NOTICE OF REGULAR CITY COUNCIL MEETING
CITY OF TOMBALL, TEXAS

MONDAY, JUNE 20, 2011

6:00 P.M.

Notice is hereby given of a meeting of the Tomball City Council, to be held on Monday, June 20, 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 Sonny Howard, Youth Pastor, Terra Verde Community Church

3.0 Pledges to U.S. and Texas Flags

- Led by Junior Girl Scouts Troop 14223

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

5.0 Reports and Announcements

- **Farmers Market –** 9 a.m.-1:00 p.m. (Every Saturday, April through July)
- **June 20-August 15** (skip July 4th) **– Tomball's Kids Club**, hosted by HEB and partner, Buffalo Wild Wings – **MLK Community Park**
- **July 4, 2011 – Fourth of July Celebration** – Fireworks Display – City offices closed
- July 5, 2011 – Special Council Meeting (Budget) – 4 p.m.
- July 5, 2011 – Regular Council Meeting – 6 p.m.
- July 9, 2011 – **2nd Saturday at the Depot**
- July 18, 2011 – Special Council Meeting (Budget) – 4 p.m.
- July 18, 2011 – Special Council/Planning and Zoning Commission/Downtown Tomball Advisory Committee Meeting – 5 p.m.
- July 20, 2011 – Strategic Planning Workshop – 9 a.m.-4 p.m.
- July 25, 2011 – Special Council Meeting (Budget) – 4 p.m.
- July 25, 2011 – Regular Tourism Advisory Committee Meeting – 6 p.m.
- July 26, 2011 – Special Council Meeting (Budget) – 4 p.m.
- **August 5, 2011 – Tomball Night**
- ***Walk Tomball!*** (every Saturday at 8:00 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
  - Glenn Windsor - Results of the $8,650,000 General Obligation Refunding Bonds Authorized by Council at the June 6, 2011 Council meeting

6.0 Approve the Minutes of the June 6, 2011 Regular City Council Meeting and the June 6, 2011 Special City Council Meeting

7.0 Old Business:

7.1 Approve, on Second Reading, Resolution No. 2011-06-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 Stripes LLC to Promote and Develop a 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 Stripes LLC to Make Direct Incentives to, or Expenditures for, Assistance with Infrastructure Costs related to the Development and Construction of a Commercial Building to be located at the northwest corner of FM 2920 and FM 2978 in Tomball, Texas. The estimated amount of expenditures for such Project is $56,000

8.0 New Business:

8.1 Adopt Resolution No. 2011-10, a Resolution of the City Council of the City of Tomball, Texas, Supporting the *39th Annual Tomball Night* and Parade, to be held in Tomball on Friday, August 5, 2011

8.2 Approve the Following Plats, as Recommended by Planning and Zoning Commission:

- **LESLIE'S PARK REPLAT**: A subdivision of 1.7291 acres of land in the Joseph House Survey, A-34, Harris County, Texas; being a partial Replat of Leslie's Park, originally recorded in Film Code No. 400005, Harris County Map Records
- **WAUKESHA PEARCE TOMBALL FINAL PLAT**; A subdivision of 5.7864 Acres; located in the Joseph House Survey, Abstract No. 34, City of Tomball, Harris County, TX

8.3 Approval of Proposal by Raba-Kistner Consultants, Inc. for Professional Environmental Consulting Services associated with the Modification of the existing Groundwater Monitoring System at the City of Tomball Closed Landfill, at a not-to-exceed cost of $61,000.00

8.4 Approve Hart Voting System Master Agreement for the Purchase of Election Equipment from HartIntercivic, Inc. in the amount of $25,752.00, and Hart Voting System Warranty, License, and Support Agreement for Future General City's Elections, in the amount of $5,500.00 for the First City Election in which the Equipment and Software are used and Authorize the Mayor to Execute Agreements.

8.5 Adopt, on First Reading, Ordinance No. 2011-10, an Ordinance of the City Council of the City of Tomball, Texas, Amending Chapter 70, Plats and the Subdivision of Land, of the Code of Ordinances of the City of Tomball, Texas, by Amending Subsection (d) of Section 70-3 of Article I to Allow Joinder of Lots Under Common Ownership without Requiring a Plat, Provided that the Joinder of Lots does not Require the Dedication or Removal of any Public Rights-of-Way, Public Easements or Public Improvements; Providing a Penalty in an Amount of not more than $2,000 for Violation of any Provision Hereof; Providing for Saving and Severability; Providing for Publication; and Making Other Provisions and Finding related Thereto.

9.0 Adjournment

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

I hereby certify that the above notice of meeting was posted on the bulletin board of City Hall, City of Tomball, Texas, a place readily accessible to the general public at all times, on the 17th day of June 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: June 20, 2011

Topic:

- **Farmers Market** – 9 a.m.-1:00 p.m. (Every Saturday, April through July)
- **June 20-August 15** (skip July 4th) – **Tomball's Kids Club**, hosted by HEB and partner, Buffalo Wild Wings – **MLK Community Park**
- **July 4, 2011 – Fourth of July Celebration** – Fireworks Display – City offices closed
- July 5, 2011 – Special Council Meeting (Budget) – 4 p.m.
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- ***Walk Tomball!*** (every Saturday at 8:00 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
  - Glenn Windsor **-** Results of the $8,650,000 General Obligation Refunding Bonds Authorized by Council at the June 6, 2011 Council meeting

Background:

Origination:

Recommendation:

Funding:

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

ACTION TAKEN

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

ATTACHMENTS:

Tomball Kids Club

Results of $ 8,650,000 General Obligation Refunding Bonds

Tomball Kid's Club

Hosted by H-E-B

Partnership with Buffalo Wild Wings

Begins June 20-August 15th (Excluding July 4th)

Every Monday & Wednesday

11am-1pm

MLK Community Park- Tomball

Event Type

- 8 Week **FREE** Summer Health & Nutrition/ Diversity Program
- Food donated by Tomball HEB

Lunch Menu

- Cold cut & sliced cheese sandwiches
- Small apple or banana
- Juice Box
- HEB Gummies

Audience

- Tomball community kids

Date	Activity	Guests
Monday, June 20th	Food Nutrition Zumba Exercise	Veggie Pals, Inc Doll Star Dance
Monday, June 27th	Basketball Highlights	Ex- Chicago Bulls
Monday, July 11th	Buffalo Soldiers	Buffalo Soldiers
Monday, July 18th	Arts & Crafts	HEB
Monday, July 25th	Special Project	Boys & Girls Scouts of America
Monday, August 01st	Contest Games	HEB
Monday, August 08th	Fire/Police	City of Tomball
Monday, August 15th	End of Program Party Anti- Bullying Campaign Battle of the Mascots	HEB/Buffalo Wild Wings

~ Program registration begins May 30th and is available at HEB Tomball, Buffalo Wild Wings or City Hall.

Tomball Kids Club

Hosted by H-E-B

Partnership with Buffalo Wild Wings

Registration Form

Name- Parent/Guardian

Address

City /State

Phone

Parent's Email Address

Child's Name

Child's Age

Day(s) Attending:

- ☐ Mondays
- ☐ Wednesdays
- ☐ Monday/Wednesday (Entire 8 weeks)

As a parent, you may grant or deny any photography or video recording of your child. **If you do not wish for your child's photograph to be taken for publications, please note below.**

Do you give permission to have your child's photo taken and used for publications?

Yes ________ No _________

Regular City Council Meeting, June 20, 2011

Reports and Announcements

Topic: Results of the $ 8,650,000 General Obligation Refunding Bonds Authorized by Council at the June 6, 2011 council meeting.

Summary:
The refunding bonds were priced this past Tuesday and the City received a rating of "AA-" from the rating agency, Standard & Poor's.

Closing is scheduled for July 12, 2011.

At the last Council meeting, we had discussed a target savings (gross) of at least $750,000. After the pricing on Tuesday, the actual savings over the term of the issuance will be $1,020,657. In simple terms, we will pay **$1,020,657 less** than we would have paid under the existing repayment schedule.

Additionally, I have attached a summary of the refunding results and a detail of the issuance costs, or the various costs to actually complete the refunding. Issuance costs were $ 100,000 and a detail can be found on page 9 of the "detail final" documents.

Regarding the cost of issuance, I reviewed last year's refunding issue and the cost of issuance was $ 62,581.50 on a par amount of $ 2,120,000.

On other previous years:

2003 Certificates of Obligation- $ 130,466 on a par amount of $ 8,590,566
2002 Certificates of Obligation- $ 192,580 on a par amount of $ 20,164,980

Refunding Results

- Priced transaction on Tuesday, June 14, 2011
- Bank Qualified Issuance
- City of Tomball received "AA-" rating from Standard & Poor's on this issue
- Issue will close on July 12, 2011
- Savings begin in fiscal year starting October 1, 2011
- Savings shown are after all costs have been paid

	Target	Result
Total Gross Savings	$ 750,000	$ 1,020,657
Average Annual Savings	$ 68,182	$ 92,787
Net PV Savings	$ 611,123	$ 868,480
Net PV Savings %	7.032%	9.994%

SOURCES AND USES OF FUNDS

City of Tomball, Texas
General Obligation Refunding Bonds, Series 2011
FINAL

Dated Date	07/01/2011
Delivery Date	07/12/2011

Sources:	
Bond Proceeds:	
Par Amount	8,650,000.00
Accrued Interest	8,124.72
Premium	407,792.75
	9,065,917.47
Other Sources of Funds:	
DSF transfer	209,768.75
	9,275,686.22

Uses:	
Refunding Escrow Deposits:	
Cash Deposit	210,547.50
Open Market Purchases	8,893,345.95
	9,103,893.45
Other Fund Deposits:	
Accrued Interest	8,124.72
Delivery Date Expenses:	
Cost of Issuance	100,000.00
Underwriter's Discount	59,593.78
	159,593.78
Other Uses of Funds:	
Additional Proceeds	4,074.27
	9,275,686.22

SUMMARY OF REFUNDING RESULTS

City of Tomball, Texas
General Obligation Refunding Bonds, Series 2011
FINAL

Dated Date	07/01/2011
Delivery Date	07/12/2011
Arbitrage yield	2.406769%
Escrow yield	0.107447%
Bond Par Amount	8,650,000.00
True Interest Cost	2.652423%
Net Interest Cost	2.738987%
Average Coupon	3.320120%
Average Life	6.896
Par amount of refunded bonds	8,690,000.00
Average coupon of refunded bonds	4.884100%
Average life of refunded bonds	7.088
PV of prior debt to 07/12/2011 @ 2.834221%	9,984,572.24
Net PV Savings	868,479.80
Percentage savings of refunded bonds	9.994014%
Percentage savings of refunding bonds	10.040229%

SUMMARY OF BONDS REFUNDED

City of Tomball, Texas
General Obligation Refunding Bonds, Series 2011
FINAL

Bond	Maturity Date	Interest Rate	Par Amount	Call Date	Call Price
Combination Tax & Revenue Certificates of Obligation, Series 2002, 2002:					
SERIAL	02/15/2015	4.500%	1,090,000.00	02/15/2012	100.000
	02/15/2016	4.625%	1,090,000.00	02/15/2012	100.000
	02/15/2017	4.750%	1,085,000.00	02/15/2012	100.000
	02/15/2018	4.750%	1,085,000.00	02/15/2012	100.000
	02/15/2019	5.000%	1,085,000.00	02/15/2012	100.000
	02/15/2020	5.000%	1,085,000.00	02/15/2012	100.000
	02/15/2021	5.000%	1,085,000.00	02/15/2012	100.000
	02/15/2022	5.000%	1,085,000.00	02/15/2012	100.000
			8,690,000.00		

Bond	Maturity Date	Interest Rate	Interest Only Refunded Amount	Begin Date	End Date
Combination Tax & Revenue Certificates of Obligation, Series 2002, 2002:					
SERIAL	02/15/2015	4.500%	1,090,000.00	07/12/2011	08/15/2011
	02/15/2016	4.625%	1,090,000.00	07/12/2011	08/15/2011
	02/15/2017	4.750%	1,085,000.00	07/12/2011	08/15/2011
	02/15/2018	4.750%	1,085,000.00	07/12/2011	08/15/2011
	02/15/2019	5.000%	1,085,000.00	07/12/2011	08/15/2011
	02/15/2020	5.000%	1,085,000.00	07/12/2011	08/15/2011
	02/15/2021	5.000%	1,085,000.00	07/12/2011	08/15/2011
	02/15/2022	5.000%	1,085,000.00	07/12/2011	08/15/2011
			8,690,000.00		

SAVINGS

City of Tomball, Texas
General Obligation Refunding Bonds, Series 2011
FINAL

Date	Prior Debt Service	Prior Receipts	Prior Net Cash Flow	Refunding Debt Service	Savings	Present Value to 07/12/2011 @ 2.8342215%
09/30/2011	209,768.75	209,768.75				(540.46)
09/30/2012	419,537.50		419,537.50	333,048.89	86,488.61	83,999.89
09/30/2013	419,537.50		419,537.50	324,600.00	94,937.50	89,739.58
09/30/2014	419,537.50		419,537.50	328,350.00	91,187.50	83,754.56
09/30/2015	1,485,012.50		1,485,012.50	1,391,300.00	93,712.50	83,878.30
09/30/2016	1,435,281.25		1,435,281.25	1,340,962.50	94,318.75	82,221.73
09/30/2017	1,379,306.25		1,379,306.25	1,283,462.50	95,843.75	81,388.67
09/30/2018	1,327,768.75		1,327,768.75	1,233,925.00	93,843.75	77,582.37
09/30/2019	1,274,875.00		1,274,875.00	1,182,275.00	92,600.00	74,554.12
09/30/2020	1,220,625.00		1,220,625.00	1,126,100.00	94,525.00	74,069.40
09/30/2021	1,166,375.00		1,166,375.00	1,075,300.00	91,075.00	69,452.89
09/30/2022	1,112,125.00		1,112,125.00	1,020,000.00	92,125.00	68,378.76
	11,869,750.00	209,768.75	11,659,981.25	10,639,323.89	1,020,657.36	868,479.80

Savings Summary

PV of savings from cash flow	868,479.80
Net PV Savings	868,479.80

BOND SUMMARY STATISTICS

City of Tomball, Texas
General Obligation Refunding Bonds, Series 2011
FINAL

Dated Date	07/01/2011
Delivery Date	07/12/2011
Last Maturity	02/15/2022
Arbitrage Yield	2.406769%
True Interest Cost (TIC)	2.652423%
Net Interest Cost (NIC)	2.738987%
All-In TIC	2.834221%
Average Coupon	3.320120%
Average Life (years)	6.896
Duration of Issue (years)	6.232
Par Amount	8,650,000.00
Bond Proceeds	9,065,917.47
Total Interest	1,989,323.89
Net Interest	1,641,124.92
Total Debt Service	10,639,323.89
Maximum Annual Debt Service	1,391,300.00
Average Annual Debt Service	1,003,732.42
Underwriter's Fees (per $1000)	
Average Takedown	4.720000
Management Fee	1.000000
Other Fee	1.169454
Total Underwriter's Discount	6.889454
Bid Price	104.025422

Bond Component	Par Value	Price	Average Coupon	Average Life
Serial Bond	8,650,000.00	104.714	3.320%	6.896
	8,650,000.00			6.896

	TIC	All-In TIC	Arbitrage Yield
Par Value	8,650,000.00	8,650,000.00	8,650,000.00
+ Accrued Interest	8,124.72	8,124.72	8,124.72
+ Premium (Discount)	407,792.75	407,792.75	407,792.75
- Underwriter's Discount	(59,593.78)	(59,593.78)	
- Cost of Issuance Expense		(100,000.00)	
- Other Amounts			
Target Value	9,006,323.69	8,906,323.69	9,065,917.47
Target Date	07/12/2011	07/12/2011	07/12/2011
Yield	2.652423%	2.834221%	2.406769%

BOND PRICING

City of Tomball, Texas
General Obligation Refunding Bonds, Series 2011
FINAL

Bond Component	Maturity Date	Amount	Rate	Yield	Price	Call Date	Call Price	Premium (-Discount)	Takedown
Serial Bond:									
	02/15/2012	35,000	2.000%	0.600%	100.825			288.75	7.500
	02/15/2013	60,000	2.000%	0.750%	101.973			1,183.80	7.500
	02/15/2014	65,000	2.000%	1.150%	102.163			1,405.95	7.500
	02/15/2015	1,140,000	2.000%	1.360%	102.235			25,479.00	3.750
	02/15/2016	1,115,000	2.500%	1.580%	104.058			45,246.70	3.750
	02/15/2017	1,085,000	2.500%	1.900%	103.167			34,361.95	5.000
	02/15/2018	1,065,000	3.000%	2.250%	104.569			48,659.85	5.000
	02/15/2019	1,045,000	3.000%	2.510%	103.366			35,174.70	5.000
	02/15/2020	1,025,000	4.000%	2.800%	108.153 C	02/15/2019	100.000	83,568.25	5.000
	02/15/2021	1,015,000	4.000%	2.950%	107.092 C	02/15/2019	100.000	71,983.80	5.000
	02/15/2022	1,000,000	4.000%	3.100%	106.044 C	02/15/2019	100.000	60,440.00	5.000
		8,650,000						407,792.75	

Dated Date	07/01/2011	
Delivery Date	07/12/2011	
First Coupon	02/15/2012	
Par Amount	8,650,000.00	
Premium	407,792.75	
Production	9,057,792.75	104.714367%
Underwriter's Discount	(59,593.78)	(0.688945)
Purchase Price	8,998,198.97	104.025422%
Accrued Interest	8,124.72	
Net Proceeds	9,006,323.69	

BOND DEBT SERVICE

City of Tomball, Texas
General Obligation Refunding Bonds, Series 2011
FINAL

Period Ending	Principal	Interest	Debt Service
09/30/2012	35,000	298,048.89	333,048.89
09/30/2013	60,000	264,600.00	324,600.00
09/30/2014	65,000	263,350.00	328,350.00
09/30/2015	1,140,000	251,300.00	1,391,300.00
09/30/2016	1,115,000	225,962.50	1,340,962.50
09/30/2017	1,085,000	198,462.50	1,283,462.50
09/30/2018	1,065,000	168,925.00	1,233,925.00
09/30/2019	1,045,000	137,275.00	1,182,275.00
09/30/2020	1,025,000	101,100.00	1,126,100.00
09/30/2021	1,015,000	60,300.00	1,075,300.00
09/30/2022	1,000,000	20,000.00	1,020,000.00
	8,650,000	1,989,323.89	10,639,323.89

BOND DEBT SERVICE

City of Tomball, Texas
General Obligation Refunding Bonds, Series 2011
FINAL

Period Ending	Principal	Interest	Debt Service	Annual Debt Service
02/15/2012	35,000	165,448.89	200,448.89	
08/15/2012		132,600.00	132,600.00	333,048.89
02/15/2013	60,000	132,600.00	192,600.00	
08/15/2013		132,000.00	132,000.00	324,600.00
02/15/2014	65,000	132,000.00	197,000.00	
08/15/2014		131,350.00	131,350.00	328,350.00
02/15/2015	1,140,000	131,350.00	1,271,350.00	
08/15/2015		119,950.00	119,950.00	1,391,300.00
02/15/2016	1,115,000	119,950.00	1,234,950.00	
08/15/2016		106,012.50	106,012.50	1,340,962.50
02/15/2017	1,085,000	106,012.50	1,191,012.50	
08/15/2017		92,450.00	92,450.00	1,283,462.50
02/15/2018	1,065,000	92,450.00	1,157,450.00	
08/15/2018		76,475.00	76,475.00	1,233,925.00
02/15/2019	1,045,000	76,475.00	1,121,475.00	
08/15/2019		60,800.00	60,800.00	1,182,275.00
02/15/2020	1,025,000	60,800.00	1,085,800.00	
08/15/2020		40,300.00	40,300.00	1,126,100.00
02/15/2021	1,015,000	40,300.00	1,055,300.00	
08/15/2021		20,000.00	20,000.00	1,075,300.00
02/15/2022	1,000,000	20,000.00	1,020,000.00	1,020,000.00
	8,650,000	1,989,323.89	10,639,323.89	10,639,323.89

COST OF ISSUANCE

City of Tomball, Texas
General Obligation Refunding Bonds, Series 2011
FINAL

Cost of Issuance	$/1000	Amount
Financial Advisory Fee	4.66763	40,375.00
Bond Counsel Fee	2.31214	20,000.00
Bond Counsel Expenses	0.11561	1,000.00
Attorney General	1.00000	8,650.00
S&P Rating Fee	1.27168	11,000.00
Paying Agent	0.05780	500.00
Bond Call Fee	0.03468	300.00
Escrow Agent Fee	0.08671	750.00
Verification Agent Fee	0.40462	3,500.00
Computer Structuring Fee	0.57803	5,000.00
Document Preparation	0.28902	2,500.00
Document Printing	0.28902	2,500.00
Miscellanous	0.45376	3,925.00
	11.56069	100,000.00

AVERAGE TAKEDOWN

City of Tomball, Texas
General Obligation Refunding Bonds, Series 2011
FINAL

Dated Date	07/01/2011
Delivery Date	07/12/2011

Bond Component	Maturity Date	Par Amount	Takedown $/Bond	Takedown Amount
Serial Bond:				
	02/15/2012	35,000	7.5000	262.50
	02/15/2013	60,000	7.5000	450.00
	02/15/2014	65,000	7.5000	487.50
	02/15/2015	1,140,000	3.7500	4,275.00
	02/15/2016	1,115,000	3.7500	4,181.25
	02/15/2017	1,085,000	5.0000	5,425.00
	02/15/2018	1,065,000	5.0000	5,325.00
	02/15/2019	1,045,000	5.0000	5,225.00
	02/15/2020	1,025,000	5.0000	5,125.00
	02/15/2021	1,015,000	5.0000	5,075.00
	02/15/2022	1,000,000	5.0000	5,000.00
		8,650,000	4.7204	40,831.25

Rounded Takedown

$/Bond	4.72
Total amount	40,828.00

UNDERWRITER'S DISCOUNT

City of Tomball, Texas
General Obligation Refunding Bonds, Series 2011
FINAL

Underwriter's Discount	$/1000	Amount
Average Takedown	4.72000	40,828.00
Management Fee	1.00000	8,650.00
Underwriter's Counsel	0.75145	6,500.00
Interest on Good Faith	0.01130	97.75
Day Loan	0.02080	179.92
IPREO	0.08500	735.25
CUSIP Fee	0.03690	319.19
CUSIP Disclosure Fee	0.00390	33.74
MAC Fee	0.14450	1,249.93
DTC Fee	0.05780	500.00
Miscellaneous	0.05780	500.00
	6.88945	59,593.78

FORM 8038 STATISTICS

City of Tomball, Texas
General Obligation Refunding Bonds, Series 2011
FINAL

Dated Date	07/01/2011
Delivery Date	07/12/2011

Bond Component	Date	Principal	Coupon	Price	Issue Price	Redemption at Maturity
Serial Bond:						
	02/15/2012	35,000.00	2.000%	100.825	35,288.75	35,000.00
	02/15/2013	60,000.00	2.000%	101.973	61,183.80	60,000.00
	02/15/2014	65,000.00	2.000%	102.163	66,405.95	65,000.00
	02/15/2015	1,140,000.00	2.000%	102.235	1,165,479.00	1,140,000.00
	02/15/2016	1,115,000.00	2.500%	104.058	1,160,246.70	1,115,000.00
	02/15/2017	1,085,000.00	2.500%	103.167	1,119,361.95	1,085,000.00
	02/15/2018	1,065,000.00	3.000%	104.569	1,113,659.85	1,065,000.00
	02/15/2019	1,045,000.00	3.000%	103.366	1,080,174.70	1,045,000.00
	02/15/2020	1,025,000.00	4.000%	108.153	1,108,568.25	1,025,000.00
	02/15/2021	1,015,000.00	4.000%	107.092	1,086,983.80	1,015,000.00
	02/15/2022	1,000,000.00	4.000%	106.044	1,060,440.00	1,000,000.00
		8,650,000.00			9,057,792.75	8,650,000.00

	Maturity Date	Interest Rate	Issue Price	Stated Redemption at Maturity	Weighted Average Maturity	Yield
Final Maturity	02/15/2022	4.000%	1,060,440.00	1,000,000.00		
Entire Issue			9,057,792.75	8,650,000.00	6.9318	2.4068%

Proceeds used for accrued interest	8,124.72
Proceeds used for bond issuance costs (including underwriters' discount)	159,593.78
Proceeds used for credit enhancement	0.00
Proceeds allocated to reasonably required reserve or replacement fund	0.00
Proceeds used to currently refund prior issues	209,768.75
Proceeds used to advance refund prior issues	8,894,124.70
Remaining weighted average maturity of the bonds to be currently refunded	0.0000
Remaining weighted average maturity of the bonds to be advance refunded	7.0882

FORM 8038 STATISTICS

City of Tomball, Texas
General Obligation Refunding Bonds, Series 2011
FINAL

Refunded Bonds

Bond Component	Date	Principal	Coupon	Price	Issue Price
Combination Tax & Revenue Certificates of Obligati:					
SERIAL	02/15/2015	1,090,000.00	4.500%	100.000	1,090,000.00
SERIAL	02/15/2016	1,090,000.00	4.625%	100.000	1,090,000.00
SERIAL	02/15/2017	1,085,000.00	4.750%	100.000	1,085,000.00
SERIAL	02/15/2018	1,085,000.00	4.750%	100.000	1,085,000.00
SERIAL	02/15/2019	1,085,000.00	5.000%	100.000	1,085,000.00
SERIAL	02/15/2020	1,085,000.00	5.000%	100.000	1,085,000.00
SERIAL	02/15/2021	1,085,000.00	5.000%	100.000	1,085,000.00
SERIAL	02/15/2022	1,085,000.00	5.000%	100.000	1,085,000.00
		8,690,000.00			8,690,000.00

