

**NOTICE OF REGULAR TOMBALL ECONOMIC DEVELOPMENT  
CORPORATION MEETING**



**Tuesday, March 07, 2023  
5:30 PM**

Notice is hereby given of a meeting of the Tomball Economic Development Corporation, to be held on Tuesday, March 07, 2023 at 5:30 PM, City Hall, 401 Market Street, Tomball, TX 77375, for the purpose of considering the following agenda items. All agenda items are subject to action. The Tomball Economic Development Corporation 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 TOMBALL ECONOMIC DEVELOPMENT CORPORATION OF THE CITY OF TOMBALL, TEXAS, WILL CONDUCT THE MEETING SCHEDULED FOR MARCH 7, 2023, 5:30 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>**

**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: 819 3134 8599 Passcode: 650677. 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
- C. Pledges
- 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. 2023 Strategic Work Plan Board Retreat – April 6, 2023
2. New video Success Stories – Kinsley Armelle and Tejas Chocolate and Barbeque

F. Approval of Minutes

3. Regular Tomball EDC Meeting of January 10, 2023

G. New Business

4. Consideration and possible action by Tomball EDC to approve a request by JDR Cable Systems for a one-year extension of time in order to complete the hiring of additional employees for their office/warehouse facility located at 2012 S Persimmon Lane, Tomball, Texas 77375.

5. Consideration and possible action by Tomball EDC to approve, as a Project of the Corporation, an agreement with the City of Tomball to make direct incentives to, or expenditures for, improvements to Jerry Matheson Park located at 1240 Ulrich Rd., Tomball, Texas 77375. The estimated amount of expenditures for such Project is \$200,000.00.

- Public Hearing

6. Consideration and possible action by Tomball EDC to approve, as a Project of the Corporation, an agreement with the City of Tomball to make direct incentives to, or expenditures for, improvements to Louie's Together Playground located at 1331 Ulrich Rd., Tomball, Texas 77375. The estimated amount of expenditures for such Project is \$200,000.00.

- Public Hearing

7. Consideration and possible action by Tomball EDC to approve, as a Project of the Corporation, an agreement with the City of Tomball to make direct incentives to, or expenditures for, design of the South Wastewater Treatment Plant expansion located in the City of Tomball, Texas. The estimated amount of expenditures for such Project is \$415,000.00.

- Public Hearing

8. Consideration and possible action by Tomball EDC to approve, as a Project of the Corporation, an agreement with the City of Tomball to make direct incentives to, or expenditures for, improvements to the North and South 100 Block Alleyways located in the City of Tomball, Texas. The estimated amount of expenditures for such Project is \$600,000.00.

  - Public Hearing
  
9. Consideration and possible action by Tomball EDC to approve a Professional Services Agreement with Kimley-Horn and Associates, Inc. for Professional Services related to the design of aesthetic enhancements for the Old Town Alley Improvement Project and Authorize the Executive Director to execute the Agreement in an amount not to exceed \$100,000.

  - Public Hearing
  
10. EXECUTIVE SESSION: The Tomball Economic Development Corporation Board will meet in Executive Session as authorized by Title 5, Chapter 551, Texas Government Code, The Texas Open Meetings Act, for the following purpose:

  - Section 551.072, - Deliberations regarding real property: Deliberate the purchase, exchange, sale, lease, or value of real property.
  - Section 551.087, - Deliberation regarding Economic Development negotiations.
  
11. Reconvene into regular session and take action, if necessary, on items discussed in Executive Session.
  
12. Consideration and possible action by Tomball EDC to ratify approval of a commercial real estate contract – unimproved property between the Corporation as Seller and Moffitt Williams, LLC and/or assigns as purchaser and authorize the execution of contracts and documentation by the EDC Executive Director relating to approximately 1.791 gross acres of land identified as Lot 3, Block 1, of the Tomball Business and Technology Park Section 2.
  
13. Consideration and possible action by Tomball EDC to ratify approval of a commercial real estate contract – between First Baptist Church of Tomball as Seller and the Corporation as purchaser and authorize the execution of contracts and documentation by the EDC Executive Director relating to approximately 4.63 acres of land comprised of Lot 13 of First Baptist Church of Tomball Subdivision and Lots 1-24 of Block 57, Lots 10-12 of Block 56, Lots 13-24 of Block 17, Lots 13-15 of Block 12, Lots 16 & 43-46 of Block 44, and Lots 17-19 & 43-48 of Block 46 of the Tomball Subdivision.

14. TEDC Quarterly update on 2022-2023 Strategic Work Plan.

H. 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 3rd day of MARCH 2023 by 5:30 PM, and remained posted for at least 72 continuous hours preceding the scheduled time of said meeting.

Kelly Violette  
Executive Director

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).

# Regular Tomball EDC Agenda Item Data Sheet

Meeting Date: March 7, 2023

**Topic:**

2023 Strategic Work Plan Board Retreat – April 6, 2023

**Background:**

**Origination:**

**Recommendation:**

**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

# Regular Tomball EDC Agenda Item Data Sheet

Meeting Date: March 7, 2023

**Topic:**

New video Success Stories – Kinsley Armelle and Tejas Chocolate and Barbeque

**Background:**

**Origination:**

**Recommendation:**

**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

# Regular Tomball EDC Agenda Item Data Sheet

Meeting Date: March 7, 2023

**Topic:**

Regular Tomball EDC Meeting of January 10, 2023

**Background:**

**Origination:** Kelly Violette, Executive Director

**Recommendation:**

Approval of the Minutes for the Meeting of January 10, 2023

**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

**NOTICE OF REGULAR TOMBALL ECONOMIC DEVELOPMENT  
CORPORATION MEETING**



**Tuesday, January 10, 2023  
5:30 PM**

Notice is hereby given of a meeting of the Tomball Economic Development Corporation, to be held on Tuesday, January 10, 2023 at 5:30 PM, City Hall, 401 Market Street, Tomball, TX 77375, for the purpose of considering the following agenda items. All agenda items are subject to action. The Tomball Economic Development Corporation 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 TOMBALL ECONOMIC DEVELOPMENT CORPORATION OF THE CITY OF TOMBALL, TEXAS, WILL CONDUCT THE MEETING SCHEDULED FOR JANUARY 10, 2023 5:30 PM, AT 401 MARKET STREET, TOMBALL, TEXAS, 77375. THIS MEETING AGENDA AND THE AGENDA PACKET ARE POSTED ONLINE AT:**

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**A. Call to Order**

President Fagan called the meeting to order at 5:30 p.m.

**PRESENT**

President Gretchen Fagan  
Vice-President Steven Vaughan  
Secretary Bill Sumner



Treasurer Richard Bruce  
Member Chad Degges  
Member Lisa Covington

ABSENT  
Member Clete Jaeger

OTHERS PRESENT  
Kelly Violette (via Zoom)  
Tiffani Wooten  
Tori Gleason  
McKayley Dannelley  
Kyle Bertrand  
Drew Huffman  
Jason Snell  
Matt Lawrence  
Bill Lawrence  
William McCain  
Sherrie Dunaway  
Amber Slaughter  
Josh Theut  
Josh Mueller  
Dan Church  
Clint Hammonds  
Lindsey Adams  
Matt Kimich  
Kaela Olson (via Zoom)

B. Invocation

Board Member Degges led the invocation.

C. Pledges

Board Member Degges led the pledge of allegiance to both 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.]*

No public comments were received.

E. Approval of Minutes

Motion made by Member Degges, Seconded by Treasurer Bruce.

Voting Yea: Vice-President Vaughan, Secretary Sumner, Treasurer Bruce, Member Degges, Member Covington.

The motion carried unanimously.

1. Special Joint Tomball EDC and Tomball City Council Meeting of November 7, 2022
2. Regular Tomball EDC Meeting of November 15, 2022

F. New Business

Drew Huffman, Public Works Director, requested that Item 8 be moved up on the agenda to Item 3.

3. Presentation by Drew Huffman, Public Works Director, City of Tomball, regarding upcoming City of Tomball project requests.

Drew Huffman, Public Works Director, provided an overview of the of the upcoming City of Tomball project requests.

Presentation item only; no Board action required.

4. Consideration and possible action by Tomball EDC to approve, as a Project of the Corporation, an agreement with 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, Suite 212 and 213, Tomball, Texas. The estimated amount of expenditures for such Project is \$4,063.00.

Public Hearing

President Fagan opened the public hearing at 6:09 p.m. No comments were received. Public hearing was closed 6:09 at p.m.

Motion made by Treasurer Bruce, Seconded by Secretary Sumner.

Voting Yea: Vice-President Vaughan, Secretary Sumner, Treasurer Bruce, Member Degges, Member Covington.

The motion carried unanimously.

5. Consideration and possible action by Tomball EDC to approve, as a Project of the Corporation, an agreement with Persimmon Global Logistics to make direct incentives to, or expenditures for, the creation or retention of primary jobs

associated with the development of its corporate headquarters to be located at 1014 Lizzie Lane, Tomball, Texas 77375. The estimated amount of expenditures for such Project is \$16,920.00.

Public Hearing

President Fagan opened the public hearing at 6:22 p.m. No comments were received. Public hearing was closed at 6:22 p.m.

Motion made by Member Covington, Seconded by Vice-President Vaughan.

Voting Yea: Vice-President Vaughan, Secretary Sumner, Treasurer Bruce, Member Degges, Member Covington.

The motion carried unanimously.

6. Consideration and possible action by Tomball EDC to approve, as a Project of the Corporation, an agreement with Church Holdings, Inc., to make direct incentives to, or expenditures for, assistance with infrastructure costs to be required or suitable for the promotion of new or expanded business development related or 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. The estimated amount of expenditures for such Project is \$426,639.00.

Public Hearing

President Fagan opened the public hearing at 6:47 p.m. No comments were received. Public hearing was closed 6:47 at p.m.

Motion made by Member Degges, Seconded by Treasurer Bruce.

Voting Yea: Vice-President Vaughan, Secretary Sumner, Treasurer Bruce, Member Degges, Member Covington.

The motion carried unanimously.

7. Consideration and possible action by Tomball EDC to approve, as a Project of the Corporation, an agreement with Hufsmith-Kohrville Business Park, LLC to make direct incentives to, or expenditures for, assistance with infrastructure costs to be required or suitable for the promotion of new or expanded business development related to the development and construction of a multibuilding office/warehouse park to be located at Hufsmith-Kohrville and Werich Road, Tomball, Texas 77375. The estimated amount of expenditures for such Project is \$122,722.00.

Public Hearing

President Fagan opened the public hearing at 6:57 p.m. No comments were received. Public hearing was closed at 6:57 p.m.

Motion made by Secretary Sumner, Seconded by Member Covington.

Voting Yea: Vice-President Vaughan, Secretary Sumner, Treasurer Bruce, Member Degges, Member Covington.

The motion carried unanimously.

8. Consideration and possible action by Tomball EDC to approve, as a Project of the Corporation, an agreement with 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, TX 77377. The estimated amount of expenditures for such Project is \$123,094.00.

Public Hearing

President Fagan opened the public hearing at 7:07 p.m. No comments were received. Public hearing was closed at 7:07 p.m.

Motion made by Secretary Sumner, Seconded by Vice-President Vaughan.

Voting Yea: Vice-President Vaughan, Secretary Sumner, Treasurer Bruce, Member Degges, Member Covington.

The motion carried unanimously.

9. Presentation by Matt Kimich, CEO, Blue Kite Building Group, regarding mixed-use development in Old Town Tomball.

Matt Kimich, CEO, provided an overview of the mixed-use development in Old Town Tomball.

Presentation item only; no Board action required.

10. EXECUTIVE SESSION: The Tomball Economic Development Corporation Board will meet in Executive Session as authorized by Title 5, Chapter 551, Texas Government Code, The Texas Open Meetings Act, for the following purpose:

- Section 551.072, - Deliberations regarding real property: Deliberate the purchase, exchange, sale, lease, or value of real property.

- Section 551.087, - Deliberation regarding Economic Development negotiations.

- Section 551.071, - Consultation with the Attorney regarding a matter which the Attorney's duty requires to be discussed in closed session.

The Tomball Economic Development Corporation Board of Directors recessed at 7:29 p.m.

- 11. Reconvene into regular session and take action, if necessary, on items discussed in Executive Session.

The Tomball Economic Development Corporation Board of Directors reconvened at 8:43 p.m.

- 12. Consideration and possible action by Tomball EDC to approve, as a Project of the Corporation, the designation of a mixed-use development in Old Town Tomball, to promote new and expanded businesses 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.

Public Hearing

President Fagan opened the public hearing at 8:44 p.m. No comments were received. Public hearing was closed at 8:44 p.m.

Motion made by Vice-President Vaughan, Seconded by Secretary Sumner.

Voting Yea: Vice-President Vaughan, Secretary Sumner, Treasurer Bruce, Member Degges, Member Covington.

The motion carried unanimously.

- 13. Consideration and possible action by Tomball EDC to approve a Budget Amendment to the Tomball EDC 2022-2023 Fiscal Year Budget.

Public Hearing

President Fagan opened the public hearing at 8:45 p.m. No comments were received. Public hearing was closed at 8:45 p.m.

Motion made by Vice-President Vaughan, Second by Treasurer Bruce.

Voting Yea: Vice-President Vaughan, Secretary Sumner, Treasurer Bruce, Member Degges, Member Covington.

The motion carried unanimously.

G. Adjournment

Motion made by Secretary Sumner, Seconded by Member Covington

Voting Yea: Vice-President Vaughan, Secretary Sumner, Treasurer Bruce, Member Degges, Member Covington.

The motion carried unanimously. Meeting adjourned at 8:45 p.m.

**CERTIFICATION**

I hereby certify that the above notice of meeting was posted on the bulletin board of City Hall, City of Tomball, Texas, a place readily accessible to the general public at all times, on the 6th day of JANUARY 2023 by 5:30 PM, and remained posted for at least 72 continuous hours preceding the scheduled time of said meeting.

Kelly Violette  
Executive Director

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).

PASSED AND APPROVED this the 7th day of March 2023.

\_\_\_\_\_  
President, Tomball EDC Board

\_\_\_\_\_  
Secretary, Tomball EDC Board

# Regular Tomball EDC Agenda Item Data Sheet

Meeting Date: March 7, 2023

**Topic:**

Consideration and possible action by Tomball EDC to approve a request by JDR Cable Systems for a one-year extension of time in order to complete the hiring of additional employees for their office/warehouse facility located at 2012 S Persimmon Lane, Tomball, Texas 77375.

**Background:**

At its December 17, 2019 Special Joint Tomball EDC and Tomball B&TP POA Board Meeting, the TEDC Board of Directors approved an agreement with JDR Cable Systems to expend funds, as a Project of the Corporation, for construction of a 76,915 square-foot corporate headquarters facility to be located at 2012 S Persimmon Lane, Tomball, Texas 77375. The approved grant amount was not to exceed \$135,591.00 based upon 30% of the 5-year net benefit to the community.

The effective date of the original agreement was February 23, 2020, which was sixty (60) days after the first published notice of the Project, with an expiration date of February 23, 2023.

In March 2021, the TEDC Board of Directors approved a one-year time extension for the completion of the expansion project and to hire the additional employees.

Brian Davis, General Manager of JDR Cable Systems has submitted a request for a one-year extension of the performance agreement. The corporate headquarters facility is complete, but they are struggling to find the additional workforce needed to complete the performance agreement. The pandemic and the national workforce shortage has played a huge role in their inability to meet the original timeline to hire workers. The new requested expiration date is February 23, 2024.

**Origination:** Brian Davis, General Manager, JDR Cable Systems

**Recommendation:** Staff recommends approval of the one-year time extension request.

**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







## PROVIDING THE VITAL CONNECTION

Tomball Economic Development Corporation  
Executive Director, Kelly Violette, CEcD, PCED, ACP  
29201 Quinn Road, Suite B  
Tomball, TX 77375

24 February 2023

Dear Kelly,

**Re: JDR Cable Systems, Inc – New North America Headquarters**

I am writing to kindly request an extension to the incentive package from the TEDC for development of JDR's new facility at 2012 S. Persimmon Street in the Tomball Business and Technology Park.

Construction on our facility was completed in February of 2021 and JDR spent its first year of operations moving to the new site and getting the facility up and running. While JDR did successfully relocate our 45 existing personnel to the site in accordance with the grant agreement, our additional headcount has not yet reached the 20 person threshold.

We are actively recruiting for a number of positions both in the office as well as for additional service technicians. As our business continues to grow in 2023, we are expecting our headcount to increase as well.

For the reasons listed above, JDR is requesting an extension of the grant proposal of 9 months to fulfil the requirement to create 20 new positions.

If there is any additional information required to support this extension, JDR will be happy to assist. We appreciate the support from TEDC and look forward to our continued relationship in a manner that is beneficial to both JDR and the City of Tomball.

Yours Sincerely,

A handwritten signature in black ink that reads "Brian Davis".

Brian Davis  
General Manager

M: 713-446-1246  
brian.davis@jdrcables.com

**AGREEMENT**

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

This Agreement (the "Agreement") is made and entered into by and between the **Tomball Economic Development Corporation**, an industrial development corporation created pursuant to Tex. Rev. Civ. Stat. Ann. Art. 5190.6, Section 4B, located in Harris County, Texas (the "TEDC"), and **JDR Cable Systems** (the "Company"), 11331 Charles Road, Houston, TX 77041.

