

**NOTICE OF SPECIAL CITY COUNCIL MEETING - WORKSHOP
CITY OF TOMBALL, TEXAS**



**Monday, February 17, 2025
5:00 PM**

Notice is hereby given of a Regular meeting of the Tomball City Council, to be held on Monday, February 17, 2025 at 5:00 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: 854 1091 1548 Passcode: 826953. 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. 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.]*
- C. General Discussion
 - 1. Presentation, discussion to provide staff direction for ordinance changes on open pit burning.
 - 2. Use of AMI Water and Gas Meters for leak detection.
- D. Proposed Future Agenda Items
 - 1. Workshop Discussion Only – Adopt, on First Reading, Ordinance No. 2025-09, an Ordinance Repealing Chapter 46, Article IV – Water, Wastewater, and Drainage Capital Recovery Fees, in its Entirety and Adopting Chapter 46, Article

IV – Water, Wastewater, and Drainage Impact Fees; Providing for a Penalty of an Amount Not To Exceed \$2,000 for Each Day of Violation of Any Provision Hereof; Making Findings of Fact; and Providing for Other Related Matters; and Providing an Effective Date.

2. Workshop Discussion Only – Adopt, on First Reading, Ordinance No. 2025-08, an Ordinance Altering the Prima Facie Speed Limits Established for Vehicles under the Provisions of §545.356, Texas Transportation Code, upon the Basis of an Engineering and Traffic Investigation, upon Certain Streets and Highways, of Parts Thereof, within the Corporate Limits of The City of Tomball, as Set Out in This Ordinance, and Providing a Penalty of a Fine in an Amount Not to Exceed Two Hundred Dollars (\$200.00) for the Violation of this Ordinance.
3. Workshop Discussion Only – Approve a professional services agreement with Raba Kistner for annual gas monitoring for the closed landfill for a not-to-exceed amount of \$20,695, approve the expenditure of funds therefor, and authorize the City Manager to execute any and all documents related to the purchase. The purchases are included in the FY 2024-2025 Budget.
4. Workshop Discussion Only – Approve a professional services agreement with Raba Kistner for annual groundwater monitoring for the closed landfill for a not-to-exceed amount of \$40,895, approve the expenditure of funds therefor, and authorize the City Manager to execute any and all documents related to the purchase. The purchases are included in the FY 2024-2025 Budget.
5. Workshop Discussion Only – Approve a services agreement renewal with Water Utility Services, Inc. for water sampling and laboratory services for a total not-to-exceed amount of \$175,000, approve the expenditure of funds therefor, and authorize the City Manager to execute any and all documents related to the purchase. This expenditure is included in the Fiscal Year 2024-2025 Budget.
6. Workshop Discussion Only – Approve an agreement extension with Tomball Little League for the maintenance and operation of the baseball fields and facilities located at Wayne Stovall Sports Complex.
7. Workshop Discussion Only - Approve a purchase with Axon Enterprise, Inc., as a sole source vendor, for the purchase of replacement tasers for the Police Department for a total contract amount of \$225,653.44 for a total of five years beginning May 1, 2025 and expiring April 3, 2029, for an annual not-to-exceed payment amount of \$47,663.36, authorize the expenditure of funds therefor, and authorize the City Manager to execute any and all documents related to the expenditure. This amount was included in the FY 2024-2025 budget to be paid from grant funds received.

- E. Future Workshop Items
 - [1.](#) Discuss Council Ethics and Rules & Procedures
 - [2.](#) Discuss Arts & Craft Market
- M. 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 13th day of February 2025 by 6:00 PM, and remained posted for at least 72 continuous hours preceding the scheduled time of said meeting.

Tracylynn Garcia, TRMC, MMC, CPM
City Secretary

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

City Council Meeting Agenda Item Data Sheet

Meeting Date: 2/17/2025

Topic:

Presentation, discussion to provide staff direction for ordinance changes on open pit burning.

Background:

Open burning is prohibited within the city limits of Tomball unless a permit has been issued by the Fire Marshal for ceremonial fires, trench burning operations for major land clearing, and the prevention or disposal of diseased livestock. A permit is not required for barbeque pits and approved outdoor fireplaces, which are used for its actual design and intent. Current Ordinance states that the open pit burning shall be not be less than 300 feet (91,440 mm) from any structure, and provisions shall be made to prevent the fire from spreading to within 300 feet (91,440 mm) of any structure.

Staff is seeking direction on amending the distance between residential structures and the open pit utilized for land clearing, ceremonial fires, and the prevention of diseased livestock; or eliminating the process from city ordinance.

Origination: Fire Department

Recommendation:

n/a

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

FUNDING (IF APPLICABLE)

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

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

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

Signed Joe Sykora 02/11/2025 Approved by _____
Staff Member Date City Manager Date

City Council Meeting Agenda Item Data Sheet

Meeting Date: February 17, 2025

Topic:

Workshop Discussion Only – Adopt, on First Reading, Ordinance No. 2025-09, an Ordinance Repealing Chapter 46, Article IV – Water, Wastewater, and Drainage Capital Recovery Fees, in its Entirety and Adopting Chapter 46, Article IV – Water, Wastewater, and Drainage Impact Fees; Providing for a Penalty of an Amount Not To Exceed \$2,000 for Each Day of Violation of Any Provision Hereof; Making Findings of Fact; and Providing for Other Related Matters; and Providing an Effective Date.

Background:

Funding was allocated in the FY 2022-2023 budget to complete required updates to the Water and Wastewater Master Plans. The updates were completed by Freese & Nichols Inc. and included updates on the impact fees for water and wastewater. In November 2023, the updated master plans were adopted by City Council which included the current imposed impact fees.

As part of the update, staff began reviewing the City’s current impact fee ordinance, Chapter 46, Article IV. During this process, staff worked with our consultant and City Attorney to make required updates to our current ordinance to adhere to Chapter 395 of Texas Local Government Code. Following updates the recommendation was to appeal Chapter 46, Article IV in its entirety and adopt a revised ordinance to address current City policy and procedures, as well as regulations set forth in Chapter 395.

Pursuant to Chapter 395 of the Local Government Code, Ordinance No. 2025-09 will be adopted to repeal Chapter 46, Article IV – Water, Wastewater, and Drainage Capital Recovery Fees and adopt Chapter 46, Article IV – Water, Wastewater, and Drainage Impact Fees.

Origination: Project Management

Recommendation:

Adopt Ordinance No. 2025-09 on First Reading, repealing Chapter 46, Article IV – Water, Wastewater, and Drainage Capital Recovery Fees and adopt Chapter 46, Article IV – Water, Wastewater, and Drainage Impact Fees.

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
Staff Member _____ Date _____

Approved by _____
City Manager _____ Date _____

ORDINANCE NO. 2025-09

AN ORDINANCE AMENDING THE CODE OF ORDINANCES OF THE CITY COUNCIL OF THE CITY OF TOMBALL, TEXAS, BY REPEALING CHAPTER 46, ARTICLE IV – WATER, WASTEWATER, AND DRAINAGE CAPITAL RECOVERY FEES, IN ITS ENTIRETY AND ADOPTING A NEW CHAPTER 46, ARTICLE IV – WATER, WASTEWATER, AND DRAINAGE IMPACT FEES; PROVIDING FOR A PENALTY OF AN AMOUNT NOT TO EXCEED \$2,000 FOR EACH DAY OF VIOLATION OF ANY PROVISION HEREOF; MAKING FINDINGS OF FACT; AND PROVIDING FOR OTHER RELATED MATTERS.

* * * * *

WHEREAS, the City of Tomball has reviewed and evaluated its current impact fee ordinance for water, wastewater, and drainage; and

WHEREAS, the City Council of the City of Tomball, Texas, finds that it is in the best interest to adopt updated regulations as it pertains Chapter 46, Article IV to align with the regulations set forth in Chapter 395 of Texas Local Government Code; now therefore,

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

Section 1. The facts and matters contained in the preamble to this ordinance are hereby found to be true and correct.

Section 2. The Code of Ordinances of the City of Tomball, Texas, is hereby amended by repealing Chapter 46, Article IV – Water, Wastewater, and Drainage Capital Recovery Fees, previously adopted on March 17, 2003 by Ordinance No. 2003-02, in its entirety. All ordinances or parts of ordinances inconsistent or in conflict herewith are, to the extent of such inconsistency or conflict, hereby repealed.

Section 3. The Code of Ordinances of the City of Tomball, Texas, is hereby amended by adopting Chapter 46, Article IV – Water, Wastewater, and Drainage Impact Fees, attached hereto and incorporated herein by this reference for all purposes.

Section 4. It is the intent of the City that this Ordinance shall comply in all respects with the applicable provisions of the solid waste contract executed between the City and contractor. In the event any clause, phrase, provision, sentence, or part of this Ordinance or the application of the same to any person or circumstance shall for any reason be adjudged invalid or held unconstitutional by a court of competent jurisdiction, it shall not affect, impair, or invalidate this Ordinance as a whole or any part or provision hereof other than the part declared to be invalid or unconstitutional; and the City Council of the City of Tomball, Texas, declares that it would have passed each and every part of the same notwithstanding the omission of any such part thus declared to be invalid or unconstitutional, whether there be one or more parts.

Section 5. Any person who shall intentionally, knowingly, recklessly or with criminal negligence violate any provision of this Ordinance shall be deemed guilty of a misdemeanor and upon conviction, shall be fined in an amount not to exceed \$2,000. Each day of violation shall constitute a separate offense.

Section 6. This Ordinance shall take effect immediately from and after its passage and the publication of the caption hereof, as provided by law and the City’s Home Rule Charter.

FIRST READING:

READ, PASSED AND APPROVED AS SET OUT BELOW AT THE MEETING OF THE CITY COUNCIL OF THE CITY OF TOMBALL HELD ON THE xxTH DAY OF MONTH 2025.

COUNCILMAN FORD	_____
COUNCILMAN GARCIA	_____
COUNCILMAN DUNAGIN	_____
COUNCILMAN COVINGTON	_____
COUNCILMAN PARR	_____

SECOND READING:

READ, PASSED, AND ORDAINED AS SET OUT BELOW AT A REGULAR MEETING OF THE CITY COUNCIL OF THE CITY OF TOMBALL, HELD ON THE XXST DAY OF MONTH 2025.

COUNCILMAN FORD	_____
COUNCILMAN GARCIA	_____
COUNCILMAN DUNAGIN	_____
COUNCILMAN COVINGTON	_____
COUNCILMAN PARR	_____

Lori Klein Quinn, Mayor
City of Tomball

ATTEST:

Tracylynn Garcia, City Secretary
City of Tomball

Chapter 46 – UTILITIES

ARTICLE IV. WATER, WASTEWATER, AND DRAINAGE IMPACT FEES

DIVISION 1. GENERALLY

Sec. 46-144. Intent.

This article is intended to impose water, wastewater, and drainage facilities impact fees on new development, as established in this article, in order to finance public facilities, the demand for which is generated by new development in the designated service areas. The designated service areas are as identified in the Water and Wastewater Impact Fee Study and Drainage Impact Fee Study

(Code 1993, § 82-132; Ord. No. 2003-02, § 2(82-132), 3-17-2003)

Sec. 46-145. Authorization.

- (a) The City is authorized to enact the ordinance from which this article is derived in accordance with V.T.C.A., Local Government Code Ch. 395, which authorizes home rule cities, among others, to enact or impose impact fees (capital recovery fees) on land within their corporate boundaries or extraterritorial jurisdictions, as charges or assessments imposed against new development in order to generate revenue for funding or recouping the costs of capital improvements or facility expansions necessitated by and attributable to such new development; and by the City Charter.
- (b) The provisions of this article shall not be construed to limit the power of the city to adopt such article pursuant to any other source of local authority, nor to utilize any other methods or powers otherwise available for accomplishing the purposes set forth in this ordinance, either in substitution of or in conjunction with this article. Guidelines may be developed by resolution or otherwise to implement and administer this article.

(Code 1993, § 82-133; Ord. No. 2003-02, § 2(82-133), 3-17-2003)

Sec. 46-146. Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Area-related facility means a capital improvement or facility expansion which is designated in the capital improvements plan and which is not a site-related facility. The term "area-related facility" may include a capital improvement which is located off site, within or on the perimeter of the development site.

Assessment means the determination of the amount of the impact fee in effect on the date or occurrence provided in this section and is the maximum amount that can be charged per service unit of such development. No specific act by the political subdivision is required.

