

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



**Monday, March 06, 2023  
6:00 PM**

Notice is hereby given of a Regular meeting of the Tomball City Council, to be held on Monday, March 06, 2023 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.

**THE CITY COUNCIL OF THE CITY OF TOMBALL, TEXAS, WILL CONDUCT THE MEETING SCHEDULED FOR DATE, 2022, 6:00 PM, AT 401 MARKET STREET, TOMBALL, TEXAS, 77375. 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: 820 9008 3866, Passcode: 578988. 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 Craig Gilbert – Rosehill Methodist Church
- C. Pledges to U.S. and Texas Flags
- 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.. Reports and Announcements

1. Announcements

- I. March 11, 2023 – Second Saturday at the Depot – “*The Rise of Gru*” at dusk
- II. March 24-26, 2023 – **Tomball German Heritage Festival** at the Depot
- III. April 1, 2023 – Tomball Athletic Booster Club Crawfish Boil at Juergens Park
- IV. April 15, 2023 – Tomball Rails and Tails Crawfish Festival at the Depot
- V. April 21, 2023 – Tomball Rotary Fish Fry at Juergens Park
- VI. April 17-22, 2023 – Tomball Annual Spring Clean-up and Chipping Week
- VII. April 22, 2023 – Tomball Consolidated Recycling Day – Lone Star College-Tomball Campus, 30555 Tomball Parkway, South Entrance – 10:00 a.m.-2:00 p.m.
- VIII. April 24 through May 2, 2023 – Early Voting for the May 6, 2023 General Election, at City Hall, 401 Market Street
- IX. May 4, 2023 – National Day of Prayer at the Depot
- X. May 6, 2023 – Election Day at City Hall, 7:00 a.m.-7:00 p.m.

2. Reports by City staff and members of council about items of community interest on which no action will be taken:

- I. Receive an update regarding Utility Billing.

F. 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. 2023-02, 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 3.12 acres of land legally described as being portions of Lot 172, in Tomball Townsite, located at the northwest corner of S. Cherry Street and Medical Complex Drive, at 1635 S. Cherry Street, 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. 2023-03, an Ordinance of the City of Tomball, Texas, Amending Chapter 50 (Zoning) of the Tomball Code of Ordinances by Revising Its Code of Ordinance Amending Section 50-2 (Definitions), of Article I, in General and Section 50-82 (Use Regulations (Charts)), Subsection (B)(Use Charts), of Article III, District Regulations; Providing for 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 (*Establishing an “Electric Storage System” Land Use and Definition in the City’s Code of Ordinances*).
  3. Approve, on Second Reading, Resolution No. 2023-04-TEDC, a Resolution of the City Council of the City of Tomball, Texas, authorizing and approving the Project of the Tomball Economic Development Corporation, the designation of a mixed-use development in Old Town Tomball, to promote new or expanded business development, with such Project including the expenditure of funds for the purchase of land, buildings, equipment, facilities, expenditures, targeted infrastructure, and improvements related to the Project, and authorizing the Executive Director or designee to execute any and all documentation related to the Project (*Approximately 4.63 Acres, located at 401 Oxford Street [First Baptist Church], and Approximately 84,420 Sq. Ft. of Facilities*)
- G. 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 the Minutes of the February 20, 2023, Regular City Council Meeting
  2. Authorize the City Manager to execute documents necessary to participate in the Choice Partners cooperative purchasing program through the Harris County Department of Education.

3. Approve amendment to Appendix C: Approved Purchasing Cooperatives of Administrative Policy No. 9, Procurement Policy & Manual to add Choice Partners as an approved cooperative.

H. New Business

1. Discussion and Possible Action regarding Legislative Items at the 2023 Texas Legislative Session.
2. Authorize the City Manager to Execute an Interlocal Agreement between the City of Tomball and Harris County Emergency Services District No. 15 (ESD15) for Fire Protection, Fire Suppression, and Rescue Services.
3. Consideration for review and discussion of the proposed residential and commercial development on the west side of the intersection of Hufsmith Kohrville and Medical complex drive.
4. 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. 551.071 – Consultation with the City Attorney regarding a matter which the Attorney’s duty requires to be discussed in closed session
  - \* Sec. 551.072 – Deliberations regarding Real Property
  - \* Sec. 551.076 – Deliberations regarding Security Devices

I. 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 2nd day of March 2023 by 5:00 PM, and remained posted for at least 72 continuous hours preceding the scheduled time of said meeting.

Tracylynn Garcia, 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 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](http://www.ci.tomball.tx.us)

**City Council Meeting  
Agenda Item  
Data Sheet**

**Meeting Date:** March 6, 2023

**Topic:**

March 11, 2023 – Second Saturday at the Depot – “*The Rise of Gru*” at dusk

**Background:**

**Origination:**

**Recommendation:**

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

**City Council Meeting  
Agenda Item  
Data Sheet**

**Meeting Date:** March 6, 2023

**Topic:**

March 24-26, 2023 – **Tomball German Heritage Festival** at the Depot

**Background:**

**Origination:**

**Recommendation:**

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

**City Council Meeting  
Agenda Item  
Data Sheet**

**Meeting Date:** March 6, 2023

**Topic:**

April 1, 2023 – Tomball Athletic Booster Club Crawfish Boil at Juergens Park

**Background:**

**Origination:** Requested by Councilman Parr

**Recommendation:**

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

**City Council Meeting  
Agenda Item  
Data Sheet**

**Meeting Date:** March 6, 2023

**Topic:**

April 15, 2023 – Tomball Rails and Tails Crawfish Festival at the Depot

**Background:**

**Origination:** Requested by Councilman Parr

**Recommendation:**

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

**City Council Meeting  
Agenda Item  
Data Sheet**

**Meeting Date:** March 6, 2023

**Topic:**

April 21, 2023 – Tomball Rotary Fish Fry at Juergens Park

**Background:**

**Origination:** Requested by Councilman Parr

**Recommendation:**

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

Doris Speer, City Secretary

**City Council Meeting  
Agenda Item  
Data Sheet**

**Meeting Date:** March 6, 2023

**Topic:**

April 17-22, 2023 – Tomball Annual Spring Clean-up and Chipping Week

**Background:**

**Origination:** Requested by Councilman Parr

**Recommendation:**

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

# City Council Meeting Agenda Item Data Sheet

Meeting Date: March 6, 2023

**Topic:**

April 22, 2023 – Tomball Consolidated Recycling Day – Lone Star College-Tomball Campus, 30555 Tomball Parkway, South Entrance – 10:00 a.m.-2:00 p.m.

**Background:**

**Origination:** Requested by Councilman Parr

**Recommendation:**

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

# City Council Meeting Agenda Item Data Sheet

**Meeting Date:** March 6, 2023

**Topic:**

April 24 through May 2, 2023 – Early Voting for the May 6, 2023 General Election, at City Hall, 401 Market Street

**Background:**

**Origination:** Requested by Councilman Parr

**Recommendation:**

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

**City Council Meeting  
Agenda Item  
Data Sheet**

**Meeting Date:** March 6, 2023

**Topic:**

May 4, 2023 – National Day of Prayer at the Depot

**Background:**

**Origination:** Requested by Councilman Parr

**Recommendation:**

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

# City Council Meeting Agenda Item Data Sheet

Meeting Date: March 6, 2023

**Topic:**

May 6, 2023 – Election Day at City Hall, 7:00 a.m.-7:00 p.m.

**Background:**

**Origination:** Requested by Councilman Parr

**Recommendation:**

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

# City Council Meeting Agenda Item Data Sheet

Meeting Date: March 6, 2023

**Topic:**

Receive an update regarding Utility Billing.

**Background:**

City staff will present an update regarding the status of Utility Billing

**Origination:** City Manager's Office

**Recommendation:**

n/a

**Party(ies) responsible for placing this item on agenda:** Jessica Rogers, 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 Jessica Rogers Approved by \_\_\_\_\_  
Staff Member \_\_\_\_\_ Date \_\_\_\_\_ City Manager \_\_\_\_\_ Date \_\_\_\_\_

# City Council Meeting

## Agenda Item

### Data Sheet

**Meeting Date:** March 6, 2023

**Topic:**

Adopt, on Second Reading, Ordinance No. 2023-02, 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 3.12 acres of land legally described as being portions of Lot 172, in Tomball Townsite, located at the northwest corner of S. Cherry Street and Medical Complex Drive, at 1635 S. Cherry Street, 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.

**Background:**

The subject property has been within the City Limits of Tomball since at least 1907. The property has remained vacant since this time. The applicants are requesting to rezone the subject property to General Retail to allow the development of a retail shopping center and convenience store.

**Origination:** RIAA Group LLC.

**Recommendation:**

Staff Recommends Approval, Planning & Zoning Commission Approved (3 Votes Aye, 1 Vote Nay).

**Party(ies) responsible for placing this item on agenda:** Nathan Dietrich (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 Date City Manager Date

**ORDINANCE NO. 2023-02**

**AN ORDINANCE OF THE CITY OF TOMBALL, TEXAS, AMENDING CHAPTER 50 (ZONING) OF THE TOMBALL CODE OF ORDINANCES BY CHANGING THE ZONING DISTRICT BOUNDARIES AFFECTING CERTAIN PROPERTIES (EXHIBIT “A”); FROM AGRICULTURAL (AG) TO GENERAL RETAIL (GR) DISTRICT; 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.**

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**WHEREAS**, RIAA Group LLC. has requested that approximately 3.12 acres of land legally described as being portions of Lot 172, in Tomball Townsite, located at the northwest corner of S. Cherry Street and Medical Complex Drive, within the City of Tomball, Harris County, Texas (the “Property”), be rezoned; and

**WHEREAS**, at least fifteen (15) days after publication in the official newspaper of the City of the time and place of a public hearing and at least ten (10) days after written notice of that hearing was mailed to the owners of land within three 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; and

**WHEREAS**, at least fifteen (15) days after the publication in the official newspaper of the City of the time and place of a public hearing, the City Council held a public hearing on the proposed rezoning; and

**WHEREAS**, the City Council finds it to be in the best interest of the health, safety, and welfare of the citizens to approve the text amendment as contained in this ordinance;

**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 rezoning classification of the Property is hereby changed and is 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 hereby stated, 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 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 20TH DAY OF FEBRUARY 2023.

COUNCILMAN FORD	<u>AYE</u>
COUNCILMAN STOLL	<u>AYE</u>
COUNCILMAN DUNAGIN	<u>AYE</u>
COUNCILMAN TOWNSEND	<u>AYE</u>
COUNCILMAN PARR	<u>NAY</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 6TH DAY OF MARCH 2023.

COUNCILMAN FORD	_____
COUNCILMAN STOLL	_____
COUNCILMAN DUNAGIN	_____
COUNCILMAN TOWNSEND	_____
COUNCILMAN PARR	_____

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LORI KLEIN QUINN, Mayor

ATTEST:

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TRACYLYNN GARCIA, City Secretary

**EXHIBIT 'A'**

**TRACT 1:**

BEING A 1.839 ACRE TRACT SITUATED IN THE JESSE PRUETT SURVEY, ABSTRACT NO. 629, HARRIS COUNTY, TEXAS, BEING A PORTION OF THE RESIDUE OF THAT CERTAIN CALLED 7.56 ACRE TRACT DESCRIBED IN INSTRUMENT TO JANA'S DIRT, LLC, RECORDED IN CLERK'S FILE NO. 20120271296 OF THE OFFICIAL PUBLIC RECORDS OF REAL PROPERTY, HARRIS COUNTY, TEXAS (O.P.R.R.P.H.C.T.), SAID 1.839 ACRE TRACT BEING MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS:

BEGINNING AT A 1 INCH IRON PIPE WITH CAP FOUND IN THE WESTERLY RIGHT-OF-WAY OF SOUTH CHERRY STREET (80' WIDTH), FOR THE COMMON EASTERLY CORNER OF SAID RESIDUE TRACT AND A CALLED 1.2748 ACRE TRACT DESCRIBED IN INSTRUMENT TO JANA'S DIRT, LLC, RECORDED IN CLERK'S FILE NO. 20150109818, O.P.R.R.P.H.C.T., BEING THE NORTHEASTERLY CORNER OF THE HEREIN DESCRIBED 1.839 ACRE TRACT, FROM WHICH A 1 1/2 INCH PINCHED TOP PIPE FOUND FOR THE NORTHEASTERLY CORNER OF SAID 1.2748 ACRE TRACT BEARS NORTH 02°28'33" WEST, 79.89 FEET;

THENCE SOUTH 02°28'33" EAST, 176.06 FEET, WITH THE WESTERLY RIGHT-OF-WAY OF SAID SOUTH CHERRY STREET AND THE EASTERLY LINE OF SAID RESIDUE TRACT, TO A 1/2 INCH IRON ROD WITH CAP STAMPED "TPS 100834-00" SET FOR THE NORTHERLY CUTBACK CORNER AT THE NORTHWESTERLY CORNER OF THE INTERSECTION OF SAID SOUTH CHERRY STREET, WITH MEDICAL COMPLEX DRIVE (120' WIDTH), RECORDED IN CLERK'S FILE NO. 2015107119, O.P.R.R.P.H.C.T., FOR THE EASTERLY SOUTHEAST CORNER OF SAID RESIDUE TRACT AND THE HEREIN DESCRIBED 1.839 ACRE TRACT;

THENCE SOUTH 44°57'24" WEST, 33.81 FEET, WITH SAID CUTBACK AND THE SOUTHEASTERLY LINE OF SAID RESIDUE TRACT, TO A 1/2 INCH IRON ROD WITH CAP FOUND FOR THE BEGINNING OF A CURVE TO THE RIGHT, THE SOUTHERLY CUTBACK CORNER AT SAID INTERSECTION AND THE SOUTHERLY SOUTHEAST CORNER OF SAID RESIDUE TRACT AND THE HEREIN DESCRIBED 1.839 ACRE TRACT;

THENCE NORTHWESTERLY, 642.62 FEET, WITH ARC OF SAID CURVE TO THE RIGHT IN THE NORTHERLY RIGHT-OF-WAY OF SAID MEDICAL COMPLEX DRIVE, WITH THE SOUTHWESTERLY LINE OF SAID RESIDUE TRACT, HAVING A RADIUS OF 1,440.00 FEET, A CENTRAL ANGLE OF 25°34'08", AND A CHORD THAT BEARS NORTH 74°23'36" WEST, 637.30 FEET TO A 1/2 INCH IRON ROD WITH CAP STAMPED "TPS 100834-00" SET FOR THE COMMON WESTERLY CORNER OF SAID RESIDUE TRACT AND SAID 1.2748 ACRE TRACT, BEING THE NORTHWESTERLY CORNER OF THE HEREIN DESCRIBED 1.839 ACRE TRACT;

THENCE NORTH 87°25'21" EAST, 630.73 FEET, WITH THE COMMON LINE OF SAID RESIDUE TRACT AND SAID 1.2748 ACRE TRACT, TO THE PLACE OF BEGINNING;

CONTAINING A COMPUTED AREA OF 1.839 ACRES OF LAND WITHIN THIS FIELD NOTE DESCRIPTION.

**TRACT 2:**

BEING A 1.283 ACRE TRACT SITUATED IN THE JESSE PRUETT SURVEY, ABSTRACT NO. 629, HARRIS COUNTY, TEXAS, BEING ALL OF THAT CERTAIN CALLED 1.2748 ACRE TRACT DESCRIBED IN INSTRUMENT TO JANA'S DIRT, LLC, RECORDED IN CLERK'S FILE NO.

RP-2021-155506

20150109818 OF THE OFFICIAL PUBLIC RECORDS OF REAL PROPERTY, HARRIS, COUNTY, TEXAS (O.P.R.R.P.H.C.T.), SAID 1.283 ACRE TRACT BEING MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS:

BEGINNING AT A 1 INCH IRON PIPE WITH CAP FOUND IN THE WESTERLY RIGHT-OF-WAY OF SOUTH CHERRY STREET (80' WIDTH), FOR THE COMMON EASTERLY CORNER OF SAID 1.2748 ACRE TRACT AND THE RESIDUE OF A CALLED 7.56 ACRE TRACT DESCRIBED IN INSTRUMENT TO JANA'S DIRT, LLC, RECORDED IN CLERK'S FILE NO. 20120271296, O.P.R.R.P.H.C.T., BEING THE SOUTHEASTERLY CORNER OF THE HEREIN DESCRIBED 1.283 ACRE TRACT;

THENCE SOUTH 87°25'21" WEST, 630.73 FEET, WITH THE COMMON LINE OF SAID 1.2748 ACRE TRACT AND SAID RESIDUE TRACT, TO A ½ INCH IRON ROD WITH CAP STAMPED "TPS 100834-00" SET IN THE NORTHEASTERLY RIGHT-OF-WAY OF MEDICAL COMPLEX DRIVE (120' WIDTH), RECORDED IN CLERK'S FILE NO. 2015107119, O.P.R.R.P.H.C.T., FOR THE COMMON WESTERLY CORNER OF SAID 1.2748 ACRE TRACT AND SAID RESIDUE TRACT, BEING THE SOUTHWESTERLY CORNER OF THE HEREIN DESCRIBED 1.283 ACRE TRACT, FROM WHICH A 5/8 INCH IRON ROD WITH CAP FOUND FOR REFERENCE, BEARS SOUTH 89°01'05" WEST, 0.38 FEET;

THENCE NORTH 58°06'39" WEST, 145.11 FEET, WITH THE NORTHEASTERLY RIGHT-OF-WAY OF SAID MEDICAL COMPLEX DRIVE AND THE SOUTHWESTERLY LINE OF SAID 1.2748 ACRE TRACT, TO A 5/8 INCH IRON ROD WITH CAP FOUND FOR THE COMMON WESTERLY CORNER OF SAID 1.2748 ACRE TRACT AND A TRACT DESCRIBED IN INSTRUMENT TO CORRAL RUP, LLC, RECORDED IN CLERK'S FILE NO. 2018138656, O.P.R.R.P.H.C.T., BEING THE NORTHWESTERLY CORNER OF THE HEREIN DESCRIBED 1.283 ACRE TRACT;

THENCE NORTH 87°35'34" EAST, 750.51 FEET, WITH THE COMMON LINE OF SAID 1.2748 ACRE TRACT AND SAID CORRAL RUP TRACT, TO A 1 ½ INCH PINCHED TOP PIPE FOUND IN THE WESTERLY RIGHT-OF-WAY OF SAID SOUTH CHERRY STREET, FOR THE COMMON EASTERLY CORNER OF SAID 1.2748 ACRE TRACT AND SAID CORRAL RUP TRACT, BEING THE NORTHEASTERLY CORNER OF THE HEREIN DESCRIBED 1.283 ACRE TRACT;

THENCE SOUTH 02°28'33" EAST, 79.89 FEET, WITH THE WESTERLY RIGHT-OF-WAY OF SAID SOUTH CHERRY STREET AND THE EASTERLY LINE OF SAID 1.2748 ACRE TRACT, TO THE PLACE OF BEGINNING;

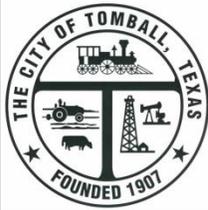
CONTAINING A COMPUTED AREA OF 1.283 ACRES OF LAND WITHIN THIS FIELD NOTE DESCRIPTION.