**WITNESSETH:**

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

**WHEREAS**, the Company proposes to lease a 76,915 square-foot building to be constructed on approximately 10.06 acres of land out of Lots 6 and 7 on the recorded plat of the Tomball Business & Technology Park, generally located on the west side of South Persimmon Street, adjacent to the M118 Drainage Channel and more particularly described in Exhibit "A," attached hereto and made a part hereof (the "Property"); and

**WHEREAS**, the Company, currently located at 11331 Charles Road, Houston, TX 77041, proposes to enter into a build-to-suit lease agreement for the construction of a \$9,250,000 corporate headquarters facility on the Property as described in Exhibit "B," attached hereto and made a part hereof (the "Improvements"); and

**WHEREAS**, the Company also proposes to relocate forty-five (45) full-time employees to the Property and create twenty (20) new full-time positions in Tomball in conjunction with the relocation of its business operations to the Property; and

**WHEREAS**, the TEDC agrees to provide to the Company the sum of up to One Hundred Thirty-Five Thousand Five Hundred Ninety-One Dollars (\$135,591.00) to assist in the construction of the Improvements, the relocation of forty-five (45) employees, and the creation of twenty (20) new employment positions at the Property; and

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

**WHEREAS**, this expenditure is found by the Board of Directors of the TEDC to be suitable for the relocation of the corporate headquarters, to promote and develop new business enterprises, and in furtherance of creation and retention of primary jobs on the Property;

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

1.

Except as provided by paragraph 5, the Company covenants and agrees that it will operate and maintain the proposed business for a term of at least five (5) years and will maintain sixty-five (65) full-time employees on the Property.

2.

The construction of the Improvements, the relocation of forty-five (45) employees, the creation of twenty (20) new jobs, and the obtaining of all necessary occupancy permits from the City shall be obtained within two (2) years of the Effective Date. Extensions of these deadlines

may be granted by the Board of Directors of the TEDC due to any extenuating circumstance or uncontrollable delay.

3.

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

4.

While this Agreement is in effect, annually within 60 days following the anniversary date of the Effective Date of this Agreement, the Company, or an affiliated entity, will certify to the TEDC that it has complied with the terms of this Agreement and provide sufficient written information, records, and documents, to support its certification of compliance.

5.

In consideration of the Company's representations, promises, and covenants, TEDC agrees to grant to the Company up to One Hundred Thirty-Five Thousand Five Hundred Ninety-One Dollars (\$135,591.00) as a performance incentive to fund a portion of the cost of the Improvements and the addition of the sixty-five (65) employees to the Property. The TEDC agrees to distribute such funds to the Company within thirty (30) days of receipt of a letter from the Company requesting such payment, which letter shall also include: (a) a copy of the City's occupancy permit for the Improvements to the Property, if applicable; (b) proof that the company has added the number of employees indicated above to the Tomball operation as evidenced by copies of Texas Workforce Commission form C-3 or Internal Revenue Service form 941; (c) a letter from the City acknowledging that all necessary plats, plans, and specifications have been received, reviewed,

and approved; (d) certification that the Improvements have been constructed in accordance with the approved plans and specifications; (e) an affidavit stating that all contractors and subcontractors providing work and/or materials in the construction of the Improvements have been paid and any and all liens and claims regarding such work have been released; and (f) Proof of payment to all contractors and subcontractors providing work and/or materials in the construction of the Improvements, proof of payment must include copies of canceled checks and/or credit card receipts and copies of paid invoices from all contractors and subcontractors.

In the event the number of jobs originally projected is not met or maintained, the amount of the funding provided to the Company by TEDC will be reduced on a pro-rata basis to reflect the actual number of jobs at the time of the request for disbursement of funds.

6.

It is understood and agreed by the parties that in the event of a default by the Company on any of its obligations under this Agreement, the Company shall reimburse the TEDC any amounts paid to the Company by the TEDC for jobs created but not thereafter maintained in accordance with the terms of this Agreement along with interest at the rate equal to the 90 day Treasury Bill plus ½% per annum, within 120 days after the TEDC notifies the Company of the default. It is further understood and agreed by the parties that if the Company is convicted of a violation under 8 U.S.C. Section 1324a(f), the Company will reimburse the TEDC the full amount paid to the Company, with interest at the rate equal to the 90 day Treasury Bill plus ½% per annum, within 120 days after the TEDC notifies the Company of the violation.

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

funds. Such reimbursement shall be due and payable 120 days after the Company receives written notice of default accompanied by copies of all applicable invoices.

d. The Company's obligation to reimburse the TEDC payments made to Company if the Company breaches this Agreement survives termination of this Agreement.

e. It is understood and agreed by the parties that, in the event of a default by the TEDC on any of its obligations under this Agreement, the Company's sole and exclusive remedy shall be limited to either i) the termination of this Agreement, or ii) a suit for specific performance.

7.

Personal Liability of Public Officials: To the extent permitted by law, no director, officer, employee or agent of the TEDC, and no officer, employee or agent of the City of Tomball, shall be personally responsible for any liability arising under or growing out of this Agreement.

8.

This Agreement may not be assigned by the Company to any other person or entity unless the TEDC consents in writing to the assignment.

9.

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

above. The initial addresses of the parties for the purpose of notice under this Agreement shall be as follows:

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

If to Company: JDR Cable Systems Inc.  
11330 Charles Road, Houston, TX 77041  
Attn: Brian Davis, General Manager

10.

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

11.

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

12.

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

13.

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

14.

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

IN TESTIMONY OF WHICH, THIS AGREEMENT has been executed by both parties on this

23<sup>rd</sup> day of Feb 2020 (the "Effective Date").

**JDR Cable Systems Inc.**

By:




Name: Brian Davis

Title: General Manager

ATTEST:

By:



Name:

Toni Kiltum

Title:

Coordinator



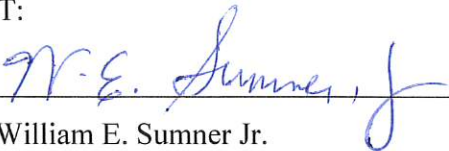
**TOMBALL ECONOMIC DEVELOPMENT CORPORATION**

By: 

Name: Gretchen Fagan

Title: President, Board of Directors

ATTEST:

By: 

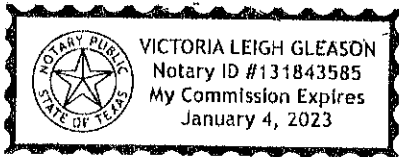
Name: William E. Sumner Jr.

Title: Secretary, Board of Directors

**ACKNOWLEDGMENT**

THE STATE OF TEXAS   §  
  §  
COUNTY OF HARRIS   §

This instrument was acknowledged before me on the 16<sup>th</sup> day of November 2020 by Brian Davis, General Manager of JDR Cable Systems Inc. for and on behalf of said company.



[Signature]  
Notary Public in and for the State of Texas

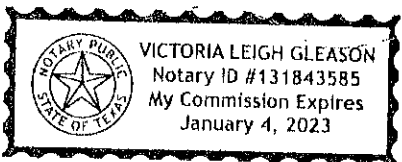
My Commission Expires: 01/04/2023

(SEAL)

**ACKNOWLEDGMENT**

THE STATE OF TEXAS   §  
  §  
COUNTY OF HARRIS   §

This instrument was acknowledged before me on the 17<sup>th</sup> day of December 2019 by Gretchen Fagan, President of the Board of Directors of the Tomball Economic Development Corporation, for and on behalf of said Corporation.



[Signature]  
Notary Public in and for the State of Texas

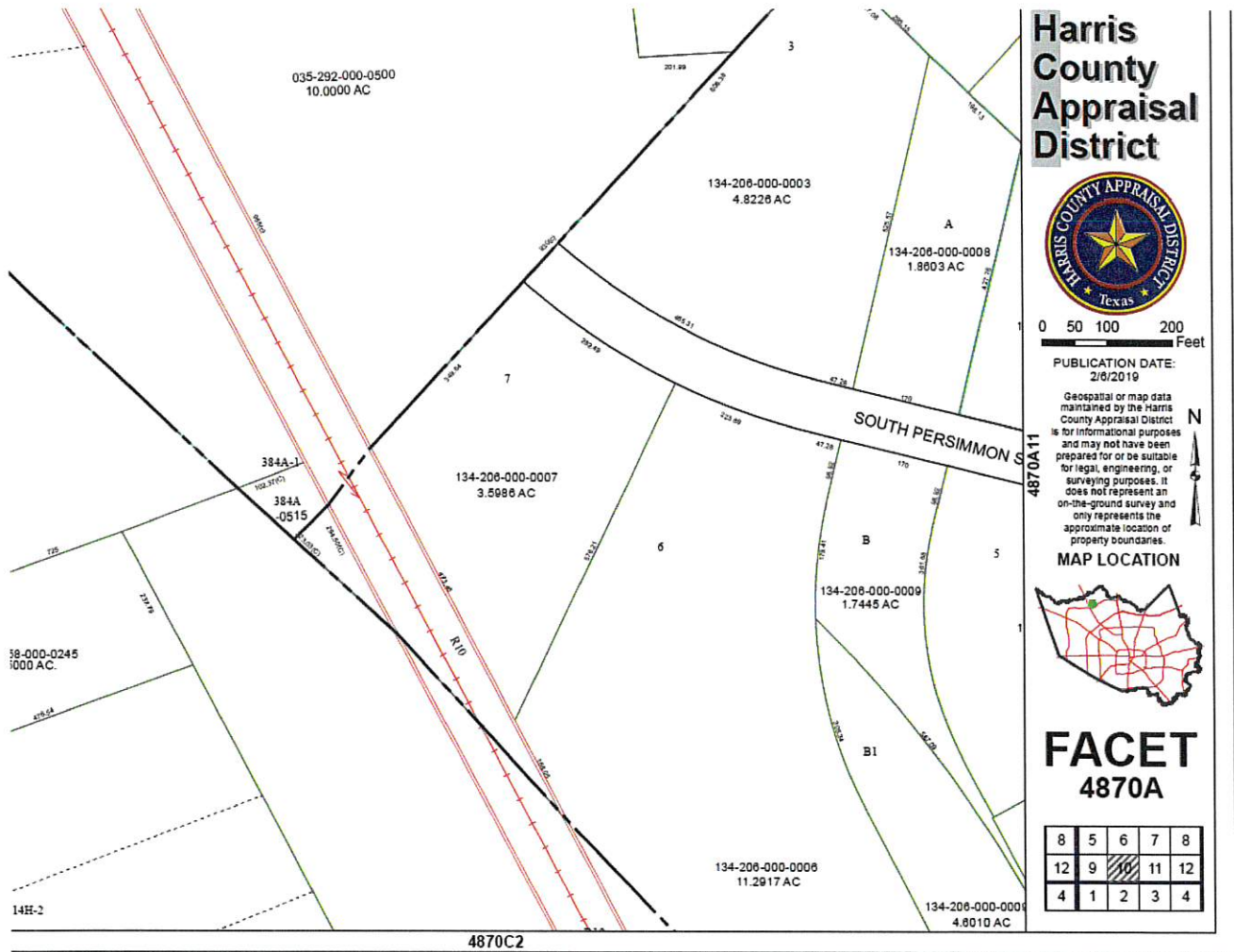
My Commission Expires: 01/04/2023

(SEAL)

### Exhibit A

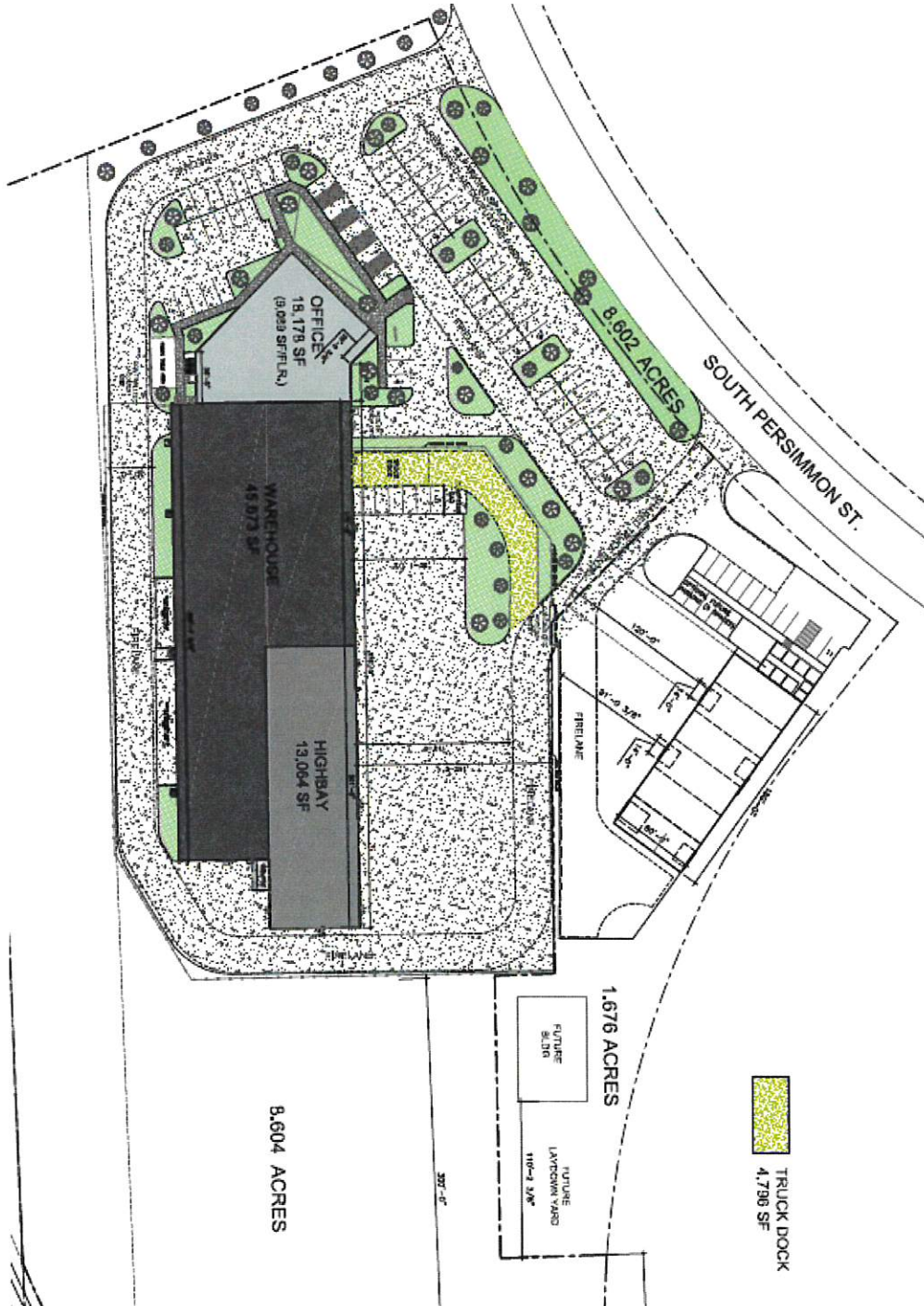
### Description of Property

10.06 acres out of Lots 6 and 7 of the Recorded Plat of the Tomball Business & Technology Park.



**Exhibit B**  
**Description of Improvements**

Construction of an approximately 76,915 square-foot concrete tilt wall office/warehouse facility. improvements include parking areas, drive aisles, loading docks, and truck aprons.



# Regular Tomball EDC Agenda Item Data Sheet

Meeting Date: March 7, 2023

**Topic:**

Consideration and possible action by Tomball EDC to approve, as a Project of the Corporation, an agreement with the City of Tomball to make direct incentives to, or expenditures for, improvements to Jerry Matheson Park located at 1240 Ulrich Rd., Tomball, Texas 77375. The estimated amount of expenditures for such Project is \$200,000.00.

- Public Hearing

**Background:**

At the November 10, 2020 Board Meeting, the TEDC Board of Directors approved a request from the City of Tomball for funding assistance related to a Texas Parks and Wildlife (TPWD) Grant Application for improvements to Jerry Matheson Park for \$300,000.00. The initial request indicated that the total project cost was \$1.5 million and included new play structures, a splashpad, pickleball courts, and a walking trail. The TPWD grant is a 50% matching grant with the local requirement being \$750,000.00.

The attached request letter from David Esquivel, City Manager, indicated that the City of Tomball has received the TPWD grant and approved a contract in November 2022, the additional \$200,000.00 is being requested due to rising inflation.

This is an eligible project under the legislation that governs Type B sales tax corporations. If approved as a Project of the TEDC, it will go to the city council for final approval by resolution.

**Origination:** David Esquivel, City Manager, City of Tomball

**Recommendation:** Approval of the proposed Agreement with the City of Tomball

**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: X No: \_\_\_\_\_ If yes, specify Account Number: #Project Grants

If no, funds will be transferred from account # \_\_\_\_\_ To account # \_\_\_\_\_

Signed \_\_\_\_\_  
Staff Member-TEDC Date

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



# City of Tomball

Item 5.

*Lori Klein Quinn*  
Mayor

*David Esquivel, PE*  
City Manager

February 27, 2023

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

RE: Matheson Park

Kelly,

The City of Tomball would like to request financial assistance from the Tomball Economic Development Corporation for Matheson Park Rebuild. Previously the TEDC Board approved \$300,000 in assistance toward the rebuild of Matheson Park contingent upon the City receiving a grant from Texas Parks and Wildlife (TPWD). The City did receive the grant and approved contract in November 2022. During the budget process for the current fiscal year, the City requested an additional \$200,000 due to additional costs associated with the project and the rising cost of materials.

The Jerry Matheson Park project is partially funded through a grant totaling \$750,000. The grant was awarded in May 2021, and we experienced a major delay getting our federal agreement due to COVID and the federal government operations being limited. The City received and approved our grant agreement in November 2022, and we have already begun construction on the new playground structure and are working to finalize the construction documents to be submitted for review and approval for TPWD.

To continue our efforts of developing our parks and complete a much needed rebuild of this park, the City of Tomball is requesting the funding of \$500,000 that was allocated during the budget process for fiscal year 2021-2022 and 2022-2023.