Building permit means written permission issued by the city for the construction, repair, alternation or addition to a structure.

Capital construction cost of service means costs of constructing capital improvements or facility expansions, including and limited to the construction contract price, surveying and engineering fees, land acquisition costs (including land purchases, court awards and costs, attorney's fees and expert witness fees), and the fees actually paid or contracted to be paid to an independent qualified engineer or financial consultant preparing or updating the capital improvements plan who is not an employee of the city.

Capital improvements advisory committee or *advisory committee* means the advisory committee appointed by the City Council, consisting of at least five members who are not employees of the City, not less than 40 percent of which shall be representatives of the real estate, development or building industries, and including one member representing the extraterritorial jurisdiction of the City; or consisting of the planning and zoning commission, including one regular or ad hoc member who is not an employee of the City and which is representative of the real estate, development or building industry, and one representative of the extraterritorial jurisdiction area of the City; which committee is appointed to regularly review and update the capital improvements program in accordance with the requirements of V.T.C.A., Local Government Code § 395.001 et seq., or its successor statute.

Capital improvements program or *capital improvements plan (CIP)* means the plan which identifies water, wastewater, and drainage capital improvements or facility expansions pursuant to which capital recovery fees may be assessed.

Certificate of occupancy means a certificate issued by the building official which certifies that all code-required systems have been inspected and are in compliance with the city codes and that the building may be occupied.

Commercial development means all development that is not residential.

Comprehensive plan (master plan) means the comprehensive long-range plan, adopted by the city council, which is intended to guide the growth and development of the city and which includes analysis, recommendations and proposals for the city regarding such topics as population, economy, housing, transportation, community facilities and land use.

Credit means the amount of the reduction of an impact fee for fees, payments, or charges for the same type of capital improvements for which the fee has been assessed.

Director means the City's Director of Public Works.

Drainage facility means those improvements or facility expansions to provide drainage service, including land or easements, more particularly described in the CIP.

Drainage facility expansion means expansion of the capacity of any existing drainage improvement identified in the CIP, for the purpose of serving new development, not including the repair, maintenance, modernization, or expansion of such existing drainage facility to serve existing development.

Drainage improvements plan means that portion of the CIP, as may be amended from time to time, which identifies the drainage facilities or drainage expansions and their associated costs, which are necessitated by and attributable to new development, and for a period not to exceed

ten years, and which are to be financed in whole or in part through the imposition of drainage facilities impact fees, pursuant to this article.

Facility expansion means the expansion of the capacity of an existing facility which serves the same function as an otherwise necessary new capital improvement in order that the existing facility may serve new development. Facility expansion does not include the repair, maintenance, modernization or expansion of an existing facility to better serve existing development.

Final subdivision plat means the map, drawing or chart on which is provided a subdivider's plan of a subdivision, and which has received final approval by the planning and zoning commission or the city council, and which is recorded with the office of the county clerk.

Growth-related costs means capital construction costs of service related to providing additional service units to new development, either from excess capacity in existing facilities, from facility expansions or from new capital facilities. The term "growth-related costs" does not include:

- (1) Construction, acquisition or expansion of public facilities or assets other than capital improvements or facility expansions identified in the capital improvements plan;
- (2) Repair, operation or maintenance of existing or new capital improvements or facility expansions;
- (3) Upgrading, updating, expanding or replacing existing capital improvements to serve existing development in order to meet stricter safety, efficiency, environmental or regulatory standards;
- (4) Upgrading, updating, expanding or replacing existing capital improvements to provide better service to existing development;
- (5) Administrative and operating costs of the city; and
- (6) Principal payments and interest or other finance charges on bonds or other indebtedness, except for such payments for growth-related facilities contained in the capital improvements program.

Impact Fee means the fee to be imposed upon new development, calculated based upon the costs of facilities in proportion to development creating the need for such facilities. The term "impact fee" does not include dedication of rights-of-way or easements, construction or dedication of site-related water distribution, wastewater collection, or drainage facilities required by other ordinances or this Code; or pro rata fees placed in trust funds for the purpose of reimbursing developers for oversizing or constructing water or sewer mains or lines or drainage facilities.

Land use assumptions means projections of changes in land uses, densities, intensities and population therein over at least a ten-year period, adopted by the city, as may be amended from time to time, upon which the capital improvement plan is based.

Multifamily residence means a structure on a single lot designed to accommodate more than one dwelling unit.

New development means a subdivision of land; or the construction, reconstruction, redevelopment, conversion, structural alteration, relocation, or enlargement of any structure; or

any use or extension of the use of land; or any of which increases the number of service units; or any new meter or request for size upgrade to existing meters.

Offset means the amount of the reduction of an impact fee designed to fairly reflect the value of area-related facilities, pursuant to rules herein established or administrative guidelines, provided and funded by a developer pursuant to the city's subdivision regulations or requirements.

Residential development means a lot developed for use and occupancy as a single-family or multifamily residence, as authorized by Chapter 48 of the Code of Ordinances.

Service area means an area within the corporate boundaries and within the extraterritorial jurisdiction as defined by V.T.C.A., Local Government Code § 43.001, to be served by the water, wastewater, and drainage capital improvements or facilities expansions specified in the capital improvements program applicable to the service area.

Service unit means a standardized measure of consumption, use, generation or discharge attributable to an individual unit of development calculated in accordance with generally accepted engineering or planning standards for a particular category of capital improvements or facility expansions, expressed in service units equivalent.

Service Unit Equivalent means the equivalent to a water or wastewater connection for a single-family residence established by the safe maximum operating capacity for a given meter size.

Single-family residence means a single-family dwelling unit.

Site-related facility means improvement or facility which is for the primary use or benefit of a new development and/or which is for the primary purpose of safe and adequate provision of water, wastewater, or drainage facilities to serve the new development, and which is not included in the capital improvements plan, and for which the developer or property owner is solely responsible under subdivision and other applicable regulations.

Tap purchase means the filing with the City of a written application for a water or wastewater tap and the acceptance of applicable fees by the City. The term "tap purchase" shall not be applicable to a master water meter or master wastewater connection purchased from the City by a wholesale customer such as a water district, political subdivision of the state, or other wholesale utility customer; nor shall it be applicable to a meter purchased for and exclusively dedicated to fire protection.

Wastewater facility means improvement for providing wastewater service, including, but not limited to, land or easements, treatment facilities, lift stations or interceptor mains. The term "wastewater facility" excludes wastewater lines or mains which are constructed by developers, the costs of which are reimbursed from pro rata charges paid by subsequent users of the facilities, and which are maintained in dedicated trusts. The term "wastewater facilities" also excludes dedication of rights-of-way or easements or construction or dedication of on-site wastewater collection facilities required by valid ordinances of the city and necessitated by and attributable to the new development.

Wastewater facility expansion means expansion of the capacity of any existing wastewater improvement for the purpose of serving new development, not including the repair, maintenance, modernization, or expansion of an existing wastewater facility to serve existing development.

Wastewater improvements plan means that portion of the CIP, as may be amended from time to time, which identifies the wastewater facilities or wastewater expansions and their associated costs which are necessitated by and which are attributable to new development, and for a period not to exceed ten years, and which are to be financed in whole or in part through the imposition of wastewater facilities impact fees, pursuant to this article.

Water facility means an improvement for providing water service, including, but not limited to, land or easements, water supply facilities, treatment facilities, pumping facilities, storage facilities or transmission mains. The term "water facility" excludes water lines or mains which are constructed by developers, the costs of which are reimbursed from pro rata charges paid by subsequent users of the facilities, and which are maintained in dedicated trusts. The term "water facilities" also excludes dedication of rights-of-way or easements or construction or dedication of on-site water distribution facilities required by valid ordinances of the city and necessitated by and attributable to the new development.

Water facility expansion means expansion of the capacity of any existing water improvement for the purpose of serving new development, not including the repair, maintenance, modernization, or expansion of an existing water facility to serve existing development.

Water improvements plan means that portion of the CIP, as may be amended from time to time, which identifies the water facilities or water expansions and their associated costs which are necessitated by and which are attributable to new development, and for a period not to exceed ten years, and which are to be financed in whole or in part through the imposition of water facilities impact fees, pursuant to this article.

Wholesale customers means water or wastewater customers of the city's utilities which purchase utility service at wholesale rates for resale to their retail customers.

(Code 1993, § 82-134; Ord. No. 2003-02, § 2(82-134), 3-17-2003)

Sec. 46-147. Applicability of Impact Fees.

- (a) This article shall be uniformly applicable to new development which occurs within the water, wastewater, and drainage service areas, except for new development which occurs within the service areas of the City's wholesale customers. It shall be the policy of the City to revise contracts with wholesale customers, when the terms of current contracts are completed, to effectively charge wholesale customers impact fees for the new development within the wholesale customers' service area, such fees being equivalent to impact fees charged to retail customers of the City's utilities.
- (b) No new development shall be exempt from the assessment of impact fees. However, the City Council may determine that, for reasons of applicant hardship or for reasons of general community welfare, the applicable fees may be waived.

(Code 1993, § 82-135; Ord. No. 2003-02, § 2(82-135), 3-17-2003)

Sec. 46-148. Assessment and Collection of Impact Fees.

Impact fees imposed by this article shall be assessed and collected in accordance with the provisions of V.T.C.A., Local Government Code Ch. 395.

(Code 1993, § 82-136; Ord. No. 2003-02(82-136), § 2, 3-17-2003)

Sec. 46-149. Establishment of Water, Wastewater, and Drainage Service Areas.

- (a) Water, wastewater, and drainage service areas are hereby established as identified and described in the CIP.
- (b) The service areas shall be established consistent with any facility service area established in the CIP for each utility. Additions to the service area may be designated by the City Council consistent with the procedure set forth in V.T.C.A., Local Government Code Ch. 395.

(Code 1993, § 82-137; Ord. No. 2003-02, § 2(82-137), 3-17-2003)

Sec. 46-150. Land Use Assumptions.

Land use assumptions used in the development of the impact fees are hereby adopted and are more particularly described in the Water and Wastewater Impact Fee Study from which this section is derived and made a part of this article. These assumptions may be revised by the City Council according to the procedure set forth in V.T.C.A., Local Government Code Ch. 395.

(Code 1993, § 82-138; Ord. No. 2003-02, § 2(82-138), 3-17-2003; Ord. No. 2014-12, § 2, 6-2-2014)

Sec. 46-151. Service Units.

- (a) Service units are established in accordance with generally accepted engineering and planning standards.
- (b) Service units for water and wastewater impact fees shall be calculated as follows:
 - a. For platted lots and for lots on which new development will occur without platting, and for which no water or wastewater meter has been purchased, service units are established as follows:
 - i. The developments impact on the water system will be determined by utilizing the safe maximum operating capacity of each meter, as defined by the manufacturer, to calculate the service unit equivalent (SUE) for all meters larger than ¾-inch. The SUE is the ratio of the safe maximum operating capacity for the larger meters to the safe maximum operating capacity of a ¾-inch meter.
 - b. Before issuance of a certificate of occupancy, service units shall be calculated based on service units equivalent as determined by the size of the water meters for the development, or, alternatively, based on the recommendation of the director as a result of an engineering report prepared by a qualified professional engineer licensed

to perform such professional engineering services in the state, which demonstrates the water meter size required for the new development.

- c. If the director determines that the water pressure in the city's transmission main is significantly higher or lower than standard pressure such that the size of the water meter is not indicative of actual service demand, the director may adjust the meter size to more accurately reflect the flow rate and the system pressure conditions.
 - d. If a fire demand meter (tap) is purchased for a property, the meter size utilized to calculate the number of LUEs shall be the dimension of the portion of the fire demand meter that reflects the meter size which would provide only domestic service to the property. Such reduced meter size shall then be utilized to calculate the number of LUEs.
 - i. The meter types used to calculate the number of LUEs shall be either simple or compound meters.
 - ii. To avoid the use of fire flow volumes for domestic usage, the owner of any property for which a fire demand meter is purchased shall be required to execute a restrictive covenant on a form approved by the city attorney, which covenant shall acknowledge the right of the city to assess such fees to subsequent owners of the property. Such covenant shall be executed prior to the purchase of the fire demand meter and shall be filed in the deed records of the county.
 - e. Upon issuance of certificate of occupancy for construction on lots for which no water meter has been purchased, service units shall be established by a professional engineer licensed in the state and shall be approved by the Director of Public Works.
- (c) A service unit for calculation of drainage impact fees shall be per developed acre.
- (d) The City Council may revise the service units designation according to the procedure set forth in V.T.C.A., Local Government Code Ch. 395, or its successor statute.

