NOTICE OF REGULAR CITY COUNCIL
CITY OF TOMBALL, TEXAS

Monday, April 01, 2024
6:00 PM

Notice is hereby given of a Regular meeting of the Tomball City Council, to be held on Monday, April 01, 2024 at 6:00 PM, City Hall, 401 Market Street, Tomball, Texas 77375, for the purpose of considering the following agenda items. All agenda items are subject to action. The Tomball City Council reserves the right to meet in a closed session for consultation with attorney on any agenda item should the need arise and if applicable pursuant to authorization by Title 5, Chapter 551, of the Texas Government Code.

The public toll-free dial-in numbers to participate in the telephonic meeting are any one of the following (dial by your location**): +1 312 626 6799 US (Chicago); +1 646 876 9923 US (New York); +1 301 715 8592 US; +1 346 248 7799 US (Houston); +1 408 638 0968 US (San Jose); +1 669 900 6833 US (San Jose); or +1 253 215 8782 US (Tahoma) - Meeting ID: 847 8799 3674 Passcode: 911651.** The public will be permitted to offer public comments telephonically, as provided by the agenda and as permitted by the presiding officer during the meeting.

A. Call to Order

B. Invocation - Led by Craig Gilbert - Rose Hill Methodist Church

C. Pledges to U.S. and Texas Flags

D. Public Comments and Receipt of Petitions; *[At this time, anyone will be allowed to speak on any matter other than personnel matters or matters under litigation, for length of time not to exceed three minutes. No Council/Board discussion or action may take place on a matter until such matter has been placed on an agenda and posted in accordance with law - GC, 551.042.]*

E. Reports and Announcements

1. Announcements

I. Upcoming Events:

April 6, 2024 – Tomball Athletic Booster Crawfish Boil 4:00 pm – 8:00 pm @ Juergens Park

April 11, 2024 – Mayor's Kaffeeklatsch 8:30 am – 10:00 am @ Community Center

April 12, 2024 – Rotary Fish Fry 5:00 pm – 8:00 pm @ Juergens Park

April 13, 2024 – Second Saturday 5:00 pm – 9:00 pm @ Depot

April 15 – 20, 2024 - Annual Spring Clean-up & Chipping Week

April 20, 2024 - Tomball Consolidated Recycling Day

F. Old Business

1. Approve, on Second Reading, Resolution No. 2024-14-TEDC, a Resolution of the City Council of the City of Tomball, Texas, authorizing and approving the Tomball Economic Development Corporation's Project to Expend Funds in accordance with an Economic Development Performance Agreement by and between the Corporation and Sylvia's Wood Fire Pizza, LLC to make direct incentives to, or expenditures for, rental assistance for new or expanded business enterprise to be located at 306 Market Street, Tomball, Texas 77375. The estimated amount of expenditures for such Project is an amount not to exceed $10,000.00.

G. New Business Consent Agenda: *[All matters listed under Consent Agenda are considered to be routine and will be enacted by one motion. There will be no separate discussion of these items. If discussion is desired, the item in question will be removed from the Consent Agenda and will be considered separately. Information concerning Consent Agenda items is available for public review.]*

1. Approve the Minutes of the March 18, 2024, Regular City Council meeting.

2. Approve a Professional Services Agreement with WGA Consulting Engineers for the design of the North Sycamore parking lot, Project Number 2024-10001, for a not-to-exceed amount of $106,000, authorize the expenditure of funds therefor, and authorize the City Manager to execute the agreement. This amount is included in the fiscal year 2023-2024 budget as a Capital Improvement Project.

3. Approve a Services Agreement with Aramark Uniform Services for uniforms for Public Works through a BuyBoard Contract (Contract No. 670-22) for a total contract amount of $74,725.85 for a total of three years beginning June 1, 2024 and expiring May 31, 2027, authorize the expenditure of funds therefor, and authorize the City Manager to execute the agreement. This amount is included in the fiscal year 2023-2024 budget for the Public Works department.

H. New Business

1. Approve City of Tomball mowing list of property, Rights-of-way, Parks, drainage ways and corridors.

2. Approve Resolution Number 2024-08, a Resolution of the City Council of the City of Tomball, Texas approving a Development Agreement relating to the Graylou Grove Public Improvement District.

3. Approve Resolution Number 2024-07, a Resolution of the City Council of the City of Tomball, Texas authorizing and creating the Graylou Grove Public Improvement District in the City of Tomball, Harris County, Texas, in accordance with Chapter 372 of the Texas Local Government Code; Providing for Related Matters and Providing an Effective Date.

4. Consider approval of Wholesale Water Services Agreement between the City of Tomball and Harris County Municipal District No. 273.

5. Executive Session: The City Council will meet in Executive Session as Authorized by Title 5, Chapter 551, Government Code, the Texas Open Meetings Act, for the Following Purpose(s):
   - Sec. 551.071 – Consultation with the City Attorney regarding a matter which the Attorney's duty requires to be discussed in closed session.

I. Adjournment

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

I hereby certify that the above notice of meeting was posted on the bulletin board of City Hall, City of Tomball, Texas, a place readily accessible to the general public at all times, on the 28th day of March 2024 by 6:00 PM, and remained posted for at least 72 continuous hours preceding the scheduled time of said meeting.

_____

Tracylynn Garcia, TRMC, CMC, CPM
City Secretary

This facility is wheelchair accessible and accessible parking spaces are available. Requests for accommodation or interpretive services must be made 48 hours prior to this meeting. Please contact the City Secretary's office at (281) 290-1019 for further information.

City Council Meeting
Agenda Item
Data Sheet

Meeting Date: April 1, 2024

Topic:

Upcoming Events:

- April 6, 2024 – Tomball Athletic Booster Crawfish Boil 4:00 pm – 8:00 pm @ Juergens Park
- April 11, 2024 – Mayor's Kaffeeklatsch 8:30 am – 10:00 am @ Community Center
- April 12, 2024 – Rotary Fish Fry 5:00 pm – 8:00 pm @ Juergens Park
- April 13, 2024 – Second Saturday 5:00 pm – 9:00 pm @ Depot
- April 15 – 20, 2024 - Annual Spring Clean-up & Chipping Week
- April 20, 2024 - Tomball Consolidated Recycling Day

Background:

Origination:

Recommendation:

n/a

Party(ies) responsible for placing this item on agenda: Sasha Luna, Assistant City Secretary

FUNDING (IF APPLICABLE)
Are funds specifically designated in the current budget for the full amount required for this purpose?
Yes: _____ No: _____ If yes, specify Account Number: #

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

Signed Meagan Mageo Approved by

Staff Member Date City Manager Date

Regular City Council
Agenda Item
Data Sheet

Meeting Date: April 1, 2024

Topic:

Approve, on Second Reading, Resolution No. 2024-14-TEDC, a Resolution of the City Council of the City of Tomball, Texas, authorizing and approving the Tomball Economic Development Corporation's Project to Expend Funds in accordance with an Economic Development Performance Agreement by and between the Corporation and Sylvia's Wood Fire Pizza, LLC to make direct incentives to, or expenditures for, rental assistance for new or expanded business enterprise to be located at 306 Market Street, Tomball, Texas 77375. The estimated amount of expenditures for such Project is an amount not to exceed $10,000.00.

Background:

First Reading approved during the March 18, 2024 Regular City Council meeting.

On March 5, 2024, the Tomball Economic Development Corporation (TEDC) Board of Directors unanimously approved, as a Project of the Corporation, an economic development performance agreement with Sylvia's Wood Fire Pizza, LLC for rental assistance for new or expanded business enterprise. The Tomball City Council has final approval authority over all programs and expenditures of the Corporation.

Origination: Tomball Economic Development Corporation Board of Directors

Recommendation: Approval of Resolution No. 2024-14-TEDC

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 _____ Approved by _____

Staff Member-TEDC Date Executive Director-TEDC Date

RESOLUTION NO. 2024-14-TEDC

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF TOMBALL, TEXAS, AUTHORIZING AND APPROVING THE TOMBALL ECONOMIC DEVELOPMENT CORPORATION'S PROJECT TO EXPEND FUNDS IN ACCORDANCE WITH AN ECONOMIC DEVELOPMENT AGREEMENT BY AND BETWEEN THE CORPORATION AND SYLVIA'S WOOD FIRE PIZZA, LLC TO PROMOTE AND DEVELOP A NEW OR EXPANDED BUSINESS ENTERPRISE; CONTAINING OTHER PROVISIONS RELATING TO THE SUBJECT; AND PROVIDING FOR SEVERABILITY.

* * * * *

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

WHEREAS, the Board of Directors of the TEDC had adopted as a specific project the expenditure of the estimated amount of Ten Thousand Dollars ($10,000.00), found by the Board to be required or suitable to promote a new business development by Sylvia's Wood Fire Pizza, LLC; and

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

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

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

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

Section 2. The City Council hereby authorizes and approves the adoption, by the Board of Directors of the Tomball Economic Development Corporation, as a specific project for the economic development of the City, an expenditure of the estimated amount of Ten Thousand Dollars ($10,000.00), to Sylvia's Wood Fire Pizza, LLC, in accordance with an economic development agreement by and between the TEDC and Sylvia's Wood Fire Pizza, LLC to promote and develop a new or expanded business enterprise, to be located at 306 Market Street, Tomball, Texas 77375.

Section 3. In the event any clause, phrase, provision, sentence, or part of this Resolution or the application of the same to any person or circumstance shall for any reason be adjudged invalid or held unconstitutional by a court of competent jurisdiction, it shall not affect, impair, or

invalidate this Resolution as a whole or any part or provision hereof other than the part declared to be invalid or unconstitutional; and the City Council of the City of Tomball, Texas, declares that it would have passed each and every part of the same notwithstanding the omission of any such part thus declared to be invalid or unconstitutional, whether there be one or more parts.

PASSED AND APPROVED on first reading this 18th day of March, 2024.

PASSED, APPROVED, AND RESOLVED on second and final reading this 1st day of April, 2024.

Lori Klein Quinn, Mayor

ATTEST:

Tracy Garcia, City Secretary

March 1, 2024

Kelly Violette

Executive Director

Tomball Economic Development Corporation

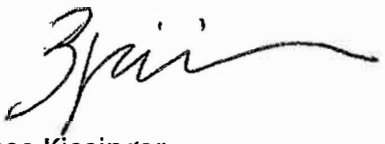
Good morning,

Delayed opening due to bad weather has extended our opening date. The Oven manufacturer was impeding the progress, due to part delays and shipping delays. This caused revenue loss that would have impacted our local economy.

Sylvia's Wood Fire Pizza, will be a one of a kind establishment that Tomball's community and surrounding areas are already talking about. Our business will attract a new crowd, which will impact the small businesses around Tomball. We will be providing employment for around 30 individuals.

We are also putting a focus on local artists, young and up and coming entrepreneur's that will have a pivotal role in our restaurant. This will also help with highlighting the amazing people and businesses in the Greater Tomball area. We greatly appreciate your consideration.

With regards,



Bruce Kissinger

Owner

Sylvia's Wood Fire Pizza

306 Market Street Tomball, Texas

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 **Sylvia's Wood Fire Pizza, LLC** (the "Company"), 306 Market Street, Tomball, TX 77375.

W I T N E S S E T H :

WHEREAS, it is the established policy of the TEDC to adopt such reasonable measures from time-to-time as are permitted by law to promote local economic development and stimulate business and commercial activity within the City of Tomball (the "City"); and

WHEREAS, the Company proposes to lease a 2,280 square foot existing office space located at 306 Market Street, Tomball, Texas 77375 (the "Property"), and more particularly described in Exhibit "A," attached hereto and made a part hereof; and

WHEREAS, the Company proposes to open a Wood Fire Pizza and Sandwich shop at the Property; and

WHEREAS, the Company proposes to create Ten (10) full-time jobs in Tomball in conjunction with the new location; and

WHEREAS, the TEDC agrees to provide to the Company an amount equal to twenty-five percent (25%) of the base monthly rent for the first 12 consecutive months of operation not to exceed Ten Thousand Dollars ($10,000.00), in accordance with an established Rental Assistance Incentive; and

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

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

1.

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

2.

The Company also covenants and agrees that construction of the Improvements, the addition of the Ten (10) new employees, and obtaining all necessary occupancy permits from the City shall occur within twelve (12) months from the Effective Date of this Agreement. Extensions of these deadlines, due to any extenuating circumstance or uncontrollable delay, may be granted at the sole discretion of the Board of Directors of the TEDC.

3.

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

4.

In consideration of the Company's representations, promises, and covenants, TEDC agrees to grant to the Company an amount equal to twenty-five percent (25%) of the base monthly rent for the first 12 consecutive months of operation not to exceed Ten Thousand Dollars ($10,000.00). 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 Property; (b) proof that the Company has added the number of employees indicated above to its business operations on the Property, as evidenced by copies of Texas Workforce Commission form C-3 or Internal Revenue Service Form 941; and, (c) an affidavit from the landlord of the Property stating that all rents have been paid in accordance with the terms of the lease agreement for the first twelve consecutive months of operation.

5.

It is understood and agreed by the parties that, in the event of a default by the Company on any of its obligations under this Agreement, the Company shall reimburse the TEDC the full amount paid to the Company by the TEDC, with interest at the rate equal to the 90-day Treasury Bill plus ½% per annum, within thirty (30) days after the TEDC notifies the Company of the default. It is further understood and agreed by the parties that if the Company 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 thirty (30) days after the TEDC notifies the Company of the violation.

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

6.

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

7.

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

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

If to Company: Sylvia's Wood Fire Pizza, LLC
306 Market Street
Tomball, TX 77375
Attn: Bruce Kissinger, Owner

8.

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

9.

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

10.

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

11.

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

IN TESTIMONY OF WHICH, THIS AGREEMENT has been executed by the parties on this _____ day of _____ 2024 (the "Effective Date").

SYLVIA'S WOOD FIRE PIZZA, LLC

By: _____

Name: Bruce Kissinger

Title: Owner

ATTEST:

By: _____

Name: _____

Title: _____

TOMBALL ECONOMIC DEVELOPMENT CORPORATION

By: _____

Name: Gretchen Fagan

Title: President, Board of Directors

ATTEST:

By: _____

Name: Bill Sumner Jr.

Title: Secretary, Board of Directors

ACKNOWLEDGMENT

THE STATE OF TEXAS §
§
COUNTY OF HARRIS §

This instrument was acknowledged before me on the __ day of ____ 2024, by Bruce Kissinger, Owner of Sylvia's Wood Fire Pizza, LLC, for and on behalf of said company.

_____
Notary Public in and for the State of Texas

My Commission Expires: _____

(SEAL)

ACKNOWLEDGMENT

THE STATE OF TEXAS §
§
COUNTY OF HARRIS §

This instrument was acknowledged before me on the _5th____ day of _March___ 2024, by Gretchen Fagan, President of the Board of Directors of the Tomball Economic Development Corporation, for and on behalf of said Corporation.

_____
Notary Public in and for the State of Texas

My Commission Expires: _____

(SEAL)

Exhibit "A"

Legal Description of Property

Property Address: 306 Market Street, Tomball, TX 77375

TOMBALL
ECONOMIC DEVELOPMENT CORP.

TO: Honorable Mayor and City Council

FROM: Kelly Violette
Executive Director

MEETING DATE: March 18, 2024

SUBJECT: Sylvia's Wood Fire Pizza, LLC

ITEM TYPE: Action

The Tomball Economic Development Corporation has received a request from Bruce Kissinger, Owner of Sylvia's Wood Fire Pizza, LLC for funding assistance through the TEDC's Rental Incentive Program.

Sylvia's Wood Fire Pizza is a start up business looking to locate in a 2,280 square foot lease space located at 306 Market Street in Tomball. The owners of Sylvia's Wood Fire Pizza also own Fire Ant Brewpub which will conveniently be located next door. The business will serve unique pizza, sandwiches, and salads.

The goal of the TEDC's Rental Incentive Program is to assist in the establishment of new businesses in existing vacant spaces and to stimulate commercial investment in the City of Tomball. In accordance with the Rental Incentive Program Policy, the proposed performance agreement is for 25% of the base monthly rent for the first year of operation only.

The lease agreement that was submitted in conjunction with the request letter shows a three-year lease commitment with a monthly rent amount of $4,950.00 for the first 12 months. The proposed grant amount is $10,000.00, payable after the first year of operation based on landlord verification of rents paid and meeting the performance agreement criteria.

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

COMMERCIAL LEASE AGREEMENT
TOMBALL HISTORIC DISTRICT (MARKET ST)

This lease agreement (**Lease**), is entered into by and between **Rodney K Hutson**, (**Landlord**), and **Bruce Kissinger** (the "**Tenant**") whose address for notice purposes is **306 Market St, Tomball, TX 77375**.

PREMISES, RENT PAYMENT, COMMON AREA AND REAL PROPERTY TAX

1. **Lease Term and Payment.** The begin and end dates below represent each **Lease Period**, unless terminated earlier by the terms and conditions of this Lease. The begin date of the first Lease Period shall be the lease **Commencement Date**. The end date of the last Lease Period shall be the lease **Expiration Date. Total Rent/ Month** shall be the total monthly amount Tenant shall pay to Landlord. **Total Tenant Liability** shall be the total amount Tenant shall be liable to Landlord at this signing of this Lease, payable in monthly installments per the **Lease Payment Schedule**. ***Lease Period Begin Date shall be delayed (if any) according to BUILDING UPDATE AND RENOVATION provisions elsewhere within this Lease.***

Lease Payment Schedule

Lease Period	Lease Period Begin Date	Lease Period End Date	Base Rent / Month	Common Area Maintenance	Property Tax / Month	Total Rent / Month
1	6/1/23	5/31/24	$4,330	$50	$570	**$4,950**
2	6/1/24	5/31/25	$4,470	$50	$570	**$5,090**
3	6/1/25	5/31/26	$4,620	$50	$570	**$5,240**

2. **Place of Payment.** All checks shall be made payable and delivered each month to:

   Rodney K Hutson
   9431 Rosie Lane
   Magnolia, TX 77354-3703

   Landlord may designate a different place as necessary from time to time in writing.

3. **Premises.** The leased building(s), suite(s) and/or outdoor area(s) (collectively, **Premises**) shall be as follows:

Premises

Lease Period	Address	Premises is part of a Center	Interior SQFT	Interior Rent / SQFT	Base Rent / Month
1	306 Market St	Yes	2,280	$1.90	**$4,330**
2	306 Market St	Yes	2,280	$1.96	**$4,470**
3	306 Market St	Yes	2,280	$2.03	**$4,620**

4. **Condition of Premises.** Tenant acknowledges its own responsibility to determine the present or future suitability of the Premises for the intended use and has not relied upon any representations made by Landlord nor Landlord's agent. Landlord hereby disclaims any representations or warranties. ***Tenant accepts delivery of the Premises from Landlord in as-is condition, subject to BUILDING UPDATE AND RENOVATION provisions elsewhere in this Lease.***

5. **Common Area Maintenance**. For any Premises that is a part of a multi-building shopping village or a single-building shopping center (both referred to as the **Center**), Tenant agrees to pay Tenant's pro rata share of expenses for (1) exterior common area maintenance and (2) landlord real property insurance (collectively, **Common Area Maintenance** or **CAM**). Landlord's common area maintenance responsibility does not include any interior portion of the Premises nor any exterior area under Tenant's exclusive control, regardless of whether the exterior area is included as exterior square footage (if any) in this Lease.

6. **Real Property Tax.** Tenant agrees to pay its pro rata share of real property tax for the Premises as stated in the **Real Property Tax Schedule** below:

Real Property Tax Schedule

Period	Tax Account	Account SQFT	Tenant SQFT	Tenant SQFT %	Account Property Tax (2022)	Tenant Tax Portion / Year	Tenant Tax Portion / Month
1, 2, 3	352590140021	13,620	2,280	16.74%	$40,852	$6,839	**$570**

7. **Default Deposit.** Tenant has paid to Landlord the amount(s) specified below in the **Deposit** table, which shall constitute the **Default Deposit** to secure the faithful performance by Tenant of all the terms, covenants, and conditions of this Lease. **Tenant shall not be allowed to use Default Deposit to satisfy monthly rent for any month without Landlord's permission.**

Deposit

Date	Address	Amount
6/1/23	306 Market St	**$4,950**

8. **Common Area.** For any Premises that is a part of a Center, the term **Common Area** means all areas of the Center not leased to Tenant or any other tenant of that Center, including any areas dedicated or belonging to any governmental authority which are required to be maintained by or at the expense of Landlord. ***Tenant accepts the condition of the Common Area in as-is condition.***

9. **Determination of Square Footage for Calculating CAM Fees**. Common Area Maintenance (CAM) fees, if applicable, shall be calculated based upon total leased interior square feet of the Premises (**Interior SQFT**).

BUILDING UPDATE AND RENOVATION - NEW TENANTS ONLY

10. **Initial Buildout.** Landlord shall perform no buildout. All buildout is Tenant's responsibility. Tenant and Landlord have discussed the current state of the building regarding any deferred maintenance issues, and Tenant agrees to take the Premises as-is, where-is.

11. **Occupancy Changes.** This building is a Type M Retail building within the City of Tomball Zone Old Town/Mixed Use District. Any occupancy designation changes needed as a result of Tenant's use of the building shall be the sole responsibility of Tenant.

12. **New Lease Cancellation Prior to Commencement Date: For initial new leases between Landlord and Tenant for the Premises, either Landlord or Tenant shall have the right to cancel this lease in writing and delivered to the other party at any time prior to the date Tenant receives keys to the Premises (1) regardless of Commencement Date, (2) without cause and (3) in either party's sole discretion.** Tenant shall only be entitled to a full refund of all amounts paid at lease signing and only after delivering keys back to Landlord. This provision shall not apply to renewal leases on the same Premises.

13. **Buildout Credit**. **New tenants shall be credited one month rent for purposes of Tenant build-out.** All interior remodeling and buildout are at Tenant's discretion with Landlord approval. Tenant shall not perform any exterior

remodeling or building without Landlord's explicit written approval and submission of detailed building plans to Landlord.

RENT DUE DATE, GRACE PERIOD AND DELINQUENCY

14. **Date of Accrual**. Rent shall accrue beginning from the Commencement Date.

15. **Monthly Payment Due Date**. Tenant agrees to pay to Landlord the Total Lease Value in monthly installments as stated in the Lease Payment Schedule on the first day of each month. If the Commencement Date is a day other than the first day of the month, then the monthly rent installments for that month shall be prorated and paid in advance.

16. **Monthly Payment Grace Period**. Monthly rent payments shall not be considered late if received by Landlord on or before the third day of each month (**Grace Period**). Payments that are mailed must be postmarked **on or before the 3rd day of each month** to be considered timely and not delinquent.

17. **Delinquent Payments**. If Landlord receives Tenant's monthly rent payment after expiration of the Grace Period, Tenant agrees to pay to Landlord a service charge equal to **twenty-five percent (25%) of the Total Rent/Month** due for that month.

    All service charges relating to delinquent rent are for purposes of covering Landlord's additional expenses involved in handling delinquent payments. Tenant agrees that these amounts are charged as additional rent for the purpose of defraying Landlord's expenses incident to the processing of such overdue payments and not as penalty or interest.

18. **Insufficient Funds**. Tenant agrees to pay a **$25 processing fee for any check written to Landlord that is returned unpaid** from Tenant's bank due to insufficient funds or any other problem with Tenant's bank account. Tenant agrees that the processing fee shall be charged as additional rent for the purpose of defraying Landlord's expenses incident to the processing of the unpaid check and not as penalty or interest.

19. **Surrender**. Promptly on the Expiration Date or upon earlier termination of this Lease, Tenant shall peaceably and quietly leave, surrender, and yield to Landlord the Premises, broom-clean and in good condition, reasonable wear and tear excepted. Tenant shall then surrender to Landlord all keys to the Premises.

20. **Holding Over**. In the event Tenant remains in possession of the Premises after the Expiration Date of this Lease without the execution of a new lease, Tenant shall be deemed to be occupying the Premises as a month-to-month tenant at a rent equal to twice the Total Rent/Month as of the Expiration Date. Tenant's monthly tenancy shall be subject to all terms, covenants and conditions of this Lease as are applicable to a month-to-month tenancy.

21. **Landlord-Tenant Relationship**. Landlord and Tenant agree that in no event they are to be construed or held to be partners, joint ventures or associates of each other in the conduct of each others business. Landlord be not be liable for any debts incurred by Tenant in the conduct of Tenant's business. The relationship is that of Landlord and Tenant, and at all times shall remain so.

PERSONAL PROPERTY TAXES

22. Tenant shall pay and be liable for all taxes levied against personal property and trade fixtures placed by or on behalf of tenant in the Premises (**Personal Property Taxes**). If any Personal Property Taxes for which Tenant is liable are levied against Landlord or Landlord's property and if the Landlord elects to pay the same or if the assessed value of Landlord's property is increased by inclusion of personal property and the fixtures placed by or on behalf of Tenant in the Premises and Landlord elects to pay the taxes based on such increase, Tenant shall pay the Landlord on demand, the amount of any such levy against Tenant's personal property and trade fixtures and the amount of any increase attributable to personal property and trade fixtures. Personal Property Taxes are sometimes referred to as Fixture, Furnishings and Equipment (FF&E) Taxes by some taxing authorities and are different taxes than Real Property Taxes levied against the real estate containing the Premises.

INSURANCE, INDEMNITY AND LIABILITY

23. **Indemnification**. Tenant agrees to and shall indemnify and hold Landlord harmless from and against any and all claims, liabilities, losses, damages, expenses of every kind or character, causes of action (including court costs and reasonable attorneys' fees) arising from and relating to (1) Tenant's occupation of the Premises, use of the Premises and Common Areas of the Center, conduct of its business, or any other activity permitted or suffered by Tenant in and about the Premises, (2) any default, breach, violation or nonperformance of this Lease or any of its terms, covenants and conditions, and (3) any act, omission or negligence of Tenant or any officer, agent, employee, guest, customer, subtenant, assignee, or invitee of Tenant, including without limitation, any act, omission, or negligence resulting in injury or death. Tenant, upon notice from Landlord, shall defend any claim at Tenant's expense by counsel reasonably satisfactory to Landlord. Tenant, as a material part of the consideration to Landlord, assures all risk of damage to property or injury to persons in, upon or about the Premises from any cause other than Landlord's gross negligence or intentional illegal acts. Tenant waives all claims against Landlord. Tenant shall give immediate notice to Landlord in case of casualty or accidents in or about the Premises within 24 hours after the casualty or accident. Additionally, Tenant shall indemnify and hold Landlord harmless from and against any penalty, damage, or charge incurred or imposed by reason of any violation of law, statute, ordinance or government rule, regulation, or requirement now or hereafter in force, by Tenant, or any officer, agent, employee, guest, customer, subtenant, assignee or invitee of Tenant.

24. **Tenant Liability Insurance.** Tenant shall procure and maintain at its sole cost and expense at all times, a policy or policies of insurance insuring Landlord, as well as Tenant, from all claims, demands, or actions arising out of Tenant's use and occupancy of the Premises. **TENANT'S INSURANCE COVERAGE SHALL COVER BODILY INJURY AND PROPERTY DAMAGE WITH COMBINED SINGLE LIMIT COVERAGE OF NOT LESS THAN ONE MILLION DOLLARS ($1,000,000) PER EACH OCCURRENCE. THIS LIABILITY INSURANCE REQUIREMENT IS A MATERIAL CONDITION OF THIS LEASE. ANY LAPSE OF TENANT'S LIABILITY INSURANCE OR PROCUREMENT OF AN INSURANCE POLICY IN AN AMOUNT LESS THAN THE AMOUNT REQUIRED IN THIS PROVISION SHALL BE CONSIDERED A MATERIAL BREACH OF THIS LEASE AND SHALL SUBJECT TENANT TO IMMEDIATE EVICTION AT LANDLORD'S SOLE DISCRETION.**

25. **Tenant Window Glass Insurance**. At Tenant's option, Tenant shall procure and maintain an insurance policy covering window glass of the Premises. Under no circumstances shall Landlord be responsible for repair or replacement of any window glass.

26. **Waiver of Subrogation**. Landlord and Tenant agree to release any and all claims against each other for any loss covered by either party's insurance, including negligence claims. Landlord and Tenant further agree that their respective insurance companies shall have no right of subrogation against the other party.

27. **Non-Liability for Certain Events**. Neither Landlord nor its agents shall be liable for any loss or damage to persons or property resulting from fire, explosion, falling plaster, steam, gas, electricity, rain or water from any source, or any other cause whatsoever, including acts or omissions of other tenants in the Center unless wholly caused by or due to the gross negligence of Landlord or Landlord's agents, servants or employees. Landlord or its agents shall not be liable for interference with the light or air or for any latent defect in the Premises, and any interference with air or light shall not affect this Lease nor give Tenant any right to withhold rent.

28. **Landlord Not Liable for Special Damages.** In no event shall Landlord or the interest of Landlord be liable to Tenant for direct, indirect, special or consequential damages under any provisions of this Lease.

29. **Landlord Not Liable for Tenant's Property**. Tenant agrees to use and occupy the Premises and to use other portions of the Center (if applicable) at its own risk. Landlord shall have no responsibility or liability for any loss of or damage to fixtures, inventory, or other property of Tenant or Tenant's employees, invitees, or customers.

30. **Limitation of Landlord Personal Liability**. Tenant agrees that Landlord shall not be personally liable for any judgment which Tenant may obtain against Landlord or for any other claim, liability or obligation. Tenant shall look solely to Landlord's interest in the Premises or Center (if applicable) for the recovery of any such judgment, claim or obligation. Landlord's limitation of liability shall not limit any right Tenant may otherwise have to obtain injunctive

relief against Landlord or in any suit or action in connection with enforcement or collection of amounts which may become owing or payable to Tenant under or on account of insurance maintained by Landlord.

UTILITIES

31. Tenant shall be responsible for all costs and expenses for the connection of all utility services to the Premises, including, without limitation, the payment of utility deposits and gas pressure testing fees. Tenant shall promptly pay all charges for any and all electricity, water, gas, telephone, Internet and all other utilities furnished to the Premises. Landlord shall not be liable for any interruption whatsoever in utility services. No interruption shall be construed as either a constructive or actual eviction of Tenant, nor give Tenant any right to withhold rent, nor relieve Tenant from fulfilling any term, covenant or condition contained in this Lease.

TENANTS BUSINESS

32. **Permitted Uses**. The Premises may be used and occupied only for Tenant's primary and related secondary products and services as initially approved by Landlord at lease signing.

33. **Trade Name**. Tenant may operate its business in the Premises only under its registered trade name, company name or d/b/a. Tenant shall not operate its business under any name that misleads the public as to the true nature of Tenant's business.

34. **Changes**. Tenant may not change the use of the Premises or its trade name without Landlord's prior written consent.

35. **Continuous Operation**. Tenant shall at all times operate its business at the Premises as a full-time commercial business with operating hours comparable to typical businesses similar to Tenant's business. Tenant shall not at any time leave the Premises vacant. Tenant agrees and understands that any breach of this provision shall constitute a material breach of this Lease, unless Landlord gives prior written consent.

36. **Permits and Licenses**. Tenant shall obtain and maintain at its sole cost and expense, all permits and licenses required for the transaction of its business in the Premises. Tenant shall fully comply with any applicable law, ordinance or governmental regulation affecting the Premises at any time during this Lease.

37. **Prohibited Uses**. Tenant shall keep the Premises free from waste and nuisance at all times. Tenant shall keep the Premises clean throughout, (including, but without limitation, floors, light fixtures and all glass). Tenant shall not, without Landlord's prior consent, locate or install or cause to be located or installed on the sidewalks or service area (if any) immediately adjoining the Premises any bike racks, newspaper holder stands, vending machines of any kind, mailboxes, telephone booths, "No parking" signs or any other device of a similar nature which would impede or obstruct the sidewalk or service area. Tenant shall not, without Landlord's prior written consent, perform or fail to perform any act, keep anything within the Premises, or use the Premises for any purpose which increases the insurance premium cost or invalidates any insurance policy carried on either the Premises or on other parts of the center. If Landlord does give such written consent to Tenant, then Tenant shall be responsible, at its sole cost and expense for the amount of any increase in the casualty or liability insurance premium cost. Tenant shall not, without Landlord's prior written consent, conduct or permit to be conducted within the Premises any auction or bankruptcy sales nor permit any objectionable or unpleasant odors or loud noises to emanate from the Premises, nor place or permit any radio, television or other antennae, loud speaker or amplifiers, or flashing lights or searchlights on the roof or outside the Premises or where the same can be seen or heard outside the building; nor take any other action which would disturb or endanger other Tenants of the Center (if applicable) or unreasonably interfere with their use of their respective premises or the Common Area.

38. **Obstruction of Walkways**. Tenant shall not place merchandise, furniture or any other obstructions on any walkways, porches or Common Areas at any time without Landlord consent. Landlord consent may be granted or revoked at any time in Landlord's sole discretion.

39. **Ventilation and Pest Control**. Tenant shall be responsible for exhausting and/or containing all food, chemical or other objectionable odors resulting from Tenant's operation and use of the Premises. Tenant shall be responsible

for maintaining all traps, vents and exhausts. Tenant shall further be responsible for any and all pest control throughout the Premises, including all exterior areas under exclusive control of Tenant.

40. **Use of Common Areas and Parking Areas.** Tenant and its employees, customers and invitees shall have the non-exclusive right to use the Common Area in common with the Landlord, other tenants of the Center and other persons entitled to use the same, subject to reasonable rules and regulations governing its use as Landlord may from time to time prescribe. Tenant shall neither solicit any business nor conduct any business activity within the Common Area or any adjacent city sidewalks, or take any action which would interfere with the rights of other persons to use the Common Area. Landlord may temporarily close any part of the Common Area for such periods of time as may be necessary to make repairs and alterations or to prevent a dedication to the public from obtaining prescriptive rights. Landlord may restrict employee use of the Common Area and may regulate employee parking by designating employee parking area(s). Landlord shall have the right, but no obligation, to maintain and operate lighting facilities on all the parking areas, to police all the parking and other common areas and to discourage non-customer parking.

41. **Alterations and Fixtures.** All repairs, replacements, alterations, additions, improvements, plate glass, exterior doors, overhead, sprinkler systems (if any), floor coverings, and fixtures (other than unattached, movable trade fixtures), including all air conditioning, heating, electrical, mechanical and plumbing machinery equipment which may be made or installed by either party whether in the interior or exterior of the Premises, shall become the property of Landlord without credit or compensation to Tenant at the termination of this Lease for any reason whatsoever, and at the termination of this Lease shall remain upon and be surrendered with the Premises, unless Landlord requests their removal, in which event, Tenant shall remove the same and restore the Premises to its original condition, normal wear and tear excepted, at Tenant's expense.

42. **Signs and Store Fronts.** Tenant shall not, without Landlord's prior written consent (1) make any changes to the exterior of the Premises or Tenant's store front, including architectural changes and exterior painting, (2) install any exterior lighting, shades or awnings, or any exterior decorations or paintings, (3) place or install any reflective material on the doors, windows or store front, or (4) erect or install any signs, window or door lettering, placards, decorations, or advertising media of any type which can be viewed from the exterior of the Premises. Use of the roof is reserved to Landlord.

43. **Community Sign**. Tenant shall have the right to place a sign panel on the community sign, if any, provided by Landlord. Expenses for installation and maintenance of the sign panel shall be paid by Tenant. The community sign, except for sign panels for individual tenants, shall be deemed to be part of the Common Area maintenance. All expenses in connection with the lighting maintenance thereof shall be included as part of the Tenants CAM obligation. No sign panel may be installed on the community sign until Landlord has approved, in writing, the design of the panel. Landlord reserves the right to charge Tenant for use of the Community Sign in Landlord's sole discretion.

44. **Rules and Regulations**. Tenant shall comply with all rules and regulations which Landlord may produce from time to time with respect to Tenant's use of the Premises. Tenant agrees that rules and regulations are intended for the protection of Tenant and Center as well as to ensure the Center is aesthetically maintained, and Landlord reserves the right to edit, delete or add any regulations upon 30 days notice to Tenant. Tenant's failure to comply with such rules and regulations shall constitute a material breach of this Lease.

45. **Quiet Enjoyment**. Tenant, on payment of rent and observing all terms of this Lease, rules and regulations, shall lawfully, peaceably, and quietly hold, occupy and enjoy the Premises without hindrance or ejection by any persons lawfully claiming under the Landlord.

46. **Waiver of Warranties. LANDLORD EXPRESSLY DISCLAIMS ANY WARRANTY OF HABITABILITY WHICH MAY OTHERWISE HAVE ARISEN BY OPERATION OF LAW. LANDLORD DOES NOT WARRANT THAT THE PREMISES IS HABITABLE AND FIT FOR LIVING, OR THAT THERE ARE NO LATENT DEFECTS IN THE FACILITIES THAT WILL RENDER THE PREMISES UNSAFE, UNSANITARY OR OTHERWISE UNFIT. TENANT EXPRESSLY AGREE TO LEASE THE PROPERTY AS-IS, WHETHER HABITABLE OR NOT, AND EXPRESSLY WAIVES THE IMPLIED RIGHT OF HABITABILITY.**

MAINTENANCE AND REPAIR

47. **Maintenance by Landlord. Landlord shall only be responsible for reasonable maintenance of the foundation, the exterior walls (except window glass), and roof of the Premises.** Landlord shall not be required to make any repairs occasioned by the act, omission or negligence of Tenant, its agents, invitees, contractors, or employees. It is Tenant's sole obligation to make roof repairs arising out of any damage or injury in any way caused by maintenance work on Tenant's air conditioning or ventilation equipment. In the event that the Premises should become in need of repairs required to be made by Landlord, Tenant shall give immediate notice of the needed repairs to Landlord. Landlord shall not be responsible in any way for failure to make any such repairs until a reasonable time shall have elapsed after delivery of such written notice or for any consequential or other resulting damages.

48. **Maintenance by Tenant**. Tenant shall keep the Premises, including windows, signs and sidewalks and service ways and loading areas adjacent to the Premises in good, clean, garbage-free condition, free from waste and nuisance at all times. **Tenant shall have sole responsibility for maintenance, repair or replacement of all air conditioning/heating systems servicing the Premises.** Tenant shall make all needed repairs, including without limitation, maintenance of all direct utility connections and replacement of cracked or broken glass, except for repairs required to be made by Landlord. Tenant shall have sole responsibility for the sprinkler system (if any), and the water meter and shall at Tenant's sole cost and expense, repair and replace all or any part thereof as may be necessary from time to time to keep such items in good working condition at all times. Tenant shall comply, at its sole cost and expense, with all governmental laws, ordinances, and regulations applicable to the Premises. Tenant shall not be obligated to make any structural changes or alterations to the Premises in order to comply with governmental laws, ordinances and regulations unless made necessary by the act or omission of Tenant. Tenant shall perform any such changes or alterations at its expense and in accordance with plans and specifications approved by Landlord. If any repairs required to be made by Tenant are not made within ten days after written notice delivered to Tenant by Landlord, Landlord may, at its option, make such repairs without liability to Tenant for any loss or damage which may result to its business by reason of such repairs. Tenant shall pay to Landlord the cost of such repairs upon demand, plus an amount equal to eighteen percent (18%) of such cost as compensation for Landlord's administrative expenses.

49. **Common Area Maintenance**. The Common Area shall be operated and maintained by Landlord in such manner as Landlord, in its sole discretion, shall determine.

CASUALTY

50. Tenant shall give immediate written notice to Landlord of any damage caused to the Premises by fire or other casualty. In the event that (1) all or any portion of the Premises is damaged or destroyed by fire or other casualty, or (2) in excess of twenty-five percent (25%) of the gross leasable area in the Center is destroyed or rendered untenable, Landlord shall have the election to terminate this Lease prior to repair so it may restore the Premises to the condition in which it existed immediately prior to such damage or destruction. In the event Landlord desires to terminate this Lease, Landlord shall deliver written notice to Tenant on or before thirty days following receipt of Tenant's written notice of the damage to the Premises. In the event that Landlord elects to terminate this Lease, Landlord shall refund to Tenant any prepaid rent not accrued as of the date of damage or destruction, less any sum owed to Landlord by Tenant. If Landlord has elected to repair and reconstruct the Premises, this Lease shall continue in full force and effect and such repairs will be made within a reasonable time. Upon written notice to Tenant, Landlord may elect to extend the lease Expiration Date by a period of time equal to the period of such repair and reconstruction. Tenant agrees that during the period of reconstruction or repair of the Premises, it will continue operating its business within the Premises to the best of its ability.

CONDEMNATION

51. **Termination Option After Condemnation.** In the event that all or any portion of the Premises or in excess of twenty-five percent (25%) of the parking area of the Center should be appropriated or taken by any public or quasi-public authority under the power of eminent domain, this Lease may be terminated by either Landlord or Tenant by the delivery of written notice of such election. Such notice shall be delivered at least sixty (60) days prior to the date title vests pursuant to such taking or acquisition, and termination shall be effective as of the date title vests pursuant to such taking or acquisition, and all rent payments must be paid up to that date. Landlord

may also terminate this Lease upon thirty (30) days prior written notice delivered on or before one hundred twenty (120) days after possession, taken or appropriated by the condemning authority if, in Landlord's judgment, the remainder of the Center is unsuitable for retail use. A termination under this provision shall be effective thirty (30) days following delivery of notice.

52. **Lease Obligation After Condemnation**. In the event that all or any portion of the Premises is appropriated or taken by any public or quasi-public authority under the power of eminent domain and this Lease is not terminated by Landlord or Tenant, Landlord shall repair any structural damage to the Premises caused by the appropriation or taking. The monthly rent payable during the unexpired portion of this Lease shall be recalculated using the following equation:

    Revised Monthly Rent = (Original Monthly Rent / Original Total Square Feet) x Revised Total Square Feet

    - *Revised Monthly Rent* = new monthly rent due for the affected portion of the Premises (interior or exterior) for the remainder of the unexpired portion of this Lease
    - *Original Monthly Rent* = monthly rent amount that was due immediately prior to the condemnation for that portion (interior or exterior) leased by Tenant
    - *Original Total Square Feet* = total square feet of the portion of the Premises (interior or exterior) leased by Tenant prior to condemnation
    - *Revised Total Square Feet* = total square feet of the portion of the Premises (interior or exterior) leased by Tenant after being reduced by condemnation

    If condemnation affects only exterior leased portions of the Premises, then Revised Monthly Rent calculations shall only include exterior portions of the total rent due under this Lease. If the condemnation affects only interior leased portions of the Premises, then Revised Monthly Rent calculations shall only include interior portions of the total rent due under this Lease. In the event both interior and exterior leased portions of the Premises are subject to condemnation, then two separate calculations shall be made each for interior and exterior revised monthly rent.