	Last Call Date	Issue Date	Remaining Weighted Average Maturity
Combination Tax & Revenue Certificates of Obligati	02/15/2012	08/15/2009	7.0882
All Refunded Issues	02/15/2012		7.0882

PROOF OF ARBITRAGE YIELD

City of Tomball, Texas
General Obligation Refunding Bonds, Series 2011
FINAL

Date	Debt Service	Present Value to 07/12/2011 @ 2.4067695%
02/15/2012	200,448.89	197,631.51
08/15/2012	132,600.00	129,181.71
02/15/2013	192,600.00	185,403.85
08/15/2013	132,000.00	125,557.12
02/15/2014	197,000.00	185,156.35
08/15/2014	131,350.00	121,985.28
02/15/2015	1,271,350.00	1,166,668.41
08/15/2015	119,950.00	108,764.59
02/15/2016	1,234,950.00	1,106,475.02
08/15/2016	106,012.50	93,854.32
02/15/2017	1,191,012.50	1,041,881.87
08/15/2017	92,450.00	79,912.38
02/15/2018	1,157,450.00	988,585.70
08/15/2018	76,475.00	64,541.13
02/15/2019	4,161,475.00	3,470,318.23
	10,397,123.89	9,065,917.47

Proceeds Summary

Delivery date	07/12/2011
Par Value	8,650,000.00
Accrued interest	8,124.72
Premium (Discount)	407,792.75
Target for yield calculation	9,065,917.47

PROOF OF ARBITRAGE YIELD

City of Tomball, Texas
General Obligation Refunding Bonds, Series 2011
FINAL

Assumed Call/Computation Dates for Premium Bonds

Bond Component	Maturity Date	Rate	Yield	Call Date	Call Price	Net Present Value (NPV) to 07/12/2011 @ 2.4067695%
SERIAL	02/15/2020	4.000%	2.800%	02/15/2019	100.000	29,080.93
SERIAL	02/15/2021	4.000%	2.950%	02/15/2019	100.000	39,566.36
SERIAL	02/15/2022	4.000%	3.100%	02/15/2019	100.000	49,461.64

Rejected Call/Computation Dates for Premium Bonds

Bond Component	Maturity Date	Rate	Yield	Call Date	Call Price	Net Present Value (NPV) to 07/12/2011 @ 2.4067695%	Increase to NPV
SERIAL	02/15/2020	4.000%	2.800%			42,457.34	13,376.41
SERIAL	02/15/2021	4.000%	2.950%			65,745.05	26,178.69
SERIAL	02/15/2022	4.000%	3.100%			87,693.89	38,232.25

ESCROW REQUIREMENTS

City of Tomball, Texas
General Obligation Refunding Bonds, Series 2011
FINAL

Period Ending	Interest	Principal Redeemed	Total
08/15/2011	209,768.75		209,768.75
02/15/2012	209,768.75	8,690,000.00	8,899,768.75
	419,537.50	8,690,000.00	9,109,537.50

ESCROW DESCRIPTIONS

City of Tomball, Texas
General Obligation Refunding Bonds, Series 2011
FINAL

	Type of Security	CUSIP or ID	Maturity Date	Par Amount	Rate	Yield	Price	Interest Class	Interest Frequency	Interest Day Basis
Jul 12, 2011:										
	TSTRIP-P	912820GV3	02/15/2012	8,899,000		0.107%	99.936464	Zero Coupon	Semiannual	ACT/ACT
				8,899,000						

ESCROW COST

City of Tomball, Texas
General Obligation Refunding Bonds, Series 2011
FINAL

Type of Security	Maturity Date	Par Amount	Rate	Yield	Price	Cost	Total Cost
TSTRIP-P	02/15/2012	8,899,000		0.107039%	99.93646426	8,893,345.95	8,893,345.95
		8,899,000				8,893,345.95	8,893,345.95

Purchase Date	Cost of Securities	Cash Deposit	Total Escrow Cost
07/12/2011	8,893,345.95	210,547.50	9,103,893.45
	8,893,345.95	210,547.50	9,103,893.45

ESCROW CASH FLOW

City of Tomball, Texas
General Obligation Refunding Bonds, Series 2011
FINAL

Date	Principal	Net Escrow Receipts
02/15/2012	8,899,000.00	8,899,000.00
	8,899,000.00	8,899,000.00

Escrow Cost Summary

Purchase date	07/12/2011
Purchase cost of securities	8,893,345.95

ESCROW SUFFICIENCY

City of Tomball, Texas
General Obligation Refunding Bonds, Series 2011
FINAL

Date	Escrow Requirement	Net Escrow Receipts	Excess Receipts	Excess Balance
07/12/2011		210,547.50	210,547.50	210,547.50
08/15/2011	209,768.75		(209,768.75)	778.75
02/15/2012	8,899,768.75	8,899,000.00	(768.75)	10.00
	9,109,537.50	9,109,547.50	10.00	

ESCROW STATISTICS

City of Tomball, Texas
General Obligation Refunding Bonds, Series 2011
FINAL

Escrow	Total Escrow Cost	Modified Duration (years)	Yield to Receipt Date	Yield to Disbursement Date	Perfect Escrow Cost	Value of Negative Arbitrage	Cost of Dead Time
Prior Bonds (PRIOR):							
	8,894,124.70	0.591	0.107447%	0.107447%	8,774,689.33	119,424.43	10.94
Current Refunding (CURR):							
	209,768.75				209,309.22		459.53
	9,103,893.45				8,983,998.55	119,424.43	470.47

Delivery date	07/12/2011
Arbitrage yield	2.406769%

Regular City Council
Agenda Item
Data Sheet

Meeting Date: June 20, 2011

Topic:

Approve the Minutes of the June 6, 2011 Regular City Council Meeting and the June 6, 2011 Special City Council Meeting

Background:

Origination:

Recommendation:

Funding:

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

ACTION TAKEN

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

ATTACHMENTS:

Draft - Special City Council Meeting - June 6, 2011
Draft - Regular City Council Meeting - June 6, 2011

MINUTES OF SPECIAL CITY COUNCIL MEETING
CITY OF TOMBALL, TEXAS

MONDAY, JUNE 6, 2011

5:00 P.M.

1.0 Call to Order

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

Councilman Hudgens
Councilman Stoll
Councilman Brown
Councilman Townsend
Councilman Dodson

Others present:

City Manager – George Shackelford
Assistant City Manager – Christal Weber
City Secretary – Doris Speer
City Attorney – Loren B. Smith
Director of Public Works – David Kauffman
Assistant to City Manager – Shawn Cox
Assistant City Engineer – Lori Lakatos
Building Official – David Allen

2.0 The following public comments were received:

Rodney Hutson, M.D. 9431 Rosie Lane, 77354	- Spoke in support of revisions to Chapter 70; offered suggestions for revisions.

3.0 New Business:

3.1 Council entered into a Workshop Session to discuss possible revisions to Chapter 70, Plats and the Subdivision of Land.

Loren Smith and Lori Lakatos provided information regarding exceptions to current platting requirements that will enable property owners to join small lots without incurring the costs of replatting. Consensus of Council was:

1. to expand the minor plat process to both residential and commercial properties in the city containing small lots;
2. to use the 1912 city map;
3. that the ordinance will not apply to vacant lots, only lots containing structures;
4. that damage to 60% or more of the square footage of the existing structure will require the property owner to replat;
5. that expansion of or additions to the existing structure will require the property owner to replat; and
6. to include a dis-joinder process, as long as it does not create a substandard lot.

City staff will return with proposed ordinance for Council consideration at a future Council meeting.

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

Motion carried unanimously.

Meeting adjourned.

PASSED AND APPROVED this 20th day of June 2011.

Doris Speer, TRMC
City Secretary

Gretchen Fagan
Mayor

MINUTES OF REGULAR CITY COUNCIL MEETING
CITY OF TOMBALL, TEXAS

MONDAY, JUNE 6, 2011

7:00 P.M.

1.0 Call to Order

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

Councilman Hudgens
Councilman Stoll
Councilman Brown
Councilman Townsend
Councilman Dodson

Others present:

City Manager – George Shackelford
Assistant City Manager – Christal Weber
City Secretary – Doris Speer
City Attorney – Loren B. Smith
Director of Public Works – David Kauffman
Finance Director – Glenn Windsor
Assistant to City Manager – Shawn Cox
Police Captain – Rick Grassi
Assistant City Engineer – Lori Lakatos
Fire Inspector – Tommy Nicholson
Executive Director-TEDC – Kelly Violette
Chief-NWEMS – Brian Petrilla

2.0 The invocation was given by Steve Alison, Chaplain, VFW Post #2427

3.0 Pledge to the U. S. and Texas flags was led by Diane Whitney, Ladies Auxiliary, VFW Post #2427.

4.0 No public comments were received.

5.0 Presentations:

- Mayor Fagan presented a Proclamation declaring June 6, 2011 as **"Honor Our Military Heroes Day"** to current and former members of the military.

6.0 Reports and Announcements:

- **Farmers Market –** 9 a.m.-1:00 p.m. (Every Saturday, April through July)
- **Tomball Livable Centers Downtown Plan** receives the **American Society of Landscape Architects Merit Award**
- June 11, 2011 – **2nd Saturday at the Depot**
- **June 20-August 15** (skip July 4th) – **Tomball's Kids Club** on **Mondays and Wednesdays,** free lunch hosted by HEB and partner, Buffalo Wild Wings **– MLK Community Park;** applications available at City Hall and online
- July 4, 2011 – **Fourth of July Celebration – Fireworks Display**
- ***Walk Tomball!*** (every Saturday at 8:00 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
    - Doris Speer presented information regarding the effects that the federal M.O.V.E. Act and Texas legislation, SB100, will have on the City's elections and requested Council direction regarding securing election equipment for future elections, changing Council's terms of office, or moving the City's elections to November. Council direction was given to keep City elections in May and to negotiate the purchase of election equipment from HartIntercivic and return an agreement for Council approval.

7.0 Motion was made by Councilman Townsend, second by Councilman Stoll, to approve the minutes of the May 16, 2011 Regular City Council Meeting and the May 17, 2011 Special City Council Meeting

Motion carried unanimously.

8.0 New Business:

8.1 Mayor Fagan presented recommendation for the appointment of Evelyn Torres-Chervenak to the Planning and Zoning Commission. Councilman Townsend nominated Lisa Daniels; nominations ceased. Vote was as follows:

Councilman Hudgens	Evelyn Torres-Chervenak
Councilman Stoll	Evelyn Torres-Chervenak
Councilman Brown	Evelyn Torres-Chervenak
Councilman Townsend	Evelyn Torres-Chervenak
Councilman Dodson	Evelyn Torres-Chervenak

Evelyn Torres-Chervenak is appointed to the Planning and Zoning Commission.

8.2 George Shackelford and Lori Lakatos presented an overview of the proposed Tomball East-Side Specific Plan, presented by Partners for Strategic Action, Inc. (PSA), to develop a plan for the downtown area east of the railroad tracks, with an estimated cost of $142,000. No action necessary.

8.3 Glenn Windsor and Joe Morrow presented an overview of the refunding Ordinance. Motion was made by Councilman Townsend, second by Councilman Dodson, to read Ordinance No. 2011-09 by caption only on First and Only Reading.

Motion carried unanimously.

Motion was made by Councilman Townsend, second by Councilman Dodson, to adopt, on First and Only Reading, Ordinance No. 2011-09, Authorizing the Issuance of City of Tomball, Texas General Obligation Refunding Bonds, Series 2011; Levying a Tax in Payment Thereof; Setting Certain Parameters for the Bonds; Authorizing the Authorized Officer to Approve the Amount, the Interest Rate, Price and Certain Other Terms Thereof; Authorizing the Redemption Prior to Maturity of Certain Outstanding Bonds; Authorizing the Execution and Delivery of a Bond Purchase Agreement, a Paying Agent/Registrar Agreement and an Escrow Agreement relating to such Bonds; Approving the Preparation and Distribution of an Official Statement; and Enacting other Provisions Relating Thereto. Vote was as follows:

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

Motion carried unanimously.

8.4 Shawn Cox presented the request from Woodforest National Bank. Motion was made by Councilman Townsend, second by Councilman Brown, to approve Resolution No. 2011-08, a Resolution of the City Council of the City of Tomball, Texas, supporting the Woodforest National Bank 5K "Tomball Dash" to be held in Tomball on Saturday, November 12, 2011.

Motion carried unanimously.

8.5 Doris Speer presented the request from Tomball Independent School District. Motion was made by Councilman Townsend, second by Councilman Hudgens, to approve Resolution No. 2011-07, a Resolution of the City Council of the City of Tomball, Texas, Supporting the 4th Annual Homecoming Parade and Pep Rally, to be held at the Tomball Depot, Sponsored by the Tomball Independent School District and the TISD Student Council, on Wednesday, September 28, 2011.

Motion carried unanimously.

8.6 Kelly Violette presented an overview of the proposed Resolution. Motion was made by Councilman Dodson, second by Councilman Brown, to approve, on First Reading, Resolution No. 2011-06-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 Stripes LLC to Promote and Develop a 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 Stripes LLC to Make Direct Incentives to, or Expenditures for, Assistance with Infrastructure Costs related to the Development and Construction of a Commercial Building to be located at the northwest corner of FM 2920 and FM 2978 in Tomball, Texas. The estimated amount of expenditures for such Project is $56,000.

Motion carried unanimously.

8.7 Kelly Violette presented the Tomball Economic Development Corporation 2010-2011 Annual Report to Council. No action necessary.

8.8 Kelly Violette presented the Tomball Economic Development Corporation 2011-2012 Strategic Work Plan. Motion was made by Councilman Townsend, second by Councilman Stoll, to approve the Tomball Economic Development Corporation 2011-2012 Strategic Work Plan.

Motion carried unanimously.

8.9 Kelly Violette presented an overview of the proposed Project and Agreement. Motion was made by Councilman Dodson, second by Councilman Townsend, to approve, as a Project of the Corporation, an agreement with American National Carbide to make direct incentives to, or expenditures for, the creation or retention of primary jobs and that are found by the Board of Directors to be required or suitable for the development, retention, or expansion of manufacturing and industrial facilities: to wit: American National Carbide expansion and development of its manufacturing facility located at 915 South Cherry Street, Tomball, Texas. The estimated amount of expenditures for such Project is $75,000.

Motion carried unanimously.

8.10 Kelly Violette presented an overview of the proposed Resolution and Project. Motion was made by Councilman Stoll, second by Councilman Dodson, to approve, on First Reading, Resolution No. 2011-09-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 to Acquire up to 120 Acres of Land Generally Located at the Corner of Hufsmith-Kohrville and Holderrieth Roads for the Creation of a Business Park; Containing Other Provisions Relating to the Subject; and Providing for Severability.

Motion carried unanimously.

8.11 Kelly Violette presented an overview of the proposed Agreement between the City of Tomball and the Tomball Economic Development Corporation. Motion was made by Councilman Townsend, second by Councilman Stoll, to approve an Agreement between the City of Tomball and the Tomball Economic Development Corporation (TEDC) for Reimbursement for Costs Associated with the Purchase of up to 120 Acres of Land located at the northwest corner of Hufsmith-Kohrville and Holderrieth Roads in Tomball for the Purpose of Developing a Business Park.

Motion carried unanimously.

8.12 George Shackelford requested Council direction regarding setting July 20, 2011 as the date for the Strategic Planning Workshop. Consensus of the Council was unanimous to set July 20, 2011 as the date for the Strategic Planning Workshop.

8.13 The City Council recessed at 7:08 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:

- Sec. 551.072 – Deliberations Regarding Real Property

Upon reconvening into regular session at 7:34 p.m., no action was taken.

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

Motion carried unanimously.

Meeting adjourned.

PASSED AND APPROVED this 2nd day of May 2011.

Doris Speer, TRMC City Secretary	Gretchen Fagan Mayor

Regular City Council
Agenda Item
Data Sheet

Meeting Date: June 20, 2011

Topic:

Approve, on Second Reading, Resolution No. 2011-06-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 Stripes LLC to Promote and Develop a 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 Stripes LLC to Make Direct Incentives to, or Expenditures for, Assistance with Infrastructure Costs related to the Development and Construction of a Commercial Building to be located at the northwest corner of FM 2920 and FM 2978 in Tomball, Texas. The estimated amount of expenditures for such Project is $56,000

Background:

All expenditures of the Tomball Economic Development Corporation (TEDC) sales tax revenue must first be approved as a "Project of the Corporation." At its annual meeting on May 24, 2011, the TEDC Board of Directors did take formal action to approve, as a Project of the TEDC, an agreement with Stripes LLC, for the construction of a commercial building to be located at the northwest corner of FM 2920 and FM 2978 in Tomball, Texas. The City Council of Tomball has final approval authority over all projects and agreements of the TEDC.

On June 6, 2011, Council approved Resolution No. 2011-06-TEDC on First Reading.

Origination:

Tomball Economic Development Corporation Board of Directors

Recommendation:

Approve Resolution No. 2011-06-TEDC on Second Reading

Funding: Yes

Account Number: Grant Funds Available

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

Kelly Violette, Executive Director, Tomball Economic Development Corporation

ACTION TAKEN

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

ATTACHMENTS:

Resolution No. 2011-06-TEDC
Cover Memo
Request Letter
Performance Agreement
Economic Impact Model

RESOLUTION NO. 2011-06-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 STRIPES LLC 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 Fifty-Six Thousand Dollars ($56,000.00) found by the Board to be required or suitable to promote a new business development by Stripes LLC.; 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 Fifty-Six Thousand Dollars ($56,000.00) to Stripes LLC., in accordance with an economic development agreement by and between the TEDC and Stripes LLC, to promote and develop a new or expanded business enterprise, to be located at the northwest corner of FM 2920 and FM 2978 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 6th day of June 2011.

PASSED, APPROVED, AND RESOLVED on second and final reading this 20th day of June 2011.

____
Gretchen Fagan, Mayor

ATTEST:

____
Doris Speer, City Secretary

TOMBALL
ECONOMIC DEVELOPMENT CORPORATION

TO:	Board of Directors Tomball Economic Development Corporation
FROM:	Kelly Violette Executive Director
MEETING DATE:	May 24, 2011
SUBJECT:	Stripes LLC

As per the grant funding assistance request dated May 19, 2011, Stripes LLC, is planning to establish a new convenience store and gasoline facility at the northwest corner of FM 2920 and FM 2978 in the City of Tomball.

The project involves new construction of a 4,825 square foot commercial building on the site with an estimated value of $2,500,000.00.

Stripes LLC is requesting grant funding assistance with infrastructure costs that are necessary to complete this project. Details as to the infrastructure improvements are shown in Exhibit C of the proposed agreement between the Tomball Economic Development Corporation and Stripes LLC.

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 this firm on Tomball's economy.

If the agreement between the TEDC and Stripes LLC is approved as a Project of the Corporation, the grant funding amount will not exceed $56,000, based on actual expenditures for the approved Infrastructure Improvements.

SUSSER Holdings Corporation

Richard J. Hatch, Jr.
Senior Counsel

Tel: 361.693.3646
Fax: 361.693.3725
rhatch@susser.com

May 19, 2011

Ms. Kelly Violette, AICP
Executive Director
Tomball Economic Development Corporation
29201 Quinn Road, Suite B
Tomball, Texas 77375

VIA EMAIL AND UPS

Re: NWC of Hufsmith (FM 2978) and FM 2920, Tomball, Harris County, Texas

1475 E. Main Street, Tomball, Texas

Dear Ms. Violette:

I am writing on behalf of Stripes LLC to request funding assistance for improvements necessary for the construction and development of a Stripes convenience store with gasoline facilities at the above referenced location. Stripes LLC is a Texas limited liability company and a wholly owned subsidiary of Susser Holdings Corporation, a publicly traded company listed on the NASDAQ under the symbol SUSS. Susser Holdings Corporation operates over 525 convenience stores under the Stripes brand in Texas, Oklahoma and New Mexico and distributes wholesale motor fuels to approximately 430 dealers through its wholesale company, Susser Petroleum Company. A business update dated May 2011 may be viewed on our web page at www.susser.com under the tab Investor Relations. The link to the first quarter business update is under Featured Events and Presentations.

Stripes acquired the above site at the northwest corner of Hufsmith and FM 2920 from Exxon Mobil Corporation in March of this year. Attached is a copy of the Special Warranty Deed from Exxon Mobil Corporation to Stripes LLC for the site. Since the acquisition, the property has been replatted as Lot 1, Block 1, Stripes – FM 2920, a copy of which is attached.

Stripes intends to construct a convenience store with gasoline facilities at the location as shown on the attached site plan. In order to develop the site, Stripes will need to extend sanitary sewer and water to the site. An estimate of construction costs for extension of the sanitary sewer and water lines to the site is attached ($146,000.00). Also attached is an estimate for landscape and irrigation costs for the project in the amount of $31,250.00. Signage for this location is estimated to be between $85,000.00 to $90,000.00.

Street Address: 4525 Ayers Street, Corpus Christi, TX 78415 **Mailing Address:** P.O. Box 9036, Corpus Christi, TX 78469-9036 **www.susser.com**

The proposed building would be approximately 4,825 square feet and would include a Laredo Taco Company, Stripes proprietary food service. The total capital investment for this project will be in excess of $2.5 million and would employ 18 to 20 people (full time and part time) with an annual payroll in excess of $200,000.00. Annual taxable sales are anticipated between $1,000,000.00 and $1.5 million.

Stripes requests that the Tomball Economic Development Corporation provide funding for infrastructure as outlined above. Please contact me if you have any questions or need additional information.

Very truly yours,

Rich Hatch

Richard J. Hatch, Jr.

RHJ/ic
Enclosures
L:\REAL ESTATE - STRIPES\Escrowed\Tomball\Hufsmith & FM 2920\kelly violette ltr.doc

cc: Mr. Gene Clancy
Stripes LLC
P.O. Box 9036
Corpus Christi, Texas 78469

VIA EMAIL

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 the Development Corporation Act, now Chapter 501 et seq of the Texas Local Government Code, located in Harris County, Texas (the "TEDC"),, and **Stripes LLC** (the "Company"), 4525 Ayers Street, Corpus Christi, Texas, 78415.

W I T N E S S E T H :

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

WHEREAS, the Company proposes to develop approximately 55,352 square feet of land within the City, located at the northwest corner of F.M. 2920 and F.M. 2978 in Tomball, Texas 77375 (the "Property"), more particularly described in Exhibit "A," attached hereto and made a part hereof; and

WHEREAS, such development shall include the construction of a 4,825 square foot convenience store and gasoline facility (the "Improvements") on the site, and more particularly described in Exhibit "B," attached hereto and made a part hereof; and

WHEREAS, the TEDC agrees to provide to the Company the sum of Fifty Six Thousand Dollars ($56,000.00), or an amount equal to actual construction costs if less than the sum stated above, to assist in the construction of infrastructure necessary to promote and develop a new business enterprise on the Property. The infrastructure found by the Board of Directors of TEDC to be required to develop the Property are site improvements and site utilities to the exterior of the building (the "Infrastructure Improvements"), identified and described in Exhibit "C," attached hereto and made a part hereof; 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.

The Company covenants and agrees that it will construct and maintain on the Property a 4,825 square foot convenience store and gasoline facility (the "Improvements") identified and described in Exhibit "B," attached hereto and made a part hereof. In conjunction with the development of the Property, the Company further agrees to construct the Improvements contemplated by this Agreement, in accordance with the requirements of the ordinances of the City and the plans and specifications approved by the City. The Company further represents and agrees that it will certify the costs of the construction of such Infrastructure Improvements to the TEDC prior to construction.

2.

Construction of the Improvements on the Property, including construction of the Infrastructure Improvements, must commence within 180 days from the Effective Date of this Agreement (the "Date"). The construction of the Improvements to the Property, including construction of the Infrastructure Improvements, shall be completed, and all necessary occupancy permits from the City shall be obtained within eighteen (18) months from the Date of this agreement. Extensions of these deadlines due to extenuating circumstances or uncontrollable delay may be granted by the Board of Directors of the TEDC at its sole discretion.

3.

The Company further covenants and agrees that the Improvements described in Paragraph 1 hereof will be occupied and that the convenience store and gasoline facility will be maintained on the Property for a term of at least five (5) years.

4.

The Company further covenants and agrees that the Company or any owner or lessee of the Improvements 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 under the law to be employed in that manner in the United States.

5.

In consideration of the Company's representations, promises, and covenants, TEDC agrees to reimburse the Company for the actual cost of the Infrastructure Improvements up to the amount of Fifty Six Thousand Dollars ($56,000.00), or an amount equal to actual construction costs if less than the sum stated above. The TEDC agrees to reimburse the Company for such amount within thirty (30) days of receipt of a letter from the Company requesting such payment and including: (a) certification of the actual costs of constructing the Infrastructure Improvements; (b) a copy of the City's occupancy permit for the Improvements to the Property; (c) verification from the City acknowledging that all necessary plats, permits, plans, and specifications have been received, reviewed, and approved; (d) verification that the Infrastructure Improvements have been constructed in accordance with the approved plans and specifications; and, (e) an affidavit stating that all contractors and subcontractors providing work and/or materials in the construction of the Infrastructure Improvements have been paid and any and all liens and claims regarding such work have been released.

6.

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 one-half percent (½%) 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, or any owner or lessee of the Improvements, 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 one-half percent (½%) 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. Such reimbursement shall be due and payable thirty (30) days after the Company receives written notice of default.

7.

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, lessees, affiliates, and subsidiaries, and shall remain in force whether the Company sells, leases, 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.

8.

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:
Stripes LLC
4525 Ayers Street
Corpus Christi, Texas, 78415
Attn: Richard J. Hatch Jr., Senior Counsel

9.

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.

10.

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.

11.

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.

12.

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.

13.

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").