RP-2021-155506

COPY



Location: Northwest corner of S. Cherry Street and Medical Complex Drive at 1635 S. Cherry Street.  
Being portions of Lot 172, in Tomball Townsite, City of Tomball, Harris County, Texas



**Rezoning  
Staff Report**

Planning & Zoning Commission Public Hearing Date: February 13, 2023  
City Council Public Hearing Date: February 20, 2023

**Rezoning Case:** Z23-02  
**Property Owner(s):** RIAA Group LLC.  
**Applicant(s):** RIAA Group LLC.  
**Legal Description:** Portions of Lot 172, in Tomball Townsite  
**Location:** 1635 S. Cherry St. (Exhibit “A”)  
**Area:** 3.12 acres  
**Comp Plan Designation:** Neighborhood Commercial/Transitional Residential (Exhibit “B”)  
**Present Zoning:** Agricultural (AG) (Exhibit “C”)  
**Request:** Rezone from Agricultural (AG) to the General Retail (GR) district  
**Adjacent Zoning & Land Uses:**  
**North:** Manufactured Home (MH) & Conditional Use Permit (CUP)(SF-20)/ RV Park  
**South:** Agricultural (AG)/Vacant  
**West:** Agricultural (AG)/Vacant  
**East:** General Retail (GR)/Convenience Store & Fuel Sales

**BACKGROUND**

The subject property has been within the City Limits of Tomball since at least 1907. The property has remained vacant since this time. The applicants are requesting to rezone the subject property to General Retail to allow the development of a retail shopping center and convenience store.

**ANALYSIS**

**Description:** The subject property comprises approximately 3.12 acres, located at the northwest corner of Medical Complex Drive and South Cherry Street. The property is presently located within the Agricultural zoning district and has been within this zoning classification since the City of Tomball adopted zoning in 2008. Immediately north of the subject property is an existing recreational vehicle park which is permitted by virtue of a Conditional Use Permit (CUP1) in the existing Manufactured Home Park zoning district. East of the subject site is an existing fuel station and convenience store which has been in existence since 2008, this use is located in the General Retail district. The southeast corner of South Cherry Street and Medical Complex Drive is presently occupied by an existing office building, which has been in existence since 2002, and is located in the Office zoning district. The properties immediately west of the subject property is

currently vacant and zoned Agricultural. In 2022, the property south of the subject property at the southwest corner of S. Cherry Street and Medical Complex Drive requested to rezone from the Agricultural to the Commercial (C) district in 2022. This request was ultimately denied by the City Council and has remained vacant.

**Comprehensive Plan Recommendation:** The Future Land Use Plan adopted with the Comprehensive Plan in 2019 currently splits the subject property into two planned land use categories, “Transitional Residential” & “Neighborhood Commercial”. The portion of the subject property which falls within “Transitional Residential” is approximately 70,000 square feet in area. This transitional residential land use category calls for multi-family, duplex, and single-family residential uses. When considering this proposed transitional residential land use, the subject property will not allow the establishment of multi-family development due to its size (multi-family requires 10-acres minimum). In addition to the size and irregular shape, the property presents challenges to developing single-family or duplex residential given restrictions pertaining to direct access from residential lots to major arterial streets (Medical Complex). This restriction would likely require the dedication and creation of a new street for each lot to front on, said street dedication would further reduce the developable area and likely exacerbate the irregular shape of the parcels. Taking this information into consideration, the entirety of the subject property is likely best suited for the neighborhood commercial land use category.

The Neighborhood Commercial land use category is intended for commercial uses that are developed with the appropriate context, scale and design to complement residential development. These areas are intended to be accessible by both vehicles and pedestrians.

According to the Comprehensive Plan, land uses that are appropriate in these neighborhood commercial land use areas include restaurants, retail, professional services, clinics, and offices. Appropriate secondary uses may include places of assembly or event venues, local utility services, and government facilities.

The Comprehensive Plan recommends the zoning districts of – General Retail (GR), Office (O), or Planned Developments (PD) for the Neighborhood Commercial land use category.

The Comprehensive Plan states that when making decisions regarding the neighborhood commercial land use category the city should consider that neighborhood commercial development should be located adjacent to intersections of collector streets or streets of greater functional classification.

**Staff Review Comments:**

The request to rezone to General Retail is in direct alignment with the Comprehensive Plans objective of establishing neighborhood commercial land uses at the northwest corner of the intersection of S. Cherry Street and Medical Complex Drive. The land uses that would result from this zone change would be in character with surrounding land uses at this intersection. Furthermore, the subject site is situated at the intersection of two arterial streets. Locations such as this are customarily considered appropriate for commercial land uses as these roadways provide convenient access and exposure often considered necessary for commercial success.

## **PUBLIC COMMENT**

A Notice of Public Hearing was published in the paper and property owners within 300 feet of the project site were mailed notification of this proposal on February 2, 2023. Any public comment forms will be provided in the Planning & Zoning Commission and City Council packets or during the public hearing.

## **RECOMMENDATION**

Based on the findings outlined in the analysis section of this staff report, City staff recommends approval of Zoning Case Z23-02.

## **EXHIBITS**

- A. Aerial Location Map
- B. Future Land Use Map
- C. Zoning Map
- D. Site Photo
- E. Rezoning Application

Exhibit "A"  
Aerial Location Map



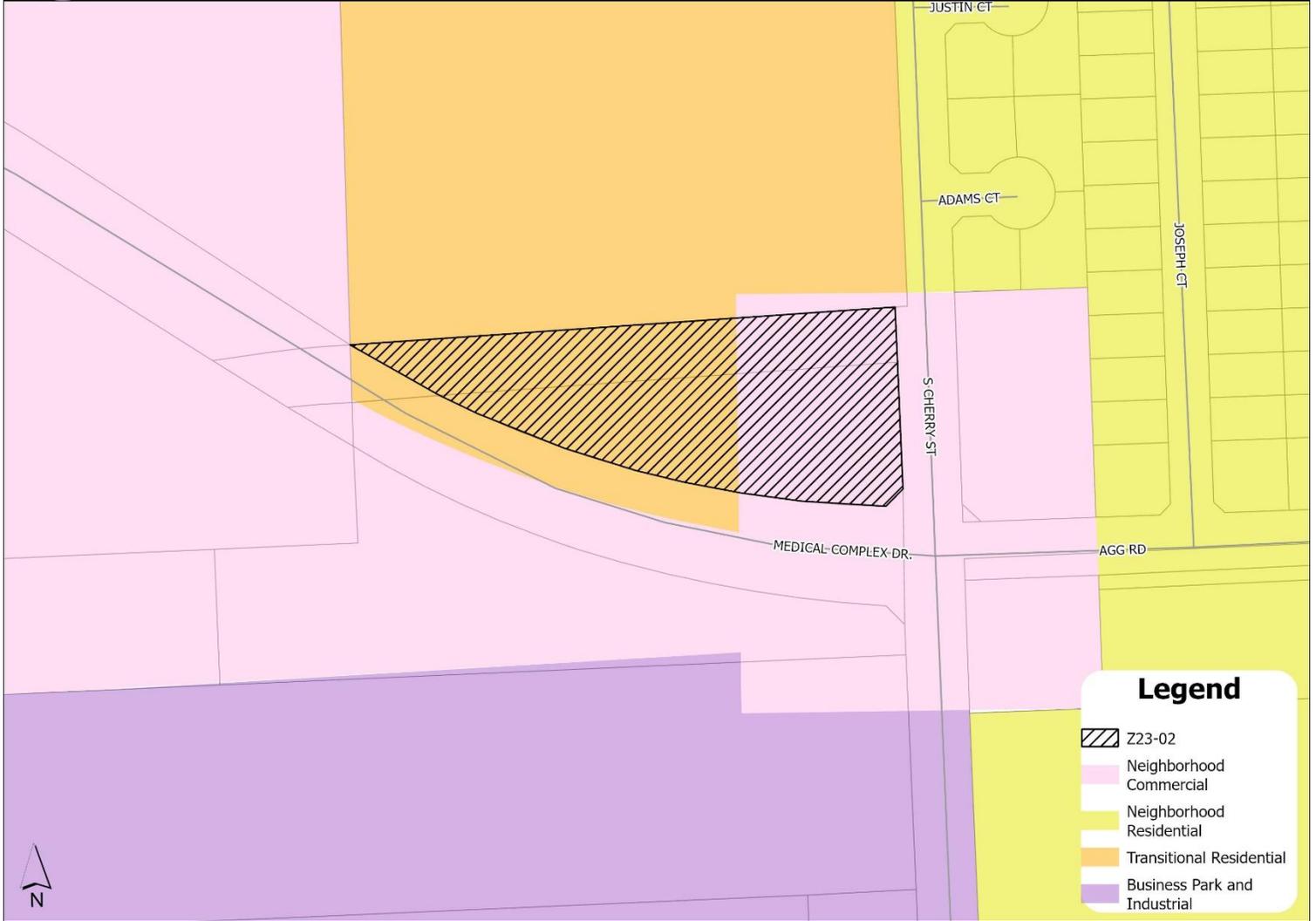
# Location Map



Exhibit "B"  
Future Land Use Plan



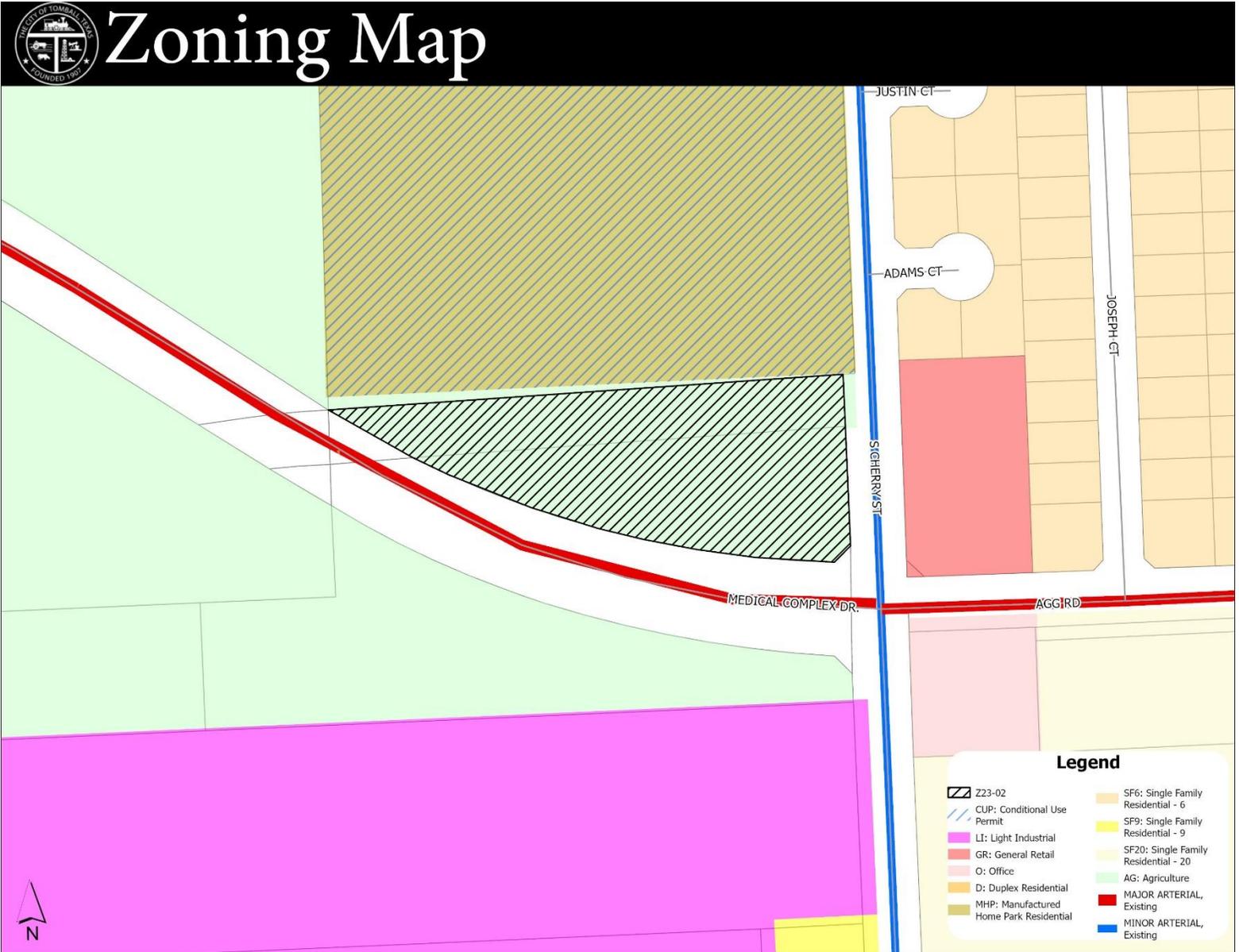
# Future Land Use Map



### Legend

- Z23-02
- Neighborhood Commercial
- Neighborhood Residential
- Transitional Residential
- Business Park and Industrial

Exhibit "C"  
Zoning Map



**Exhibit "D"**  
**Site Photo(s)**

**Subject Site**



**Neighbor (West)**



## Neighbor (East)



## Neighbor (North)



# Neighbor (South)



**Exhibit "E"**  
**Rezoning Application**

Revised: 4/13/2020



**APPLICATION FOR RE-ZONING**

Community Development Department  
Planning Division

**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: RIAA GROUP, LLC. Title: LLC  
Mailing Address: 4814 ZACARY LANE City: SUIGAR LAND State: TEXAS  
Zip: 77479 Contact: ARIF MANKNOJIYA  
Phone: (832) 620-3514 Email: Riaagroupllc@gmail.com

**Owner**

Name: ARIF MANKNOJIYA Title: OWNER  
Mailing Address: 4814 ZACARY LANE City: SUIGAR LAND State: TEXAS  
Zip: 77479 Contact: \_\_\_\_\_  
Phone: (832) 620-3514 Email: Riaagroupllc@gmail.com

**Engineer/Surveyor (if applicable)**

Name: Catalyst Technical Group, inc. Title: Engineer  
Mailing Address: 440 Cobia dr. suite 1503 City: KATY State: TX  
Zip: 77494 Contact: RAFIQ  
Phone: (\_\_\_\_) 832-913-1888 Fax: (\_\_\_\_) \_\_\_\_\_ Email: ali@texasctgroup.com

**Description of Proposed Project:** \_\_\_\_\_

Physical Location of Property: 1635 CHERRY ST TOMBALL TX 77375.

[General Location – approximate distance to nearest existing street corner]

Legal Description of Property: TR 172A-2 TOMBALL OUTLOTS

[Survey/Abstract No. and Tracts; or platted Subdivision Name with Lots/Block]

Current Zoning District: Agricultural (AG)

Current Use of Property: NONE (EMPTY LOT)

Proposed Zoning District: General Retail (GR)

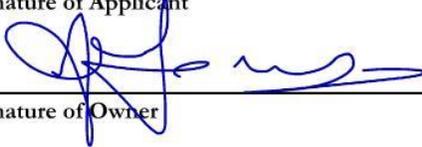
Proposed Use of Property: RETAIL PLAZA AND C-STORE

HCAD Identification Number: 0352860002419 , 0352860002420 Acreage: 3.122

City of Tomball, Texas 501 James Street, Tomball, Texas 77375 Phone: 281-290-1405 [www.tomballtx.gov](http://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.

<input checked="" type="checkbox"/>		12-16-2022
	Signature of Applicant	Date
<input checked="" type="checkbox"/>		12-16-2022
	Signature of Owner	Date

## **Submittal Requirements**

The following summary is provided for the applicant's benefit. However, fulfilling the requirements of this summary checklist does not relieve the applicant from the responsibility of meeting the regulations in the Zoning Ordinance, subdivision regulations, and other development related ordinances of the City of Tomball.

