

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



**Monday, January 18, 2021
6:00 PM**

Notice is hereby given of a Regular meeting of the Tomball City Council, to be held on Monday, January 18, 2021 at 6:00 PM, 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.

**IN ACCORDANCE WITH ORDER OF THE OFFICE OF THE GOVERNOR ISSUED MARCH 16, 2020, THE CITY COUNCIL OF THE CITY OF TOMBALL, TEXAS, WILL CONDUCT THE MEETING SCHEDULED FOR JANUARY 18, 2021, 6:00 PM, AT 401 MARKET STREET, TOMBALL, TEXAS, 77375. IN ORDER TO ADVANCE THE PUBLIC HEALTH GOAL OF LIMITING FACE-TO-FACE MEETINGS (ALSO CALLED “SOCIAL DISTANCING”) TO SLOW THE SPREAD OF THE CORONAVIRUS (COVID-19), THERE WILL BE LIMITED PUBLIC ACCESS TO THE LOCATION DESCRIBED ABOVE. THIS MEETING AGENDA AND THE AGENDA PACKET ARE POSTED ONLINE AT:
[HTTPS://TOMBALLTX.GOV/ARCHIVE.ASPX?AMID=38](https://tomballtx.gov/archive.aspx?amid=38); A RECORDING OF THE MEETING WILL BE MADE AND WILL BE AVAILABLE TO THE PUBLIC IN ACCORDANCE WITH THE OPEN MEETINGS ACT UPON WRITTEN REQUEST.**

The public toll-free dial-in numbers to participate in the telephonic meeting are any one of the following (dial by your location): +1 312 626 6799 US (Chicago); +1 646 876 9923 US (New York); +1 301 715 8592 US; +1 346 248 7799 US (Houston); +1 408 638 0968 US (San Jose); +1 669 900 6833 US (San Jose); or +1 253 215 8782 US (Tahoma) - Meeting ID: 847 6224 7567, Passcode: 108746. The public will be permitted to offer public comments telephonically, as provided by the agenda and as permitted by the presiding officer during the meeting.

- A. Call to Order
- B. Invocation - Led by Pastor Joseph Martinez – The Light of the World Church
- C. Pledges to U.S. and Texas Flags - Led by Scouts, Pack 12

- D. 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 - GC, 551.042.]*
- E. Presentations
- 1. Dr. Lee Ann Nut, President, Lone Star College-Tomball, and Kyle Scott, Vice Chancellor of Strategic Priorities, Lone Star College – Update regarding the 2020 Fall Semester and Plans for 2021 Spring Semester
 - 2. *2020 Employee of the Year – **Luisa Taylor***
- F. Reports and Announcements
- 1. Announcements
 - I. February 6, 2021 – **2nd Saturday at the Depot**
 - II. February 12, 2021– Last day to apply for Place on Ballot for the May 1, 2021 General City Election
 - 2. Reports by City staff and members of council about items of community interest on which no action will be taken:
 - I. Doris Speer – City Secretary’s Office has received the **“5 Star Exemplary Award”** from Texas Department of Vital Statistics – (10 years)
- G. Approval of Minutes
- 1. Approve the Minutes of the January 4, 2021 Regular Tomball City Council Meeting
- H. New Business Consent Agenda: *[All matters listed under Consent Agenda are considered to be routine and will be enacted by one motion. There will be no separate discussion of these items. If discussion is desired, the item in question will be removed from the Consent Agenda and will be considered separately. Information concerning Consent Agenda items is available for public review.]*
- 1. Approve Letter of Agreement for Acceptance of Real Property Transfer of the “Green Street” Property and grant Lot 33, Block 70 of the Revised Map of Tomball via Special Warranty Deed to the Tomball Economic Development Corporation

2. Authorize City Manager to execute contract between the City of Tomball and Texas Commission on Environmental Quality (TCEQ) for the award of a Texas Volkswagen Environmental Mitigation Program (TxVEMP) Grant, for an amount of \$72,284.00.
3. Award purchase of one (1) Peterbuilt Dump Truck in the amount of \$128,629.00 to Rush Truck Center, through State Buyboard Cooperative Purchasing Contract.
4. Authorize City Manager to execute contract between the City of Tomball and Texas Commission on Environmental Quality (TCEQ) for the award of a Texas Volkswagen Environmental Mitigation Program (TxVEMP) Grant, for an amount of \$67,168.00.
5. Award purchase of one (1) Street Sweeper made by Global Environmental in the amount of \$258,299.00 to Associated Supply Co., Inc., through a State Buyboard Cooperative Purchasing Contract.

I. New Business

1. Open Public Hearing of the City of Tomball, Texas to Consider the Advisability of the Creation of a Public Improvement District to Make Certain Improvements over Certain Property located within the City (TPID 11, Wood Leaf Reserve)
2. Approve Resolution No. 2021-04, a Resolution of the City Council of the City of Tomball, Texas, Authorizing and Creating the Wood Leaf Reserve Public Improvement District in the City of Tomball, Harris County, Texas, in Accordance with Chapter 372 of the Texas Local Government Code; Providing for Related Matters; and Providing an Effective Date.
3. Approve Resolution No. 2021-06, a Resolution of the City Council of the City of Tomball, Texas approving a Development Agreement relating to the Woodleaf Reserve Public Improvement District Project (TPID 11)
4. Conduct Public Hearing for the Purpose of Considering the Following Annexation: *(Being a 3.119-Acre (138,840 Square Feet) Tract or Parcel of Land Situated in the Elizabeth Smith Survey, A-70, Harris County, Texas, Being out of Unrestricted Reserve "C" of the Final Plat of Tomball Greens, as Recorded under Film Code No. 440128 of the Map Records of Harris County, Texas, also Being Out and Part of a 5.00 Acre Tract Described in Deed Recorded under Clerk's File No. Z331045 of the Real Property Records of Harris County, Texas) [11234 Spell Road, HCAD 1207880000010]*
5. Adopt, on First Reading, Ordinance No. 2021-01, an Ordinance of the City of Tomball, Texas, Extending the City Limits of Said City to Include All of the

Territory Within Certain Limits and Boundaries and Annexing to the City of Tomball All of the Territory Within Such Limits And Boundaries; Approving a Service Plan for All of the Area Within Such Limits and Boundaries; Containing Other Provisions Relating to the Subject; and Providing a Savings and Severability Clause (*Being a 3.119-Acre (138,840 Square Feet) Tract or Parcel of Land Situated in the Elizabeth Smith Survey, A-70, Harris County, Texas, Being out of Unrestricted Reserve "C" of the Final Plat of Tomball Greens, as Recorded under Film Code No. 440128 of the Map Records of Harris County, Texas, also Being Out and Part of a 5.00 Acre Tract Described in Deed Recorded under Clerk's File No. Z331045 of the Real Property Records of Harris County, Texas*) [11234 Spell Road, HCAD 1207880000010]

6. Consideration to approve **Zoning Case P20-419**: Request by TN Associates Inc. to amend Chapter 50 (Zoning) of the Tomball Code of Ordinances by establishing the zoning district of approximately 3.119 acres of land legally described as Reserve C3 Tomball Greens, as Commercial District. The property is generally located at the northeast corner of Hufsmith-Kohrville Road and Spell Road at 11234 Spell Road, Harris County, Texas.
- Conduct Public Hearing on **Zoning Case P20-419**
 - Adopt, on First Reading, Ordinance No. 2021-02, an Ordinance of the City of Tomball, Texas, amending Chapter 50 (Zoning) of the Tomball Code of Ordinances by establishing the zoning district of approximately 3.119 acres of land, legally described as Reserve C3 Tomball Greens, within the City of Tomball, Harris County, Texas, to the Commercial District; said property being generally located at the northeast corner of Hufsmith-Kohrville Road and Spell Road at 11234 Spell Road; providing for the amendment of the Official Zoning Map of the City; providing for severability; providing for a penalty of an amount not to exceed \$2,000 for each day of violation of any provision hereof, making findings of fact; and providing for other related matters.
7. Approve Resolution No. 2021-05, a Resolution Declaring the Intention of the City of Tomball, Texas, to Institute Proceedings to Annex Certain Territory; Describing Such Territory; Setting the Date, Time, and Place for Public Hearing at which all Interested Parties shall have an Opportunity to be heard; Providing for Publication of Notice of Such Public Hearing; and Directing Preparation of a Municipal Service Plan for the Territory Proposed to be Annexed (*Being a Tract or Parcel Containing 6.5681 Acres of Land known as Tracts 1 & 2 out of that Certain Called 40.1148 Acre Tract of Land Situated in the John M. Hooper Survey, A-375 In Harris County, Texas, Said 40.1148 Acre Tract being that Same Tract of Land as Described in a Deed Filed for Record under Harris County Clerk's File No. F41707.2 (13810 Windy Meadow Rd, HCAD 04304100000055)*)

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

Sec. 551.072 - Deliberations Regarding the Purchase, Exchange, Lease, or Value of Real Property

9. Authorize City Manager to Negotiate and Execute the Required Documents for the Sale of City Property to Harris County for the Purpose of Widening Holderrieth Road as Discussed in Executive Session

J. 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 14th day of January 2021 by 5:00 PM, and remained posted for at least 72 continuous hours preceding the scheduled time of said meeting.

Doris Speer, City Secretary, TRMC/MMC

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 contact the City Secretary's office at (281) 290-1002 or FAX (281) 351-6256 for further information.

AGENDAS MAY BE VIEWED ONLINE AT www.ci.tomball.tx.us.

City Council Meeting Agenda Item Data Sheet

Meeting Date: January 18, 2021

Topic:

Dr. Lee Ann Nut, President, Lone Star College-Tomball, and Kyle Scott, Vice Chancellor of Strategic Priorities, Lone Star College – Update regarding the 2020 Fall Semester and Plans for 2021 Spring Semester

Background:

Origination:

Recommendation:

Party(ies) responsible for placing this item on agenda: Doris Speer, City Secretary

FUNDING (IF APPLICABLE)

Are funds specifically designated in the current budget for the full amount required for this purpose?

Yes: _____ No: _____ If yes, specify Account Number: # _____

If no, funds will be transferred from account # _____ To account # _____

Signed	<u>Doris Speer</u>	<u>1-12-2021</u>	Approved by	_____
	Staff Member	Date		City Manager
				Date

City Council Meeting Agenda Item Data Sheet

Meeting Date: January 18, 2021

Topic:

2020 Employee of the Year – Luisa Taylor

Background:

Origination:

Recommendation:

Party(ies) responsible for placing this item on agenda: Doris Speer, City Secretary

FUNDING (IF APPLICABLE)

Are funds specifically designated in the current budget for the full amount required for this purpose?

Yes: _____ No: _____ If yes, specify Account Number: # _____

If no, funds will be transferred from account # _____ To account # _____

Signed	<u>Doris Speer</u>	<u>1-12-2021</u>	Approved by	_____
	Staff Member	Date		City Manager
				Date

City Council Meeting Agenda Item Data Sheet

Meeting Date: January 18, 2021

Topic:

February 6, 2021 – 2nd Saturday at the Depot

Background:

Origination:

Recommendation:

Party(ies) responsible for placing this item on agenda: Doris Speer, City Secretary

FUNDING (IF APPLICABLE)

Are funds specifically designated in the current budget for the full amount required for this purpose?

Yes: _____ No: _____ If yes, specify Account Number: # _____

If no, funds will be transferred from account # _____ To account # _____

Signed	<u>Doris Speer</u>	<u>1-12-2021</u>	Approved by	_____
	Staff Member	Date		City Manager
				Date

City Council Meeting Agenda Item Data Sheet

Meeting Date: January 18, 2021

Topic:

February 12, 2021– Last day to apply for Place on Ballot for the May 1, 2021 General City Election

Background:

Origination:

Recommendation:

Party(ies) responsible for placing this item on agenda: Doris Speer, City Secretary

FUNDING (IF APPLICABLE)

Are funds specifically designated in the current budget for the full amount required for this purpose?

Yes: _____ No: _____ If yes, specify Account Number: # _____

If no, funds will be transferred from account # _____ To account # _____

Signed	<u>Doris Speer</u>	<u>1-12-2021</u>	Approved by	_____
	Staff Member	Date		City Manager
				Date

NOTICE OF DEADLINE TO FILE APPLICATIONS FOR PLACE ON THE BALLOT
(AVISO DE FECHA LÍMITE PARA PRESENTAR SOLICITUDES PARA UN LUGAR EN LA BOLETA)
(THÔNG BÁO VỀ THỜI HẠN NỘP ĐƠN XIN GHI DANH TRÊN LÁ PHIẾU)
(申請選票席位 截止日期通知)

Notice is hereby given that applications for a place on the May 1, 2021 City of Tomball, Texas General Election ballot may be filed during the following time:
(Se da aviso por la presente que las solicitudes para un lugar en la boleta de la Elección General de la Ciudad de Tomball, Tejas de 1 de mayo de 2021 se pueden presentar durante el siguiente horario:)
(Theo đây xin thông báo quý vị có thể nộp đơn xin ghi tên tranh cử trên lá phiếu cho Cuộc Tổng Tuyển Cử của Thành Phố Tomball, Texas ngày 1 tháng Năm, 2021 vào ngày giờ sau đây:)
(特此通知, 申請 2021 年 5 月 1 日 Texas 州 Tomball 市 普通選舉之選票席位可於以下期間辦理登記:)

Filing Dates and Times:

(Fechas y Horario para Entregar Presentaciones):

(Ngày giờ nộp đơn):

(登記日期和时间):

Start Date: January 13, 2021

(Fecha Inicio): 13 de enero de 2021

(Ngày bắt đầu: 13 tháng Một, 2021)

(開始日期): 2021 年 1 月 13 日

End Date: February 12, 2021

(Fecha Limite): 12 de febrero de 2021

(Ngày kết thúc): 12 tháng Hai, 2021

(截止日期): 2021 年 2 月 12 日

Office Hours: Monday-Thursday: 7:45 a.m.-5:00 p.m.; Friday: 7:45 a.m.-4:00 p.m.

Horario de la Oficina: Lunes-Jueves: 7:45 a.m.-5:00 p.m.; Viernes: 7:45 a.m.-4:00 p.m.

Giờ làm việc: Thứ Hai - thứ Năm, 7:45 a.m.-5:00 p.m.; thứ Sáu: 7:45 a.m.-4:00 p.m.

辦公時間: 週一至週四: 上午 7:45 - 下午 5:00; 週五: 上午 7:45 - 下午 4:00

Physical address for filing applications in person for place on the ballot:

(Dirección a física para presentar las solicitudes en persona para un lugar en la boleta):

(Địa chỉ tiếp nhận đơn xin nộp trực tiếp):

(親自辦理選票席位申請地址):

City Secretary	La Secretaria de la Ciudad	Thư Ký Thành Phố	市秘書
City of Tomball, Texas	La Ciudad de Tomball, Tejas	Thành phố Tomball, Texas	Texas 州 Tomball 市
401 Market Street	401 Market Street	401 Market Street	401 Market Street
Tomball, Texas 77375	Tomball, Texas 77375	Tomball, Texas 77375	Tomball, Texas 77375
281-290-1002	281-290-1002	281-290-1002	281-290-1002

Address to mail applications for place on the ballot (if filing by mail):

[Dirección a donde enviar las solicitudes para un lugar en la boleta (en caso de presentar por correo)]

[Địa chỉ nhận đơn xin gửi qua thư bưu điện (nếu nộp qua thư)]:

[郵寄辦理選票席位申請地址 (如郵寄申請)]:

City Secretary	Secretaria de la Ciudad	Thư Ký Thành Phố	市秘書
City of Tomball, Texas	La Ciudad de Tomball, Tejas	Thành phố Tomball, Texas	Texas 州 Tomball 市
401 Market Street	401 Market Street	401 Market Street	401 Market Street
Tomball, Texas 77375	Tomball, Texas 77375	Tomball, Texas 77375	Tomball, Texas 77375
dspeer@tomballtx.gov	dspeer@tomballtx.gov	dspeer@tomballtx.gov	dspeer@tomballtx.gov

Doris Speer, City Secretary/Secretaria de la Ciudad/

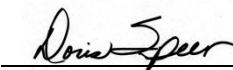
Thư Ký Thành Phố/市秘書

Printed Name of Filing Officer

(Nombre en letra de molde del Oficial de Archivos)

(Tên viết bằng chữ in của viên chức phụ trách thủ tục nộp đơn xin)

(登記官印刷體姓名)



Signature of Filing Officer

(Firma del Oficial de Archivos)

(Chữ ký của viên chức phụ trách thủ tục nộp đơn xin)

(登記官簽名)

December 7, 2020/7 de diciembre de 2020/

Ngày 7 tháng Mười Hai, 2020/2020 年 12 月 7 日

Date Posted (Fecha archivada) (Ngày đăng) (发布日期)



★ ★ ★ ★ ★

2020

Exemplary 5 Star Award

THIS CERTIFICATE IS PRESENTED TO

CITY OF TOMBALL

for excellence in the

Vital Statistics Registration Process

December 9, 2020

Thank you for going above and beyond to register your records and ensure excellent customer service, security, and data quality in Texas!



Tara Das

Texas State Registrar, VSS



City Council Meeting Agenda Item Data Sheet

Meeting Date: January 18, 2021

Topic:

Doris Speer – City Secretary’s Office has received the “*5 Star Exemplary Award*” from Texas Department of Vital Statistics – (10 years)

Background:

Origination:

Recommendation:

Party(ies) responsible for placing this item on agenda: Doris Speer, City Secretary

FUNDING (IF APPLICABLE)

Are funds specifically designated in the current budget for the full amount required for this purpose?

Yes: _____ No: _____ If yes, specify Account Number: # _____

If no, funds will be transferred from account # _____ To account # _____

Signed	<u>Doris Speer</u>	<u>1-13-2021</u>	Approved by	_____
	Staff Member	Date		City Manager
				Date

City Council Meeting Agenda Item Data Sheet

Meeting Date: January 4, 2021

Topic:

Approve the Minutes of the January 4, 2021 Regular Tomball City Council Meeting

Background:

Origination: City Secretary

Recommendation:

Approve

Party(ies) responsible for placing this item on agenda: Doris Speer, City Secretary

FUNDING (IF APPLICABLE)

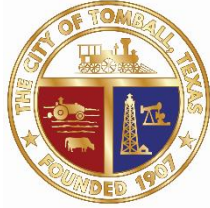
Are funds specifically designated in the current budget for the full amount required for this purpose?

Yes: _____ No: _____ If yes, specify Account Number: # _____

If no, funds will be transferred from account # _____ To account # _____

Signed	<u>Doris Speer</u>	<u>1-12-2021</u>	Approved by	_____
	Staff Member	Date		City Manager
				Date

MINUTES OF REGULAR CITY COUNCIL MEETING CITY OF TOMBALL, TEXAS



**Monday, January 4, 2021
6:00 PM**

The City Council of the City of Tomball, Texas, conducted the Council meeting scheduled for January 4, 2021, 6:00 PM, at 401 Market Street, Tomball, Texas 77375, via video/telephone conference.

A. Call to Order

PRESENT

Mayor Gretchen Fagan

Council 1 John Ford

Council 2 Mark Stoll

Council 3 Chad Degges

Council 4 Derek Townsend, Sr. (Called away for emergency, left before voting began)

Council 5 Lori Klein Quinn

OTHERS PRESENT:

City Manager – Robert Hauck

Assistant City Manager – David Esquivel

City Secretary – Doris Speer

Assistant City Secretary – Tracylynn Garcia

City Attorney – Loren Smith

Fire Chief – Randy Parr (via video)

Fire Marshall – Joe Sykora (via video)

Assistant Fire Chief – Taner Drake (via video)

Finance Director – Glenn Windsor

Director of Community Development – Craig Meyers

Administrative Assistant - Johnita Robinson

B. Invocation - Led by Pastor Dustin Reitzel - Woodlands Church Northpointe Campus

C. Pledges to U.S. and Texas Flags led by TPD Chief Jeff Bert

D. No public comments received.

E. Reports and Announcements

1. Announcements

- I. January 13, 2021 – First day to apply for Place on Ballot for the May 1, 2021 General City Election
 - II. February 12, 2021– Last day to apply for Place on Ballot for the May 1, 2021 General City Election
2. Reports by City staff and members of council about items of community interest on which no action will be taken:
- F. Approval of Minutes
1. Motion made by Council 2 Stoll, Seconded by Council 5 Klein Quinn to approve the Minutes of the December 21, 2020 Regular Tomball City Council Meeting
- Voting Yea: Council 1 Ford, Council 2 Stoll, Council 3 Degges, Council 5 Klein Quinn
Absent: Council 4 Townsend Sr.
- Motion carried unanimously.
- G. Old Business Consent Agenda: *All matters listed under Consent Agenda are considered to be routine and will be enacted by one motion. There will be no separate discussion of these items. If discussion is desired, the item in question will be removed from the Consent Agenda and will be considered separately. Information concerning Consent Agenda items is available for public review.*
1. Adopt, on Second Reading, Ordinance No. 2020-35, an Ordinance of the City of Tomball, Texas, amending Chapter 50 (Zoning) of the Tomball Code of Ordinances by changing the zoning district classification of approximately 5 acres of land legally described as Tract 10A-1 Abstract 632 C N Pillot, from the Single-Family 20 Estate District to the Light Industrial District, said property being generally located on the north side of Holderrieth Road at 12118 Holderrieth Road, within the City of Tomball, Harris County, Texas; providing for the amendment of the official zoning map of the city; providing for severability; providing for a penalty of an amount not to exceed \$2,000 for each day of violation of any provision hereof, making findings of fact; and providing for other related matters.
 2. Adopt, on Second Reading, Ordinance No. 2020-36, an Ordinance of the City of Tomball, Texas, amending Chapter 50 (Zoning) of the Tomball Code of Ordinances by changing the zoning district classification of approximately 20.78 acres of land legally described as Tract 9N-2 Abstract 632 C N Pillot, from the

Agricultural District to the Single-Family 6 District, said property being generally located on the east side of Cherry Street, across from the Cherry Pines subdivision, within the City of Tomball, Harris County, Texas; providing for the amendment of the official zoning map of the city; providing for severability; providing for a penalty of an amount not to exceed \$2,000 for each day of violation of any provision hereof, making findings of fact; and providing for other related matters.

Motion made by Council 5 Klein Quinn, Seconded by Council 2 Stoll to adopt on second reading, Ordinance No. 2020-35 and Ordinance No. 2020-36.

Voting Yea: Council 1 Ford, Council 2 Stoll, Council 3 Degges, Council 5 Klein Quinn

Absent: Council 4 Townsend Sr.

Motion carried unanimously.

H. New Business

1. Motion made by Council 2 Stoll, Seconded by Council 1 Ford to approve Resolution No. 2021-01, a Resolution and Order of the City Council of the City of Tomball, Texas, Ordering a Regular City Officer's Election, to be held in the City of Tomball on Saturday, May 1, 2021; Designating the Polling Places and Appointing Election Officials for Such Election; Directing the Giving of Notice of Such Election; Designating the Date for a Runoff Election if Needed; and Providing Details Relating to the Holding of Such Election
Aprobar la Resolución Nro. 2021-01, una Resolución y Orden del Consejo Municipal de la Ciudad de Tomball Texas, Ordenando una Elección Regular de Funcionarios Municipales a Celebrarse el sábado 1 de mayo de 2021; Designando los Lugares de Votación y Nombrando a los Oficiales Electorales de tal Elección; Instruyendo que se Notifique Sobre esta Elección; Designando la Fecha de una Elección de Desempate de ser Necesaria; y Proporcionando Detalles Referentes a la Celebración de Tal Elección.
Chấp thuận Nghị Quyết số 2021-01, một Nghị Quyết và Sắc Lệnh của Hội Đồng Thành Phố Tomball, Texas, Yêu Cầu một Cuộc Bầu Cử Viên Chức Thường Lệ sẽ được tổ chức tại Thành Phố Tomball vào Thứ Bảy, ngày 1 tháng Năm, 2021; Chỉ định các Địa Điểm Bỏ Phiếu và Chỉ Định các Viên Chức Bầu Cử cho Cuộc Bầu Cử đó; Hướng Dẫn việc Đưa Ra Thông Báo của Cuộc Bầu Cử đó; Chỉ Định Ngày Bầu Cử Chung Cuộc nếu cần; và Đưa Ra các Chi Tiết có Liên Quan đến việc Tổ Chức Cuộc Bầu Cử đó
批准決議案編號2021-01，為一德克薩斯州，Tomball市市議會決議及指示，特指示一市府官員普選，其將於2021年5月1日，星期六在Tomball市召開；

並已為此選舉指定投票所地點以及指派選舉官員；指導發出本選舉之選舉通知；如需要，將指定決選日期；以及提供所有與召開本選舉相關的細節

Voting Yea: Council 1 Ford, Council 2 Stoll, Council 3 Degges, Council 5 Klein Quinn

Absent: Council 4 Townsend Sr.

Motion carried unanimously.

2. Motion made by Council 1 Ford, Seconded by Council 5 Klein Quinn to approve Resolution No. 2021-02, a Resolution of the City Council of the City of Tomball, Texas, Designating The Potpourri, Tomball Edition (Houston Community Newspapers/Houston Chronicle) as the Official Newspaper for 2021 for Publication of Matters Pertaining to the City of Tomball

Voting Yea: Council 1 Ford, Council 3 Degges, Council 5 Klein Quinn

Voting Nay: Council 2 Stoll

Absent: Council 4 Townsend Sr.

Motion carried, 3 votes Aye, 1 vote Nay.

3. Motion made by Council 2 Stoll, Seconded by Council 3 Degges to approve the Assignment and Sale Agreement between Yaupon Trails LTD LLC, and Texas PID Financing I, LLC, for (TPID 5) Yaupon Trails Subdivision and Authorize the Mayor to Execute the Necessary Documents.

Voting Yea: Council 1 Ford, Council 2 Stoll, Council 3 Degges, Council 5 Klein Quinn

Absent: Council 4 Townsend Sr.

Motion carried unanimously.

4. Motion made by Council 2 Stoll, Seconded by Council 5 Klein Quinn to approve the Assignment and Sale Agreement between Tomball Copper Cove, LLC,, and Texas PID Financing I, LLC, for (TPID 6) Copper Cove Subdivision and Authorize the Mayor to Execute the Necessary Documents

Voting Yea: Council 1 Ford, Council 2 Stoll, Council 3 Degges, Council 5 Klein Quinn

Absent: Council 4 Townsend Sr.

Motion carried unanimously.

5. Motion made by Council 2 Stoll, Seconded by Council 1 Ford to approve the Assignment and Sale Agreement between Tomball Grand Junction, LLC, and Texas PID Financing I, LLC, for (TPID 7) Tomball Grand Junction Subdivision and Authorize the Mayor to Execute the Necessary Documents

Voting Yea: Council 1 Ford, Council 2 Stoll, Council 3 Degges, Council 5 Klein Quinn

Absent: Council 4 Townsend Sr.

Motion carried unanimously.

6. Motion made by Council 2 Stoll, Seconded by Council 1 Ford to approve the Assignment and Sale Agreement between Tomball Timber Trails, LLC,, and Texas PID Financing I, LLC, for (TPID 8) Timber Trails Subdivision and Authorize the Mayor to Execute the Necessary Documents

Voting Yea: Council 1 Ford, Council 2 Stoll, Council 3 Degges, Council 5 Klein Quinn

Absent: Council 4 Townsend Sr.

Motion carried unanimously.

- I. Motion made by Council 5 Klein Quinn, Seconded by Council 2 Stoll to adjourn

Voting Yea: Council 1 Ford, Council 2 Stoll, Council 3 Degges, Council 5 Klein Quinn

Absent: Council 4 Townsend Sr.

Motion carried unanimously.

PASSED AND APPROVED this the 18th day of January 2021.

Doris Speer
City Secretary, TRMC, MMC

Gretchen Fagan
Mayor

City Council Meeting

Agenda Item

Data Sheet

Meeting Date: January 18, 2021

Topic:

Approve Letter of Agreement for Acceptance of Real Property Transfer of the “Green Street” Property and grant Lot 33, Block 70 of the Revised Map of Tomball via Special Warranty Deed to the Tomball Economic Development Corporation

Background:

Lot 33, Block 70 of the Revised Map of Tomball was granted to the City of Tomball via a Warranty Gift Deed by Audrey Reed on October 22, 1985. The Special Warranty Deed conveys the property from the City of Tomball to the Tomball Economic Development Corporation (TEDC) with the intent that the property be used by the TEDC to further the purposes of the TEDC.

Origination: Craig T. Meyers, Community Development Director

Recommendation:

Approval

Party(ies) responsible for placing this item on agenda: Craig T. Meyers, P.E., Community Development Director

FUNDING (IF APPLICABLE)

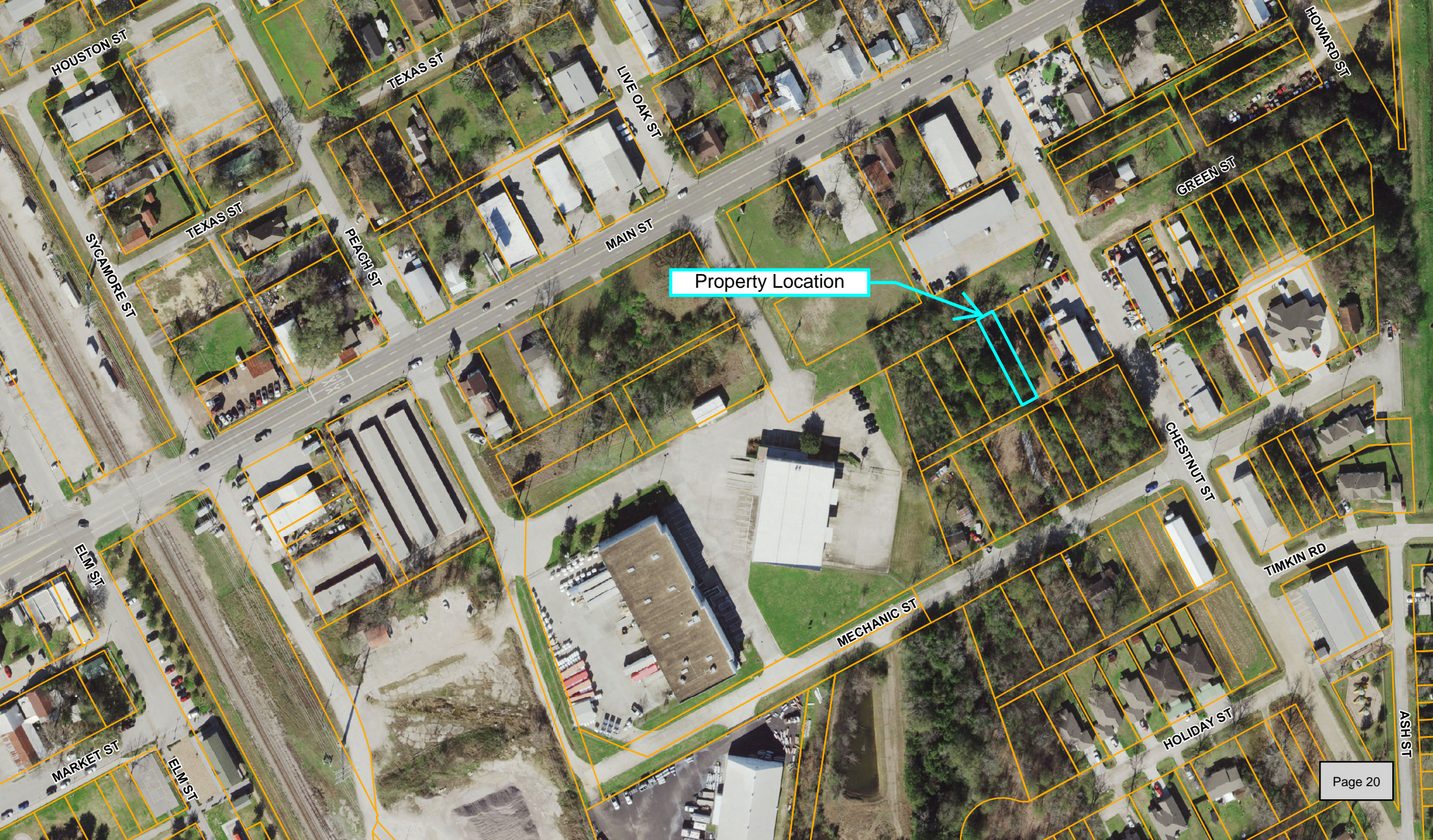
Are funds specifically designated in the current budget for the full amount required for this purpose?

Yes: _____ No: _____

If yes, specify Account Number: # _____

If no, funds will be transferred from account: # _____ To Account: # _____

Signed: _____ **Approved by:** _____
Staff Member Date City Manager Date



Property Location

_____, 2021

**The Honorable Mayor and City Council
City of Tomball
401 West Market Street
Tomball, Texas 77375**

Re: Letter of Agreement for Acceptance of Real Property Transfer of the “Green Street” Property

Dear Mayor and Councilmembers:

The City of Tomball (the “City”) has indicated its desire and intent to transfer certain real property to the Tomball Economic Development Corporation (the “TEDC”). The real property to be transferred, which is more particularly described in the deed attached to this Letter of Agreement as “Exhibit A”, was gifted to the City on October 22, 1985 (the “Property”). The City now believes that if the Property were to be transferred to the TEDC, then the Property would be better used by the TEDC to further the purposes of the TEDC. **The TEDC hereby agrees to receive from the City the transfer of the Property under the following conditions:**

1. The TEDC agrees to receive the Property through Special Warranty Deed;
2. The TEDC shall use the Property solely to further the purposes of the TEDC; and,
3. Should the TEDC see fit to sell or transfer the Property to any person or entity in furtherance of the TEDC’s purposes, then the TEDC shall provide written notice of such sale or transfer.

If the above terms and conditions are acceptable to the City, please have an authorized officer of the City sign below acknowledging the City’s agreement and return this Letter of Agreement to the undersigned. Upon receipt of this signed Letter of Agreement, the TEDC’s Treasurer, or authorized representative, will be directed to finalize the transfer of the Property and to perform all tasks and to execute all documents related to such transfer.

Yours very truly,

Steven Vaughan, Vice President, TEDC

**AGREED AND ACCEPTED:
CITY OF TOMBALL, TEXAS**

Gretchen Fagan, Mayor

ATTEST:

Doris Speer, City Secretary

EXHIBIT A – Description of Property (Deed, October 1985)

HOWARD H. KLEIN
MILTON E. HAVLICK, JR.
GEORGE W. COVINGTON
VICTORIA H. GALLAGHER

KLEIN, HAVLICK & COVINGTON
ATTORNEYS AT LAW
1427 KEEFER ROAD
TOMBALL, TEXAS 77375

TELEPHONE
AREA CODE 713
351-7181

November 4, 1985

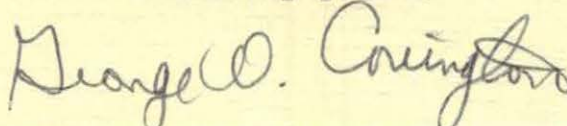
Ms. Kathy Morgan
City Secretary
City of Tomball
401 W. Market Street
Tomball, Texas 77375

RE: Donation by AUDREY REED
to the City of Tomball of Lot 33, Block 70,
Tomball Townsite, Harris County, Texas

Dear Kathy:

Enclosed herewith, for your permanent files, is the Warranty Deed as referenced above which has been filed in the Real Property Records of Harris County, Texas, under Clerk's File No. K267803, and Film Code No. 030-62-1711. As this is the original instrument, please take steps to safeguard it as such.

Sincerely yours,



GEORGE W. COVINGTON

GWC:dm

Enclosure

cc: Ms. Linda Browning
Tax Assessor-Collector
City of Tomball

Mrs. Audrey Reed
248 Harkness
Houston, Texas 77022

Mr. Lee Tipton, Mayor
City of Tomball

WARRANTY GIFT DEED

030-62-1711

THE STATE OF TEXAS
COUNTY OF HARRIS

§
§ KNOW ALL MEN BY THESE PRESENTS:

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2

THAT I, AUDREY REED, a Widow, Individually, as sole heir, and as Independent Executrix of the Estate of JAMES C. REED, of 248 Harkness, Houston, Texas 77022, County of Harris, State of Texas, hereinafter called "GRANTOR", for and in consideration of the sum of ONE AND NO/100 DOLLAR (\$1.00) and other good and valuable consideration, in cash paid by the City of Tomball, a Texas Municipal Corporation, with a mailing address of 401 West Market Street, Tomball, Texas, 77375, hereinafter called "GRANTEE", the receipt of which is hereby acknowledged, has GIVEN, SOLD, and CONVEYED, and by these presents, does hereby GIVE, SELL, and CONVEY unto the said Grantee, that certain tract or parcel of land lying and being in the County of Harris, State of Texas, being more particularly described as follows, to-wit:

see

Lot Thirty-Three (33) in Block Seventy (70) of Revised Map of Tomball, an addition in Harris County, Texas, according to the map or plat thereof, recorded in Volume 4, Page 25, of the Map Records of Harris County, Texas.

D

This conveyance is made by Grantor and accepted by Grantee subject to all valid and subsisting conditions, covenants, restrictions, reservations, exceptions, rights-of-way and easements of record and all laws, regulations and restrictions, including building and zoning ordinances, of municipal or other governmental authorities applicable to and enforceable against the above-described premises.

TO HAVE AND TO HOLD the above-described premises, together with all and singular the rights and appurtenances thereto in anywise belonging, unto the said Grantee, its successors and assigns forever; and we do hereby bind ourselves, our heirs, executors and administrators to WARRANT and FOREVER DEFEND, all and singular, the said premises unto the said Grantee, its

successors and assigns, against every person whomsoever lawfully claiming or to claim the same or any part thereof.

EXECUTED this 22 day of October, 1985.

Audrey Reed
AUDREY REED

107

THE STATE OF TEXAS

§

COUNTY OF HARRIS

§

This instrument was acknowledged before me on this 22nd day of October, 1985, by AUDREY REED, Individually, as sole heir, and as Independent Executrix of the Estate of JAMES C. REED.



Joan M. Ware
NOTARY PUBLIC, STATE OF TEXAS

Notary's Printed Name:
JOAN M. WARE

Notary Public in and for State of Texas
My Commission Expires February 08, 1987.

My Commission Expires: 02/08/87

STATE OF TEXAS }
COUNTY OF HARRIS

I hereby certify that this instrument was FILED in File Number Sequence on the date and at the time stamped hereon by me; and was duly RECORDED, in the Official Public Records of Real Property of Harris County, Texas on

OCT 30 1985



Janita Rodchevner
COUNTY CLERK,
HARRIS COUNTY, TEXAS

FILED FOR RECORD
8:30 A.M.

OCT 30 1985

Janita Rodchevner
County Clerk, Harris County, Texas

RETURN TO
GEORGE COVINGTON
KLEIN, HAVLICK & COVINGTON
1427 KEEFER ROAD
TOMBALL, TEXAS 77375

NOTICE OF CONFIDENTIALITY RIGHTS – IF YOU ARE A NATURAL PERSON, YOU MAY REMOVE OR STRIKE ANY OF THE FOLLOWING INFORMATION FROM THIS INSTRUMENT BEFORE IT IS FILED FOR RECORD IN THE PUBLIC RECORDS: YOUR SOCIAL SECURITY NUMBER OR YOUR DRIVER'S LICENSE NUMBER.

§

§

§

SPECIAL WARRANTY DEED

DATE: _____, 2021

PARTIES:

Grantor:

City of Tomball
401 Market Street
Tomball, Harris County, Texas 77375

Grantee:

Tomball Economic Development Corporation
29201 Quinn Road, Suite B
Tomball, Harris County, Texas 77375

CONSIDERATION:

The sum of **TEN DOLLARS AND NO CENTS (\$10.00)** and other good and valuable consideration this day which have been paid in cash to the Grantor by the Grantee, the receipt of which is hereby acknowledged and confessed.

PROPERTY (INCLUDING ANY IMPROVEMENTS):

Lot Thirty-Three (33) in Block Seventy (70) of Revised Map of Tomball, an addition in Harris County, Texas, according to the map or plat thereof, recorded in Volume 4, Page 25, of the Map Records of Harris County, Texas (the "Property"), with the Property intended by the Grantor to be that certain real property described in the Warranty Gift Deed attached to this Deed as "Exhibit A".

RESERVATIONS FROM CONVEYANCE:

All those of Record

EXCEPTIONS TO CONVEYANCE AND WARRANTY:

All those of Record

KNOW ALL MEN BY THESE PRESENTS: The Grantor, for the Consideration and subject to the Reservations from Conveyance and the Exceptions to Conveyance and Warranty, grants, sells, and conveys to the Grantee the Property, together with all and singular the rights and appurtenances thereto in any way belonging, to have and hold it to the Grantee and the Grantee's heirs, successors, and assigns forever. The Grantor binds the Grantor and the Grantor's heirs, successors, and assigns, to provide a special warranty, and forever defend all and singular the Property, to the Grantee and the Grantee's heirs, successors, and assigns against any party claiming by, through, or under the Grantor, but not otherwise.

If this Special Warranty Deed is executed by more than one person, or if the Grantee is more than one person, then the instrument shall read as though the pertinent verbs, nouns, pronouns were changed correspondingly; and, when executed by or to a corporation the words, heirs, executors, administrators, heirs, or assigns, shall be construed to mean successors and assigns.

THIS SPECIAL WARRANTY DEED WAS DRAFTED BASED SOLELY ON INFORMATION PROVIDED BY THE PARTIES AND WITH THE KNOWLEDGE OF THE PARTIES THAT NO INDEPENDENT TITLE EXAMINATION HAS BEEN DONE ON THE PROPERTY.

EXECUTED BY THE GRANTOR ON THIS ____ DAY OF _____, 2021.

GRANTOR

GRETCHEN FAGAN, MAYOR
CITY OF TOMBALL

After recording, return copy to:
City of Tomball
401 Market Street
Tomball, Harris County, Texas 77375

With additional copy to:
Tomball Economic Development Corporation
29201 Quinn Road, Suite B
Tomball, Harris County, Texas 77375

ACKNOWLEDGEMENT

THE STATE OF TEXAS §
 §
COUNTY OF HARRIS §

This instrument was acknowledged before me on the ____ day of _____, 2021, by the Grantor, **Gretchen Fagan, Mayor, the City of Tomball, Texas.**

[SEAL]

Notary Public in and for the State of Texas

EXHIBIT A – DESCRIPTION OF THE PROPERTY

HOWARD H. KLEIN
MILTON E. HAVLICK, JR.
GEORGE W. COVINGTON
VICTORIA H. GALLAGHER

KLEIN, HAVLICK & COVINGTON
ATTORNEYS AT LAW
1427 KEEFER ROAD
TOMBALL, TEXAS 77375

TELEPHONE
AREA CODE 713
351-7181

November 4, 1985

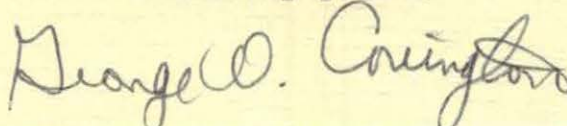
Ms. Kathy Morgan
City Secretary
City of Tomball
401 W. Market Street
Tomball, Texas 77375

RE: Donation by AUDREY REED
to the City of Tomball of Lot 33, Block 70,
Tomball Townsite, Harris County, Texas

Dear Kathy:

Enclosed herewith, for your permanent files, is the Warranty Deed as referenced above which has been filed in the Real Property Records of Harris County, Texas, under Clerk's File No. K267803, and Film Code No. 030-62-1711. As this is the original instrument, please take steps to safeguard it as such.

Sincerely yours,



GEORGE W. COVINGTON

GWC:dm

Enclosure

cc: Ms. Linda Browning
Tax Assessor-Collector
City of Tomball

Mrs. Audrey Reed
248 Harkness
Houston, Texas 77022

Mr. Lee Tipton, Mayor
City of Tomball

WARRANTY GIFT DEED

030-62-1711

THE STATE OF TEXAS
COUNTY OF HARRIS

§
§ KNOW ALL MEN BY THESE PRESENTS:

5
2

THAT I, AUDREY REED, a Widow, Individually, as sole heir, and as Independent Executrix of the Estate of JAMES C. REED, of 248 Harkness, Houston, Texas 77022, County of Harris, State of Texas, hereinafter called "GRANTOR", for and in consideration of the sum of ONE AND NO/100 DOLLAR (\$1.00) and other good and valuable consideration, in cash paid by the City of Tomball, a Texas Municipal Corporation, with a mailing address of 401 West Market Street, Tomball, Texas, 77375, hereinafter called "GRANTEE", the receipt of which is hereby acknowledged, has GIVEN, SOLD, and CONVEYED, and by these presents, does hereby GIVE, SELL, and CONVEY unto the said Grantee, that certain tract or parcel of land lying and being in the County of Harris, State of Texas, being more particularly described as follows, to-wit:

see

Lot Thirty-Three (33) in Block Seventy (70) of Revised Map of Tomball, an addition in Harris County, Texas, according to the map or plat thereof, recorded in Volume 4, Page 25, of the Map Records of Harris County, Texas.

D

This conveyance is made by Grantor and accepted by Grantee subject to all valid and subsisting conditions, covenants, restrictions, reservations, exceptions, rights-of-way and easements of record and all laws, regulations and restrictions, including building and zoning ordinances, of municipal or other governmental authorities applicable to and enforceable against the above-described premises.

TO HAVE AND TO HOLD the above-described premises, together with all and singular the rights and appurtenances thereto in anywise belonging, unto the said Grantee, its successors and assigns forever; and we do hereby bind ourselves, our heirs, executors and administrators to WARRANT and FOREVER DEFEND, all and singular, the said premises unto the said Grantee, its

successors and assigns, against every person whomsoever lawfully claiming or to claim the same or any part thereof.

EXECUTED this 22 day of October, 1985.

Audrey Reed
AUDREY REED

107

THE STATE OF TEXAS §
COUNTY OF HARRIS §

This instrument was acknowledged before me on this 22nd day of October, 1985, by AUDREY REED, Individually, as sole heir, and as Independent Executrix of the Estate of JAMES C. REED.



Joan M. Ware
NOTARY PUBLIC, STATE OF TEXAS

Notary's Printed Name:
JOAN M. WARE

Notary Public in and for State of Texas
My Commission Expires February 08, 1987.

My Commission Expires: 02/08/87

STATE OF TEXAS }
COUNTY OF HARRIS }

I hereby certify that this instrument was FILED in File Number Sequence on the date and at the time stamped hereon by me; and was duly RECORDED, in the Official Public Records of Real Property of Harris County, Texas on

OCT 30 1985



Janita Rodchevner
COUNTY CLERK,
HARRIS COUNTY, TEXAS

FILED FOR RECORD
8:30 A.M.

OCT 30 1985

Janita Rodchevner
County Clerk, Harris County, Texas

RETURN TO
GEORGE COVINGTON
KLEIN, HAVLICK & COVINGTON
1427 KEEFER ROAD
TOMBALL, TEXAS 77375

City Council Meeting Agenda Item Data Sheet

Meeting Date: January 18, 2021

Topic:

Authorize City Manager to execute contract between the City of Tomball and Texas Commission on Environmental Quality (TCEQ) for the award of a Texas Volkswagen Environmental Mitigation Program (TxVEMP) Grant, for an amount of \$72,284.00.

Background:

Staff submitted a grant application to the TCEQ to receive funds toward the replacement of an aging dump truck.

The City has been awarded the Texas Volkswagen Environmental Mitigation Program Grant in the amount of \$72,284.00. The grant funds received, plus budgeted funds from the City of \$56,345.00, will fund the purchase of a new dump truck to be utilized by the entire Public Works Department.

As part of the grant requirements, our current dump truck being replaced must be destroyed so that it is unable to be used in the future thus reducing omissions into the environment.

Origination: Public Works Department

Recommendation:

Staff recommends authorizing the City Manager to execute a contract between the City and the Texas Commission on Environmental Quality to receive grant funds through the Texas Volkswagen Environmental Mitigation Program in the amount of \$72,284.00.

Party(ies) responsible for placing this item on agenda: Meagan Mageo, Project Coordinator

FUNDING (IF APPLICABLE)

Are funds specifically designated in the current budget for the full amount required for this purpose?

Yes: ☒ No: ☐ If yes, specify Account Number: #650-651-6405

If no, funds will be transferred from account # _____ To account # _____

Signed	Meagan Mageo		Approved by		
	Staff Member	Date		City Manager	Date

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

TEXAS VOLKSWAGEN ENVIRONMENTAL MITIGATION PROGRAM CONTRACT

CONTRACT SIGNATURE PAGE

Contract Name:	Texas Volkswagen Environmental Mitigation Program (TxVEMP)
Contract Number:	582-21-22241-VW
PERFORMING PARTY Name:	City of Tomball
Total Contract Amount Not To Exceed:	\$72,284.00
Contract Effective Date:	Date of last signature
Contract Expiration Date & Purchase Expiration Date:	24 months after Contract Effective Date
Activity Life Expiration Date:	Five years from final reimbursement date

The Texas Commission on Environmental Quality (TCEQ), an agency of the State of Texas and the named PERFORMING PARTY enter this Contract for the purpose of providing financial assistance for emissions reduction projects as authorized under Texas Water Code Section 5.124, the Volkswagen Environmental Mitigation Trust Agreement for State Beneficiaries (State Trust), and the Beneficiary Mitigation Plan for Texas. The Parties agree the PERFORMING PARTY will conduct the Grant Activities required by the Contract and will be reimbursed from the State Trust for authorized Allowable Costs in accordance with the Texas Uniform Grant Management Standards and the Contract.

Authorized Official	Texas Commission on Environmental Quality (TCEQ)	City of Tomball (PERFORMING PARTY)
Printed name:	Nate Hickman	Mr. Robert S. Hauck
Title:	Manager, Grant Development and Management Section	City Manager
By (Authorized Signature):		
Date of Signature:		

**GENERAL CONDITIONS
for
Texas Volkswagen Environmental Mitigation Program
Replacement and Repower Activities**

ARTICLE 1. DEFINITIONS

Unless defined herein, terms in this Contract and Contract Documents will have the meanings provided in the Texas Uniform Grant Management Standards (UGMS) or the Volkswagen Environmental Mitigation Trust Agreement for State Beneficiaries (State Trust) and Beneficiary Mitigation Plan for Texas (Mitigation Plan). The following terms have the meanings indicated.

1.1 Activity Life - the time period established by the TCEQ that is used to determine the emissions reductions of the activity. The Activity Life begins on the date the final reimbursement payment is made under the grant, continuing for five (5) years afterwards. Upon acceptance by TCEQ of the final disposition verification and completion of all reimbursements, the TCEQ will notify the PERFORMING PARTY in writing of the Activity Life start and end dates for each activity.

1.2 Application - the Application for a grant submitted by the PERFORMING PARTY including any amendments or supplemental conditions added to the application. An Application may include one or more Supplemental Forms, which pertain to the individual activities to be conducted under the grant. The Application is used to develop the Scope of Work. In case of conflict between the Application and Scope of Work, the Scope of Work will take precedence.

1.3 Authorized Official - the individual authorized to sign legal documents on behalf of the TCEQ and the PERFORMING PARTY. Authorized Officials of the TCEQ and the PERFORMING PARTY are designated in writing in the Contract.

1.4 Contract Period - term of the Contract from the Contract Effective Date through final reimbursement payment. This Contract will administratively terminate at the end of the Contract Period with the final reimbursement payment and release of claims; however, the PERFORMING PARTY remains obligated for the Activity Life of the Contract.

1.5 Final Completion - when the Grant Activities are completed in the judgment of the TCEQ. This will usually occur upon the successful completion of the Activity Life of all the Grant Activities under this Contract.

1.6 Grant Activity/Activities - activities the PERFORMING PARTY has agreed to perform under this Contract that are detailed in the Scope of Work.

1.7 Grant - means the Contract between TCEQ and the PERFORMING PARTY consisting of the documents listed in Article 8, Contract Documents. The term "Grant" shall be used interchangeably as "Agreement" or "Contract."

1.8 Grant Equipment - the equipment, real property, vehicles, qualifying fuel, infrastructure, processes and technology, and the related goods and services in a Grant Activity for which the cost of purchase or utilization is reimbursed, in whole or in part, under this Contract. The term includes replacements for the Grant Equipment which is lost, stolen, or irreparably damaged.

1.9 Incremental Costs - the cost of an approved activity less a baseline cost that would otherwise be incurred by the PERFORMING PARTY in the normal course of business, as determined according to the RFGA.

1.10 Minor Change - a written document which provides for minor changes in the work in accordance with these General Conditions, but which does not involve a change in the Contract Amount or the Contract Period.

1.11 NO_x - nitrogen oxides (NO_x) are a class of pollutants formed when fuel is burned at a very high temperature (above 1200° F), such as in automobiles and power plants. For air pollution purposes, it is composed primarily of nitric oxide (NO), nitrogen dioxide (NO₂), and other oxides of nitrogen, and it plays a major role in the formation of ground-level ozone in the atmosphere through a complex series of reactions with volatile organic compounds (VOCs).

1.12 Optimum Performance - the level of performance at which Grant Equipment functions to achieve the anticipated emissions reductions.

1.13 PERFORMING PARTY – the grant recipient indicated on the signature page of this Contract, also referred to in this agreement as the “grantee.”

1.14 Purchase Expiration Date – the date specified in the Contract when all costs for Grant Equipment must be incurred and paid.

1.15 Priority Areas - the eligible areas and counties where the PERFORMING PARTY must use the grant-funded equipment a minimum of 51% of the annual use during the Activity Life. The applicable Priority Areas are listed in the TxVEMP RFGA, TxVEMP Application, and the Scope of Work of this Contract.

1.16 Project Representative – individual identified by each party and designated in this Contract to whom all communications, signed contracts and related documents, and written correspondence will be addressed and delivered.

1.17 Scope of Work – the contract document detailing the requirements of the Grant Activities.

1.18 State - means the State of Texas.

1.19 Termination - means a permanent end and cessation of the Contract because: the Purchase Expiration Date has passed without completion of purchases eligible for reimbursement; all requirements of this Contract are completed within the sole discretion of the TCEQ; the PERFORMING PARTY has requested termination and repaid funds as allowed by Section 19.7; or the Contract is ended by action of the TCEQ for cause or for convenience. The Date of Termination is the Purchase Expiration Date, Final Completion, or the effective date of action by the TCEQ ending the Contract for cause or for convenience, as applicable.

1.20 Written Amendment - a document signed by the PERFORMING PARTY and the TCEQ which authorizes an adjustment in the Contract Amount or the Contract Period, or substantive changes to the Grant Activities affecting obligations between the parties issued on or after the Effective Date of the Contract.

ARTICLE 2. GOVERNING STANDARDS AND LEGAL AUTHORITY

This Contract is subject to: (1) Texas Water Code Section 5.124 (TCEQ’s authority to award grants) and Section 5.229 (TCEQ’s general authority to enter into contracts); (2) the Uniform Grant and Contract Management Act, Texas Government Code, Section 783.001 et seq., and the Texas Uniform Grant Management Standards (UGMS); (3) TCEQ rules and policies (pertaining to TCEQ contracts and grants); (4) the State Trust Agreement and the Mitigation Plan; (5) the RFGA; and (6) other applicable Federal and State rules and statutes.

ARTICLE 3. PURPOSE

This grant program implements a portion of the Texas Volkswagen (VW) Environmental Mitigation Program (TxVEMP) established and administered by the TCEQ. Visit the TxVEMP website, www.TexasVWFund.org, for more information on the background and purpose of the TxVEMP.

ARTICLE 4. FUNDS

4.1 Amount Limits on Funds. The PERFORMING PARTY will receive reimbursement for the costs of the conforming Grant Activities. The Total Contract Amount Not to Exceed is shown on the Signature Page.

4.2 TCEQ in its sole discretion will determine whether costs are eligible and conform to the Grant Activities. The actual amount of reimbursement authorized may be less than the Total Contract Amount Not to Exceed. The Total Contract Amount Not to Exceed is not a guarantee of payment, nor does the Contract guarantee a minimum amount of reimbursement.

4.3 Time Limits on Funds (Purchase Expiration Date). Costs to be reimbursed under this Contract must be incurred and paid by the Purchase Expiration Date as identified on the Signature Page of this Contract.

ARTICLE 5. CONTRACT PERIOD

5.1 This Contract will commence on the Effective Date of the Contract and will expire 24 months after that date (Contract Expiration Date). The Contract Expiration Date may be extended through a Written Amendment. Extensions are subject to TCEQ’s sole discretion.

5.2 The PERFORMING PARTY agrees to perform in accordance with the Contract Documents beyond any event of termination and through the end of the Activity Life of any Grant Activity for which the PERFORMING PARTY has been reimbursed. The PERFORMING PARTY acknowledges that certain contractual requirements, such as record retention and audit survive the Expiration Date or termination of the Contract.

5.3 Due to the time limitations on availability of the grant funds, the TCEQ's obligation to reimburse the PERFORMING PARTY's allowable costs incurred and paid expires forty-five (45) days after the Purchase Expiration Date. If no reimbursement has been requested as of this date, this Contract will terminate without any further obligations to either party.

ARTICLE 6. ELIGIBLE ACTIVITIES

6.1 The PERFORMING PARTY agrees to complete all Grant Activities as described in the Scope of Work and in accordance with the Contract Documents.

6.2 The TCEQ may accept performance of a reduced number of the individual Grant Activities listed in the Scope of Work, at its sole discretion. The PERFORMING PARTY will only be reimbursed for those Grant Activities for which eligible purchases are completed.

6.3 The vehicle or piece of equipment being acquired under a grant may not have been acquired prior to the opening of the grant application period, unless otherwise approved by the TCEQ.

ARTICLE 7. REPRESENTATIONS

The PERFORMING PARTY hereby ratifies and attests to all representations and certifications in the Application and agrees to give prompt written notice to the TCEQ if there is any material change in these representations or certifications.

