerning such information or its usefulness to a decision to invest in or sell Certificates at any future date.

UNDER NO CIRCUMSTANCES SHALL THE CITY BE LIABLE TO THE OWNER OR BENEFICIAL OWNER OF ANY CERTIFICATE OR ANY OTHER PERSON, IN CONTRACT OR TORT, FOR DAMAGES RESULTING IN WHOLE OR IN PART FROM ANY BREACH BY THE CITY, WHETHER NEGLIGENT OR WITHOUT FAULT ON ITS PART, OF ANY COVENANT SPECIFIED IN THIS ARTICLE, BUT EVERY RIGHT AND REMEDY OF ANY SUCH PERSON, IN CONTRACT OR TORT, FOR OR ON ACCOUNT

OF ANY SUCH BREACH SHALL BE LIMITED TO AN ACTION FOR MANDAMUS OR SPECIFIC PERFORMANCE.

(c) No default by the City in observing or performing its obligations under this Article shall constitute a breach of or default under the Ordinance for purposes of any other provisions of this Ordinance.

(d) Nothing in this Article is intended or shall act to disclaim, waive, or otherwise limit the duties of the City under federal and state securities laws.

(e) The provisions of this Article may be amended by the City from time to time to adapt to changed circumstances that arise from a change in legal requirements, a change in law, or a change in the identity, nature, status, or type of operations of the City, but only if (i) the provisions of this Article, as so amended, would have permitted an underwriter to purchase or sell Certificates in the primary offering of the Certificates in compliance with the Rule, taking into account any amendments or interpretations of the Rule to the date of such amendment, as well as such changed circumstances, and (ii) either (A) the Owners of a majority in aggregate principal amount (or any greater amount required by any other provisions of this Ordinance that authorizes such an amendment) of the Outstanding Certificates consent to such amendment or (B) an entity or individual person that is unaffiliated with the City (such as nationally recognized bond counsel) determines that such amendment will not materially impair the interests of the Owners and beneficial owners of the Certificates. If the City so amends the provisions of this Article, it shall include with any amended financial information or operating data next provided in accordance with Section 12.1 an explanation, in narrative form, of the reasons for the amendment and of the impact of any change in type of financial information or operating data so provided.

ARTICLE XI

MISCELLANEOUS

Section 11.1. Changes to Ordinance.

Bond Counsel is hereby authorized to make changes to the terms of this Ordinance if necessary or desirable to carry out the purposes hereof or in connection with the approval of the issuance of the Certificates by the Attorney General of Texas.

Section 11.2. Partial Invalidity.

If any section, paragraph, clause or provision of this Ordinance shall for any reason be held to be invalid or unenforceable, the invalidity or unenforceability of such section, paragraph, clause or provision shall not affect any of the remaining provisions of this Ordinance.

Section 11.3. Repealer.

All ordinances or resolutions, or parts thereof, heretofore adopted by the City and inconsistent with the provisions of this Ordinance are hereby repealed to the extent of such conflict.

Section 11.4. Individuals Not Liable.

No covenant, stipulation, obligation or agreement herein contained shall be deemed to be a covenant, stipulation, obligation or agreement of any member of City Council or agent or employee of City Council or of the City in his or her individual capacity and neither the members of City Council nor any officer thereof, nor any agent or employee of City Council or of the City, shall be liable personally on the Certificates, or be subject to any personal liability or accountability by reason of the issuance thereof.

Section 11.5. Related Matters.

To satisfy in a timely manner all of the City's obligations under this Ordinance, the Mayor, the City Secretary and all other appropriate officers and agents of the City are hereby authorized and directed to do any and all things necessary and/or convenient to carry out the terms and purposes of this Ordinance.

Section 11.6. Force and Effect.

This Ordinance shall be in full force and effect from and after its final passage, and it is so ordained.

[Signature Page Follows]

FIRST AND FINAL READING:

READ, PASSED AND APPROVED AS SET OUT BELOW AT THE MEETING OF
THE CITY COUNCIL OF THE CITY OF TOMBALL HELD ON THE 5TH DAY OF
DECEMBER 2011.

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

PASSED, APPROVED AND EFFECTIVE this 5th day of December, 2011.