**Applications must be received by the City of Tomball at least 40 calendar days prior to the City Planning and Zoning Commission hearing date.**

- Completed application form**
- \*Copy of Recorded/Final Plat**
- Check for \$400.00 + \$10.00 per acre (Non-Refundable)**
- Letter stating reason for request and issues relating to request**
- Conceptual Site Plan (if applicable)**
- Metes & Bounds of property**
- Payment of all indebtedness attributed to subject property must be paid with application or an arrangement in accordance with Section 50-36(a)(3) of the Code of Ordinances as cited below:**

(No person who owes delinquent taxes, delinquent paving assessments, or any other fees, delinquent debts or obligations or is otherwise indebted to the City of Tomball, and which are directly attributed to a piece of property shall be allowed to submit any application for any type of rezoning, building permit, or plan review until the taxes, assessments, debts, or obligations directly attributable to said property and owed by the owner or previous owner thereof to the City of Tomball shall have been first fully discharged by payment, or until an arrangement satisfactory to the City has been made for the payment of such debts or obligations. It shall be the applicant's responsibility to provide evidence of proof that all taxes, fees, etc.. have been paid, or that other arrangements satisfactory to the City have been made for payment of said taxes, fees, etc.)

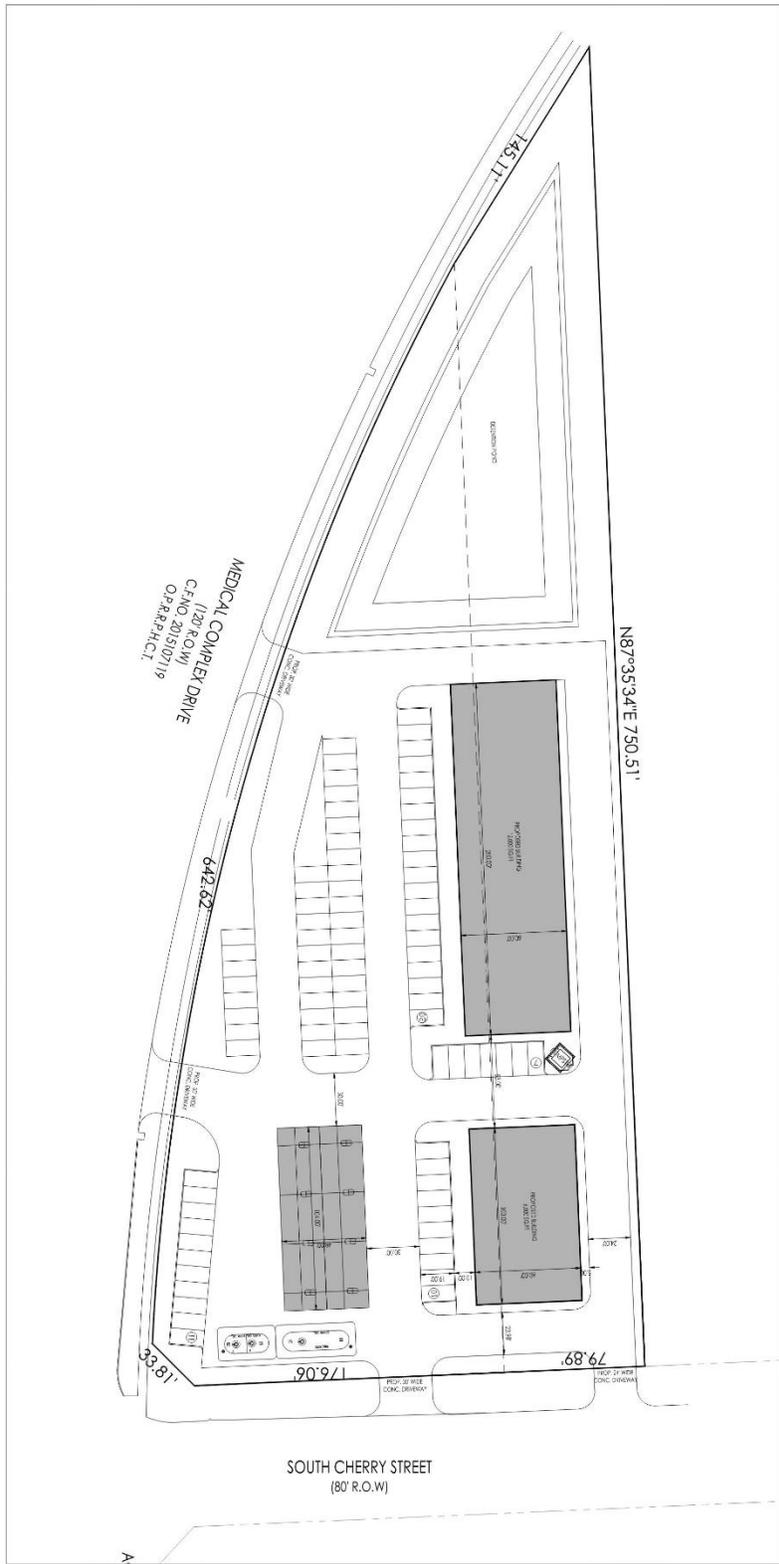
**The City's staff may require other information and data for specific required plans. Approval of a required plan may establish conditions for construction based upon such information.**

**\*Legal Lot Information:** If property is not platted, a plat will be required to be filed with the Community Development Department unless evidence of a legal lot is provided. To be an unplatted legal lot, the applicant is required to demonstrate that the tract existed in the same shape and form (same metes and bounds description) as it currently is described prior to August 15, 1983, the date the City adopted a subdivision ordinance.

## Application Process

1. The official filing date is the date the application and fee are received by the City.
2. The City will review the application for completeness and will notify the applicant in writing within 10 days if the application is deemed incomplete.
3. Property owners within two-hundred (200) feet of the project site will be notified by letter within 10 calendar days prior to the public hearing date and legal notice will appear in the official newspaper of the City before the eighth calendar day prior to the date of the hearing.
4. A public hearing will be held by the Planning and Zoning Commission at 6:00 p.m. in the City Council chambers, unless otherwise noted. The Planning and Zoning Commission meetings are scheduled on the second Monday of the month. The staff will review the request with the Commission and after staff presentations the chair will open the public hearing. The applicant will have ten (10) minutes to present the request. The chair will then allow those present in favor of the request and those in opposition to the request to speak. The Commission may then ask staff or anyone present additional questions, after which the Commission may close or table the public hearing. The Commission may then vote to recommend approval or denial to the City Council. The Commission may also table the request to a future date before a recommendation is sent to the City Council.
5. A second public hearing will be scheduled before the City Council after fifteen (15) days of legal notice. The Council meetings are held on the first (1<sup>st</sup>) and third (3<sup>rd</sup>) Mondays of the month at 6:00 p.m. in the City Council chambers (401 Market Street, Tomball, Texas, 77375).
6. The City Council will conduct a public hearing on the request in the same manner as the Planning and Zoning Commission. In the event that there has been a petition filed with the City Secretary with twenty percent (20%) of the adjoining property owners in opposition to the subject zoning request, it will require a three fourths (3/4) vote of the full Council to approve the request. Upon approval of the request by the City Council, an amended ordinance shall be prepared and adopted. The ordinance shall have two separate readings and will be effective at such time that it is adopted by City Council and signed by the Mayor and attested by the City Secretary.

**FAILURE TO APPEAR:** It is the applicant/property owner's responsibility to attend all Planning and Zoning Commission and City Council meetings regarding their case. Failure of the applicant or his/her authorized representative to appear before the Planning and Zoning Commission or the City Council for more than one (1) hearing without approved delay by the City Manager, or his/her designee, may constitute sufficient grounds for the Planning and Zoning Commission or the City Council to table or deny the application unless the City Manager or his/her designee is notified in writing by the applicant at least seventy-two (72) hours prior to the hearing. If the agenda item is tabled the Planning and Zoning Commission shall specify a specific date at which it will be reconsidered.



MEDICAL COMPLEX DRIVE  
 (120' R.O.W.)  
 C.F. NO. 2019107119  
 O.P. # P. # H. # C. #

SOUTH CHERRY STREET  
 (80' R.O.W.)

**PROPOSED DEVELOPMENT  
 LOCATED AT  
 MEDICAL COMPLEX DRIVE  
 TOMBALL, TX 77375**



**CATALYST TECHNICAL GROUP, INC.**  
 19015 SONGSPRING DRIVE  
 SUITE 200  
 HOUSTON, TEXAS 77058  
 TEL: 281-272-2188  
 FAX: 281-272-2189  
 INFO@CATALYSTGROUP.COM  
 WWW.CATALYSTGROUP.COM

DATE: 11/9/2022

GENERAL NOTES:  
 1. THIS DOCUMENT IS FOR INFORMATION PURPOSES ONLY.  
 2. THIS DOCUMENT IS NOT TO BE USED FOR ANY REGULATORY PURPOSES.  
 3. THIS DOCUMENT IS NOT TO BE USED FOR ANY REGULATORY PURPOSES.  
 4. THIS DOCUMENT IS NOT TO BE USED FOR ANY REGULATORY PURPOSES.

DATE: 11/9/2022

PROJECT TITLE:  
 CONCEPTUAL SITE PLAN

SHEET NUMBER:  
 C-0.0

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

**WARRANTY DEED**

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

THAT, JANA'S DIRT LLC, A TEXAS LIMITED LIABILITY COMPANY, which acquired title to Tract 2 of the hereinafter described real property by error or mistake as JANA'S DIRT, L.L.C., hereinafter called Grantor, for and in consideration of the sum of Ten and No/100 (\$10.00) Dollars cash and other good and valuable consideration in hand paid by

RIA GROUP LLC  
4914 Zachary Ln.  
Sugarland, Tx 77479  
J

hereinafter called Grantee, the receipt and sufficiency of which are hereby acknowledged and confessed, has GRANTED, SOLD and CONVEYED, and by these presents does GRANT, SELL and CONVEY unto Grantee all those certain lots, tracts or parcels of land, together with all improvements thereon, lying and being situated in the County of Harris, State of Texas, described as follows, to-wit:

TRACT 1:  
Being a 1.839 acre tract situated in the Jesse Pruett Survey, Abstract No. 629, Harris County, Texas, being a portion of the residue of that certain called 7.56 acre tract described in instrument to Jana's Dirt, LLC, recorded in Clerk's File No. 20120271296 of the Official Public Records of Real Property, Harris County, Texas (O.P.R.R.P.H.C.T.), said 1.839 acre tract being more particularly described by metes and bounds on Exhibit "A" attached hereto.

TRACT 2:  
Being a 1.283 acre tract situated in the Jesse Pruett Survey, Abstract No. 629, Harris County, Texas, being all of that certain called 1.2748 acre tract described in instrument to Jana's Dirt, LLC, recorded in Clerk's File No. 20150109818 of the Official Public Records of Real Property, Harris County, Texas (O.P.R.R.P.H.C.T.), said 1.283 acre tract being more particularly described by metes and bounds on Exhibit "A" attached hereto.

This conveyance is made and accepted subject to any and all valid covenants, conditions, restrictions, easements and outstanding mineral and/or royalty interests in the oil, gas, and other minerals and leases thereon, now outstanding or affecting the premises herein conveyed, now of record in the County Clerk's office of Harris County, Texas, but only to the extent they are still in force and effect.

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 and Grantee's successors and assigns, forever. And Grantor does hereby bind Grantor and Grantor's successors and assigns, to warrant and forever defend all and singular the said premises unto the said Grantee and Grantee's successors and assigns, against every person whomsoever lawfully claiming or to claim the same or any part thereof.

Executed this 12 day of February, 2021.

JANA'S DIRT LLC,  
A TEXAS LIMITED LIABILITY COMPANY

By: [Signature]  
MIKE O'BRIEN, Managing Member

And By: [Signature]  
JANA O'BRIEN, Managing Member

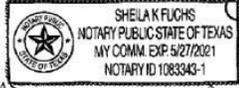
RECORDED AT THE REQUEST  
OF FIRST AMERICAN TITLE  
GF# - 2565826-43

RP-2021-155506

UNOFFICIAL

STATE OF TEXAS §  
COUNTY OF Montgomery §

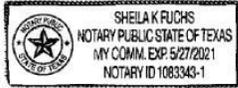
This instrument was acknowledged before me on this 12 day of February, 2021 by MIKE O'BRIEN, Managing Member of JANA'S DIRT LLC, A TEXAS LIMITED LIABILITY COMPANY, on behalf of said entity in the capacity herein stated.



*[Signature]*  
Notary Public, State of Texas

STATE OF TEXAS §  
COUNTY OF Montgomery §

This instrument was acknowledged before me on this 12 day of February, 2021 by JANA O'BRIEN, Managing Member of JANA'S DIRT LLC, A TEXAS LIMITED LIABILITY COMPANY, on behalf of said entity in the capacity herein stated.



*[Signature]*  
Notary Public, State of Texas

After recording return to:  
R1AA Group LLC  
4814 Zachary Ln.  
Sugarland, Tx 77479

G:\JEANIE\FIRST AMERICAN\2021\2565826 -Jana's Dirt LLC-R1AA Group, LLC(1-1).cd.doc

RP-2021-155506

UNOFFICIAL COPY

**EXHIBIT 'A'**

**TRACT 1:**

BEING A 1.839 ACRE TRACT SITUATED IN THE JESSE PRUETT SURVEY, ABSTRACT NO. 629, HARRIS COUNTY, TEXAS, BEING A PORTION OF THE RESIDUE OF THAT CERTAIN CALLED 7.56 ACRE TRACT DESCRIBED IN INSTRUMENT TO JANA'S DIRT, LLC, RECORDED IN CLERK'S FILE NO. 20120271296 OF THE OFFICIAL PUBLIC RECORDS OF REAL PROPERTY, HARRIS COUNTY, TEXAS (O.P.R.R.P.H.C.T.), SAID 1.839 ACRE TRACT BEING MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS:

BEGINNING AT A 1 INCH IRON PIPE WITH CAP FOUND IN THE WESTERLY RIGHT-OF-WAY OF SOUTH CHERRY STREET (80' WIDTH), FOR THE COMMON EASTERLY CORNER OF SAID RESIDUE TRACT AND A CALLED 1.2748 ACRE TRACT DESCRIBED IN INSTRUMENT TO JANA'S DIRT, LLC, RECORDED IN CLERK'S FILE NO. 20150109818, O.P.R.R.P.H.C.T., BEING THE NORTHEASTERLY CORNER OF THE HEREIN DESCRIBED 1.839 ACRE TRACT, FROM WHICH A 1 1/2 INCH PINCHED TOP PIPE FOUND FOR THE NORTHEASTERLY CORNER OF SAID 1.2748 ACRE TRACT BEARS NORTH 02°28'33" WEST, 79.89 FEET;

THENCE SOUTH 02°28'33" EAST, 176.06 FEET, WITH THE WESTERLY RIGHT-OF-WAY OF SAID SOUTH CHERRY STREET AND THE EASTERLY LINE OF SAID RESIDUE TRACT, TO A 1/2 INCH IRON ROD WITH CAP STAMPED "TPS 100834-00" SET FOR THE NORTHERLY CUTBACK CORNER AT THE NORTHWESTERLY CORNER OF THE INTERSECTION OF SAID SOUTH CHERRY STREET, WITH MEDICAL COMPLEX DRIVE (120' WIDTH), RECORDED IN CLERK'S FILE NO. 2015107119, O.P.R.R.P.H.C.T., FOR THE EASTERLY SOUTHEAST CORNER OF SAID RESIDUE TRACT AND THE HEREIN DESCRIBED 1.839 ACRE TRACT;

THENCE SOUTH 44°57'24" WEST, 33.81 FEET, WITH SAID CUTBACK AND THE SOUTHEASTERLY LINE OF SAID RESIDUE TRACT, TO A 1/2 INCH IRON ROD WITH CAP FOUND FOR THE BEGINNING OF A CURVE TO THE RIGHT, THE SOUTHERLY CUTBACK CORNER AT SAID INTERSECTION AND THE SOUTHERLY SOUTHEAST CORNER OF SAID RESIDUE TRACT AND THE HEREIN DESCRIBED 1.839 ACRE TRACT;

THENCE NORTHWESTERLY, 642.62 FEET, WITH ARC OF SAID CURVE TO THE RIGHT IN THE NORTHERLY RIGHT-OF-WAY OF SAID MEDICAL COMPLEX DRIVE, WITH THE SOUTHWESTERLY LINE OF SAID RESIDUE TRACT, HAVING A RADIUS OF 1,440.00 FEET, A CENTRAL ANGLE OF 25°34'08", AND A CHORD THAT BEARS NORTH 74°23'36" WEST, 637.30 FEET TO A 1/2 INCH IRON ROD WITH CAP STAMPED "TPS 100834-00" SET FOR THE COMMON WESTERLY CORNER OF SAID RESIDUE TRACT AND SAID 1.2748 ACRE TRACT, BEING THE NORTHWESTERLY CORNER OF THE HEREIN DESCRIBED 1.839 ACRE TRACT;

THENCE NORTH 87°25'21" EAST, 630.73 FEET, WITH THE COMMON LINE OF SAID RESIDUE TRACT AND SAID 1.2748 ACRE TRACT, TO THE PLACE OF BEGINNING;

CONTAINING A COMPUTED AREA OF 1.839 ACRES OF LAND WITHIN THIS FIELD NOTE DESCRIPTION.

**TRACT 2:**

BEING A 1.283 ACRE TRACT SITUATED IN THE JESSE PRUETT SURVEY, ABSTRACT NO. 629, HARRIS COUNTY, TEXAS, BEING ALL OF THAT CERTAIN CALLED 1.2748 ACRE TRACT DESCRIBED IN INSTRUMENT TO JANA'S DIRT, LLC, RECORDED IN CLERK'S FILE NO.