ARTICLE 8. CONTRACT DOCUMENTS

8.1 The Contract Documents which comprise the entire Contract between TCEQ and the PERFORMING PARTY are (in order of precedence in the event of conflicts):

- 8.1.1 Contract Signature Page.
- 8.1.2 Scope of Work.
- 8.1.3 Special Conditions.
- 8.1.4 General Conditions.
- 8.1.5 The TCEQ Request for Grant Applications, incorporated herein by reference.
- 8.1.6 Beneficiary Mitigation Plan for Texas, incorporated herein by reference.
- 8.1.7 Environmental Mitigation Trust Agreement for State Beneficiaries ("State Trust"), incorporated herein by reference.
- 8.1.8 The PERFORMING PARTY's Original Application, and any supplemental documentation submitted by the PERFORMING PARTY in support of the Application or grant award, incorporated herein by reference.
- 8.1.9 The following which may be delivered or issued after the Effective Date of the Contract and are not attached: all written Amendments, and other documents amending, modifying, or supplementing the Contract Documents pursuant to the General Conditions.

8.2 The information and data provided in the Application submitted by the PERFORMING PARTY may have been altered after submittal to the TCEQ, to ensure that the information in the application is accurate. The PERFORMING PARTY has reviewed the Scope of Work (a Contract Document) and hereby ratifies, adopts, and agrees to all such alterations contained within the Scope of Work.

8.3 There are no Contract Documents other than those listed above in this Article. The Contract Documents may be amended, modified, or supplemented only as provided in the General Conditions.

ARTICLE 9. ELIGIBILITY FOR COST REIMBURSEMENT

9.1 The TCEQ will direct the Trustee of the State Trust to act as Disburser to issue payment to the PERFORMING PARTY for those costs which are eligible for reimbursement in accordance with all requirements. Costs are considered eligible for reimbursement when the TCEQ, in its sole discretion, determines that the costs are the reasonable, necessary, actual, and allowable costs of implementing the Grant Activities listed in the Scope of Work. Costs must be included in the Scope of Work to be eligible for reimbursement.

9.2 The Grant Equipment must be acquired, with costs incurred and paid to be eligible for reimbursement. If the PERFORMING PARTY is obligated under a commercial financing agreement resulting in PERFORMING PARTY's purchase and ownership of the equipment (such as a capital lease or finance lease), this is also eligible. Leases that do not meet this criterion are ineligible.

- 9.2.1 If the Contract includes Infrastructure projects, a standard lease agreement of the infrastructure equipment without a binding commitment to purchase is eligible for these projects. The lease must extend to the end of the Activity Life for the Infrastructure equipment.

Procurement

9.3 The PERFORMING PARTY agrees to follow all the requirements of the Texas Uniform Grant Management Standards (UGMS). The PERFORMING PARTY must ensure its procurement practices prohibit any actual or apparent conflicts of interest as described under UGMS __.36 Procurement (b)(3). Performing Party agrees that TCEQ has sole discretion to determine whether a conflict exists, and that a conflict of interest may be considered a material breach of this Contract. Additionally, PERFORMING PARTY will adhere to the applicable cost principles under __.22 Allowable Costs. The UGMS document is located at:

<https://comptroller.texas.gov/purchasing/docs/ugms.pdf>

Reasonable Costs

- 9.4 Reasonableness of costs depends upon a variety of considerations and circumstances, including:
- 9.4.1 whether it is the type of cost generally recognized as ordinary and necessary for the conduct of the PERFORMING PARTY's business or the contract performance;
 - 9.4.2 generally accepted sound business practices, arm's length bargaining, and federal and state laws and regulations;
 - 9.4.3 the PERFORMING PARTY's responsibilities to the TCEQ, other customers, the owners of the business, employees, and the public at large; and
 - 9.4.4 any significant deviations from the accepted industry established practices.

Necessary Costs

9.5 Necessary costs include costs which are directly attributable to the implementation of the Grant Activities and must be included in the Scope of Work.

- 9.6 Unless expressly authorized by the TCEQ, necessary costs do not include:
- 9.6.1 the cost of money;
 - 9.6.2 the interest charges on a purchase money loan or on a deferred payment purchase agreement; or
 - 9.6.3 the cost of converting from a lease to a purchase at the end of the lease period.

Actual Costs

- 9.7 The criteria for actual costs include:
- 9.7.1 the direct Incremental Costs of implementing the Grant Activities; or
 - 9.7.2 the true price charged by a vendor/contractor to the PERFORMING PARTY for implementing the Grant Activities.
- 9.8 Unless expressly authorized by the TCEQ, actual costs do not include:
- 9.8.1 amounts deducted from the true price of the purchase or lease acquisition of Grant Equipment whether as discounts, rebates, refunds or otherwise;
 - 9.8.2 amounts which the PERFORMING PARTY owes or agrees to pay a vendor or contractor for any purpose other than the implementation of Grant Activities;
 - 9.8.3 amounts in the charges which a vendor/contractor intends to return to PERFORMING PARTY in the form of cash, goods, services, gifts, intangibles, discounts or any other items of value;
 - 9.8.4 baseline costs designated by the TCEQ in the Application reflecting the costs that would otherwise be incurred by the PERFORMING PARTY in the normal course of business; or
 - 9.8.5 amounts which are reimbursed by other public sources or for which tax credits or other public financial incentives are or will be received by the PERFORMING PARTY.

9.9 The PERFORMING PARTY's documentation of expenses is required under Article 17 of these General Conditions.

Allowable Costs

9.10 In order to be allowable, costs must be included in the Scope of Work, and must satisfy the requirements of: this Contract, the UGMS, state agency rules, and all applicable state and federal laws.

Consulting (Application Assistance) Fees

9.11 Any fees charged by a consultant for preparation of the Application, either directly or as an addition to the cost basis of the grant-funded vehicle, equipment, or engine, are the sole responsibility of the PERFORMING PARTY or the vendor and are not an allowable cost under this Contract. All purchase decisions must be based on sound business practices and arm's length bargaining. It is generally considered acceptable for an applicant to accept assistance from a vendor or an agent of a vendor in preparing the Application, so long as any decision by the applicant to purchase the grant-funded vehicle or equipment from that vendor is made independently and meets the other reasonableness provisions in the grant contract. However, if the consultant is paid directly by the applicant to complete the Application or to act as the PERFORMING PARTY's agent for the grant process, purchases of Grant Equipment from an entity in which the consultant has an interest will be considered a conflict of interest under Subsection 9.3 of this Contract.

9.12 Unless otherwise approved in advance by the TCEQ, fees for a third-party consultant hired by the PERFORMING PARTY to manage and administer the grant-funded activities, including coordination of the work and submission of reports and paperwork to the TCEQ, will be considered administrative costs of the PERFORMING PARTY and are not allowable under this Contract. This provision does not limit the ability of an equipment vendor or installer to include ordinary, reasonable, and necessary operational costs in the price of the vehicle, equipment, or installation services.

Preapproval of Costs

9.13 The TCEQ may request additional details regarding costs listed in the Scope of Work and may require that the PERFORMING PARTY obtain preapproval of specific costs from the TCEQ prior to incurring those costs.

Purchase Agreements and Subcontracts

9.14 If requested by the TCEQ, the PERFORMING PARTY must provide the TCEQ with copies of purchase agreements or subcontracts for cost items to be reimbursed under this Contract for approval, prior to the PERFORMING PARTY entering into a final purchase agreement and/or subcontract.

Additional Evidence

9.15 The TCEQ may at any time before or after reimbursement, as necessary in its sole discretion, request additional evidence concerning costs.

Additional Criteria for Reimbursement

9.16 The TCEQ may at any time, in its sole discretion, establish additional criteria and requirements for reimbursement of costs as serves the best interests of the State.

Costs in Scope of Work are Maximum Amounts, Not a Guarantee

9.17 Amounts of costs stated in the Scope of Work are maximum amounts of reimbursement. By stating the amounts, TCEQ does not 1) guarantee payment of those amounts or 2) waive the requirements for reimbursement which must subsequently and continually be satisfied by the PERFORMING PARTY. The amount of costs for which reimbursement may be requested is the lesser of 1) the costs stated in the Scope of Work or 2) the actual eligible costs.

No Entitlement to Funds

9.18 The PERFORMING PARTY has a continuing obligation to satisfy the requirements for reimbursement. Neither a request for reimbursement nor TCEQ's direction of the Disburser to issue payment nor any other action will establish an entitlement in the PERFORMING PARTY to payment from the TCEQ or the Disburser.

9.19 By directing the Disburser to issue a check for payment, the TCEQ does not waive any requirements for the reimbursement of costs. The TCEQ may audit the records of the PERFORMING PARTY and may also audit the PERFORMING PARTY's performance as to the Grant Activities and the administrative requirements. The PERFORMING PARTY shall return grant funding to the State Trust for any reimbursed expenses that are later determined to be unallowable under the terms of this Contract.

Debts owed to the State

9.20 If the PERFORMING PARTY owes any amount(s) to the State of Texas TCEQ may not authorize reimbursement until the debt is satisfied.

Child Support

9.21 Under Section 231.006 of the Texas Family Code, a child support obligor who is more than 30 days delinquent in paying child support and a business entity in which the obligor is a sole proprietor, partner, shareholder, or owner with an ownership interest of at least 25 percent is not eligible to receive a state grant or loan. By executing this Contract, the PERFORMING PARTY certifies that the individual or business entity named in this contract, bid, or application is eligible to receive the specified grant, loan, or payment and acknowledges that this Contract may be terminated and payment may be withheld if this certification is inaccurate.

Required Waiver

9.22 Any checks to the PERFORMING PARTY will be issued on behalf of TCEQ by Wilmington Trust, N.A., acting as Disburser. Checks will include the following waiver language below the endorsement signature line of each check: "By endorsing and cashing this check the Payee hereof agrees and acknowledges that: (i) Wilmington Trust N.A. ("WT") is acting merely as an agent of the TCEQ solely to assist it in making payments and that such payees agrees to waive any and all claims whatsoever, in law and/or in equity, against WT, and agrees not to initiate a suit against WT in respect of, and agrees that WT will not be liable for, any actions that WT takes, or abstains from taking, in either case, arising out of or in connection with the performance of its duties on behalf and as directed by TCEQ and (ii) WT shall not be liable for indirect, special, incidental, punitive or consequential losses or damages of any kind whatsoever or force majeure events or Acts of God in connection with making this payment for TCEQ."

9.22.1 The PERFORMING PARTY acknowledges that the Disburser is a third-party beneficiary of this acknowledgement.

ARTICLE 10. REQUEST FOR REIMBURSEMENT

10.1 Eligible expenses must have been incurred by the PERFORMING PARTY prior to the Purchase Expiration Date. To receive reimbursement for eligible expenses, the PERFORMING PARTY shall submit no more frequently than monthly, a completed TCEQ Request for Reimbursement form, to be made available to the PERFORMING PARTY by the TCEQ. The request and forms shall be mailed or delivered to:

Texas Commission on Environmental Quality
Air Grants Division, MC-204
P.O. Box 13087
Austin, TX 78711-3087

10.2 The PERFORMING PARTY is responsible for fully and accurately completing the Request for Reimbursement form. The PERFORMING PARTY will receive its reimbursement payment in the form of a check sent by Wilmington Trust, N.A., as Disburser. All payments will be sent to the PERFORMING PARTY by the Wilmington Trust, N.A. at the direction of TCEQ. Neither TCEQ nor Wilmington Trust, N.A. is liable for any inaccurate or incomplete information provided by the PERFORMING PARTY. The PERFORMING PARTY is responsible for any additional costs or fees related to correcting any inaccurate information provided by the PERFORMING PARTY, including any tax penalties or fees resulting from inaccurate information.

10.3 The PERFORMING PARTY will indicate on the Request for Reimbursement whether any additional financial incentives have been received, or are expected to be received, by the PERFORMING PARTY that offsets the grant activity costs, including tax credits or deductions, other grants, or any other public financial assistance.

10.4 Except as provided for under Subsection 10.6 below, to be eligible for reimbursement under this Contract, a cost must have been incurred and paid by the Purchase Expiration Date and prior to claiming reimbursement from TCEQ. A cost may not be considered incurred until the Grant Equipment and/or goods and services included under the cost have been received and accepted by the PERFORMING PARTY. The cost must have been paid by the PERFORMING PARTY prior to claiming reimbursement.

Project Costs

10.5 The TCEQ will direct the Disburser to reimburse the PERFORMING PARTY for no more than the amount specified for each Activity in the Scope of Work. This amount may be adjusted downward in accordance with the Contract.

10.6 If the PERFORMING PARTY has paid eligible expenses that are equal to or greater than the grant amount with cash-on hand, the reimbursement may be paid directly to the PERFORMING PARTY. In the event the PERFORMING PARTY finances the Grant Equipment, TCEQ may not pay the PERFORMING PARTY directly unless the PERFORMING PARTY has paid an amount equal to or greater than the grant amount; however, the payment may be assigned directly to the financing company. Supporting documentation must be submitted to establish that the goods or services were received, and that the payment amount is owed to the financing company indicated by the PERFORMING PARTY.

10.6.1. If an assignment is requested, the PERFORMING PARTY must complete the Assignment Request and Acceptance section of the Request for Reimbursement.

10.7 A final Request for Reimbursement Form, indicating in the appropriate box that it is the final request, must be submitted to the TCEQ by no later than forty-five (45) days after the Purchase Expiration Date.

10.8 All Request for Reimbursement forms must clearly detail and document the costs incurred (or obligated under a financing agreement) and paid. TCEQ will review the Request for Reimbursement form and supporting documentation to determine the eligibility of a particular cost. Supporting documentation materials, as directed by the TCEQ in the instructions accompanying the forms, shall be attached to the report forms to clearly show that the cost was incurred and, except where the payment is assigned to another entity, paid.

10.9 Unless otherwise approved by the TCEQ, all work on the Grant Equipment must be completed and the Grant Equipment operational and delivered in final form before reimbursement will be made on an Activity. The invoices and payment documents provided by the PERFORMING PARTY to support the reimbursement request must document that all work is completed, and the Grant Equipment is operational.

Replacement, Repower, and On-Site Infrastructure Project Costs

10.10 For replacement, repower, and on-site infrastructure projects, the TCEQ will reimburse the PERFORMING PARTY for no more than the eligible amount for the purchase of the replacement vehicle or equipment as specified in the RFGA.

Purchase/Payment Documents

10.11 In accordance with the terms of this Contract, for any purchase, deferred payment purchase, or other commercial financing arrangement, the PERFORMING PARTY must submit any supporting documentation required or requested by TCEQ. To receive payment for each Request for Reimbursement, and allow for any subsequent audit, the PERFORMING PARTY is specifically required to submit the following supporting documents:

- 10.11.1 canceled checks or wire transfers;
- 10.11.2 written purchase and commercial financing agreements;
- 10.11.3 Bills of Sale or Receipts for Delivery;
- 10.11.4 for deferred payment purchases, statements of account status showing the account in good standing and the equipment is in possession of the PERFORMING PARTY;
- 10.11.5 Uniform Commercial Code (UCC) Financing Statement (Form UCC1) filing, if applicable. (The UCC allows a creditor to notify other creditors about a debtor's assets used as collateral for a secured transaction by filing a public notice (financing statement) with a particular filing office.); and
- 10.11.6 other documentation requested by TCEQ to support the Request for Reimbursement.

10.12 The TCEQ may waive the requirement for submission of any supporting documents that are not applicable to the PERFORMING PARTY.

10.13 If the Request for Reimbursement does not satisfactorily demonstrate the accomplishment of the required tasks, or that costs are allowable, eligible, actual, and incurred costs, the TCEQ may reject the request, until the deficiencies have been corrected. Satisfactory accomplishment of a task is within the judgment of the TCEQ; however, such judgment must be reasonable.

10.14 The TCEQ is not obligated to direct the Disburser to make payment until the Request for Reimbursement is approved by the TCEQ. Payments may be suspended or withheld in all or part as authorized by the Contract.

ARTICLE 11. RELEASE OF CLAIMS

The final Request for Reimbursement must include a signed Release of Claims. The Release of Claims will be for the benefit of TCEQ and the Disburser, and the PERFORMING PARTY will release all claims for payment of any funds due and payable, pending PERFORMING PARTY'S receipt of the funds from the Disburser for the final Request for Reimbursement.

ARTICLE 12. PERFORMING PARTY'S RESPONSIBILITIES TO THE TCEQ: GENERAL

12.1 All Grant Activities for which reimbursement is requested must be completed as set forth in the Scope of Work.

12.2 The Grant Equipment is listed in the Scope of Work. For on-road vehicle and non-road equipment replacement projects only, PERFORMING PARTY may substitute a replacement vehicle and/or engine for the unit listed in the Scope of Work; provided that the substitute unit meets all eligibility and other requirements, is certified to the same or better NO_x emission standard or family emission limit (FEL) and will result in the same or better NO_x emissions reductions as the unit listed. Any substitution is subject to review and approval by TCEQ. For other project types and categories, PERFORMING PARTY may not substitute different Grant Equipment for the units listed in the approved Application without approval from the TCEQ.

12.3 The PERFORMING PARTY agrees to continuously own, or otherwise commercially finance the Grant Equipment; continuously maintain registration of the Grant Equipment in Texas; and operate the Grant Equipment in Texas for the specified Activity Life, regardless of the financing arrangements used for the purchase of the Grant Equipment, and subject to the more specific provisions contained in Article 14 of the General Conditions of this Contract.

Professional Quality

12.4 The PERFORMING PARTY shall be responsible for the professional quality, technical accuracy, timely completion and the coordination of all Grant Activities under this Contract.

Supervision and Superintendence

12.5 The PERFORMING PARTY is responsible for the supervision, inspection and direction of the Grant Activities in a competent and efficient manner, devoting such attention thereto and applying such skills and expertise as may be necessary to perform the Grant Activities in accordance with the Contract Documents. The PERFORMING PARTY shall be solely responsible for the means, methods, techniques, sequences, and procedures of the Grant Activities. The PERFORMING PARTY agrees to completely implement the Grant Activities in accordance with the Contract.

Materials & Equipment

12.6 Unless otherwise specified in the Contract, the PERFORMING PARTY will assume full responsibility for all materials, equipment, labor, transportation, tools, appliances, fuel, power, light, heat, telephone, water, sanitary facilities, temporary facilities and all other facilities and incidentals necessary for the implementation and completion of the Grant Activities.

12.7 Unless otherwise expressly agreed by the TCEQ, all Grant Equipment will be of good quality and as provided in the Contract Documents. All materials and equipment shall be applied, installed, connected, erected, used, cleaned and conditioned, and maintained in accordance with instructions of the applicable manufacturer and supplier.

12.8 The PERFORMING PARTY agrees to maintain the Grant Equipment as necessary to keep the Grant Equipment in good condition and functioning at Optimum Performance during the Activity Life. Failure to maintain the Grant Equipment as necessary to achieve the required Annual Usage shall constitute a material breach of this Contract.

12.9 The PERFORMING PARTY agrees that the emissions reductions generated by each activity over the Activity Life may not be used for credit under any state or federal emissions reduction credit averaging, banking, or trading program. Emissions reductions generated may not be used as a marketable emissions reduction credit and may be used to demonstrate conformity with the state implementation plan. PERFORMING PARTY agrees that any marketable credits generated by emissions reduction measures are transferred to the TCEQ, and that the reductions are permanently retired. The PERFORMING PARTY may not combine with this grant funding from other incentive programs that require transfer of the emissions reductions to that other program.

ARTICLE 13. PERFORMING PARTY'S RESPONSIBILITIES TO THE TCEQ: INSURANCE, REPAIR, AND REPLACEMENT

13.1 Unless otherwise expressly agreed by the TCEQ, the PERFORMING PARTY must obtain and maintain a policy of insurance for the Activity Life which is sufficient to provide for replacement of Grant Equipment which is lost, stolen, or irreparably damaged. Governmental entities may use an established self-insurance program to satisfy this requirement. If requested by the TCEQ, the PERFORMING PARTY shall provide proof of insurance coverage. The TCEQ may approve alternative forms of insurance to comply with this requirement, including evidence of self-insurance. The TCEQ may also waive this requirement, at its sole discretion, for certain types of entities. Previously submitted certificates of insurance coverage may be amended to reflect newly extended coverage. A failure to comply with this requirement is considered a material breach of the Contract.

13.2 Upon the occurrence of a repairable malfunction of or damage to Grant Equipment which affects emissions reductions during the Activity Life, the PERFORMING PARTY will repair and restore the Grant Equipment to the level of Optimum Performance.

13.3 Upon the occurrence of loss, theft, or irreparable damage of Grant Equipment during the Activity Life, the PERFORMING PARTY will replace the lost, stolen, or damaged Grant Equipment with similar equipment which achieves the same Optimum Performance or better. The replacement Grant Equipment must be in operation no later than 60 consecutive days from the occurrence of loss, theft, or damage, unless the TCEQ expressly agrees to a longer period. Replacement Grant Equipment must meet all eligibility requirements applicable to the original Grant Equipment and is subject to all the requirements applicable to Grant Equipment contained in this Contract.

13.4 The PERFORMING PARTY shall fully comply with all requirements of any agreements with third parties that have a security interest or similar interest in the Grant Equipment. Repossession, seizure, or any other event where the PERFORMING PARTY loses possession of the Grant Equipment shall be considered a material breach of this Contract and shall require the return of grant funds.

ARTICLE 14. PERFORMING PARTY'S RESPONSIBILITIES TO THE TCEQ: GRANT ACTIVITIES

14.1 The emissions reduction benefit supporting the award of this grant is based upon the PERFORMING PARTY's successful performance of the Grant Activities as detailed in the Scope of Work.

14.2 The PERFORMING PARTY agrees that if the usage of the Grant Equipment does not meet the requirements listed in the Scope of Work, the PERFORMING PARTY will return the grant funds to the State Trust.

14.2.1 The determination of whether return of funds is required will be primarily based on whether the Grant Equipment is used and maintained in the manner and area specified in the Scope of Work during the Activity Life.

14.3 State law and TCEQ policy require that TCEQ remain in contractual privity with the entity operating the Grant Equipment. TCEQ must retain the ability to enforce until after the Activity Life of this Contract. Any act by the PERFORMING PARTY that impairs the TCEQ's ability to enforce the Contract, including sale of the Grant Equipment, transfer of the Grant Equipment, loss of the Grant Equipment, sale of the PERFORMING PARTY's business interests, or liquidation of the PERFORMING PARTY's assets (including the Grant Equipment), shall constitute a material breach of this Contract and shall require the return of grant funds.

14.3.1 The decision by TCEQ on whether to require return of grant funds may include consideration of whether the Grant Equipment will continue to be used in a manner consistent with the Scope of Work. If TCEQ, in its sole discretion, allows the assignment of this Contract, the PERFORMING PARTY and proposed assignee will be required to enter a TCEQ Consent to Assignment agreement that shall include the assignee's obligation to accept this Contract and to continue to use the Grant Equipment subject to the terms of this Contract.

14.4 If the PERFORMING PARTY is required to return grant funds, the TCEQ, at its sole discretion, may allow for the return of a pro-rated share of the reimbursement funds reflecting a partial failure to perform the requirements of the Scope of Work. This determination shall depend on factors including, but not limited to, use of the grant equipment in a manner that maintained overall program eligibility, full completion of reimbursement and equipment disposition requirements, the PERFORMING PARTY's good-faith efforts to

perform the grant activities during the Activity Life, and the PERFORMING PARTY's compliance with notification requirements of this Contract (i.e., notification before sale of equipment).

ARTICLE 15. PERFORMING PARTY'S RESPONSIBILITIES TO THE TCEQ: PROJECT STATUS, AND LONG-TERM MONITORING

15.1 As a condition of receiving grant funds, the PERFORMING PARTY agrees to maintain and operate the Grant Equipment as specified in the Scope of Work for the Activity Life of this Contract.

15.2 If requested by the TCEQ during a periodic review, the PERFORMING PARTY shall provide information on the status and completion of grant activities. The PERFORMING PARTY shall provide such information on the form or in a format requested by the TCEQ, and within a reasonable time frame as may be requested by the TCEQ.

15.3 The PERFORMING PARTY agrees that failure to comply with the Scope of Work during the Activity Life and/or submitting documents with false, incorrect, or incomplete information constitutes a material breach of this Contract and may require a return of the reimbursement grant funds.

ARTICLE 16. PERFORMING PARTY'S RESPONSIBILITIES TO THE TCEQ: DISPOSITION OF REPLACED VEHICLES AND ENGINES

16.1 The PERFORMING PARTY agrees to dispose of the vehicles, equipment, and engines being replaced by complete destruction or otherwise rendering them permanently inoperable. This may be performed by complete crushing of the vehicle and engine or putting a 3-inch or larger hole through the engine block on both sides (or otherwise destroying it) and cutting both frame rails in half. The structural damage to the vehicle or equipment must be such that repairs are not possible.

16.2 The PERFORMING PARTY shall verify the final disposition of the vehicles and engines replaced under this Contract on the TCEQ-provided form. The PERFORMING PARTY must submit a copy of a Texas Nonrepairable Vehicle Title issued by the Texas Department of Motor Vehicles (TxDMV) for the on-road vehicle(s) replaced under this Contract. The Texas Nonrepairable Vehicle Title must be submitted to the TCEQ simultaneously with the required disposition documentation. The final disposition forms shall be submitted prior to or with the Request for Reimbursement.

16.3 The PERFORMING PARTY must submit photographs of the vehicles and engines being destroyed, both before and after the vehicles, equipment, and/or engines are destroyed or rendered inoperable. The TCEQ must approve the forms and supplemental documentation submitted by the PERFORMING PARTY to meet the disposition requirement. Such approval is at the sole discretion of TCEQ. The PERFORMING PARTY shall provide TCEQ with any clarification and additional documentation as requested by TCEQ to approve disposition.

16.4 The PERFORMING PARTY agrees that failure to properly destroy and render permanently inoperable a vehicle or engine replaced under this Contract will result in non-payment of the grant funds. This Article shall also apply to a failure to provide properly completed documentation of final disposition of equipment as required by this Contract.

Credit for Replaced Vehicles Or Equipment

16.5 In determining the expenses eligible for reimbursement under this Contract, the cost of replacement or repower activities shall be reduced by the value of any credit or other financial compensation received by the PERFORMING PARTY for the sale or trade-in of the destroyed vehicles, equipment, or engines being replaced, including, the parts from those vehicles, equipment, or engines, for the sale of the scrapped vehicles, equipment, engines being replaced, trade-in of engines for remanufacture, or insurance proceeds.

16.6 For on-road vehicle and non-road equipment replacement activities, the TCEQ may use a default scrappage value of \$1,000 in lieu of the actual value and in lieu of the PERFORMING PARTY reporting the value to the TCEQ. For activities involving the repower of heavy-duty equipment the default scrappage value is \$250.

16.7 If TCEQ does not use the above default scrappage values, the actual scrappage value or other value received for the old vehicle, equipment, or engine is considered a cost of performing the Grant Activities and as such must satisfy the cost guidelines of this Contract. The value received for the vehicle or equipment being replaced must be the result of arms-length bargaining with the entity disposing of the replaced vehicle or equipment and must reflect actual market value.

ARTICLE 17. PERFORMING PARTY'S RESPONSIBILITIES: ADMINISTRATIVE REQUIREMENTS

Access to Records, Grant Equipment, and Vehicles, Equipment, and Engines Being Replaced

17.1 State Auditor's Office. The PERFORMING PARTY understands that acceptance of funds under this Contract acts as acceptance of the authority of the State Auditor's Office, or any successor agency, to conduct an audit on investigation in connection with those funds. Under the direction of the legislative audit committee, an entity that is the subject of an audit or investigation by the State Auditor's Office must provide the State Auditor with access to any information the State Auditor considers relevant to the investigation or audit. The PERFORMING PARTY further agrees to cooperate fully with the State Auditor's Office or its successor in the conduct of the audit or investigation, including providing all records requested. The PERFORMING PARTY will ensure that this clause concerning the authority to audit funds received indirectly by subcontractors through the PERFORMING PARTY and the requirement to cooperate is included in any subcontract it awards under this Contract. The PERFORMING PARTY will include in all subcontracts for work under this Contract a requirement that subcontractors will provide access to all relevant financial records including bank statements.

17.2 The PERFORMING PARTY shall allow access to all Grant Equipment by the TCEQ, the State of Texas, the State Auditor's Office, and any of their authorized representatives for the purpose of review, on-site inspection, and/or audit. In addition, the PERFORMING PARTY shall allow access to all vehicles, equipment, and engines being replaced under this Contract.

Maintenance of Records

17.3 The PERFORMING PARTY shall maintain books, records, documents, and other evidence reasonably pertinent to performance of the Grant Activities and requirements of the Contract, including the Contract or amendments thereto. All financial records will be maintained in accordance with generally accepted accounting principles, the UGMS, and this Contract. The PERFORMING PARTY shall also maintain the financial information and data used in the preparation or support of any request for reimbursement (direct and indirect), price or profit analysis for this Contract, and a copy of any cost information or analysis submitted to the TCEQ. The PERFORMING PARTY shall allow access to all the material including bank statements and records by the TCEQ, the State of Texas, the State Auditor's Office, and any of their authorized representatives for the purpose of review, inspection, audit, excerpts, transcriptions, and/or copying during normal business hours. The PERFORMING PARTY shall provide appropriate facilities and equipment for such access and inspection.

17.4 The PERFORMING PARTY agrees to the disclosure of all information and reports resulting from access to records under this Contract.

17.5 Records under this Article shall be maintained by the PERFORMING PARTY during performance of Grant Activities under this Contract and for three (3) years after the Activity Life of equipment under this Contract. If any litigation, claim, negotiation, audit, cost recovery, or other action (including actions concerning costs of items to which an audit exception has been taken) involving such records has been started before the expiration of the three year period, such records must be retained until completion of the action or resolution of all issues which arise from it, or until the end of the regular three year period, whichever is later.

17.6 Subject to the obligations and conditions set forth in this Contract, title to Grant Equipment (hereafter referred to in this Article as "property") acquired under this Contract by the PERFORMING PARTY will vest upon acquisition in the PERFORMING PARTY.

17.7 The PERFORMING PARTY may develop and use its own property management system, which must comply with all applicable federal, state, and local laws, rules, and regulations. If an adequate system for accounting for property owned by the PERFORMING PARTY is not in place or is not used properly, the *State Property Accounting Process User's Guide* (<https://fmx.cpa.state.tx.us/fmx/pubs/spaproc/index.php>) issued by the State Comptroller of Public Accounts will be used as a guide for establishing such a system. The property management system used by the PERFORMING PARTY must meet the requirements set forth in this Article.

- 17.7.1 Property records of Grant Equipment must be maintained that include a description of the property, a serial number or other identification number, the source of property, usage and mileage (separated by location of usage and mileage), who holds title, the acquisition date, and the cost of the property, percentage of TCEQ participation in the cost of the property, the

location, use and condition of the property, and any ultimate disposition data including the date of disposal and sale price of the property.

- 17.7.2 The PERFORMING PARTY will conduct a physical inventory of all Grant Equipment no less frequently than once every two years during the Activity Life and reconcile the results of such inventories with the appropriate property records. Property control procedures utilized by the PERFORMING PARTY must include adequate safeguards to prevent loss, damage, or theft of the Grant Equipment.

Accounting Systems

17.8 The PERFORMING PARTY shall have an accounting system which accounts for costs in accordance with generally accepted accounting standards or principles and complies in all material respects with applicable State law, regulations, and policies relating to accounting standards or principles. The PERFORMING PARTY must account for costs in a manner consistent with such standards or principles. This system shall provide for the identification, accumulation, and segregation of allowable and unallowable costs among projects.

PERFORMING PARTY's Representative

17.9 The PERFORMING PARTY will identify in writing a Project Representative as the person authorized to receive and respond to inquiries and requests from the TCEQ, to manage the Grant Activities being performed, and to act on behalf of the PERFORMING PARTY.

17.10 The PERFORMING PARTY agrees to ensure that its authorized Project Representative, or someone to whom that person has delegated his or her authority, is available during regular business hours for consultation with the TCEQ. Written notice of any such delegation will be provided to the TCEQ.

Personnel

17.11 PERFORMING PARTY shall provide competent, suitably qualified personnel, whether employees or contractors to implement the Grant Activities as required by the Contract Documents. The PERFORMING PARTY must always maintain good discipline and order on the location of Grant Activities.

Permits

17.12 Unless otherwise provided in the Contract Documents, the PERFORMING PARTY shall obtain and pay for all transportation, construction, and operating permits and licenses required for performance of this Contract. Failure to comply with a permit or administrative order issued by the TCEQ or other state agency may result in a determination, within the sole discretion of the TCEQ, that the best interests of the state are served by withholding reimbursement or by the application of other remedies under this Contract.

Laws and Regulations

17.13 The PERFORMING PARTY shall give all notices and comply in all material respects with all Laws and Regulations applicable to furnishing and performance of the Grant Activities. Except where otherwise expressly required by applicable Laws and Regulations, TCEQ shall not be responsible for monitoring PERFORMING PARTY's compliance with any Laws or Regulations.

Data and Publicity

17.14 All data and other information developed under this Contract shall be furnished, upon request, to the TCEQ and shall be public data and information except to the extent that it is exempted from public access by the Texas Public Information Act, Texas Government Code, Chapter 552. Upon termination of this Contract, if requested by the TCEQ, all copies of data and information developed under this Contract, including databases for which the costs of preparation are reimbursed under this Contract, shall be furnished at no charge to the TCEQ, and shall become the property of the TCEQ.

17.15 The PERFORMING PARTY agrees to notify TCEQ prior to releasing any information to the news media regarding the Grant Activities. The PERFORMING PARTY will acknowledge the financial support of the TCEQ whenever a Grant Activity reimbursed, in whole or part, is publicized or reported in news media or publications.

Safety and Protection

17.16 Where applicable, the PERFORMING PARTY shall be responsible for requiring employees, contractors, and subcontractors to maintain and supervise all necessary safety precautions and programs in connection with the Grant Activities. The PERFORMING PARTY shall take all necessary safety precautions.

17.17 In performing the Grant Activities hereunder, the PERFORMING PARTY undertakes performance for its own benefit and not as agent for the TCEQ.

Lobbying Activities

17.18 As set forth in these Contract Documents, and in accordance with the UGMS and State law, the PERFORMING PARTY shall not use funds provided under this Contract to support lobbying or political activity either directly or indirectly.

ARTICLE 18. TCEQ'S RESPONSIBILITIES

18.1 The Executive Director of the TCEQ will identify a person authorized to give direction to the PERFORMING PARTY and act on behalf of the TCEQ.

18.2 The TCEQ will not supervise, direct or have control or authority over, nor be responsible for, PERFORMING PARTY's means, methods, techniques, sequences or procedures relating to the implementation project or the Safety precautions and programs incident thereto, or for any failure of PERFORMING PARTY to comply with Laws and Regulations applicable to the furnishing or performance of the Scope of Work. TCEQ will not be responsible for PERFORMING PARTY's failure to perform or furnish the Scope of Work in accordance with the Contract.

18.3 The TCEQ shall authorize the payment of reimbursement funds from the State Trust for Grant Activities specified in the Scope of Work and performed in accordance with the requirements of this Contract.

ARTICLE 19. TERMINATION

19.1 Termination of this Contract under any circumstances shall not constitute a waiver of any rights or remedies that TCEQ may exercise under this Contract or otherwise as provided by law.

19.2 This Contract may be terminated in whole or in part by the TCEQ for cause, including a material failure to comply with the requirements of the Contract Documents. The TCEQ will provide written notice (delivered by certified mail, return receipt requested) of intent to terminate. The PERFORMING PARTY shall have twenty (20) calendar days from the date such notice is sent to cure performance deficiencies.

19.3 This Contract may be terminated in whole or part by the TCEQ if any delay or failure of performance of the Grant Activities occurs by either PERFORMING PARTY or by the TCEQ due to a force majeure event. Neither PERFORMING PARTY nor TCEQ shall be liable to the other for any delay in, or failure of performance, of any requirement included in the Contract caused by force majeure. The existence of such causes of delay or failure shall extend the period of performance until after the causes of delay or failure have been removed, provided that the non-performing party exercises all reasonable due diligence to perform. Force majeure is defined as acts of God, war, fires, explosions, hurricanes, floods, failure of transportation, or other causes that are beyond the reasonable control of either party and that by exercise of due foresight such party could not reasonably have been expected to avoid, and which, by the exercise of all reasonable due diligence, such party is unable to overcome. Force majeure does not include ordinary delays that are common to the industry or location. Each party must inform the other in writing, with proof of receipt, within three (3) business days of the existence of such force majeure, or otherwise waive this right as a defense.

19.4 This Contract may be terminated in whole or in part by the TCEQ for its convenience. This includes without limitation the Trustee's denial of a request for funds, which results in the unavailability of funds to complete this project. To the extent feasible, in the sole discretion of the TCEQ, the TCEQ will provide a minimum of ten (10) days written notice (delivered by certified mail, return receipt requested) of intent to terminate.

19.5 If after termination for the PERFORMING PARTY's material failure to comply with the requirements of the Contract Documents, it is determined that the PERFORMING PARTY had not so failed, the termination shall be deemed to have been affected for the convenience of the TCEQ.

19.6 In accordance with this Contract, the PERFORMING PARTY does not have an expectation or entitlement of continued receipt of financial assistance under this Contract. Therefore, PERFORMING PARTY waives any claim for damages arising from or resulting from TCEQ's termination of this Contract for any reason.

19.7 If, during the performance of the Grant Activities, the PERFORMING PARTY chooses to not complete the Grant Activities and withdraw from the obligations under this Contract, the PERFORMING PARTY may terminate this Contract by providing ten (10) days written notice to the TCEQ and returning any reimbursements already received to the Trustee of the State Trust.

19.8 The PERFORMING PARTY acknowledges that certain requirements of this Contract shall survive an event of termination. The PERFORMING PARTY agrees to performance of Grant Activities in accordance with the Contract Documents beyond the Contract Period and through the end of the Activity Life of each Activity included in the Scope of Work for which reimbursement has been requested. TCEQ reserves the right to assert any remedies available by law and under this contract for PERFORMING PARTY's performance of the Grant Activities for the length of the Activity Life of all Grant Activities.

ARTICLE 20. REMEDIES AVAILABLE TO THE TCEQ

20.1. The following Schedule of Remedies applies in the event of any breach of the requirements of this Contract; including the substandard performance of Grant Activities or other failure, material or otherwise, to conform to the requirements of the Contract or applicable law:

- 20.1.1 Issue notice of substandard performance or other non-conforming act or omission;
- 20.1.2 Reject substandard performance and request corrections without charge to the TCEQ;
- 20.1.3 Request and receive return to State Trust of any over payments or inappropriate payments;
- 20.1.4 Reject reimbursement request and suspend all or part of any payment, pending accepted revision of substandard performance or non-conformity;
- 20.1.6 Suspend all or part of the Scope of Work and/or payments pending accepted revision of substandard performance or non-conformity;
- 20.1.7 Terminate the contract and demand and receive return to State Trust of all unexpended funds and any improperly expended funds;
- 20.1.8 Demand restitution and return to State Trust of any payments where performance is subsequently determined non-conforming; or
- 20.1.9 Require payment of liquidated damages to the State Trust.

20.2. **Liquidated Damages.** The parties agree that the actual damages that may be sustained by TCEQ or the State Trust due to the PERFORMING PARTY breaching its obligations under this Contract are uncertain and difficult to ascertain. Therefore, the parties agree that reasonable compensation for such breach will be the sum of the total of grant funds paid from the State Trust, reduced by the percentage of the total Activity Life that the PERFORMING PARTY met prior to the breach. Determination of timely and accurate documentation supporting the PERFORMING PARTY's activity is in the sole discretion of TCEQ. The PERFORMING PARTY hereby promises to pay to the State Trust, such sum as liquidated damages, and not as a penalty, in the event of such breach.

20.3. **Cumulative Remedies.** TCEQ may avail itself of any remedy or sanction provided in this contract or in law to recover any losses arising from or caused by the PERFORMING PARTY's substandard performance or any material non-conformity with the contract or the law. The remedies and sanctions available to either party in this contract shall not limit the remedies available to the parties under law.

ARTICLE 21. INDEMNIFICATION

21.1 To the extent permitted by law, the PERFORMING PARTY agrees to indemnify and hold harmless the State of Texas and the TCEQ, including its employees and officers, against and from any and all liability, loss, or damage arising out of actions of the PERFORMING PARTY, its subcontractors, agents, officers and directors, principals and employees in the performance of this Contract.

21.2 This paragraph is not intended and shall not be construed to require the PERFORMING PARTY to indemnify or hold harmless the State or the TCEQ for any claims or liabilities resulting from the negligent acts or omissions of the TCEQ or its employees.

ARTICLE 22. AMENDING AND SUPPLEMENTING CONTRACT DOCUMENTS

The Contract Documents may be amended to provide for additions, deletions, and revisions in the Scope of Work or to modify the terms and conditions of this Contract in one or more of the following ways: a formal Written Amendment or a Minor Change.

ARTICLE 23. STANDARDS FOR PERFORMING PARTY'S PERFORMANCE

23.1 The PERFORMING PARTY agrees that the standards set forth below are appropriate standards for the PERFORMING PARTY's performance during the Contract.

- 23.1.1 Quality and Accuracy. Standard: The PERFORMING PARTY's Grant Activities conform to the requirements of this Contract.

- 23.1.2 Timeliness. Standard: The PERFORMING PARTY's Grant Activities are completed on schedule.
 - 23.1.3 Reports and Administrative and Financial Operations. Standard: The PERFORMING PARTY's administrative and financial operations comply with all obligations in law and in this Contract, including record-keeping, reimbursement requests, audits, allowable costs, payments to subcontractors, and restricted expenditures.
 - 23.1.4 Communication. Standard: The PERFORMING PARTY's accessibility, responsiveness, and cooperativeness with respect to any contract-related concerns communicated by the TCEQ; and including the PERFORMING PARTY's demonstrated relationship with subcontractors.
 - 23.1.5 Other. Standard: Other factors unique to the type of project, as determined by the TCEQ.
- 23.2 The TCEQ will monitor the PERFORMING PARTY's performance and evaluate the level of compliance with the standards utilizing the performance measures set forth below.
- 23.2.1 Exceeds Expectations. The PERFORMING PARTY fully complied with all the standards on a consistent basis.
 - 23.2.2 Satisfactory Performance. The PERFORMING PARTY's performance complied with all of the standards, with only typical errors, delays, or other problems that needed to be corrected.
 - 23.2.3 Marginal Performance. The PERFORMING PARTY's performance was acceptable, although a significant number of deficiencies had to be corrected before the contract requirements could be considered met.
 - 23.2.4 Unsatisfactory Performance. The PERFORMING PARTY's performance was not acceptable, even after attempts to correct deficiencies.

Performance Evaluation

23.3 The TCEQ may prepare a written evaluation of the performance of the PERFORMING PARTY upon the completion of the Activity Life, or more frequently, as deemed necessary by the TCEQ. A copy of the evaluation will be provided to the PERFORMING PARTY and a copy retained in the TCEQ's contract files. The content of the evaluation shall be wholly within the sole discretion of the TCEQ. The PERFORMING PARTY may provide a written statement which explains or disagrees with the evaluation, which will be incorporated into the evaluation. The PERFORMING PARTY waives any claim for damages against TCEQ for the evaluation.

23.4 The performance rating on the contractor evaluations may be considered by the TCEQ in evaluating an application from the PERFORMING PARTY for additional funding under this program. The PERFORMING PARTY understands that a rating of marginal or unsatisfactory performance may have a negative impact on decisions regarding funding for additional projects applied for by the PERFORMING PARTY.

ARTICLE 24. MISCELLANEOUS

24.1 Any notice issued pursuant to this Contract shall be addressed to the respective party's Authorized Project Representative, or to such other address as they have theretofore specified by written notice. Such notices shall be sent by certified or registered mail or shall be delivered in hand and a receipt provided thereof. Any notice or other written communication shall be considered delivered upon date of receipt.

24.2 For this Contract to be effective, an authorized principal of a corporation, an unincorporated business organization, or association must sign the Contract. An agent signing for a corporation must be authorized to sign by the corporation.

24.3 Unless authorized in writing by the TCEQ in accordance with this Contract, no waiver of any obligation of the PERFORMING PARTY shall bind the TCEQ. Any such authorized waiver shall not constitute a continuing waiver of the obligation.

24.4 The PERFORMING PARTY is not a "vendor" of goods and services within the meaning of Texas Government Code, Chapter 2251. Therefore, the provisions for interest on payments under that statute do not apply to this Contract.

24.5 When any period of time is referred to in the Contract Documents by days, it will be computed to exclude the first and include the last day of such period. If the last day of any such period falls on a Saturday or Sunday or on a State of Texas or federal holiday, such day will be omitted from the computation.

24.6 A calendar day of twenty-four (24) hours measured from midnight to the next midnight will constitute a day.

24.7 By stating at any place in this Contract that any particular non-compliance is a material breach, TCEQ does not limit the acts or omissions which may constitute a material breach.

24.8 The parties to this Contract expressly agree that time is of the essence of this contract.

24.9 The terms include, included, including, includes, when used in this Contract shall mean “includes but not limited to.”

24.10 Notice of Claim. Should the TCEQ or the PERFORMING PARTY suffer injury or damage to person or property because of any error, omission or act of the other party or of any of the other party’s employees or agents or others for whose acts the other party is legally liable, claim will be made in writing to the other party within a reasonable time of the first observance of such injury or damage. The provisions of this paragraph shall not be construed as a substitute for or a waiver of the provisions of any applicable statute of limitations or repose or sovereign immunity.

24.11 All representations, indemnifications, warranties and guarantees made in, required by or given in accordance with the Contract Documents, as well as all continuing obligations indicated in the Contract Documents, will survive final payment, completion and acceptance of the Grant Activities and termination or completion of the Contract until such time as enforcement of such representations, indemnifications, warranties and guarantees is barred by the applicable statute of limitations.

24.12 This Contract is not transferable or otherwise assignable by the PERFORMING PARTY without the written consent of the TCEQ and any attempted transfer without such consent is void. Notwithstanding any provisions relating to assignment in the Uniform Commercial Code, no delegation by a party hereto of any duties or obligations nor assignment by a party hereto of any rights under or interests in the Contract Documents will be binding on another party hereto without the written consent of the party sought to be bound. Specifically, but without limitation, monies that may become due and monies that are due may not be assigned without such consent (except to an extent that the effect of this restriction may be limited by law), and unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under the Contract Documents.

24.13 Subject to the provisions of Article 14, General Conditions PERFORMING PARTY’S RESPONSIBILITIES TO THE TCEQ: GRANT ACTIVITIES, Subsection 14.3, the TCEQ and the PERFORMING PARTY each binds itself, its successors, assigns and agents to the other party hereto, successors, assigns and representatives in respect to all covenants, agreements and obligations contained in the Contract Documents.

24.14 The parties hereby agree that this Contract does not waive the State’s sovereign immunity relating to suit, liability, and the payment of damages. No TCEQ personnel or agents are authorized to waive sovereign immunity by accepting, on behalf of TCEQ, goods or services which are not required under the Contract Documents or any conforming amendment. The parties further agree that all claims, suits, or obligations arising under or related to this Contract are subject to and limited to the availability of funds appropriated by the Texas Legislature for that respective claim, suit, or obligation.

24.15 The PERFORMING PARTY acknowledges and agrees that this Contract has been executed, and will be administered in Travis County, Texas. The PERFORMING PARTY also acknowledges and agrees that any permissible cause of action involving this Contract will arise solely in Travis County. This provision does not waive the TCEQ’s sovereign immunity.

24.16 Any provision of the Contract Documents held to be void or unenforceable under any Laws or Regulations shall be deemed stricken, and all remaining provisions shall continue to be valid and binding upon TCEQ and PERFORMING PARTY. The parties agree that the Contract Documents will be reformed to replace a stricken provision or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision.

24.17 Bankruptcy. If the PERFORMING PARTY files for bankruptcy, the PERFORMING PARTY shall immediately notify TCEQ in writing according to the Notice provisions AND send notification by certified mail directly to TCEQ Bankruptcy Program. The PERFORMING PARTY shall place TCEQ on the distribution list for bankruptcy court documents. The PERFORMING PARTY’s notice to the bankruptcy program must include the appropriate contract number(s).

— End of General Conditions —

AUTHORIZED REPRESENTATIVES/LOCATION OF RECORDS

TCEQ Project Representative

The individual named below is the TCEQ Project Representative, who is authorized to give and receive communications and directions on behalf of the TCEQ. All communications including all payment requests must be addressed to the TCEQ Project Representative or his or her designee.

Mailing Address:

Mr. Nate Hickman
Air Grants Division, MC-204
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, TX 78711-3087

Physical Address:

Mr. Nate Hickman
Air Grants Division, MC-204
Texas Commission on Environmental Quality
12100 Park 35 Circle, Bldg. F
Austin, TX 78753

Telephone No.: (512) 239-4434

Facsimile No.: (512) 239-6161

PERFORMING PARTY's Authorized Official

The individual authorized to sign legal documents on behalf of the PERFORMING PARTY.

Mailing Address:

Mr. Robert S. Hauck
City of Tomball
501 James Street
Tomball, Texas 77375

Physical Address:

Mr. Robert S. Hauck
City of Tomball
401 Market Street
Tomball, Texas 77375

Telephone No.: (281) 290-1302

PERFORMING PARTY's Project Representative

The individual named in the original application is the PERFORMING PARTY Project Representative, who is authorized to give and receive communications and directions on behalf of the PERFORMING PARTY. All communications to the PERFORMING PARTY will be addressed to the PERFORMING PARTY Project Representative or his or her designee.

Mailing Address:

Ms. Beth Jones
City of Tomball
501 James Street
Tomball, Texas 77375

Physical Address:

Ms. Beth Jones
City of Tomball
501 James Street
Tomball, Texas 77375

Telephone No.: (281) 290-1466

The PERFORMING PARTY agrees to make arrangements necessary to ensure that its authorized Project Representative, or someone to whom that person has delegated his or her authority, is available during business hours for consultation with the TCEQ. Written notice of any such delegation will be provided to the TCEQ.

Designated Location for Records Access and Review

The PERFORMING PARTY designates the physical location identified in the original application for record access and review pursuant to any applicable provision of this contract.

— End of Authorized Representatives/Location of Records —

SPECIAL CONDITIONS
for
Texas Volkswagen Environmental Mitigation Program
Replacement and Repower Activities

ARTICLE 1. SPECIAL CONDITIONS

The PERFORMING PARTY agrees to these Special Conditions.

{This Article is not applicable to this project. The Article number is retained for numbering continuity.}

— End of Special Conditions —

SCOPE OF WORK
for
Texas Volkswagen Environmental Mitigation Program (TxVEMP)
Refuse Replacement Project

The following Scope of Work contains information on each Grant Activity to be conducted and the expenses that will be reimbursed under this Agreement. The information and data provided in the original Application submitted by the PERFORMING PARTY may have been altered after submittal to the TCEQ, to ensure that the information in the Grant Agreement is accurate. The PERFORMING PARTY has reviewed the Scope of Work and, by signing this Agreement, ratifies, adopts, and agrees to all such alterations.

ARTICLE 1. ACTIVITY NUMBERS

1.1. The Project under this Agreement is assigned the following project number 2020-21-0060-VW. Each Activity under this Agreement is assigned the Activity Number(s) listed in the table below. The PERFORMING PARTY shall use the assigned Activity Number(s) when tracking and reporting to the TCEQ.

Activity Number	Description; Identified by last 4 digits of VIN
001	Replace 1 On-Road Dump Truck, ID:5770

1.2. If the purchase and installation of electric charging or hydrogen fueling infrastructure is included in this project, the Infrastructure Activity under this Agreement is assigned the Activity Number(s) in the table below. The PERFORMING PARTY shall use the assigned Activity Number(s) when tracking and reporting to the TCEQ.

Not Applicable

ARTICLE 2. ACTIVITY LIFE

2.1. The duration of the Activity Life for Grant Activities performed under the Grant Agreement is 5 years. The Activity Life will commence upon the date of reimbursement unless a different start date is specified in writing by the TCEQ.

2.2. The start and end date of the Activity Life for each Grant Activity will be established by the TCEQ in accordance with Article 1.1, General Conditions of this Agreement.

ARTICLE 3. AREAS OF USE

3.1. The PERFORMING PARTY commits to operate the Grant Equipment over the Activity Life at least 51% of its total annual use as measured by annual mileage in the following designated Priority Area.

Priority Area:

Houston/Galveston/Brazoria Area: Brazoria, Chambers, Fort Bend, Galveston, Harris, Liberty, Montgomery, and Waller Counties

3.2. If the purchase and installation of electric charging or hydrogen fueling infrastructure are included in this Project, the Infrastructure Activity location is listed below.

Not Applicable

3.3. Changes to the Priority Area and/or facility location may not be made without prior approval from TCEQ. The PERFORMING PARTY understands that TCEQ will not normally approve Priority Area changes unless acceptance of multiple areas is contemplated in the original grant solicitation. The PERFORMING PARTY agrees to notify the TCEQ of any proposed change to the Priority Area and/or facility location for any of the Activities included under this Agreement prior to the change.

ARTICLE 4. ANNUAL USAGE

4.1 The table below contains the approved annual usage amount for each Grant Activity that is used to calculate the NO_x emissions reductions achieved.

Activity Number	Usage Rate	Usage Factor
001	40,000	Miles

4.2 Unless otherwise stated in the Special Conditions of this Agreement, the Annual Usage Rates represent the default usage amounts accepted by the TCEQ for calculation of the emissions reductions and successful performance does not require that those usage rates be met. Alternatively, if the TCEQ has determined that the Annual Usage Rates represent a usage commitment that must be met, additional requirements and obligations for operating the Grant Equipment for annual and total usage amounts will be set forth in the Special Conditions.

ARTICLE 5. GRANT EQUIPMENT

5.1. The PERFORMING PARTY agrees to purchase the Grant Equipment listed below and use it as described herein to accomplish the purpose of the grant.

Activity Number	Equip Description	Equip Year	Fuel Type	Engine Year	NOx Std Rate (g/bhp-hr)
001	Dump Truck	2021	Diesel	2020	0.2

5.1.1 The vehicle must be the same vehicle description as stated in the table above.

5.1.2 The vehicle must be manufactured for and intended to be used for the same primary function as the vehicle being replaced.

5.1.3 The model year of the engine installed on the replacement vehicle may not be more than one calendar year older than the calendar year in which the grant application was submitted.

5.1.4 The engine must have the same fuel type.

5.1.5 The engine must be certified to the same or better NO_x emission standard or family emission limit (FEL).

5.1.6 The vehicle must have the same or similar standard features necessary for performing the primary work for which the vehicle is intended.

5.2. If the purchase and installation of electric charging or hydrogen fueling infrastructure are included in this Project, the PERFORMING PARTY agrees to purchase the Infrastructure Activity listed below:

Not Applicable

5.3. TCEQ must approve any changes to the Grant Equipment that are different from the criteria shown above. If there is a question whether the Grant Equipment is different from the criteria above, TCEQ will make the final determination. If TCEQ approves a change to the Grant Equipment, it must be documented through an Amendment or Minor Change. A copy of the document will be provided to the PERFORMING PARTY.

5.4. Grant Equipment changes must be finalized before the PERFORMING PARTY may submit a Request for Reimbursement. TCEQ will not process a Request for Reimbursement until such changes are made. The PERFORMING PARTY is encouraged to submit a Contract Amendment Request Form for review and approval by the TCEQ of any changes not meeting the eligibility criteria above.

5.5. The PERFORMING PARTY remains responsible for purchasing Grant Equipment that meets all eligibility requirements. The TCEQ is not obligated to accept the change in Grant Equipment if the TCEQ determines that the change does not meet all eligibility requirements. In addition, the TCEQ's acceptance and payment of a Request for Reimbursement that includes changes to the Grant Equipment does not remove the ability of the TCEQ to require return of any grant funds paid in reimbursement for purchase of equipment that is later determined to not be eligible.

ARTICLE 6. EQUIPMENT BEING REPLACED

6.1. The PERFORMING PARTY agrees to replace the following equipment and complete the disposition of the equipment being replaced in accordance with Article 17 of the General Conditions:

Activity Number	Equip Description	Equip Make	Equip Model	Equip Year	VIN # (last 4 digits)	Engine Make	Engine Model	Engine Year	Engine ID	NOx Std Rate (g/bhp-hr)
001	Dump Truck	Peterbilt	335	2005	5770	Cummins	ISC 285	2004	46429461	2.375

ARTICLE 7. ACTIVITY GRANT AMOUNT

7.1. The maximum Grant Amount that may be reimbursed for each Grant Activity is listed below.

Activity Number	Activity Grant Amount
001	\$72,284.00

7.2. Regardless of the maximum Activity Grant Amounts, reimbursements are subject to the requirements of Article 9 of the General Conditions of this Agreement.

7.3. The maximum Activity Grant Amounts and the percentage of incremental costs may be adjusted downward in accordance with the Grant Agreement.

City Council Meeting Agenda Item Data Sheet

Meeting Date: January 18, 2021

Topic:

Award purchase of one (1) Peterbuilt Dump Truck in the amount of \$128,629.00 to Rush Truck Center, through State Buyboard Cooperative Purchasing Contract.

Background:

This purchase is for the replacement of an existing Public Works dump truck that has been flagged for replacement due to age and mechanical issues as recommended by the Public Works Fleet Maintenance Department.

The purchase price for the replacement dump truck is \$128,629.00 however the City has received a grant for the TCEQ totaling \$72,284.00 making the total commitment from the City \$56,345.00, after reimbursement.

As part of the grant requirements, our current dump truck being replaced must be destroyed so that it is unable to be used in the future thus reducing omissions into the environment.

Origination: Public Works Department

Recommendation:

Public Works staff recommends approval to award the purchase of one (1) dump truck in the amount of \$128,629.00, to Rush Truck Center, through the State Buyboard Cooperative Purchasing Contract.

Party(ies) responsible for placing this item on agenda: Meagan Mageo, Project Coordinator

FUNDING (IF APPLICABLE)

Are funds specifically designated in the current budget for the full amount required for this purpose?