53. **Voluntary Conveyance in Lieu of Condemnation**. In the event that any authority having the power of eminent domain requests that Landlord convey to such authority all or any portion of the Center or all or any portion of the Premises, Landlord shall have the right to make a voluntary conveyance to such authority of all or any portion of the Center or the Premises whether or not proceedings have been filed by such authority. In the event of any such voluntary conveyance, it shall be deemed for the purpose of interpreting this Lease that there has been a condemnation and taking under the power of eminent domain.

54. **Condemnation Awards**. In the event of a condemnation or taking, whether whole or partial, all awards of compensations shall belong to Landlord. Tenant expressly waives any claim or right to any such award, except that Tenant shall be allowed to recover from such authority, but not from any portion of any award to Landlord, at Tenant's own cost and expense, the unamortized cost of Tenant's improvements and trade fixtures.

DEFAULT AND REMEDIES FOR DEFAULT

55. **Eviction for Failure or Lapse of Tenant Liability Insurance. TENANT AGREES AND UNDERSTANDS THAT TENANT'S FAILURE TO PROCURE LIABILITY INSURANCE FOR ITS BUSINESS AND PREMISES IN THE AMOUNTS REQUIRED UNDER THE *INSURANCE, INDEMNITY AND LIABILITY* SECTIONS OF THIS LEASE SHALL BE AN EVICTION CONDITION OF THIS LEASE. ANY LAPSE OF TENANT'S LIABILITY INSURANCE OR PROCUREMENT OF AN INSURANCE POLICY IN AN AMOUNT LESS THAN THE AMOUNT REQUIRED IN THIS PROVISION SHALL BE CONSIDERED A MATERIAL BREACH OF THIS LEASE AND SHALL SUBJECT TENANT TO IMMEDIATE EVICTION AT LANDLORD'S SOLE DISCRETION.**

56. **Tenant Default**. The following shall be deemed to be events of default by Tenant under this Lease:

    (a) Tenant fails to pay any installment of rent or any other payment required pursuant to this Lease when due.

    (b) Tenant abandons any substantial portion of the Premises or fails to operate Tenant's business continuously in accordance with the terms of this Lease or if goods, equipment or other property, in amounts substantial

enough to indicate a probable intent to abandon the promises is being, or has been, removed from the Premises, and the removal is not within the normal course of the Tenant's business.

(c) Tenant fails to comply with any term, covenant or condition of this Lease, other than the payment of rent, and fails to cure such failure within fifteen (15) days after the receipt of written notice by Landlord.

(d) Tenant files a petition or be adjudged bankrupt or insolvent under any Federal or State law; or a receiver or trustee is appointed for all or substantially all of the assets of Tenant; or Tenant makes a fraudulent transfer to creditors or makes an assignment for the benefit of creditors; or

(e) Tenant does or permits to be done any act which results in a lien being filed against the Premises or the Center and does not discharge of record or bond against said lien within fifteen (15) days following written notice by Landlord to Tenant of the filing.

57. **Remedies**. In the event of Tenant default and in addition to all other remedies provided by this Lease or by operation of law:

(a) Landlord may immediately enter and take possession of the Premises and of the personal property of Tenant on which it has a contractual lien and/or statutory landlord lien without any previous notice of intention to enter, and may remove all persons and property from the Premises and may take full and exclusive possession of the Premises. Landlord may secure and lock up the Premises, cut off utility services, and attempt to relet the Premises, or without any of such actions being deemed a trespass or an election on Landlord's par to terminate this Lease. If, however, any such default on Tenant's part should be fully corrected and cured before Landlord exercises an option to terminate this Lease, and if Landlord has not relet the Premises, then the Premises shall be returned to Tenant, and Tenant may continue in possession under this Lease. Tenant expressly waives any and all damages by reason of reentry by Landlord under this Lease;

(b) If Landlord elects to reenter the Premises without terminating the Lease, then Tenant shall be liable for and shall pay to Landlord all rent and other indebtedness accrued to that date, plus rent required to be paid by Tenant to Landlord during the remainder of the Primary Term until the date this Lease expires, diminished by the amount received by Landlord through reletting the Premises during said period (after deducting all expenses incurred by Landlord to relet the Premises). Landlord shall not obligated to relet the Premises or any part thereof, but may do so to any person or persons for such rent and for such terms and conditions as Landlord deems appropriate. In no event shall Tenant be entitled to any excess of any rent obtained by reletting over and above the rent herein reserved and in no case shall Landlord be liable for failure to relet the Premises or to collect the rent due under such reletting. Actions to collect amounts due by Tenant as provided in this section may be brought form time to time, on one or more occasions, without the necessity of Landlord's waiting until the Expiration Date of this Lease.

(c) Notwithstanding any prior election not to terminate, Landlord may at any time, including subsequent to a reentry as above provided, elect to terminate this Lease on account of such default. Upon termination, Tenant shall be liable to Landlord for the sum of all rent and other indebtedness accrued to the date of such termination, plus, as damages, amount equal to the rent for the remaining portion of the Primary Term if such term has not already been terminated by Landlord prior to expiration of the same.

(d) In case of default, Tenant shall also be liable for and shall pay to Landlord, in addition to any sum provided to be paid above: (a) broker's fees incurred by Landlord in connection with reletting the whole or any part of the Premises; (b) the cost of removing and storing Tenant's or other occupant's property; (c) the cost of repairing altering, remodeling, renovating or otherwise putting the Premises into condition acceptable to a new tenant or tenants; and (d) all reasonable expenses incurred by Landlord in enforcing Landlord's remedies, including reasonable attorney's fees.

58. **Contractual Landlord's Lien and Security Interest.** IN THE EVENT OF DEFAULT BY TENANT TO SECURE THE PAYMENT OF ALL RENT OR ADDITIONAL RENT DUE AND TO BECOME DUE HEREUNDER AND THE FAITHFUL PERFORMANCE OF ALL OF THE OTHER COVENANTS OF THE LEASE REQUIRED OF THE TENANT TO BE PERFORMED, TENANT GIVES TO LANDLORD AN EXPRESS CONTRACTUAL LIEN ON AND SECURITY INTEREST IN AND TO ALL MERCHANDISE WHICH MAY BE

PLACED IN THE PREMISES AND ALSO TO ALL PROCEEDS OF ANY INSURANCE WHICH MAY ACCRUE TO TENANT BY REASONS OF DAMAGE OR DESTRUCTION OF ANY SUCH PROPERTY. ALL EXEMPTION LAWS ARE HEREBY WAIVED BY TENANT. THIS LIEN AND SECURITY INTEREST MAY BE FORECLOSED WITH OR WITHOUT COURT PROCEEDINGS, BY PUBLIC OR PRIVATE SALE, WITH OR WITHOUT NOTICE, AND LANDLORD SHALL HAVE THE RIGHT TO BECOME PURCHASER UPON BEING THE HIGHEST BIDDER AT SUCH SALE. UPON REQUEST OF LANDLORD, TENANT AGREES TO EXECUTE UNIFORM COMMERCIAL CODE FINANCING STATEMENTS RELATING TO SUCH SECURITY INTEREST. LANDLORD, AS SECURED PARTY, SHALL BE ENTITLED TO ALL THE RIGHTS AND REMEDIES AFFORDED A SECURED PARTY UNDER SAID UNIFORM COMMERCIAL CODE WHICH RIGHTS AND REMEDIES SHALL BE IN ADDITION TO AND CUMULATIVE OF THE LANDLORD'S LIENS AND RIGHTS PROVIDED BY LAW OF OR BY THE TERMS AND PROVISIONS OF THIS LEASE. TENANT SHALL NOT PERMIT ANY MECHANIC'S OR OTHER LIENS TO BE FIXED OR PLACED AGAINST THE PREMISES AND AGREES TO IMMEDIATELY DISCHARGE (EITHER BY PAYMENT OR BY FILING OF THE NECESSARY BOND OR OTHERWISE) ANY SUCH LIEN WHICH IS ALLEGEDLY FIXED OR PLACED AGAINST THE PREMISES. THIS CONTRACTUAL LIEN IS IN ADDITION TO ANY AND ALL STATUTORY OR COMMON LAW LIENS PROVIDED FOR BY LAW.

59. **Statutory Landlord's Lien**. IN ADDITION TO LANDLORD'S CONTRACTUAL LIEN PROVIDED BY THIS LEASE, TENANT FURTHER AGREES AND ACKNOWLEDGES LANDLORD'S STATUTORY LANDLORD'S LIEN PROVIDED BY CHAPTER 54, SUBSECTION B OF THE TEXAS PROPERTY CODE, WHICH PARTIALLY STATES AS FOLLOWS:

Sec. 54.021. LIEN. A person who leases or rents all or part of a building for nonresidential use has a preference lien on the property of the tenant or subtenant in the building for rent that is due and for rent that is to become due during the current 12-month period succeeding the date of the beginning of the rental agreement or an anniversary of that date. (Acts 1983, 68th Leg., p. 3559, ch. 576, Sec. 1, eff. Jan. 1, 1984. Amended by Acts 1985, 69th Leg., ch. 200, Sec. 2, eff. Aug. 26, 1985.)

Sec. 54.024. DURATION OF LIEN. The lien exists while the tenant occupies the building and until one month after the day that the tenant abandons the building. (Acts 1983, 68th Leg., p. 3560, ch. 576, Sec. 1, eff. Jan. 1, 1984.)

Sec. 54.025. DISTRESS WARRANT. The person to whom rent is payable under a building lease or the person's agent, attorney, assign, or other legal representative may apply to the justice of the peace in the precinct in which the building is located for a distress warrant if the tenant:

(1) owes rent;
(2) is about to abandon the building; or
(3) is about to remove the tenant's property from the building.

(Acts 1983, 68th Leg., p. 3560, ch. 576, Sec. 1, eff. Jan. 1, 1984. Amended by Acts 1993, 73rd Leg., ch. 48, Sec. 10, eff. Sept. 1, 1993.)

60. **Default Deposit**. If Tenant fails to pay Monthly Rent when due, the Default Deposit may, at Landlord's option, be applied to any rent due and unpaid, or other amounts payable to Landlord by Tenant. If Tenant violates any of the terms, covenants and conditions of this Lease, the Default Deposit may be applied to any damages suffered by Landlord as a result of Tenant's default to the extent of the amount of the damages suffered. Should any of the Default Deposit be used to pay rent due for any reason, and if this Lease is kept in full force and effect at Landlord's option, Tenant shall reimburse Landlord the amount of said depletion within ten (10) days after notice to Tenant by Landlord of such depletion. Nothing contained in this section shall in any way diminish or be construed as waiving any of Landlord's other remedies provided by this Lease or by law or equity. Should Tenant comply with all of the terms, covenants and conditions of this Lease and promptly pay Monthly Rent when due and all other sums payable by Tenant to Landlord, the remaining balance of the Default Deposit, without interest), shall be returned to Tenant within sixty (60) days after the first day of the month after Tenant vacates the Premises.

61. **Landlord Default**. Landlord shall not be in default unless Landlord fails to perform obligations required of Landlord within a reasonable time, but in no event less than thirty (30) days after written notice by Tenant to Landlord, specifying that Landlord has failed to perform such obligations. However, if the nature of Landlord's obligation is such that more than thirty (30) days are required for performance, then Landlord shall not be in default if Landlord commences performance within such thirty (30) day period and thereafter diligently prosecutes completion of same.

TRANSFERS AND LIENS

62. **Subordination and Attornment**. This Lease and the rights of Tenant under this Lease are subject and subordinate to (1) any prior ground or master leases affecting the land, including renewals and extensions, and (2) any mortgage or Deed of Trust, together with all renewals, modifications, consolidations, replacements and extensions, which may now or later encumber the Center and the real property on which it is located. Tenant agrees to execute any further documents as may be necessary for subordinating this lease to any mortgage, Deed of Trust or master or ground leases, as the case may be, and further agrees to execute any other document of attornment and non-disturbance required by Landlord's mortgagees. Tenant irrevocably constitutes and appoints Landlord as Tenant's attorney-in-fact to execute any such instruments for and on behalf of Tenant, giving and granting unto said attorney full power and authority to do everything in Tenant's name, place and stead as fully and effectual to all intents and purposes as Tenant might or could do if personally present, ratifying all that said attorney shall lawfully do or cause to be done by virtue of those present. This power of attorney is coupled with an interest, and therefore shall survive the death, dissolution, or termination of Tenant. Tenant agrees to that it shall not undertake any act which will cause a lien to be filed against the Premises. Tenant acknowledges that it has no power to encumber or cloud Landlord's title to the land or Premises. Tenant further agrees that if, because of any act or omission of Tenant, any mechanics lien or other lien, charge, or order for the payment of money shall be filed against Tenant or any portion of the Premises, or upon the right, title, an interest of Tenant created by this Lease, Tenant shall, at its own cost and expense cause the same to be discharged of record or bonded within fifteen (15) days after written notice by Landlord to Tenant of the filing thereof; and Tenant hereby agrees to indemnify and hold harmless Landlord from and against all costs, liabilities, suits, penalties, claims, and demands resulting therefrom.

63. **Assignment and Subletting**. **Tenant may assign this Lease or sublet the Premises only with the prior written consent of Landlord.** Tenant acknowledges that this Lease is personal to Tenant for the use specified herein, and that Landlord may withhold its consent arbitrarily and for any reason whatsoever, and may further condition any consent on an increase in rent or any other changes in the terms, covenants, or conditions hereof. The consent by Landlord to any transfer, assignment, or subletting shall not be deemed to be a waiver on the part of Landlord of its rights regarding any future transfers, assignments or subletting. If Landlord consents to any assignment or subletting, such consent shall not be effective unless and until Landlord approves in writing the executed assignment or sublease agreement, which agreement shall provide for Landlord's consent to any amendment, and for the assignee or sublessee to assume all of the obligations and liabilities of Tenant under this Lease, without relieving Tenant of its obligations under this Lease.

64. **Transfer of Landlord's Interest**. In the event of any sale of the Premises or transfer of Landlord's interest under this Lease, Landlord shall be and is hereby entirely freed and relieved from all liability under any and all of the terms, covenants, and conditions contained in or derived from this Lease, arising out of any act, occurrence, or omission occurring after the consummation of such sale. The purchaser at such sale or any subsequent sale of the Premises shall be deemed, without further agreement between the parties in any such purchase, to have assumed and agreed to carry out any and all of the terms, covenants, and conditions obligating Landlord under this Lease. Any security given by Tenant to secure performance of its obligations hereunder, including the required Default Deposit, may be assigned and transferred by Landlord to the purchaser. Tenant, at Landlord's request, shall execute promptly any appropriate certificate or instrument, properly acknowledged, which shall certify to Landlord, any purchaser or any other person specified by Landlord, reasonable information required by Landlord, including whether or not this Lease is unmodified and in full force and effect, whether or not Tenant contends that Landlord is in default under this Lease in any respect, whether or not there are then existing set-offs or defenses against the enforcement of any right or remedy of Landlord, or any duty or obligation of Tenant, the amount of deposits held y Landlord, the date to which rent and other charges have been paid, and stating that Tenant has no right or interest in the Premises or the Center, other than as a Tenant under this Lease.

65. **Landlord's Assignment as Security**. With reference to any assignment by Landlord of its interest in this Lease or the rents payable under this Lease, conditional in nature or otherwise, which assignment is made to or held by the holder of a Deed of Trust on all or any part of the property or the Center including the Premises, Tenant agrees:

(a) That the execution by Landlord and the acceptance by the holder of such Deed of Trust shall never be deemed an assumption by such holder of any of the obligations of Landlord, unless such holder shall, by written notice to Tenant, specifically otherwise elect; and

(b) That, except as stated above, such holder shall be treated as having assumed Landlord's obligations only upon acquiring title to all or any part of the Land or the Center, including the Premises, through foreclosure of such holder's Deed of Trust or acceptance of a deed in lieu of foreclosure subject to this Lease and the taking of possession of such acquired property which includes the Premises.

ACCESS TO PREMISES

66. **Access for Premises.** Landlord shall have the right to enter the Premises at all reasonable hours for the purpose of inspection, making repairs to the Premises or making repairs, alterations, or additions to any adjacent premises, or curing any default of Tenant hereunder that Landlord elects to cure. In the event that Landlord is required to enter the Premises at a time other than during the Tenant's business hours, Landlord shall not be liable to Tenant for any expense, loss, or damage from any such entry. No entry by Landlord permitted under the terms of this Lease shall be deemed a breach by Landlord of Tenant's right to quiet enjoyment of the Premises as set forth in this Lease. Tenant shall permit Landlord during the thirty (30) day period preceding the expiration of this Lease to place usual or ordinary "For Lease" signs in clearly visible locations within the Premises and to enter upon the Premises during normal business hours to exhibit same to prospective tenants.

INTERPRETATION, NOTICES AND MISCELLANEOUS

67. **Applicable Law**. The enforcement of the Lease shall be governed under the laws and ordinances of the city of Tomball, Harris County, Texas, and this Lease shall be construed, interpreted, and enforced in accordance with the laws of the State of Texas.

68. **Successors and Assigns**. The terms, covenants and conditions contained in this Lease shall apply to, inure to the benefit of, and be binding upon the parties and their respective heirs and/or successors-in-interest and legal representatives, except as otherwise expressly provided.

69. **Force Majeure**. In the event that Landlord is delayed, hindered or prevented from performing any action required by this Lease, Landlord shall not be liable or responsible if the delay is due to strike, riot, plague, pestilence, act of God, shortage of labor or materials, war, governmental laws, regulations, or other restrictions or any other causes of any kind which are beyond the reasonable control of Landlord, and the period for the performance of such act shall be extended for a period equivalent to the period of delay.

70. **Partial Invalidity**. Any provision of this Lease which shall prove to be illegal, invalid, or unenforceable under present or future laws shall in no way affect, impair or invalidate any other provision, and this Lease shall be interpreted as if it had been entered into without such illegal, invalid, or unenforceable provision.

71. **Waiver**. The waiver by Landlord of any remedy for the breach of any term, covenant, or condition shall not be deemed to be a waiver of any subsequent breach of the same or any other term, covenant, or condition contained in this Lease. The subsequent acceptance of rent by Landlord shall not be deemed to be a waiver of any preceding default by Tenant of any term, covenant, or condition of this Lease, other than failure of the Tenant to provide the particular rent payments so accepted, regardless of Landlord's knowledge of such preceding default at the time of acceptance of such rent.

72. **Merger of Estates**. The voluntary or other surrender of this Lease by Tenant or a mutual cancellation of this agreement shall not cause a merger, but, at Landlord's option, either (1) shall terminate all or any existing sublease or subtenancies, or (2) may operate as an assignment to Landlord of Tenant's interest in any or all subleases or subtenancies.

73. **Construction**. Whenever in this Lease a singular number or word is used, the same shall include the plural, and the neutral gender shall include the feminine and masculine genders. The captions used in this Lease are for

convenience only, do not constitute a part of the Lease, and shall have no effect upon the construction or interpretation of any term, covenant, or condition.

74. **Notices.** All notices or requests required by or provided for in this Lease must be in writing and must be given by hand delivering or depositing the same in the United States mail, addressed to the party to be notified, postage prepaid. Notices by mail shall be deemed received upon receipt. Notices shall be sent to the address designated in this Lease or at other address specified in writing by the parties. In the event that more than one party is acting as either Landlord or Tenant under this lease, the parties shall agree upon a common location for the receipt of notices and any notice sent to said designated location shall bind each party acting as either Landlord or Tenant as if each party acting in said capacity had received such notice.

75. **Entire Agreement.** This Lease, together with any attached exhibits, set forth all agreements between Landlord and Tenant relative to the Premises and Center, if applicable. All prior negotiations and agreements are merged within this Lease, and no subsequent agreement relative to this Lease shall be binding unless reduced to a writing signed by both parties.

76. **Reimbursement for Legal Expenses.** In the event Tenant defaults in the performance of any of the terms, agreements or conditions of this Lease and Landlord places (1) the enforcement of this Lease, (2) the collection of any rent due or to become due and/or (3) recovery of the possession of the Premises in the hands of any attorney, Tenant shall reimburse Landlord on demand for any reasonable legal and administrative fees and expenses incurred by Landlord. If Tenant shall request anything of Landlord which requires preparation or review of documents by Landlord's counsel, and if Landlord agrees to such request, Tenant shall reimburse Landlord on demand any reasonable legal and administrative fees and expenses incurred by Landlord.

77. **Tenant's Certificates.** Recognizing that both Landlord and Tenant may find it necessary to establish to third parties such as accountants, banks, mortgagees, or the like, the then current status of performance under this Lease, either party upon written request to the other, shall promptly furnish a written affidavit on the status of this Lease consisting of statements, if true, (1) that this Lease is in full force and effect, (2) the date through which rentals have been paid, (3) the Commencement Date, (4) the nature of any amendments or modifications to this Lease, (5) that no default, or state of facts which, with the passage of time or notice would constitute a default, exists on the part of either party, (6) the names and addresses of corporate or management officers and personnel, and (7) the dates on which rent payments are due under the terms of this Lease. Tenant specifically agrees upon the Commencement Date or upon receipt of a written request from Landlord after the Commencement Date, to notify Landlord in writing of the Commencement Date and acknowledge satisfaction of the requirements with respect to Landlord's work and other matters by Landlord, save and except any matters which Tenant may which to set forth specifically in said statement.

78. **Discharge of Mechanic's Lien.** Tenant agrees within fifteen (15) days after receipt of notice of filing to discharge of record by payment, filing of the necessary bond, order of a court of competent jurisdiction, or other means acceptable to Landlord, any mechanic's lien or other lien against the Premises and/or Landlord's or Tenant's interest in the Premises or any portion of the Center when such liens arise out of work performed or claimed to have been performed in or on the Premises. The liens may arise out of any payment due for, or purported to be due for, any labor, services, materials, supplies, or equipment alleged to have been furnished to or for Tenant in, upon, or about the Premises. In the event that Tenant contests any such mechanic's lien, Tenant shall, at Landlord request, (1) deposit with Landlord an amount equal to the claims made by such lien, together with interest as it may from time to time become due, as security for the payment and discharge prior to execution or (2) deliver to Landlord a bond of a recognized surety authorized to write surety bonds in Texas, assuring the payment and removal of such lien, together with any interest or penalty, and naming Landlord as a co-obligee. Any judgment or other proceeds issued in such a contest shall be paid and discharged before execution. If Tenant fails to keep this covenant, then in addition to all other remedies available to Landlord under this lease, Landlord may, at its option, purchase a surety bond at twice the amount of the lien, securing such lien, and Tenant agrees to pay Landlord, as additional rent, one and one half times the cost thereof, to compensate Landlord for its expenses attorney's fees, and damages.

79. **Short Form Lease.** Tenant agrees not to record this Lease or any other document which sets forth the rental or other charges payable by Tenant under this Lease.

80. **Landlord Not Liable for Interest.** Tenant agrees that Landlord shall not be liable or accountable to Tenant for interest on any sum of money deposited by Tenant under the terms of this Lease.

81. **When Lease Becomes Binding.** This lease shall become effective and binding only upon the execution and delivery by both Landlord and Tenant. All negotiations, considerations, representations and understandings between Landlord and Tenant are incorporated within this Lease and may be modified or altered only by agreement in writing between Landlord and Tenant, and no act or omission of any employee or agent of Landlord shall alter, change, or modify any of the provisions.

82. **Tenant Not a Beneficiary of Other Leases.** In the event that Landlord, in its sole discretion, shall effect other tenancies in the Center, if applicable, Tenant shall not be deemed to be a beneficiary of any agreement between Landlord and such other tenants. Tenant shall have no right whatsoever, either express or implied, under any agreement between Landlord and other tenants or under any of the terms or provisions of such agreements. Tenant shall have no right to enforce any such agreements, terms, or provision on behalf of itself or any other party including Landlord.

83. **Contracts Between Landlord and Third Parties.** In the event that Landlord shall enter into any contract with third parties in any way connected to the Premises or Center (if applicable), Tenant shall not be deemed to be a beneficiary of any such contract. Tenant shall have no right whatsoever, either express or implied, under any such contract or under any of the terms or provisions of such contract; and Tenant shall have no right to enforce such contract, term, or provision on behalf of itself or any other part, including Landlord.

LANDLORD RODNEY K HUTSON 6/1/23 DATE	**LANDLORD ADDRESS FOR NOTICE AND RENT PAYMENT** RODNEY K HUTSON 9431 ROSIE LN MAGNOLIA, TEXAS 77354 **FOR LEASE OR FINANCIAL INQUIRIES, PLEASE CONTACT** TERESA H LATSIS (503) 348-0718 T.LATSIS@HUTSONGROUP.COM **FOR ALL OTHER ISSUES, PLEASE CONTACT** BRYAN H HUTSON (713) 678-0152 B.HUTSON@HUTSONGROUP.COM
TENANT BRUCE KISSINGER 6-1-23 DATE	**TENANT ADDRESS FOR NOTICE** 306 MARKET ST TOMBALL, TEXAS 77375 PHONE: (281) 222-9326 (MOBILE) EMAIL: BRUCE@FIREANTBREWING.COM

City Council Meeting
Agenda Item
Data Sheet

Meeting Date: April 1, 2024

Topic:

Approve the Minutes of the March 18, 2024, Regular City Council meeting.

Background:

Origination: City Staff

Recommendation:

Approve Minutes

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

FUNDING (IF APPLICABLE)
Are funds specifically designated in the current budget for the full amount required for this purpose?
Yes: _____ No: _____ If yes, specify Account Number: #_____
If no, funds will be transferred from account #_____ To account #_____

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

MINUTES OF REGULAR CITY COUNCIL MEETING
CITY OF TOMBALL, TEXAS

Monday, March 18, 2024
6:00 PM

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

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

Others Present
City Manager - David Esquivel
Assistant City Manager - Jessica Rogers
City Attorney - Tom Ramsey, Jr.
City Secretary - Tracylynn Garcia
Assistant City Secretary - Sasha Luna
Director of Community Development - Craig Meyers
Fire Chief - Joe Sykora
Police Chief - Jeff Bert
Finance Director - Katherine Tapscott
Director of Marketing & Tourism - Chrislord Templonuevo
HR Director - Kristi Lewis
IT Director - Tom Wilson
Public Works Director - Drew Huffman
Records Specialist - Fae Morris
Project Manager - Meagan Mageo
IT Sr. Specialist - Ben Lato
IT Support Tech - Sam Walton

B. Invocation - Led by Pastor Bill Haygood – Tomball Methodist Church

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

D. Public Comments and Receipt of Petitions; *[At this time, anyone will be allowed to speak on any matter other than personnel matters or matters under litigation, for length of time not to exceed three minutes. No Council/Board discussion or action may take place on a matter until such matter has been placed on an agenda and posted in accordance with law - GC, 551.042.]*

No public comments were received.

E. Reports and Announcements

1. Announcements

I. Upcoming Events:

March 22-24 – Tomball German Heritage Festival @ Depot

April 6, 2024 – Tomball Athletic Booster Crawfish Boil 4:00 pm – 8:00 pm @ Juergens Park

April 12, 2024 – Rotary Fish Fry 5:00 pm – 8:00 pm @ Juergens Park

April 13, 2024 – Second Saturday 5:00 pm – 9:00 pm @ Depot

F. Old Business

1. Adopt, on Second Reading, Ordinance No. 2024-06, an Ordinance of the City of Tomball, Texas, finding and determining that public convenience and necessity no longer require the continued existence of an unimproved right-of-way between Main Street and Alma Street, all situated in the Main Street Addition Plat as recorded in File 189453 of the Map Records of Harris County, Texas; vacating, abandoning, and closing said portion of such unimproved right-of-way; authorizing the City Manager to execute and the City Secretary to attest a quitclaim deed quitclaiming the City's interest in said unimproved right-of-way; and containing other provisions relating to the subject.

Motion made by Council 3 Dunagin, Seconded by Council 4 Townsend, Sr..

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

Motion carried unanimously.

G. New Business Consent Agenda: *[All matters listed under Consent Agenda are considered to be routine and will be enacted by one motion. There will be no separate discussion of these items. If discussion is desired, the item in question will be removed from the Consent Agenda and will be considered separately. Information concerning Consent Agenda items is available for public review.]*

1. Approve the Minutes of the March 4, 2024, Regular City Council meeting.

2. Approve the purchase of information technology hardware, software, and consulting services from Waypoint Business Solutions through the Choice Partners Cooperative (Contract #22/041KN-02) for a not-to-exceed amount of $135,557.53 approve the expenditure of funds therefor and authorize the City Manager to execute any and all documents related to the purchases. The purchases are included in the FY 2023-2024 Budget.

3. Authorize the City Manager to execute documents necessary to participate in the Texas SmartBuy cooperative purchasing program through the Texas Comptroller of Public Accounts Cooperative Purchasing Program.

4. Consideration and possible action to approve, as a Project of the Tomball Economic Development Corporation, an agreement with WR Transformers, Inc. to make direct incentives to, or expenditures for, the creation or retention of primary jobs associated with the development of its corporate headquarters facility to be located at 2013 S. Persimmon Street, Tomball, Texas 77375. The estimated amount of expenditures for such Project is and amount not to exceed $12,072.00.

   Motion made by Council 4 Townsend, Sr., Seconded by Council 3 Dunagin.

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

   Motion carried unanimously.

H. New Business

1. Discussion and possible action to schedule a Special Joint City Council and P&Z Workshop.

   No action taken; looking for alternative date.

2. Appoint Member to Business Position 4 of the Tourism Advisory Committee.

Amanda Kelley - Regarding consideration.
19710 Rippling Brook Ln.
Tomball

Motion made by Council 4 Townsend, Sr., Seconded by Council 3 Dunagin.

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

Motion carried unanimously.

3. Approve Resolution No. 2024-13, a Resolution Declaring the Intention of the City of Tomball, Texas, to Institute Proceedings to Annex Certain Territory; Describing Such Territory; Setting the Date, Time, and Place for Public Hearing at which all Interested Parties shall have an Opportunity to be heard; Providing for Publication of Notice of Such Public Hearing; and Directing Preparation of a Municipal Service Plan for the territory proposed to be annexed (*being 38.814 acres of land situated in the Jesse Pruitt Survey, Abstract Number 629, Harris County, Texas, being that certain called 31.994 acres of land described deed recorded in the Official Public Records of Real Property of Harris County, Texas, under County Clerk's File Number RP-2023-170674, a portion of that certain called 17.307 acres of land described deed recorded in the Official Public Records of Real Property of Harris County, Texas, under County Clerk's File Number RP-2023-171232being more particularly described by metes and bounds).*

Motion made by Council 5 Parr, Seconded by Council 4 Townsend, Sr..

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

Motion carried unanimously.

4. Approve Resolution No.2024-16 Authorizing the Application of a Grant, if awarded, from the office of the Governor, Public Safety Office, Criminal Justice Division, for funding assistance through the FY 2025 State and Local Cybersecurity Grant Program (SLCGP) – Mitigation projects and authorizing execution of documents relative to the submission and acceptance of such grant.

Motion made by Council 4 Townsend, Sr., Seconded by Council 1 Ford.

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

Motion carried unanimously.

5. Appoint Regular and Alternate Members to the Board of Adjustments for terms that expire on March 2, 2026.

Danny Hudson - regarding consideration
12777 Zion Rd.
Tomball

Motion made by Council 4 Townsend, Sr., Seconded by Council 2 Stoll to reappoint Position 2 Regular: Tina Roquemore.

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

Motion carried unanimously.

Motion made by Council 4 Townsend, Sr., Seconded by Council 3 Dunagin to appoint Position 4 Regular: Colleen Pye

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

Motion carried unanimously.

Motion made by Council 2 Stoll, Seconded by Council 4 Townsend, Sr. reappoint Position 5 Regular: Cindy Phillips

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

Motion carried unanimously.

Motion made by Council 5 Parr, Seconded by Council 2 Stoll to appoint Alternate 1: Devon Ketchner and reappoint Alternate 3: Ellen Warren.

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

Motion carried unanimously.

6. Discussion and possible action regarding the Draft Tree Protection Ordinance.

JR Bayteck - regarding tree ordinance
114 Bending Tail Drive
Tomball

No action - workshop to be scheduled.

7. Approve, on First Reading, Resolution No. 2024-14-TEDC, a Resolution of the City Council of the City of Tomball, Texas, authorizing and approving the Tomball Economic Development Corporation's Project to Expend Funds in accordance with an Economic Development Performance Agreement by and between the Corporation and Sylvia's Wood Fire Pizza, LLC to make direct incentives to, or expenditures for, rental assistance for new or expanded business enterprise to be located at 306 Market Street, Tomball, Texas 77375. The estimated amount of expenditures for such Project is an amount not to exceed $10,000.00.

Motion made by Council 4 Townsend, Sr., Seconded by Council 2 Stoll.

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

Motion carried unanimously.

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

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

Executive Session Started: 7:05 PM
Executive Session Ended: 7:22 PM

I. Adjournment

Motion made by Council 4 Townsend, Sr., Seconded by Council 2 Stoll.

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

Motion carried unanimously.

PASSED AND APPROVED this 1st day of April, 2024.

Tracylynn Garcia City Secretary, TRMC, CMC, CPM	Lori Klein Quinn Mayor

Board of Adjustments Appointments

BOA Member	Position	Term expiration	Action requested
Jarmon Wolfe	Regular 1	3/2/2025	None
Tina Roquemore	Regular 2	3/2/2024	Reappoint Tina Roquemore or appoint an alternate member or new applicant
Billy Hemby	Regular 3	3/2/2025	None
Vacant	Regular 4	3/2/2024	Appoint member with either alternate or new applicant
Cindy Phillips	Regular 5	3/2/2024	Reappoint Cindy Phillips or appoint an alternate member or new applicant
Colleen Pye	Alternate 1	3/2/2024	Reappoint Colleen Pye as an alternate or regular member or appoint a new applicant
Rocky Pilgrim	Alternate 2	3/2/2025	None
Ellen Warren	Alternate 3	3/2/2024	Reappoint Ellen Warren as an alternate or regular member or appoint a new applicant
Matthew Williams	Alternate 4	3/2/2025	Consider as a regular member
New applicants: Devon Ketchner and Danny Hudson			

City Council Meeting
Agenda Item
Data Sheet

Meeting Date: April 1, 2024

Topic:

Approve a Professional Services Agreement with WGA Consulting Engineers for the design of the North Sycamore parking lot, Project Number 2024-10001, for a not-to-exceed amount of $106,000, authorize the expenditure of funds therefor, and authorize the City Manager to execute the agreement. This amount is included in the fiscal year 2023-2024 budget as a Capital Improvement Project.

Background:
Included in the City's five-year Capital Improvement Plan is the project for the construction of a parking lot on North Sycamore that will include off-street parking and roadway expansion at the 100-300 block of North Sycamore Street. The addition of the parking lot will create an estimated 40 to50 parking spots and will include the additional width of pavement and retaining wall.

Staff worked with WGA to develop the proposed services to include design, permitting, Texas Department of Licensing and Regulation (TDLR) adherence, bid phase services, and construction administration.

The proposed Professional Services Agreement with WGA is for a not-to-exceed amount of $106,000.

This project was approved in the FY 2023-2024 budget and FY 2024-2028 CIP and was allocated funding from the 2023 Certificate of Obligation issuance that was approved at the December 4, 2023 City Council meeting.

Project Element	Total Contract	Remaining Contract Amount
Engineering - WGA	$106,000	N/A
Estimated Construction	$1,375,000	N/A
Project Budget $1,500,000	**Total Contracts & Estimates $1,481,000**	**Remaining Funding $19,000**

Origination: Project Management

Recommendation:

Staff recommends approving the Professional Services Agreement with WGA Consulting Engineers for the design of the North Sycamore parking lot for a not-to-exceed amount of $106,000.

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

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: #400-154-6409

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

Signed: Meagan Mageo **Approved by:** _____

Staff Member Date City Manager Date

PROFESSIONAL SERVICES AGREEMENT
FOR
ENGINEERING SERVICES
RELATED TO
ENGINEERING & PLANNING PROJECT NO. 2024-10001
CITY OF TOMBALL
NORTH SYCAMORE PARKING

THE STATE OF TEXAS §
§
COUNTY OF HARRIS §

THIS AGREEMENT is made, entered into, and executed by and between the CITY OF TOMBALL, TEXAS (the "City"), a municipal corporation of the State of Texas, and WGA Consulting Engineers ("Engineer").

WITNESSETH:

WHEREAS, the City desires to contract for the design of the North Sycamore Parking (the “Project”); and

WHEREAS, the services of a professional engineering firm are necessary to project planning and design, and

WHEREAS, the Engineer represents that it is fully capable and qualified to provide professional services to the City related to professional engineering;

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

SECTION I.
SCOPE OF AGREEMENT

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

SECTION II.
CHARACTER AND EXTENT OF SERVICES

Engineer shall do all things necessary to render the engineering services and perform the Scope of Work in a manner consistent with the professional skill and care ordinarily provided by competent engineering practicing in the same or similar locality and under the same or similar circumstances and professional license. It is expressly understood and agreed that Engineer is an Independent Contractor in the performance of the services

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

SECTION III.
OWNERSHIP OF WORK PRODUCT

Engineer agrees that the City shall have the right to use all exhibits, maps, reports, analyses and other documents prepared or compiled by Engineer pursuant to this Agreement. The City shall be the absolute and unqualified owner of all studies, exhibits, maps, reports, analyses, determinations, recommendations, computer files, and other documents prepared or acquired pursuant to this Agreement with the same force and effect as if the City had prepared or acquired the same. It is further understood and agreed that ownership and usage rights associated with the above referenced documents and analyses, hereinafter referred to as instruments, are contingent upon Engineer's completion of the services which will result in the production of such instruments and Engineer's receipt of payment, in full, for said services. Additionally, City understands and agrees that the rights described and provided hereunder shall not preclude or prevent Engineer from continuing to use those processes, analyses and data.

SECTION IV.
TIME FOR PERFORMANCE

The time for performance is an estimated 210 calendar day duration beginning from the execution date of this Agreement. Upon written request of the Engineer, the City may grant time extensions to the extent of any delays caused by the City or other agencies with which the work must be coordinated and over which Engineer has no control.

SECTION V.
COMPLIANCE AND STANDARDS

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

SECTION VI.
INDEMNIFICATION

To the fullest extent permitted by Texas Local Government Code
Section 271.904, Engineer shall and does hereby agree to indemnify,
hold harmless and defend the City,[2] its officers, agents, and employees
against liability for damage caused by or resulting from an act

of negligence, intentional tort, intellectual property infringement, or failure to pay a subcontractor or supplier committed by the Engineer, the Engineer's agent, consultant under contract, or another entity over which the Engineer exercises control.

SECTION VII.
ENGINEER'S COMPENSATION

For and in consideration of the services rendered by Consultant pursuant to this Agreement, the City shall pay Engineer only for the actual work performed under the Scope of Work, on the basis set forth in Exhibit "A," up to an amount not to exceed $106,000, including reimbursable expenses as identified in Exhibit "A".

SECTION VIII.
INSURANCE

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

SECTION IX.
TERMINATION

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

SECTION X.
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:

WGA Consulting Engineers
Attn: Chris Roznovsky, P.E.
2500 Tanglewilde, Suite 120
Houston, TX 77063

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

City of Tomball
Attn: Project Manager
501 James Street
Tomball, Texas 77375

SECTION XI.
LIMIT OF APPROPRIATION

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

SECTION XII.
SUCCESSORS AND ASSIGNS

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

SECTION XIII.
DISCLOSURE OF INFORMATION

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

SECTION XIV.
MODIFICATIONS

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

SECTION XV.
ADDITIONAL SERVICES OF ENGINEER

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

SECTION XVI.
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 a Conflict of Interest Questionnaire.

SECTION XVII.
PAYMENT TO ENGINEER FOR SERVICES AND REIMBURSABLE EXPENSES

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

XVIII.
MISCELLANEOUS PROVISIONS

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

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

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

D. Engineer 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.

E. In accordance with Chapter 2270, Texas Government Code, a government entity may not enter into a contract with a company for goods or services unless the Engineer covenants and agrees that it: (1) does not boycott Israel; and (2) will not boycott Israel during the term of the contract. Furthermore, the Engineer is prohibited from engaging in business with Iran, Sudan or Foreign Terrorist Organizations.

F. In accordance with Chapter 2274 of the Texas Government Code, Engineer covenants that it: (1) does not have a practice, policy, guidance or directive that discriminates against a firearm entity or firearm trade association, and (2) will not discriminate during the term of this contract against a firearm entity or firearm trade associations.

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

EXECUTED on this___day of_____, _____.

WGA Consulting Engineers:

Chris Roznovsky

Name: Chris Roznovsky, PE
Title: Practice Leader

CITY OF TOMBALL, TEXAS

David Esquivel, City Manager

ATTEST:

Tracylynn Garcia, City Secretary

March 13, 2024

Mr. Troy Toland, P.E.
City of Tomball Public Works
501 James Street
Tomball, TX 77375
By email: ttoland@tomballtx.gov

RE: Proposal for Civil Engineering Services
Sycamore Street Improvements
100-300 Block of Sycamore Street
City of Tomball, Harris County, Texas
Project type: Public Roadway
WGA Project No.00710-001

Dear Mr. Toland:

WGA Consulting Engineers (WGA) is pleased to submit this proposal to City of Tomball (City) to provide Civil Engineering Design Services for the above referenced project. We understand the City wishes to develop off street parking and roadway expansion at the 100-300 Block of Sycamore Street in the City of Tomball, Texas, based on an email request for proposal. We also understand the City wants explore various options of obtaining approval from the adjacent rail road to obtain access to locate parking within the railroad right of way, if possible. Our scope of services and fee are below.