RP-2021-155506

20150109818 OF THE OFFICIAL PUBLIC RECORDS OF REAL PROPERTY, HARRIS, COUNTY, TEXAS (O.P.R.R.P.H.C.T.), SAID 1.283 ACRE TRACT BEING MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS:

BEGINNING AT A 1 INCH IRON PIPE WITH CAP FOUND IN THE WESTERLY RIGHT-OF-WAY OF SOUTH CHERRY STREET (80' WIDTH), FOR THE COMMON EASTERLY CORNER OF SAID 1.2748 ACRE TRACT AND THE RESIDUE OF A CALLED 7.56 ACRE TRACT DESCRIBED IN INSTRUMENT TO JANA'S DIRT, LLC, RECORDED IN CLERK'S FILE NO. 20120271296, O.P.R.R.P.H.C.T., BEING THE SOUTHEASTERLY CORNER OF THE HEREIN DESCRIBED 1.283 ACRE TRACT;

THENCE SOUTH 87°25'21" WEST, 630.73 FEET, WITH THE COMMON LINE OF SAID 1.2748 ACRE TRACT AND SAID RESIDUE TRACT, TO A 1/2 INCH IRON ROD WITH CAP STAMPED "TPS 100834-00" SET IN THE NORTHEASTERLY RIGHT-OF-WAY OF MEDICAL COMPLEX DRIVE (120' WIDTH), RECORDED IN CLERK'S FILE NO. 2015107119, O.P.R.R.P.H.C.T., FOR THE COMMON WESTERLY CORNER OF SAID 1.2748 ACRE TRACT AND SAID RESIDUE TRACT, BEING THE SOUTHWESTERLY CORNER OF THE HEREIN DESCRIBED 1.283 ACRE TRACT, FROM WHICH A 5/8 INCH IRON ROD WITH CAP FOUND FOR REFERENCE, BEARS SOUTH 89°01'05" WEST, 0.38 FEET;

THENCE NORTH 58°06'39" WEST, 145.11 FEET, WITH THE NORTHEASTERLY RIGHT-OF-WAY OF SAID MEDICAL COMPLEX DRIVE AND THE SOUTHWESTERLY LINE OF SAID 1.2748 ACRE TRACT, TO A 5/8 INCH IRON ROD WITH CAP FOUND FOR THE COMMON WESTERLY CORNER OF SAID 1.2748 ACRE TRACT AND A TRACT DESCRIBED IN INSTRUMENT TO CORRAL RUP, LLC, RECORDED IN CLERK'S FILE NO. 2018138656, O.P.R.R.P.H.C.T., BEING THE NORTHWESTERLY CORNER OF THE HEREIN DESCRIBED 1.283 ACRE TRACT;

THENCE NORTH 87°35'34" EAST, 750.51 FEET, WITH THE COMMON LINE OF SAID 1.2748 ACRE TRACT AND SAID CORRAL RUP TRACT, TO A 1 1/2 INCH PINCHED TOP PIPE FOUND IN THE WESTERLY RIGHT-OF-WAY OF SAID SOUTH CHERRY STREET, FOR THE COMMON EASTERLY CORNER OF SAID 1.2748 ACRE TRACT AND SAID CORRAL RUP TRACT, BEING THE NORTHEASTERLY CORNER OF THE HEREIN DESCRIBED 1.283 ACRE TRACT;

THENCE SOUTH 02°28'33" EAST, 79.89 FEET, WITH THE WESTERLY RIGHT-OF-WAY OF SAID SOUTH CHERRY STREET AND THE EASTERLY LINE OF SAID 1.2748 ACRE TRACT, TO THE PLACE OF BEGINNING;

CONTAINING A COMPUTED AREA OF 1.283 ACRES OF LAND WITHIN THIS FIELD NOTE DESCRIPTION.

COPY

RP-2021-155506

RP-2021-155506  
# Pages 5  
03/25/2021 07:40 AM  
e-Filed & e-Recorded in the  
Official Public Records of  
HARRIS COUNTY  
TENESHIA HUDSPETH  
COUNTY CLERK  
Fees \$30.00

UNOFFICIAL COPY

RECORDERS MEMORANDUM

This instrument was received and recorded electronically and any blackouts, additions or changes were present at the time the instrument was filed and recorded.

Any provision herein which restricts the sale, rental, or use of the described real property because of color or race is invalid and unenforceable under federal law.  
THE 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.



*Teneshia Hudspeth*  
COUNTY CLERK  
HARRIS COUNTY, TEXAS





**NOTICE OF PUBLIC HEARING  
CITY OF TOMBALL  
PLANNING & ZONING COMMISSION (P&Z)  
FEBRUARY 13, 2023  
&  
CITY COUNCIL  
FEBRUARY 20, 2023**



Notice is Hereby Given that a Public Hearing will be held by the P&Z of the City of Tomball on **Monday, February 13, 2023 at 6:00 P.M.** and by the City Council of the City of Tomball on **Monday, February 20, 2023 at 6:00 P.M.** at City Hall, 401 Market Street, Tomball Texas. On such dates, the P&Z and City Council will consider the following:

**Ordinance Amendment OAM23-01:** Request by Apex Clean Energy Holdings, LLC to amend Section(s) 50-2 (*Definitions*) and Section 50-82 (*Use Regulations (Charts)*), Subsection (b) (*Use Charts*) of the Tomball Code of Ordinances by adding standards pertaining to “Energy Storage System”.

**Zoning Case Z23-02:** Request by RIAA Group, LLC. to amend Chapter 50 (Zoning) of the Tomball Code of Ordinances, by rezoning approximately 3.12 acres of land legally described as being portions of Lot 172, in Tomball Townsite from Agricultural (AG) to General Retail (GR). The property is located at the northwest corner of S. Cherry Street & Medical Complex Drive at 1635 S. Cherry Street, within the City of Tomball, 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, and the Public Works Buildings, located at 501 James Street, Tomball, TX 77375. Further information may be obtained by contact the City Planner, Jared Smith, at (281) 290-1491 or at [jasmith@tomballtx.gov](mailto:jasmith@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 10<sup>th</sup> day of February 2023 by 5:00 p.m., and remained posted for at least 72 continuous hours preceding the scheduled time of said meeting.

Jared Smith  
Jared Smith  
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](http://www.tomballtx.gov).



## Notice of Public Hearing

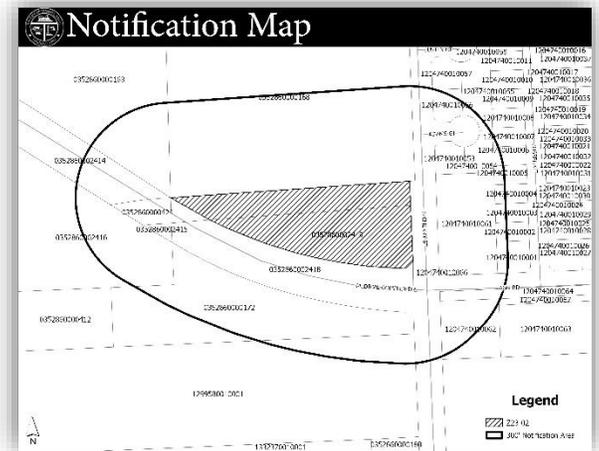
**YOU ARE INVITED TO ATTEND** the Public Hearing before the **PLANNING & ZONING COMMISSION** and **CITY COUNCIL** of the City of Tomball regarding the following item:

**CASE NUMBER:** Z23-02

**APPLICANT/OWNER:** RIAA Group, LLC

**LOCATION:** The property is located at the northwest corner of S. Cherry Street & Medical Complex Drive at 1635 S. Cherry Street, within the City of Tomball, Harris County, Texas.

**PROPOSAL:** A Rezoning to amend Chapter 50 (Zoning) of the Tomball Code of Ordinances, by rezoning approximately 3.12 acres of land legally described as being portions of Lot 172, in Tomball Townsite from Agricultural (AG) to General Retail (GR).



**CONTACT:** Jared Smith, City Planner  
**PHONE:** (281) 290-1491  
**E-MAIL:** [tomballtxcd@gmail.com](mailto:tomballtxcd@gmail.com)

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 300 feet of the request as such ownership appears on the last approved Harris County Appraisal District tax roll.**

**Planning & Zoning Commission  
Public Hearing:  
Monday, February 13, 2023 @ 6:00 P.M**

**City Council Public Hearing:  
\*Monday, February 20, 2023 @ 6:00 P.M.**

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

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

# City Council Meeting

## Agenda Item

### Data Sheet

Meeting Date: March 6, 2023

**Topic:**

Adopt, on Second Reading, Ordinance No. 2023-03, an Ordinance of the City of Tomball, Texas, Amending Chapter 50 (Zoning) of the Tomball Code of Ordinances by Revising Its Code of Ordinance Amending Section 50-2 (Definitions), of Article I, in General and Section 50-82 (Use Regulations (Charts)), Subsection (B)(Use Charts), of Article III, District Regulations; Providing for 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:**

Apex Energy has requested to amend the current City of Tomball code of ordinance, requesting to establish an “Energy Storage System” land use within the City of Tomball. These businesses utilize batteries to create energy storage reserves that are to be utilized if our city and/or surrounding communities lose access to electricity. Currently, the City of Tomball does not identify any such land use within our Code of Ordinance, leading staff to categorize this use as an “Electrical Substation” which is the closest similar use within our code of ordinance. Where permitted, electrical substations require a Conditional Use Permit. To avoid potential confusion that may arise from seeking a Conditional Use Permit for an Electrical Substation, the applicants would like to add the electric storage system land use to our code of ordinance. This amendment will allow an electric storage system within the Light Industrial (LI) zoning district with the approval of a Conditional Use Permit. Additionally, this amendment includes a definition that will clearly define the electric storage facility land use.

**Origination:** Apex Clean Energy Holdings, LLC.

**Recommendation:**

Staff Recommends Approval, Planning & Zoning Commission Approved (3 Votes Aye, 1 Vote Nay)

**Party(ies) responsible for placing this item on agenda:** Nathan Dietrich (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 Date City Manager Date



**ORDINANCE NO. 2023-03**

**AN ORDINANCE OF THE CITY OF TOMBALL, TEXAS, AMENDING ITS CODE OF ORDINANCE BY AMENDING SECTION 50-2 (DEFINITIONS), OF ARTICLE I, IN GENERAL AND SECTION 50-82 (USE REGULATIONS (CHARTS)), SUBSECTION (B)(USE CHARTS), OF ARTICLE III, DISTRICT REGULATIONS, OF CHAPTER 50, ZONING; 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**, Apex Clean Energy Holdings, LLC. Has requested an amendment to the code of ordinance, particularly by adding the “Electric Energy Storage” land use and providing a definition to the Planning & Zoning Commission; 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, the Planning & Zoning Commission held a public hearing on the requested text amendment; 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 text amendment; and

**WHEREAS**, at least fifteen (15) days after the publication in the official newspaper of the City of the time and place of a public hearing, the City Council held a public hearing on the proposed text amendment; and

**WHEREAS**, the City Council finds it to be in the best interest of the health, safety, and welfare of the citizens to approve the text amendment as contained in this ordinance;

**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.** Article II, In General and Article III, District Regulations, of Chapter 50, Zoning of the Code of Ordinances of the City of Tomball, Texas is hereby amended as set out in Exhibit A, attached hereto and made a part of this Ordinance for all purposes.

**Section 3.** 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

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 4.** 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 FEBRUARY 2023.

COUNCILMAN FORD	<u>AYE</u>
COUNCILMAN STOLL	<u>AYE</u>
COUNCILMAN DUNAGIN	<u>NAY</u>
COUNCILMAN TOWNSEND	<u>AYE</u>
COUNCILMAN PARR	<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 6TH DAY OF MARCH 2023.

COUNCILMAN FORD	_____
COUNCILMAN STOLL	_____
COUNCILMAN DUNAGIN	_____
COUNCILMAN TOWNSEND	_____
COUNCILMAN PARR	_____

\_\_\_\_\_  
LORI KLEIN QUINN, Mayor

ATTEST:

\_\_\_\_\_  
TRACYLYNN GARCIA, City Secretary

Exhibit “A”

**AMEND:** Section 50-2 (*Definitions*)

**REVISE:** Add the following entry

**ADD:**

*Electric Storage System* – One or more devices assembled together capable of storing energy that allows power system operators and utilities to collect and store energy from the grid and discharge it at a future time to provide electricity when needed, such as to ensure adequate peaking generation capacity and grid resiliency.

**AMEND:** Section 50-82 (b) (*Use Regulations (Charts)*)

**REVISE:** Add the following entry

**ADD:**

Types of Land Uses	Residential Zoning Districts										Nonresidential Zoning Districts						Parking				
	AG	SF-20-E	SF-9	SF-6			D		MF		MHP	O		GR			C	LI		OT&MU	
Institutional/Governmental																					
Electric Storage System																		C			2 spaces per facility

-END-



**Ordinance Amendment  
Staff Report**

Planning & Zoning Commission Public Hearing Date: February 13, 2023  
City Council Public Hearing Date: February 20, 2023

**Case:** OAM23-01  
**Applicant(s):** Apex Clean Energy Holdings, LLC  
**Section(s):** Section(s) 50-2 (*Definitions*) and 50-82 (*Use Regulations (Charts)*),  
Subsection (b)(*Use Charts*)  
**Subject:** Add “Electric Storage System”

**BACKGROUND**

In recent months, the City of Tomball has been approached by multiple businesses looking to establish an “Energy Storage System” within the City of Tomball. These businesses utilize batteries to create energy storage reserves that are to be utilized if our city and/or surrounding communities lose access to electricity. Currently, the City of Tomball does not identify any such land use within our Code of Ordinance, leading staff to categorize this use as an “Electrical Substation” which is the closest similar use within our code of ordinance. Where permitted, electrical substations require a Conditional Use Permit. To avoid potential confusion that may arise from seeking a Conditional Use Permit for an Electrical Substation, the applicants would like to add the electric storage system land use to our code of ordinance. This amendment will allow an electric storage system within the Light Industrial (LI) zoning district with the approval of a Conditional Use Permit. Additionally, this amendment includes a definition that will clearly define the electric storage facility land use.

**NOTICE OF PUBLIC HEARING:**

A public hearing notice was published in the Potpourii on February 1, 2023.

**PROPOSED ORDINANCE AMENDMENT(s):**

Code of Ordinance Section(s):

50-2 (*Definitions*)

**ADD:**

*Electric Storage System – One or more devices assembled together capable of storing energy that allows power system operators and utilities to collect and store energy from the grid and discharge it at a future time to provide electricity when needed, such as to ensure adequate peaking generation capacity and grid resiliency.*

50-82 (Use Regulations (Charts))

**ADD:**

Types of Land Uses	Residential Zoning Districts										Nonresidential Zoning Districts						Parking				
	AG	SF-20-E	SF-9	SF-6			D		MF		MHP	O		GR			C	LI		OT&MU	
Institutional/Governmental																					
Electric Storage System																		C			2 spaces per facility

**RECOMMENDATION**

City staff recommends approval of OAM23-01



## ZONING TEXT AMENDMENT Planning Division

**APPLICATION REQUIREMENTS:** 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.

There is a \$1,000.00 application fee that must be paid at time of submission or the application will not be processed.

**DIGITAL PLAN SUBMITTALS:**

PLEASE SUBMIT YOUR APPLICATIONS AND PLANS DIGITALLY IN A SINGLE PDF BY FOLLOWING THE WEBSITE BELOW:

**WEBSITE:** [tomballtx.gov/securesend](http://tomballtx.gov/securesend)  
**USERNAME:** [tomballedd](#)  
**PASSWORD:** [Tomball1](#)

**Applicant**

Name: Apex Clean Energy Holdings, LLC Title: Chief Operating Officer  
Mailing Address: 120 Garrett Street, Suite 700 City: Charlottesville State: VA  
Zip: 22902 Contact: Ken Young  
Phone: (434) 270-7491 Email: ken.young@apexcleanenergy.com  
c/o Jake Steinman, [jake.steinman@apexcleanenergy.com](mailto:jake.steinman@apexcleanenergy.com)

**Property Owner**

Name: TBD Title: \_\_\_\_\_  
Mailing Address: \_\_\_\_\_ City: \_\_\_\_\_ State: \_\_\_\_\_  
Zip: \_\_\_\_\_ Contact: \_\_\_\_\_  
Phone: (\_\_\_\_) \_\_\_\_\_ Email: \_\_\_\_\_

**Statement of Purpose-** Identify the existing section(s) of the Zoning Ordinance for which the Text Amendment is proposed, the proposed revised language and the reason(s) for the requested text Amendment (attach additional sheets as necessary):

The proposed zoning text amendment would amend City Code Sec. 50-2 (Zoning Definitions) to define "Energy Storage System". It would also amend Sec. 50-82(b) (Use Charts) to make Energy Storage System a conditional use that may be permitted in the LI zoning district only upon approval of a Conditional Use Permit (CUP) subject to the requirements of Sec. 50-81 (Conditional Use Permit). The amendments are needed to update the Code to reflect advances in technology and to allow for a regulated use that will enhance the energy grid. The proposed definition for "Energy Storage System" is "one or more devices assembled together capable of storing energy that allows power system operators and utilities to collect and store energy from the grid and discharge it at a future time to provide electricity when needed, such as to ensure adequate peaking generation capacity and grid resiliency."

**General Description of Property Affected by Amendment** (attach additional sheets as necessary):

There is a parcel under consideration but no sale has closed at this time. Generally, however, an energy storage system use must be in close proximity to an electrical substation.

**Statement of Facts Which the Applicant Believes Justify the Amendment** (attach additional sheets as necessary):

The storage of energy is becoming increasingly important to achieve public policy goals including grid resiliency, emergency preparedness, and cost management. Energy storage will help to reduce costs associated with meeting peak electric demands, increase efficiency, stabilize supply during peak electric usage, and help keep critical systems online during an outage. The use should be regulated by allowing it only in the LI zoning district upon a public hearing and approval process for a Conditional Use Permit, and shall meet all fire and building code requirements and shall require ERCOT interconnection approval.