STRIPES LLC

By: ____________________________________
Name: ________________________________
Title: ____________________________________

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 E. V. Bonner Jr., Executive Vice President, Stripes LLC, 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 __________________________, 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

LOT 1 OF STRIPES - FM 2920 REPLAT, A SUBDIVISION OF 1.2707 ACRES OR 55,352 SQUARE FEET OF LAND, BEING A PARTIAL REPLAT OF UNRESTRICTED RESERVE "B" OF TOMBALL EAST GATE CENTER, RECORDED UNDER F.C. NO. 542107, H.C.M.R. AND OUTLOTS 313 AND 314 OF TOMBALL TOWNSITE, VOL. 2, PG. 65, H.C.M.R. SITUATED IN THE JESSE PRUITT SURVEY, ABSTRACT NO. 629, CITY OF TOMBALL, HARRIS COUNTY, TEXAS.

Exhibit "B"

Description of Improvements

Construction of a 4,825 square foot convenience store and gasoline facility to be located at the northwest corner of F.M. 2920 and F.M. 2978, Tomball, Texas on the site.

A detailed description of the Improvements is on file at the Tomball Economic Development Corporation office located at 29201 Quinn Road, Suite B, Tomball, Texas 77375.

Exhibit "C"

<u>Description of Infrastructure Improvements</u>

Site utilities

- 12" waterline and connection
- 12" sanitary sewer line and connection
- Fiberglass manholes
- Utility line bore
- Irrigation system

<u>Note</u>: No costs for tap fees or impact fees have been included in the costs estimates that have been submitted.

STRIPES, LLC

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:	20	9.85		
TOTAL:	20	9.85	7,880	409,760

Federal Income and FICA Taxes at 28% deducted	114,733
Fixed payments for rent, insurance, etc. at 25%	102,440
Net Disposable Annual Income	192,587

Total Return to Local Government by Annual Payroll:

Local Sales Tax Rate of 2% on Fixed Payments:	2,049
Average Multiplier effect of the Dollar turning over 3.5 times to Calculate the Total Annual Local Sales Tax Impact:	7,171

Annual Sales Tax Impact:

Value of Retail Sales	Sales Tax	
1,500,000	2.00%	30,000

Estimated Property Tax Impact:

Value of Property and Improvements	Tomball Tax Rate (per $100)	
2,500,000	0.25146	6,286

Annual Economic Impact of Construction of Banking Facility	43,457
Economic Impact over a Five Year Period	217,286

Regular City Council Agenda Item Data Sheet

Meeting Date: June 20, 2011

Topic:

Adopt Resolution No. 2011-10, a Resolution of the City Council of the City of Tomball, Texas, Supporting the *39th Annual Tomball Night* and Parade, to be held in Tomball on Friday, August 5, 2011

Background:

The Greater Tomball Area Chamber of Commerce requests the support and endorsement of the City of Tomball for the Chamber's annual Tomball Night and Parade. The Chamber requests the assistance of the Tomball Fire, Police, and Public Works Department personnel; furnishing of electric service from the Tax office on Walnut Street, the Depot, and 200 South Walnut; and closure of the following streets on Friday night only:

- from 2:00 p.m. until 11:00 p.m. – the 100, 200, and 300 blocks of Market Street and the 100 block of South Elm;
- from 3:00 p.m. until 11:00 p.m. – the 100 block of North Walnut, between Commerce and Main Street, and the 100 and 200 blocks of Commerce Street; and
- from 5:00 p.m. until 11:00 p.m. – South Walnut, between Market and Main, and Sycamore, from Main Street south.

Tomball Night will begin at 2:00 p.m. on Friday with a night parade, fireworks, and other festivities on Friday night and extended shopping sales events through Sunday.

The Chamber also requests permission from the City of Tomball to ignite fireworks out of season, under the insurance and guidance of Pyrotecnico of Louisiana, LLC, Registration number FWD-0071.

The Chamber's request and a map of the requested street closures are presented, along with Resolution No. 2011-10. Fire Department costs are minimal, approximately $35 in fuel and support provided by volunteer firefighters. Public Works costs to support Tomball Night include personnel time, refuse management, and fuel, approximately $1,150.

Origination:

Greater Tomball Area Chamber of Commerce

Recommendation:

Approval of Resolution No. 2011-10

Funding:

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

City Secretary

ACTION TAKEN

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

ATTACHMENTS:

Resolution No. 2011-10
GTACC Request Letter
Tomball Night Parade of Lights Route

RESOLUTION NO. 2011-10

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF TOMBALL, TEXAS, SUPPORTING THE *39TH ANNUAL TOMBALL NIGHT* AND PARADE, TO BE HELD IN TOMBALL ON FRIDAY, AUGUST 5, 2011.

* * * * * * *

WHEREAS the Greater Tomball Area Chamber of Commerce will present the ***39th Annual Tomball Night*** on Friday, August 5, 2011, beginning at 2 p.m., with a night parade and a fireworks display under the direction of A.M. Pyrotechnics; and

WHEREAS ***Tomball Night*** is a unique way to showcase Tomball's many attractions and an opportune time to encourage citizens to shop Tomball throughout the rest of the year; and

WHEREAS ***Tomball Night*** has become Tomball's biggest shopping night, drawing shoppers from surrounding areas including Magnolia, Spring, Houston and The Woodlands to enjoy the sales, discounts, other great values and many planned activities sponsored by Tomball's retail community; and

WHEREAS ***Tomball Night*** includes many cash and merchandise prizes from participating Tomball businesses for *Tomball Night* shoppers; and

WHEREAS the Greater Tomball Area Chamber of Commerce desires and requests the support and endorsement of the City of Tomball in this city-wide effort, through the assistance of the Tomball Fire, Tomball Police, and Tomball Public Works Department personnel; furnishing of electrical service from the Harris County Tax Assessor-Collector's office on Walnut Street, by the Depot, and at 200 South Walnut; and the closure of the following streets on Friday night only:

* from 2:00 p.m. until 11:00 p.m. – the 100, 200, and 300 blocks of Market Street and the 100 block of South Elm;
* from 3:00 p.m. until 11:00 p.m. – the 100 block of North Walnut, between Commerce and Main Street, and the 100 and 200 blocks of Commerce Street;
* from 5:00 p.m. until 11:00 p.m. – South Walnut, between Market and Main, and Sycamore Street, from Main Street south; and

WHEREAS The Chamber also requests permission from the City of Tomball to ignite fireworks out of season, under the insurance and guidance of A.M. Pyrotechnics, ATF License #5-MO-059-51-6A-00130;

NOW, THEREFORE, BE IT RESOLVED that the City of Tomball and its governing body endorses and supports the efforts of the Greater Tomball Area Chamber of Commerce in promoting and undertaking the *39th Annual Tomball Night* and pledges to encourage this effort to showcase Tomball;

PASSED AND APPROVED AS SET OUT BELOW AT THE MEETING OF THE CITY COUNCIL HELD ON THE _____ DAY OF ___________, 2011.

____
GRETCHEN FAGAN, Mayor

ATTEST:

____
Doris Speer, City Secretary

Greater
Tomball Area
Chamber of Commerce
www.tomballchamber.org

June 1, 2011

City of Tomball
401 Market Street
Tomball, Texas 77375

RE: Tomball Night Street Closures and Electricity

Dear George,

We are anticipating a fabulous 39th Annual **Tomball Night**, Friday, August 5, 2011 with help from our city, police and fire departments, as well as from numerous volunteers. The popular attraction of a night parade with a fireworks display ending the night's festivities has been met with overwhelming enthusiasm over the past six years. We are looking forward again to the expertise of the Tomball Police Department for crowd control and as visual deterrents from any negative activity.

The Greater Tomball Area Chamber of Commerce is requesting permission from the City of Tomball to ignite fireworks out of season, under the insurance and guidance of Pyrotechnico, a highly trained and licensed pyrotechnician.

To insure the safety of the many visitors that will be in Tomball on Friday, August 5, 2011 and the multiple number of vendors we are expecting, we are asking for street closures for the following streets on Friday night only from
2:00 p.m. until 11:00 p.m.

- Market St. – 100, 200 and 300 blocks
- S. Elm – 100 Block

From 3:00 p.m. until 11:00 p.m.

- 100 N. Walnut – between Commerce and Main St.
- 100 & 200 blocks Commerce St.

And from 5:00 p.m. until 11:00 p.m.

- S. Walnut – between Market and Main
- Sycamore from Main St. South

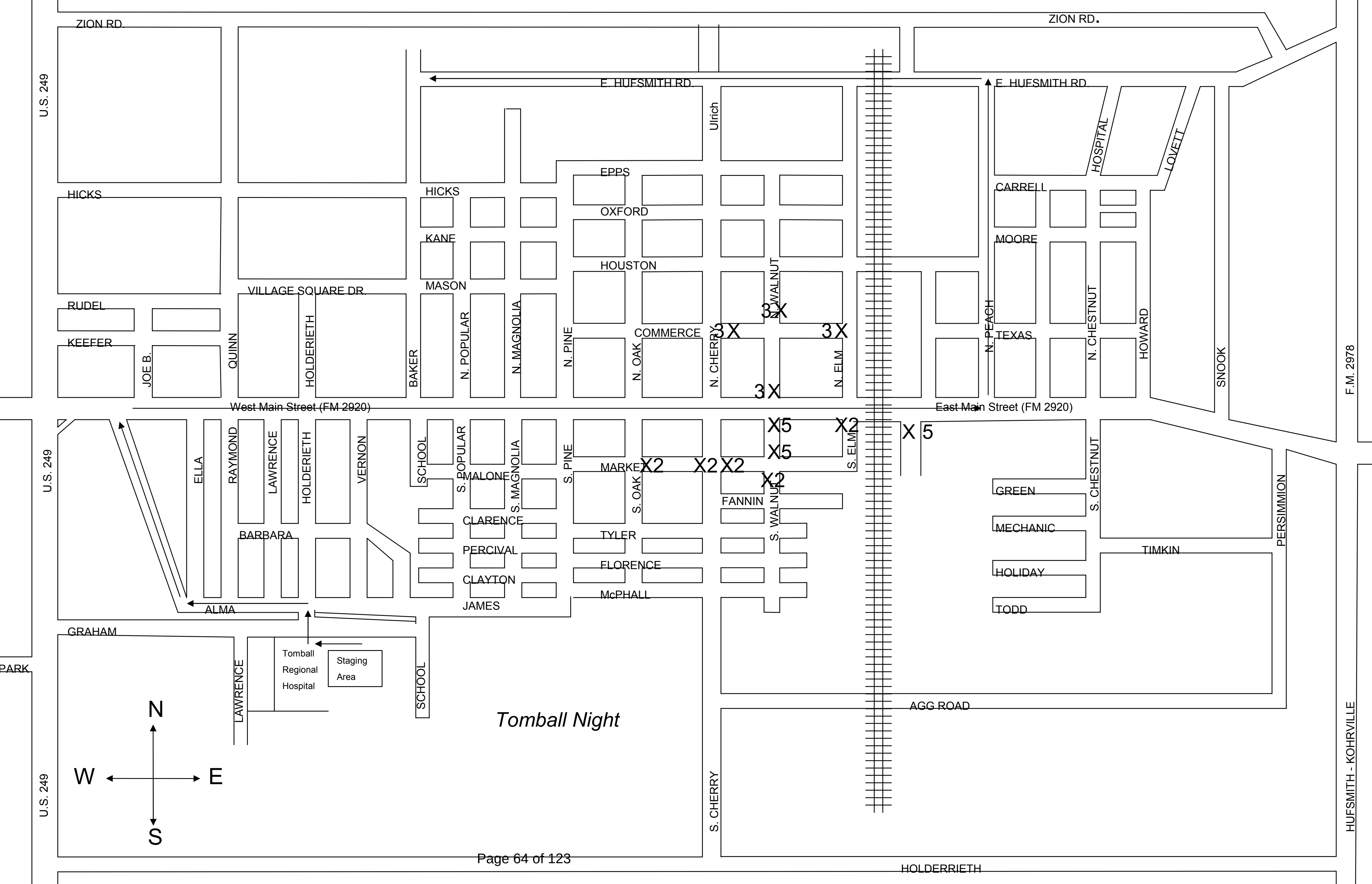
Enclosed is a map for your review. We are also requesting permission for the use of electricity from the Harris County Tax Assessor Collector's office on Walnut Street, by the Depot, 100 & 200 blocks of Market Street, the alley on south side of Main between Cherry and Oak and at 200 S. Walnut.

P.O. Box 516 • Tomball, TX 77377-0516
281.351.7222 • fax: 281.351.7223 • admin@tomballchamber.org

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

Sincerely,

Bruce Hillegeist
President


Tomball Night
ZION RD.
ZION RD.
E. HUFSMITH RD.
E. HUFSMITH RD.
Ulrich
HOSPITAL
LOVETT
HICKS
HICKS
EPPS
OXFORD
CARRELL
KANE
MOORE
HOUSTON
MASON
VILLAGE SQUARE DR.
RUDEL
KEEFER
COMMERCE
TEXAS
WALNUT
3X
3X
3X
3X
JOE B.
QUINN
HOLDERIETH
BAKER
N. POPULAR
N. MAGNOLIA
N. PINE
N. OAK
N. CHERRY
N. ELM
N. PEACH
N. CHESTNUT
HOWARD
SNOOK
F.M. 2978
West Main Street (FM 2920)
East Main Street (FM 2920)
X5
X2
X 5
X5
X2
X2X2
X2
U.S. 249
U.S. 249
U.S. 249
ELLA
RAYMOND
LAWRENCE
HOLDERIETH
VERNON
SCHOOL
S. POPULAR
S. MAGNOLIA
S. PINE
S. OAK
S. WALNUT
S. ELM
S. CHESTNUT
PERSIMMION
MARKET
MALONE
FANNIN
GREEN
CLARENCE
MECHANIC
BARBARA
TYLER
PERCIVAL
TIMKIN
FLORENCE
HOLIDAY
CLAYTON
McPHALL
JAMES
TODD
ALMA
GRAHAM
PARK
LAWRENCE
Tomball Regional Hospital
Staging Area
SCHOOL
AGG ROAD
S. CHERRY
HUFSMITH - KOHRVILLE
HOLDERRIETH
N
W
E
S

Regular City Council Agenda Item Data Sheet

Meeting Date: June 20, 2011

Topic:

Approve the Following Plats, as Recommended by Planning and Zoning Commission:

- **LESLIE'S PARK REPLAT**: A subdivision of 1.7291 acres of land in the Joseph House Survey, A-34, Harris County, Texas; being a partial Replat of Leslie's Park, originally recorded in Film Code No. 400005, Harris County Map Records
- **WAUKESHA PEARCE TOMBALL FINAL PLAT**; A subdivision of 5.7864 Acres; located in the Joseph House Survey, Abstract No. 34, City of Tomball, Harris County, TX

Background:

The Planning and Zoning Commission approved Leslie's Park Replat with contingencies on Monday, June 13, 2011. Corrections have been made and the plat is being forwarded to City Council for approval consideration.

The Planning and Zoning Commission approved Waukesha Pearce Final Plat on Monday, June 13, 2011. The plat is being forwarded to City Council for approval consideration.

Origination:

Recommendation:

Funding:

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

Engineering and Planning

ACTION TAKEN

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

ATTACHMENTS:

Leslie's Park Replat

Waukesha Pearce Final Plat

THE STATE OF TEXAS:
COUNTY OF HARRIS:

I, Sammie Jean Cole, owner of the 1.7291 acre tract described in the above and foregoing Replat of Leslie's Park, do hereby make and establish said subdivision of said property according to all liens, dedications, restrictions and notations on said plat and hereby dedicate to the use of the public forever, all streets, alleys, parks, watercourses, drains, easements, and public places shown thereon for the purposes and considerations therein expressed; and do hereby bind myself, my heirs, successors and assigns to warrant and forever defend the title to the land so dedicated.

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

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

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

WITNESS my hand in the City of Tomball, Texas, this 28 day of April, 2011.

Sammie Jean Cole
Sammie Jean Cole

THE STATE OF TEXAS:
COUNTY OF HARRIS:

BEFORE ME, the undersigned authority, on this day personally appeared Sammie Jean Cole, known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that she executed the same for the purposes and considerations therein expressed.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this 28 day of April, 2011.

Mary C. Lewis
Notary Public in and For the State of Texas
My Commission Expires: 1-10-2015

MARY C. LEWIS
Notary Public, State of Texas
My Commission Expires
January 10, 2015

SURVEYOR'S CERTIFICATION

I, Hal Moyer, am registered under the laws of the State of Texas to practice the profession of surveying and hereby certify that the above subdivision is true and correct; was prepared from an actual survey of the property made under my supervision on the ground; that all corners and angle points of the boundaries of the original tract to be subdivided of reference have been marked with iron rods having a diameter of not less than five-eighths of an inch (5/8") and a length of not less than three feet (3') and that the plat boundary corners have been tied to the nearest street intersection.

Hal Moyer
Hal Moyer, R.P.L.S.
Texas Registration No. 5656

STATE OF TEXAS
REGISTERED
HAL MOYER
5656
PROFESSIONAL LAND SURVEYOR

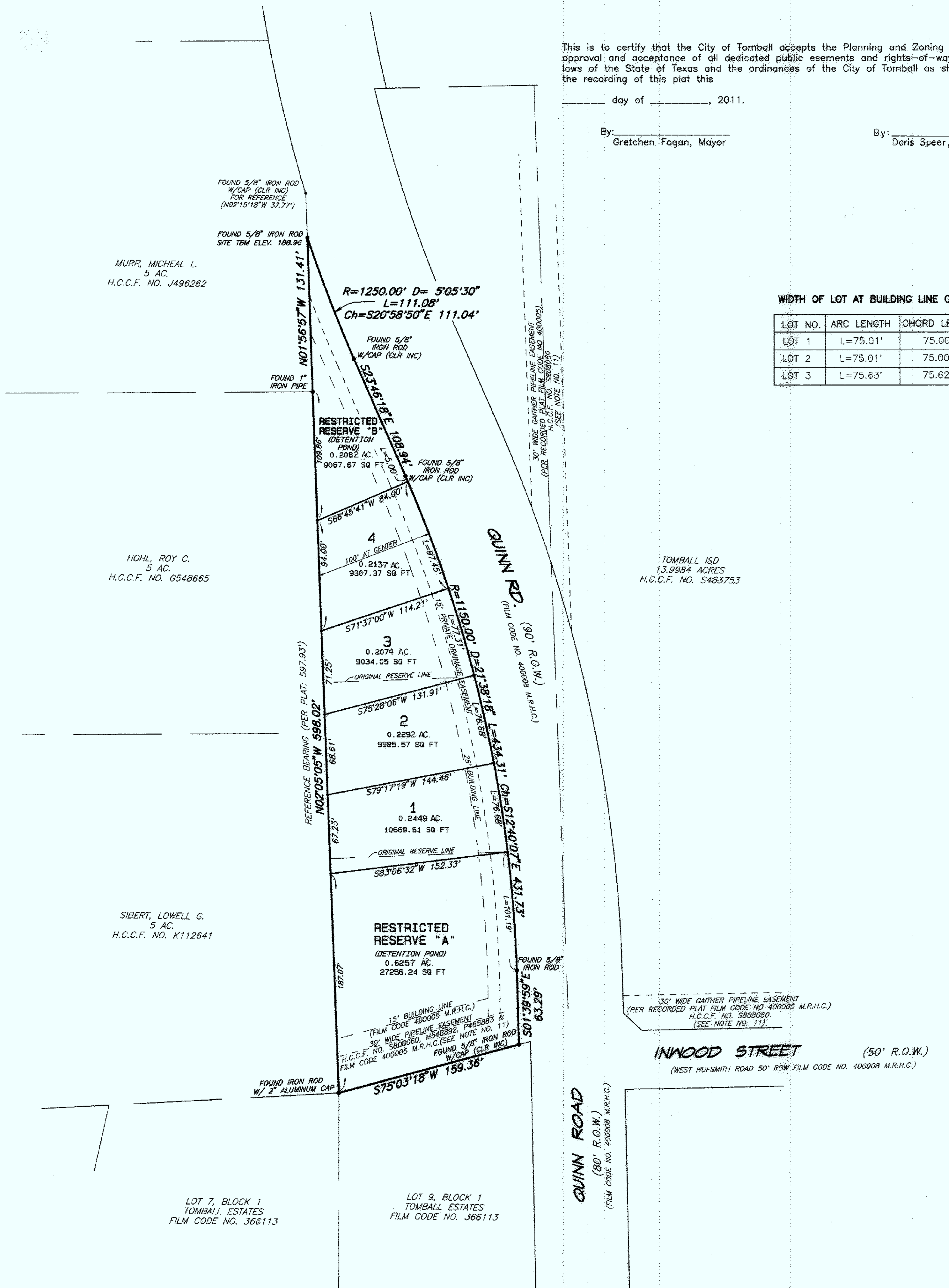
NOTES:

1. THERE IS HEREBY DEDICATED A FIVE-FOOT (5') BUILDING LINE ALONG ALL SIDE LOT LINES, UNLESS OTHERWISE SHOWN OR NOTED.
2. THERE IS A FIFTEEN-FOOT (15') BUILDING LINE ALONG ALL REAR LOT LINES PER FILM CODE NO. 400005 M.R.H.C.
3. PUBLIC EASEMENTS DENOTED ON THIS PLAT ARE HEREBY DEDICATED TO THE PUBLIC FOREVER. ANY PUBLIC UTILITY, INCLUDING THE CITY OF TOMBALL, SHALL HAVE THE RIGHT AT ALL TIMES, OF INGRESS AND EGRESS TO AND FROM AND UPON SAID EASEMENTS FOR THE PURPOSE OF CONSTRUCTION, RECONSTRUCTION, INSPECTION, PATROLLING, MAINTAINING AND ADDING TO OR REMOVING ALL OR PART OF ITS RESPECTIVE SYSTEMS WITHOUT THE NECESSITY OF ANY TIME OF PROCURING THE PERMISSION OF THE PROPERTY OWNER. ANY PUBLIC UTILITY, INCLUDING THE CITY OF TOMBALL, SHALL HAVE THE RIGHT TO MOVE AND KEEP MOVED ALL OR PART OF ANY BUILDING, FENCES, TREES, SHRUBS, OTHER GROWTHS OR IMPROVEMENTS THAT IN ANY WAY ENDANGER OR INTERFERE WITH THE CONSTRUCTION, MAINTENANCE OR EFFICIENCY OF ITS RESPECTIVE SYSTEMS ON ANY OF THE EASEMENTS SHOWN ON THIS PLAT. NEITHER THE CITY OF TOMBALL NOR ANY OTHER PUBLIC UTILITY SHALL BE RESPONSIBLE FOR ANY DAMAGES TO PROPERTY WITHIN AN EASEMENT ARISING OUT OF THE REMOVAL OR RELOCATION OF ANY OBSTRUCTION IN THE PUBLIC EASEMENT.
4. ALL OIL/GAS PIPELINES OR PIPELINE EASEMENTS WITH OWNERSHIP THROUGH THE SUBDIVISION HAVE BEEN SHOWN OR NOTED.
5. ALL OIL/GAS WELLS WITH OWNERSHIP (PLUGGED, ABANDONED, AND /OR ACTIVE) THROUGH THE SUBDIVISION HAVE BEEN SHOWN OR NOTED.
6. NO BUILDING OR STRUCTURE SHALL BE CONSTRUCTED ACROSS ANY PIPELINES, BUILDING LINES, AND/OR EASEMENTS. BUILDING SETBACK LINES WILL BE REQUIRED ADJACENT TO OIL/GAS PIPELINES. THE SETBACKS AT A MINIMUM SHOULD BE 15 FEET OFF CENTERLINE OF LOW PRESSURE GAS LINES, AND 30 FEET OFF CENTERLINE OF HIGH PRESSURE GAS LINES.
7. THIS PLAT DOES NOT ATTEMPT TO AMEND OR REMOVE ANY VALID COVENANTS OR RESTRICTIONS.
8. THE BUILDING LINES SHOWN ON THIS PLAT SHALL BE IN ADDITION TO, AND SHALL NOT LIMIT OR REPLACE, ANY BUILDING LINES REQUIRED BY THE CITY OF TOMBALL CODE OF ORDINANCES AT THE TIME OF THE DEVELOPMENT OF THE PROPERTY.
9. THIS PROPERTY IS LOCATED IN ZONE "X" AND IS NOT WITHIN THE 100-YEAR FLOODPLAIN AS SHOWN ON FIRM COMMUNITY PANEL No. 48201C0210 L, EFFECTIVE DATE JUNE 18, 2007.
10. ALL CORNERS ARE SET 5/8" IRON RODS W/CAP UNLESS OTHERWISE SHOWN OR NOTED.
11. D.R.H.C. DENOTES DEED RECORDS HARRIS COUNTY, F.C. NO. DENOTES FILM CODE NUMBER, H.C.C.F. NO. DENOTES HARRIS COUNTY CLERKS FILE NUMBER, R.P.R.H.C DENOTES REAL PROPERTY RECOREDS HARRIS COUNTY AND M.R.H.C DENOTES MAP RECORDS HARRIS COUNTY.
12. PIPELINE CORRIDOR CONTAINS UNLOCATED PIPELINES THAT MAY INCLUDE THOSE EASEMENTS RECORDED IN VOLUME 942, PAGE 518, VOLUME 967, PAGE 167 AND VOLUME 1932, PAGE 497 D.R.H.C. AND CLERKS FILE NO. H520286, R.P.R.H.C. PIPELINE COMPANIES WERE CONTACTED AND COULD NOT VERIFY WIDTH OF EASEMENTS
13. ELEVATIONS ON THIS SURVEY ARE BASED ON NAVD 88. AN ELEVATION OF 185.25 WAS COLLECTED AT TOMBALL BENCHMARK NGS RECOGNIZED J1010 PID EL. 186.05. AN ADJUSTMENT OF 0.8 FEET NEEDS TO BE ADDED TO THE ELEVATIONS ON THIS SURVEY IN ORDER TO BE CONSISTENT WITH THE J1010 NGS BM IN TOMBALL.
14. SITE TBM: 5/8" IRON ROD ELEV. 188.96 LOCATION NORTH PROPERTY CORNER OF SUBJECT TRACT.
15. PER CITY PLANNING LETTER BY STEWART TITLE CO. FILE NO. 1120131479, DATED FEB. 23, 2011 THERE IS A UNRECORDED 10' WIDE HL & P EASEMENT AS REFLECTED BY THE PLAT RECORDED AT CLERKS FILM CODE NO. 400005 M.R.H.C. THIS ELEC. LINE HAS BEEN RELOCATED INTO THE RIGHT-OF-WAY.