City Secretary
City of Tomball, Texas

Mayor
City of Tomball, Texas

[SEAL]

CERTIFICATE FOR ORDINANCE

THE STATE OF TEXAS §
COUNTIES OF HARRIS AND MONTGOMERY §

We, the undersigned officers of the City Council of the City of Tomball, Texas, hereby certify as follows:

1. The City Council of the City of Tomball, Texas, convened in a regular meeting on the 5th day of December, 2011, at the regular meeting place thereof, within said City, and the roll was called of the duly constituted officers and members of said City Council, to wit:

Gretchen Fagan	Mayor
F.S. “Field” Hudgins	Council Member, Position 1
Mark Stoll	Mayor Pro Tem and Council Member, Position 2
Rick Brown	Council Member, Position 3
Derek Townsend, Sr.	Council Member, Position 4
Preston L. Dodson	Council Member, Position 5

and all of said persons were present, except the following absentee(s): _____, thus constituting a quorum. Whereupon, among other business, the following was transacted at said meeting: a written

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

was duly introduced for the consideration of said City Council and read in full. It was then duly moved and seconded that said ordinance be adopted; and, after due discussion, said motion, carrying with it the adoption of said ordinance, prevailed and carried by the following vote:

AYES: Member(s) shown present above voted "Aye".

NOES: Member(s) shown present above voted “No”.

2. A true, full and correct copy of the aforesaid ordinance adopted at the meeting described in the above and foregoing paragraph is attached to and follows this certificate; that said ordinance has been duly recorded in said City Council's minutes of said meeting; that the above and foregoing paragraph is a true, full and correct excerpt from said City Council's minutes of said meeting pertaining to the adoption of said ordinance; that the persons named in the above and foregoing paragraph are the duly chosen, qualified and acting officers and members of said City Council as indicated therein; that each of the officers and members of said City Council was duly and sufficiently notified officially and personally, in advance, of the date, hour, place and purpose of the aforesaid meeting, and that said ordinance would be introduced and considered for adoption at said meeting, and each of said officers and members consented, in advance, to the holding of said meeting for such purpose; that said meeting was open to the public as required by law; and that public notice of the date, hour, place and subject of said meeting was given as required by Chapter 551, Texas Government Code.

SIGNED AND SEALED this 5th day of December, 2011.

City Secretary
City of Tomball, Texas

Mayor
City of Tomball, Texas

[SEAL]

Regular City Council

Agenda Item

Meeting Date: December 5, 2011

Data Sheet

Topic:

Approve Professional Services Agreement with LJA Engineering, Inc., in the amount of \$1,445,800.00 for Final Design, and Professional Services Agreement with Cobb Fendley & Associates, Inc., in the amount of \$34,600.00 for Professional Services related to Land Acquisition, and Authorize City Manager to Execute Agreements.

Background:

City Council approved funding M121 Drainage Channels in the 2012 Fiscal Years Budget. The professional agreement is for the design of M121 including the east and west channels and detention facilities. This agreement also includes construction documents for the M121 West Channel and any detention facilities required to accomodated detention requirements. Land acquisition is also included for south of Holderrieth and any additional detention facilities. The M121 drainage basin serves approximately 1,500 acres.

Origination:

Engineering and Planning

Recommendation:

Engineering and Planning recommends approval of the Professional service agreements. In the event funding is not available, these agreements will be null and void.

Funding: Yes

Account Number: 400-156-6302 & 400-156-6304

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:

Cobb Fendley Inc. Professional Services Agreement
LJA Engineering, Inc. Professional Services Agreement
LJA M121 Scope of Services

PROFESSIONAL SERVICES AGREEMENT
(Not Including Architectural or Engineering Services)
M121 WEST DRAINAGE CHANNEL
E&P Project Number: 2003-10005

THE STATE OF TEXAS §
§
COUNTY OF HARRIS §

THIS AGREEMENT is made, entered into, and executed by and between the CITY OF TOMBALL, TEXAS (the "City"), a municipal corporation of the State of Texas, and COBB FENDLEY & ASSOCIATES, INC. ("Cobb Fendley").

WITNESSETH:

WHEREAS, Cobb Fendley represents that it is capable of providing and qualified to provide professional services to the City and Cobb Fendley desires to perform the same;

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

1.
SCOPE OF AGREEMENT

Cobb Fendley agrees to perform certain professional services as outlined and defined in the Proposal attached hereto as Exhibit "A", and made a part hereof for all purposes, hereinafter sometimes referred to as "Scope of Work," and for having rendered such services, the City agrees to pay Cobb Fendley compensation as stated in the sections to follow.

2.
CHARACTER AND EXTENT OF SERVICES

Cobb Fendley shall do all things necessary to render the services and perform the Scope of Work in a professional and workmanlike manner. It is expressly understood and agreed that Cobb Fendley is an Independent Contractor in the performance of the services agreed to herein. It is further understood and agreed that Cobb Fendley shall not have the authority to obligate or bind the City, or make representations or commitments on behalf of the City or its officers or employees without the express prior approval of the City. The City shall be under no obligation to pay for services rendered not identified in Exhibit "A" without prior written authorization from the City.