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  12/22/2022  
Signature of Applicant Date

X \_\_\_\_\_  
Signature of Owner Date



Jake Steinman  
Apex Clean Energy, Inc.  
120 Garrett Street, Suite 700  
Charlottesville, VA 22902  
jake.steinman@apexcleanenergy.com  
Cell: 775-842-4749

January 3, 2023

Nathan Dietrich  
Community Development Director  
The City of Tomball  
501 James Street  
Tomball, TX 77375

Dear Mr. Dietrich:

On behalf of Apex Clean Energy, this serves as a request for zoning text amendments to define the “Energy Storage System” use and to make Energy Storage a conditional use in the Light Industrial (LI) zoning district pursuant to City Code Sec. 50-82(a)(4) (Classification of New/Unlisted Uses). Below is a list of the information required per the above-referenced Code section.

- (i) The nature of the use and whether the use involves dwelling activity, sales, services, or processing:

“Energy Storage System” is one or more devices assembled together capable of storing energy that allows power system operators and utilities to collect and store energy from the grid and discharge it at a future time to provide electricity when needed, such as to ensure adequate peaking generation capacity and grid resiliency.

- (ii) The type of product sold or produced under the use:

Electrical energy storage and discharge into the grid as needed to enhance the functionality and resiliency of the energy grid.

- (iii) Whether the use has enclosed or outside storage and the amount and nature of the storage:

The use is to be stored in enclosed containers with the amount dependent on the energy storage needs and physical constraints.

(iv) Anticipated employment typically anticipated with the use:

There will be construction jobs generated as part of the construction of a battery storage facility. Upon construction, employment will be related to routine maintenance and remote 24/7 monitoring.

(v) Transportation requirements:

There will be no transportation requirements after construction except for a public or private access drive for maintenance.

(vi) The nature and time of occupancy and operation of the premises:

The use will be automated and continuous to ensure that adequate energy supply is available to the grid at all times.

(vii) The off-street parking and loading requirements:

There will be minimal parking and loading requirements, as the facility will only need parking for maintenance visits. Typically, this would include a loading space and little to no parking.

(viii) The amount of noise, odor, fumes, dust, toxic materials and vibration likely to be generated:

The use will not generate any odor, fumes, dust, toxic materials, or vibration. It will generate sound of approximately 55 decibels at 60 feet, which, for example, is approximately 25 decibels lower than the existing Tomball substation generates at the same distance.

(ix) The requirements for public utilities such as sanitary sewer and water and any special public services that may be required:

Because this type of use does not require occupancy during operations, there will be no need for connection to city water or sewer.

(x) Impervious surface coverage:

Impervious surface cover will vary from project to project and is dependent on type and make of energy storage system. Adequate storm water retention will be designed and constructed if over the minimum threshold.

Nathan Dietrich  
January 3, 2023  
Page 3

Sincerely,



Jake Steinman  
Senior Development Manager, Energy Storage

**NOTICE OF PUBLIC HEARING  
CITY OF TOMBALL  
PLANNING & ZONING COMMISSION (P&Z)  
FEBRUARY 13, 2023  
&  
CITY COUNCIL  
FEBRUARY 20, 2023**



Notice is Hereby Given that a Public Hearing will be held by the P&Z of the City of Tomball on **Monday, February 13, 2023 at 6:00 P.M.** and by the City Council of the City of Tomball on **Monday, February 20, 2023 at 6:00 P.M.** at City Hall, 401 Market Street, Tomball Texas. On such dates, the P&Z and City Council will consider the following:

**Ordinance Amendment OAM23-01:** Request by Apex Clean Energy Holdings, LLC to amend Section(s) 50-2 (*Definitions*) and Section 50-82 (*Use Regulations (Charts)*), Subsection (b) (*Use Charts*) of the Tomball Code of Ordinances by adding standards pertaining to “Energy Storage System”.

**Zoning Case Z23-02:** Request by RIAA Group, LLC. to amend Chapter 50 (Zoning) of the Tomball Code of Ordinances, by rezoning approximately 3.12 acres of land legally described as being portions of Lot 172, in Tomball Townsite from Agricultural (AG) to General Retail (GR). The property is located at the northwest corner of S. Cherry Street & Medical Complex Drive at 1635 S. Cherry Street, within the City of Tomball, 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, and the Public Works Buildings, located at 501 James Street, Tomball, TX 77375. Further information may be obtained by contact the City Planner, Jared Smith, at (281) 290-1491 or at [jasmith@tomballtx.gov](mailto:jasmith@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 10<sup>th</sup> day of February 2023 by 5:00 p.m., and remained posted for at least 72 continuous hours preceding the scheduled time of said meeting.

Jared Smith  
Jared Smith  
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](http://www.tomballtx.gov).

# Regular City Council Agenda Item Data Sheet

Meeting Date: February 20, 2023

**Topic:**

Approve, on First Reading, Resolution No. 2023-04-TEDC, a Resolution of the City Council of the City of Tomball, Texas, authorizing and approving the Project of the Tomball Economic Development Corporation, the designation of a mixed-use development in Old Town Tomball, to promote new or expanded business development, with such Project including the expenditure of funds for the purchase of land, buildings, equipment, facilities, expenditures, targeted infrastructure, and improvements related to the Project, and authorizing the Executive Director or designee to execute any and all documentation related to the Project.

**Background:**

On January 10, 2023, the Tomball Economic Development Corporation (TEDC) Board of Directors unanimously approved a \$4.5 million budget amendment for property acquisition as well as the designation of a mixed-use development in Old Town Tomball to promote new or expanded business development, with such Project including the expenditure of funds for the purchase of land, buildings, equipment, facilities, expenditures, targeted infrastructure, and improvements related to the Project, and authorizing the Executive Director or designee to execute any and all documentation related to the Project.

The project includes the acquisition of approximately 4.63 acres of land located at 401 Oxford Street, Tomball, TX 77375 (First Baptist Church of Tomball Campus) and includes approximately 84,420 square feet of building area.

This is a permissible project as outlined in Texas Economic Development Legislation which permits funding of projects that promote new or expanded business development.

The Tomball City Council has final approval authority over all programs and expenditures of the TEDC. Final approval of this project requires the adoption of Resolution No. 2023-04-TEDC after two separate readings.

**Origination:** Tomball Economic Development Corporation Board of Directors

**Recommendation:** Approval of Resolution No. 2023-04-TEDC on First Reading

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

**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 \_\_\_\_\_  
Staff Member-TEDC                      Date

Approved by \_\_\_\_\_  
Executive Director-TEDC                      Date

**RESOLUTION NO. 2023-04-TEDC**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF TOMBALL, TEXAS,  
APPROVING A PROJECT OF THE TOMBALL ECONOMIC DEVELOPMENT  
CORPORATION UNDER TEXAS LOCAL GOVERNMENT CODE SECTION 505.158.**

\* \* \* \* \*

**WHEREAS**, the City Council of the City of Tomball, Texas (the “Council”) finds that Tomball Economic Development Corporation (the “TEDC”) is a duly-formed organization in the State of Texas and that its purpose is to enhance the economic well being of the City of Tomball (the “City”) and its citizens; and

**WHEREAS**, the Council finds that the TEDC’s proposed project designation that includes the TEDC’s expenditure of funds for the purchase of land, buildings, equipment, facilities, expenditures, targeted infrastructure, and improvements related to a mixed-use development in Old Town Tomball and promote new or expanded business development in and around the City (the “Project”), and authorizing the Executive Director or designee to execute any and all documentation related to the Project, with a description of the Project being attached to this Resolution as “Exhibit A”; and **NOW THEREFORE**,

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

**THAT** the City Council of the City of Tomball hereby finds and approves the Tomball Economic Development Corporation’s project, as such project is described in the Project Description attached to this Resolution as “Exhibit A”.

**PASSED, APPROVED, and RESOLVED on first reading on \_\_\_\_\_.**

**PASSED, APPROVED, and RESOLVED on second reading on \_\_\_\_\_.**

\_\_\_\_\_  
**LORI KLEIN QUINN, MAYOR**

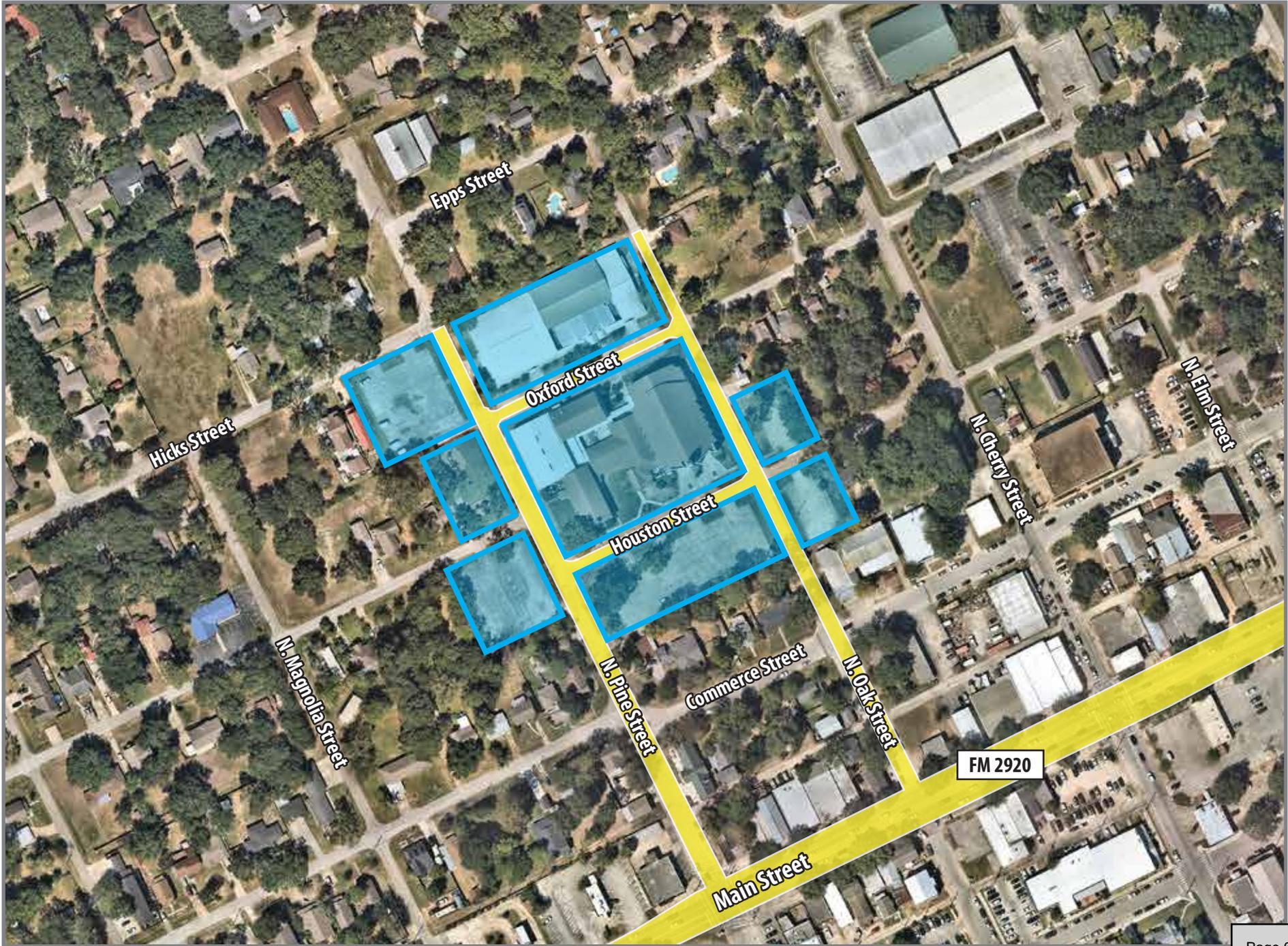
**ATTEST:**

\_\_\_\_\_  
**Doris Speer, City Secretary**

**EXHIBIT A**

**PROJECT DESCRIPTION**

The expenditure of funds for the purchase of land, buildings, equipment, facilities, expenditures, targeted infrastructure, and improvements related to a mixed-use development to be located at 401 Oxford Street, Tomball, Texas 77375 in Old Town Tomball and promote new or expanded business development in and around the City (the “Project”), and authorizing the Executive Director or designee to execute any and all documentation related to the Project.



**City Council Meeting  
Agenda Item  
Data Sheet**

**Meeting Date:** March 6, 2023

**Topic:**

Approve the Minutes of the February 20, 2023, Regular City Council Meeting

**Background:**

**Origination:** City Secretary

**Recommendation:**

Approve the Minutes of the February 20, 2023, Regular City Council Meeting

**Party(ies) responsible for placing this item on agenda:** Tracylynn Garcia, City Secretary

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



**Monday, February 20, 2023  
6:00 PM**

The City Council of the City of Tomball, Texas, conducted the meeting scheduled for February 20, 2023, 6:00 PM, at 401 Market Street, Tomball, Texas 77375, via physical attendance and video/telephone conference.

- A. Mayor L. Klein-Quinn called the meeting of the City of Tomball Council to Order at 6:00 p.m.

**PRESENT:**

Council 1 John Ford  
Council 2 Mark Stoll  
Council 3 Dane Dunagin  
Council 4 Derek Townsend, Sr.  
Council 5 Randy Parr

**OTHERS PRESENT:**

City Manager – David Esquivel  
Assistant City Manager – Jessica Rogers  
City Secretary – Doris Speer  
City Attorney – Loren Smith  
Assistant City Secretary – Tracylynn Garcia  
Director of Public Works – Drew Huffman  
Police Chief – Jeff Bert  
Director of Community Development – Nathan Dietrich  
Director of IT – Doug Tippey  
Fire Chief - Joe Sykora  
Director of Finance – Katherine Tapscott  
IT Sr. Specialist – Ben Lato  
Executive Director-TEDC – Kelly Violette  
Court Administrator – Maria Morris  
Senior Court Clerk – Inez Sanchez  
Marketing Manager - Chrislord Templonuevo  
Community Center Manager – Rosalie Dillon  
Project Coordinator – Meagan Mageo

B. Invocation - Led by Pastor Richard Jennings - River of Praise Church

C. Pledges to U.S. and Texas Flags led by Fire Chief Joe Sykora

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.]*

Carl Monrad  
25319 Waterslide Estates  
Tomball, Texas 77377

-

spoke about the amended request for  
Crawfish Boil- New Business#1  
Tomball High School Booster Club

E. Reports and Announcements

1. Announcements

I. February 21, 2023 – **Sam Houston Trailride Reception** – 12 Noon at the Depot

II. March 4, 2023 - **Tomball Little League Parade of Teams** – beginning at 7:30 a.m.

III. March 11, 2023 – Second Saturday at the Depot – *“The Rise of Gru”* at dusk

IV. March 24-26, 2023 – **Tomball German Heritage Festival** at the Depot

2. Reports by City staff and members of council about items of community interest on which no action will be taken:

1. David Esquivel expressed appreciation for Doris Speer and her 33 years of service to the City of Tomball, and the community.

2. Mayor presented a Proclamation to Doris Speer – 33 years of service as a Public Servant.

F. 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. Approve, on Second Reading, Resolution No. 2023-05-TEDC, a Resolution of the City Council of the City of Tomball, Texas, authorizing and approving the Tomball Economic Development Corporation's Project to Expend Funds in accordance with an Economic Development Performance Agreement by and between the Corporation and Hufsmith Kohrville Business Park, LLC to make direct incentives to, or expenditures for, assistance with infrastructure costs required or suitable for the promotion of new or expanded business enterprise related to the development and construction of a multibuilding office/warehouse park to be located on the West side of Hufsmith-Kohrville and Werich Rd, Tomball, Texas 77375. The estimated amount of expenditures for such Project is an amount not to exceed \$122,722.00.
2. Approve, on Second Reading, Resolution No. 2023-06-TEDC, a Resolution of the City Council of the City of Tomball, Texas, authorizing and approving the Tomball Economic Development Corporation's Project to Expend Funds in accordance with an Economic Development Performance Agreement by and between the Corporation and Church Holdings, Inc. to make direct incentives to, or expenditures for, assistance with infrastructure costs required or suitable for the promotion of new or expanded business enterprise related to the development and construction of a multibuilding office/warehouse park to be located near the intersection of Hufsmith-Kohrville and Spell Rd. in the City of Tomball, Texas. The estimated amount of expenditures for such Project is an amount not to exceed \$426,639.00.
3. Approve, on Second Reading, Resolution No. 2023-07-TEDC, a Resolution of the City Council of the City of Tomball, Texas, authorizing and approving the Tomball Economic Development Corporation's Project to Expend Funds in accordance with an Economic Development Performance Agreement by and between the Corporation and BCS Tomball Main, LLC to make direct incentives to, or expenditures for, assistance with infrastructure costs required or suitable for the promotion of new or expanded business enterprise related to the construction of a commercial retail development to be located at the NE corner of SH 249 and FM 2920 Rd, Tomball, Texas 77375. The estimated amount of expenditures for such Project is an amount not to exceed \$123,094.00.
4. Approve, on Second Reading, Resolution No. 2023-08-TEDC, a Resolution of the City Council of the City of Tomball, Texas, authorizing and approving the Tomball Economic Development Corporation's Project to Expend Funds in accordance with an Economic Development Performance Agreement by and between the Corporation and STUDIO a28 to make direct incentives to, or expenditures for, rental assistance for new or expanded business enterprise to be located at 1431 Graham Drive, Suites 212 and 213, Tomball, Texas 77375. The estimated amount of expenditures for such Project is an amount not to exceed \$4,063.00.  
Motion made by Council 2 Stoll, Seconded by Council 4 Townsend

Voting Yea: Council 1 Ford, Council 2 Stoll, Council 3 Dunagin, Council 4 Townsend, Sr., Council 5 Parr

Motion carried unanimously.