Scope of Services

I. Preliminary Design:

WGA will coordinate with BNSF to discuss the ability of obtaining the right to locate parking within their right of way. WGA will coordinate with the City during the process until a go/no-go decision is made on utilizing the rail road property for parking. Upon reaching a decision, WGA will provide a preliminary design inclusive of roadway improvements, parking, and sidewalk for review and approval to the City.

II. Design Phase Services:

WGA will prepare plans for the above-mentioned roadway improvements project based on the City approved preliminary layout. After commencement of this task, significant changes to the preliminary layout may be considered as an additional service. This task does not include design of offsite infrastructure, such as offsite storm sewer extensions, offsite sanitary sewer extension, water main extension, median openings, or left turn lanes. Any dry utilities identified to be in conflict with the proposed improvements will be coordinated by WGA to be relocated by others, if possible. We anticipate the following submittals will be required:

- City of Tomball
- Texas Department of Transportation

WGA will submit 60%, 90%, and 100% construction documents to the City for review/approval, and meeting with City Staff to discuss/review at each milestone. Technical specifications and bid documents will be submitted to the City for review at the 90% and 100% design milestones.

The plan set will consist of the following sheets:

- Cover Sheet
  Plan Contents, Vicinity Map, Site Information, and required City notations.

- General Notes
  Inclusive of generic City and project specific notes.

- Demolition Plan
  Demolition plan showing the existing features to be demolished and/or protected during construction including protection of trees.

- Overall Grading and Paving Plan
  Grading and paving plan inclusive of elevations, details, sections, and profiles relative to paving, sidewalks, handicap ramps, curbs and curb cuts. This plan will show spot elevations for the limited landscape areas typically associated with a roadway improvement of this type.

- Permanent Striping and Signage Plan
  Permanent striping and signage plan showing all proposed striping and signage within the project area.

- Storm Drainage Plan / Drainage Area Map
  A drainage area map for the site indicating existing drainage areas, proposed drainage areas, and related calculations based on the proposed grading plan for the Right of way.

- Roadway - Plan and Profile
  Plan for the proposed roadway infrastructure for the improvements. (It is assumed that underground storm sewer is not required, if during the preliminary or design phase of the project it is identified as required, an additional services proposal will be provided.)

- Erosion Control Plan and Details
  Erosion control plans indicate measures to be implemented by the contractor prior to disturbing the site. Note that WGA is not responsible for any inspections of the SWPPP implementation or for filing of the NOI, NOT, or any other aspect of the SWPPP.

- Traffic Control Plan and Phasing Plan
  Traffic control plans and phasing plan required for the roadway widening and parking lot improvements. Where available, City/TxDOT details will be utilized or referenced.

- Details
  Detail sheets showing the paving, signage, etc. as required for the project. Where available, City details will be utilized or referenced.

III. TxDOT Permitting:

WGA will prepare and submit a TxDOT driveway and drainage permit application, as applicable, for the proposed revised street tie-in. It will include the necessary civil construction documents for tie-in to the TxDOT ROW, on-site drainage systems and drainage connections to TxDOT ROW.

IV. Texas Department of Licensing & Regulation (TDLR) for compliance with the Americans with Disabilities Act (ADA):

WGA will use a consultant to prepare, coordinate, and submit the necessary documents to obtain an approval of compliance to the TDLR Plan Review. Cost for consultant will be billed as a reimbursable expense and WGA coordination with consultant will be hourly.

V. BNSF Permitting (If Required):

WGA will prepare and submit the necessary documents to obtain approval from BNSF to construct improvements within their right-of-way. (Insurance and permitting fees to be paid directly by City.)

VI. Bid Phase Services

WGA shall prepare bid documents and provide the City Engineer with the final documents for solicitation on CivCast for interested parties to review. WGA will organize and run the pre-bid meeting virtually via Microsoft Teams, address contractor questions during the bidding process & submit bid addendums as applicable. WGA will open bids electronically via CivCast, review the bid results, prepare a bid tabulation, and recommendation of award.

VII. Construction Administration:

Construction Administration includes the following items at an assumed contract period of performance of 90 calendar days. Delays during construction which extend the contract period of performance past 120% of the original, will be billed as an additional service per the schedule of hourly rates attached.

RFIs

The Consultant shall review and respond to requests for information about the Contract Documents. Requests for information shall include, at a minimum, a detailed written statement that indicates the specific drawings or specifications in need of clarification and the nature of the clarification requested. The Consultant's response to such requests shall be made in writing in a reasonably timely manner as to not adversely affect the Owner's schedule. If appropriate, the Consultant shall prepare and issue supplemental drawings and specifications in response to requests for information.

Submittals

The Consultant shall review the Contractor's submittal schedule and shall not unreasonably delay or withhold approval concerning any civil design related submittals. The Consultant's action in reviewing submittals shall be taken in accordance with the approved submittal schedule or, in the absence of an approved submittal schedule, with reasonable promptness while allowing sufficient time in the Consultant's professional judgement to permit adequate review.

General Construction Oversite

Periodic site inspection by WGA construction staff or design team to ensure project is being constructed per plans and specifications. Assume weekly site visits at 2 hours per visit which includes any travel time.

Pay Estimates & Project Close Out Documentation

Review and field verification of pay estimates. Prepare and issue certificates of substantial completion and recommendation to City of Certificate of Acceptance. Preparation of as built construction drawings for City records.

VIII. Reimbursable Expenses:

Service includes additional fees for geo-technical investigation, printing expenses, Civ-Cast advertising (new paper advertising to be paid directly by City), TDLR consultant and review fees, and other reimbursable expenses.

This Proposal Assumes The Following Are Not Required Or Will Be Provided By Others And Have Been Excluded:

- Survey. Current boundary, topographic, and utility survey will be provided by City. Any additional survey information required for government approvals will be billed to the Client as an additional service in excess of the budget amount estimated.
- Drainage Impact Analysis
- Floodplain Mitigation. According to the Federal Emergency Management Agency (FEMA) the subject site is graphically located outside the 500-year floodplain (Zone "X" Unshaded) as delineated on the FEMA FIRM Map 48201C0230L, dated June 18, 2007.
- Dry utilities design, including but not limited to, gas, electric, and communications
- We will provide erosion control plans for permitting approval; General Contractor/Owner shall provide the required Storm Water Pollution Prevention Plan (SWPPP) for construction
- Landscape and Irrigation Plans
- Tree Preservation plans and Tree Mitigation plans
- Additional effort required by the Client or Design Team which may arise, and are not outlined above, will billed as an additional service.
- Municipal agency review fees, impact fees, or plat fees
- Wetland permitting and coordination
- Environmental studies
- Site walls, structural site design or pump stations
- Agency review fees and Reimbursable expenses will be invoiced at cost plus 10%.
- If additional services are required and authorized by Client, they will be invoiced hourly per the attached rate schedule.

Fee Summary

The services will be provided as Lump Sum (LS) as follows unless otherwise noted:

Civil Engineering Design Services		
I.	Preliminary Design (Hourly Not to Exceed)	$ 12,000
II.	Design Phase Services (LS)	$ 39,000
III.	TxDOT Permitting (LS)	$ 9,500
IV.	TDLR Approval (Hourly Not to Exceed)	$ 2,000
V.	Bid Phase Services (LS)	$ 3,500
VI.	Construction Administration (LS)	$ 25,000
VII.	Reimbursable Expenses (Cost Plus 10%)	$ 15,000
	Total Civil Engineering Design	**$ 106,000**
Additional Services		
I.	BNSF Permitting (If Required, Hourly Not to Exceed)	$ TBD
II.	Extended Construction Administration Services	$ TBD

Closure

Notes:

- *This proposal is good for a period of up to 90 days from the date of the proposal.*

Please review the attached Terms and Conditions (Exhibit A), fill out your project and billing details below, sign this proposal, and return an executed copy to our office. Our receipt of the executed document will serve as authorization to proceed. If there are any questions, please feel free to contact me at 713-789-1900. Thank you for the opportunity and we look forward to working with you on this project.

Regards,

Chris Roznovsky

Chris Roznovsky, P.E.
Practice Leader

Accepted by Client

_____
Signature

_____
Printed Name and Title

_____
Date

Client Project Number: _____

Billing Contact Information

Billing Contact Name: _____

Company (If different): _____

Address: _____

_____

Phone: _____

Email: _____

Additional Info: _____

SCHEDULE OF HOURLY RATES

Effective January 2024
Subject to Revision

Position	**Hourly Rate**
Engineer VIII	$275
Engineer VII	$235
Engineer VI	$210
Engineer V	$175
Engineer IV	$160
Engineer III	$150
Engineer II	$130
Engineer I	$120
Design Project Manager	$160
Senior Designer	$140
Designer	$120
CAD Technician II	$100
CAD Technician	$ 80
Construction Manager IV	$205
Construction Manager III	$170
Construction Manager II	$140
Construction Manager I	$120
Construction Administrator	$120
Field Project Representative III	$120
Field Project Representative II	$100
Field Project Representative I	$ 90
Project Accountant	$110
Project Administrator	$ 90

Reimbursables to include but not limited to mileage, travel, reproduction, and others at + 10%

EXHIBIT A

AGREEMENT FOR
ENGINEERING SERVICES

GENERAL TERMS AND CONDITIONS

BILLING

Statements are issued when appropriate and shall be payable to WGA upon receipt, whenever issued, unless otherwise agreed. Interest at one percent (1%) per month accruing from the date of statement shall be payable on any amounts not paid within 30 days. All payments thereafter shall be applied first to accrued interest on the fees and reimbursables and then to the principal unpaid amount. Any costs incurred in collecting any of the above amounts, which become delinquent, shall be paid by the CLIENT upon demand, including but not limited to, attorney's fees and the cost of employees' time expended on the collection.

DIRECT PERSONNEL EXPENSE

If the project is performed on the basis of Direct Personnel Expense times a multiplier, Direct Personnel Expense is defined as the direct salaries of the ENGINEER's personnel engaged on the project and the portion of the cost of their mandatory and customary contributions and benefits related thereto, such as employment Texas and other statutory employee benefits, Insurance, sick leave, holidays, vacations, pensions and similar contributions and benefits.

REIMBURSABLE EXPENSES

Reimbursable expenses are in addition to the compensation for personnel time and include actual expenditures made in the interest of the job, such as those for transportation, living expenses in connection with out-of-town travel, long distance communications, expenses for reproductions (excluding reproductions for use in our office or consultant's offices), expense of postage and handling of drawings, specifications and other documents, expense of any renderings or models, and any similar expenses made in the interest of the job. The above expenses shall be reimbursable at 1.15 times the actual cost.

SUSPENSION OR TERMINATION OF SERVICES

If the CLIENT fails to make any payment due ENGINEER on account of its services and expenses within thirty (30) days after the date of the statement, then ENGINEER may, after giving (7) days written notice to the CLIENT, suspend services until all amounts due on services and expenses have been paid in full. Further, ENGINEER shall have the right to withhold all drawings, specifications, and other instruments of service as of the date services are suspended. In the event that the CLIENT requests termination of the services prior to completion of a report, ENGINEER reserves the right to complete such investigations and analyses as are necessary to protect its professional reputation, or to complete appropriate records of the services performed to date. A termination charge to cover the cost thereof in an amount not to exceed 10% of all charges incurred up to the date of the stoppage of the services may be made at the discretion of ENGINEER.

LAWS/REGULATIONS

This agreement is to be governed by the law of the principal place of business of the ENGINEER. The CLIENT and the ENGINEER are each bound to a policy of non-discrimination and equal employment opportunity. The CLIENT and ENGINEER are committed to complying with Executive Order 11246, as amended; Title VII of the Civil Rights Act of 1964; the Civil Rights Act of 1991; Section 503 of the Rehabilitation Act of 1973; Section 402 of the Vietnam Era Veterans Readjustment Assistant Act of 1974; the Americans with Disabilities Act of 1990; the Age Discrimination in Employment Act of 1967; the Equal Pay Act of 1963 and any other applicable local, state or federal statutes or regulations.

Prior to initiating litigation against ENGINEER for any alleged claim, based on negligence or other legal theory, the CLIENT agrees to first negotiate in good faith for a period of thirty days, then to mediate the claim under rules of mediation as agreed to at that time.

LIMITS OF LIABILITY

ENGINEER's services, as limited by the CLIENT, are performed with the usual thoroughness and competence of the ENGINEER and engineering professions in Texas. No warranty or other representation, either expressed or implied, is included or intended in ENGINEER's proposals, contracts, reports, designs, and other services including, without limitation, warranties of fitness or merchantability which are hereby disclaimed. In retaining ENGINEER's services, the CLIENT expressly agrees that in all cases, ENGINEER's liability shall be limited solely to its negligent acts, errors or omissions. ENGINEER's liability to the CLIENT for injury or damage to persons or property arising out of services performed for CLIENT and for which legal liability may be found to rest upon ENGINEER, other than for professional errors and omissions, will be limited to recovery from ENGINEER's general liability insurance coverage and shall be limited to the sum of the fee payable to ENGINEER under this Agreement. For any damages resulting from ENGINEER's negligent acts, errors, or omissions in rendering professional services, its liability will be limited to the sum of $50,000.00 or its fee, whichever is less. The CLIENT agrees that in no event will it make a claim against ENGINEER after the expiration of four years from the substantial completion of ENGINEER's services hereunder, or the expiration of two (2) years from the date the CLIENT knew or should have known of said claim, whichever shall first occur. Following such date, all such CLIENT claims, if any, known or unknown, shall be deemed to be and are hereby waived. To the extent that any applicable statute of limitations provides for a shorter period of time, such shorter time period shall control.

In the event the CLIENT makes a claim against ENGINEER at law or otherwise, for any alleged negligent act, error or omission arising out of the performance of its professional services, and the CLIENT fails to prove such claim, then the CLIENT shall pay all costs incurred by ENGINEER in defending itself against said claim, including but not limited to, attorney's fees, experts' fees, consultants' fees, and the cost of employee's time expended on the claim.

In the event of a claim against ENGINEER and its consultants arising out of or in any way related to the negligence or other liability of the CLIENT, the Contractor or any others associated with or related to the CLIENT's project, the CLIENT shall indemnify and hold ENGINEER and its consultants harmless from and against such claim and any associated liability or expense including but not limited to, attorney's fees, experts' fees, consultants' fees, and the costs of employees time expended on the claim.

EXCLUDED SERVICES

ENGINEER has not been retained or compensated for and shall not have control or charge of and shall not be responsible for construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the work of any Contractor or Subcontractor or any other person performing work, or for any acts or omissions of any of them, or for the failure of any of them to carry out work in accordance with their contract documents.

ADDITIONAL CONSULTANTS

Fees for services of additional consultants to be retained under subcontract to WGA Houston, when required, and when authorized by the CLIENT, will be billed to the CLIENT at 1.10 times such consultants' net billings to WGA Houston, unless otherwise agreed.

CONFIDENTIALITY

ENGINEERS, its agents, employees, and Consultants shall hold client information, data, and documents (collectively, "the information") that they receive, or to which they have access, in strictest confidence. ENGINEER, its agents, employees and Consultants shall not disclose, disseminate, or use the Information unless the Client authorizes such in writing.

CLIENTSHIP OF DOCUMENTS

All documents field notes and data prepared or obtained by or through ENGINEER and related to the CLIENT's project will be joint property of the ENGINEER and CLIENT and may be transferred to other parties or used for other purposes (e.g., marketing) with written consent from the other party. **Any expense of the documents without written authorization from ENGINEER shall be at the CLIENT's own risk and without liability to ENGINEER.**

TIME LIMIT

An agreement or proposal is subject to renegotiation if not accepted within 90 days.

City Council Meeting
Agenda Item
Data Sheet

Meeting Date: April 1, 2024

Topic:
Approve a Services Agreement with Aramark Uniform Services for uniforms for Public Works through a BuyBoard Contract (Contract No. 670-22) for a total contract amount of $74,725.85 for a total of three years beginning June 1, 2024 and expiring May 31, 2027, authorize the expenditure of funds therefor, and authorize the City Manager to execute the agreement. This amount is included in the fiscal year 2023-2024 budget for the Public Works department.

Background:
Aramark Uniform Services is a uniform distributor that has the ability to provide consistent service to the Public Works department for uniforms. The services to be provided include uniforms for all employees including jeans, uniform shirts, and coveralls, as well as lockers for all employees and weekly laundry service and replacement as needed. Each employee will receive 11 pairs of jeans, 11 custom shirts with the City logo and their name, and two pairs of coveralls for those employees working on natural gas to enhance their safety. Included in the services agreement is a 5% annual increase that will be effective on the anniversary date of each year of service.

Based on the City's adopted Procurement Policy, staff is requesting approval of a services agreement for Public Works uniforms through an existing BuyBoard Contract for a three-year term, expiring May 31, 2027. The chart below identifies the estimated contract amount annually that will be included in the departmental clothing budget.

Annual Contract Amounts		
Contract Year One June 1, 2024 – May 31, 2025	Contract Year Two June 1, 2025 – May 31, 2026	Contract Year Three June 1, 2026 – May 31, 2027
$23,703.68	$24,888.86*	$26,133.31*

*Contracts totals are based off current Public Works employees can increase or decrease annually based on the number of total employees requiring uniform.

The proposed Services Agreement with Aramark Uniform Services will be for a total contract amount of $74,725.85 over the three-year contract term, including the 5% annual increase.

Origination: Project Management

Recommendation:

Staff recommends approving the Services Agreement with Aramark Uniform Services to provide uniforms for the Public Works department for a total three-year contract amount of $74,725.85

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

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: #100-152-6107, #100-153-6107, #100-154-6107, #100-157-6107, #600-613-6107, #600-612-6107, #600-613-6107, #600-614-6107

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

Signed: Meagan Mageo **Approved by:**

Staff Member Date City Manager Date

aramark

SERVICE AGREEMENT

This **SERVICE AGREEMENT** (this "Agreement") is made and is effective this _____ day of _____, 20__ (the "Effective Date"), between **_____,** ("Customer"), with principal place of business at _____, and **Aramark Uniform Services**, a division of Aramark Uniform & Career Apparel, LLC ("Company"), with principal place of business at 115 North First Street, Burbank, California 91502.

Section 1. Company agrees to supply and Customer agrees to rent the textile merchandise and/or other items set forth on Schedule I attached to this Agreement (collectively, the "Merchandise"), exclusively from Company. Company will launder, mend and finish rental Merchandise. The rental prices, replacement rates and other charges for the initial Merchandise are set forth on Schedule I. Customer locations are authorized to order additional products and services offered by Company (which shall be deemed Merchandise under this Agreement). The rental prices, replacement rates and other charges for any additional Merchandise ordered by a Customer location will be as agreed to by Company and the Customer location and set forth on the Customer location's weekly invoice.

Section 2. The Merchandise shall be provided at those Customer locations identified on Schedule II attached hereto, and at all other additional locations in Company's service area where Customer requests to utilize textile rental services under this Agreement. For Customer locations serviced by Company prior to the Commencement Date (as defined below), the charges set forth in this Agreement shall be implemented within 45 days after the Commencement Date.

Section 3. All rental Merchandise supplied to Customer under this Agreement is the property of Company and shall be promptly returned on demand. Company will replace rental Merchandise worn out through normal wear and tear at no additional charge. Customer agrees to pay for rental Merchandise that is lost or damaged, except rental Merchandise that is worn out through normal wear and tear, ruined garment Merchandise covered by EasyCare® and lost or ruined non-garment Merchandise covered EasyCare®. The charge for lost or damaged Merchandise shall be the then current replacement rate. The initial replacement rate for the initial Merchandise is set forth on Schedule I.

If an "EasyCare®" charge is included, Company will replace the corresponding garment Merchandise that is ruined by Customer and non-garment Merchandise that is lost or ruined by Customer, in each case without any additional loss or ruin charges, as applicable. Merchandise that is lost or ruined as a result of willful misconduct or intentional abuse is not covered by EasyCare® and Customer is still responsible for preparation, name and emblem charges. Either party may discontinue EasyCare® on garment Merchandise by providing written notice to the other party, in which case standard loss and ruin charges will apply.

Section 4. The term of this Agreement shall be one hundred and fifty-six (156) consecutive weeks following the later of the last signature date below or the date the rental Merchandise is first installed at a Customer location under this Agreement (the "Commencement Date").

Section 5. **(a)** All charges under this Agreement are due and payable thirty (30) days from the date of each statement rendered by Company. Customer agrees to pay Company a late payment charge equal to the lesser of 1.5% per month or the maximum permitted by law for any payments not received by Company by the applicable due date.

(b) Customer agrees that all charges shall be increased annually on or after each anniversary of the Effective Date by 5%.

(c) In consideration of the sizeable investment Company is making in Merchandise for Customer, Customer agrees that Company may impose minimum per invoice recurring charges equal to the greater of (a) $25 or (b) 75% of the average weekly charges during the initial three months following the Commencement Date.

(d) Company will bill and invoice Customer using Company's established standard billing and invoicing procedures. Company will not be required to agree to any non-standard billing and invoicing procedures requested by Customer, including requests to prepare reports and analyses or to utilize Customer's billing systems. Any deviations from Company's standard billing and invoicing procedures agreed to by Company will be at Customer's sole expense at a cost to be agreed to by the parties. The charges set forth on Schedule I are based on

a 52-week year. Customer shall be responsible for charges applicable to each employee without regard to the absence of any employee for any reason other than termination of employment.

(e) Company will waive all company emblems, name emblems and preparation charges for term of agreement.

Section 6. **(a)** The Merchandise provided under this Agreement shall not be reduced without Company's consent, except that Customer may reduce the garments related to an employee that is no longer employed by Customer and is not replaced by another employee. Customer agrees to immediately notify Company in writing of any employee's termination and agrees to immediately return all Merchandise issued to such employee. Customer's management shall designate specific personnel at each Customer location who shall have responsibility for notifying Company's route sales representative of any personnel changes and of any new inventory requirements. Company's route sales representative shall be so notified at the time of delivery of the Merchandise.

(b) With respect to the Merchandise covered by this Agreement, Customer acknowledges that Company's Merchandise is not interchangeable and cannot be mixed with those of other textile rental service companies. Customer agrees that it will use only Company's Merchandise for Customer's total requirements, including new additional locations opened by Customer, and will have Company's Merchandise processed only by Company.

Section 7. **(a)** Customer may terminate this Agreement for any individual location for material deficiencies in service and/or quality of Merchandise provided:

(1) complaints are first made promptly in writing to Company's location serving the Customer location (with a copy sent by U.S. mail, return receipt requested, to the address first set forth above for Company, attention Director of Service, National Accounts or via email to Aramark-Cares@aramark.com), stating the precise nature of any complaints;

(2) Company is afforded at least thirty (30) days to correct, or begin to take reasonable steps to correct, any deficiencies complained of; and

(3) Company fails to correct, or begin to take reasonable steps to correct, the deficiencies complained of, within thirty (30) days.

In the event Customer complies with the foregoing and Company fails to correct or begin to take reasonable steps to correct such deficiencies at the applicable location, Customer may terminate this Agreement at any such location.

Section 8. **(a)** Customer agrees to pay all loss or ruin charges and all unpaid statements upon any termination or expiration of this Agreement at any Customer location. EasyCare® does not cover lost or ruined Merchandise identified in connection with any reduction or elimination of Merchandise or any termination or expiration of this Agreement.

(b) If Customer breaches this Agreement or terminates this Agreement early, other than in accordance with Section 7(a), Customer shall pay Company as liquidated damages (intended as a good faith pre-estimate of the actual damages Company would incur and not as a penalty) for each and every location so terminated, an amount equal to the greater of (a) fifty percent (50%) of the average weekly charges at such location(s) during the three months prior to termination multiplied by the number of weeks remaining in the current term, or (b) a buyback of all rental Merchandise being provided to Customer at such location(s) at the then current replacement rate.

Section 9. Customer acknowledges that Company may make an investment in "Special Items" provided to Customer locations. "Special Items" are (a) any items that are (i) embroidered, (ii) not part of Company's standard product line or (iii) otherwise denoted with an "*" on Schedule I, and (b) emblems that are unique to Customer. In addition to any other obligations under this Agreement, upon (i) any termination of this Agreement in whole or in part, by either party, whether or not for cause, (ii) the final expiration of this Agreement or (iii) the Customer's or any location's change of the specifications of any Special Items, Customer shall purchase from Company any Special Items in stock or committed by Company to Customer's service (i.e., in-service and shelf inventory, as well as manufacturer's supplies ordered by Company). The purchase price for such Special Items shall be the then current replacement rate or direct sale purchase price, as applicable, or, in the case of emblems, the purchase price set forth on Schedule I.

Section 10. **(a)** The Merchandise is not resistant to hazardous chemicals, contains no special hazardous chemical resistant features and is not designed for use in areas where contact with hazardous substances is possible. Customer warrants that none of the employees for whom Merchandise is supplied pursuant to this Agreement require clothing that is resistant to hazardous substances. Customer is obligated to notify Company of any toxic or hazardous substance introduced onto the Merchandise and agrees to be responsible for any loss, damage or injury experienced by Company or its employees as a result of the existence of such substances. Company reserves the right not to handle or process any Merchandise soiled with toxic or hazardous substances. Customer agrees to indemnify Company from and against any losses, claims, expenses, damages, or liabilities, including reasonable attorney's fees incurred by Company as a result of any Merchandise being soiled with a toxic or hazardous substance.

(b) Unless otherwise stated in this Agreement, the Merchandise supplied under this Agreement is not flame resistant, contains no flame resistant features, and is not is not designed for use in areas of flammability risk is possible. Except for employees wearing flame resistant merchandise, if any, Customer warrants that none of the employees for whom Merchandise is supplied pursuant to this Agreement require clothing that is designed for use in areas of flammability risk.

(c) Any Merchandise listed on Schedule I with two asterisks (**) is flame resistant merchandise. Customer is responsible for ensuring that Customer and its employees follow the proper procedures and requirements for laundering any purchased flame resistant Merchandise as recommended by the fabric manufacturer(s). Customer will provide the following notification to its employees wearing flame resistant Merchandise:

> **- WARNING** - For prevention of clothing ignition during short term and emergency exposure to flame or electric arc, do not use for protection against continuous thermal loads, hot liquids or steam. Do not wear alone for limb/torso protection during structural fire fighting. Do not use for chemical protection or protection from other hazardous substances. Failure to comply with this warning may result in serious injury or death.

Section 11. Customer agrees that Customer has selected the Merchandise and is responsible for determining its appropriateness and for the safe and proper use, placement and securing of the Merchandise. Company warrants to Customer that, so long as Customer shall not be in default of any of the provisions of this Agreement, Company shall provide Customer with Merchandise freshly processed, mended and finished in accordance with generally accepted standards of the textile industry. Company makes no other warranty, express or implied, as to any other matter whatsoever. Customer assumes all risks associated with the use of the Merchandise and Company shall not be liable either in tort or in contract for any injury, death, loss or damage, arising out of the use or misuse of, or the inability to use, the Merchandise, except to the extent such injury, death, loss or damage is due to the willful misconduct of Company or its agents or employees. Customer agrees to indemnify, defend and hold harmless Company from any and all losses, claims, expenses, damages or liabilities, including reasonable attorney's fees incurred by Company, arising out of the use or misuse of, or the inability to use, the Merchandise, or the degradation or loss of the reflectivity of any reflective Merchandise or the flame-resistant properties of any flame-resistant Merchandise. In no event will Company, its affiliates and their respective officers, directors or employees be liable to Customer for any indirect, special, incidental, consequential (including lost revenue or profits), punitive or extraordinary damages. For reflective Merchandise, any garments supplied satisfy specific ANSI/ISEA standards only if so labeled. Customer acknowledges that Company makes no representation, warranty or covenant regarding the visibility performance of any reflective Merchandise and that reflective properties may be reduced or ultimately lost through laundering.

Section 12. Company will provide, or cause to be provided, workers' compensation insurance as required by law. Additionally, Company will carry comprehensive general liability insurance (including products, contractual, and broad form vendors' coverage), with minimum limits of $2,000,000. Any insurance coverage (additional insured or otherwise) that Company provides for Customer will only cover liability assumed by Company in this Agreement; its insurance coverage will not cover liability in connection with or arising out of the wrongful or negligent acts or omissions of Customer. Company will furnish to Customer, upon request, a certificate of insurance via email indicating that its coverage is in effect. Customer and Company waive any right of recovery from each other for property damage or loss of property use, however occurring. This waiver includes losses covered by policies of fire, extended coverage, boiler explosion, and sprinkler leakage. This waiver will not apply to claims for personal injury or death.

Section 13. Except as otherwise set forth herein, any notice under this Agreement must be in writing and addressed to the receiving party at the address stated on the first page of this Agreement (or such other address of which that party has given proper notice) and will be effective when delivered by overnight delivery service.

Section 14. Any controversy, claim or dispute arising out of or relating to this Agreement shall be settled by binding arbitration administered by the American Arbitration Association (the "AAA") under its Commercial Arbitration Rules, and judgment on the award rendered by the arbitrator may be entered in any court of competent jurisdiction. The arbitration shall be held in Los Angeles, California and each party agrees to pay its own costs and expenses (including attorney's fees) and agrees to share equally the fees owed to the AAA.

Section 15. Each of Company and Customer hereby waives all claims against each other for damages arising from interruption or postponement of service caused by reason of acts of God, strikes, lockouts or other industrial disturbances, wars, riots, arrests, explosions, fire, accidents or any other similar cause outside the parties' reasonable control. Upon discontinuance of the cause(s) of interruption or postponement of service, Company shall resume normal service and the then current term of this Agreement shall be extended by a period equal to the period of the interruption or postponement.

Section 16. This Agreement shall be binding upon and shall inure to the benefit of the parties hereto, their heirs, administrators, executors, successors or assigns.

Section 17. This Agreement constitutes the entire agreement of the parties regarding its subject matter and supersedes all prior or contemporaneous agreements, discussions, or representations. This Agreement cannot be amended or changed, except in writing signed by Customer and Company. Any terms contained in a purchase order, quote, acknowledgement, or invoice will not be part of this Agreement and are not binding on either party.

Section 18. This Agreement, the pricing contained in this Agreement and all invoices and other related information provided by Company shall be considered confidential information of Company and Customer agrees to hold such information in confidence and not share it with any third party, without the prior written consent of Company.

Section 19. Customer has read the foregoing in its entirety and understands all of its terms and conditions, and warrants to Company that the person signing on behalf of Customer has the authority and power to execute this Agreement on behalf of Customer, and after the execution hereof Customer is bound by all of the terms and conditions herein. Customer confirms that by signing this Agreement, no existing contract to which Customer is a party is, or will be, breached.

Section 20. Any provision of this Agreement determined by a legal authority to be invalid or unenforceable will not affect the validity or enforceability of the rest of this Agreement. The rights and obligations of the parties which by their nature must survive the termination of this Agreement will survive the termination of this Agreement. This Agreement may be executed in multiple counterparts and sent by facsimile or other electronic means, and each counterpart will be deemed an original, which will together constitute one and the same instrument.

IN WITNESS WHEREOF, the undersigned, by their duly authorized representatives, have executed this Agreement as of the day and year first above written.

ARAMARK UNIFORM SERVICES, **a division of Aramark Uniform & Career Apparel, LLC**	**[CUSTOMER]**
DocuSigned by: By: Shawn Joseph Fromme Name: Shawn Joseph Fromme Title: Manager General Date: 3/25/2024	By:_____ Name: Title: Date:

SCHEDULE I

MERCHANDISE

(See attached)

City of Tomball

Schedule 1

ITEM DESCRIPITION	ABS ITEM CODE	ITEM COLOR	ITEM SIZE	WEEKLY RENTAL RATE	WEEKLY INVENTORY %	LOSS & RUIN RATE	EASY CARE
SHIRTS							
MEN'S ARAMARK FLEXFIT SHIRT- SS	GS2472	NAVY	XSMR-6XLR, LGEL-4XLL	$ 0.250	100	$ 43.200	$ 0.030
MEN'S ARAMARK FLEXFIT SHIRT- LS	GS2471	NAVY	XSMR-6XLR, LGEL-4XLL	$ 0.250	100	$ 43.200	$ 0.030
ARAMARK AUTHENTIC WORK SHIRT- COTTON- LS	GS0448	NAVY	SMLR-4XLR, MEDL-4XLL	$ 0.220	100	$ 21.280	$ 0.030
ARAMARK AUTHENTIC WORK SHIRT- COTTON- SS	GS0449	NAVY	SMLR-4XLR, MEDL-4XLL	$ 0.220	100	$ 21.280	$ 0.030
WOMEN'S ARAMARK FLEXFIT SHIRT- SS	GS2491	NAVY	XSMR-3XLR	$ 0.250	100	$ 43.200	$ 0.030
COVERALL							
STEELGUARD FR ENHANCED VISIBILITY COVERALL	GO2600	NVYT	38R-60R, 42L-58L	$ 0.900	100	$ 123.050	$ 0.100
PANTS							
DENIM JEANS	GP0294	BLDM	28X28-60X32	$ 0.270	100	$ 27.600	$ 0.030
EQUIPMENT							
8-COMPARTMENT LOCKERS-BIG	CE-0034	SLVN	8/COMP	$ 3.00	100	$ 632.50	$ -
SOIL LOCKERS	CE-0096	SLVN	STAND	$ 3.00	100	$ 402.50	$ -
Z-RACKS	-	BLAK		$ -	100	$ 100.05	$ -
LAUNDRY BAG	XX-0297	GREY		$ -	100	$ 5.75	$ -
LAUNDRY BAG STAND	CE-0120	BLAK		$ -	100	$ 16.10	$ -
MANAGED RESTROOM SERVICES							
Managed Restroom Services Program consists of delivering a variety of restroom supplies (like toilet paper, soap, paper towels, etc….) and providing related restroom stocking services at the time of delivery. Mandated for all locations to receive Managed Restroom Service. Supplies to be provided and related initial pricing.							
MISC. CHARGES							
PREP CHARGE				$ -	100	$ -	
COMPANY EMBLEM CHARGE				$ -	100	$ -	
NAME EMBLEM CHARGE				$ -	100	$ -	
Service Charge				10.00%			
Bill Assure				-			
Additional Stop Charge				$ 20.000			
DIRECT EMBROIDERY				$ 10.000	100	$ -	

*Indicates a Special Merchandise item; buyback required

** Indicates a Flame Resistant garment.

DL/DM "X' is not a valid item code; will be updated upon receipt of pending artwork

PLEASE NOTE: Item codes may vary and are subject to change, including substitutes for discontinued items.

Above charges are based on 1x weekly service unless stated otherwise. Changes to service frequency are subject to increased or changed rates and/or minimum billing percentages.

EasyCare®, Inventory Maintenance and Bill Assure do not cover Merchandise that is lost or ruined as a result of Customer's willful misconduct or intentional abuse or lost or ruined Merchandise identified in connection with any termination or expiration of this Agreement.

Customer Signature:

Customer Title:

Date:

SCHEDULE II

CUSTOMER LOCATIONS

(**See Attached**)

Account: City of Tomball

Store #	Contract Assist	Bill To	Service To
1	CA-01032256	City of Tomball	401 Market St Ste C Tomball, TX 77375-4697

Bill To Address	Servicing MC
401 Market St Ste C Tomball, TX 77375-4697	557

City Council Meeting
Agenda Item
Data Sheet

Meeting Date: April 1, 2024

Topic:

Approve City of Tomball mowing list of property, Rights-of-way, Parks, drainage ways and corridors.

Background:

In September 2019, City Council approved a resolution of exchanging right-of-way maintenance with Harris County. The rights-of-way exchange agreement allowed for the City of Tomball to take on the responsibility of maintaining 14,522 feet of right-of-way along portions of Quinn Road, Inwood Street, Hicks Street, Graham Drive, Medical Complex Drive, Hirschfield Road, High Meadow Road, Alice Road and Snook Lane. Harris Country assumed the responsibility of maintaining the right-of-way along 11,304 feet of Brown Road, Zion Road, Calvert Road, Park Road, and Tomball Cemetery Road. City Council also discussed mowing operations in August 2023 and January 2024.

The Public Works department currently maintains approximately 40 properties, parks, drainage ways, rights-of-way and alleys. The acreage maintained is an estimated 252 acres. Mowing operations are typically from March to December. Parks are mowed on a weekly basis, while rights-of-ways, alleys and drainage ways are mowed monthly or on an as needed basis.

Origination: Public Works Department

Recommendation:

Approve City of Tomball mowing list of property, Rights-of-way, Parks, drainage ways and corridors.

Party(ies) responsible for placing this item on agenda: Drew Huffman, Public Works Director

FUNDING (IF APPLICABLE)

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

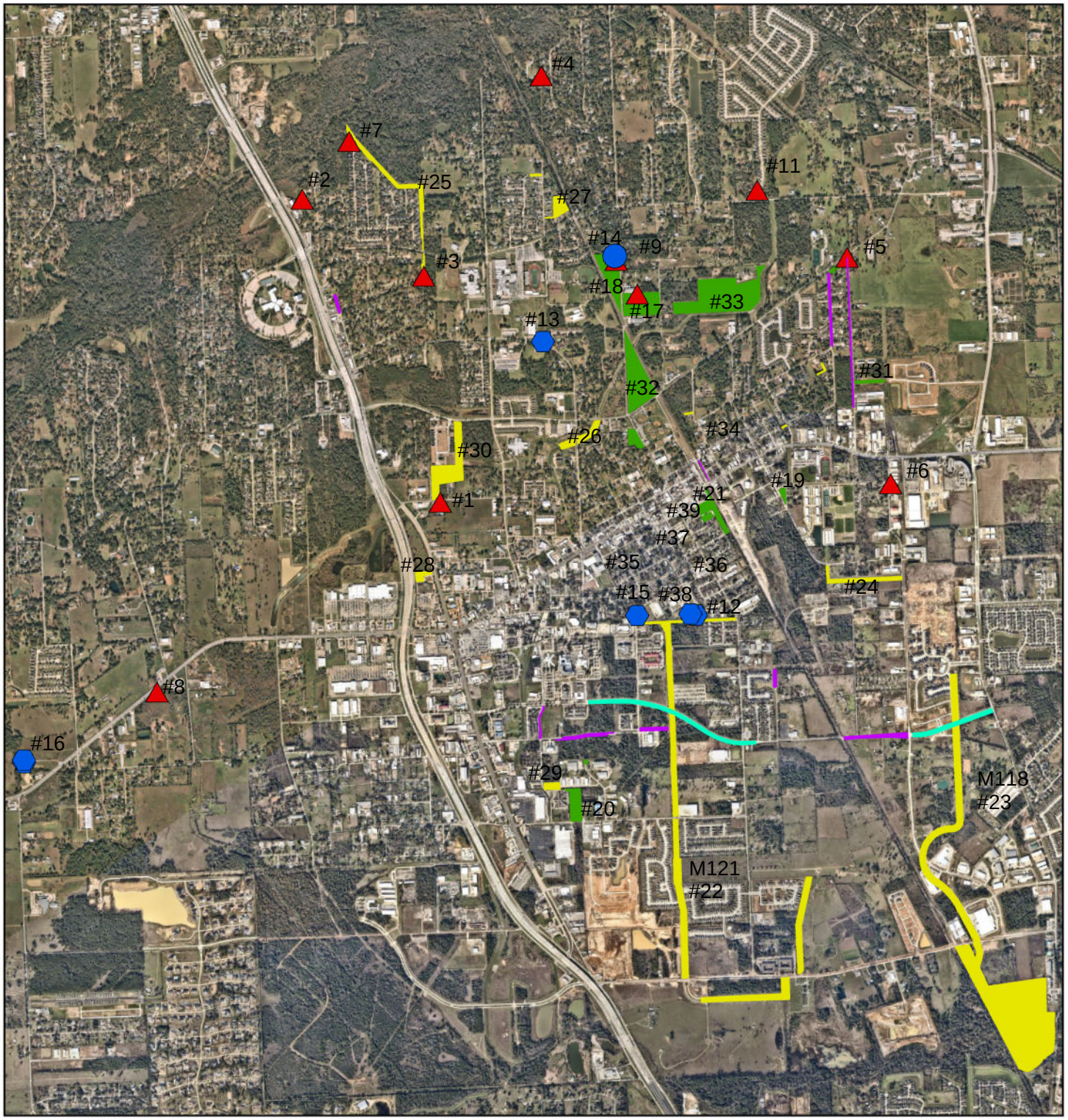
Yes: _____ No: _____ If yes, specify Account Number: # _____

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

Signed _____ Approved by _____

Staff Member Date City Manager Date

CITY PROPERTIES				DRAINAGE		
LIFT STATIONS	ACERAGE	Map Number		M121	42.34	22
Hicks St #4	0.00	1		M118	24.53	23
Tomball Hills #5	0.55	2		Lizzie Ln Drainage Channel	3.90	24
Sherwood Forest #6	0.61	3		Sherwood Forest Drainage Channel	7.16	25
Hunterwood #7	0.02	4		Baker St Drainage Channel	3.57	26
Snook #8	0.30	5		Martens Rd Detention/ Drainage Eas.	2.93	27
Persimmon #9	0.04	6		Kroger Detention	1.33	28
North Star #10	0.47	7		Johnson Road Detention	1.34	29
FM 2920 #3	0.02	8		Liberty Detention	11.68	30
Juergens Park LS	0.00	9		OTHER PROPERTIES		
Matheson Park LS	0.00	10		Snook Lot	0.75	31
Raleigh Creek #11	0.00	11		Hufsmith across from ball park	14.20	32
WATER WELLS				Landfill	26.71	33
Pine St 1&2	1.28	12		*All Allyways not blocked by fencing*		
Baker St	1.06	13		Peach St - N Willow	4.00	34
Ulrich Tower	0.28	14		Baker Dr - N Elm	5.00	35
School St	0.45	15		Poplar St - Walnut	3.00	36
Well 5&6	2.22	16		CONTRACT MOWING		
PARKS				401 Market St	0.65	37
Matheson	9.62	17		501 James St	4.00	38
Juergens	7.86	18		221 Market St	0.15	39
MLK	0.94	19		ROW - Medical Com./Quinn Rd	13.30	40
Theis Attaway	4.48	20				
Depot Plaza	2.47	21		ROWs	Lane Miles	
				14128 Limerick Ln - 30310 SH 249	0.20	
				Zion Rd, South side of RD (Alice Ln - Wickford Dr)	0.35	
				Lovett St (E Hufsmith Rd - Carrell St)	0.70	
				Snook Ln (E Hufsmith Rd - E Main St)	1.50	
				N Sycamore St (E Main St - Houston St)	0.10	
				Medical Complex Dr (Lawerence St - S Cherry St)	0.75	
				Medical Complex Dr (S Persimmon - Hufsmith/Korville)	0.37	
				Agg Rd (RR Crossing - S Persimmon)	0.30	
				Johnson Rd (Michel Rd - Medical Complex Dr)	0.15	
				Michel Rd (Johnson Rd - School St)	0.31	
				Michel Rd, unimproved ROW (School St - M121)	0.24	
				Mulberry Ct unimproved ROW	0.32	



THE CITY OF TOMBALL, TEXAS
FOUNDED 1907

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City Council Meeting
Agenda Item
Data Sheet

Meeting Date: April 1, 2024

Topic:

Approve Resolution Number 2024-08, a Resolution of the City Council of the City of Tomball, Texas approving a Development Agreement relating to the Graylou Grove Public Improvement District.