3.
OWNERSHIP OF WORK PRODUCT

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

4.
TIME FOR PERFORMANCE

The time for performance is as estimated in Exhibit "A" attached hereto. Upon written request of Cobb Fendley, the City may grant time extensions to the extent of any delays caused by the City or other agencies with which the work must be coordinated and over which Cobb Fendley has no control.

In the event funding is not available, this agreement will be null and void.

5.
COMPLIANCE AND STANDARDS

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

6.
INDEMNIFICATION

Cobb Fendley shall and does hereby agree to indemnify, defend, and hold harmless the City, its officers, agents, and employees from any and all damages, loss or liability of any kind whatsoever, by reason of death or injury to property or third persons caused by the negligent act or omission of Cobb Fendley, its officers, agents, employees, invitees or other persons for whom it is legally liable, with regard to the performance of this Agreement, and Cobb Fendley will, at its cost and expense, defend, pay on behalf of, and protect the City and its officers, agents, and employees against any and all such claims and demands. Such indemnity shall apply where the suits, actions, legal proceedings, claims, demands, damages, costs, expenses and attorney fees arise in whole or in part from the negligence of Cobb Fendley.

7.
COMPENSATION

For and in consideration of the services rendered by Cobb Fendley pursuant to this Agreement, the City shall pay Cobb Fendley only for the actual work performed under the Scope of Work, on the basis set forth in Exhibit "A," up to an amount not to exceed \$34,600.00, plus reimbursable expenses.

8.
INSURANCE

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

9.
TERMINATION

The City may terminate this Agreement at any time by giving seven (7) days prior written notice to Cobb Fendley. Upon receipt of such notice, Cobb Fendley shall discontinue all services in connection with the performance of this Agreement and shall proceed to promptly cancel all existing orders and contracts insofar as such orders or contracts are chargeable to the Agreement. As soon as practicable after receipt of notice of termination, Cobb Fendley shall submit a statement, showing in detail the services performed under this Agreement to the date of termination. The City shall then pay Cobb Fendley that proportion of the prescribed charges which the services actually performed under this Agreement bear to the total services called for under this Agreement, less such payments on account of the charges as have been previously made. Copies of all completed or partially completed maps, studies, reports, documents and other work product prepared under this Agreement shall be delivered to the City when and if this Agreement is terminated.

10.
ADDRESSES, NOTICES AND COMMUNICATIONS

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

Dale Conger, P.E.
Vice President
Cobb Fendley & Associates, Inc.
13430 Northwest Freeway, Suite 1100
Houston, Texas 77040

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

City Manager
City of Tomball
401 W. Market Street
Tomball, Texas 77375

**11.
LIMIT OF APPROPRIATION**

Prior to the execution of this Agreement, Cobb Fendley has been advised by the City and Cobb Fendley clearly understands and agrees, such understanding and agreement being of the absolute essence to this Agreement, that the City shall have available only those sums as expressly provided for under this Agreement to discharge any and all liabilities which may be incurred by the City and that the total compensation that Cobb Fendley may become entitled to hereunder and the total sum that the City shall become liable to pay to Cobb Fendley hereunder shall not under any conditions, circumstances, or interpretations hereof exceed the amounts as provided for in this Agreement.

**12.
SUCCESSORS AND ASSIGNS**

The City and Cobb Fendley bind themselves and their successors, executors, administrators, and assigns to the other party of this Agreement and to the successors, executors, administrators and assigns of such other party, in respect to all covenants of this Agreement. Neither the City nor Cobb Fendley shall assign, sublet, or transfer its interest in this Agreement without the written consent of the other. Nothing herein shall be construed as creating any personal liability on the part of any officer or agent of any public body which may be a party hereto.

**13.
DISCLOSURE OF INFORMATION**

Cobb Fendley shall under no circumstances release any material or information developed in the performance of its services hereunder without the express written permission of the City.

14.
MODIFICATIONS

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

15.
ADDITIONAL SERVICES

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

16.
CONFLICTS OF INTEREST

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

17.
PAYMENT FOR SERVICES AND REIMBURSABLE EXPENSES

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

18.
MISCELLANEOUS PROVISIONS

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

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

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.

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

EXECUTED on the _____ day of _____ 2011.

ATTEST:

CITY OF TOMBALL, TEXAS

Doris Speer, City Secretary

George Shackelford, City Manager

COBB FENDLEY & ASSOCIATES, INC.