G. 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 the Minutes of the February 6, 2023, Regular City Council Meeting
2. Approve a contract with B&C Constructors, LP to reconstruct driveways and headwalls for the Belmont Drainage Improvement Project through a 1GPA Contract (Contract No. 19-03DP) for a not-to-exceed amount of \$73,752.62, approve the expenditure of funds therefor, and authorize the City Manager to execute any and all documents related to the purchase. This expenditure is included in the FY 2022-2023 Budget.
3. Approve a master services agreement with North Water District Laboratories Services, Inc. for wastewater sampling and laboratory services for a total not-to-exceed amount of \$75,000, approve the expenditure of funds therefor, and authorize the City Manager to execute any and all documents related to the purchase. This service is included in the FY 2022-2023 Budget.
4. Approve service agreement to use Waypoint Business Solutions as a consulting services provider for a 3-year term.
5. Approve a lease extension for two years with Frank and Russell DeNina, for 3.547-acre tract, described as TR R10, Abstract 371 W. Hurd Survey, 0 Mechanic Road, for the daily worker's site.
6. Approve Resolution No. 2023-09, a Resolution of the City Council of the City of Tomball, Texas, accepting the Preliminary Service and Assessment Plan for Authorized Improvements within the Seven Oaks Public Improvement District; Setting a Date for a Public Hearing on the Proposed Levy of Assessments; Authorizing the Publication and Mailing of Notice; and Enacting Other Provisions Relating thereto

New Business Consent Item 6 was removed for discussion at request of Council.

Motion made by Council 2 Stoll, Seconded by Council 4 Townsend, Sr. to approve items 1-5 of the Consent Agenda

Voting Yea: Council 1 Ford, Council 2 Stoll, Council 3 Dunagin, Council 4 Townsend, Sr., Council 5 Parr

Motion carried unanimously.

Motion made by Council 2 Stoll, Seconded by Council 4 Townsend, Sr. to approve item 6 of the Consent Agenda

Voting Yea: Council 1 Ford, Council 2 Stoll, Council 3 Dunagin, Council 4 Townsend, Sr., Council 5 Parr

Motion carried unanimously.

#### H. New Business

1. Motion made by Council 2 Stoll, Seconded by Council 4 Townsend, Sr. to approve an amended request from Tomball High School Athletic Booster Club (THSABC) for City Support and In-Kind Services for the THSABC Scholarship Crawfish Boil at Juergens Park, on Saturday, April 1, 2023 from 4:00-8:00 p.m.

Council 2 Stoll requested to Amend his Motion to allow alcohol.

Voting Yea: Council 1 Ford, Council 2 Stoll, Council 3 Dunagin, Council 5 Parr  
Voting Nay: Council 4 Townsend, Sr.

Motion carried 4 votes Yea, 1 vote Nay.

Motion made by Council 2 Stoll, Seconded by Council 4 Townsend, Sr. to approve request, as amended.

Voting Yea: Council 1 Ford, Council 2 Stoll, Council 3 Dunagin, Council 5 Parr  
Voting Nay: Council 4 Townsend, Sr.

Motion, as amended, carried 4 votes Yea, 1 vote Nay.

2. Motion made by Council 3 Dunagin, Seconded by Council 5 Parr to approve the Appointment, by the City Manager, of Tracylynn Garcia as City Secretary, effective March 1, 2023.

Voting Yea: Council 1 Ford, Council 2 Stoll, Council 3 Dunagin, Council 4 Townsend, Sr., Council 5 Parr

Motion carried unanimously.

(At this time Doris Speer stepped down and T. Garcia took the dais and served as secretary of the board for the remainder of the meeting)

3. Motion made by Council 3 Dunagin, Seconded by Council 4 Townsend, Sr. to approve Administrative Policy No. 1, entitled “Proclamation Policy”

Voting Yea: Council 1 Ford, Council 2 Stoll, Council 3 Dunagin, Council 4 Townsend, Sr., Council 5 Parr

Motion carried unanimously.

4. Conduct a Public Hearing and consideration to approve **Zoning Case Z23-02**: Request by RIAA Group, LLC. to amend Chapter 50 (Zoning) of the Tomball Code of Ordinances, by rezoning approximately 3.12 acres of land legally described as being portions of Lot 172, in Tomball Townsite from Agricultural (AG) to General Retail (GR). The property is located at the northwest corner of S. Cherry Street & Medical Complex Drive at 1635 S. Cherry Street, within the City of Tomball, Harris County, Texas.

- Mayor Klein Quinn called the Public Hearing on **Zoning Case Z23-02** to order at 6:47 p.m.
- Receiving no public comments, Mayor Klein Quinn closed the Public Hearing at 6:48 p.m.

Motion made by Council 3 Dunagin, Seconded by Council 2 Stoll, to read Ordinance No. 2023-02 by caption only on First Reading.

Voting Yea: Council 1 Ford, Council 2 Stoll, Council 3 Dunagin, Council 4 Townsend, Sr., Council 5 Parr

Motion carried unanimously.

Motion made by Council 2 Stoll to Adopt, on First Reading, Ordinance No. 2023-02, an Ordinance of the City of Tomball, Texas, Amending Chapter 50 (Zoning) of the Tomball Code of Ordinances by Changing the Zoning District Boundaries Affecting Certain Properties (Exhibit “A”); from Agricultural (AG) to General Retail (GR) District; 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 (1635 S. Cherry; 3.12 Acres, located at the Northwest Corner of S. Cherry Street and Medical Complex Drive)

Voting Yea: Council 1 Ford, Council 2 Stoll, Council 3 Dunagin, Council 4 Townsend, Sr.

Voting Nay: Council 5 Parr

Motion carried 4 votes Yea, 1 vote Nay.

5. Conduct a Public Hearing and consideration to approve **Ordinance Amendment OAM23-01**: Request by Apex Clean Energy Holdings, LLC to amend Section(s) 50-2 (*Definitions*) and Section 50-82 (*Use Regulations (Charts)*), Subsection (b) (*Use Charts*) of the Tomball Code of Ordinances by adding standards pertaining to “Energy Storage System”.

- Mayor Klein Quinn called the Public Hearing on **Ordinance Amendment OAM230-01** to order at 7:05 p.m.

Presentation was made by Apex Clean Energy Holdings –

Micah King, Attorney with Hush Blackwell

Jake Simon, 120 Garrett Street, Charlottesville VA, with Apex Clean Energy

Sam & Latrell Shannon submitted their comments to be read during the council meeting requesting that Council not approve the proposed amendment.

- Receiving no further comments, Mayor Klein Quinn closed the Public Hearing at 7:21 p.m.

Motion made by Council 5 Parr, Seconded by Council 3 Dunagin, to read Ordinance No. 2023-03 by caption only on First Reading.

Voting Yea: Council 1 Ford, Council 2 Stoll, Council 3 Dunagin, Council 4 Townsend, Sr., Council 5 Parr

Motion carried unanimously.

Motion made by Council 4 Townsend, Sr., Seconded by Council 5 Parr to adopt, on First Reading, Ordinance No. 2023-03, an Ordinance of the City of Tomball, Texas, Amending Chapter 50 (Zoning) of the Tomball Code of Ordinances by Revising Its Code of Ordinance Amending Section 50-2 (Definitions), of Article I, in General and Section 50-82 (Use Regulations (Charts)), Subsection (B)(Use

Charts), of Article III, District Regulations; Providing for 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 (Establishing an “Electric Storage System” Land Use and Definition in the City’s Code of Ordinances).

Voting Yea: Council 1 Ford, Council 2 Stoll, Council 4 Townsend, Sr., Council 5 Parr

Voting Nay: Council 3 Dunagin

Motion carried 4 votes Yea, 1 vote Nay.

6. Executive Session: The City Council recessed at 8:00 p.m. to meet Executive Session as Authorized by Title 5, Chapter 551, Government Code, the Texas Open Meetings Act, for the Following Purpose(s):

Sec. 551.071 – Consultation with the City Attorney regarding a matter which the Attorney’s duty requires to be discussed in closed session.

Sec. 551.072 – Deliberations regarding Real Property

Sec. 551.076 – Deliberations regarding Security Devices

Sec. 551.087 – Deliberations regarding Economic Development

Council reconvened back into regular session at 9:08 pm.

7. Motion made by Council 4 Townsend Sr., Seconded by Council 5 Parr to approve, on First Reading, Resolution No. 2023-04-TEDC, a Resolution of the City Council of the City of Tomball, Texas, authorizing and approving the Project of the Tomball Economic Development Corporation, the designation of a mixed-use development in Old Town Tomball, to promote new or expanded business development, with such Project including the expenditure of funds for the purchase of land, buildings, equipment, facilities, expenditures, targeted infrastructure, and improvements related to the Project, and authorizing the Executive Director or designee to execute any and all documentation related to the Project.

Voting Yea: Council 1 Ford, Council 2 Stoll, Council 3 Dunagin, Council 4 Townsend, Sr., Council 5 Parr

Motion carried unanimously.

8. Motion by Council 5 Parr, Seconded by Council 4 Townsend Sr., to approve, on First Reading, Resolution No. 2023-03-TEDC, a Resolution of the City Council of the City of Tomball, Texas, authorizing and approving an Amendment to the

Tomball Economic Development Corporation Fiscal Year 2022-2023 Budget to allow for the expenditure of funds and related project costs for the acquisition of land, buildings, equipment, facilities, expenditures, targeted infrastructure, and improvements near Old Town Tomball.

Voting Yea: Council 1 Ford, Council 2 Stoll, Council 3 Dunagin, Council 4 Townsend, Sr., Council 5 Parr

Motion carried unanimously.

- I. Motion by Council 5 Parr, Seconded by Council 4 Townsend, Sr., to adjourn.

Voting Yea: Council 1 Ford, Council 2 Stoll, Council 3 Dunagin, Council 4 Townsend, Sr., Council 5 Parr

Motion carried unanimously.

Meeting adjourned.

PASSED AND APPROVED this 6<sup>th</sup> day of March 2023

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Tracylynn Garcia  
City Secretary, TRMC, CMC, CPM

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Lori Klein Quinn  
Mayor

# City Council Meeting Agenda Item Data Sheet

Meeting Date: March 6, 2023

**Topic:**

Authorize the City Manager to execute documents necessary to participate in the Choice Partners cooperative purchasing program through the Harris County Department of Education.

**Background:**

Choice Partners is a national procurement and contract purchasing cooperative that meets the purchasing requirements for the State of Texas and 2 CFR 200 (federal purchasing requirements). Contracts available on the Choice Partners cooperative include facilities, supplies, services, food, and technology. The primary government agency for Choice Partners is the Harris County Department of Education, a nonprofit tax-assisted organization that supports education and school districts in Harris County.

In order to participate as a member in the Choice Partners purchasing cooperative, the City must execute an interlocal agreement with Harris County Department of Education. This interlocal agreement allows the City to join Choice Partners and benefit from the savings of the competitively procured contracts offered through the cooperative.

**Origination:** Finance

**Recommendation:**

Staff recommends authorizing the City Manager to execute the documents necessary to participate in the Choice Partners cooperative purchasing program.

**Party(ies) responsible for placing this item on agenda:** Jessica Rogers, 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:** Jessica Rogers 3/1/2023 **Approved by:** \_\_\_\_\_  
Staff Member Date City Manager Date

**Interlocal Agreement**  
**between Harris County Department of Education**  
**& City of Tomball**

Pursuant to the Interlocal Cooperation Act, Chapter 791 of the Texas Government Code, and Chapter 271, Subchapter F of the Texas Local Government Code, and other similar, applicable laws of other states, this Interlocal Agreement (“Agreement”) is made and entered into by and between Harris County Department of Education (“HCDE”), located in Houston, Texas, and City of Tomball, a local governmental entity and/or political subdivision (“LGE”), located in Tomball (*city*), Texas (*state*), for the purpose of contracting for the performance of governmental functions and services. The undersigned may be referred to in this Agreement individually as a “Party” and collectively as the “Parties.”

**Preamble**

HCDE is a local governmental entity established to promote education in Harris County, Texas and is duly authorized to provide programs and services in the State of Texas. Both HCDE and LGE desire to set forth, in writing, the terms and conditions of their agreement.

**General Terms and Conditions**

In consideration of the mutual covenants and conditions contained in this Agreement and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties, intending to be legally bound, agree as follows:

1. **Term.** The term of this Agreement shall commence on the date of the first signature of this Agreement (“Effective Date”) and shall automatically renew annually, unless either Party gives thirty (30) days prior written notice of non-renewal.
2. **Agreement.** The terms of this Agreement shall apply and will be considered a part of any addendum, purchase order, or contract for programs and services delivered by HCDE. This Agreement and the attached and incorporated addenda, purchase orders, or exhibits, if any, contain the entire agreement of the parties, and there are no representations, agreements, arrangements, or undertakings, oral or written, between the Parties to this Agreement other than those set forth in this Agreement and duly executed in writing.
3. **Purpose and Scope of Work.**
  - A. HCDE agrees to:**
    - Provide LGE with descriptive offerings of each of the programs and services that HCDE provides.
    - Provide programs and services upon LGE’s submission of independent contracts or purchase orders to HCDE and HCDE’s acceptance thereof. HCDE’s obligations to provide programs and services is contingent on HCDE acquiring and maintaining sufficient staffing through reasonable efforts to satisfy HCDE’s obligations under this Agreement and all similar obligations under its contracts with other local governmental entities.
    - Conduct, at a minimum, an annual audit or survey, as appropriate, for each of the programs and services that HCDE delivers.
  - B. LGE agrees to:**
    - Participate in any or all of the programs and services that HCDE offers, in LGE’s sole discretion.

- Submit purchase order(s) or independent contract(s) for each of the HCDE programs and/or services that LGE desires to purchase and/or collaborate.
  - Agree to follow the terms and conditions of each independent contract or purchase order.
  - Designate a person to act as LGE’s representative to each respective HCDE program and/or service delivered.
4. As is. HCDE makes this Agreement available to HCDE participating entities “as is” and is under no obligation to revise the terms, conditions, scope, prices, and/or any requirements of the Agreement for the benefit of LGE.
  5. Master Contract. This Agreement can be utilized as a Master Contract. The general terms and conditions in this Agreement will serve to outline the working relationship between HCDE and LGE.

LGE agrees to adhere to the specific terms and conditions set forth for the HCDE programs and/or services as contracted by LGE. In the case of a conflict between this Agreement and any addendum, purchase order, or individual contract for a specific HCDE program or service, the provisions of the addendum, purchase order, or individual contract will govern.

6. Payments. The Parties agree that all payments made under this Agreement will be in an amount that fairly compensates the performing Party for the services or functions performed under this Agreement. The Parties further agree that each Party paying for the performance of governmental functions or services pursuant to this Agreement must make those payments from current revenues available to the paying Party.
7. Invoices. HCDE will invoice LGE for the HCDE programs and services that LGE purchases from HCDE. LGE agrees to remit payment to HCDE within thirty (30) days after the later of the following: (1) the date LGE receives the goods; (2) the date the performance of the service is completed; or (3) the date LGE receives an invoice for the goods or service. If LGE makes a payment to HCDE with a credit card, LGE agrees to pay to HCDE a surcharge fee consisting of any applicable credit card fees and/or costs incurred by HCDE, including, without limitation, the processing fee(s) charged to HCDE by the credit card company(ies).
8. Participation in HCDE’s Cooperative Purchasing Program. If LGE elects to participate in HCDE’s cooperative purchasing program, Choice Partners, LGE shall be permitted to purchase goods and services using the contracts competitively procured by HCDE. HCDE does not assess a fee to LGE for participation in Choice Partners. LGE shall make payments directly to vendors. LGE shall be responsible for ordering, inspecting, and accepting the goods and services purchased through Choice Partners. LGE shall further be responsible for the vendors’ compliance with provisions relating to the specific quality of goods and services delivered and terms of delivered, as set forth between LGE and the vendor. HCDE is not responsible or liable for the performance of any vendor used by LGE as a result of this Agreement or LGE’s participation in Choice Partners.
9. Compliance with Laws. Each Party is responsible for complying with applicable laws and regulations relating to this Agreement and any purchase made under this Agreement.

10. Termination. This Agreement may be terminated prior to the expiration of the Term hereof as follows:
- By either Party, with or without cause, upon thirty (30) days' prior written notice;
  - By mutual written agreement of the Parties; or
  - By either Party immediately if the other Party commits a material breach of any of the terms of this Agreement and no remedial action can be agreed upon by the Parties.

Termination of this Agreement by a Party shall not terminate an existing purchase order or individual contract between HCDE and LGE or between LGE and an HCDE cooperative purchasing program vendor. In the event of termination of this Agreement or any purchase order or individual contract, LGE shall be responsible for compensating HCDE for programs and services provided by HCDE up to the effective date of termination.

11. Assignment. Neither this Agreement nor any duties or obligations entered in subsequent contracts because of this agreement shall be assignable by either party without the prior written acknowledgment and authorization of both parties.
12. Conflict of Interest. During the Term of HCDE's service to LGE, LGE, its personnel and agents, shall not, directly or indirectly, whether for LGE's own account or with any other person or entity whatsoever, employ, solicit or endeavor to entice away any person who is employed by HCDE.
13. Contract Amendment. This Agreement may be amended only by the mutual agreement of all Parties, in writing, to be attached to and incorporated into this Agreement.
14. Notice. Any notice provided under the terms of this Agreement by either party to the other shall be in writing and shall be sent by **certified mail, return receipt requested**. Notice to shall be sufficient if made or addressed as follows:

Harris County Department of Education Attn: James Colbert, Jr. County School Superintendent 6300 Irvington Blvd. Houston, Texas 77022 713-694-6300	_____ (“LGE”) Attn: _____ Title: _____ Address: _____ City, State, Zip: _____ Phone: _____ Email: _____
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15. Relation of Parties. It is the intention of the parties that LGE is independent of HCDE and not an employee, agent, joint venturer, or partner of HCDE and nothing in this Agreement shall be interpreted or construed as creating or establishing the relationship of employer and employee, agent, joint venturer or partner, between HCDE and LGE or HCDE and any of LGE's representatives.
16. Non-Exclusivity of Services. Nothing in this Agreement may be construed to imply that HCDE has exclusive right to provide LGE with programs or services. During the Term of this Agreement, LGE reserves the right to use all available resources to procure other programs and services as needed and, in doing so, will not violate any rights of HCDE.