Background:

FLS Development, LLC has requested consideration of a public improvement district to develop approximately 44 acres at the intersection of Hufsmith Kohrville Road and Medical Complex Drive as a residential development called Graylou Grove. As part of the PID creation process, the City and the developer entered into negotiations for a development agreement to outline key elements of the proposed PID and development.

In December, the development was discussed with Council. Council provided general direction the developer did not have to make the connection to Country Club Green or build Medical Complex Drive through the development. In lieu of building the road through the development, Council asked that a cul-de-sac be constructed near the detention and amenity area.

Following the December discussion, staff met with the Tomball Economic Development Corporation to discuss the potential for the TEDC to participate in the portion of Medical Complex Drive adjacent to Hufsmith Kohrville, which will service commercial frontage property. TEDC stated they could consider this part of the extension for funding, which could allow the developer to extend their public infrastructure commitment on Medical Complex Drive further to the east without increasing costs.This funding option has been incorporated into section 4.07 of the Development Agreement, stating “the Tomball EDC will fund the portion of Medical Complex extending thru the commercial portion and the Developer will be responsible to fund and construct matching footage funded by the EDC.”

In addition to these considerations, the development agreement also includes the following terms:

- Reimbursement Debt PID with a cap of $8,000,000, with bonds to be issued following the completion of the public improvements.
- Value to lien (LTV) ratio of 3:1 at the time of levy of assessment and total assessment value to lien (LTV) ratio of each series of PID bonds be at least 3:1.
- Maximum term of 30 years.
- Maximum assessment of $0.95 per $100 of assessed value.
- Requirement for annexation and CCN release prior to levy of assessments.
- Excluded street development of Medical Complex Drive includes seeking out funding from the Economic Development Corporation to fund a portion of Medical Complex and the Developer will be responsible to fund and construct matching footage.
- Excluded connection of the development to Country Club Green.

The developer has reviewed the recommended Development Agreement by our PID Counsel and is requesting the following exceptions to the agreement by City Council:

- Requesting to levy at less than a 3:1 LTV but issue the bonds at the 3:1 LTV.
- Removing the requirement for public improvements to be completed before the issuance of bonds.
- Requesting not to build any additional footage of Medical Complex Drive and not seek out funding through the EDC.
- Exception of the maximum assessment, per the PID policy the maximum assessment for a 30-year PID is $0.48 per $100 of assessed value and they are requesting $0.95 per $100 assessed value.

Resolution 2024-08 will approve the development agreement between the City and FLS Development, LLC with respect to the development of the property, the public improvements, and the levy of assessments in the proposed district. Following approval of Resolution 2024-08, Resolution 2024-07 will be presented to authorize the creation of Public Improvement District 15 – Graylou Grove.

Origination: Project Management

Recommendation:

Staff recommends denial of Resolution Number 2024-08, approving a Development Agreement with FLS Development, LLC, due to non-adherence of the minimum requirements of the City's adopted PID policy as being requested with City Council granting an exception to the PID policy.

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

FUNDING (IF APPLICABLE)

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

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

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

Signed Meagan Mageo _____ Approved by _____

Staff Member Date City Manager Date

RESOLUTION NO. 2024-08

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF TOMBALL, TEXAS APPROVING A DEVELOPMENT AGREEMENT RELATING TO THE GRAYLOU GROVE PUBLIC IMPROVEMENT DISTRICT PROJECT

* * * * * * * * *

WHEREAS, FLS Development, LLC, a Texas limited lability company (the "Developer") owns and plans to acquire and develop, in phases, approximately 44 acres of real property, a portion of which that is within the City and a portion of which is in the City's extraterritorial jurisdiction (the "Property"); and

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

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

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

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

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

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

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

PASSED, APPROVED, AND RESOLVED this ____ day of April 2024.

Lori Klein Quinn
Mayor

ATTEST:

Tracylynn Garcia
City Secretary

GRAYLOU GROVE DEVELOPMENT AGREEMENT

BETWEEN

FLS DEVELOPMENT, LLC A LIMITED LIABILITY COMPANY

AND

THE CITY OF TOMBALL, TEXAS

Dated: _____, 2024

ARTICLE I

DEFINITIONS **2**

ARTICLE II

THE DEVELOPMENT **7**

Section 2.01. Scope of Agreement. 7
Section 2.02. Project Overview – The Development.....7

ARTICLE III

PUBLIC IMPROVEMENT DISTRICT **8**

Section 3.01. Creation.....8
Section 3.02. Issuance of PID Bonds.....8
Section 3.03. Developer Cash Contribution. 11
Section 3.04. Apportionment and Levy of Assessments. 11
Section 3.05. Transfer of Property. 12

ARTICLE IV

DEVELOPMENT **12**

Section 4.01. Full Compliance with City Standards.....12
Section 4.02. Planned Development. 12
Section 4.03. Property Acquisition. 12
Section 4.04. Conflicts. 13
Section 4.05. Fees. 13
Section 4.06. Zoning. 13
Section 4.07. Excluded Street Development. 13

ARTICLE V

ANNEXATION **13**

Section 5.01. Annexation of Land into the City. 13
Section 5.02. Zoning. 13
Section 5.03. CCN Release. 14

ARTICLE VI

CONSTRUCTION OF THE PUBLIC IMPROVEMENTS **14**

Section 6.01. Designation of Construction Manager, Construction Engineers. 14
Section 6.02. Construction Agreements. 15

Section 6.03. Project Scope Verification. 17
Section 6.04. Joint Cooperation; Access for Planning and Development. 17
Section 6.05. City Not Responsible. 17
Section 6.06. Construction Standards and Inspection. 17
Section 6.07. Public Improvements to be Owned by the City – Title Evidence. 18
Section 6.08. Public Improvement Constructed on City Land or the Property. 18
Section 6.09. Additional Requirements. 18
Section 6.10. Revisions to Scope and Cost of Public Improvements. 20
Section 6.11. City Police Powers. 20
Section 6.12. Title and Mechanic's Liens. 20
Section 6.13. City Consents. 21
Section 6.14. Right of the City to Make Inspection. 21
Section 6.15. Competitive Bidding. 21

ARTICLE VII

PAYMENT OF PUBLIC IMPROVEMENTS 22

Section 7.01. Overall Requirements. 22
Section 7.02. Remaining Funds after Completion of a Public Improvement. 23
Section 7.03. Payment Process for Public Improvements. 23
Section 7.04. Public Improvements Reimbursement from Assessment Fund in the Event of a Non-Issuance of PID Bonds. 23
Section 7.05. Rights to Audit. 24

ARTICLE VIII

REPRESENTATIONS AND WARRANTIES 24

Section 8.01. Representations and Warranties of City. 24
Section 8.02. Representations and Warranties of Developer. 25

ARTICLE IX

MAINTENANCE OF CERTAIN IMPROVEMENTS 26

Section 9.01. Mandatory Home Owners' Association. 26

ARTICLE X

TERMINATION EVENTS 27

Section 10.01. Developer Termination Events. 27
Section 10.02. City Termination Events. 27
Section 10.03. Termination Procedure. 27
Section 10.04. City Actions Upon Termination. 28

ARTICLE XI

TERM **28**

ARTICLE XII

DEFAULT AND REMEDIES **28**

Section 12.01. Developer Default. 28
Section 12.02. Notice and Cure Period. 29
Section 12.03. City's Remedies. 29
Section 12.04. City Default. 30
Section 12.05. Developer's Remedies. 30
Section 12.06. Sovereign Immunity. 31
Section 12.07. Limitation on Damages. 31
Section 12.08. Waiver. 31

ARTICLE XIII

INSURANCE, INDEMNIFICATION AND RELEASE **31**

Section 13.01. Insurance. 31
Section 13.02. Waiver of Subrogation Rights. 33
Section 13.03. Additional Insured Status. 33
Section 13.04. Certificates of Insurance. 33
Section 13.05. Carriers. 33
Section 13.06. INDEMNIFICATION. 33

ARTICLE XIV

GENERAL PROVISIONS **34**

Section 14.01. Notices. 34
Section 14.02. Make-Whole Provision. 35
Section 14.03. Assignment. 36
Section 14.04. Table of Contents; Titles and Headings. 37
Section 14.05. Entire Agreement; Amendment. 37
Section 14.06. Time. 37
Section 14.07. Counterparts. 37
Section 14.08. Severability; Waiver. 38
Section 14.09. No Third-Party Beneficiaries. 38
Section 14.10. Notice of Assignment. 38
Section 14.11. No Joint Venture. 38
Section 14.12. Estoppel Certificates. 39
Section 14.13. Independence of Action. 39
Section 14.14. Compliance with Homebuyer Disclosure Program. 39
Section 14.15. Limited Recourse. 39

Section 14.16. Exhibits. 39
Section 14.17. No Consent to Third Party Financing. 39
Section 14.18. Survival of Covenants. 39
Section 14.19. No Acceleration. 40
Section 14.20. Conditions Precedent. 40
Section 14.21. No Reduction of Assessments. 40
Section 14.22. Recording Fees. 40
Section 14.23. Iran, Sudan and Foreign Terrorist Organizations. 40
Section 14.24. Petroleum. 40
Section 14.25. Firearms. 41
Section 14.26. Anti-Boycott. .....42˙suh
Section 14.27. Form 1295. 42
Section 14.28. Conflict. 42

Exhibit A-1 – The Total Property
Exhibit A-2 – The Property
Exhibit B –Planned Development
Exhibit C –Public Improvements
Exhibit D – [Reserved]
Exhibit E – Landowner Consent
Exhibit F – Form of Payment Certificate
Exhibit G – Form of Disbursement Request
Exhibit H – Homebuyer Disclosure Program
Exhibit I – Amenities

GRAYLOU GROVE DEVELOPMENT AGREEMENT

This Graylou Grove Development Agreement (this "**Agreement**"), dated as of _____, 2024 (the "**Effective Date**"), is entered into between FLS DEVELOPMENT, LLC, a Texas limited liability company (the "**Developer**"), and the City of Tomball Texas (the "**City**"), a home-rule city and municipal corporation, acting by and through its duly authorized representative.

Recitals:

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

WHEREAS the Developer owns and is developing approximately 50.1 acres of real property described in Exhibit A-1 attached hereto (the "Total Property"), partially in the City's extraterritorial jurisdiction ("ETJ"), and partially in the corporate limits of the City; and

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

WHEREAS, in order to finance the Public Improvements, the City Council intends to create one public improvement district (the "PID") encompassing the 43.149 acres described in Exhibit A-2 attached hereto ("Property") in accordance with Chapter 372 Texas Local Government Code, as amended (the "PID Act" in order to finance certain Public Improvements from Assessments levied on benefitted parcels within the Property); and

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

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

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

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

ARTICLE I

DEFINITIONS

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

"Actual Costs" is defined in the Service and Assessment Plan.

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

"Agreement" has the meaning stated in the first paragraph of this Agreement.

"Amenities" means the Graylou Grove Development amenities to be constructed by the Developer and owned by the Developer or the HOA, as set forth in Exhibit I.

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

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

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

"Assessment Ordinance" means one or more of the City's ordinances approving a SAP and levying Assessments on the benefitted Property within the PID.

"Assessments" means those certain assessments levied by the City pursuant to the PID Act on benefitted parcels within the PID for the purpose of paying the costs of the Public

Improvements, which Assessments shall be structured to be amortized over 30 years, including interest, all as set forth in or modified by the Service and Assessment Plan.

"City" means the City of Tomball, Texas.

"City Regulations" mean provisions of the City's Code of Ordinances, ordinances not codified, design standards, uniform and international building and construction codes, and other policies duly adopted by the City, which shall be applied to the Development, including zoning the land in the PID, if any.

"City Representative" means the Mayor or designee which may include a third party inspector or representative.

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

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

"Completion of Construction" shall mean that the City has with respect to applicable Public Improvements accepted the respective Public Improvements and confirmed that Final Completion has been reached with respect to such Public Improvements.

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

"Completion Date" means a date that is no later than twenty-four (24) months after Commencement of Construction for the Public Improvements. Such date may be extended by two six (6) month extensions that may be granted by the Mayor upon request of the Developer.

"Construction Agreements" mean the contracts for the construction of the Public Improvements.

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

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

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

"Developer" means FLS Development, LLC, a Texas limited liability company, its successors and permitted assigns.

"Development" means the Graylou Grove Development, a residential development to be developed and constructed on the Total Property pursuant to the City Regulations.

"Effective Date" means the date set forth in the first paragraph of this Agreement which shall be the earliest date on which (i) the Developer has executed this Agreement and (ii) the Agreement is approved by City Council in open session.

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

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

"Final Completion" means as the point in the construction of the project when the City determines that the project is 100% completed, including punch list work.

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

"Force Majeure" means any act that (i) materially and adversely affects the affected Party's ability to perform the relevant obligations under this Agreement or delays such affected Party's ability to do so, (ii) is beyond the reasonable control of the affected Party, (iii) is not due to the affected Party's fault or negligence and (iv) could not be avoided, by the Party who suffers it, by the exercise of commercially reasonable efforts. "Force Majeure" shall include: (a) natural phenomena, such as storms, floods, lightning and earthquakes; (b) wars, civil disturbances, revolts, insurrections, terrorism, sabotage and threats of sabotage or terrorism; (c) transportation disasters, whether by ocean, rail, land or air; (d) strikes or other labor disputes that are not due to the breach of any labor agreement by the affected Party; (e) fires; (f) epidemics or pandemics where shut-down of residential construction or the manufacturing of supplies relating thereto has been ordered by a Governmental Authority; and (g) actions or omissions of a Governmental Authority (including the actions of the City in its capacity as a Governmental Authority) that were not voluntarily induced or promoted by the affected Party, or brought about by the breach of its obligations under this Agreement or any Applicable Law or failure to comply with City Regulations; provided, however, that under no circumstances shall Force Majeure include any of the following events: (g) economic hardship; (h) changes in market condition; (i) any strike or labor dispute involving the employees of the Developer or any Affiliate of the Developer, other than industry or nationwide strikes or labor disputes; (j) during construction, weather conditions which could reasonably be anticipated by experienced contractors operating the relevant location; (k) the occurrence of any manpower, material or equipment shortages except as set forth in (f) above; or (l) any delay, default or failure (financial or otherwise) of the general contractor or any subcontractor, vendor or supplier of the Developer, or any construction contracts for the Project Improvement and Public Improvements.

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

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

"HOA" is defined in Section 9.01.

"HOA Maintenance Agreement" is defined in Section 9.01

"HOA Maintained Improvements" is defined in Section 9.01.

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

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

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

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

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

"Net Bond Proceeds" means the proceeds of the PID Bonds issued pursuant to Sections 3.02, net of costs of issuance, capitalized interest, reserve funds and other financing costs.

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

"Payment Certificate" means a Payment Certificate as set forth in Section 10.03, the form of which is attached as Exhibit F.

"PD" or "PD Zoning" means the Planned Development Zoning District Ordinance to be approved by the City, as may be amended pursuant to City Regulations, and when approved by the City is made a part hereof and attached hereto as Exhibit B.

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

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

"PID Bonds" means one or more series special assessment revenue bonds issued by the City pursuant to the PID Act for the reimbursement of the Public Improvement Project Costs.

"PID" means the Graylou Grove Public Improvement District, encompassing the Property.

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

"Private Improvements" means these horizontal improvements described in the Plans and Specifications submitted to the City as part of the zoning process, other than the Public Improvements, being constructed in each Phase to get to a Final Lot Value.

"Professional Services Agreement" means that certain agreement between the City and the Developer pursuant to which the Developer shall pay certain City costs with respect to the Development and PID financing.

"Project Fund" means the fund by that name created under each Indenture into which PID Bond Proceeds shall be deposited.

"Property" means the approximately 43.149 acres located partially in the corporate limits of the City and partially within the ETJ of the City, as described in Exhibit A-2 hereto.

"Total Property" means approximately 50.105 acres located partially in the corporate limits of the City and partially within the ETJ of the City, as described in Exhibit A-1 hereto.

"Public Improvement Project Costs" means the estimated cost of the Public Improvements to be constructed to benefit the land within the PID as set forth in Exhibit C, as may be amended pursuant to this Agreement, such costs to be eligible "project costs," as defined in the PID Act.

"Public Improvements" means public improvements to be developed and constructed or caused to be developed or constructed inside and outside the PID by the Developer to benefit the PID, which will include improvements described in Exhibit C.

"Public Improvement Financing Date" means the date by which the City must levy Assessments on the Property, such date to be no later than December 31, 2025 which date may be extended by written agreement of the Parties.

"Public Improvement Completion Date" means a date that is no later than twenty-four (24) months after Commencement of Construction for the Public Improvements to be funded by the PID Bonds. Such date may be extended by one six (6) month extension that may be granted by the City Manager upon request of the Developer.

"Reimbursement Agreement(s)" means the agreement(s) entered into between the City and the Developer in which Developer agrees to fund certain costs of Public Improvements and the City agrees to reimburse the Developer for a portion of such costs of the Public Improvements from the proceeds of Assessments pursuant to the SAP(s) or from future PID Bond proceeds, if any.

"Reimbursement Cap" means the reimbursement to the Developer for the Public Improvement Project Costs equal to the lesser of (i) the Actual Costs of the Public Improvements, or (ii) $8,000,000, from any source.

"Service and Assessment Plan" or "SAP" means the service and assessment plans drafted pursuant to the PID Act for the PID and any amendments or updates thereto, adopted and approved by the City that identifies and allocates the Assessments on benefitted parcels within the PID and sets forth the method of assessment, the parcels assessed, the amount of the Assessments, the Public Improvements and the method of collection of the Assessment.

Total Property means approximately 50.1 acres of real property located in part within the corporate limits of the City and in part within the extraterritorial jurisdiction of the City, as described in Exhibit A-1 hereto.

"Trustee" means the trustee under the Indenture.

"Waiver of Liens" means a complete, final and unconditional waiver of all liens with respect to the Public Improvements.

ARTICLE II

THE DEVELOPMENT

Section 2.01. Scope of Agreement. This Agreement establishes provisions for the apportionment, levying, and collection of Assessments on the Property within the PID, the construction of the Public Improvements, reimbursement, acquisition, ownership and maintenance of the Public Improvements, and the issuance of PID Bonds for the financing of the Public Improvements benefitting the property within the PID.

Section 2.02. Project Overview – The Development.

(a) The Developer will undertake or cause the undertaking of the design, development, construction, maintenance, management, use and operation of the Development, and will undertake the design, development and construction of the Public Improvements. The Development will consist of the following elements:

(i) Up to 87 single family homes; and

(ii) Amenities set forth in Exhibit I.

(b) Subject to the terms and conditions set forth in this Agreement, the Developer shall plan, design, construct, and complete or cause the planning, designing, construction and

completion of the Public Improvements to the City's standards and specifications and subject to the City's approval as provided herein and in accordance with City Regulations and Applicable Law.

(c) Upon completion and acceptance by the City, the Public Improvement shall own be owned by the City and shall be maintained by the City.

(d) The Developer shall construct or cause to be constructed, the Amenities as set forth in Exhibit I and such Amenities shall not be owned by the City and shall not be paid or reimbursed as a Public Improvement Project Cost.

ARTICLE III

PUBLIC IMPROVEMENT DISTRICT

Section 3.01. Creation.

The Developer shall request the creation of a PID over a portion of the Property by submitting a petition to the City that contain a list of the Public Improvements to be financed by the PID and the estimated or actual costs of such Public Improvements in the PID. Upon receipt of such petition, the City shall consider such petition by resolution and schedule a public hearing to consider the creation of the PID in accordance with the PID Act. Developer has previously entered into a professional services agreement that obligates Developer to fund the costs of the City's professionals relating to the creation of the PID, the levy of Assessments in the PID and any PID Bond financing costs, which amount shall be considered a cost payable from PID Bond Proceeds.

Section 3.02. Issuance of PID Bonds.

(a) Subject to the terms and conditions set forth in this Article III, the City intends to authorize the issuance of PID Bonds in one or more series up to an aggregate principal amount of $8,000,000 to reimburse the Public Improvements Project Costs. The Public Improvements to be constructed and reimbursed in connection with the PID Bonds are detailed in Exhibit C which may be amended from time to time, and shall be as set forth in the Service and Assessment Plan for the PID or any updates thereto. The net proceeds from the sale of each series of PID Bonds (i.e., net of costs and expenses of issuance of each series of PID Bonds and amounts for debt service reserves and capitalized interest) will be used to reimburse the Public Improvement Project Costs. Notwithstanding anything in this Agreement, the issuance of PID Bonds and the levy of Assessments is a discretionary governmental action by the City Council and subject to the City's approval and the issuance of PID Bonds is also subject to market conditions at the time of issuance. The issuance of PID Bonds and the levy of Assessments is an action to be taken by a future City Council and such future City Council shall not be bound by the terms of this Agreement with respect to the issuance of PID Bonds and the levy of Assessments.

(b) Each series of PID Bonds shall be issued with the terms deemed appropriate by the City Council at the time of issuance, if at all.

(c) The following conditions must be satisfied prior to the City's consideration of the sale of PID Bonds:

(i) The Developer shall have requested, in writing, the issuance of PID Bonds;

(ii) The Developer shall have submitted to the City all requested and required information necessary to evaluate a PID Bond issuance and to accomplish the levy of Assessments and the issuance of PID Bonds, which information shall include:

A. Total acreage of residential property, commercial property, open space, multi-family property, non-developable property within the Property for which Assessments are to be levied;

B. Engineers' opinion of probable costs (dated within the last 3 months prior to submission) for all improvements for which Assessments are to be levied;

C. Any required Traffic Impact Analysis improvements for which Assessments are to be levied;

D. Break out of total offsite costs to serve the PID for which Assessments are to be levied;

E. Break out of total oversizing costs of improvements within the PID for which Assessments are to be levied;

F. Breakout of phased costs for all phases versus any major improvement cost within the PID;

G. Assumptions for number of residential lots.

1. Total number of lots by type;

2. Total estimated value per lot;

3. Total estimated value of final home value;

4. The values provided in 1-3 above based on phasing plan/absorption schedule

H. Map of Property

I. Concept Plan

1. With construction phasing identified by map and cost

2. Location of any open space maintained by HOA

3. Total acreage of open space maintained by HOA

4. Map/locations of improvements to be financed by the PID

5. Onsite improvements

6. Offsite improvements

J. Final private costs (not including the public improvement costs) to reach completed lots (i.e., final lot benching, stablilization,etc.)

(iii) The maximum aggregate par amount of the PID Bonds to be issued by the City shall not exceed $8,000,000.

(iv) The Assessments shall have been levied at the amount requested by the Developer up to a maximum "tax rate" for the Assessments not to exceed $0.95 per $100 of assessed value at the time of the levy of the Assessments, based on the Estimated Build Out Value of each lot as determined at the time of the levy of the Assessments. Such "tax rate" applies on an individual assessed parcel basis by lot type based on Estimated Build Out Value, as set forth in the Service and Assessment Plan.

(v) unless otherwise agreed by the Parties, the total assessment value to lien ratio is at least 3:1 at the time of the levy of assessments and the total assessment value to lien ratio of each ("VTL") for a series of PID Bonds for the PID is at least 3:1 at the time of the issuance of PID Bonds; such values shall be confirmed by an appraisal from a licensed MAI appraiser. At the City's sole discretion, the PID Bonds may be issued at a a lower VTL and proceeds of PID Bonds would then be restricted and shall only be disbursed only at a 3:1 lien ratio, and the Indenture may contain a provision for the redemption of PID Bonds from unexpended proceeds after the expiration of three (3) years after issuance of the PID Bonds. If the City agrees to such lower value to lien ratio, the Developer shall provide to the City, if requested, certifications regarding the building and construction of the development for purposes of the City's obligations under Federal tax law. The Developer may request to City Council, in its sole discretion, to levy Assessments or issue PID Bonds at a lower value to lien ratio.

(vi) The Developer or its Affiliates, or another entity that has purchased a portion of the Property for development shall own all property within the PID prior to the levy of Assessments, or have otherwise complied with Section 3.04 herein. The City shall not levy Assessments without a consent to the creation of the PID and the levy of Assessments from each property owner within the area to be assessed by the City.

(vii) No Event of Default by the Developer has occurred or no event has occurred which but for notice, the lapse of time or both, would constitute an Event of Default by the Developer pursuant to this Agreement, except that if an Event of Default has occurred and has been cured by the Developer, it shall not prevent the issuance of PID Bonds by the City;

(viii) The Property must have been annexed into the corporate limits of the City.

(ix) The Public Improvements must have been completed.

(x) The PID Bonds must be marketable by a reputable Underwriter to a reputable purchaser at a reasonable rate of interest as determined by the City's financial advisor.

(xi) PID bonds may not be issued through a third-party conduit and all PID bond issues must be approved by the Texas Attorney General;

(xii) The Developer shall have agreed to any continuing disclosure requirements required by the Underwriter or by the purchasers of the PID Bonds and shall be current in all past continuing disclosure obligations.

(d) In no event shall the Developer be paid and/or reimbursed from PID Bond Proceeds or Assessment revenues for all Public Improvement Project Costs in an amount in excess of the Reimbursement Cap.

Section 3.03. Developer Cash Contribution.

(a) At closing on the PID Bonds intended to fund construction of Public Improvements, if the PID Bond Proceeds are not sufficient to pay the Public Improvement Project Costs for the Phase to which such PID Bond Proceeds relate, the Developer shall be required to provide cash in the amount of the difference between the Public Improvement Costs and the amount of PID Bond Proceeds available and minus any approved Developer expenditures of Public Improvement Project Costs as confirmed and approved by the City or its PID administrator (the "Deficit") as illustrated below:

Total Amount of Public Improvement Project Costs being finance by Bond Proceeds
- PID Bond Proceeds deposited to Project Fund
- Verified and approved Developer expenditures of Public Improvement Project Costs
= Total amount of Deficit

For the Deficit, the Developer, must deposit cash in the amount of Deficit to a designated account under the applicable Indenture from which funds may be drawn to pay the Public Improvement Project Costs. The determination of the amount of the Deficit shall be estimated prior to pricing of the PID Bonds and shall be finalized within five (5) days of pricing of the PID Bonds. Any required cash deposit shall be provided at closing of the applicable series of PID Bonds. No funds shall be disbursed from the Project Fund until the Deficit has been funded as provided herein.

Section 3.04. Apportionment and Levy of Assessments.

(a) The City intends to levy Assessments on property located within the PID in accordance with this Agreement, the Service and Assessment Plan (as updated or amended from time to time), and the Assessment Ordinance on or before the Public Improvement Financing Date. The Assessments, if levied, shall be levied pursuant to either a Reimbursement Agreement or the issuance of PID Bonds, all subject to City Council discretion. The City's apportionment and levy of Assessments shall be made in accordance with the PID Act.

(b) Concurrently with the levy of the Assessments, the Developer and its Affiliates shall execute and deliver a Landowner Consent in the form attached as Exhibit E for all land owned

or controlled by Developer or its Affiliates, or otherwise evidence consent to the creation of the PID and the levy of Assessments therein and shall record evidence and notice of the Assessments in the real property records of Harris County. The City shall not levy Assessments on property within the PID without an executed Landowner Consent from each landowner within the PID whose property is being assessed.

Section 3.05. Transfer of Property. Notwithstanding anything to the contrary contained herein, no sale of property within a Phase of the PID in which Assessments are to be levied, shall occur prior to the City's levy of Assessments in the PID unless the Developer provides the City with an executed consent to the creation of the PID and the levy of Assessments, in a form acceptable to the City with respect to the purchased property. In addition, evidence of any transfer of property in the PID prior to the levy of Assessments on such property shall be provided to the City prior to the levy of Assessments on such property. The City shall require consent of each of the owners of Assessed Property in the PID to the levy of Assessments on each property and to the creation of the PID prior to Assessments being levied on such owner's property. The Developer understands and acknowledges that evidence of land transfer, the execution of the Landowner Consent, appraisal district certificate and property record recording will be required from each Assessed Property Owner in order to levy the Assessments. The Developer shall provide all necessary documentation to the City with respect to any land transfers.

ARTICLE IV

DEVELOPMENT

Section 4.01. Full Compliance with City Standards.

Development and use of the Total Property by Developer and its Affiliates, including, without limitation, the construction, installation, maintenance, repair, and replacement of all buildings and all other improvements and facilities of any kind whatsoever on and within the Total Property, shall be in compliance with the then current applicable City Regulations.

Section 4.02. Planned Development. As consideration for the City's obligations under this Agreement and in consideration for the reimbursement of the Public Improvement Project Costs, the Developer agrees that its development and use of the Total Property, including, without limitation, the construction, installation, maintenance, repair and replacement of all buildings and all other improvements and facilities of any kind whatsoever on and within the Total Property, shall be in compliance with the City Regulations, and the PD. Upon approval by the City of an updated PD, this Agreement shall be deemed amended to include such approved updated items.

Section 4.03. Property Acquisition. With the exception of the acquisition of easement rights as set forth in Article VI hereof, the Parties acknowledge that the Developer is responsible for the acquisition of certain off-site property rights and interests to allow the Public Improvements to be constructed to serve the Property. The City agrees to allow Developer the use of any City easements, rights of way or owned property as is reasonably necessary for the construction and installation of the Public Improvements. Developer shall be responsible for funding all reasonable and necessary legal proceeding/litigation costs, attorney's fees and related expenses, and appraiser and expert witness fees actually incurred by the City in the exercise of its eminent domain powers,

such costs to be paid by the Developer pursuant to the Professional Services Agreement prior to any taking of land by the City.

Section 4.04. Conflicts. In the event of any conflict between this Agreement and any City Regulation, the City Regulations shall control.

Section 4.05. Fees. Development of the Property shall be subject to payment to the City of all fees charged pursuant to the City Regulations and the City's master fee schedule, including Impact Fees.

Section 4.06. Zoning. The Developer consents and agrees to the zoning of the Property pursuant to the planned development process and that such zoning shall be consistent with the PD.

Section 4.07. Excluded Street Development. (a) Except as specified below, the Developer shall not be responsible for paving Medical Complex Boulevard to and through and will only be responsible for paving the portion of Medical Complex Boulevard located within the Property, to serve the development. The limits of Medical Complex Boulevard shall connect Hufsmith Kohrville Road to the easternmost ultimate intersection and provide temporary pavement for a turnaround, access to the proposed amenities, as reflected in Exhibit B; provided, however, that the Developer will construct the drainage with capacity for Medical Complex Boulevard for full build-out of the road based upon the City's requirements. If, when Medical Complex Boulevard is fully constructed to and through, the City determines that the drainage improvements were not constructed to handle full build-out of Medical Complex Boulevard, the Developer shall be required to remediate the drainage improvements to the City's standards for the fully constructed road. The Tomball Economic Development Corporation (the "EDC") will fund the portion of Medical Complex extending thru the commercial portion and the Developer will be responsible to fund and construct matching footage funded by the EDC.

(b) Developer shall not be responsible for connecting the Total Property by pavement or, utility, or any other manner with Country Club Green South, as reflected in Exhibit B.

ARTICLE V

ANNEXATION

Section 5.01. Annexation of Land into the City. (a) Following (i) the City's creation of the PID and, (ii) approval of this Agreement, the Developer shall petition the City to annex the portion of the Total Property currently within the City's ETJ into the corporate limits of the City. (the "Annexation Petition") The City shall annex such property described in the Annexation Petition pursuant to ordinance in accordance with Applicable Law (the "Annexation Ordinance")

(b) In the event the City proposes to zone the Total Property inconsistent with the provisions of this Agreement, the City acknowledges that Developer may withdraw such petition to annex the Total Property, and Developer immediately shall petition the City to dissolve the PID.

Section 5.02. Zoning. In conjunction with the submittal of the Annexation Petition, the Developer shall deliver an application for the zoning of the Property substantially consistent with the Planned Development attached hereto as Exhibit "B" it is in compliance with City Regulations

(the "Zoning Application"). The Annexation Ordinance and the zoning ordinance shall be set for the same City Council agenda.

Section 5.03. CCN Release. The Developer shall cause the Total Property to be released from the CCN of Aqua Texas no later than the date upon which the Annexation Ordinance is considered.

ARTICLE VI

CONSTRUCTION OF THE PUBLIC IMPROVEMENTS

Section 6.01. Designation of Construction Manager, Construction Engineers.

(a) Prior to construction of any Public Improvement, Developer shall make, or cause to be made, application for any necessary permits and approvals required by City and any applicable Governmental Authority to be issued for the construction of the Public Improvements and shall obligate each general contractor, architect, and consultants who work on the Public Improvements to obtain all applicable permits, licenses or approvals as required by Applicable Law. The Developer shall require or cause the design, inspection and supervision of the construction of the Public Improvements to be undertaken in accordance with City Regulations, and Applicable Law.

(b) The Developer shall design and construct or cause the design and construction of the Public Improvements, together with and including the acquisition, at its sole costs, of any and all easements or fee simple title to such land necessary to provide for and accommodate the Public Improvements.

(c) Developer shall comply, or shall require its contractors to comply, with all local and state laws and regulations, including the City Regulations, regarding the design and construction of the Public Improvements applicable to similar facilities constructed by City, including, but not limited to, the requirement for payment, performance and two- year maintenance bonds for the Public Improvements at 100%.

(d) Upon Completion of Construction of the Public Improvements, Developer shall provide City with a final cost summary of all Public Improvement Project Costs incurred and paid associated with the construction of that portion of the Public Improvements and provide proof that all amounts owing to contractors and subcontractors have been paid in full evidenced by the "all bills paid" affidavits and lien releases executed by Developer and/or its contractors with regard to that portion of the Public Improvements. Evidence of payment to the applicable contractors and subcontractors shall be provided prior to the reimbursement of the costs of any portion of the Public Improvements.

(e) Developer agrees to require the contractors and subcontractors which construct the Public Improvements to provide payment, performance and two-year maintenance bonds in forms reasonably satisfactory to the City Attorney. Any surety company through which a bond is written shall be a surety company duly authorized to do business in the State of Texas, provided that the

City Attorney has the right to reasonably reject any surety company regardless of such company's authorization to do business in Texas. Evidence of payment and performance bonds shall be delivered to the City prior to Commencement of Construction of any such Public Improvements.

(f) Unless otherwise approved in writing by the City, all Public Improvements shall be constructed and dedicated to the City in accordance with City Regulations, and Applicable Law. The Public Improvements within each Phase shall reach Completion of Construction by the Public Improvement Completion Date.

(g) The Developer shall dedicate or convey by final plat or separate instrument, without cost to the City and in accordance with the Applicable Law, all property rights (which may be an easement) necessary for the construction, operation, and maintenance of the road, water, drainage, and sewer Public Improvements, at the completion of the Public Improvements and acceptance by the City.

Section 6.02. Construction Agreements. The Construction Agreements shall be let in the name of the Developer. The Developer's engineers shall prepare and provide, or cause the preparation and provision of all contract specifications and necessary related documents. The Developer shall provide all construction documents for the Public Improvements and shall acknowledge that the City has no obligations and liabilities thereunder. The Developer shall include a provision in the construction documents for the Public Improvements that the contractor will indemnify the City and its officers and employees against any costs or liabilities thereunder, as follows:

CITY OF TOMBALL, TEXAS ("CITY") SHALL NOT BE LIABLE OR RESPONSIBLE FOR, AND SHALL BE INDEMNIFIED, HELD HARMLESS AND RELEASED BY CONTRACTOR FROM AND AGAINST ANY AND ALL SUITS, ACTIONS, LOSSES, DAMAGES, CLAIMS, OR LIABILITY OF ANY CHARACTER, TYPE, OR DESCRIPTION, INCLUDING ALL EXPENSES OF LITIGATION, COURT COSTS, AND ATTORNEY'S FEES, FOR ANY LOSS, DAMAGE, INJURY OF ANY KIND OR CHARTER, INCLUDING DEATH, TO ANY PERSON, ENTITY, OR PROPERTY ARISING OUT OF OR OCCASIONED BY, DIRECTLY OR INDIRECTLY, THE PERFORMANCE OF CONTRACTOR UNDER THIS CONTRACT, WITHOUT, HOWEVER, WAIVING ANY GOVERNMENTAL IMMUNITY AVAILABLE TO THE CITY UNDER TEXAS LAW AND WITHOUT WAIVING ANY DEFENSES OF THE PARTIES UNDER TEXAS LAW. THE PROVISIONS OF THIS INDEMNIFICATION ARE SOLELY FOR THE BENEFIT OF THE PARTIES HERETO AND NOT INTENDED TO CREATE OR GRANT ANY RIGHTS, CONTRACTUAL OR OTHERWISE, TO ANY OTHER PERSON OR ENTITY. IT IS THE EXPRESSED INTENT OF THE PARTIES TO THIS CONTRACT THAT THE INDEMNITY PROVIDED FOR IN THIS CONTRACT IS AN INDEMNITY EXTENDED BY CONTRACTOR TO INDEMNIFY AND PROTECT CITY FROM THE CONSEQUENCES OF

THE CONTRACTOR'S ACTS, INCLUDING NEGLIGENCE, WHETHER SUCH ACTS OR NEGLIGENCE IS THE SOLE OR PARTIAL CAUSE OF ANY SUCH INJURY, DEATH, OR DAMAGE. CONTRACTOR AGREES TO INDEMNIFY, DEFEND, AND SAVE CITY HARMLESS FROM ALL CLAIMS GROWING OUT OF ANY DEMANDS OF SUBCONTRACTORS, LABORERS, WORKMEN, MECHANICS, MATERIALMEN, OR SUPPLIERS OF MACHINERY AND PARTS THEREOF, EQUIPMENT, POWER TOOLS, OR SUPPLIES OBTAINED IN FURTHERANCE OF THE PERFORMANCE OF THIS CONTRACT

The Developer or its designee shall administer the contracts. The Public Improvement Project Costs, which are estimated on Exhibit C, shall be (i) paid by the Developer or caused to be paid by the Developer, and reimbursed by the Assessments levied pursuant to the terms of a Reimbursement Agreement.

(a) The following requirements apply to Construction Agreements for Public Improvements:

(i) Plans and specifications shall comply with all Applicable Law, the and City Regulations and all Plans and Specification shall be reviewed and approved by the City prior to the issuance of permits. The City shall have thirty (30) business days from its receipt of the first submittal of the Plans and Specifications to approve or deny the Plans and Specifications or to provide comments to the submitter. If any approved Plans and Specifications are amended or supplemented, the City shall have thirty (30) business days from its receipt of such amended or supplemented Plans and Specifications to approve or deny the Plans and Specification or provide comments back to the submitter. Any written City approval or denial must be based on compliance with applicable City Regulations or other regulatory agencies that have jurisdiction over the Development.

(ii) Each Construction Agreement shall provide that the Contractor is an independent contractor, independent of and not the agent of the City and that the Contractor is responsible for retaining, and shall retain, the services of necessary and appropriate architects and engineers; and

(iii) Each Construction Agreement for improvements not yet under construction shall provide that the Contractor shall indemnify the City, its officers and employees for any costs or liabilities thereunder and for the negligent acts or omissions of the Contractor.

(b) <u>City's Role</u>.

The City shall have no responsibility for the cost of planning, design, engineering construction, furnishing/equipping the Public Improvements (before, during or after construction) except to the extent of the reimbursement the Public Improvements Project Costs as set forth in this Agreement. The Developer will not hold the City responsible for any costs of the Public Improvements other than the reimbursements described in this Agreement. The City shall have no liability for any claims that may arise out of design or construction of the Public Improvements,

and the Developer shall cause all of its contractors, architects, engineers, and consultants to agree in writing that they will look solely to the Developer, not to the City, for payment of all costs and valid claims associated with construction of the Public Improvements.

Section 6.03. Project Scope Verification.

(a) The Developer will from time to time, as reasonably requested by the City Representative, verify to the City Representative that the Public Improvements are being constructed substantially in accordance with the Plans and Specifications approved by the City. To the extent the City has concerns about such verification that cannot be answered by the Developer, to the City's reasonable satisfaction, the Developer will cause the appropriate architect, engineer or general contractor to consult with the Developer and the City regarding such concerns.

Section 6.04. Joint Cooperation; Access for Planning and Development.

During the planning, design, development and construction of the Public Improvements, the parties agree to cooperate and coordinate with each other, and to assign appropriate, qualified personnel to this project. The City staff will make reasonable efforts to accommodate urgent or emergency requests during construction. In order to facilitate a timely review process, the Developer shall cause the architect, engineer and other design professionals to attend City meetings if requested by the City.

Section 6.05. City Not Responsible.

By performing the functions described in this Article, the City shall not, and shall not be deemed to, assume the obligations or responsibilities of the Developer, whose obligations under this Agreement and under Applicable Law shall not be affected by the City's exercise of the functions described in this Article. The City's review of any Plans and Specifications is solely for the City's own purposes, and the City does not make any representation or warranty concerning the appropriateness of any such Plans and Specifications for any purpose. The City's approval of (or failure to disapprove) any such Plans and Specifications, including the Site Plan, submitted with such Plans and Specifications and any revisions thereto, shall not render the City liable for same, and the Developer assumes and shall be responsible for any and all claims arising out of or from the use of such Plans and Specifications.