By: _____
Name: Dale Conger, P.E.
Title: Vice President

EXHIBIT "A"

Scope of Services and Basis of Compensation and Reimbursable Expenses

Project General Description

M121 West is planned as major drainage outfall for the portion of downtown south of Main Street and the area between the Medical Center and Cherry Street, all the way to Willow Creek. Plans for this project have been under development for a number of years.

Scope of Services

The project will involve those Services needed to identify and acquire the needed right of way for construction of the project. The project will include right of way services, appraisals, and other special items.

Description of Services

CobbFendley proposes to provide the following Scope of Services. Some of these services will be provided by CobbFendley, others will be provided by specialty service providers as subconsultants to CobbFendley. Those items known to be necessary are described here. Other Additional Services elements may become desirable or necessary during the course of the project. All of these items shall be specifically authorized in writing by the City. Boundary surveys and property descriptions will be furnished to CobbFendley by the City.

- A. PROJECT SERVICES – the following tasks are included in the proposed effort to develop a right of way alignment as desired for future construction
 - 1. Attend Kick-off meeting with City of Tomball designated PM
 - 2. Coordination and management of sub-consultants for the scope
 - 3. Right of way needs determination

- B. RIGHT OF WAY ACQUISITION SERVICES (3 PARCELS base contract, 2 additional at City's Option)

Provide acquisition services, according to recently enacted SB 18, to consist of:

- 1. Order appraisals from certified appraiser on parcels where no donation is offered.
- 2. Review appraisals and send to City of Tomball for final review and approval before offer is made.

3. Meet with property owners to negotiate the acquisition and inquire as to any liens or existing encumbrances.
4. Prepare all documentation necessary for acquisition, to include cover letters, easements, and title curative instruments as needed, e.g. release of lien, under the direction of the City of Tomball attorney.
5. Meet with property owners to obtain executed easement instruments.
6. Record documents in public records.
7. Furnish closed file to City of Tomball.
8. Prepare documentation and work with City Attorney if condemnation is necessary.

Compensation

The compensation to be paid to CobbFendley for providing the described services will be as follows:

a. Right-of-way appraisal, 3 parcels, \$3000 ea (certified appraiser) ¹	\$ 9,000.00
b. Right-of-way acquisition 3 parcels, \$3000 ea (CobbFendley).....	<u>\$ 9,000.00</u>
	\$18,000.00

Reimbursable

c. Reproductions.....	\$ 200.00
d. Direct Expenses	<u>\$ 1,000.00</u>
	\$ 4,000.00

Total for Basic Authorization.....\$ 22,000.00

Additional parcels if directed by the City

e. Right-of-way appraisal, 2 parcels, \$3000 ea (certified appraiser) ¹	\$ 6,000.00
f. Right-of-way acquisition 2 parcels, \$3000 ea (CobbFendley).....	<u>\$ 6,000.00</u>
	\$12,000.00

Reimbursable

g. Reproductions	\$ 100.00
h. Direct Expenses	<u>\$ 500.00</u>
	\$ 600.00

Total for Additional Optional Authorization\$12,600.00

Total Fee Budget (sum of Basic and Optional budgets)	\$ 34,600.00
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¹ Subconsultant fees show the 10% additional charge in the totals.

Other terms of compensation:

Reimbursable items and subconsultant invoices will be subject to a 10% administration charge (included in the figures shown above). Services will be charged according to those personnel directly involved in providing the service, and will be rounded to the nearest half hour. Additional Services will be discussed with the City and any special terms for each service authorized by the City in writing prior to providing the service. Services offered as options for selection will be approved by the City prior to commencement.

For any Additional Service indicated as a T&M item, lump sum fees will be negotiated for particular, defined assignments at the request of the City. When an occasion arises which the City desires to be covered by a lump sum fee, CobbFendley will negotiate an acceptable fee with the City and prepare an addendum to this Agreement which describes the scope of services to be provided and the fee. The addendum will be effective only after its execution by both parties.

Reimbursable Direct Expenses shall be those costs incurred on or directly for the CITY'S project, including but not limited to necessary transportation costs including mileage at the current IRS rate, meals and lodging, laboratory tests and analyses, and printing and binding charges.

SCHEDULE OF WORK

From the notice to proceed, the project should be complete within 3 to 4 months. Recent action by the State Legislature effectively added 30 days to the former minimum of 60 days for an eminent domain case. Items which could impose delays would include unusual delay in an eminent domain case regarding right of way, or a protracted discussion with property owners about alignment. Schedule updates will be submitted monthly to keep the City apprised of the progress of the project.