Funding Source	Funding Amount	Element
Texas Parks & Wildlife Department Grant	\$750,000	Splash Pad: \$475,000 Baseball Field Improvements: \$140,000 Pickleball Courts: \$135,000
City of Tomball	\$600,000	Engineering: \$147,630 Construction: \$125,000 Misc. Expenses: \$6,000 Lighting: \$30,000 Shade Structures: \$50,000
Tomball Regional Health Foundation	\$490,000	Playground Equipment: \$490,000
Tomball Economic Development Corporation	\$500,000	Playground Equipment: \$171,760 Pickleball Courts: \$15,000 Pool Renovations: \$70,000



# City of Tomball

Item 5.

*Lori Klein Quinn*  
Mayor

*David Esquivel, PE*  
City Manager

		Walking Trail: \$100,000 Fencing Upgrades: \$80,000
<b>HCA – Tomball</b>	\$30,000	Pool Renovations: \$30,000

This project is a great example of our community partners coming together to provide the community much needed recreation opportunities, and we are grateful for the TEDC continued support.

Please let me know if you need any additional information regarding this project and the City's funding request.

Sincerely,

David Esquivel  
City Manager

**March 1, 2023**

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

**Re: Letter of Agreement for Partial Funding of Matheson Park Rebuild**

**Dear Mayor and Councilmembers:**

The City of Tomball (the “City”), by letter dated February 27, 2023 (the “Request Letter”), which is attached hereto as “Exhibit A”, requested financial assistance from the Tomball Economic Development Corporation (the “TEDC”) for the rebuild of the City’s Matheson Park (the “Project”). Through the Request Letter, the City has requested that the TEDC provide five hundred thousand dollars (\$500,000) to fund the portions of the Project listed in “Exhibit A” (the “Funds”).

**The TEDC hereby agrees to provide the Funds subject to the City’s acknowledgement and compliance with the following conditions:**

1. The transfer of Funds contemplated in this Letter of Agreement are subject to all applicable rules associated with a project of the TEDC as provided in Chapter 505 of the Texas Local Government Code;
2. The Funds shall be deposited in a City account dedicated to the Project and shall not be commingled with any other City funds;
3. The Funds shall only be used for the Project as provided herein;
4. The City shall keep a complete and accurate accounting of all expenditures of the Funds and make such records available to the TEDC;
5. In the event the total amount of the Funds transferred by the TEDC to the City are not used to fund the Project as provided herein, then upon completion of the Project, the City shall remit the remaining portion of the Funds to the TEDC; and,
6. That this Letter of Agreement supersedes and replaces any previous arrangement between the City and the TEDC regarding Matheson Park.

If the above terms and conditions are acceptable to the City, please have an authorized officer of the City sign below acknowledging the City’s agreement and return this Letter of Agreement to the undersigned. Upon receipt of this signed Letter of Agreement, the TEDC’s Treasurer will be directed to transfer the Funds as provided above.

**Yours very truly,**

**By:** \_\_\_\_\_  
**Gretchen Fagan, President  
Board of Directors**



**AGREED AND ACCEPTED:**

**CITY OF TOMBALL, TEXAS**

\_\_\_\_\_  
**Lori Klein Quinn, Mayor**

**ATTEST:**

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

**EXHIBIT A: City's Request for Funding**



# City of Tomball

Item 5.

*Lori Klein ~~Quinn~~  
Mayor*

*David Esquivel, PE  
City Manager*

February 27, 2023

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

RE: Matheson Park

Kelly,

The City of Tomball would like to request financial assistance from the Tomball Economic Development Corporation for Matheson Park Rebuild. Previously the TEDC Board approved \$300,000 in assistance toward the rebuild of Matheson Park contingent upon the City receiving a grant from Texas Parks and Wildlife (TPWD). The City did receive the grant and approved contract in November 2022. During the budget process for the current fiscal year, the City requested an additional \$200,000 due to additional costs associated with the project and the rising cost of materials.

The Jerry Matheson Park project is partially funded through a grant totaling \$750,000. The grant was awarded in May 2021, and we experienced a major delay getting our federal agreement due to COVID and the federal government operations being limited. The City received and approved our grant agreement in November 2022, and we have already begun construction on the new playground structure and are working to finalize the construction documents to be submitted for review and approval for TPWD.

To continue our efforts of developing our parks and complete a much needed rebuild of this park, the City of Tomball is requesting the funding of \$500,000 that was allocated during the budget process for fiscal year 2021-2022 and 2022-2023.

Funding Source	Funding Amount	Element
Texas Parks & Wildlife Department Grant	\$750,000	Splash Pad: \$475,000 Baseball Field Improvements: \$140,000 Pickleball Courts: \$135,000
City of Tomball	\$600,000	Engineering: \$147,630 Construction: \$125,000 Misc. Expenses: \$6,000 Lighting: \$30,000 Shade Structures: \$50,000
Tomball Regional Health Foundation	\$490,000	Playground Equipment: \$490,000
Tomball Economic Development Corporation	\$500,000	Playground Equipment: \$171,760 Pickleball Courts: \$15,000 Pool Renovations: \$70,000



# City of Tomball

Item 5.

*Lori Klein Quinn*  
Mayor

*David Esquivel, PE*  
City Manager

		Walking Trail: \$100,000 Fencing Upgrades: \$80,000
<b>HCA – Tomball</b>	\$30,000	Pool Renovations: \$30,000

This project is a great example of our community partners coming together to provide the community much needed recreation opportunities, and we are grateful for the TEDC continued support.

Please let me know if you need any additional information regarding this project and the City's funding request.

Sincerely,

David Esquivel  
City Manager

# Regular Tomball EDC Agenda Item Data Sheet

Meeting Date: March 7, 2023

**Topic:**

Consideration and possible action by Tomball EDC to approve, as a Project of the Corporation, an agreement with the City of Tomball to make direct incentives to, or expenditures for, improvements to Louie’s Together Playground located at 1331 Ulrich Rd., Tomball, Texas 77375. The estimated amount of expenditures for such Project is \$200,000.00.

- Public Hearing

**Background:**

The attached request letter from David Esquivel, City Manager, indicates that the City of Tomball is requesting funds for the enhancement of Louie’s Together Playground which will be Tomball’s first inclusive playground. The total cost for the project is anticipated to be \$800,000.00. The City of Tomball has committed \$200,000.00 to the project and the Munson family has continued their fundraising efforts for the remainder of the funding.

This is an eligible project under the legislation that governs Type B sales tax corporations. If approved as a Project of the TEDC, it will go to the city council for final approval by resolution.

**Origination:** David Esquivel, City Manager, City of Tomball

**Recommendation:** Approval of the proposed Agreement with the City of Tomball

**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: X No: \_\_\_\_\_ If yes, specify Account Number: #Project Grants \_\_\_\_\_

If no, funds will be transferred from account # \_\_\_\_\_ To account # \_\_\_\_\_

Signed \_\_\_\_\_  
Staff Member-TEDC Date

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



# City of Tomball

Item 6.

*Lori Klein Gunn*  
Mayor

*David Esquivel, PE*  
City Manager

February 27, 2023

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

RE: Louie's Together Playground

Kelly,

The City of Tomball would like to request financial assistance from the Tomball Economic Development Corporation for Louie's Together Playground. During the budget process for fiscal year 2023, the City requested funding for four projects, including Louie's Together Playground. To continue our efforts of developing our parks, the City of Tomball is requesting the funding of \$200,000 that was allocated during the budget process.

The Munson family has continued their fundraising, and between funds committed by the City, TEDC, and donations we are approximately half-way to being fully funded. As you are aware, the development of this playground will be the first inclusive playground in our area, and we are excited to begin this project. The total cost for the proposed inclusive playground structure is \$800,000. The City has also committed \$200,000 to the project.

Please let me know if you need any additional information regarding this project and the City's funding request.

Sincerely,

David Esquivel  
City Manager

**March 1, 2023**

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

**Re: Letter of Agreement for Partial Funding of Louie’s Together Playground**

**Dear Mayor and Councilmembers:**

The City of Tomball (the “City”), by letter dated February 27, 2023 (the “Request Letter”), which is attached hereto as “Exhibit A”, requested financial assistance from the Tomball Economic Development Corporation (the “TEDC”) for the construction of the Louie’s Together Playground (the “Project”). Through the Request Letter, the City has requested that the TEDC provide two hundred thousand dollars (\$200,000) to fund one-quarter of the cost of the Project (the “Funds”).

**The TEDC hereby agrees to provide the Funds subject to the City’s acknowledgement and compliance with the following conditions:**

1. The transfer of Funds contemplated in this Letter of Agreement are subject to all applicable rules associated with a project of the TEDC as provided in Chapter 505 of the Texas Local Government Code;
2. The Funds shall be deposited in a City account dedicated to the Project and shall not be commingled with any other City funds;
3. The Funds shall only be used for the Project as provided herein;
4. The City shall keep a complete and accurate accounting of all expenditures of the Funds and make such records available to the TEDC; and,
5. In the event the total amount of the Funds transferred by the TEDC to the City are not used to fund the Project as provided herein, then upon completion of the Project, the City shall remit the remaining portion of the Funds to the TEDC.

If the above terms and conditions are acceptable to the City, please have an authorized officer of the City sign below acknowledging the City’s agreement and return this Letter of Agreement to the undersigned. Upon receipt of this signed Letter of Agreement, the TEDC’s Treasurer will be directed to transfer the Funds as provided above.

**Yours very truly,**

**By:** \_\_\_\_\_  
**Gretchen Fagan, President  
Board of Directors**

**AGREED AND ACCEPTED:**

**CITY OF TOMBALL, TEXAS**

\_\_\_\_\_  
**Lori Klein Quinn, Mayor**

**ATTEST:**

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



**EXHIBIT A: City's Request for Funding**



# City of Tomball

Item 6.

*Lori Klein Gunn*  
Mayor

*David Esquivel, PE*  
City Manager

February 27, 2023

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

RE: Louie's Together Playground

Kelly,

The City of Tomball would like to request financial assistance from the Tomball Economic Development Corporation for Louie's Together Playground. During the budget process for fiscal year 2023, the City requested funding for four projects, including Louie's Together Playground. To continue our efforts of developing our parks, the City of Tomball is requesting the funding of \$200,000 that was allocated during the budget process.

The Munson family has continued their fundraising, and between funds committed by the City, TEDC, and donations we are approximately half-way to being fully funded. As you are aware, the development of this playground will be the first inclusive playground in our area, and we are excited to begin this project. The total cost for the proposed inclusive playground structure is \$800,000. The City has also committed \$200,000 to the project.

Please let me know if you need any additional information regarding this project and the City's funding request.

Sincerely,

David Esquivel  
City Manager

# Regular Tomball EDC Agenda Item Data Sheet

Meeting Date: March 7, 2023

**Topic:**

Consideration and possible action by Tomball EDC to approve, as a Project of the Corporation, an agreement with the City of Tomball to make direct incentives to, or expenditures for, design of the South Wastewater Treatment Plant expansion located in the City of Tomball, Texas. The estimated amount of expenditures for such Project is \$415,000.00.

- Public Hearing

**Background:**

The attached request letter from David Esquivel, City Manager, indicates that the City of Tomball is requesting funds for Phase I of the design for the South Wastewater Treatment Plan expansion. The City of Tomball has not currently received any grant funding for this project. The total estimated project cost with design and construction is approximately \$60,000,000.00.

This is an eligible project under the legislation that governs Type B sales tax corporations. If approved as a Project of the TEDC, it will go to the city council for final approval by resolution.

**Origination:** David Esquivel, City Manager, City of Tomball

**Recommendation:** Approval of the proposed Agreement with the City of Tomball

**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: X No: \_\_\_\_\_ If yes, specify Account Number: #Project Grants

If no, funds will be transferred from account # \_\_\_\_\_ To account # \_\_\_\_\_

Signed \_\_\_\_\_  
Staff Member-TEDC Date

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



# City of Tomball

Item 7.

**Lori Klein Quinn**  
Mayor

**David Esquivel, PE**  
City Manager

February 27, 2023.

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

RE: South Wastewater Treatment Plant Expansion

Kelly,

The City of Tomball would like to request financial assistance from the Tomball Economic Development Corporation for the design of the South Wastewater Treatment Plant expansion. During the budget process for Fiscal Year 2023, the City requested funding for four projects, including the treatment plant expansion and the City of Tomball is requesting the funding of \$415,000 that was allocated during the budget process.

Currently the South Wastewater Treatment Plan is permitted for 1.5 million gallons per day, and due to the rapid growth within the City, we are nearing our permitted capacity. The City had previously engaged Freese & Nichols, Inc. to determine the timeframe for the expansion and given the extended time for not only the design but construction, this will be a multi-phase project with the first phase consisting of preliminary design to ensure the expansion will meet the long-term growth of the City.

The total estimated project cost, with design, is approximately \$60 million, and the City is in the process of determining the best solution for funding. We do not have a grant for this project, and there are no other funding sources currently available on the state or federal level. The \$415,000 that the City is requesting from the EDC is for Phase I of the design, with total design services estimated at \$2,700,000.

Please let me know if you need any additional information regarding this project and the City's funding request.

Sincerely,

David Esquivel  
City Manager

**March 1, 2023**

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

**Re: Letter of Agreement for Funding of South Wastewater Treatment Plant Expansion**

**Dear Mayor and Councilmembers:**

The City of Tomball (the “City”), by letter dated February 27, 2023 (the “Request Letter”), which is attached hereto as “Exhibit A”, requested financial assistance from the Tomball Economic Development Corporation (the “TEDC”) for the expansion of the City’s South Wastewater Treatment Plant (the “Project”). Through the Request Letter, the City has requested that the TEDC provide four hundred fifteen thousand dollars (\$415,000) to fund a portion of the design phase of the Project (the “Funds”).

**The TEDC hereby agrees to provide the Funds subject to the City’s acknowledgement and compliance with the following conditions:**

1. The transfer of Funds contemplated in this Letter of Agreement are subject to all applicable rules associated with a project of the TEDC as provided in Chapter 505 of the Texas Local Government Code;
2. The Funds shall be deposited in a City account dedicated to the Project and shall not be commingled with any other City funds;
3. The Funds shall only be used for the Project as provided herein;
4. The City shall keep a complete and accurate accounting of all expenditures of the Funds and make such records available to the TEDC; and
5. In the event the total amount of the Funds transferred by the TEDC to the City are not used to fund the design phase of the Project as provided herein, then upon completion of the Project, the City shall remit the remaining portion of the Funds to the TEDC.

If the above terms and conditions are acceptable to the City, please have an authorized officer of the City sign below acknowledging the City’s agreement and return this Letter of Agreement to the undersigned. Upon receipt of this signed Letter of Agreement, the TEDC’s Treasurer will be directed to transfer the Funds as provided above.

**Yours very truly,**

**By:** \_\_\_\_\_  
**Gretchen Fagan, President  
Board of Directors**

**AGREED AND ACCEPTED:**

**CITY OF TOMBALL, TEXAS**

\_\_\_\_\_  
**Lori Klein Quinn, Mayor**

**ATTEST:**

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

**EXHIBIT A: City's Request for Funding**



# City of Tomball

Item 7.

**Lori Klein Quinn**  
Mayor

**David Esquivel, PE**  
City Manager

February 27, 2023.

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

RE: South Wastewater Treatment Plant Expansion

Kelly,

The City of Tomball would like to request financial assistance from the Tomball Economic Development Corporation for the design of the South Wastewater Treatment Plant expansion. During the budget process for Fiscal Year 2023, the City requested funding for four projects, including the treatment plant expansion and the City of Tomball is requesting the funding of \$415,000 that was allocated during the budget process.

Currently the South Wastewater Treatment Plan is permitted for 1.5 million gallons per day, and due to the rapid growth within the City, we are nearing our permitted capacity. The City had previously engaged Freese & Nichols, Inc. to determine the timeframe for the expansion and given the extended time for not only the design but construction, this will be a multi-phase project with the first phase consisting of preliminary design to ensure the expansion will meet the long-term growth of the City.

The total estimated project cost, with design, is approximately \$60 million, and the City is in the process of determining the best solution for funding. We do not have a grant for this project, and there are no other funding sources currently available on the state or federal level. The \$415,000 that the City is requesting from the EDC is for Phase I of the design, with total design services estimated at \$2,700,000.

Please let me know if you need any additional information regarding this project and the City's funding request.

Sincerely,

David Esquivel  
City Manager



# Regular Tomball EDC Agenda Item Data Sheet

Meeting Date: March 7, 2023

**Topic:**

Consideration and possible action by Tomball EDC to approve, as a Project of the Corporation, an agreement with the City of Tomball to make direct incentives to, or expenditures for, improvements to the North and South 100 Block Alleyways located in the City of Tomball, Texas. The estimated amount of expenditures for such Project is \$600,000.00.

- Public Hearing

**Background:**

The attached request letter from David Esquivel, City Manager, indicates that the City of Tomball is requesting additional funding due to an increase in the scope of the project (addition of a public restroom) and rising prices for construction material. The aesthetic enhancements related to the project are still under design and have not received opinion on probable costs for those elements.

This is an eligible project under the legislation that governs Type B sales tax corporations. If approved as a Project of the TEDC, it will go to the city council for final approval by resolution.

**Origination:** David Esquivel, City Manager, City of Tomball

**Recommendation:** Approval of the proposed Agreement with the City of Tomball

**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: X No: \_\_\_\_\_ If yes, specify Account Number: #Project Grants

If no, funds will be transferred from account # \_\_\_\_\_ To account # \_\_\_\_\_

Signed \_\_\_\_\_  
Staff Member-TEDC Date

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



# City of Tomball

Item 8.