OWNER:

SAMMIE JEAN COLE
32502 FM 2978, SUITE C
MAGNOLIA, TX 77354

(281) 356-4500



MOYER SURVEYING, LLC
3706 WEST DAVIS - CONROE, TX. 77304
PH: 936-756-2500 FAX: 936-539-9582

CERTIFICATE OF APPROVAL BY CITY OF TOMBALL

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

By:__________________
George Shackelford, City Manager

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

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

_______ day of _________, 2011.

By:__________________
Gretchen Fagan, Mayor

By:__________________
Doris Speer, City Secretary

WIDTH OF LOT AT BUILDING LINE CHART

LOT NO.	ARC LENGTH	CHORD LENGTH
LOT 1	L=75.01'	75.00'
LOT 2	L=75.01'	75.00'
LOT 3	L=75.63'	75.62'

CERTIFICATE OF APPROVAL BY PLANNING AND ZONING COMMISSION

This is to certify that the Planning and Zoning Commission of the City of Tomball, Texas, has approved this plat and subdivision of Replat of Leslie's Park in conformance with the laws of the State of Texas and the ordinances of the City of Tomball as shown hereon and authorized the recording of this plat this

_______ day of _________, 2011.

By:__________________
Lori Wallace, Chairman

By:__________________
Evelyn Chervenak, Vice Chairman

COUNTY CLERK:

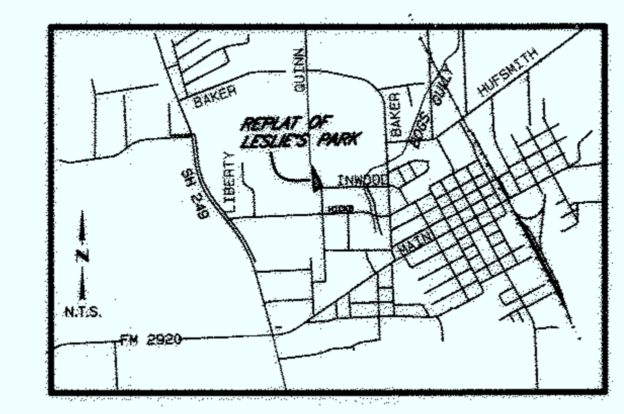
I, Stan Stanart, County Clerk of Harris County, Texas, do hereby certify that the within instrument with its certificate of authentication was filed for registration in my office on

__________________________, 2011, at _____o'clock, ___.M., and in Film Code Number _______________ of the Map Records of Harris County for said county.

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

____
Stan Stanart, County Clerk
Harris County, Texas

By:______________________Deputy



—VICINITY MAP—
MONTGOMERY COUNTY KEY MAP PAGE 288 BLOCK F & G

SCALE: 1"= 60' DATE: APRIL, 2011
0 60 120 180

REASON FOR REPLAT: TO CHANGE UNRESTRICTED RESERVES "A", "B" AND "C" INTO RESIDENTIAL LOTS

REPLAT OF

LESLIE'S PARK

REPLAT OF RESERVES "A", "B" AND "C"

4 LOTS * 2 RESTRICTED RESERVES * 1 BLOCK

A SUBDIVISION OF 1.7291 ACRES OF LAND
IN THE JOSEPH HOUSE SURVEY, A-34
HARRIS COUNTY, TEXAS

BEING A PARTIAL REPLAT OF
LESLIE'S PARK, ORIGINALLY RECORDED
IN FILM CODE NO. 400005, HARRIS
COUNTY MAP RECORDS.

TEXAS BOARD OF PROFESSIONAL LAND SURVEYING
12100 PARK 35 CIRCLE
BLDG. A, SUITE 156, MC-230
AUSTIN, TEXAS 78753
PHONE 512-239-5263
FAX 512-239-5253

SHEET 1 OF

THE STATE OF TEXAS
COUNTY OF HARRIS

WE, WAUKESHA PEARCE INDUSTRIES, INC., acting by and through, LOUIS M. PEARCE, III, PRESIDENT AND RICHARD E. BEAN, SECRETARY, being officers of WAUKESHA PEARCE INDUSTRIES INC., hereinafter referred to a owners of the 5.7864 acre Tract described in the above and foregoing plat of WAUKESHA PEARCE TOMBALL, do hereby make and establish said subdivision of said property according to all liens, dedications, restrictions and notations on said plat and hereby dedicate to the use of the public forever, all streets, alleys, parks, watercourses, drains, easements, and public places shown thereon for the purposes and considerations therein expressed; and do hereby bind ourselves, our heirs, sucessors and assigns to warrant and forever defend the title to the land so dedicated.

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

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

IN TESTIMONY WHEREOF, WAUKESHA PEARCE INDUSTRIES, INC., has caused these presents to be signed by LOUIS M. PEARCE, III, its PRESIDENT, thereunto authorized, attested by its SECRETARY, RICHARD E. BEAN, and its common seal hereunto affixed this 8th day of June, 2011.

WAUKESHA PEARCE INDUSTRIES, INC.

By: [signature] By: [signature]
LOUIS M. PEARCE, III — RICHARD E. BEAN

THE STATE OF TEXAS
COUNTY OF HARRIS

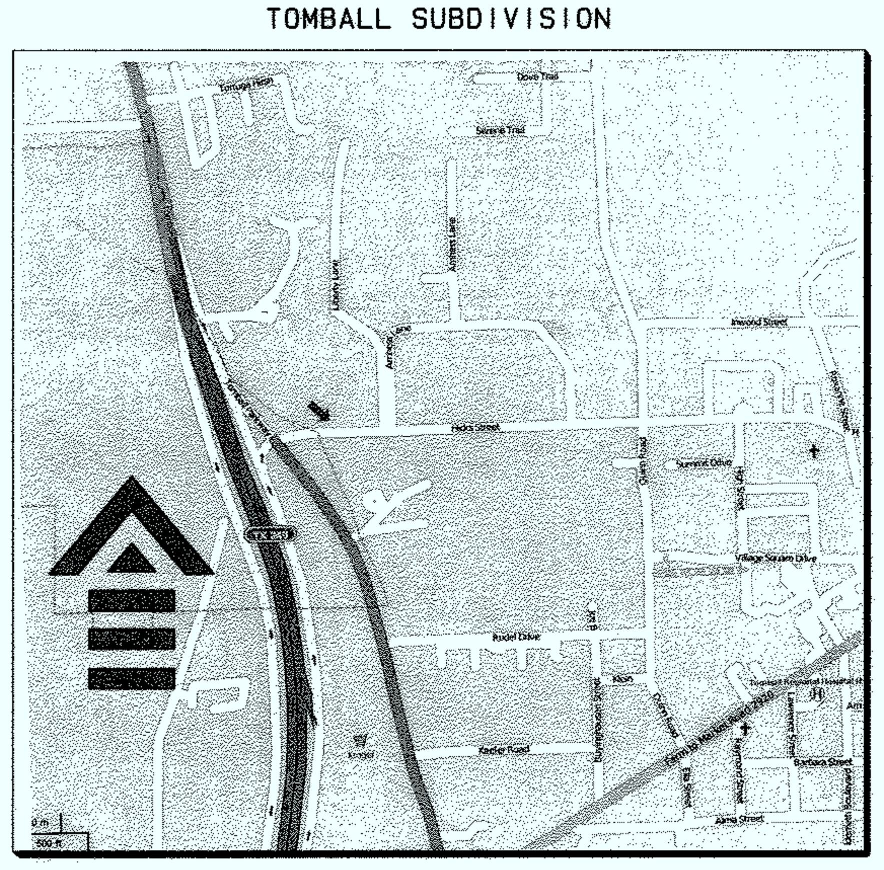
BEFORE ME, the undersigned authority, on this day personally appeared LOUIS M. PEARCE, III and RICHARD E. BEAN, PRESIDENT and SECRETARY respectively of WAUKESHA PEARCE INDUSTRIES INC., known to me to be the persons whose names are subscribed to the foregoing instrument and acknowledged to me that they executed the same for the purposes and considerations therein expressed and in the capacity therein and herein stated, and as the act and deed of said Corporation.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this 8th day of June, 2011.

[signature]
Notary Public in and For the State of Texas
My Commission Expires: 3-28-13

THERESIA RAIF
NOTARY PUBLIC
State of Texas
Comm. Exp. 03/28/2013

WAUKESHA PEARCE
TOMBALL SUBDIVISION



VICINITY MAP
KEY MAP 288F

I, Neil M. Atkinson, am registered under the laws of the State of Texas to practice the profession of Surveying and hereby certify that the above subdivision is true and correct; was prepared from an actual survey of the property made under my supervision on the ground; that all boundary corners, angle points, points of curvature, and other points of reference have been marked with iron rods having an outside diameter of not less than three-quarter inch (3/4") and a length of not less than three (3) feet, except where corners were found; and that the plat boundary corners have been tied to the nearest survey corner.

[signature]
Neil M. Atkinson
Registered Professional Land Surveyor
Texas Registration No. 5897

STATE OF TEXAS
REGISTERED
NEIL M. ATKINSON
5897
PROFESSIONAL
LAND SURVEYOR

This is to certify that the Planning and Zoning Commission of the City of Tomball, Texas, has approved this plat and subdivision of WAUKESHA PEARCE TOMBALL in conformance with the laws of the State of Texas and the ordinances of the City of Tomball as shown hereon and authorized the recording of this plat this _____ day of _____________, 20___.

By: ______________________ By: EVELYN CHERVENAK
Lori Wallace, Chair — Vice Chairman

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

By: ______________________ By: [signature]
George Shackelford, City Manager — Lori Lakatos P.E., Acting City Engineer

This is to certify that the City accepts the Planning and Zoning Commission's authorized approval and acceptance of all dedicated public easements in conformance with the laws of the State of Texas and the ordinance of the City of Tomball as shown hereon and authorized the recording of this plat this __________ day of ____________________, 20___.

By: ______________________ By: ______________________
Gretchen Fagan, Mayor — Doris Speer, City Secretary

I, Stan Stanart, County Clerk of Harris County, do hereby certify that the within instrument with its certificate of authentication was filed for registration in my office on __________ __________, 20___, at ________ o'clock ___.M., and duly recorded on ______________, 20___, at ________ o'clock ___.M., and in Film Code Number No. _______________ of the Map Records of Harris County for said county.

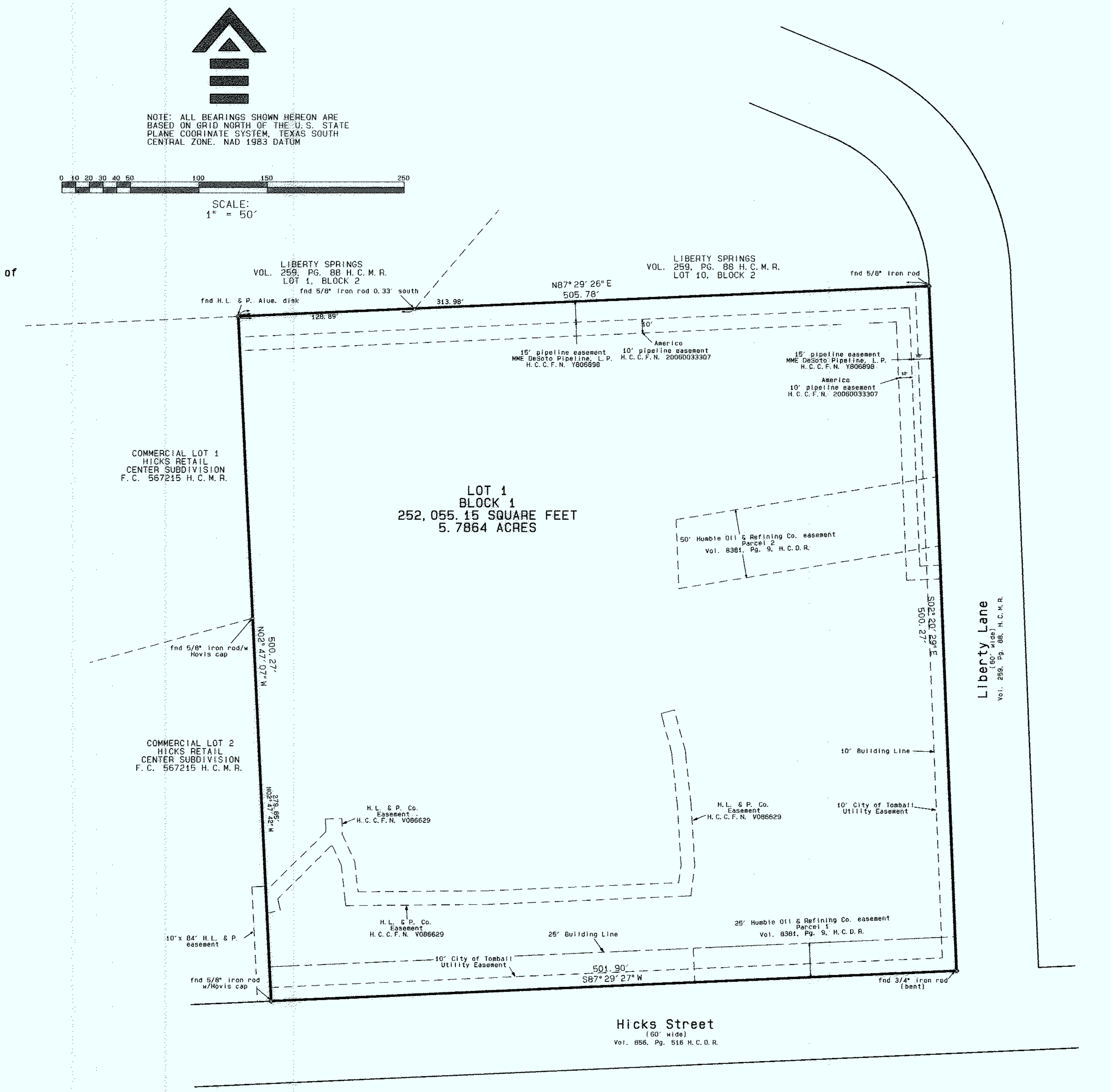
Witness my hand and seal of office, at Houston, the day and date last above written.

____
Stan Stanart
County Clerk
of Harris County, Texas

By: ______________________
Deputy

GENERAL NOTES

1. H.C.C.F.N. indicates Harris County Clerk's File Number.
2. H.C.M.R. indicates Harris County Map Records.
3. H.C.D.R. indicates Harris County Deed Records.
4. Vol. & Pg. indicates Volume and Page.



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

FLOOD INFORMATION:
According to FEMA Firm Panel No. 48201C0210L (effective date 6/18/07), this property is in Zone "X" and is not in the 0.2% Annual Chance Flood Plain.

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

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

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

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

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

WAUKESHA PEARCE TOMBALL

A SUBDIVISION OF 5.7864 ACRES; LOCATED IN THE JOSEPH HOUSE SURVEY, ABSTRACT NO. 34, CITY OF TOMBALL, HARRIS COUNTY, TX.

1 LOT — 1 BLOCK

OWNER:
WAUKESHA PEARCE INDUSTRIES, INC.
P.O. BOX 35068, HOUSTON, TX, 77235-5068
713-551-0380

DATE:
JUNE 2011

ENGINEER:
ATKINSON ENGINEERS
T.B.P.E. F-10587
15425 NORTH FREEWAY
SUITE 140
HOUSTON, TX 77090
281-872-7600

DWG. NO. 4115DPTF

Regular City Council
Agenda Item
Data Sheet

Meeting Date: June 20, 2011

Topic:

Approval of Proposal by Raba-Kistner Consultants, Inc. for Professional Environmental Consulting Services associated with the Modification of the existing Groundwater Monitoring System at the City of Tomball Closed Landfill, at a not-to-exceed cost of $61,000.00

Background:

The proposal by Raba-Kistner is based on recommendations made by the Texas Commission on Environmental Quality (TCEQ), that consideration be given to reinstalling certain groundwater monitoring wells located at the City of Tomball Closed Landfill in order to facilitate the identification of the VOC's currently found at other well locations, and also recommendations by Raba-Kistner to relocate and/or replace additional groundwater monitoring wells due to dry well conditions, poor construction, and the potential for test data received by some wells to be influenced by offsite environmental factors.

The proposal includes all engineering and environmental services, and all materials and field services associated with the plugging and abandoning, and relocating and/or reinstalling monitoring wells MW-1, MW-2, MW-6, MW-7, MW-9, and MW-10.

The redevelopment of the 6 monitoring wells is necessary in obtaining accurate groundwater monitoring data and achieving final closure for the City of Tomball Closed Landfill.

Staff recommends approval of the reference proposal.

Origination:

Public Works

Recommendation:

Staff recommends approval of the reference proposal.

Funding: Yes

Account Number: 100-155-6304

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

Director of Public Works

ACTION TAKEN

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

ATTACHMENTS:

R-K Proposal #PSF11-162-00

Raba Kistner

Raba-Kistner Consultants, Inc.
12821 W. Golden Lane, San Antonio, TX 78249
P.O. Box 690287, San Antonio, TX 78269-0287
(210) 699-9090 • FAX (210) 699-6426
www.rkci.com
TBPE Firm F-3257

Proposal No. PSF11-162-00
February 15, 2011

Mr. David Kauffman
Director of Public Works
City of Tomball
501 James Street
Tomball, Texas 77375

Re: Groundwater Monitoring System Modifications
Closed City of Tomball Landfill – MSW Permit No. 1140A
Harris County, Texas

Dear Mr. Kauffman:

Raba-Kistner Consultants, Inc. (R-K) is pleased to submit this proposal on behalf of the City of Tomball (CLIENT) for professional environmental consulting services associated with the modification of the current groundwater monitoring system at the Closed City of Tomball Landfill. This proposal provides a brief description of pertinent project information in addition to our proposed scope of services. This proposal was prepared to define the proposed scope of services, our assumptions, time and cost information, project schedule, and procedures for authorization to initiate project activities.

SCOPE OF SERVICES

As mentioned by the Texas Commission on Environmental Quality (TCEQ) in correspondence dated September 7, 2010, "consideration should be given to reinstalling MW-1, MW-2 and MW-4A at another depth and/or location to further assist in the identification of the VOCs currently found at concentrations reported at other wells above MCL". Subsequent to review of this correspondence and based on our review of collective groundwater monitoring data, **R-K** recommends the replacement and/or relocation of several other monitoring wells due dry well conditions, poor installation construction practices, and/or the potential for monitoring data at some wells to be influenced by offsite environmental factors. Proposed wells to be replaced and/or relocated and the reasons for the recommended modifications are listed below:

- MW-1 – Dry – propose to plug and abandon (P&A) and relocate due to dry conditions and close proximity of the adjacent offsite saltwater injection well.
- MW-2 – Dry – replace.
- MW-6 – Replace due to poor well construction practices – well casing was assembled with PVC glue/solvents suspected to contain chlorinated solvents (VOCs) historically detected at low concentrations in groundwater samples collected at select monitoring wells.
- MW-7 – Relocate due to the close proximity of the adjacent offsite saltwater injection well.
- MW-9 – Relocate – well is located within the industrial footprint of the City of Tomball wastewater treatment plant.
- MW-10 – Relocate – well is also located within the wastewater treatment plant extent – also, the well appears to be going dry and has not recently generated sufficient sample volume to meet groundwater monitoring needs.

Specific activities to be conducted by **R-K** as part of this proposal are described in the following paragraphs:

Task 1 – TCEQ Authorization Request

In accordance with Title 30 of the Texas Administrative Code (TAC) Chapter 305 § 70(j) (26-27), a permit modification which does not require public notice is required to modify the groundwater monitoring system. Upon written notice to proceed by CLIENT, an authorization request to modify the groundwater monitoring system will be prepared by **R-K** and submitted to TCEQ on behalf of the City of Tomball.

In addition, the authorization request will include a description of the activities required to plug and abandon and relocate and/or reinstall several monitor wells. As required by current TCEQ rules, the request to modify the groundwater monitoring system will include the following:

- Summary of proposed activities associated with the relocation and/or reinstallation of monitor wells, plugging and abandoning of wells to be replaced or reinstalled, and disposal of incidental waste generated during drilling.
- Summary of existing conditions (e.g., subsurface stratigraphy, surface topography, existing landfill gas vents and groundwater monitor wells, etc.).
- Figures depicting the proposed well locations.

For scheduling purposes, we anticipate completing the authorization request within ten to fifteen working days from the receipt date of written authorization to proceed with the project. In turn, TCEQ will require approximately 45 days for review and approval prior to being able to initiate the proposed field activities (described in Task 2, below).

Task 2 – Field Activities

Subsequent to receipt of TCEQ approval, **R-K** will utilize the services of a Texas-licensed environmental drilling contractor to conduct the P&A and well installation activities. **R-K** will monitor and document system modification activities.

Plug and Abandoned Existing Wells

Prior to the relocation and/or reinstallation of the monitor wells the referenced monitoring wells (i.e., MW-1, MW-2, MW-6, MW-7, MW9, and MW-10) will be plugged and abandoned. The P&A procedure will include removal of the surface completion components of the monitor well. Subsequent to the removal of surface completion components, the PVC casing/screen will be removed from the borehole. The borehole will be plugged with bentonite slurry assisted by a tremmie pipe from the bottom of the borehole to approximately 2 feet below ground surface (ft bgs). The top 2 feet of the borehole will be subsequently plugged using cement grout. The bentonite slurry and cement grout will be prepared using potable water.

Groundwater Monitoring Well Installation

Subsequent to P&A activities, the 6 monitor wells will be replaced. The installation of the new monitor wells will better facilitate an evaluation of shallow groundwater conditions and will minimize the potential for possible influence of outside factors (i.e., the adjacent saltwater injection well, the adjacent waste water treatment plant and poor installation construction practices). The monitor wells will be installed utilizing standard environmental drilling and sampling protocols and will be installed utilizing hollow stem flight auger methods to further evaluate subsurface soil conditions.

During boring installation, soils will be observed continuously from all borings and logged by an environmental professional for composition, color, degree of moisture, and visual/olfactory indications of contamination. In conjunction with logging activities, representative soil samples will be field-screened for the presence of VOCs using a calibrated PID as part of the normal environmental screening protocol. Field observations will be documented in a field notebook and subsequently used to generate boring logs.

All samples will be collected in accordance with standard environmental protocol. In general, soil samples (up to 2) will be collected from borings at the following intervals to evaluate the presence of residual impacts: (i) near surface soils exhibiting maximum field screening results; (ii) zone of maximum field screening within native soils, and/or (iii) the boring total depth or water table interface. Soil samples will generally be collected in accordance with TRRP definitions of surface (i.e., 0-5 ft) and subsurface (i.e., greater than 5 ft) soils.

The groundwater monitor wells will be installed in accordance with State of Texas guidelines utilizing 2-inch casing and screen. Surface completion of the wells will include a 4x4 ft concrete pad with protective bollards at the corners, an approximate 3 ft monument to protect the riser, and sign labeling the number of the well. Once installed, wells will be properly gauged, developed, and purged prior to groundwater sampling. In conjunction with gauging activities for new monitoring wells, existing monitoring wells will also be gauged. The well locations and top of casing will be surveyed.

The activities will be documented in field notes and included in the Report of Field Activities (described in ***Task 4***).

It is anticipated that field activities will require approximately 5 to 6 working days to complete, including drilling contractor mobilization to/from the project site and excluding delays due to adverse weather or contractor equipment problems.

Task 3 – Waste Characterization and Disposal

During installation of the proposed wells, it is anticipated that a maximum of 12 drums of waste material (soil cuttings) will be generated, requiring disposal at an active permitted landfill facility. Prior to disposal of the waste material, **R-K** will collect samples to characterize the material in accordance with the requirements of the receiving landfill facility. For the purposes of this proposal, Waste Management, Inc. (Waste Management) of Houston was contacted regarding waste characterization requirements prior to disposal. On the basis of 12 drums of waste material generated, it is anticipated that one sample will be collected and analyzed for the following suite of parameters:

- Toxic Characteristic Leaching Procedure (TCLP) Volatile Organic Compounds (VOCs)
- TCLP Semi-VOCs (SVOCs)
- TCLP Organochlorine Pesticides
- TCLP Herbicides
- 11 TCLP Metals (antimony, arsenic, barium, beryllium, cadmium, chromium, lead, mercury, nickel, selenium and silver)
- Total Polychlorinated Biphenyls (PCBs)
- Total Petroleum Hydrocarbons (TPH)

Upon receipt of the analytical results, **R-K** will prepare the waste profile form required by the host disposal facility and the waste will be transported to the permitted disposal facility. For the purposes of this proposal, it is assumed that the waste material requiring disposal will be classified as Class II waste, in accordance with Texas Regulatory Levels, provided by Waste Management. Should the analytical results include concentrations above Class II regulatory levels, **R-K** will contact CLIENT for written authorization of additional funds prior to proceeding with additional services required for testing and disposal of Class I and/or hazardous waste.

Task 4 – Report of Field Activities

Subsequent to installation of the new wells, **R-K** will prepare a Report of Field Activities documenting the installation activities in a format suitable for submittal to the TCEQ. The report will include figures detailing the as-built construction details and the locations of the wells. Photographic documentation of field activities and tables summarizing the depths and screened intervals of the wells will also be included.

R-K will submit a draft copy to CLIENT for internal review. Subsequent to incorporation of CLIENT comments, if any, **R-K** will submit the required copies to TCEQ on behalf of CLIENT.