EXHIBIT "B"

INSURANCE

**PROFESSIONAL SERVICES AGREEMENT
FOR
ENGINEERING SERVICES
RELATED TO
M121 EAST & WEST CHANNELS & DETENTION BASIN FINAL DESIGN
E&P PROJECT NUMBER: 2003-10005**

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

THIS AGREEMENT made on the _____ day of December, 2011 entered into, and executed by and between the City of Tomball, Texas (the "City"), a municipal corporation of the State of Texas, and LJA Engineering, Inc. ("Engineer").

WITNESSETH:

WHEREAS, the City desires to complete Final Design for the Willow Creek Tributary M121 East & West Channels and Detention Basin (the "Project"); and

WHEREAS, the services of a professional engineering firm are necessary to complete Final Design for the Willow Creek Tributary M121 East & West Channels and Detention Basin, and

WHEREAS, the Engineer represents that it is fully capable and qualified to provide professional services to the City related to completing Final Design for the Willow Creek Tributary M121 East & West Channels and Detention Basin;

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

**SECTION I
SCOPE OF AGREEMENT**

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

**SECTION II
CHARACTER AND EXTENT OF SERVICES**

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

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

SECTION III OWNERSHIP OF WORK PRODUCT

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

SECTION IV TIME FOR PERFORMANCE

The time for performance of the Scope of Work is two-hundred and forty (240) days beginning from the execution date of this Agreement. Upon written request of Engineer, the City may grant time extensions to the extent of any delays caused by the City or other agencies with which the work must be coordinated and over which Engineer has no control.

In the event funding is not available, this agreement will be null and void.

SECTION V COMPLIANCE AND STANDARDS

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

SECTION VI INDEMNIFICATION

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

SECTION VII ENGINEER'S COMPENSATION

For and in consideration of the services rendered by Engineer pursuant to this Agreement, the City shall pay Engineer only for the actual work performed under the Scope of Work, on the basis set forth in Attachment "A," up to an amount not to exceed \$1,445,800.00, plus reimbursable expenses as identified in Attachment "A."

SECTION VIII TERMINATION

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

SECTION IX ADDRESSES, NOTICES AND COMMUNICATIONS

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

LJA Engineering & Surveying, Inc.
2929 Briarpark Drive, Suite 600
Houston, TX 77042
Attn: David H. Zuhlke, P.E., CFM

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

City of Tomball
501 James Street
Tomball, Texas 77375
Attn: Director of Engineering and Planning

SECTION X LIMIT OF APPROPRIATION

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

SECTION XI SUCCESSORS AND ASSIGNS

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

SECTION XII MODIFICATIONS

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

SECTION XIII ADDITIONAL SERVICES OF ENGINEER

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

SECTION XIV CONFLICTS OF INTEREST

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

SECTION XV PAYMENT TO ENGINEER FOR SERVICES AND REIMBURSABLE EXPENSES

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

SECTION XVI INSURANCE

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

SECTION XVII MISCELLANEOUS PROVISIONS

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

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

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

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

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

EXECUTED on this _____ day of December, 2011.

ENGINEER:

LJA ENGINEERING, INC.

By: _____
Name: _____
Title: _____

CITY OF TOMBALL, TEXAS

George Shackelford, City Manager

ATTEST:

Doris Speer, City Secretary

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

ATTACHMENT “B”

INSURANCE

ATTACHMENT A

SCOPE OF SERVICES M121 CHANNEL AND DETENTION BASIN DESIGN

The proposed project is to complete one construction plan set and specifications for the Willow Creek Tributary M121 West and East. The limits of the plans are from the confluence with Willow Creek to approximately Hardin Street Ditch, as outlined in the M121 Preliminary Engineering Report, dated October 2009. The length of the project is approximately 11,000 feet from Willow Creek up to Hardin Street Ditch for the M121 West alignment including approximately 2800 feet of the existing M121-00-00 channel alignment from Willow Creek to Holderrieth Road and 2400 feet of Hardin Street Ditch including improvements for Hampton Place development. The M121 East alignment will be completed from Holderrieth north to its terminus at Agg Road which is approximately 3000 feet. The existing M500-01-00 detention basin will require some work for side slope repair and final grading to bring the site up to HCFCD standards. The project will also include associated detention to offset the impacts in the Willow Creek watershed for ultimate development. The project will be designed to HCFCD standards and specifications to allow for the possibility of HCFCD taking over maintenance in the future.