(Code 1993, § 82-139; Ord. No. 2003-02, § 2(82-139), 3-17-2003)

Sec. 46-152. Impact Fees per Service Unit.

The maximum allowable impact fee per service unit for each service area shall be computed by dividing the cost of required capital improvements identified in the capital improvements plan by the total number of service units attributed to new development during the impact fee eligibility period.

(Code 1993, § 82-140; Ord. No. 2003-02, § 2(82-140), 3-17-2003)

Sec. 46-153. Assessment of Impact Fees.

- (a) Impact fees are hereby assessed against new development in order to generate revenue for funding or recouping the costs of capital improvements or facility expansions necessitated by and attributable to the new development. Assessment of impact fees for new development shall be made as follows:

1. This subsection applies only to impact fees adopted and land platted before June 20, 1987. For land that has been platted in accordance with Subchapter A, Chapter 212, or the subdivision or platting procedures of a political subdivision before June 20, 1987, or land on which new development occurs or is proposed without platting, the political subdivision may assess the impact fees at any time during the development approval and building process. Except as provided by Section 395.019, the political subdivision may collect the fees at either the time of recordation of the subdivision plat or connection to the political subdivision's water or sewer system or at the time the political subdivision issues either the building permit or the certificate of occupancy.
2. This subsection applies only to impact fees adopted before June 20, 1987, and land platted after that date. For new development which is platted in accordance with Subchapter A, Chapter 212, or the subdivision or platting procedures of a political subdivision after June 20, 1987, the political subdivision may assess the impact fees before or at the time of recordation. Except as provided by Section 395.019, the political subdivision may collect the fees at either the time of recordation of the subdivision plat or connection to the political subdivision's water or sewer system or at the time the political subdivision issues either the building permit or the certificate of occupancy.
3. This subsection applies only to impact fees adopted after June 20, 1987. For new development which is platted in accordance with Texas Local Government Code Chapter 212, Subchapter A, or the subdivision or platting procedures of a political subdivision before the adoption of an impact fee, an impact fee may not be collected on any service unit for which a valid building permit is issued within one year after the date of adoption of the impact fee.
4. This subsection applies only to land platted in accordance with Texas Local Government Code Chapter 212, Subchapter A, or the subdivision or platting procedures of a political subdivision after adoption of an impact fee adopted after June 20, 1987. The political subdivision shall assess the impact fees before or at the time of recordation of a subdivision plat or other plat under Texas Local Government Code Chapter 212, Subchapter A, or the subdivision or platting ordinance or procedures of any political subdivision in the official records of the county clerk of the county in which the tract is located. Except as provided by Section 395.019 (Texas Local Government Code), if the political subdivision has water and wastewater capacity available:
 - i. the political subdivision shall collect the fees at the time the political subdivision issues a building permit;
 - ii. for land platted outside the corporate boundaries of a municipality, the municipality shall collect the fees at the time an application for an individual meter connection to the municipality's water or wastewater system is filed; or
 - iii. a political subdivision that lacks authority to issue building permits in the area where the impact fee applies shall collect the fees at the time an

application is filed for an individual meter connection to the political subdivision's water or wastewater system.

5. For land on which new development occurs or is proposed to occur without platting, the political subdivision may assess the impact fees at any time during the development and building process and may collect the fees at either the time of recordation of the subdivision plat or connection to the political subdivision's water or sewer system or at the time the political subdivision issues either the building permit or the certificate of occupancy.
6. An "assessment" means a determination of the amount of the impact fee in effect on the date or occurrence provided in this section and is the maximum amount that can be charged per service unit of such development. No specific act by the political subdivision is required.
7. Notwithstanding Subsections (a)-(e) and Section 395.017 of the Texas Local Government Code, the political subdivision may reduce or waive an impact fee for any service unit that would qualify as affordable housing under 42 U.S.C. Section 12745, as amended, once the service unit is constructed. If affordable housing as defined by 42 U.S.C. Section 12745, as amended, is not constructed, the political subdivision may reverse its decision to waive or reduce the impact fee, and the political subdivision may assess an impact fee at any time during the development approval or building process or after the building process if an impact fee was not already assessed.

(Code 1993, § 82-141; Ord. No. 2003-02, § 2(82-141), 3-17-2003)

Sec. 46-154. Calculation of Impact Fees.

- (a) Following the request for new development as provided in section 46-153, or upon application for a building permit, the Ccity shall compute impact fees due for the new development in the following manner:
 - (1) Determine the meter size required to adequately service the development and reference the approved impact fee as adopted in the Water and Wastewater Impact Fee Study; and
 - (2) For drainage impact fees, determine the amount of acreage of each land use from the subdivision plat or appropriate document.
 - (3) The amount of each impact fee due for a new development, whether calculated at the time of final plat approval or at the time of building permit issuance, shall not exceed an amount as identified by V.T.C.A., Local Government Code Ch. 395, or its successor statute.
 - (4) Fee credits shall be subtracted as determined by the process prescribed in section 46-159.

(Code 1993, § 82-142; Ord. No. 2003-02, § 2(82-142), 3-17-2003)

Sec. 46-155. Collection of Impact Fees.

- (a) For all development platted after the effective date of the ordinance from which this article is derived, the impact fees due shall be collected at the time of application for a building permit, or at the time of application for a utility connection, whichever occurs first. If the building permit for which an impact fee has been paid has expired, and a new application is thereafter filed, the impact fees due shall be computed using the impact fee then in effect, and previous payments of impact fees shall be credited against the new fees due.
- (b) For water and wastewater fees, if the city has water and wastewater capacity available, the impact fee shall be collected at the time the city issues a building permit or approves an application for a utility connection, whichever occurs first.
- (c) In areas where services are not currently available, fees may be assessed but may not be collected, except as provided by state law. Where state law requires a commitment by the city to commence construction of a capital improvement or facility expansion, and to have the service available within a specified time frame in order to collect the fees, the city manager is empowered to make this commitment on behalf of the city after consultation with the city's engineer.
- (d) A school district is not required to pay impact fees imposed under this article unless the board of trustees of the district consents to the payment of the fees by entering into a contract with the city.
- (e) Notwithstanding the above, the City may enter into an agreement with the owner of a tract of land for which the plat has been recorded providing for the time and method of payment of the impact fees.
- (f) No certificate of occupancy shall be issued until all impact fees have been paid to the city.

(Code 1993, § 82-143; Ord. No. 2003-02, § 2(82-143), 3-17-2003)

Sec. 46-156. Establishment of Accounts.

- (a) Impact fee funds shall be deposited in interest-bearing accounts clearly identifying the category of capital improvements or facility expansions within the service area for which the fee was adopted.
- (b) Interest earned on the account into which the impact fees are deposited shall be considered funds of the account and shall be used solely for the purposes authorized in section 46-157.
- (c) The city shall establish adequate financial and accounting controls to ensure that impact fees disbursed from the account are utilized solely for the purposes authorized in section 46-157. Disbursement of funds shall be authorized by the city at such times as are reasonably necessary to carry out the purposes and intent of this article; provided, however, that any fee paid shall be expended within a reasonable period of time, but not to exceed ten years from the date the fee was collected.

- (d) The city shall maintain and keep financial records for impact fees, which shall show the source and disbursement of all fees collected in or expended within the service area. The records of the account into which impact fees are deposited shall be open for public inspection and copying during ordinary business hours.

(Code 1993, § 82-146; Ord. No. 2003-02, § 2(82-146), 3-17-2003)

Sec. 46-157. Use of Proceeds of Impact Fee Accounts.

- a. The impact fees collected may be spent only for the purposes for which they were imposed and within the service area for which they were adopted, as shown in the CIP and as authorized by this article. The impact fees collected for each service area pursuant to this article may be used to finance or to recoup of any capital improvements or facility expansion identified in the applicable capital improvement plan for the service area, including but not limited to the construction contract price, surveying and engineering fees, land acquisition cost (including land purchases, court wards and costs, attorney's fees, and expert witness fees). Impact fees may also be used to pay the principal sum and interest and other finance costs on bonds, notes or other obligations issued by or on behalf of the city to finance such capital improvements or facility expansions. Impact fees may also be used to pay fees actually contracted to be paid to an independent qualified engineer or financial consultant for preparation of or updating the impact fee study or capital improvement plan.
- b. Impact fees collected pursuant to this article shall not be used to pay for any of the following expenses:
- a. Construction, acquisition or expansion of capital improvements or assets other than those identified in the applicable capital improvements plan;
 - b. Repair, operation or maintenance of existing or new capital improvements or facility expansion;
 - c. Upgrade, expansion or replacement of existing capital improvements to serve existing development in order to meet stricter safety, efficiency, environmental or regulatory standards;
 - d. Upgrade, expansion or replacement of existing capital improvements to serve existing development; provided, however, that impact fees may be used to pay the costs of upgrading, expanding or replacing existing capital improvements in order to meet the need for new capital improvements generated by new development; or
 - e. Administrative and operating costs of the city.

(Code 1993, § 82-147; Ord. No. 2003-02(82-147), § 2, 3-17-2003)

Sec. 46-158. Appeals.

Upon written application of the owner of the property upon which impact fees were assessed, the City Council shall consider appeals to the interpretations of or errors in the application of the impact fee regulations or schedules used to calculate the fees or credits. The burden of proof shall be on the property owner to demonstrate that the amount of the impact fee,

or the amount of the offset or credit, was not calculated according to the applicable impact fee as referenced in the master fee schedule, or the guidelines established for determining offsets and credits.

(Code 1993, § 82-148; Ord. No. 2003-02, § 2(82-148), 3-17-2003)

Sec. 46-159. Refunds, Credits and Offsets.

The process for refunds for impact fees will be as follows:

On the request of an owner of property on which an impact fee has been paid, impact fees shall be refunded if existing facilities are available and service is denied, or, if the city failed to commence construction of facilities required for service within two years of payment of the fee, or if construction is not complete within a reasonable time considering the type of capital improvements or facility expansion to be constructed, but not in any event more than five years from date of payment of the fee.

- (a) Any impact fee funds not expended within ten years after payment shall be refunded.
- (b) Refunds shall bear interest calculated from the date of collection to the date of refund at the statutory rate set forth in V.T.C.A. Finance Code § 302.002 or its successor statutes.
- (c) All refunds will be made to the owner of record at the time the refund is paid. If, however, the impact fees were paid by another political subdivision or governmental entity, payment shall be made to the political subdivision or governmental entity.

The process for credits and offsets will be as follows:

- (a) Any construction of, contributions to, or dedications of any facility appearing on the capital improvements plan which is required by the city to be constructed by the owner as a condition of development shall be credited against the impact fees otherwise due from the development. Credit for impact fees due to an owner in one category of impact fees may not be used to offset impact fees in another category.

As an alternative to the foregoing, the city and owner may enter into an agreement providing that, in addition to the credit, owner will be reimbursed for all or a portion of the costs of such facilities from impact.

- (b) Fees received from other new developments that will use such capital improvements of facility expansions.
- (c) The owner shall be entitled to a credit against any category of impact fee provided in any written agreement between the city and the owner.
- (d) No credit for construction of any facility shall exceed the total amount of impact fees due from the development for the same category of improvements.

Petition for refunds for refunds shall be submitted to the Public Works Director. Within one month of the date of receipt of a petition for refund, the director must provide the petitioner, in writing, with a decision on the refund request, including the reasons for the decision. If a refund

is due to the petitioner, the director shall notify the city treasurer and request that a refund payment be made to the petitioner. The petitioner may appeal the determination to the City Council, as set forth in section 46-158.

(Code 1993, § 82-149; Ord. No. 2003-02, § 2(82-149), 3-17-2003)

Sec. 46-160. Updates to Plan and Revision of Impact Fees.

The City shall review the land use assumptions and capital improvements plan for water, wastewater, and drainage facilities in accordance with V.T.C.A., Local Government Code, Ch. 395. The City Council shall accordingly decide of whether changes to the land use assumptions, capital improvements plan or impact fees are needed and shall, in accordance with the procedures set forth in V.T.C.A., Local Government Code Ch. 395, either update the fees or make a determination that no update is necessary.

(Code 1993, § 82-150; Ord. No. 2003-02, § 2(82-150), 3-17-2003)

Sec. 46-161. Functions of Advisory Committee.