17. Disclaimer. HCDE DOES NOT WARRANT THAT THE OPERATION OR USE OF HCDE PROGRAMS AND/OR SERVICES WILL BE UNINTERRUPTED OR ERROR FREE. HCDE HEREBY DISCLAIMS ANY AND ALL WARRANTIES, EXPRESS OR IMPLIED, IN REGARD TO ANY INFORMATION, PRODUCT, PROGRAM, OR SERVICE FURNISHED UNDER THIS AGREEMENT, INCLUDING, WITHOUT LIMITATION, ANY AND ALL IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.
18. Limitation of Liability. Without waiver of the Disclaimer in Article 17 of this Agreement, the Parties agree that:
  - Neither Party waives any immunity afforded to it under applicable law; and
  - Neither Party shall be liable to the other Party for special, incidental, or exemplary damages with regard to any lawsuit or formal adjudication arising out of or relating to this Agreement.
19. Severability. In the event that any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provisions, and the Agreement shall be construed as if such invalid, illegality, or unenforceable provision had never been contained in it.
20. Governing Law and Venue. This Agreement shall be governed by and construed in accordance with the laws of the State of Texas, without regard to its conflicts of laws provisions. The mandatory and exclusive venue for the adjudication or resolution of any dispute arising out of this Agreement shall be in Houston, Harris County, Texas.
21. No Waiver. Nothing in this Agreement shall be deemed to waive, modify, or amend any legal defense available at law or equity to a Party, including the defense(s) of immunity. No failure on the part of either Party at any time to require the performance by the other Party of any term hereof shall be taken or held to be a waiver of such term or in any way affect such Party's right to enforce such term, and no waiver on the part of either Party of any term hereof shall be taken or held to be a waiver of any other term hereof or the breach thereof. No waiver, alteration, or modification of any of the provisions of this Agreement shall be binding unless in writing and signed by duly authorized representatives of the Parties hereto.
22. Benefit for Signatory Parties Only. Neither this Agreement, nor any term or provisions hereof, not any inclusion by reference, shall be construed as being for the benefit of any party not in signatory hereto.
23. Authorization. Each party acknowledges that the governing body of each Party to the Agreement has authorized and approved this Agreement.
24. Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original constituting one and the same instrument.

In witness whereof, HCDE and LGE have executed this Agreement to be effective on the date specified in Article 1. Term above:

# City of Tomball

\_\_\_\_\_  
Name of Local Governmental Entity

Harris County Department of Education

\_\_\_\_\_  
Authorized Signature

\_\_\_\_\_  
James Colbert, Jr.

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
County School Superintendent

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

Type of Local Governmental Entity (*select one*):

- School District       Charter School
- County                 City/Municipality
- University             College
- State Entity
- Governmental entity/other: \_\_\_\_\_

# City Council Meeting Agenda Item Data Sheet

Meeting Date: March 6, 2023

**Topic:**

Approve amendment to Appendix C: Approved Purchasing Cooperatives of Administrative Policy No. 9, Procurement Policy & Manual to add Choice Partners as an approved cooperative.

**Background:**

The City Council adopted the current Procurement Policy & Manual on Oct. 3, 2022. As part of the Policy, the Council approved an authorized list of purchasing cooperatives in which the City can participate. This item is to consider the addition of Choice Partners as an eligible purchasing cooperative.

Choice Partners is a national procurement and contract purchasing cooperative that meets the purchasing requirements for the State of Texas and 2 CFR 200 (federal purchasing requirements). Contracts available on the Choice Partners cooperative include facilities, supplies, services, food, and technology. The primary government agency for Choice Partners is the Harris County Department of Education, a nonprofit tax-assisted organization that supports education and school districts in Harris County.

**Origination:** Finance

**Recommendation:**

Staff recommends approval of the amendment to Appendix C: Approved Purchasing Cooperatives of Administrative Policy No. 9, Procurement Policy & Manual.

**Party(ies) responsible for placing this item on agenda:** Jessica Rogers, 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:** Jessica Rogers 3/1/2023 **Approved by:** \_\_\_\_\_  
Staff Member Date City Manager Date

## **Appendix C**

### **Approved Purchasing Cooperatives**

Buyboard National Purchasing Cooperative

1 Government Procurement Alliance (1GPA)

Texas Department of Information Resources (DIR)

Sourcewell ID #124317

Houston- Galveston Area Council Cooperative Purchasing Program (H-GAC)

National Purchasing Partners- Government Division (NPPGov)

- Member # 5708546 Market Street
- Member # 5708547 Rudel Drive

Texas Smart Buy – M1012

OMNIA Partners Cooperative Purchasing Program

U.S. General Services Administration (GSA)

**Choice Partners**

# City Council Meeting Agenda Item Data Sheet

Meeting Date: March 6, 2023

**Topic:**

Discussion and Possible Action regarding Legislative Items at the 2023 Texas Legislative Session.

**Background:**

Two recent bills filed seek to prevent cities and counties from adopting or enforcing local ordinances or orders related to any activity contained in six different state codes unless expressly allowed to do so by state law.

H.B. 2127, filed by Rep. Dustin Burrows, and S.B. 814, filed by Sen. Brandon Creighton, would give the state exclusive authority over any activity contained in the Agricultural Code, Finance Code, Insurance Code, Labor Code, Natural Resources Code, and Occupations Code. And unless state law expressly authorizes a city or county to act in these fields, any local ordinance or order that attempts to regulate any activity within these codes would be void and unenforceable by law.

Anyone impacted by a local ordinance or order in these fields may bring suit against a local government or local official. If a court finds that the challenged ordinance or order is not expressly authorized by law, the plaintiff would be entitled to declaratory and injunctive relief, costs, and attorney's fees. Governmental, official, or qualified immunity would not apply to any such claim.

TML encourages city officials to contact your state representatives and senators to discuss how these bills would impact your communities.

**Origination:** Requested by Councilman Parr

**Recommendation:**

**Party(ies) responsible for placing this item on agenda:** Tracylynn Garcia, City Secretary

# Council Legislative Priorities

HB 2127

SB 814

While we are still analyzing the full impact of these bills, the consequences are far-reaching. If passed, then a city or county may no longer be able to adopt or enforce ordinances or orders designed to protect its residents from:

- Drought conditions (Agricultural Code)
- Overgrown lots (Agricultural Code)
- Insects and bees (Agricultural Code)
- Raising animals (Agricultural Code)
- Predatory lending businesses (Finance Code)
- Pawn shops (Finance Code)
- Injuries at special events (Insurance Code)
- Employment discrimination (Labor Code)
- Door-to-door sales (Occupations Code)
- Uncontrolled burns (Natural Resources Code)
- Unsafe waste storage (Natural Resources Code)
- Heavy trucks (Natural Resources Code)
- Oil, gas, and propane pipelines (Natural Resources Code)
- Unscrupulous raffles and bingo games (Occupations Code)
- Unsafe outdoor festivals and sporting events (Occupations Code)

# City Council Meeting

## Agenda Item

### Data Sheet

Meeting Date: March 6, 2023

#### Topic:

Authorize the City Manager to Execute an Interlocal Agreement between the City of Tomball and Harris County Emergency Services District No. 15 (ESD15) for Fire Protection, Fire Suppression, and Rescue Services.

#### Background:

In August of 2022, Harris County Emergency Services District #15 (ESD15) broke ground on their east side fire station. In order to staff the fire station there is a need to revise the interlocal agreement between the City and the Emergency Services District. Currently the interlocal agreement only allows for the staffing of Fire Station 5, on the west side of their district, and provides for a contract service fee, which is calculated based on the valuation of their taxable properties.

The new interlocal agreement provides for the following:

- 100% of the salaries and benefits of all assigned firefighters (18 firefighters and 1 Battalion Chief) to Station 4 and 5, including Overtime and training costs.
- 100% of the operating costs of the District's Stations to include;
  - o Office, computer, educational, janitorial and food supplies.
  - o Uniform purchase as outlined in City's Budget presented to the District and allowance for each firefighter in the amount of \$500 in each calendar year for their uniform if outside the City approved Budget by the District.
  - o Chemical supplies, SCBA supplies and parts, radio supplies, firefighter tools and parts.
  - o Maintenance of aforementioned items.
  - o Vehicle and building maintenance.
  - o Vehicle and equipment insurance.
- 25% of the costs of the actual salaries and benefits of Fire Department Administration staff.
- Apportioned costs of services provided by the City;
  - o Twenty-five percent (25%) of the City's cost to operate its telecommunications and dispatch services;
  - o Ten percent (10%) of the City's cost to operate Information Technology services;
  - o Fifteen percent (15%) of the City's cost to operate Human Resources services;
  - o Five percent (5%) of the City's cost to operate Finance Department services; and
  - o One percent (1%) of the City's cost to provide City Management.

**Origination:** Fire Department

#### Recommendation:

Approval

**Party(ies) responsible for placing this item on agenda:** Joe Sykora, Fire Chief

**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 Joe Sykora 02/28/2023 Approved by \_\_\_\_\_  
Staff Member Date City Manager Date

THE STATE OF TEXAS           §  
  §  
COUNTY OF HARRIS           §

**INTERLOCAL AGREEMENT FOR  
THE PROVISION OF FIRE PROTECTION SERVICES WITHIN THE SERVICE AREA  
OF HARRIS COUNTY EMERGENCY SERVICES DISTRICT NO. 15**

This INTERLOCAL AGREEMENT FOR THE PROVISION OF FIRE PROTECTION SERVICES AND THE USE OF TWO FIRE STATIONS FOR FIRE PROTECTION, FIRE SUPPRESSION AND EMERGENCY RESCUE SERVICES (herein after “Agreement”) is entered into as the effective date of this signed contract by and between the **CITY OF TOMBALL** (hereinafter referred to as “City”), and **HARRIS COUNTY EMERGENCY SERVICES DISTRICT NO. 15** (hereinafter referred to as “District”), for the mutual covenants and agreements herein contained, and other good and other good and valuable consideration. Accordingly, the District and the City agree to the following:

**I.  
PARTIES**

The District is a political subdivision of the State of Texas, organized and operating in a portion of Harris County, Texas under Chapter 775 of the Texas Health & Safety Code. The City is a home-rule municipality organized and operating under the laws and Constitution of the State of Texas. Both the District and City propose to enter into an Agreement pursuant to the Interlocal Cooperation Act, Chapter 791 of the Texas Government Code.

The purpose of the Agreement is to facilitate the City’s Fire Department providing services to the District and City. Pursuant to this Agreement, the City shall provide, to the persons and commercial interests located within the geographic boundaries of the District (herein the “Service Area”) fire protection and suppression services to protect life and property from fire and to provide emergency medical first responder and rescue services (all collectively referred to herein as “Emergency Services”). The “Service Area” is described and set forth in Exhibit “A”, attached hereto and incorporated by reference. Within the Service Area, the boundaries of the City, as well as the City’s Extra Territorial Jurisdiction area, the City’s Fire Department shall provide the Emergency Services as it shall determine in its sole and exclusive discretion. Furthermore, nothing in this Agreement shall prohibit the City Fire Department from providing mutual aid and automatic aid pursuant to those separate agreements made and entered into by the City.

The City acknowledges and represents that it is familiar with the Service Area under Exhibit “A” and agrees to provide the fire/rescue emergency services in accordance with the Agreement. The parties agree that the City’s Fire Department shall perform and deliver said emergency services to the District and City. The parties also both agree and acknowledge that the District has built and constructed and will provide a fire station to be located 19900 Telge Road, Tomball, Texas 77377 (the “Telge Station”) and a new fire station to be constructed at 10333

Mahaffey Road and FM 2920, Tomball, Texas 77375 (the “Mahaffey Station”) for use by the City’s Fire Department.

In consideration of the District providing the Fire Stations contemplated under this Agreement, the City agrees to utilize the Fire Stations to provide emergency services to the District and the City to operate the Fire Stations in a manner that the City determines to be in the best interests of the City and the District. The District and the City mutually agree that it is in the interest of the citizens of the District and the City that the City provide fire protection services to the District and the City and the District mutually find that entering into this Agreement serves a public purpose of both the City and the District.

NOW, THEREFORE, the terms of this Agreement are as follows:

## **II. DEFINITIONS**

“Firefighter” refers to a City-employed firefighter, of any rank, certified and assigned to perform the duties of a firefighter per this Agreement.

“Battalion Chief” refers to a City-employed Chief who supervises firefighters in day to day operations.

“Overtime” refers to any hours worked by a firefighter of any rank during any Fair Labor Standards Act-defined workweek, which exceed one-hundred six (106) hours in a 14-day period.

“Regular Work Hours” refers to the normal workday or work schedule assigned to any firefighter. A regular work week is typically a 48-hour shift, with an average of 53 hours per week.

“Salaries and Benefits” refers to the regular annual salary and employer paid benefits for firefighters. Benefits include federal income taxes, including Social Security and Medicare, Texas Municipal Retirement System contributions, medical, dental, and vision insurances, employer-paid life insurance, and any other employer-paid benefits offered to firefighters as part of their employment compensation.

## **III. TERM OF THE AGREEMENT**

3.1. The term of this Agreement begins on February 24, 2023 and ends on September 30, 2030, unless terminated sooner in accordance with **Section XI** of this Agreement.

**IV.**  
**PROVISION OF FIREFIGHTERS**

4.1. The City will assign three (3) firefighters per shift for a total of nine (9) firefighters to serve at each of the District's two (2) Fire Stations beginning February 24, 2023, for a total of eighteen (18) firefighters. Both the City and the District may reevaluate at any time during the term of this contract if more firefighters are needed to be staffed at any of the two (2) Stations and if it is feasible.

4.2 The City shall assign one (1) of the City's three (3) Battalion Chiefs to the District for cost sharing measures only. This Battalion Chief will respond to all calls for service that require a Battalion Chief within the jurisdiction of the District. The physical location of the assignment of the Battalion Chief shall be at the discretion of the City Fire Chief.

4.3 The City and the District may, at any point during the term of this Agreement, mutually agree that additional firefighters are needed. If the Parties agree that additional firefighters are needed, the Parties will seek to amend this Agreement as outlined in **Section VIII**. **Any amendment must be in writing, signed and approved by the Parties governing entities and mutually agreed to by the Parties.**

4.4. For the purpose of this Agreement, any working time, whether regular time or overtime, that a firefighter spends in the provision of fire protection services on behalf of the District, including training, meetings, or other duties assigned by the Fire Chief, is counted as hours worked. Firefighters will primarily spend their Regular Work Hours devoted to the responsibilities outlined in **Section V**.

**V.**  
**DUTIES OF FIREFIGHTERS**

5.1. While on duty, a Tomball Firefighter, of any rank, shall perform the following duties:

- Protect the safety and welfare of any person in the jurisdiction of the District;
- Protect and Maintain the property of the District;
- Respond to calls for service within the District;
- Work and collaborate with outside agencies;
- Perform firefighting operations including deploying and operating hoses, pumping apparatus, directing water streams or other chemicals and raising and climbing unsupported ladders, including ground and aerial of up to 100 feet;
- Perform search and rescue for trapped or injured persons to include swift water rescue work with and without use of boat;
- Administer first aid and emergency medical service to injured persons to level authorized by Emergency Medical Technician (EMT) or Paramedic Certification;

- Work under dangerous conditions and in hostile environments during fire suppression or emergency medical activities, aircraft emergency and incidents involving hazardous chemicals;
- Wear department supplied safety equipment and personal protective equipment at emergency scenes and during training exercises that require the use of such equipment;
- Respond to fire/rescue calls as part of an engine or truck company and provide Basic Life Support as a member of the TFD First Responder program;
- Inspect and perform routine maintenance on rescue equipment, fire apparatus, hydrants, hoses, and other support equipment;
- Participate in regular training and drills for fire suppression, prevention and inspection through both simulated and on-the-job exercises;
- Clean and maintain station facilities, grounds, equipment, apparatus and hydrants;
- Participate in department committees and attends staff meetings as required;
- Provide fire station tours, present information to students at local schools and assist in providing public fire prevention and education programs;
- Drive various fire apparatus to incident scenes in response to calls for service including fires, fire alarms, emergency medical service, and any other type of call;
- Operate apparatus and numerous types of rescue, salvage, emergency and fire suppression equipment;
- Maintain all assigned apparatus to include all equipment on board, and maintain proper stock of supplies on apparatus;
- Communicate with dispatch and command personnel through the use of specialized communications equipment such as a two-way radio system, data link in stations to administration and dispatch;
- Conduct pre-fire planning, prepare reports regarding hazardous materials, emergency and non-emergency incidents and building surveys;
- Coordinate fire suppression and emergency medical services activities with those of other fire stations, outside agencies and organizations;
- Maintain required inventory levels of supplies and materials;
- Prepare reports regarding building surveys and completes incident response reports; and
- Perform any other duties as directed by the Fire Chief.

5.2. All firefighters are required to follow policies and procedures of the District and the City. If any District policy or procedure directly conflicts with a policy or procedure of the City, the firefighter shall follow the City's policy and procedure, and report the conflict in policy and procedure to his/her supervisor as outlined under **Section VIII**.