Section 6.06. Construction Standards and Inspection.

The Public Improvements will be installed within the public right-of-way or in easements granted to the City. Such easements may be granted at the time of final platting in the final plat or by separate instrument. The Public Improvements shall be constructed and inspected in accordance with applicable state law, and City Regulations, and all other applicable development requirements, including those imposed by any other governing body or entity with jurisdiction over the Public Improvements, and this Agreement, provided, however, that if there is any conflict, the regulations of the governing body or entity with jurisdiction over the Public Improvement being constructed shall control.

Section 6.07. Public Improvements to be Owned by the City – Title Evidence.

The Developer shall furnish to the City a preliminary title report for land with respect to the Public Improvements, including any related rights-of-way, easements, and open spaces if any, to be acquired and accepted by the City or by any other governmental entity from the Developer and not previously dedicated or otherwise conveyed to the City, for review and approval at least 30 calendar days prior to the transfer of title of a Public Improvement to the City. The City Representative shall approve the preliminary title report unless it reveals a matter which, in the reasonable judgment of the City, could materially affect the City's use and enjoyment of any part of the property or easement covered by the preliminary title report. In the exercise of reasonable judgment, the City Representative shall review the title report using their normal and customary review process for an easement and shall only object to matters in the title report if they would do so for any other easement granted directly to the City or to be obtained by the City for a public improvement. In the event the City Representative does not approve the preliminary title report, the City shall not be obligated to accept title to the Public Improvement until the Developer has cured such objections to title to the satisfaction of the City Representative.

Section 6.08. Public Improvement Constructed on City Land or the Property.

If the Public Improvement is on land owned by the City, the City hereby grants to the Developer a temporary easement to enter upon such land for purposes related to construction (and maintenance pending acquisition and acceptance) of the Public Improvement. If the Public Improvement is on land owned by the Developer, the Developer shall dedicate easements by plat or shall execute and deliver to the City such access and maintenance easements as the City may reasonably require in recordable form, and the Developer hereby grants to the City a permanent access and maintenance easement by plat or separate instrument to enter upon such land for purposes related to inspection and maintenance of the Public Improvement. The grant of the permanent easement shall not relieve the Developer of any obligation to grant the City title to property and/or easements related to the Public Improvement as required by this Agreement or as should in the City's reasonable judgment be granted to provide for convenient access to and routine and emergency maintenance of such Public Improvement. The provisions for inspection and acceptance of such Public Improvement otherwise provided herein shall apply.

Section 6.09. Additional Requirements.

In connection with the design and construction of the Public Improvements, the Developer shall take or cause the following entities or persons to take the following actions and to undertake the following responsibilities:

(a) The Developer shall provide to the City electronic copies of the Plans and Specifications for the Public Improvements (including revisions) as such Plans and Specifications are currently in existence and as completed after the date hereof and shall provide the City one complete set of record drawings (in electronic format) for the Public Improvements, in accordance with Applicable Law;

(b) In accordance with the requirements between the Developer and the City with regard to the development and construction of the Public Improvements, the Developer or such

person selected by and contracting with the Developer shall provide the City with a copy of the detailed construction schedule outlining the major items of work of each major construction contractor, and any revisions to such schedule;

(c) The Developer shall provide construction documents, including the Plans and Specifications to the City, signed and sealed by one or more registered professional architects or engineers licensed in the State of Texas at the time the construction documents are submitted to the City for approval;

(d) The Developer shall provide the City with reasonable advance notice of any scheduled construction meetings as set forth in the construction contracts for the Public Improvements, and shall permit the City to attend and observe such meetings as the City so chooses in order to monitor the project;

(e) The Developer or any general contractor shall comply with, and shall require that its agents and subcontractors comply with, all Applicable Laws regarding the use, removal, storage, transportation, disposal and remediation of hazardous materials;

(f) The Developer or any general contractor shall notify and obtain the City's approval for all field changes that directly result in material changes to the portion of the Plans and Specifications for the Public Improvements that describe the connection of such improvements with City streets, storm sewers and utilities;

(g) Upon notice from the City, the Developer shall or shall cause any general contractor to promptly repair, restore or correct, on a commercially reasonable basis, all damage caused by the general contractor or its subcontractors to property or facilities of the City during construction of the Public Improvements and to reimburse the City for out-of-pocket costs actually incurred by the City that are directly related to the City's necessary emergency repairs of such damage;

(h) Upon notice from the City, the Developer shall promptly cause the correction of defective work and shall cause such work to be corrected in accordance with the construction contracts for the Public Improvements and with City Regulations;

(i) If the Developer performs any soils, construction and materials testing during construction of the Public Improvements, the Developer shall make available to the City copies of the results of all such tests; and

(j) If any of the foregoing entities or persons shall fail in a material respect to perform any of its obligations described above (or elsewhere under this Agreement), the Developer shall use its good faith efforts to enforce such obligations against such entities or persons, or the Developer may cure any material failure of performance as provided herein; and

(k) The Developer shall provide any other information or documentation or services required by City Regulations; and

(l) The Developer shall allow the City Representative to conduct a reasonable pre-final and final inspection of the Public Improvements. Upon acceptance by the City of the Public

Improvements, the City shall become responsible for the maintenance of the Public Improvements and making any bond or warranty claim, if applicable.

Section 6.10. Revisions to Scope and Cost of Public Improvements.

(a) The Public Improvement Project Costs, as set forth in Exhibit C, may be modified or amended from time to time upon the approval of the City Representative, provided that the total cost of the Public Improvements shall not exceed such amounts as set forth in the applicable SAP or the Project and Financing Plan. Should the Public Improvements be amended by the City Council in a SAP pursuant to the PID Act, the City Representative shall be authorized to make corresponding changes to the applicable Exhibits attached hereto and shall keep official record of such amendments.

(b) Should the Public Improvement Project Costs exceed the amounts set forth in the SAP, the Developer shall be responsible for such excess costs and such excess costs shall not be reimbursed by the City. The City shall only reimburse the Public Improvement Project Costs in the amounts set forth in the SAP.

Section 6.11. City Police Powers.

The Developer recognizes the authority of the City pursuant to the Texas Constitution together with the City's ordinances to exercise its police powers in accordance with applicable laws to protect the public health, safety, and welfare. The City retains its police powers over the Developer's or its general contractor's construction activities on or at the Property, and the Developer recognizes the City's authority to take appropriate enforcement action in accordance with Applicable Law to provide such protection. No lawful action taken by the City pursuant to these police powers shall subject the City to any liability under this Agreement, including without limitation liability for costs incurred by any general contractor or the Developer, and as between the Developer and the City, any such costs shall be the sole responsibility of the Developer and any of its general contractors and shall not be reimbursable from PID Bond Proceeds.

Section 6.12. Title and Mechanic's Liens.

(a) Title. The Developer agrees that the Public Improvements shall not have a lien or cloud on title upon their dedication to and acceptance by the City.

(i) Mechanic's Liens. Developer shall not create nor allow or permit any liens, encumbrances, or charges of any kind whatsoever against the Public Improvements arising from any work performed by any contractor by or on behalf of the Developer. The Developer shall not permit any claim of lien made by any mechanic, materialman, laborer, or other similar liens to stand against the Public Improvements for work or materials furnished to the Developer in connection with any construction, improvements, renovation, maintenance or repair thereof made by the Developer or any contractor, agent or representative of the Developer. The Developer shall cause any such claim of lien to be fully discharged prior to the earlier of (i) the date of acceptance of the applicable Public Improvement by the City of the related Public Improvement or (ii) 180 days.

Section 6.13. City Consents.

Any consent or approval by or on behalf of the City required in connection with the design, construction, improvement or replacement of the Public Improvements or otherwise under this Agreement shall not be unreasonably withheld, delayed, or conditioned. Any review associated with any determination to give or withhold any such consent or approval shall be conducted in a timely and expeditious manner with due regard to the cost to the Developer associated with delay.

Section 6.14. Right of the City to Make Inspection.

(a) At any time during the construction of the Public Improvements, the City shall have the right to enter the Property for the purpose of inspection of the progress of construction on the Public Improvements; provided, however, the City Representative shall comply with reasonable restrictions generally applicable to all visitors to the Development that are imposed by the Developer or its General Contractor or subcontractors. The Developer shall pay the standard City inspection fees.

(b) Inspection of the construction of all Public Improvements shall be by the City Representative or his/her designee. In accordance with Sections 6.06, the Developer shall pay the inspection fee which may be included as a Public Improvement Project Cost.

(c) City may enter the Property in accordance with customary City procedures and Applicable Law to make any repairs or perform any maintenance of Public Improvements which the City has accepted for maintenance. If, during construction of the Public Improvements, the Developer is in default under this Agreement beyond any applicable cure period or in the event of an emergency which is not being timely addressed, the City may enter the Property to make any repairs to the Public Improvements that have not been accepted for maintenance by the City, of every kind or nature, which the Developer is obligated under this Agreement to repair or maintain but which the Developer has failed to perform after reasonable notice (other than in the case of an emergency in which notice is impossible or impractical). The Developer shall be obligated to reimburse the City the reasonable costs incurred by the City for any such repairs. Nothing contained in this paragraph shall be deemed to impose on the City any obligation to actually make repairs or alterations on behalf of the Developer.

Section 6.15. Competitive Bidding. The construction of the Public Improvements (which are funded from Assessments) is anticipated to be exempt from competitive bidding pursuant to Texas Local Government Code Section 252.022(a)(9). In the event that the actual costs of the Public Improvement do not meet the parameters for exemption from the competitive bid

requirement, then either competitive bidding or alternative delivery method may be utilized by the City as allowed by Applicable Law.

ARTICLE VII

PAYMENT OF PUBLIC IMPROVEMENTS

Section 7.01. Overall Requirements.

(a) The City shall not be obligated to provide funds for any Public Improvement except from the proceeds of the PID Bonds or from Assessments pursuant to a Reimbursement Agreement. The City makes no warranty, either express or implied, that the proceeds of the PID Bonds available for reimbursement of the Public Improvement Project Costs will be sufficient for the construction or acquisition of all of the Public Improvements. Any costs of the Public Improvements in excess of the available PID Bond Proceeds or Assessments pursuant to a Reimbursement Agreement, shall not be paid or reimbursed by the City. The Developer acknowledges and agrees that any lack of availability of monies in the Project Funds established under the Indentures to reimburse the costs of the Public Improvements shall in no way diminish any obligation of the Developer with respect to the construction of or contributions for the Public Improvements required by this Agreement, or any other agreement to which the Developer is a party, or any governmental approval to which the Developer or Property is subject.

(b) Upon written acceptance of a Public Improvement, and subject to any applicable maintenance-bond period, the City or another governmental entity, as designated by the City or another entity as designated by the City pursuant to an agreement, shall be responsible for all operation and maintenance of such Public Improvement, including all costs thereof and relating thereto.

(c) The City's obligation with respect to the reimbursement from Assessments of the Public Improvement Project Costs as finally set forth in the Service and Assessment Plan, shall be limited to the lower of Actual Costs or the available PID Bond Proceeds or available Assessment revenues, and shall be reimbursed solely from amounts on deposit in the Project Funds from the sale of the PID Bonds as provided herein and in the Indentures, or from Assessments collected for the reimbursement or payment of such costs pursuant to Reimbursement Agreement. The Developer agrees and acknowledges that it is responsible for all costs and all expenses related to the Public Improvements in excess of the Reimbursement Cap.

(d) The City shall have no responsibility whatsoever to the Developer with respect to the investment of any funds held in the Project Fund by the Trustee under the provisions of the Indenture, including any loss of all or a portion of the principal invested or any penalty for liquidation of an investment. Any such loss may diminish the amounts available in the Project Fund to reimburse the Public Improvement Project Costs in the PID. The obligation of Developer to pay the Assessments is not in any way dependent on the availability of amounts in the Project Fund to pay for all or any portion of the Public Improvements Project Costs hereunder.

Section 7.02. Remaining Funds after Completion of a Public Improvement.

The Service and Assessment Plan shall be updated or amended, as applicable, such that the costs of the Public Improvements in the SAP match the costs set forth in the applicable construction contracts; provided that such adjustment of the SAP does not affect the benefit analysis. Then, after the Completion of Construction of a Public Improvement payment or reimbursement for such Public Improvement, there are Cost Underruns, any remaining budgeted cost(s) may be available to reimburse Cost Overruns on any other Public Improvement with the approval of the City Representative, such approval not to be unreasonably withheld, at completion of the Public Improvements and provided that all Public Improvements, as set forth in the Service and Assessment Plan, are undertaken at least in part. The elimination of a category of Public Improvements as set forth in the Service and Assessment Plan will require an amendment to the Service and Assessment Plan. Upon receipt of all acceptance letters from the City for the Public Improvements within an improvement category as set forth in the Service and Assessment Plan, any Underruns from that category may be released to reimburse for Overruns in another improvement category, as approved by the City.

Section 7.03. Payment Process for Public Improvements.

(a) The City shall authorize reimbursement of the Public Improvement Project Costs from (i) PID Bond Proceeds or from (ii) Assessments collected in the PID as set forth in 7.04 below. The Developer shall submit a Payment Certificate to the City for Public Improvement Project Costs. The form of the Payment Certificate is set forth in Exhibit F as may be modified by the Indenture or Reimbursement Agreement. The City and PID administrator shall review the sufficiency of each Payment Certificate with respect to compliance with this Agreement, compliance with the City Regulations ,the PD and Applicable Law, and compliance with the applicable SAP and Plans and Specifications within thirty (30) business days of receipt from the Developer. After review, the City shall send notice to the Developer of what is approved in each Payment Certificate and what is denied and will notify Developer of additional documentation needed. Approved costs in a Payment Certificate shall be forwarded for payment in a timely manner and the City will work with the Developer to resolve amounts not approved in each Payment Certificate.

(b) The City shall reimburse the Public Project Costs as set forth in Exhibit C and the SAP, from funds available pursuant to the applicable Indenture or Reimbursement Agreement.

(c) Reimbursement to the Developer and the City for administrative costs relating to the creation of the PID, the levy of assessments and issuance of the PID Bonds may be distributed at closing of the applicable series of PID Bonds pursuant to a Closing Disbursement Request, in the form attached as Exhibit G.

Section 7.04. Public Improvements Reimbursement from Assessment Fund in the Event of a Non-Issuance of PID Bonds.

(a) The reimbursement for costs of the Public Improvements set forth in Exhibit C and in the Service and Assessments Plan may be made on an annual basis from Assessments levied by the City for the Public Improvements pursuant to Chapter 372, Texas Local Government Code, as

amended, if requested by the Developer and agreed to by the City. Such reimbursement shall be made pursuant to the terms and provisions of one or more Reimbursement Agreements. Such Reimbursement Agreements shall set forth the terms of the annual reimbursement for the costs of the Public Improvements.

(b) Reimbursement or payment of the costs of the Public Improvements shall only be made from the levy of Assessments within the PID as set forth herein.

(c) The term, manner and place of payment or reimbursement to the Developer under this Section shall be set forth in the Reimbursement Agreement.

(d) Reimbursement or payment shall be made only for the costs of the Public Improvements as set forth in this Agreement, the Service and Assessment Plan or in the Reimbursement Agreement, as approved by the City. Any additional public improvements other than the Public Improvements constructed by the Developer and dedicated to the City, shall not be subject to payment or reimbursement under the terms of this Agreement.

(e) Notwithstanding the above, if the land in each Phase of development is not annexed into the City and removed from the applicable MUD, the City shall not levy Assessments on such land.

Section 7.05. Rights to Audit.

(a) The City shall have the right to audit, upon reasonable notice and at the City's own expense, records of the Developer with respect to the expenditure of funds to pay Public Improvement Project Costs. Upon written request by the City, the Developer shall give the City or its agent, access to those certain records controlled by, or in the direct or indirect possession of, the Developer (other than records subject to legitimate claims of attorney-client privilege) with respect to the expenditure of Public Improvement Project Costs, and permit the City to review such records in connection with conducting a reasonable audit of such fund and account. The Developer shall make these records available to the City electronically or at a location that is reasonably convenient for City staff.

(b) The City and the Developer shall reasonably cooperate with the assigned independent auditors (internal or external) in this regard, and shall retain and maintain all such records for at least 2 years from the date of Completion of Construction of the Public Improvements. All audits must be diligently conducted and once begun, no records pertaining to such audit shall be destroyed until such audit is completed.

ARTICLE VIII

REPRESENTATIONS AND WARRANTIES

Section 8.01. Representations and Warranties of City.

The City makes the following representation and warranty for the benefit of the Developer:

(a) Due Authority; No Conflict. The City represents and warrants that this Agreement has been approved by official action by the City Council of the City in accordance with all applicable public notice requirements (including, but not limited to, notices required by the Texas Open Meetings Act). The City has all requisite power and authority to execute this Agreement and to carry out its obligations hereunder and the transactions contemplated hereby. This Agreement has been, and the documents contemplated hereby will be, duly executed and delivered by the City and constitute legal, valid and binding obligations enforceable against the City in accordance with the terms subject to principles of governmental immunity and the enforcement of equitable rights. The consummation by the City of the transactions contemplated hereby is not in violation of or in conflict with, nor does it constitute a default under, any of the terms of any agreement or instrument to which the City is a Party, or by which the City is bound, or of any provision of any applicable law, ordinance, rule or regulation of any governmental authority or of any provision of any applicable order, judgment or decree of any court, arbitrator or governmental authority.

(b) Due Authority; No Litigation. No litigation is pending or, to the knowledge of the City, threatened in any court to restrain or enjoin the construction of or the Public Improvements or the City's payment and reimbursement obligations under this Agreement, or otherwise contesting the powers of the City or the authorization of this Agreement or any agreements contemplated herein.

Section 8.02. Representations and Warranties of Developer.

The Developer makes the following representations, warranties and covenants for the benefit of the City:

(a) Due Organization and Ownership. The Developer is a Texas limited liability company validly existing under the laws of the State of Texas and is duly qualified to do business in the State of Texas; and that the person executing this Agreement on behalf of it is authorized to enter into this Agreement.

(b) Due Authority: No Conflict. The Developer has all requisite power and authority to execute and deliver this Agreement and to carry out its obligations hereunder and the transactions contemplated hereby. This Agreement has been, and the documents contemplated hereby will be, duly executed and delivered by the Developer and constitute the Developer's legal, valid and binding obligations enforceable against the Developer in accordance with their terms. The consummation by the Developer of the transactions contemplated hereby is not in violation of or in conflict with, nor does it constitute a default under, any term or provision of the organizational documents of the Developer, or any of the terms of any agreement or instrument to which the Developer is a Party, or by which the Developer is bound, or of any provision of any applicable law, ordinance, rule or regulation of any governmental authority or of any provision of any applicable order, judgment or decree of any court, arbitrator or governmental authority.

(c) Consents. No consent, approval, order or authorization of, or declaration or filing with any governmental authority is required on the part of the Developer in connection with the execution and delivery of this Agreement or for the performance of the transactions herein contemplated by the respective Parties hereto.

(d) Litigation/Proceedings. To the best knowledge of the Developer, after reasonable inquiry, there are no pending or, to the best knowledge of the Developer, threatened, judicial, municipal or administrative proceedings, consent decree or, judgments which might affect the Developer's ability to consummate the transaction contemplated hereby, nor is there a preliminary or permanent injunction or other order, decree, or ruling issued by a governmental entity, and there is no statute, rule, regulation, or executive order promulgated or enacted by a governmental entity, that is in effect which restrains, enjoins, prohibits, or otherwise makes illegal the consummation of the transactions contemplated by this Agreement.

(e) Legal Proceedings. There is no action, proceeding, inquiry or investigation, at law or in equity, before any court, arbitrator, governmental or other board or official, pending or, to the knowledge of the Developer, threatened against or affecting the Developer, any of the principals of the Developer and any key person or their respective Affiliates and representatives which the outcome of which would (a) materially and adversely affect the validity or enforceability of, or the authority or ability of the Developer under, this Agreement to perform its obligations under this Agreement, or (b) have a material and adverse effect on the consolidated financial condition or results of operations of the Developer or on the ability of the Developer to conduct its business as presently conducted or as proposed or contemplated to be conducted.

ARTICLE IX

MAINTENANCE OF CERTAIN IMPROVEMENTS

Section 9.01. Mandatory Home Owners' Association.

(a) The Developer will create a mandatory homeowners' association ("HOA") over the portion of the Property being developed as single family homes ("the "Single Family Property"), which HOA, through its conditions and restrictions filed of record in the property records of Harris County, shall be required to assess and collect from owners annual fees in an amount calculated to maintain the open spaces, common areas, right-of-way irrigation systems, raised medians and other right-of-way landscaping, detention areas, drainage areas, screening walls, trails, lawns, landscaped entrances to the Single Family Property and any other common improvements or appurtenances (the "HOA Maintained Improvements"). Maintenance of any HOA Maintained Improvements on land owned by the City shall be pursuant to a maintenance agreement between the HOA and the City (the "HOA Maintenance Agreement").

(b) The Developer and the HOA shall maintain and operate any open spaces, nature trails, amenity center, common areas, landscaping, detention ponds, screening walls, development signage and any other common improvements or appurtenances within the Property that are not maintained or operated by the City. For any improvements financed by the PID, the City and the Developer (or the HOA) must enter into an agreement for such maintenance.

(c) While the Parties anticipate that the HOA established to maintain and operate the HOA Maintained Improvements, will adequately perform such duties, in the event that the City determines that the HOA is not adequately performing the duties for which it was created, which non-performance shall be evidenced by violations of the HOA Maintenance Agreement, applicable deed restrictions and/or applicable City ordinances, the City reserves the right to levy an

assessment each year equal to the actual costs of operating and maintaining the HOA Maintained Improvements that are owned by the City. The City agrees that it will not levy such assessments without first giving the HOA written notice of the deficiencies and providing the HOA with sixty (60) days in which to cure the deficiencies.

(d) Covenants, conditions and restrictions for the HOA must be filed and executed before any certificates of occupancy are issued within the Property.

ARTICLE X

TERMINATION EVENTS

Section 10.01. Developer Termination Events.

(a) The Developer may terminate this Agreement (i) upon an uncured Event of Default by the City, (ii) if the City does not levy assessments on the Property by the Public Improvement Financing Date, (iii) the City does not create the PID with thirty (30) days of approval of this Agreement, or (iv) the Developer withdraws its petition for Annexation pursuant to Section 5.01(b).

Section 10.02. City Termination Events.

(a) The City may terminate this Agreement and any Reimbursement Agreement, upon an uncured Event of Default by the Developer pursuant to Article XV herein.

(b) The City may terminate this Agreement and any Reimbursement Agreement, if Commencement of Construction of the private horizontal improvements within the Development has not occurred within three (3) years of the Effective Date.

(c) The City may terminate this Agreement and any Reimbursement Agreement if the Annexation Petition is not submitted within thirty (30) days after the approval of the Resolution creating the PID.

(d) The City may terminate this Agreement and any Reimbursement Agreement if at any time the Public Improvements do not reach the Public Improvement Completion Date, as may have been extended pursuant to the terms of this Agreement.

(e) The City may terminate this Agreement and any Reimbursement Agreement if Assessments are not levied by the Public Improvement Financing Date.

Section 10.03. Termination Procedure.

If either Party determines that it wishes to terminate this Agreement pursuant to this Article, such Party must deliver a written notice to the other Party specifying in reasonable detail the basis for such termination and electing to terminate this Agreement. Upon such a termination, the Parties hereto shall have no duty or obligation one to the other under this Agreement, with the exception of any of Developer's Public Improvement Project Costs that were previously advanced or incurred as of the date of termination, provided that a Payment Certificate for such Public

Improvement Project Costs is submitted within ninety (90) days of the termination and is approved by the City pursuant to its normal and usual process for approving such Payment Certificate. The City must approve such Payment Certificate within thirty (30) days or submit to the Developer its objections/issues with such Payment Certificate and reasonably consult with the Developer to cure any insufficiencies in the Payment Certificate within an additional thirty (30) days.

Section 10.04. City Actions Upon Termination.

Upon termination the Developer shall have no claim or right to any further payments for Public Improvements Project Costs pursuant to this except that, (i) any Public Improvements completed and accepted by the City or (ii) Public Improvement Project Costs submitted pursuant to a Payment Certificate and approved by the City shall still be subject to reimbursement.

ARTICLE XI

TERM

This Agreement shall terminate upon the earlier of (i) the expiration of twenty (20) years from the Effective Date, (ii) the date on which the City and the Developer discharge all of their obligations hereunder, including Completion of Construction of the Public Improvements or payment or reimbursement of the Public Improvement Project Costs pursuant to this Agreement (up to the Reimbursement Cap) (iii) an Event of Default under Article XII herein or (ii) the occurrence of a termination event under Article X.

ARTICLE XII

DEFAULT AND REMEDIES

Section 12.01. Developer Default.

Each of the following events shall be an "Event of Default" by the Developer under this Agreement:

(a) The Developer shall fail to pay to the City any monetary sum hereby required of it as and when the same shall become due and payable and shall not cure such default within thirty (30) calendar days after the later of the date on which written notice thereof is given by the City to the Developer, as provided in this Agreement. The Developer shall fail in any material respect to maintain any of the insurance or bonds required by this Agreement; provided, however, that if a contractor fails to maintain any of the insurance or bonds required by this Agreement, the Developer shall have thirty (30) calendar days to cure.

(b) The Developer shall fail to comply in any material respect with any term, provision or covenant of this Agreement (other than the payment of money to the City), and shall not cure such failure within ninety (90) calendar days after written notice thereof is given by the City to the Developer;

(c) The filing by Developer of a voluntary proceeding under present or future bankruptcy, insolvency, or other laws respecting debtors, rights;

(d) The consent by Developer to an involuntary proceeding under present or future bankruptcy, insolvency, or other laws respecting debtor's rights;

(e) The entering of an order for relief against Developer or the appointment of a receiver, trustee, or custodian for all or a substantial part of the property or assets of Developer in any involuntary proceeding, and the continuation of such order, judgment or degree unstayed for any period of ninety (90) consecutive days;

(f) The failure by Developer or any Affiliate to pay Impositions, and Assessments on property owned by the Developer and/or any Affiliates within the PID if such failure is not cured within thirty (30) calendar days after written notice by the City;

(g) Any representation or warranty confirmed or made in this Agreement by the Developer was untrue in any material respect as of the Effective Date; or

Section 12.02. Notice and Cure Period.

(a) Before any Event of Default under this Agreement shall be deemed to be a breach of this Agreement, the Party claiming such Event of Default shall notify, in writing, the Party alleged to have failed to perform the alleged Event of Default and shall demand performance (with the exception of 13.01(f) above). Except with respect to cure periods set forth in 13.01 above, which shall be controlling, no breach of this Agreement may be found to have occurred if performance has commenced to the reasonable satisfaction of the complaining Party within thirty (30) calendar days of the receipt of such notice (or thirty (30) calendar days in the case of a monetary default), with completion of performance within ninety (90) calendar days.

(b) Notwithstanding any provision in this Agreement to the contrary, if the performance of any covenant or obligation to be performed hereunder by any Party is delayed by Force Majeure, the time for such performance shall be extended by the amount of time of the delay directly caused by and relating to such uncontrolled circumstances. The Party claiming delay of performance as a result of any of the foregoing Force Majeure events shall deliver written notice of the commencement of any such delay resulting from such Force Majeure event and the length of the Force Majeure event is reasonably expected to last not later than seven (7) days after the claiming Party becomes aware of the same, and if the claiming Party fails to so notify the other Party of the occurrence of a Force Majeure event causing such delay, the claiming Party shall not be entitled to avail itself of the provisions for the extension of performance contained in this Article. The number of days a Force Majeure event is in effect shall be determined by the City based upon commercially reasonable standards.

Section 12.03. City's Remedies.

With respect to the occurrence of an Event of Default the City may pursue the following remedies:

(a) The City may pursue any legal or equitable remedy or remedies, including, without limitation, specific performance, damages, and termination of this Agreement. The City shall not terminate this Agreement unless it delivers to the Developer a second notice expressly providing that the City will terminate within thirty (30) additional days. Termination or non-termination of

this Agreement upon a Developer Event of Default shall not prevent the City from suing the Developer for specific performance, damages, actual damages, excluding punitive, special and consequential damages, injunctive relief or other available remedies with respect to obligations that expressly survive termination. In the event the Developer fails to pay any of the expenses or amounts or perform any obligation specified in this Agreement, then to the extent such failure constitutes an Event of Default hereunder, the City may, but shall not be obligated to do so, pay any such amount or perform any such obligations and the amount so paid and the reasonable out of pocket costs incurred by the City in said performance shall be due and payable by the Developer to the City within thirty (30) days after the Developer's receipt of an itemized list of such costs.

(b) No remedy herein conferred or reserved is intended to be exclusive of any other available remedy or remedies, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given hereunder now or hereafter existing at law or in equity.

(c) The exercise of any remedy herein conferred or reserved shall not be deemed a waiver of any other available remedy.

Section 12.04. City Default.

Each of the following events shall be an Event of Default by the City under this Agreement:

(a) So long as the Developer has complied with the terms and provisions of this Agreement, the City shall fail to pay to the Developer any monetary sum hereby required of it and shall not cure such default within thirty (30) calendar days after the later of the date on which written notice thereof is given to the City by the Developer.

(b) The City shall fail to comply in any material respect with any term, provision or covenant of this Agreement, other than the payment of money, and shall not cure such failure within sixty (60) calendar days after written notice thereof is given by the Developer to the City.

Section 12.05. Developer's Remedies.

(a) Upon the occurrence of any Event of Default by the City, the Developer may pursue any legal remedy or remedies specifically including damages as set forth below (specifically excluding specific performance and other equitable remedies), and termination of this Agreement; provided, however, that the Developer shall have no right to terminate this Agreement unless the Developer delivers to the City a second notice which expressly provides that the Developer will terminate within thirty (30) days if the default is not addressed as herein provided.

(b) No remedy herein conferred or reserved is intended to be inclusive of any other available remedy or remedies, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given hereunder now or hereafter existing.

(c) The exercise of any remedy herein conferred or reserved shall not be deemed a waiver of any other available remedy.

Section 12.06. Sovereign Immunity.

(a) Except as specifically required to enforce the terms of this Agreement by Developer, nothing contained in this Agreement shall be deemed to waive the City's governmental immunity nor the official immunity of any City officer, official, employee or agent.

(b) Should a court of competent jurisdiction determine the City's immunity from suit is waived in any manner other than as provided in Subchapter I of Chapter 271, Texas Local Government Code, as amended, the Parties hereby acknowledge and agree that in such suit against the City for breach of this Agreement:

(i) The total amount of money awarded is limited to actual damages in an amount not to exceed the balance due and owed by City under this Agreement or any Reimbursement Agreement and is payable solely from Assessment revenues;

(ii) The recovery of damages against City may not include consequential damages or exemplary damages; and

(iii) Developer is not entitled to specific performance or injunctive relief against the City.

Section 12.07. Limitation on Damages.

In no event shall any Party have any liability under this Agreement for any exemplary or consequential damages.

Section 12.08. Waiver.

Forbearance by the non-defaulting Party to enforce one or more of the remedies herein provided upon the occurrence of an Event of Default by the other Party shall not be deemed or construed to constitute a waiver of such default. One or more waivers of a breach of any covenant, term or condition of this Agreement by either Party hereto shall not be construed by the other Party as a waiver of a different or subsequent breach of the same covenant, term or condition. The consent or approval of either Party to or of any act by the other Party of a nature requiring consent or approval shall not be deemed to waive or render unnecessary the consent to or approval of any other subsequent similar act.

ARTICLE XIII

INSURANCE, INDEMNIFICATION AND RELEASE

Section 13.01. Insurance.

With no intent to limit any contractor's liability or obligation for indemnification, the Developer shall maintain or cause to be maintained, by the persons constructing the Public Improvements, certain insurance, as provided below in full force and effect at all times during construction of the Public Improvements and shall require that the City is named as an additional insured under such contractor's insurance policies.

(a) With regard to the obligations of this Agreement, the Developer shall obtain and maintain in full force and effect at its expense, or shall cause each contractor to obtain and maintain at their expense, the following policies of insurance and coverage:

(i) Commercial general liability insurance insuring the City, contractor and the Developer against liability for injury to or death of a person or persons and for damage to property occasioned by or arising out of the activities of Developer, the contractor, the City and their respective officers, directors, agents, contractors, or employees, in the amount of $500,000 Per Occurrence or a limit equal to the amount of the contract amount, $2,000,000 General Aggregate Bodily Injury and Property Damage. The contractor may procure and maintain a Master or Controlled Insurance policy to satisfy the requirements of this section, which may cover other property or locations of the contractor and its affiliates, so long as the coverage required in this section is separate;

(ii) Worker's Compensation insurance as required by law;

(iii) Business automobile insurance covering all operations of the contractor pursuant to the Construction Agreement involving the use of motor vehicles, including all owned, non-owned and hired vehicles with minimum limits of not less than One Million Dollars ($1,000,000) combined single limit for bodily injury, death and property damage liability.

(iv) To the extent available, each policy shall be endorsed to provide that the insurer waives all rights of subrogation against the City;

(v) Each policy of insurance with the exception of Worker's Compensation and professional liability shall be endorsed to include the City (including its former, current, and future officers, directors, agents, and employees) as additional insureds;

(vi) Each policy, with the exception of Worker's Compensation and professional liability, shall be endorsed to provide the City sixty (60) days' written notice prior to any cancellation, termination or material change of coverage; and

(vii) The Developer shall cause each contractor to deliver to the City the policies, copies of policy endorsements, and/or certificates of insurance evidencing the required insurance coverage before the Commencement of Construction of the Public Improvements and within 10 days before expiration of coverage, or as soon as practicable, deliver renewal policies or certificates of insurance evidencing renewal and payment of premium. On every date of renewal of the required insurance policies, the contractor shall cause a Certificate of Insurance and policy endorsements to be issued evidencing the required insurance herein and delivered to the City. In addition the contractor shall within ten (10) business days after written request provide the City with the Certificates of Insurance and policy endorsements for the insurance required herein (which request may include copies of such policies).

Section 13.02. Waiver of Subrogation Rights.

The Commercial General Liability, Worker's Compensation, Business Auto and Excess Liability Insurance required pursuant to this Agreement shall provide for waivers of all rights of subrogation against the City.

Section 13.03. Additional Insured Status.

With the exception of Worker's Compensation Insurance and any Professional Liability Insurance, all insurance required pursuant to this Agreement shall include and name the City as additional insureds using Additional Insured Endorsements that provide the most comprehensive coverage to the City under Texas law including products/completed operations.

Section 13.04. Certificates of Insurance.

Certificates of Insurance and policy endorsements in a form satisfactory to City shall be delivered to City prior to the commencement of any work or services on the Public Improvements. All required policies shall be endorsed to provide the City with sixty (60) days advance notice of cancellation or non-renewal of coverage. The Developer shall provide sixty (60) days written notice of any cancellation, non-renewal or material change in coverage for any of the required insurance in this Article.

On every date of renewal of the required insurance policies, the Developer shall cause (and cause its contractors) to provide a certificate of insurance and policy endorsements to be issued evidencing the required insurance herein and delivered to the City. In addition, the Developer shall, within ten (10) business days after written request, provide the City with certificates of insurance and policy endorsements for the insurance required herein (which request may include copies of such policies). The delivery of the certificates of insurance and the policy endorsements (including copies of such insurance policies) to the City is a condition precedent to the payment of any amounts to the Developer by the City.

Section 13.05. Carriers.

All policies of insurance required to be obtained by the Developer and its contractors pursuant to this Agreement shall be maintained with insurance carriers that are satisfactory to and as reasonably approved by City, and lawfully authorized to issue insurance in the state of Texas for the types and amounts of insurance required herein. All insurance companies providing the required insurance shall be authorized to transact business in Texas and rated at least "A" by AM Best or other equivalent rating service. All policies must be written on a primary basis, non-contributory with any other insurance coverage and/or self-insurance maintained by the City. All insurance coverage required herein shall be evidenced by a certificate of insurance and policy endorsements submitted by the Developer's and its contractors' insurer or broker. Certificates of insurance and policy endorsements received from any other source will be rejected.

Section 13.06. INDEMNIFICATION.

DEVELOPER AGREES TO DEFEND, INDEMNIFY AND HOLD THE CITY AND ITS RESPECTIVE OFFICERS, AGENTS AND EMPLOYEES, HARMLESS AGAINST ANY AND

ALL CLAIMS, LAWSUITS, JUDGMENTS, FINES, PENALTIES, COSTS AND EXPENSES FOR PERSONAL INJURY (INCLUDING DEATH), PROPERTY DAMAGE OR OTHER HARM OR VIOLATIONS FOR WHICH RECOVERY OF DAMAGES, FINES, OR PENALTIES IS SOUGHT, SUFFERED BY ANY PERSON OR PERSONS, THAT MAY ARISE OUT OF OR BE OCCASIONED BY DEVELOPER'S ACT OR OMISSION, INCLUDING BUT NOT LIMITED TO BREACH OF ANY OF THE TERMS OR PROVISIONS OF THIS CONTRACT, VIOLATIONS OF LAW, ANY ACT OR OMISSION, INCLUDING BUT NOT LIMITED TO ANY NEGLIGENT, GROSSLY NEGLIGENT, INTENTIONAL, OR STRICTLY LIABLE ACT OR OMISSION OF THE CONTRACTOR, ITS OFFICERS, AGENTS, EMPLOYEES, INVITEES, SUBCONTRACTORS, OR SUB-SUBCONTRACTORS AND THEIR RESPECTIVE OFFICERS, AGENTS, OR REPRESENTATIVES, OR ANY OTHER PERSONS OR ENTITIES FOR WHICH THE CONTRACTOR IS LEGALLY RESPONSIBLE IN THE PERFORMANCE OF THIS CONTRACT. THE INDEMNITY PROVIDED FOR IN THIS PARAGRAPH SHALL NOT APPLY TO ANY LIABILITY RESULTING FROM THE SOLE NEGLIGENCE OF THE CITY, AND ITS OFFICERS, AGENTS, EMPLOYEES OR SEPARATE CONTRACTORS. THE CITY DOES NOT WAIVE ANY GOVERNMENTAL IMMUNITY OR OTHER DEFENSES AVAILABLE TO IT UNDER TEXAS OR FEDERAL LAW. THE PROVISIONS OF THIS PARAGRAPH ARE SOLELY FOR THE BENEFIT OF THE PARTIES HERETO AND ARE NOT INTENDED TO CREATE OR GRANT ANY RIGHTS, CONTRACTUAL OR OTHERWISE, TO ANY OTHER PERSON OR ENTITY.

DEVELOPER AT ITS OWN EXPENSE IS EXPRESSLY REQUIRED TO DEFEND CITY AGAINST ALL SUCH CLAIMS. CITY RESERVES THE RIGHT TO PROVIDE A PORTION OR ALL OF ITS OWN DEFENSE; HOWEVER, CITY IS UNDER NO OBLIGATION TO DO SO. ANY SUCH ACTION BY CITY IS NOT TO BE CONSTRUED AS A WAIVER OF DEVELOPER'S OBLIGATION TO DEFEND CITY OR AS A WAIVER OF DEVELOPER'S OBLIGATION TO INDEMNIFY CITY PURSUANT TO THIS AGREEMENT. DEVELOPER SHALL RETAIN DEFENSE COUNSEL WITHIN SEVEN (7) BUSINESS DAYS OF CITY'S WRITTEN NOTICE THAT CITY IS INVOKING ITS RIGHT TO INDEMNIFICATION UNDER THIS AGREEMENT. IF DEVELOPER FAILS TO RETAIN COUNSEL WITHIN THE REQUIRED TIME PERIOD, CITY SHALL HAVE THE RIGHT TO RETAIN DEFENSE COUNSEL ON ITS OWN BEHALF AND DEVELOPER SHALL BE LIABLE FOR ALL COSTS INCURRED BY THE CITY.

ARTICLE XIV

GENERAL PROVISIONS

Section 14.01. Notices.

Any notice, communication or disbursement required to be given or made hereunder shall be in writing and shall be given or made by facsimile or other electronic transmittal, hand delivery, overnight courier, or by United States mail, certified or registered mail, return receipt requested, postage prepaid, at the addresses set forth below or at such other addresses as may be specified in writing by any Party hereto to the other parties hereto. Each notice which shall be mailed or delivered in the manner described above shall be deemed sufficiently given, served, sent and received for all purpose at such time as it is received by the addressee (with return receipt, the

delivery receipt or the affidavit of messenger being deemed conclusive evidence of such receipt) at the following addresses:

To the City:	City Manager 401 Market Street Tomball, Texas 77357
With a copy to:	Attn: City Attorney Olson & Olson, LLP 2727 Allen Parkway, Suite 600 Houston, Texas 77019
To the Developer:	Attn: Kyle Friedman FLS Development, LLC 17119 Lakeway Park Drive Tomball, Texas 77375
With a copy to:	Attn: Tim Green Coats Rose 9 Greenway Plaza, Suite 1000 Houston, Texas 77046

Section 14.02. Make-Whole Provision.

(a) If in any calendar year the City issues debt obligations that would be qualified tax-exempt obligations but for the issuance or proposed issuance of PID Bonds, the Developer shall pay to the City a fee (the "PID Bond Fee") to compensate the City for the interest savings the City would have achieved had the debt issued by the City been qualified tax-exempt obligations. Prior to issuance of any PID Bonds, the City's financial advisor shall calculate the PID Bond Fee based on the issued and planned debt issuances for the City and shall notify the Developer of the total amount of the PID Bond Fee prior to the issuance of the PID Bonds. The Developer agrees to pay the PID Bond Fee to the City within ten (10) business days after receiving notice from the City of the amount of PID Bond Fee due to the City. If the City has not forgone the ability to issue a series of obligations as qualified tax exempt obligations, the PID Bond Fee shall be held in a segregated account of the City and if the total amount of debt obligations sold or entered into by the City in the calendar year in which the PID Bonds are issued are less than the bank qualification limits (currently $10 million per calendar year), then the PID Bond Fee shall be returned to the Developer. The City shall not be required to sell any series of PID Bonds until the Developer has paid the estimated PID Bond Fee.