- (a) The Capital Improvements Advisory Committee (advisory committee) shall consist of the Planning and Zoning Commission. If the commission does not include at least one representative of the real estate, development or building industry who is not an employee or official of a political subdivision or governmental entity, the City Council shall appoint at least one such representative as an ad hoc member of the advisory committee.
- (b) The advisory committee serves in an advisory capacity and is established to:
 1. Advise and assist the city in adopting land use assumptions;
 2. Review the capital improvements plan and file written comments;
 3. Monitor and evaluate implementation of the capital improvements plan;
 4. Advise the city staff and council of the need to update or revise the land use assumptions, capital improvements program and impact fees; and
 5. File a semi-annual report evaluating the progress of the capital improvements plans and report to the City Council any perceived inequities in implementing the plan or imposing the impact fees.
- (c) All professional reports concerning the development and implementation of the capital improvements plan shall be made available to the advisory committee.
- (d) The Planning and Zoning Chair shall serve as the chairperson to preside at its meetings.
- (e) The land use assumptions and capital improvements plan shall be updated at least every five years. Alternatively, the city council may, pursuant to the provisions of the V.T.C.A. Local Government Code § 395.0575, make a determination that no such update is necessary.

(Code 1993, § 82-151; Ord. No. 2003-02, § 2(82-151), 3-17-2003)

Sec. 46-162. Agreement for Capital Improvements.

- (a) The City Council may enter into an agreement with the owner of a new development to construct or finance some of the public improvements identified in the CIP. In the case of such approval, the property owner must enter into an agreement with the City prior to fee collection. The agreement shall be on a form approved by the City, and shall establish the estimated cost of improvement, the schedule for initiation and completion of the improvement, a requirement that the improvement shall be completed to city standards, and any other terms and conditions the City deems necessary. The Public Works Director shall review the improvement plan, verify costs, and time schedules, determine if the improvement is contained in the CIP, and determine the amount of the applicable credit for such improvement to be applied to the otherwise applicable impact fee before submitting the proposed agreement to the city council for approval.
- (b) The City and such owner either may agree that the costs incurred or funds advanced will be credited against the impact fees otherwise due from the new development, or they may agree that the City shall reimburse the owner for such costs from impact fees paid from other new developments which will use such capital improvements or facility expansions, which fees shall be collected and reimbursed to the owner at the time the other new development records its plat.

(Code 1993, § 82-152; Ord. No. 2003-02, § 2(82-152), 3-17-2003)

Sec. 46-163. Use of Other Financing Mechanisms.

- (a) The City may finance water, wastewater, and drainage capital improvements or facility expansions designated in the capital improvements plan through the issuance of bonds, through the formation of public improvement districts or other assessment districts, or through any other authorized mechanism, in such manner and subject to such limitations as may be provided by law, in addition to the use of impact fees.
- (b) Except as otherwise provided in this article, the assessment and collection of an impact fee shall be additional and supplemental to, and not in substitution of, any other tax, fee, charge or assessment which is lawfully imposed on and due against the property.
- (c) The City Council may decide that the City shall pay all or part of impact fees due for a new development taking into account available offsets and credits pursuant to duly adopted criteria.

(Code 1993, § 82-153; Ord. No. 2003-02, § 2(82-153), 3-17-2003)

Sec. 46-164. Impact Fees as Additional and Supplemental Regulation.

- (a) Impact fees established by this article are additional and supplemental to, and not in substitution of, any other requirements imposed by the City on the development of land, the issuance of building permits, the sale of water or wastewater taps, or the issuance of certificates of occupancy. Such fees are intended to be consistent with and to further the policies of the city's comprehensive plan, capital improvements plan, subdivision regulations and other city policies, ordinances, and resolutions by which the City seeks to

ensure the provision of adequate public facilities in conjunction with the development of land.

- (b) This article shall not affect, in any manner, the permissible use of property, density of development, design and improvement standards and requirements, or any other aspect of the development of land or provision of public improvements subject to the zoning and subdivision regulations or other regulations of the City, which shall be operative and remain in full force and effect without limitation with respect to all such development.

(Code 1993, § 82-154; Ord. No. 2003-02, § 2(82-154), 3-17-2003)

Sec. 46-165. Relief Procedures.

- (a) Any person who has paid an impact fee, or an owner of land upon which an impact fee has been paid, may petition the City Council to determine whether any duty required by this article has not been performed within the time so prescribed. The petition shall be in writing and shall state the nature of the unperformed duty and request that the act be performed within 60 days of the request. If the city council determines that the duty is required pursuant to this article and is late in being performed, it shall cause the duty to commence within 60 days of the date of the request and to continue until completion.
- (b) The City Council may grant a variance or waiver from any requirement of this article, upon written request by a developer or owner of property subject to this article, following a public hearing, and only upon finding that a strict application of such requirement would, when regarded as a whole, result in confiscation of the property.
- (c) The City Council may grant a waiver from any requirement of this article on other grounds, as may be set forth in administrative guidelines.
- (d) If the City Council grants a variance or waiver to the amount of the impact fees due for a new development under this section, it shall cause to be appropriated from other city funds the amount of the reduction in the impact fees to the account in which the fees would have been deposited.

(Code 1993, § 82-155; Ord. No. 2003-02, § 2(82-155), 3-17-2003)

Sec. 46-166. Schedule of Maximum Allowable Impact Fees.

- (a) The maximum allowable impact fee is determined during the impact fee study process and may be adopted by ordinance at the maximum allowable amount or amount determined by City Council and shall be established in the master fee schedule, or as hereafter adopted by resolution of the City Council from time to time.
- (b) This section may be amended by the City Council according to the procedure set forth in V.T.C.A., Local Government Code Ch. 395.

(Code 1993, § 82-156; Ord. No. 2003-02, § 2(82-156), 3-17-2003; Ord. No. 2009-12, § 2(82-156), 6-1-2009; Ord. No. 2014-22, § 13, 8-4-2014)

Secs. 46-167—46-185. Reserved.

*DIVISION 2. WATER IMPACT FEES***Sec. 46-186. Water service area.**

- (a) There is hereby established a water service area, which is specifically described and defined in the CIP .
- (b) The boundaries of the water service area may be amended from time to time, and new water service areas may be delineated, pursuant to the procedures in section 46-149.

(Code 1993, § 82-166; Ord. No. 2003-02, § 2(82-166), 3-17-2003)

Sec. 46-187. Water Capital Improvement Plan.

- (a) The water capital improvement plan for the city, as set forth in the Water and Wastewater Master Plan, is hereby adopted. A copy of such plan shall be maintained on file in the office of the City Secretary.
- (b) The water capital improvement plan may be amended from time to time, pursuant to the procedures set forth in V.T.C.A., Local Government Code Ch. 395.

(Code 1993, § 82-167; Ord. No. 2003-02, § 2(82-167), 3-17-2003)

Sec. 46-188. Water facilities fees.

- (a) The maximum allowable impact fees per service unit for water facilities are hereby adopted and incorporated in section 46-166.
- (b) The impact fees per service unit for water facilities may be amended from time to time, pursuant to the procedures in section 46-152.

(Code 1993, § 82-168; Ord. No. 2003-02, § 2(82-168), 3-17-2003)

Secs. 46-189—46-214. Reserved.

DIVISION 3. WASTEWATER IMPACT FEES

Sec. 46-215. Wastewater service area.

- (a) There is hereby established a wastewater service area, which is specifically described and defined in the CIP.
- (b) The boundaries of the wastewater service area may be amended from time to time, and new wastewater service areas may be delineated, pursuant to the procedures in section 46-149.

(Code 1993, § 82-181; Ord. No. 2003-02, § 2(82-181), 3-17-2003)

Sec. 46-216. Wastewater Capital Improvement Plan.

- (a) The wastewater capital improvement plan for the city, as set forth in the Water and Wastewater Master Plan, is hereby adopted. A copy of such plan shall be maintained on file in the office of the City Secretary.
- (b) The wastewater capital improvement plan may be amended from time to time, pursuant to the procedures set forth in V.T.C.A., Local Government Code Ch. 395.

(Code 1993, § 82-182; Ord. No. 2003-02, § 2(82-182), 3-17-2003)

Sec. 46-217. Wastewater facilities fees.

- (a) The maximum allowable impact fees per service unit for wastewater facilities are hereby adopted and incorporated in section 46-166.
- (b) The impact fees per service unit for wastewater facilities may be amended from time to time, pursuant to the procedures in section 46-152.

(Code 1993, § 82-183; Ord. No. 2003-02, § 2(82-183), 3-17-2003)

Secs. 46-218—46-242. Reserved.

DIVISION 4. DRAINAGE IMPACT FEES

Sec. 46-243. Drainage service area.

- (a) There are hereby established four drainage service areas, which are specifically described and defined in the Drainage Master Plan..
- (b) The boundaries of each drainage service area may be amended from time to time, and new drainage service areas may be delineated, pursuant to the procedures in section 46-149.

(Code 1993, § 82-190; Ord. No. 2003-02, § 2(82-190), 3-17-2003)

Sec. 46-244. Drainage capital improvement plan.

- (a) The drainage capital improvement plan for each service area, as set forth in the Drainage Master Plan, is hereby adopted. A copy of such plan shall be maintained on file in the office of the City Secretary.
- (b) The drainage capital improvement plan may be amended from time to time, pursuant to the procedures set forth in V.T.C.A., Local Government Code Ch. 395.

(Code 1993, § 82-191; Ord. No. 2003-02, § 2(82-191), 3-17-2003)

Sec. 46-245. Drainage Impact Fees.

- (a) The maximum impact fee within each service area is per service unit for drainage facilities and are hereby adopted and incorporated in section 46-166.
- (b) The impact fees per service unit for drainage facilities may be amended from time to time, pursuant to the procedures in section 46-152.

(Code 1993, § 82-192; Ord. No. 2003-02, § 2(82-192), 3-17-2003)

Secs. 46-246—46-268. Reserved.

City Council Meeting Agenda Item Data Sheet

Meeting Date: February 17, 2025

Topic:

Workshop Discussion Only – Adopt, on First Reading, Ordinance No. 2025-08, an Ordinance Altering the Prima Facie Speed Limits Established for Vehicles under the Provisions of §545.356, Texas Transportation Code, upon the Basis of an Engineering and Traffic Investigation, upon Certain Streets and Highways, of Parts Thereof, within the Corporate Limits of The City of Tomball, as Set Out in This Ordinance, and Providing a Penalty of a Fine in an Amount Not to Exceed Two Hundred Dollars (\$200.00) for the Violation of this Ordinance.

Background:

Staff was notified by the Texas Department of Transportation on January 28, 2025 that a Speed Zone Study had been completed along FM 2920 within the city limits. Based on the traffic study, it is recommended to revise the speed zone by decreasing the speed limit and establishing a school zone along certain sections of FM 2920:

Along FM 2920 from the east city limit of the City of Tomball to the Chestnut Road a distance of approximately 0.957 mile, the speed limit shall be 40 MPH.

Along FM 2920 a school zone, from Howard Road to the point of 390 feet west of east city limit of the City of Tomball, a distance of approximately 0.800 mile, the speed limit shall be 25 MPH WHEN FLASHING.

Once adopted, staff anticipate the new speed limits to be posted within 30 days of notification to the Texas Department of Transportation of approval.

Origination: Project Management

Recommendation:

Staff recommends approving Ordinance 2025-08, altering the prima facie speed limit along FM 2920 as requested by the Texas Department of Transportation.

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 _____

ORDINANCE NO. 2025-08

AN ORDINANCE ALTERING THE *PRIMA FACIE* SPEED LIMITS ESTABLISHED FOR VEHICLES UNDER THE PROVISIONS OF §545.356, TEXAS TRANSPORTATION CODE, UPON THE BASIS OF AN ENGINEERING AND TRAFFIC INVESTIGATION, UPON CERTAIN STREETS AND HIGHWAYS, OR PARTS THEREOF, WITHIN THE CORPORATE LIMITS OF THE CITY OF TOMBALL AS SET OUT IN THIS ORDINANCE; AND PROVIDING A PENALTY OF A FINE IN AN AMOUNT NOT TO EXCEED TWO HUNDRED DOLLARS (\$200.00) FOR THE VIOLATION OF THIS ORDINANCE.