Yes: ☒ No: ☐ If yes, specify Account Number: #650-651-6405

If no, funds will be transferred from account # _____ To account # _____

Signed	Meagan Mageo		Approved by		
	Staff Member	Date		City Manager	Date

TEXAS LOCAL GOVERNMENT PURCHASING COOPERATIVE BUYBOARD

Vendor	RUSH TRUCK CENTER	Date Prepared	1/4/2021
Contact for Vendor:	Drew Neubauer	Phone	(830) 302-5278
End User:	City of Tomball		
End User Contact:	Ryan Parker	Phone/Fax	(281) 351-4735
Product Description:	Peterbilt 348 Dump		

A: Base Price in Bid/Proposal Number: 601-19			Series: 348 \$ 67,772.00		
B: Published Options(Items Below)					
	DESCRIPTION	AMOUNT		DESCRIPTION	AMOUNT
Peterbilt	10 5/8 Frame w/ full liner	\$ 1,390.00	Peterbilt	Cab and Equipment	\$ 2,802.00
Peterbilt	14.6 Front Axle / springs	\$ 1,343.00	Peterbilt	Cabmate Air Susp	\$ 1,267.00
Peterbilt	Paccar PX-9 350@2000 GOV@2200	\$ 7,001.00	RTC-0003	Dump Body	\$ 20,168.00
Peterbilt	40K rears w/ Air Trac/Diff Lock	\$ 12,431.00	RTC-0050	Dump Prep Package	\$ 3,901.00
Peterbilt	Allison 3000 RDS	\$ 11,426.00	RTC-0040	OEM+ Safety Analysis	\$ 1,275.00
Peterbilt	Tires and Wheels	\$ 2,670.00			
Subtotal Column 1: \$ 36,261.00			Subtotal Column 2: \$ 29,413.00		
Published Options added to Base Price(Subtotal of "Col 1" & "Col 2")					\$ 65,674.00

C: Subtotal of A + B					\$ 133,446.00
D: Non Published Options					
Herrera Dump Body	\$ (5,967.00)				
Subtotal Column 1: \$ (5,967.00)		Subtotal Column 2: \$		-	

Unpublished Options added to Base price (Subtotal "Col 1 + Col 2")	\$ (5,967.00)
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E: Contract Price Adjustment (If any, explain here)			

F: Total of C + D +/- E	\$ 127,479.00
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G: Quantity ordered Units: 1.00 x F	\$ 127,479.00
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H: BUYBOARD Administrative Fee	\$ 400.00
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I: Non-Equipment Charges & Credits (I.e.: Ext. Warranty, Trade-In, Delivery, etc.)					
Total Freight	\$ 750.00				
					\$ 750.00

J: TOTAL PURCHASE PRICE INCLUDING (G+H+I)	\$ 128,629.00
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City Council Meeting Agenda Item Data Sheet

Meeting Date: January 18, 2021

Topic:

Authorize City Manager to execute contract between the City of Tomball and Texas Commission on Environmental Quality (TCEQ) for the award of a Texas Volkswagen Environmental Mitigation Program (TxVEMP) Grant, for an amount of \$67,168.00.

Background:

Staff submitted a grant application to the TCEQ to receive funds toward the replacement of an aging street sweeper.

The City has been awarded the Texas Volkswagen Environmental Mitigation Program Grant in the amount of \$67,168.00. The grant funds received, plus budgeted funds from the City of \$191,131, will fund the purchase of a new street sweeper to be utilized by the Public Works Department.

As part of the grant requirements, our current street sweeper being replaced must be destroyed so that it is unable to be used in the future thus reducing omissions into the environment.

Origination: Public Works Department

Recommendation:

Staff recommends authorizing the City Manager to execute a contract between the City and the Texas Commission on Environmental Quality to receive grant funds through the Texas Volkswagen Environmental Mitigation Program in the amount of \$67,168.00.

Party(ies) responsible for placing this item on agenda: Meagan Mageo, Project Coordinator

FUNDING (IF APPLICABLE)

Are funds specifically designated in the current budget for the full amount required for this purpose?

Yes: ☒ No: ☐ If yes, specify Account Number: #650-651-6405

If no, funds will be transferred from account # _____ To account # _____

Signed	Meagan Mageo		Approved by		
	Staff Member	Date		City Manager	Date

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

TEXAS VOLKSWAGEN ENVIRONMENTAL MITIGATION PROGRAM CONTRACT

CONTRACT SIGNATURE PAGE

Contract Name:	Texas Volkswagen Environmental Mitigation Program (TxVEMP)
Contract Number:	582-21-22240-VW
PERFORMING PARTY Name:	City of Tomball
Total Contract Amount Not To Exceed:	\$67,168.00
Contract Effective Date:	Date of last signature
Contract Expiration Date & Purchase Expiration Date:	24 months after Contract Effective Date
Activity Life Expiration Date:	Five years from final reimbursement date

The Texas Commission on Environmental Quality (TCEQ), an agency of the State of Texas and the named PERFORMING PARTY enter this Contract for the purpose of providing financial assistance for emissions reduction projects as authorized under Texas Water Code Section 5.124, the Volkswagen Environmental Mitigation Trust Agreement for State Beneficiaries (State Trust), and the Beneficiary Mitigation Plan for Texas. The Parties agree the PERFORMING PARTY will conduct the Grant Activities required by the Contract and will be reimbursed from the State Trust for authorized Allowable Costs in accordance with the Texas Uniform Grant Management Standards and the Contract.

Authorized Official	Texas Commission on Environmental Quality (TCEQ)	City of Tomball (PERFORMING PARTY)
Printed name:	Nate Hickman	Mr. Robert S. Hauck
Title:	Manager, Grant Development and Management Section	City Manager
By (Authorized Signature):		
Date of Signature:		

**GENERAL CONDITIONS
for
Texas Volkswagen Environmental Mitigation Program
Replacement and Repower Activities**

ARTICLE 1. DEFINITIONS

Unless defined herein, terms in this Contract and Contract Documents will have the meanings provided in the Texas Uniform Grant Management Standards (UGMS) or the Volkswagen Environmental Mitigation Trust Agreement for State Beneficiaries (State Trust) and Beneficiary Mitigation Plan for Texas (Mitigation Plan). The following terms have the meanings indicated.

1.1 Activity Life - the time period established by the TCEQ that is used to determine the emissions reductions of the activity. The Activity Life begins on the date the final reimbursement payment is made under the grant, continuing for five (5) years afterwards. Upon acceptance by TCEQ of the final disposition verification and completion of all reimbursements, the TCEQ will notify the PERFORMING PARTY in writing of the Activity Life start and end dates for each activity.

1.2 Application - the Application for a grant submitted by the PERFORMING PARTY including any amendments or supplemental conditions added to the application. An Application may include one or more Supplemental Forms, which pertain to the individual activities to be conducted under the grant. The Application is used to develop the Scope of Work. In case of conflict between the Application and Scope of Work, the Scope of Work will take precedence.

1.3 Authorized Official - the individual authorized to sign legal documents on behalf of the TCEQ and the PERFORMING PARTY. Authorized Officials of the TCEQ and the PERFORMING PARTY are designated in writing in the Contract.

1.4 Contract Period - term of the Contract from the Contract Effective Date through final reimbursement payment. This Contract will administratively terminate at the end of the Contract Period with the final reimbursement payment and release of claims; however, the PERFORMING PARTY remains obligated for the Activity Life of the Contract.

1.5 Final Completion - when the Grant Activities are completed in the judgment of the TCEQ. This will usually occur upon the successful completion of the Activity Life of all the Grant Activities under this Contract.

1.6 Grant Activity/Activities - activities the PERFORMING PARTY has agreed to perform under this Contract that are detailed in the Scope of Work.

1.7 Grant - means the Contract between TCEQ and the PERFORMING PARTY consisting of the documents listed in Article 8, Contract Documents. The term "Grant" shall be used interchangeably as "Agreement" or "Contract."

1.8 Grant Equipment - the equipment, real property, vehicles, qualifying fuel, infrastructure, processes and technology, and the related goods and services in a Grant Activity for which the cost of purchase or utilization is reimbursed, in whole or in part, under this Contract. The term includes replacements for the Grant Equipment which is lost, stolen, or irreparably damaged.

1.9 Incremental Costs - the cost of an approved activity less a baseline cost that would otherwise be incurred by the PERFORMING PARTY in the normal course of business, as determined according to the RFGA.

1.10 Minor Change - a written document which provides for minor changes in the work in accordance with these General Conditions, but which does not involve a change in the Contract Amount or the Contract Period.

1.11 NO_x - nitrogen oxides (NO_x) are a class of pollutants formed when fuel is burned at a very high temperature (above 1200° F), such as in automobiles and power plants. For air pollution purposes, it is composed primarily of nitric oxide (NO), nitrogen dioxide (NO₂), and other oxides of nitrogen, and it plays a major role in the formation of ground-level ozone in the atmosphere through a complex series of reactions with volatile organic compounds (VOCs).

1.12 Optimum Performance - the level of performance at which Grant Equipment functions to achieve the anticipated emissions reductions.

1.13 PERFORMING PARTY – the grant recipient indicated on the signature page of this Contract, also referred to in this agreement as the “grantee.”

1.14 Purchase Expiration Date – the date specified in the Contract when all costs for Grant Equipment must be incurred and paid.

1.15 Priority Areas - the eligible areas and counties where the PERFORMING PARTY must use the grant-funded equipment a minimum of 51% of the annual use during the Activity Life. The applicable Priority Areas are listed in the TxVEMP RFGA, TxVEMP Application, and the Scope of Work of this Contract.

1.16 Project Representative – individual identified by each party and designated in this Contract to whom all communications, signed contracts and related documents, and written correspondence will be addressed and delivered.

1.17 Scope of Work – the contract document detailing the requirements of the Grant Activities.

1.18 State - means the State of Texas.

1.19 Termination - means a permanent end and cessation of the Contract because: the Purchase Expiration Date has passed without completion of purchases eligible for reimbursement; all requirements of this Contract are completed within the sole discretion of the TCEQ; the PERFORMING PARTY has requested termination and repaid funds as allowed by Section 19.7; or the Contract is ended by action of the TCEQ for cause or for convenience. The Date of Termination is the Purchase Expiration Date, Final Completion, or the effective date of action by the TCEQ ending the Contract for cause or for convenience, as applicable.

1.20 Written Amendment - a document signed by the PERFORMING PARTY and the TCEQ which authorizes an adjustment in the Contract Amount or the Contract Period, or substantive changes to the Grant Activities affecting obligations between the parties issued on or after the Effective Date of the Contract.

ARTICLE 2. GOVERNING STANDARDS AND LEGAL AUTHORITY

This Contract is subject to: (1) Texas Water Code Section 5.124 (TCEQ’s authority to award grants) and Section 5.229 (TCEQ’s general authority to enter into contracts); (2) the Uniform Grant and Contract Management Act, Texas Government Code, Section 783.001 et seq., and the Texas Uniform Grant Management Standards (UGMS); (3) TCEQ rules and policies (pertaining to TCEQ contracts and grants); (4) the State Trust Agreement and the Mitigation Plan; (5) the RFGA; and (6) other applicable Federal and State rules and statutes.

ARTICLE 3. PURPOSE

This grant program implements a portion of the Texas Volkswagen (VW) Environmental Mitigation Program (TxVEMP) established and administered by the TCEQ. Visit the TxVEMP website, www.TexasVWFund.org, for more information on the background and purpose of the TxVEMP.

ARTICLE 4. FUNDS

4.1 Amount Limits on Funds. The PERFORMING PARTY will receive reimbursement for the costs of the conforming Grant Activities. The Total Contract Amount Not to Exceed is shown on the Signature Page.

4.2 TCEQ in its sole discretion will determine whether costs are eligible and conform to the Grant Activities. The actual amount of reimbursement authorized may be less than the Total Contract Amount Not to Exceed. The Total Contract Amount Not to Exceed is not a guarantee of payment, nor does the Contract guarantee a minimum amount of reimbursement.

4.3 Time Limits on Funds (Purchase Expiration Date). Costs to be reimbursed under this Contract must be incurred and paid by the Purchase Expiration Date as identified on the Signature Page of this Contract.

ARTICLE 5. CONTRACT PERIOD

5.1 This Contract will commence on the Effective Date of the Contract and will expire 24 months after that date (Contract Expiration Date). The Contract Expiration Date may be extended through a Written Amendment. Extensions are subject to TCEQ’s sole discretion.

5.2 The PERFORMING PARTY agrees to perform in accordance with the Contract Documents beyond any event of termination and through the end of the Activity Life of any Grant Activity for which the PERFORMING PARTY has been reimbursed. The PERFORMING PARTY acknowledges that certain contractual requirements, such as record retention and audit survive the Expiration Date or termination of the Contract.

5.3 Due to the time limitations on availability of the grant funds, the TCEQ's obligation to reimburse the PERFORMING PARTY's allowable costs incurred and paid expires forty-five (45) days after the Purchase Expiration Date. If no reimbursement has been requested as of this date, this Contract will terminate without any further obligations to either party.

ARTICLE 6. ELIGIBLE ACTIVITIES

6.1 The PERFORMING PARTY agrees to complete all Grant Activities as described in the Scope of Work and in accordance with the Contract Documents.

6.2 The TCEQ may accept performance of a reduced number of the individual Grant Activities listed in the Scope of Work, at its sole discretion. The PERFORMING PARTY will only be reimbursed for those Grant Activities for which eligible purchases are completed.

6.3 The vehicle or piece of equipment being acquired under a grant may not have been acquired prior to the opening of the grant application period, unless otherwise approved by the TCEQ.

ARTICLE 7. REPRESENTATIONS

The PERFORMING PARTY hereby ratifies and attests to all representations and certifications in the Application and agrees to give prompt written notice to the TCEQ if there is any material change in these representations or certifications.

ARTICLE 8. CONTRACT DOCUMENTS

8.1 The Contract Documents which comprise the entire Contract between TCEQ and the PERFORMING PARTY are (in order of precedence in the event of conflicts):

- 8.1.1 Contract Signature Page.
- 8.1.2 Scope of Work.
- 8.1.3 Special Conditions.
- 8.1.4 General Conditions.
- 8.1.5 The TCEQ Request for Grant Applications, incorporated herein by reference.
- 8.1.6 Beneficiary Mitigation Plan for Texas, incorporated herein by reference.
- 8.1.7 Environmental Mitigation Trust Agreement for State Beneficiaries ("State Trust"), incorporated herein by reference.
- 8.1.8 The PERFORMING PARTY's Original Application, and any supplemental documentation submitted by the PERFORMING PARTY in support of the Application or grant award, incorporated herein by reference.
- 8.1.9 The following which may be delivered or issued after the Effective Date of the Contract and are not attached: all written Amendments, and other documents amending, modifying, or supplementing the Contract Documents pursuant to the General Conditions.

8.2 The information and data provided in the Application submitted by the PERFORMING PARTY may have been altered after submittal to the TCEQ, to ensure that the information in the application is accurate. The PERFORMING PARTY has reviewed the Scope of Work (a Contract Document) and hereby ratifies, adopts, and agrees to all such alterations contained within the Scope of Work.

8.3 There are no Contract Documents other than those listed above in this Article. The Contract Documents may be amended, modified, or supplemented only as provided in the General Conditions.

ARTICLE 9. ELIGIBILITY FOR COST REIMBURSEMENT

9.1 The TCEQ will direct the Trustee of the State Trust to act as Disburser to issue payment to the PERFORMING PARTY for those costs which are eligible for reimbursement in accordance with all requirements. Costs are considered eligible for reimbursement when the TCEQ, in its sole discretion, determines that the costs are the reasonable, necessary, actual, and allowable costs of implementing the Grant Activities listed in the Scope of Work. Costs must be included in the Scope of Work to be eligible for reimbursement.

9.2 The Grant Equipment must be acquired, with costs incurred and paid to be eligible for reimbursement. If the PERFORMING PARTY is obligated under a commercial financing agreement resulting in PERFORMING PARTY's purchase and ownership of the equipment (such as a capital lease or finance lease), this is also eligible. Leases that do not meet this criterion are ineligible.

- 9.2.1 If the Contract includes Infrastructure projects, a standard lease agreement of the infrastructure equipment without a binding commitment to purchase is eligible for these projects. The lease must extend to the end of the Activity Life for the Infrastructure equipment.

Procurement

9.3 The PERFORMING PARTY agrees to follow all the requirements of the Texas Uniform Grant Management Standards (UGMS). The PERFORMING PARTY must ensure its procurement practices prohibit any actual or apparent conflicts of interest as described under UGMS __.36 Procurement (b)(3). Performing Party agrees that TCEQ has sole discretion to determine whether a conflict exists, and that a conflict of interest may be considered a material breach of this Contract. Additionally, PERFORMING PARTY will adhere to the applicable cost principles under __.22 Allowable Costs. The UGMS document is located at:

<https://comptroller.texas.gov/purchasing/docs/ugms.pdf>

Reasonable Costs

- 9.4 Reasonableness of costs depends upon a variety of considerations and circumstances, including:
- 9.4.1 whether it is the type of cost generally recognized as ordinary and necessary for the conduct of the PERFORMING PARTY's business or the contract performance;
 - 9.4.2 generally accepted sound business practices, arm's length bargaining, and federal and state laws and regulations;
 - 9.4.3 the PERFORMING PARTY's responsibilities to the TCEQ, other customers, the owners of the business, employees, and the public at large; and
 - 9.4.4 any significant deviations from the accepted industry established practices.

Necessary Costs

9.5 Necessary costs include costs which are directly attributable to the implementation of the Grant Activities and must be included in the Scope of Work.

- 9.6 Unless expressly authorized by the TCEQ, necessary costs do not include:
- 9.6.1 the cost of money;
 - 9.6.2 the interest charges on a purchase money loan or on a deferred payment purchase agreement; or
 - 9.6.3 the cost of converting from a lease to a purchase at the end of the lease period.

Actual Costs

- 9.7 The criteria for actual costs include:
- 9.7.1 the direct Incremental Costs of implementing the Grant Activities; or
 - 9.7.2 the true price charged by a vendor/contractor to the PERFORMING PARTY for implementing the Grant Activities.
- 9.8 Unless expressly authorized by the TCEQ, actual costs do not include:
- 9.8.1 amounts deducted from the true price of the purchase or lease acquisition of Grant Equipment whether as discounts, rebates, refunds or otherwise;
 - 9.8.2 amounts which the PERFORMING PARTY owes or agrees to pay a vendor or contractor for any purpose other than the implementation of Grant Activities;
 - 9.8.3 amounts in the charges which a vendor/contractor intends to return to PERFORMING PARTY in the form of cash, goods, services, gifts, intangibles, discounts or any other items of value;
 - 9.8.4 baseline costs designated by the TCEQ in the Application reflecting the costs that would otherwise be incurred by the PERFORMING PARTY in the normal course of business; or
 - 9.8.5 amounts which are reimbursed by other public sources or for which tax credits or other public financial incentives are or will be received by the PERFORMING PARTY.

9.9 The PERFORMING PARTY's documentation of expenses is required under Article 17 of these General Conditions.

Allowable Costs

9.10 In order to be allowable, costs must be included in the Scope of Work, and must satisfy the requirements of: this Contract, the UGMS, state agency rules, and all applicable state and federal laws.

Consulting (Application Assistance) Fees

9.11 Any fees charged by a consultant for preparation of the Application, either directly or as an addition to the cost basis of the grant-funded vehicle, equipment, or engine, are the sole responsibility of the PERFORMING PARTY or the vendor and are not an allowable cost under this Contract. All purchase decisions must be based on sound business practices and arm's length bargaining. It is generally considered acceptable for an applicant to accept assistance from a vendor or an agent of a vendor in preparing the Application, so long as any decision by the applicant to purchase the grant-funded vehicle or equipment from that vendor is made independently and meets the other reasonableness provisions in the grant contract. However, if the consultant is paid directly by the applicant to complete the Application or to act as the PERFORMING PARTY's agent for the grant process, purchases of Grant Equipment from an entity in which the consultant has an interest will be considered a conflict of interest under Subsection 9.3 of this Contract.

9.12 Unless otherwise approved in advance by the TCEQ, fees for a third-party consultant hired by the PERFORMING PARTY to manage and administer the grant-funded activities, including coordination of the work and submission of reports and paperwork to the TCEQ, will be considered administrative costs of the PERFORMING PARTY and are not allowable under this Contract. This provision does not limit the ability of an equipment vendor or installer to include ordinary, reasonable, and necessary operational costs in the price of the vehicle, equipment, or installation services.

Preapproval of Costs

9.13 The TCEQ may request additional details regarding costs listed in the Scope of Work and may require that the PERFORMING PARTY obtain preapproval of specific costs from the TCEQ prior to incurring those costs.

Purchase Agreements and Subcontracts

9.14 If requested by the TCEQ, the PERFORMING PARTY must provide the TCEQ with copies of purchase agreements or subcontracts for cost items to be reimbursed under this Contract for approval, prior to the PERFORMING PARTY entering into a final purchase agreement and/or subcontract.

Additional Evidence

9.15 The TCEQ may at any time before or after reimbursement, as necessary in its sole discretion, request additional evidence concerning costs.

Additional Criteria for Reimbursement

9.16 The TCEQ may at any time, in its sole discretion, establish additional criteria and requirements for reimbursement of costs as serves the best interests of the State.

Costs in Scope of Work are Maximum Amounts, Not a Guarantee

9.17 Amounts of costs stated in the Scope of Work are maximum amounts of reimbursement. By stating the amounts, TCEQ does not 1) guarantee payment of those amounts or 2) waive the requirements for reimbursement which must subsequently and continually be satisfied by the PERFORMING PARTY. The amount of costs for which reimbursement may be requested is the lesser of 1) the costs stated in the Scope of Work or 2) the actual eligible costs.

No Entitlement to Funds

9.18 The PERFORMING PARTY has a continuing obligation to satisfy the requirements for reimbursement. Neither a request for reimbursement nor TCEQ's direction of the Disburser to issue payment nor any other action will establish an entitlement in the PERFORMING PARTY to payment from the TCEQ or the Disburser.

9.19 By directing the Disburser to issue a check for payment, the TCEQ does not waive any requirements for the reimbursement of costs. The TCEQ may audit the records of the PERFORMING PARTY and may also audit the PERFORMING PARTY's performance as to the Grant Activities and the administrative requirements. The PERFORMING PARTY shall return grant funding to the State Trust for any reimbursed expenses that are later determined to be unallowable under the terms of this Contract.

Debts owed to the State

9.20 If the PERFORMING PARTY owes any amount(s) to the State of Texas TCEQ may not authorize reimbursement until the debt is satisfied.

Child Support

9.21 Under Section 231.006 of the Texas Family Code, a child support obligor who is more than 30 days delinquent in paying child support and a business entity in which the obligor is a sole proprietor, partner, shareholder, or owner with an ownership interest of at least 25 percent is not eligible to receive a state grant or loan. By executing this Contract, the PERFORMING PARTY certifies that the individual or business entity named in this contract, bid, or application is eligible to receive the specified grant, loan, or payment and acknowledges that this Contract may be terminated and payment may be withheld if this certification is inaccurate.

Required Waiver

9.22 Any checks to the PERFORMING PARTY will be issued on behalf of TCEQ by Wilmington Trust, N.A., acting as Disburser. Checks will include the following waiver language below the endorsement signature line of each check: "By endorsing and cashing this check the Payee hereof agrees and acknowledges that: (i) Wilmington Trust N.A. ("WT") is acting merely as an agent of the TCEQ solely to assist it in making payments and that such payees agrees to waive any and all claims whatsoever, in law and/or in equity, against WT, and agrees not to initiate a suit against WT in respect of, and agrees that WT will not be liable for, any actions that WT takes, or abstains from taking, in either case, arising out of or in connection with the performance of its duties on behalf and as directed by TCEQ and (ii) WT shall not be liable for indirect, special, incidental, punitive or consequential losses or damages of any kind whatsoever or force majeure events or Acts of God in connection with making this payment for TCEQ."

9.22.1 The PERFORMING PARTY acknowledges that the Disburser is a third-party beneficiary of this acknowledgement.

ARTICLE 10. REQUEST FOR REIMBURSEMENT

10.1 Eligible expenses must have been incurred by the PERFORMING PARTY prior to the Purchase Expiration Date. To receive reimbursement for eligible expenses, the PERFORMING PARTY shall submit no more frequently than monthly, a completed TCEQ Request for Reimbursement form, to be made available to the PERFORMING PARTY by the TCEQ. The request and forms shall be mailed or delivered to:

Texas Commission on Environmental Quality
Air Grants Division, MC-204
P.O. Box 13087
Austin, TX 78711-3087

10.2 The PERFORMING PARTY is responsible for fully and accurately completing the Request for Reimbursement form. The PERFORMING PARTY will receive its reimbursement payment in the form of a check sent by Wilmington Trust, N.A., as Disburser. All payments will be sent to the PERFORMING PARTY by the Wilmington Trust, N.A. at the direction of TCEQ. Neither TCEQ nor Wilmington Trust, N.A. is liable for any inaccurate or incomplete information provided by the PERFORMING PARTY. The PERFORMING PARTY is responsible for any additional costs or fees related to correcting any inaccurate information provided by the PERFORMING PARTY, including any tax penalties or fees resulting from inaccurate information.

10.3 The PERFORMING PARTY will indicate on the Request for Reimbursement whether any additional financial incentives have been received, or are expected to be received, by the PERFORMING PARTY that offsets the grant activity costs, including tax credits or deductions, other grants, or any other public financial assistance.

10.4 Except as provided for under Subsection 10.6 below, to be eligible for reimbursement under this Contract, a cost must have been incurred and paid by the Purchase Expiration Date and prior to claiming reimbursement from TCEQ. A cost may not be considered incurred until the Grant Equipment and/or goods and services included under the cost have been received and accepted by the PERFORMING PARTY. The cost must have been paid by the PERFORMING PARTY prior to claiming reimbursement.

Project Costs

10.5 The TCEQ will direct the Disburser to reimburse the PERFORMING PARTY for no more than the amount specified for each Activity in the Scope of Work. This amount may be adjusted downward in accordance with the Contract.

10.6 If the PERFORMING PARTY has paid eligible expenses that are equal to or greater than the grant amount with cash-on hand, the reimbursement may be paid directly to the PERFORMING PARTY. In the event the PERFORMING PARTY finances the Grant Equipment, TCEQ may not pay the PERFORMING PARTY directly unless the PERFORMING PARTY has paid an amount equal to or greater than the grant amount; however, the payment may be assigned directly to the financing company. Supporting documentation must be submitted to establish that the goods or services were received, and that the payment amount is owed to the financing company indicated by the PERFORMING PARTY.

10.6.1. If an assignment is requested, the PERFORMING PARTY must complete the Assignment Request and Acceptance section of the Request for Reimbursement.

10.7 A final Request for Reimbursement Form, indicating in the appropriate box that it is the final request, must be submitted to the TCEQ by no later than forty-five (45) days after the Purchase Expiration Date.

10.8 All Request for Reimbursement forms must clearly detail and document the costs incurred (or obligated under a financing agreement) and paid. TCEQ will review the Request for Reimbursement form and supporting documentation to determine the eligibility of a particular cost. Supporting documentation materials, as directed by the TCEQ in the instructions accompanying the forms, shall be attached to the report forms to clearly show that the cost was incurred and, except where the payment is assigned to another entity, paid.

10.9 Unless otherwise approved by the TCEQ, all work on the Grant Equipment must be completed and the Grant Equipment operational and delivered in final form before reimbursement will be made on an Activity. The invoices and payment documents provided by the PERFORMING PARTY to support the reimbursement request must document that all work is completed, and the Grant Equipment is operational.

Replacement, Repower, and On-Site Infrastructure Project Costs

10.10 For replacement, repower, and on-site infrastructure projects, the TCEQ will reimburse the PERFORMING PARTY for no more than the eligible amount for the purchase of the replacement vehicle or equipment as specified in the RFGA.

Purchase/Payment Documents

10.11 In accordance with the terms of this Contract, for any purchase, deferred payment purchase, or other commercial financing arrangement, the PERFORMING PARTY must submit any supporting documentation required or requested by TCEQ. To receive payment for each Request for Reimbursement, and allow for any subsequent audit, the PERFORMING PARTY is specifically required to submit the following supporting documents:

- 10.11.1 canceled checks or wire transfers;
- 10.11.2 written purchase and commercial financing agreements;
- 10.11.3 Bills of Sale or Receipts for Delivery;
- 10.11.4 for deferred payment purchases, statements of account status showing the account in good standing and the equipment is in possession of the PERFORMING PARTY;
- 10.11.5 Uniform Commercial Code (UCC) Financing Statement (Form UCC1) filing, if applicable. (The UCC allows a creditor to notify other creditors about a debtor's assets used as collateral for a secured transaction by filing a public notice (financing statement) with a particular filing office.); and
- 10.11.6 other documentation requested by TCEQ to support the Request for Reimbursement.

10.12 The TCEQ may waive the requirement for submission of any supporting documents that are not applicable to the PERFORMING PARTY.

10.13 If the Request for Reimbursement does not satisfactorily demonstrate the accomplishment of the required tasks, or that costs are allowable, eligible, actual, and incurred costs, the TCEQ may reject the request, until the deficiencies have been corrected. Satisfactory accomplishment of a task is within the judgment of the TCEQ; however, such judgment must be reasonable.

10.14 The TCEQ is not obligated to direct the Disburser to make payment until the Request for Reimbursement is approved by the TCEQ. Payments may be suspended or withheld in all or part as authorized by the Contract.

ARTICLE 11. RELEASE OF CLAIMS

The final Request for Reimbursement must include a signed Release of Claims. The Release of Claims will be for the benefit of TCEQ and the Disburser, and the PERFORMING PARTY will release all claims for payment of any funds due and payable, pending PERFORMING PARTY'S receipt of the funds from the Disburser for the final Request for Reimbursement.

ARTICLE 12. PERFORMING PARTY'S RESPONSIBILITIES TO THE TCEQ: GENERAL

12.1 All Grant Activities for which reimbursement is requested must be completed as set forth in the Scope of Work.

12.2 The Grant Equipment is listed in the Scope of Work. For on-road vehicle and non-road equipment replacement projects only, PERFORMING PARTY may substitute a replacement vehicle and/or engine for the unit listed in the Scope of Work; provided that the substitute unit meets all eligibility and other requirements, is certified to the same or better NO_x emission standard or family emission limit (FEL) and will result in the same or better NO_x emissions reductions as the unit listed. Any substitution is subject to review and approval by TCEQ. For other project types and categories, PERFORMING PARTY may not substitute different Grant Equipment for the units listed in the approved Application without approval from the TCEQ.

12.3 The PERFORMING PARTY agrees to continuously own, or otherwise commercially finance the Grant Equipment; continuously maintain registration of the Grant Equipment in Texas; and operate the Grant Equipment in Texas for the specified Activity Life, regardless of the financing arrangements used for the purchase of the Grant Equipment, and subject to the more specific provisions contained in Article 14 of the General Conditions of this Contract.

Professional Quality

12.4 The PERFORMING PARTY shall be responsible for the professional quality, technical accuracy, timely completion and the coordination of all Grant Activities under this Contract.

Supervision and Superintendence

12.5 The PERFORMING PARTY is responsible for the supervision, inspection and direction of the Grant Activities in a competent and efficient manner, devoting such attention thereto and applying such skills and expertise as may be necessary to perform the Grant Activities in accordance with the Contract Documents. The PERFORMING PARTY shall be solely responsible for the means, methods, techniques, sequences, and procedures of the Grant Activities. The PERFORMING PARTY agrees to completely implement the Grant Activities in accordance with the Contract.

Materials & Equipment

12.6 Unless otherwise specified in the Contract, the PERFORMING PARTY will assume full responsibility for all materials, equipment, labor, transportation, tools, appliances, fuel, power, light, heat, telephone, water, sanitary facilities, temporary facilities and all other facilities and incidentals necessary for the implementation and completion of the Grant Activities.

12.7 Unless otherwise expressly agreed by the TCEQ, all Grant Equipment will be of good quality and as provided in the Contract Documents. All materials and equipment shall be applied, installed, connected, erected, used, cleaned and conditioned, and maintained in accordance with instructions of the applicable manufacturer and supplier.

12.8 The PERFORMING PARTY agrees to maintain the Grant Equipment as necessary to keep the Grant Equipment in good condition and functioning at Optimum Performance during the Activity Life. Failure to maintain the Grant Equipment as necessary to achieve the required Annual Usage shall constitute a material breach of this Contract.

12.9 The PERFORMING PARTY agrees that the emissions reductions generated by each activity over the Activity Life may not be used for credit under any state or federal emissions reduction credit averaging, banking, or trading program. Emissions reductions generated may not be used as a marketable emissions reduction credit and may be used to demonstrate conformity with the state implementation plan. PERFORMING PARTY agrees that any marketable credits generated by emissions reduction measures are transferred to the TCEQ, and that the reductions are permanently retired. The PERFORMING PARTY may not combine with this grant funding from other incentive programs that require transfer of the emissions reductions to that other program.

ARTICLE 13. PERFORMING PARTY'S RESPONSIBILITIES TO THE TCEQ: INSURANCE, REPAIR, AND REPLACEMENT

13.1 Unless otherwise expressly agreed by the TCEQ, the PERFORMING PARTY must obtain and maintain a policy of insurance for the Activity Life which is sufficient to provide for replacement of Grant Equipment which is lost, stolen, or irreparably damaged. Governmental entities may use an established self-insurance program to satisfy this requirement. If requested by the TCEQ, the PERFORMING PARTY shall provide proof of insurance coverage. The TCEQ may approve alternative forms of insurance to comply with this requirement, including evidence of self-insurance. The TCEQ may also waive this requirement, at its sole discretion, for certain types of entities. Previously submitted certificates of insurance coverage may be amended to reflect newly extended coverage. A failure to comply with this requirement is considered a material breach of the Contract.

13.2 Upon the occurrence of a repairable malfunction of or damage to Grant Equipment which affects emissions reductions during the Activity Life, the PERFORMING PARTY will repair and restore the Grant Equipment to the level of Optimum Performance.

13.3 Upon the occurrence of loss, theft, or irreparable damage of Grant Equipment during the Activity Life, the PERFORMING PARTY will replace the lost, stolen, or damaged Grant Equipment with similar equipment which achieves the same Optimum Performance or better. The replacement Grant Equipment must be in operation no later than 60 consecutive days from the occurrence of loss, theft, or damage, unless the TCEQ expressly agrees to a longer period. Replacement Grant Equipment must meet all eligibility requirements applicable to the original Grant Equipment and is subject to all the requirements applicable to Grant Equipment contained in this Contract.

13.4 The PERFORMING PARTY shall fully comply with all requirements of any agreements with third parties that have a security interest or similar interest in the Grant Equipment. Repossession, seizure, or any other event where the PERFORMING PARTY loses possession of the Grant Equipment shall be considered a material breach of this Contract and shall require the return of grant funds.

ARTICLE 14. PERFORMING PARTY'S RESPONSIBILITIES TO THE TCEQ: GRANT ACTIVITIES

14.1 The emissions reduction benefit supporting the award of this grant is based upon the PERFORMING PARTY's successful performance of the Grant Activities as detailed in the Scope of Work.

14.2 The PERFORMING PARTY agrees that if the usage of the Grant Equipment does not meet the requirements listed in the Scope of Work, the PERFORMING PARTY will return the grant funds to the State Trust.

14.2.1 The determination of whether return of funds is required will be primarily based on whether the Grant Equipment is used and maintained in the manner and area specified in the Scope of Work during the Activity Life.

14.3 State law and TCEQ policy require that TCEQ remain in contractual privity with the entity operating the Grant Equipment. TCEQ must retain the ability to enforce until after the Activity Life of this Contract. Any act by the PERFORMING PARTY that impairs the TCEQ's ability to enforce the Contract, including sale of the Grant Equipment, transfer of the Grant Equipment, loss of the Grant Equipment, sale of the PERFORMING PARTY's business interests, or liquidation of the PERFORMING PARTY's assets (including the Grant Equipment), shall constitute a material breach of this Contract and shall require the return of grant funds.

14.3.1 The decision by TCEQ on whether to require return of grant funds may include consideration of whether the Grant Equipment will continue to be used in a manner consistent with the Scope of Work. If TCEQ, in its sole discretion, allows the assignment of this Contract, the PERFORMING PARTY and proposed assignee will be required to enter a TCEQ Consent to Assignment agreement that shall include the assignee's obligation to accept this Contract and to continue to use the Grant Equipment subject to the terms of this Contract.

14.4 If the PERFORMING PARTY is required to return grant funds, the TCEQ, at its sole discretion, may allow for the return of a pro-rated share of the reimbursement funds reflecting a partial failure to perform the requirements of the Scope of Work. This determination shall depend on factors including, but not limited to, use of the grant equipment in a manner that maintained overall program eligibility, full completion of reimbursement and equipment disposition requirements, the PERFORMING PARTY's good-faith efforts to

perform the grant activities during the Activity Life, and the PERFORMING PARTY's compliance with notification requirements of this Contract (i.e., notification before sale of equipment).

ARTICLE 15. PERFORMING PARTY'S RESPONSIBILITIES TO THE TCEQ: PROJECT STATUS, AND LONG-TERM MONITORING

15.1 As a condition of receiving grant funds, the PERFORMING PARTY agrees to maintain and operate the Grant Equipment as specified in the Scope of Work for the Activity Life of this Contract.

15.2 If requested by the TCEQ during a periodic review, the PERFORMING PARTY shall provide information on the status and completion of grant activities. The PERFORMING PARTY shall provide such information on the form or in a format requested by the TCEQ, and within a reasonable time frame as may be requested by the TCEQ.

15.3 The PERFORMING PARTY agrees that failure to comply with the Scope of Work during the Activity Life and/or submitting documents with false, incorrect, or incomplete information constitutes a material breach of this Contract and may require a return of the reimbursement grant funds.

ARTICLE 16. PERFORMING PARTY'S RESPONSIBILITIES TO THE TCEQ: DISPOSITION OF REPLACED VEHICLES AND ENGINES

16.1 The PERFORMING PARTY agrees to dispose of the vehicles, equipment, and engines being replaced by complete destruction or otherwise rendering them permanently inoperable. This may be performed by complete crushing of the vehicle and engine or putting a 3-inch or larger hole through the engine block on both sides (or otherwise destroying it) and cutting both frame rails in half. The structural damage to the vehicle or equipment must be such that repairs are not possible.

16.2 The PERFORMING PARTY shall verify the final disposition of the vehicles and engines replaced under this Contract on the TCEQ-provided form. The PERFORMING PARTY must submit a copy of a Texas Nonrepairable Vehicle Title issued by the Texas Department of Motor Vehicles (TxDMV) for the on-road vehicle(s) replaced under this Contract. The Texas Nonrepairable Vehicle Title must be submitted to the TCEQ simultaneously with the required disposition documentation. The final disposition forms shall be submitted prior to or with the Request for Reimbursement.

16.3 The PERFORMING PARTY must submit photographs of the vehicles and engines being destroyed, both before and after the vehicles, equipment, and/or engines are destroyed or rendered inoperable. The TCEQ must approve the forms and supplemental documentation submitted by the PERFORMING PARTY to meet the disposition requirement. Such approval is at the sole discretion of TCEQ. The PERFORMING PARTY shall provide TCEQ with any clarification and additional documentation as requested by TCEQ to approve disposition.

16.4 The PERFORMING PARTY agrees that failure to properly destroy and render permanently inoperable a vehicle or engine replaced under this Contract will result in non-payment of the grant funds. This Article shall also apply to a failure to provide properly completed documentation of final disposition of equipment as required by this Contract.

Credit for Replaced Vehicles Or Equipment

16.5 In determining the expenses eligible for reimbursement under this Contract, the cost of replacement or repower activities shall be reduced by the value of any credit or other financial compensation received by the PERFORMING PARTY for the sale or trade-in of the destroyed vehicles, equipment, or engines being replaced, including, the parts from those vehicles, equipment, or engines, for the sale of the scrapped vehicles, equipment, engines being replaced, trade-in of engines for remanufacture, or insurance proceeds.

16.6 For on-road vehicle and non-road equipment replacement activities, the TCEQ may use a default scrappage value of \$1,000 in lieu of the actual value and in lieu of the PERFORMING PARTY reporting the value to the TCEQ. For activities involving the repower of heavy-duty equipment the default scrappage value is \$250.

16.7 If TCEQ does not use the above default scrappage values, the actual scrappage value or other value received for the old vehicle, equipment, or engine is considered a cost of performing the Grant Activities and as such must satisfy the cost guidelines of this Contract. The value received for the vehicle or equipment being replaced must be the result of arms-length bargaining with the entity disposing of the replaced vehicle or equipment and must reflect actual market value.

ARTICLE 17. PERFORMING PARTY'S RESPONSIBILITIES: ADMINISTRATIVE REQUIREMENTS

Access to Records, Grant Equipment, and Vehicles, Equipment, and Engines Being Replaced

17.1 State Auditor's Office. The PERFORMING PARTY understands that acceptance of funds under this Contract acts as acceptance of the authority of the State Auditor's Office, or any successor agency, to conduct an audit on investigation in connection with those funds. Under the direction of the legislative audit committee, an entity that is the subject of an audit or investigation by the State Auditor's Office must provide the State Auditor with access to any information the State Auditor considers relevant to the investigation or audit. The PERFORMING PARTY further agrees to cooperate fully with the State Auditor's Office or its successor in the conduct of the audit or investigation, including providing all records requested. The PERFORMING PARTY will ensure that this clause concerning the authority to audit funds received indirectly by subcontractors through the PERFORMING PARTY and the requirement to cooperate is included in any subcontract it awards under this Contract. The PERFORMING PARTY will include in all subcontracts for work under this Contract a requirement that subcontractors will provide access to all relevant financial records including bank statements.

17.2 The PERFORMING PARTY shall allow access to all Grant Equipment by the TCEQ, the State of Texas, the State Auditor's Office, and any of their authorized representatives for the purpose of review, on-site inspection, and/or audit. In addition, the PERFORMING PARTY shall allow access to all vehicles, equipment, and engines being replaced under this Contract.

Maintenance of Records

17.3 The PERFORMING PARTY shall maintain books, records, documents, and other evidence reasonably pertinent to performance of the Grant Activities and requirements of the Contract, including the Contract or amendments thereto. All financial records will be maintained in accordance with generally accepted accounting principles, the UGMS, and this Contract. The PERFORMING PARTY shall also maintain the financial information and data used in the preparation or support of any request for reimbursement (direct and indirect), price or profit analysis for this Contract, and a copy of any cost information or analysis submitted to the TCEQ. The PERFORMING PARTY shall allow access to all the material including bank statements and records by the TCEQ, the State of Texas, the State Auditor's Office, and any of their authorized representatives for the purpose of review, inspection, audit, excerpts, transcriptions, and/or copying during normal business hours. The PERFORMING PARTY shall provide appropriate facilities and equipment for such access and inspection.

17.4 The PERFORMING PARTY agrees to the disclosure of all information and reports resulting from access to records under this Contract.

17.5 Records under this Article shall be maintained by the PERFORMING PARTY during performance of Grant Activities under this Contract and for three (3) years after the Activity Life of equipment under this Contract. If any litigation, claim, negotiation, audit, cost recovery, or other action (including actions concerning costs of items to which an audit exception has been taken) involving such records has been started before the expiration of the three year period, such records must be retained until completion of the action or resolution of all issues which arise from it, or until the end of the regular three year period, whichever is later.

17.6 Subject to the obligations and conditions set forth in this Contract, title to Grant Equipment (hereafter referred to in this Article as "property") acquired under this Contract by the PERFORMING PARTY will vest upon acquisition in the PERFORMING PARTY.

17.7 The PERFORMING PARTY may develop and use its own property management system, which must comply with all applicable federal, state, and local laws, rules, and regulations. If an adequate system for accounting for property owned by the PERFORMING PARTY is not in place or is not used properly, the *State Property Accounting Process User's Guide* (<https://fmx.cpa.state.tx.us/fmx/pubs/spaproc/index.php>) issued by the State Comptroller of Public Accounts will be used as a guide for establishing such a system. The property management system used by the PERFORMING PARTY must meet the requirements set forth in this Article.

- 17.7.1 Property records of Grant Equipment must be maintained that include a description of the property, a serial number or other identification number, the source of property, usage and mileage (separated by location of usage and mileage), who holds title, the acquisition date, and the cost of the property, percentage of TCEQ participation in the cost of the property, the

location, use and condition of the property, and any ultimate disposition data including the date of disposal and sale price of the property.

- 17.7.2 The PERFORMING PARTY will conduct a physical inventory of all Grant Equipment no less frequently than once every two years during the Activity Life and reconcile the results of such inventories with the appropriate property records. Property control procedures utilized by the PERFORMING PARTY must include adequate safeguards to prevent loss, damage, or theft of the Grant Equipment.

Accounting Systems

17.8 The PERFORMING PARTY shall have an accounting system which accounts for costs in accordance with generally accepted accounting standards or principles and complies in all material respects with applicable State law, regulations, and policies relating to accounting standards or principles. The PERFORMING PARTY must account for costs in a manner consistent with such standards or principles. This system shall provide for the identification, accumulation, and segregation of allowable and unallowable costs among projects.

PERFORMING PARTY's Representative

17.9 The PERFORMING PARTY will identify in writing a Project Representative as the person authorized to receive and respond to inquiries and requests from the TCEQ, to manage the Grant Activities being performed, and to act on behalf of the PERFORMING PARTY.

17.10 The PERFORMING PARTY agrees to ensure that its authorized Project Representative, or someone to whom that person has delegated his or her authority, is available during regular business hours for consultation with the TCEQ. Written notice of any such delegation will be provided to the TCEQ.

Personnel

17.11 PERFORMING PARTY shall provide competent, suitably qualified personnel, whether employees or contractors to implement the Grant Activities as required by the Contract Documents. The PERFORMING PARTY must always maintain good discipline and order on the location of Grant Activities.

Permits

17.12 Unless otherwise provided in the Contract Documents, the PERFORMING PARTY shall obtain and pay for all transportation, construction, and operating permits and licenses required for performance of this Contract. Failure to comply with a permit or administrative order issued by the TCEQ or other state agency may result in a determination, within the sole discretion of the TCEQ, that the best interests of the state are served by withholding reimbursement or by the application of other remedies under this Contract.

Laws and Regulations

17.13 The PERFORMING PARTY shall give all notices and comply in all material respects with all Laws and Regulations applicable to furnishing and performance of the Grant Activities. Except where otherwise expressly required by applicable Laws and Regulations, TCEQ shall not be responsible for monitoring PERFORMING PARTY's compliance with any Laws or Regulations.

Data and Publicity

17.14 All data and other information developed under this Contract shall be furnished, upon request, to the TCEQ and shall be public data and information except to the extent that it is exempted from public access by the Texas Public Information Act, Texas Government Code, Chapter 552. Upon termination of this Contract, if requested by the TCEQ, all copies of data and information developed under this Contract, including databases for which the costs of preparation are reimbursed under this Contract, shall be furnished at no charge to the TCEQ, and shall become the property of the TCEQ.

17.15 The PERFORMING PARTY agrees to notify TCEQ prior to releasing any information to the news media regarding the Grant Activities. The PERFORMING PARTY will acknowledge the financial support of the TCEQ whenever a Grant Activity reimbursed, in whole or part, is publicized or reported in news media or publications.

Safety and Protection

17.16 Where applicable, the PERFORMING PARTY shall be responsible for requiring employees, contractors, and subcontractors to maintain and supervise all necessary safety precautions and programs in connection with the Grant Activities. The PERFORMING PARTY shall take all necessary safety precautions.

17.17 In performing the Grant Activities hereunder, the PERFORMING PARTY undertakes performance for its own benefit and not as agent for the TCEQ.

Lobbying Activities

17.18 As set forth in these Contract Documents, and in accordance with the UGMS and State law, the PERFORMING PARTY shall not use funds provided under this Contract to support lobbying or political activity either directly or indirectly.

ARTICLE 18. TCEQ'S RESPONSIBILITIES

18.1 The Executive Director of the TCEQ will identify a person authorized to give direction to the PERFORMING PARTY and act on behalf of the TCEQ.

18.2 The TCEQ will not supervise, direct or have control or authority over, nor be responsible for, PERFORMING PARTY's means, methods, techniques, sequences or procedures relating to the implementation project or the Safety precautions and programs incident thereto, or for any failure of PERFORMING PARTY to comply with Laws and Regulations applicable to the furnishing or performance of the Scope of Work. TCEQ will not be responsible for PERFORMING PARTY's failure to perform or furnish the Scope of Work in accordance with the Contract.

18.3 The TCEQ shall authorize the payment of reimbursement funds from the State Trust for Grant Activities specified in the Scope of Work and performed in accordance with the requirements of this Contract.

ARTICLE 19. TERMINATION

19.1 Termination of this Contract under any circumstances shall not constitute a waiver of any rights or remedies that TCEQ may exercise under this Contract or otherwise as provided by law.

19.2 This Contract may be terminated in whole or in part by the TCEQ for cause, including a material failure to comply with the requirements of the Contract Documents. The TCEQ will provide written notice (delivered by certified mail, return receipt requested) of intent to terminate. The PERFORMING PARTY shall have twenty (20) calendar days from the date such notice is sent to cure performance deficiencies.

19.3 This Contract may be terminated in whole or part by the TCEQ if any delay or failure of performance of the Grant Activities occurs by either PERFORMING PARTY or by the TCEQ due to a force majeure event. Neither PERFORMING PARTY nor TCEQ shall be liable to the other for any delay in, or failure of performance, of any requirement included in the Contract caused by force majeure. The existence of such causes of delay or failure shall extend the period of performance until after the causes of delay or failure have been removed, provided that the non-performing party exercises all reasonable due diligence to perform. Force majeure is defined as acts of God, war, fires, explosions, hurricanes, floods, failure of transportation, or other causes that are beyond the reasonable control of either party and that by exercise of due foresight such party could not reasonably have been expected to avoid, and which, by the exercise of all reasonable due diligence, such party is unable to overcome. Force majeure does not include ordinary delays that are common to the industry or location. Each party must inform the other in writing, with proof of receipt, within three (3) business days of the existence of such force majeure, or otherwise waive this right as a defense.

19.4 This Contract may be terminated in whole or in part by the TCEQ for its convenience. This includes without limitation the Trustee's denial of a request for funds, which results in the unavailability of funds to complete this project. To the extent feasible, in the sole discretion of the TCEQ, the TCEQ will provide a minimum of ten (10) days written notice (delivered by certified mail, return receipt requested) of intent to terminate.

19.5 If after termination for the PERFORMING PARTY's material failure to comply with the requirements of the Contract Documents, it is determined that the PERFORMING PARTY had not so failed, the termination shall be deemed to have been affected for the convenience of the TCEQ.

19.6 In accordance with this Contract, the PERFORMING PARTY does not have an expectation or entitlement of continued receipt of financial assistance under this Contract. Therefore, PERFORMING PARTY waives any claim for damages arising from or resulting from TCEQ's termination of this Contract for any reason.

19.7 If, during the performance of the Grant Activities, the PERFORMING PARTY chooses to not complete the Grant Activities and withdraw from the obligations under this Contract, the PERFORMING PARTY may terminate this Contract by providing ten (10) days written notice to the TCEQ and returning any reimbursements already received to the Trustee of the State Trust.

19.8 The PERFORMING PARTY acknowledges that certain requirements of this Contract shall survive an event of termination. The PERFORMING PARTY agrees to performance of Grant Activities in accordance with the Contract Documents beyond the Contract Period and through the end of the Activity Life of each Activity included in the Scope of Work for which reimbursement has been requested. TCEQ reserves the right to assert any remedies available by law and under this contract for PERFORMING PARTY's performance of the Grant Activities for the length of the Activity Life of all Grant Activities.

ARTICLE 20. REMEDIES AVAILABLE TO THE TCEQ

20.1. The following Schedule of Remedies applies in the event of any breach of the requirements of this Contract; including the substandard performance of Grant Activities or other failure, material or otherwise, to conform to the requirements of the Contract or applicable law:

- 20.1.1 Issue notice of substandard performance or other non-conforming act or omission;
- 20.1.2 Reject substandard performance and request corrections without charge to the TCEQ;
- 20.1.3 Request and receive return to State Trust of any over payments or inappropriate payments;
- 20.1.4 Reject reimbursement request and suspend all or part of any payment, pending accepted revision of substandard performance or non-conformity;
- 20.1.6 Suspend all or part of the Scope of Work and/or payments pending accepted revision of substandard performance or non-conformity;
- 20.1.7 Terminate the contract and demand and receive return to State Trust of all unexpended funds and any improperly expended funds;
- 20.1.8 Demand restitution and return to State Trust of any payments where performance is subsequently determined non-conforming; or
- 20.1.9 Require payment of liquidated damages to the State Trust.

20.2. **Liquidated Damages.** The parties agree that the actual damages that may be sustained by TCEQ or the State Trust due to the PERFORMING PARTY breaching its obligations under this Contract are uncertain and difficult to ascertain. Therefore, the parties agree that reasonable compensation for such breach will be the sum of the total of grant funds paid from the State Trust, reduced by the percentage of the total Activity Life that the PERFORMING PARTY met prior to the breach. Determination of timely and accurate documentation supporting the PERFORMING PARTY's activity is in the sole discretion of TCEQ. The PERFORMING PARTY hereby promises to pay to the State Trust, such sum as liquidated damages, and not as a penalty, in the event of such breach.

20.3. **Cumulative Remedies.** TCEQ may avail itself of any remedy or sanction provided in this contract or in law to recover any losses arising from or caused by the PERFORMING PARTY's substandard performance or any material non-conformity with the contract or the law. The remedies and sanctions available to either party in this contract shall not limit the remedies available to the parties under law.

ARTICLE 21. INDEMNIFICATION

21.1 To the extent permitted by law, the PERFORMING PARTY agrees to indemnify and hold harmless the State of Texas and the TCEQ, including its employees and officers, against and from any and all liability, loss, or damage arising out of actions of the PERFORMING PARTY, its subcontractors, agents, officers and directors, principals and employees in the performance of this Contract.

21.2 This paragraph is not intended and shall not be construed to require the PERFORMING PARTY to indemnify or hold harmless the State or the TCEQ for any claims or liabilities resulting from the negligent acts or omissions of the TCEQ or its employees.

ARTICLE 22. AMENDING AND SUPPLEMENTING CONTRACT DOCUMENTS

The Contract Documents may be amended to provide for additions, deletions, and revisions in the Scope of Work or to modify the terms and conditions of this Contract in one or more of the following ways: a formal Written Amendment or a Minor Change.

ARTICLE 23. STANDARDS FOR PERFORMING PARTY'S PERFORMANCE

23.1 The PERFORMING PARTY agrees that the standards set forth below are appropriate standards for the PERFORMING PARTY's performance during the Contract.

- 23.1.1 Quality and Accuracy. Standard: The PERFORMING PARTY's Grant Activities conform to the requirements of this Contract.

- 23.1.2 Timeliness. Standard: The PERFORMING PARTY's Grant Activities are completed on schedule.
 - 23.1.3 Reports and Administrative and Financial Operations. Standard: The PERFORMING PARTY's administrative and financial operations comply with all obligations in law and in this Contract, including record-keeping, reimbursement requests, audits, allowable costs, payments to subcontractors, and restricted expenditures.
 - 23.1.4 Communication. Standard: The PERFORMING PARTY's accessibility, responsiveness, and cooperativeness with respect to any contract-related concerns communicated by the TCEQ; and including the PERFORMING PARTY's demonstrated relationship with subcontractors.
 - 23.1.5 Other. Standard: Other factors unique to the type of project, as determined by the TCEQ.
- 23.2 The TCEQ will monitor the PERFORMING PARTY's performance and evaluate the level of compliance with the standards utilizing the performance measures set forth below.
- 23.2.1 Exceeds Expectations. The PERFORMING PARTY fully complied with all the standards on a consistent basis.
 - 23.2.2 Satisfactory Performance. The PERFORMING PARTY's performance complied with all of the standards, with only typical errors, delays, or other problems that needed to be corrected.
 - 23.2.3 Marginal Performance. The PERFORMING PARTY's performance was acceptable, although a significant number of deficiencies had to be corrected before the contract requirements could be considered met.
 - 23.2.4 Unsatisfactory Performance. The PERFORMING PARTY's performance was not acceptable, even after attempts to correct deficiencies.

Performance Evaluation

23.3 The TCEQ may prepare a written evaluation of the performance of the PERFORMING PARTY upon the completion of the Activity Life, or more frequently, as deemed necessary by the TCEQ. A copy of the evaluation will be provided to the PERFORMING PARTY and a copy retained in the TCEQ's contract files. The content of the evaluation shall be wholly within the sole discretion of the TCEQ. The PERFORMING PARTY may provide a written statement which explains or disagrees with the evaluation, which will be incorporated into the evaluation. The PERFORMING PARTY waives any claim for damages against TCEQ for the evaluation.

23.4 The performance rating on the contractor evaluations may be considered by the TCEQ in evaluating an application from the PERFORMING PARTY for additional funding under this program. The PERFORMING PARTY understands that a rating of marginal or unsatisfactory performance may have a negative impact on decisions regarding funding for additional projects applied for by the PERFORMING PARTY.

ARTICLE 24. MISCELLANEOUS

24.1 Any notice issued pursuant to this Contract shall be addressed to the respective party's Authorized Project Representative, or to such other address as they have theretofore specified by written notice. Such notices shall be sent by certified or registered mail or shall be delivered in hand and a receipt provided thereof. Any notice or other written communication shall be considered delivered upon date of receipt.

24.2 For this Contract to be effective, an authorized principal of a corporation, an unincorporated business organization, or association must sign the Contract. An agent signing for a corporation must be authorized to sign by the corporation.

24.3 Unless authorized in writing by the TCEQ in accordance with this Contract, no waiver of any obligation of the PERFORMING PARTY shall bind the TCEQ. Any such authorized waiver shall not constitute a continuing waiver of the obligation.

24.4 The PERFORMING PARTY is not a "vendor" of goods and services within the meaning of Texas Government Code, Chapter 2251. Therefore, the provisions for interest on payments under that statute do not apply to this Contract.

24.5 When any period of time is referred to in the Contract Documents by days, it will be computed to exclude the first and include the last day of such period. If the last day of any such period falls on a Saturday or Sunday or on a State of Texas or federal holiday, such day will be omitted from the computation.

24.6 A calendar day of twenty-four (24) hours measured from midnight to the next midnight will constitute a day.

24.7 By stating at any place in this Contract that any particular non-compliance is a material breach, TCEQ does not limit the acts or omissions which may constitute a material breach.

24.8 The parties to this Contract expressly agree that time is of the essence of this contract.

24.9 The terms include, included, including, includes, when used in this Contract shall mean "includes but not limited to."

24.10 Notice of Claim. Should the TCEQ or the PERFORMING PARTY suffer injury or damage to person or property because of any error, omission or act of the other party or of any of the other party's employees or agents or others for whose acts the other party is legally liable, claim will be made in writing to the other party within a reasonable time of the first observance of such injury or damage. The provisions of this paragraph shall not be construed as a substitute for or a waiver of the provisions of any applicable statute of limitations or repose or sovereign immunity.