COST

The estimated maximum costs not to exceed for conducting the activities described above for each of the tasks considered in this proposal are:

Task 1 – TCEQ Authorization Request	$ 6,750
Task 2 – Field Activities	$ 44,100
Task 3 – Waste Characterization and Disposal	$ 3,350
Task 4 – Report of Field Activities	$ 6,800
TOTAL	$ **61,000**

Should additional services be requested costs for those services will be billed in accordance with our standard fees for professional services, as indicated on the attached Schedule of Fees for Professional Services, and the unit rates for drilling, equipment, and laboratory services shown on our latest fee schedules for those services.

ACCEPTANCE

We appreciate the opportunity to work with you on this important assignment, which will be carried out in accordance with this letter and the following attachments:

Attachment	Description
I	Standard Terms and Conditions
II	Schedule of Fees for Professional Services

Our invoices are due and payable upon receipt at P.O. Box 971037, Dallas, Texas 75397-1037. All parties hereby agree that this contract upon acceptance will be performable in Harris County, Texas.

Please return one signed copy of this letter proposal to provide written authorization for our firm to commence work on the services outlined herein. Again, we appreciate the opportunity to be of service to you and look forward to beginning work on this project.

R-K considers the data and information contained in this proposal to be proprietary. This statement of qualifications and any information contained herein shall not be disclosed and shall not be duplicated or used in whole or in part for any purpose other than to evaluate this proposal.

Very truly yours,

RABA-KISTNER CONSULTANTS, INC.

J Wiatrek

James Wiatrek
Environmental Professional

Richard V. Klar

Richard V. Klar, P.G.
Associate

Accepted by________________________
(Signature)

____
(Typed or Printed Name)

____
(Title)

Date:________________________

JW/RVK/dac

Attachments:
I – Standard Terms and Conditions
II – Schedule of Fees

Copies Submitted: Above (2)

ATTACHMENT I

RABA-KISTNER COMPANIES

STANDARD TERMS AND CONDITIONS

1. RABA-KISTNER (Raba-Kistner Consultants, Inc.; Raba-Kistner Infrastructure, Inc.) is being engaged by the CLIENT to render professional services involving various aspects of design, construction observation, or the condition of various building, site, and/or environmental materials, which may contain or be contaminated by hazardous materials and asbestos containing materials (ACM).

   Raba-Kistner (hereafter referred to as R-K) provides a wide variety of services. Services provided by different R-K companies or different departments therein, to the same Client, occasionally overlap. CLIENT acknowledges that R-K has no obligation to research prior work by R-K for CLIENT or others, or work performed by R-K or others at the proposed project site, regardless of the specific R-K companies, departments or office locations that will be involved in the proposed work.

2. R-K will perform its services in accordance with the standard of care and diligence normally practiced by recognized professional firms in performing services of a similar nature, in the same locality, under similar circumstances. CLIENT expressly acknowledges that R-K makes no other warranties or guarantees, expressed or implied, regarding the services set forth herein. CLIENT expressly acknowledges that all of the services provided to it by R-K pursuant to this Agreement are professional services involving only R-K's advice, judgment and opinion. R-K will apply professional judgment in determining the extent to which R-K will comply with any given standard identified in R-K's instruments of professional services. Unless otherwise stated in writing, such compliance, referred to as "general compliance", specifically excludes consideration of any standard listed as a reference in the text of those standards cited by R-K.

3. CLIENT will provide right-of-entry to the buildings and sites which are the subjects of R-K's services. CLIENT represents that it possesses authority for such right-of-entry and that the building/site operator(s) possess the necessary permits and licenses for current activities at the site.

4. The CLIENT will be responsible for providing the location of all underground utilities and other structures in the vicinity of our borings. R-K cannot accept responsibility and will not be liable for penetrating any underground utility, underground storage tank, or other subsurface condition not previously identified and located, or improperly located, by the CLIENT or a utility agency.

5. If materials are encountered in the field which are judged to be potentially hazardous or a danger to our personnel, all field work will cease and the CLIENT will be notified. Subsequent work on the project will then be conducted only with specific additional authorization from the CLIENT and will be charged at appropriate revised unit rates. The scope of work and cost estimate does not include the cost of containerizing any waste or cuttings or their removal from the site. Such materials will be containerized and left at the site.

   The results of sample analyses or other information will be used to render a professional opinion regarding the nature of materials left on site. If this information indicates the materials are hazardous or potentially hazardous, and if CLIENT does not wish the waste or drill cuttings to be left on site, R-K will have such materials transported to a licensed facility for final disposal using a manifest signed by the CLIENT as generator. CLIENT agrees to pay all costs associated with management, analyses, storage, transportation, and disposal of materials. CLIENT recognizes and agrees that R-K at no time assumes ownership to said materials.

6. The scope of work and cost estimate does not include costs incurred to provide access to sites which are inaccessible to our truck-mounted drill rigs and support vehicles. They also do not include costs incurred due to delays caused by inclement weather.

7. All samples obtained at the site will be managed by R-K. R-K will retain preservable samples and the residues from testing of all samples that, in R-K's professional opinion, do not contain materials that are hazardous or potentially hazardous, for 30 days after submission of its report. The samples and residues will be disposed of at the end of the 30 day period.

   In the event that in R-K's professional opinion, the samples contain potential constituents of concern, R-K will return such samples and residues to CLIENT, or, using a manifest signed by CLIENT as generator, R-K will have such samples transported to a licensed facility for final disposal. CLIENT agrees to pay all costs associated with management, analyses, storage, transportation, and disposal of materials. CLIENT recognizes and agrees that R-K at no time assumes ownership of said samples.

8. R-K will be compensated largely on the basis of the time required in rendering these professional services – not on the basis of potential legal liabilities created by any risks associated from the hazardous materials and ACM.

   During its prime, asbestos was used in over 3,000 different products and can still be found in some products today. Consequently, attempts to locate and identify "all" asbestos in a survey would be both impractical and cost prohibitive. If retained to conduct an asbestos survey, R-K will direct its efforts at locating accessible, friable asbestos and non-friable asbestos which, in R-K's professional opinion, might become friable as a result of remodeling activities.

   Likewise, several thousand chemicals, wastes, and other materials have been designated as hazardous or toxic by various laws and regulations. If retained to conduct a site assessment with respect to such materials, R-K will direct its efforts at locating the most significant sources, or potential sources, of such materials which, in R-K's professional opinion, have the potential for causing the most significant impact.

9. R-K may provide CLIENT with a written report in connection with the services performed. The report will present such findings and conclusions as R-K may reasonably make with the information gathered while performing its services. In preparing the report, R-K may review and interpret certain information provided to it by the CLIENT or by third parties. R-K will not conduct an independent evaluation of the accuracy or completeness of such information and shall not be responsible for any errors or omissions contained in such information. The report and other instruments of service are prepared for, and made available for the sole use of the CLIENT, and the contents thereof may not be used or relied upon by any other person without the express written authorization of R-K. Any unauthorized use or distribution shall be at the CLIENT's sole risk and without liability to R-K.

   R-K's reports, drawings, plans, specifications, and other project related documents and deliverables are instruments of professional service ("instruments") developed by R-K in contemplation of a wide array of project-specific variables, including how the documents will be used and by whom. R-K shall be the owner and custodian of the instruments, and shall take appropriate measures to help prevent unauthorized use of them. Accordingly, during development of the scope of service, CLIENT and R-K shall together identify those who, in addition to CLIENT, may use the various instruments and for what purposes, and R-K shall copyright the instruments to make illegal any unauthorized duplication, other reproduction or copying, quotation, or excerption of them.

Parties other than those identified by CLIENT and R-K may apply to use an instrument, using a form prepared by R-K for that purpose. Others' use of an instrument shall be permitted only when CLIENT and R-K both so agree; either shall have the right to forbid use by others. In addition, R-K shall make its permission contingent upon the satisfaction of certain conditions when, in R-K's professional judgment, such a contingency is necessary.

10. CLIENT will indemnify R-K against any claims or costs which exceed the limitation on R-K's liability provided for in this document, or result from acts or omissions of CLIENT. If litigation or threat of litigation ensues not involving R-K, CLIENT agrees to bear the full cost for R-K to comply with applicable State law and any court orders to provide access to R-K's files, personnel, facilities and equipment.

11. The person or entity responsible for performing the Work under the contract for Construction shall be defined as the Contractor. R-K's site safety responsibilities are solely limited to the activities of R-K and R-K's employees on the site. These responsibilities shall not be inferred by any party to mean that R-K has responsibility for site safety for any reason. Safety in, on or about the site is the sole and exclusive responsibility of the Contractor alone. The Contractor's methods of work performance, supervision of the Contractor's employees, and sequencing of construction are also the sole and exclusive responsibility of the Contractor alone. CLIENT warrants that these responsibilities will be made clear in CLIENT'S agreement with the Contractor; CLIENT'S agreement with the Contractor shall require the Contractor, to the extent of Contractor's negligence, to indemnify, defend and hold CLIENT and R-K harmless from any fine, penalty, claim, or liability for injury or loss arising from CLIENT's and R-K's alleged failure to exercise site safety responsibility; and CLIENT'S agreement with Contractor and all Subcontractors shall require the Contractor and Subcontractors to make CLIENT and R-K additional insureds under the Contractor's and all Subcontractor's general liability insurance policy, which insurance protection shall be primary protection for CLIENT and R-K, and shall hold CLIENT and R-K harmless from claims, losses, and defense arising from the negligence of Contractor or Subcontractor on any tier.

12. For any damage on account of any error, omission, or other professional negligence, R-K's liability to CLIENT, or to any third party, will be limited to a sum not to exceed $50,000 or R-K's project fee for that portion of R-K's work found to be defective, whichever is greater. R-K's liability to CLIENT, or to any third party, for injury or damage to persons or property arising out of work performed for CLIENT and for which legal liability may be found to rest upon R-K, other than for professional errors and omissions, will be limited to R-K's available general liability insurance coverage of $1,000,000.

13. Cancellation of the Agreement to which these terms and conditions apply may be made by either party for just cause after 30 days' written notification of intent of cancellation is provided to the other party. In the event the CLIENT elects to terminate the Agreement, R-K will be compensated in full for all services, materials, supplies, and expenses incurred prior to the actual cancellation date of the Agreement. The CLIENT shall in any event pay all amounts invoiced that the CLIENT does not dispute as provided herein.

14. If the Client fails to make payments when due or otherwise is in breach of this Agreement, R-K may suspend performance of services upon 7 calendar days' notice to the Client. R-K shall have no liability whatsoever to the Client for any costs or damages as a result of such suspension caused by any breach of this Agreement by the Client. Upon payment in full by the Client, R-K shall resume services under this Agreement, and the time schedule and compensation shall be equitably adjusted to compensate for the period of suspension plus any other reasonable time and expense necessary for R-K to resume performance. If the Client fails to make payment to R-K in accordance with the payment terms herein, this shall constitute a material breach of this Agreement and shall be cause for termination of this Agreement by R-K. Payment of invoices shall not be subject to any discounts or set-offs by the Client unless agreed to in writing by R-K. Payment to R-K for services rendered and expenses incurred shall be due and payable regardless of any subsequent suspension or termination of this Agreement by either party.

15. All claims, disputes, and other controversy between R-K and CLIENT arising out of or in any way related to the services provided by R-K will be submitted to "alternative dispute resolution" (ADR) such as mediation, before and as a condition precedent to other remedies provided by law. If a dispute at law arises related to these services and that dispute requires litigation as provided above, then; CLIENT assents to personal jurisdiction in the State of R-K's principal place of business; The claim will be brought and tried in judicial jurisdiction of the court of the county where R-K's principal place of business is located, and CLIENT waives the right to remove action to any other county or jurisdiction; and the prevailing party will be entitled to recovery of all reasonable costs incurred, including staff time, court costs, attorneys' and expert witness fees, and other claim-related expenses.

16. Neither party shall be liable in damages or have the right to terminate this Agreement for any delay or default in performing hereunder if such delay or default is caused by conditions beyond its control ("Force Majeure") including, but not limited to Acts of God, Government restrictions (including the denial or cancellation of any export or other necessary license), wars, insurrections and/or any other cause beyond the reasonable control of the party whose performance is affected. Force Majeure may not be claimed as a cause for delay in payment of money due and payable hereunder.

17. Each provision of this Agreement is intended to be several. If any terms or provisions of this agreement shall be held to be invalid, illegal, or unenforceable of any reason whatsoever, the validity, legality, and enforceability of the remaining provisions hereof shall remain in full force and effect and shall not in any way be affected or impaired thereby. Moreover, to the maximum extent allowed by law, the Parties hereto stipulate that any offending provisions will be modified or altered, as necessary, so as to give such provision the maximum permissible effect and application intended.

18. This Agreement, and all of its attachments, constitutes the entire, integrated Agreement between the Parties to it, and this Agreement supersedes all other Agreements, oral or written between the Parties, concerning the subject set forth in this Agreement. This Agreement may not be amended except in writing, with that amendment being signed by both Parties.

Proposal No. PSF11-162-00
May 3, 2011

ATTACHMENT II

RABA-KISTNER CONSULTANTS, INC.

SCHEDULE OF FEES FOR PROFESSIONAL SERVICES

PERSONNEL:

Principal	$135 to $250/hour
Professional	$70 to $200/hour
Auto Cad Operator	$65 to $110/hour
Technical/Clerical/Administrative	$40 to $80/hour

The specific hourly rate within each classification listed above depends on the experience, special training, and qualifications of the personnel needed for the project. For projects requiring work at any hazardous waste site, there will be a $10 per hour surcharge added to the normal billing rate for all personnel. Consultants to Raba-Kistner (R-K) will be charged according to their professional classification.

EXPENSES: Use of company automobiles will be charged at $1.00 per mile. Automobiles and light trucks assigned to field sites will be charged at $70.00 per day, plus $1.00 per mile over 50 miles per day. Copies will be charged at $0.25 per page.

Other project specific charges for use of R-K equipment or for R-K testing will be in accordance with established fee schedules. All other project specific, third-party costs will be charged at cost plus 15 percent.

Invoices will be submitted monthly for work in progress in our standard format. They are due and payable upon receipt and become past due 30 days after the billing date. Past due invoices may be subject to late charges at the rate of 1-1/2 percent per month (18 percent per annum). In the event that the State of Texas legislates a sales tax on Professional Services, the amount of the tax will be PAYMENT added to the appropriate service rate charged. Our invoices are due and payable upon receipt at P.O. Box 971037, Dallas, Texas 75397-1037.

Preparation of non-standard invoice will be charged on a time and materials basis in accordance with the rates in this fee schedule.

CONDITIONS: Services will be performed in accordance with our Standard Terms and Conditions.

The proposal to which this schedule is an attachment is valid for 90 days from the date of the proposal.

Regular City Council Agenda Item Data Sheet

Meeting Date: June 20, 2011

Topic:

Approve Hart Voting System Master Agreement for the Purchase of Election Equipment from HartIntercivic, Inc. in the amount of $25,752.00, and Hart Voting System Warranty, License, and Support Agreement for Future General City's Elections, in the amount of $5,500.00 for the First City Election in which the Equipment and Software are used and Authorize the Mayor to Execute Agreements.

Background:

In response to the federally-adopted Military and Overseas Voter Empowerment Act (M.O.V.E.), and the Texas Legislature's adoption of SB 100, John German, Elections Administrator for Harris County, has advised Tomball that Harris County will be unable to furnish election equipment or support for the May 2012 general city election and future city elections held in even-numbered years.

On June 6, 2011, Council directed City staff to negotiate a contract with HartIntercivic for the purchase of election equipment and support services for future City elections in order to continue holding the City's annual elections on the second Saturday in May, as specified for municipalities under SB100.

Attached is a copy of the proposed Hart Voting System Master Agreement for the Purchase of Election Equipment, in the amount of $25,752.00, and the proposed Hart Voting System Warranty, License, and Support Agreement, which includes testing, programming, on-site support, tallying, maintenance/repairs, software upgrades and certification services for the first year of service and the first City election to be held using the equipment.

HART's quote ($31,252.00) includes the initial purchase of the same election equipment we currently use, and the services and support for the first City election; $25,752.00 would be due when the equipment is delivered and $5,500.00 would be due following the election.

Continuing expenses include annual licensing, maintenance and software updates for the equipment would cost $80.00 per unit, a total of $640.00 and support services for each election, approximately $5,500.00, for programming, ballots, and on-site support and tallying services on Election Day.

Origination:

City Secretary

Recommendation:

Approve Hart Voting System Master Agreement and Hart Voting System Warranty, License, and Support Agreement

Funding: Yes

Account Number: 100-114-6371 and 100-114-6304

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

City Secretary

ACTION TAKEN

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

ATTACHMENTS:

Hart Voting System Master Agreement
Hart Voting System Warranty, License, and Support Agreement
Hart Pricing Quote for Purchase

HART VOTING SYSTEM

MASTER AGREEMENT
(SIGNATURE PAGE)

This Hart Voting System Master Agreement ("**Agreement**") is entered into by and between Hart InterCivic, Inc., a Texas corporation ("**Hart**"), and _City of Tomball ~~County~~ ("**Client**"), a governmental subdivision of the State of __Texas_____. This Agreement sets forth the terms under which Client will purchase from Hart the Hart Voting System ("**HVS**"). Defined terms used in this Agreement will have the meanings specified in Section 9, Definitions, or as otherwise set forth herein.

The following Schedules and Exhibits are attached to this Agreement and made a part hereof:

Schedule A	Hardware and Pricing
Schedule B	Hart Proprietary Software
Schedule C	Non-Hart Software
Exhibit A	Hart Voting System Warranty, License, and Support Agreement
~~Exhibit B~~	~~Client's Request for Proposal #____________~~
~~Exhibit C~~	~~Hart's Proposal~~

This Agreement is entered into as the result of negotiations between Client and Hart with respect to Client's Request for Proposal, a copy of which is attached as Exhibit B, and Hart's Proposal, a copy of which is attached as Exhibit C. Client's Request for Proposal and Hart's Proposal are incorporated herein by reference. If a conflict occurs between the terms of this Agreement (including the Schedules and Exhibit A), Client's Request for Proposal and Hart's Proposal, (a) the terms of this Agreement (including the Schedules and Exhibit A) will control over Client's Request for Proposal and Hart's Proposal and (b) the terms of Hart's Proposal will control over Client's Request for Proposal.

Client acknowledges it has read and understands this Agreement (including all Schedules and Exhibits) and is entering into this Agreement only on the basis of the terms set forth in this Agreement. There are no oral agreements, representations, or warranties. The Effective Date of this Agreement is_June 21_, 2011.

Agreed and Accepted:

	Client	**Hart**
Name:	City of Tomball, Texas	Hart InterCivic, Inc.
Address:	401 Market Street Tomball, Tx 77375 Attn: Doris Speer, City Secretary	15500 Wells Port Drive Austin, Texas 78728 Attn.: Phillip W. Braithwaite President
Primary Phone:	281-290-1002	800-223-4278
Facsimile:	281-351-6256	800-831-1485
E-mail:	dspeer@ci.tomball.tx.us	pbraithwaite@hartic.com
Executed By:	____________________________	____________________________
Name:	Gretchen Fagan	Phillip W. Braithwaite
Title:	Mayor	President

This Agreement is not effective until executed by both parties.

In consideration for the agreements set forth herein, the parties agree as follows:

1. Purchase of HVS Hardware and Equipment; License of Software:

1.1 Sale. Hart agrees to sell and Client agrees to purchase the HVS Hardware, subject to the terms and conditions set forth in this Agreement.

1.2 Licenses and Sublicenses. Simultaneously upon entering into this Agreement, Hart and Client will enter into the Hart Voting System Warranty, License, and Support Agreement ("**HVS License Agreement**") in the form of Exhibit A, the terms of which are incorporated herein by reference. The License Agreement sets forth additional terms applicable to Client's ownership and use of the HVS Hardware and license of Hart Proprietary Software, including warranty, support of software and hardware, license of software, and other terms.

1.3 Delivery and Installation. Hart will cause the HVS Hardware with Software to be delivered to Client's premises on a date mutually agreed to by Hart and Client. A Hart representative will install the HVS Hardware containing the HVS Software at the Client's site on a mutually agreed upon date during Hart normal working hours, within ten (10) business days or as soon as is practicable for both Parties. At that time, Hart and Client will together complete the HVS Acceptance Testing. Upon successful completion of the Acceptance Testing, Client will sign the Acceptance Form indicating acceptance of the HVS. Hardware warranty begins ten (10) days after date the hardware is shipped to the Client. Billing will occur on the date the HVS Hardware is shipped to the Client's site. If additional labor and rigging or Client-specified customization is required for installation due to Client's special site requirements, Client will pay those costs including costs to meet union or local law requirements.

(a) Hart will provide onsite and offsite project management, operational training, and Election Day support for the first election in which the Equipment and Software are used. Project management may include equipment administration, ballot programming, and support for logic and accuracy testing. Training may include administrative staff training on HVS Software and Equipment, and training for polling place officials. Professional Service days cannot be exchanged for HVS or third party equipment, software, License & Support or Maintenance fees. If the Professional Services offered under the terms of this contract are not used prior to 60 days after the date of the Client's first election in which any portion of the Equipment and Software are used, the Professional Services shall expire.

(b) Any additional training and/or professional services which may be identified and mutually agreed upon will be documented in a Service Order, including details regarding the type and location of the training and/or services and the cost for the additional training and/or services requested by the client. If agreed to and signed off in writing by Hart and Client, charges for the additional training and/or services will be invoiced to Client at Hart's then-current rates, plus travel, communication and other expenses.

1.4 Training and Documentation. Hart will provide to Client one (1) electronic copy of the standard user-level documentation for the Software and standard operational training for the HVS System installed at the Client's location before the first election for which the Software will be used. Hart will provide Client operational training and on-site support at the first election in which the Equipment and Software are used. Charges for additional training or support services will be invoiced to Client at Hart's then-current hourly rates, plus travel, communication, and other expenses. Any additional training or support services will be mutually agreed to by Hart and Client and documented in an amendment to this Agreement.

1.5 User Documentation; Environmental Specifications. Hart will provide to Client one (1) electronic copy of the applicable then-current user documentation and operator's manuals for the HVS Hardware and Software and, where applicable, environmental specifications for the Hardware. Client shall not remove any trademark, copyright, or other proprietary or restrictive notices contained on any Hart user documentation, operator's manuals, and environmental specifications, and all copies will contain such notices as are on the original electronic media.

1.6 Support. Support will be provided as set forth in the HVS License Agreement.

2. Charges; Payments:

2.1 Total Purchase Price. The Total Purchase Price is set forth in Schedule A and includes the purchase price for the Hardware, the Initial Annual Fee under the HVS License Agreement, state and local taxes (if applicable), and delivery and installation charges.

2.2 Payments. Client shall pay Hart the Purchase Price according to the following schedule:

1. Hart Hardware and Extended Hardware Warranty (if any) as per Schedule A – Billed Upon Shipment.
2. 3rd Party Hardware, HVS Software and 1st Year License/Support Fees (if any) - Billed Upon Shipment.
3. Professional Services – Billed Upon one or more of the following: first Election in which the Professional Services are used; receipt of Final Services Acceptance or the end of the first calendar year after receipt of Hart or 3rd Party Hardware or Software (but not later than sixty (60) days after the date of the Client's first election in which any portion of the Equipment and Software are used).

All payments are to be made to Hart at its principal office in Austin, Texas, as set forth on the Signature Page or to such other location as may be designated by Hart in a notice to Client.

2.3 Late Charges. If the Total Purchase Price is not paid in full within thirty (30) days after delivery of the Hardware and Software, Hart may charge Client interest on the unpaid balance until paid, at the lesser of (a) 1% per month or (b) the maximum rate allowed by law.

2.4 Additional Charges. Additional charges may apply to services rendered outside contracted hours or beyond normal coverage at Client's request, e.g., travel expenses, and premium and minimum charges. There will be an additional charge at Hart's current technician's rate per hour for any technical work required as a result of other than Hart-recommended equipment purchased by the Client for use with the HVS. Any other additional charges must be mutually agreed to by Hart and Client and documented in an amendment to this Agreement.

2.5 Payment Disputes. If any dispute exists between the parties concerning the amount due or due date of any payment, Client shall promptly pay the undisputed portion. Such payment will not constitute a waiver by Client or Hart of any of their respective legal rights and remedies against each other.

2.6 Taxes. If Client is tax-exempt, Client will provide Hart with proof of its tax-exempt status. If Client is not tax-exempt, (a) Client will pay any tax Hart becomes obligated to pay in connection with this Agreement, exclusive of taxes based on the net income of Hart and (b) Client will pay all personal property and similar taxes assessed after shipment. If Client challenges the applicability of any such tax, Client shall pay the tax and may thereafter seek a refund.

2.7 Suspension of Performance. If any payment due to Hart under this Agreement is past due more than thirty (30) days, Hart may suspend performance under this Agreement until all amounts due are current.

3. Client Responsibilities:

3.1 Independent Determination. Client acknowledges it has independently determined that the Hart Voting System purchased under this Agreement meets its requirements.

3.2 Cooperation. Client agrees to cooperate with Hart and promptly perform Client's responsibilities under this Agreement and the HVS License Agreement.

4. Title; Risk of Loss:

4.1 Hardware. Subject to Section 4.3, title to Hardware will pass to Client upon delivery of the Equipment to Client. Risk of loss of, or damage to, Hardware will pass to Client upon delivery to Client.

4.2 Confidential and Proprietary Information. Title to Hart's Confidential and Proprietary Information will remain in Hart. Title to Confidential and Proprietary Information of Hart's suppliers and licensors will remain in the relevant suppliers and licensors.