* * * * *

WHEREAS, §545.356, Vernon’s Texas Civil Statutes, provides that whenever the governing body of the City shall determine, upon the basis of an engineering and traffic investigation that any *prima facie* speed therein set forth is greater or less than is reasonable or safe under the conditions found to exist at any intersection or other place or upon any part of a street or highway within the City, taking into consideration the width and condition of the pavement and other circumstances on such portion of said street or highway, as well as the usual traffic thereon, said governing body may determine and declare a reasonable and safe *prima facie* speed limit thereat or thereon by the passage of an Ordinance, which shall be effective when appropriate signs giving notice thereof are erected at such intersection or other place or part of the street or highway;

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

Section 1. Upon the basis of an engineering and traffic investigation heretofore made as authorized by the provisions of §545.356, Texas Transportation Code, the following *prima facie* speed limits hereafter indicated for vehicles are hereby determined and declared to be reasonable and safe; and such speed limits are hereby fixed at the rate of speed indicated for vehicles traveling upon the named streets and highways, or parts thereof, described as follows:

Along FM 290 from the east city limit of the City of Tomball to the Chestnut Road a distance of approximately 0.957 mile, the speed limit shall be 40 MPH.

Along FM 2920 a school zone, from Howard Road to the point of 390 feet west of east city limit of the City of Tomball, a distance of approximately 0.800 mile, the speed limit shall be 25 MPH WHEN FLASHING.

Section 2. Any person violating any of the provisions of this Ordinance shall be deemed guilty of a misdemeanor and, upon conviction thereof, shall be fined in any sum not more than Two Hundred Dollars (\$200.00).

FIRST READING:

READ, PASSED, AND APPROVED AS SET OUT BELOW AT A REGULAR MEETING OF THE CITY COUNCIL OF THE CITY OF TOMBALL, HELD ON THE 17TH DAY OF FEBRUARY 2025.

COUNCILMAN FORD	_____
COUNCILMAN GARCIA	_____
COUNCILMAN DUNAGIN	_____
COUNCILMAN COVINGTON	_____
COUNCILMAN PARR	_____

SECOND READING:

READ, PASSED, AND APPROVED AS SET OUT BELOW AT A REGULAR MEETING OF THE CITY COUNCIL OF THE CITY OF TOMBALL, HELD ON THE 3RD DAY OF MARCH 2025.

COUNCILMAN FORD	_____
COUNCILMAN GARCIA	_____
COUNCILMAN DUNAGIN	_____
COUNCILMAN COVINGTON	_____
COUNCILMAN PARR	_____

Lori Klein Quinn, Mayor
City of Tomball

ATTEST:

Tracylynn Garcia, City Secretary
City of Tomball



P.O. Box 1386 | Houston, Texas 77251-1386
713.802.5000
txdot.gov

January 28, 2025

The Honorable Lori Klein Quinn
Mayor, City of Tomball
401 Market Street
Tomball, Texas 77375-4697

**RE: Request for City Speed Zone Ordinance
FM 2920
Harris County
Control Section: 2941-02**

Dear Mayor Quinn:

Our office has completed a Speed Zone Study along FM 2920 within the city limits of the City of Tomball.

Attached you will find a Speed Zone Strip Map numbered 5821 A and a prepared Speed Zone Ordinance suggested by the Texas League of Municipalities containing the recommended speed zone along FM 2920.

If you concur with the recommended speed zone, please furnish this office with a copy of your executed ordinance.

Should you have any questions, please contact Gaurang Pandit at (713) 802-5856.

Sincerely,

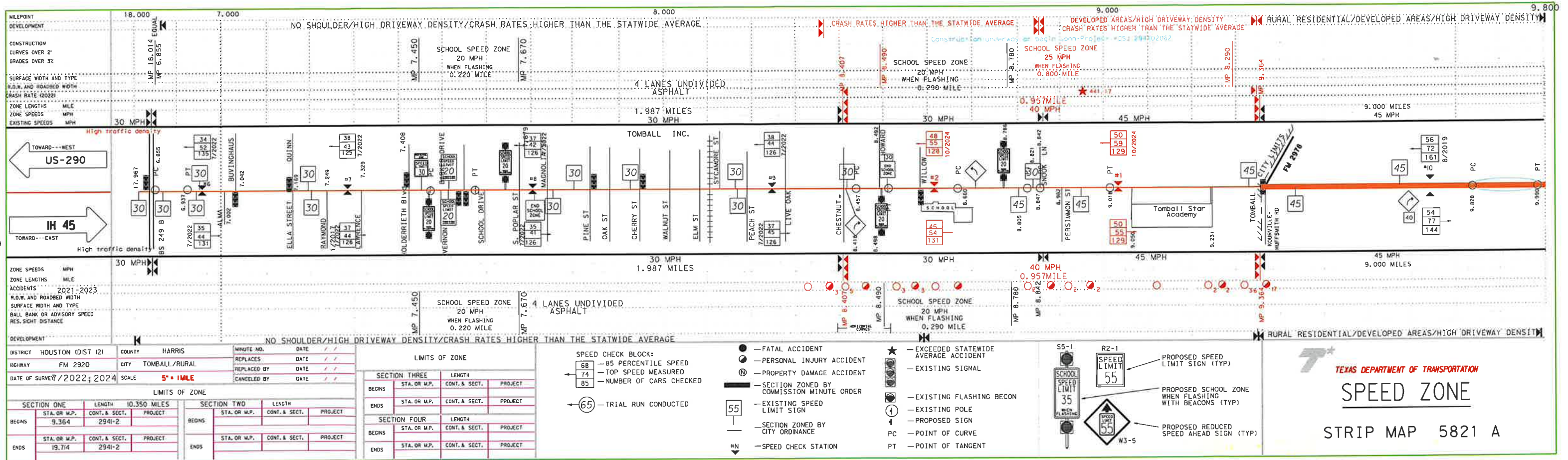
Signed by:

6ACCE87C44674E8...

Ugonna U. Ughanze, P.E.
Director of Transportation Operations
Houston District

Attachments

CC: Tracy Garcia, City Secretary, City of Tomball
Gaurang S. Pandit, P.E., Transportation Engineer Supervisor, HOU, TxDOT
Phillip B. Garlin P.E., North Harris Area Engineer, Houston District, TxDOT



DISTRICT	HOUSTON (DIST 12)	COUNTY	HARRIS
HIGHWAY	FM 2920	CITY	TOMBALL/RURAL
DATE OF SURVEY	7/2022; 2024	SCALE	5" = 1 MILE

LIMITS OF ZONE			
SECTION ONE	LENGTH	SECTION TWO	LENGTH
STA. OR M.P.	CONT. & SECT.	STA. OR M.P.	CONT. & SECT.
BEGINS 9.364	2941-2	BEGINS	
ENDS 19.714	2941-2	ENDS	

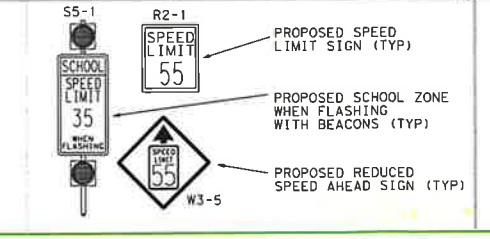
LIMITS OF ZONE			
SECTION THREE	LENGTH	SECTION FOUR	LENGTH
STA. OR M.P.	CONT. & SECT.	STA. OR M.P.	CONT. & SECT.
BEGINS		BEGINS	
ENDS		ENDS	

SPEED CHECK BLOCK:

- 68 - 85 PERCENTILE SPEED
- 74 - TOP SPEED MEASURED
- 85 - NUMBER OF CARS CHECKED

65 - TRIAL RUN CONDUCTED

- - FATAL ACCIDENT
- - PERSONAL INJURY ACCIDENT
- - PROPERTY DAMAGE ACCIDENT
- - SECTION ZONED BY COMMISSION MINUTE ORDER
- 55 - EXISTING SPEED LIMIT SIGN
- - SECTION ZONED BY CITY ORDINANCE
- #N - SPEED CHECK STATION
- ★ - EXCEEDED STATEWIDE AVERAGE ACCIDENT
- - EXISTING SIGNAL
- - EXISTING FLASHING BECON
- ④ - EXISTING POLE
- ⚡ - PROPOSED SIGN
- PC - POINT OF CURVE
- PT - POINT OF TANGENT



TEXAS DEPARTMENT OF TRANSPORTATION

SPEED ZONE

STRIP MAP 5821 A

\$FILE\$ \$DATE\$ \$TIME\$

City Council Meeting

Agenda Item

Data Sheet

Meeting Date: February 17, 2025

Topic:

Workshop Discussion Only – Approve a professional services agreement with Raba Kistner for annual gas monitoring for the closed landfill for a not-to-exceed amount of \$20,695, approve the expenditure of funds therefor, and authorize the City Manager to execute any and all documents related to the purchase. The purchases are included in the FY 2024-2025 Budget.

Background:

Raba Kistner is an engineering consultant and program management firm that provides the City with annual gas and ground water monitoring and reporting for the closed City of Tomball landfill in accordance with post-closure care and monitoring requirements as required by the Texas Commission on Environmental Quality (TCEQ) Municipal Solid Waste (MSW) Permit number 1140A.

Based on the City’s adopted Procurement Policy, City Council approval is required for individual or aggregate vendor purchases exceeding \$50,000. The annual spend for the vendor, Raba Kistner, will exceed \$50,000 during fiscal year 2024-2025. Policy compliance with the Purchasing and Bidding Policy, staff is requesting approval of the professional services agreements relating to the post-closure care and monitoring of the City of Tomball landfill.

Raba Kistner will provide both gas and groundwater monitoring and reporting related to the requirements of our TCEQ MSW permit for the closed landfill under two separate contracts. The total amount for both contracts is \$61,590.

Landfill Service	Amount
Gas Monitoring & Reporting	\$20,695
Groundwater Monitoring & Reporting	\$40,895
Total Annual Expenditure	\$61,590

Staff is requesting to approve the professional services agreement for the annual gas monitoring for a not-to-exceed amount of \$20,695.

Origination: Project Management

Recommendation:

Staff recommends approving the professional services agreement for the annual gas monitoring for the closed City of Tomball landfill for a not-to-exceed amount of \$20,695.

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: #100-155-6304

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
CONSULTANT SERVICES
RELATED TO
PROJECT NO. 0000-10038
CITY OF TOMBALL
GAS MONITORING CITY OF TOMBALL CLOSED LANDFILL**

**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 Raba Kistner ("Engineer").

WITNESSETH:

WHEREAS, Consultant represents that it is capable of providing and qualified to provide professional services to the City and desires to perform the same;

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

**SECTION I.
SCOPE OF AGREEMENT**

Consultant agrees to perform certain professional 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 Consultant compensation as stated in the sections to follow.

**SECTION II.
CHARACTER AND EXTENT OF SERVICES**

Consultant shall do all things necessary to render the services and perform the Scope of Work in a manner consistent with the professional skill and care ordinarily provided by competent consultants practicing in the same or similar locality and under the same or similar circumstances and professional license. It is expressly understood and agreed that Consultant is an Independent Contractor in the performance of the services agreed to herein. It is further understood and agreed that Consultant shall not have the authority to obligate or bind the 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

Consultant agrees that the City shall have the right to use all exhibits, maps, reports, analyses and other documents prepared or compiled by Consultant 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 Consultant's completion of the services which will result in the production of such instruments and Consultant'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 Consultant from continuing to use those processes, analyses and data.

SECTION IV. TIME FOR PERFORMANCE

The time for performance is as estimated in Exhibit A attached hereto. Upon written request of Consultant, 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 Consultant has no control.

SECTION V. COMPLIANCE AND STANDARDS

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

SECTION VI. INDEMNIFICATION

To the fullest extent permitted by Texas Local Government Code Section 271.904, Engineer shall and does hereby agree to indemnify, hold harmless and defend the City, 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 Consultant 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 \$20,695, including reimbursable expenses.

SECTION VIII. INSURANCE

Consultant 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 Consultant. Upon receipt of such notice, Consultant shall discontinue all services in connection with the performance of this Agreement and shall proceed to promptly cancel all existing orders and contracts insofar as such orders or contracts are chargeable to the Agreement. As soon as practicable after receipt of notice of termination, Consultant shall submit a statement, showing in detail the services performed under this Agreement to the date of termination. The City shall then pay Consultant 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:

Raba Kistner
Attn: Richard V. Klar, P.G.
12821 W. Golden Lane
San Antonio, TX & 78249

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, Consultant has been advised by the City and Consultant 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 Consultant may become entitled to hereunder and the total sum that the City shall become liable to pay to Consultant hereunder shall not under any conditions, circumstances, or interpretations hereof exceed the amounts as provided for in this Agreement.