24.11 All representations, indemnifications, warranties and guarantees made in, required by or given in accordance with the Contract Documents, as well as all continuing obligations indicated in the Contract Documents, will survive final payment, completion and acceptance of the Grant Activities and termination or completion of the Contract until such time as enforcement of such representations, indemnifications, warranties and guarantees is barred by the applicable statute of limitations.

24.12 This Contract is not transferable or otherwise assignable by the PERFORMING PARTY without the written consent of the TCEQ and any attempted transfer without such consent is void. Notwithstanding any provisions relating to assignment in the Uniform Commercial Code, no delegation by a party hereto of any duties or obligations nor assignment by a party hereto of any rights under or interests in the Contract Documents will be binding on another party hereto without the written consent of the party sought to be bound. Specifically, but without limitation, monies that may become due and monies that are due may not be assigned without such consent (except to an extent that the effect of this restriction may be limited by law), and unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under the Contract Documents.

24.13 Subject to the provisions of Article 14, General Conditions PERFORMING PARTY'S RESPONSIBILITIES TO THE TCEQ: GRANT ACTIVITIES, Subsection 14.3, the TCEQ and the PERFORMING PARTY each binds itself, its successors, assigns and agents to the other party hereto, successors, assigns and representatives in respect to all covenants, agreements and obligations contained in the Contract Documents.

24.14 The parties hereby agree that this Contract does not waive the State's sovereign immunity relating to suit, liability, and the payment of damages. No TCEQ personnel or agents are authorized to waive sovereign immunity by accepting, on behalf of TCEQ, goods or services which are not required under the Contract Documents or any conforming amendment. The parties further agree that all claims, suits, or obligations arising under or related to this Contract are subject to and limited to the availability of funds appropriated by the Texas Legislature for that respective claim, suit, or obligation.

24.15 The PERFORMING PARTY acknowledges and agrees that this Contract has been executed, and will be administered in Travis County, Texas. The PERFORMING PARTY also acknowledges and agrees that any permissible cause of action involving this Contract will arise solely in Travis County. This provision does not waive the TCEQ's sovereign immunity.

24.16 Any provision of the Contract Documents held to be void or unenforceable under any Laws or Regulations shall be deemed stricken, and all remaining provisions shall continue to be valid and binding upon TCEQ and PERFORMING PARTY. The parties agree that the Contract Documents will be reformed to replace a stricken provision or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision.

24.17 Bankruptcy. If the PERFORMING PARTY files for bankruptcy, the PERFORMING PARTY shall immediately notify TCEQ in writing according to the Notice provisions AND send notification by certified mail directly to TCEQ Bankruptcy Program. The PERFORMING PARTY shall place TCEQ on the distribution list for bankruptcy court documents. The PERFORMING PARTY's notice to the bankruptcy program must include the appropriate contract number(s).

— End of General Conditions —

AUTHORIZED REPRESENTATIVES/LOCATION OF RECORDS

TCEQ Project Representative

The individual named below is the TCEQ Project Representative, who is authorized to give and receive communications and directions on behalf of the TCEQ. All communications including all payment requests must be addressed to the TCEQ Project Representative or his or her designee.

Mailing Address:

Mr. Nate Hickman
Air Grants Division, MC-204
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, TX 78711-3087

Physical Address:

Mr. Nate Hickman
Air Grants Division, MC-204
Texas Commission on Environmental Quality
12100 Park 35 Circle, Bldg. F
Austin, TX 78753

Telephone No.: (512) 239-4434

Facsimile No.: (512) 239-6161

PERFORMING PARTY's Authorized Official

The individual authorized to sign legal documents on behalf of the PERFORMING PARTY.

Mailing Address:

Mr. Robert S. Hauck
City of Tomball
501 James Street
Tomball, Texas 77375

Physical Address:

Mr. Robert S. Hauck
City of Tomball
401 Market Street
Tomball, Texas 77375

Telephone No.: (281) 290-1302

PERFORMING PARTY's Project Representative

The individual named in the original application is the PERFORMING PARTY Project Representative, who is authorized to give and receive communications and directions on behalf of the PERFORMING PARTY. All communications to the PERFORMING PARTY will be addressed to the PERFORMING PARTY Project Representative or his or her designee.

Mailing Address:

Ms. Beth Jones
City of Tomball
501 James Street
Tomball, Texas 77375

Physical Address:

Ms. Beth Jones
City of Tomball
501 James Street
Tomball, Texas 77375

Telephone No.: (281) 290-1466

The PERFORMING PARTY agrees to make arrangements necessary to ensure that its authorized Project Representative, or someone to whom that person has delegated his or her authority, is available during business hours for consultation with the TCEQ. Written notice of any such delegation will be provided to the TCEQ.

Designated Location for Records Access and Review

The PERFORMING PARTY designates the physical location identified in the original application for record access and review pursuant to any applicable provision of this contract.

— End of Authorized Representatives/Location of Records —

SPECIAL CONDITIONS
for
Texas Volkswagen Environmental Mitigation Program
Replacement and Repower Activities

ARTICLE 1. SPECIAL CONDITIONS

The PERFORMING PARTY agrees to these Special Conditions.

{This Article is not applicable to this project. The Article number is retained for numbering continuity.}

— End of Special Conditions —

SCOPE OF WORK
for
Texas Volkswagen Environmental Mitigation Program (TxVEMP)
Refuse Replacement Project

The following Scope of Work contains information on each Grant Activity to be conducted and the expenses that will be reimbursed under this Agreement. The information and data provided in the original Application submitted by the PERFORMING PARTY may have been altered after submittal to the TCEQ, to ensure that the information in the Grant Agreement is accurate. The PERFORMING PARTY has reviewed the Scope of Work and, by signing this Agreement, ratifies, adopts, and agrees to all such alterations.

ARTICLE 1. ACTIVITY NUMBERS

1.1. The Project under this Agreement is assigned the following project number 2020-21-0059-VW. Each Activity under this Agreement is assigned the Activity Number(s) listed in the table below. The PERFORMING PARTY shall use the assigned Activity Number(s) when tracking and reporting to the TCEQ.

Activity Number	Description; Identified by last 4 digits of VIN
001	Replace 1 On-Road Sweeper Truck, ID:3140

1.2. If the purchase and installation of electric charging or hydrogen fueling infrastructure is included in this project, the Infrastructure Activity under this Agreement is assigned the Activity Number(s) in the table below. The PERFORMING PARTY shall use the assigned Activity Number(s) when tracking and reporting to the TCEQ.

Not Applicable

ARTICLE 2. ACTIVITY LIFE

2.1. The duration of the Activity Life for Grant Activities performed under the Grant Agreement is 5 years. The Activity Life will commence upon the date of reimbursement unless a different start date is specified in writing by the TCEQ.

2.2. The start and end date of the Activity Life for each Grant Activity will be established by the TCEQ in accordance with Article 1.1, General Conditions of this Agreement.

ARTICLE 3. AREAS OF USE

3.1. The PERFORMING PARTY commits to operate the Grant Equipment over the Activity Life at least 51% of its total annual use as measured by annual mileage in the following designated Priority Area.

Priority Area:

Houston/Galveston/Brazoria Area: Brazoria, Chambers, Fort Bend, Galveston, Harris, Liberty, Montgomery, and Waller Counties

3.2. If the purchase and installation of electric charging or hydrogen fueling infrastructure are included in this Project, the Infrastructure Activity location is listed below.

Not Applicable

3.3. Changes to the Priority Area and/or facility location may not be made without prior approval from TCEQ. The PERFORMING PARTY understands that TCEQ will not normally approve Priority Area changes unless acceptance of multiple areas is contemplated in the original grant solicitation. The PERFORMING PARTY agrees to notify the TCEQ of any proposed change to the Priority Area and/or facility location for any of the Activities included under this Agreement prior to the change.

ARTICLE 4. ANNUAL USAGE

4.1 The table below contains the approved annual usage amount for each Grant Activity that is used to calculate the NO_x emissions reductions achieved.

Activity Number	Usage Rate	Usage Factor
001	20,000	Miles

4.2 Unless otherwise stated in the Special Conditions of this Agreement, the Annual Usage Rates represent the default usage amounts accepted by the TCEQ for calculation of the emissions reductions and successful performance does not require that those usage rates be met. Alternatively, if the TCEQ has determined that the Annual Usage Rates represent a usage commitment that must be met, additional requirements and obligations for operating the Grant Equipment for annual and total usage amounts will be set forth in the Special Conditions.

ARTICLE 5. GRANT EQUIPMENT

5.1. The PERFORMING PARTY agrees to purchase the Grant Equipment listed below and use it as described herein to accomplish the purpose of the grant.

Activity Number	Equip Description	Equip Year	Fuel Type	Engine Year	NOx Std Rate (g/bhp-hr)
001	Sweeper Truck	2021	Diesel	2020	0.2

5.1.1 The vehicle must be the same vehicle description as stated in the table above.

5.1.2 The vehicle must be manufactured for and intended to be used for the same primary function as the vehicle being replaced.

5.1.3 The model year of the engine installed on the replacement vehicle may not be more than one calendar year older than the calendar year in which the grant application was submitted.

5.1.4 The engine must have the same fuel type.

5.1.5 The engine must be certified to the same or better NO_x emission standard or family emission limit (FEL).

5.1.6 The vehicle must have the same or similar standard features necessary for performing the primary work for which the vehicle is intended.

5.2. If the purchase and installation of electric charging or hydrogen fueling infrastructure are included in this Project, the PERFORMING PARTY agrees to purchase the Infrastructure Activity listed below:

Not Applicable

5.3. TCEQ must approve any changes to the Grant Equipment that are different from the criteria shown above. If there is a question whether the Grant Equipment is different from the criteria above, TCEQ will make the final determination. If TCEQ approves a change to the Grant Equipment, it must be documented through an Amendment or Minor Change. A copy of the document will be provided to the PERFORMING PARTY.

5.4. Grant Equipment changes must be finalized before the PERFORMING PARTY may submit a Request for Reimbursement. TCEQ will not process a Request for Reimbursement until such changes are made. The PERFORMING PARTY is encouraged to submit a Contract Amendment Request Form for review and approval by the TCEQ of any changes not meeting the eligibility criteria above.

5.5. The PERFORMING PARTY remains responsible for purchasing Grant Equipment that meets all eligibility requirements. The TCEQ is not obligated to accept the change in Grant Equipment if the TCEQ determines that the change does not meet all eligibility requirements. In addition, the TCEQ's acceptance and payment of a Request for Reimbursement that includes changes to the Grant Equipment does not remove the ability of the TCEQ to require return of any grant funds paid in reimbursement for purchase of equipment that is later determined to not be eligible.

ARTICLE 6. EQUIPMENT BEING REPLACED

6.1. The PERFORMING PARTY agrees to replace the following equipment and complete the disposition of the equipment being replaced in accordance with Article 17 of the General Conditions:

Activity Number	Equip Description	Equip Make	Equip Model	Equip Year	VIN # (last 4 digits)	Engine Make	Engine Model	Engine Year	Engine ID	NOx Std Rate (g/bhp-hr)
001	Sweeper Truck	GMC	T-7500	2008	3140	Isuzu	6HK1XR	2007	4554206HI1778	1.23

ARTICLE 7. ACTIVITY GRANT AMOUNT

7.1. The maximum Grant Amount that may be reimbursed for each Grant Activity is listed below.

Activity Number	Activity Grant Amount
001	\$67,168.00

7.2. Regardless of the maximum Activity Grant Amounts, reimbursements are subject to the requirements of Article 9 of the General Conditions of this Agreement.

7.3. The maximum Activity Grant Amounts and the percentage of incremental costs may be adjusted downward in accordance with the Grant Agreement.

City Council Meeting Agenda Item Data Sheet

Meeting Date: January 18, 2021

Topic:

Award purchase of one (1) Street Sweeper made by Global Environmental in the amount of \$258,299.00 to Associated Supply Co., Inc., through a State Buyboard Cooperative Purchasing Contract.

Background:

This purchase is for the replacement of an existing Street Sweeper utilized by the Public Works department for routine cleaning of city-maintained roadways. The current street sweeper has been flagged for replacement due to age and mechanical issues as recommended by the Public Works Fleet Maintenance Department.

The purchase price for the replacement street sweeper is \$258,299.00 however the City has received a grant for the TCEQ totaling \$67,168.00 making the total commitment from the City \$191,131.00, after reimbursement.

As part of the grant requirements, our current street sweeper being replaced with the grant funds must be destroyed so that it is unable to be used in the future thus reducing omissions into the environment.

Origination: Public Works Department

Recommendation:

Public Works staff recommends approval to award the purchase of one (1) street sweeper in the amount of \$258,299.00, to Associated Supply Cp., Inc., through the State Buyboard Cooperative Purchasing Contract.

Party(ies) responsible for placing this item on agenda: Meagan Mageo, Project Coordinator

FUNDING (IF APPLICABLE)

Are funds specifically designated in the current budget for the full amount required for this purpose?

Yes: ☒ No: ☐ If yes, specify Account Number: #650-651-6405

If no, funds will be transferred from account #	To account #
---	--------------

Signed	Meagan Mageo	Approved by	
	Staff Member		City Manager
	Date		Date

City Council Meeting

Agenda Item

Data Sheet

Meeting Date: December 21, 2020

Topic:

Open Public Hearing of the City of Tomball, Texas to consider the advisability of the creation of a Public Improvement District to make certain improvements over certain property located within the City (TPID 11, Wood Leaf Reserve)

Background:

The Public Hearing needs to be opened and continued to January 18, 2021 at 6:00 pm in the City Council Chamber at Tomball City Hall, 401 Market Street, Tomball, Texas 77375.

Origination: Chesmar Homes, LLC

Recommendation:

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

Craig Meyers, Director of
Community Development

FUNDING (IF APPLICABLE)

Are funds specifically designated in the current budget for the full amount required for this purpose?

Yes: _____ No: _____ If yes, specify Account Number: # _____

If no, funds will be transferred from account # _____ To account # _____

Signed _____	Approved by _____
Staff Member _____	City Manager _____
Date _____	Date _____

NOTICE OF PUBLIC HEARING CITY OF TOMBALL, TEXAS

MONDAY, DECEMBER 21, 2020



6:00 P.M.

NOTICE OF PUBLIC HEARING OF THE CITY OF TOMBALL, TEXAS TO CONSIDER THE ADVISABILITY OF THE CREATION OF A PUBLIC IMPROVEMENT DISTRICT TO MAKE CERTAIN IMPROVEMENTS OVER CERTAIN PROPERTY LOCATED WITHIN THE CITY

NOTICE IS HEREBY GIVEN THAT the City Council (the “City Council”) of the City of Tomball, Texas (the “City”), pursuant to Chapter 372 of the Texas Local Government Code, as amended (the “Act”), will hold a public hearing at 6:00 p.m. on December 21, 2020, in the City Council Chamber at Tomball City Hall, 401 Market Street, Tomball, Texas 77375 for the purpose of considering the establishment by the City of a public improvement district to be located within its corporate limits.

In accordance with the Act, the City Council has received a petition (the “Petition”) from certain property owners within the extraterritorial jurisdiction of the City (the “Petitioners”), that requests the establishment of a public improvement district (the “PID”). The Petition and the legal description of the property to be included in the PID are on file and open for public inspection in the office of the City Secretary at 401 Market Street, Tomball, Texas 77375. The public hearing is being held with respect to the advisability of creating the PID and the improvements to be made therein.

GENERAL NATURE OF THE AUTHORIZED IMPROVEMENTS: The general nature of the proposed public improvements (collectively, the "Authorized Improvements") may include: (i) design, construction and other allowed costs related to street and roadway improvements, including related sidewalks, drainage, utility relocation, signalization, landscaping, lighting, signage, off-street parking and right-of-way; (ii) design, construction and other allowed costs related to improvement of parks and open space, together with any ancillary structures, features or amenities such as trails, playgrounds, walkways, lighting and any similar items located therein; (iii) design, construction and other allowed costs related to sidewalks and landscaping and hardscaping, fountains, lighting and signage; (iv) design, construction and other allowed costs related to gas, water, wastewater and drainage (including detention) improvements and facilities; (v) design, construction and other allowed costs related to projects similar to those listed in subsections (i) - (iv) above authorized by the Act, including similar off-site projects that provide a benefit to the property within the District; (vi) special supplemental services for improvement and promotion of the district; (vii) payment of costs associated with operating and maintaining the public improvements listed in subparagraphs (i) - (v) above; and (viii) payment of costs associated with developing and financing the public improvements listed in subparagraphs (i) - (v) above, and costs of establishing, administering and operating the District. These Authorized Improvements shall promote the interests of the City and confer a special benefit upon the Property.

ESTIMATED COST OF THE AUTHORIZED IMPROVEMENTS: The estimated cost to design, acquire and construct the Authorized Improvements, together with bond issuance costs, eligible legal and financial fees, eligible credit enhancement costs and eligible costs incurred in the establishment, administration and operation of the PID is \$18,895,633 plus the annual cost of supplemental services and operation and maintenance costs, if any. The City will pay no costs of the Authorized Improvements, supplemental services or operation and maintenance costs from funds other than assessments levied on property within the PID. The remaining costs of the proposed improvements will be paid from sources other than those described above.

PROPOSED METHOD OF ASSESSMENT: The City shall levy assessments on each parcel within the PID in a manner that results in the imposition of an equal share of the costs of the Authorized Improvements on property similarly benefitted by such Authorized Improvements. The proposed method of assessment shall be based upon (i) an equal apportionment per lot, per front foot, or per square foot of property benefiting from the Authorized Improvements, as determined by the City, (ii) the ad valorem taxable value of the property benefiting from the Authorized Improvements, with or without regard to improvements on the property, or (iii) in any manner that results in imposing equal shares of the cost on property similarly benefitted.

PROPOSED APPORTIONMENT OF COSTS BETWEEN THE CITY AND THE PID: The City will not be obligated to provide any funds to finance the Authorized Improvements. All of the costs of the Authorized Improvements will be paid from assessments levied on properties in the PID and from other sources of funds available to the Petitioners.

BOUNDARIES OF THE PROPOSED PID: 90.54 Acres of Land within the City of Tomball, Harris County, Texas, Said Property Being Generally Located approximately ½ mile east of State Highway 249 between Theis Lane and Holderrieth Road and near the future intersection of School Street and Theis Lane. A metes and bounds description is available for inspection at the offices of the City Secretary at the location described above.

All interested persons are invited to attend such public hearing to express their views with respect to the establishment of the PID and the Authorized Improvements to be made therein.

This Notice of Public Hearing is given and the public hearing is being held pursuant to the requirements of the Act.

CERTIFICATION

I hereby certify that the above notice of meeting was posted on the bulletin board of City Hall, City of Tomball, Texas, a place readily accessible to the general public at all times, on the 17th day of November 2020 by 5:00 p.m., and remained posted for at least 72 continuous hours preceding the scheduled time of said meetings.

Tracylynn Garcia
Tracylynn Garcia
Assistant City Secretary, TRMC, CMC, CPM

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.



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- Service and/or repair a variety of vehicles
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Qualifications include:

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- Automotive Service Excellence (ASE) preferred but not required
- Ability to diagnose and service engine and transmission, electrical, steering, suspension, brakes, and AC systems, oil changes, mount & balance tires
- Hold a valid driver's license with a clean driving record
- All applicants must be authorized to work in the United States
- Must be able to pass a pre-employment background check and drug screen
- Must have tools

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- Position is M-F 7-5 and may include some Saturdays depending on the workload.
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Legals/Public Notices

NOTICE OF PUBLIC HEARING OF THE CITY OF TOMBALL, TEXAS TO CONSIDER THE ADVISABILITY OF THE CREATION OF A PUBLIC IMPROVEMENT DISTRICT TO MAKE CERTAIN IMPROVEMENTS OVER CERTAIN PROPERTY LOCATED WITHIN THE CITY

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In accordance with the Act, the City Council has received a petition (the "Petition") from certain property owners within the extraterritorial jurisdiction of the City (the "Petitioners"), that requests the establishment of a public improvement district (the "PID"). The Petition and the legal description of the property to be included in the PID are on file and open for public inspection in the office of the City Secretary at 401 Market Street, Tomball, Texas 77375. The public hearing is being held with respect to the advisability of creating the PID and the improvements to be made therein.

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PROPOSED METHOD OF ASSESSMENT: The City shall levy assessments on each parcel within the PID in a manner that results in the imposition of an equal share of the costs of the Authorized Improvements on property similarly benefited by such Authorized Improvements. The proposed method of assessment shall be based upon (i) an equal apportionment per lot, per front foot, or per square foot of property benefiting from the Authorized Improvements, as determined by the City, (ii) the ad valorem taxable value of the property benefiting from the Authorized Improvements, with or without regard to improvements on the property, or (iii) in any manner that results in imposing equal shares of the cost on property similarly benefited.

PROPOSED APPORTIONMENT OF COSTS BETWEEN THE CITY AND THE PID: The City will not be obligated to provide any funds to finance the Authorized Improvements. All of the costs of the Authorized Improvements will be paid from assessments levied on properties in the PID and from other sources of funds available to the Petitioners.

BOUNDARIES OF THE PROPOSED PID: 90.54 Acres of Land within the City of Tomball, Harris County, Texas, Said Property Being Generally Located approximately 1/2 mile east of State Highway 249 between Theis Lane and Holderrieth Road and near the future intersection of School Street and Theis Lane. A metes and bounds description is available for inspection at the offices of the City Secretary at the location described above.

All interested persons are invited to attend such public hearing to express their views with respect to the establishment of the PID and the Authorized Improvements to be made therein.

This Notice of Public Hearing is given and the public hearing is being held pursuant to the requirements of the Act.

CERTIFICATION

I hereby certify that the above notice of meeting was posted on the bulletin board of City Hall, City of Tomball, Texas, a place readily accessible to the general public at all times, on the 17th day of November 2020 by 5:00 p.m., and remained posted for at least 72 continuous hours preceding the scheduled time of said meetings.

Tracylynn Garcia
Tracylynn Garcia
Assistant City Secretary, TRMC, CMC, CPM

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.

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City Council Meeting

Agenda Item

Data Sheet

Meeting Date: January 18, 2021

Topic:

Consider Resolution 2021-04, a Resolution of the City Council of the City of Tomball, Texas, authorizing and creating the Wood Leaf Reserve Public Improvement District in the City of Tomball, Harris County, Texas, in accordance with Chapter 372 of the Texas Local Government Code; providing for related matters; and providing an effective date.

Background:

Origination: Chesmar Homes, LLC

Recommendation:

Approval

Party(ies) responsible for placing this item on agenda: Craig T. Meyers, P.E., Community Development Director

FUNDING (IF APPLICABLE)

Are funds specifically designated in the current budget for the full amount required for this purpose?

Yes: _____ No: _____

If yes, specify Account Number: # _____

If no, funds will be transferred from account: # _____ To Account: # _____

Signed: _____ **Approved by:** _____
Staff Member Date City Manager Date

RESOLUTION NO. 2021-04

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF TOMBALL, TEXAS, AUTHORIZING AND CREATING THE WOOD LEAF RESERVE PUBLIC IMPROVEMENT DISTRICT IN THE CITY OF TOMBALL, HARRIS COUNTY, TEXAS, IN ACCORDANCE WITH CHAPTER 372 OF THE TEXAS LOCAL GOVERNMENT CODE; PROVIDING FOR RELATED MATTERS; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City of Tomball, Texas (the "*City*"), is authorized under Chapter 372 of the Texas Local Government Code, as amended (the "*Act*"), to create a public improvement district ("*PID*") within its corporate limits; and

WHEREAS, the City received a petition from the owner of approximately 90.4 acres within the corporate limits of the City (the "*Petitioner*"), submitted and filed with the City Secretary of the City a petition (the "*Petition*") requesting the establishment of a PID to be known as the Wood Leaf Reserve Public Improvement District (the "*District*") within the corporate limits of the City, such District to include the property depicted in Exhibit "A" and described by metes and bounds in Exhibit "B" (the "*Property*"), each attached hereto and incorporated herein for all purposes; and

WHEREAS, the City Council of the City (the "*City Council*") received the Petition which was signed by the owners of more than 50% of the appraised value of the taxable real property liable for assessment and the record owners of more than 50% of the area of all taxable real property within the District that is liable for assessment, and as such, the Petition complies with the Act; and

WHEREAS, on November 16, 2020, the City Council accepted the Petition and called a public hearing for December 21, 2020, on the creation of the District and the advisability of the improvements; and

WHEREAS, notice of the hearing was published in a newspaper of general circulation in the City in which the District is to be located on November 25, 2020; and,

WHEREAS, on November 20, 2020, notice to the owners of property within the proposed District was sent by first-class mail to the owners of 100% of the property subject to assessment under the proposed District containing the information required by the Act such that such owners had actual knowledge of the public hearing to be held on December 21, 2020; and

WHEREAS, the City Council opened and continued such public hearing on the advisability of the improvements and the creation of the District until January 18, 2021; and

WHEREAS, the City Council, on January 18, 2021 the City Council continued such public hearing on the creation of the District and heard any comments or objection thereto;

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

SECTION 1. That the findings set forth in the recitals of this Resolution are found to be true and correct.

SECTION 2. That the Petition submitted to the City by the Petitioner was filed with the City Secretary and complies with the Act.

SECTION 3. That pursuant to the requirements of the Act, including, without limitation, Sections 372.006, 372.009(a), and 372.009(b), the City Council, after considering the Petition and any evidence and testimony presented at the public hearing on December 21, 2020 and January 18, 2021, hereby finds and declares:

- (a) *Advisability of the Proposed Improvements.* It is advisable to create the District to provide the Authorized Improvements (as described below). The Authorized Improvements are feasible and desirable and will promote the interests of the City and will confer a special benefit on the Property.
- (b) *General Nature of the Authorized Improvements.* The general nature of the proposed public improvements (collectively, the "Authorized Improvements") may include: (i) design, construction and other allowed costs related to street and roadway improvements, including related sidewalks, drainage, utility relocation, signalization, landscaping, lighting, signage, off-street parking and right-of-way; (ii) design, construction and other allowed costs related to improvement of parks and open space, together with any ancillary structures, features or amenities such as trails, playgrounds, walkways, lighting and any similar items located therein; (iii) design, construction and other allowed costs related to sidewalks and landscaping and hardscaping, fountains, lighting and signage; (iv) design, construction and other allowed costs related to gas, water, wastewater and drainage (including detention) improvements and facilities; (v) design, construction and other allowed costs related to projects similar to those listed in subsections (i) - (iv) above authorized by the Act, including similar off-site projects that provide a benefit to the property within the District; (vi) special supplemental services for improvement and promotion of the district; (vii) payment of costs associated with operating and maintaining the public improvements listed in subparagraphs (i) - (v) above; and (viii) payment of costs associated with developing and financing the public improvements listed in subparagraphs (i) - (v) above, and costs of establishing, administering and operating the District. These Authorized Improvements shall promote the interests of the City and confer a special benefit upon the Property.
- (c) *Estimated Costs of the Authorized Improvements and Apportionment of Costs.* The estimated cost to design, acquire and construct the Authorized Improvements, together with bond issuance costs, eligible legal and financial fees, eligible credit enhancement costs and eligible costs incurred in the establishment, administration and operation of the PID is \$18,895,633 plus the annual cost of supplemental services and operation and maintenance costs, if any. The City will pay no costs of the Authorized Improvements, supplemental services or operation and maintenance costs from funds other than assessments levied on property within the PID. The remaining costs of the proposed improvements will be paid from sources other than those described above.

- (d) *Boundaries of the District.* 90.54 Acres of Land within the City of Tomball, Harris County, Texas, Said Property Being Generally Located approximately ½ mile east of State Highway 249 between Theis Lane and Holderrieth Road and near the future intersection of School Street and Theis Lane. A metes and bounds description is available for inspection at the offices of the City Secretary at the location described above in the City of Tomball, Harris County, Texas, located within the Corporate Limits of the City of Tomball, Texas. The boundaries of the District are set forth in Exhibits “A” and “B” attached hereto.
- (e) *Proposed Method of Assessment.* The City shall levy assessments on each parcel within the PID in a manner that results in the imposition of an equal share of the costs of the Authorized Improvements on property similarly benefitted by such Authorized Improvements. The proposed method of assessment shall be based upon (i) an equal apportionment per lot, per front foot, or per square foot of property benefiting from the Authorized Improvements, as determined by the City, (ii) the ad valorem taxable value of the property benefiting from the Authorized Improvements, with or without regard to improvements on the property, or (iii) in any manner that results in imposing equal shares of the cost on property similarly benefitted.
- (f) *Apportionment of Cost Between the District and the City.* The City will not be obligated to provide any funds to finance the Authorized Improvements. All of the costs of the Authorized Improvements will be paid from assessments levied on properties in the PID and from other sources of funds available to the Petitioners.
- (g) *Management of the District.* The District shall be managed by the City, with the assistance of a consultant, who shall, from time to time, advise the City regarding certain operations of the District.
- (h) *Advisory Board.* The District shall be managed without the creation of an advisory body.

SECTION 4. That the Wood Leaf Reserve Public Improvement District is hereby authorized and created as a public improvement district under the Act in accordance with the findings of the City Council as to the advisability of the Authorized Improvements contained in this Resolution, the nature and the estimated costs of the Authorized Improvements, the boundaries of the District, the method of assessment and the apportionment of costs as described herein; and the conclusion that the District is needed to fund such Authorized Improvements.

SECTION 5. That notice of this Resolution authorizing the District shall be given by publishing such notice once in a newspaper of general circulation in the City in which the District is to be located. Effective upon the publication of such notice, the District shall be established.

SECTION 6. That City staff is directed to cause to be prepared a Service and Assessment Plan for the District and to present it to the City Council for review and approval.

SECTION 7. That this Resolution shall take effect immediately from and after its passage and publication as required by law.

DULY RESOLVED by the City Council of the City of Tomball, Texas, on the 18th day of January, 2021.

Gretchen Fagan
Mayor

ATTEST:

City Secretary

EXHIBIT A

Property Depiction

EXHIBIT B

Property Depiction

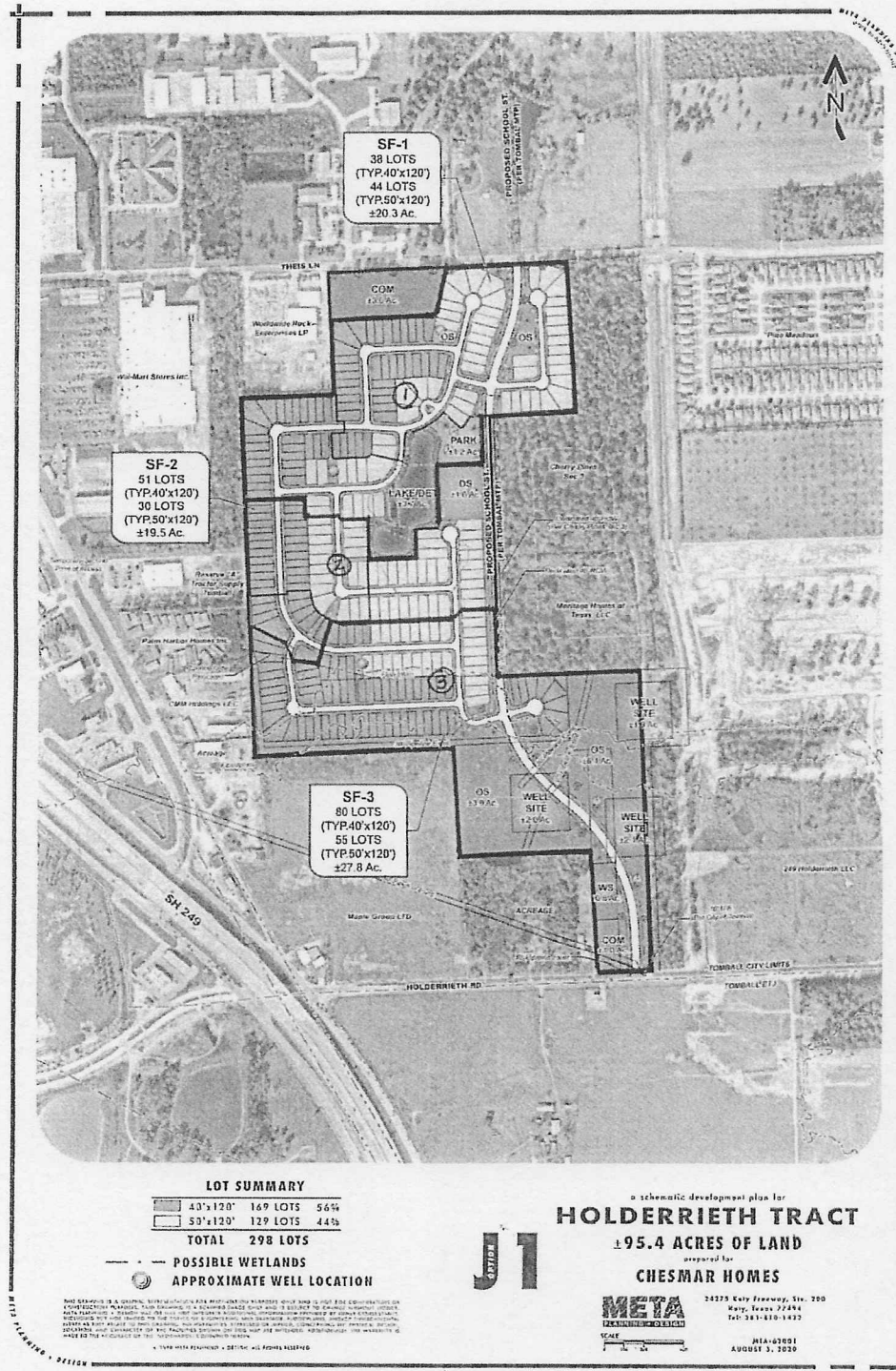


EXHIBIT B

STATE OF TEXAS §

COUNTY OF HARRIS §

A **METES & BOUNDS** description of a certain 90.54 acre (3,943,901 square feet) tract of land situated in the Claude N. Pillot Survey, Abstract No. 632 in Harris County, Texas, being all of the remainder of a called 2.84 acre tract (Tract I) conveyed to Chesmar Homes, LLC, by deed recorded in Clerk's File No. RP-2020-405995, Harris County Official Public Records of Real Property, also being all of the remainder of a called 5.00 acre tract (Tract II) conveyed to Chesmar Homes, LLC, by deed recorded in Clerk's File No. RP-2020-405995, Harris County Official Public Records of Real Property, also being all of a called 1.13 acre tract (Tract III) conveyed to Chesmar Homes, LLC, by deed recorded in Clerk's File No. RP-2020-405995, Harris County Official Public Records of Real Property, also being all of a called 18.334 acre tract (Tract IV) conveyed to Chesmar Homes, LLC, by deed recorded in Clerk's File No. RP-2020-405995, Harris County Official Public Records of Real Property, also being all of a called 4.990 acre tract (Tract V) conveyed to Chesmar Homes, LLC, by deed recorded in Clerk's File No. RP-2020-405995, Harris County Official Public Records of Real Property, also being a portion of a called 61.013 acre tract conveyed to Chesmar Homes, LLC, by deed recorded in Clerk's File No. RP-2020-407771, Harris County Official Public Records of Real Property; said 90.54 acre (3,943,901 square feet) tract of land being more particularly described as follows with all bearings being based on the Texas Coordinate System, South Central Zone, NAD 83, 2001 Adjustment:

BEGINNING at a 2-inch iron pipe found, being the most westerly northwest corner of the herein described tract, being the most westerly northwest corner of said called 61.013 acre tract, also being the southwest corner of a called 6.7133 acre tract conveyed to Worldwide Rock Enterprises, L.P., by deed recorded in Clerk's File No. 20150562448, Harris County Official Public Records of Real Property, also being on the east line of Restricted Reserve "A", Replat of Wal-Mart Tomball, by plat recorded in Clerk's File No. W008922, Harris County Map Records;

THENCE, North 87°45'25" East, 472.90 feet along the south line of said called 6.7133 acre tract to a 1-inch iron pipe found, being the southeast corner of said called 6.7133 acre tract;

THENCE, North 02°26'51" West, 368.19 feet along the east line of said called 6.7133 acre tract to a 5/8-inch iron rod (with cap) found, being the most northerly northwest corner of said called 61.013 acre tract;

THENCE, North 87°17'42" East, 542.42 feet to a 5/8-inch iron rod (with cap) found, being the southeast corner of a called 1.167 acre tract (Tract 2) conveyed to Alejandro and Apolinar Gomez by deed recorded in Clerk's File No. RP-2020-410875, Harris County Official Public Records of Real Property;

THENCE, North 11°11'31" East, 257.21 feet to a point for corner, being the northeast corner of said called 1.167 acre tract (Tract 2), from which a 5/8-inch iron rod (with cap) found bears North 11°11'31" East, 0.41 feet;

THENCE, North 87°21'24" East, 629.28 feet to a point for the northeast corner of the herein described tract, being the northeast corner of said Tract V, also being the northwest corner of a called 39.03 acre tract conveyed to Meritage Homes of Texas, LLC, by deed recorded in Clerk's File No. RP-2019-7816, Harris County Official Public Records of Real Property, from which a 5/8-inch iron rod (with cap) found bears North 03°29'29" West, 0.92 feet;

THENCE, along the west line of said called 39.03 acre tract, the following five (5) courses and distances:

1. South 03°29'29" East, 776.09 feet to a 1/2-inch iron rod found;
2. South 87°21'07" West, 448.18 feet to a 5/8-inch iron rod found;
3. South 02°27'59" East, 1,331.96 feet to a 1/2-inch iron rod found;
4. North 87°39'22" East, 720.29 feet to a 1/2-inch iron rod found;
5. South 02°27'41" East, 1,545.47 feet to a 5/8-inch iron rod (with cap stamped "Manhard") set for the southeast corner of the herein described tract, being 10 feet north of and parallel to the north right-of-way line of Holderrieth Road (width varies per Volume 816, Page 359, and Volume 1036, Page 256, Harris County Deed Records);

THENCE, South 87°39'37" West, 10 feet north of and parallel to said north right-of-way line of Holderrieth Road, 129.42 feet to a 5/8-inch iron rod (with cap stamped "Manhard") set, being the beginning of a curve to the left;

THENCE, along said curve to the left in a northerly direction, with a radius of 30.00 feet, a central angle of 40°10'02", an arc length of 21.03 feet, and a chord bearing of North 17°44'38" East, 20.60 feet to a 5/8-inch iron rod (with cap stamped "Manhard") set;

THENCE, North 02°20'23" West, 198.70 feet to a 5/8-inch iron rod (with cap stamped "Manhard") set, being the beginning of a curve to the left;

THENCE, along said curve to the left in a northerly direction, with a radius of 810.05 feet, a central angle of 15°17'16", an arc length of 216.14 feet, and a chord bearing of North 09°59'01" West, 215.50 feet to a 5/8-inch iron rod (with cap stamped "Manhard") set;

THENCE, South 87°39'37" West, 132.30 feet to a 5/8-inch iron rod (with cap stamped "Manhard") set, being on the east line of a called 0.6462 acre tract (Tract 2) conveyed to Alejandro Gomez and Apolinar Gomez by deed recorded in Clerk's File No. 20060092123, Harris County Official Public Records of Real Property;

THENCE, North 03°36'41" West, 204.00 feet along said east line of said called 0.6462 acre tract to the northeast corner of said called 0.6462 acre tract, from which a 1-inch iron pipe found bears North 22°52'28" West, 1.14 feet;

City of Tomball PID#11 (Wood Leaf Reserve)
90.54 acres

Claude N. Pilot Survey
Abstract No. 632

THENCE, South 87°37'15" West, along the north line of said called 0.6462 acre tract, at a distance of 100.11 feet passing a 1/2-inch iron rod found, being the northwest corner of said called 0.6462 acre tract, also being the northeast corner of the remainder of a called 10.0 acre tract conveyed to Walter John Rumfolo and wife, Lucille Rumfolo, by deed recorded in Clerk's File No. D055346, Harris County Official Public Records, continuing along the north line of said called 10.0 acre tract for a total distance of 675.32 feet to a 3/8-inch iron rod found, being the northwest corner of said remainder of said called 10.0 acre tract, also being on the east line of a called 25.950 acre tract conveyed to Maple Group, Ltd., by deed recorded in Clerk's File No. X273577, Harris County Official Public Records of Real Property;

THENCE, North 03°35'52" West, 551.72 feet along said east line of said called 25.950 acre tract to a 5/8-inch iron rod (with cap) found, being the northeast corner of said called 25.950 acre tract;

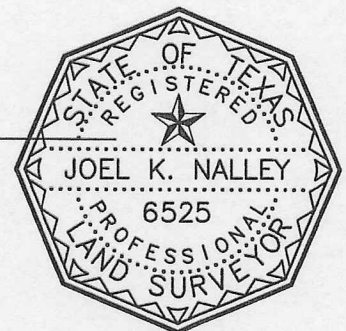
THENCE, South 87°39'58" West, 1,019.61 feet along the north line of said called 25.950 acre tract to a point for corner, being the northwest corner of said called 25.950 acre tract, also being on the east line of a called 1.3488 acre tract conveyed to Gordon Bruce Glanville by deed recorded in Clerk's File No. P064837, Harris County Official Public Records of Real Property, from which a 5/8-inch iron rod (with cap) found bears South 87°39'58" West, 1.07 feet;

THENCE, North 02°26'12" West, at a distance of 766.87 feet passing a 1/2-inch iron rod found, being the northeast corner of a called 5.0074 acre tract conveyed to Alvin W. Theis and wife, Thelma Theis, by deed recorded in Clerk's File No. J142169, Harris County Official Public Records of Real Property, also being the southeast corner of a called 4.9837 acre tract conveyed to Tractor Supply Co. of Texas, LP, by deed recorded in Clerk's File No. 20140022360, Harris County Official Public Records of Real Property, at a distance of 1,726.03 feet passing a 1/2-inch iron rod inside of a 2" iron pipe found on said east line of Restricted Reserve "A", Replat of Wal-Mart Tomball, in all a distance of 1,844.67 feet to the **POINT OF BEGINNING, CONTAINING 90.54 acres (3,943,901 square feet)** of land in Montgomery County, Texas, filed in the office of Manhard Consulting, Ltd. in The Woodlands, Texas.

NOTE: This document was prepared under 22 TAC 663.21, does not reflect the results of an on the ground survey, and is not to be used to convey or establish interests in real property except those rights and interests implied or established by the creation or reconfiguration of the political subdivision for which it was prepared.

Manhard Consulting, Ltd.
2445 Technology Forest Blvd, Suite #200
The Woodlands, Texas 77381
(832) 823-2200
*Texas Board of Professional Engineers &
Land Surveyors Firm Reg. No. 10194379*


Acting By/Through Joel K. Nalley
Registered Professional Land Surveyor
No. 6525
jnalley@manhard.com
29 October 2020



City Council Meeting

Agenda Item

Data Sheet

Meeting Date: January 18, 2021

Topic:

Approve Resolution No. 2021-06, a Resolution of the City Council of the City of Tomball, Texas approving a Development Agreement relating to the Wood Leaf Reserve Public Improvement District Project

Background:

Chesmar Homes, LLC is pursuing to develop a 90.54 acre residential development between Theis Lane and Holderrieth Road, just to the east of State Highway 249. As part of the development, Chesmar Homes desires to establish a Public Improvement District.

Resolution No. 2021-06 approves a Development Agreement between the City and Chesmar Homes, LLC with respect to development of the property, the public improvements and the levy of assessments in the PID.

Origination: Chesmar Homes, LLC

Recommendation:

Approval

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

Craig T. Meyers, P.E., Director of
Community Development

FUNDING (IF APPLICABLE)

Are funds specifically designated in the current budget for the full amount required for this purpose?

Yes: _____ No: _____ If yes, specify Account Number: # _____

If no, funds will be transferred from account # _____ To account # _____

Signed	Craig Meyers	1-13-2021	Approved by	
	Staff Member	Date		City Manager
				Date

RESOLUTION NO. 2021-06

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF
TOMBALL, TEXAS APPROVING A DEVELOPMENT AGREEMENT
RELATING TO THE WOOD LEAF RESERVE PUBLIC IMPROVEMENT
DISTRICT PROJECT**

WHEREAS, Chesmar Homes, LLC Texas limited liability company (the “Developer”) owns and plans to acquire and develop, in phases, approximately 90.54 acres of real property within the City (the “Property”); and

WHEREAS, the City of Tomball, Texas (the “City”) wishes to incentivize the development of the Property and encourage and support economic and housing development within the City through the financing of certain public infrastructure (the “Public Improvements”) within the Property; and

WHEREAS, in order to finance the Public Improvements, the City Council intends to create a public improvement district (the “PID”) coterminous with the boundaries of the Property in accordance with Chapter 372, Texas Local Government Code, as amended; and

WHEREAS, the City and the Developer desire to enter into a development agreement (the “Development Agreement” that sets forth the agreement between the parties with respect to development of the Property, the Public Improvements and the levy of assessments in the PID;

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

SECTION 1. The recitals set forth in the preamble of this Resolution are true and correct in all material respects.

SECTION 2. The City Council of the City approves the Development Agreement by and between the City and the Developer in substantially the form attached hereto as Exhibit A, with such changes as may be approved by the City Manager, and the City Manager is hereby authorized to execute such Development Agreement and the City Secretary may attest such signature.

3. It is hereby found, determined, and declared that a sufficient written notice of the date, hour, place, and subject of this meeting of the City Council was posted at a place convenient to the public at the City Hall of the City for the time required by law preceding this meeting, as required by the Open Meetings Act, Chapter 551, Texas Government Code, and that this meeting has been open to the public as required by law at all times during which this Resolution and the subject matter thereof has been discussed, considered and formally acted upon. City Council further ratifies, approves and confirms such written notice and the contents and posting thereof.

PRESENTED AND PASSED on this the ____ day of _____, 2021, by a vote of __ayes
and __ nays at a regular meeting of the City Council of the City of Tomball, Texas.

Mayor, City of Tomball

ATTEST:

City Secretary, City of Tomball

EXHIBIT A

WOOD LEAF RESERVE DEVELOPMENT AGREEMENT

WOOD LEAF RESERVE
DEVELOPMENT AGREEMENT
BETWEEN
CHESMAR HOMES, LLC
and
THE CITY OF TOMBALL, TEXAS
Dated: January 18, 2021

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WOOD LEAF RESERVE DEVELOPMENT AGREEMENT

This Wood Leaf Reserve Development Agreement (this “**Agreement**”), dated as of January 18, 2021 (the “**Effective Date**”), is entered into between Chesmar Homes, LLC a Texas limited liability company (the “**Developer**”), and the City of Tomball, Texas (the “**City**”), a home-rule city and municipal corporation, acting by and through its duly authorized representative.

Recitals:

WHEREAS, unless otherwise defined: (1) all references to “sections” shall mean to sections of this Agreement; (2) all references to “exhibits” shall mean exhibits to this Agreement which are incorporated as part of this Agreement for all purposes; and (3) all references to “ordinances” or “resolutions” shall mean ordinances or resolutions adopted by the City Council of the City of Tomball (the “City Council”); and

WHEREAS the Developer currently has under contract to purchase and plans to acquire and to develop, in phases, approximately 90.54 acres of real property depicted on Exhibit A attached hereto (the “Property”) within the corporate limits of the City as a single-family residential development, in accordance with the applicable City Regulations and the Concept Plan (the “Project”); and

WHEREAS, in order to incentivize the development of the Property and encourage and support economic development within the City and to promote employment, the City desires to facilitate the development of the Property through the financing of certain public infrastructure (the “Public Improvements” as defined herein) and constructing additional public improvements within the Property; and

WHEREAS, in order to finance the Public Improvements, the City Council intends to create a public improvement district that is coterminous with the boundaries of the Property (the “PID”) in accordance with Chapter 372 Texas Local Government Code, as amended (the “PID Act”); and

WHEREAS, the City recognizes that financing of the Public Improvements confers a special benefit to the Property within the PID; and

WHEREAS, the City intends to (upon satisfaction of the conditions and in accordance with the terms set forth in this Agreement), adopt the Assessment Ordinance (as defined herein) and adopt the SAPs (as defined herein) which provide for the construction, and financing of the Public Improvements pursuant to the Service and Assessment Plan (“SAP”), payable in whole or in part by and from Assessments levied against property within the PID (whether through a cash reimbursement or through an issuance of PID Bonds); and

WHEREAS, upon satisfaction of the conditions and in accordance with the terms set forth in this Agreement, the City intends to levy Assessments on all benefitted property located within the PID and issue PID Bonds (as defined herein) up to a maximum aggregate principal

amount of \$18,895,633.00 for payment or reimbursement of the Public Improvements included in the SAP; and

WHEREAS the payment and reimbursement for the Public Improvements shall be solely from the installment payments of Assessments and/or proceeds of the PID Bonds and the City shall never be responsible for the payment of the Public Improvements or the PID Bonds from its general fund or its ad valorem tax collections, past or future or any other source of City revenue or any assets of the City of whatsoever nature; and

WHEREAS, the City recognizes the positive impact that the construction and installation of the Public Improvements for the PID will bring to the City and will promote state and local economic development; to stimulate business and commercial activity in the City; for the development and diversification of the economy of the State; development and expansion of commerce in the State, and elimination of employment or underemployment in the State;

NOW, THEREFORE, for and in consideration of the mutual agreements, covenants, and conditions contained herein, and other good and valuable consideration, the parties hereto agree as follows:

ARTICLE I

DEFINITIONS

For all purposes of this Agreement, except as otherwise expressly provided or unless the context otherwise requires, the terms defined in this Article have the meanings assigned to them in the Recitals or this Article, and all such terms include the plural as well as the singular.

“Actual Costs” is defined in the Service and Assessment Plan.

“Affiliates” of Chesmar Homes, LLC. means any other person directly controlling, or directly controlled by or under direct common control with the Developer. As used in this definition, the term “control,” “controlling” or “controlled by” shall mean the possession, directly, of the power either to (a) vote fifty percent (50%) or more of the securities or interests having ordinary voting power for the election of directors (or other comparable controlling body) of the Developer, or (b) direct or cause the direction of management or policies of the Developer, whether through the ownership of voting securities or interests, by contract or otherwise, excluding in each case, any lender of the Developer or any affiliate of such lender.

“Agreement” has the meaning stated in the first paragraph of this Agreement.

“Annual Installments” means with respect to each parcel subject to Assessments, each annual payment of the Assessments, including any applicable interest, as set forth and calculated in the SAP.

“Applicable Law” means any statute, law, treaty, rule, code, ordinance, regulation, permit, interpretation, certificate or order of any Governmental Authority, or any judgment, decision, decree, injunction, writ, order or like action of any court, arbitrator or other Governmental Authority. Applicable Laws shall include, but not be limited to, City Regulations.

“Appraisal” means an appraisal of the property to be assessed in each PID by a licensed MAI Appraiser, such Appraisal to include as-complete improvements, including the Public Improvements to be financed in part with PID Bonds (i.e., “as-complete”) and the construction and installation of the Private Improvements, necessary to get a Final Lot Value.

“Assessment Ordinance” means one or more of the City’s ordinances approving the SAP and levying Assessments on the benefitted Property within the PID.

“Assessments” means those certain assessments levied by the City pursuant to the PID Act and on benefitted parcels within the PID for the purpose of paying the costs of the Public Improvements, which Assessments shall be structured to be amortized over 30 years, including interest, all as set forth in or modified by the Service and Assessment Plan.

“Building Regulations” means those requirements for construction within the District set forth in Exhibit D.

“City Regulations” mean provisions of the City’s Code of Ordinances, ordinances not codified, design standards, uniform and international building and construction codes, and other policies duly adopted by the City, which shall be applied to the Development, including zoning, the Building Regulations and the City’s Planned Development – 14.

“City Representative” means the City Manager or designee which may include a third party inspector or representative.

“City” means the City of Tomball, Texas.

“Closing Disbursement Request” means the Closing Disbursement Request described in Section 4.06, the form of which is attached as Exhibit G.

“Commencement of Construction” shall mean that (i) the plans have been prepared and all approvals thereof required by applicable governmental authorities have been obtained for construction of the applicable improvement, or portion thereof, as the case may be, on the Property; (ii) all necessary permits for the initiation of construction of the improvement, or portion thereof, as the case may be, on the Property pursuant to the respective plans therefore having been issued by all applicable governmental authorities; and (iii) grading of the Property for the construction of the applicable improvement, or portion thereof, as the case may be, has commenced.

“Completion of Construction” shall mean that (i) the construction of the applicable Public Improvement, or portion or segment thereof, as the case may be, benefitting the Property has been substantially completed pursuant to the City’s determination; and (ii) the City has with respect to applicable Public Improvements accepted the respective Public Improvements.

“Completed Lots” means Fully Developed and Improved Lots for which (i) water, sanitary sewer, drainage and roads have been extended, and (ii) the City has authorized that a building permit may be obtained for construction on each lot.

“Concept Plan” means that concept plan for the Development set forth in Exhibit K, as may be amended or changed upon approval of the City.

“Construction Agreements” mean the contracts for the construction of the Public Improvements.

“Cost Overruns” means those Public Improvement Project Costs that exceed the budget cost set forth in the SAP(s) plus the Developer Cash Contribution.

“Cost Underruns” means Public Improvement Project Costs that are less than the budgeted cost set forth in the SAP(s).

“Delinquent Collection Costs” shall be defined in the SAP(s).

“Developer Cash Contribution” means that portion of the Public Improvement Project Costs that the Developer is contributing to initially fund the Public Improvements for each series of PID Bonds, as set forth in the SAP.

“Developer” means Chesmar Homes, LLC. its successors and permitted assigns.

“Development” means that single-family residential development consisting of approximately 318 single family homes to be developed and constructed on the Property pursuant to the City Regulations.

“Effective Date” means the date set forth in the first paragraph of this Agreement.

“End Buyer” means any developer, homebuilder, tenant, user, or owner of a Fully Developed and Improved Lot.

“Estimated Build Out Value” means the estimated value of an assessed property with fully constructed buildings, as provided by the Developer and confirmed by the City by considering such factors as density, lot size, proximity to amenities, view premiums, location, market conditions, historical sales, builder contracts, discussions with homebuilders, reports from third party consultants, or any other factors that, in the judgment of the City, may impact value.

“Final Lot Value” means the developed lot values established by an Appraisal.

“Force Majeure” means any act that (i) materially and adversely affects the affected Party’s ability to perform the relevant obligations under this Agreement or delays such affected Party’s ability to do so, (ii) is beyond the reasonable control of the affected Party, (iii) is not due to the affected Party’s fault or negligence and (iv) could not be avoided, by the Party who suffers it, by the exercise of commercially reasonable efforts. “Force Majeure” shall include: (a) natural phenomena, such as storms, floods, lightning and earthquakes; (b) wars, civil disturbances, revolts, insurrections, terrorism, sabotage and threats of sabotage or terrorism; (c) transportation disasters, whether by ocean, rail, land or air; (d) strikes or other labor disputes that are not due to the breach of any labor agreement by the affected Party; (e) fires; and (f) actions or omissions of a Governmental Authority (including the actions of the City in its capacity as a Governmental

Authority) that were not voluntarily induced or promoted by the affected Party, or brought about by the breach of its obligations under this Agreement or any Applicable Law or failure to comply with City Regulations; provided, however, that under no circumstances shall Force Majeure include any of the following events: (g) economic hardship; (h) changes in market condition; (i) any strike or labor dispute involving the employees of the Developer or any Affiliate of the Developer, other than industry or nationwide strikes or labor disputes; (j) weather conditions which could reasonably be anticipated by experienced contractors operating the relevant location; (k) the occurrence of any manpower, material or equipment shortages; or (l) any delay, default or failure (financial or otherwise) of the general contractor or any subcontractor, vendor or supplier of the Developer, or any construction contracts for the Project Improvement and Public Improvements.

“Fully Developed and Improved Lot” means any lot in the Property, regardless of proposed use, intended to be served by the Public Improvements and for which a final plat has been approved by the City and recorded in the Real Property Records of Harris County, Texas.

“Governmental Authority” means any Federal, state or local governmental entity (including any taxing authority) or agency, court, tribunal, regulatory commission or other body, whether legislative, judicial or executive (or a combination or permutation thereof) and any arbitrator to whom a dispute has been presented under Applicable Law, pursuant to the terms of this Agreement or by agreement of the Parties.

“Home or Property Buyer Disclosure Program” means the disclosure program, as set forth in a document in the form of Exhibit H that establishes a mechanism to disclose to each End Buyer the terms and conditions under which their lot is burdened by the PID.

“Impact Fees” means all utility impact fees relating to the Public Improvements in each case assessed, imposed and collected by the City on the Property in accordance with the City Regulations adopted by the City, as may be revised or amended from time to time.

“Impositions” shall mean all taxes, assessments, use and occupancy taxes, sales taxes, charges, excises, license and permit fees, and other charges by public or governmental authority, which are or may be assessed, charged, levied, or imposed by any public or governmental authority on Developer, or any property or any business owned by Developer within City.

“Indenture(s)” means the applicable trust indenture pursuant to which PID Bonds are issued.

“Landowner Consent” means a consent by the applicable owner(s) of the Property consenting to the formation of the PID and the levy of Assessments in the form attached hereto as Exhibit E.

“Net Bond Proceeds” means the proceeds of the PID Bonds issued pursuant to Sections 3.02, net of costs of issuance, capitalized interest, reserve funds and other financing costs, that are deposited to the project fund for such bonds.

“Parties” or “Party” means the City and the Developer as parties to this Agreement.

“Payment Certificate” means a Payment Certificate as set forth in Section 9.03, the form of which is attached as Exhibit F.

“Phase” means a phase of development of the Property. The Development will consist of three (3) phases.

“Phase A” means the first phase of development in the PID, consisting of approximately 143 lots, as depicted on Exhibit I.

“Phase A Public Improvement Financing Date” means the date the City approves a bond purchase agreement and sells the first series of PID Bonds for Phase A of the Property, such date to be no later than October 1, 2021, which date may be extended by written agreement of the Developer and the City.

“Phase B” means the second phase of development in the PID, consisting of approximately 80 lots, as depicted on Exhibit I.

“Phase B Public Improvement Financing Date” means the date the City approves a bond purchase agreement and sells the first series of PID Bonds for Phase B of the Property, such date to be no more than three (3) years after the Completion of Construction of the Public Improvements in Phase A.