4.3 Proprietary Rights. Client acknowledges and agrees that the design of the HVS, design of the HVS Hardware, Hart Proprietary Software, and any and all related patents, copyrights, trademarks, service marks, trade names, documents, logos, software, microcode, information, and material are the property of Hart. Client agrees that the sale of the HVS Hardware and license of Hart Proprietary Software and other accompanying items under this Agreement does not grant to or vest in Client any right, title, or interest in such proprietary property. All patents, trademarks, copyrights, trade secrets, and other intellectual property rights, whether now owned or acquired by Hart with respect to the HVS, HVS Hardware, and Hart Proprietary Software, are the sole and absolute property of Hart and no interest therein is being vested in Client by the execution of this Agreement or the sale of the HVS Hardware or license of the Hart Proprietary Software to Client. Client shall not, under any circumstances, cause or permit the adaptation, conversion, reverse engineering, disassembly, or de-compilation of any Software or Equipment. Client will have no authority or right to copy, reproduce, modify, sell, license, or otherwise transfer any rights in any proprietary property of Hart. The provisions of this Section 4.3 will survive the termination or cancellation of this Agreement and the HVS License Agreement.

5. Warranty Terms:

THE WARRANTY TERMS APPLICABLE TO THE HART VOTING SYSTEM ARE SET FORTH IN THE HART VOTING SYSTEM WARRANTY, LICENSE, AND SUPPORT AGREEMENT. EXCEPT FOR THE EXPRESS LIMITED WARRANTIES IN THE LICENSE AGREEMENT, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, (A) THERE ARE NO WARRANTIES, EXPRESS OR IMPLIED, BY OPERATION OF LAW OR OTHERWISE UNDER THIS AGREEMENT AND THE LICENSE AGREEMENT, AND (B) HART DISCLAIMS ALL EXPRESS AND IMPLIED WARRANTIES, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF FITNESS FOR A PARTICULAR PURPOSE, MERCHANTABILITY, TITLE AND NONINFRINGEMENT FOR ALL HARDWARE, SOFTWARE, AND SERVICES. THE EXPRESS WARRANTIES EXTEND SOLELY TO CLIENT. SOME STATES (OR JURISDICTIONS) DO NOT ALLOW LIMITATIONS ON IMPLIED WARRANTIES, SO THE ABOVE LIMITATION MAY NOT APPLY TO CLIENT.

6. Limitation of Damages:

6.1 EXCLUSIVE REMEDY. HART DOES NOT ACCEPT ANY LIABILITY FOR WARRANTIES BEYOND THE REMEDIES SET FORTH IN SECTION 1 OF THE LICENSE AGREEMENT. HART'S ENTIRE LIABILITY AND CLIENT'S EXCLUSIVE REMEDY FOR ANY CLAIM CONCERNING THIS AGREEMENT AND THE HARDWARE, SOFTWARE, AND SERVICES PROVIDED UNDER THIS AGREEMENT ARE SET FORTH IN THIS SECTION.

6.2 DISCLAIMER. CLIENT IS RESPONSIBLE FOR ASSURING AND MAINTAINING THE BACKUP OF ALL CLIENT DATA. UNDER NO CIRCUMSTANCES WILL HART BE LIABLE TO CLIENT OR ANY THIRD PARTY FOR THE LOSS OF OR DAMAGE TO CLIENT DATA.

6.3 LIMITATION. NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THIS AGREEMENT, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, HART, HART'S LICENSORS, AND ANY PARTY INVOLVED IN THE CREATION, MANUFACTURE, OR DISTRIBUTION OF THE HARDWARE AND SOFTWARE AND THE PERFORMANCE OF SERVICES UNDER THIS AGREEMENT WILL NOT BE LIABLE TO CLIENT FOR ANY SPECIAL, INDIRECT, INCIDENTAL, PUNITIVE, OR CONSEQUENTIAL DAMAGES (INCLUDING LOST PROFITS) OR FOR LOST DATA SUSTAINED OR INCURRED IN CONNECTION WITH THE HARDWARE, SOFTWARE, SERVICES, OR THIS AGREEMENT, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, REGARDLESS OF THE FORM OF ACTION AND WHETHER OR NOT SUCH DAMAGES ARE FORESEEABLE. IN ADDITION, HART'S TOTAL LIABILITY TO CLIENT FOR DIRECT DAMAGES ARISING OUT OF OR RELATING TO THE HARDWARE, SOFTWARE, SERVICES, AND THIS AGREEMENT WILL IN NO EVENT EXCEED THE TOTAL AMOUNT ACTUALLY PAID BY CLIENT TO HART UNDER THIS AGREEMENT. HART IS NOT LIABLE FOR DAMAGES CAUSED IN ANY PART BY CLIENT'S NEGLIGENCE OR INTENTIONAL ACTS OR FOR ANY CLAIM AGAINST CLIENT OR ANYONE ELSE BY ANY THIRD PARTY.

SOME STATES (OR JURISDICTIONS) DO NOT ALLOW THE EXCLUSION OR LIMITATION OF INCIDENTAL OR CONSEQUENTIAL DAMAGES, SO THE ABOVE EXCLUSION OR LIMITATION MAY NOT APPLY TO CLIENT.

6.4 Referrals. Hart may direct Client to third parties having products or services that may be of interest to Client for use in conjunction with the Hardware and Software. Notwithstanding any Hart recommendation, referral, or introduction, Client will independently investigate and test non-Hart products and services and will have sole responsibility for determining suitability for use of non-Hart products and services. Hart has no liability with respect to claims relating to or arising from use of non-Hart products and services, including, without limitation, claims arising from failure of non-Hart products to provide proper time and date functionality.

7. Dispute Resolution:

7.1 Disputes and Demands. The parties will attempt to resolve any claim or controversy related to or arising out of this Agreement, whether in contract or in tort ("**Dispute**"), on a confidential basis according to the following process, which either party may start by delivering to the other party a written notice describing the dispute and the amount involved ("**Demand**").

7.2 Negotiation and Mediation. After receipt of a Demand, authorized representatives of the parties will meet at a mutually agreed upon time and place to try to resolve the Dispute by negotiation. If the Dispute remains unresolved after this meeting, either party may start mandatory nonbinding mediation under the commercial mediation rules of the American Arbitration Association ("**AAA**") or such other mediation process as is mutually acceptable to the parties.

7.3 Injunctive Relief. Notwithstanding the other provisions of this Section 7, if either party seeks injunctive relief, such relief may be sought in a court of competent jurisdiction without complying with the negotiation and mediation provisions of this Section 7.

7.4 Time Limit. Neither mediation under this section nor any legal action, regardless of its form, related to or arising out of this Agreement may be brought more than two (2) years after the cause of action first accrued.

8. General Provisions:

8.1 Entire Agreement. This Agreement and the attachments, schedules, and exhibits hereto are the entire agreement and supersede all prior negotiations and oral agreements. Hart has made no representations or warranties with respect to this Agreement or the HVS and its components that are not included herein. This Agreement may not be amended or waived except in writing signed by an officer of the party to be bound thereby.

8.2 Preprinted Forms. The use of preprinted forms, such as purchase orders or acknowledgments, in connection with this Agreement is for convenience only and all preprinted terms and conditions stated thereon are void and of no effect. If any conflict exists between this Agreement and any terms and conditions on a purchase order, acknowledgment, or other preprinted form, the terms and conditions of this Agreement will govern and the conflicting terms and conditions in the preprinted form will be void and of no effect. The terms and conditions of this Agreement, including, but not limited to, this Section 8.2, cannot be amended, modified, or altered by any conflicting preprinted terms or conditions in a preprinted form.

8.3 Interpretation. This Agreement will be construed according to its fair meaning and not for or against either party. Headings are for reference purposes only and are not to be used in construing the Agreement. All words and phrases in this Agreement are to be construed to include the singular or plural number and the masculine, feminine, or neuter gender as the context requires.

8.4 GOVERNING LAW. THIS AGREEMENT WILL BE GOVERNED BY THE LAWS OF THE STATE OF TEXAS, WITHOUT REGARD TO ITS CONFLICT OF LAW PROVISIONS, UNLESS CLIENT IS A GOVERNMENTAL SUBDIVISION OF ANOTHER STATE, IN WHICH CASE THE LAWS OF THE STATE IN WHICH CLIENT IS A GOVERNMENTAL SUBDIVISION WILL CONTROL.

8.5 Severability. Whenever possible, each provision of this Agreement will be interpreted to be effective and valid under applicable law; but if any provision is found to be invalid, illegal, or unenforceable, then such provision or portion thereof will be modified to the extent necessary to render it legal, valid, and enforceable and have the intent and economic effect as close as possible to the invalid, illegal, or unenforceable provision. If it is not possible to modify the provision to render it legal, valid, and enforceable, then the provision will be severed from the rest of the Agreement and ignored. The invalidity, illegality, or unenforceability of any provision will not affect the validity, legality, or enforceability of any other provision of this Agreement, which will remain valid and binding.

8.6 Delays. Hart is not responsible for failure to fulfill its obligations when due to causes beyond its reasonable control, including the failure of third parties to timely provide Software, Hardware, materials, or labor contemplated herein. Hart will notify Client in writing of any such delay, and the time for Hart's performance will be extended for a period corresponding to the delay. Hart and Client will determine alternative procedures to minimize delays.

8.7 Force Majeure. "Force Majeure" means a delay encountered by a party in the performance of its obligations under this Agreement that is caused by an event beyond the reasonable control of the party, but does not include any delays in the payment of monies due by either party. Without limiting the generality of the foregoing, "Force Majeure" will include, but is not restricted to, the following types of events: acts of God or public enemy; acts of governmental or regulatory authorities (other than, with respect to Client's performance, the Client, and its governing entities); fires, floods, epidemics, or serious accidents; unusually severe weather conditions; and strikes, lockouts, or other labor disputes. If any event constituting Force Majeure occurs, the affected party shall notify the other party in writing, disclosing the estimated length of the delay and the cause of the delay. If a Force Majeure occurs, the affected party will not be deemed to have violated its obligations under this Agreement, and time for performance of any obligations of that party will be extended by a period of time necessary to overcome the effects of the Force Majeure.

8.8 Compliance with Laws. HVS Hardware and Software will meet the certification requirements in place on the effective date of the HVS Master Agreement. Client and Hart shall comply with all federal, state, and local laws in the performance of this Agreement, including those governing use of the Hardware and Software. Hardware and Software provided under this Agreement may be subject to U.S. and other government export control regulations. Client shall not export or re-export any Hardware or Software.

8.9 Assignments. Hart may assign this Agreement or its interest in any Hardware or Software, or may assign the right to receive payments, without Client's consent. Any such assignment, however, will not change the obligations of Hart to Client that are outstanding at the time of assignment. Client will be notified in writing if Hart makes an assignment of this Agreement. Client shall not assign this Agreement without the express written consent of Hart, such consent not to be unreasonably withheld. In the event of any permitted assignment of this Agreement, the assignee shall assume the liabilities and responsibilities of the assignor, in writing.

8.10 Independent Contractors. Client and Hart are independent contractors and are not agents or partners of each other. Hart's employees, agents, and subcontractors will not be entitled to any privileges or benefits of Client employment. Client's employees, agents, and contractors will not be entitled to any privileges or benefits of Hart employment.

8.11 Notices. Any notice required or permitted to be given under this Agreement by one party to the other must be in writing and shall be given and deemed to have been given immediately if delivered in person to the address set forth on the Signature Page for the party to whom the notice is given, or on the fifth (5^{th}) business day following mailing if placed in the United States Mail, postage prepaid, by registered or certified mail with return receipt requested, addressed to the party at the party's address set forth on the Signature Page. Each party may change its address for notice by giving written notice of the change to the other party.

8.12 Trademarks. eScan™, eSlate®, Judge's Booth Controller™, JBC™, Disabled Access Unit™, DAU™, Mobile Ballot Box™, Ballot Origination Software System™, BOSS™, Tally™, Rally™, FUSION™, and Ballot Now™ are trademarks of Hart.

9. Definitions:

"*Acceptance Testing*" means testing in accordance with Hart's standard Acceptance Testing Procedure to be provided to Client at time of Hart and Client Acceptance testing as described in Section 1.3 of this Agreement.

"*Agreement*" has the meaning set forth in the Signature Page.

"*Annual Fee*" means the combined annual license, sublicense, and support fees payable by Client to Hart under the HVS Warranty, License, and Support Agreement.

"*Client*" has the meaning set forth in the Signature Page.

"*Confidential and Proprietary Information*" means Software, firmware, diagnostics, documentation (including operating manuals, user documentation, and environmental specifications), designs and configurations of Hardware, Software, and firmware, trade secrets and related documentation, and any other information confidential to Hart or its suppliers or licensors.

"*DAU™*" means the Disabled Access Unit (DAU™) created by Hart as an add-on component to an eSlate® that facilitates the performance of voting activities by disabled voters, for example, by providing an audio ballot presentation and/or accepting inputs from specialized switch mechanisms, such as head switches, breath switches, and panel switches that facilitate interaction with disabled voters, as needed.

"*Effective Date*" has the meaning set forth in the Signature Page and indicates the date this Agreement becomes effective.

"*Equipment*" means the HVS Hardware and Non-Hart Hardware listed on Schedule A.

"*eScan™*" means the eScan™ device created by Hart, consisting of a precinct digital ballot imaging device single-feed scanner that transports and scans both sides of a ballot simultaneously, and a base that provides for secure ballot storage and transport.

"*eSlate®*" means the eSlate® created by Hart and consisting of hardware including an electronically configurable, network-capable voting station that permits a voter to cast votes by direct interaction, which voting station in its present configuration created by Hart comprises an electronically configurable liquid crystal display (LCD) panel for use in displaying ballot images, a rotary input device for use in ballot navigation, and various buttons that facilitate voter options for selecting ballot choices and casting a ballot.

"*eSlate® Hardware*" means the eSlate®, JBC™, and DAU™ in the quantities listed on Schedule A.

"*Firmware*" means the Hart Proprietary Software embedded in eSlate® voting devices that allows execution of the software functions, but does not allow access to or modification of the software by an end user.

"*Force Majeure*" has the meaning set forth in Section 8.7.

"*Hart*" means Hart InterCivic, Inc., a Texas corporation.

"*Hart Proprietary Software*" means the run-time executable code and associated support files of the Ballot Origination Software System (BOSS™) Software, Tally™ Software, Rally™ Software, Ballot Now™ Software, computer code and software resident in the HVS Hardware, and other support software utilities as specified on Schedule B, consisting of computer programs and computer code owned by Hart that are licensed to Client pursuant to the Hart Voting System Warranty, License, and Support Agreement, and all updates, upgrades, versions, new releases, derivatives, revisions, corrections, improvements, rewrites, bug fixes, enhancements, and other modifications, including any custom modifications, to such computer programs and code that are provided to Client, and all copies of the foregoing. Hart Proprietary Software also includes all documentation provided by Hart to Client with respect to these computer programs and code, and all copies of the foregoing (electronic and hard copy).

"*Hart Voting System (HVS)*" means the HVS Hardware and the Software.

"*Hart Voting System Warranty, License, and Support Agreement*" means the Hart Voting System Warranty, License, and Support Agreement in the form of Exhibit A to be entered into by Hart and Client simultaneously upon entering into this Agreement. This Warranty covers only the HVS Hardware. Third-party equipment's warranty is passed through to the Customer.

"*Initial Annual Fee*" means the first Annual Fee payable under the Hart Voting System Warranty, License, and Support Agreement, which is included in the Total Purchase Price.

"*Installation Date*" means, with respect to the Hart Voting System, the date Hart completes installation of the HVS with included Software.

"*JBC™*" means the Judge's Booth Controller (JBC™) created by Hart that is a local area network controller capable of interacting with one or more eSlate® devices or DAU devices by transmitting and receiving signals that manage or control an election, e.g., by opening and closing the polls, providing or recording an audit trail of system events during an election, storing cast ballot data, and applying data security and integrity algorithms.

"*Non-Hart Hardware*" means the hardware listed on Schedule A that is not Hart's HVS Hardware.

"*Non-Hart Software*" means the run-time executable code and associated support files of computer programs owned by third parties that are identified on Schedule C and sublicensed by Hart to Client pursuant to the Hart Voting System Warranty, License, and Support Agreement or licensed directly by the third-party licensor to Client, and all updates, upgrades, versions, new releases, derivatives, revisions, corrections, improvements, rewrites, bug fixes, enhancements, and other modifications to such computer programs and code that are provided to Client, and all copies of the foregoing. Non-Hart Software also includes all documentation provided to Client with respect to these computer programs, and all copies of the foregoing.

"*Software*" means the Hart Proprietary Software and Firmware and Non-Hart Software.

"*Sublicensed Software*" means Non-Hart Software and Firmware that is identified on Schedule C as being sublicensed by Hart to Client pursuant to the Hart Voting System Warranty, License, and Support Agreement.

"*VBO™*" means the Verifiable Ballot Option unit used in conjunction with the eSlate® for a *Voter Verifiable Paper Audit Trail*.

"*Total Purchase Price*" is defined in Section 2.1.

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SCHEDULE A

HARDWARE AND PRICING

Note: This Schedule A specifically lists all hardware, software and services to be provided by Hart to the Customer under this Agreement. No other hardware, software, or services are included in this sale.

Tactile input switches are not included with the Disabled Access Unit. Tactile switches must be purchased as a separate item. Wheels are not included with the eSlate® Caddy. Wheels must be purchased as a separate item.

There will be an additional charge at Hart's current technician's rate per hour for any technical work required as a result of *other than Hart-recommended hardware* purchased by the Client for use with the Hart Voting System.

The HVS System will be compliant with all certification requirements currently in place at the time the HVS System is purchased (the "Effective Date"). Software and Firmware will be upgraded as required for those Client's up-to-date on their Annual Fees. Required HVS Hardware changes mandated by rules, certification, or statutory changes will be assessed by Hart, the Client will be notified of the costs for those changes, and the Client will be required to pay for those HVS Hardware changes if they choose to have the changes completed.

Hart's training and project management obligations under this Agreement will end no later than sixty (60) days after the date of the Client's first election in which any portion of the Equipment and Software are used.

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SCHEDULE B

HART PROPRIETARY SOFTWARE

QUANTITY	MODEL	DESCRIPTION	UNIT PRICE	NUMBER OF LICENSES	INITIAL LICENSE FEE

Licensed Location:

NOTE: Hart and Client will update this Schedule as appropriate if Hart releases new Hart Proprietary Software that is made available to Client under the HVS Warranty, License, and Support Agreement.

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SCHEDULE C

NON-HART SOFTWARE

Non-Hart Software Sublicensed to Client:

QUANTITY	MODEL	DESCRIPTION	UNIT PRICE	NUMBER OF LICENSES	TOTAL PRICE
Four (4).	Sybase Embedded Runtime Program.	Database Engine.	No Charge.	Four (4).	No Charge.

Licensed Location:

NOTE: Hart and Client will update this Schedule as appropriate if Hart provides new or different Non-Hart Software to Client under the HVS Warranty, License, and Support Agreement.

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EXHIBIT A

Hart Voting System Warranty, License, and Support Agreement

(See Attached Agreement)

~~**EXHIBIT B**~~

~~**Client's Request for Proposal**~~

~~*(See Attached Document*~~

~~EXHIBIT C~~

~~Hart's Proposal~~

~~(See Attached Document)~~

HART VOTING SYSTEM

WARRANTY, LICENSE AND LICENSE AGREEMENT
(SIGNATURE PAGE)

This Hart Voting System (HVS) Warranty, Support, and License Agreement ("**Agreement**") is entered into by and between Hart InterCivic, Inc., a Texas corporation ("**Hart**"), and _the City of Tomball_ ("**Client**"), a governmental subdivision of the State of __Texas____. This Agreement is entered into in connection with a Hart Voting System Master Agreement dated _June 21, 2011, between Hart and Client under which Client has purchased HVS Hardware. This Agreement sets forth terms between Hart and Client applicable to Client's ownership and use of the HVS Hardware and license from Hart of Hart Proprietary Software (including Firmware), including warranty, support, license, and other terms. Defined terms used in this Agreement will have the meanings specified in Section 13, Definitions, or as otherwise set forth herein.

The following Schedules are attached to this Agreement and made a part hereof:

Schedule A	Support Contact Information
Schedule B	Hart Proprietary Software
Schedule C	Non-Hart Software
Schedule D	Initial Annual Fee

Client acknowledges it has read and understands this Agreement (including all Schedules) and is entering into this Agreement only on the basis of the terms expressly set forth in this Agreement. There are no oral agreements, representations, or warranties. The Effective Date of this Agreement is , 2011.

Agreed and Accepted:

	Client	**Hart**
Name:	City of Tomball, Texas	Hart InterCivic, Inc.
Address:	401 Market Street Tomball, TX 77375 Attn: Doris Speer, City Secretary	15500 Wells Port Drive Austin, Texas 78728 Attn.: Phillip W. Braithwaite President
Primary Phone:	281-290-1002	800-223-4278
Facsimile:	281-351-6256	800-831-1485
E-mail:	dspeer@ci.tomball.tx.us	pbraithwaite@hartic.com
Executed By:	____________________________	____________________________
Name:	Gretchen Fagan	Phillip W. Braithwaite
Title:	Mayor	President

This Agreement is not effective until executed by both parties.

In consideration for the agreements set forth herein, the parties agree as follows:

1. WARRANTY TERMS

1.1 HVS Hardware Limited Warranty. Hart warrants that during the warranty period the HVS Hardware purchased by Client will be free from defects in materials and workmanship and will substantially conform to the performance specifications stated in the Hart Voting System Operator's Manuals for the HVS Hardware applicable at the time of the installation of the Hardware. The hardware warranty period is three (3) years, other than the VBO unit(s) and/or eScan™ unit(s), which is one (1) year, beginning ten (10) days after the shipping date of the HVS Hardware. Hart will, at Hart's sole discretion, replace or repair any HVS Hardware that does not comply with this warranty, at no additional charge to Client. To request warranty service, Client must contact Hart in writing within the warranty period. Hart may elect to conduct any repairs at Client's site, Hart's facility, or any other location specified by Hart. Any replacement HVS Hardware provided to Client under this warranty may be new or reconditioned. Hart may use new and reconditioned parts in performing warranty repairs and building replacement products. If Hart repairs or replaces HVS Hardware, its warranty period is not extended and will terminate upon the end of the warranty period of the replaced or repaired HVS Hardware. Hart owns all replaced HVS Hardware and all parts removed from repaired products. Client acknowledges and agrees that this warranty is contingent upon and subject to Client's proper use of the Hart Voting System and the Exclusions from Warranty and Support Coverage set forth in Section 1.3. This warranty does not cover any HVS Hardware that has had the original identification marks and/or numbers removed or altered in any manner. The remedies set forth in this Section are the full extent of Client's remedies and Hart's obligations regarding this warranty.

If the HVS Hardware is required to be reconfigured, modified, or otherwise changed after its sale to and installation at the Client's location due to the Client's or a local, state, or federal government certification change(s) or due to any statutory changes or new requirements, Hart will determine the feasibility and cost of the required changes and advise the Client of the total amount due for those HVS Hardware changes. Upon written approval to move forward with the changes and receipt from the Client of the stated fees, Hart will complete the required HVS Hardware changes to the Client's HVS Hardware.

1.2 Hart Proprietary Software Limited Warranty. Hart warrants that beginning ten (10) days after the shipping of the HVS Software and for rest of the term of this Agreement, the Hart Proprietary Software will perform substantially according to the then-current functional specifications described in the applicable software Operators' Manuals accompanying such Hart Proprietary Software. To request warranty service, Client must contact Hart in writing within the warranty period. Failure to conform to the warranty must be reported in writing and be accompanied with sufficient detail to enable Hart to reproduce the error and provide a remedy or suitable corrective action (a solution that will allow the software to function appropriately as certified). Hart will make commercially reasonable efforts to remedy or provide a suitable workaround for defects, errors, or malfunctions covered by this warranty that have a significant adverse affect upon operation of the Hart Proprietary Software. Because not all errors or defects can or need to be corrected, Hart does not warrant that all errors or defects will be corrected. Client acknowledges and agrees that this warranty is contingent upon and subject to Client's proper use of the Hart Voting System and the Exclusions from Warranty and Support Coverage set forth in Section 1.3. The remedies set forth in this Section 1.2 are the full extent of Client's remedies and Hart's obligations regarding this warranty.

1.3 Exclusions from Warranty and Support Coverage. The warranties under this Section 1 and Software Support under Section 2 do not cover defects, errors, or malfunctions that are caused by any external causes, including, but not limited to, any of the following: (a) Client's failure to follow operational, support, or storage instructions as set forth in applicable documentation; (b) the use of noncompatible media, supplies, parts, or components; (c) modification or alteration of the HVS, or its components, by Client or third parties not authorized by Hart; (d) use of equipment or software not supplied or authorized by Hart; (e) external factors (including, without limitation, power failure, surges or electrical damage, fire or water damage, air conditioning failure, humidity control failure, or corrosive atmosphere harmful to electronic circuitry); (f) failure to maintain proper site specifications and environmental conditions; (g) negligence, accidents, abuse, neglect, misuse, or tampering; (h) improper or abnormal use or use under abnormal conditions; (i) use in a manner not authorized by this Agreement or use inconsistent with Hart's specifications and instructions; (j) use of software on Equipment that is not in good operating condition; (k) acts of Client, its agents, servants, employees, or any third party; (l) servicing or support not authorized by Hart; or (m) Force Majeure. Hart reserves the right to charge for repairs on a time-and-materials basis at Hart's then-prevailing rates, plus expenses, and for replacements at Hart's list prices caused by these exclusions from warranty and support coverage.

1.4 Non-Hart Equipment and Non-Hart Software Excluded. HART MAKES NO REPRESENTATIONS OR WARRANTIES AS TO NON-HART EQUIPMENT AND NON-HART SOFTWARE, IF ANY, PROVIDED BY HART TO CLIENT, ALL OF WHICH IS SOLD, LICENSED, OR SUBLICENSED TO CLIENT "AS IS." HART HAS NO RESPONSIBILITY OR LIABILITY FOR NON-HART EQUIPMENT AND NON-HART SOFTWARE, IF ANY, PROVIDED BY HART'S DISTRIBUTORS OR OTHER THIRD PARTIES TO CLIENT. If Hart sells, licenses, or sublicenses any Non-Hart Equipment or Non-Hart Software to Client, Hart will pass through to Client, on a nonexclusive basis and without recourse to Hart, any third-party manufacturer's warranties covering the equipment or software, but only to the extent, if any, permitted by the third-party manufacturer. Client agrees to look solely to the warranties and remedies, if any, provided by the manufacturer or third-party licensor.