**SECTION XII.
SUCCESSORS AND ASSIGNS**

The City and Consultant 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 Consultant 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**

Consultant 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 Exhibit A, 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, Consultant shall furnish, or obtain from others, Additional Services that may be required because of significant changes in the scope, extent or character of the Scope of Work, 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.

**SECTION XVIII.
PAYMENT FOR SERVICES AND REIMBURSABLE EXPENSES**

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

**SECTION XIX.
MISCELLANEOUS PROVISIONS**

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

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

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

D. 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.

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

EXECUTED on this ___ day of _____, 2025.

Raba Kistner:



Name: Richard V. Klar
Title: Vice President

CITY OF TOMBALL, TEXAS

David Esquivel, City Manager

ATTEST:

Tracylynn Garcia, City Secretary

Proposal No. PSF25-008-00
January 28, 2025



Mr. Drew Huffman
Director of Public Works
City of Tomball
501 James Street
Tomball, Texas 77375

12821 W. Golden Lane
San Antonio, TX 78249

PO Box 690287
San Antonio, TX 78269

P 210.699.9090
F 210.699.6426
TBPE Firm F-3257

WWW.RKCI.COM

**RE: Proposal for 2025 Landfill Gas Monitoring
Closed City of Tomball Landfill
Tomball, Harris County, Texas
MSW Permit No. 1140A
RN102120755/CN600667190**

Dear Mr. Huffman:

Raba Kistner, Inc. (RKI) is pleased to submit this proposal to the City of Tomball (CLIENT) to conduct annual post-closure landfill gas monitoring and reporting for the closed City of Tomball (CoT) landfill, Municipal Solid Waste (MSW) Permit No. 1140A, which is located east of Rudolph Road and north of East Hufsmith Road within the City of Tomball, Harris County, Texas (hereinafter referred to as the FACILITY). As directed by the Texas Commission on Environmental Quality (TCEQ) in correspondence dated March 29, 2018, the FACILITY is officially designated to be in landfill gas (LFG) “detection” monitoring status. Monitoring activities are required on a quarterly basis at seven existing landfill gas detection probes (LGDPs) and 13 ambient air monitoring stations installed/established along and beyond the FACILITY perimeter.

This proposal defines the scope of services, total project cost, and terms and conditions for the performance of quarterly LFG monitoring and annual reporting for both landfill gas monitoring to be conducted throughout the 2025 post-closure period.

SCOPE OF WORK

RKI proposes to conduct quarterly LFG monitoring activities to maintain compliance with the applicable regulatory requirements. In the absence of any non-compliance conditions throughout the program (e.g., methane exceedance at perimeter LGDP, which serve as regulatory points of compliance for the FACILITY), **RKI** will prepare and submit to the TCEQ MSW Permits Section on behalf of the City of Tomball an annual monitoring report presenting collective LFG data, monitoring findings, and recommendations pertaining to LFG management during execution of and following the completion of the 2025 LFG monitoring program.

The following scope of work was developed based upon our understanding of 2021 LFG monitoring requirements for the FACILITY pursuant to the TCEQ-approved Landfill Gas Management Plan (i.e., **RKI Project No. ASF06-456-35, dated January 18, 2017**), our past performance on this project, and applicable regulatory requirements (i.e., *Title 30 of the Texas Administrative Code, Chapter 330 § 330.371(k)*)/ directives administered by the TCEQ.

TASK 1 – 2025 Landfill Gas Monitoring

The proposed 2025 LFG monitoring program will include the performance of field activities associated with four comprehensive quarterly LFG monitoring events. During each LFG monitoring event, LFG constituents (i.e., methane, hydrogen sulfide, carbon dioxide and oxygen) concentrations in air will be measured with pre-calibrated instruments at the tops of casings at the 43 landfill gas vents (LGVs), seven landfill gas detection probes (LGDPs) and 12 passive soil vapor extraction vents (SVEs), as well as at the 13 ambient air monitoring stations located within, at, and beyond the FACILITY permit boundaries. Landfill gas measurements will also be obtained at existing groundwater monitoring wells in a manner consistent with past monitoring programs for informational purposes only. LFG monitoring activities will be conducted in accordance with previously established procedures pursuant to above-referenced §330.371 (k) requirements and procedures called out in Section 6 of the Landfill Gas Management Plan.

For budgetary purposes, costs associated with the scope of services described herein were developed with the assumption that a total of four quarterly LFG monitoring events will be conducted at the FACILITY throughout 2025. In the event that methane gas concentrations exceeding 5% volume in air are measured at any of the seven perimeter LGDPs in conjunction with quarterly LFG monitoring efforts, RKI will prepare a scope of work and estimated costs under a separate cover for TCEQ, local authority and adjacent landowner notification, in addition to an increased (i.e., monthly) perimeter LFG monitoring frequency, as required by 30 TAC, §330.371 (k)(1).

TASK 2 – 2025 Landfill Gas Reporting

After completion of the 2025 LFG monitoring program, **RKI** will prepare and submit to the TCEQ on behalf of CLIENT an annual report documenting the LFG monitoring activities and findings. In a manner similar to previous LFG reporting, this annual report will additionally provide a summary of automated LGV leachate recovery and disposal activities. On the basis of collective LFG monitoring data and TCEQ directives, **RKI** will offer recommendations to the CoT for continued FACILITY perimeter methane gas management/control and/or remediation strategies, as applicable.

Unless otherwise directed, **RKI** will prepare and submit one original report hardcopy and one copy to the TCEQ MSW Permits Section. Additionally, one copy of each report will be submitted to the TCEQ Region 12 office located in Houston, Texas. Original hardcopies and electronic versions of the reports will be provided to the City of Tomball Director of Public Works for consideration and inclusion in the FACILITY operating record.

For budgetary purposes, costs associated with the scope of services described herein were developed with the assumption that quarterly perimeter LFG monitoring results will be provided in the annual 2025 landfill gas monitoring and leachate recovery report. In the event that methane gas concentrations exceeding 5% volume in air are measured at any of the seven perimeter LGDPs in conjunction with quarterly LFG monitoring efforts, RKI will prepare a scope of work and estimated costs under a separate cover for quarterly LFG monitoring reporting, if directed by the TCEQ.

COST AND SCHEDULE

RKI will provide the scope of services described above for a **LUMP SUM fee of \$20,695.00**. Authorized additional costs, if requested by CLIENT and/or directed by the TCEQ, will be billed in accordance with our standard fees for professional services and at the unit rates for equipment shown on the attached Schedules of Fees for Professional Services. *To minimize project costs, to the extent practicable quarterly LFG monitoring activities in 2025 will be scheduled to coincide with other RKI post-closure field activities (e.g., semiannual groundwater monitoring).*

Pending CLIENT approval, the field activities described above will be performed quarterly with annual monitoring report delivery to CLIENT and submittal to the TCEQ in early 2026.

ASSUMPTIONS

The following assumptions were made with regard to the scope of work and services described herein:

- Upon scheduling notification provided to the CoT by **RKI**, CLIENT will provide access to the FACILITY and its surroundings as necessary to perform the monthly LFG monitoring activities described above. It is assumed that weather conditions and/or other health and safety or FACILITY considerations during the scheduled monitoring events will not preclude or inhibit the effective execution of the proposed scope of services.
- Additional TCEQ MSW Permits Section directives pertaining to the proposed 2025 LFG monitoring program are not addressed as part of the scope of services described herein. **RKI** will provide appropriate proposal(s) at CLIENT’s request following receipt of TCEQ directives following their review of the 2024 Annual Landfill Gas Monitoring and Leachate Recovery Report.
- Costs provided assume a quarterly frequency of LFG monitoring events and that the number of LFG monitoring points proposed above will remain roughly constant throughout 2025.

ACCEPTANCE

We appreciate the opportunity to submit this proposal and look forward to working with you on this project. This proposal and the attachments listed below constitute the contract between us. Please sign below as your acceptance of this contract and to authorize **RKI** to proceed with the project scope.

<u>Attachment</u>	<u>Description</u>
I	Standard Terms and Conditions
II	Schedule of Fees for Professional Services

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

Proposal No. PSF25-008-00
January 28, 2025

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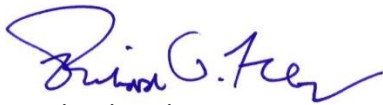
RKI considers the data and information contained in this proposal to be proprietary. This statement of qualifications and any information contained herein shall not be disclosed, and shall not be duplicated or used in whole or in part, for any purpose other than to evaluate this proposal.

Very truly yours,

RABA KISTNER, INC.



Anthony J. Krupa
Environmental Geologist



Richard V. Klar, P.G.
Vice President
Geosciences Practice Leader

Accepted By _____
(Signature)

(Typed or Printed Name)

(Title)

Date _____

PMS/RVK/law

Attachments:

- I – Standard Terms and Conditions
- II – Schedule of Fees for Professional Services

Copies Submitted: Above (1 Electronic PDF Copy)
 Ms. Meagan Mageo – City of Tomball (1 Electronic PDF Copy)



STANDARD TERMS AND CONDITIONS

1. **DEFINITIONS.**

1.1 **RK.** Raba Kistner, Inc., and / or one of its subsidiaries (Project Control of Texas, Inc. or PC Sports, Inc.) that is being engaged to provide the services to CLIENT in connection with the delivery of the proposal to which these Standard Terms and Conditions relate.

1.2 **CLIENT.** Person, entity or organization for which RK is rendering services regarding the Project.

1.3 **PROJECT.** The activity, venture, plan, building, site or investigation for which CLIENT has engaged RK to provide professional services.

1.4 **CONTRACTOR.** Person, entity or organization providing construction services, including labor and material for the Project.

1.5 **SERVICES.** The professional services to be performed by RK as set forth in the proposal or Agreement to which the Standard Terms and Conditions are attached.

1.6 **AGREEMENT.** RK's proposal accepted by CLIENT and these Standard Terms and Conditions which are incorporated into and made a part of the Agreement.

2. **SERVICES.** RK is being engaged by the CLIENT to render professional services ("Services") involving only RK's advice, judgment and opinion. RK may subcontract all or a portion of the Services performed hereunder. RK shall apply professional judgment in determining the extent to which RK complies with any given standard identified in RK's instruments of professional services. CLIENT expressly acknowledges that RK makes no warranties or guarantees, expressed or implied, regarding the Services.

3. **INFORMATION PROVIDED BY CLIENT.** CLIENT may provide or direct RK to utilize or rely upon certain information ("CLIENT Information") in the performance of RK's services. RK shall be entitled to rely upon such CLIENT Information. RK will not conduct an independent evaluation of the accuracy or completeness of such CLIENT Information and shall not be responsible for any errors or omissions in such information. RK's report, as well as any recommendations, findings, and conclusions made by RK, are dependent on information received from CLIENT. Changes or modifications to the information provided by CLIENT can affect RK's evaluation, recommendations, findings and conclusions, and CLIENT agrees—as a material term of this Agreement—to notify RK immediately, in writing, if CLIENT becomes aware of any such changes or modifications, including changes to the size, scope, location, or other material characteristics of CLIENT's project. The CLIENT shall be responsible for providing

the location of all underground utilities and other structures in the vicinity of RK borings or excavations. RK will not accept responsibility and will not be liable for affecting or damaging any underground utility, underground storage tank, or other subsurface condition not previously identified and located, or improperly located, by the CLIENT, a utility, or a utility locating agency.

4. **SITE ACCESS AND SITE SAFETY.** CLIENT shall provide right-of-entry to the buildings and sites which are the subjects of RK's services. CLIENT represents that it possesses authority for such right-of-entry and that the building/site operator(s) possess the necessary permits and licenses for current activities at the site. RK shall be responsible for supervision and site safety measures of its own employees and subconsultants, but shall not be responsible for the supervision or health and safety precautions of any other parties, including CLIENT, CLIENT's contractors, subcontractors, or other parties present at the site.

5. **SUBSURFACE EXPLORATIONS.** Subsurface conditions throughout the site may vary from those depicted on logs of discrete borings, test pits, or other exploratory services. CLIENT understands RK's layout of boring and test locations is approximate and that RK may deviate a reasonable distance from those locations. RK will take reasonable precautions to reduce damage to the site when performing services; however, CLIENT accepts that invasive services such as drilling, or sampling may damage or alter the site. Site restoration is not provided unless specifically included in the scope of services.