(b) If the City is planning to issue debt obligations as qualified tax exempt obligations prior to the issuance of PID Bonds in any calendar year, the City may (but is not obligated to) notify the Developer that it is planning to issue qualified tax-exempt obligations that may limit the amount of debt that the City can issue in a calendar year. In connection with the delivery of such notice, the City's financial advisor shall provide a calculation of the interest savings that the City would achieve by issuing the obligations the City plans to issue in the year as qualified tax-exempt obligations as opposed to non-qualified tax exempt obligations. If following the receipt of such

notice the Developer asks the City to forego designating the obligations as qualified tax exempt obligations in order to preserve capacity for PID Bonds, the Developer shall pay to the City a fee to compensate the City for the interest savings the City would have achieved had the debt issued by the City been qualified tax-exempt obligations. The Developer agrees to pay the PID Bond Fee to the City within ten (10) business days after receiving notice from the City of the amount of PID Bond Fee due to the City. Upon receipt of the PID Bond Fee, the City agrees not to designate the obligations planned for issuance as qualified tax exempt obligations. Such payment is compensation to the City for choosing to forego the designation of obligations as qualified tax exempt obligations, and the PID Bond Fee may be used for any lawful purpose of the City.

Section 14.03. Assignment.

(a) This Agreement shall be binding upon and inure to the benefit of the successors and assigns of the Parties. The obligations, requirements or covenants to develop the Property, including construction of the Public Improvements may be assigned to any Affiliate thereof without the prior written consent of the City. The obligations, requirements or covenants to the development of the Property, including construction of the Public Improvements shall not be assigned to any non-Affiliate without the prior written consent of the City Council, which consent shall not be unreasonably withheld if the assignee demonstrates the financial ability to perform in the reasonable judgment of the City Council. Each assignment shall be in writing executed by Developer and the assignee and shall obligate the assignee to be bound by this Agreement to the extent this Agreement applies or relates to the obligations, rights, title or interests being assigned. No assignment by Developer shall release Developer from any liability that resulted from an act or omission by Developer that occurred prior to the effective date of the assignment unless the City approves the release in writing. Developer shall maintain written records of all assignments made by Developer to Assignee, including a copy of each executed assignment and the Assignee's notice information as required by this Agreement, and, upon written request from the City, any Party or Assignee, shall provide a copy of such records to the requesting person or entity, and this obligation shall survive the assigning Party's sale, assignment, transfer or other conveyance of any interest in this Agreement or the Property. The City shall not be required to make any representations with respect to any assignment.

(b) Developer may assign any receivables or revenues due pursuant to this Agreement or any Reimbursement Agreement to a third party without the consent of, but upon written notice to the City. Provided, however, that notwithstanding the above, the City shall not be required to make partial payments to more than two parties as a result of an assignment and shall not execute any consent or make any representations with respect thereto.

(c) The Developer and assignees have the right, from time to time, to collaterally assign, pledge, grant a lien or security interest in, or otherwise encumber any of their respective rights, title, or interest under this Agreement for the benefit of (a) their respective lenders without the consent of, but with prompt written notice to, the City. The collateral assignment, pledge, grant of lien or security interest, or other encumbrance shall not, however, obligate any lender to perform any obligations or incur any liability under this Agreement unless the lender agrees in writing to perform such obligations or incur such liability. Provided the City has been given a copy of the documents creating the lender's interest, including notice information for the lender, then that lender shall have the right, but not the obligation, to cure any default under this Agreement within

thirty (30) days written notice to the lender. A lender is not a party to this Agreement unless this Agreement is amended, with the consent of the lender, to add the lender as a Party. Notwithstanding the foregoing, however, this Agreement shall continue to bind the Property and shall survive any transfer, conveyance, or assignment occasioned by the exercise of foreclosure or other rights by a lender, whether judicial or non-judicial. Any purchaser from or successor owner through a lender of any portion of the Property, except an en-user homeowner, shall be bound by this Agreement and shall not be entitled to the rights and benefits of this Agreement with respect to the acquired portion of the Property until all defaults under this Agreement with respect to the acquired portion of the Property have been cured. The City shall not be required to make partial payments to more than two parties as a result of an assignment and shall not execute any consent or make any representations or execute any document with respect thereto.

(d) The City shall not be required to acknowledge the receipt of any Assignment by the Developer; however, to the extent the City does acknowledge receipt of any assignment pursuant to this Section, such acknowledgment does not evidence the City's agreement, acceptance or acknowledgment of the content of the assignment documents or any rights accruing thereunder; it is solely an acknowledgment of receipt of the notice via mail, express mail or email.

(e) The City does not and shall not consent to nor participate in any third-party financing based upon the Developer's assignment of its right to receive funds pursuant to this Agreement or any Reimbursement Agreement.

Section 14.04. Table of Contents; Titles and Headings.

The titles of the articles, and the headings of the sections of this Agreement are solely for convenience of reference, are not a part of this Agreement, and shall not be deemed to affect the meaning, construction, or effect of any of its provisions.

Section 14.05. Entire Agreement; Amendment.

This Agreement is the entire agreement between the Parties with respect to the subject matter covered in this Agreement. There is no other collateral oral or written agreement between the Parties that in any manner relates to the subject matter of this Agreement. This Agreement may only be amended by a written agreement executed by all Parties.

Section 14.06. Time.

In computing the number of days for purposes of this Agreement, all days will be counted, including Saturdays, Sundays, and legal holidays; however, if the final day of any time period falls on a Saturday, Sunday, or legal holiday, then the final day will be deemed to be the next day that is not a Saturday, Sunday, or legal holiday.

Section 14.07. Counterparts.

This Agreement may be executed in any number of counterparts, each of which will be deemed to be an original, and all of which will together constitute the same instrument.

Section 14.08. Severability; Waiver.

If any provision of this Agreement is illegal, invalid, or unenforceable, under present or future laws, it is the intention of the parties that the remainder of this Agreement not be affected and, in lieu of each illegal, invalid, or unenforceable provision, a provision be added to this Agreement which is legal, valid, and enforceable and is as similar in terms to the illegal, invalid, or enforceable provision as is possible.

Any failure by a Party to insist upon strict performance by the other party of any material provision of this Agreement will not be deemed a waiver or of any other provision, and such Party may at any time thereafter insist upon strict performance of any and all of the provisions of this Agreement.

Section 14.09. No Third-Party Beneficiaries.

The City and the Developer intend that this Agreement shall not benefit or create any right or cause of action in or on behalf of any third party beneficiary, or any individual or entity other than the City, the Developer or assignees of such Parties.

Section 14.10. Notice of Assignment. Developer shall not transfer any portion of the Property prior to the levy of Assessments, except as provided in Section 3.05. Subject to Section 14.03 herein, the requirements set forth below shall apply in the event that the Developer sells, assigns, transfers or otherwise conveys the Property or any part thereof and/or any of its rights, benefits or obligations under this Agreement. Developer must provide the following:

(a) within 30 days after the effective date of any such sale, assignment, transfer, or other conveyance, the Developer must provide written notice of same to the City;

(b) the Notice must describe the extent to which any rights or benefits under this Agreement have been sold, assigned, transferred, or otherwise conveyed;

(c) the Notice must state the name, mailing address, and telephone contact information of the person(s) acquiring any rights or benefits as a result of any such sale, assignment, transfer, or other conveyance;

(d) the Notice must be signed by a duly authorized person representing the Developer and a duly authorized representative of the person that will acquire any rights or benefits as a result of the sale, assignment transfer or other conveyance.

Section 14.11. No Joint Venture.

Nothing contained in this Agreement or any other agreement between the Developer and the City is intended by the Parties to create a partnership or joint venture between the Developer, on the one hand, and the City on the other hand and any implication to the contrary is hereby expressly disavowed. It is understood and agreed that this Agreement does not create a joint enterprise, nor does it appoint either Party as an agent of the other for any purpose whatsoever. Neither Party shall in any way assume any of the liability of the other for acts of the other or

obligations of the other. Each Party shall be responsible for any and all suits, demands, costs or actions proximately resulting from its own individual acts or omissions.

Section 14.12. Estoppel Certificates. From time to time within fifteen (15) business days of a written request of the Developer or any future Developer, and upon the payment of a $500.00 fee to the City, the Mayor, or his/her designee is authorized, in his official capacity and to his reasonable knowledge and belief, to execute a written estoppel certificate in form approved by the City Attorney, identifying any obligations of a Developer under this Agreement that are in default. No other representations in the Estoppel shall be made by the City.

Section 14.13. Independence of Action.

It is understood and agreed by and among the Parties that in the design, construction and development of the Public Improvements and any of the related improvements described herein, and in the Parties' satisfaction of the terms and conditions of this Agreement, that each Party is acting independently, and the City assumes no responsibility or liability to any third parties in connection to the Developer's obligations hereunder.

Section 14.14. Compliance with Homebuyer Disclosure Program. The Developer shall comply with the Homebuyer Disclosure Program attached hereto as Exhibit H.

Section 14.15. Limited Recourse.

No officer, director, employee, agent, attorney or representative of the Developer shall be deemed to be a Party to this Agreement or shall be liable for any of the contractual obligations created hereunder. No elected official of the City and no agent, attorney or representative of the City shall be deemed to be a Party to this Agreement or shall be liable for any of the contractual obligations created hereunder.

Section 14.16. Exhibits.

All exhibits to this Agreement are incorporated herein by reference for all purposes wherever reference is made to the same.

Section 14.17. No Consent to Third Party Financing.

The City does not and shall not consent to nor participate in any way in any third-party financing based upon the Developer's assignment of its right to receive funds pursuant to this Agreement or any Reimbursement Agreement.

Section 14.18. Survival of Covenants.

Any of the representations, warranties, covenants, and obligations of the Parties, as well as any rights and benefits of the Parties, pertaining to a period of time following the termination of this Agreement shall survive termination.

Section 14.19. No Acceleration.

All amounts due pursuant to this Agreement and any remedies under this Agreement are not subject to acceleration.

Section 14.20. Conditions Precedent.

This Agreement is expressly subject to, and the obligations of the Parties are conditioned upon the City levy of the Assessments or approval of a Reimbursement Agreement.

Section 14.21. No Reduction of Assessments.

Following the issuance of each series of PID Bonds, the Developer agrees not to take any action or actions to reduce the total amount of the Assessments levied in payment of such PID Bonds.

Section 14.22. Recording Fees.

Any fees associated with the recording of documents in the real property records of Harris County in order to give initial notice of the Assessments or made pursuant to the Act, shall be paid by the Developer. Ongoing recording in the real property records of Harris County of updates to the Service and Assessment Plan shall be paid as an administrative expense of the PID.

Section 14.23. Iran, Sudan and Foreign Terrorist Organizations. The Developer represents that neither it nor any of its parent company, wholly- or majority-owned subsidiaries, and other affiliates is a company identified on a list prepared and maintained by the Texas Comptroller of Public Accounts under Section 2252.153 or Section 2270.0201, Texas Government Code, and posted on any of the following pages of such officer's internet website:

https://comptroller.texas.gov/purchasing/docs/sudan-list.pdf,
https://comptroller.texas.gov/purcasing/docs/iran-list.pdf, or
https://comptroller.texas.gov/purchasing/docs/flo-list.pdf.

The foregoing representation is made solely to comply with Section 2252.152, Texas Government Code, and to the extent such Section does not contravene applicable Federal law and excludes the Developer and each of its parent company wholly- or majority-owned subsidiaries, and other affiliates, if any, that the United States government has affirmatively declared to be excluded from its federal sanctions regime relating to Sudan or Iran or any federal sanctions regime relating to a foreign terrorist organization. The Developer understands "affiliate" to mean any entity than controls, is controlled by, or is under common control with the Developer and exists to make a profit.

Section 14.24. Petroleum. The Developer hereby verifies that it and its parent company, wholly- or majority-owned subsidiaries, and other affiliates, if any, do not boycott energy companies and will not boycott energy companies during the term of this Agreement. The foregoing verification is made solely to enable the Issuer to comply with such Section. As used in

the foregoing verification, "boycott energy companies" shall mean, without an ordinary business purpose, refusing to deal with, terminating business activities with, or otherwise taking any action that is intended to penalize, inflict economic harm on, or limit commercial relations with a company because the company (A) engages in the exploration, production, utilization, transportation, sale, or manufacturing of fossil fuel-based energy and does not commit or pledge to meet environmental standards beyond applicable federal and state law; or (B) does business with a company described by (A) above. The Developer understands "affiliate" to mean an entity that controls, is controlled by, or is under common control with the Developer within the meaning of SEC Rule 133(f), 17 C.F.R. §230.133(f), and exists to make a profit. Notwithstanding anything contained herein, the representations and covenants contained in this Section 14.24 shall survive termination of the Agreement until the statute of limitations has run.

Section 14.25. Firearms. The Developer hereby verifies that it and its parent company, wholly- or majority-owned subsidiaries, and other affiliates, if any, do not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association and will not discriminate during the term of this Agreement against a firearm entity or firearm trade association. The foregoing verification is made solely to enable the Issuer to comply with such Section. As used in the foregoing verification, 'discriminate against a firearm entity or firearm trade association: (a) means, with respect to the firearm entity or firearm trade association, to: (i) refuse to engage in the trade of any goods or services with the firearm entity or firearm trade association based solely on its status as a firearm entity or firearm trade association; (ii) refrain from continuing an existing business relationship with the firearm entity or firearm trade association based solely on its status as a firearm entity or firearm trade association; or (iii) terminate an existing business relationship with the firearm entity or firearm trade association based solely on its status as a firearm entity or firearm trade association and (b) does not include: (i) the established policies of a merchant, retail seller, or platform that restrict or prohibit the listing or selling of ammunition, firearms, or firearm accessories; and (ii) a company's refusal to engage in the trade of any goods or services, decision to refrain from continuing an existing business relationship, or decision to terminate an existing business relationship: (aa) to comply with federal, state, or local law, policy, or regulations or a directive by a regulatory agency; or (bb) for any traditional business reason that is specific to the customer or potential customer and not based solely on an entity's or association's status as a firearm entity or firearm trade association. As used in the foregoing verification, (a) 'firearm entity' means a manufacturer, distributor, wholesaler, supplier, or retailer of firearms (i.e., weapons that expel projectiles by the action of explosive or expanding gases), firearm accessories (i.e., devices specifically designed or adapted to enable an individual to wear, carry, store, or mount a firearm on the individual or on a conveyance and items used in conjunction with or mounted on a firearm that are not essential to the basic function of the firearm, including detachable firearm magazines), ammunition (i.e., a loaded cartridge case, primer, bullet, or propellant powder with or without a projectile) or a sport shooting range (as defined by Section 250.001, Texas Local Government Code), and (c) 'firearm trade association' means a person, corporation, unincorporated association, federation, business league, or business organization that: (i) is not organized or operated for profit (and none of the net earnings of which inures to the benefit of any private shareholder or individual); (ii) has two or more firearm entities as members; and (iii) is exempt from federal income taxation under Section 501(a), Internal Revenue Code of 1986, as an organization described by Section 501(c) of that code. The Developer

understands "affiliate" to mean an entity that controls, is controlled by, or is under common control with the Developer within the meaning of SEC Rule 133(f), 17 C.F.R. §230.133(f), and exists to make a profit. Notwithstanding anything contained herein, the representations and covenants contained in this Section 14.25 shall survive termination of the Agreement until the statute of limitations has run.

Section 14.26. Anti-Boycott. The Developer hereby verifies that it and its parent company, wholly- or majority-owned subsidiaries, and other affiliates, if any, do not boycott Israel and, will not boycott Israel during the term of this Agreement. The foregoing verification is made solely to comply with Section 2271.002, Texas Government Code. As used in the foregoing verification, 'boycott Israel' means refusing to deal with, terminating business activities with, or otherwise taking any action that is intended to penalize, inflict economic harm on, or limit commercial relations specifically with Israel, or with a person or entity doing business in Israel or in an Israeli-controlled territory, but does not include an action made for ordinary business purposes. The Developer understands 'affiliate' to mean an entity that controls, is controlled by, or is under common control with the Developer and exists to make a profit. Notwithstanding anything contained herein, the representations and covenants contained in this Section 14.26 shall survive termination of the Agreement until the statute of limitations has run.

Section 14.27. Form 1295. The Developer will provide a completed and notarized Form 1295 generated by the Texas Ethics Commission's electronic filing application in accordance with the provisions of Section 2252.908 of the Texas Government Code and the rules promulgated by the Texas Ethics Commission (a "Form 1295"), in connection with entry into this Agreement. Upon receipt of the Developer's Form 1295, the City agrees to acknowledge the Developer's Form 1295 through its electronic filing application. The Developer and the City understand and agree that, with the exception of information identifying the City and the contract identification number, the City is not responsible for the information contained in the Developer's Form 1295 and the City has not verified such information.

Section 14.28. Conflict.

In the event of any conflict between this Agreement and any Indenture authorizing the PID Bond, the Indenture controls. In the event of any conflict between this Agreement and the Reimbursement Agreement, the Reimbursement Agreement shall control, except that in all cases, Applicable Law shall control.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

CITY OF TOMBALL

By: _____
Name: _____
Title: City Manager

ATTEST:

_____
City Secretary

[SIGNATURES CONTINUE ON NEXT PAGE]

DEVELOPER

FLS Development LLC, a Texas,

limited liability company

By: _____
Name: _____
Title: _____
Date: _____

STATE OF TEXAS §
§
COUNTY OF _____ §

BEFORE ME, the undersigned authority, on this day personally appeared **_____,** known to me to be one of the persons whose names are subscribed to the foregoing instrument; he/she acknowledged to me that he/she is the _____ and duly authorized representative of _____, an _____, and that he/she executed said instrument for the purposes and consideration therein expressed and in the capacity therein stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this _____ day of _____, 2024.

_____
_____
Notary Public, State of Texas
My Commission Expires: _____

EXHIBIT A-1

TOTAL PROPERTY DESCRIPTION

OVERALL ACREAGE

49.301 acres of land situated in the Jesse Pruitt Survey, Abstract Number 629, Harris County, Texas, being that certain called 31.994 acres of land described deed recorded in the Official Public Records of Real Property of Harris County, Texas, under County Clerk's File Number RP-2023-170674, that certain called 17.307 acres of land described deed recorded in the Official Public Records of Real Property of Harris County, Texas, under County Clerk's File Number RP-2023-171232, a portion of that certain Reserve "A" and Lot 1 of Brandt Holdings, a subdivision as shown on map or plat recorded under Film Code Number 679589 of the Map Records of Harris County, Texas, a portion of those certain Lots 489, 490, 495, 496, 497 and 498 of Tomball Townsite, a subdivision as shown on map or plat recorded under Volume 2, Page 65 of the Map Records of Harris County, Texas and those certain Lots 491, 492, 493 and 494 of said Tomball Townsite, said 49.301 acres of land being more particularly described by metes and bounds as follows:

BEGINNING at a 5/8 inch iron rod with cap found in the Southerly line of that certain Restricted Reserve "J" of The Estates at Willow Creek, a subdivision as shown on map or plat recorded under Film Code Number 540246 of the Map Records of Harris County, Texas, for the Northeasterly comer of that certain called 2.3291 acres of land described deed recorded in the Official Public Records of Real Property of Harris County, Texas, under County Clerk's File Number RP-2016-558665 and the Northerly Northwest corner of said 17.307 acre tract;

Thence, N 87° 49'3 5" E, along the Southerly line of said Restricted Reserve "I" of The Estates at Willow Creek, the Southerly line of that certain called 11.98 acres of land described deed recorded in the Official Public Records of Real Property of Harris County, Texas, under County Clerk's File Number U517222 and the Southerly line of that certain Restricted Reserve "A" of Willow Creek Pet Ranch of Tomball, a subdivision as shown on map or plat recorded under Film Code Number 683259 of the Map Records of Harris County, Texas, a distance of 2,003.38 feet to the Northeasterly corner of said 31.994 acre tract;

Thence, S 03°07'21" E, along the Westerly line of that certain called 0.5045 of one acre of land described deed recorded in the Official Public Records of Real Property of Harris County, Texas, under County Clerk's File Number V343704, a distance of 232.39 feet to a 1/2 inch iron rod found in the Northwesterly line of that certain Block 2 of Country Club Greens Section Two-Replat, a subdivision as shown on map or plat recorded under Film Code Number 548068 of the Map Records of Harris County, Texas, for the Southwesterly corner of said 0.5045 acre tract;

Thence, S 42°56'22" W, along the Northwesterly line of said Block 2 of Country Club Greens Section Two-Replat, the Northwesterly line of that certain Block I of said Country Club Greens Section Two-Replat, the Northwesterly line of that certain Block 2 of Country Club Greens Partial Replat-Phase Two, a subdivision a shown on map or plat recorded under Film

Code Number 540231 of the Map Records of Harris County, Texas and the Northwesterly line of that certain Block 2 of Country Club Greens Partial Replat, a subdivision as shown on map or plat recorded under Film Code Number 519225 of the Map Records of Harris County, Texas, a distance of 1,846.30 feet to a 5/8 inch iron rod found for the Southeasterly comer of that certain called 5.3977 acres of land described deed recorded in the Official Public Records of Real Property of Harris County, Texas, under County Clerk's File Number P792577 and the most Southerly comer of said 31.994 acre tract;

Thence, N 13°37'50" W, along the Easterly line of said 5.3977 acre tract and the Easterly line of that certain called 5.5000 acres of land described deed recorded in the Official Public Records of Real Property of Harris County, Texas, under County Clerk's File Number P964270, a distance of 558.86 feet to a 5/8 inch iron rod found for the Northeasterly comer of said 5.5000 acre tract and the Southeasterly corner of said 17.307 acre tract;

Thence, S 56 ° 48'54" W, along the Northerly line of said 5.5000 acre tract and the Northerly line of that certain called 1.000 acre of land described deed recorded in the Official Public Records of Real Property of Harris County, Texas, under County Clerk's File Number X5 l 7792, a distance of 423.87 feet to a 5/8 inch iron rod with cap found for the Southeasterly corner of that certain Lot 1, Block I of Huffsmith Kohrville Food Court, a subdivision as shown on map or plat recorded under Film Code Number 701507 of the Map Records of Harris County, Texas;

Thence, N 11 °23' 19" W, along the Easterly line of said Lot 1, Block I of Huffsmith Kohrville Food Court, a distance of 290.49 feet to a 5/8 inch iron rod with cap found for the Northeasterly corner of said Lot 1, Block 1 of Huffsmith Kohrville Food Court and an interior corner of said 17.307 acre tract;

Thence, S 76° 00'34" W, along the Northerly line of said Lot I, Block 1 of Huffsmith Kohrville Food Court, a distance of 412.84 feet to a 5/8 inch iron rod with cap found in the Easterly right-of-way line of Huffsmith Kohrville Road (variable width right-of-way);

Thence, along the Easterly right-of-way line of said Hufsmith Kohrville Road, the following courses and distances:

> N 20°20'37" W, a distance of 284.48 feet to a 5/8 inch iron rod found for the Southwesterly corner of that certain called 0.3634 of one acre of land dedicated for the widening of Hufsmith Kohrville Road by said map or plat of Brandt Holdings;
>
> N 87° 26'22" E, a distance of 24.68 feet to a 5/8 inch iron rod with cap found for the Southwesterly corner of said Reserve "A" of Brandt Holdings and the Southeasterly corner of said dedication;
>
> N 20' 18'43" W, a distance of 437.48 feet to a 5/8 inch iron rod with cap found for a point of curvature to the right;

In a Northwesterly direction, with said curve to the right, having a central angle of 0 l '25' 11 ", a radius of 1950.00 feet, an arc length of 48.32 feet, a chord bearing of N 19'36'08" W and

a chord distance of 48.32 feet to a 5/8 inch iron rod with cap found for the Southwesterly corner of said 2.3291 acre tract;

Thence, N 87° 37'27" E, along the Southerly line of said 2.3291 acre tract, a distance of 441.49 feet to a 5/8 inch iron rod with cap found for the Southeasterly corner of said 2.3291 acre tract;

Thence, N 02'23'19" W, along the Easterly line of said 2.3291 acre tract, a distance of 269.92 feet to the POINT OF BEGINNING and containing 49.301 acres of land.

BEARING ORIENTATION BASED ON TEXAS STATE PLANE COORDINATE GRID SYSTEM OF 1983, DERIVED FROM CORS SITE RODS.

TRACT 1

0.8041 of one acre or 35,026 square feet of land situated in the Elizabeth Smith Survey, Abstract Number 70, Harris County, Texas, being a portion of that certain Unrestricted Reserve "A" of Tomball Greens, a subdivision as shown on map or plat recorded under Film Code Number 440128 of the Map Records of Harris County, Texas, said 0.8041 of one acre or 35,026 square feet of land being more particularly described by metes and bounds as follows:

BEGINNING at a 1/2 inch iron rod found in the Southeasterly line of that certain called 0.1262 of one acre of land described deed recorded in the Official Public Records of Real Property of Harris County, Texas, under County Clerk's File Number V308253, for the Northeasterly corner of that certain Lot 9, Block 2 of Country Club Greens Section Two-Replat, a subdivision as shown on map or plat recorded under Film Code Number 548068 of the Map Records of Harris County, Texas;

Thence, N 42'56'22" E, along the Southeasterly line of said 0. 1262 acre tract and the Southeasterly line of that certain called 1.879 acres of land described deed recorded in the Official Public Records of Real Prope1ty of Harris County, Texas,· under County Clerk's File Number RP-2020-279347, a distance of 163.90 feet to a 1/2 inch iron rod found for the Northwesterly corner of that certain Lot 6, Block 2 of Country Club Greens Sec. Two, a subdivision as shown on map or plat recorded under Film Code Number 491143 of the Map Records of Harris County, Texas;

Thence, S 15' 43'52" E, along the Westerly line of said Lot 6, a distance of 270.27 feet to a 1/2 inch iron rod found for the Northwesterly right-of-way line of North Country Club Green Drive (60 foot Permanent access easement), for the Southwesterly corner of said Lot 6;

Thence, S 56'26'08" W, along the Northwesterly right-of-way line of said North Country Club Green Drive, a distance of 147.07 feet to a 1/2 inch iron rod found for the Southeasterly corner of said Lot 9;

Thence, N 15'43'52" W, along the Easterly line of said Lot 9, a distance of 230.09 feet to the POINT OF BEGINNING and containing 0.8041 of one acre or 35,026 square feet of land.

BEARING ORIENTATION BASED ON TEXAS STATE PLANE COORDINATE GRID SYSTEM OF 1983, DERIVED FROM CORS SITE RODS.

EXHIBIT A-2

PROPERTY DESCRIPTION

43.149 acres of land situated in the Jesse Pruitt Survey, Abstract Number 629, Harris County, Texas, being that certain called 31.994 acres of land described in deed recorded in the Official Public Records of Real Property of Harris County, Texas, under County Clerk's File Number RP-2023-170674, a portion of that certain called 17.307 acres of land described in deed recorded in the Official Public Records of Real Property of Harris County, Texas, under County Clerk's File Number RP-2023-171232, a portion of that certain Reserve "A" and Lot 1 of Brandt Holdings, a subdivision as shown on map or plat recorded under Film Code Number 679589 of the Map Records of Harris County, Texas, a portion of those certain Lots 489, 490, 495, 496, 497 and 498 of Tomball Townsite, a subdivision as shown on map or plat recorded under Volume 2, Page 65 of the Map Records of Harris County, Texas and those certain Lots 491, 492, 493 and 494 of said Tomball Townsite, said 43.149 acres of land being more particularly described by metes and bounds as follows:

BEGINNING at a 5/8 inch iron rod with cap found in the Southerly line of that certain Restricted Reserve "J" of The Estates at Willow Creek, a subdivision as shown on map or plat recorded under Film Code Number 540246 of the Map Records of Harris County, Texas, for the Northeasterly corner of that certain called 2.3291 acres of land described in deed recorded in the Official Public Records of Real Property of Harris County, Texas, under County Clerk's File Number RP-2016-558665 and the most Northerly Northwest corner of said 17.307 acre tract;

Thence, N 87°49'35" E, along the Southerly line of said Restricted Reserve "J" of The Estates at Willow Creek, the Southerly line of that certain called 11.98 acres of land described in deed recorded in the Official Public Records of Real Property of Harris County, Texas, under County Clerk's File Number U517222 and the Southerly line of that certain Restricted Reserve "A" of Willow Creek Pet Ranch of Tomball, a subdivision as shown on map or plat recorded under Film Code Number 683259 of the Map Records of Harris County, Texas, a distance of 2,003.38 feet to the Northwesterly corner of that certain called 0.5045 of one acre of land described in deed recorded in the Official Public Records of Real Property of Harris County, Texas, under County Clerk's File Number V343704;

Thence, S 03°07'21" E, along the Westerly line of said 0.5045 acre tract, a distance of 232.39 feet to a 1/2 inch iron rod found in the Northwesterly line of that certain Block 2 of Country Club Greens Section Two Replat, a subdivision as shown on map or plat recorded under Film Code Number 548068 of the Map Records of Harris County, Texas, for the Southwesterly corner of said 0.5045 acre tract;

Thence, S 42°56'22" W, along the Northwesterly line of said Block 2 of Country Club Greens Section Two-Replat, the Northwesterly line of that certain Block 1 of said Country Club Greens Section Two-Replat, the Northwesterly line of that certain Block 2 of Country Club Greens Partial Replat-Phase Two, a subdivision a shown on map or plat recorded under Film Code Number 540231 of the Map Records of Harris County, Texas and the Northwesterly line of that certain Block 2 of Country Club Greens Partial Replat, a subdivision as shown on map or plat recorded under Film Code Number 519225 of the Map Records of Harris County, Texas, a distance of 1,846.30 feet to a 5/8 inch iron rod found for the Southeasterly corner of that certain called 5.3977 acres of land described in deed recorded in the Official

Public Records of Real Property of Harris County, Texas, under County Clerk's File Number P792577 and the most Southerly corner of said 31.994 acre tract;

Thence, N 13°37'50" W, along the Easterly line of said 5.3977 acre tract and the Easterly line of that certain called 5.5000 acres of land described in deed recorded in the Official Public Records of Real Property of Harris County, Texas, under County Clerk's File Number P964270, a distance of 558.86 feet to a 5/8 inch iron rod found for the Northeasterly corner of said 5.5000 acre tract and the Southeasterly corner of said 17.307 acre tract;

Thence, S 56°48'54" W, along the Northerly line of said 5.5000 acre tract and the Northerly line of that certain called 1.000 acre of land described in deed recorded in the Official Public Records of Real Property of Harris County, Texas, under County Clerk's File Number X517792, a distance of 423.87 feet to a 5/8 inch iron rod with cap found for the Southeasterly corner of that certain Lot 1 of Huffsmith Kohrville Food Court, a subdivision as shown on map or plat recorded under Film Code Number 701507 of the Map Records of Harris County, Texas;

Thence, N 11°23'19" W, along the Easterly line of said Lot 1 of Huffsmith Kohrville Food Court, a distance of 290.49 feet to a 5/8 inch iron rod with cap found for the Northeasterly corner of said Lot 1 of Huffsmith Kohrville Food Court and an interior corner of said 17.307 acre tract;

Thence, N 14°21'35" W, severing said 17.307 acre tract, a distance of 261.11 feet to a point for corner;

Thence, S 60°51'41" W, a distance of 38.37 feet to an angle point;

Thence, S 65°38'25" W, a distance of 46.09 feet to a point of curvature to the right;

Thence, in a Southwesterly direction, with said curve to the right, having a central angle of 04°19'22", a radius of 1200.00 feet, an arc length of 90.53 feet, a chord bearing of S 67°48'06" W and a chord distance of 90.51 feet to a point of tangency;

Thence, S 69°57'46" W, a distance of 219.80 feet to a point for corner;

Thence, S 24°51'39" W, a distance of 28.07 feet to the proposed Northeasterly right-of-way line of Hufsmith Kohrville Road;

Thence, N 20°18'43" W, along the proposed Northeasterly right-of-way line of Hufsmith Kohrville Road, a distance of 139.94 feet to a point for corner;

Thence, S 65°08'21" E, a distance of 28.42 feet to a point for corner;

Thence, N 69°57'46" E, a distance of 220.16 feet to a point of curvature to the left;

Thence, in a Northeasterly direction, with said curve to the left, having a central angle of 04°19'22", a radius of 1100.00 feet, an arc length of 82.99 feet, a chord bearing of N 67°48'06" E and a chord distance of 82.97 feet to a point of tangency;

Thence, N 65°38'25" E, a distance of 46.09 feet to an angle point;

Thence, N 70°25'08" E, a distance of 54.69 feet to a point for corner;

Thence, N 14°21'35" W, a distance of 293.28 feet to a point for corner;

Thence, N 70°47'20" W, a distance of 43.49 feet to a 5/8 inch iron rod with cap found for the Southeasterly corner of said 2.3291 acre tract and an interior corner of said 17.307 acre tract;

Thence, N 02°23'19" W, along the Easterly line of said 2.3291 acre tract, a distance of 269.92 feet to the POINT OF BEGINNING and containing 43.149 acres of land.

BEARING ORIENTATION BASED ON TEXAS STATE PLANE COORDINATE GRID SYSTEM OF 1983, DERIVED FROM CORS SITE RODS.

EXHIBIT B

CONCEPT PLAN/ PLANNED DEVELOPMENT

FLS Development

Planned Development Regulations

(Medical Complex Blvd & Hufsmith Kohrville Rd)

Contents

a. General Provisions

b. Land Uses

c. Development Regulations

d. Architecture Standards

e. Landscape/Buffer Regulations

f. Amenities

a. General Provisions

The Planned Development, PD, approved herein must be constructed, developed, and maintained in compliance with this ordinance and other applicable ordinances of the City of Tomball. If any provisions or regulations of any City of Tomball ordinance applicable in GR or SF-9 zoning districts is not contained in this ordinance, all of the regulations contained in the Development Code applicable to the GR and SF-9 zoning district in effect on the effective date of this ordinance shall apply to thisPD.

Except as otherwise provided herein, the words used in this Planned Development have the same meaning established by the Development Code.

b. Land Uses

Permitted Land Uses are listed below. All others are prohibited.

1) Any use permitted by right in SF-9

2) Any use permitted in the General Retail District (GR) Zoning Code of Ordinances. In addition, the following uses will not be permitted as-of-right in commercial zones:

a) All-terrain vehicle (go-carts) dealer/sales (w/no outdoor sales, storage, and display)

b) Ambulance service

c) Antique shop (with outside storage)

d) Appliance repair

e) Auction house

f) Auto dealer (new, auto servicing and used auto sales as accessory uses only, w/outdoor sales, storage, and display)

g) Auto dealer, primarily used auto sales w/outdoor sales, storage, and display

h) Auto glass repair/tinting

i) Auto interior shop/upholstery

j) Auto muffler shop

k) Auto paint shop

l) Auto parts sale (new or rebuilt; with outside storage or display)

m) Auto repair (major & minor)

n) Auto tire sales

o) Automobile wash (full service/detail shop)

p) Automobile wash (self-service)

q) Building material sales/lumber yard

r) Caretaker's, guard's residence

s) Carpet and rug cleaning plant

t) Cemetery and/or mausoleum

u) Check cashing service

v) Concrete or asphalt mixing/batching plant

w) Family home (child care in place of residence)

x) Feed and grain store/farm supply store

y) Fix-it shops, small engine, saw filing, mower sharpening

z) Fraternity or sorority house

aa) Funeral home

bb) Golf driving range

cc) Heliport/Helistop

dd) Household care institution

ee) Institution for alcoholic, narcotic, or psychiatric patients

ff) Laundromat/washateria/self- service

gg) Loan service (payday / auto title)

hh) Maintenance and repair service for buildings/janitorial

ii) Mortuary

jj) Motorcycle sales/dealer w/outdoor sales, storage, and display

kk) Office, parole-probation

ll) Pawn shop

mm) Quick lube/oil change/minor inspection

nn) Rehabilitation care facility (halfway house)

oo) School, public or denominational

pp) Sheltered care facility

qq) Taxi/limousine service

rr) Taxidermist

ss) Telemarketing agency

tt) Telephone exchange/switching station

uu) Tool and machinery rental (with outdoor storage)

vv) Welding shop

c. Development Regulations

1) Area regulations for Single Family Lots

a) Minimum Lot Size – 7,800 Feet

b) Minimum Lot Width – 60 Feet

c) Minimum Lot Depth – 120 Feet

d) Minimum Front Yard – 25 Feet (35’ adjacent to Arterial Street)

e) Minimum Side Yard – 5 Feet (15’ adjacent to street, 25’ adjacent to Arterial Street)

f) Minimum Rear Yard – 15 Feet (25’ adjacent to Arterial)

g) Maximum Lot Coverage – 55% (including main buildings and accessory buildings)

h) Maximum Height – Two stories not to exceed 35 feet for the main building/house

2) Area Regulations for nonresidential uses **(Excludes Amenities)**

a) Minimum Lot Area – 6,000 Square Feet

b) Minimum Lot Width – 60 Feet

c) Minimum Lot Depth – 100 Feet

d) Minimum Front Yard – 35 feet

e) Minimum Side Yard (Interior) – 5 Feet (25’ Adjacent to Arterial)

f) Minimum Side Yard Adjacent to Single Family – 25 Feet

g) Minimum Rear Yard – 15 Feet

h) Maximum floor area ratio (FAR) is 1:1

3) Develop full boulevard of Medical Complex Drive to serve the development (through the extent of single family residential construction) as shown in Exhibit A.

d. Architecture Standards

These recommendations and standards are meant to foster a sense of design community that will deliver the desired aesthetic of the planned residential development. The follow architectural criteria are intended to make the home builder and building designer aware of the architectural context, not to inhibit or limit unique design.

1) Building façade criteria and features:

a) Each residence must present an exterior design within the classification of “Modern Farmhouse”

or “Craftsman” design.

b) Combined exterior materials and colors must vary from those within 4 residences of the subject. Crossing the street will count as one residence.

c) Primary brick material may not be repeated within 4 residences.

d) A variation of garage entries and garage sizes is expected as a general method of breaking up the street scene for the subdivision. This will include front loading 2 and 3 car garages as well as "J-Swing" garage entries.

2) Building façade finishes and materials:

a) Each residence must include the following materials in varied methods of use.

b) Brick and/or Stone.

c) Board and Batten siding or similar painted material.

d) Cedar or other stained or painted decorative wood detailing.

e) Minimum 8:12 Side to side roof pitch.

e. Landscape/Buffer Regulations

1) Single Family Lot Requirements

a) Each lot shall be fully landscaped with either trees, plants or otherwise coved with grass.

b) Each lot shall have at least one 3.5" caliper shade tree planted in the front yard.

c) See attached (Exhibit B) for landscaping guidelines.

2) Non-residential Requirements

a) Provide 30' landscape buffer and tree preservation between commercial reserve tracts and single family lots.

b) Common areas near community signage, amenities, and within the esplanade for Medical Complex will be consistently landscaped with seasonal vegetation and flowers.

3) The community park, fishing dock and shade structure shall be maintained with irrigated grass and seasonal landscaping.

f. Amenities

Amenities will be designed and built to complement the overall concept of the community with a similar use of

materials and design concepts related to the home design requirements for the subdivision. When completed, the combination of the architectural design of the

Amenities, the consistent branding of each area, and the complimentary design of the commercial section of the community will complete a destination environment combining a modern design with a nod to the history of Tomball.

The following Amenities are required as shown on Exhibit A.

1) Up to two (2) Wet amenity detention ponds with fountains.

2) Designated walking trails around amenity ponds (w/ workout equipment).

3) Playground structure.

4) Fishing Dock.

5) Shade structure.

6) Up to two (2) monument signs within platted area.

7) Two (2) Pickle ball courts with fence and seating and up to 5 designated head-in parking spaces

Planned Development EXHIBIT B

Landscaping Guidelines

Just as all structures built throughout Graylou Grove from commercial to residences to amenity structures will be required to include design elements consistent with one another, landscaping in all of these areas will be expected to create a consistent and beautiful vegetation concept throughout the development.

A focus will be made on trees, plants and flowers which are native to the area and the State of Texas in general. Trees planted will be Oaks, implementation of plants will have a focus on evergreen selections and color will be provided by plants and flowers which do well in the environment and seasonal use of their intent.

All areas landscaped as part of the development will remain on an ongoing maintenance plan including irrigation and landscaping maintenance workers who will perform work on a regular basis.

Treelines:

Areas designated as treelines will be completed with selected Oaks of 6" in diameter or greater.

Common Areas:

Common areas in the development will include areas around signage, inside medians of Medical Complex, and throughout the amenity area at east end of the community.

These areas will require coverage by landscaping. Medians will be presented with a combination of mulch, St Augustine Grass, Evergreen plants and seasonal plants and flowers. These areas will be maintained through irrigation and ongoing care through landscaping professionals.

Areas immediately surrounding amenities or signage will be maintained with a combination of St. Augustine grass, mulch, evergreen plants and seasonal color.

Smaller, more detailed areas that require grass will be completed with the laying of sod while larger open areas will be completed through the use of grass seed.

Residential Requirements:

In order to be considered complete per community guidelines, each residence must include at least one 3.5 caliper tree of Oak or other approve tree, a fully sodded and irrigated front yard (to front corner of home at a minimum) and a landscaping area which must be a minimum of 5' x 20' in size. Landscaped should include a combination of mulch beds, evergreen plants and seasonal plants with color or seasonal flowers.

EXHIBIT C

PUBLIC IMPROVEMENTS AND PROJECT COSTS

The Projects listed and their costs are estimates and final projects and costs of the Public Improvements shall be as set forth in the applicable Service and Assessment Plan. The Service and Assessment Plan will also include costs of issuance for the PID Bonds.