“Phase C” means the third phase of development in the PID, consisting of approximately 95 lots, as depicted on Exhibit I.

“Phase C Public Improvement Financing Date” means the date the City approves a bond purchase agreement and sells the first series of PID Bonds for Phase C of the Property, such date to be no more than three (3) years after the Completion of Construction of the Public Improvement in Phase B.

“PID Act” means Chapter 372, Texas Local Government Code, as amended.

“PID Bond Proceeds” means the proceeds of the PID Bonds, net of costs of issuance, capitalized interest, reserve funds and other financing costs, that are deposited to the Project Fund.

“PID Bonds” means one or more series special assessment revenue bonds issued by the City pursuant to the PID Act for the payment and/or reimbursement of the Public Improvement Project Costs, including bonds issued to fund construction of the Public Improvements, and, if any, issued to reimburse the Developer for a portion of the costs of the Public Improvements, not previously funded with bond proceeds.

“PID” means the Wood Leaf (PID No. 11) Public Improvement District.

“Plans and Specifications” means the plans and specifications for Public Improvements approved by the City.

Planned Development – 14” means that certain zoning ordinance No. 2020-19 of the City set forth in Exhibit B.

“Private Improvements” means those horizontal improvements described in the Plans and Specifications submitted to the City as part of the zoning process, other than the Public Improvements, being constructed in each Phase to get to a Final Lot Value.

“Project Fund” means the fund by that name created under each Indenture into which PID Bond Proceeds shall be deposited.

“Property” means approximately 90.54 acres of real property located within the City described in Exhibit A.

“Public Improvement Completion Date” means a date that is no later than eighteen (18) months after Commencement of Construction for the Public Improvements funded for such phase by each series of PID Bonds.

“Public Improvement Project Costs” means the estimated cost of the Public Improvements to be constructed to benefit the land within the PID as set forth in Exhibit C, as may be amended pursuant to this Agreement, such costs to be eligible “project costs,” as defined in the PID Act.

“Public Improvements” means public improvements to be developed and constructed or caused to be developed or constructed inside and outside the PID by the Developer to benefit the PID and the Property, which will include improvements described in Exhibit C.

“Reimbursement Agreement(s)” means the agreement(s) between the City and the Developer in which Developer agrees to fund the certain costs of Public Improvements and the City agrees to reimburse the Developer for a portion of such costs of the Public Improvements from the proceeds of Assessments pursuant to the SAP(s) or from future PID Bond proceeds, if any.

“Reimbursement Cap” means the total amount of reimbursement and/or payment to the Developer for the Public Improvement Project Costs from any source, including the proceeds of PID Bonds, or Assessment Revenues; such amount shall be no more than \$10,000,000 in Net Bond Proceeds.

“Service and Assessment Plan” or “SAP” means the service and assessment plans drafted pursuant to the PID Act for the PID and any amendments or updates thereto, adopted and approved by the City that identifies and allocates the Assessments on benefitted parcels within the PID and sets forth the method of assessment, the parcels assessed, the amount of the Assessments, the Public Improvements and the method of collection of the Assessment.

“Trustee” means the trustee under the Indenture.

“Waiver of Liens” means a complete, final and unconditional waiver of all liens with respect to the Public Improvements.

ARTICLE II

THE DEVELOPMENT

Section 2.01. Scope of Agreement. This Agreement establishes provisions for the apportionment, levying, and collection of Assessments on the Property within the PID, the construction of the Public Improvements, reimbursement, acquisition, ownership and maintenance of the Public Improvements, and the issuance of PID Bonds for the financing of the Public Improvements benefitting the property within the PID.

Section 2.02. Project Overview – The Development.

(a) The Developer will undertake or cause the undertaking of the design, development, construction, maintenance, management, use and operation of the Development, and will undertake the design, development and construction of the Public Improvements. The Development will consist of the following elements:

(i) Up to 318 single family homes;

(ii) A minimum 1-acre recreational reserve, centrally located within the development which may include playground, picnic facilities and other recreational components.

(iii) A minimum 30% of the Development to be open space.

(b) Subject to the terms and conditions set forth in this Agreement, the Developer shall plan, design, construct, and complete or cause the planning, designing, construction and completion of the Public Improvements to the City's standards and specifications and subject to the City's approval as provided herein and in accordance with City Regulations, the Concept Plan and Applicable Law.

(c) Upon completion and acceptance by the City, the City shall own and maintain all of the Public Improvements.

ARTICLE III

PUBLIC IMPROVEMENT DISTRICT

Section 3.01. Creation.

The Developer intends to request the creation of the PID that in total, encompasses the Property, by submitting a petition to the City that contain a list of the Public Improvements to be funded or acquired with the PID Bond Proceeds and the estimated or actual costs of such Public Improvements. Such petition shall also allow for the City's levy of Assessments for maintenance purposes and for administration of the PID. Upon receipt and acceptance of such petition, the City has held a public hearing to consider the creation of the PID in accordance with the PID Act. Developer agrees that the City may require at any time a professional services agreement that obligates Developer to fund the costs of the City's professionals relating to the

preparation for and issuance of PID Bonds, which amount shall be agreed to by the Parties and considered a cost payable from PID Bond Proceeds. The Developer agrees to enter into any such agreement upon request by the City.

Section 3.02. Issuance of PID Bonds.

(a) Subject to the terms and conditions set forth in this Article III, the City intends to authorize the issuance of PID Bonds in one or more series (each to coincide with the Developer's phased development of the Property) up to an aggregate principal amount of \$18,895,633.00 to construct, reimburse or acquire the Public Improvements benefitting the Property. The Public Improvements to be constructed and funded in connection with the PID Bonds are detailed in Exhibit C, which may be amended from time to time, and in the Service and Assessment Plan for the PID or any updates thereto. The net proceeds from the sale of each series of PID Bonds (i.e., net of costs and expenses of issuance of each series of PID Bonds and amounts for debt service reserves and capitalized interest) will be used to pay for, reimburse or acquire the Public Improvements. Notwithstanding the foregoing, the issuance of PID Bonds is a discretionary action by the City Council and is further conditioned upon the adequacy of the bond security and the financial ability and obligation of the Developer to pay the Developer Cash Contribution and perform its obligations hereunder.

(b) The Developer shall complete all Public Improvements within each phase in the PID and such Public Improvements shall be completed by the applicable Public Improvement Completion Date.

(c) The issuance of PID Bonds is subject to the discretion of the City Council and each series of PID Bonds shall be issued with the terms deemed appropriate by the City Council at the time of issuance, if at all.

(d) The following conditions must be satisfied prior to the City's consideration of the sale of PID Bonds:

(i) The maximum aggregate par amount of the PID Bonds to be issued by the City shall not exceed \$18,895,633.00.

(ii) The maximum "tax rate" for the projected annual assessment for each Phase shall be no greater than \$0.90 per \$100 of assessed value at the time of the levy of the Assessment on each PID Phase based on the Estimated Build Out Value of each parcel; such rate limit for each PID Phase as determined at the time of the levy of the Assessments applies on an individual assessed parcel basis by Lot Type based on Estimated Build Out Value, as will be set forth in more detail in the Service and Assessment Plan.

(iii) the total assessment value to lien ratio is at least 3:1 at the time of the levy of assessments and the total assessment value to lien ratio of each series of PID Bonds for each PID Phase is at least 3:1 at the time of the issuance of PID Bonds for each PID Phase; such values shall be confirmed by appraisal from licensed MAI appraiser.

(iv) The Developer or its Affiliates shall own all property within a Phase of the PID prior to the levy of Assessments for such Phase.

(v) The Developer must provide evidence reasonably acceptable to the City of an executed loan document and/or private equity in an amount sufficient to complete the amenities set forth in 2.02(a)(ii) above.

(vi) no Event of Default by the Developer has occurred or no event has occurred which but for notice, the lapse of time or both, would constitute an Event of Default by the Developer pursuant to this Agreement;

(vii) a site plan including preliminary engineering is approved by City staff for the Public Improvements for the Phase for which PID Bonds are being issued; and

(viii) all offsite easements (meaning offsite to the Property) not owned by the Developer that is necessary to construct the Public Improvements in each Phase have been acquired by the Developer and dedicated to the City, or dedicated by the City.

(e) In no event shall the Developer be paid and/or reimbursed for all Public Improvement Project Costs in an amount in excess of the Reimbursement Cap.

Section 3.03. Apportionment and Levy of Assessments.

(a) The City intends to levy Assessments on property located within the PID in accordance herewith and with the Service and Assessment Plans (as such plans are amended supplemented or updated from time to time) and the Assessment Ordinances on or before such time as each series of PID Bonds are issued. The City's apportionment and levy of Assessments shall be made in accordance with the PID Act.

(b) Concurrently with the levy of the Assessments on each Phase, the Developer and its Affiliates shall execute and deliver a Landowner Consent in the form attached as Exhibit E for all land owned or controlled by Developer or its Affiliates, or otherwise evidence consent to the creation of the and the levy of Assessments therein and shall record evidence and notice of the Assessments in the real property records of Harris County. The City shall not levy Assessments on property within the PID without an executed Landowner Consent from each landowner within the PID whose property is being assessed.

Section 3.04. Developer Cash Contribution. At closing on any series of PID Bonds intended to fund construction of Public Improvements that have not already been constructed by the Developer, Developer shall deposit into a designated account with the Trustee under the applicable Indenture a pro-rata amount of the Developer Cash Contribution. If the Public Improvements relating to each series of PID Bonds have already been constructed and the PID Bonds are intended to acquire the Public Improvements, then Developer shall not be required to deposit the Developer Cash Contribution as provided in this paragraph for such series. The amount of the Developer Cash Contribution for each series of PID Bonds shall be equal to the difference between the costs of the Public Improvements and the Net PID Bonds Proceeds

available to fund such costs of the Public Improvements related to such series of PID Bonds, as set forth in the SAP.

Section 3.05. Transfer of Property. Other than the sale of the Property to the Developer, notwithstanding anything to the contrary contained herein, no sale of property within a Phase of the PID shall occur prior to the City's levy of Assessments in such Phase of the PID unless the Developer provides the City with an executed consent to the creation of the PID and the levy of Assessments, in a form acceptable to the City with respect to the purchased property. In addition, evidence of any transfer of Property in the PID prior to the levy of Assessments on such property shall be provided to the City prior to the levy of Assessments on such property. The City shall require consent of each of the owners of Assessed Property in the PID to the levy of Assessments on each property and to the creation of the PID prior to Assessments being levied on such owner's property. The Developer understands and acknowledges that evidence of land transfer, the execution of the Landowner Consent, appraisal district certificate and property record recording will be required from each Assessed Property Owner in order to levy the Assessments and issue PID Bonds. The Developer shall provide all necessary documentation to the City with respect to any land transfers.

ARTICLE IV

DEVELOPMENT

Section 4.01. Full Compliance with City Standards.

Development and use of the Property by Developer and its Affiliates, including, without limitation, the construction, installation, maintenance, repair, and replacement of all buildings and all other improvements and facilities of any kind whatsoever on and within the Property, shall be in compliance with the then current applicable City Regulations and the Concept Plan.

Section 4.02. Development Standards and Planned Development - 14. As consideration for the City's obligations under this Agreement and in consideration for the issuance of the PID Bonds, the Developer agrees that its development and use of the Property, including, without limitation, the construction, installation, maintenance, repair and replacement of all buildings and all other improvements and facilities of any kind whatsoever on and within the Property, shall be in compliance with the City Regulations, the Concept Plan and the Planned Development - 14 attached as Exhibit B. Any changes to the Planned Development - 14 attached hereto must be approved by the City. Upon approval by the City of an updated Planned Development - 14, this Agreement shall be deemed amended to include such approved updated Planned Development - 14.

Section 4.03. Property Acquisition. The Parties acknowledge that, with the exception of School Street Right-of-Way, if required, the Developer is responsible for the acquisition of certain off-site property rights and interests to allow the Public Improvements to be constructed to serve the Property. Developer shall use commercially reasonable efforts to obtain all third-party rights-of-way, consents, or easements, if any, needed to construct the off-site Public Improvements. The Developer shall provide evidence of costs, maps, locations and size of

infrastructure to the City and obtain the City's consent prior to such acquisition of third-party rights-of-way, consents, or easements needed to construct the off-site Public Improvements.

Section 4.04. Zoning of Property. The Developer consents and agrees to the zoning of the Property pursuant to the planned development process and that such zoning shall be consistent with the Planned Development - ___ set forth in Exhibit B.

Section 4.05. Conflicts. In the event of any conflict between this Agreement and any City Regulation, the City Regulations, the Concept Plan, the City Regulations shall control.

Section 4.06. Replat. The Developer may submit a replat for all or any portion of the Property. Any replat shall be in conformance with City Regulations and the Concept Plan and may require a prepayment of Assessments as set forth in the applicable SAP.

ARTICLE V

DEVELOPMENT CHARGES

Section 5.01. Plat Review Fees. Development of the Property shall be subject to payment to the City of the reasonable fees and charges applicable to the City's preliminary and final plat review and approval process according to the fee schedule adopted by the City Council and in effect at the time of platting.

Section 5.02. Plan Review and Permit Fees. Development of the Property shall be subject to payment to the City of the reasonable fees and charges applicable to the City's review of plans and specifications and issuance of permits (including building permits) for construction of the Public Improvements according to the fee schedule adopted by the City Council at the time of plan review and permit issuance.

Section 5.03. Inspection Fees. Development of the Property shall be subject to the payment to the City of inspection fees according to the fee schedule adopted by the City Council at the time of inspection.

Section 5.04. Impact Fees. All impact fees associated with the Development shall be paid pursuant to the City Regulations.

ARTICLE VI

DEVELOPMENT SPECIFIC REQUIREMENTS

Section 6.01. Road Improvements. The Developer shall be responsible for the completion of the School Street extension between Theis Lane and Holderrieth Road to the City of Tomball's standards. Such completion shall be constructed concurrently with the construction of the Public Improvements. It is acknowledged that a section of School Street Right of Way is to be dedicated to the City by the developer of an adjoining tract. Developer's obligations are contingent on said right of way to be dedicated to the City, free and clear of all encumbrances, including utilities or third party facilities, prior to the commencement of paving for the development of Phase C.

ARTICLE VII

CONSTRUCTION OF THE PUBLIC IMPROVEMENTS

Section 7.01. Designation of Construction Manager, Construction Engineers.

(a) Prior to construction of any Public Improvement, Developer shall make, or cause to be made, application for any necessary permits and approvals required by City and any applicable Governmental Authority to be issued for the construction of the Public Improvements and shall obligate each general contractor, architect, and consultants who work on the Public Improvements to obtain all applicable permits, licenses or approvals as required by Applicable Law. The Developer shall require or cause the design, inspection and supervision of the construction of the Public Improvements to be undertaken in accordance with City Regulations and Applicable Law.

(b) The Developer shall design and construct or cause the design and construction of the Public Improvements, together with and including the acquisition, at its sole costs, of any and all easements or fee simple title to such land necessary to provide for and accommodate the Public Improvements.

(c) Developer shall comply, or shall require its contractors to comply, with all local and state laws and regulations regarding the design and construction of the Public Improvements applicable to similar facilities constructed by City, including, but not limited to, the requirement for payment, performance and two- year maintenance bonds for the Public Improvements.

(d) Upon Completion of Construction of any portion of the Public Improvements, Developer shall provide City with a final cost summary of all Public Improvement Project Costs incurred and paid associated with the construction of that portion of the Public Improvements and provide proof that all amounts owing to contractors and subcontractors have been paid in full evidenced by the "all bills paid" affidavits and lien releases executed by Developer and/or its contractors with regard to that portion of the Public Improvements. Evidence of payment to the

applicable contractors and subcontractors shall be provided prior to the reimbursement of the costs of any portion of the Public Improvements.

(e) Developer agrees to require the contractors and subcontractors which construct the Public Improvements to provide payment, performance and two-year maintenance bonds in forms reasonably satisfactory to the City Attorney. Any surety company through which a bond is written shall be a surety company duly authorized to do business in the State of Texas, provided that the City Attorney has the right to reasonably reject any surety company regardless of such company's authorization to do business in Texas. Evidence of payment and performance bonds shall be delivered to the City prior to Commencement of Construction of any such Public Improvements.

(f) Unless otherwise approved in writing by the City, all Public Improvements shall be constructed and dedicated to the City in accordance with City Regulations and Applicable Law.

(g) The Developer shall dedicate or convey by final plat or separate instrument, without cost to the City and in accordance with the Applicable Law, all property rights necessary for the construction, operation, and maintenance of the road, water, drainage, gas and sewer Public Improvements, at the completion of the Public Improvements and acceptance by the City.

Section 7.02. Construction Agreements. The Construction Agreements shall be let in the name of the Developer. The Developer's engineers shall prepare and provide, or cause the preparation and provision of all contract specifications and necessary related documents. The Developer shall provide all construction documents for the Public Improvements and shall acknowledge that the City has no obligations and liabilities thereunder. The Developer shall include a provision in the construction documents for the Public Improvements that the contractor will indemnify the City and its officers and employees against any costs or liabilities thereunder. The Developer or its designee (Engineer) shall administer the contracts. The Public Improvement Project Costs, which are estimated on Exhibit C, shall be paid by the Developer or caused to be paid by the Developer, or from the proceeds of PID Bonds and/or the Developer Cash Contribution in accordance with the Bond Indentures, or reimbursed by the Assessments levied pursuant to the terms of a Reimbursement Agreement.

(a) The following requirements apply to Construction Agreements for Public Improvements:

(i) Plans and specifications shall comply with all Applicable Law and City Regulations and all Plans and Specification shall be reviewed and approved by the City prior to the issuance of permits. The City shall have thirty (30) business days from its receipt of the first submittal of the Plans and Specifications to approve or deny the Plans and Specifications or to provide comments to the submitter. If any approved Plans and Specifications are amended or supplemented, the City shall have thirty (30) business days from its receipt of such amended or supplemented Plans and Specifications to approve or deny the Plans and Specification or provide comments back to the submitter. Any written City approval or denial must be based on compliance with applicable City Regulations or other regulatory agencies that have jurisdiction over the Development.

(ii) Each Construction Agreement shall provide that the Contractor is an independent contractor, independent of and not the agent of the City and that the Contractor is responsible for retaining, and shall retain, the services of necessary and appropriate architects and engineers; and

(iii) Each Construction Agreement for improvements not yet under construction shall provide that the Contractor shall indemnify the City, its officers and employees for any costs or liabilities thereunder and for the negligent acts or omissions of the Contractor.

(b) City's Role.

The City shall have no responsibility for the cost of planning, design, engineering construction, furnishing/equipping the Public Improvements (before, during or after construction) except to the extent of the reimbursement or funding of the Public Improvements Project Costs as set forth in this Agreement. The Developer will not hold the City responsible for any costs of the Public Improvements other than the reimbursements or fundings described in this Agreement. The City shall have no liability for any claims that may arise out of design or construction of the Public Improvements, and the Developer shall cause all of its contractors, architects, engineers, and consultants to agree in writing that they will look solely to the Developer, not to the City, for payment of all costs and valid claims associated with construction of the Public Improvements.

Section 7.03. Project Scope Verification.

(a) The Developer will from time to time, as reasonably requested by the City Representative, verify to the City Representative that the Public Improvements are being constructed substantially in accordance with the Plans and Specifications approved by the City. To the extent the City has concerns about such verification that cannot be answered by the Developer, to the City's reasonable satisfaction, the Developer will cause the appropriate architect, engineer or general contractor to consult with the Developer and the City regarding such concerns.

Section 7.04. Joint Cooperation; Access for Planning and Development.

(a) Cooperation and Timely Response. During the planning, design, development and construction of the Public Improvements, the parties agree to cooperate and coordinate with each other, and to assign appropriate, qualified personnel to this project. The City staff will make reasonable efforts to accommodate urgent or emergency requests during construction. In order to facilitate a timely review process, the Developer shall cause the architect, engineer and other design professionals to attend City meetings if requested by the City.

Section 7.05. City Not Responsible.

By performing the functions described in this Article, the City shall not, and shall not be deemed to, assume the obligations or responsibilities of the Developer, whose obligations under this Agreement and under Applicable Law shall not be affected by the City's exercise of the functions described in this Article. The City's review of any Plans and Specifications is solely

for the City's own purposes, and the City does not make any representation or warranty concerning the appropriateness of any such Plans and Specifications for any purpose. The City's approval of (or failure to disapprove) any such Plans and Specifications, including the Site Plan, submitted with such Plans and Specifications and any revisions thereto, shall not render the City liable for same, and the Developer assumes and shall be responsible for any and all claims arising out of or from the use of such Plans and Specifications.

Section 7.06. Construction Standards and Inspection.

The Public Improvements will be installed within the public right-of-way or in easements granted to the City. Such easements may be granted at the time of final platting in the final plat or by separate instrument. The Public Improvements shall be constructed and inspected in accordance with applicable state law, and City Regulations, and all other applicable development requirements, including those imposed by any other governing body or entity with jurisdiction over the Public Improvements, and this Agreement, provided, however, that if there is any conflict, the regulations of the governing body or entity with jurisdiction over the Public Improvement being constructed shall control.

Section 7.07. Public Improvements to be Owned by the City – Title Evidence.

The Developer shall furnish to the City a preliminary title report for land with respect to the Public Improvements, including any related rights-of-way, easements, and open spaces if any, to be acquired and accepted by the City from the Developer and not previously dedicated or otherwise conveyed to the City, for review and approval at least 30 calendar days prior to the transfer of title of a Public Improvement to the City. The City Representative shall approve the preliminary title report unless it reveals a matter which, in the reasonable judgment of the City, could materially affect the City's use and enjoyment of any part of the property or easement covered by the preliminary title report. In the event the City Representative does not approve the preliminary title report, the City shall not be obligated to accept title to the Public Improvement until the Developer has cured such objections to title to the satisfaction of the City Representative.

Section 7.08. Public Improvement Constructed on City Land or the Property.

If the Public Improvement is on land owned by the City, the City hereby grants to the Developer a temporary easement to enter upon such land for purposes related to construction (and maintenance pending acquisition and acceptance) of the Public Improvement. If the Public Improvement is on land owned by the Developer, the Developer shall dedicate easements by plat or shall execute and deliver to the City such access and maintenance easements as the City may reasonably require in recordable form, and the Developer hereby grants to the City a permanent access and maintenance easement to enter upon such land for purposes related to inspection and maintenance of the Public Improvement. The grant of the permanent easement shall not relieve the Developer of any obligation to grant the City title to property and/or easements related to the Public Improvement as required by this Agreement or as should in the City's reasonable judgment be granted to provide for convenient access to and routine and emergency maintenance of such Public Improvement. The provisions for inspection and acceptance of such Public Improvement otherwise provided herein shall apply.

Section 7.09. Additional Requirements.

In connection with the design and construction of the Public Improvements, the Developer shall take or cause the following entities or persons to take the following actions and to undertake the following responsibilities:

(a) The Developer shall provide to the City electronic copies of the Plans and Specifications for the Public Improvements (including revisions) as such Plans and Specifications are currently in existence and as completed after the date hereof and shall provide the City one complete set of record drawings (in electronic format) for the Public Improvements, in accordance with Applicable Law;

(b) In accordance with the requirements between the Developer and the City with regard to the development and construction of the Public Improvements, the Developer or such person selected by and contracting with the Developer shall provide the City with a copy of the detailed construction schedule outlining the major items of work of each major construction contractor, and any revisions to such schedule;

(c) The Developer shall provide construction documents, including the Plans and Specifications to the City, signed and sealed by one or more registered professional architects or engineers licensed in the State of Texas at the time the construction documents are submitted to the City for approval;

(d) The Developer shall provide the City with reasonable advance notice of any regularly-scheduled construction meetings regarding the Public Improvements, and shall permit the City to attend and observe such meetings as the City so chooses in order to monitor the project, and shall provide the City with copies of any construction schedules as are discussed and reviewed at any such regularly-scheduled construction meeting;

(e) The Developer or any general contractor shall comply with, and shall require that its agents and subcontractors comply with, all Applicable Laws regarding the use, removal, storage, transportation, disposal and remediation of hazardous materials;

(f) The Developer or any general contractor shall notify and obtain the City's approval for all field changes that directly result in material changes to the portion of the Plans and Specifications for the Public Improvements that describe the connection of such improvements with City streets, storm sewers and utilities;

(g) Upon notice from the City, the Developer shall or shall cause any general contractor to promptly repair, restore or correct, on a commercially reasonable basis, all damage caused by the general contractor or its subcontractors to property or facilities of the City during construction of the Public Improvements and to reimburse the City for out-of-pocket costs actually incurred by the City that are directly related to the City's necessary emergency repairs of such damage;

(h) Upon notice from the City, the Developer shall promptly cause the correction of defective work and shall cause such work to be corrected in accordance with the construction contracts for the Public Improvements and with City Regulations;

(i) If the Developer performs any soils, construction and materials testing during construction of the Public Improvements, the Developer shall make available to the City copies of the results of all such tests; and

(j) If any of the foregoing entities or persons shall fail in a material respect to perform any of its obligations described above (or elsewhere under this Agreement), the Developer shall use its good faith efforts to enforce such obligations against such entities or persons, or the Developer may cure any material failure of performance as provided herein; and

(k) The Developer shall provide any other information or documentation or services required by City Regulations; and

(l) The Developer shall allow the City Representative to conduct a reasonable pre-final and final inspection of the Public Improvements. Upon acceptance by the City of the Public Improvements, the City shall become responsible for the maintenance of the Public Improvements and making any bond or warranty claim, if applicable.

Section 7.10. Revisions to Scope and Cost of Public Improvements.

(a) The Public Improvement Project Costs, as set forth in Exhibit C, may be modified or amended from time to time upon the approval of the City Representative, provided that the total cost of the Public Improvements shall not exceed such amounts as set forth in the applicable SAP plus the Developer Cash Contribution. Should the Public Improvements be amended by the City Council in a SAP pursuant to the PID Act, the City Representative shall be authorized to make corresponding changes to the applicable Exhibits attached hereto and shall keep official record of such amendments.

(b) Should the Public Improvement Project Costs exceed the amounts set forth in the SAPs, the Developer must make a Developer Cash Contribution at the time of each PID Bond issuance such that the net proceeds of each series of PID Bonds plus the Developer Cash Contribution, is sufficient to fund the Public Improvement Project Costs for which the PID Bonds are being issued.

Section 7.11. City Police Powers.

The Developer recognizes the authority of the City pursuant to the Texas Constitution together with the City's charter and ordinances to exercise its police powers in accordance with applicable laws to protect the public health, safety, and welfare. The City retains its police powers over the Developer's or its general contractor's construction activities on or at the Property, and the Developer recognizes the City's authority to take appropriate enforcement action in accordance with Applicable Law to provide such protection. No lawful action taken by the City pursuant to these police powers shall subject the City to any liability under this Agreement, including without limitation liability for costs incurred by any general contractor or the Developer, and as between the Developer and the City, any such costs shall be the sole responsibility of the Developer and any of its general contractors and shall not be reimbursable from PID Bond Proceeds.

Section 7.12. Title and Mechanic's Liens.

(a) Title. The Developer agrees that the Public Improvements shall not have a lien or cloud on title upon their dedication to and acceptance by the City.

(i) Mechanic's Liens. Developer shall not create nor allow or permit any liens, encumbrances, or charges of any kind whatsoever against the Public Improvements arising from any work performed by any contractor by or on behalf of the Developer. The Developer shall not permit any claim of lien made by any mechanic, materialman, laborer, or other similar liens to stand against the Public Improvements for work or materials furnished to the Developer in connection with any construction, improvements, renovation, maintenance or repair thereof made by the Developer or any contractor, agent or representative of the Developer. The Developer shall cause any such claim of lien to be fully discharged no later than thirty (30) days after the Developer's receipt of written notice of the filing thereof.

Section 7.13. City Consents.

Any consent or approval by or on behalf of the City required in connection with the design, construction, improvement or replacement of the Public Improvements or otherwise under this Agreement shall not be unreasonably withheld, delayed, or conditioned. Any review associated with any determination to give or withhold any such consent or approval shall be conducted in a timely and expeditious manner with due regard to the cost to the Developer associated with delay.

Section 7.14. Right of the City to Make Inspection.

(a) At any time during the construction of the Public Improvements, the City shall have the right to enter the Property for the purpose of inspection of the progress of construction on the Public Improvements; provided, however, the City Representative shall comply with reasonable restrictions generally applicable to all visitors to the Development that are imposed by the Developer or its General Contractor or subcontractors. The Developer shall pay the City's costs for the retention of a third-party inspector.

(b) Inspection of the construction of all Public Improvements shall be by the City Representative or his/her designee. In accordance with Sections 5.03 and 7.03, the Developer shall pay the inspection fee which may be included as a Public Improvement Project Cost.

(c) City may enter the Property in accordance with customary City procedures and Applicable Law to make any repairs or perform any maintenance of Public Improvements which the City has accepted for maintenance. If, during construction of the Public Improvements, the Developer is in default under this Agreement beyond any applicable cure period or in the event of an emergency which is not being timely addressed, the City may enter the Property to make any repairs to the Public Improvements that have not been accepted for maintenance by the City, of every kind or nature, which the Developer is obligated under this Agreement to repair or maintain but which the Developer has failed to perform after reasonable notice (other than in the case of an emergency in which notice is impossible or impractical). The Developer shall be obligated to reimburse the City the reasonable costs incurred by the City for any such repairs.

Nothing contained in this paragraph shall be deemed to impose on the City any obligation to actually make repairs or alterations on behalf of the Developer.

Section 7.15. Competitive Bidding. The construction of the Public Improvements (which are funded from Assessments) is anticipated to be exempt from competitive bidding pursuant to Texas Local Government Code Section 252.022(a)(9). In the event that the actual costs of the Public Improvement do not meet the parameters for exemption from the competitive bid requirement, then either competitive bidding or alternative delivery method may be utilized by the City as allowed by Applicable Law.

ARTICLE VIII

PAYMENT OF PUBLIC IMPROVEMENTS

Section 8.01. Overall Requirements.

(a) The City shall not be obligated to provide funds for any Public Improvement except from the proceeds of the PID Bonds or from Assessments pursuant to a Reimbursement Agreement. The City makes no warranty, either express or implied, that the proceeds of the PID Bonds available for the payment or reimbursement of the Public Improvement Project Costs or for the payment of the cost to construct or acquire a Public Improvement by the City will be sufficient for the construction or acquisition of all of the Public Improvements. Any costs of the Public Improvements in excess of the available PID Bond Proceeds or Assessments pursuant to a Reimbursement Agreement, shall not be paid or reimbursed by the City. The Developer acknowledges and agrees that any lack of availability of monies in the Project Funds established under the Indentures to pay the costs of the Public Improvements shall in no way diminish any obligation of the Developer with respect to the construction of or contributions for the Public Improvements required by this Agreement, or any other agreement to which the Developer is a party, or any governmental approval to which the Developer or Property is subject.

(b) Upon written acceptance of a Public Improvement, and subject to any applicable maintenance-bond period, the City shall be responsible for all operation and maintenance of such Public Improvement, including all costs thereof and relating thereto.

(c) The City's obligation with respect to the reimbursement or payment of the Public Improvement Project Costs as finally set forth in the Service and Assessment Plan, shall be limited to the lower of Actual Costs or the available Net PID Bond Proceeds or Assessment revenues, and shall be payable solely from amounts on deposit in the Project Funds from the sale of the PID Bonds as provided herein and in the Indentures, or Assessments collected for the reimbursement or payment of such costs pursuant to Reimbursement Agreement. The Developer agrees and acknowledges that it is responsible for all costs and all expenses related to the Public Improvements in excess of the available Net PID Bond Proceeds and that the Developer Cash Contribution must be deposited at the time of the issuance of PID Bonds.

(d) The City shall have no responsibility whatsoever to the Developer with respect to the investment of any funds held in the Project Fund by the Trustee under the provisions of the Indenture, including any loss of all or a portion of the principal invested or any penalty for

liquidation of an investment. Any such loss may diminish the amounts available in the Project Fund to pay or reimburse the Public Improvement Project Costs in the PID. The obligation of Developer to pay the Assessments is not in any way dependent on the availability of amounts in the Project Fund to pay for all or any portion of the Public Improvements Project Costs hereunder.

Section 8.02. Remaining Funds after Completion of a Public Improvement.

If, upon the Completion of Construction of a Public Improvement (or segment or stage thereof) and payment or reimbursement for such Public Improvement, there are Cost Underruns, any remaining budgeted cost(s) may be available to pay Cost Overruns on any other Public Improvement with the approval of the City Representative, such approval not to be unreasonably withheld, at completion of the Public Improvements for each PID Phase and provided that all Public Improvements for such PID Phase, as set forth in the Service and Assessment Plan are undertaken at least in part. The elimination of a category of Public Improvements in a PID Phase as set forth in the Service and Assessment Plan will require an amendment to the Service and Assessment Plan. Upon receipt of all acceptance letters from the City for the Public Improvements within an improvement category as set forth in the Service and Assessment Plan, any Underruns from that category may be released to pay for Overruns in another improvement category, as approved by the City.

Section 8.03. Payment Process for Public Improvements.

(a) The City shall authorize payment or reimbursement of the Public Improvement Project Costs from PID Bond Proceeds or from Assessments collected in the PID as set forth in 8.04 below. The Developer shall submit a Payment Certificate to the City (no more frequently than monthly) for Public Improvement Project Costs including a completed segment, section or portion of a Public Improvement, as approved by the City. The form of the Payment Certificate is set forth in Exhibit F, as may be modified by the applicable Indenture or Reimbursement Agreement. The City shall review the sufficiency of each Payment Certificate with respect to compliance with this Agreement, compliance with the Applicable Law, and compliance with the applicable SAP and Plans and Specifications. The City shall review each Payment Certificate within thirty (30) Business Days of receipt thereof and upon approval, certify the Payment Certificate pursuant to the provisions of the applicable Indenture or Reimbursement Agreement, and payment shall be made to the Developer or its designee pursuant to the terms of the applicable Indenture or Reimbursement Agreement, provided that funds are available under the applicable Indenture or Reimbursement Agreement. Notwithstanding the foregoing, the City shall review the first Payment Certificate within forty-five (45) business days of receipt thereof. If a Payment Certificate is approved only in part, the City shall specify the extent to which the Payment Certificate is approved and payment for such partially approved Payment Certificate shall be made to the Developer pursuant to the terms of the applicable Indenture or Reimbursement Agreement, provided that funds are available under the applicable Indenture or Reimbursement Agreement.

(b) If the City requires additional documentation, timely disapproves or questions the correctness or authenticity of the Payment Certificate, the City shall deliver a detailed notice to the Developer within fifteen (15) Business Days of receipt thereof, then payment with respect to

disputed portion(s) of the Payment Certificate shall not be made until the Developer and the City have jointly settled such dispute or additional information has been provided to the City's reasonable satisfaction.

(c) The City shall reimburse the Public Improvement Project Costs as set forth in Exhibit C and the SAP, from funds available pursuant to the applicable Indenture or Reimbursement Agreement.

(d) Reimbursement to the Developer and the City for administrative costs relating to the creation of the PID, the levy of assessments and issuance of the PID Bonds may be distributed at closing of the applicable series of PID Bonds pursuant to a Closing Disbursement Request, in the form attached as Exhibit G.

Section 8.04. Public Improvements Reimbursement from Assessment Fund In the Event of a Non-Issuance of PID Bonds.

(a) In the event that, (i) the City does not issue PID Bonds by the Public Improvement Financing Date, or (ii) PID Bonds cannot be issued for the full costs of the Public Improvements of a result of the parameters set forth in Section 3.02(d), the reimbursement for costs of the Public Improvements set forth in Exhibit C and in the Service and Assessments Plan that are not paid with PID Bond Proceeds shall be made on an annual basis from Assessments levied by the City for the Public Improvements pursuant to Chapter 372, Texas Local Government Code, as amended, unless the Public Improvement Financing Date has been extended by written agreement between the Developer and the City and approved by City Council. Such reimbursement shall be made pursuant to the terms and provisions of one or more Reimbursement Agreements. Such Reimbursement Agreement shall set forth the terms of the annual reimbursement for the costs of the Public Improvements. If the City does not issue additional PID Bonds to fund subsequent Public Improvement Project Costs that have not been previously funded by PID Bonds, such unfunded costs may be funded from Assessments pursuant to additional Reimbursement Agreements. These Reimbursement Agreement obligations may, in the City's discretion, be reimbursed through the issuance of PID Bonds by the City once the parameters set forth in Section 3.02(d) can be met. The issuance of any PID Bonds to fund obligations under a Reimbursement Agreement is subject to the City's discretion and shall be determined by the City. In any event, the issuance of PID Bonds to Fund any obligations under a Reimbursement Agreement, if the City determines to issue such PID Bonds, shall occur no later than three (3) years after the Phase C Public Improvement Financing Date or the City shall not issue such PID Bonds.

(b) Reimbursement or payment of the costs of the Public Improvements shall only be made from the levy of Assessments within the PID as set forth herein.

(c) The term, manner and place of payment or reimbursement to the Developer under this Section shall be set forth in the Reimbursement Agreement.

(d) Reimbursement or payment shall be made only for the costs of the Public Improvements as set forth in this Agreement, the Service and Assessment Plan or in the Reimbursement Agreement, as approved by the City. Any additional public improvements other

than the Public Improvements constructed by the Developer and dedicated to the City, shall not be subject to payment or reimbursement under the terms of this Agreement.

Section 8.05. Rights to Audit.

(a) The City shall have the right to audit, upon reasonable notice and at the City's own expense, records of the Developer with respect to the expenditure of funds to pay Public Improvement Project Costs. Upon written request by the City, the Developer shall give the City or its agent, access to those certain records controlled by, or in the direct or indirect possession of, the Developer (other than records subject to legitimate claims of attorney-client privilege) with respect to the expenditure of Public Improvement Project Costs, and permit the City to review such records in connection with conducting a reasonable audit of such fund and account. The Developer shall make these records available to the City electronically or at a location that is reasonably convenient for City staff.

(b) The City and the Developer shall reasonably cooperate with the assigned independent auditors (internal or external) in this regard, and shall retain and maintain all such records for at least 2 years from the date of Completion of Construction of the Public Improvements. All audits must be diligently conducted and once begun, no records pertaining to such audit shall be destroyed until such audit is completed.

ARTICLE IX

REPRESENTATIONS AND WARRANTIES

Section 9.01. Representations and Warranties of City.

The City makes the following representation and warranty for the benefit of the Developer:

(a) Due Authority; No Conflict. The City represents and warrants that this Agreement has been approved by official action by the City Council of the City in accordance with all applicable public notice requirements (including, but not limited to, notices required by the Texas Open Meetings Act). The City has all requisite power and authority to execute this Agreement and to carry out its obligations hereunder and the transactions contemplated hereby. This Agreement has been, and the documents contemplated hereby will be, duly executed and delivered by the City and constitute legal, valid and binding obligations enforceable against the City in accordance with the terms subject to principles of governmental immunity and the enforcement of equitable rights. The consummation by the City of the transactions contemplated hereby is not in violation of or in conflict with, nor does it constitute a default under, any of the terms of any agreement or instrument to which the City is a Party, or by which the City is bound, or of any provision of any applicable law, ordinance, rule or regulation of any governmental authority or of any provision of any applicable order, judgment or decree of any court, arbitrator or governmental authority.

(b) Due Authority; No Litigation. No litigation is pending or, to the knowledge of the City, threatened in any court to restrain or enjoin the construction of or the Public Improvements or the City's payment and reimbursement obligations under this Agreement, or otherwise

contesting the powers of the City or the authorization of this Agreement or any agreements contemplated herein.

Section 9.02. Representations and Warranties of Developer.

The Developer makes the following representations, warranties and covenants for the benefit of the City:

(a) Due Organization and Ownership. The Developer is a Texas limited liability company validly existing under the laws of the State of Texas and is duly qualified to do business in the State of Texas; and that the person executing this Agreement on behalf of it is authorized to enter into this Agreement.

(b) Due Authority: No Conflict. The Developer has all requisite power and authority to execute and deliver this Agreement and to carry out its obligations hereunder and the transactions contemplated hereby. This Agreement has been, and the documents contemplated hereby will be, duly executed and delivered by the Developer and constitute the Developer's legal, valid and binding obligations enforceable against the Developer in accordance with their terms. The consummation by the Developer of the transactions contemplated hereby is not in violation of or in conflict with, nor does it constitute a default under, any term or provision of the organizational documents of the Developer, or any of the terms of any agreement or instrument to which the Developer is a Party, or by which the Developer is bound, or of any provision of any applicable law, ordinance, rule or regulation of any governmental authority or of any provision of any applicable order, judgment or decree of any court, arbitrator or governmental authority.

(c) Consents. No consent, approval, order or authorization of, or declaration or filing with any governmental authority is required on the part of the Developer in connection with the execution and delivery of this Agreement or for the performance of the transactions herein contemplated by the respective Parties hereto.

(d) Litigation/Proceedings. To the best knowledge of the Developer, after reasonable inquiry, there are no pending or, to the best knowledge of the Developer, threatened, judicial, municipal or administrative proceedings, consent decree or, judgments which might affect the Developer's ability to consummate the transaction contemplated hereby, nor is there a preliminary or permanent injunction or other order, decree, or ruling issued by a governmental entity, and there is no statute, rule, regulation, or executive order promulgated or enacted by a governmental entity, that is in effect which restrains, enjoins, prohibits, or otherwise makes illegal the consummation of the transactions contemplated by this Agreement.

(e) Legal Proceedings. There is no action, proceeding, inquiry or investigation, at law or in equity, before any court, arbitrator, governmental or other board or official, pending or, to the knowledge of the Developer, threatened against or affecting the Developer, any of the principals of the Developer and any key person or their respective Affiliates and representatives which the outcome of which would (a) materially and adversely affect the validity or enforceability of, or the authority or ability of the Developer under, this Agreement to perform its obligations under this Agreement, or (b) have a material and adverse effect on the

consolidated financial condition or results of operations of the Developer or on the ability of the Developer to conduct its business as presently conducted or as proposed or contemplated to be conducted.

(f) Ownership. The Developer represents that it or one or more Affiliates will be the sole owners of the Property within the PID at the time of their creation and will be the sole owners at the time of the levy of Assessments. The Developer shall consent to the levy of Assessments in substantially the form of the Landowner Consent attached hereto as Exhibit E, and shall not transfer title of any land within the PID prior to the levy of all Assessments within each PID.

ARTICLE X

MAINTENANCE OF LANDSCAPE IMPROVEMENTS

Section 10.01. Mandatory Property Owners' Association.

(a) The Developer will create a mandatory homeowners' association ("HOA") over the portion of the Property then being developed as single family homes ("the "Single Family Property"), which HOA, through its conditions and restrictions filed of record in the property records of Harris County, shall be required to assess and collect from owners annual fees in an amount calculated to maintain the open spaces, common areas, right-of-way irrigation systems, raised medians and other right-of-way landscaping, detention areas, drainage areas, screening walls, trails, lawns, landscaped entrances to the Single Family Property and any other common improvements or appurtenances (the "HOA Maintained Improvements"). Maintenance of any Public Improvements or land owned by the City shall be pursuant to a maintenance agreement between the HOA and the City (the "HOA Maintenance Agreement").

(b) While the Parties anticipate that the HOA established to maintain and operate the HOA Maintained Improvements, will adequately perform such duties, in the event that the City determines that the HOA is not adequately performing the duties for which it was created, which non-performance shall be evidenced by violations of the HOA Maintenance Agreement, applicable deed restrictions and/or applicable City ordinances, the City reserves the right to levy an assessment each year equal to the actual costs of operating and maintaining the HOA Maintained Improvements that are owned by the City. The City agrees that it will not levy such assessments without first giving the HOA written notice of the deficiencies and providing the HOA with sixty (60) days in which to cure the deficiencies.

(c) Covenants, conditions and restrictions for the HOA must be filed in each PID Phase and the HOA Maintenance Agreement must be approved and executed before any PID Bonds are issued by the City.

ARTICLE XI

TERMINATION EVENTS

Section 11.01. Developer Termination Events.

The Developer may terminate this Agreement as to a phase of Development if the City does not either (i) sell PID Bonds by a Public Improvement Financing Date (i.e., the Phase A Public Improvement Financing Date, the Phase B Public Improvement Financing Date and the Phase C Public Improvement Financing Date or (ii) levy Assessments and enter into a Reimbursement Agreement pursuant to Section 8.04 for such phase of the Development.

Section 11.02. City Termination Events.

(a) The City may terminate this Agreement for each Phase if the City determines both (i) not to issue a series of PID Bonds for such phase of Development to fund the construction of the Public Improvements, and (ii) not to levy Assessments and enter into a Reimbursement Agreement for such phase of the Development.

(b) The City may terminate this Agreement and any Reimbursement Agreement with respect to the applicable PID Phase and any remaining PID Phase, upon an uncured Event of Default by the Developer pursuant to Article XIV herein.

(c) The City may terminate this Agreement and any Reimbursement Agreement, if Commencement of Construction of the private horizontal improvements within the Development has not occurred within three (3) years of the Effective Date.

(d) The City may terminate this Agreement, with respect to any remaining PID Phase, any Reimbursement Agreement, at any time if the Public Improvements in each PID Phase do not reach the applicable Phase Completion Date, as may have been extended pursuant to the term of this Agreement.

(e) The City may terminate this Agreement with respect to the applicable PID Phase and any remaining PID Phase if the Developer does not pay the Developer Cash Contribution at closing of the applicable series of PID Bonds.

Section 11.03. Termination Procedure.

If either Party determines that it wishes to terminate this Agreement pursuant to this Article, such Party must deliver a written notice to the other Party specifying in reasonable detail the basis for such termination and electing to terminate this Agreement. Upon such a termination, the Parties hereto shall have no duty or obligation one to the other under this Agreement, including the reimbursement of any of Developer's costs that were previously advanced or incurred or the levy of assessments on any remaining phases. Provided, however, that as of the date of termination, (i) any Public Improvements completed and accepted by the City or (ii) Public Improvement Project Costs submitted pursuant to a Payment Certificate and approved by the City, shall still be subject to reimbursement.

Section 11.04. City Actions Upon Termination.

In the event of termination of this Agreement, the City may (i) use any remaining PID Bond Proceeds to redeem PID Bonds pursuant to the provisions of the Indenture or (ii) construct or cause to be constructed the remaining Public Improvements, payable from PID Bond Proceeds. Upon termination the Developer shall have no claim or right to any further payments for Public Improvements Project Costs pursuant to this except that, (i) any Public Improvements completed and accepted by the City or (ii) Public Improvement Project Costs submitted pursuant to a Payment Certificate and approved by the City shall still be subject to reimbursement.

ARTICLE XII

TERM

This Agreement shall terminate upon the earlier of: (i) the expiration of 30 years from the Effective Date, (ii) the date on which the City and the Developer discharge all of their obligations hereunder, including Completion of Construction and acceptance of the Public Improvements, and (b) all PID Bond Proceeds have been expended for the construction of all of the Public Improvements and the Developer has been reimbursed for all completed and accepted Public Improvements up to the Reimbursement Cap but in the amount set forth in the Service and Assessment Plan (iii) an event of default under Article XIII, or (iv) the occurrence of a termination event under Article XI.

ARTICLE XIII

DEFAULT AND REMEDIES

Section 13.01. Developer Default.

Each of the following events shall be an “Event of Default” by the Developer under this Agreement:

(a) The Developer shall fail to pay to the City any monetary sum hereby required of it as and when the same shall become due and payable and shall not cure such default within thirty (30) calendar days after the later of the date on which written notice thereof is given by the City to the Developer, as provided in this Agreement. The Developer shall fail in any material respect to maintain any of the insurance or bonds required by this Agreement; provided, however, that if a contractor fails to maintain any of the insurance or bonds required by this Agreement, the Developer shall have thirty (30) calendar days to cure.

(b) The Developer shall fail to comply in any material respect with any term, provision or covenant of this Agreement (other than the payment of money to the City), and shall not cure such failure within ninety (90) calendar days after written notice thereof is given by the City to the Developer;

(c) The filing by Developer of a voluntary proceeding under present or future bankruptcy, insolvency, or other laws respecting debtors, rights;

(d) The consent by Developer to an involuntary proceeding under present or future bankruptcy, insolvency, or other laws respecting debtor's rights;

(e) The entering of an order for relief against Developer or the appointment of a receiver, trustee, or custodian for all or a substantial part of the property or assets of Developer in any involuntary proceeding, and the continuation of such order, judgment or degree unstayed for any period of ninety (90) consecutive days;

(f) The failure by Developer or any Affiliate to pay Impositions, and Assessments on property owned by the Developer and/or any Affiliates within the PID if such failure is not cured within thirty (30) calendar days after written notice by the City; OR

(g) Any representation or warranty confirmed or made in this Agreement by the Developer was untrue in any material respect as of the Effective Date.

Section 13.02. Notice and Cure Period.

(a) Before any Event of Default under this Agreement shall be deemed to be a breach of this Agreement, the Party claiming such Event of Default shall notify, in writing, the Party alleged to have failed to perform the alleged Event of Default and shall demand performance (with the exception of 13.01(f) above). Except with respect to cure periods set forth in 13.01 above, which shall be controlling, no breach of this Agreement may be found to have occurred if performance has commenced to the reasonable satisfaction of the complaining Party within thirty (30) calendar days of the receipt of such notice (or thirty (30) calendar days in the case of a monetary default), with completion of performance within ninety (90) calendar days subject.

(b) Notwithstanding any provision in this Agreement to the contrary, if the performance of any covenant or obligation to be performed hereunder by any Party is delayed by Force Majeure, the time for such performance shall be extended by the amount of time of the delay directly caused by and relating to such uncontrolled circumstances. The Party claiming delay of performance as a result of any of the foregoing Force Majeure events shall deliver written notice of the commencement of any such delay resulting from such Force Majeure event and the length of the Force Majeure event is reasonably expected to last not later than seven (7) days after the claiming Party becomes aware of the same, and if the claiming Party fails to so notify the other Party of the occurrence of a Force Majeure event causing such delay, the claiming Party shall not be entitled to avail itself of the provisions for the extension of performance contained in this Article. The number of days a Force Majeure event is in effect shall be determined by the City based upon commercially reasonable standards.

Section 13.03. City's Remedies.

With respect to the occurrence of an Event of Default the City may pursue the following remedies:

(a) The City may pursue any legal or equitable remedy or remedies, including, without limitation, specific performance, damages, and termination of this Agreement. The City shall not terminate this Agreement unless it delivers to the Developer a second notice expressly providing that the City will terminate within thirty (30) additional days. Termination or non-

termination of this Agreement upon a Developer Event of Default shall not prevent the City from suing the Developer for specific performance, damages, actual damages, excluding punitive, special and consequential damages, injunctive relief or other available remedies with respect to obligations that expressly survive termination. In the event the Developer fails to pay any of the expenses or amounts or perform any obligation specified in this Agreement, then to the extent such failure constitutes an Event of Default hereunder, the City may, but shall not be obligated to do so, pay any such amount or perform any such obligations and the amount so paid and the reasonable out of pocket costs incurred by the City in said performance shall be due and payable by the Developer to the City within thirty (30) days after the Developer's receipt of an itemized list of such costs.

(b) No remedy herein conferred or reserved is intended to be exclusive of any other available remedy or remedies, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given hereunder now or hereafter existing at law or in equity.

(c) The exercise of any remedy herein conferred or reserved shall not be deemed a waiver of any other available remedy.

Section 13.04. City Default.

Each of the following events shall be an Event of Default by the City under this Agreement:

(a) So long as the Developer has complied with the terms and provisions of this Agreement, the City shall fail to pay to the Developer any monetary sum hereby required of it and shall not cure such default within thirty (30) calendar days after the later of the date on which written notice thereof is given to the City by the Developer.

(b) The City shall fail to comply in any material respect with any term, provision or covenant of this Agreement, other than the payment of money, and shall not cure such failure within ninety (90) calendar days after written notice thereof is given by the Developer to the City.

Section 13.05. Developer's Remedies.

(a) Upon the occurrence of any Event of Default by the City, the Developer may pursue any legal remedy or remedies specifically including damages as set forth below (specifically excluding specific performance and other equitable remedies), and termination of this Agreement; provided, however, that the Developer shall have no right to terminate this Agreement unless the Developer delivers to the City a second notice which expressly provides that the Developer will terminate within thirty (30) days if the default is not addressed as herein provided.

(b) No remedy herein conferred or reserved is intended to be inclusive of any other available remedy or remedies, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given hereunder now or hereafter existing.

(c) The exercise of any remedy herein conferred or reserved shall not be deemed a waiver of any other available remedy.

Section 13.06. Limited Waiver of Immunity.

(a) The City and the Developer hereby acknowledge and agree that to the extent this Agreement is subject to the provisions of Subchapter I of Chapter 271, Texas Local Government Code, as amended, and the City's immunity from suit is waived only as set forth in such statute.

(b) Should a court of competent jurisdiction determine the City's immunity from suit is waived in any manner other than as provided in Subchapter I of Chapter 271, TEXAS LOCAL GOVERNMENT CODE, as amended, the Parties hereby acknowledge and agree that in a suit against the City for breach of this Agreement:

(i) The total amount of money awarded is limited to actual damages in an amount not to exceed the balance due and owed by City under this Agreement or any Reimbursement Agreement and is payable solely from Assessment revenues;

(ii) The recovery of damages against City or the Developer may not include consequential damages or exemplary damages;

(iii) The Parties may not recover attorney's fees; and

(iv) The Parties are not entitled to specific performance or injunctive relief against the City.

Section 13.07. Limitation on Damages.

In no event shall any Party have any liability under this Agreement for any exemplary or consequential damages.

Section 13.08. Waiver.

Forbearance by the non-defaulting Party to enforce one or more of the remedies herein provided upon the occurrence of an Event of Default by the other Party shall not be deemed or construed to constitute a waiver of such default. One or more waivers of a breach of any covenant, term or condition of this Agreement by either Party hereto shall not be construed by the other Party as a waiver of a different or subsequent breach of the same covenant, term or condition. The consent or approval of either Party to or of any act by the other Party of a nature requiring consent or approval shall not be deemed to waive or render unnecessary the consent to or approval of any other subsequent similar act.

ARTICLE XIV

INSURANCE, INDEMNIFICATION AND RELEASE

Section 14.01. Insurance.

With no intent to limit any contractor's liability or obligation for indemnification, the Developer shall maintain or cause to be maintained, by the persons constructing the Public Improvements, certain insurance, as provided below in full force and effect at all times during construction of the Public Improvements and shall require that the City is named as an additional insured under such contractor's insurance policies.

(a) With regard to the obligations of this Agreement, the Developer shall obtain and maintain in full force and effect at its expense, or shall cause each contractor to obtain and maintain at their expense, the following policies of insurance and coverage:

(i) Commercial general liability insurance insuring the City, contractor and the Developer against liability for injury to or death of a person or persons and for damage to property occasioned by or arising out of the activities of Developer, the contractor, the City and their respective officers, directors, agents, contractors, or employees, in the amount of \$500,000 Per Occurrence or a limit equal to the amount of the contract amount, \$2,000,000 General Aggregate Bodily Injury and Property Damage. The contractor may procure and maintain a Master or Controlled Insurance policy to satisfy the requirements of this section, which may cover other property or locations of the contractor and its affiliates, so long as the coverage required in this section is separate;

(ii) Worker's Compensation insurance as required by law;

(iii) Business automobile insurance covering all operations of the contractor pursuant to the Construction Agreement involving the use of motor vehicles, including all owned, non-owned and hired vehicles with minimum limits of not less than One Million Dollars (\$1,000,000) combined single limit for bodily injury, death and property damage liability.

(iv) To the extent available, each policy shall be endorsed to provide that the insurer waives all rights of subrogation against the City;

(v) Each policy of insurance with the exception of Worker's Compensation and professional liability shall be endorsed to include the City (including its former, current, and future officers, directors, agents, and employees) as additional insureds;

(vi) Each policy, with the exception of Worker's Compensation and professional liability, shall be endorsed to provide the City sixty (60) days' written notice prior to any cancellation, termination or material change of coverage; and

(vii) The Developer shall cause each contractor to deliver to the City the policies, copies of policy endorsements, and/or certificates of insurance evidencing the

required insurance coverage before the Commencement of Construction of the Public Improvements and within 10 days before expiration of coverage, or as soon as practicable, deliver renewal policies or certificates of insurance evidencing renewal and payment of premium. On every date of renewal of the required insurance policies, the contractor shall cause a Certificate of Insurance and policy endorsements to be issued evidencing the required insurance herein and delivered to the City. In addition the contractor shall within ten (10) business days after written request provide the City with the Certificates of Insurance and policy endorsements for the insurance required herein (which request may include copies of such policies).

Section 14.02. Waiver of Subrogation Rights.

The Commercial General Liability, Worker's Compensation, Business Auto and Excess Liability Insurance required pursuant to this Agreement shall provide for waivers of all rights of subrogation against the City.

Section 14.03. Additional Insured Status.

With the exception of Worker's Compensation Insurance and any Professional Liability Insurance, all insurance required pursuant to this Agreement shall include and name the City as additional insureds using Additional Insured Endorsements that provide the most comprehensive coverage to the City under Texas law including products/completed operations.

Section 14.04. Certificates of Insurance.

Certificates of Insurance and policy endorsements in a form satisfactory to City shall be delivered to City prior to the commencement of any work or services on the Public Improvements. All required policies shall be endorsed to provide the City with sixty (60) days advance notice of cancellation or non-renewal of coverage. The Developer shall provide sixty (60) days written notice of any cancellation, non-renewal or material change in coverage for any of the required insurance in this Article.

On every date of renewal of the required insurance policies, the Developer shall cause (and cause its contractors) to provide a certificate of insurance and policy endorsements to be issued evidencing the required insurance herein and delivered to the City. In addition, the Developer shall, within ten (10) business days after written request, provide the City with certificates of insurance and policy endorsements for the insurance required herein (which request may include copies of such policies). The delivery of the certificates of insurance and the policy endorsements (including copies of such insurance policies) to the City is a condition precedent to the payment of any amounts to the Developer by the City.

Section 14.05. Carriers.