**Lori Klein Gunn**  
Mayor

**David Esquivel, PE**  
City Manager

February 27, 2023

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

RE: Alley Improvement Project

Kelly,

The City of Tomball would like to request financial assistance from the Tomball Economic Development Corporation for the Alley Improvement Project. During the budget process for fiscal year 2023, the City requested funding for four projects, including the Alley Improvement Project. To continue our efforts to increase walkability in downtown, the City of Tomball is requesting the funding of \$600,000 that was allocated during the budget process.

The Request for Proposals has been issued for the 100 block north and south, with responses due March 7, 2023. We are requesting \$600,000 from the EDC due an increase in the scope of the project (addition of a public restroom) and rising prices for construction material. The aesthetic enhancements related to the project are still under design, and we have not received an opinion of probable cost for those elements. As we currently have agreed, the cost of the aesthetic enhancements will be the responsibility of the EDC. A breakdown of the estimated project budget is below.

Project Element	Estimated Cost
100 block north & south	\$595,000
Public restroom facility	\$85,000
200 block north	\$240,000
Engineering	\$305,819
Misc. Expenses	\$1,500
300 & 400 blocks north & south	TBD – pending design

Please let me know if you need any additional information regarding this project and the City's funding request.

Sincerely,

David Esquivel  
City Manager

**March 1, 2023**

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

**Re: Letter of Agreement for Partial Funding of the City of Tomball’s Alley Improvements**

**Dear Mayor and Councilmembers:**

The City of Tomball (the “City”), by letter dated February 27, 2023 (the “Request Letter”), which is attached hereto as “Exhibit A”, requested financial assistance from the Tomball Economic Development Corporation (the “TEDC”) for the partial funding of the City’s Alley Improvement Project (the “Project”). Through the Request Letter, the City has requested that the TEDC provide six hundred thousand dollars (\$600,000) to fund the Project as listed in “Exhibit A” (the “Funds”).

**The TEDC hereby agrees to provide the Funds subject to the City’s acknowledgement and compliance with the following conditions:**

1. The transfer of Funds contemplated in this Letter of Agreement are subject to all applicable rules associated with a project of the TEDC as provided in Chapter 505 of the Texas Local Government Code;
2. The Funds shall be deposited in a City account dedicated to the Project and shall not be commingled with any other City funds;
3. The Funds shall only be used for the Project as provided herein;
4. The City shall keep a complete and accurate accounting of all expenditures of the Funds and make such records available to the TEDC; and,
5. In the event the total amount of the Funds transferred by the TEDC to the City are not used to fund the Project as provided herein, then upon completion of the Project, the City shall remit the remaining portion of the Funds to the TEDC.

If the above terms and conditions are acceptable to the City, please have an authorized officer of the City sign below acknowledging the City’s agreement and return this Letter of Agreement to the undersigned. Upon receipt of this signed Letter of Agreement, the TEDC’s Treasurer will be directed to transfer the funds as provided above.

**Yours very truly,**

**By:** \_\_\_\_\_  
**Gretchen Fagan, President  
Board of Directors**

**AGREED AND ACCEPTED:**

**CITY OF TOMBALL, TEXAS**

\_\_\_\_\_  
**Lori Klein Quinn, Mayor**

**ATTEST:**

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

**EXHIBIT A: City's Request for Funding**



# City of Tomball

Item 8.

**Lori Klein Gunn**  
Mayor

**David Esquivel, PE**  
City Manager

February 27, 2023

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

RE: Alley Improvement Project

Kelly,

The City of Tomball would like to request financial assistance from the Tomball Economic Development Corporation for the Alley Improvement Project. During the budget process for fiscal year 2023, the City requested funding for four projects, including the Alley Improvement Project. To continue our efforts to increase walkability in downtown, the City of Tomball is requesting the funding of \$600,000 that was allocated during the budget process.

The Request for Proposals has been issued for the 100 block north and south, with responses due March 7, 2023. We are requesting \$600,000 from the EDC due an increase in the scope of the project (addition of a public restroom) and rising prices for construction material. The aesthetic enhancements related to the project are still under design, and we have not received an opinion of probable cost for those elements. As we currently have agreed, the cost of the aesthetic enhancements will be the responsibility of the EDC. A breakdown of the estimated project budget is below.

Project Element	Estimated Cost
100 block north & south	\$595,000
Public restroom facility	\$85,000
200 block north	\$240,000
Engineering	\$305,819
Misc. Expenses	\$1,500
300 & 400 blocks north & south	TBD – pending design

Please let me know if you need any additional information regarding this project and the City's funding request.

Sincerely,

David Esquivel  
City Manager

# Regular Tomball EDC

## Agenda Item

### Data Sheet

**Meeting Date:** March 7, 2023

**Topic:**

Consideration and possible action by Tomball EDC to approve a Professional Services Agreement with Kimley-Horn and Associates, Inc. for Professional Services related to the design of aesthetic enhancements for the Old Town Alley Improvement Project and Authorize the Executive Director to execute the Agreement in an amount not to exceed \$100,000.

- Public Hearing

**Background:**

In accordance with the TEDC's Strategic Work Plan, the Corporation has partnered with the City of Tomball on targeted improvements to enhance Tomball's Old Town. Alleyway improvements were identified in the City's 2009 Livable Centers Downtown Plan as important pedestrian linkages between blocks.

The Alley Improvement Project consists of two phases: a civil package and an amenities package. The civil package has been bid and will include site and right-of-way prep, stamped reinforced concrete pavement, sidewalks, dumpster pads and enclosures, a pre-fabricated restroom, and related utility work.

The attached Professional Services Agreement authorizes the design of the amenities package. Included design elements are:

- a. Entry Arch Gateways
- b. 'Ribbons and Lights' decorative light structures
- c. Masonry seatwalls and low walls related to Gateways
- d. Lighted Entry Markers
- e. Lighting and electrical:
  - Power drop, meter and controls
  - Pedestrian light fixtures mounted on Center Point poles
  - 'Ribbons and Lights' string light systems
  - Lighted entry markers
  - Gateway arch light

The project scope includes detailed design, construction documents, bidding, and construction phase services. The estimated fee is not to exceed \$100,000.00.

**Origination:** City of Tomball

**Recommendation:** Approval

**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: #Project Grants \_\_\_\_\_

If no, funds will be transferred from account # \_\_\_\_\_ To account # \_\_\_\_\_

Signed \_\_\_\_\_ Approved by \_\_\_\_\_  
Staff Member-TEDC Date Executive Director-TEDC Date



**PROFESSIONAL SERVICES AGREEMENT  
FOR  
DESIGN SERVICES RELATED TO THE  
TOMBALL ALLEY AMENITIES PROJECT**

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

THIS AGREEMENT made on the \_\_\_\_\_ day of \_\_\_\_\_, 2023 entered into, and executed by and between the Tomball Economic Development Corporation, an industrial development corporation created pursuant to Tex. Rev. Civ. Stat. Ann. Art. 5190.6, Section 48, now Chapter 505 of the Texas Local Government Code, located in Harris County, Texas (the "TEDC"), and Kimley-Horn and Associates, Inc. ("Consultant").

**WITNESSETH:**

WHEREAS, the TEDC is committed to partnering with the City of Tomball on targeted infrastructure improvements including alleyway enhancements that improve Old Town’s tourism readiness and visitor experience (the "Project"); and

WHEREAS, the services of a professional design consultant are necessary for final design of alleyway enhancements and entryway features; and

WHEREAS, the Consultant represents that it is fully capable and qualified to provide the services herein specified;

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

**SECTION I  
SCOPE OF AGREEMENT**

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

**SECTION II  
CHARACTER AND EXTENT OF SERVICES**

Consultant shall do all things necessary to render the design services and perform the Scope of Work in a professional and workmanlike manner. All professional services to be provided by Consultant pursuant to this Agreement shall be provided by personnel experienced in their respective fields and in a manner consistent with the standards of care, diligence and skill ordinarily exercised by professional consultants in similar fields

and circumstances in accordance with sound professional practices. It is expressly understood and agreed that Consultant is an Independent Contractor in the performance of the services agreed to herein. It is further understood and agreed that Consultant shall not have the authority to obligate or bind the TEDC, or make representations or commitments on behalf of the TEDC or its officers or employees without the express prior approval of the TEDC. The TEDC shall be under no obligation to pay for services rendered not identified in Attachment "A" without prior written authorization from the TEDC.

### **SECTION III OWNERSHIP OF WORK PRODUCT**

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

### **SECTION IV TIME FOR PERFORMANCE**

Consultant and the project team are committed to achieving the schedule necessary to meet the Tomball EDC project goals. Consultant will coordinate with the Executive Director and establish a schedule of events to include project task, milestones, and deadlines. Tasks identified can be authorized as a whole or individually as the project progresses at the discretion of the Tomball EDC and their Executive Director.

### **SECTION V COMPLIANCE AND STANDARDS**

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

### **SECTION VI INDEMNIFICATION**

To the fullest extent permitted by Texas Local Government Code Section 271.904, Consultant shall and does hereby agree to indemnify, hold harmless and defend the TEDC, its officers, agents, and employees against liability for damage caused by or resulting from an act of negligence, intentional tort, intellectual property infringement, or failure to pay a subcontractor or supplier committed by the Consultant, the Consultant's

agent, consultant under contract, or another entity over which the Consultant exercises control.

## **SECTION VII CONSULTANT'S COMPENSATION**

For and in consideration of the services rendered by Consultant pursuant to this Agreement, the TEDC shall pay Consultant only for the actual work performed under the Scope of Work, on the basis set forth in Attachment "A."

## **SECTION VIII TERMINATION**

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

## **SECTION IX ADDRESSES, NOTICES AND COMMUNICATIONS**

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

Kimley-Horn and Associates, Inc.  
11700 Katy Freeway, Suite 800  
Houston, TX 77079  
Attn: Jim Patterson

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

Tomball Economic Development Corporation  
29201 Quinn Road, Suite B  
Tomball, Texas 77375  
Attn: Kelly Violette, Executive Director

## **SECTION X LIMIT OF APPROPRIATION**

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

## **SECTION XI SUCCESSORS AND ASSIGNS**

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

## **SECTION XII MODIFICATIONS**

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

## **SECTION XIII ADDITIONAL SERVICES OF CONSULTANT**

If authorized in writing by the TEDC, Consultant shall furnish, or obtain from others, Additional Services that may be required because of significant changes in the scope,

extent or character of the portions of the Project designed or specified by the Consultant, as defined in Attachment "A." These Additional Services, plus reimbursable expenses, will be paid for by the Owner on the basis set forth in Attachment "A," up to the amount authorized in writing by the TEDC.

#### **SECTION XIV CONFLICTS OF INTEREST**

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

#### **SECTION XV PAYMENT TO CONSULTANT FOR SERVICES AND REIMBURSABLE EXPENSES**

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

#### **SECTION XVI INSURANCE**

Consultant shall procure and maintain insurance for protection from workers' compensation claims, claims for damages because of bodily injury, including personal injury, sickness or disease or death, claims or damages because of injury to or destruction of property including loss of use resulting therefrom, and claims of errors and omissions.

#### **SECTION XVII MISCELLANEOUS PROVISIONS**

A. This Agreement is subject to the provisions of the Texas Prompt Payment Act, Chapter 2250 of the Texas Government Code. The approval or payment of any invoice shall be considered to be evidence of performance by Consultant or of the receipt of or acceptance by the TEDC of the work covered by such invoice.

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

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

D. Consultant further covenants and agrees that it does not and will not knowingly employ an undocumented worker. An "undocumented worker" shall mean an individual who, at the time of employment, is not (a) lawfully admitted for permanent residence to

the United States, or (b) authorized by law to be employed in that manner in the United States.

IN WITNESS WHEREOF, the TEDC of Tomball has lawfully caused this Agreement to be executed by the Board President of TEDC and attested by the Vice President of the TEDC and Kimley-Horn and Associates, Inc., acting by and through its duly authorized officer/representative, does now sign, execute, and deliver this instrument.

EXECUTED on this \_\_\_\_\_ day of \_\_\_\_\_, 2023.

**CONSULTANT:**

**Kimley-Horn and Associates, Inc.**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**TOMBALL ECONOMIC  
DEVELOPMENT CORPORATION**

\_\_\_\_\_  
President, Board of Directors

**ATTEST:**

\_\_\_\_\_  
Vice President, Board of Directors

**TOMBALL ALLEY AMENITIES PROJECT SCOPE**

March 1, 2023

1. Work Phases Included:
  - a. Detailed Design
  - b. Construction Documents
  - c. Bidding (One bid/construction package included in scope/fee)
  - d. Construction Phase Services (one construction phase only)
  
2. Project Area:
  - a. All three alleys will be designed and documented in one work effort, then packaged with one or more alleys, or certain components as bid alternates for one construction package.
  
3. Scope / Project Components:
  - a. Entry Arch Gateways
  - b. 'Ribbons and Lights' decorative light structures
  - c. Masonry seatwalls and low walls related to Gateways
  - d. Lighted Entry Markers
  - e. Lighting and electrical:
    - Power drop, meter and controls
    - Pedestrian light fixtures mounted on Centerpoint poles
    - 'Ribbons and Lights' string light systems
    - Lighted entry markers
    - Gateway arch light
  - f. Fixture selection and location only for light fixtures intended for possible future placement on private buildings. No circuitry or controls, and these lights will not be included in the construction scope.
  - g. Not included: irrigation design, planting,
  
4. Special Considerations
  - a. Certain aspects of design may be accelerated to allow accommodation in Alley pavement construction project (like need for drainage pipes, lighting conduit or irrigation sleeves).
  - b. Certain aspects may be accelerated and included as change order in Alley pavement construction project.
  - c. Assist Ardurra with coordination with CenterPoint for planned attachments to their power poles to include decorative lights, banner arms and possibly to anchor string lights.
  
5. Assumptions about Alley Pavement project:
  - a. Kimley-Horn will not be involved in project meetings for the Alley pavement project.
  - b. All smooth alley pavement for dumpsters will be documented by Ardurra based on previous design coordination.

- c. Dumpster pads documented by Ardurra are included in the Alley Pavement project.
  - d. Assume City will coordinate with private property owners regarding demolition and construction on their property, as well as take care of all related easements or other use agreements.
  - e. The work does not include development on private property.
  - f. This scope does NOT include assisting City/TEDC in meetings with or presentations to property owners.
6. Consultants
- a. Structural engineering:
    - i. Light pole foundation or direct burial design not included Kimley-Horn scope and will be provided by Centerpoint.
    - ii. Gateways, Entry Markers, Masonry Walls, and Seatwalls are included in Kimley-Horn scope and will be performed by a consultant to Kimley-Horn.
    - iii. Dumpster Pads, CMU Walls and Gate Posts/Foundations are not included in Kimley-Horn scope and will be performed by Ardurra.
  - b. Electrical Engineering for circuitry and controls beyond Center Point lights.
  - c. Irrigation – planning only to identify need for future installation and placement of sleeve under proposed placement. Will not include specific design of main line, laterals or heads.
7. Design Documentation and Approval Process
- a. Refine Design and coordinate with Ardurra
  - b. Client Review Meeting
  - c. Prepare Construction Drawings (including ongoing coordination with Ardurra)
    - i. Consultant coordination – Structural, Electrical
  - d. 70% Page Turn Review with TEDC and City.
  - e. Complete Construction Drawings, Specs, Bid Form (including ongoing coordination with Ardurra)
  - f. Submit for Final Review by TEDC and City
  - g. Finalize and submit for TDLR review
  - h. Post to Civcast or other bid process
8. Bid Process:
- a. Assist City with Pre-Bid Meeting
  - b. Answer contractor questions and prepare addenda
  - c. Evaluate bids and recommend award
9. Construction Phase Services:
- a. One construction phase included in this scope. Specific duration to be defined as part of final approved scope of services.
  - b. Submittal review
  - c. RFI response
  - d. Review submittal and RFI logs compiled and maintained by the Contractor
  - e. Regular site visits



- f. Punch list/substantial completion
  - g. Final Acceptance
  - h. City will lead progress meetings. Kimley-Horn will assist.
10. Estimated Fee - Not to Exceed Fee: \$100,000.00 (to be adjusted based on approved final scope of services)

# Regular Tomball EDC Agenda Item Data Sheet

Meeting Date: March 7, 2023

**Topic:**

EXECUTIVE SESSION: The Tomball Economic Development Corporation Board will meet in Executive Session as authorized by Title 5, Chapter 551, Texas Government Code, The Texas Open Meetings Act, for the following purpose:

- Section 551.072, - Deliberations regarding real property: Deliberate the purchase, exchange, sale, lease, or value of real property.
- Section 551.087, - Deliberation regarding Economic Development negotiations.

**Background:**

**Origination:** Kelly Violette, Executive Director, Tomball Economic Development Corporation

**Recommendation:**

**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

# Regular Tomball EDC Agenda Item Data Sheet

Meeting Date: March 7, 2023

**Topic:**

Reconvene into regular session and take action, if necessary, on items discussed in Executive Session.

**Background:**

**Origination:** Kelly Violette, Executive Director

**Recommendation:**

**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

# Regular Tomball EDC Agenda Item Data Sheet

Meeting Date: March 7, 2023

**Topic:**

Consideration and possible action by Tomball EDC to ratify approval of a commercial real estate contract – unimproved property between the Corporation as Seller and Moffitt Williams, LLC and/or assigns as purchaser and authorize the execution of contracts and documentation by the EDC Executive Director relating to approximately 1.791 gross acres of land identified as Lot 3, Block 1, of the Tomball Business and Technology Park Section 2.

**Background:**

The Tomball Economic Development Corporation has received an offer from Moffitt Williams, LLC and/or assigns to purchase Lot 3 in the Tomball Business and Technology Park. The project contemplated is an approximately 15,000 square foot single story building that will house JDC Fluid Equipment, LLC. The company provides pumps, valves, accessories and controls for water and wastewater equipment and is currently located at 6710 Bourgeois Road, Houston, Texas 77066.