6. **CHANGED CONDITIONS.** If, during the term of this Agreement, circumstances or conditions that were not originally contemplated by or known to RK are uncovered or revealed, to the extent that they affect the scope of services, compensation, schedule, allocation of risks or other material terms of this Agreement, RK may require renegotiation of appropriate portions of this Agreement. RK shall notify the CLIENT of the changed conditions necessitating renegotiation, and RK and the CLIENT shall promptly and in good faith attempt to renegotiate the terms of the agreement affected by the changed conditions. If changes cannot be agreed to with respect to the changed conditions, the parties shall utilize the Dispute Resolution/Litigation procedures in this Agreement.

7. **TESTING AND OBSERVATIONS.** CLIENT understands that testing and observation are discrete sampling procedures, and that such procedures indicate conditions only at the depths, locations, and times the procedures were performed. RK will provide test results and opinions based on tests and field observations only for the work tested. CLIENT understands that testing and observation are not continuous or exhaustive and are conducted to reduce – not eliminate – project risk. CLIENT agrees to the level or amount of testing performed and the associated risk. CLIENT is responsible (even if CLIENT delegates such responsibility to Contractor) for notifying and scheduling RK to perform these services. RK shall not be responsible for the quality and completeness of contractor's work or Contractor's adherence to the project plans, specifications and other related documents. RK's performance of testing and observation services shall not relieve Contractor in any way from responsibility for defects discovered in Contractor's work or create a

warranty or guarantee on the part of RK. CLIENT acknowledges that RK will not supervise or direct the work performed by Contractor or its subcontractors and is not responsible for their means and methods.

8. **ESTIMATE OF FEES FOR SERVICES.** If included as part of RK's proposal, RK will, to the best of its ability, perform the scope of services within the proposed fee estimate provided by RK. RK's proposal fees are based upon an estimate of the services required to meet the specifications for the project and following generally accepted engineering practices. The CLIENT recognizes that unforeseen circumstances along with changes in scope and project/contractor's schedules can influence the successful completion of the scope of services within the estimated proposed fees. Because Contractor has sole control over the project and determines the means and methods used to build/construct the project, RK's service fees are estimates and not lump sum or guaranteed maximum fees. The CLIENT is fully responsible for payment for all services provided, including retests of areas or samples that failed to meet Project specifications. The Estimate of Fees is valid for a period of 60 days after RK's proposal is submitted to CLIENT. If RK's proposal is not accepted by CLIENT within 60 days after it is submitted to CLIENT, RK may modify the Estimate of Fees.
9. **REPORTS.** RK may provide CLIENT with written reports in connection with the Services performed. Such reports will present such findings and conclusions as RK may reasonably make with the information gathered while performing its services and provided by CLIENT. The reports may be copied for inclusion in other documents related to the project provided they are reproduced in their entirety. Reports and other instruments of service are prepared for, and made available for, the sole use of the CLIENT, and the contents thereof may not be used or relied upon by others without the express written authorization of RK. Any unauthorized use or distribution of RK's reports shall be at the CLIENT's sole risk and without liability to RK.
10. **TOXIC AND HAZARDOUS MATERIALS.** CLIENT shall provide RK with all information within CLIENT's possession or knowledge related to the potential or presence of toxic or hazardous materials or pollutants at the Project site. CLIENT agrees that RK neither created nor contributed to the creation or existence of any toxic or hazardous materials or pollutants. In no event shall RK be required to sign a hazardous waste manifest or take ownership of any toxic or hazardous materials or pollutants. If unanticipated toxic or hazardous materials or pollutants are encountered while RK is performing its services, RK reserves the right to stop field operations and notify CLIENT and CLIENT assumes responsibility to notify appropriate regulatory agencies. RK and CLIENT must mutually agree to remobilize.
11. **NO THIRD-PARTY BENEFICIARIES.** The services and any report(s) prepared under this Agreement are for the sole benefit and sole use of CLIENT and are not for the use of any other party or person. Only CLIENT may rely upon the services and any report or work product. Nothing in this Agreement, or any subsequent amendments or modifications, or in any report issued under this Agreement, shall create a contractual relationship with

or a cause of action in the favor of any third party against either RK or CLIENT. If CLIENT provides a copy of any report prepared by RK to others, it shall advise the recipient that the information contained in the report is provided for information only and is not to be relied upon by third parties.

12. **LEED PROJECTS.** Unless specifically addressed elsewhere in this agreement, RK has no responsibility or liability, including duty to defend or duty to indemnify, any party (including but not limited to CLIENT, owner, owner's agents, architects, engineers, contractors, construction managers, subcontractors) for the LEED certification process including: developing, producing, or retaining any documentation relating to the calculation of LEED points; and attainment of LEED certification points or LEED ratings.
13. **STANDARD OF CARE.** RK shall perform its professional services in accordance with the standard of care and diligence normally practiced by professional firms in performing services of a similar nature, in the same locality, under similar circumstances. CLIENT expressly acknowledges that RK makes no other warranties or guarantees, expressed or implied, regarding its professional services or its work product.
14. **RISK ALLOCATION.** RK will be responsible only for its own work, and that of its sub-consultants, and not for defects in the work designed or built by others.
15. **LIMITATION OF LIABILITY.** CLIENT AND RK HAVE EVALUATED THE RISKS AND REWARDS ASSOCIATED WITH THIS PROJECT, INCLUDING RK'S FEE RELATIVE TO THE RISKS ASSUMED, AND AGREE TO ALLOCATE CERTAIN OF THE RISKS SO, TO THE FULLEST EXTENT PERMITTED BY LAW, THE TOTAL AGGREGATE LIABILITY OF RK (AND ITS RELATED ENTITIES, EMPLOYEES, OWNERS, AGENTS, AND REPRESENTATIVES) TO CLIENT (AND THIRD PARTIES GRANTED RELIANCE ON RK'S WORK PRODUCT, OR OTHERWISE SEEKING RECOVERY UNDER THIS AGREEMENT) IS LIMITED TO THE GREATER OF \$100,000 OR THE FEE PAID RK UNDER THIS AGREEMENT, FOR ANY AND ALL INJURIES, DAMAGES, CLAIMS, LOSSES, OR EXPENSES (INCLUDING ATTORNEY AND EXPERT FEES) ARISING OUT OF RK'S SERVICES OR THIS AGREEMENT REGARDLESS OF CAUSE(S) OR THE THEORY OF LIABILITY.
16. **CONSEQUENTIAL DAMAGES.** Neither CLIENT nor RK will be liable to the other for any special, consequential, indirect, incidental or penal losses or damages of any kind, nor will CLIENT or RK be liable to the other for losses, damages, or claims, regardless of how defined, related to: lost profits; unavailability of property or facilities; shutdowns or service interruptions; loss of use, revenue, opportunity, or inventory; use charges, carrying costs, cost of substitute facilities, goods, or services; cost of capital, or claims of any other party and/or its customers.
17. **SUSPENSION OF SERVICES.** If CLIENT fails to make payments when due or otherwise is in breach of this Agreement, RK may suspend performance of services upon seven (7) calendar days' notice to CLIENT. RK shall have no liability whatsoever to CLIENT for any costs or damages as a result of such suspension. Upon payment in full by CLIENT, RK may resume services under this Agreement, and the time schedule and compensation shall be equitably adjusted to compensate for the period of suspension plus any other reasonable time and expense necessary for RK to resume performance. Payment of invoices shall not be subject to any discounts or set-offs by CLIENT unless agreed to in writing by RK. Payment to RK for services rendered and expenses incurred will be due and payable regardless of any subsequent suspension or termination of this Agreement by either party. CLIENT shall not make any changes to RK's banking and deposit information or payment instructions unless CLIENT

communicates the requested changes to RK orally and in writing and obtains written confirmation from an RK officer that the requested changes are legitimate and authorized by RK. If CLIENT makes a payment to a third party instead of to RK based on an unauthorized request to CLIENT for a change to RK's banking and deposit information or payment instructions and without obtaining written confirmation of the change from RK, CLIENT will remain liable to RK for payment of the amount of the unauthorized payment.

18. **WAIVER OF SUBROGATION.** To the extent damages are covered by property insurance, or any other available insurance coverage, CLIENT and RK waive all rights against each other and against the contractors, consultants, agents and employees of the other for damages. CLIENT agrees that CLIENT shall procure or cause to be procured builder's risk insurance or other property insurance for its project. RK and CLIENT waive all rights against each other and any of their consultants, contractors, subcontractors, sub-subcontractors, agents, and employees, for damages caused by fire, flood, or other causes of loss to the extent covered by CLIENT's or CLIENT's Contractor's builder's risk insurance, or other available insurance coverage. The policies shall provide waivers of subrogation by endorsement or otherwise. CLIENT shall require of its contractors, consultants, agents and employees similar waivers in favor of RK and its subconsultants. A waiver of subrogation shall be effective as to a person or entity even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, did not pay the insurance premium directly or indirectly, and whether or not the person or entity had an insurable interest in the property damaged.

19. **OWNERSHIP OF DOCUMENTS.** RK's reports, drawings, plans, specifications, and other documents and deliverables are instruments of professional service ("Instruments of Service") developed by RK in contemplation of a wide array of project-specific variables, including how the documents will be used and by whom. RK shall be the author, owner and custodian of the Instruments of Service, and shall retain all common law, statutory, and other reserved rights, including copyright. By execution of this Agreement, RK grants to CLIENT a limited, nonexclusive license to use the Instruments of Service for purposes of constructing, using, and maintaining the project for which the services are performed, provided CLIENT substantially performs its obligations, including prompt payment of all sums when due, under this agreement.

Upon completion of the services, and payment in full of all monies due RK, CLIENT may retain copies of all such documents. **THE INSTRUMENTS OF SERVICE ARE NOT INTENDED NOR REPRESENTED TO BE SUITABLE FOR REUSE ON EXTENSIONS, MODIFICATIONS, OR ADAPTATIONS OF THE PROJECT, OR ANY OTHER PROJECT. ANY REUSE OF SUCH DOCUMENTS, WITHOUT WRITTEN VERIFICATION OR ADAPTATION BY RK FOR THE SPECIFIC PURPOSE INTENDED, WILL BE AT CLIENT'S SOLE RISK WITHOUT LIABILITY OR LEGAL EXPOSURE TO RK. CLIENT AGREES, TO THE FULLEST EXTENT PERMITTED BY LAW, TO INDEMNIFY, DEFEND, AND HOLD HARMLESS RK, ITS OFFICERS, DIRECTORS, EMPLOYEES, AND CONSULTANTS AGAINST ALL CLAIMS,**

DAMAGES, LOSSES, AND EXPENSES (INCLUDING REASONABLE ATTORNEYS' FEES, DEFENSE COSTS, AND COURT COSTS) ARISING FROM, OR ALLEGEDLY ARISING FROM, OR IN ANY WAY CONNECTED WITH, THE UNAUTHORIZED REUSE OR MODIFICATION OF THE DOCUMENTS BY CLIENT OR ANY PERSON OR ENTITY THAT ACQUIRES OR OBTAINS THE DOCUMENTS FROM OR THROUGH CLIENT WITHOUT THE WRITTEN AUTHORIZATION OF RK REGARDLESS OF WHETHER SUCH CLAIMS, DEMANDS, OR ACTIONS ARE FOUNDED IN WHOLE OR IN PART UPON ALLEGED NEGLIGENCE OF RK, ITS OFFICERS, DIRECTORS, EMPLOYEES, OR CONSULTANTS.