All policies of insurance required to be obtained by the Developer and its contractors pursuant to this Agreement shall be maintained with insurance carriers that are satisfactory to and as reasonably approved by City, and lawfully authorized to issue insurance in the state of Texas for the types and amounts of insurance required herein. All insurance companies providing the required insurance shall be authorized to transact business in Texas and rated at least "A" by

AM Best or other equivalent rating service. All policies must be written on a primary basis, non-contributory with any other insurance coverage and/or self-insurance maintained by the City. All insurance coverage required herein shall be evidenced by a certificate of insurance and policy endorsements submitted by the Developer's and its contractors' insurer or broker. Certificates of insurance and policy endorsements received from any other source will be rejected.

Section 14.06. INDEMNIFICATION.

DEVELOPER AGREES TO DEFEND, INDEMNIFY AND HOLD THE CITY AND ITS RESPECTIVE OFFICERS, AGENTS AND EMPLOYEES, HARMLESS AGAINST ANY AND ALL CLAIMS, LAWSUITS, JUDGMENTS, FINES, PENALTIES, COSTS AND EXPENSES FOR PERSONAL INJURY (INCLUDING DEATH), PROPERTY DAMAGE OR OTHER HARM OR VIOLATIONS FOR WHICH RECOVERY OF DAMAGES, FINES, OR PENALTIES IS SOUGHT, SUFFERED BY ANY PERSON OR PERSONS, THAT MAY ARISE OUT OF OR BE OCCASIONED BY DEVELOPER'S BREACH OF ANY OF THE TERMS OR PROVISIONS OF THIS CONTRACT, VIOLATIONS OF LAW, OR BY ANY NEGLIGENT, GROSSLY NEGLIGENT, INTENTIONAL, OR STRICTLY LIABLE ACT OR OMISSION OF THE CONTRACTOR, ITS OFFICERS, AGENTS, EMPLOYEES, INVITEES, SUBCONTRACTORS, OR SUB-SUBCONTRACTORS AND THEIR RESPECTIVE OFFICERS, AGENTS, OR REPRESENTATIVES, OR ANY OTHER PERSONS OR ENTITIES FOR WHICH THE CONTRACTOR IS LEGALLY RESPONSIBLE IN THE PERFORMANCE OF THIS CONTRACT. THE INDEMNITY PROVIDED FOR IN THIS PARAGRAPH SHALL NOT APPLY TO ANY LIABILITY RESULTING FROM THE SOLE NEGLIGENCE OF THE CITY, AND ITS OFFICERS, AGENTS, EMPLOYEES OR SEPARATE CONTRACTORS. THE CITY DOES NOT WAIVE ANY GOVERNMENTAL IMMUNITY OR OTHER DEFENSES AVAILABLE TO IT UNDER TEXAS OR FEDERAL LAW. THE PROVISIONS OF THIS PARAGRAPH ARE SOLELY FOR THE BENEFIT OF THE PARTIES HERETO AND ARE NOT INTENDED TO CREATE OR GRANT ANY RIGHTS, CONTRACTUAL OR OTHERWISE, TO ANY OTHER PERSON OR ENTITY.

DEVELOPER AT ITS OWN EXPENSE IS EXPRESSLY REQUIRED TO DEFEND CITY AGAINST ALL SUCH CLAIMS. CITY RESERVES THE RIGHT TO PROVIDE A PORTION OR ALL OF ITS OWN DEFENSE; HOWEVER, CITY IS UNDER NO OBLIGATION TO DO SO. ANY SUCH ACTION BY CITY IS NOT TO BE CONSTRUED AS A WAIVER OF DEVELOPER'S OBLIGATION TO DEFEND CITY OR AS A WAIVER OF DEVELOPER'S OBLIGATION TO INDEMNIFY CITY PURSUANT TO THIS AGREEMENT. DEVELOPER SHALL RETAIN DEFENSE COUNSEL WITHIN SEVEN (7) BUSINESS DAYS OF CITY'S WRITTEN NOTICE THAT CITY IS INVOKING ITS RIGHT TO INDEMNIFICATION UNDER THIS AGREEMENT. IF DEVELOPER FAILS TO RETAIN COUNSEL WITHIN THE REQUIRED TIME PERIOD, CITY SHALL HAVE THE RIGHT TO RETAIN DEFENSE COUNSEL ON ITS OWN BEHALF AND DEVELOPER SHALL BE LIABLE FOR ALL COSTS INCURRED BY THE CITY.

ARTICLE XV

GENERAL PROVISIONS

Section 15.01. Notices.

Any notice, communication or disbursement required to be given or made hereunder shall be in writing and shall be given or made by facsimile or other electronic transmittal, hand delivery, overnight courier, or by United States mail, certified or registered mail, return receipt requested, postage prepaid, at the addresses set forth below or at such other addresses as may be specified in writing by any Party hereto to the other parties hereto. Each notice which shall be mailed or delivered in the manner described above shall be deemed sufficiently given, served, sent and received for all purpose at such time as it is received by the addressee (with return receipt, the delivery receipt or the affidavit of messenger being deemed conclusive evidence of such receipt) at the following addresses:

To the City: City Manager
401 Market Street
Tomball, TX 77375

With a copy to: Attn: City Attorney
Olson & Olson, LLP
2727 Allen Parkway, Suite 600
Houston, TX 77019

To the Developer: Attn: Tom Markiewicz
Chesmar Homes, LLC
480 Wildwood Forest Dr., Suite 800
The Woodlands, Texas 77380

With a copy to: Don Klein
480 Wildwood Forest Dr., Suite 800
The Woodlands, Texas 77380

Section 15.02. Make-Whole Provision. If the issuance of the PID Bonds in any calendar year precludes the City from issuing bank qualified debt for that calendar year, then the Developer shall pay to the City a fee (the “PID Bond Fee”) to compensate the City for the interest savings the City would have achieved had the debt issued by the City been bank qualified. The City’s financial advisor shall calculate the PID Bond Fee based on the planned debt issuances for the City in the year in which each series of PID Bonds are issued, and shall notify the Developer of the total amount due prior to the issuance of the applicable series of PID Bonds. The Developer agrees to pay the PID Bond Fee to the City within ten (10) business days after receiving notice from the City of the amount of PID Bond Fee due to the City. The PID Bond Fee shall be held in a segregated account of the City and if the total amount of debt obligations sold or entered into by the City in the calendar year in which the applicable series of PID Bonds are issued are less than the bank qualification limits (currently \$10 million per

calendar year), then the PID Bond Fee shall be returned to the Developer. If, at the time of the City's notification to the Developer as set forth above, there are additional bonds to be issued by the City in that year that will be issued to accommodate additional developers within the City, the PID Bond Fee shall be shared by all parties in a pro-rata amount based upon the estimated par amounts of each series of bonds issued for the benefit of each, as determined by the City and its financial advisor.

Section 15.03. Assignment.

(a) This Agreement shall be binding upon and inure to the benefit of the successors and assigns of the Parties. The obligations, requirements or covenants to develop the Property, including construction of the Public Improvements may be assigned to an Affiliate without the prior written consent of the City. The obligations, requirements or covenants to the development of the Property, including construction of the Public Improvements shall not be assigned to any non-Affiliate without the prior written consent of the City Council, which consent shall not be unreasonably withheld if the assignee demonstrates the financial ability to perform in the reasonable judgment of the City Council. Each assignment shall be in writing executed by Developer and the assignee and shall obligate the assignee to be bound by this Agreement to the extent this Agreement applies or relates to the obligations, rights, title or interests being assigned. No assignment by Developer shall release Developer from any liability that resulted from an act or omission by Developer that occurred prior to the effective date of the assignment unless the City approves the release in writing. Developer shall maintain written records of all assignments made by Developer to Assignee, including a copy of each executed assignment and the Assignee's notice information as required by this Agreement, and, upon written request from the City, any Party or Assignee, shall provide a copy of such records to the requesting person or entity, and this obligation shall survive the assigning Party's sale, assignment, transfer or other conveyance of any interest in this Agreement or the Property. The City shall not be required to make any representations or execute any consent with respect to any assignment.

(b) Developer may assign any receivables or revenues due pursuant to this Agreement or any Reimbursement Agreement to a third party without the consent of, but upon written notice to the City. Provided, however, that notwithstanding the above, the City shall not be required to make partial payments to more than two parties as a result of an assignment and shall not execute any consent or other representations with respect thereto.

(c) The Developer and assignees have the right, from time to time, to collaterally assign, pledge, grant a lien or security interest in, or otherwise encumber any of their respective rights, title, or interest under this Agreement for the benefit of (a) their respective lenders without the consent of, but with prompt written notice to, the City. The collateral assignment, pledge, grant of lien or security interest, or other encumbrance shall not, however, obligate any lender to perform any obligations or incur any liability under this Agreement unless the lender agrees in writing to perform such obligations or incur such liability. Provided the City has been given a copy of the documents creating the lender's interest, including Notice information for the lender, then that lender shall have the right, but not the obligation, to cure any default under this Agreement within thirty (30) days written Notice to the lender, not to be unreasonably withheld. A lender is not a party to this Agreement unless this Agreement is amended, with the consent of the lender, to add the lender as a Party. Notwithstanding the foregoing, however, this Agreement

shall continue to bind the Property and shall survive any transfer, conveyance, or assignment occasioned by the exercise of foreclosure or other rights by a lender, whether judicial or non-judicial. Any purchaser from or successor owner through a lender of any portion of the Property shall be bound by this Agreement and shall not be entitled to the rights and benefits of this Agreement with respect to the acquired portion of the Property until all defaults under this Agreement with respect to the acquired portion of the Property have been cured. The City shall not be required to make partial payments to more than two parties as a result of an assignment and shall not execute any consent or other representations with respect thereto.

(d) The City shall not be required to acknowledge the receipt of any Assignment by the Developer; however, to the extent the City does acknowledge receipt of any assignment pursuant to this Section, such acknowledgment does not evidence the City's agreement, acceptance or acknowledgment of the content of the assignment documents or any rights accruing thereunder; it is solely an acknowledgment of receipt of the notice via mail, express mail or email.

(e) The City does not and shall not consent to nor participate in any third-party financing based upon the Developer's assignment of its right to receive funds pursuant to this Agreement or any Reimbursement Agreement.

Section 15.04. Table of Contents; Titles and Headings.

The titles of the articles and the headings of the sections of this Agreement are solely for convenience of reference, are not a part of this Agreement, and shall not be deemed to affect the meaning, construction, or effect of any of its provisions.

Section 15.05. Entire Agreement; Amendment.

This Agreement is the entire agreement between the Parties with respect to the subject matter covered in this Agreement. There is no other collateral oral or written agreement between the Parties that in any manner relates to the subject matter of this Agreement. This Agreement may only be amended by a written agreement executed by all Parties.

Section 15.06. Time.

In computing the number of days for purposes of this Agreement, all days will be counted, including Saturdays, Sundays, and legal holidays; however, if the final day of any time period falls on a Saturday, Sunday, or legal holiday, then the final day will be deemed to be the next day that is not a Saturday, Sunday, or legal holiday.

Section 15.07. Counterparts.

This Agreement may be executed in any number of counterparts, each of which will be deemed to be an original, and all of which will together constitute the same instrument.

Section 15.08. Severability; Waiver.

If any provision of this Agreement is illegal, invalid, or unenforceable, under present or future laws, it is the intention of the parties that the remainder of this Agreement not be affected and, in lieu of each illegal, invalid, or unenforceable provision, a provision be added to this Agreement which is legal, valid, and enforceable and is as similar in terms to the illegal, invalid, or enforceable provision as is possible.

Any failure by a Party to insist upon strict performance by the other party of any material provision of this Agreement will not be deemed a waiver or of any other provision, and such Party may at any time thereafter insist upon strict performance of any and all of the provisions of this Agreement.

Section 15.09. No Third-Party Beneficiaries.

The City and the Developer intend that this Agreement shall not benefit or create any right or cause of action in or on behalf of any third party beneficiary, or any individual or entity other than the City, the Developer or assignees of such Parties.

Section 15.10. Notice of Assignment. Developer shall not transfer any portion of the Property prior to the levy of Assessments, except as provided in Section 3.05. Subject to Section 15.03 herein, the requirements set forth below shall apply in the event that the Developer sells, assigns, transfers or otherwise conveys the Property or any part thereof and/or any of its rights, benefits or obligations under this Agreement. Developer must provide the following:

- (a) within 30 days after the effective date of any such sale, assignment, transfer, or other conveyance, the Developer must provide written notice of same to the City;
- (b) the Notice must describe the extent to which any rights or benefits under this Agreement have been sold, assigned, transferred, or otherwise conveyed;
- (c) the Notice must state the name, mailing address, and telephone contact information of the person(s) acquiring any rights or benefits as a result of any such sale, assignment, transfer, or other conveyance;
- (d) the Notice must be signed by a duly authorized person representing the Developer and a duly authorized representative of the person that will acquire any rights or benefits as a result of the sale, assignment transfer or other conveyance.

Section 15.11. No Joint Venture.

Nothing contained in this Agreement or any other agreement between the Developer and the City is intended by the Parties to create a partnership or joint venture between the Developer, on the one hand, and the City on the other hand and any implication to the contrary is hereby expressly disavowed. It is understood and agreed that this Agreement does not create a joint enterprise, nor does it appoint either Party as an agent of the other for any purpose whatsoever. Neither Party shall in any way assume any of the liability of the other for acts of the other or

obligations of the other. Each Party shall be responsible for any and all suits, demands, costs or actions proximately resulting from its own individual acts or omissions.

Section 15.12. Estoppel Certificates. From time to time within fifteen (15) business days of a written request of the Developer or any future Developer, and upon the payment of a \$100.00 fee to the City, the City Manager, or his/her designee is authorized, in his official capacity and to his reasonable knowledge and belief, to execute a written estoppel certificate in form approved by the City Attorney, identifying any obligations of a Developer under this Agreement that are in default. No other representations in the Estoppel shall be made by the City.

Section 15.13. Independence of Action.

It is understood and agreed by and among the Parties that in the design, construction and development of the Public Improvements and any of the related improvements described herein, and in the Parties' satisfaction of the terms and conditions of this Agreement, that each Party is acting independently, and the City assumes no responsibility or liability to any third parties in connection to the Developer's obligations hereunder.

Section 15.14. Limited Recourse.

No officer, director, employee, agent, attorney or representative of the Developer shall be deemed to be a Party to this Agreement or shall be liable for any of the contractual obligations created hereunder. No elected official of the City and no agent, attorney or representative of the City shall be deemed to be a Party to this Agreement or shall be liable for any of the contractual obligations created hereunder.

Section 15.15. Exhibits.

All exhibits to this Agreement are incorporated herein by reference for all purposes wherever reference is made to the same.

Section 15.16. Survival of Covenants.

Any of the representations, warranties, covenants, and obligations of the Parties, as well as any rights and benefits of the Parties, pertaining to a period of time following the termination of this Agreement shall survive termination.

Section 15.17. No Acceleration.

All amounts due pursuant to this Agreement and any remedies under this Agreement are not subject to acceleration.

Section 15.18. Conditions Precedent.

This Agreement is expressly subject to, and the obligations of the Parties are conditioned upon the City levy of the Assessments and the issuance of the PID Bonds or approval of a Reimbursement Agreement.

Section 15.19. No Reduction of Assessments.

Following the issuance of each series of PID Bonds, the Developer agrees not to take any action or actions to reduce the total amount of the Assessments levied in payment of such PID Bonds. The Developer agrees not to take any action or actions to reduce the total amount of such Assessments to be levied as of the effective date of this Agreement.

Section 15.20. Anti-Boycott Verification.

The Developer hereby verifies that it and its parent company, wholly- or majority-owned subsidiaries, and other affiliates, if any, do not boycott Israel and, to the extent this Agreement is a contract for goods or services, will not boycott Israel during the term of this Agreement. The foregoing verification is made solely to comply with Section 2270.002, Texas Government Code, and to the extent such Section does not contravene applicable Federal law. As used in the foregoing verification, 'boycott Israel' means refusing to deal with, terminating business activities with, or otherwise taking any action that is intended to penalize, inflict economic harm on, or limit commercial relations specifically with Israel, or with a person or entity doing business in Israel or in an Israeli-controlled territory, but does not include an action made for ordinary business purposes. The Developer understands 'affiliate' to mean an entity that controls, is controlled by, or is under common control with the Developer and exists to make a profit.

Section 15.21. Iran, Sudan and Foreign Terrorist Organizations

The Developer represents that neither it nor any of its parent company, wholly- or majority-owned subsidiaries, and other affiliates is a company identified on a list prepared and maintained by the Texas Comptroller of Public Accounts under Section 2252.153 or Section 2270.0201, Texas Government Code, and posted on any of the following pages of such officer's internet website: <https://comptroller.texas.gov/purchasing/docs/sudan-list.pdf>, <https://comptroller.texas.gov/purchasing/docs/iran-list.pdf>, or <https://comptroller.texas.gov/purchasing/docs/fto-list.pdf>. The foregoing representation is made solely to comply with Section 2252.152, Texas Government Code, and to the extent such Section does not contravene applicable Federal law and excludes the Developer and each of its parent company, wholly- or majority-owned subsidiaries, and other affiliates, if any, that the United States government has affirmatively declared to be excluded from its federal sanctions regime relating to Sudan or Iran or any federal sanctions regime relating to a foreign terrorist organization. The Developer understands "affiliate" to mean any entity that controls, is controlled by, or is under common control with the Developer and exists to make a profit.

Section 15.22. Governing Law.

The Agreement shall be governed by the laws of the State of Texas without regard to any choice of law rules; and venue for any action concerning this Agreement and the Reimbursement Agreement shall be in the State District Court of Harris County, Texas. The Parties agree to submit to the personal and subject matter jurisdiction of said court.

Section 15.23. Conflict.

In the event of any conflict between this Agreement and any Indenture authorizing the PID Bond, the Indenture controls. In the event of any conflict between this Agreement and the Reimbursement Agreement, the Reimbursement Agreement shall control, except that in all cases, Applicable Law shall control.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

CITY OF TOMBALL

By: _____
Name: _____
Title: City Manager

ATTEST:

City Secretary

[SIGNATURES CONTINUE ON NEXT PAGE]

[Developer signature block]

STATE OF TEXAS
HARRIS COUNTY

This instrument was acknowledged before me on the ____ day of _____, 2021 by
_____, _____ of _____ on behalf of such limited partnership.

Notary Public, State of Texas

EXHIBIT A
PROPERTY DESCRIPTION DEPICTION

STATE OF TEXAS §

COUNTY OF HARRIS §

A **METES & BOUNDS** description of a certain 90.54 acre (3,943,901 square feet) tract of land situated in the Claude N. Pillot Survey, Abstract No. 632 in Harris County, Texas, being all of the remainder of a called 2.84 acre tract (Tract I) conveyed to Chesmar Homes, LLC, by deed recorded in Clerk's File No. RP-2020-405995, Harris County Official Public Records of Real Property, also being all of the remainder of a called 5.00 acre tract (Tract II) conveyed to Chesmar Homes, LLC, by deed recorded in Clerk's File No. RP-2020-405995, Harris County Official Public Records of Real Property, also being all of a called 1.13 acre tract (Tract III) conveyed to Chesmar Homes, LLC, by deed recorded in Clerk's File No. RP-2020-405995, Harris County Official Public Records of Real Property, also being all of a called 18.334 acre tract (Tract IV) conveyed to Chesmar Homes, LLC, by deed recorded in Clerk's File No. RP-2020-405995, Harris County Official Public Records of Real Property, also being all of a called 4.990 acre tract (Tract V) conveyed to Chesmar Homes, LLC, by deed recorded in Clerk's File No. RP-2020-405995, Harris County Official Public Records of Real Property, also being a portion of a called 61.013 acre tract conveyed to Chesmar Homes, LLC, by deed recorded in Clerk's File No. RP-2020-407771, Harris County Official Public Records of Real Property; said 90.54 acre (3,943,901 square feet) tract of land being more particularly described as follows with all bearings being based on the Texas Coordinate System, South Central Zone, NAD 83, 2001 Adjustment:

BEGINNING at a 2-inch iron pipe found, being the most westerly northwest corner of the herein described tract, being the most westerly northwest corner of said called 61.013 acre tract, also being the southwest corner of a called 6.7133 acre tract conveyed to Worldwide Rock Enterprises, L.P., by deed recorded in Clerk's File No. 20150562448, Harris County Official Public Records of Real Property, also being on the east line of Restricted Reserve "A", Replat of Wal-Mart Tomball, by plat recorded in Clerk's File No. W008922, Harris County Map Records;

THENCE, North 87°45'25" East, 472.90 feet along the south line of said called 6.7133 acre tract to a 1-inch iron pipe found, being the southeast corner of said called 6.7133 acre tract;

THENCE, North 02°26'51" West, 368.19 feet along the east line of said called 6.7133 acre tract to a 5/8-inch iron rod (with cap) found, being the most northerly northwest corner of said called 61.013 acre tract;

THENCE, North 87°17'42" East, 542.42 feet to a 5/8-inch iron rod (with cap) found, being the southeast corner of a called 1.167 acre tract (Tract 2) conveyed to Alejandro and Apolinar Gomez by deed recorded in Clerk's File No. RP-2020-410875, Harris County Official Public Records of Real Property;

THENCE, North 11°11'31" East, 257.21 feet to a point for corner, being the northeast corner of said called 1.167 acre tract (Tract 2), from which a 5/8-inch iron rod (with cap) found bears North 11°11'31" East, 0.41 feet;

THENCE, North 87°21'24" East, 629.28 feet to a point for the northeast corner of the herein described tract, being the northeast corner of said Tract V, also being the northwest corner of a called 39.03 acre tract conveyed to Meritage Homes of Texas, LLC, by deed recorded in Clerk's File No. RP-2019-7816, Harris County Official Public Records of Real Property, from which a 5/8-inch iron rod (with cap) found bears North 03°29'29" West, 0.92 feet;

THENCE, along the west line of said called 39.03 acre tract, the following five (5) courses and distances:

1. South 03°29'29" East, 776.09 feet to a 1/2-inch iron rod found;
2. South 87°21'07" West, 448.18 feet to a 5/8-inch iron rod found;
3. South 02°27'59" East, 1,331.96 feet to a 1/2-inch iron rod found;
4. North 87°39'22" East, 720.29 feet to a 1/2-inch iron rod found;
5. South 02°27'41" East, 1,545.47 feet to a 5/8-inch iron rod (with cap stamped "Manhard") set for the southeast corner of the herein described tract, being 10 feet north of and parallel to the north right-of-way line of Holderrieth Road (width varies per Volume 816, Page 359, and Volume 1036, Page 256, Harris County Deed Records);

THENCE, South 87°39'37" West, 10 feet north of and parallel to said north right-of-way line of Holderrieth Road, 129.42 feet to a 5/8-inch iron rod (with cap stamped "Manhard") set, being the beginning of a curve to the left;

THENCE, along said curve to the left in a northerly direction, with a radius of 30.00 feet, a central angle of 40°10'02", an arc length of 21.03 feet, and a chord bearing of North 17°44'38" East, 20.60 feet to a 5/8-inch iron rod (with cap stamped "Manhard") set;

THENCE, North 02°20'23" West, 198.70 feet to a 5/8-inch iron rod (with cap stamped "Manhard") set, being the beginning of a curve to the left;

THENCE, along said curve to the left in a northerly direction, with a radius of 810.05 feet, a central angle of 15°17'16", an arc length of 216.14 feet, and a chord bearing of North 09°59'01" West, 215.50 feet to a 5/8-inch iron rod (with cap stamped "Manhard") set;

THENCE, South 87°39'37" West, 132.30 feet to a 5/8-inch iron rod (with cap stamped "Manhard") set, being on the east line of a called 0.6462 acre tract (Tract 2) conveyed to Alejandro Gomez and Apolinar Gomez by deed recorded in Clerk's File No. 20060092123, Harris County Official Public Records of Real Property;

THENCE, North 03°36'41" West, 204.00 feet along said east line of said called 0.6462 acre tract to the northeast corner of said called 0.6462 acre tract, from which a 1-inch iron pipe found bears North 22°52'28" West, 1.14 feet;

City of Tomball PID#11 (Wood Leaf Reserve)
90.54 acres

Claude N. Pilot Survey
Abstract No. 632

THENCE, South 87°37'15" West, along the north line of said called 0.6462 acre tract, at a distance of 100.11 feet passing a 1/2-inch iron rod found, being the northwest corner of said called 0.6462 acre tract, also being the northeast corner of the remainder of a called 10.0 acre tract conveyed to Walter John Rumfolo and wife, Lucille Rumfolo, by deed recorded in Clerk's File No. D055346, Harris County Official Public Records, continuing along the north line of said called 10.0 acre tract for a total distance of 675.32 feet to a 3/8-inch iron rod found, being the northwest corner of said remainder of said called 10.0 acre tract, also being on the east line of a called 25.950 acre tract conveyed to Maple Group, Ltd., by deed recorded in Clerk's File No. X273577, Harris County Official Public Records of Real Property;

THENCE, North 03°35'52" West, 551.72 feet along said east line of said called 25.950 acre tract to a 5/8-inch iron rod (with cap) found, being the northeast corner of said called 25.950 acre tract;

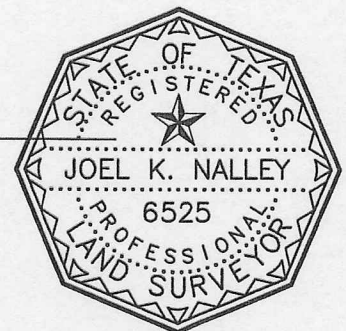
THENCE, South 87°39'58" West, 1,019.61 feet along the north line of said called 25.950 acre tract to a point for corner, being the northwest corner of said called 25.950 acre tract, also being on the east line of a called 1.3488 acre tract conveyed to Gordon Bruce Glanville by deed recorded in Clerk's File No. P064837, Harris County Official Public Records of Real Property, from which a 5/8-inch iron rod (with cap) found bears South 87°39'58" West, 1.07 feet;

THENCE, North 02°26'12" West, at a distance of 766.87 feet passing a 1/2-inch iron rod found, being the northeast corner of a called 5.0074 acre tract conveyed to Alvin W. Theis and wife, Thelma Theis, by deed recorded in Clerk's File No. J142169, Harris County Official Public Records of Real Property, also being the southeast corner of a called 4.9837 acre tract conveyed to Tractor Supply Co. of Texas, LP, by deed recorded in Clerk's File No. 20140022360, Harris County Official Public Records of Real Property, at a distance of 1,726.03 feet passing a 1/2-inch iron rod inside of a 2" iron pipe found on said east line of Restricted Reserve "A", Replat of Wal-Mart Tomball, in all a distance of 1,844.67 feet to the **POINT OF BEGINNING, CONTAINING 90.54 acres (3,943,901 square feet)** of land in Montgomery County, Texas, filed in the office of Manhard Consulting, Ltd. in The Woodlands, Texas.

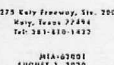
NOTE: This document was prepared under 22 TAC 663.21, does not reflect the results of an on the ground survey, and is not to be used to convey or establish interests in real property except those rights and interests implied or established by the creation or reconfiguration of the political subdivision for which it was prepared.

Manhard Consulting, Ltd.
2445 Technology Forest Blvd, Suite #200
The Woodlands, Texas 77381
(832) 823-2200
*Texas Board of Professional Engineers &
Land Surveyors Firm Reg. No. 10194379*


Acting By/Through Joel K. Nalley
Registered Professional Land Surveyor
No. 6525
jnalley@manhard.com
29 October 2020



Property Depiction



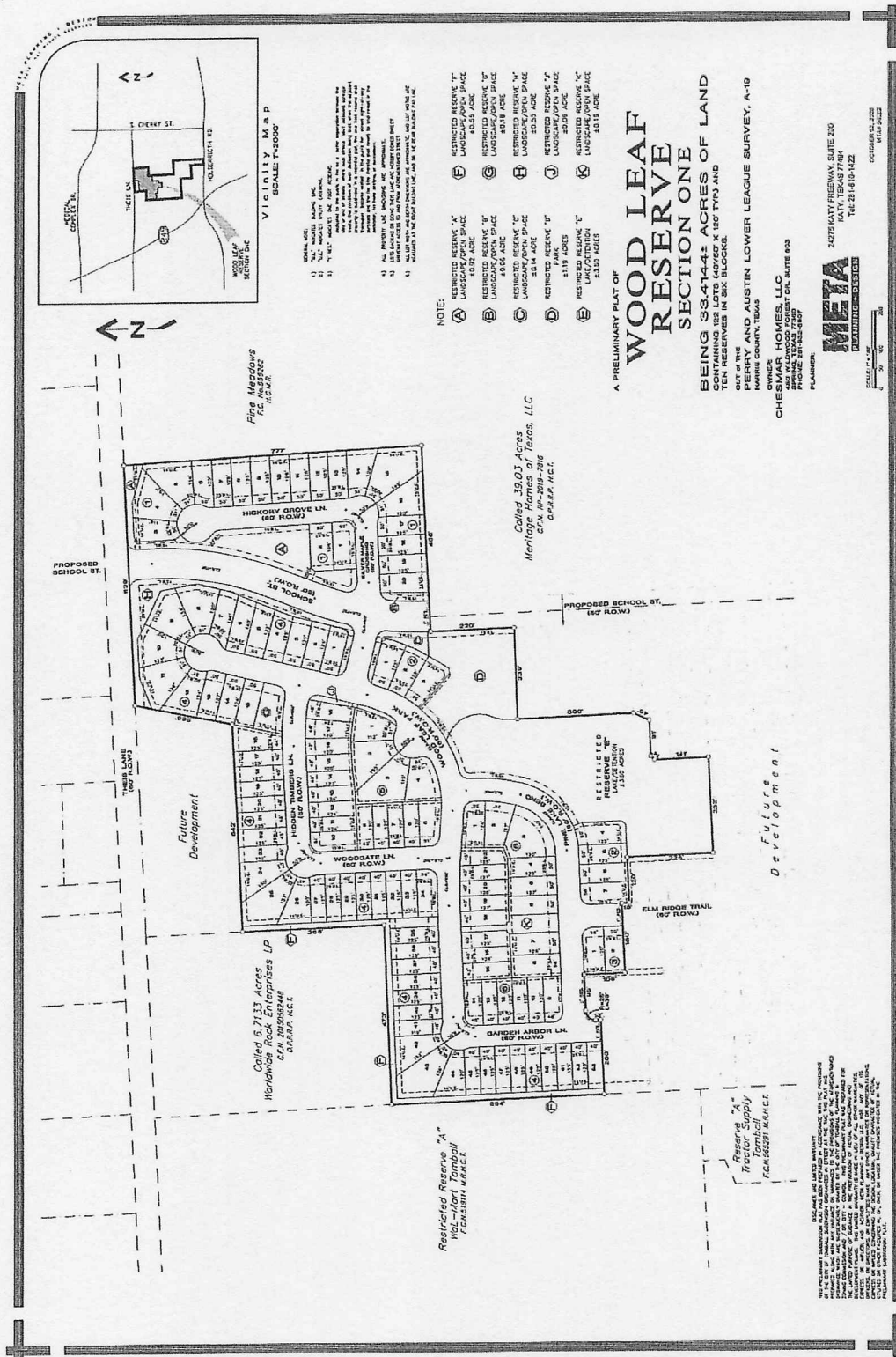


EXHIBIT B

PLANNED DEVELOPMENT - 14

[See attached]

ORDINANCE NO. 2020-19

AN ORDINANCE OF THE CITY OF TOMBALL, TEXAS, AMENDING CHAPTER 50 (ZONING) OF THE TOMBALL CODE OF ORDINANCES BY CHANGING THE ZONING DISTRICT CLASSIFICATION OF APPROXIMATELY 95.4 ACRES OF LAND, LEGALLY DESCRIBED AS TRACTS 198A, 202A & 206A, TOMBALL OUTLOTS, TRACTS 3B, 4, 4Q, 21A, 23B & 23B-2 ABSTRACT 632 C V PILLOT, PT TRACT 21A (HOMESITE) (TRACT 4-X) ABSTRACT C N PILLOT, TRACT 23A ABSTRACT 632 C N PILLOT, PT TRACT 21A (AG-USE) ABSTRACT 632 C N PILLOT, TRACTS 3A-2, 4P, 19A & 23B-1 ABSTRACT 632 C V PILLOT, TRACT 4R ABSTRACT 632 C V PILLOT, TRACT 23A-2 ABSTRACT 632 C N PILLOT, TRACTS 4Q-1, 23B-3 & 23B-2A ABSTRACT 632 C V PILLOT, TRACTS 3A & 3A-3 ABSTRACT 632 C V PILLOT, AND TRACT 4R-1 ABSTRACT 632 C V PILLOT, WITHIN THE CITY OF TOMBALL, HARRIS COUNTY, TEXAS, FROM THE AGRICULTURAL AND COMMERCIAL DISTRICTS TO THE PLANNED DEVELOPMENT (PD-14) DISTRICT; SAID PROPERTY BEING GENERALLY LOCATED ON THE SOUTH SIDE OF THEISS LANE AT COMMERCIAL PARK ROAD AND NORTH SIDE OF HOLDERRIETH ROAD BETWEEN SH 249 AND SOUTH CHERRY STREET; PROVIDING FOR THE AMENDMENT OF THE OFFICIAL ZONING MAP OF THE CITY; PROVIDING FOR SEVERABILITY; PROVIDING FOR A PENALTY OF AN AMOUNT NOT TO EXCEED \$2,000 FOR EACH DAY OF VIOLATION OF ANY PROVISION HEREOF, MAKING FINDINGS OF FACT; AND PROVIDING FOR OTHER RELATED MATTERS.

* * * * *

Whereas, Daniel Valdez with META Planning + Design, has requested that approximately 95.4 acres of land, legally described Tracts 198A, 202A & 206A, Tomball Outlots, Tracts 3B, 4, 4Q, 21A, 23B & 23B-2 Abstract 632 C V Pillot, Pt Tract 21A (Homesite) (Tract 4-X) Abstract C N Pillot, Tract 23A Abstract 632 C N Pillot, Pt Tract 21A (Ag-Use) Abstract 632 C N Pillot, Tracts 3A-2, 4P, 19A & 23B-1 Abstract 632 C V Pillot, Tract 4R Abstract 632 C V Pillot, Tract 23A-2 Abstract 632 C N Pillot, Tracts 4Q-1, 23B-3 & 23B-2A Abstract 632 C V Pillot, Tracts 3A & 3A-3 Abstract 632 C V Pillot, and Tract 4R-1 Abstract 632 C V Pillot, generally located on the south side of Theiss Lane at Commercial Park Road and north side of Holderrieth Road between SH 249 and South Cherry Street, in the City of Tomball, Harris County, Texas, (the "Property"), be rezoned; and

Whereas, the applicant has presented an application to the City for a Planned Development District to allow for the construction of a mixed-use development; and

Whereas, the Planned Development application consists of an application for Planned Development District (Exhibit "A"); Planned Development Regulations (Exhibit "B"); and concept plan (Exhibit "C") attached to and made part of this ordinance; and

Whereas, at least fifteen (15) days after publication in the official newspaper of the City of the time and place of a public hearing and at least ten (10) days after written notice of that hearing was mailed to the owners of land within two hundred feet of the Property in the manner required by law, the Planning & Zoning Commission held a public hearing on the requested rezoning; and

Whereas, the public hearing was held before the Planning & Zoning Commission at least forty (40) calendar days after the City's receipt of the requested rezoning; and

Whereas, the Planning & Zoning Commission recommended in its final report that City Council approve the requested rezoning of Planned Development (PD-14) District; and

Whereas, at least fifteen (15) days after publication in the official newspaper of the City of the time and place of a public hearing for the requested rezoning, the City Council held the public hearing for the requested rezoning and the City Council considered the final report of the Planning & Zoning Commission; and

Whereas, the City Council deems it appropriate to grant the requested rezoning.

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

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

Section 2. The zoning classification of the Property is hereby changed from the Agricultural and Commercial and Districts to the Planned Development (PD-14) District subject to the regulations, restrictions, and conditions hereafter set forth.

Section 3. The Official Zoning Map of the City of Tomball, Texas shall be revised and amended to show the designation of the Property as Planned Development (PD-14) District, with the appropriate reference thereon to the number and effective date of this Ordinance and a brief description of the nature of the change.

Section 4. This Ordinance shall in no manner amend, change, supplement, or revise any provision of any ordinance of the City of Tomball, save and except the change in zoning classification for the Property to the Planned Development (PD-14) District as described above.

Section 5. The Planned Development (PD-14) shall be subject to the following limitations, restrictions and covenants:

- A. Compliance with the Application, Regulations and Concept Plan. The granting of the Planned Development (PD-14) District shall be conditioned upon the proposed improvements and lands uses being located, constructed and conducted upon the Property in substantial compliance with the application for the Planned Development District (Exhibit "A"), Planned Development Regulations (Exhibit "B") and concept plan (Exhibit "C") made a part hereof for all purposes.

Section 6. In the event any section, paragraph, subdivision, clause, phrase, provision, sentence, or part of this Ordinance or the application of the same to any person or circumstance shall for any reason be adjudged invalid or held unconstitutional by a court of competent jurisdiction, it shall not

affect, impair, or invalidate this Ordinance as a whole or any part or provision hereof other than the part declared to be invalid or unconstitutional; and the City Council of Tomball, Texas, declares that it would have passed each and every part of the same notwithstanding the omission of any and every part of the same notwithstanding the omission of any such part thus declared to be invalid or unconstitutional, or whether there be one or more parts.

Section 7. Any person who shall violate any provision of this Ordinance shall be deemed guilty of a misdemeanor and upon conviction, shall be fined in an amount not to exceed \$2,000. Each day of violation shall constitute a separate offense.

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 20TH DAY OF JULY 2020.

COUNCILMAN FORD	<u>AYE</u>
COUNCILMAN STOLL	<u>AYE</u>
COUNCILMAN DEGGES	<u>AYE</u>
COUNCILMAN TOWNSEND	<u>AYE</u>
COUNCILMAN KLEIN QUINN	<u>AYE</u>

SECOND READING:


READ, PASSED, AND APPROVED AS SET OUT BELOW AT THE MEETING OF THE CITY COUNCIL OF THE CITY OF TOMBALL HELD ON THE 3RD DAY OF AUGUST 2020.

COUNCILMAN FORD	<u>AYE</u>
COUNCILMAN STOLL	<u>AYE</u>
COUNCILMAN DEGGES	<u>AYE</u>
COUNCILMAN TOWNSEND	<u>AYE</u>
COUNCILMAN KLEIN QUINN	<u>AYE</u>



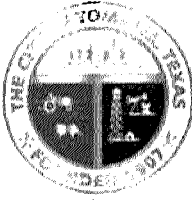
Gretchen Fagan, Mayor

ATTEST:



Doris Speer, City Secretary

Exhibit "A"
Application for Planned Development



RECEIVED (KC)
06/04/2020 8:02:05 AM

Revised 5/19/15
P&Z #20-103

**APPLICATION FOR
PLANNED DEVELOPMENT**
Community Development Department
Planning Division

The PD, Planned Development, district is a district which accommodates planned associations of uses developed as integral land use units such as office parks, retail/commercial or service centers, shopping centers, residential developments having a mixture of housing options (e.g., single-family, multi-family, Duplex (Two Family), etc.), or any appropriate combination of uses which may be planned, developed or operated as integral land use units either by a single owner or a combination of owners. A Planned Development district may be used to permit new or innovative concepts in land utilization not permitted by other zoning districts.

No planned development shall be established and no building permit shall be issued for any use designated as a Planned Development within any zoning district until a Planned Development is approved and issued in accordance with the provisions of the Zoning Ordinance and Concept Plan.

The minimum acreage for a planned development request shall be four (4) acres.

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

Applicant

Name: Daniel Valdez - META Planning + Design Title: Senior Planner
Mailing Address: 24275 Katy Freeway, Suite 200 City: Katy State: Texas
Zip: 77494
Phone: (281) 810-1422 Fax: () Email: dvaldez@mataplanningdesign.com

Owner

Name: Kevin Graham Title:
Mailing Address: P.O. BOX 1621 City: TOMBALL State: TX
Zip: 77377-1621
Phone: (281) 825-7211 Fax: () Email: GRAHAM-KEVIN@SBCGLOBAL.NET

Engineer/Surveyor (if applicable)

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

Description of Proposed Project: 95.4 Acre Single-family residential community

Physical Location of Property: East of SH 249, North of Holderrieth Rd., ±1,500' west of S. Cherry St.


[General Location - approximate distance to nearest existing street corner]

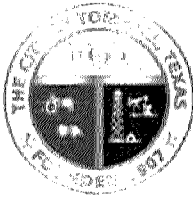
City of Tomball, Texas 501 James Street, Tomball, Texas 77375 Phone: 281-290-1405 www.tomballtx.gov

Legal Description of Property: See attached list
[Survey/Abstract No. and Tracts; or platted Subdivision Name with Lots/Block]
HCAD Identification Number: See attached list Acreage: 95.4
Current Use of Property: Vacant
Proposed Use of Property: Single-family development

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

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

X <u></u>	<u>5/11/2020</u>
Signature of Applicant	Date
X <u>Kevin Graham</u>	<u>5-26-2020</u>
Signature of Owner	Date



Revised 5/19/15

**APPLICATION FOR
PLANNED DEVELOPMENT**
Community Development Department
Planning Division

The PD, Planned Development, district is a district which accommodates planned associations of uses developed as integral land use units such as office parks, retail/commercial or service centers, shopping centers, residential developments having a mixture of housing options (e.g., single-family, multi-family, Duplex (Two Family), etc.), or any appropriate combination of uses which may be planned, developed or operated as integral land use units either by a single owner or a combination of owners. A Planned Development district may be used to permit new or innovative concepts in land utilization not permitted by other zoning districts.

No planned development shall be established and no building permit shall be issued for any use designated as a Planned Development within any zoning district until a Planned Development is approved and issued in accordance with the provisions of the Zoning Ordinance and Concept Plan.

The minimum acreage for a planned development request shall be four (4) acres.

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

Applicant
Name: Daniel Valdez - META Planning + Design Title: Senior Planner
Mailing Address: 24275 Katy Freeway, Suite 200 City: Katy State: Texas
Zip: 77494
Phone: (281) 810-1422 Fax: () Email: dvaldez@metaplanningdesign.com

Owner
Name: Maritia LP Title: _____
Mailing Address: 30 E RIVERCREST DR City: HOUSTON State: TX
Zip: 77092
Phone: (832) 255-5042 Fax: () Email: LOUIS STULBERG@hotmail.com

Engineer/Surveyor (if applicable)
Name: _____ Title: _____
Mailing Address: _____ City: _____ State: _____
Zip: _____
Phone: () Fax: () Email: _____

Description of Proposed Project: 95.4 Acre Single-family residential community

Physical Location of Property: East of SH 249, North of Holderrieth Rd., ±1,500' west of S. Cherry St.
[General Location – approximate distance to nearest existing street corner]

Legal Description of Property: See attached list
[Survey/Abstract No. and Tracts; or platted Subdivision Name with Lots/Block]

HCAD Identification Number: See attached list Acreage: 95.4


Current Use of Property: Vacant

Proposed Use of Property: Single-family development

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

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

X  5/11/2020
Signature of Applicant Date

X  5/27/2020
Signature of Owner Date



June 2, 2020

Mayor and City Council
City of Tomball
401 Market Street
Tomball, Texas 77375

Re: HOLDERRIETH TRACT PLANNED DEVELOPMENT

Dear Mayor and City Council,

On behalf of our client, Chesmar Homes, we are submitting the application for the creation of the Holderrieth Tract Planned Development.

The developer intends to develop the 95-acre tract into a single-family residential community. The tract is located north of Holderrieth Road, south of Theis Lane, west of South Cherry Street.

Below is a list of the items that are included with this submittal:

- 1) Completed application form
- 2) Surveys that comprise the tract
- 3) List of HCAD tracts that comprise tract
- 4) Planned Development Text
- 5) Detailed Concept Plan
- 6) Open Space Plan
- 7) Tax Certificates (Harris County and Tomball ISD)

Feel free to contact me if you have any questions or need any additional information.

Sincerely,

A handwritten signature in black ink, appearing to read "Daniel Valdez".

Daniel Valdez
Enclosure

24275 Katy Freeway, Suite 200 | Katy, Texas 77494 | 281-810-1422

Exhibit “B” Planned Development Regulations

Exhibit B

Planned Development

95 Acres Tomball (Theis Lane Tract)

A. Contents. This final development plan includes the following sections:

- General Provisions
- Land Uses
- Development Regulations for Single Family Lots
- Development Regulations for Non-Residential Uses
- Amenities and Landscape Regulations
- Open Space and Trails
- Building Regulations

B. General Provisions

1. The planned Development, PD, approved herein must be constructed, developed, and maintained in compliance with this ordinance and other ordinances of the City in effect at the effective date of this PD Ordinance. If any provisions or regulations of any City ordinance applicable in a SF-6 (Standard Single Family Residential) or GR (General Retail) zoning district is not contained in this ordinance, all the regulations contained in the Development Code applicable to the SF-6 and GR zoning district in effect on the effective date of this ordinance apply to this PD as through written herein, except to the extent the City regulation or provision conflicts with a provision in this ordinance.
2. Except as otherwise provided herein, the words used in this Planned Development have the meaning established by the Development Code.
3. The PD shall be developed in accordance with the following exhibits that are attached to and made a part of this Final Development Plan:

Exhibit C – Concept Plan

Exhibit C1 – Landscape and Open Space Plan

4. As shown on Exhibit C, the PD encompasses 95.4 acres, located west of S. Cherry Street, east of State Highway 249, north of Holderrieth Road and south of Theis Lane.

C. Land Uses.

1. SFR: Permitted land uses are listed below.

Use	SIC Code
Private Household Services	8811
Dwellings – Single Family	99 (Non-Classifiable)
Parks and Recreational Facilities, Public or Private	99 (Non-Classifiable)
Residential Sales Office (Temporary)	
Drill Site	
Well Site	
Wetlands	

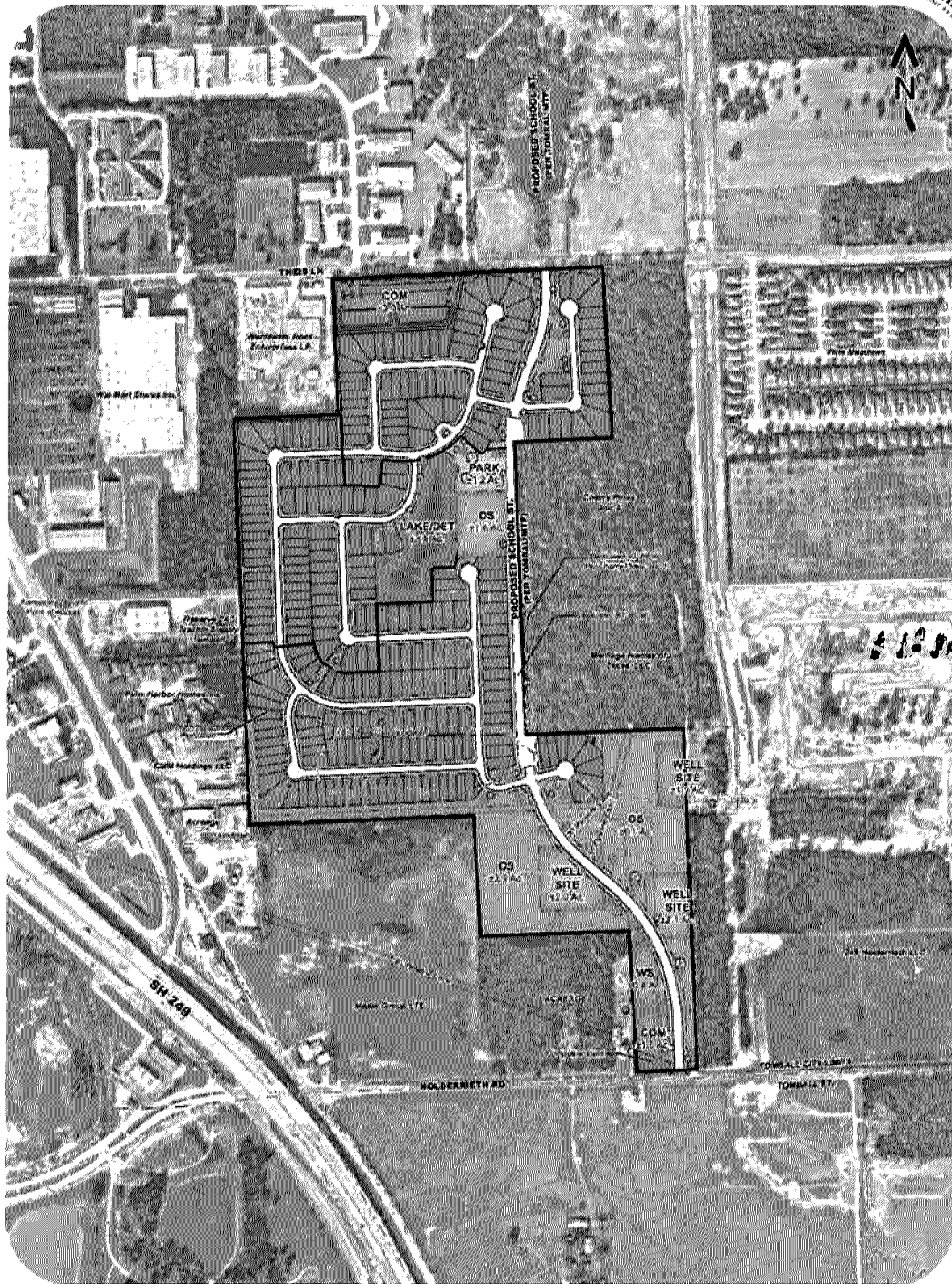
2. General Retail: Permitted uses of the Commercial tracts on Exhibit C shall be those uses permitted within GR- General Retail District of the Zoning Ordinance.
- D. **Development Regulations for Single Family Lots** – Maximum 350 lots permitted. The total lot count may vary from that shown in Exhibit C so long as it is generally in a configuration with what is shown on Exhibit C. See H. Minor Modifications for permitted variations to the land plan.

Single-family home sites within the PD shall be developed in accordance with the following regulations:

1. The minimum lot width shall be 40 feet wide. Except the maximum number of lots 40 feet wide shall not exceed 60% percent of the total maximum number of lots.
2. Lots shown on Exhibit C
 - a. Minimum lots area:
 - i. 40' wide lots shall have a minimum area of 4,800 square feet.
 - ii. 50' wide and greater, lots shall have a minimum area of 6,000 square feet.
Lot width shall be measured at the building line.
 - b. Minimum lot width: 40 feet. Lot width shall be measured at the building line.
 - c. Minimum lot depth: 100 feet
 - d. Maximum lot coverage: 60% (lot acreage shall include building footprint only)
3. Minimum building setbacks:
 - a. Front yard: 20 feet; (measured from front building line)
 - b. Rear yard: 15 feet;
 - c. Side yard: 5 feet, 10 feet on street side of a corner lot.
- E. **Development Regulations for non-residential uses**- All provisions and regulations regarding height, area regulations, maximum lot coverage, and maximum floor-area-ratios applicable in a GR (General Retail) zoning district.
- F. **Amenities and Landscape Regulations** – As shown on Exhibit C1, the PD shall be developed in accordance with the following landscape regulations:
 1. Recreation site and amenities:
 - a. A minimum 1-acre recreational reserve, centrally located within the development, may include a playground and picnic facilities, etc.
 - b. A minimum 6, off-street parking spaces shall be provided. The off-street parking may be provided thru dedicated parking lot, parallel parking and/or a combination of both. At a minimum, one bicycle rack which will accommodate a minimum of five bicycles.
 - c. Amenities may include (but are not limited to):
 - Playground
 - Picnic Facilities
 2. Landscape buffers:
 - a. 15' foot minimum buffer shall be provided along all major and minor arterials and within commercial areas contiguous to lot lines. As shown on Exhibit C1
 - b. 10-foot minimum buffer, contiguous to lot lines, shall be provided along entry street(s) and collector streets. As shown on Exhibit C1

- c. Required buffers along major arterials and entry streets shall include one shade tree for each street frontage, or portion thereof, measured along the right-of-way line. The trees may be clustered or spaced linearly; they need to be placed evenly.
 - d. Required buffers may include trails.
- 3. Open Space:
 - a. Minimum 30% space, to be distributed as shown on Exhibit C1
 - b. Open space shall include all landscape buffers, landscape reserves, open space reserves, parks, drill sites, detention, lakes, wetlands and well sites.
 - c. At a minimum 1 acre shall be provided as parks
 - d. All required open space shall be owned and maintained by the Homeowners Association and shall be accessible to all residents within the PD's Homeowner's association. Exhibit C1
- G. Sidewalks - As shown on Exhibit C1, the PD shall be developed in accordance with the following:
 - 1. Sidewalks:
 - a. Minimum 5-foot width sidewalks shall be provided along both sides of local residential and collector streets.
 - b. All sidewalks shall be paved with concrete.
- H. **Minor Modifications** –The following minor modifications of the PD are allowed provided that such modifications shall be reviewed for compliance with the applicable Tomball Codes and this Ordinance and approved by the Planning Director.
 - 1. Modifications to internal street patterns are allowed
 - 2. Modifications to the location of land uses, provide that such relocations meet the minimum area and land use regulations set forth within in this document.
 - 3. Modifications to lot sizes are allowed provided that such lots shall meet the minimum area regulations set forth in this document.
 - 4. Modifications to the total acreage provided for each land use set for in Exhibit C are allowed, provided that the modification or series of modifications, shall not result in a net change of greater than 10% in each land use.

**Exhibit “C”
Concept Plan**



LOT SUMMARY	
±120'	LOTS 55%
±120'	LOTS 45%
LOTS	

APPROXIMATE WELL LOCATION

an open space exhibit for
**HOLDERRIETH TRACT
 PLANNED DEVELOPMENT**
 ±95.4 ACRES OF LAND

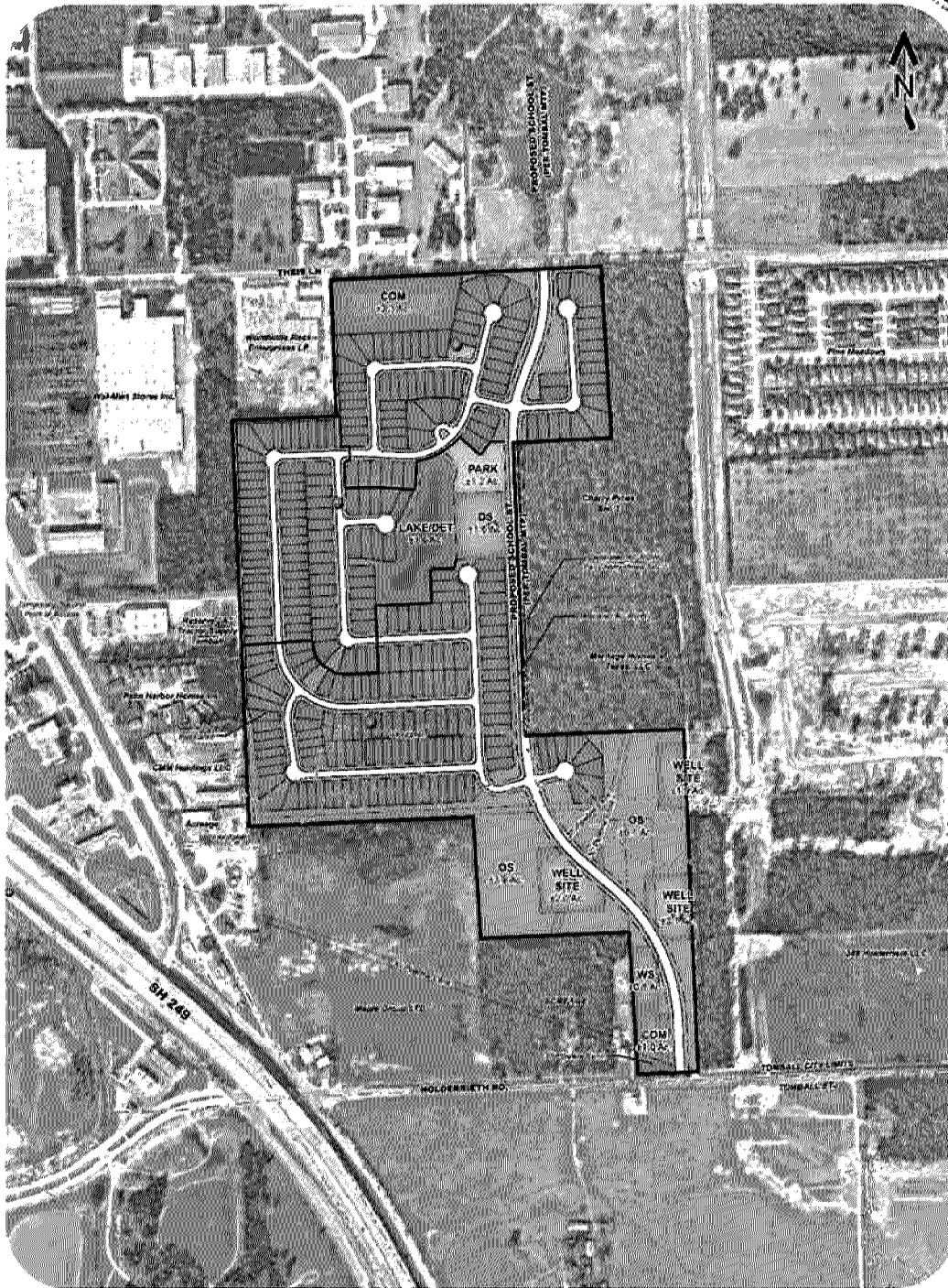


14275 Katy Freeway, Ste. 200
 Katy, Texas 77494
 Tel: 281-810-1422

MTA-62001
 MAY 6, 2020

THIS DRAWING IS A GRAPHIC REPRESENTATION FOR PRELIMINARY PURPOSES ONLY AND IS NOT FOR CONSTRUCTION OR
 INTERPRETATION PURPOSES. THE DRAWING IS A SCHEMATIC AND DOES NOT CONSTITUTE A CONTRACT. THE USER SHALL
 BE RESPONSIBLE FOR OBTAINING ALL NECESSARY PERMITS AND APPROVALS FROM THE APPROPRIATE AGENCIES. THE
 USER SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY PERMITS AND APPROVALS FROM THE APPROPRIATE AGENCIES.
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 THE USER SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY PERMITS AND APPROVALS FROM THE APPROPRIATE AGENCIES.