The attached commercial real estate contract has been reviewed by all parties, including legal counsel, and is presented for approval. The terms of the contract are outlined below:

- Total acreage: 1.791 gross acres
- Sales Price: ±\$332,000.00; based on \$4.25 PSF of total area
- Earnest Money: \$10,000.00
- Feasibility Period: 90 days from Effective Date
- Closing: On or before 15 days after the expiration of the feasibility period.

**Origination:** Kelly Violette, Executive Director, Tomball Economic Development Corporation

**Recommendation:** Ratify approval of the commercial real estate contract and authorize the Executive Director to execute contracts and documentation between the Corporation as Seller and Moffitt Williams, LLC and/or assigns as purchaser.

**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





**COMMERCIAL CONTRACT - UNIMPROVED PROPERTY**  
USE OF THIS FORM BY PERSONS WHO ARE NOT MEMBERS OF THE TEXAS ASSOCIATION OF REALTORS, INC. IS NOT AUTHORIZED.  
©Texas Association of REALTORS, Inc. 2002

**1. PARTIES:** Seller agrees to sell and convey to Buyer the Property described in Paragraph 2. Buyer agrees to buy the Property from Seller for the sales price stated in Paragraph 3. The parties to this contract are:

**Seller: TOMBALL ECONOMIC DEVELOPMENT CORPORATION**

Address: P.O. Box 820, Tomball, TX 77377  
Phone: (281)401-4086 E-mail: KVioletta@tomballexdc.org  
Mobile: \_\_\_\_\_ Fax or Other: 281-351-7223

**Buyer: MOFFITT WILLIAMS, LLC**

Address: 6710 Bourgeois Rd, Houston, TX 77066  
Phone: (281)586-7087 E-mail: amy.williams@dcfluid.com and jeff.williams@dcfluid.com  
Mobile: (281)450-6892 Fax or Other: \_\_\_\_\_

**2. PROPERTY:**

A. "Property" means that real property situated in Harris County, Texas at Eastside of S. Parsimmon St, Tomball, TX 77375 (address) and that is legally described on the attached Exhibit \_\_\_\_\_ or as follows: being approximately 1.791 acres of land, more or less, described as LOT 3, Block 1, Tomball Business and Technology Park Section 2 and as depicted on Exhibit "A" attached hereto and incorporated herein.

- B. Seller will sell and convey the Property together with:
- (1) all rights, privileges, and appurtenances pertaining to the Property, including Seller's right, title, and interest in any minerals, utilities, adjacent streets, alleys, strips, gores, and rights-of-way;
  - (2) Seller's interest in all leases, rents, and security deposits for all or part of the Property; and
  - (3) Seller's interest in all licenses and permits related to the Property.

*(Describe any exceptions, reservations, or restrictions in Paragraph 12 or an addendum.)  
(If mineral rights are to be reserved an appropriate addendum should be attached.)*

**3. SALES PRICE:**

A. At or before closing, Buyer will pay the following sales price for the Property:

(1) Cash portion payable by Buyer at closing .....	\$	<u>332,000.00</u>
(2) Sum of all financing described in Paragraph 4 .....	\$	_____
(3) Sales price (sum of 3A(1) and 3A(2)) .....	\$	<u>332,000.00</u>

(TXR-1802) 07-08-22

Initialed for identification by Seller

DS  
kv

and Buyer

Page 1 of 15

Commercial Contract - Unimproved Property concerning Eastside of S. Paraimmon St. Tomball, TX 77375

**B. Adjustment to Sales Price:** (Check (1) or (2) only.)

- (1) The sales price will not be adjusted based on a survey.
- (2) The sales price will be adjusted based on the latest survey obtained under Paragraph 6B.

(a) The sales price is calculated on the basis of \$ 4.25 per:

- (i) square foot of  total area  net area.
- (ii) acre of  total area  net area.

(b) "Total area" means all land area within the perimeter boundaries of the Property. "Net area" means total area less any area of the Property within:

- (I) public roadways;
- (II) rights-of-way and easements other than those that directly provide utility services to the Property; and
- (III) \_\_\_\_\_

(c) If the sales price is adjusted by more than 5.000 % of the stated sales price, either party may terminate this contract by providing written notice to the other party within 10 days after the terminating party receives the survey. If neither party terminates this contract or if the variance is less than the stated percentage, the adjustment to the sales price will be made to the cash portion of the sales price payable by Buyer.

**4. FINANCING:** Buyer will finance the portion of the sales price under Paragraph 3A(2) as follows:

**A. Third Party Financing:** One or more third party loans in the total amount of \$ \_\_\_\_\_ This contract:

- (1) is not contingent upon Buyer obtaining third party financing.
- (2) is contingent upon Buyer obtaining third party financing in accordance with the attached Commercial Contract Financing Addendum (TXR-1931).

**B. Assumption:** In accordance with the attached Commercial Contract Financing Addendum (TXR-1931), Buyer will assume the existing promissory note secured by the Property, which balance at closing will be \$ \_\_\_\_\_

**C. Seller Financing:** Buyer will deliver a promissory note and deed of trust to Seller under the terms of the attached Commercial Contract Financing Addendum (TXR-1931) in the amount of \$ \_\_\_\_\_

**5. EARNEST MONEY:**

**A.** Not later than 3 days after the effective date, Buyer must deposit \$ 510,000.00 as earnest money with Stewart Title - Tomball (title company) at 14080 FM 2920, Ste E, Tomball, TX 77377 (address) Jane Mathews (closer). If Buyer fails to timely deposit the earnest money, Seller may terminate this contract or exercise any of Seller's other remedies under Paragraph 15 by providing written notice to Buyer before Buyer deposits the earnest money.

**B.** Buyer will deposit an additional amount of \$ \_\_\_\_\_ with the title company to be made part of the earnest money on or before:

- (i) \_\_\_\_\_ days after Buyer's right to terminate under Paragraph 7B expires; or
- (ii) \_\_\_\_\_

Buyer will be in default if Buyer fails to deposit the additional amount required by this Paragraph 5B within 3 days after Seller notifies Buyer that Buyer has not timely deposited the additional amount.

(TXR-1802) 07-08-22

Initialed for identification by Seller [Signature] and Buyer [Signature]

Commercial Contract - Unimproved Property concerning Eastside of S. Perrinmon St, Tomball, TX 77375

C. Buyer may instruct the title company to deposit the earnest money in an interest-bearing account at a federally insured financial institution and to credit any interest to Buyer.

**6. TITLE POLICY AND SURVEY:**

**A. Title Policy:**

(1) Seller, at Seller's expense, will furnish Buyer an Owner's Policy of Title Insurance (the title policy) issued by any underwriter of the title company in the amount of the sales price, dated at or after closing, insuring Buyer against loss under the title policy, subject only to:  
(a) those title exceptions permitted by this contract or as may be approved by Buyer in writing; and  
(b) the standard printed exceptions contained in the promulgated form of title policy unless this contract provides otherwise.

(2) The standard printed exception as to discrepancies, conflicts, or shortages in area and boundary lines, or any encroachments or protrusions, or any overlapping improvements:

- (a) will not be amended or deleted from the title policy.
- (b) will be amended to read "shortages in areas" at the expense of  Buyer  Seller.

(3) Within 20 days after the effective date, Seller will furnish Buyer a commitment for title insurance (the commitment) including legible copies of recorded documents evidencing title exceptions. Seller authorizes the title company to deliver the commitment and related documents to Buyer at Buyer's address.

**B. Survey: Within 5 days after the effective date:**

(1) Buyer will obtain a survey of the Property at Buyer's expense and deliver a copy of the survey to Seller. The survey must be made in accordance with the: (i) ALTA/NSPS Land Title Survey standards, or (ii) Texas Society of Professional Surveyors' standards for a Category 1A survey under the appropriate condition. Seller will reimburse Buyer (insert amount) of the cost of the survey at closing, if closing occurs.

(2) Seller, at Seller's expense, will furnish Buyer a survey of the Property dated after the effective date. The survey must be made in accordance with the: (i) ALTA/NSPS Land Title Survey standards, or (ii) Texas Society of Professional Surveyors' standards for a Category 1A survey under the appropriate condition.

(3) Seller will deliver to Buyer and the title company a true and correct copy of Seller's most recent survey of the Property along with an affidavit required by the title company for approval of the existing survey. If the existing survey is not acceptable to the title company,  Seller  Buyer (updating party), will, at the updating party's expense, obtain a new or updated survey acceptable to the title company and deliver the acceptable survey to the other party and the title company within 30 days after the title company notifies the parties that the existing survey is not acceptable to the title company. ~~The closing date will be extended daily up to 30 days if necessary for the updating party to deliver an acceptable survey within the time required. The other party will reimburse the updating party (insert amount or percentage) of the cost of the new or updated survey at closing, if closing occurs.~~ **See Special Provisions Addendum for further details.**

**C. Buyer's Objections to the Commitment and Survey:**

(1) Within 10 days after Buyer receives the last of the commitment, copies of the documents evidencing the title exceptions, and any required survey, Buyer may object in writing to matters disclosed in the items if: (a) the matters disclosed are a restriction upon the Property or constitute a defect or encumbrance to title other than those permitted by this contract or liens that Seller will

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satisfy at closing or Buyer will assume at closing; or (b) the items show that any part of the Property lies in a special flood hazard area (an "A" or "V" zone as defined by FEMA). If the commitment or survey is revised or any new document evidencing a title exception is delivered, Buyer may object in writing to any new matter revealed in such revision or new document. Buyer's objection must be made within the same number of days stated in this paragraph, beginning when the revision or new document is delivered to Buyer. If Paragraph 6B(1) applies, Buyer is deemed to receive the survey on the earlier of: (i) the date Buyer actually receives the survey; or (ii) of the deadline specified in Paragraph 6B.

- (2) Seller may, but is not obligated to, cure Buyer's timely objections within 15 days after Seller receives the objections. The closing date will be extended as necessary to provide such time to cure the objections. If Seller fails to cure the objections by the time required, Buyer may terminate this contract by providing written notice to Seller within 5 days after the time by which Seller must cure the objections. If Buyer terminates, the earnest money, less any independent consideration under Paragraph 7B(1), will be refunded to Buyer.
- (3) Buyer's failure to timely object or terminate under this Paragraph 6C is a waiver of Buyer's right to object except that Buyer will not waive the requirements in Schedule C of this commitment.

7. PROPERTY CONDITION:

A. Present Condition: Buyer accepts the Property in its present condition except that Seller, at Seller's expense, will complete the following before closing:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

B. Feasibility Period: Buyer may terminate this contract for any reason within 90 days after the effective date (feasibility period) by providing Seller written notice of termination.

(1) Independent Consideration. (Check only one box and insert amounts.)

(a) If Buyer terminates under this Paragraph 7B, the earnest money will be refunded to Buyer less \$ 100.00 that Seller will retain as independent consideration for Buyer's unrestricted right to terminate. Buyer has tendered the independent consideration to Seller upon payment of the amount specified in Paragraph 5A to the title company. The independent consideration is to be credited to the sales price only upon closing of the sale. If no dollar amount is stated in this Paragraph 7B(1) or if Buyer fails to deposit the earnest money, Buyer will not have the right to terminate under this Paragraph 7B.

(b) Not later than 3 days after the effective date, Buyer must pay \$ \_\_\_\_\_ as independent consideration for Buyer's right to terminate by tendering such amount to the title company. Buyer authorizes escrow agent to release and deliver the independent consideration to Seller at any time upon Seller's request without further notice to or consent from Buyer. If Buyer terminates under this Paragraph 7B, the earnest money will be refunded to Buyer and Seller will retain the independent consideration. The independent consideration will be credited to the sales price only upon closing of the sale. If no dollar amount is stated in this Paragraph 7B(2) or if Buyer fails to pay the independent consideration, Buyer will not have the right to terminate under this Paragraph 7B.

(2) Feasibility Period Extension: Prior to the expiration of the initial feasibility period, Buyer may extend the feasibility period for a single additional period of \_\_\_\_\_ days by delivering \$ \_\_\_\_\_ to the title company as additional earnest money.

(a) \$ \_\_\_\_\_ of the additional earnest money will be retained by Seller as additional independent consideration for Buyer's unrestricted right to terminate, but will be credited to the

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sales price only upon closing of the sale. If Buyer terminates under this Paragraph 7B, the additional earnest money will be refunded to Buyer and Seller will retain the additional independent consideration.

(b) Buyer authorizes escrow agent to release and deliver to Seller the following at any time upon Seller's request without further notice to or consent from Buyer:

(i) The additional independent consideration.

(ii) (Check no boxes or only one box.)

all or  \$ \_\_\_\_\_ of the remaining portion of the additional earnest money, which will be refunded to Buyer if Buyer terminates under this Paragraph 7B or if Seller defaults under this contract.

If no dollar amount is stated in this Paragraph 7B(2) as additional earnest money or as additional independent consideration, or if Buyer fails to timely deliver the additional earnest money, the extension of the feasibility period will not be effective.

C. Inspections, Studies, or Assessments:

(1) During the feasibility period, Buyer, at Buyer's expense, may complete or cause to be completed any and all inspections, studies, or assessments of the Property (including all improvements and fixtures) desired by Buyer.

(2) Buyer must:

- (a) employ only trained and qualified inspectors and assessors;
- (b) notify Seller, in advance, of when the inspectors or assessors will be on the Property;
- (c) abide by any reasonable entry rules or requirements of Seller;
- (d) not interfere with existing operations or occupants of the Property; and
- (e) restore the Property to its original condition if altered due to inspections, studies, or assessments that Buyer completes or causes to be completed.

(3) Except for those matters that arise from the negligence of Seller or Seller's agents, Buyer is responsible for any claim, liability, encumbrance, cause of action, and expense resulting from Buyer's inspections, studies, or assessments, including any property damage or personal injury. Buyer will indemnify, hold harmless, and defend Seller and Seller's agents against any claim involving a matter for which Buyer is responsible under this paragraph. This paragraph survives termination of this contract.

*\*to the extent the items are existing and readily available and within Seller's possession and/or control since it took title to the Property.*

D. Property Information:

(1) Delivery of Property Information: Within 5 days after the effective date, Seller\* will deliver to Buyer the following to the extent in Seller's possession or control: (Check all that apply.)

- (a) copies of all current leases, including any mineral leases, pertaining to the Property, including any modifications, supplements, or amendments to the leases;
- (b) copies of all notes and deeds of trust against the Property that Buyer will assume or that Seller will not pay in full on or before closing;
- (c) copies of all previous environmental assessments, geotechnical reports, studies, or analyses made on or relating to the Property;
- (d) copies property tax statements for the Property for the previous 2 calendar years;
- (e) plats of the Property;
- (f) copies of current utility capacity letters from the Property's water and sewer service provider; and
- (g) \_\_\_\_\_

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and Buyer

*[Signature]*

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- (2) Return of Property Information: If this contract terminates for any reason, Buyer will, not later than 10 days after the termination date: *(Check all that apply.)*
- (a) return to Seller all those items described in Paragraph 7D(1) that Seller delivered to Buyer in other than an electronic format and all copies that Buyer made of those items;
  - (b) delete or destroy all electronic versions of those items described in Paragraph 7D(1) that Seller delivered to Buyer or Buyer copied in any format; and
  - (c) deliver to Seller copies of all inspection and assessment reports related to the Property that Buyer completed or caused to be completed.
- This Paragraph 7D(2) survives termination of this contract.

E. Contracts Affecting Operations: Until closing, Seller: (1) will operate the Property in the same manner as on the effective date under reasonably prudent business standards; and (2) will not transfer or dispose of any part of the Property, any interest or right in the Property, or any of the personal property or other items described in Paragraph 2B or sold under this contract. After the feasibility period ends, Seller may not enter into, amend, or terminate any other contract that affects the operations of the Property without Buyer's written approval.

8. **LEASES: NONE IN EFFECT.**

- ~~A. Each written lease Seller is to assign to Buyer under this contract must be in full force and effect according to its terms. Seller may not enter into any new lease, fail to comply with any existing lease, or make any amendment or modification to any existing lease without Buyer's written consent. Seller must disclose, in writing, if any of the following exist at the time Seller provides the leases to the Buyer or subsequently occur before closing:~~
- ~~(1) any failure by Seller to comply with Seller's obligations under the leases;~~
  - ~~(2) any circumstances under any lease that entitle the tenant to terminate the lease or seek any effects or damages;~~
  - ~~(3) any advance sums paid by a tenant under any lease;~~
  - ~~(4) any concessions, bonuses, free rents, rebates, brokerage commissions, or other matters that affect any lease; and~~
  - ~~(5) any amounts payable under the leases that have been assigned or encumbered, except as security for loan(s) assumed or taken subject to under this contract.~~
- ~~B. Estoppel Certificates: Within \_\_\_\_\_ days after the effective date, Seller will deliver to Buyer estoppel certificates signed not earlier than \_\_\_\_\_ by each tenant that leases space in the Property. The estoppel certificates must include the certifications contained in the current version of TXR Form 4038 - Commercial Tenant Estoppel Certificate and any additional information requested by a third party lender providing financing under Paragraph 4 if the third party lender requests such additional information at least 10 days prior to the earliest date that Seller may deliver the signed estoppel certificates.~~

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**9. BROKERS:**

**A. The brokers to this sale are:**

Principal Broker: Colliers International Houston, Inc.

Cooperating Broker: Palermo Corporate Real Estate

Advisors

Agent: Tom Condon, Jr.