## VI. CITY'S RIGHTS AND OBLIGATIONS

6.1. The City will assign nine (9) firefighters to serve at the Telge Station and nine (9) firefighters to serve at the Mahaffey Station when the station is completed. Three (3) firefighters in shifts of

three (3) will serve at each Station and both Stations will be manned twenty-four (24) hours a day, seven (7) days a week. The firefighters shall begin serving at the Mahaffey Station as soon as feasible on the effective date of this contract following the recruitment and hiring process of the nine (9) firefighters for the Mahaffey Road Station as it is within six (6) months prior to the completion of the Mahaffey Station. The City will carry the appointment of the firefighters and be responsible for ensuring compliance with all applicable licensure requirements as defined by the Texas Occupations Code and the Texas Commission on Fire Protection.

6.2. For the entirety of the term of this Agreement, the firefighters assigned to District fire stations are the employees of the City and not the District. The City shall be responsible for the hiring, discipline, and dismissal of City employees. The City shall also be responsible for all compensation, including salary, benefits, sick leave, vacation, and any other obligations associated with full-time employment for all firefighters, except as may otherwise be provided herein.

6.3. The Fire Chief shall retain control and supervision of all firefighters assigned to the District to the same extent he or she does for all other firefighters employed by the City. The rules, regulations, procedures, and policies of the City shall govern the performance of duties rendered pursuant to this Agreement. All firefighters shall also abide by the policies, procedures, and rules of the District in accordance with **Section 5.2**.

6.4. The City shall be responsible for the provision of any equipment necessary for any firefighter to fulfill the role as a firefighter. Equipment for which the City is responsible for furnishing maintaining, and replacing includes but is not limited to, uniforms, personal protective equipment, hand-held radios utilized to communicate with the Tomball Fire Department and outside agencies, vehicles, and fuel.

6.5. The City and the District may, at any point during the term of this Agreement, mutually agree that additional firefighters are needed. If the Parties agree that additional firefighters are needed, the Parties will seek to amend this Agreement as outlined under **Section VIII**.

## **VII. DISTRICT'S RIGHTS AND OBLIGATIONS**

7.1. The District shall provide access and maintenance of the District's facilities located at the Telge Station and the Mahaffey Station when completed, a networked computer for firefighters assigned to a shift at each of the District's locations, and general office supplies needed for the firefighters to perform their duties.

7.2. The District will notify the City regarding any concerns, questions, or issues with firefighters in a timely manner. Notification shall be provided to the City by the District in writing. The District reserves the right to request removal or reassignment of any firefighter whose assignment it deems not to be in the best interests of the District. The City shall work to accommodate the District's request to the extent feasible.

7.3. The District will be responsible for the payment of one hundred percent (100%) of the actual costs associated with hours worked by firefighters in the provision of fire protection services as outlined in this Agreement. Any Overtime hours worked by firefighters not in connection with firefighter duties at the District, as determined by the City, shall be paid in full by the City.

7.4 The District will be responsible for the payment of one hundred percent (100%) of the actual costs associated with hours worked by one (1) Battalion Chief in the provision of fire protection services as outlined in this Agreement. Any Overtime hours worked by the Battalion Chief in support of the District shall be the responsibility of the District. Any Overtime hours worked not in connection with the Battalion Chief's duties to support the District, as determined by the City, shall be paid in full by the City.

7.5. The District will pay one hundred percent (100%) of the costs associated with any training which is mandated by the Texas Commission on Fire Protection (TCFP) and the Texas Department of State Health Services. Any training outside the City's budget must be approved by the District Board at least sixty (60) days prior to the training or to the extent that is feasible. The City shall provide monthly reports to the District Board of any training.

7.6. The District will pay the proportional support costs as outlined in Section IX of this Agreement necessary for the provision of fire protection services to the District, including human resources, information technology, telecommunications/dispatch services, fire administration, and city management.

7.7. The District will pay one hundred percent (100%) of the allocated direct costs of materials and supplies, services, personal protective equipment, and/or maintenance necessary for the provision of fire protection services within the District.

7.8 The District shall purchase their own apparatus for fire protection services. The District shall be responsible for apparatus insurance and reimbursing the City of the actual amount of the insurance coverage costs for District owned vehicles, should the apparatus or vehicles be covered under City insurance.

## **VIII. MUTUAL OBLIGATIONS OF THE PARTIES**

8.1. The Parties agree that any conflicts, questions, or interpretations of this Agreement will be addressed between the District's President, designee, or District Counsel and the City Manager, or designee. Any clarifications or amendments resulting from those conflicts, questions, or interpretations will be made in writing and signed by both parties, and the President and the City Manager are authorized to execute agreements acknowledging the clarifications or amendments.

8.2. The Parties agree that this Agreement is not intended, nor shall it be construed, to obligate the City in any manner whatsoever to assign any firefighter to devote any portion of his or her working time to the provision of fire protection services. However, if for any reason, the City does not provide fire protection services as described in this Agreement, then the District is entitled to pay the City only a proportionate share of the identified costs identified in this Agreement. If the amount paid to the City exceeds the proportionate amount of services received, the District is entitled to a refund equal to the proportionate amount of excess paid.

8.3. The Parties agree to meet no less than quarterly to discuss issues and concerns relative to fire protection services as agreed upon herein. These discussions should include an analysis of District growth, reports of incidents, trends, needs, and any other information deemed necessary to evaluate the continued effectiveness of firefighters, promote safety within the District, identify opportunities for efficiencies, and resolve potential conflicts.

8.4. The Parties agree that the number of firefighters outlined in this Agreement are based on projections, including projections of District growth, response statistics, and staffing models employed by the City of Tomball. The Parties agree that they will work together to resolve any issues and conduct joint analyses when necessary to ensure that the obligations of this Agreement can be met. If at any point during the term of this Agreement, either party desires to make a change to the number of firefighters, duties of firefighters, or other Agreement obligations, that Party is required to notify the other Party as soon as feasible, provide a detailed analysis of facts used to come to the conclusion, and meet with the other Party to discuss the potential changes to the Agreement.

8.5. The Parties agree that any amendment to this Agreement must be made in writing, and approved by both the City Council of the City of Tomball and the District's Commissioners.

8.6. The Parties agree that any Overtime related to the provision of fire protection services will be approved by the shift Battalion Chief and/or Fire Chief.

8.7. The Parties agree that the Fire Chief shall submit to the District his/her recommendations for firefighter staffing and assignments, including, but not limited to the rank and proposed assigned location of each firefighter, for the following City Fiscal Year no later than June 1 of each year in the contract term. The Parties agree that the District may object to any recommendations and those objections will be evaluated by the Fire Chief. The Parties agree that this list is to be provided for budget planning purposes and the Fire Chief has the right to assign firefighters of any rank to fulfill the obligations of this Agreement as he/she deems appropriate.

**IX.**  
**CONTRACT AMOUNT**

9.1. The District shall pay the City an amount equal to one hundred (100%) of the cost of the actual Salaries and Benefits of the firefighters for each year in the term of this Agreement, as outlined in **Section IV**.

9.2. Because Salaries and benefits will change annually due to raises, promotions, personnel changes, benefit changes, the calculation of the total amount the District shall remit to the City for the provision of fire protection services will be based on the actual costs of Salaries and Benefits of the firefighters in those fiscal years.

9.3. The District will pay one hundred percent (100%) of any Overtime costs incurred by firefighters acting in the course and scope of their primary duties while assigned to District Fire Stations, including, but not limited to, overtime incurred through administrative tasks required by the District or the City, including but not limited to report completion, required meetings, and training.

9.4. The District will pay one hundred percent (100%) of the costs associated with any training which is mandated by the Texas Commission on Fire Protection (TCFP) and the Texas Department of State Health Services, in accordance with **Section 7.8**.

9.5. The District will pay one hundred percent (100%) of the operating costs of the District's Stations to include, but not limited to the following;

- Office, computer, educational, janitorial and food supplies.
- Uniform purchase as outlined in City's Budget presented to the District and allowance for each firefighter in the amount of \$500 in each calendar year for their uniform if outside the City approved Budget by the District.
- Chemical supplies, SCBA supplies and parts, radio supplies, firefighter tools and parts.
- Maintenance of aforementioned items.
- Vehicle and building maintenance.
- Vehicle and equipment insurance.

9.6. The District will pay twenty five percent (25%) of the costs of actual salaries and benefits of the Fire Department Administration for each year in the term of this Agreement.

9.7. The District will pay a proportion of support services provided by the City required to operate fire protection services in the District. **The District shall no longer be obligated to provide any portion of its tax rate (previously three cents (\$0.03) per one hundred dollars (\$100.00) valuation) to the City.** The Parties have instead decided to apportion the costs of certain services as follows:

- Twenty-five percent (25%) of the City’s cost to operate its telecommunications and dispatch services;
- Ten percent (10%) of the City’s cost to operate Information Technology services;
- Fifteen percent (15%) of the City’s cost to operate Human Resources services;
- Five percent (5%) of the City’s cost to operate Finance Department services; and
- One percent (1%) of the City’s cost to provide City Management.

**X.  
PAYMENT PROVISIONS**

10.1. The District agrees to pay the City for the provision of fire protection services as outlined in this Agreement in **Section IX**.

10.2. Payments will be made quarterly in arrears, based upon the reasonable actual expenditures made by the City on behalf of the District. The City shall provide appropriate and reasonably requested documentation of its expenditures to the District. The District shall be entitled to review reports, budgets, expenditures, financial statements and other such similar types of documents to substantiate the payment being made.

10.3. Any payment remitted by the District to the City should be made via check and payable to the “City of Tomball”. The District shall also be entitled to make such payment via wire transfer or other funds transfer should it desire to do so.

10.4. If this Agreement is terminated at any time other than the scheduled termination date, payments under this Contract shall be prorated as needed and approved by the City and District.

10.5. If the District fails to make a payment within forty-five (45) days after the date the payment is presented and due, the City is authorized to terminate this Agreement by providing the notice specified herein. In the event of overdue payment, the City shall immediately notify the District in writing after the due date for failure of payment and such notice shall require payment by the District within thirty (30) days of the date of the second notice provided. Upon receipt from the City of a written notice of failure of payment, the District shall have thirty (30) days to cure the failure or rejection of payment. If the District cures the payment within the time allotted, the City shall not be entitled to terminate this Agreement except as otherwise permitted by Section 11.1. Further, the City’s failure to make demand for payments due is not a waiver of the District’s obligation to make timely payments.

10.6. If, at any time, the City fails to provide firefighters in accordance with **Section IV.**, the District is entitled to a prorated reimbursement of all costs and expenses paid under the terms of this Agreement which will be calculated and agreed to in writing by both Parties.

10.7. The Parties agree that this Agreement is a commitment of the District’s current revenue only. Notwithstanding anything to the contrary in this Agreement, the District is obligated to make

payments only as approved each year by the District's Commissioners. The District retains the right to terminate the Agreement as outlined in **Section XI**.

**XI.  
TERMINATION AND DEFAULT**

11.1. Prior to the expiration of the term, either Party is authorized to terminate this Agreement without cause by giving to the other party at least three-hundred sixty-five (365) days advance written notice of its intention to do so, specifying therein the effective date of such termination. If such termination occurs, a copy of written notice must be provided to the Harris County Fire Marshal's Office.

**XII.  
NOTICE**

12.1. Any notice permitted or required to be given to City may be given by registered or certified United States Mail, postage prepaid, return receipt requested, addressed to:

**Tomball Fire Department  
Attn: Fire Chief  
1200 Rudel Dr.  
Tomball, Texas 77375**

Notice shall be deemed given upon deposit of the notice in the United States Mail as aforesaid.

12.2. Any notice permitted or required to be given to the District may be given by registered or certified United States Mail, postage prepaid, return receipt requested, addressed to:

**Harris County Emergency Services District No. 15  
Attn: President  
P.O Box 1215  
Tomball, Texas 77375**

Any formal notice to the District required under this Agreement shall be copied to **Coveler & Peeler, P.C., Attn: Krystine Ramon, 820 Gessner, Suite 1710, Houston, Texas 77024**. Notice shall be deemed given upon deposit of the notice in the United States Mail as aforesaid.

12.3. Either Party may designate a different address by giving at least ten (10) days written notice in the manner provided above.

**XIII.**  
**MISCELLANEOUS**

13.1. The terms and provisions of this Agreement constitute the entire Agreement between the City and the District, and no modification of this Contract is effective unless in writing and executed by both Parties.

13.2. Notwithstanding anything to the contrary contained in this Agreement, City and District agree and acknowledge that the District is entering into this Agreement in reliance on City's ability to provide fire protective services to the District. The City covenants with the District to use its best efforts, skill, judgment, and abilities to perform the services outlined herein and to further the interest of the City and the District in compliance with all applicable federal, state, and municipal laws, regulations, codes, ordinances, and orders and with those of any other body having jurisdiction. The City warrants, represents, covenants, and agrees that all work to be performed by the City under or pursuant to this Agreement shall be of the standard and quality which prevail among similar entities and organizations of superior knowledge and skill engaged in providing similar services in major urban areas within the United States under the same or similar circumstances and involving the scope of services to be performed in accordance with this Agreement.

13.3. The provisions of this Agreement are severable and if, for any reason, a clause, sentence, paragraph, or any other part of this Agreement shall be determined to be invalid by a court or federal or state agency, board, or commission having jurisdiction over the subject matter thereof, shall not affect other provisions which can be given effect without the invalid provision.

13.4. The failure of either Party to insist upon the performance of any term or provision of the Agreement or to exercise any right herein conferred shall not be construed as a waiver or relinquishment to any extent of either Party's right to assert or to rely upon such term or right on any future occasion.

13.5. Should any action, whether real or asserted, at law or in equity, arise out of the execution, performance, attempted performance or nonperformance of the Agreement, the venue for said action shall lie solely in Harris County, Texas.

13.6. This written instrument and any exhibits hereto which are incorporated by reference and made a part of this Agreement for all purposes, constitute the entire agreement between the Parties hereto concerning the work and services to be performed hereunder and any prior contemporaneous oral or written agreement which purports to vary from the terms hereof shall be void. Any amendments to the terms of this Agreement must be in writing and must be approved by both Parties.

13.7. The Parties agree and understand that each Party will be responsible for its own actions or omissions, including the acts or omissions of its employees, officers, trustees, and agents. If any negligence occurs by either Party, the Parties agree to abide by comparative negligence under the

Texas Civil Practice and Remedies Code in accordance with the applicable laws of the State of Texas, subject to all defenses, including governmental immunity. The District and City agree that each Party will be individually responsible for responding to all complaints or causes of action resulting from the provision of services pursuant to this Agreement.

13.8. The Parties expressly acknowledge that both the City and the District are governmental entities of the State of Texas, and nothing in this Agreement, including but not limited to its execution and the performance by the Parties of their respective functions or obligations hereunder, is intended to waive or relinquish, or shall waive, relinquish, or be considered as a waiver or relinquishment by the City or by the District of the right to claim any exemptions, privileges, rights, defenses, or immunities, including without limitation any governmental, sovereign immunities or defenses, from or to the liability or prosecution available to either Party, or to their respective trustees, officers, employees, or agents under federal or Texas laws, including without limitation the Texas Constitution or the laws of the State of Texas.

***[The Balance of this Page has Intentionally Been Left Blank]  
[Signature page(s) follow(s)]***

IN WITNESS WHEREOF, the parties hereto have executed this Agreement in multiple copies, each of equal dignity, on this 24<sup>th</sup> day of February, 2023.

**CITY OF TOMBALL**

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Tracylynn Garcia, City Secretary

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David Esquivel, City Manager

**HARRIS COUNTY EMERGENCY SERVICES DISTRICT NO. 15**

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Terry Whistler, President

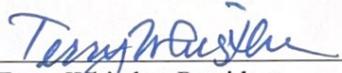
IN WITNESS WHEREOF, the parties hereto have executed this Agreement in multiple copies, each of equal dignity, on this 24<sup>th</sup> day of February, 2023.

**CITY OF TOMBALL**

\_\_\_\_\_  
Tracylynn Garcia, City Secretary

\_\_\_\_\_  
David Esquivel, City Manager

**HARRIS COUNTY EMERGENCY SERVICES DISTRICT NO. 15**

  
\_\_\_\_\_  
Terry Whistler, President

# City Council Meeting

## Agenda Item

### Data Sheet

Meeting Date: 03/01/2023

**Topic:**

Consideration for review and discussion of the proposed residential and commercial development on the west side of the intersection of Hufsmith Kohrville and Medical complex drive.

**Background:**

This is a roughly 40-acre development of approximately 95 single family homes and 7 acres of proposed commercial. This property came before City Council around 6 months ago requesting to remove the section of Medical Complex drive from Hufsmith Kohrville to FM 2920. In this new proposal the developer would construct a portion of the Medical complex extension to access the single family subdivision and develop commercial frontage along Hufsmith Kohrville. However, to accomplish this goal there are many moving parts, including, but not limited to a change to a Certificate of Convenience and Necessity (CCN), Annexation, a request for a Public Improvement District, and a possible Planned Development. Due to the complexity of this timeline, the developer is looking for some guidance from staff and Council.

**Origination:** Harrisburg Homes

**Recommendation:**

**Party(ies) responsible for placing this item on agenda:** Nathan Dietrich (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 Date City Manager Date

# City Council Meeting Agenda Item Data Sheet

Meeting Date: March 6, 2023

**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. 551.071 – Consultation with the City Attorney regarding a matter which the Attorney’s duty requires to be discussed in closed session
- Sec. 551.072 – Deliberations regarding Real Property
- Sec. 551.076 – Deliberations regarding Security Devices

**Background:**

**Origination:** Tracylynn Garcia, City Secretary

**Recommendation:**

**Party(ies) responsible for placing this item on agenda:** David Esquivel, City Manager