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C1

This layout is preliminary and subject to change. All changes will be in compliance with the development guidelines in Exhibit 9 of the Planned Development.

THIS DRAWING IS A PRELIMINARY REPRESENTATION OF THE PROPOSED DEVELOPMENT. IT IS NOT A CONTRACT. THE DEVELOPER ASSUMES ALL LIABILITY FOR THE ACCURACY OF THE INFORMATION CONTAINED HEREIN. THE DEVELOPER DOES NOT WARRANT, REPRESENT OR GUARANTEE THE ACCURACY OF THE INFORMATION CONTAINED HEREIN. THE DEVELOPER DOES NOT WARRANT, REPRESENT OR GUARANTEE THE ACCURACY OF THE INFORMATION CONTAINED HEREIN. THE DEVELOPER DOES NOT WARRANT, REPRESENT OR GUARANTEE THE ACCURACY OF THE INFORMATION CONTAINED HEREIN.

© 2020 META HOLDINGS, LLC. ALL RIGHTS RESERVED.

an open space exhibit for
**HOLDERRIETH TRACT
 PLANNED DEVELOPMENT**
 ±95.4 ACRES OF LAND

META
 HOLDINGS, LLC

100' 20' 40'

24275 Katy Freeway, Ste. 200
 Katy, Texas 77494
 Tel: 281-810-1422

MTA-62001
 MAY 26, 2020

EXHIBIT C

PUBLIC IMPROVEMENTS AND PROJECT COSTS

Costs are estimates and final costs of the Public Improvements shall be as set forth in the applicable Service and Assessment Plan. The Service and Assessment Plan will also include costs of issuance for the PID Bonds.

[See attached]

EXHIBIT C



ENGINEER'S OPINION OF PROBABLE COST WOOD LEAF RESERVE, SECTIONS 1-3 IN TOMBALL, HARRIS COUNTY, TX SEPTEMBER 2020

BUDGET ITEMS	SERVICE AREA 1 (SECTION 1)	SERVICE AREA 2 (SECTIONS 2 & 3)	TOTAL
1. Clearing, Grubbing, and Site Preparation	\$ 396,600	\$ 44,700	\$ 441,300
2. Water Distribution System	\$ 217,298	\$ 257,244	\$ 474,542
3. Wastewater Collection System (On-site)	\$ 374,350	\$ 305,710	\$ 680,060
4. Storm Drainage Collection System	\$ 218,350	\$ -	\$ 218,350
5. Offsite Drainage	\$ 867,857	\$ 662,772	\$ 1,530,629
6. Excavation, Grading, and Detention	\$ 769,510	\$ -	\$ 769,510
7. Collector WS&D	\$ 576,295	\$ 173,300	\$ 749,595
7. Gas Improvements	\$ 114,096	\$ 304,361	\$ 418,457
8. Paving	\$ 175,675	\$ 217,734	\$ 393,409
Sub-Total Construction Cost	\$ 1,440,000	\$ 2,284,200	\$ 3,724,200
TOTAL CONSTRUCTION COSTS	\$ 5,150,031	\$ 4,250,021	\$ 9,400,052
Detention Impact Fees	\$ 133,900	\$ -	\$ 133,900
Preliminary Engineering	\$ 20,500	\$ -	\$ 20,500
Construction Staking (3%)	\$ 154,800	\$ 127,600	\$ 282,200
SWPPP (1.5%)	\$ 77,300	\$ 63,800	\$ 141,100
Geotech & CMT Services (2%)	\$ 103,100	\$ 85,100	\$ 188,200
Engineering (15%)	\$ 772,600	\$ 637,600	\$ 1,410,200
Contingencies (10%)	\$ 515,100	\$ 425,100	\$ 940,200
Construction Permit (2%)	\$ 103,100	\$ 85,100	\$ 188,200
Drainage Study	\$ 35,000	\$ -	\$ 35,000
Traffic Impact Analysis	\$ 15,000	\$ -	\$ 15,000
PID Creation and Bond Issue Costs	\$ -	\$ -	\$ -
Sub-Total Impact Fees, Eng. Const. Staking, Geotech and CMT Testing, SWPP, Geotech, TIA, etc.	\$ 1,930,200	\$ 1,424,300	\$ 3,354,500
TOTAL PRELIMINARY CONSTRUCTION COST ESTIMATE	\$ 7,080,231	\$ 5,674,321	\$ 12,754,552

NOTES:

- *This Engineer's Opinion of Probable Cost is made on the basis of Engineer's experience and qualifications using plan quantities and represents Engineer's best estimate.
- †† Cost estimate does not include removal of abandoned in place gas line.
- †† The northern outfall location currently cuts through a drill site. This will need to be investigated further to see what can be put into the drill site.

*Cost of financing \$6,141,081

1 of 1

Texas Board of Professional Engineers Registration No. F-18741
Manhard Consulting • 2445 Technology Forest Blvd. Ste 200, The Woodlands, Texas 77381 • 281-853-2200 • manhard.com

EXHIBIT D
BUILDING REGULATIONS

Single family homes within the District shall be developed in accordance with the following building regulations:

1. Primary exterior finishes are limited to brick, stone (natural, cast, or cultured-textured), stucco, and glass, and shall comprise at least 85% of the front façade and 50% of the remaining facades. A 100% brick front elevation is acceptable.
2. Secondary exterior finishes shall include wood, ceramic tiles and fiber cement siding.
3. Use of architectural metals is limited to canopies, roof systems, and miscellaneous trim work and such use shall meet the durability standards of the development code.
4. The Director of Community Development may approve alternative Primary or Secondary exterior finishes not specified herein if the Director determines that the alternative finish is respective of the architectural elements of the existing historical industrial buildings, substantially equal to or better than a specified Primary or Secondary exterior finish in quality, durability and appearance, and the use thereof will not violate any provision of the Final Development Plan.
5. No single exterior finish material shall cover more than 80% of the front of any single family home.
6. The following building materials shall not be used on the exterior finish:
 - a. Vinyl siding, wood fiber hardboard siding, oriented strand board siding, plastic or fiberglass panels.
 - b. Smooth or untextured concrete surfaces.
 - c. Exterior Insulated Finish Systems (E.I.F.S.)
 - d. Unfired or underfired clay, sand, or shale brick.

EXHIBIT E

LANDOWNER CONSENT

CONSENT AND AGREEMENT OF LANDOWNERS

This Consent and Agreement of Landowner is issued by _____, A Texas limited partnership, as the landowner (the “Landowner”) who collectively hold record title to all property located within the [_____ Public Improvement District] (the “PID”) created by the City of Tomball pursuant to a petition of Landowner. Capitalized terms used herein and not otherwise defined shall have the meaning given to such terms in the City’s ordinance levying assessments on property within the PID, dated _____, 2021, including the Service and Assessment Plan and Assessment Rolls attached thereto (the “Assessment Ordinance”). [TO BE EXECUTED PRIOR TO THE LEVY OF ASSESSMENTS FOR EACH SERIES OF BONDS WITH EACH PID]

Landowner hereby declare and confirm that they collectively hold record title to all property in the PID which are subject to the Assessment Ordinances, as set forth on Exhibit A. Further, Landowner hereby ratify, declare, consent to, affirm, agree to and confirm each of the following:

1. The creation and boundaries of the PID, the boundaries of each Assessed Property, and the Authorized Improvements for which the Assessments are being made, as set forth in the Service and Assessment Plan.
2. The determinations and findings as to benefits by the City in the Assessment Ordinance and the Service and Assessment Plan.
3. The Assessment Ordinance and the Service and Assessment Plan and Assessment Roll.
4. The right, power and authority of the City Council to adopt the Assessment Ordinances and the Service and Assessment Plans and Assessment Roll;
5. Each Assessment levied on each Assessed Property as shown in the Service and Assessment Plan (including interest and Administrative Expenses as identified in the Service and Assessment Plan and as updated from time to time as set forth in the Service and Assessment Plan).
6. The Authorized Improvements specially benefit the Assessed Property in an amount in excess of the Assessment levied on each Assessed Property, as such Assessments are shown on the Assessment Roll.
7. Each Assessment is final, conclusive and binding upon such Landowners, regardless of whether such Landowners may be required to pay Assessments under certain circumstances pursuant to the Service and Assessment Plan.

8. The then-current owner of each Assessed Property shall pay the Assessment levied on the Assessed Property owned by it when due and in the amount required by and stated in the Service and Assessment Plan and the Assessment Ordinance.
9. Delinquent installments of the Assessment shall incur and accrue interest, penalties, and attorney's fees as provided in the PID Act.
10. The "Annual Installments" of the Assessments may be adjusted, decreased and extended in accordance with the Service and Assessment Plan, and the then-current owner of each Assessed Property shall be obligated to pay its revised amounts of the Annual Installments, when due, and without the necessity of further action, assessments or reassessments by the City.
11. All notices required to be provided to it under the PID Act have been received and to the extent of any defect in such notice, Landowners hereby waive any notice requirements and consents to all actions taken by the City with respect to the creation of the PID and the levy of the Assessments.
12. That the resolution creating the PID, the Ordinance levying the Assessments, the Service and Assessment Plan and a Notice of Creation of Special Assessment District and Imposition of Special Assessment to be provided by the City, shall be filed in the records of the County Clerk of Harris County, with copies of the recorded documents delivered to the City promptly after receipt thereof by the recording party, as a lien and encumbrance against the Assessed Property.
13. Each Assessed Property owned by the Landowner identified in the Service and Assessment Plan and Assessment Roll are wholly within the boundaries of the PID.
14. There are no Parcels owned by the Landowners within the boundaries of the PID that are not identified in the Service and Assessment Plan and the Assessment Roll.
15. Each Parcel owned by the Landowners identified in the Service and Assessment Plan and Assessment Roll against which no Assessment has been levied was Non-Benefited Property as of _____, 20__.

Originals and Counterparts. This Agreement may be executed in a number of identical counterparts, each of which shall be deemed an original for all purposes.

[Execution page follows]

IN WITNESS WHEREOF, the undersigned has caused this Agreement and Consent of Landowner to be executed as of _____, 2021.

_____, LP,
a Texas limited partnership

By:

By:

By: _____
Name:
Its

STATE OF TEXAS §
 §
COUNTY OF HARRIS §

This instrument was acknowledged before me on the ____ day of _____, 20____ by _____, as, a Texas limited liability company on behalf of said company.

Notary Public, State of Texas

EXHIBIT F
FORM OF PAYMENT CERTIFICATE

PAYMENT CERTIFICATE NO. _____

Reference is made to that certain Indenture of Trust by and between the City and the Trustee dated as of _____ (the “Indenture”) relating to the “City of Tomball, Texas, Special Assessment Revenue Bonds, Series 20__ (Wood Leaf Reserve Public Improvement District Project)” (the “Bonds”). Unless otherwise defined, any capitalized terms used herein shall have the meanings ascribed to them in the _____, LP Texas limited partnership (the “Developer”) and requests payment to the Developer (or to the person designated by the Developer) from:

_____ the Public Improvement Account of the Project Fund

_____ the Developer Improvement Account of the Project Fund

from _____, N.A., (the “Trustee”), in the amount of _____ (\$_____) for labor, materials, fees, and/or other general costs related to the creation, acquisition, or construction of certain Public Improvements providing a special benefit to property within the _____ Public Improvement District.

In connection with the above referenced payment, the Developer represents and warrants to the City as follows:

1. The undersigned is a duly authorized officer of the Developer, is qualified to execute this Certificate for Payment Form on behalf of the Developer, and is knowledgeable as to the matters set forth herein.
2. The itemized payment requested for the below referenced Public Improvements has not been the subject of any prior payment request submitted for the same work to the City or, if previously requested, no disbursement was made with respect thereto.
3. The itemized amounts listed for the Public Improvements below is a true and accurate representation of the Public Improvements associated with the creation, acquisition, or construction of said Public Improvements and such costs (i) are in compliance with the Development Agreement, and (ii) are consistent with and within the cost identified for such Public Improvements as set forth in the Service and Assessment Plan.
4. The Developer is in compliance with the terms and provisions of the Development Agreement, the Indenture, and the Service and Assessment Plan.

5. The Developer has timely paid all ad valorem taxes and Annual Installments of Public Assessments it owes or an entity the Developer controls owes, located in the _____ Public Improvement District and has no outstanding delinquencies for such Public Assessments.
6. All conditions set forth in the Indenture and the Development Agreement for the payment hereby requested have been satisfied.
7. The work with respect to Public Improvements referenced below (or its completed segment) has been completed, and the City has inspected such Public Improvements (or its completed segment).
8. The Developer agrees to cooperate with the City in conducting its review of the requested payment, and agrees to provide additional information and documentation as is reasonably necessary for the City to complete said review.
9. No more than ninety percent (90%) of the budgeted or contracted costs for the Public Improvements identified may be paid until the work with respect to such Public Improvements (or segment) has been completed and the City has accepted such Public Improvements (or segment).

Payments requested are as follows:

Payee / Description of Public Improvement	Total Cost Public Improvement	Budgeted Cost of Public Improvement	Amount requested be paid from the Public Improvement Account	Amount requested to be paid from the Developer Improvement Account

Attached hereto are receipts, purchase orders, change orders, and similar instruments which support and validate the above requested payments. Also attached hereto are "bills paid" affidavits and supporting documentation in the standard form for City construction projects.

Pursuant to the Development Agreement, after receiving this payment request, the City has inspected the Public Improvements (or completed segment) and confirmed that said work has been completed in accordance with approved plans and all applicable governmental laws, rules, and regulations.

Payments requested hereunder shall be made as directed below:

- a. X amount to Person or Account Y for Z goods or services.

b. Payment instructions

I hereby declare that the above representations and warranties are true and correct.

_____, LP.,
a Texas limited partnership

By: _____

Name: _____

Title: _____

APPROVAL OF REQUEST

The City is in receipt of the attached Certificate for Payment, acknowledges the Certificate for Payment, and finds the Certificate for Payment to be in order. After reviewing the Certificate for Payment, the City approves the Certificate for Payment and authorizes and directs payment of the amounts set forth below by Trustee from the Project Fund to the Developer or other person designated by the Developer as listed and directed on such Certificate for Payment. The City's approval of the Certificate for Payment shall not have the effect of estopping or preventing the City from asserting claims under the Development Agreement, the Reimbursement Agreement, the Indenture, the Service and Assessment Plan, or any other agreement between the parties or that there is a defect in the Public Improvements.

Amount of Payment Certificate Request	Amount to be Paid by Trustee from Improvement Account	Amount to be paid by Trustee from Developer Improvement Account
\$_____	\$_____	\$_____

CITY OF TOMBALL, TEXAS

By: _____

Name: _____

Title: _____

Date: _____

EXHIBIT G

FORM OF CLOSING DISBURSEMENT REQUEST

The undersigned is an agent for _____, LP, (the “Developer”) and requests payment from:

[the Cost of Issuance Account of the Project Fund][the Improvement Account of the Project Fund] from _____, (the “Trustee”) in the amount of _____ DOLLARS (\$_____) for costs incurred in the establishment, administration, and operation of the Wood Leaf Reserve Public Improvement District (the “District”), as follows:

Closing Costs Description	Cost	PID Allocated Cost
TOTAL		

In connection to the above referenced payments, the Developer represents and warrants to the City as follows:

1. The undersigned is a duly authorized officer of the Developer, is qualified to execute this Closing Disbursement Request on behalf of the Developer, and is knowledgeable as to the matters set forth herein.
2. The payment requested for the above referenced establishment, administration, and operation of the District at the time of the delivery of the Bonds has not been the subject of any prior payment request submitted to the City.
3. The amount listed for the below itemized costs is a true and accurate representation of the Actual Costs incurred by Developer with the establishment of the District at the time of the delivery of the Bonds, and such costs are in compliance with and within the costs as set forth in the Service and Assessment Plan.
4. The Developer is in compliance with the terms and provisions of the Development Agreement, the Indenture, and the Service and Assessment Plan.
5. All conditions set forth in the Indenture for the payment hereby requested have been satisfied.
6. The Developer agrees to cooperate with the City in conducting its review of the requested payment, and agrees to provide additional information and documentation as is reasonably necessary for the City to complete said review.

Payments requested hereunder shall be made as directed below:

- c. X amount to Person or Account Y for Z goods or services.
- d. Payment instructions

I hereby declare that the above representations and warranties are true and correct.

_____, LP, a Texas limited partnership

By: _____

Name: _____

Title: _____

Date: _____

APPROVAL OF REQUEST

The City is in receipt of the attached Closing Disbursement Request, acknowledges the Closing Disbursement Request, and finds the Closing Disbursement Request to be in order. After reviewing the Closing Disbursement Request, the City approves the Closing Disbursement Request to the extent set forth below and authorizes and directs payment by Trustee in such amounts and from the accounts listed below, to the Developer or other person designated by the Developer herein.

Closing Costs	Amount to be Paid by Trustee from Cost of Issuance Account	Amount to be paid by Trustee from Improvement Account
\$_____	\$_____	\$_____

CITY OF TOMBALL, TEXAS

By:_____

Name: _____

Title: _____

Date: _____

EXHIBIT H

HOME BUYER DISCLOSURE PROGRAM

The Developer (as defined in the Service and Assessment Plan) for the Wood Leaf Reserve Public Improvement District (the “PID”) shall facilitate notice to prospective homebuyers in accordance with the following minimum requirements:

1. Record notice of the PID in the appropriate land records for the Property.
2. Require homebuilders to attach the Recorded Notice of the Authorization and Establishment of the PID and the final Assessment Roll for such Assessed Parcel (or if the Assessment Roll is not available for such Assessed Parcel, then a schedule showing the maximum 30-year payment for such Assessed Parcel) in an addendum to each residential homebuyer’s contract on brightly colored paper.
3. Collect a copy of the addendum signed by each buyer from homebuilders and provide to the City.
4. Require signage indicating that the Property for sale is located in a special assessment district and require that such signage be located in conspicuous places in all model homes.
5. Prepare and provide to homebuilders an overview of the existence and effect of the PID for those homebuilders to include in each sales packet of information that it provides to prospective homebuyers.
6. Notify homebuilders who estimate monthly ownership costs of the requirement that they must include special assessments in estimated Property taxes.
7. Notify Settlement Companies through the homebuilders or cause the homebuilders to notify settlement companies that they are required to include special taxes on HUD 1 forms and include in total estimated taxes for the purpose of setting up tax escrows.
8. Include notice of the PID in the homeowner association documents in conspicuous bold font.

The Developer shall regularly monitor the implementation of this disclosure program and shall take appropriate action to require these notices to be provided when one of them discovers that any requirement is not being complied with.

IN WITNESS WHEREOF, the undersigned has caused this Agreement and Consent of Landowner to be executed as of _____, 20__.

CITY OF TOMBALL

By:_____

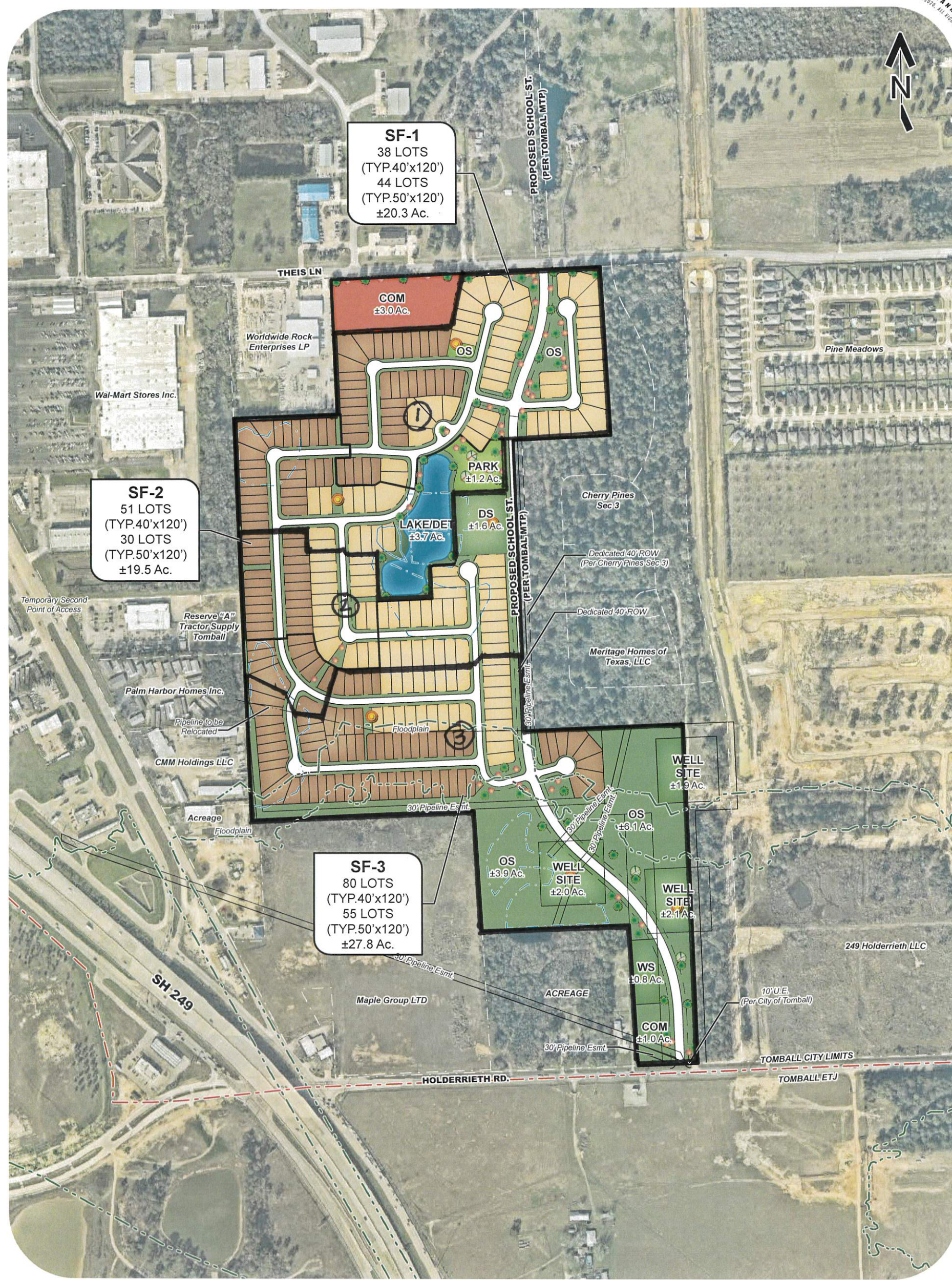
Name:_____

Title: City Manager

ATTEST:

City Secretary

EXHIBIT I
DEVELOPMENT PHASES



SF-1
38 LOTS
(TYP.40'x120')
44 LOTS
(TYP.50'x120')
±20.3 Ac.

SF-2
51 LOTS
(TYP.40'x120')
30 LOTS
(TYP.50'x120')
±19.5 Ac.

SF-3
80 LOTS
(TYP.40'x120')
55 LOTS
(TYP.50'x120')
±27.8 Ac.

LOT SUMMARY			
	40'x120'	169 LOTS	56 %
	50'x120'	129 LOTS	44 %
TOTAL		298 LOTS	

POSSIBLE WETLANDS
 APPROXIMATE WELL LOCATION

OPTION 1

a schematic development plan for
HOLDERRIETH TRACT
±95.4 ACRES OF LAND
prepared for
CHESMAR HOMES



24275 Katy Freeway, Ste. 200
Katy, Texas 77494
Tel: 281-810-1422



MTA-62001
AUGUST 3, 2020

THIS DRAWING IS A GRAPHIC REPRESENTATION FOR PRESENTATION PURPOSES ONLY AND IS NOT FOR COMPUTATION OR CONSTRUCTION PURPOSES. SAID DRAWING IS A SCANNED IMAGE ONLY AND IS SUBJECT TO CHANGE WITHOUT NOTICE. META PLANNING + DESIGN MAY OR MAY NOT INTEGRATE ADDITIONAL INFORMATION PROVIDED BY OTHER CONSULTANTS, INCLUDING BUT NOT LIMITED TO THE TOPICS OF ENGINEERING AND DRAINAGE, FLOODPLAINS, AND/OR ENVIRONMENTAL ISSUES AS THEY RELATE TO THIS DRAWING. NO WARRANTIES, EXPRESSED OR IMPLIED, CONCERNING THE PHYSICAL DESIGN, LOCATION, AND CHARACTER OF THE FACILITIES SHOWN ON THIS MAP ARE INTENDED. ADDITIONALLY, NO WARRANTY IS MADE TO THE ACCURACY OF THE INFORMATION CONTAINED HEREIN.

City Council Meeting

Agenda Item

Data Sheet

Meeting Date: January 18, 2021

Topic:

Conduct Public Hearing for the Purpose of Considering the Following Annexation: (Being a 3.119-Acre (138,840 Square Feet) Tract or Parcel of Land Situated in the Elizabeth Smith Survey, A-70, Harris County, Texas, Being out of Unrestricted Reserve "C" of the Final Plat of Tomball Greens, as Recorded under Film Code No. 440128 of the Map Records of Harris County, Texas, also Being Out and Part of a 5.00 Acre Tract Described in Deed Recorded under Clerk's File No. Z331045 of the Real Property Records of Harris County, Texas) [11234 Spell Road, HCAD 1207880000010]

Background:

Following the passage of HB 347, Chapter 43, Subchapter C-3, of the Local Government Code now requires a single public hearing to annex an area if petitioned by the landowner. The first reading of the ordinance to annex the area may immediately follow the public hearing.

Council approved Resolution No. 2020-44, to begin the annexation process, on December 21, 2020 and set the public hearing for January 18, 2021.

Written notice was provided to the area school districts and public entities, as required and proper publication was made in the official newspaper and the City's website.

The first reading of the Ordinance will follow the public hearing; the second reading of the ordinance will be presented to Council at the regular Council meeting on February 1, 2021.

Origination: Nazimuddin K. Maredia, TN Associates

Recommendation:

Conduct Public Hearing

Party(ies) responsible for placing this item on agenda: Doris Speer, City Secretary

FUNDING (IF APPLICABLE)

Are funds specifically designated in the current budget for the full amount required for this purpose?

Yes: _____ No: _____ If yes, specify Account Number: # _____

If no, funds will be transferred from account # _____ To account # _____

Signed	Doris Speer	12/11/2020	Approved by	
	Staff Member	Date		
			City Manager	Date

**NOTICE OF PUBLIC HEARING
CITY OF TOMBALL, TEXAS**



**MONDAY, JANUARY 18, 2021
6:00 P.M.**

Notice is hereby given that a **PUBLIC HEARING** will be held by the Tomball City Council, as the Governing Body of the City of Tomball, at a Regular Council Meeting on Monday, January 18, 2021 at 6:00 p.m., City Hall, 401 Market Street, Tomball, Texas 77375, for the purpose of considering the following Annexation:

**METES AND BOUNDS DESCRIPTION
3.119 ACRES OF LAND IN THE ELIZABETH SMITH SURVEY, A-70,
HARRIS COUNTY, TEXAS, HCAD 1207880000010
11234 SPELL ROAD**

BEING A 3.119-ACRE (138,840 SQUARE FEET) TRACT OR PARCEL OF LAND SITUATED IN THE ELIZABETH SMITH SURVEY, A-70, HARRIS COUNTY, TEXAS, BEING OUT OF UNRESTRICTED RESERVE "C" OF THE FINAL PLAT OF TOMBALL GREENS, AS RECORDED UNDER FILM CODE NO. 440128 OF THE MAP RECORDS OF HARRIS COUNTY, TEXAS, ALSO BEING OUT AND PART OF A 5.00 ACRE TRACT DESCRIBED IN DEED RECORDED UNDER CLERK'S FILE NO. Z331045 OF THE REAL PROPERTY RECORDS OF HARRIS COUNTY, TEXAS, SAID 3.119 ACRE TRACT BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

ALL THAT CERTAIN 3.119 ACRE (135,840 SQUARE FOOT) TRACT OR PARCEL OF LAND SITUATED IN THE ELIZABETH SMITH SURVEY, A-70, HARRIS COUNTY, TEXAS, BEING OUT OF UNRESTRICTED RESERVE "C" OF THE FINAL PLAT OF TOMBALL GREENS, AS RECORDED UNDER FILM CODE NO. 440128 OF THE MAP RECORDS OF HARRIS COUNTY, TEXAS, ALSO BEING OUT OF AND PART OF A 5.000 ACRE TRACT DESCRIBED IN DEED RECORDED UNDER CLERK'S FILE NO. Z331048 OF THE REAL PROPERTY RECORDS OF HARRIS COUNTY, TEXAS, SAID 3.119 ACRE TRACT BEING MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS:

BEGINNING AT A 5/8 INCH IRON ROD WITH CAP STAMPED "PICKERING 5879" SET MARKING THE SOUTHWESTERLY CORNER OF SAID UNRESTRICTED RESERVE "C" AND THE 5.000 ACRE TRACT, SAME BEING THE INTERSECTION OF THE EASTERLY RIGHT-OF-WAY LINE HUFFSMITH-KOHRVILLE ROAD (WIDTH VARIES) AND THE NORTHERLY RIGHT-OF-WAY LINE OF SPELL ROAD (60 FEET WIDE) AND BEING THE SOUTHWESTERLY CORNER OF THE HEREIN DESCRIBED TRACT, FROM WHICH A FOUND 5/8 INCH IRON ROD BEARS S 69°27' E-0.7 FEET;

Notice of Public Hearing - City of Tomball City Council

January 18, 2021

Page 2

THENCE, N 17°59'48" W-350.00 FEET ALONG THE EASTERLY RIGHT-OF-WAY LINE OF SAID HUFFSMITH-KOHRVILLE ROAD AND THE WESTERLY LINE OF SAID UNRESTRICTED RESERVE "C" AND THE 5.000 ACRE TRACT TO A 5/8 INCH IRON ROD WITH CAP FOUND MARKING THE NORTHWESTERLY CORNER OF THE SAID 5.000 ACRE TRACT AND THE HEREIN DESCRIBED TRACT;

THENCE, N 75°08'55" E ALONG THE NORTHERLY LINE OF SAID 5.000 ACRE TRACT, AT A DISTANCE OF 383.70 FEET PASSING A 5/8 INCH IRON ROD WITH CAP FOUND FOR REFERENCE AND CONTINUING ALONG SAID LINE FOR A TOTAL DISTANCE OF 388.70 FEET TO A 5/8 INCH IRON ROD WITH CAP STAMPED "PICKERING 5879" SET MARKING THE NORTHEASTERLY CORNER OF THE HEREIN DESCRIBED TRACT;

THENCE, S 17°59'48" E-350.00 FEET TO A 5/8 INCH IRON ROD WITH CAP STAMPED "PICKERING 5879" SET TN THE NORTHERLY RIGHT-OF-WAY LINE OF AFORESAID SPELL ROAD AND MARKING THE SOUTHEASTERLY CORNER OF THE HEREIN DESCRIBED TRACT;

THENCE, S 75°08'55" W, ALONG THE NORTHERLY RIGHT-OF-WAY LINE OF SAID SPELL ROAD AND THE SOUTHERLY LINE OF AFORESAID UNRESTRICTED RESERVE "C", AT A DISTANCE OF 5.00 FEET PASSING A 5/8 INCH IRON ROD WITH CAP FOUND FOR REFERENCE AND CONTINUING ALONG SAID LINE A TOTAL DISTANCE OF 388.70 FEET TO THE POINT OF BEGINNING AND CONTAINING 3.119 ACRES (135,840 SQUARE FEET) OF LAND, MORE OR LESS.

Persons interested in the above-proposed Annexation will be given an opportunity to be heard. Legal descriptions and maps of said property are available for inspection at the office of the City Secretary, 401 Market Street, Tomball, Texas.

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 22nd day of December 2020 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, MMC

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 contact the City Secretary's office at (281) 290-1002 or FAX (281) 351-6256 for further information. AGENDAS MAY BE VIEWED ONLINE AT www.ci.tomball.tx.us.

City Council Meeting

Agenda Item

Data Sheet

Meeting Date: January 18, 2021

Topic:

Adopt, on First Reading, Ordinance No. 2021-01, an Ordinance of the City of Tomball, Texas, Extending the City Limits of Said City to Include All of the Territory Within Certain Limits and Boundaries and Annexing to the City of Tomball All of the Territory Within Such Limits And Boundaries; Approving a Service Plan for All of the Area Within Such Limits and Boundaries; Containing Other Provisions Relating to the Subject; and Providing a Savings and Severability Clause *(Being a 3.119-Acre (138,840 Square Feet) Tract or Parcel of Land Situated in the Elizabeth Smith Survey, A-70, Harris County, Texas, Being out of Unrestricted Reserve "C" of the Final Plat of Tomball Greens, as Recorded under Film Code No. 440128 of the Map Records of Harris County, Texas, also Being Out and Part of a 5.00 Acre Tract Described in Deed Recorded under Clerk's File No. Z331045 of the Real Property Records of Harris County, Texas)* [11234 Spell Road, HCAD 1207880000010]

Background:

The required public hearing for this voluntary annexation, petitioned by the landowner, has been held and the required notices and publications have been completed.

The second reading of the ordinance will be presented to Council at the regular Council meeting on February 1, 2021.

Origination: Nazimuddin K. Maredia, TN Associates

Recommendation:

Adopt Ordinance No. 2021-01 on First Reading

Party(ies) responsible for placing this item on agenda: Doris Speer, City Secretary

FUNDING (IF APPLICABLE)

Are funds specifically designated in the current budget for the full amount required for this purpose?

Yes: _____ No: _____ If yes, specify Account Number: # _____

If no, funds will be transferred from account # _____ To account # _____

Signed	Doris Speer	12/10/2020	Approved by	_____
	Staff Member	Date		City Manager
				Date

ORDINANCE NO. 2021-01

AN ORDINANCE OF THE CITY OF TOMBALL, TEXAS, EXTENDING THE CITY LIMITS OF SAID CITY TO INCLUDE ALL OF THE TERRITORY WITHIN CERTAIN LIMITS AND BOUNDARIES AND ANNEXING TO THE CITY OF TOMBALL ALL OF THE TERRITORY WITHIN SUCH LIMITS AND BOUNDARIES; APPROVING A SERVICE PLAN FOR ALL OF THE AREA WITHIN SUCH LIMITS AND BOUNDARIES; CONTAINING OTHER PROVISIONS RELATING TO THE SUBJECT; AND PROVIDING A SAVINGS AND SEVERABILITY CLAUSE (BEING A 3.119-ACRE (138,840 SQUARE FEET) TRACT OR PARCEL OF LAND SITUATED IN THE ELIZABETH SMITH SURVEY, A-70, HARRIS COUNTY, TEXAS, BEING OUT OF UNRESTRICTED RESERVE "C" OF THE FINAL PLAT OF TOMBALL GREENS, AS RECORDED UNDER FILM CODE NO. 440128 OF THE MAP RECORDS OF HARRIS COUNTY, TEXAS, ALSO BEING OUT AND PART OF A 5.00 ACRE TRACT DESCRIBED IN DEED RECORDED UNDER CLERK'S FILE NO. Z331045 OF THE REAL PROPERTY RECORDS OF HARRIS COUNTY, TEXAS) [11234 SPELL ROAD, HCAD 1207880000010]

* * * * *

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

Section 1. The boundaries and limits of the City of Tomball, Texas, are hereby extended to embrace and include all of the territory described in **Exhibit "A"** attached hereto and made a part hereof and such territory hereby annexed to and made a part of the city.

Section 2. The plan for extension of municipal services into the territory annexed to the City of Tomball by the provisions of this ordinance is set forth in the "Municipal Service Plan" attached hereto as **Exhibit "B"** and made a part hereof for all purposes. Such Municipal Service Plan is hereby approved.

Section 3. If any section or part of this Ordinance be held unconstitutional, illegal, or invalid, or the application thereof ineffective or inapplicable as to any territory, such unconstitutionality, illegality, invalidity, or ineffectiveness of such section or part shall in no wise affect, impair, or invalidate the remaining portion or portions thereof, but as to such remaining portion or portions, the same shall be and remain in full force and effect; and should

this Ordinance for any reason be ineffective as to any part of the territory hereby annexed to the City of Tomball, such ineffectiveness of this Ordinance as to any such part or parts of any such territory shall not affect the effectiveness of this ordinance as to all of the remainder of such territory or area, and the City Council hereby declares it to be its purpose to annex to the City of Tomball every part of the territory described in Section 1 of this ordinance, regardless of whether any other part of such described territory is hereby effectively annexed to the City. Provided, further, that if there is included in the general description of territory set out in Section 1 of this Ordinance to be hereby annexed to the City of Tomball any territory which is already a part of and included within the general limits of the City of Tomball, or which is presently part of and included in the limits or extraterritorial jurisdiction of any other city, town, or village, or which is not within the City of Tomball's jurisdiction to annex, the same is hereby excluded and excepted from the territory to be annexed hereby as fully as if such excluded and excepted territory were especially and specifically described herein.

Section 4. Severability. In the event any section, paragraph, subdivision, clause, phrase, provision, sentence, or part of this Ordinance or the application of the same to any person or circumstance shall for any reason be adjudged invalid or held unconstitutional by a court of competent jurisdiction, it shall not affect, impair, or invalidate this Ordinance as a whole or any part of 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, or whether there be one or more parts.

FIRST READING:

READ, PASSED AND APPROVED AS SET OUT BELOW AT THE MEETING OF
THE CITY COUNCIL OF THE CITY OF TOMBALL HELD ON THE 18TH DAY OF
JANUARY 2021.

COUNCILMAN FORD	_____
COUNCILMAN STOLL	_____
COUNCILMAN DEGGS	_____
COUNCILMAN TOWNSEND	_____
COUNCILMAN KLEIN QUINN	_____

SECOND READING:

READ, PASSED AND APPROVED AS SET OUT BELOW AT THE MEETING OF
THE CITY COUNCIL OF THE CITY OF TOMBALL HELD ON THE 1ST DAY OF
FEBRUARY 2021.

COUNCILMAN FORD	_____
COUNCILMAN STOLL	_____
COUNCILMAN DEGGS	_____
COUNCILMAN TOWNSEND	_____
COUNCILMAN KLEIN QUINN	_____

GRETCHEN FAGAN, Mayor

ATTEST:

DORIS SPEER, City Secretary

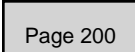


Exhibit "A" – Page 2

PICKERING & ASSOCIATES

PROFESSIONAL LAND SURVEYORS, LLC

7702 Pin Oak Street, Montgomery, Texas 77316

Phone (936) 447-4703, Mobile (281) 804-0785

Texas Licensed Surveying Firm 10165200

METES AND BOUNDS DESCRIPTION

ALL THAT CERTAIN 3.119 ACRE (135,840 SQUARE FOOT) TRACT OR PARCEL OF LAND SITUATED IN THE ELIZABETH SMITH SURVEY, A-70, HARRIS COUNTY, TEXAS, BEING OUT OF UNRESTRICTED RESERVE "C" OF THE FINAL PLAT OF TOMBALL GREENS, AS RECORDED UNDER FILM CODE NO. 440128 OF THE MAP RECORDS OF HARRIS COUNTY, TEXAS, ALSO BEING OUT OF AND PART OF A 5.000 ACRE TRACT DESCRIBED IN DEED RECORDED UNDER CLERK'S FILE NO. Z331048 OF THE REAL PROPERTY RECORDS OF HARRIS COUNTY, TEXAS, SAID 3.119 ACRE TRACT BEING MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS:

BEGINNING AT A 5/8 INCH IRON ROD WITH CAP STAMPED "PICKERING 5879" SET MARKING THE SOUTHWESTERLY CORNER OF SAID UNRESTRICTED RESERVE "C" AND THE 5.000 ACRE TRACT, SAME BEING THE INTERSECTION OF THE EASTERLY RIGHT-OF-WAY LINE HUFFSMITH-KOHRVILLE ROAD (WIDTH VARIES) AND THE NORTHERLY RIGHT-OF-WAY LINE OF SPELL ROAD (60 FEET WIDE) AND BEING THE SOUTHWESTERLY CORNER OF THE HEREIN DESCRIBED TRACT, FROM WHICH A FOUND 5/8 INCH IRON ROD BEARS S 69°27' E-0.7 FEET;

THENCE, N 17°59'48" W-350.00 FEET ALONG THE EASTERLY RIGHT-OF-WAY LINE OF SAID HUFFSMITH-KOHRVILLE ROAD AND THE WESTERLY LINE OF SAID UNRESTRICTED RESERVE "C" AND THE 5.000 ACRE TRACT TO A 5/8 INCH IRON ROD WITH CAP FOUND MARKING THE NORTHWESTERLY CORNER OF THE SAID 5.000 ACRE TRACT AND THE HEREIN DESCRIBED TRACT;

THENCE, N 75°08'55" E ALONG THE NORTHERLY LINE OF SAID 5.000 ACRE TRACT, AT A DISTANCE OF 383.70 FEET PASSING A 5/8 INCH IRON ROD WITH CAP FOUND FOR REFERENCE AND CONTINUING ALONG SAID LINE FOR A TOTAL DISTANCE OF 388.70 FEET TO A 5/8 INCH IRON ROD WITH CAP STAMPED "PICKERING 5879" SET MARKING THE NORTHEASTERLY CORNER OF THE HEREIN DESCRIBED TRACT;

THENCE, S 17°59'48" E-350.00 FEET TO A 5/8 INCH IRON ROD WITH CAP STAMPED "PICKERING 5879" SET IN THE NORTHERLY RIGHT-OF-WAY LINE OF AFORESAID SPELL ROAD AND MARKING THE SOUTHEASTERLY CORNER OF THE HEREIN DESCRIBED TRACT;

THENCE, S 75°08'55" W, ALONG THE NORTHERLY RIGHT-OF-WAY LINE OF SAID SPELL ROAD AND THE SOUTHERLY LINE OF AFORESAID UNRESTRICTED RESERVE "C", AT A DISTANCE OF 5.00 FEET PASSING A 5/8 INCH IRON ROD WITH CAP FOUND FOR REFERENCE AND CONTINUING ALONG SAID LINE A TOTAL DISTANCE OF 388.70 FEET TO THE POINT OF BEGINNING AND CONTAINING 3.119 ACRES (135,840 SQUARE FEET) OF LAND, MORE OR LESS.

ROGER D. PICKERING, R.P.L.S.
TEXAS REGISTRATION NO. 5879



EXHIBIT "B"

CITY OF TOMBALL, TEXAS

MUNICIPAL SERVICE PLAN

I. INTRODUCTION

This Municipal Service Plan (the "Plan") is made by the City of Tomball, Texas (the "City"), pursuant to Chapter 43 of the Texas Local Government Code. This Plan relates to the annexation by the City of the tract of land ("Tract") described by metes and bounds in "Exhibit A," which is attached to this Plan and to the annexation ordinance of which this Plan is a part.

II. EFFECTIVE TERM

This Plan shall be in effect for a period of ten (10) years commencing on the effective date of the annexation of the Tract, unless otherwise stated in this Plan. Renewal of the Plan shall be at the option of the City. Such option may be exercised by the adoption of an ordinance by the City Council, which refers to this Plan and specifically renews this Plan for a stated period of time.

III. INTENT

It is the intent of the City that services under this Plan shall equal the number of services and the level of services in existence within the Tract prior to annexation and which are available in other parts of the City with land uses and population densities similar to those reasonably contemplated or projected within the Tract. However, it is not the intent of this Plan to require that a uniform level of service be provided to all areas of the City, including the Tract, where differing characteristics of topography, land utilization, and population density are considered as a sufficient basis for providing differing service levels.

The City reserves the right, granted to it by Section 43.056(k), Texas Local Government Code, to amend this Plan, if the City Council determines that changed conditions or subsequent occurrences or any other legally sufficient circumstances exist under the Texas Local Government Code, or other Texas laws to make this Plan unworkable, obsolete, or unlawful.

IV. SERVICE PROGRAMS

A. In General.

1. This Plan includes the following service programs: A 60-Day Program and a Capital Improvement Program.
2. As used in this Plan, "providing services" shall include having services provided by any method or means by which the City may extend municipal

services to any other area of the City. The City shall provide the area, or cause the area to be provided, with services in accordance with the Plan. This may include, but is not limited to, causing or allowing private utilities, governmental entities, and other public service organizations to provide such services, in whole or in part.

As used in this Plan, the phrase "standard policies and procedures" shall mean those policies and procedures of the City applicable to a particular service, which are in effect either at the time that the service is requested or at the time the service is made available or provided. Such policies and procedures may require a specific type of request be made, such as an application or a petition, may require that fees or charges be paid, and may include eligibility requirements or other similar provisions.

B. 60-Day Program. The following services will be provided within the Tract within the period required by State law. State law requires the City to provide the following services within sixty (60) days after the effective date of the annexation: police protection, fire protection, solid waste collection, operation and maintenance of water, wastewater, and gas facilities, operation and maintenance of roads and streets, including lighting, operation and maintenance of parks, playgrounds, and swimming pools, and maintenance of any other publicly owned facility, building or service. The 60-Day Program plan is as follows:

1. Police Protection. The Police Department of the City will provide protection and law enforcement within the Tract. These activities will include routine patrols and responses, handling of complaints and incident reports, and, as appropriate, support by special units. In order to provide the above services, the Police Department will operate from a City facility.
2. Fire Protection. The Fire Department of the City currently provides fire protection to the Tract. Fire protection will be provided from either the southside or central fire stations. Fire protection will remain at the current level of service.
3. Solid Waste Collection. All eligible residences and businesses will be provided solid waste collection service, either by City personnel or by contract.
4. Maintenance of Water, Wastewater, and Gas Facilities. There are no City water, wastewater, or gas facilities currently located within the Tract. If any such facilities are constructed or acquired by the City within the Tract, the City's Department of Public Works will operate and maintain such facilities at levels of service and maintenance comparable to those available for other such facilities in other parts of the City with similar topography, load use, and population density as those reasonably contemplated or projected within the Tract.

5. Operation and Maintenance of Roads and Streets (including lighting). The City's Department of Public Works will provide for the maintenance of roads and streets over which the City will have jurisdiction. Such Department will also provide services relating to traffic control devices and will provide street lighting for such roads and streets through an electric utility company or by other means. The operation and maintenance of roads and streets, including street lighting and traffic control devices, shall be provided at levels of service and maintenance comparable to those available for other roads and streets in other parts of the City with similar topography, load use, and population density as those reasonably contemplated or projected within the Tract.
6. Operation and Maintenance of Parks, Playground and Swimming Pools. There are no public parks, playgrounds, or swimming pools currently located within the Tract. If, as a result of acquisition of park land, any such facilities are constructed by the City within the Tract, the City's Department of Parks and Recreation will operate and maintain such facilities at levels of service and maintenance comparable to those available for other such facilities in other parts of the City with similar topography, load use, and population density as those reasonably contemplated or projected within the Tract.
7. Operation and Maintenance of Any Other Publicly-Owned Facility, Building, or Service. Those drainage facilities associated with City-maintained public streets will be maintained by the City's Department of Public Works, as needed. Any other facility, building, or service existing or which may be constructed or located by the City within the Tract, will be operated and maintained by an appropriate City department at levels of service and maintenance comparable to those available to other such facilities in other parts of the City with similar topography, load use, and population density as those reasonably contemplated or projected within the Tract.

- C. Capital Improvement Program. It is the intent of the City to provide full City services within the Tract not less than four and one-half (4-1/2) years after the effective date of annexation of the Tract, in accordance with the Texas Local Government Code, § 43.056(e).

The City will initiate the acquisition and construction of the capital improvements necessary to provide municipal services adequate to serve the Tract. Any necessary construction or acquisition is indicated below, and any such construction or acquisition shall begin within two (2) years of the effective date of this Plan and shall be substantially completed within 4-1/2 years, except as otherwise indicated:

1. Police Protection. No capital improvements are necessary at this time to provide police protection services within the Tract. The Tract will be included with other City territory in connection with planning for new, revised, or expanded police facilities.

2. Fire Protection. No capital improvements are necessary at this time to provide fire protection services within the Tract. The Tract will be included with other City territory in connection with planning for new, revised, or expanded fire facilities.
3. Solid Waste Collection. No capital improvements are necessary at this time to provide solid waste collection services within the Tract. The Tract will be included with other City territory in connection with planning for new, revised, or expanded solid waste facilities and/or services.
4. Wastewater Facilities. The Tract will be included with other City territory in connection with planning for new, revised, or expanded public wastewater facilities. Wastewater services will be provided according to the standard policies and procedures of the City's Department of Public Works. A summary of the City's policies with regard to the extension of wastewater services is attached to and made a part of this Plan.
5. Water Distribution. The Tract will be included with other City territory in connection with planning for new, revised, or expanded public water facilities. Water services will be provided according to the standard policies and procedures of the City's Department of Public Works. A summary of the City's policies with regard to the extension of water services is attached to and made a part of this Plan.
6. Gas Distribution. The Tract will be included with other City territory in connection with planning for new, revised, or expanded public gas facilities. Gas services will be provided according to the standard policies and procedures of the City's Department of Public Works. A summary of the City's policies with regard to the extension of gas services is attached to and made a part of this Plan.
7. Roads and Streets (including lighting). The City will acquire jurisdiction in and over all public roads and streets within the Tract upon annexation, pursuant to Section 311.001 of the Texas Transportation Code and other similar provisions, except for public roads and streets subject to the jurisdiction of other governmental entities. Additional roads, streets, or related facilities are not necessary at this time to service the Tract. Future extensions of roads or streets and future installation of related facilities, such as traffic control devices or street lights, within the Tract will be governed by standard policies and procedures of the City. The Tract will be included with other City territory in connection with planning for new, improved, revised, widened, or enlarged roads, streets, or related facilities.
8. Parks, Playgrounds, and Swimming Pools. No capital improvements are necessary at this time to provide park and recreational services to the Tract. The Tract will be included with other City territory in connection with

planning for new, revised, or expanded parks, playgrounds, and/or swimming pools.

9. Other Publicly-Owned Facilities, Buildings or Services: Additional Services. In general, other City functions and services can be provided to the Tract by using existing capital improvements. At this time, additional capital improvements are not necessary to provide City services. However, the Tract will be included with other City territory in connection with planning for new, revised, or expanded facilities, functions, and services.

V. AMENDMENT: GOVERNING LAW

This Plan may not be amended or repealed, except as provided by the Texas Local Government Code or other controlling law. Neither changes in the methods or means of implementing any part of the service programs nor changes in the responsibilities of the various departments of the City shall constitute amendments to this Plan, and the City reserves the right to make such changes at any time. This Plan is subject to, and shall be interpreted in accordance with, the Constitution and laws of the United States of America and the State of Texas, the Texas Local Government Code, and any orders, rules, or regulations of any other governmental body having jurisdiction.

VI. FORCE MAJEURE

In the event the City is rendered unable, wholly or in part, by force majeure to carry out its obligations under this Plan, notice shall be given with full particulars of such force majeure, in writing, as soon as reasonably possible after the occurrence of the cause relied on, and the City's obligations, so far as effected by such force majeure, shall be suspended during the continuance of such inability so caused but for no longer period, and such cause shall, so far as possible, be remedied with all reasonable dispatch; provided, however, City shall not be required to settle a strike or dispute with workmen when such settlement is against the will of the City. The term "force majeure" shall mean acts of God, strikes, acts of the public enemy, wars, blockades, insurrections, riots, epidemics, landslides, lightning, earthquakes, fires, storms, floods, washouts, arrests and restraints of rulers and people, explosions, breakage or accident to machinery or lines of pipe, droughts, hurricanes and tornadoes, and any other inability of either party, whether similar to those enumerated or otherwise, not within the control of the City, which, by the exercise of reasonable diligence, the City shall not have been able to avoid.

VIII. ENTIRE PLAN

This document contains the entire and integrated Plan relating to the Tract and supersedes all other negotiations, representations, plans, and agreements, whether written or oral.

If one or more provisions of this Plan is held to be invalid, unenforceable, or illegal in any respect, the remainder the Plan shall remain valid and in full force and effect.

SUMMARY OF EXTENSION POLICY FOR WATER, WASTEWATER, AND GAS SERVICE

The following information is a summary of the City of Tomball's ("City") policies respecting water, wastewater and gas service extensions. This summary is made in compliance with the Texas Local Government Code, which requires that each annexation plan include a summary of the service extension policy. Nothing herein shall repeal any provision of the Code of Ordinances of the City of Tomball, as amended, or any of the uncodified ordinances that contain the City's policies and procedures.

The City extends water, wastewater, and gas services to existing unserved development as follows:

Construction of such service lines is based on a priority schedule that considers potential health hazards, population density, the number of existing buildings, the reasonable cost of providing service, and the desires of the residents of the unserved areas.

Extensions built by the City at its cost are included in its Capital Improvements Plan, which is updated annually. Placement of an extension or enlargement of any water and/or wastewater lines into the Capital Improvement Plan is based primarily on the following requirements: (1) to provide service to unserved areas, (2) and to provide adequate capacity for projected service requirements.

Persons or entities desiring to develop land within unserved areas must construct water, wastewater, and gas service lines and extensions to connect to City trunk lines to serve the new development.

City Council Meeting

Agenda Item

Data Sheet

Meeting Date: January 18, 2021

Topic:

Consideration to approve **Zoning Case P20-419**: Request by TN Associates Inc. to amend Chapter 50 (Zoning) of the Tomball Code of Ordinances by establishing the zoning district of approximately 3.119 acres of land legally described as Reserve C3 Tomball Greens, as Commercial District. The property is generally located at the northeast corner of Hufsmith-Kohrville Road and Spell Road at 11234 Spell Road, Harris County, Texas.

- Conduct Public Hearing on **Zoning Case P20-419**
- Adopt, on First Reading, Ordinance No. 2021-02, an Ordinance of the City of Tomball, Texas, amending Chapter 50 (Zoning) of the Tomball Code of Ordinances by establishing the zoning district of approximately 3.119 acres of land, legally described as Reserve C3 Tomball Greens, within the City of Tomball, Harris County, Texas, to the Commercial District; said property being generally located at the northeast corner of Hufsmith-Kohrville Road and Spell Road at 11234 Spell Road; providing for the amendment of the Official Zoning Map of the City; providing for severability; providing for a penalty of an amount not to exceed \$2,000 for each day of violation of any provision hereof, making findings of fact; and providing for other related matters.

Background:

Origination: TN Associates, Inc.

Recommendation:

Approval for General Retail Zoning District

Party(ies) responsible for placing this item on agenda: Craig T. Meyers, P.E., Community Development Director

FUNDING (IF APPLICABLE)

Are funds specifically designated in the current budget for the full amount required for this purpose?

Yes: _____ No: _____

If yes, specify Account Number: # _____

If no, funds will be transferred from account: # _____ To Account: # _____

Signed: _____ **Approved by:** _____
Staff Member Date City Manager Date

ORDINANCE NO. 2021-02

AN ORDINANCE OF THE CITY OF TOMBALL, TEXAS, AMENDING CHAPTER 50 (ZONING) OF THE TOMBALL CODE OF ORDINANCES BY ESTABLISHING THE ZONING DISTRICT OF APPROXIMATELY 3.119 ACRES OF LAND, LEGALLY DESCRIBED AS RESERVE C3 TOMBALL GREENS, WITHIN THE CITY OF TOMBALL, HARRIS COUNTY, TEXAS, TO THE COMMERCIAL DISTRICT; SAID PROPERTY BEING GENERALLY LOCATED AT THE NORTHEAST CORNER OF HUFSMITH-KOHRVILLE ROAD AND SPELL ROAD AT 11234 SPELL ROAD; PROVIDING FOR THE AMENDMENT OF THE OFFICIAL ZONING MAP OF THE CITY; PROVIDING FOR SEVERABILITY; PROVIDING FOR A PENALTY OF AN AMOUNT NOT TO EXCEED \$2,000 FOR EACH DAY OF VIOLATION OF ANY PROVISION HEREOF, MAKING FINDINGS OF FACT; AND PROVIDING FOR OTHER RELATED MATTERS.

* * * * *

Whereas, TN Associates Inc. has requested that approximately 3.119 acres of land, legally described as Reserve C3 Tomball Greens, generally located at the northeast corner of Hufsmith-Kohrville Road and Spell Road at 11234 Spell Road, in the City of Tomball, Harris County, Texas, (the "Property"), be zoned to the Commercial District; and

Whereas, at least fifteen (15) days after publication in the official newspaper of the City of the time and place of a public hearing and at least ten (10) days after written notice of that hearing was mailed to the owners of land within two hundred feet of the Property in the manner required by law, the City Council held a public hearing on the requested zoning; and

Whereas, the City Council deems it appropriate to grant the requested zoning.

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

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

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

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

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

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

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

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 18TH DAY OF JANUARY 2021.

COUNCILMAN FORD	_____
COUNCILMAN STOLL	_____
COUNCILMAN DEGGES	_____
COUNCILMAN TOWNSEND	_____
COUNCILMAN QUINN	_____

SECOND READING:

READ, PASSED, AND APPROVED AS SET OUT BELOW AT THE MEETING OF THE CITY COUNCIL OF THE CITY OF TOMBALL HELD ON THE 1ST DAY OF FEBRUARY 2021.

COUNCILMAN FORD	_____
COUNCILMAN STOLL	_____
COUNCILMAN DEGGES	_____
COUNCILMAN TOWNSEND	_____
COUNCILMAN QUINN	_____

Gretchen Fagan, Mayor

ATTEST:

Doris Speer, City Secretary

**NOTICE OF PUBLIC HEARING
CITY OF TOMBALL
CITY COUNCIL
JANUARY 18, 2021**



Notice is Hereby Given that a Public Hearing will be held by the City Council of the City of Tomball on **Monday, January 18, 2021, at 6:00 P.M.** at City Hall, 401 Market Street, Tomball Texas. On such dates, City Council will consider the following:

Zoning Case P20-419: Request by TN Associates Inc. to amend Chapter 50 (Zoning) of the Tomball Code of Ordinances by establishing the zoning district of approximately 3.119 acres of land legally described as Reserve C3 Tomball Greens, as Commercial District. The property is generally located at the northeast corner of Hufsmith-Kohrville Road and Spell Road at 11234 Spell Road, Harris County, Texas.

Zoning Case P20-436: Request by Paul Hicks to amend Chapter 50 (Zoning) of the Tomball Code of Ordinances by establishing the zoning district of approximately 8.31 acres of land legally described as Tract 12 Abstract 375 J M Hooper, as Commercial District. The property is generally located at the southwest corner of SH 249 and Alice Road, Harris County, Texas.