Agent: Damon P. Palermo

Address: 9950 Woodloch Forest Dr, Suite 1225  
The Woodlands, TX 77380

Address: 4747 Research Forest Drive, Suite 180 #238  
The Woodlands, TX 77381

Phone & Fax: (713)830-4067 (713)830-4057

Phone & Fax: (713)816-0001

E-mail: tom.conda.jr@colliers.com

E-mail: dpalermo@palermocrea.com

License No.: 0029114

License No.: 390849

Principal Broker: (Check only one box)

Cooperating Broker represents Buyer.

- represents Seller only.
- represents Buyer only.
- is an Intermediary between Seller and Buyer.

**B. Fees: (Check only (1) or (2) below.)**

*(Complete the Agreement Between Brokers on page 14 only if (1) is selected.)*

- (1) Seller will pay Principal Broker the fee specified by separate written commission agreement between Principal Broker and Seller. Principal Broker will pay Cooperating Broker the fee specified in the Agreement Between Brokers found below the parties' signatures to this contract.
- (2) At the closing of this sale, Seller will pay:

Principal Broker a total cash fee of:  
 3.000 % of the sales price.

Cooperating Broker a total cash fee of:  
 3.000 % of the sales price.

The cash fees will be paid in Harris County, Texas. Seller authorizes the title company to pay the brokers from the Seller's proceeds at closing.  
**NOTICE: Chapter 62, Texas Property Code, authorizes a broker to secure an earned commission with a lien against the Property.**

**C. The parties may not amend this Paragraph 9 without the written consent of the brokers affected by the amendment.**

**10. CLOSING:**

**A. The date of the closing of the sale (closing date) will be on or before the later of:**

(1)  15 days after the expiration of the feasibility period.  
 \_\_\_\_\_ (specific date).

(2) ~~7 days after objections made under Paragraph 6C have been cured or waived.~~

**B. If either party fails to close by the closing date, the non-defaulting party may exercise the remedies in Paragraph 15.**

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- C. At closing, Seller will execute and deliver, at Seller's expense, a  general  special warranty deed. The deed must include a vendor's lien if any part of the sales price is financed. The deed must convey good and indefeasible title to the Property and show no exceptions other than those permitted under Paragraph 6 or other provisions of this contract. Seller must convey the Property:
- (1) with no liens, assessments, or other security interests against the Property which will not be satisfied out of the sales price, unless securing loans Buyer assumes;
  - (2) without any assumed loans in default; and
  - (3) with no persons in possession of any part of the Property as lessees, tenants at sufferance, or trespassers except tenants under the written leases assigned to Buyer under this contract.
- D. At closing, Seller, at Seller's expense, will also deliver to Buyer:
- (1) tax statements showing no delinquent taxes on the Property;
  - (2) ~~an assignment of all leases to or on the Property;~~
  - (3) to the extent assignable, an assignment to Buyer of any licenses and permits related to the Property;
  - (4) evidence that the person executing this contract is legally capable and authorized to bind Seller;
  - (5) an affidavit acceptable to the title company stating that Seller is not a foreign person or, if Seller is a foreign person, a written authorization for the title company to: (i) withhold from Seller's proceeds an amount sufficient to comply with applicable tax law; and (ii) deliver the amount to the Internal Revenue Service (IRS) together with appropriate tax forms; and
  - (6) any notices, statements, certificates, affidavits, releases, and other documents required by this contract, the commitment, or law necessary for the closing of the sale and issuance of the title policy, all of which must be completed by Seller as necessary.
- E. At closing, Buyer will:
- (1) pay the sales price in good funds acceptable to the title company;
  - (2) deliver evidence that the person executing this contract is legally capable and authorized to bind Buyer;
  - (3) ~~sign and send to each tenant in a lease for any part of the Property a written statement that:~~
    - (a) acknowledges Buyer has received and is responsible for the tenant's security deposit; and
    - (b) specifies the exact dollar amount of the security deposit;
  - (4) ~~sign an assumption of all leases then in effect; and~~
  - (5) execute and deliver any notices, statements, certificates, or other documents required by this contract or law necessary to close the sale.
- F. Unless the parties agree otherwise, the closing documents will be as found in the basic forms in the current edition of the State Bar of Texas Real Estate Forms Manual without any additional clauses.
11. **POSSESSION:** Seller will deliver possession of the Property to Buyer upon closing and funding of this sale in its present condition with any repairs Seller is obligated to complete under this contract, ordinary wear and tear excepted. Any possession by Buyer before closing or by Seller after closing that is not authorized by a separate written lease agreement is a landlord-tenant at sufferance relationship between the parties.
12. **SPECIAL PROVISIONS:** The following special provisions apply and will control in the event of a conflict with other provisions of this contract. *(If special provisions are contained in an Addendum, identify the Addendum here and reference the Addendum in Paragraph 22D.)*  
**This Contract is subject to the terms and conditions of the Special Provisions Addendum attached hereto and incorporated herein.**

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**13. SALES EXPENSES:**

- A. **Seller's Expenses:** Seller will pay for the following at or before closing:
  - (1) releases of existing liens, other than those liens assumed by Buyer, including prepayment penalties and recording fees;
  - (2) release of Seller's loan liability, if applicable;
  - (3) tax statements or certificates;
  - (4) preparation of the deed;
  - (5) one-half of any escrow fee;
  - (6) costs to record any documents to cure title objections that Seller must cure; and
  - (7) other expenses that Seller will pay under other provisions of this contract.
- B. **Buyer's Expenses:** Buyer will pay for the following at or before closing:
  - (1) all loan expenses and fees;
  - (2) preparation of any deed of trust;
  - (3) recording fees for the deed and any deed of trust;
  - (4) premiums for flood insurance as may be required by Buyer's lender;
  - (5) one-half of any escrow fee;
  - (6) other expenses that Buyer will pay under other provisions of this contract.

**14. PRORATIONS:**

- A. **Prorations:**
  - (1) Interest on any assumed loan, taxes, rents, and any expense reimbursements from tenants will be prorated through the closing date.
  - (2) If the amount of ad valorem taxes for the year in which the sale closes is not available on the closing date, taxes will be prorated on the basis of taxes assessed in the previous year. If the taxes for the year in which the sale closes vary from the amount prorated at closing, the parties will adjust the prorations when the tax statements for the year in which the sale closes become available. This Paragraph 14A(2) survives closing.
  - (3) If Buyer assumes a loan or is taking the Property subject to an existing lien, Seller will transfer all receive deposits held by the lender for the payment of taxes, insurance premiums, and other charges to Buyer at closing and Buyer will reimburse such amounts to Seller by an appropriate adjustment at closing.
- B. **Rollback Taxes:** If Seller's use or change in use of the Property before closing results in the assessment of additional taxes, penalties, or interest (assessments) for periods before closing, the assessments will be the obligation of the Seller. If this sale or Buyer's use of the Property after closing results in additional assessments for periods before closing, the assessments will be the obligation of Buyer. This Paragraph 14B survives closing.
- C. **Rent and Security Deposits:** At closing, Seller will tender to Buyer all security deposits and the following advance payments received by Seller for periods after closing: prepaid expenses, advance rental payments, and other advance payments paid by tenants. Rents prorated to one party but received by the other party will be remitted by the recipient to the party to whom it was prorated within 5 days after the rent is received. This Paragraph 14C survives closing.

**15. DEFAULT:**

- A. If Buyer fails to comply with this contract, Buyer is in default and Seller, as Seller's sole remedy(ies), may terminate this contract and receive the earnest money, as liquidated damages for Buyer's failure

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except for any damages resulting from Buyer's inspections, studies or assessments in accordance with Paragraph 7C(3) which Seller may pursue; or  
~~(Check if applicable)~~

~~enforce specific performance, or seek such other relief as may be provided by law.~~

B. If, without fault, Seller is unable within the time allowed to deliver the ~~estoppel certificates~~, survey or the commitment, Buyer may; **as Buyer's sole remedy(ies):**

- (1) terminate this contract and receive the earnest money, less any independent consideration under Paragraph 7B(1), as liquidated damages and as Buyer's sole remedy; or
- (2) extend the time for performance up to 15 days ~~and the closing will be extended as necessary.~~

C. Except as provided in Paragraph 15B, if Seller fails to comply with this contract, Seller is in default and Buyer may; **as Buyer's sole remedy(ies):**

- (1) terminate this contract and receive the earnest money, less any independent consideration under Paragraph 7B(1), as liquidated damages and as Buyer's sole remedy; or
- (2) enforce specific performance, ~~or seek such other relief as may be provided by law, or both.~~

16. CONDEMNATION: If before closing, condemnation proceedings are commenced against any part of the Property, Buyer may:

A. terminate this contract by providing written notice to Seller within 15 days after Buyer is advised of the condemnation proceedings and the earnest money, less any independent consideration paid under Paragraph 7B(1), will be refunded to Buyer; or

B. appear and defend in the condemnation proceedings and any award will, at Buyer's election, belong to:  
(1) Seller and the sales price will be reduced by the same amount; or  
(2) Buyer and the sales price will not be reduced.

17. ATTORNEY'S FEES: If Buyer, Seller, any broker, or the title company is a prevailing party in any legal proceeding brought under or with relation to this contract or this transaction, such party is entitled to recover from the non-prevailing parties all costs of such proceeding and reasonable attorney's fees. This Paragraph 17 survives termination of this contract.

18. ESCROW:

A. At closing, the earnest money will be applied first to any cash down payment, then to Buyer's closing costs, and any excess will be refunded to Buyer. If no closing occurs, the title company may require payment of unpaid expenses incurred on behalf of the parties and a written release of liability of the title company from all parties.

B. If one party makes written demand for the earnest money, the title company will give notice of the demand by providing to the other party a copy of the demand. If the title company does not receive written objection to the demand from the other party within 15 days after the date the title company sent the demand to the other party, the title company may disburse the earnest money to the party making demand, reduced by the amount of unpaid expenses incurred on behalf of the party receiving the earnest money and the title company may pay the same to the creditors.

C. The title company will deduct any independent consideration under Paragraph 7B(1) before disbursing any earnest money to Buyer and will pay the independent consideration to Seller.

D. If the title company complies with this Paragraph 18, each party hereby releases the title company from all claims related to the disbursement of the earnest money.

E. Notices under this Paragraph 18 must be sent by certified mail, return receipt requested. Notices to the title company are effective upon receipt by the title company.

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F. Any party who wrongfully fails or refuses to sign a release acceptable to the title company within 7 days after receipt of the request will be liable to the other party for: (i) damages; (ii) the earnest money; (iii) reasonable attorney's fees; and (iv) all costs of suit.

G.  Seller  Buyer intend(s) to complete this transaction as a part of an exchange of like-kind properties in accordance with Section 1031 of the Internal Revenue Code, as amended. All expenses in connection with the contemplated exchange will be paid by the exchanging party. The other party will not incur any expenses or liability with respect to the exchange. The parties agree to cooperate fully and in good faith to arrange and consummate the exchange so as to comply to the maximum extent feasible with the provisions of Section 1031 of the Internal Revenue Code. The other provisions of this contract will not be affected in the event the contemplated exchange fails to occur.

19. MATERIAL FACTS: To the best of Seller's knowledge and belief: (Check only one box.)

A. Seller is not aware of any material defects to the Property except as stated in the attached Commercial Property Condition Statement (TXR-1408).

B. Except as otherwise provided in this contract, Seller is not aware of:  
(1) any subsurface structures, pits, waste, springs, or improvements;  
(2) any pending or threatened litigation, condemnation, or assessment affecting the Property;  
(3) any environmental hazards or conditions that materially affect the Property;  
(4) whether the Property is or has been used for the storage or disposal of hazardous materials or toxic waste, a dump site or landfill, or any underground tanks or containers;  
(5) whether radon, asbestos containing materials, urea-formaldehyde foam insulation, lead-based paint, toxic mold (to the extent that it adversely affects the health of ordinary occupants), or other pollutants or contaminants of any nature now exist or ever existed on the Property;  
(6) any wetlands, as defined by federal or state law or regulation, on the Property;  
(7) any threatened or endangered species or their habitat on the Property;  
(8) any present or past infestation of wood-destroying insects in the Property's improvements;  
(9) any contemplated material changes to the Property or surrounding area that would materially and detrimentally affect the ordinary use of the Property;  
(10) any condition on the Property that violates any law or ordinance.

(Describe any exceptions to (1)-(10) in Paragraph 12 or an addendum.)

20. NOTICES: All notices between the parties under this contract must be in writing and are effective when hand-delivered, mailed by certified mail return receipt requested, sent by a national or regional overnight delivery service that provides a delivery receipt, or sent by confirmed facsimile transmission to the parties addresses or facsimile numbers stated in Paragraph 1. The parties will send copies of any notices to the broker representing the party to whom the notices are sent.

A. Seller also consents to receive any notices by e-mail at Seller's e-mail address stated in Paragraph 1.

B. Buyer also consents to receive any notices by e-mail at Buyer's e-mail address stated in Paragraph 1.

21. DISPUTE RESOLUTION: The parties agree to negotiate in good faith in an effort to resolve any dispute related to this contract that may arise. If the dispute cannot be resolved by negotiation, the parties will submit the dispute to mediation before resorting to arbitration or litigation and will equally share the costs of a mutually acceptable mediator. This paragraph survives termination of this contract. This paragraph does not preclude a party from seeking equitable relief from a court of competent jurisdiction.

22. AGREEMENT OF THE PARTIES:

A. This contract is binding on the parties, their heirs, executors, representatives, successors, and permitted assigns. This contract is to be construed in accordance with the laws of the State of Texas. If any term or condition of this contract shall be held to be invalid or unenforceable, the remainder of this

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contract shall not be effected thereby. All individuals signing represent that they have the authority to sign on behalf of and bind the party for whom they are signing.

- B. This contract contains the entire agreement of the parties and may not be changed except in writing.
- C. If this contract is executed in a number of identical counterparts, each counterpart is an original and all counterparts, collectively, constitute one agreement.

D. Addenda which are part of this contract are: (Check all that apply.)

- (1) Property Description Exhibit Identified in Paragraph 2;
- (2) Commercial Contract Financing Addendum (TXR-1931);
- (3) Commercial Property Condition Statement (TXR-1408);
- (4) Commercial Contract Addendum for Special Provisions (TXR-1940);
- (5) Notice to Purchaser of Real Property in a Water District (MUD);
- (6) Addendum for Coastal Area Property (TXR-1915);
- (7) Addendum for Property Located Seaward of the Gulf Intracoastal Waterway (TXR-1916);
- (8) Information About Brokerage Services (TXR-2501);
- (9) Information About Mineral Clauses In Contract Forms (TXR-2509);
- (10) Notice of Obligation to Pay Improvement District Assessment (TXR-1655, PID); and
- (11) **Special Provisions Addendum**

(Note: Council for Texas REALTORS® has determined that any of the foregoing addenda which are promulgated by the Texas Real Estate Commission (TREC) or published by Texas REALTORS® are appropriate for use with this form.)

~~E. Buyer  may  may not assign this contract. If Buyer assigns this contract, Buyer will be relieved of any future liability under this contract only if the assignee assumes, in writing, all obligations and liability of Buyer under this contract.~~

23. **TIME:** Time is of the essence in this contract. The parties require strict compliance with the times for performance. If the last day to perform under a provision of this contract falls on a Saturday, Sunday, or federal reserve bank holiday, the time for performance is extended until the end of the next day which is not a Saturday, Sunday, or federal reserve bank holiday.

24. **EFFECTIVE DATE:** The effective date of this contract for the purpose of performance of all obligations is the date the title company receipts this contract after all parties execute this contract.

25. **ADDITIONAL NOTICES:**

- A. Buyer should have an abstract covering the Property examined by an attorney of Buyer's selection, or Buyer should be furnished with or obtain a title policy.
- B. If the Property is situated in a utility or other statutorily created district providing water, sewer, drainage, or flood control facilities and services, Chapter 49, Texas Water Code, requires Seller to deliver and Buyer to sign the statutory notice relating to the tax rate, bonded indebtedness, or standby fees of the district before final execution of this contract.
- C. Notice Required by §13.257, Water Code: "The real property, described below, that you are about to purchase may be located in a certificated water or sewer service area, which is authorized by law to provide water or sewer service to the properties in the certificated area. If your property is located in a certificated area there may be special costs or charges that you will be required to pay before you can receive water or sewer service. There may be a period required to construct lines or other facilities necessary to provide water or sewer service to your property. You are advised to determine if the property is in a certificated area and contact the utility service provider to determine the cost that you will be required to pay and the period, if any, that is required to provide water or sewer service to your property. The undersigned purchaser hereby acknowledges receipt of the foregoing notice at or before

(TXR-1802) 07-08-22

Initialed for Identification by Seller: [Signature] and Buyer: [Signature]

Page 12 of 15

Callers International - Corporate, 1280 West Loop South, Suite 520 Houston, TX 77027  
Tara Clendon

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Phone: 714-222-8111 Fax: 714-222-8118

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LOT 1.761AC

Commercial Contract - Unimproved Property concerning Eastside of S. Persimmon St, Tomball, TX 77375

the execution of a binding contract for the purchase of the real property described in the notice or at closing of purchase of the real property." The real property is described in Paragraph 2 of this contract.