Description		WSD	Roadway	Out-of-Distrcit	Total
B1. General & Site Preparation Items		$ 496,180	$ -	$ -	$ 496,180
B2. SWPPP Items		$ 194,081	$ 194,081	$ 2,910	$ 391,072
B3. Water Distribution Items		$ 781,915	$ -	$ -	$ 781,915
B4. Wastewater Collection Items		$ 552,860	$ -	$ -	$ 552,860
B5. Stormwater Collection Items		$ 1,480,189	$ -	$ 12,536	$ 1,492,725
B6. Natural Gas Distribution Items		$ 189,635	$ -	$ -	$ 189,635
B7. Excavation and Paving Items		$ -	$ 2,822,700	$ 129,595	$ 2,952,295
B7. Traffic and Traffic Control Items		$ -	$ 80,000	$ -	$ 80,000
C. Extra Unit Price Items		$ 106,900	$ -	$ -	$ 106,900
D. Cash Allowances		$ 125,000	$ 535,000	$ 130,000	$ 790,000
Subtotal		$ 3,926,759	$ 3,631,781	$ 275,042	$ 7,833,582
Construction Staking (1.5%)		$ 58,901	$ 54,477	$ 4,126	$ 117,504
City of Tomball Construction Permit Fee (2%)		$ 78,535	$ 72,636	$ 5,501	$ 156,672
Certification of Insurance, Performance, Payment and Maintenance Bonds (2%)		$ 80,000	$ 74,000	$ 6,000	$ 160,000
Contigency (5%)		$ 207,210	$ 191,645	$ 14,533	$ 413,388
Sub-Total Construction Cost		**$ 4,133,969**	**$ 3,823,426**	**$ 289,575**	**$ 8,681,145**
Drainage Impact Fee		$ -	$ -	$ -	$ -
Engineering Fees (8%)		$ 330,718	$ 305,874	$ 23,166	$ 659,758
Geotechnical Eng. & Construction Material Testing (2%)		$ 82,679	$ 76,469	$ 5,792	$ 164,939
Sub-Total Engineering and Fees		**$ 413,397**	**$ 382,343**	**$ 28,958**	**$ 824,697**
Total Preliminary Construction Cost Estimate		**$ 4,547,366**	**$ 4,205,768**	**$ 318,533**	**$ 9,505,842**
Cost per Lot	87	$ 52,269	$ 48,342	-	$ 109,263
Cost per Acre	47.9	$ 94,956	$ 87,823	-	$ 198,496

Notes

1 Estimate does not include any additional costs that may be required for development outside the scope outlined above. These fees may include street lighting, dry utilities, etc.

2 The quantities reflected on this estimate were tabulated from 30% preliminary engineering drawings. The unit prices shown hereon are based on current bid prices received in this office, are valid for 30 days from tabulation, and are subject to change pending approved construction plans and market conditions.

EXHIBIT D

[RESERVED]

EXHIBIT E

LANDOWNER CONSENT

CONSENT AND AGREEMENT OF LANDOWNERS

This Consent and Agreement of Landowner is issued by _____, an _____, as the landowner (the "Landowner") who collectively hold record title to all property located within the [_____ Public Improvement District] (the "PID") created by the City of _____ pursuant to a petition of Landowner. Capitalized terms used herein and not otherwise defined shall have the meaning given to such terms in the City's ordinance levying assessments on property within the PID, dated _____, 20__, including the Service and Assessment Plan and Assessment Rolls attached thereto (the "Assessment Ordinance"). [TO BE EXECUTED PRIOR TO THE LEVY OF ASSESSMENTS]

Landowner hereby declare and confirm that they collectively hold record title to all property in the PID which are subject to the Assessment Ordinances, as set forth on Exhibit A. Further, Landowner hereby ratify, declare, consent to, affirm, agree to and confirm each of the following:

1. The creation and boundaries of the PID, the boundaries of each Assessed Property, and the Authorized Improvements for which the Assessments are being made, as set forth in the Service and Assessment Plan.

2. The determinations and findings as to benefits by the City in the Assessment Ordinance and the Service and Assessment Plan.

3. The Assessment Ordinance and the Service and Assessment Plan and Assessment Roll.

4. The right, power and authority of the City Council to adopt the Assessment Ordinances and the Service and Assessment Plans and Assessment Roll;

5. Each Assessment levied on each Assessed Property as shown in the Service and Assessment Plan (including interest and Administrative Expenses as identified in the Service and Assessment Plan and as updated from time to time as set forth in the Service and Assessment Plan).

6. The Authorized Improvements specially benefit the Assessed Property in an amount in excess of the Assessment levied on each Assessed Property, as such Assessments are shown on the Assessment Roll.

7. Each Assessment is final, conclusive and binding upon such Landowners, regardless of whether such Landowners may be required to pay Assessments under certain circumstances pursuant to the Service and Assessment Plan.

8. The then-current owner of each Assessed Property shall pay the Assessment levied on the Assessed Property owned by it when due and in the amount required by and stated in the Service and Assessment Plan and the Assessment Ordinance.

9. Delinquent installments of the Assessment shall incur and accrue interest, penalties, and attorney's fees as provided in the PID Act.

10. The "Annual Installments" of the Assessments may be adjusted, decreased and extended in accordance with the Service and Assessment Plan, and the then-current owner of each Assessed Property shall be obligated to pay its revised amounts of the Annual Installments, when due, and without the necessity of further action, assessments or reassessments by the City.

11. All notices required to be provided to it under the PID Act have been received and to the extent of any defect in such notice, Landowners hereby waive any notice requirements and consents to all actions taken by the City with respect to the creation of the PID and the levy of the Assessments.

12. That the resolution creating the PID, the Ordinance levying the Assessments, the Service and Assessment Plan and a Notice of Creation of Special Assessment District and Imposition of Special Assessment to be provided by the City, shall be filed in the records of the County Clerk of Harris County, with copies of the recorded documents delivered to the City promptly after receipt thereof by the recording party, as a lien and encumbrance against the Assessed Property.

13. Each Assessed Property owned by the Landowner identified in the Service and Assessment Plan and Assessment Roll are wholly within the boundaries of the PID.

14. There are no Parcels owned by the Landowners within the boundaries of the PID that are not identified in the Service and Assessment Plan and the Assessment Roll.

15. Each Parcel owned by the Landowners identified in the Service and Assessment Plan and Assessment Roll against which no Assessment has been levied was Non-Benefited Property as of _____, 20__.

Originals and Counterparts. This Agreement may be executed in a number of identical counterparts, each of which shall be deemed an original for all purposes.

[Execution page follows]

IN WITNESS WHEREOF, the undersigned has caused this Agreement and Consent of Landowner to be executed as of _____, 20__.

_____, LLC,
an _____

By:

By:

By: _____
Name:
Its

STATE OF TEXAS §
§
COUNTY OF HARRIS §

This instrument was acknowledged before me on the _____ day of _____, 20____ by _____, as, an _____ limited liability company on behalf of said company.

_____
Notary Public, State of Texas

EXHIBIT F

FORM OF PAYMENT CERTIFICATE

PAYMENT CERTIFICATE NO. _____

Reference is made to that certain Indenture of Trust by and between the City and the Trustee dated as of _____ (the "Indenture") relating to the "City of Tomball, Texas, Special Assessment Revenue Bonds, Series 20__ (Graylou Grove Public Improvement District Project)" (the "Bonds"). FLS Development, LLC a Texas limited liability company (the "Developer") requests payment to the Developer (or to the person designated by the Developer) from:

_____ the Public Improvement Account of the Project Fund

from _____, N.A., (the "Trustee"), in the amount of _____ ($_____) for labor, materials, fees, and/or other general costs related to the creation, acquisition, or construction of certain Public Improvements providing a special benefit to property within the _____ Public Improvement District.

In connection with the above referenced payment, the Developer represents and warrants to the City as follows:

1. The undersigned is a duly authorized officer of the Developer, is qualified to execute this Certificate for Payment Form on behalf of the Developer, and is knowledgeable as to the matters set forth herein.

2. The itemized payment requested for the below referenced Public Improvements has not been the subject of any prior payment request submitted for the same work to the City or, if previously requested, no disbursement was made with respect thereto.

3. The itemized amounts listed for the Public Improvements below is a true and accurate representation of the Public Improvements associated with the creation, acquisition, or construction of said Public Improvements and such costs (i) are in compliance with the Development Agreement, and (ii) are consistent with and within the cost identified for such Public Improvements as set forth in the Service and Assessment Plan.

4. The Developer is in compliance with the terms and provisions of the Development Agreement, the Indenture, and the Service and Assessment Plan.

5. The Developer has timely paid all ad valorem taxes and Annual Installments of Public Assessments it owes or an entity the Developer controls owes, located in the Graylou Grove Public Improvement District and has no outstanding delinquencies for such Public Assessments.

6. All conditions set forth in the Indenture and the Development Agreement for the payment hereby requested have been satisfied.

7. The work with respect to Public Improvements referenced below (or its completed segment) has been completed, and the City has inspected such Public Improvements (or its completed segment).

8. The Developer agrees to cooperate with the City in conducting its review of the requested payment, and agrees to provide additional information and documentation as is reasonably necessary for the City to complete said review.

Payments requested are as follows:

Payee / Description of Public Improvement	Total Cost Public Improvement	Budgeted Cost of Public Improvement	Amount requested be paid from the Public Improvement Account

Attached hereto are receipts, purchase orders, change orders, and similar instruments which support and validate the above requested payments. Also attached hereto are "bills paid" affidavits and supporting documentation in the standard form for City construction projects. In addition, the Developer must complete and submit any requirement information requested by the City's PID Administrator.

Pursuant to the Development Agreement, after receiving this payment request, the City has inspected the Public Improvements (or completed segment) and confirmed that said work has been completed in accordance with approved plans and all applicable governmental laws, rules, and regulations.

Payments requested hereunder shall be made as directed below:

a. X amount to Person or Account Y for Z goods or services.

b. Payment instructions

I hereby declare that the above representations and warranties are true and correct.

_____,
LLC, an _____ limited liability company

By: _____

Name: _____

Title: _____

APPROVAL OF REQUEST

The City is in receipt of the attached Certificate for Payment, acknowledges the Certificate for Payment, and finds the Certificate for Payment to be in order. After reviewing the Certificate for Payment, the City approves the Certificate for Payment and authorizes and directs payment of the amounts set forth below by Trustee from the Project Fund to the Developer or other person designated by the Developer as listed and directed on such Certificate for Payment. The City's approval of the Certificate for Payment shall not have the effect of estopping or preventing the City from asserting claims under the Development Agreement, the Reimbursement Agreement, the Indenture, the Service and Assessment Plan, or any other agreement between the parties or that there is a defect in the Public Improvements.

Amount of Payment Certificate Request	Amount to be Paid by Trustee from Improvement Account
$_____	$_____

CITY OF TOMBALL, TEXAS

By:_____

Name: _____

Title: _____

Date: _____

EXHIBIT G

FORM OF CLOSING DISBURSEMENT REQUEST

The undersigned is an agent for FLS Development, LLC (the "Developer") and requests payment from:

[the Cost of Issuance Account of the Project Fund][the Improvement Account of the Project Fund] from _____, (the "Trustee") in the amount of _____DOLLARS ($_____) for costs incurred in the establishment, administration, and operation of the Graylou Grove Public Improvement District (the "District"), as follows:

Closing Costs Description	Cost	PID Allocated Cost
TOTAL		

In connection to the above referenced payments, the Developer represents and warrants to the City as follows:

1. The undersigned is a duly authorized officer of the Developer, is qualified to execute this Closing Disbursement Request on behalf of the Developer, and is knowledgeable as to the matters set forth herein.

2. The payment requested for the above referenced establishment, administration, and operation of the District at the time of the delivery of the Bonds has not been the subject of any prior payment request submitted to the City.

3. The amount listed for the below itemized costs is a true and accurate representation of the Actual Costs incurred by Developer with the establishment of the District at the time of the delivery of the Bonds, and such costs are in compliance with and within the costs as set forth in the Service and Assessment Plan.

4. The Developer is in compliance with the terms and provisions of the Development Agreement, the Indenture, and the Service and Assessment Plan.

5. All conditions set forth in the Indenture for the payment hereby requested have been satisfied.

6. The Developer agrees to cooperate with the City in conducting its review of the requested payment, and agrees to provide additional information and documentation as is reasonably necessary for the City to complete said review.

The Developer must also submit any requirement information requested by the City's PID Administrator.

Payments requested hereunder shall be made as directed below:

c. X amount to Person or Account Y for Z goods or services.

d. Payment instructions

I hereby declare that the above representations and warranties are true and correct.

_____, LLC, an _____ limited liability company

By: _____

Name: _____

Title: _____

Date: _____

APPROVAL OF REQUEST

The City is in receipt of the attached Closing Disbursement Request, acknowledges the Closing Disbursement Request, and finds the Closing Disbursement Request to be in order. After reviewing the Closing Disbursement Request, the City approves the Closing Disbursement Request to the extent set forth below and authorizes and directs payment by Trustee in such amounts and from the accounts listed below, to the Developer or other person designated by the Developer herein.

Closing Costs	Amount to be Paid by Trustee from Cost of Issuance Account
$_____	$_____

CITY OF TOMBALL, TEXAS

By:_____
Name: _____
Title: _____

Date: _____

EXHIBIT H

HOME BUYER DISCLOSURE PROGRAM

The Developer perform the following with respect to disclosure to homebuyers in the PID and if lots are sold to third-party builders, shall require in its contracts with such builders within the PID that the builders provide notice to prospective homebuyers in accordance with the following minimum requirements:

2. Attach the final Assessment Roll for such Assessed Parcel (or if the Assessment Roll is not available for such Assessed Parcel, then a schedule showing the maximum 30-year payment for such Assessed Parcel) in an addendum to each residential homebuyer's contract on colored paper.

3. Collect a copy of the addendum signed by each buyer at closing and record it in the real property records of Harris County.

4. Require signage indicating that the Property for sale is located in a special assessment district and require that such signage be located in conspicuous places in all model homes.

6. If the homebuilders estimate monthly ownership costs, they must include special assessments in estimated property taxes.

7. Notify Settlement Companies that they are required to include special taxes on HUD 1 forms and include in total estimated taxes for the purpose of setting up tax escrows

EXHIBIT I

AMENITIES

- Wet amenity detention pond with fountains
- Designated walking trails around amenity ponds (w/ workout equipment)
- Playground structure
- Fishing Dock
- Shade structure
- Up to two (2) monument signs within platted area
- Two (2) Pickle ball courts with fence and seating.

City Council Meeting
Agenda Item
Data Sheet

Meeting Date: April 1, 2024

Topic:

Approve Resolution Number 2024-07, a Resolution of the City Council of the City of Tomball, Texas authorizing and creating the Graylou Grove Public Improvement District in the City of Tomball, Harris County, Texas, in accordance with Chapter 372 of the Texas Local Government Code; Providing for Related Matters and Providing an Effective Date.

Background:

FLS Development, LLC has requested consideration of a public improvement district to develop approximately 44 acres at the intersection of Hufsmith Kohrville Road and Medical Complex Drive as a residential development called Graylou Grove. On December 18, 2023, City Council approved Resolution Number 2023-56, calling for the required public hearing to be conducted on January 15, 2024, but due to inclement weather the public hearing was rescheduled, with notice provided, and held on January 22, 2024, to consider the advisability of the proposed PID.

Staff worked with the developer, PID consultant, financial advisors, and Bond Counsel to draft the proposed development agreement that outlines the requirements of the development if creation of the District is granted. Resolution 2024-07 authorizing and creating the Graylou Grove Public Improvement District is being presented for approval following approval of Resolution 2024-08 approving a Development Agreement between the City of Tomball and FLS Development, LLC.

The submitted PID application and proposed development agreement include policy exceptions from the City's adopted PID policy (adopted September 19, 2022), including:

1. The total acreage included in the proposed PID is 43.149 acres. The City's adopted PID policy requires a minimum of 50 acres for a debt PID.
2. The developer has proposed a 30-year PID with a maximum assessment of $0.95 per $100 assessed value. the City's adopted PID policy sets the maximum assessment for a 30-year PID at $0.48 per $100 of assessed value.
3. The developer will not be constructing Medical Complex Drive through the extent of their proposed development. Per the City's adopted PID policy, a developer requesting a PID must adhere to the City's adopted master plans and development ordinances. The proposed development does not meet the minimum requirements of Section II-E of the adopted PID policy and violates Ordinance Section 38-125. Staff did work with the EDC regarding a grant for the development to construct the commercial portion of Medical Complex Drive as match with the developer construct matching linear footage in the back of the development to further extend Medical Complex.
    a. Section 2-E requires that PIDs increase or enhance the City's transportation and roadway plans. The Medical Complex Drive extension to Mahaffey is shown on our Major Thoroughfare Plan and the proposed development does not include plans to construct the proposed boulevard through their development.
    b. Ordinance Section 38-125 required development to "*construct street or drainage facilities in such a manner that they will benefit other property owners, may at their own*

cost and expense construct such street and drainage facilities in accordance with the master plan of the City and in accordance with such conditions as may be prescribed by the ordinances of the City or the City Council". As proposed the development does not construct the extension of Medical Complex Drive. in accordance with the Major Thoroughfare Plan.

   c. The developer does not want to construct additional footage of Medical Complex and requesting to not work with the EDC for the match grant.

4. Value to lien (LTV) ratio of 3:1 at the time of levy of assessment and total assessment value to lien (LTV) ratio of each series of PID bonds be at least 3:1.
   a. The developer is requesting to levy at less than a 3:1 LTV but issue the bonds at the 3:1 LTV which would result in the bond proceeds being held over.
5. The developer is requesting to remove the existing requirement for public improvements to be completed before the issuance of bonds.

Resolution Number 2024-07 authorizes and creates Public Improvement District Number 15 – Graylou Grove with respect to the development of the property specified in the Public Improvement District Application, dated November 15, 2023, following approval of the proposed Development Agreement.

Origination: Project Management

Recommendation:

Staff recommends denial of Resolution Number 2024-07, authorizing and creating Graylou Grove Public Improvement District Number 15, due to non-adherence of the minimum requirements of the City's adopted PID policy.

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

FUNDING (IF APPLICABLE)

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

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

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

Signed Meagan Mageo _____ Approved by _____

Staff Member Date City Manager Date

RESOLUTION NO. 2024-07

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

* * * * * * * * *

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

WHEREAS, the City received a petition from the owner of property partially within the corporate limits of the City and partially within the extraterritorial jurisdiction of the City (the "*Petitioner*"), requesting the establishment of a public improvement district (to be known as the "Graylou Grove Public Improvement District") (the "*District*"), such District to include the property described by metes and bounds in Exhibit A (the "*Property*"), each attached hereto and incorporated herein for all purposes; and

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

WHEREAS, on December 18, 2023, the City Council accepted the Petition and called a public hearing for January 15, 2024, on the creation of the District and the advisability of the improvements; and

WHEREAS, notice of the hearing was published in a newspaper of general circulation in the City in which the District is to be located, in accordance with the Act; and,

WHEREAS, notice to the owners of property within the proposed District was sent by first-class mail to the owners of 100% of the property subject to assessment under the proposed District containing the information required by the Act such that such owners had actual knowledge of the public hearing to be held on January 15, 2024; and

WHEREAS, the City of Tomball was closed on January 15, 2024 and the Council meeting cancelled due to inclement weather; and

WHEREAS, the City posted notice on its website that the Council meeting and the public hearing scheduled for January 15, 2024 would be held January 22, 2024; and

WHEREAS, the public hearing was held on January 22, 2024 and the City now desires to approve the creation of the Graylou Grove Public Improvement District;

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

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

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

SECTION 3. That pursuant to the requirements of the Act, including, without limitation, Sections 372.006, 372.009(a), and 372.009(b), the City Council, after considering the Petition at the public hearing on January 22, 2024, hereby finds and declares:

(a) *Advisability of the Proposed Improvements*. It is advisable to create the District to provide the Authorized Improvements (as described below). The Authorized Improvements are feasible and desirable and will promote the interests of the City and will confer a special benefit on the Property.

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

payment of costs associated with developing and financing the public improvements listed in subparagraphs (i) - (v) above, and costs of establishing, administering and operating the district. These Authorized Improvements shall promote the interests of the City and confer a special benefit upon the Property.

(c) *Estimated Costs of the Authorized Improvements and Apportionment of Costs.* The estimated cost to design, acquire and construct the Authorized Improvements, together with bond issuance costs, eligible legal and financial fees, eligible credit enhancement costs and eligible costs incurred in the establishment, administration, and operation of the PID is $8,000,000 plus the annual cost of supplemental services and operation and maintenance cost, if any. The City will pay none of the costs of the proposed Authorized Improvements, supplemental services or operation and maintenance costs from funds other than assessments levied on property within the PID. The remaining costs of the proposed improvements will be paid from sources other than those described above.

(d) *Boundaries of the District*. 43.149 Acres of Land currently located partially within the extra-territorial jurisdiction of the City and partially within the corporate limits of the City of Tomball, Harris County, Texas, Said Property Being Generally Located 0.2 miles from the future intersection of Winfrey Lane (unimproved) and FM 2978, and is APPROXIMATELY 3,275 FEET North of FM 2920, APPROXIMATELY 3,375 FEET South of E. Hufsmith Rd, APPROXIMATELY 845 FEET East of Snook Lane and APPROXIMATELY 1,100 FEET West of FM 2978 (Hufsmith Kohrville Rd.). The boundaries of the District are set forth in Exhibit A attached hereto.

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

(f) *Apportionment of Cost Between the District and the City.* The City will not be obligated to provide any funds to finance the Authorized Improvements. All of the costs of the Authorized Improvements will be paid from assessments levied on properties in the District and from other sources of funds available to the Petitioner.

(g) *Management of the District.* The District shall be managed by the City, with the assistance of a consultant, who shall, from time to time, advise the City regarding certain operations of the District.

(h) *Advisory Board.* The District shall be managed without the creation of an advisory body.

SECTION 4. That the Graylou Grove Public Improvement District is hereby authorized and created as a public improvement district under the Act in accordance with the findings of the City Council as to the advisability of the Authorized Improvements contained in this Resolution, the nature and the estimated costs of the Authorized Improvements, the boundaries of the District, the method of

assessment and the apportionment of costs as described herein; and the conclusion that the District is needed to fund such Authorized Improvements.

SECTION 5. That City staff is directed to cause to be prepared a Service and Assessment Plan for the District and to present it to the City Council for review and approval.

SECTION 6. That this Resolution shall take effect immediately from and after its passage, as required by law.

PASSED, APPROVED, AND RESOLVED this ____day of April 2024.

Lori Klein Quinn
Mayor

ATTEST:

Tracylynn Garcia
City Secretary

City Council
Agenda Item
Data Sheet

Meeting Date: April 1, 2024

Topic:
Consider approval of Wholesale Water Services Agreement between the City of Tomball and Harris County Municipal District No. 273.

Background:
The First Amendment to the Development Agreement between the City of Tomball, A-K 133 HWY 249-GRAND PARKWAY, L.P., and Harris County Municipal Utility District No. 273 as executed on May 19, 2017, specifies the City of Tomball as the water supplier for the District. This item is to consider approval of the Wholesale Water Services Agreement which outlines the connection provisions, construction of improvements and metering provisions, rates and charges, and other related matters.

Origination:

Harris County Municipal Utility District No. 273

Recommendation:

Approval

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

FUNDING (IF APPLICABLE)

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

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

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

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

WHOLESALE WATER SERVICES AGREEMENT

BETWEEN THE CITY OF TOMBALL AND HARRIS COUNTY MUNICIPAL UTILITY DISTRICT NO. 273

This WHOLESALE WATER SERVICES AGREEMENT (this "Agreement") is made and entered into by and between THE CITY OF TOMBALL (“City”), a home-rule municipality created and operating pursuant to the Constitution of Texas and the HARRIS COUNTY MUNICIPAL UTILITY District NO. 273 ("Customer") a political subdivision of the State of Texas.

RECITALS

1. City owns and operates water supply, storage, treatment, transmission and distribution facilities which have been designed to serve the needs of its customers in Harris County, Texas (collectively, the "City System").

2. Customer, a retail public utility furnishing retail water service, desires to obtain wholesale water services from City, and City desires to provide wholesale water service to Customer.

3. Customer will be responsible for construction of all improvements necessary to receive and deliver the potable water provided by City under this Agreement from the Delivery Point, as defined herein, to the Customer's utility system to allow the Customer to supply retail potable water service to the Customer's customers within the Wholesale Service Area, as defined herein.

4. City and Customer now desire to execute this Agreement to evidence the agreement of City to provide Wholesale Water Services, as more fully defined herein, to Customer under the conditions described in this Agreement.

AGREEMENT

NOW, THEREFORE, for and in consideration of the mutual covenants and agreements set forth and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, City and Customer agree as follows:

ARTICLE I

DEFINITIONS

Section 1.01 Definitions of Terms. In addition to the terms otherwise defined in the above recitals or the provisions of this Agreement, the terms used in this Agreement will have the meanings set forth below.

"Agreement" means this agreement.

"Annual Water Supply Commitment" means quantity of maximum annual quantity of Wholesale Water Services to be made available by City to Customer for the Wholesale Service Area under this Agreement. The Annual Water Supply Commitment shall be 12.6 million gallons per annum, to be calculated on a calendar year basis.

"AWWA" means the American Water Works Association.

"Commencement Date" means the date of commencement of Wholesale Water Services by City to Customer. Except as otherwise agreed by the Parties, the Commencement Date shall be the same as the Effective Date.

"Connection Limit" means the cumulative number of customer service connections within the Wholesale Service Area, which shall not exceed 83 equivalent single family connections.

"Costs of the City System" means all of City's costs of acquiring, constructing, developing, permitting, implementing, expanding, improving, enlarging, bettering, extending, replacing, repairing, maintaining and operating the City System, including, without limiting the generality of the foregoing, the costs of reasonable water losses within the City System as well as the costs of property, , interests in property, capitalized interest, land, easements and rights-of-way, damages to land and property, leases, facilities, equipment, machinery, pumps, pipes, tanks, valves, fittings, mechanical devices, office equipment, assets, contract rights, wages and salaries, employee benefits, chemicals, stores, material, supplies, power, supervision, engineering, testing, auditing, franchises, charges, assessments, claims, insurance, engineering, financing, consultants, administrative expenses, auditing expenses, legal expenses and other similar or dissimilar expenses and costs required for the City System in accordance with the policies of the City. The term "Costs of the City System" shall also include any costs incurred by the City associated with providing Wholesale Water Services to Customer during the initial five (5) year period after the Commencement Date in which the City's wholesale rates and fees are fixed, and which are not recovered through such rates and fees, including costs of additional capacity made available to new customers within the Wholesale Service Area. Notwithstanding the foregoing, because City is providing Wholesale Water Services to Customer and retail potable water service to other customers from the City System, the term "Costs of the City System" shall not include retail billing and customer service costs or any costs properly attributable to the provision of retail potable water service for facilities not used and useful by City for the provision of service to the Wholesale Service Area from the City System, such as costs of retail distribution lines, and individual retail customer service lines.

"Customer" means Harris County Municipal Utility District No. 273, dba MUD 273.

"Customer System" means the Customer's water transmission, distribution and delivery systems that provide service to the Customer's retail customers required to extend service to the Wholesale Service Area from Customer's side of the Delivery Point. The Customer System shall be owned, operated and maintained by Customer and shall not include the Master Meters or any facilities on City's side of the Delivery Point.

"Delivery Point" means the point at which City will deliver treated water to Customer under this Agreement, which shall be the location of the Master Meters, as depicted on Exhibit A.

"City" means the City of Tomball or its successor.

"City Service Area" means the service area for the City System, together with such other service areas as may be added by City in the future.

"City System" means the facilities owned and operated by City, together with all extensions, expansions, improvements, enlargements, betterments and replacements to provide retail or wholesale water services to City's customers in the City Service Area. The City System shall include the Delivery Point Improvements, but shall not include the Customer System.

"City Water Conservation and Drought Contingency Plan" means, collectively, the City Water Conservation Plan and the City Drought Contingency Plan, as may be amended by the from time to time.

"Effective Date" means the date this Agreement has been executed by both Customer and City.

"Emergency" means a sudden unexpected happening; an unforeseen occurrence or condition; exigency; pressing necessity; or a relatively permanent condition or insufficiency of service or of facilities resulting from causes outside of the reasonable control of City. The term includes Force Majeure and acts of third parties that cause the City System to be unable to provide the Wholesale Water Services agreed to be provided herein.

"Force Majeure" means acts of God, strikes, lockouts, or other industrial disturbances, acts of the public enemy, orders of any kind of any governmental entity other than City or any civil or military authority, acts, orders or delays of any regulatory authorities with jurisdiction over the parties, insurrections, riots, acts of terrorism, epidemics, landslides, lightning, earthquakes, fires, hurricanes, floods, washouts, droughts, arrests, restraint of government and people, civil disturbances, explosions, breakage or accidents to machinery, pipelines or canals, or any other conditions which are not within the control of a party.

"Master Meters" means the two (2) master meters and related equipment located at the Delivery Point(s) which shall measure the quantity of Wholesale Water Service provided by City pursuant to this Agreement.

"Minimum Monthly Charge" means the monthly charge by the City to the Customer for the provision of Wholesale Water Service by the City to the Wholesale Service Area as described in Sections 4.01 and 4.03(b) below.

"TCEQ" means the Texas Commission on Environmental Quality or its successor agency.

"Volume Charges" means the monthly charge assessed by the City to the Customer for the provision of Wholesale Water Service to the Wholesale Service Area determined by the volume of water delivered to the Wholesale Service Area as measured by the Master Meters and as described in Sections 4.01 and 4.03 herein.

"Wholesale Water Services" means the production of groundwater from City's municipal groundwater wells, the transmission of such untreated water supplies to City's water treatment plant, the treatment of the water into potable form, and the transmission of potable water to the Delivery Point.

"Wholesale Service Area" means only the territory more particularly described or depicted in Exhibit B attached hereto which consists of the real property located within the extraterritorial jurisdiction of the City that is also within the Customer’s boundaries .

Section 1.02 Captions. The captions appearing at the first of each numbered section or paragraph in this Agreement are inserted and included solely for convenience and shall never be considered or given any effect in construing this Agreement.

ARTICLE II

PROVISION OF WHOLESALE WATER SERVICES

Section 2.01 Wholesale Water Services. City agrees to provide Wholesale Water Services to Customer for the Wholesale Service Area in accordance with the flow limitations and other terms and conditions of this Agreement.

Section 2.02 Customer Responsible for Retail Connections. Customer will be solely responsible for providing retail water service within the Wholesale Service Area. Customer shall not provide or sell water received under this Agreement to any entity, private or public, other than the Customer's retail customers located within the Wholesale Service Area. Customer will be solely responsible for ensuring compliance by its retail customers with the applicable terms of this Agreement, for the applicable provisions of the City Service Rules and Policies, and for the proper and lawful application of Customer's policies and regulations governing connection to the Customer System.

Section 2.03 Secondary Source.

(a) The Parties agree that as of the Commencement Date, the sole source of water to Customer for the Wholesale Service Area is Wholesale Water Services furnished by the City. Notwithstanding the foregoing, the Wholesale Water Services shall not be the exclusive source of potable water supply to Customer, and Customer may elect, in its sole discretion, to secure additional or alternative water supplies for the Wholesale Service Area at any time. The Customer shall be solely responsible for securing any such alternative or additional water supplies. The Parties mutually acknowledge and agree that it is their intent for Customer to be solely responsible for compliance with TCEQ's minimum capacity rules. Customer agrees that, upon securing of additional or alternative water supplies, Customer will, at its sole expense, construct and maintain an air gap separation between the Customer System and the City system.

(b) City, by entering into this Agreement with Customer, does not confer upon Customer, and Customer, as a result of this Agreement, shall never have or claim, any interest in any water owned or controlled by City.

Section 2.04 Title to and Responsibility for Water, Delivery Point.

(a) Title to the water diverted, treated and transported to Customer by City under this Agreement shall remain with City at all times until it reaches the Delivery Point. At the Delivery Point, title, control and dominion of the water shall pass to the Customer.

(b) Customer shall be solely responsible for conveying water from the Delivery Point to the Customer's intended places of use within the Wholesale Service Area.

Section 2.05 Volume and Pressure.

(a) Subject to the terms of this Agreement, upon completion of construction by the Customer of the Customer Improvements and Delivery Improvements, City agrees to provide Wholesale Water Services in a quantity up to, but not in excess of:

(i) the Annual Water Supply Commitment;

(ii) the Connection Limit;

(iii) a maximum daily flow rate of 34,528 gallons per day;

(iv) a maximum hourly rate of 250 gallons per hour per equivalent single family connection; and

(v) a maximum instantaneous flow rate of 4 gallons per minute per equivalent single family connection. The Parties agree that the water supply shall be delivered at the Delivery Point at a minimum pressure of 35 psi under normal operating conditions, and Customer shall be solely responsible for ensuring that the water service furnished to its customers meets minimum pressure and other regulatory requirements applicable to public water systems established by TCEQ rules.

(b) City reserves the right to install, at Customer's expense, flow restriction devices within the City System or at the Delivery Point, if necessary, in order to restrict the flow of water to Customer to the specified levels. City shall provide Customer not less than fifteen (15) day prior written notice of its intention to do so.

(c) This Agreement shall not be construed as any guarantee or representation by City that the Wholesale Water Services furnished by City to the Customer will be sufficient for fire protection purposes, and the City expressly disclaims any such responsibility.

(d) This Agreement shall not be construed as any guarantee or representation by City that the Wholesale Water Services furnished by City to Customer will be delivered at a static pressure in excess of thirty-five (35) pound per square inch (PSI). Customer will, at Customer's expense, install and maintain any and all facilities necessary for ensuring water pressure within the Customer System.

(e) Customer, at any time and upon first giving City three hundred sixty five (365) days prior written notice, may reduce the Annual Water Supply Commitment. The written notice furnished by Customer to City shall specify the reduced Annual Water Supply Commitment. In the event of any such reduction, City's obligation to provide Wholesale Water Services shall be reduced accordingly, and City's maximum daily, hourly and instantaneous delivery obligations shall be reduced accordingly.

Section 2.06 Excess Consumption.

(a) If at any time Customer exceeds the Annual Water Supply Commitment, the Connection Limit, the maximum daily, hourly, or instantaneous flow rates as set forth in Section 2.05, the City will deliver written notice to Customer. Customer shall have a period of thirty days from receipt of the notice to develop and implement a plan to address the cause of the exceedance. If the quantity of Wholesale Water Service again exceeds the Annual Water Supply Commitment within any calendar year within five (5) years of the first exceedance, then unless Customer obtains an alternative source of water service to meet its excess service requirements, City may exercise any of the following remedies, as determined in the sole and absolute discretion of City:

(1) City may terminate this Agreement to be effective as of a date not less than 365 days after issuance of notice of termination by City to Customer, in which event Customer shall be solely responsible for securing an alternative water supply for the Wholesale

Service Area, and City's obligation to provide Wholesale Water Service to Customer shall terminate on the effective date of termination;

(2) City may pursue any remedy available at law or in equity as a result of Customer's breach; or

(3) City may elect to acquire and develop additional wholesale water capacity at the sole cost and expense of Customer. In the event of such election, City shall calculate the cost of acquiring an additional water supply, which may include the construction of new groundwater well facilities, the purchase of additional water or the purchase of wholesale water service from another purveyor. In such an event, City shall provide six months' written notice of the improvements and costs required to develop additional wholesale water service capacity, and City's method of financing the cost. Unless Customer obtains an alternative source of water service to meet its excess capacity requirements, Customer will be obligated to pay such costs (or, if the improvements will be designed to serve customers in addition to Customer, a pro rata share of such costs) on or before the expiration of such six-month period. The cost of any improvements required under this Section will include all reasonable and necessary costs of planning, designing, constructing and permitting, and any and all other costs in connection with, the required improvements and securing additional water supplies.

Section 2.07 Quality of Water Delivered to Customer.

The water delivered by City at the Delivery Point shall be potable water of a quality conforming to the requirements of applicable federal or state laws, rules, regulations or orders, including requirements of the TCEQ applicable to water provided for human consumption and other domestic use. City will provide Customer with a report of drinking water quality as required by federal and state laws. Customer shall be solely responsible for the quality of water once it passes through the Delivery Point, including any degradation of water quality or system pressure.

Section 2.08 Maintenance and Operation; Future Construction.

City shall be responsible for operating, maintaining, repairing the City System, including the Master Meters. Customer shall be responsible for operating, maintaining, repairing, replacing, extending, improving and enlarging the Customer System condition and shall promptly repair any leaks or breaks in the Customer System.

Section 2.09 Rights and Responsibilities in Event of Leaks or Breaks.

Customer shall be responsible for paying for all water delivered to it under this Agreement at the Delivery Point even if such water passed through the Delivery Point as a result of leaks or breaks in the Customer System. In the event a leak, break, rupture or other defect occurs within the Customer System that could either endanger or contaminate the City System or prejudice City's ability to provide water service to its other customers, City, after providing notice to Customer, shall have the right to take reasonable, appropriate action to protect the public health or welfare of the City System or the water systems of City's customers including, without limitation, the right to restrict, valve off or discontinue service to Customer until such leak, break, rupture or other defect has been repaired.

Section 2.10 Wholesale Service Commitment Not Transferable.

City's commitment to provide Wholesale Water Services is solely to Customer and solely for the Wholesale Service Area. Customer may not assign or transfer in whole or in part its right to receive Wholesale Water Services without City's prior written approval. Notwithstanding the foregoing, the City reserves the right to provide wholesale water service to other properties, as may be amended from time to time. It shall be a material breach of this Agreement for Customer to provide retail (or wholesale) water service to any lands outside the Wholesale Service Area with water furnished by City under this Agreement. In the event of such breach, Customer agrees that City may terminate this Agreement, or pursue any other right or remedy available at law or in equity, if Customer does not terminate the service connection within 30 days of receipt of written notice from City.

Section 2.11 Conservation and Drought Planning.

Customer, by signing below, certifies that it has adopted a water conservation plan and a drought contingency plan in compliance with TCEQ rules, 30 Texas Administrative Code, Chapter 288, and that the provisions of such plans are at least as stringent as the provisions of the City Water Conservation and Drought Contingency Plan. Any curtailment, prohibitions, or restrictions on watering in effect for City retail customers must be applied to retail customers of Customer in the Wholesale Service Area.

Section 2.12 Plumbing Regulations.

To the extent City and Customer have the authority, both covenant and agree to adopt and enforce adequate plumbing regulations with provisions for the proper enforcement thereof, to ensure that neither cross-connection nor other undesirable plumbing practices are permitted, including an agreement with each of their respective water customers that allows it to inspect individual water facilities prior to providing service to ensure that no substandard materials or methods are used and to prevent cross-connection and other undesirable plumbing practices.

Section 2.13 Curtailment of Service.

(a) The Parties agree that if water service is curtailed by City to other customers of the City System, City may impose a like curtailment, with notice to Customer, on Wholesale Water Services delivered to Customer under this Agreement. City will impose such curtailments in a nondiscriminatory fashion.

(b) The Parties agree that they will not construe this Agreement to prohibit City from curtailing service completely in the event of a maintenance operation or Emergency for a reasonable period necessary to complete such maintenance operations or repairs or respond to an emergency circumstance. The Customer acknowledges and agrees that the City's provision of Wholesale Water Services under this Agreement is subject to applicable provisions of the City Water Conservation and Drought Contingency Plan. City will provide reasonable notice of planned maintenance to Customer that is anticipated to materially impact Wholesale Water Services so that Customer can provide reasonable prior notice of potential disruptions to its customers.

Section 2.14 Cooperation During Maintenance or Emergency.

Customer will reasonably cooperate with City during periods of Emergency or required maintenance. If necessary, upon prior notice, Customer will operate and maintain the Customer System at its expense in a manner reasonably necessary for the safe and efficient completion of repairs or the replacement of facilities, the restoration of service, and the protection of the public health, safety, and welfare.

Section 2.15 Right of Entry.

Customer agrees to provide City the right of entry and access to the Customer System at all reasonable times upon prior notice in order to inspect those facilities, to investigate the source of operational or maintenance problems or for preventive purposes intended to detect, minimize, or avert operational or maintenance problems, or for any other purpose reasonably related to the provision of Wholesale Water Service.

ARTICLE III

CONSTRUCTION OF IMPROVEMENTS AND METERING PROVISIONS

Section 3.01 Master Meters. The City shall be responsible for ownership, operation, maintenance and repair of the Master Meters.

Section 3.02 Master Meter Accuracy; Calibration.

(a) The Master Meters shall be calibrated each calendar year by the City, and the costs associated with such calibration shall be paid by Customer. The City shall provide not less than 48 hours prior written notice of each such calibration, and a representative of the Customer may be present to observe each calibration.

(b) In the event any question arises at any time as to the accuracy of the Master Meters, but not more than a frequency of once per consecutive 12-month period without mutual consent of both parties, then the Master Meters shall be tested by City promptly upon demand of Customer. The expense of such test shall be borne by Customer.

(c) If, as a result of any test, either of the Master Meters are found to be registering inaccurately (in excess of AWWA and manufacturer's standards for the type and size of meter), the readings of the Master Meter(s) shall be corrected at the rate of their inaccuracy for any period which is definitely known or agreed upon and City shall pay for the testing or, if no such period is known or agreed upon, the shorter of:

(1) a period extending back either 60 days from the date of demand for the test or, if no demand for the test was made, 60 days from the date of the test; or

(2) a period extending back one-half of the time elapsed since the last previous test; and the records of the readings, and all payments which have been made on the basis of such readings, shall be adjusted accordingly.

ARTICLE IV

RATES AND CHARGES

Section 4.01 Wholesale Water Rates, Fees and Charges.

Effective as of the Commencement Date, Customer will pay City for the Wholesale Water Service provided under this Agreement that is metered through the Master Meters in accordance with the City's published Master Fee Schedule applicable to large commercial users, which initially shall be comprised of:

a) Minimum Monthly Charge, which initially shall be $55.11 per month; and

b) Volume Charge, which initially shall be $5.72 per one thousand (1,000) gallons of water, or as amended, as set forth in the City's Master Fee Schedule.

c) North Harris County Regional Water Authority Fee, which shall be equal to the adopted and applicable rate charged by the North Harris County Regional Water Authority. This fee is remitted wholly to the North Harris County Regional Water Authority on behalf of Customer.

City may amend the Minimum Monthly Charge and the Volume Charge from time to time which is published in the City's adopted Master Fee Schedule. Notice of such changes in the City's adopted Master Fee Schedule or to any rate applicable to the Customer will be provided by the City to the Customer prior to any such rate change taking effect.