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

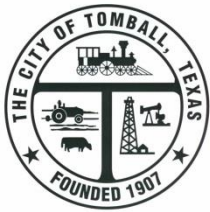
C E R T I F I C A T I O N

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 **14th** day of **January 2021** by 5:00 p.m., and remained posted for at least 72 continuous hours preceding the scheduled time of said meeting.

Amelia Lindley

Amelia Lindley
City Planner

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



Notice of Public Hearing

YOU ARE INVITED TO ATTEND the Public Hearing before the **CITY COUNCIL** of the City of Tomball regarding the following item:

CASE NUMBER: P20-419

APPLICANT/OWNER: TN Associates Inc.

LOCATION: Generally located at the northeast corner of Hufsmith-Kohrville and Spell Road at 11234 Spell Road, Harris County, Texas.

PROPOSAL: A Re-Zoning to amend Chapter 50 (Zoning) of the Tomball Code of Ordinances by establishing the zoning district of approximately 3.119 acres of land legally described as Reserve C Tomball Greens, as Commercial District.

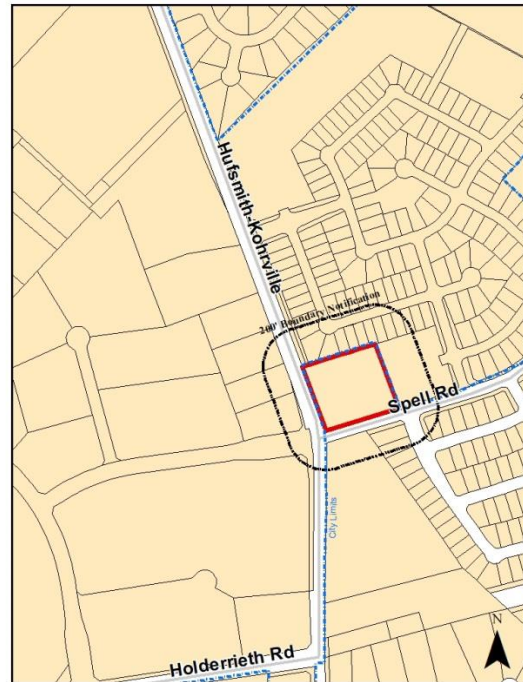
CONTACT: Amelia Lindley, City Planner

PHONE: (281) 290-1410

E-MAIL: alindley@tomballtx.gov

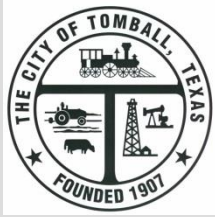
Interested parties may contact the City of Tomball between 8:00 a.m. and 5:00 p.m. Monday through Friday for further information. The application is available for public review Monday through Friday, except holidays, between the hours of 8:00 a.m. and 5:00 p.m. in the Community Development Department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

This notice is being mailed to all owners of real property within 200 feet of the request as such ownership appears on the last approved Harris County Appraisal District tax roll.



City Council Public Hearing:
***Monday, January 18, 2021 6:00 PM**

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



Zoning Staff Report

City Council Public Hearing Date: January 18, 2021

Zoning Case: P20-419
Property Owner(s): HARRISON ELM ASSET LLC
Applicant(s): TN Associates Inc.
Legal Description: Reserve C3 Tomball Greens
Location: Northeast corner of Spell Road and Hufsmith-Kohrville Road at 11234 Spell Road (Exhibit "A")
Area: 3.119 acres
Comp Plan Designation: Neighborhood Commercial (Exhibit "B")
Present Use: Single-family residence (Exhibit "D")
Request: Establish the Zoning District as Commercial upon annexation

Adjacent Zoning & Land Uses:

North: Planned Development District / Single-family residential subdivision – Alexander Estates (under construction)
South: Outside City Limits / Single-family residences
West: Light Industrial District / Warehouses, Business Park
East: Planned Development District / Single-family residential subdivision – Alexander Estates (under construction)

BACKGROUND

The subject site is currently being annexed into the City limits and therefore requires the establishment of a Zoning District classification. City Staff met with the applicant in October 2020 to discuss the future development of a convenience store, gasoline station and retail lease space.

ANALYSIS

The property is currently developed with a single-family residence. With the high traffic volume and expansion of Hufsmith-Kohrville Road, which is a major arterial, it is appropriate for the property to be redeveloped as non-residential. According to the applicant, the proposed development will include a convenience store, gasoline station and retail lease space.

Surrounding properties to the north and east are zoned Planned Development (PD-9), a single-family residential neighborhood that is currently under construction. Properties to the west are

zoned Light Industrial District and include the Tomball Business & Technology Park and various warehouse buildings. Properties to the south are outside the City limits.

According to Section 50-77 (Commercial District), the purpose of the Commercial District is to provide smaller sites for commercial and service-related establishments. The uses in the Commercial District usually “have operation characteristics which are generally not compatible with residential uses”.

The General Retail District may be a more appropriate zoning district for this property. According to Section 50-76 (General Retail District), the purpose of the General Retail District is “to provide areas for local neighborhood shopping and service facilities for the retail sales of goods and services.” This district is also considered less intense than the Commercial District, and may be better suited adjacent to single-family residences.

Chapter 50 (Zoning) of the Code of Ordinances also includes multiple regulations for non-residential uses that are constructed adjacent to residential uses, such as increased building setbacks, screening requirements and landscape buffers.

The Future Land Use Map designation of this property is Neighborhood Commercial, which, according to the Comprehensive Plan, “is intended for commercial uses that are developed with the appropriate context, scale and design to compliment residential development”. The General Retail District is listed as a compatible zoning district; the Commercial District is not listed in this category.

PUBLIC COMMENT

Property owners located in the City limits within 200 feet of the project site were mailed notification of this proposal on January 7, 2021. The Notice of Public Hearing was published in the paper on December 30, 2020. Any public comment forms will be provided in the City Council packets or during the public hearing.

RECOMMENDATION

City staff recommends establishing the zoning district as General Retail for the following reasons:

- The General Retail District meets the Neighborhood Commercial Future Land Use designation;
- The General Retail District is considered less intense than the Commercial District and may be more appropriate adjacent to single-family residences;
- The proposed land use, *convenience store (with or without gasoline sales)* is allowed in the General Retail District by-right;

EXHIBITS

- A. Aerial Photo
- B. Comprehensive Plan
- C. Zoning Map
- D. Site Photo
- E. Application

Exhibit "A"
Aerial Photo



Exhibit "B"
Comprehensive Plan

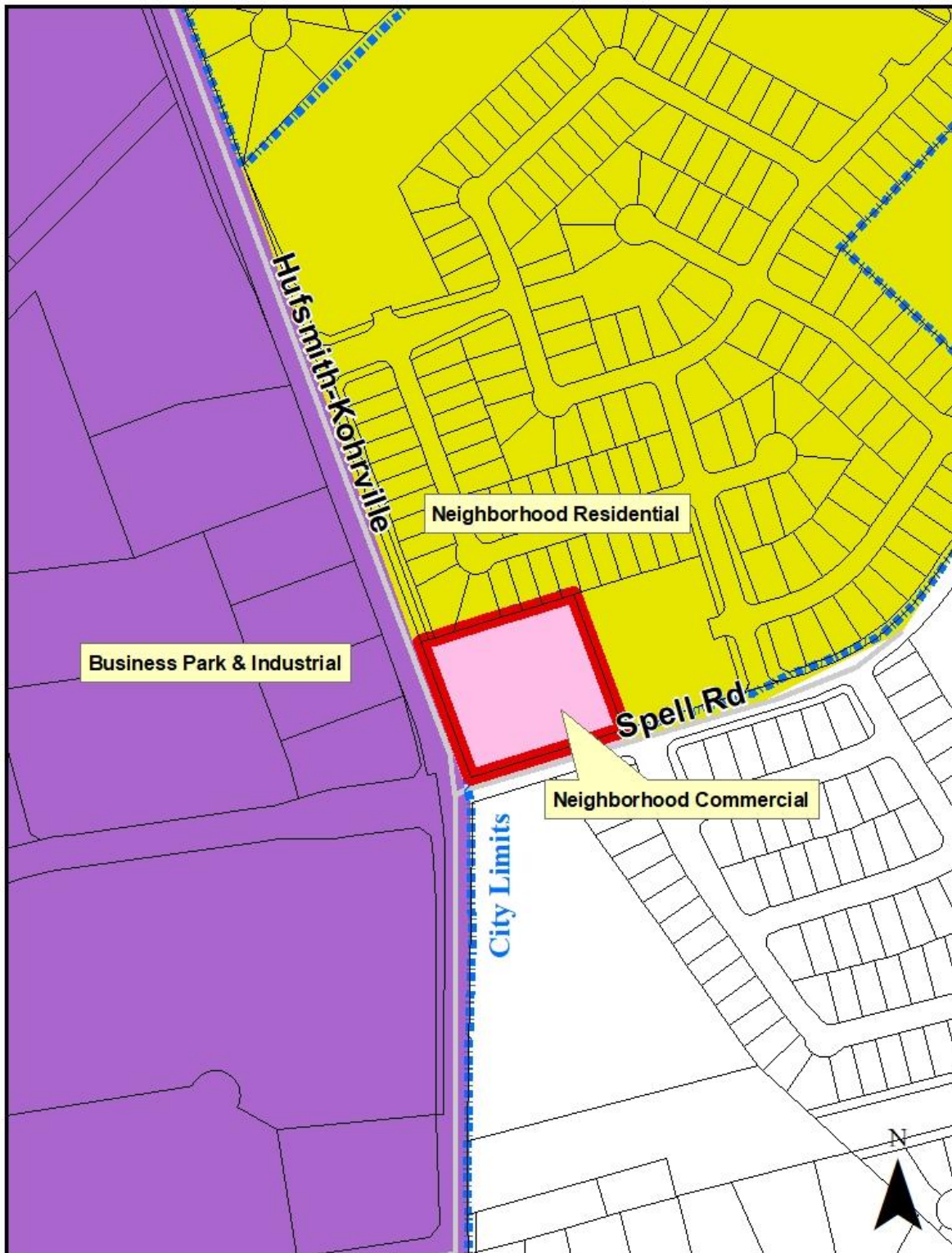
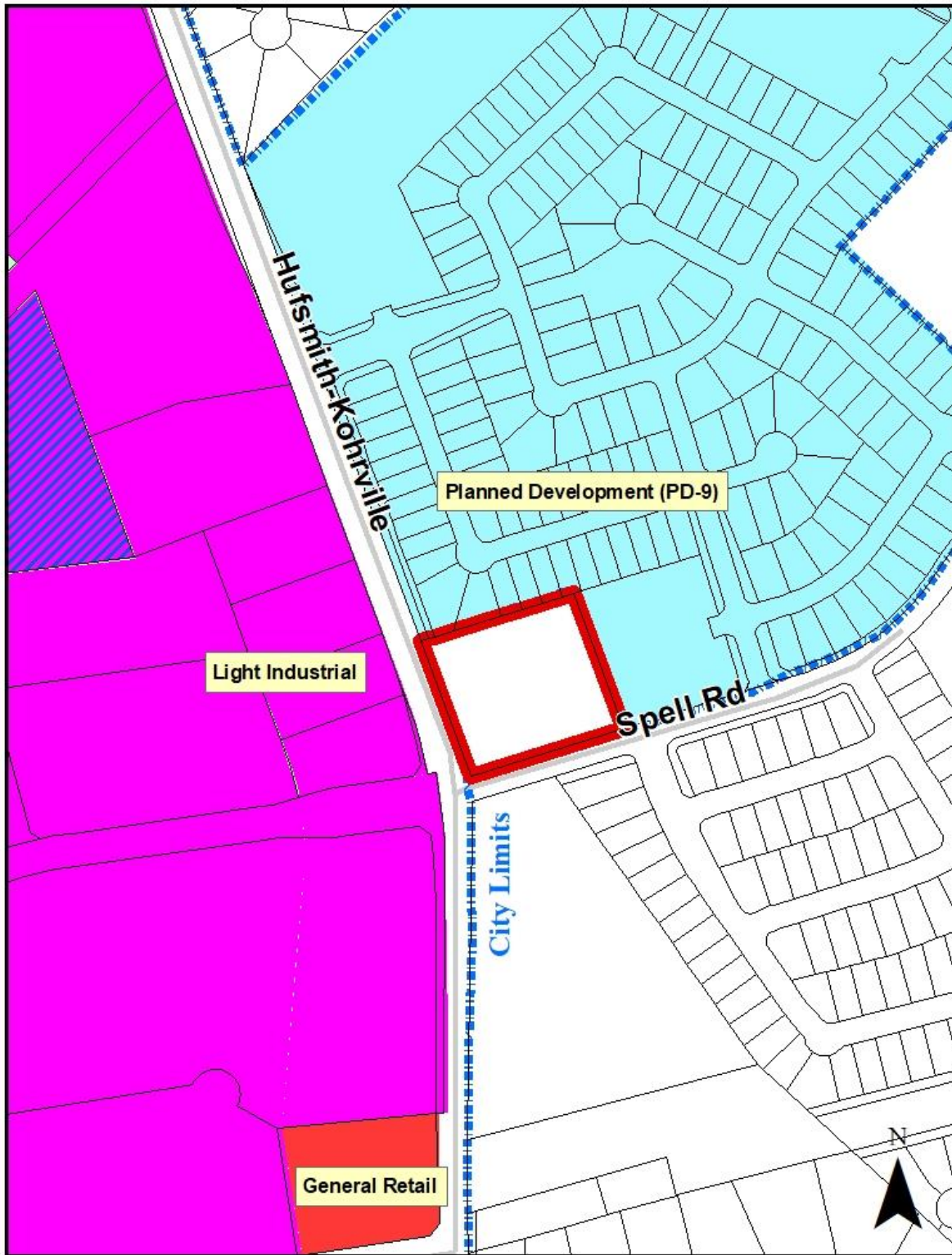


Exhibit "C"
Zoning Map



**Exhibit “D”
Site Photo**



Exhibit "E" Application



RECEIVED (KC)
12/09/2020 8:16:41 AM

APPLICATION FOR RE-ZONING

Community Development Department
Planning Division

Revised: 4/13/2020
P&Z -20-419
\$430.00 PD

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

Applicant

Name: TN ASSOCIATES INC. Title: Architect
Mailing Address: 2825 Wilcrest Drive Ste. 616 City: Houston State: TX
Zip: 77042 Contact: Chan Huynh, Kimmie Wu
Phone: (713) 541-3195 Email: kimmie@tnassociatesinc.com

Owner

Name: Nazimuddin.K.Maredia Title: President of Abyan Property LLC.
Mailing Address: 1003 Terscott Ln City: Sugarland State: TX
Zip: 77479 Contact: _____
Phone: (832) 768-7052 Email: nmaredia@hotmail.com

Engineer/Surveyor (if applicable)

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

Description of Proposed Project: Proposed new convenience store with gas station

Physical Location of Property: Corner lot at the intersection of Huffsmith Kohrville Road and Spell Road
[General Location – approximate distance to nearest existing street corner]

Legal Description of Property: RES C3 Tomball Greens
[Survey/Abstract No. and Tracts; or platted Subdivision Name with Lots/Block]

Current Zoning District: Residential, single-family

Current Use of Property: Single Family Residential

Proposed Zoning District: Commerical


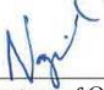
Proposed Use of Property: Gasoline Station

HCAD Identification Number: 1207880000010 Acreage: 3.119 acre

City of Tomball, Texas 501 James Street, Tomball, Texas 77375 Phone: 281-290-1405 www.tomballtx.gov

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

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

<u>X</u>	<u></u>	<u>12/03/2020</u>
Signature of Applicant		Date
<u>X</u>	<u></u>	<u>12/08/2020</u>
Signature of Owner		Date

CITY OF TOMBALL REZONING APPLICATION- REASON FOR REQUEST

To whom many concern,

This letter is to state the reason and issue relating to rezoning request for property address
11234 Spell Road, Tomball TX 77375

In the process of annexation, we were informed to submit a separate application to establish desired property's zoning district. The property is currently zoned for single family residential use and we would like to designate the property for commercial use due to our future development of convenience store gasoline station with retail lease space. Thank you for your time and consideration.

Owner: NAZimuddin MARE DIA

Signature: Naj

Date: 12/09/2020

8/20/2020

PICKERING & ASSOCIATES

PROFESSIONAL LAND SURVEYORS, LLC

7702 Pin Oak Street, Montgomery, Texas 77316

Phone (936) 447-4703, Mobile (281) 804-0785

Texas Licensed Surveying Firm 10165200

METES AND BOUNDS DESCRIPTION

ALL THAT CERTAIN 3.119 ACRE (135,840 SQUARE FOOT) TRACT OR PARCEL OF LAND SITUATED IN THE ELIZABETH SMITH SURVEY, A-70, HARRIS COUNTY, TEXAS, BEING OUT OF UNRESTRICTED RESERVE "C" OF THE FINAL PLAT OF TOMBALL GREENS, AS RECORDED UNDER FILM CODE NO. 440128 OF THE MAP RECORDS OF HARRIS COUNTY, TEXAS, ALSO BEING OUT OF AND PART OF A 5.000 ACRE TRACT DESCRIBED IN DEED RECORDED UNDER CLERK'S FILE NO. Z331048 OF THE REAL PROPERTY RECORDS OF HARRIS COUNTY, TEXAS, SAID 3.119 ACRE TRACT BEING MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS:

BEGINNING AT A 5/8 INCH IRON ROD WITH CAP STAMPED "PICKERING 5879" SET MARKING THE SOUTHWESTERLY CORNER OF SAID UNRESTRICTED RESERVE "C" AND THE 5.000 ACRE TRACT, SAME BEING THE INTERSECTION OF THE EASTERLY RIGHT-OF-WAY LINE HUFFSMITH-KOHRVILLE ROAD (WIDTH VARIES) AND THE NORTHERLY RIGHT-OF-WAY LINE OF SPELL ROAD (60 FEET WIDE) AND BEING THE SOUTHWESTERLY CORNER OF THE HEREIN DESCRIBED TRACT, FROM WHICH A FOUND 5/8 INCH IRON ROD BEARS S 69°27' E-0.7 FEET;

THENCE, N 17°59'48" W-350.00 FEET ALONG THE EASTERLY RIGHT-OF-WAY LINE OF SAID HUFFSMITH-KOHRVILLE ROAD AND THE WESTERLY LINE OF SAID UNRESTRICTED RESERVE "C" AND THE 5.000 ACRE TRACT TO A 5/8 INCH IRON ROD WITH CAP FOUND MARKING THE NORTHWESTERLY CORNER OF THE SAID 5.000 ACRE TRACT AND THE HEREIN DESCRIBED TRACT;

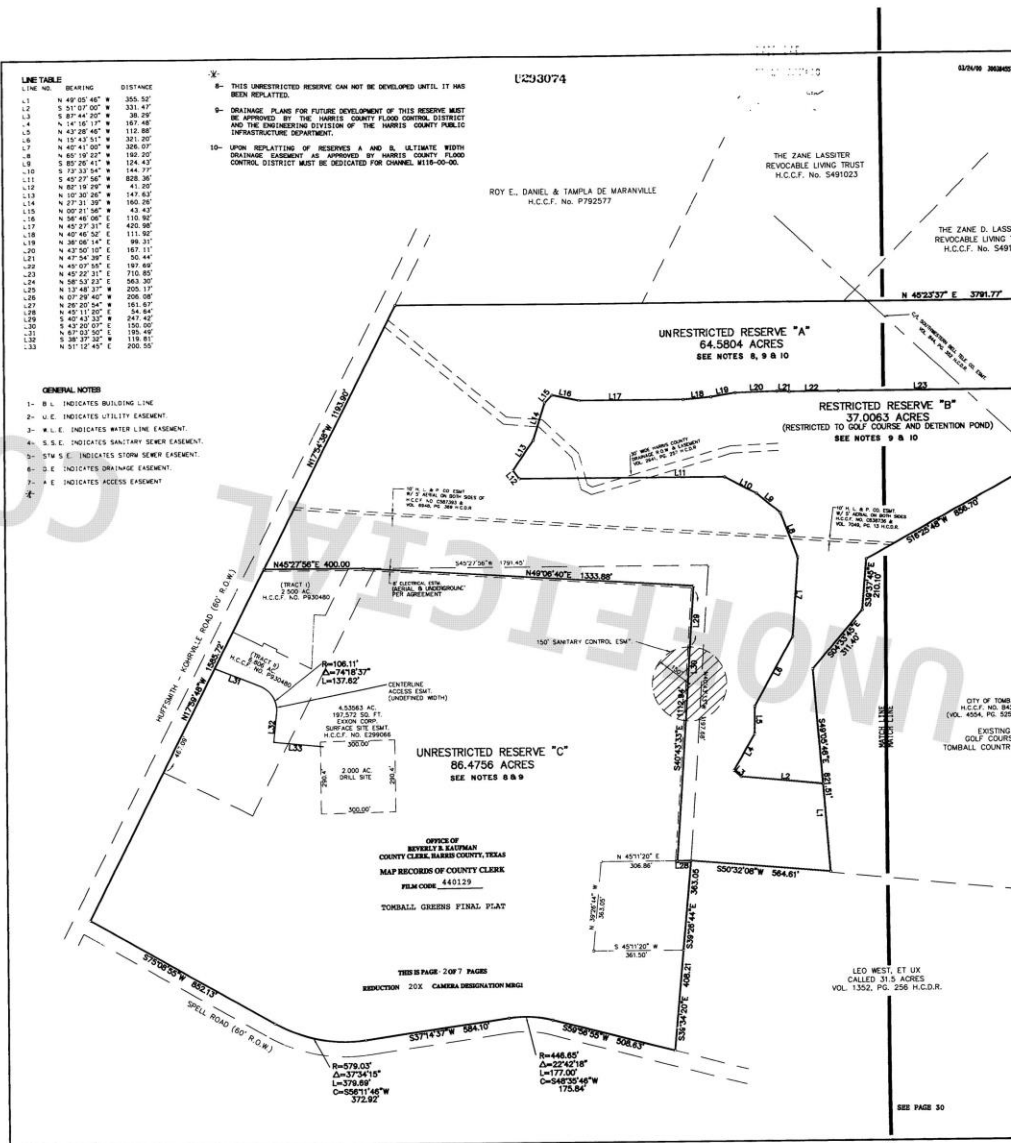
THENCE, N 75°08'55" E ALONG THE NORTHERLY LINE OF SAID 5.000 ACRE TRACT, AT A DISTANCE OF 383.70 FEET PASSING A 5/8 INCH IRON ROD WITH CAP FOUND FOR REFERENCE AND CONTINUING ALONG SAID LINE FOR A TOTAL DISTANCE OF 388.70 FEET TO A 5/8 INCH IRON ROD WITH CAP STAMPED "PICKERING 5879" SET MARKING THE NORTHEASTERLY CORNER OF THE HEREIN DESCRIBED TRACT;

THENCE, S 17°59'48" E-350.00 FEET TO A 5/8 INCH IRON ROD WITH CAP STAMPED "PICKERING 5879" SET IN THE NORTHERLY RIGHT-OF-WAY LINE OF AFORESAID SPELL ROAD AND MARKING THE SOUTHEASTERLY CORNER OF THE HEREIN DESCRIBED TRACT;

THENCE, S 75°08'55" W, ALONG THE NORTHERLY RIGHT-OF-WAY LINE OF SAID SPELL ROAD AND THE SOUTHERLY LINE OF AFORESAID UNRESTRICTED RESERVE "C", AT A DISTANCE OF 5.00 FEET PASSING A 5/8 INCH IRON ROD WITH CAP FOUND FOR REFERENCE AND CONTINUING ALONG SAID LINE A TOTAL DISTANCE OF 388.70 FEET TO THE POINT OF BEGINNING AND CONTAINING 3.119 ACRES (135,840 SQUARE FEET) OF LAND, MORE OR LESS.

ROGER D. PICKERING, R.P.L.S.
TEXAS REGISTRATION NO. 5879





THE STATE OF TEXAS
COUNTY OF HARRIS

WE, T.C.C. DEVELOPMENT, INC., ACTING BY AND THROUGH DEAN L. FENTON, VICE PRESIDENT; TOMMALL COUNTRY CLUB, INC., ACTING BY AND THROUGH JOHN PEMBERTON, PRESIDENT; AND JACK N. WARREN, OWNERS, OF THE PROPERTY SUBDIVIDED IN THE ABOVE AND FOREGOING MAP OF TOMMALL GREENS DO HEREBY MAKE SUBDIVISION FOR SAID PROPERTY FOR AND ON BEHALF OF T.C.C. DEVELOPMENT, INC., TOMMALL COUNTRY CLUB, INC., AND JACK N. WARREN, ACCORDING TO THE LINES, STREETS, ALLEYS, PARKS, AND EASEMENTS THEREIN SHOWN, AND DESIGNATE SAID SUBDIVISION AS SUBDIVISION OF 188.0823 ACRES IN THE ELIZABETH SMITH SURVEY, A-70, AN ADDITION TO THE CITY OF TOMMALL, HARRIS COUNTY, TEXAS, AND ON BEHALF OF SAID T.C.C. DEVELOPMENT, INC., TOMMALL COUNTRY CLUB, INC., AND JACK N. WARREN, DEDICATE TO THE PUBLIC USE, AS SUCH THE STREETS, ALLEYS, PARKS, AND EASEMENTS SHOWN THEREON FOREVER EXCEPT WHERE NOTED ON THE MAP FOR PRIVATE STREETS; AND WE DO HEREBY WAIVE ANY CLAIMS FOR DAMAGES OCCASIONED BY THE ESTABLISHING OF GRADES AS APPROVED FOR THE STREETS AND ALLEYS DEDICATED, OR OCCASIONED BY THE ALTERNATION OF THE SURFACE OF ANY PORTION OF STREETS OR ALLEYS TO CONFORM TO SUCH GRADES, AND DO HEREBY BIND OURSELVES, OUR SUCCESSORS AND ASSIGNS TO WARRANT AND FOREVER DEFEND THE TITLE TO THE LAND SO DEDICATED.

OWNERS HAVE DEDICATED AND BY THESE PRESENTS DO DEDICATE TO THE USE OF THE PUBLIC FOR PUBLIC UTILITY PURPOSES FOREVER, UNOBSTRUCTED AERIAL EASEMENTS FIVE (5) FEET SIX (6) INCHES IN WIDTH FOR PERIMETER LOTS, SEVEN (7) FEET FOR BACK-TO-BACK LOTS FROM A PLANE SIXTEEN (16) FEET ABOVE THE GROUND LEVEL UPWARD, LOCATED ADJACENT TO ALL PUBLIC UTILITY EASEMENTS SHOWN HEREON.

WE DO HEREBY DEDICATE FOREVER TO THE PUBLIC A STRIP OF LAND TWENTY-FIVE (25) FEET WIDE ON EACH SIDE OF THE CENTER LINE OF ANY AND ALL BAYOUS, CREEKS, GULLIES, BAYINES, DRAINS, SLOUGHS, OR OTHER NATURAL DRAINAGE COURSES LOCATED IN SAID PLAT, AS EASEMENTS FOR DRAINAGE PURPOSES, GIVING THE CITY OF TOMMALL, HARRIS COUNTY OR 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.

* WITNESS OUR HAND IN HOUSTON HARRIS COUNTY, TEXAS ON THIS 11 DAY OF August 1999.

T.C.C. DEVELOPMENT, INC. TOMMALL COUNTRY CLUB, INC.

BY: Dean L. Fenton DEAN L. FENTON
VICE PRESIDENT PRESIDENT

WITNESS MY HAND IN HOUSTON HARRIS COUNTY, TEXAS ON THIS 11 DAY OF August 1999.

BY: Jack N. Warren JACK N. WARREN

STATE OF TEXAS
COUNTY OF HARRIS

THIS INSTRUMENT WAS ACKNOWLEDGED BEFORE ME ON THE 11th DAY OF August 1999, BY DEAN L. FENTON, VICE PRESIDENT OF T.C.C. DEVELOPMENT, INC., AND IN THE CAPACITIES THEREIN STATED.

NOTARY PUBLIC, STATE OF TEXAS
MY COMMISSION EXPIRES: 3/1/02

STATE OF TEXAS
COUNTY OF HARRIS

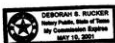
THIS INSTRUMENT WAS ACKNOWLEDGED BEFORE ME ON THE 11th DAY OF August 1999, BY JOHN PEMBERTON, PRESIDENT OF TOMMALL COUNTRY CLUB, INC., AND IN THE CAPACITIES THEREIN STATED.

NOTARY PUBLIC, STATE OF TEXAS
MY COMMISSION EXPIRES: 11/15/01

STATE OF TEXAS
COUNTY OF HARRIS

THIS INSTRUMENT WAS ACKNOWLEDGED BEFORE ME ON THE 11 DAY OF August 1999 BY JACK N. WARREN AND IN THE CAPACITIES THEREIN STATED.

NOTARY PUBLIC, STATE OF TEXAS
MY COMMISSION EXPIRES: 06-03-2001



OFFICE OF
COUNTY CLERK, HARRIS COUNTY, TEXAS
MAP RECORDS OF COUNTY CLERK
FILM CODE: 440132

TOMMALL GREENS FINAL PLAT

WE, THE CITY MANAGER AND CITY ENGINEER FOR THE CITY OF TOMMALL, DO HEREBY CERTIFY THAT THE PLAT OF THIS SUBDIVISION COMPLIES WITH THE CITY OF TOMMALL SUBDIVISION ORDINANCE.

BY: Warren R. Driver WARREN R. DRIVER
CITY MANAGER
BY: R. L. Johnson, P.E. R. L. JOHNSON, P.E.
CITY ENGINEER

THIS IS TO CERTIFY THAT THE CITY PLANNING COMMISSION OF THE CITY OF TOMMALL, TEXAS HAS APPROVED THIS PLAT AND SUBDIVISION OF SUBDIVISION OF TOMMALL GREENS IN CONFORMANCE WITH THE LAWS OF THE STATE OF TEXAS AND THE ORDINANCES OF THE CITY OF TOMMALL AS SHOWN HEREON AND AUTHORIZED THE RECORDING OF THIS PLAT THIS 11 DAY OF August 1999.

BY: Jeanne English-Janisch JEANNE ENGLISH-JANISCH
CHAIRMAN
BY: Alan Cox ALAN COX
VICE CHAIRMAN

APPROVED BY THE COMMISSIONERS' COURT OF HARRIS COUNTY, TEXAS, THIS 11 DAY OF August 2000.

BY: El Franco Lee EL FRANCO LEE
COMMISSIONER, PRECINCT 1
BY: John Lortens JOHN LORTENS
COMMISSIONER, PRECINCT 2

BY: Robert Eckels ROBERT ECKELS
COUNTY JUDGE
BY: Steve Madock STEVE MADOCK
COMMISSIONER, PRECINCT 3

BY: John E. Enos JOHN E. ENOS
COMMISSIONER, PRECINCT 4

I, BEVERLY B. KAUFMAN, CLERK OF THE COUNTY COURT OF HARRIS COUNTY, DO HEREBY CERTIFY THAT THE WITHIN INSTRUMENT WITH ITS CERTIFICATE OF AUTHENTICATION WAS FILED FOR REGISTRATION IN MY OFFICE ON 09-08-24-2000 AT 10 O'CLOCK A.M. AND DULY RECORDED ON 09-08-24-2000 AT 10 O'CLOCK A.M. AND IN FILM CODE NO. 440132 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.

BY: Beverly B. Kaufman BEVERLY B. KAUFMAN
CLERK OF THE COUNTY COURT OF HARRIS COUNTY, TEXAS

BY: Debra B. Matos DEBRA B. MATOS
DEPUTY CLERK

I, ARTHUR L. STONEY, JR., COUNTY ENGINEER OF HARRIS COUNTY, DO HEREBY CERTIFY THAT THE PLAT OF THIS SUBDIVISION COMPLIES WITH ALL OF THE EXISTING RULES AND REGULATIONS OF THIS OFFICE AS ADOPTED BY THE HARRIS COUNTY COMMISSIONERS' COURT; AND FURTHER, THAT IT COMPLES OR WILL COMPLY WITH ALL OF THE LAWS INCLUDED IN THE HARRIS COUNTY ROAD LAW, ALSO INCLUDING SECTION 31-C AS AMENDED BY CHAPTER 814, ACTS OF 1973, 63rd LEGISLATURE.

BY: Arthur L. Stoney, Jr. ARTHUR L. STONEY, JR.
COUNTY ENGINEER

I, ARTHUR L. STONEY, JR., EXECUTIVE DIRECTOR OF HARRIS COUNTY FLOOD CONTROL DISTRICT, HARRIS COUNTY, TEXAS, DO HEREBY CERTIFY THAT THE PLAT OF THIS SUBDIVISION COMPLIES WITH REQUIREMENTS FOR INTERNAL SUBDIVISION DRAINAGE AS ADOPTED BY COMMISSIONERS' COURT; HOWEVER, NO CERTIFICATION IS HEREBY GIVEN AS TO THE EFFECT OF DRAINAGE FROM THIS SUBDIVISION ON THE INTERCEPTING DRAINAGE ARTERY OR PARENT STREAM OR ON ANY OTHER AREA OR SUBDIVISION WITHIN THE WATERSHED.

BY: Arthur L. Stoney, Jr. ARTHUR L. STONEY, JR.
EXECUTIVE DIRECTOR

THIS IS TO CERTIFY THAT I, SURVEYOR OF THE STATE SUBDIVISION FROM AN AD BLOCK CORNERS, ANGLE POIN MARKED WITH IRON RODS 3/4 LENGTH, AND THAT THIS PLAT BY ME.

BY: Donald E. Mader DONALD E. MADER, JR.
TEXAS REGISTRATION NO. 34

WE, FIRST BANK TEXAS, N.A. THE PROPERTY DESCRIBED 188.0823 ACRES, SAID I RECORD IN THE CLERK'S FI HARRIS COUNTY, TEXAS, DO INTEREST IN SAID FROM PLAT AND THE DEDICATIONS PLAT AND WE HEREBY CONF I SAID LIEN AND HAVE NOT A

FIRST BANK TEXAS, N.A.

BY: Al Long AL LONG
VICE PRESIDENT

STATE OF TEXAS
COUNTY OF HARRIS

THIS INSTRUMENT WAS ACKN BY August 1999 BY AL C N.A. AND IN THE CAPACIT

NOTARY PUBLIC, STATE OF
MY COMMISSION EXPIRES: 12

FURTHER, WE DO HEREBY CO PROPERTY WITHIN THE BOUND DRAINAGE EASEMENT, DITCH, SHALL HEREBY BE RESTRICTE EASEMENTS CLEAR OF FENC OBSTRUCTIONS TO THE OPEN FACILITY AND THAT SUCH AB TO DRAIN DIRECTLY INTO THE APPROVED DRAINAGE STRUCTURE

FURTHER OWNERS CERTIFY AND OR WILL COMPLY WITH THE EX 31-C AS AMENDED BY CHAPTER AND ALL OTHER REGULATIONS COUNTY ENGINEER AND ADOP HARRIS COUNTY.

SEE PAGE 31

Page 18 of 19

City Council Meeting

Agenda Item

Data Sheet

Meeting Date: January 18, 2021

Topic:

Approve Resolution No. 2021-05, a Resolution Declaring the Intention of the City of Tomball, Texas, to Institute Proceedings to Annex Certain Territory; Describing Such Territory; Setting the Date, Time, and Place for Public Hearing at which all Interested Parties shall have an Opportunity to be heard; Providing for Publication of Notice of Such Public Hearing; and Directing Preparation of a Municipal Service Plan for the Territory Proposed to be Annexed (*Being a Tract or Parcel Containing 6.5681 Acres of Land known as Tracts 1 & 2 out of that Certain Called 40.1148 Acre Tract of Land Situated in the John M. Hooper Survey, A-375 In Harris County, Texas, Said 40.1148 Acre Tract being that Same Tract of Land as Described in a Deed Filed for Record under Harris County Clerk's File No. F41707.2 (13810 Windy Meadow Rd, HCAD 04304100000055)*)

Background:

Following the passage of HB 347, Chapter 43, Subchapter C-3, of the Local Government Code now requires a single public hearing to annex an area if petitioned by the landowner. The first reading of the ordinance to annex the area may immediately follow the public hearing.

Approval of Resolution No. 2021-05 will begin the annexation process for 13810 Windy Meadow Road and set the public hearing for February 15, 2021.

Written notice will be provided to the area school districts and public entities, as required and proper publication will be made in the official newspaper and the City's website.

The first reading of the Ordinance will follow the public hearing; the second reading of the ordinance will be presented to Council at the regular Council meeting on March 1, 2021.

Origination: Paul Hicks, ABH Enterprises

Recommendation:

Approve Resolution No. 2021-05, setting the public hearing date for February 15, 2021

Party(ies) responsible for placing this item on agenda: Doris Speer, City Secretary

FUNDING (IF APPLICABLE)

Are funds specifically designated in the current budget for the full amount required for this purpose?

Yes: _____ No: _____ If yes, specify Account Number: # _____

If no, funds will be transferred from account # _____ To account # _____

Signed	Tracylynn Garcia	01/13/2021	Approved by	
	Staff Member	Date	City Manager	Date

RESOLUTION NO. 2021-05

A RESOLUTION DECLARING THE INTENTION OF THE CITY OF TOMBALL, TEXAS, TO INSTITUTE PROCEEDINGS TO ANNEX CERTAIN TERRITORY; DESCRIBING SUCH TERRITORY; SETTING THE DATE, TIME, AND PLACE FOR PUBLIC HEARING AT WHICH ALL INTERESTED PARTIES SHALL HAVE AN OPPORTUNITY TO BE HEARD; PROVIDING FOR PUBLICATION OF NOTICE OF SUCH PUBLIC HEARING; AND DIRECTING PREPARATION OF A MUNICIPAL SERVICE PLAN FOR THE TERRITORY PROPOSED TO BE ANNEXED (*BEING A TRACT OR PARCEL CONTAINING 6.5681 ACRES OF LAND KNOWN AS TRACTs 1 & 2 OUT OF THAT CERTAIN CALL 40.1148 ACRE TRACT OF LAND SITUATED IN THE JOHN M. HOOPER SURVEY, A-375 IN HARRIS COUNTY, TEXAS, SAID 40.1148 ACRE TRACT BEING THAT SAME TRACT OF LAND AS DESCRIBED IN A DEED FILED FOR RECORD UNDER HARRIS COUNTY CLERK'S FILE NO. F41707.2 (13810 WINDY MEADOW RD HCAD 04304100000055)*)

* * * * *

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

Section 1. The City Council of the City of Tomball hereby declares its intention to institute proceedings to annex to the City the territory described in Exhibit "A" attached hereto and made a part hereof by the passage of an ordinance of annexation extending the general corporate limits of the City of Tomball for all purposes to include such territory.

Section 2. The City Council of the City of Tomball hereby calls a public hearing at which all interested persons shall have the right and opportunity to appear and be heard upon such proposal to annex the territory described above. No suitable location is available for a public hearing to be held on the property proposed for annexation. The public hearing shall be held in the City Council Chambers, 401 Market Street, City of Tomball, Texas, **during a Regular Council Meeting at 6:00 o'clock (6:00 p.m.), on February 15, 2021.** The annexation proceeding, of which notice of intention to annex is given by this Resolution, subsequent to such public hearing.

Section 3. The City Secretary of the City of Tomball is hereby directed to cause notice of such public hearing to be given by publication in a newspaper having general circulation within the City of Tomball and within the territory proposed to be annexed, the publication of notice of public hearing to be made at least once in such newspaper not more than twenty (20) days nor less than ten (10) days prior to the day of that public hearing.

Section 4. The City Engineer is hereby directed to cause to be prepared a service plan that provides for the extension of municipal services to the territory that is proposed to be annexed. The proposed service plan shall be made available for public inspection and shall be explained to the inhabitants of the territory at the public hearing called herein. Such service plan shall be prepared in accordance with the provisions of Chapter 43 of the TEXAS LOCAL GOVERNMENT CODE.

PASSED, APPROVED, AND RESOLVED this 18th day of January 2021.

GRETCHEN FAGAN, Mayor
City of Tomball

ATTEST:

Doris Speer, City Secretary
City of Tomball

Exhibit "A" – Page 1

SURVEYING COMPANY

12345 Jones Road, Suite 270
Houston, TX 77070
281-955-2772 • Fax 281-955-6678
www.ejcsurveying.com • eic@ejcsurveying.com

Firm No. 100334-00

Tract 1

All that certain tract or parcel containing 6.4955 acres of land known as Tract 1 out of that certain call 40.1148 acre tract of land situated in the John M. Hooper Survey, A-375 in Harris County, Texas, said 40.1148 acre tract being that same tract of land as described in a deed filed for record under Harris County Clerk's File No. F417072, said Tract 1 being more particularly described by metes and bounds as follows:

BEGINNING at a 5/8" iron rod with EIC cap (set) in the South right-of-way line of Alice Road, (60.00 feet in width), and the North line of said 40.1148 acre tract of land marking the Northeast corner of Tract 42 in Alice Acres, (unrecorded), as described in a deed filed for record under Harris County Clerk's File No. N225400 and the Northerly-Northwest corner and POINT OF BEGINNING of the herein described Tract 1;

THENCE N 87°38'44" E, a distance of 37.97 feet along the South right-of-way line of said Alice Road and the North line of said 40.1148 acre tract of land to a 5/8" iron rod (found) marking the intersection of the South right-of-way line of said Alice Road with the Southwest right-of-way line of State Highway 249 Southbound Feeder, (variable width), as described in instruments filed for record under Harris County Clerk's File No's R891794, R891795, X285321, Y393097 and 20070057608, same point marking an interior corner of the herein described Tract 1;

THENCE S 04°46'39" E, a distance of 30.09 feet along said Alice Road to a 5/8" iron rod with EIC cap (set) marking an interior corner of the herein described Tract 1;

THENCE N 87°34'54" E, a distance of 111.73 feet along said Alice Road to a 5/8" iron rod with EIC cap (set) at the Westerly end of a cut-back corner in the Southwest right-of-way line of said State Highway 249 Southbound Feeder marking the Northerly-Northeast corner of the herein described Tract 1;

THENCE S 61°02'40" E, a distance of 50.71 feet along said cut-back corner to a 3/4" iron rod (found) in the Southwest right-of-way line of said State Highway 249 Southbound Feeder marking the Easterly-Northeast corner of the herein described Tract 1;

THENCE S 26°14'09" E, a distance of 559.61 feet along the Southwest right-of-way line of said State Highway 249 Southbound Feeder to a 5/8" iron rod with EIC cap (set) marking the intersection of the West right-of-way line of Sarah Road, (60.00 feet in width, unimproved), as described in an instrument filed for record under Harris County Clerk's File No. J492760 with the Southwest right-of-way line of said State Highway 249 Southbound Feeder marking an interior corner of the herein described Tract 1;

THENCE S 02°19'40" E, a distance of 200.05 feet along the West right-of-way line of said Sarah Road to a 5/8" iron rod with EIC cap (set) marking an point where said Sarah Road turns Westerly, same point marking the Southeast corner of the herein described Tract 1;

THENCE S 87°40'19" W, a distance of 456.12 feet along the North right-of-way line of said Sarah Road to a 5/8" iron rod with EIC cap (set) in the East line of Tract L, a call 15,045 square foot tract of land as described in a deed filed for record under Harris County Clerk's File No. 20060199244 marking the Southerly-Southwest corner of the herein described Tract 1;

THENCE N 02°19'41" W, a distance of 110.00 feet along the East line of said Tract L to a point for corner under a debris pile marking the Northeast corner of said Tract 1 and an interior corner of the herein described Tract 1;

THENCE S 87°40'19" W, along the North line of said Tract L, passing at 88.50 feet the Northwest corner of said Tract L and the Northeast corner of Tract M, a call 15,000 square foot tract of land as described in a deed filed for record under Harris County Clerk's File No. 20060199244, a total distance of 177.68 feet to a p.k. nail in asphalt (set) in the centerline of the East end of Windy Meadow Road, (60.00 feet in width), same point marking the Northeast corner of Tract 14 in said Alice Acres as described in a deed filed for record under Harris County Clerk's File No. 20120190138, the Southeast corner of Tract 15 in said Alice Acres as described in a deed filed for record under Harris County Clerk's File No. K156930 and the Westerly-Southwest corner of the herein described Tract 1;

THENCE N 02°57'38" W, along the East line of said Tract 15, passing at 30.00 feet the North right-of-way line of said Windy meadow Road, a total distance of 170.00 feet to a 5/8" iron rod with EIC cap (set) marking the Northeast corner of said Tract 15, the Southeast corner of Tract 38 in said Alice Acres as described in a deed filed for record under Harris County Clerk's File No. R323731, the Southwest corner of Tract 39 in said Alice Acres as described in a deed filed for record under Harris County Clerk's File No. 20120190136 and the Westerly-Northwest corner of the herein described Tract 1;

THENCE N 89°11'40" E, a distance of 150.00 feet along the South line of said Tract 39 to a 5/8" iron rod (found) for angle point marking the Southeast corner of said Tract 39 and an interior corner of the herein described Tract 1;

Page 1 of 2

Land Boundary / Topographic Surveying
A Division of Everything in Christ Services, Inc.

Exhibit "A" – Page 2



12345 Jones Road, Suite 270
Houston, TX 77070
281-955-2772 • Fax 281-955-6678
www.eicsurveying.com • eic@eicsurveying.com
Firm No. 100334-00

THENCE N 29°15'53" E, a distance of 131.33 feet along the Easterly line of said Tract 39 to a ¾" iron rod (found) for angle point marking an interior corner of the herein described Tract 1;

THENCE N 02°57'38" W, along the East line of said Tract 39, passing at 45.02 feet a ½" iron rod (found) marking the Northeast corner of said Tract 39 and the Southeast corner of Tract 40 in said Alice Acres as described in a deed filed for record under Harris County Clerk's File No. RP-2019-121066, a total distance of 110.00 feet to a 5/8" iron rod with EIC cap (set) marking the Southwest corner of that certain call 0.0941 acre tract of land as described in a deed filed for record under Harris County Clerk's File No. RP-2019-518294 and an interior corner of the herein described Tract 1;

THENCE N 87°37'30" E, a distance of 80.00 feet to a 5/8" iron rod with EIC cap (set) marking the Southeast corner of said 0.0941 acre tract of land and an interior corner of the herein described Tract 1;

THENCE N 02°57'38" W, a distance of 70.00 feet to a 5/8" iron rod with EIC cap (set) marking the Easterly-Northeast corner of said 0.0941 acre tract of land and an interior corner of the herein described Tract 1;

THENCE S 87°37'30" W, a distance of 35.00 feet to a 5/8" iron rod with EIC cap (set) marking an interior corner of said 0.0941 acre tract of land and an interior corner of the herein described Tract 1;

THENCE N 02°57'38" W, a distance of 25.00 feet to a 5/8" iron rod with EIC cap (set) marking the Northerly-Northeast corner of said 0.0941 acre tract of land and an interior corner of the herein described Tract 1;

THENCE S 87°37'30" W, a distance of 40.00 feet to a 5/8" iron rod with EIC cap (set) marking the Northerly-Northwest corner of said 0.0941 acre tract of land and an interior corner of the herein described Tract 1;

THENCE S 02°57'38" E, a distance of 25.00 feet to a 5/8" iron rod with EIC cap (set) marking the interior corner of said 0.0941 acre tract of land and an interior corner of the herein described Tract 1;

THENCE S 87°37'30" W, a distance of 5.00 feet to a 5/8" iron rod with EIC cap (set) in the East line of Tract 41 in said Alice Acres as described in a deed filed for record under Harris County Clerk's File No. RP-2019-121066 marking the Westerly-Northwest corner of said 0.0941 acre tract of land and an interior corner of the herein described Tract 1;

THENCE N 02°57'38" W, along the East line of said Tract 41, passing at 92.52 feet the Northeast corner of said Tract 41 and the Southeast corner of said Tract 42, from this point a 1" iron pipe (found) bears N 68°39'16" E, 0.51 feet, also from this point a 5/8" iron rod (found) bears N 61°13'42" E, 0.21 feet, a total distance of 200.00 feet to the POINT OF BEGINNING and containing 6.4955 acres of land.

Surveyed on the ground February 20, 2020.

Job No. 20-67-02. (See corresponding plat)

The basis of bearing is S 26°14'09" E along the Southwest right-of-way line of State Highway 249 South Bound Feeder per RTK GPS Observation using the Leica Network, NAD 83, Texas South Central Zone 2004



Page 2 of 2

Land Boundary / Topographic Surveying
A Division of Everything in Christ Services, Inc.

Exhibit "A" – Page 3

EIC SURVEYING COMPANY

12345 Jones Road, Suite 270
Houston, TX 77070
281-955-2772 • Fax 281-955-6678
www.eicsurveying.com • eic@eicsurveying.com
Firm No. 100334-00

Tract 2

All that certain tract or parcel containing 0.0726 acres of land known as Tract 2 out of that certain call 40.1148 acre tract of land situated in the John M. Hooper Survey, A-375 in Harris County, Texas, said 40.1148 acre tract being that same tract of land as described in a deed filed for record under Harris County Clerk's File No. F417072, said Tract 2 being more particularly described by metes and bounds as follows:

COMMENCING at a 5/8" iron rod with EIC cap (set) in the South right-of-way line of Alice Road, (60.00 feet in width), and the North line of said 40.1148 acre tract of land marking the Northeast corner of Tract 42 in Alice Acres, (unrecorded), as described in a deed filed for record under Harris County Clerk's File No. N225400;

THENCE N 87°38'44" E, a distance of 37.97 feet along the South right-of-way line of said Alice Road and the North line of said 40.1148 acre tract of land to a 5/8" iron rod (found) marking the intersection of the South right-of-way line of said Alice Road with the Southwest right-of-way line of State Highway 249 Southbound Feeder, (variable width), as described in instruments filed for record under Harris County Clerk's File No's R891794, R891795, X285321, Y393097 and 20070057608;

THENCE S 04°46'39" E, a distance of 30.09 feet along said Alice Road to a 5/8" iron rod with EIC cap (set);

THENCE N 87°34'54" E, a distance of 111.73 feet along said Alice Road to a 5/8" iron rod with EIC cap (set) at the Westerly end of a cut-back corner in the Southwest right-of-way line of said State Highway 249 Southbound Feeder;

THENCE S 61°02'40" E, a distance of 50.71 feet along said cut-back corner to a 3/4" iron rod (found) in the Southwest right-of-way line of said State Highway 249 Southbound Feeder;

THENCE S 26°14'09" E, along the Southwest right-of-way line of said State Highway 249 Southbound Feeder, passing at 559.61 feet a 5/8" iron rod with EIC cap (set) marking the intersection of the West right-of-way line of Sarah Road, (60.00 feet in width, unimproved), as described in an instrument filed for record under Harris County Clerk's File No. J492760 with the Southwest right-of-way line of said State Highway 249 Southbound Feeder, a total distance of 707.66 feet to a 5/8" iron rod with EIC cap (set) marking the intersection of the East right-of-way line of Sarah Road with the Southwest right-of-way line of said State Highway 249 Southbound Feeder marking the Northerly corner and POINT OF BEGINNING of the herein described Tract 2;

THENCE continuing S 26°14'09" E, a distance of 111.40 feet along the Southwest right-of-way line of said State Highway 249 Southbound Feeder to a 5/8" iron rod with Weissner Surveying cap (found) marking the Northerly corner of that certain call 0.0066 acre tract of land as described in a deed filed for record under Harris County Clerk's File No. 20150332006 and the Easterly-Southeast corner of the herein described Tract 2;

THENCE S 30°43'05" W, a distance of 27.27 feet along the Westerly line of said 0.0066 acre tract of land to a 5/8" iron rod with Harris County cap (found) in the South line of said 40.1148 acre tract of land, the South line of said John M. Hooper Survey, the North line of the Chauncey Goodrich Survey, A-305 in said Harris County, Texas, the North line of Unrestricted Reserve "A" in Block 1 of Willow Creek Campus, Section 1 a subdivision in said Harris County, Texas according to the map or plat thereof filed for record under Film Code No. 686614 of the Harris County Map Records and the North line of North Humble Lake Road, (60.00 feet in width), marking the Southwest corner of said 0.0066 acre tract of land and the Southerly-Southeast corner of the herein described Tract 2;

THENCE S 87°40'19" W, a distance of 30.28 feet along the South line of said John M. Hooper Survey, the South line of said 40.1148 acre tract of land, the North line of said Chauncey Goodrich Survey, the North line of said Unrestricted Reserve "A" and the North line of North Humble Lake Road to a 5/8" iron rod with EIC cap (set) marking the Southeast corner of said Sarah Road and the Southwest corner of the herein described Tract 2;

THENCE N 02°19'40" W, a distance of 124.70 feet along the East right-of-way line of said Sarah Road to the POINT OF BEGINNING and containing 0.0726 acre of land.

Surveyed on the ground February 20, 2020.

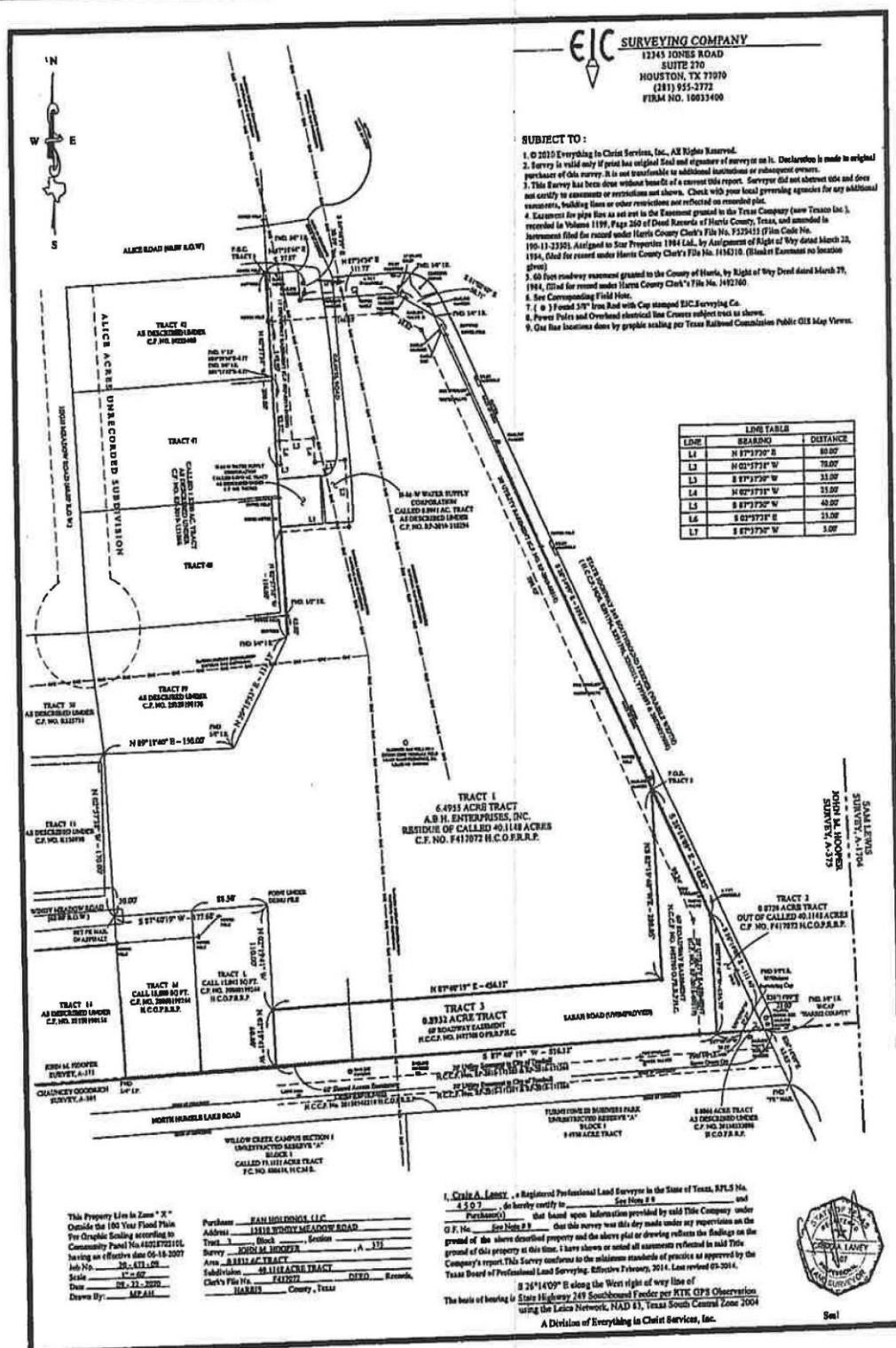
Job No. 20-67-02. (See corresponding plat)

The basis of bearing is S 26°14'09" E along the Southwest right-of-way line of State Highway 249 South Bound Feeder per RTK GPS Observation using the Leica Network, NAD 83, Texas South Central Zone 2004

Land Boundary / Topographic Surveying
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Exhibit "B" – Page 1



City Council Meeting Agenda Item Data Sheet

Meeting Date: January 18, 2021

Topic:

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

Sec. 551.072 - Deliberations Regarding the Purchase, Exchange, Lease, or Value of Real Property

Background:

Origination: David Esquivel, Assistant City Manager

Recommendation:

Party(ies) responsible for placing this item on agenda: David Esquivel, Asst. City Manager

FUNDING (IF APPLICABLE)

Are funds specifically designated in the current budget for the full amount required for this purpose?

Yes: _____ No: _____ If yes, specify Account Number: # _____

If no, funds will be transferred from account # _____ To account # _____

Signed	<u>Doris Speer</u>	<u>1-12-2021</u>	Approved by	_____
	Staff Member	Date		City Manager
				Date

City Council Meeting

Agenda Item

Data Sheet

Meeting Date: 01-18-21

Topic:

Authorize City Manager to negotiate and execute the required documents for the sale city property to Harris County for the purpose of widening Holderrieth Road as discussed in executive session.

Background:

Origination: Administration

Recommendation:

Approval

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

FUNDING (IF APPLICABLE)

Are funds specifically designated in the current budget for the full amount required for this purpose?

Yes: _____ No: _____ If yes, specify Account Number: # _____

If no, funds will be transferred from account # _____ To account # _____

Signed	<u>David Esquivel</u>	<u>01-13-21</u>	Approved by	_____
	Staff Member	Date		City Manager
				Date