- D. If the Property adjoins or shares a common boundary with the tidally influenced submerged lands of the state, §33.135 of the Texas Natural Resources Code requires a notice regarding coastal area property to be included as part of this contract (the Addendum for Coastal Area Property (TXR-1816) may be used).
- E. If the Property is located seaward of the Gulf Intracoastal Waterway, §61.025, Texas Natural Resources Code, requires a notice regarding the seaward location of the Property to be included as part of this contract (the Addendum for Property Located Seaward of the Gulf Intracoastal Waterway (TXR-1816) may be used).
- F. If the Property is located outside the limits of a municipality, the Property may now or later be included in the extra-territorial jurisdiction (ETJ) of a municipality and may now or later be subject to annexation by the municipality. Each municipality maintains a map that depicts its boundaries and ETJ. To determine if the Property is located within a municipality's ETJ, Buyer should contact all municipalities located in the general proximity of the Property for further information.
- G. Brokers are not qualified to perform property inspections, surveys, engineering studies, environmental assessments, or inspections to determine compliance with zoning, governmental regulations, or laws. Buyer should seek experts to perform such services. Buyer should review local building codes, ordinances and other applicable laws to determine their effect on the Property. Selection of experts, inspectors, and repairmen is the responsibility of Buyer and not the brokers. Brokers are not qualified to determine the credit worthiness of the parties.
- H. NOTICE OF WATER LEVEL FLUCTUATIONS: If the Property adjoins an impoundment of water, including a reservoir or lake, constructed and maintained under Chapter 11, Water Code, that has a storage capacity of at least 5,000 acre-feet at the impoundment's normal operating level, Seller hereby notifies Buyer: "The water level of the impoundment of water adjoining the Property fluctuates for various reasons, including as a result of: (1) an entity lawfully exercising its right to use the water stored in the impoundment; or (2) drought or flood conditions."
- I. PUBLIC IMPROVEMENT DISTRICTS: If the Property is in a public improvement district, Seller is required by §5.014, Property Code to give Buyer a written notice concerning the obligation to pay assessments. The form of the required notice is available as a part of the Notice of Obligation to Pay Improvement District Assessment (TXR-1865).
- J. LICENSE HOLDER DISCLOSURE: Texas law requires a real estate license holder who is a party to a transaction or acting on behalf of a spouse, parent, child, business entity in which the licensee holder owns more than 10%, or a trust for which the licensee holder acts as a trustee or of which the licensee holder or the licensee holder's spouse, parent or child is a beneficiary, to notify the other party in writing before entering into a contract of sale. Disclose if applicable: \_\_\_\_\_

28. CONTRACT AS OFFER: The execution of this contract by the first party constitutes an offer to buy or sell the Property. Unless the other party accepts the offer by 6:00 p.m., in the time zone in which the Property is located, on January 17, 2023, the offer will lapse and become null and void.

(TXR-1802) 07-08-22

Initialed for Identification by Seller  and Buyer 

Page 13 of 15

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www.lexipol.com

LATS-L751AC

Commercial Contract - Unimproved Property concerning Eastside of S. Parsippon St. Tomball, TX 77375

**READ THIS CONTRACT CAREFULLY.** The brokers and agents make no representation or recommendation as to the legal sufficiency, legal effect, or tax consequences of this document or transaction. **CONSULT your attorney BEFORE signing.**


**Seller: TOMBALL ECONOMIC DEVELOPMENT CORPORATION**

**Buyer: MOFFITT WILLIAMS, LLC**

By:   
By (signature): DocuSigned by: Kelly Violette  
Printed Name: **Kelly Violette**  
Title: **Executive Director**

By: Jeff Williams  
By (signature):   
Printed Name: **Jeff Williams**  
Title: **Manager**

By: \_\_\_\_\_  
By (signature): \_\_\_\_\_  
Printed Name: \_\_\_\_\_  
Title: \_\_\_\_\_

By: Amy Williams  
By (signature):   
Printed Name: **Amy Williams**  
Title: **Manager**

Commercial Contract -Unimproved Property concerning **Eastside of S. Perainmon St. Tomball, TX 77375**

**AGREEMENT BETWEEN BROKERS**  
*(use only if Paragraph 0B(1) is effective)*

Principal Broker agrees to pay \_\_\_\_\_ (Cooperating Broker) a fee when the Principal Broker's fee is received. The fee to be paid to Cooperating Broker will be:

\$ \_\_\_\_\_ or  
 \_\_\_\_\_ % of the sales price, or  
 \_\_\_\_\_ % of the Principal Broker's fee.

The title company is authorized and directed to pay Cooperating Broker from Principal Broker's fee at closing. This Agreement Between Brokers supersedes any prior offers and agreements for compensation between brokers.

Principal Broker: \_\_\_\_\_ Cooperating Broker: \_\_\_\_\_

By: \_\_\_\_\_ By: \_\_\_\_\_

**ATTORNEYS**

**Seller's attorney: Justin Pruitt**  
**Olson & Olson, L.L.P.**  
 Address: **2727 Allen Parkway, Ste 600**  
**Houston, TX 77019**  
 Phone & Fax: **(713)533-3878** **(713)533-3888**  
 E-mail: **jp Pruitt@olsonllp.com**

**Buyer's attorney:** \_\_\_\_\_  
 Address: \_\_\_\_\_  
 Phone & Fax: \_\_\_\_\_  
 E-mail: \_\_\_\_\_

Seller's attorney requests copies of documents, notices, and other information:  
 the title company sends to Seller.  
 Buyer sends to Seller.

Buyer's attorney requests copies of documents, notices, and other information:  
 the title company sends to Buyer.  
 Seller sends to Buyer.

**ESCROW RECEIPT**

The title company acknowledges receipt of:

A. the contract on this day \_\_\_\_\_ (effective date);  
 B. earnest money in the amount of \$ \_\_\_\_\_ in the form of \_\_\_\_\_ on \_\_\_\_\_.

Title company: \_\_\_\_\_ Address: \_\_\_\_\_  
 By: \_\_\_\_\_ Phone & Fax: \_\_\_\_\_  
 Assigned file number (GF#): \_\_\_\_\_ E-mail: \_\_\_\_\_

DS  
kV

**SPECIAL PROVISIONS ADDENDUM  
TO  
COMMERCIAL CONTRACT - UNIMPROVED PROPERTY**

This Special Provisions Addendum to Commercial Contract - Unimproved Property ("Addendum") is entered into between **TOMBALL ECONOMIC DEVELOPMENT CORPORATION** ("Seller") and **MOFFITT WILLIAMS, LLC** ("Buyer") in order to amend the terms of a Commercial Contract - Unimproved Property contract ("Contract") entered into contemporaneously with the execution of this Addendum with respect to the approximately 1.791 acres of land described as LOT 3, Block 1 in Tomball Business And Technology Park Section 2 (the "Property").

Seller and Buyer agree as follows:

1. Assignment. Buyer has the right to assign the Contract at any time without the consent of Seller to a related entity in which Buyer has a controlling interest that exceeds 51%, so long as written notice is provided to Seller at least ten (10) days prior to Closing, the new buyer assumes all of the obligations of the Buyer under the terms of this Contract and the original Buyer is not relieved of any obligation under the Contract. Any other assignment requires Seller's prior written approval, which such approval shall not be unreasonably withheld.
2. Right of Access Agreement. Simultaneous with the Effective Date of the Contract, Seller shall provide Buyer with a "Right of Access" Agreement, which upon Buyer's execution of same will allow Buyer and his consultants to perform Due Diligence studies, tests and reports, including the limited clearing of underbrush, on the Property.
3. Prohibited Uses and Development Standards. The Special Warranty Deed conveyance of the Property will include and be subject to the Prohibited Uses and Development Standards as detailed in Exhibit "B" attached hereto and incorporated herein.
4. Survey. In the event that under Section 6.B.(3) of the Contract that the Buyer, be it for itself or its Lender or for any other reason other than the Title Company not approving Seller's Existing Survey, an updated or revised Survey is desired by Buyer then Buyer, at Buyer's sole expense, shall be responsible for obtaining the new Survey. Closing shall not be delayed in this event.
5. Signatures. Facsimile, emailed and/or electronic signatures shall be deemed same as originals for purposes of formation hereunder.
6. Terms. Defined and capitalized terms in this Addendum will have the same meaning as in the Contract, unless otherwise indicated.
7. Ratification. Except as amended, the Contract is ratified and affirmed.
8. Merger. All prior oral agreements of the parties are merged into the terms of the Contract and this Addendum.

DS  
KV

*JD* *AN*

9. Conflict. In the event of a direct conflict between the terms of this Addendum and the Contract, the terms of this Addendum will control.

**BUYER:**



**MOFFITT WILLIAMS, LLC**

By:   
Jeffrey Williams, Manager

By:   
Amy Williams, Manager

**SELLER:**

**TOMBALL ECONOMIC DEVELOPMENT CORPORATION**

DocuSigned by:  
  
By:   
Kelly Violette,  
Executive Director



## Information About Brokerage Services

Texas law requires all real estate license holders to give the following information about brokerage services to prospective buyers, tenants, sellers and landlords.

11-2-2015



**TYPES OF REAL ESTATE LICENSE HOLDERS:**

- A **BROKER** is responsible for all brokerage activities, including acts performed by sales agents sponsored by the broker
- A **SALES AGENT** must be sponsored by a broker and works with clients on behalf of the broker.

**A BROKER'S MINIMUM DUTIES REQUIRED BY LAW (A client is the person or party that the broker represents):**

- Put the interests of the client above all others, including the broker's own interests;
- Inform the client of any material information about the property or transaction received by the broker;
- Answer the client's questions and present any offer to or counter-offer from the client; and
- Treat all parties to a real estate transaction honestly and fairly.

**A LICENSE HOLDER CAN REPRESENT A PARTY IN A REAL ESTATE TRANSACTION:**

**AS AGENT FOR OWNER (SELLER/LANDLORD):** The broker becomes the property owner's agent through an agreement with the owner, usually in a written listing to sell or property management agreement. An owner's agent must perform the broker's minimum duties above and must inform the owner of any material information about the property or transaction known by the agent, including information disclosed to the agent or subagent by the buyer or buyer's agent.

**AS AGENT FOR BUYER/TENANT:** The broker becomes the buyer/tenant's agent by agreeing to represent the buyer, usually through a written representation agreement. A buyer's agent must perform the broker's minimum duties above and must inform the buyer of any material information about the property or transaction known by the agent, including information disclosed to the agent by the seller or seller's agent.

**AS AGENT FOR BOTH - INTERMEDIARY:** To act as an intermediary between the parties the broker must first obtain the written agreement of *each party* to the transaction. The written agreement must state who will pay the broker and, in conspicuous bold or underlined print, set forth the broker's obligations as an intermediary. A broker who acts as an intermediary:

- Must treat all parties to the transaction impartially and fairly;
- May, with the parties' written consent, appoint a different license holder associated with the broker to each party (owner and buyer) to communicate with, provide opinions and advice to, and carry out the instructions of each party to the transaction.
- Must not, unless specifically authorized in writing to do so by the party, disclose:
  - o that the owner will accept a price less than the written asking price;
  - o that the buyer/tenant will pay a price greater than the price submitted in a written offer; and
  - o any confidential information or any other information that a party specifically instructs the broker in writing not to disclose, unless required to do so by law.

**AS SUBAGENT:** A license holder acts as a subagent when aiding a buyer in a transaction without an agreement to represent the buyer. A subagent can assist the buyer but does not represent the buyer and must place the interests of the owner first.

**TO AVOID DISPUTES, ALL AGREEMENTS BETWEEN YOU AND A BROKER SHOULD BE IN WRITING AND CLEARLY ESTABLISH:**

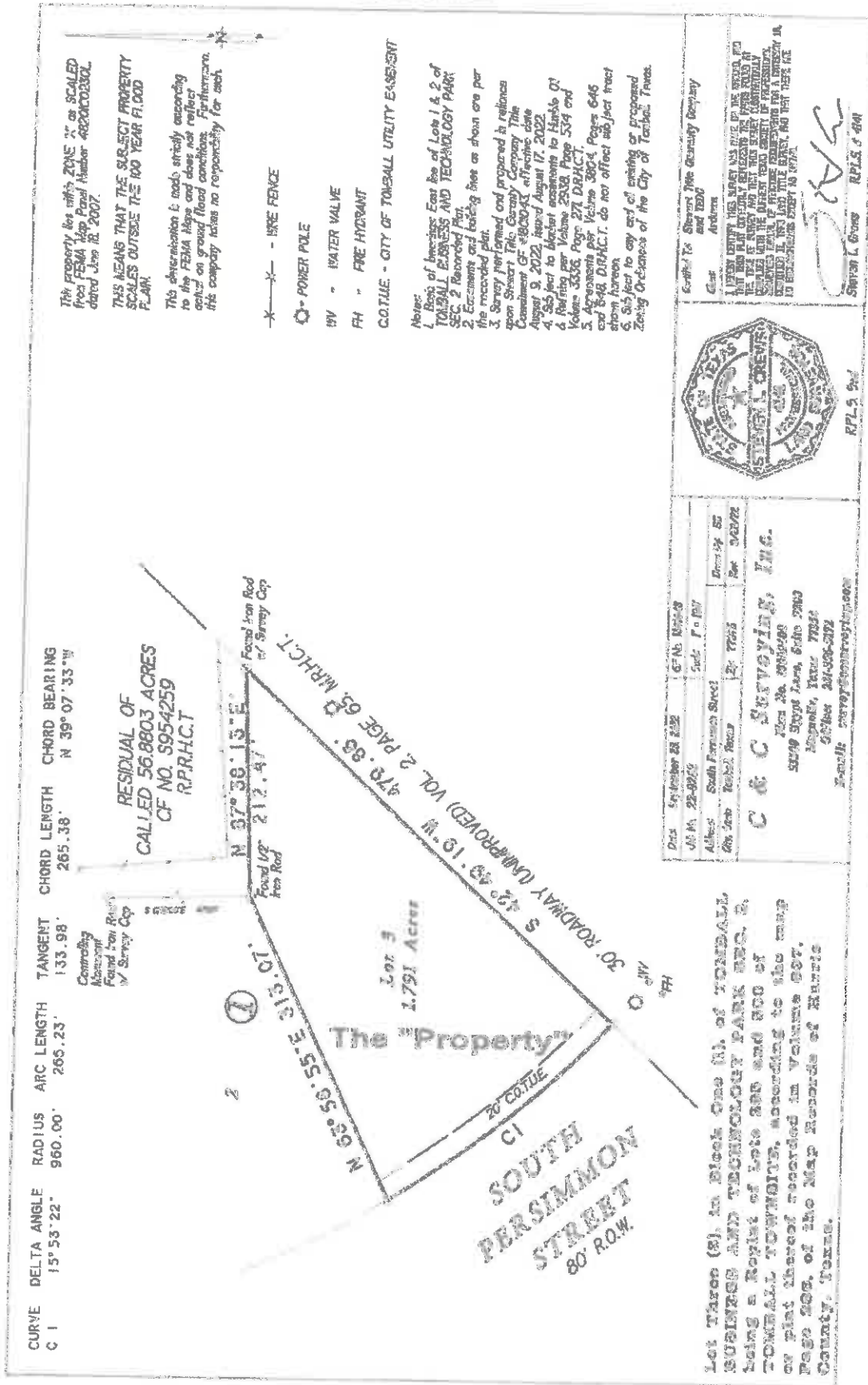
- The broker's duties and responsibilities to you, and your obligations under the representation agreement.
- Who will pay the broker for services provided to you, when payment will be made and how the payment will be calculated.

**LICENSE HOLDER CONTACT INFORMATION:** This notice is being provided for information purposes. It does not create an obligation for you to use the broker's services. Please acknowledge receipt of this notice below and retain a copy for your records.

Colliers International Houston, Inc.	29114	houston.info@colliers.com	+1 713 222 2111
Licensed Broker /Broker Firm Name or Primary Assumed Business Name	License No.	Email	Phone
David Lee Carter	364568	david.carter@colliers.com	+1 713 830 2135
Designated Broker of Firm	License No.	Email	Phone
Patrick Duffy, MCR	604308	patrick.duffy@colliers.com	+1 713 830 2112
Licensed Supervisor of Sales Agent/ Associate	License No.	Email	Phone
Tom Condon, Jr.	419324	tom.condon.jr@colliers.com	+1 713 830 4007
Sales Agent/Associate's Name	License No.	Email	Phone

Buyer/Tenant/Seller/Landlord Initials: DLV      Date: 1/17/2023

# Exhibit "A"



This property lies within ZONE "C" as SCALED from FEMA Flood Panel Number 48220C0330L dated June 18, 2007.

THIS BEARING THAT THE SUBJECT PROPERTY SCALES OUTSIDE THE 100 YEAR FLOOD PLAN.

This dimension is made strictly according to the FEMA maps and does not reflect actual ground flood conditions. Furthermore, this company takes no responsibility for such.

- X - FIRE FENCE
- - POWER POLE
- W - WATER VALVE
- FH - FIRE HYDRANT

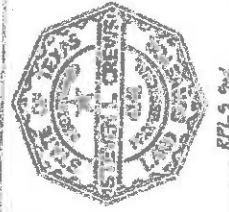
C.O.U.L.I.E. - CITY OF TOMBALL UTILITY EASEMENT

**Notes:**

1. Basis of bearings East line of Lots 1 & 2 of TOMBALL BUSINESS AND TECHNOLOGY PARK SEC. 9 Recorded Plat.
2. Easements and bearing lines as shown are per the recorded plat.
3. Survey performed and prepared by reference upon Street Title Gazette Company, The Commission of 4822043 effective date August 9, 2022, issued August 17, 2022.
4. 25 feet to Market easements to Market of Volume 3356, Page 271 D.B.H.C.T.
5. Appointments per Volume 3804, Pages 646 and 648, D.B.H.C.T. do not affect subject tract shown hereon.
6. Subject to any and all existing or proposed zoning Ordinance of the City of Tomball, Texas.

Created by: Stewart McCreary DeLong and TDD  
 Client: Andrew  
 I HEREBY CERTIFY THAT I HAVE MADE A PERSONAL AND VISUAL SURVEY OF THE ABOVE DESCRIBED TRACT AND THAT THE BEARING AND DISTANCE ARE CORRECTLY SHOWN AND THE CURRENT TOWN CEMETERY OF TOMBALL, TEXAS IS SHOWN AND THE PROPERTY IS SHOWN AS DESCRIBED IN THE PLAT. I HAVE NOT BEEN ADVISED BY ANY PERSON OF ANY INTEREST IN THE PROPERTY THAT THE BEARING OR DISTANCE IS INCORRECT.