PHASE 1 – FINAL CONSTRUCTION PLANS (Lump Sum)

1. Coordination, Meeting Attendance and Field Visit

- Coordinate between City of Tomball and the other members on the project team, which include the surveyor, ecologists, subsurface utility engineering team and the geotechnical engineers. The coordination effort will also include coordination with HCFCD and Harris County Precinct 4. A maximum of four meetings will take place with HCFCD and Harris County Precinct 4.
- Attend meetings with City of Tomball staff to discuss the project. A maximum of six meetings will take place.
- Field Visit: Conduct two field visits of the watershed and determine locations of possible conflicts or potential design conflicts.

2. Update Hydrology and Hydraulics

HEC-RAS models will be updated with field obtained topographic information for the section of M121 West south of Holderrieth Road. During the PER for the project, LiDAR information was used for this area. It is expected during the final design phase some revisions to the HEC-RAS models will be required due to field conditions. Also additional modeling for the two tracts of land on the east side of M121 West at Hardin Street Ditch will be included.

3. HCFCD Drainage Impact Analysis Report and Drainage Memo

A drainage impact analysis report will be submitted to HCFCD for review and approval. This report is required as the project will connect to a HCFCD facility. Part of the drainage impact report will be a phasing plan to demonstrate at what development density the additional detention expansion will need to be constructed. To meet

minimum HCFCD detention requirements, the report may encompass both the M121 and adjacent M118 watershed improvements. At the time of this scope, it is anticipated that M118 and M121 construction should happen simultaneously or M118 is expected to be completed prior to M121 effort. The report will include any modeling revisions encountered during the first part of the design phase due to new topography. This scope does not include a CLOMR or LOMR for these projects.

A separate drainage memo will be completed for scenarios investigated for improving the Hardin Street Ditch to box culverts and proposed improvements to reduce existing flooding from the Hampton Place.

4. Construction Plans and Specification

LJA will create plan and profile sheets on 22" x 34" sheet size at a horizontal scale of 1" = 20' and a vertical scale of 1" = 2' for the channel portion of the project. Existing utilities, existing property ownership, proposed channel flowline, proposed drainage structures, and erosion control structures will be shown on the plan and profile sheets. Cross-sections will be cut at 200-foot intervals for the project. Storm Water Pollution Prevention Plan sheets (1" = 100') will be prepared for the channel improvement project including details. Other channel sheets will include drainage area map, detail sheets, and typical sections.

For this scope of services, it is anticipated that one complete construction package will be completed for the M121 West and M121 East channels. At a date determined later by the City, the west and east packages may be split into two separate packages for bidding and construction purposes. The effort required to split the overall design is not part of this scope of services.

LJA will design bridges meeting Harris County Public Infrastructure Department Architecture and Engineering Division requirements for the following locations:

- Holderrieth Road (two crossing: M121W and M121E)
- Theis Road

The bridge design for this scope assumes that the ultimate Holderrieth Road 4-lane boulevard section will require two separate bridge structures and for this scope only one –two lane bridge at each location will be designed. Discussions will take place with Harris County Precinct 4 to determine if this will be acceptable and to determine if the north or south bridge structure will be designed for this project. Bridge layout sheets along with bridge details will be developed for each bridge location. At the time of this scope, it is anticipated no bridges will be required along the M121 West channel south of Holderrieth for landowner access. Landowner access for property south of the M121 West channel alignment will be provided via an access road on the south edge of the channel and not bridges across M121 West.

For Traffic Control, this scope provides for phased construction of the three proposed bridges, maintaining traffic at each location. Plans will include all temporary pavement, signage and pavement markings, and other installations necessary to provide for continual traffic operations during the construction period.

For this scope, it will be assumed that all of the private utilities will be moved prior to construction; and assumed no public utility relocation sheets will be required in the plan set.

LJA will develop structural design sheets for the concrete drop structures for three (3) locations along the M121 West channel alignment and three (3) locations along M121 East channel alignment. Structural detail sheets will be developed for each location.

A horizontal layout sheet, grading sheet, and Storm Water Pollution Prevention Plan sheet will be created for the completion of excavation of the M500-01-00 detention basin and ultimate expansion. Currently, HCFCD has excavated approximately 90% of the current M500-01-00 detention basin location. The ultimate expansion for the M500-01-00 basin will be designed as well under this scope of services. Existing utilities, existing property ownership, proposed basin, proposed drainage structures, and erosion control structures will be shown on the plan sheets. Other detention basin sheets will include typical sections, cross-section sheets, control structure details and drainage details. It will be assumed that all of the private utilities will be moved prior to construction.