Pursuant to Section 5.01(b) of the Development Agreement and Section 4.03 of the First Amendment to the Development Agreement, the District agrees to pay to the City the Water Impact Fee prior to securing water service to the end customer.

Section 4.02 Volume Charge, and Minimum Monthly Charge.

(a) City will measure water flows monthly based on monthly readings of the Master Meters. The total of these amounts multiplied by the Volume Charges will be used by City to compute the monthly bill for the Volume Charge as provided in Section 5.02 below.

(b) Upon the commencement of delivery of potable water, Customer will commence payment to the City of the Minimum Monthly Charge and Volume Charge.

(c) If the amount of water delivered to Customer at the Delivery Point in any calendar year exceeds the Annual Water Supply Commitment, as determined by the Master Meters, then Customer agrees to pay an amount of money equal to the rate determined by the City to then be in effect for use of water in amounts in excess of the Annual Water Supply Commitment during the previous calendar year. Purchaser acknowledges and agrees that the initial volumetric rate in effect as of the Effective Date of this Agreement applicable to consumption in excess of the Annual Water Supply Commitment shall be equal to the Volume Charge applicable to large commercial users under the City's Master Fee Schedule.

Section 4.04 Customer Water Rates and Charges.

Customer will be solely responsible for ensuring that its retail rates and charges are determined and collected in accordance with applicable law.

Section 4.05 Verification of Customer Connections.

Customer will annually report records for retail connections to the Customer System. In addition, City will have the right to inspect the Customer System at any time, at City's sole expense, after giving Customer written notice of its intention to inspect and allowing the opportunity for Customer to be present, to verify the type and amount of retail connections made or the condition of the Customer System and Customer will provide lawful access to City for this purpose.

ARTICLE V

WHOLESALE BILLING METHODOLOGY; REPORTS

AND OTHER RELATED MATTERS

Section 5.01 Monthly Statement.

For each monthly billing period, City will forward to Customer a bill providing a statement of the total Minimum Monthly Charge and Volume Charges owed by Customer for Wholesale Water Service provided to Customer during the previous monthly billing period. Customer will pay City for each bill submitted by City to Customer by any acceptable payment method accepted by the City on or before the due date published on the bill. Payment must be received by the City by the due date in order not to be considered past due or late. In the event Customer fails to make payment of a bill by the due date published on a bill, Customer shall pay in addition City's then-current late payment charges on the unpaid balance of the invoice.

Section 5.02 Monthly Billing Calculations.

City will compute the Minimum Monthly Charge and Volume Charge included in the monthly billing for Wholesale Water Service on the basis of monthly readings of the Master Meters. The total of these amounts multiplied by the wholesale water rates, set from time to time by the City, will be used to compute the monthly bill for the Volume Charge.

Section 5.03 Effect of Nonpayment.

With respect to monthly billings, if City has not received payment from Customer for charges authorized pursuant to this Agreement by the due date, the bill will be considered delinquent, unless contested in good faith. In such event, City will notify Customer of such delinquency in writing, if Customer or its assignee fails to make payment of the delinquent billing within 30 calendar days from the date of transmittal of such written notice of delinquency from City, then City may, at its discretion, terminate Wholesale Water Services to Customer until payment is made or exercise any other remedy available at law or in equity. Any delinquent payments shall also be subject to any late payment fees or similar charges adopted by the City from time to time.

Section 5.04 Protests, Disputes or Appeals.

Nothing in this Agreement is intended to limit, impair or prevent any right of Customer to protest, dispute or appeal with respect to rate making, the establishment of fees and charges or any other related legal or administrative proceedings affecting services or charges to the Customer under this Agreement.

Section 5.05 Additional Required Notices.

Customer shall provide to City by June 1 of every year during the term of this Agreement a report setting forth:

(i) the total number of retail water service connections within the Wholesale Service Area as of April 1 of the same year;
(ii) the service address for each connection; and,
(iii) the total number of new retail water service connections to the Customer System during the prior annual period ending April 1 of the same year.

ARTICLE VI

REGULATORY COMPLIANCE

Section 6.01 Agreement Subject to Applicable Law.

The Agreement will be subject to all valid rules, regulations, and applicable laws of the United States of America, the State of Texas and/or any other governmental body or agency having lawful jurisdiction or any authorized representative or agency of any of them. City shall be solely responsible for regulatory compliance associated with the City System, and Customer shall be solely responsible for regulatory compliance associated with the Customer System.

ARTICLE VII

TERM, TERMINATION, DEFAULT, REMEDIES

Section 7.01 Term and Termination.

This Agreement shall become effective upon the Effective Date and shall extend for a term of thirty (30) years unless terminated earlier as provided herein.

Section 7.02 Default.

(a) In the event Customer shall default in the payment of any amounts due to City under this Agreement, or in the performance of any material obligation to be performed by Customer under this Agreement, then City shall give Customer at least thirty (30) days' written notice of such default and the opportunity to cure same. Thereafter, City shall have the right to temporarily limit Wholesale Water Services to Customer under this Agreement pending cure of such default by Customer and also to pursue any remedy available at law or in equity, pending cure of such default by Customer.

(b) In the event City shall default in the performance of any material obligation to be performed by City under this Agreement, then Customer shall give City at least 30 days' written notice of such default and the opportunity to cure same. Thereafter, in the event such default remains uncured, the Customer shall have the right to pursue any remedy available at law or in equity, pending cure of such default by City.

Section 7.03 Additional Remedies Upon Default.

It is not intended hereby to specify (and this Agreement shall not be considered as specifying) an exclusive remedy for any default, but all such other remedies existing at law or in equity may be availed of by any party and shall be cumulative of the remedies provided. Recognizing however, that City's undertaking to provide and maintain the services of the City System is an obligation, failure in the performance of which cannot be adequately compensated in money damages alone, City agrees, in the event of any default on its part, that Customer shall have available to it the equitable remedies of *mandamus* and specific performance in addition to any other legal or equitable remedies (other than termination of this Agreement) that may also be available. In recognition that failure in the performance of Customer's obligations could not be adequately compensated in money damages alone, Customer agrees in the event of any default on its part that City shall have available to it the equitable remedy of specific performance in addition to any other legal or equitable remedies that may also be available to City. If either party institutes legal proceedings to seek adjudication of an alleged default under this Agreement, the prevailing party in the adjudication shall be entitled to its reasonable and necessary attorneys' fees.

ARTICLE VIII

GENERAL PROVISIONS

Section 8.01 Assignability.

Assignment of this Agreement by either party is prohibited without the prior written consent of the other party, which consent shall not be unreasonably withheld, delayed or conditioned. Any attempted assignment that is not undertaken in accordance with the foregoing requirements shall be null and void.

Section 8.02 Amendment.

This Agreement may be amended or modified only by written agreement duly authorized by Customer and City and executed by duly authorized representatives of each.

Section 8.03 Necessary Documents and Actions.

Each Party agrees to execute and deliver all such other and further instruments and undertake such actions as are or may become necessary or convenient to effectuate the purposes and intent of this Agreement.

Section 8.04 Entire Agreement.

This Agreement constitutes the entire agreement of the Parties regarding its subject matter, and this Agreement supersedes any prior or contemporaneous oral or written understandings or representations of the Parties regarding the subject matter.

Section 8.05 Applicable Law.

This Agreement will be construed under and in accordance with the laws of the State of Texas.

Section 8.06 Venue.

All obligations of the Parties created in this Agreement are performable in Harris County, Texas, and venue for any action arising under this Agreement will be in Harris County, Texas.

Section 8.07 No Third Party Beneficiaries.

Nothing in this Agreement, express or implied, is intended to confer upon any person or entity, other than to the Parties, any rights, benefits, or remedies under or by reason of this Agreement.

Section 8.08 Duplicate Originals.

This Agreement may be executed in duplicate originals each of equal dignity.

Section 8.09 Notices.

Any notice required under this Agreement may be given to the respective Parties by deposit in regular first-class mail or by hand-delivery to the address of the other party shown below:

Customer:

HARRIS COUNTY MUNICIPAL UTILITY DISTRICT NO. 273

c/o Allen Boone Humphries Robinson LLP

3200 Southwest Freeway, Suite 2600

Houston, Texas 77027

Attention: Angie Lutz

Email: ALutz@abhr.com

City:

City of Tomball

Attn: City Manager

401 Market Street

Tomball, Texas 77375

Notices shall be deemed received on the date of hand delivery or within three days of deposit in

first-class mail.

Section 8.10 Severability.

Should any court declare or determine that any provisions of this Agreement is invalid or unenforceable under present or future laws, that provision shall be fully severable; this Agreement shall be construed and enforced as if the illegal, invalid, or unenforceable provision had never comprised a part of this Agreement and the remaining provisions of this Agreement shall remain in full force and effect and shall not be affected by the illegal, invalid, or unenforceable provision or by its severance from this Agreement. Furthermore, in place of each such illegal, invalid, or unenforceable provision, there shall be added automatically as a part of this Agreement a provision as similar in terms to such illegal, invalid, or

unenforceable provision as may be possible and be legal, valid, and enforceable. Texas law shall govern the validity and interpretation of this Agreement.

Section 8.11 Force Majeure.

If any party is rendered unable, wholly or in part, by Force Majeure to carry out any of its obligations under this Agreement, other than an obligation to pay or provide money, then such obligations of that party to the extent affected by such Force Majeure and to the extent that due diligence is being used to resume performance at the earliest practicable time shall be suspended during the continuance of any inability so caused to the extent provided but for no longer period. Such cause, as far as possible, shall be remedied with all reasonable diligence. It is understood and agreed that the settlement of strikes and lockouts shall be entirely within the discretion of the affected party, and that the above requirements that any Force Majeure shall be remedied with all reasonable dispatch shall not require the settlement of strikes and lockouts by acceding to the demand of the opposing party or parties when such settlement is unfavorable to it in the judgment of the affected party.

Section 8.12 Authority of Parties Executing Agreement Validity.

By their execution, each of the individuals executing this Agreement on behalf of a party represents and warrants to the other party that he or she has the authority to execute the document in the capacity shown on this document. Each of the parties further represent and warrant that this Agreement constitutes a valid and binding contract, enforceable against it in accordance with its terms.

Section 8.13 Exhibits.

The following exhibits are attached to and incorporated into this Agreement for all purposes:

Exhibit A Delivery Point

Exhibit B Wholesale Service Area

Exhibit C Service Connection Addresses within Wholesale Service Area

Section 8.14 Effective Date. This Agreement will be effective from and after the last date of due execution by all Parties.

Signatures

HARRIS COUNTY MUNICIPAL UTILITY DISTRICT NO 273

Mark Day
President

ATTEST:

Felecia Lee
Secretary

STATE OF TEXAS §

COUNTY OF HARRIS §

This instrument was acknowledged before me the 8 day of March, 2024, by Mark Day, President and Felecia Lee, Secretary of Harris County Municipal Utility District No. 273, a political subdivision of the State of Texas.

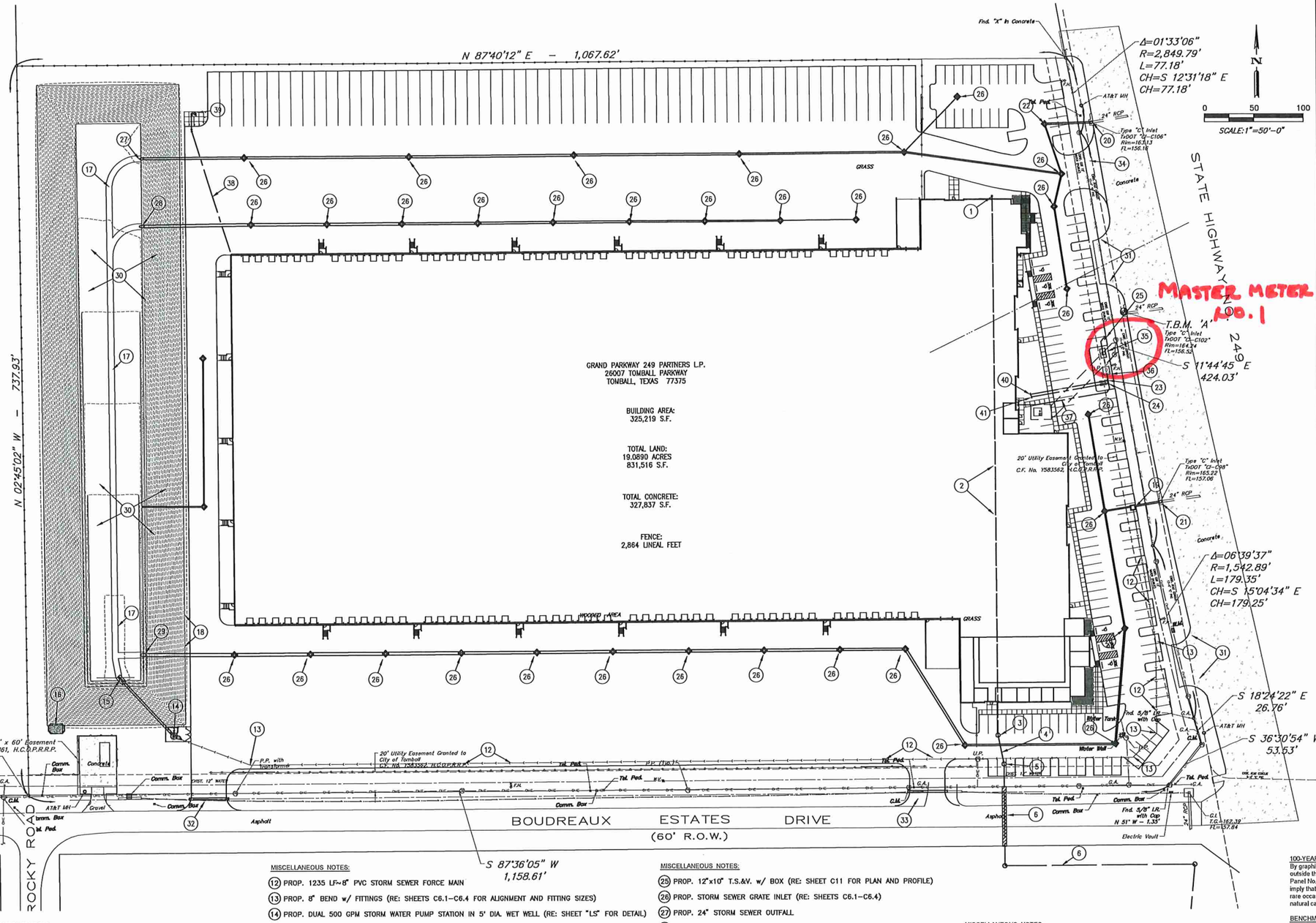
KERRI HOUCK
Notary Public, State of Texas
Comm. Expires 11-01-2027
Notary ID 132236105

Notary Public Signature

Exhibit A

Delivery Points

See attached.



LEGEND:

- EXISTING GRATE INLET
- EXISTING B INLET
- EXISTING C INLET
- EXISTING MANHOLE
- EXISTING SAMPLE WELL
- EXISTING CLEAN OUT
- EXISTING POWER POLE
- EXISTING DOWN GUY
- EXISTING FIRE HYDRANT
- EXISTING WATER VALVE
- EXISTING WATER METER
- EXISTING BLOWOFF VALVE
- EXISTING STREET SIGN
- EXISTING AREA LIGHT
- EXISTING TELEPHONE ENCLOSURE
- EXISTING TELEPHONE PEDESTAL
- EXISTING TELEPHONE CABLE MARKER
- EXISTING GAS METER
- EXISTING PIPE LINE MARKER
- EXISING PROPERTY LINE
- EXISTING STORM SEWER LINE
- EXISTING SANITARY SEWER LINE
- EXISTING WATER LINE
- EXISTING OVERHEAD ELECTRIC LINE
- EXISTING ENTEX GAS LINE
- EXISTING SWBT TELEPHONE LINE
- EXISTING EASEMENT LINE
- PROPOSED STORM SEWER LINE
- PROPOSED SANITARY SEWER LINE
- PROPOSED WATER LINE
- PROPOSED FLUSING VALVE
- PROPOSED GATE VALVE
- PROPOSED SANITARY MANHOLE
- PROPOSED STORM MANHOLE
- PROPOSED STORM INLET
- ×15.62 EXISTING SPOT ELEVATION
- 20 EXISTING CONTOUR
- EXISTING CONCRETE PAVEMENT
- EXISTING ASPHALT PAVEMENT
- PROPOSED CONCRETE PAVEMENT
- PROPOSED ASPHALT PAVEMENT
- TC 92.58 PROPOSED TOP OF CURB ELEVATION
- TP 92.58 PROPOSED TOP OF PAVEMENT
- SW 92.58 PROPOSED TOP OF SIDEWALK ELEVATION
- FG 92.58 PROPOSED FINISH GRADE ELEVATION
- FF 92.58 PROPOSED FINISHED FLOOR ELEVATION
- TG 92.58 PROPOSED TOP OF GRATE ELEVATION
- TW 92.58 PROPOSED TOP OF WALL ELEVATION
- DIRECTIONAL SHEET FLOW ARROW
- OFFSITE SHEET FLOW ARROWS

MISCELLANEOUS NOTES:

(1) PROP. 6" G.C.O. FL=4' BELOW F.F. ~ 6"FL=162.10'
(2) PROP. 545 LF~6" SANITARY SEWER @ 1.50% (SCH 40 PVC)
(3) PROP. 4' DIA. SANITARY SEWER MANHOLE; 6"FL(N)=157.32, 6"FL(S)=156.75
(4) PROP. 30 LF~6" SANITARY SEWER @1.00% (SCH 40 PVC)
(5) PROP. 4' DIA. SANITARY SEWER MANHOLE; 6"FL=156.45, 12"FL=155.01
(6) EXIST. 12" SANITARY SEWER (BY OTHERS). HC P#2303160049
~~(7) PROP. 4' DIA. SANITARY SEWER MANHOLE; 6"FL=159.52~~
~~(8) PROP. 208 LF~6" SANITARY SEWER @0.50% (ASTM D3034 SDR26)~~
~~(9) PROP. 4' DIA. SANITARY SEWER MANHOLE; 6"FL=149.18~~
~~(10) PROP. 103 LF~6" SANITARY SEWER (BY HCMUD NO. 273)~~
~~(11) PROP. 4' DIA. SANITARY SEWER MANHOLE (BY HCMUD NO. 273)~~

MISCELLANEOUS NOTES:

(12) PROP. 1235 LF~8" PVC STORM SEWER FORCE MAIN
(13) PROP. 8" BEND w/ FITTINGS (RE: SHEETS C6.1–C6.4 FOR ALIGNMENT AND FITTING SIZES)
(14) PROP. DUAL 500 GPM STORM WATER PUMP STATION IN 5' DIA. WET WELL (RE: SHEET "LS" FOR DETAIL)
(15) PROP. PERMANENT STORM WATER QUALITY STRUCTURE (RE: SHEET "SWQ" FOR DETAIL)
(16) PROP. CONCRETE WIER EMERGENCY OVERFLOW STRUCTURE (RE: SHEET C7 FOR DETAIL)
(17) PROP. 3755 SQ FT~6" WIDE CONCRETE LINING (4" THICK TYP SIDEWALK DETAIL)
~~(18) PROP. 600 LF GONS. RETAINING WALL (RE: SHEETS C6.1–C6.4 FOR VARYING HEIGHT)~~
(19) PROP. 4'x4' JUNCTION BOX w/ 8" FORCE MAIN DISCHARGE & 8" PVC RESTRICTOR (RE: DETAIL 2/C8)
(20) PROP. SMOOTH CORE DRILL INTO EXISTING STORM SEWER INLET (TxDOT R.O.W.) SEE SHEET C10 FOR PIPE SIZE AND FLOWLINE (RE: PLAN AND PROFILE #1/C10)
(21) PROP. SMOOTH CORE DRILL INTO EXISTING STORM SEWER INLET (TxDOT R.O.W.) SEE SHEET C10 FOR PIPE SIZE AND FLOWLINE (RE: PLAN AND PROFILE #2/C10)
(22) PROP. 8" PVC RESTRICTOR INSIDE STORM SEWER INLET
(23) PROP. (IRRIGATION) 10" X 1–1/2" STAINLESS STEEL TAP, 1–1/2" SADDLE TAP w/ 1–1/2" G.V.& BOX (SEE SHEET C11 FOR ADDITIONAL DETAILS)
(24) PROP. (DOMESTIC) 10" X 2" STAINLESS STEEL TAP, 2" SADDLE TAP w/ 2" G.V.& BOX (SEE SHEET C11 FOR ADDITIONAL DETAILS)

MISCELLANEOUS NOTES:

(25) PROP. 12"x10" T.S.&V. w/ BOX (RE: SHEET C11 FOR PLAN AND PROFILE)
(26) PROP. STORM SEWER GRATE INLET (RE: SHEETS C6.1–C6.4)
(27) PROP. 24" STORM SEWER OUTFALL
(28) PROP. 30" STORM SEWER OUTFALL
(29) PROP. 36" STORM SEWER OUTFALL
(30) PROP. PUMPED DETENTION BASIN (RE: SHEET C7 FOR CALCULATIONS)
(31) REMOVE EXISTING DRIVEWAY PER TXDOT PERMIT
(32) PROP. DRIVEWAY #1: 36'–0" WIDE COMMERCIAL DRIVEWAY, 7–INCH THICK REINF. CONCRETE, HARRIS COUNTY DRIVEWAY DETAIL SHEET C4 w/ 15' CURB RETURNS
(33) PROP. DRIVEWAY #2: 36'–0" WIDE COMMERCIAL DRIVEWAY, 7–INCH THICK REINF. CONCRETE, HARRIS COUNTY DRIVEWAY DETAIL SHEET C4 w/ 15' CURB RETURNS
(34) PROP. DRIVEWAY #3: 38'–0" WIDE COMMERCIAL DRIVEWAY, 7–INCH THICK REINF. CONCRETE, TXDOT DRIVEWAY DETAIL, w/ 25' CURB RETURNS
(35) PROP. 10" CITY OF TOMBALL WATER METER.
(36) PROP. 10" DOUBLE DETECTOR CHECK ASSEMBLY BACKFLOW PREVENTER.

MISCELLANEOUS NOTES:

(37) PROP. 100 LF~10" FIRE LINE (C900 PVC) ENTRANCE INTO FIRE RISER ROOM.
(38) PROP. 134 LF~6" FIRE LINE (C900 PVC) OPEN SYSTEM.
(39) PROP. 6"x6" TEE, 6" G.V. & BOX, w/ 6" CITY OF TOMBALL FIRE HYDRANT ASSEMBLY.
(40) PROP. 70 LF~1–1/2" IRRIGATION WATER LINE (SCH 40 PVC).
(41) PROP. 70 LF~2" DOMESTIC WATER LINE (SCH 40 PVC).

100-YEAR FLOOD PLAIN INFORMATION:
By graphic plotting only, this tract of land lies in Zone X (Unshaded) "areas determined to be outside the 0.2% annual chance flood", according to FEMA Federal Insurance Rate Map Panel No. 48201C0240-M dated revised October 16, 2013. This flood statement does not imply that the property or structures thereon will be free from flooding or flood damage. On rare occasions floods can and will occur and flood heights may be increased by man-made or natural causes.

BENCHMARK INFORMATION:
1. Elevations shown hereon based on Harris County Floodplain Reference Benchmark No. 120060, being an Akaminam Rod located at the intersection of Willow Creek and Unnamed Tributary to M100-00-00, situated in the Willow Creek Watershed. Elevation = 148.53 feet (NAVD 1988, 2001 adj.)
2. Temporary Benchmark (TBM) - T.B.M. 'A' - Chiseled square on Type 'C' Inlet located on westerly Right-of-Way of State Highway 249, as shown hereon. Elevation = 164.24 feet.

PERMIT NOTES:
1. OWNER OR OWNER'S AGENT to obtain all permits required by the "Regulations of Harris County, Texas for Flood Plain Management" prior to starting construction.
2. OWNER OR OWNER'S AGENT to obtain all notifications required by Harris County, Texas prior to starting construction of utilities and/or culverts within Harris County and Harris County Flood Control District Rights-of-Way.
3. The contractor(s) shall notify Harris County Public Infrastructure Department - Architecture and Engineering Division - Permit Office twenty-four (24) hours in advance of commencing utility and/or paving construction at (713) 274-3931 and written notification forty-eight (48) hours in advance of commencing construction at 10555 Northwest Freeway, Suite 144, Houston, TX 77092.
4. This site is being serviced by the City of Tomball for public water service and Harris County MUD No. 273 for sanitary sewer service.

0 1 2 3 ORIGINAL SCALE IN INCHES (for reduced plans)

OWNER:
Grand Parkway 249 Partner LP
ATTN: Steve Adkisson, Vice President
1330 Enclave Parkway #475
Houston, Texas 77077

ARCHITECT:
MIII Designs
ATTN: Scott McCarthy, President
12730 Cypress Valley Road
Cypress, Texas 77429
Phone: (713) 339-0354
www.MIIIDesigns.com

CIVIL ENGINEER:
Dev-Tex Engineering, LP
ATTN: Randy Rutherford, P.E.
12248 Queenston Blvd, Suite J
Houston, Texas 77095
Phone: (281) 955-1197
www.dev-tex.com

ISSUED:

DATE	ACTIVITY

REVISIONS:

DATE	ACTIVITY

TEXAS PROFESSIONAL ENGINEERING REGISTRATION NO. #F-7999

STATE OF TEXAS · RANDY L. RUTHERFORD · 93778 · LICENSED · PROFESSIONAL ENGINEER

Randy L. Rutherford, P.E.
Dev-Tex Engineering, LP
F-7999
01.02.2024

DRAWN BY:	RLR
CHECKED BY:	RLR
JOB NO:	2022-672
SCALE: 1"=50'	HORIZ: AS SHOWN VERT: AS SHOWN
DATE PLOTTED:	Jan 02,2024 - 2.02pm

OVERALL WATER AND SANITARY SEWER LAYOUT

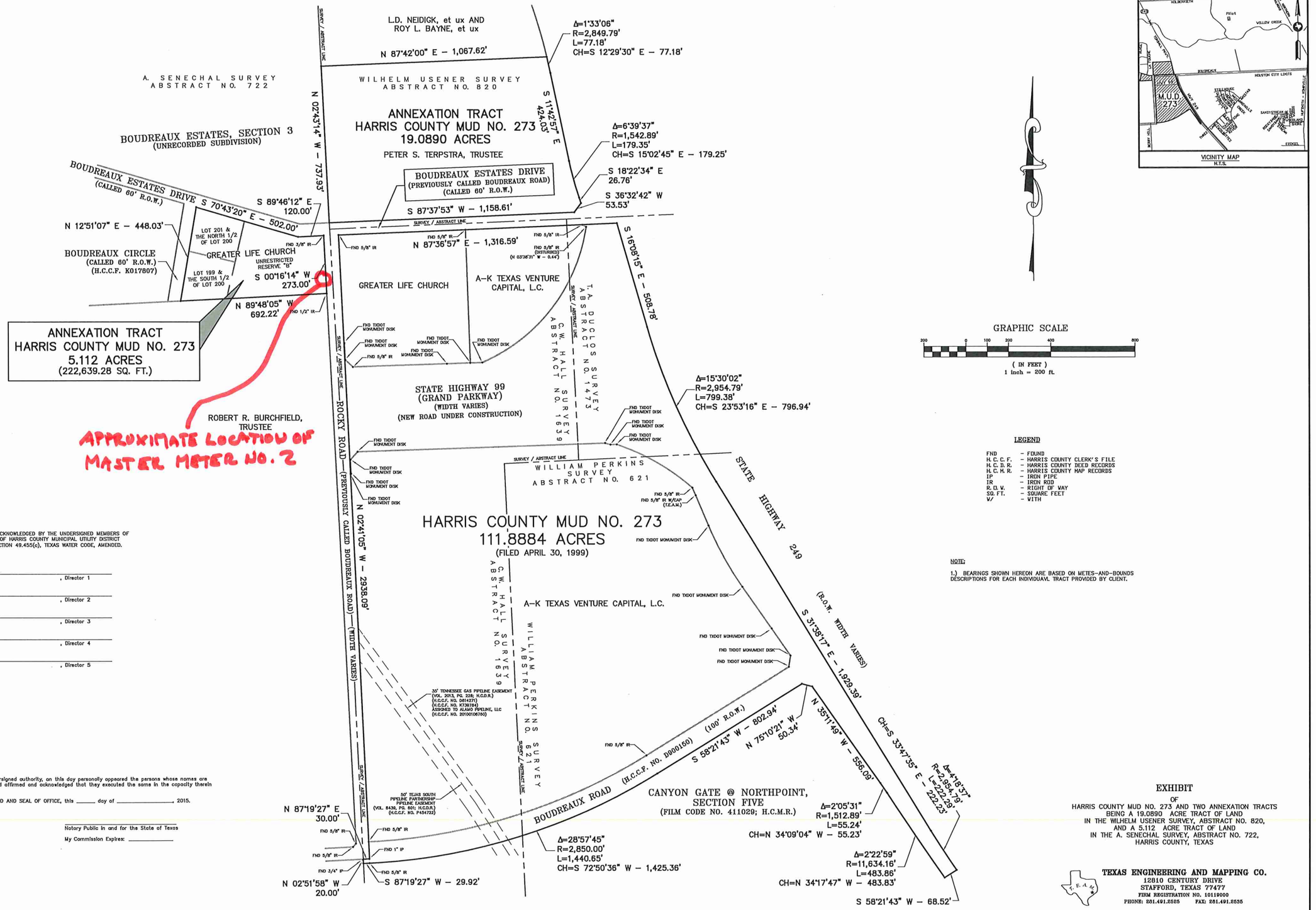
Grand Parkway 249 Partners, LP
26007 Tomball Parkway, Tomball, Texas 77377

DESCRIPTION:

SHEET NO:

C5

W:\Drawings\Dev-Tex\2022\249 Boudreaux Estates\Dwg\Civil\SH99 and 249.dwg



LEGEND

FND	– FOUND
H.C.C.F.	– HARRIS COUNTY CLERK'S FILE
H.C.D.R.	– HARRIS COUNTY DEED RECORDS
H.C.M.R.	– HARRIS COUNTY MAP RECORDS
IP	– IRON PIPE
IR	– IRON ROD
R.O.W.	– RIGHT OF WAY
SQ. FT.	– SQUARE FEET
W/	– WITH

NOTE:

1.) BEARINGS SHOWN HEREON ARE BASED ON METES-AND-BOUNDS DESCRIPTIONS FOR EACH INDIVIDUAL TRACT PROVIDED BY CLIENT.

EXECUTED, AFFIRMED AND ACKNOWLEDGED BY THE UNDERSIGNED MEMBERS OF THE BOARD OF DIRECTORS OF HARRIS COUNTY MUNICIPAL UTILITY DISTRICT NO. 273, PURSUANT TO SECTION 49.455(e), TEXAS WATER CODE, AMENDED.

DIRECTORS:

_____, Director 1

_____, Director 2

_____, Director 3

_____, Director 4

_____, Director 5

STATE OF TEXAS
COUNTY OF HARRIS

BEFORE ME, the undersigned authority, on this day personally appeared the persons whose names are subscribed to the right, and affirmed and acknowledged that they executed the same in the capacity therein stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, this _____ day of _____, 2015.

_____
Notary Public in and for the State of Texas

My Commission Expires: _____

EXHIBIT
OF
HARRIS COUNTY MUD NO. 273 AND TWO ANNEXATION TRACTS
BEING A 19.0890 ACRE TRACT OF LAND
IN THE WILHELM USENER SURVEY, ABSTRACT NO. 820,
AND A 5.112 ACRE TRACT OF LAND
IN THE A. SENECHAL SURVEY, ABSTRACT NO. 722,
HARRIS COUNTY, TEXAS

TEXAS ENGINEERING AND MAPPING CO.
12810 CENTURY DRIVE
STAFFORD, TEXAS 77477
FIRM REGISTRATION NO. 10110000
PHONE: 281.491.2525 FAX: 281.491.2535

JOB NO.: 1111-11 DATE: MAY 7, 2015

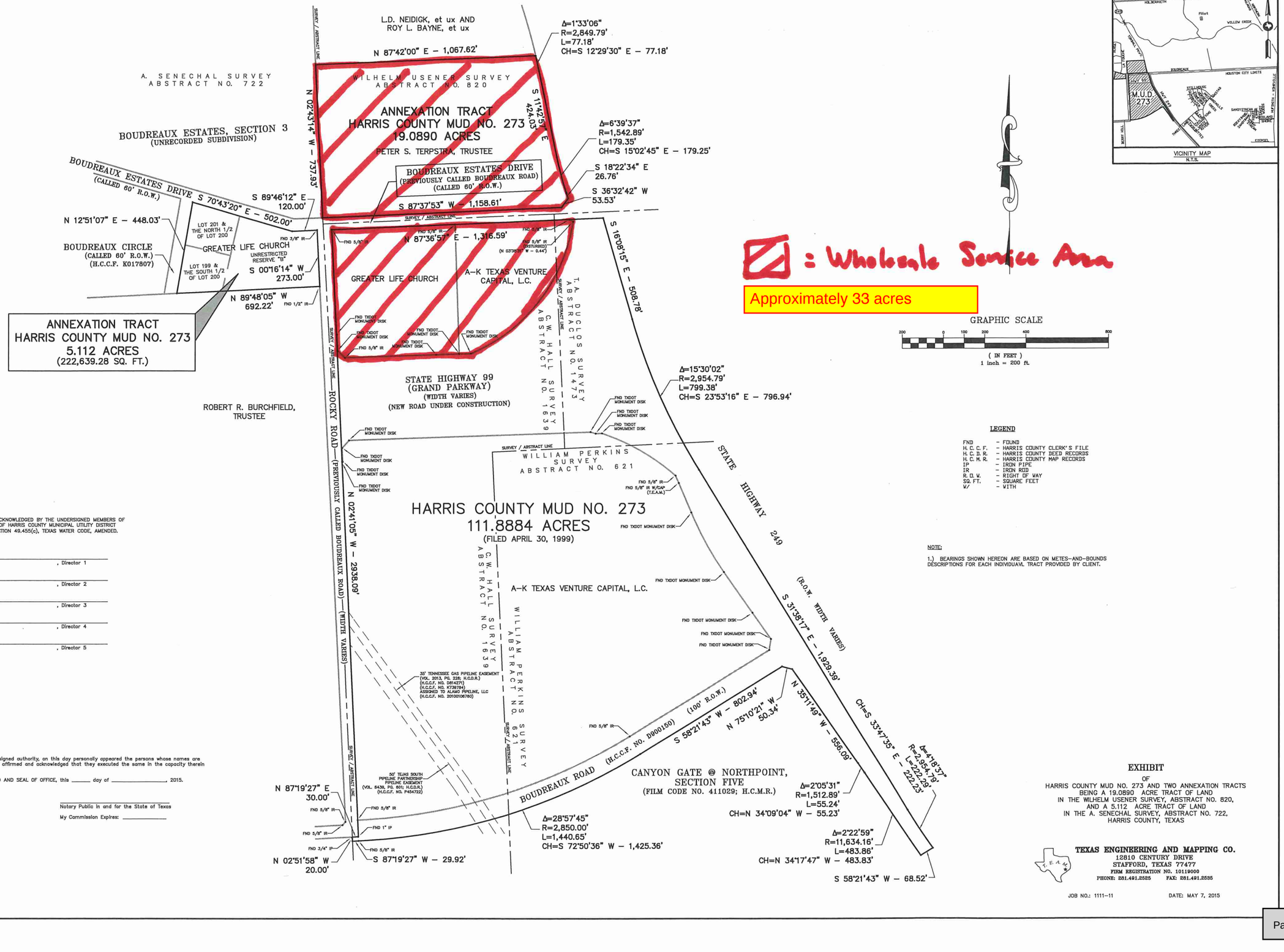
DRAWING INFO: Z:\Job\1111-11\dwg\1111-11_MUD_Annex_273.dwg MAY 07, 2015 10:55 AM

Exhibit B

Wholesale Service Area

See attached.

EXHIBIT B



☑ : Wholesale Service Area

Approximately 33 acres

LEGEND

FND	– FOUND
H.C.C.F.	– HARRIS COUNTY CLERK'S FILE
H.C.D.R.	– HARRIS COUNTY DEED RECORDS
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NOTE:

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EXECUTED, AFFIRMED AND ACKNOWLEDGED BY THE UNDERSIGNED MEMBERS OF THE BOARD OF DIRECTORS OF HARRIS COUNTY MUNICIPAL UTILITY DISTRICT NO. 273, PURSUANT TO SECTION 49.455(c), TEXAS WATER CODE, AMENDED.

DIRECTORS:

_____, Director 1

_____, Director 2

_____, Director 3

_____, Director 4

_____, Director 5

STATE OF TEXAS
COUNTY OF HARRIS

BEFORE ME, the undersigned authority, on this day personally appeared the persons whose names are subscribed to the right, and affirmed and acknowledged that they executed the same in the capacity therein stated.

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TEXAS ENGINEERING AND MAPPING CO.
12810 CENTURY DRIVE
STAFFORD, TEXAS 77477
FIRM REGISTRATION NO. 10119000
PHONE: 281.491.2525 FAX: 281.491.2535

JOB NO.: 1111–11 DATE: MAY 7, 2015

DRAWING INFO: Z:\job\1111-11\dwg\1111-11_MUD_Annex_273.dwg MAY 07, 2015 10:55 AM

Exhibit C

Service Connection Addresses

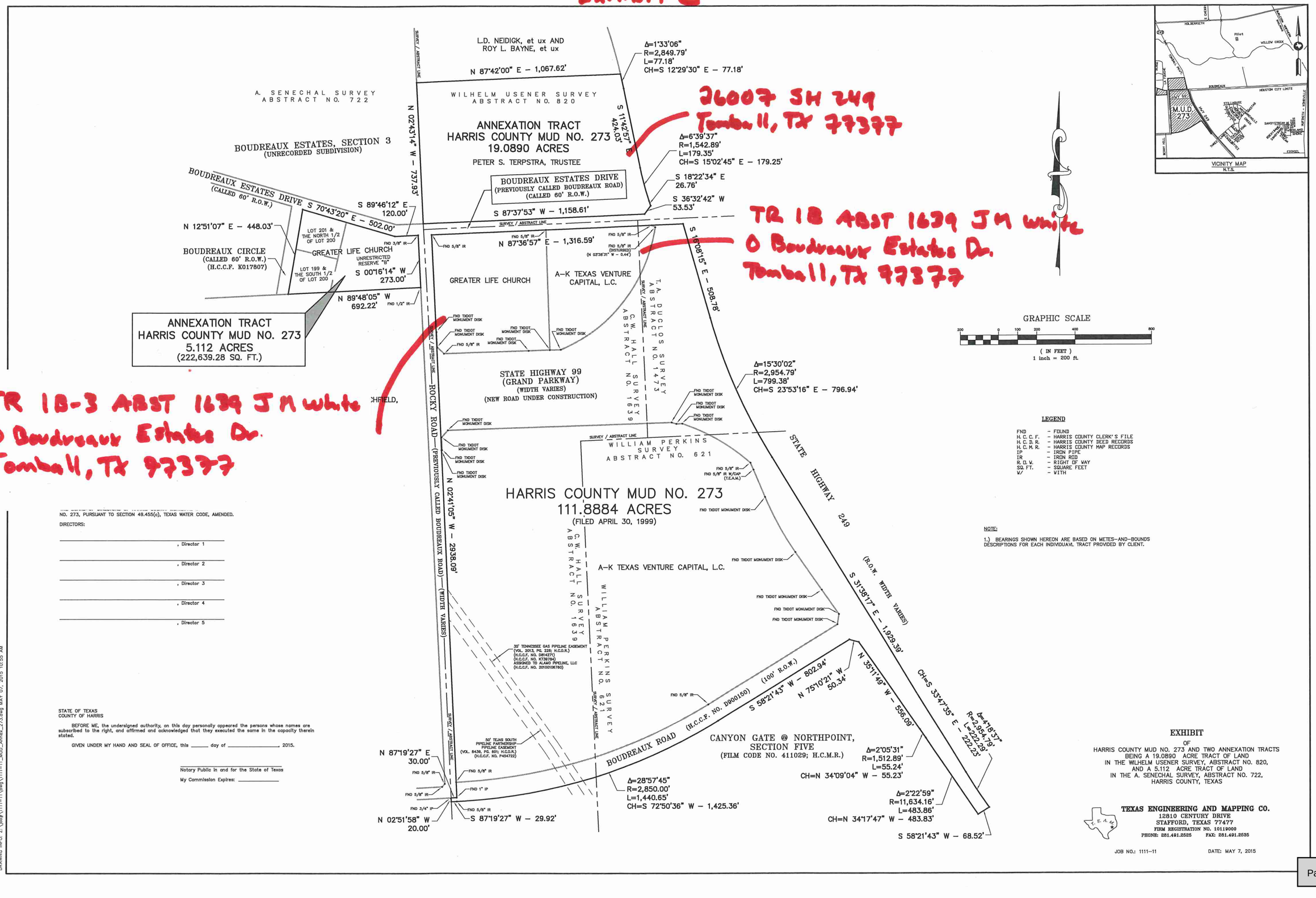
See attached.

Exhibit C

26007 SH 249
Tomball, TX 77377

TR 1B ABST 1639 JM White
0 Boudreaux Estates Dr.
Tomball, Tx 77377

TR 1B-3 ABST 1639 J M White
0 Boudreaux Estates Dr.
Tomball, Tx 77377



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NOTE:

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NO. 273, PURSUANT TO SECTION 49.455(c), TEXAS WATER CODE, AMENDED.

DIRECTORS:

_____, Director 1

_____, Director 2

_____, Director 3

_____, Director 4

_____, Director 5

STATE OF TEXAS
COUNTY OF HARRIS

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JOB NO.: 1111–11 DATE: MAY 7, 2015

DRAWING INFO: Z:\dwg\1111-11\dwg\1111-11_MUD_Annex_273.dwg MAY 07, 2015 10:55 AM

City Council Meeting
Agenda Item
Data Sheet

Meeting Date: April 1, 2024

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

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

Background:

Origination: David Esquivel, City Manager

Recommendation:

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