Stewart L. DeLong  
 RPL 5-404



Plot No. 22-0229  
 67th St. N.W.  
 South Persimmon Street  
 Tomball, Texas 77358

**C & C Surveying, Inc.**  
 5119 Stage Lane, Suite 200  
 Houston, Texas 77056  
 Phone: 281-366-2771  
 Email: survey@ccsurveying.com

Plot No. 22-0229  
 Date: 12/14/22  
 Per: 362072

Lot Three (3), in Block One (1), of TOMBALL BUSINESS AND TECHNOLOGY PARK SEC. 9, being a portion of Lots 300 and 300 of TOMBALL TOWNSHIP, according to the map on plat thereof recorded in volume 607, Page 603, of the Map Records of Harris County, Texas.

Not to scale; for illustrative purposes only

Handwritten initials: "JW" and "AN" in blue ink.



**EXHIBIT "B"**  
**PROHIBITED USES and DEVELOPMENT STANDARDS**

**A. PROHIBITED USES**

None of the lands within the bounds of the Property shall be used for any of the following purposes:

1. Uses constituting nuisance, public or private, by reason of emission of smoke, dust, gas, odor, fumes, noise, vibration or refuse material of any kind;
2. Any establishment that offers or sells a product or service that is intended to provide sexual gratification to its users (including, but not limited to, the dissemination or exhibition of obscene materials; any establishment featuring topless, bottomless, or totally nude performances or personnel; or any establishment that regularly shows X-rated or pornographic movies, or sells or rents pornographic material or movies);
3. Any massage parlor, modeling studio, or establishment where men and/or women are engaged in salacious activities;
4. Single Family Residential;
5. Duplex Residential;
6. Apartments;
7. Mobile Homes;
8. Radio/Television Tower/Cell Tower;
9. Public Parking;
10. Recycling Facility;
11. Commercial and/or non-commercial arena/coliseum;
12. Commercial amusements and/or theme parks;
13. Drive-in seating establishments;
14. Funeral homes;
15. Commercial automotive garages;
16. Hospital or sanitarium;
17. Boarding, care, or treatment of any animal not involved in medical research;
18. Growing or production of any agricultural product;
19. Nursery/plant retail/wholesale sales;
20. Salvage or junkyards;
21. Commercial or non-commercial theater or motion picture house.

**B. DEVELOPMENT STANDARDS**

**1. Screening, Service Access, and Service Areas:**

- A. Service drives and service areas should not interfere with parking, driveways or walkways and must be screened from adjoining properties and public rights-of-way.
- B. Service areas must be paved and screened from public view.
- C. Screening must be compatible with building materials.
- D. All service area lighting shall include directional shields and must be submitted for Property Owners Association review.
- E. Outdoor storage must be screened from view from all public road right-of-ways. A combination of screening elements may be used, including walls, berms, and landscape.

DS  
 kv  
 JW AN

**F. Trash Receptacles and Enclosures.**

- i. Trash receptacles must be oriented to the building service areas and screened with a four-sided enclosure.
- ii. The enclosure must be two (2) feet higher than the height of the receptacle and a minimum of eight (8) feet in height.
- iii. The enclosure shall be constructed of brick, stone, concrete block, decorative metal, or any combination of these elements.
- iv. Gates shall be constructed of metal and be opaque.
- v. Wood, chain-link, and vinyl materials are not acceptable.

**2. Building Structures:****Exterior Materials and Colors:**

- A. Acceptable materials are brick, stone, glass, masonry, concrete (including pre-cast concrete or tilt slab construction), Architectural Composite Metal Panels, stucco, and cement plaster. EIFS (exterior insulation finish systems) will be allowed as a trim material. Buildings with architectural composite metal panels shall have factory applied finish.
- B. No building elevation that is visible from a public road right-of-way may have only one (1) material; it must have a combination of at least three (3) of the above described materials.
- C. Color, texture and architectural elements shall be used to break the monotony of large vertical surfaces where visible from public road rights-of-way.
- D. Prohibited exterior materials include:
  - i. Cementitious based siding and trim products;
  - ii. Wood siding, shingle siding, or wood shingle roofing;
  - iii. Painted brick or stone;
  - iv. Corrugated metal;
  - v. Untreated metal;
  - vi. Asbestos;
  - vii. Mirror or reflective glass;
  - viii. Burglar security bars;
- E. Primary building entrances must be clearly defined and recessed or framed by a sheltering element such as an awning, arcade or portico to provide shelter from the sun and inclement weather. A minimum of thirty (30) percent of all primary building entrance areas must be masonry or stone.
- F. Building colors must be low-reflecting, subtle and neutral or earth-toned. Roof colors must be muted and compatible with the dominant building color. High-intensity colors, metallic colors, or fluorescent colors are prohibited.

Handwritten signature and initials in blue ink. The signature appears to be 'JGD' and the initials are 'KV' inside a small box.

# Regular Tomball EDC

## Agenda Item

### Data Sheet

**Meeting Date:** March 7, 2023

**Topic:**

Consideration and possible action by Tomball EDC to ratify approval of a commercial real estate contract – between First Baptist Church of Tomball as Seller and the Corporation as purchaser and authorize the execution of contracts and documentation by the EDC Executive Director relating to approximately 4.63 acres of land comprised of Lot 13 of First Baptist Church of Tomball Subdivision and Lots 1-24 of Block 57, Lots 10-12 of Block 56, Lots 13-24 of Block 17, Lots 13-15 of Block 12, Lots 16 & 43-46 of Block 44, and Lots 17-19 & 43-48 of Block 46 of the Tomball Subdivision.

**Background:**

The attached commercial real estate contract outlines the purchase of approximately 4.63 acres of land in Old Town Tomball. The site is home to the First Baptist Church of Tomball which was organized in 1909. The purchase includes approximately 84,420 square feet of building area as well as multiple parking lots and a playground.

The attached commercial real estate contract has been reviewed by all parties, including legal counsel, and is presented for approval. The terms of the contract are outlined below:

Total acreage: 4.63 gross acres  
 Sales Price: ±\$4,500,000.00  
 Earnest Money: \$45,000  
 Feasibility Period: 75 days from Effective Date  
 Closing: On or before 15 days after the expiration of the feasibility period (estimated 4/12/2023)

This purchase aligns with Goal 3 of the TEDC’s Strategic Work Plan which is to encourage quality investment in Tomball’s Old Town. This Goal includes investing in strategic anchor projects that have the potential to catalyze development in Old Town.

**Origination:** Kelly Violette, Executive Director, Tomball Economic Development Corporation

**Recommendation:** Ratify approval of the commercial real estate contract and authorize the execution of contracts and documentation by the EDC Executive Director.

**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: #Property Acquisition

If no, funds will be transferred from account # \_\_\_\_\_ To account # \_\_\_\_\_

Signed \_\_\_\_\_ Approved by \_\_\_\_\_

---

Staff Member-TEDC                      Date

---

Executive Director-TEDC                      Date



COMMERCIAL CONTRACT AMENDMENT

USE OF THIS FORM BY PERSONS WHO ARE NOT MEMBERS OF THE TEXAS ASSOCIATION OF REALTORS®, INC. IS NOT AUTHORIZED. ©Texas Association of REALTORS®, Inc., 2022

AMENDMENT TO COMMERCIAL CONTRACT BETWEEN THE UNDERSIGNED BUYER AND SELLER CONCERNING THE PROPERTY AT

401 Oxford Street, Tomball, TX 77375

Effective January 18, 2023, Seller and Buyer amend the contract as follows: (Check all applicable boxes.)

- A. Sales Price: The sales price in Paragraph 3 of the contract is changed to: Cash portion payable by Buyer at closing. Sum of all financing described in the contract. Sales price (sum of cash portion and sum of all financing)

- B. Property Description: The Property's legal description in Paragraph 2A of the contract is changed to the legal description described on the attached Exhibit of as follows: being approximately 4.63 acres of land comprised of Lot 13 of First Baptist Church of Tomball Subdivision and Lots 1-24 of Block 57, Lots 10-12 of Block 56, Lots 13-24 of Block 17, Lots 13-15 of Block 12, Lots 16 & 43-46 of Block 44 and Lots 17-19 & 43-48 of Block 46 of the Tomball Subdivision, together with approximately 84,420SF Mixed-Use Facility as depicted on the Aerial Site Plan attached as Exhibit "A" to the Contract.

- C. Repairs: Buyer accepts the Property in its present condition except that Seller, at Seller's expense, will complete the following before closing:

- D. Extension of Feasibility Period: Prior to the expiration of the feasibility period, Buyer may extend the feasibility period until 11:59 p.m. on (date) by delivering \$ to the title company as additional earnest money.

- (1) \$ of the additional earnest money will be retained by Seller as additional independent consideration for Buyer's unrestricted right to terminate, but will be credited to the sales price only upon closing of the sale. If Buyer terminates under this Paragraph D, the additional earnest money will be refunded to Buyer and Seller will retain the additional independent consideration. (2) Buyer authorizes escrow agent to release and deliver to Seller the following at any time upon Seller's request without further notice to or consent from Buyer: (a) The additional independent consideration. (b) (Check no boxes or only one box.) all or \$ of the remaining portion of the additional earnest money, which will be refunded to Buyer if Buyer terminates under this Paragraph 7B or if Seller defaults under the contract.

If no dollar amount is stated in this Paragraph D as additional earnest money or as additional independent consideration, or if Buyer fails to timely deliver the additional earnest money, the extension of the feasibility period will not be effective.

(TXR-1932) 07-08-22 Initialed for Identification by Seller [DS] [DS] [DS] [DS] and Buyer [DS]

Amendment to Commercial Contract concerning 401 Oxford Street, Tomball, TX 77375

- E. **Extension of Financing Deadline:** The deadline for Buyer to give notice of inability to obtain the:
  - (1) Third party loan(s) described in Subparagraph A(2) of the Commercial Contract Financing Addendum is extended until \_\_\_\_\_ (date).
  - (2) Assumption approval described in Subparagraph B(6) of the Commercial Contract Financing Addendum is extended until \_\_\_\_\_ (date).
  - (3) Buyer has paid Seller additional consideration of \$ \_\_\_\_\_ for the extension financing deadline. This additional consideration  will  will not be credited to the sales price upon the closing of the sale.
- F. **Closing:** The closing date in Paragraph 10A of the contract is changed to \_\_\_\_\_.
- G. **Expenses:** At closing Seller will pay the first \$ \_\_\_\_\_ of Buyer's expenses under Paragraph 13 of the contract.
- H. **Waiver of Right to Terminate:** Upon final acceptance of this Amendment, Buyer waives the right to terminate under Paragraph 7B of the contract.
- I. **Counterparts:** If this amendment is executed in a number of identical counterparts, each counterpart is an original and all counterparts, collectively, constitute one agreement.
- J. **Other Modifications:**  
**All other terms and conditions of the Contract and its Special Provisions Addendum remain the same and are unchanged by this Amendment.**

**Seller: First Baptist Church of Tomball**

DocuSigned by:  
 By: W. R. Fort  
D7C6375744E14E8  
**W.R. Fort, Trustee**  
 DocuSigned by:  
 By: Jeffrey J. Erdely  
618A086D04DC446  
**Jeff J. Erdely, Trustee**  
 DocuSigned by:  
 By: Donald R. Davis, Jr.  
73010ADD924E745C  
**Donald R. Davis Jr., Trustee**

**Buyer: Tomball Economic Development Corporation**

By: \_\_\_\_\_  
 DocuSigned by:  
 By (signature):   
258EC51BE10C4DE  
 Printed Name: **Kelly Violette**  
 Title: **Executive Director**

By: \_\_\_\_\_  
 By (signature): \_\_\_\_\_  
 Printed Name: \_\_\_\_\_  
 Title: \_\_\_\_\_



# Regular Tomball EDC Agenda Item Data Sheet

Meeting Date: March 7, 2023

**Topic:**

TEDC Quarterly update on 2022-2023 Strategic Work Plan.

**Background:**

**Origination:** Kelly Violette, Executive Director

**Recommendation:** Presentation item only.

**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



## 2022 – 2023 STRATEGIC PLAN: QUARTERLY UPDATE

### GOAL 1: BUSINESS RETENTION & EXPANSION (BRE)

*To continually engage and assist in the success of Tomball businesses.*

1. Conduct 12 BRE on-site or virtual visits per quarter and report feedback from visits to board.
2. Conduct an annual online business survey to identify and manage business needs.
3. Develop a Grow Tomball initiative to highlight and promote local businesses.
  - (a) Share success stories on the Tomball EDC website.
  - (b) Create Tomball EDC podcasts.
  - (c) Develop video stories to be added to the Tomball EDC website.
4. Produce programming that meets the needs of the existing industry in Tomball.
  - (a) Host business networking events to continually engage community stakeholders.
5. Provide resources/access to information to assist local businesses with demographic and market data.

### STATUS/UPDATES

- 19 site visits have been conducted with the necessary follow up from each visit.
- A Business Retention and Expansion (BRE) Survey will be sent out March 2023.
- 2 new success stories have been added to the TEDC website. These will be updated quarterly.
- TEDC Podcast are scheduled with Beefy Marketing during Economic Development week in May.
- Both Video Success Stories (Tejas Chocolates & BBQ and Kinsley Armelle) have been completed and added to the TEDC Website.
- "Mix N Jingle" a business networking event was held on December 8<sup>th</sup> at Paradigm Brewing Co.
- Staff continues to work with clients to provide market data that addresses their needs.

## GOAL 2: ATTRACTION & RECRUITMENT

### ***Recruit and secure new businesses/industry that are suitable for Tomball.***

1. Enhance Tomball's image as a community of choice through marketing and branding efforts.
  2. Continue developing and strengthening ties with business allies, site selectors, brokers, and developers.
  3. Support infill and redevelopment opportunities to attract new private sector investment.
  4. Support local and emerging entrepreneurs.
    - (a) Partner with local landowners, developers, and investors to create co-working spaces.
    - (b) Provide training opportunities.
  5. To have 100% of available Business & Technology Park property sold or under contract.
  6. Explore needed infrastructure in target areas: identify where TEDC need to invest and entities with which to partner.
- 

### STATUS/UPDATES

- Marketing and Branding efforts continue to be updated to reflect a "We Mean Business" theme.
- Social Media Campaign to strengthen TEDC's identity and resources has been established and has active feedback.
- The Tomball Business & Technology Park is currently 100% sold or under contract.
- Tomball has been selected as a top three site in the Houston region for Project Viraj
  - Investment: Plant/Land/Equipment: \$100 - \$150 Million
  - Jobs: - 400 FTEs at peak employment
  - Approximately 500,000 sqft of industrial space

### **GOAL 3: DEVELOPMENT/REDEVELOPMENT OF OLD TOWN**

#### ***To encourage quality investment in Tomball's Old Town***

1. Partner with the City of Tomball on targeted infrastructure improvements (alleyways, parking, wayfinding, etc.) that enhance Old Town's tourism readiness and experience, starting with alleyway assistance.
  - (a.) Partner with stakeholders to help minimize construction disruption and to provide additional marketing assistance for those businesses who do experience disruption.
2. Initiate the redevelopment of the South Live Oak Business Park Project.
3. Continue to promote incentives and explore additional ways to encourage upgrades to properties in Old Town.
4. Invest in strategic anchor projects that have the potential to catalyze development in Old Town.
5. Continue to partner with the Greater Tomball Area Chamber of Commerce to further develop and support a shop local initiative.

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#### **STATUS/UPDATES**

- Multiple/ongoing meetings with consultants and city staff regarding alleyways.
- Facilitated numerous meetings with Old Town property owners, tenants and business owners regarding alleyway project.
- Block Talk event held December 5<sup>th</sup> at Public Works for Old Town merchants and property owners.
- Presentation to Board of Directors by potential partners to redevelop South Live Oak.
- Working on Design Contract for amenity package for alleyways.
- Under contract to purchase First Baptist Church site.
- TEDC incentivized successful monthly Shop & Stroll's that were held in Old Town Tomball in December and February.
- Developing a "Made in Tomball" program that will spotlight and support Tomball businesses and products.

## **GOAL 4: EDUCATION & WORKFORCE DEVELOPMENT**

***Partner with local/regional education institutions, City of Tomball, Greater Tomball Area Chamber of Commerce, and local industries to further develop youth workforce initiatives.***

1. Research and evaluate workforce programs and partner with local organizations to define areas of need and interest.
2. Enhance existing STEM initiative to reach more industry partners.
3. Continue to work with local/regional education institutions to support a Grow Tomball - Youth Program.
  - (a) Work with education institutions to host job/career fairs
  - (b) Create a job board for High School Students on the TEDC Website
  - (c) Continue to work with industry partners to create pathways for CTE students to enter the workforce.
  - (d) Create an apprenticeship/internship program.

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### **STATUS/UPDATES**

- Working with Susan Dixon, Workforce Solutions -Gulf Coast Workforce Board to discuss/apply for High Demand Job Training programs and Jobs & Education for Texans (Jet) Program.
- Met with Robert Andrade, Employer Engagement & Community Outreach Specialist from Texas Workforce Commission to discuss available programs with our local education institutions.
- Working on TEDC Website updates to include a Youth Initiative Page that will showcase available jobs, internships, and apprenticeships in Tomball.
- Serve on the Tomball ISD – CTE Advisory Board (Semi-Annual) Meetings to ensure that Tomball ISD and industry needs are promoting the 21<sup>st</sup> century skills that students will need.
- Serve on the TISD P-TECH Committee Meetings to further the partnership between TISD, LSC-Tomball, and HCA.
- Working with TISD and Industry partners to launch the 2023 apprenticeship/internship pilot program.