5. Advertise, Bid and Award

LJA will advertise the project, attend pre-bid conference, attend bid opening, and tabulate bid estimates. After the bids have been tabulated, LJA will recommend awarding of contract. Construction administration is not in this scope of services. However, LJA will be pleased to provide construction phase services to the extent required by the City.

6. Cost Analysis

LJA shall prepare a cost estimate for construction for the channel and detention project. The cost estimate will include existing utility relocation costs along with cost items for construction of the channel itself.

ADDITIONAL SERVICE ITEMS (Time and Materials with Limit)

1. Field Surveying

In the PER study, topographic survey was completed for a majority of the M121 West channel alignment. The only area not field surveyed was the portion of the channel south of Holderrieth, approximately 2500 feet. Property acquisition documents will be developed for the M121 West channel alignment south of Holderrieth until its confluence with the existing M121-00-00 channel. Property acquisition documents will be developed for the M121 East channel alignment north of the Hometown Apartments. The following items describe the surveying services to be completed for the final design project:

- **Horizontal Control:** The stationing of the cross sections will begin at the intersection of the M121 West alignment and the existing M121 channel and increasing the channel stationing moving upstream. The first complete cross section for the project will begin at the intersection of the two alignments.

- Vertical Control: All vertical information will be based on NAVD 1988 datum with 2001 adjustment.
- Topographic Surveying: A detailed topographic survey will be conducted by taking cross sections every 200 feet from right-of-way line to right-of-way line. In areas where the City of Tomball does not own the ROW, an additional 100 feet outside of preliminary ROW (50 feet each side) will be surveyed. All cross sections are to be surveyed perpendicular to the ROW. All abrupt changes in elevations are to be surveyed. At all road crossings, the profile of the road centerline is to be surveyed. The roadway profiles at all crossings are to be surveyed as if the surveyor is looking downstream. Along with the roadway profiles, the roadside ditches shall be surveyed as well. The excavated M500-01-00 detention basin has been surveyed by HCFCD personnel and will be used for design purposes. Some minor additional areas around the wetland area may need field surveying. The two additional parcels of land for the M500-01-00 expansion will have the boundary established as well as the existing Willow Creek easement located along its centerline. A 200-ft grid will be established for topographic work on the site. This information will be used as the base information for the project.
- Topographic survey of the M121 lateral ROW from Cherry Street to M121 East.
- Surface Features: Existing features such as roadways, utilities, fences, culvert, etc. will be located within the proposed ROW.
- Utility Location: The surveyors are responsible for locating storm sewers, sanitary sewers, waterlines, telephone lines and pipelines (if the pipeline markers exist) within the proposed ROW. No probing will occur.
- Boundary surveys: Surveyor will locate all property corners already owned by the City of Tomball. Any missing or destroyed property corners shall be re-established. In areas of the project that does not have ROW currently owned by the City of Tomball, the adjacent property lines will be established.
- The City of Tomball will obtain all right of entry for property not owned by the City for this project.
- Bore Locations: After the geotechnical bores have been completed, surveyor will tie in the bore hole locations on the topographic survey.
- Coordinate with SUE subcontractor for benchmark information as well as staking the M121 West channel centerline south of Holderrieth to M121 confluence at 200 foot intervals.
- Property acquisition: Surveyor will create an overall acquisition map showing all parcels to be obtained.
- Boundary surveys: Surveyor will create individual parcel sketches and legal descriptions for each parcel to be acquired. The following list is the expected property acquisition:
 - a) M121 East Parcels – 9 assumed
 - b) M121 West (south of Holderrieth) – 5 assumed
 - c) M121 lateral – 4 assumed

In addition, the Hardin Street Ditch right-of-way will be verified from M121 West to Cherry Street to confirm the City does have ownership of all property.

2. Geotechnical Investigation

A geotechnical consultant will conduct a geotechnical investigation for the project. The appropriate geotechnical information will be provided to LJA to incorporate in the channel, detention basin, drop structure and bridge design for the project. The design of the bridges will be performed in accordance with Harris County Public Infrastructure Department (HCPID) design guidelines dated February, 2010 and the design of channel, detention basins and drop structures will be performed in accordance with Harris County Design Guidelines and Appendix D of Harris County Flood Control District Policy Criteria, and Procedure Manual, dated December 21, 2010