1.5 Disclaimer. THE WARRANTIES IN THIS WARRANTY TERMS SECTION GIVE CLIENT SPECIFIC LEGAL RIGHTS, AND CLIENT MAY ALSO HAVE OTHER RIGHTS THAT VARY FROM STATE TO STATE (OR JURISDICTION TO JURISDICTION). HART'S RESPONSIBILITY FOR MALFUNCTIONS AND DEFECTS IN HVS HARDWARE AND HART PROPRIETARY SOFTWARE IS LIMITED TO REPAIR AND REPLACEMENT AS SET FORTH IN THIS WARRANTY TERMS SECTION. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, EXCEPT FOR THE EXPRESS LIMITED WARRANTIES IN SECTION 1 OF THIS AGREEMENT, (A) THERE ARE NO WARRANTIES, EXPRESS OR IMPLIED, BY OPERATION OF LAW OR OTHERWISE UNDER THIS AGREEMENT OR IN CONNECTION WITH THE SALE OF HVS HARDWARE AND LICENSE OF HART PROPRIETARY SOFTWARE, AND (B) HART DISCLAIMS ALL EXPRESS AND IMPLIED WARRANTIES, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF FITNESS FOR A PARTICULAR PURPOSE, MERCHANTABILITY, TITLE, AND NONINFRINGEMENT FOR ALL HARDWARE, SOFTWARE, AND SERVICES. THE EXPRESS WARRANTIES EXTEND SOLELY TO CLIENT. SOME STATES (OR JURISDICTIONS) DO NOT ALLOW LIMITATIONS ON IMPLIED WARRANTIES, SO THE ABOVE LIMITATION MAY NOT APPLY TO CLIENT.

2. SOFTWARE SUPPORT SERVICES

2.1 Description of Software Support Services. Subject to the terms and conditions of this Agreement, Hart will provide Client the Software Support Services described below. Support Services under this Section 2 do not cover any of the exclusions from warranty and support coverage as described under Section 1.3. If Hart, in its discretion, provides Support Services in addition to the services described under this Section 2, Client will pay Hart for such services on a time-and-materials basis at Hart's then-prevailing rates, plus expenses, and for replacements at Hart's list prices, unless otherwise agreed in writing by Hart and Client.

2.1.1 General Software Support. *General Software Support* will consist of assisting the Client in the design and production of elections, including pre-election and post-election testing and general operation of the HVS.

2.1.2 Software Support Services. Software Support Services will consist of periodic updates and any software "bug" corrections to Hart software. A software "bug" is any malfunction that prevents the Hart software from performing substantially as described in the then-current operator's manual for such software. Because not all errors or defects can or need to be corrected, Hart does not warrant that all errors or defects will be corrected. Hart reserves the right to determine whether any reported, claimed software malfunction is in fact a "bug." Software "bugs" must be reported in writing and be accompanied with sufficient detail to enable Hart staff to reproduce the error and provide a remedy or suitable corrective action. The exclusions from warranty coverage under Section 1.3 also are exclusions from Software Support Services under this Section 2.1.2.

2.1.3 Engineering Services. In any case where Hart software interfaces with a third party software system, including but not limited to, the Client's voter registration system, non-Hart election management system, early voting validation system, non-Hart election systems, absentee envelope management systems, or other like systems; Hart will not be responsible for proper operation of any Hart software that interfaces with the third party software should such third party software be upgraded, replaced, modified, or altered in any way. Hart will also not be responsible for the proper operation of any Hart software running on Client's computer equipment, should Client install a new computer operating system on said equipment without advising Hart of such changes and receiving Hart's written approval. Engineering services and associated costs may be required in those situations where the Client requests Hart's review and approval of any system changes outside the original system specifications at the time of the original acceptance date of this Agreement and the Hart Voting System Master Agreement. Hart will not be responsible for the proper operation of any Hart software that interfaces with third party software should such third party software be configured or operated in any manner contrary than that described in a Statement of Work (to be attached as a mutually agreed upon Schedule to this Agreement if engineering services are requested by the Client).

2.1.4 Client Suggestions and Recommendations. Client may propose, suggest, or recommend changes to the Software at any time in writing to Hart. Such proposals, suggestions, or recommendations will become Hart's property. Hart may include any such proposals, suggestions, or recommendations, solely at Hart's option, in subsequent periodic Software updates, without restriction or obligation, and any implementation thereof shall become Hart's property. Hart is under no obligation to change, alter, or otherwise revise the Software according to Client's proposals, suggestions, or recommendations.

2.2 Software Support Services Contact Information. Support contact information is set forth in Schedule A, Support Contact Information.

3. SOFTWARE LICENSES AND SUBLICENSES

3.1 Licenses and Sublicenses. Subject to the terms and conditions of this Agreement and for so long as Client has a current Warranty, License and Support agreement in effect with Hart with respect to the HVS Hardware and the HVS Software, Hart grants to Client a personal, nonexclusive, nontransferable, and limited license to use the Hart Proprietary Software and a personal, nonexclusive, nontransferable, and limited sublicense to use the Sublicensed Software. Hart will provide Client, and

Client will be permitted to use, only the run-time executable code and associated support files of the Software for Client's internal data processing requirements as part of the HVS Voting System. The Software may be used only in the United States at the Licensed Location specified on Schedule B on the hardware or other computer systems authorized by Hart in writing. Client may temporarily transfer the Software to a backup computer system at an alternative location within Client's county of operation if the Equipment or other authorized computer system is inoperative or the Licensed Location is temporarily unavailable, provided Client must promptly give Hart written notice of such temporary transfer, including a description of the backup computer system and the alternative location. Client's use of the Software will be limited to the number of licenses specified in Schedules B and C. Only Client and its authorized employees, agents or contractors may use or access the Software. Voters are also authorized to interact with the Software, in a manner consistent with user instructions, for the sole purpose of producing a Cast Vote Record during the course of an election. Client agrees that Hart, the licensors of Sublicensed Software, and their representatives may periodically inspect, conduct, and/or direct an independent accounting firm to conduct an audit, at mutually agreed-upon times during normal business hours, of the computer site, computer systems, HVS Hardware, and appropriate records of Client to verify Client's compliance with the terms of the licenses and sublicenses granted to Client.

3.2 Delivery and Installation. Hart will deliver and install the Software at the Client's site on a mutually agreed-upon date during Hart's normal working hours. The Software will be deemed accepted upon the Installation Date.

(a) Hart will provide onsite and offsite project management, operational training, and Election Day support for the first election in which the Equipment and Software are used unless otherwise specified in writing and mutually agreed upon by Hart and Client. Project management may include equipment administration, ballot programming, and support for logic and accuracy testing. Training may include administrative staff training on HVS Software and Equipment, and training for polling place officials. Professional Service days cannot be exchanged for HVS or third party equipment, software, License & Support or Maintenance fees. If the Professional Services offered under the terms of this contract are not used prior to 60 days after the date of the Client's first election in which any portion of the Equipment and Software are used, the Professional Services shall expire.

(b) Any additional training and/or professional services which may be identified and mutually agreed upon will be documented in a Service Order, including details regarding the type and location of the training and/or services and the cost for the additional training and/or services requested by the client. If agreed to and signed off in writing by Hart and Client, charges for the additional training and/or services will be invoiced to Client at Hart's then-current rates, plus travel, communication and other expenses.

3.3 Training and Documentation. Hart will provide standard user-level documentation in electronic form for the Software and standard operational training before the first election for which the Software will be used. Hart will provide Client operational training and on-site support at the first election in which the Hardware and Software are used unless otherwise specified in writing and mutually agreed upon by Hart and Client. Charges for additional training or support services will be invoiced to Client at Hart's then-current hourly rates, plus travel, communication, and other expenses. Any additional training or support services will be mutually agreed to by Hart and Client and documented in writing. Hart's training and documentation obligation under this HVS Agreement ends no later than sixty (60) days after the date of the Client's first election in which any portion of the Equipment and Software are used.

3.4 Protection of Software.

(a) The HVS Hardware and Hart Proprietary Software are designed to be used only with each other and the agreed-upon Non-Hart Software and Non-Hart Equipment. To protect the integrity and security of the HVS, without the express written consent of Hart, (i) Client shall use the Software and Hardware only in connection with the HVS; (ii) Client shall not install or use other software on or with the Hardware or Software or network the Hardware or Software with any other hardware, software, equipment, or computer systems; and (iii) Client shall not modify the Hardware or Software. If Client does not comply with any provisions of the preceding sentence, then (i) the Limited Warranties under Section 1 will automatically terminate; (ii) Hart may terminate its obligation to provide Support Services under Section 2; (iii) Hart will have no further installation obligations under Section 3.2 (Delivery and Installation), and (iv) Hart will have no further obligations under Section 3.3 (Training and Documentation). Furthermore, if Client uses the Software and Hardware in combination with other software and equipment (other software or equipment being those not provided by Hart or its designees), and the combination infringes Hart proprietary patent claims outside the scope of the software license granted to Client under Section 3, Hart reserves its rights to enforce its patents with respect to those claims.

(b) Client shall not, under any circumstances, cause or permit the adaptation, conversion, reverse engineering, disassembly, or decompilation of any Software. Client shall not use any Software for application development, modification, or customization purposes, except through Hart.

(c) Client shall not assign, transfer, sublicense, time-share, or rent the Software or use it for facility management or as a service bureau. This restriction does not preclude or restrict Client from contracting for election services for other local governments located within Client's jurisdictional boundaries. Client shall not modify, copy, or duplicate the Software; provided, during the term of the Software licenses and sublicenses. All copies of the Software, in whole or in part, must contain all of Hart's or the third-party licensor's titles, trademarks, copyright notices, and other restrictive and proprietary notices and legends (including government-restricted rights) as they appear on the copies of the Software provided to Client. Client shall notify Hart of the following: (i) the location of all Software and all copies thereof and (ii) any circumstances known to Client regarding any unauthorized possession or use of the Software.

(d) Upon termination of Client's license or sublicense of Software, Client shall immediately discontinue all use of the Software and return to Hart or destroy, at Hart's option, the Software (and all related documentation (electronic and hard copy) and Confidential and Proprietary Information) and all archival, backup, and other copies thereof, and provide certification to Hart of such return or destruction.

(e) Client shall not publish any results of benchmark tests run on any Software.

(f) Although the Hart Proprietary Software and Sublicensed Software are protected by copyright and/or patents, they may be unpublished, and constitute Confidential and Proprietary Information of Hart and the third-party licensor, respectively. Client shall maintain the Software in confidence and comply with the terms of Section 6, Protection of Confidential and Proprietary Information, with respect to the Software.

(g) This Section 3.4 will survive the termination or cancellation of this Agreement.

3.5 No Transfer of Title. This Agreement does not transfer to Client title to any Software, intellectual property contained in any Software, or Confidential and Proprietary Information. Title to

Hart Proprietary Software and all copies thereof, and all associated intellectual property rights therein, will remain in Hart. Title to Non-Hart Software and all copies thereof, and all associated intellectual property rights therein, will remain in the applicable third-party licensor.

3.6 Inherently Dangerous Applications. The Software is not developed or licensed for use in any nuclear, aviation, mass transit, or medical application or in any other inherently dangerous applications. Client shall not use the Software in any inherently dangerous application and agrees that Hart and any third-party licensor will not be liable for any claims or damages arising from such use.

4. ANNUAL FEE

4.1 Amount of Annual Fee. The Annual Fee is a combined licensing, sublicensing, and support fee. Client will pay Hart an Annual Fee upon execution of this Agreement and annually thereafter before each Anniversary Date. The amount of the Initial Annual Fee, payable upon execution of this Agreement, is the amount specified as the "Initial Annual Fee" on Schedule D, Initial Annual Fee. Subsequent Annual Fees are due annually before each Anniversary Date of this Agreement. After five years, Hart may adjust the amount of the Annual Fee payable on each Anniversary Date by notifying Client of any price changes with the invoice in which the adjustment is made. Annual adjustments shall not exceed five percent (5%) of the initial Annual Fee. Unless adjusted by Hart, each Annual Fee will be the same as the immediately preceding Annual Fee.

4.2 Invoices. Hart will invoice Client annually ninety (90) calendar days before the due date of the Annual Fee.

4.3 Payments. Client must pay each invoiced Annual Fee before the Anniversary Date immediately following the date of invoice. If Client elects not to or fails to timely pay an Annual Fee, this Agreement and the licenses, sublicenses, and software support services will automatically terminate on such Anniversary Date. All payments are to be made to Hart at its principal office in Austin, Texas, as set forth on the Signature Page or to such other location as may be designated by Hart in a notice to Client.

4.4 Additional Charges. Additional charges may apply to services rendered outside contracted hours or beyond normal coverage at Client's request, e.g., travel expenses, and premium and minimum charges. There will be an additional charge at Hart's current technician's rate per hour for any technical work required as a result of other than Hart-recommended equipment purchased by the Client for use with the HVS. Any other additional charges must be mutually agreed to by Hart and Client and documented in an amendment to this Agreement.

4.5 Payment Disputes. If any dispute exists between the parties concerning the amount due or due date of any payment, Client shall promptly pay the undisputed portion. Such payment will not constitute a waiver by Client or Hart of any of their respective legal rights and remedies against each other.

4.6 Taxes. If Client is tax-exempt, Client will provide Hart with proof of its tax-exempt status. If Client is not tax-exempt, (a) Client will pay any tax Hart becomes obligated to pay in connection with this Agreement, exclusive of taxes based on the net income of Hart and (b) Client will pay all personal property and similar taxes assessed after shipment. If Client challenges the applicability of any such tax, Client shall pay the tax and may thereafter seek a refund. Client is responsible for all applicable taxation.

4.7 Suspension of Performance. If any payment due to Hart under this Agreement is past due more than thirty (30) days, Hart may suspend performance under this Agreement until all amounts due are current.

5. CLIENT RESPONSIBILITIES

5.1 Independent Determination. Client acknowledges it has independently determined that the HVS meets its requirements.

5.2 Cooperation. Client agrees to cooperate with Hart and promptly perform Client's responsibilities under this Agreement. Client will (a) provide adequate working and storage space for use by Hart personnel near Equipment; (b) provide Hart full access to the Equipment and Software and sufficient computer time, subject to Client's security rules; (c) follow Hart's procedures for placing hardware warranty or software support service requests and determining if warranty remedial service is required; (d) follow Hart's instructions for obtaining hardware and software support and warranty services; (e) provide a memory dump and additional data in machine-readable form if requested; (f) reproduce suspected errors or malfunctions in Software; (g) provide timely access to key Client personnel and timely respond to Hart's questions; and (h) otherwise cooperate with Hart in its performance under this Agreement.

5.3 Site Preparation. Client shall prepare and maintain the installation site in accordance with instructions provided by Hart. Client is responsible for environmental requirements, electrical interconnections, and modifications to facilities for proper installation, in accordance with Hart's specifications. Any delays in preparation of the installation site will correspondingly extend Hart's delivery and installation deadlines.

5.4 Site Maintenance; Proper Storage. Client shall maintain the appropriate operating environment, in accordance with Hart's specifications, for the Equipment and Software and all communications equipment, telephone lines, electric lines, cabling, modems, air conditioning, and all other equipment and utilities necessary for the Equipment and Software to operate properly. Client shall properly store the Equipment and Software when not in use.

5.5 Use. Client is exclusively responsible for supervising, managing, and controlling its use of the HVS, including, but not limited to, establishing operating procedures and audit controls, supervising its employees, making daily backups, inputting data, ensuring the accuracy and security of data input and data output, monitoring the accuracy of information obtained, and managing the use of information and data obtained. Client will ensure that its personnel are, at all times, educated and trained in the proper use and operation of the HVS and that the Equipment and Software are used in accordance with applicable manuals, instructions, and specifications. Client shall comply with all applicable laws, rules, and regulations with respect to its use of the HVS.

5.6 Backups. Client will maintain backup data necessary to replace critical Client data in the event of loss or damage to data from any cause.

6. PROTECTION OF CONFIDENTIAL AND PROPRIETARY INFORMATION

6.1 Confidentiality. Client will keep in confidence and protect Confidential and Proprietary

Information (electronic or hard copy) from disclosure to third parties and restrict its use to uses expressly permitted under this Agreement. Client shall take all reasonable steps to ensure that the trade secrets and proprietary data contained in the Hardware and Software and the other Confidential and Proprietary Information are not disclosed, copied, duplicated, misappropriated, or used in any manner not expressly permitted by the terms of this Agreement. Client shall keep the Software and all tapes, diskettes, CDs, and other physical embodiments of them, and all copies thereof, at a secure location and limit access to those employees who must have access to enable Client to use the Software. Client acknowledges that unauthorized disclosure of Confidential and Proprietary Information may cause substantial economic loss to Hart or its suppliers and licensors. Each permitted copy of Confidential and Proprietary Information, including its storage media, will be marked by Client to include all notices that appear on the original. Title, copyright, and all other proprietary rights in and to the Software at all times remains vested exclusively in Hart or, as applicable, third-party licensors.

6.2 Return of Confidential and Proprietary Information. Upon termination or cancellation of this Agreement or, if earlier, upon termination of Client's permitted access to or possession of Confidential and Proprietary Information, Client shall return to Hart all copies of the Confidential and Proprietary Information in Client's possession (including Confidential and Proprietary Information incorporated in software or writings, electronic and hard copies).

6.3 Intellectual Properties. All ideas, concepts, know-how, data processing techniques, documentation, diagrams, schematics, firmware, equipment architecture, software, improvements, bug fixes, upgrades, and trade secrets developed by Hart personnel (alone or jointly with others, including Client) in connection with Confidential and Proprietary Information, HVS® Hardware, and Hart Proprietary Software will be the exclusive property of Hart.

6.4 Support Materials. Client acknowledges that all support materials related to the HVS are the property of Hart and include Confidential and Proprietary Information of Hart. Client agrees that it will not permit anyone other than Hart installation and support personnel and authorized County employees, agents and contractors to use such materials.

6.5 Client Employees, Agents and Contractors. Client will inform its employees and other agents and contractors of their obligations under this Section 6 and shall be fully responsible for any breach thereof by such personnel.

6.6 License Back. If Client possesses or comes to possess a licensable or sublicensable interest in any issued patent with claims that read upon the HVS, its method of operation, or any component thereof, Client hereby grants and promises to grant a perpetual, irrevocable, royalty-free, paid-up license, with right to sublicense, of such interest to Hart permitting Hart to make, have made, use, and sell materials or services within the scope of the patent claims.

6.7 Survival. This Section 6 will survive termination or cancellation of this Agreement.

7. TITLE; RISK OF LOSS

7.1 Software.

(a) *Hart Proprietary Software*: Title to Hart Proprietary Software, all copies thereof, and all associated intellectual proprietary rights therein will remain in Hart including, but not limited to, all patents, copyrights, trade secrets, trademarks, and other proprietary rights.

(b) *Non-Hart Software*: Title to Non-Hart Software, all copies thereof, and all associated intellectual proprietary rights therein will remain in the applicable third-party licensor including, but not limited to, all patents, copyrights, trade secrets, trademarks, and other proprietary rights.

(c) *Risk of Loss:* Risk of loss to Software will pass to Client upon delivery.

7.2 Confidential and Proprietary Information. Title to Hart's Confidential and Proprietary Information will remain in Hart. Title to Confidential and Proprietary Information of Hart's suppliers and licensors will remain in the relevant suppliers and licensors.

7.3 Proprietary Rights. Client acknowledges and agrees that the design of the Hart Voting System, design of the HVS Hardware, Hart Proprietary Software, and any and all related patents, copyrights, trademarks, service marks, trade names, documents, logos, software, microcode, information, and material, are the property of Hart. Client agrees that the sale of HVS Hardware and license of Hart Proprietary Software to Client does not grant to or vest in Client any right, title, or interest in such proprietary property. All patents, trademarks, copyrights, trade secrets, and other intellectual property rights, whether now owned or acquired by Hart with respect to the HVS, HVS Hardware, and Hart Proprietary Software, are the sole and absolute property of Hart and no interest therein is being vested in Client by the execution of this Agreement or the sale of the HVS Hardware or license of the Hart Proprietary Software to Client. Client shall not, under any circumstances, cause or permit the adaptation, conversion, reverse engineering, disassembly, or decompilation of any Software or Hardware. Client will have no authority or right to copy, reproduce, modify, sell, license, or otherwise transfer any rights in any proprietary property of Hart. The provisions of this Section 7.3 will survive the termination or cancellation of this Agreement.

8. TERM OF AGREEMENT; TERMINATION

8.1 Term. The initial term of this Agreement and the licenses granted herein is one (1) year commencing on the Effective Date and expiring on the first Anniversary Date.

8.2 Renewal Terms. Except as otherwise provided in this Agreement, Client may renew this Agreement before its expiration or termination by paying the Annual Fee invoiced by Hart, as provided in Section 4.2, before the Anniversary Date immediately following the date of invoice, as provided in Section 4.3. Each renewal term will be a one-year (1-year) term, commencing on the expiration of the prior term and expiring on the immediately following Anniversary Date.

8.3 Defaults. The following events will be deemed to be defaults:

(a) A party committing a material breach of any term of this Agreement or the HVS Agreement if such breach has not been cured within thirty (30) days after written notice of such breach has been given by the nondefaulting party to the defaulting party;

(b) A party filing bankruptcy, becoming insolvent, or having its business placed in the hands of a receiver, assignee, or trustee, whether by voluntary act or otherwise; or

(c) A party failing to comply in any material respect with any federal, state, or local laws applicable to a party's performance under this Agreement or the HVS Master Agreement.

8.4 Termination.

(a) This Agreement will automatically terminate at the end of its then-current term if Client has elected not to or has failed to timely make full payment to Hart of the invoiced Annual Fee required to renew the term, as provided in Sections 4.3 and 8.2.

(b) Hart may terminate Software Support Services under Section 2 on thirty (30) days prior written notice to Client if Hart determines that any alterations, attachments, or modifications not made by Hart or the failure to install a software or hardware release will interfere with the provision of support.

(c) A party may terminate this Agreement before expiration of its term for default by the other party (that is not cured as contemplated by Section 8.3). If default occurs and is not cured as specified in Section 8.3, the parties will have all remedies provided in this Agreement and otherwise available by statute, law, or equity.

8.5 Survival. Section 1.1 will survive the termination or expiration of this Agreement until the end of the warranty period stated therein. Sections 3.4(b), 3.4(c), 3.4(d), 3.4(e), 3.4(f), 6, 7.3, 8.5, 9, 11, and 12 will survive the termination or expiration of this Agreement. Section 3.1 shall survive for so long as Client has a current Warranty, License, and Support agreement in effect with Hart with respect to the HVS Hardware and the HVS Software. Notwithstanding any language to the contrary in this Agreement or another agreement, all licenses to the Software shall terminate when Client ceases to have a current Warranty, License, and Support agreement in effect with Hart with respect to the HVS Hardware and the HVS Software.

9. LIMITATION OF DAMAGES

9.1 EXCLUSIVE REMEDY. HART DOES NOT ACCEPT ANY LIABILITY FOR WARRANTIES BEYOND THE REMEDIES SET FORTH IN SECTION 1. HART'S ENTIRE LIABILITY AND CLIENT'S EXCLUSIVE REMEDY FOR ANY AND ALL CLAIMS CONCERNING THE HVS HARDWARE PROVIDED TO CLIENT BY HART OR ITS DISTRIBUTORS, THIS AGREEMENT, AND SOFTWARE AND SERVICES PROVIDED UNDER THIS AGREEMENT ARE SET FORTH IN THIS SECTION.

9.2 DISCLAIMER. CLIENT IS RESPONSIBLE FOR ASSURING AND MAINTAINING THE BACKUP OF ALL CLIENT DATA. UNDER NO CIRCUMSTANCES WILL HART BE LIABLE TO CLIENT OR ANY THIRD PARTY FOR THE LOSS OF OR DAMAGE TO CLIENT DATA.

9.3 LIMITATION. NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THIS AGREEMENT, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, HART, HART'S LICENSORS, AND ANY PARTY INVOLVED IN THE CREATION, MANUFACTURE, OR DISTRIBUTION OF THE HARDWARE, SOFTWARE, AND PERFORMANCE OF SERVICES UNDER THIS AGREEMENT WILL NOT BE LIABLE TO CLIENT FOR ANY SPECIAL, INDIRECT, INCIDENTAL, PUNITIVE, OR CONSEQUENTIAL DAMAGES (INCLUDING LOST PROFITS) OR FOR LOST DATA SUSTAINED OR INCURRED IN CONNECTION WITH THE HARDWARE, SOFTWARE, SERVICES, OR THIS AGREEMENT, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, REGARDLESS OF THE FORM OF ACTION AND WHETHER OR NOT SUCH DAMAGES ARE FORESEEABLE. IN ADDITION, HART'S TOTAL LIABILITY TO CLIENT FOR

DIRECT DAMAGES ARISING OUT OF OR RELATING TO THE HARDWARE, SOFTWARE, SERVICES, AND THIS AGREEMENT WILL IN NO EVENT EXCEED THE TOTAL AMOUNT ACTUALLY PAID BY CLIENT TO HART UNDER THIS AGREEMENT. HART IS NOT LIABLE FOR DAMAGES CAUSED IN ANY PART BY CLIENT'S NEGLIGENCE OR INTENTIONAL ACTS OR FOR ANY CLAIM AGAINST CLIENT OR ANYONE ELSE BY ANY THIRD PARTY.

SOME STATES (OR JURISDICTIONS) DO NOT ALLOW THE EXCLUSION OR LIMITATION OF INCIDENTAL OR CONSEQUENTIAL DAMAGES, SO THE ABOVE EXCLUSION OR LIMITATION MAY NOT APPLY TO CLIENT.

9.4 Referrals. Hart may direct Client to third parties having products or services that may be of interest to Client for use in conjunction with the Equipment and Software. Notwithstanding any Hart recommendation, referral, or introduction, Client will independently investigate and test non-Hart products and services and will have sole responsibility for determining suitability for use of non-Hart products and services. Hart has no liability with respect to claims relating to or arising from use of non-Hart products and services, including, without limitation, claims arising from failure of non-Hart products to provide proper time and date functionality.

10. INFRINGEMENT INDEMNITY

10.1 Indemnity. Hart, at its own expense, will defend and indemnify Client against claims that the HVS Hardware or Hart Proprietary Software infringe a United States patent, copyright, or misappropriate trade secrets protected under United States law, provided Client (a) gives Hart prompt written notice of such claims; (b) permits Hart to control the defense and settlement of the claims; and (c) provides all reasonable assistance to Hart in defending or settling the claims.

10.2 Remedies. As to HVS Hardware or Hart Proprietary Software that is subject to a claim of infringement or misappropriation, Hart may (a) obtain the right of continued use of the HVS Hardware or Hart Proprietary Software for Client or (b) replace or modify the HVS Hardware or Hart Proprietary Software to avoid the claim. If neither alternative is available on commercially reasonable terms, then, at the request of Hart, any applicable Software license and its charges will end, Client will cease using the applicable HVS Hardware and Hart Proprietary Software, Client will return to Hart all applicable HVS Hardware and return or destroy all copies of the applicable Hart Proprietary Software, and Client will certify in writing to Hart that such return or destruction has been completed. Upon return or Hart's receipt of certification of destruction, Hart will give Client a credit for the price paid to Hart for the returned or destroyed HVS Hardware and Hart Proprietary Software, less a reasonable offset for use and obsolescence.

10.3 Exclusions. Hart will not defend or indemnify Client if any claim of infringement or misappropriation (a) is asserted by an affiliate of Client; (b) results from Client's design or alteration of any HVS Hardware or Hart Proprietary Software; (c) results from use of any HVS Hardware or Hart Proprietary Software in combination with any non-Hart product, except to the extent, if any, that such use in combination is restricted to the HVS designed by Hart; (d) relates to Non-Hart Software or Non-Hart Equipment alone; or (e) arises from Client-specified customization work undertaken by Hart or its designees in response to changes in Hart Proprietary Software or Non-Hart Software that are made in response to Client specifications.

10.4 EXCLUSIVE REMEDIES. THIS SECTION 10 STATES THE ENTIRE LIABILITY OF HART AND CLIENT'S SOLE AND EXCLUSIVE REMEDIES FOR INFRINGEMENT AND

TRADE SECRET MISAPPROPRIATION.

11. DISPUTE RESOLUTION

11.1 Disputes and Demands. The parties will attempt to resolve any claim or controversy related to or arising out of this Agreement, whether in contract or in tort ("**Dispute**"), on a confidential basis according to the following process, which either party may start by delivering to the other party a written notice describing the dispute and the amount involved ("**Demand**").

11.2 Negotiation and Mediation. After receipt of a Demand, authorized representatives of the parties will meet at a mutually agreed-upon time and place to try to resolve the Dispute by negotiation. If the Dispute remains unresolved after this meeting, either party may start mandatory nonbinding mediation under the commercial mediation rules of the American Arbitration Association ("**AAA**") or such other mediation process as is mutually acceptable to the parties.

11.3 Injunctive Relief. Notwithstanding the other provisions of this Section 11, if either party seeks injunctive relief, such relief may be sought in a court of competent jurisdiction without complying with the negotiation and mediation provisions of this Section 11.

11.4 Time Limit. Neither mediation under this section nor any legal action, regardless of its form, related to or arising out of this Agreement may be brought more than two (2) years after the cause of action first accrued.

12. GENERAL PROVISIONS

12.1 Entire Agreement. This Agreement and the attachments, schedules, and exhibits hereto are the entire agreement and supersede all prior negotiations and oral agreements. Hart has made no representations or warranties with respect to this Agreement or the HVS and its components that are not included herein. Client acknowledges and agrees that Hart has no responsibility or liability under the HVS Master Agreement except to the extent, if any, that Hart is a party to the HVS Master Agreement. This Agreement may not be amended or waived except in writing signed by an officer of the party to be bound thereby.

12.2 Preprinted Forms. The use of preprinted forms, such as purchase orders or acknowledgments, in connection with this Agreement is for convenience only and all preprinted terms and conditions stated thereon are void and of no effect. If any conflict exists between this Agreement and any terms and conditions on a purchase order, acknowledgment, or other preprinted form, the terms and conditions of this Agreement will govern and the conflicting terms and conditions in the preprinted form will be void and of no effect. The terms and conditions of this Agreement, including, but not limited to, this Section 12.2, cannot be amended, modified, or altered by any conflicting preprinted terms or conditions in a preprinted form.

12.3 Interpretation. This Agreement will be construed according to its fair meaning and not for or against either party. Headings are for reference purposes only and are not to be used in construing the Agreement. All words and phrases in this Agreement are to be construed to include the singular or plural number and the masculine, feminine, or neuter gender as the context requires.

12.4 GOVERNING LAW. THIS AGREEMENT WILL BE GOVERNED BY THE LAWS OF THE STATE OF TEXAS, WITHOUT REGARD TO ITS CONFLICT OF LAWS PROVISIONS,

UNLESS CLIENT IS A GOVERNMENTAL SUBDIVISION OF ANOTHER STATE, IN WHICH CASE THE LAWS OF THE STATE IN WHICH CLIENT IS A GOVERNMENTAL SUBDIVISION WILL CONTROL.

12.5 Severability. Whenever possible, each provision of this Agreement will be interpreted to be effective and valid under applicable law; but if any provision is found to be invalid, illegal, or unenforceable, then such provision or portion thereof will be modified to the extent necessary to render it legal, valid, and enforceable and have the intent and economic effect as close as possible to the invalid, illegal, or unenforceable provision. If it is not possible to modify the provision to render it legal, valid, and enforceable, then the provision will be severed from the rest of the Agreement and ignored. The invalidity, illegality, or unenforceability of any provision will not affect the validity, legality, or enforceability of any other provision of this Agreement, which will remain valid and binding.

12.6 Delays. Hart is not responsible for failure to fulfill its obligations when due to causes beyond its reasonable control, including the failure of third parties to timely provide Software, Equipment, materials, or labor contemplated herein. Hart will notify Client in writing of any such delay, and the time for Hart's performance will be extended for a period corresponding to the delay. Hart and Client will determine alternative procedures to minimize delays.

12.7 Force Majeure. "Force Majeure" means a delay encountered by a party in the performance of its obligations under this Agreement that is caused by an event beyond the reasonable control of the party, but does not include any delays in the payment of monies due by either party. Without limiting the generality of the foregoing, "Force Majeure" will include, but is not restricted to, the following types of events: acts of God or public enemy; acts of governmental or regulatory authorities (other than, with respect to Client's performance, the Client, and its governing entities); fires, floods, epidemics, or serious accidents; unusually severe weather conditions; and strikes, lockouts, or other labor disputes. If any event constituting Force Majeure occurs, the affected party shall notify the other party in writing, disclosing the estimated length of the delay and the cause of the delay. If a Force Majeure occurs, the affected party will not be deemed to have violated its obligations under this Agreement, and time for performance of any obligations of that party will be extended by a period of time necessary to overcome the effects of the Force Majeure.

12.8 Compliance with Laws. HVS Hardware and Software will meet the certification requirements in place on the effective date of the HVS Master Agreement. Client and Hart shall comply with all federal, state, and local laws in the performance of this Agreement, including those governing use of the Hardware and Software. Hardware and Software provided under this Agreement may be subject to U.S. and other government export control regulations. Client shall not export or re-export any Hardware or Software.

12.9 Assignments. Hart may assign this Agreement or its interest in any Hardware or Software, or may assign the right to receive payments, without Client's consent. Any such assignment, however, will not change the obligations of Hart to Client that are outstanding at the time of assignment. Client will be notified in writing if Hart makes an assignment of this Agreement. Client shall not assign this HVS Agreement without the express written consent of Hart, such consent not to be unreasonably withheld. In the event of any permitted assignment of this Agreement, the assignee shall assume the liabilities and responsibilities of the assignor, in writing.

12.10 Independent Contractors. Client and Hart are independent contractors and are not agents or partners of each other. Hart's employees, agents, and subcontractors will not be entitled to any privileges or benefits of Client employment. Client's employees, agents, and contractors will not be entitled to any privileges or benefits of Hart employment.

12.11 Notices. Any notice required or permitted to be given under this Agreement by one party to the other must be in writing and shall be given and deemed to have been given immediately if delivered in person to the address set forth on the Signature Page for the party to whom the notice is given, or on the fifth business day following mailing if placed in the United States Mail, postage prepaid, by registered or certified mail with return receipt requested, addressed to the party at their address set forth on the Signature Page. Each party may change its address for notice by giving written notice of the change to the other party.

12.12 Trademarks. eScan™, eSlate®, Judge's Booth Controller™, JBC™, Disabled Access Unit™, DAU™, Mobile Ballot Box™, Ballot Origination Software System™, BOSS™, Tally™, Rally™, FUSION™, and Ballot Now™ are trademarks of Hart.

13. DEFINITIONS

"*Agreement*" has the meaning set forth on the Signature Page.

"*Anniversary Date*" means each anniversary of the Effective Date.

"*Annual Fee*" means the combined annual license, sublicense, and support fees payable by Client to Hart as described in Section 4.

"*Client*" has the meaning set forth on the Signature Page.

"*Confidential and Proprietary Information*" means Software, firmware, diagnostics, documentation (including operating manuals, user documentation, and environmental specifications), designs and configurations of Equipment, Software and firmware, trade secrets and related documentation, and any other information confidential to Hart or its suppliers or licensors.

"*DAU™*" means the Disabled Access Unit (DAU™) created by Hart as an add-on component to an eSlate® that facilitates the performance of voting activities by disabled voters, for example, by providing an audio ballot presentation and/or accepting inputs from specialized switch mechanisms, such as head switches, breath switches, and panel switches that facilitate interaction with disabled voters, as needed.

"*Effective Date*" has the meaning set forth in the Signature Page and indicates the date this Agreement becomes effective.

"*Equipment*" means the HVS Hardware and Non-Hart Equipment.

"*eScan™*" means the eScan™ device created by Hart, consisting of a precinct digital ballot imaging device single-feed scanner that transports and scans both sides of a ballot simultaneously, and a base that provides for secure ballot storage and transport.

"*eSlate®*" means the eSlate® created by Hart and consisting of hardware including an electronically configurable, network-capable voting station that permits a voter to cast votes by direct interaction, which voting station in its present configuration created by Hart comprises an electronically configurable liquid crystal display (LCD) panel for use in displaying ballot images, a rotary input device for use in ballot navigation, and various buttons that facilitate voter options for selecting ballot choices and casting a ballot.

"*Firmware*" means the Hart Proprietary Software embedded in eSlate® voting devices that allows execution of the software functions, but does not allow access to or modification of the software by an end user.

"*Force Majeure*" has the meaning set forth in Section 12.7.

"*Hart*" means Hart InterCivic, Inc., a Texas corporation.

"*Hart Proprietary Software*" means the run-time executable code and associated support files of the Ballot Origination Software System (BOSS™) Software, Tally™ Software, Rally™ Software, Ballot Now™ Software, computer code, and software resident in the HVS Hardware and other support software utilities as specified on Schedule B, consisting of computer programs and computer code owned by Hart that are licensed to Client pursuant to this Agreement, and all updates, upgrades, versions, new releases, derivatives, revisions, corrections, improvements, rewrites, bug fixes, enhancements, and other modifications, including any custom modifications, to such computer programs and code that are provided to Client, and all copies of the foregoing. Hart Proprietary Software also includes all documentation provided by Hart to Client with respect to these computer programs and code and all copies of the foregoing.

"*Hart Voting System (HVS)"* means the HVS Hardware and the Software.

"*Hart Voting System Master Agreement*" means the agreement, between Client and Hart or Hart's authorized distributor of HVS Hardware, under which Client has purchased the HVS Hardware and limited HVS Software licenses. The HVS Master Agreement is identified on the Signature Page.

"*HVS"* means the Hart Voting System.

"*HVS Hardware*" means the eSlate® units, JBC™ units, and DAU™ units purchased by Client pursuant to the Hart Voting System Master Agreement and any other associated written agreements.

"*Initial Annual Fee*" means the first Annual Fee, in the amount specified as the "Initial Annual Fee" on Schedule D, which is payable upon execution of this Agreement.

"*Installation Date*" means, with respect to the Hart Voting System, the date Hart completes installation of the HVS with included Software.

"*JBC™*" means the Judge's Booth Controller (JBC™) created by Hart that is a local area network controller capable of interacting with one or more eSlate® devices or DAU devices by transmitting and receiving signals that manage or control an election, e.g., by opening and closing the polls, providing or recording an audit trail of system events during an election, storing cast ballot data, and applying data security and integrity algorithms.

"*Non-Hart Equipment*" means the equipment, if any, not consisting of HVS Hardware that was sold to Client by Hart or Hart's distributor for use with, and in connection with the sale of, the HVS Hardware.

“*Non-Hart Software*” means the run-time executable code and associated support files of computer programs owned by third parties that are identified on Schedule C and sublicensed by Hart to Client pursuant to this Agreement or licensed directly by the third-party licensor to Client, and all updates, upgrades, versions, new releases, derivatives, revisions, corrections, improvements, rewrites, bug fixes, enhancements, and other modifications to such computer programs and code that are provided to Client, and all copies of the foregoing. Non-Hart Software also includes all documentation provided to Client with respect to these computer programs, and all copies of the foregoing.

“*Software*” means the Hart Proprietary Software and Firmware, and Non-Hart Software.

“*Sublicensed Software*” means Non-Hart Software that is identified on Schedule C as being sublicensed by Hart to Client pursuant to this Agreement.

“*VBO™*” means the Verifiable Ballot Option unit used in conjunction with the eSlate® for a *Voter Verifiable Paper Audit Trail*.

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SCHEDULE A

SUPPORT CONTACT INFORMATION

The following contact information is to be used by Client for submitting Support requests to Hart InterCivic, Inc.:

Client Support Center:	1-866-275-4278 (1-866-ASK-HART)
Client Support Center Fax:	1-512-252-6925 or 1-800-831-1485
E-mail Address:	hartsupport@hartic.com
Team Track:	https://hartsupporthartic.com
Hart InterCivic, Inc. Switchboard:	1-800-223-HART (4278)
Client Support Manager:	

The following contact information is to be used by Hart for contacting Client on Software Support Service requests:

Primary Client Contact Point ("CCP"):	281-290-1002 (Doris Speer)
First Alternate CCP:	281-290-1019 (Betsy Gates)

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SCHEDULE B

HART PROPRIETARY SOFTWARE

QUANTITY	MODEL	DESCRIPTION	UNIT PRICE	NUMBER OF LICENSES	INITIAL LICENSE FEE
One (1)	Tally™ , BOSS™, Ballot Now™, SERVO™, and eCM Manager™.	Electronic Voting Software.	$	Four (4).	$

Licensed Location: ______ .

NOTE: Hart and Client will update this Schedule as appropriate if Hart releases new Hart Proprietary Software that is made available to Client under the HVS Warranty, License, and Support Agreement.

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SCHEDULE C

NON-HART SOFTWARE

Non-Hart Software Sublicensed to Client:

QUANTITY	MODEL	DESCRIPTION	UNIT PRICE	NUMBER OF LICENSES	TOTAL PRICE
Four (4).	Sybase Embedded Runtime Program	Database software.	Included.	Four (4).	No Charge.

Licensed Location: ______ .

NOTE: Hart and Client will update this Schedule as appropriate if Hart provides new or different Non-Hart Software to Client under this HVS Warranty, License, and Support Agreement.

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SCHEDULE D

INITIAL ANNUAL FEE

Initial Annual Fee: $

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Pricing Quote for Purchase

HART intercivic

Date	June 14, 2011
Customer	City of Tomball
Customer PO (if applicable)	
System Version	Hart Voting System 6.2.1
Additional Notes	Final Quote
Election Event Date	May 2012

Item	Description	Quantity	Unit Price	Total	Remarks
1	City/School Base Services Package	1	$5,000.00	$ 5,000.00	* Ballot Programming (English/Spanish - up to 10 contests) * One on-site trip by Professional Services Team to include: * Logic & Accuracy Testing (on-site) * Poll Work Training (on-site) * Phone Support for Early Voting * Onsite Support on Election Day through Tally
2	eSlate, DAU, used	2	$2,860.00	$ 5,720.00	Disabled Access Unit (ADA HAVA - compliant) and booth
3	eSlate, used	6	$2,200.00	$ 13,200.00	Standard Voting Machine and booth
4	JBC, used	2	$2,200.00	$ 4,400.00	Judges Booth Controller (1 per Poll Location)
5	eScan Digital Scanner, used		$3,960.00		Ballot Box included
6	eSlate Storage Caddy III	1	$605.00	$ 605.00	
7	Casters for Caddy III	1	$110.00	$ 110.00	Set of 4
8	JBC Storage and Transport Box	2	$55.00	$ 110.00	
9	Jelly Switches for DAU	1	$167.00	$ 167.00	Tactile input switches (ADA Compliant) for DAU machine
10	Additional Language Programming	1	$450.00	$ 450.00	Vietnamese (audio & ballot)
11	Additional Ballot Programming		$500.00		Up to 10 additional contests
12	Paper Ballots	50	$1.00	$ 50.00	Minimum 50 Ballots, includes ground transportation
13	Paper Ballots (8.5 x 11)		$0.34		Minimum 1000 Ballots
14	Paper Ballots (8.5 x 14)		$0.37		
15	Annual License & Support Fee - eSlate	6	$80.00	$ 480.00	per unit. Required.
16	Annual License & Support Fee - DAU	2	$80.00	$ 160.00	per unit. Required.
17	Annual License & Support Fee - eScan		$150.00		per unit. Required.
			Subtotal	$ 30,452.00	
			Minimum Shipping & Handling	$ 800.00	
			Total	**$ 31,252.00**	

Billing Address and Phone

Doris Speer, City Secretary
City of Tomball
401 Market Street
Tomball, Texas 77375
281-290-1002

Shipping Address and Phone

Doris Speer, City Secretary
City of Tomball
401 Market Street
Tomball, Texas 77375
281-290-1002

Billing Instructions

Customer will receive 2 Hart Invoices:
first invoice upon equipment delivery for **$25,585**
second immediately following date of election for **$5,500**

Payment terms are Net 30.

Shipping Instructions

Ground Transportation

Terms and Conditions:
Prices are effective for 30 days from date of quote and subject to inventory availability.

Hart Contact (Name): **Brian McRae**	**Title:** **Sales Representative**
Hart Approval (signature): B McRae	**Date:** **June 3, 2011**
Customer Contact (Name):	**Title:**
Customer Approval (signature):	**Date:**

To activate your agreement, please sign and fax to 512.252.6414 or email bmcrae@hartic.com

Regular City Council
Agenda Item
Data Sheet

Meeting Date: June 20, 2011

Topic:

Adopt, on First Reading, Ordinance No. 2011-10, an Ordinance of the City Council of the City of Tomball, Texas, Amending Chapter 70, Plats and the Subdivision of Land, of the Code of Ordinances of the City of Tomball, Texas, by Amending Subsection (d) of Section 70-3 of Article I to Allow Joinder of Lots Under Common Ownership without Requiring a Plat, Provided that the Joinder of Lots does not Require the Dedication or Removal of any Public Rights-of-Way, Public Easements or Public Improvements; Providing a Penalty in an Amount of not more than $2,000 for Violation of any Provision Hereof; Providing for Saving and Severability; Providing for Publication; and Making Other Provisions and Finding related Thereto.

Background:

City Staff has been working with the City Attorney to determine the best way to address Council's concerns regarding the platting requirements for lots that are under one ownership and possibly have structures across existing lot lines. The City Attorney drafted a revision to Chapter 70 - Plats and the Subdivision of Land to allow joinder of lots under common ownership. The draft ordinance is attached for your review.

There are issues and concerns that need to be addressed in order to move forward with the revision to the ordinance. Some of the issues, but not limited to, are as follows:

1. Determine the definition for "joinder lot";
2. Determine the area of the City that would be allowed to have joinder lots;
3. Define the removal of a structure; and
4. Potential Incentive Program (Not yet defined).

At the City Council Workshop on June 6, 2011 Council directed City Staff and the City Attorney to draft an ordinance to address the concerns for joinder lots. The information requested to be included in the ordinance is as follows:

1. Include residential and commercial property;
2. The area for the ordinance should include the Recorded Plat Revised Map of Tomball 1912; and
3. Change the percentage of structure removed or destroyed to 60%.

The revised ordinance is attached with the requested changes.

Origination:

City Council

Recommendation:

N/A

Funding:

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

Engineering and Planning

ACTION TAKEN

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

ATTACHMENTS:

Ordinance No. 2011-10 - Joinder Lots

ORDINANCE NO. 2011-10

AN ORDINANCE AMENDING CHAPTER 70, PLATS AND THE SUBDIVISION OF LAND, OF THE CODE OF ORDINANCES OF THE CITY OF TOMBALL, TEXAS, BY AMENDING SUBSECTION (D) OF SECTION 70-3 OF ARTICLE I TO ALLOW JOINDER OF LOTS UNDER COMMON OWNERSHIP WITHOUT REQUIRING A PLAT PROVIDED THAT THE JOINDER OF LOTS DOES NOT REQUIRE THE DEDICATION OR REMOVAL OF ANY PUBLIC RIGHTS-OF-WAY, PUBLIC EASEMENTS OR PUBLIC IMPROVEMENTS; PROVIDING A PENALTY IN AN AMOUNT OF NOT MORE THAN $2,000 FOR VIOLATION OF ANY PROVISION HEREOF; PROVIDING FOR SAVINGS AND SEVERABILITY; PROVIDING FOR PUBLICATION; AND MAKING OTHER PROVISIONS AND FINDINGS RELATED THERETO.

* * * * * * * *

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

<u>**Section 1.**</u> The Code of Ordinances of the City of Tomball is hereby amended by adding to Subsection (d) of Section 70-3, Exceptions, of Article I, Special Provisions, the language underscored below, the amended Subsection (d) to read as follows:

"Sec. 70-3. Special provisions.

* * *

(d) *Exceptions.*

(3) <u>A division of land does not include the merger of two or more adjoining lots or tracts of land, with common ownership, that the owner(s) wishes to merge into one lot in order to avoid the creation of a technical violation of the City's building, subdivision and zoning regulations relating to building setback lines. This exception applies only if:</u>

a. <u>the lots or tracts were under common ownership as of the effective date of this ordinance; and</u>

b. <u>the lots or tracts are located in the Recorded Plat Revised Map of Tomball Harris Co. Texas recorded July 9, 1912, a true and</u>

correct copy of which is attached hereto as Exhibit "A" and incorporated herein for all purposes; and

c. a structure existed on the lots or tracts, as of the effective date of this ordinance, provided, however, that this exception shall not apply in the event that sixty-percent (60%) or more of the square feet of the structure is removed or destroyed; and

d. the joinder of lots or tracts does not require the dedication or removal of any public rights-of-way, public easements or other public improvements; and

e. the owner(s) agrees in writing on a form approved by the City that the merged lot may not be divided in the future unless a subdivision plat authorizing such division is approved by the City and filed of record in accordance with applicable state laws and City Ordinances governing plats and the subdivision of land. The form must also inform and declare that any subsequent purchaser will be bound by the requirements of this exception and the form shall be filed in the County Clerk's office of the County in which the property is located. A property owner who has elected to join one (1) or more lots pursuant to this subsection may file an election with the City to reverse the joinder of lots so long as no violations of the City's setback requirements in the building, subdivision, or zoning regulations is created by the reversal.

Two or more platted lots joined together pursuant to this Subsection shall be considered one (1) joined lot for purpose of this Chapter; provided, however that nothing contained herein shall otherwise constitute an exception to the platting requirements imposed by this Chapter."

Section 2. All ordinances or parts of ordinances inconsistent or in conflict herewith are, to the extent of such inconsistency or conflict, hereby repealed.

Section 3. It is the intent of the City that this Ordinance shall comply in all respects with the applicable provisions of the United States Constitution, the Texas Constitution, and the Charter of the City of Tomball. In the event any clause, phrase, provision, sentence, or part of this Ordinance or the application of the same to any person or circumstance shall for any reason be adjudged invalid or held unconstitutional by a court of competent jurisdiction, it shall not affect, impair, or invalidate this Ordinance as a whole or any part or provision hereof other than the part declared to be invalid or unconstitutional; and the City Council of the City of Tomball, Texas, declares that it would have passed each and every part of the same notwithstanding the omission of any such part thus declared to be invalid or unconstitutional, whether there be one or more parts.

Section 4. Any person, firm or corporation that knowingly violates any of the provisions or terms of this Ordinance shall be subject to the same penalty as provided for in the Code of Ordinances of the City of Tomball, Texas, and, upon conviction, shall be punished by a fine not to exceed five hundred ($2,000.00) dollars for each offense.

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

FIRST READING:

READ, PASSED AND APPROVED AS SET OUT BELOW AT THE MEETING OF THE CITY COUNCIL OF THE CITY OF TOMBALL HELD ON THE _____ DAY OF __________ 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 ______ DAY OF __________ 2011.

COUNCILMAN HUDGENS	______
COUNCILMAN STOLL	______
COUNCILMAN BROWN	______
COUNCILMAN TOWNSEND	______
COUNCILMAN DODSON	______

Gretchen Fagan, Mayor

ATTEST:

Doris Speer, City Secretary