3. Environmental Assessment Investigation

A Phase I Environmental Site Assessment (ESA) will be completed for all property to be acquired by the City of Tomball. The investigation will identify “recognized environmental conditions” associated with the current or past usage of the property or with off-site sources of environmental contamination. The proposed ESA will be conducted in accordance with the American Society for Testing and Materials (ASTM) Standard Practice E1527-05. On-site surveys will be conducted consistent with the US Army Corps of Engineers (USACE) 1987 Wetlands Delineation Manual and the Regional supplement to the Corps of Engineers Wetland Delineation Manual: Atlantic and Gulf Coastal Plain Region (Version 2.0) to delineate boundaries and record the characteristics of potential waters of the US. A review of threatened and endangered species list provided by the US Fish and Wildlife Service (USFWS) for Harris County (listed species) will be completed. During the field effort for the wetland delineation, the presence/absence of listed species’ habitat on the site will be confirmed. A cultural resources constraints analysis will be completed prior to committing to any type of field survey. A preliminary jurisdictional determination form will be submitted to the USACE. This determination may be used as part of a Nationwide Permit for any impacts that can not be avoided during construction. An individual permit is not part of this effort.

4. Subsurface Utility Engineering

For the PER study, the majority of the M121 West channel alignment was completed for Subsurface Utility Engineering (SUE) work. For the final design phase, the section of M121 West south of Holderrieth will be investigated for pipelines. Additionally, the area for the future expansion of the M500-01-00 detention facility also requires a SUE investigation for pipelines. This information will be provided to LJA in Microstation format for inclusion in the design plans.

5. On-Call Engineering Services – Pipeline Relocation Design

Any private utilities requiring relocation due to construction of the M121 West and M121 East channel alignment will be moved prior to construction. LJA will coordinate with utility owner and provide plan and profile sheets for relocation of utilities prior to construction.

6. On-Call Engineering Services – Drainage Review

Several areas may require additional drainage consideration for the M121-00-00 Watershed. Expected drainage improvements south of Theis Road and west of the

channel alignment will need to be reviewed by the design engineer prior to the city approving the developer's channel design to discharge to the M121 West channel. Along M121 East, the future improvement of an existing private road to a public road with a 60-ft right-of-way could be evaluated during the final design of the M121 East channel.

7. Construction Phase Services

LJA will provide the following construction phase services:

Provide construction control staking consisting of:

Horizontal Control: The surveyor will set control points along the project centerline approximately every 1000 feet.

Vertical Control: Benchmarks will be set along the project reach with the NAVD 1988 datum with 2001 adjustment.

Review shop, laboratory, and mill tests of material for compliance with design concepts and specifications and promptly report to City any deficiencies noted.

Review and approve contractor pay request.

Make weekly visits, as distinguished from the continuous services of a resident project representative, to observe the progress and quality of the work, and to determine, in general, if the work is proceeding in accordance with the contract documents. After each visit, the Engineer will prepare a written report of his observations of the progress and quality of work performed pursuant to the contract documents. A copy of said reports will be submitted to the City. In performing these services, the Engineer will endeavor to protect the City against defects and deficiencies in the work of the contractors, but the Engineer does not guarantee the performance of their contracts, nor does the Engineer accept responsibility for the Contractor's means, methods, and workers' safety. The Engineer will also conduct inspections to determine the dates of substantial and final completion.

Consult with and advise the City during construction. Engineer will issue all instructions to the Contractor requested by the City and prepare, sign, and issue routine change orders for City's approval.

Participate with the City's representative in a final inspection of the project.

Prepare and deliver to City a set of reproducible record drawings showing those changes made during the construction period based on change orders, marked-up prints, drawings, and other data furnished by the Contractor to the Engineer and which Engineer considers significant.

TERMS

LJA proposes to perform the engineering services as described in the scope of services on a lump sum basis to be billed monthly on a percent complete schedule for the basic services tasks and on a time and materials not too exceed for the additional services tasks.

SCHEDULE

After receiving your Notice to Proceed, LJA will complete the design channel project within 240 days.

BUDGET

LJA proposes to perform the engineering services described in the scope of services for \$1,445,800. For your convenience, and information, we have attached our fee estimate so that you can review the composition of this fee.

Regular City Council

Agenda Item

Data Sheet

Meeting Date: December 5, 2011

Topic:

Discussion of City Sidewalks (Country Meadows & Spring Pine Estates)

Background:

Discussion was requested by Councilmen Stoll.

Origination:

Councilmen Stoll and City Manager's Office

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:

Proposed and Existing Sidewalks



Regular City Council

Agenda Item

Meeting Date: December 5, 2011

Data Sheet

Topic:

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

- Section 551.071 Consultation with Attorney regarding Litigation

Background:

Origination:

Recommendation:

Funding:

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

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