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

20. **DISPUTE RESOLUTION/LITIGATION.** All claims, disputes, and other controversies between RK and CLIENT arising out of, or in any way related to, the services provided by RK shall be submitted to mediation, before and as a condition precedent to, other remedies provided by law. Any litigation related to the Agreement or RK's performance of its professional services shall be commenced in a court in Bexar County, Texas. CLIENT consents to personal jurisdiction in the State of Texas and agrees that venue of any litigation shall be in Bexar County, the county where RK's principal place of business is located. CLIENT waives any objection to personal jurisdiction in Texas or to venue in Bexar County. The prevailing party in such litigation will be entitled to recover all court costs, attorneys' fees, and other legally recoverable claim-related expenses. As a condition precedent to mediation and / or litigation related to any claim arising out of the services provided under this Agreement, CLIENT shall obtain a written affidavit from a registered, independent, and reputable professional engineer describing any error, omission or other act by RK that allegedly failed to comply with the professional standard of care applicable to RK's performance of services and provide such affidavit to RK. The affidavit shall comply with the requirements of Texas Civil Practice & Remedies Code Chapter 150.
21. **TERMINATION OF CONTRACT.** CLIENT and RK may terminate RK's services at any time upon ten (10) calendar days' written notice. In the event of termination, CLIENT agrees to fully compensate RK for services performed including reimbursable expenses through the termination date, as well as reasonable demobilization expenses. RK will terminate its services without waiving any claims against or incurring any liability to CLIENT.
22. **STATUTE OF LIMITATIONS.** Any applicable statute of limitations will commence to run and any cause of action shall be deemed to have accrued not later than the earlier of the following: (1) the date of the report issued by RK giving rise to the cause of action; (2) the date on which RK issues its last report under this Agreement; or (3) if RK is retained to perform construction observation, the date of substantial completion of the project.
23. **FORCE MAJEURE.** Neither party shall be liable in damages or have the right to terminate this Agreement for any delay or default in performing hereunder if such delay or default is caused by conditions beyond its control ("Force Majeure") including, but not limited to Acts of God, Government restrictions (including the denial or cancellation of any export or other necessary license), wars, insurrections and/or any other cause beyond the reasonable control of the party whose performance is affected. Force Majeure may not be claimed as a cause for delay in payment of money due and payable hereunder.

24. **NO ASSIGNMENT.** Neither RK nor CLIENT shall assign or transfer its interest in this Agreement without the express written consent of the other.

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

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



SCHEDULE OF FEES FOR PROFESSIONAL SERVICES

PERSONNEL:

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

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

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

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

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

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

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

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

City Council Meeting

Agenda Item

Data Sheet

Meeting Date: February 17, 2025

Topic:

Workshop Discussion Only – Approve a professional services agreement with Raba Kistner for annual groundwater monitoring for the closed landfill for a not-to-exceed amount of \$40,895, approve the expenditure of funds therefor, and authorize the City Manager to execute any and all documents related to the purchase. The purchases are included in the FY 2024-2025 Budget.

Background:

Raba Kistner is an engineering consultant and program management firm that provides the City with annual gas and ground water monitoring and reporting for the closed City of Tomball landfill in accordance with post-closure care and monitoring requirements as required by the Texas Commission on Environmental Quality (TCEQ) Municipal Solid Waste (MSW) Permit number 1140A.

Based on the City’s adopted Procurement Policy, City Council approval is required for individual or aggregate vendor purchases exceeding \$50,000. The annual spend for the vendor, Raba Kistner, will exceed \$50,000 during fiscal year 2024-2025. To ensure compliance with the Purchasing and Bidding Policy staff is requesting approval of the professional services agreements relating to the post-closure care and monitoring of the City of Tomball landfill.

Raba Kistner will provide both gas and groundwater monitoring and reporting related to the requirements of our TCEQ MSW permit for the closed landfill under two separate contracts. The total amount for both contracts is \$61,590.

Landfill Service	Amount
Gas Monitoring & Reporting	\$20,695
Groundwater Monitoring & Reporting	\$40,895
Total Annual Expenditure	\$61,590

Staff is requesting to approve the professional services agreement for the annual groundwater monitoring for a not-to-exceed amount of \$40,895.

Origination: Project Management

Recommendation:

Staff recommends approving the professional services agreement for the annual groundwater monitoring for the closed City of Tomball landfill for a not-to-exceed amount of \$40,895.

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: #100-155-6304

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

Signed Meagan Mageo
Staff Member _____
Date _____

Approved by _____
City Manager _____
Date _____

**PROFESSIONAL SERVICES AGREEMENT
FOR
CONSULTANT SERVICES
RELATED TO
PROJECT NO. 0000-10039
CITY OF TOMBALL
GROUNDWATER MONITORING CITY OF TOMBALL CLOSED LANDFILL**

**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 Raba Kistner ("Engineer").

WITNESSETH:

WHEREAS, Consultant represents that it is capable of providing and qualified to provide professional services to the City and desires to perform the same;

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

**SECTION I.
SCOPE OF AGREEMENT**

Consultant agrees to perform certain professional 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 Consultant compensation as stated in the sections to follow.

**SECTION II.
CHARACTER AND EXTENT OF SERVICES**

Consultant shall do all things necessary to render the services and perform the Scope of Work in a manner consistent with the professional skill and care ordinarily provided by competent consultants practicing in the same or similar locality and under the same or similar circumstances and professional license. It is expressly understood and agreed that Consultant is an Independent Contractor in the performance of the services agreed to herein. It is further understood and agreed that Consultant shall not have the authority to obligate or bind the 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

Consultant agrees that the City shall have the right to use all exhibits, maps, reports, analyses and other documents prepared or compiled by Consultant 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 Consultant's completion of the services which will result in the production of such instruments and Consultant'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 Consultant from continuing to use those processes, analyses and data.

SECTION IV. TIME FOR PERFORMANCE

The time for performance is as estimated in Exhibit A attached hereto. Upon written request of Consultant, 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 Consultant has no control.

SECTION V. COMPLIANCE AND STANDARDS

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

SECTION VI. INDEMNIFICATION

To the fullest extent permitted by Texas Local Government Code Section 271.904, Engineer shall and does hereby agree to indemnify, hold harmless and defend the City, 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 Consultant 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 \$40,895, including reimbursable expenses.

SECTION VIII. INSURANCE

Consultant 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 Consultant. Upon receipt of such notice, Consultant shall discontinue all services in connection with the performance of this Agreement and shall proceed to promptly cancel all existing orders and contracts insofar as such orders or contracts are chargeable to the Agreement. As soon as practicable after receipt of notice of termination, Consultant shall submit a statement, showing in detail the services performed under this Agreement to the date of termination. The City shall then pay Consultant 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:

Raba Kistner
Attn: Richard V. Klar, P.G.
12821 W. Golden Lane
San Antonio, TX & 78249

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, Consultant has been advised by the City and Consultant 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 Consultant may become entitled to hereunder and the total sum that the City shall become liable to pay to Consultant hereunder shall not under any conditions, circumstances, or interpretations hereof exceed the amounts as provided for in this Agreement.

**SECTION XII.
SUCCESSORS AND ASSIGNS**

The City and Consultant 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 Consultant 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**

Consultant 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 Exhibit A, 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, Consultant shall furnish, or obtain from others, Additional Services that may be required because of significant changes in the scope, extent or character of the Scope of Work, 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.

**SECTION XVIII.
PAYMENT FOR SERVICES AND REIMBURSABLE EXPENSES**

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

**SECTION XIX.
MISCELLANEOUS PROVISIONS**

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

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

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

D. 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.

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

EXECUTED on this ___ day of _____, 2025.

Raba Kistner:



Name: Richard V. Klar
Title: Vice President

CITY OF TOMBALL, TEXAS

David Esquivel, City Manager

ATTEST:

Tracylynn Garcia, City Secretary

Proposal No. PSF25-007-00
January 28, 2025



Mr. Drew Huffman
Director of Public Works
City of Tomball
501 James Street
Tomball, Texas 77375

12821 W. Golden Lane
San Antonio, TX 78249

PO Box 690287
San Antonio, TX 78269

P 210.699.9090
F 210.699.6426
TBPE Firm F-3257

**RE: Proposal for 2025 Groundwater Monitoring
Closed City of Tomball Landfill
Tomball, Harris County, Texas
MSW Permit No. 1140A
RN102120755/CN600667190**

WWW.RKCI.COM

Dear Mr. Huffman:

Raba Kistner, Inc. (RKI) is pleased to submit this proposal to the City of Tomball (CLIENT) to conduct semiannual post-closure groundwater monitoring at the City of Tomball Landfill, Municipal Solid Waste (MSW) Permit No. 1140A, located east of Rudolph Road and north of East Hufsmith Road within the City of Tomball, Harris County, Texas (hereinafter referred to as FACILITY). As described herein, following from recommendations developed in conjunction with the 2024 Annual Groundwater Monitoring Program, it is proposed that monitoring efforts be continued at 10 existing (permitted) monitoring wells (i.e., MW-2A, MW-3, MW-4, MW-5, MW-6, and MW-12 through MW-16) and four existing (assessment) wells (i.e., MW-7, MW-9, MW-10, and MW-11) in accordance with established post-closure monitoring requirements.

This proposal defines the scope of services, total project cost, and terms and conditions pertaining to the performance of continued semiannual groundwater monitoring and annual report preparation pursuant to Texas Commission on Environmental Quality (TCEQ) requirements for the 2025 post-closure monitoring program.

PROJECT DESCRIPTION

The closed City of Tomball (CoT) landfill is currently subject to TCEQ MSW Permits Section requirements for post-closure monitoring of the uppermost groundwater-bearing unit (GBU) beneath the FACILITY. Groundwater monitoring at the FACILITY is typically performed at a total of 14 monitoring wells on a semiannual basis, with findings reported to the TCEQ on behalf of CLIENT on an annual basis.

In a manner similar to the recently-completed 2024 program, **RKI** proposes to conduct semiannual groundwater monitoring and sampling activities at the FACILITY and coordinate the requisite analytical testing and results reporting as necessary to prepare an annual report of findings. Additionally, we will conduct and report on an annual inspection of the FACILITY in March or April 2025 by a Professional Engineer (P.E.) licensed in the State of Texas, as required by the TCEQ MSW Permits Section. The scope of work described herein was developed based upon our understanding of current FACILITY post-closure

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January 28, 2025

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groundwater monitoring requirements, our past performance on this project, and applicable regulatory requirements administered by the TCEQ Municipal Solid Waste Division (i.e., *Title 30 of the Texas Administrative Code [30 TAC], Chapter 330*).

TASK 1 – Groundwater Sampling Activities

RKI will conduct two semiannual groundwater monitoring events, which will be tentatively scheduled for June and December 2025. Field activities will include monitoring well inspection and water level gauging, groundwater purging, in addition to the collection of representative groundwater and quality assurance/quality control samples at a total of 14 existing monitoring wells in accordance with the FACILITY's TCEQ-approved *Groundwater Sampling Standard Operating Procedures, dated 1992*.

As approved by the TCEQ on January 25, 2007, **RKI** will submit properly preserved groundwater samples for laboratory analysis of VOCs (including chlorinated solvents and petroleum hydrocarbons), in addition to the following groundwater quality parameters: pH, specific conductance, total dissolved solids, sulfate, nitrate, chloride and total organic carbon. Purged groundwater generated during well sampling will be disposed at the adjacent CoT wastewater treatment plant.

TASK 2 – Annual Groundwater Monitoring Reporting

Following receipt of laboratory-reported semiannual groundwater analytical results, **RKI** will prepare and submit to the TCEQ on behalf of CLIENT an annual report in the required format documenting 2025 groundwater monitoring activities, results, findings and recommendations. The annual groundwater monitoring report will include, at a minimum, the following primary elements:

- Site Plan indicating the existing FACILITY groundwater monitoring well network;
- Summary of historical and 2025 uppermost GBU groundwater elevation (gauging) data;
- Interpretive potentiometric surface maps for both semiannual groundwater monitoring events;
- Summary of historical and 2025 groundwater testing results;
- TCEQ MSW Permits Section Groundwater Sampling Reports for both semiannual events;
- Reports of laboratory analyses/chain-of-custody documentation for both monitoring events; and
- Recommendations for the FACILITY 2026 post-closure groundwater monitoring program.

Unless otherwise directed, **RKI** will prepare and submit one original report hardcopy and one report copy to the TCEQ MSW Permits Section. Additionally, one report hardcopy will be submitted to the TCEQ Region 12 office located in Houston, Texas. Original hardcopies and an electronic (PDF) version of the report will also be prepared and provided to the CoT Director of Public Works.

TASK 3 – Annual Inspection and Reporting

In accordance with MSW Permit No. 1140A requirements set forth in *Section 3.3.11*, a **RKI** P.E. currently licensed with the State of Texas will conduct an annual inspection of the FACILITY utilizing an inspection report form specific to the FACILITY that was previously adapted from applicable U.S. Environmental Protection Agency (EPA) templates. The comprehensive inspection, which will be performed on foot and documented with photographs, will address all major categories of potential post-closure concern (i.e.,

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cap maintenance, erosion control, condition of FACILITY infrastructure [landfill gas vents and probes, groundwater monitoring well network, etc.], site access, etc.). Primary categories of potential post-closure concern will be recorded on the inspection report form to document inspection findings and provide a basis for associated engineering recommendations to the CoT.

The brief letter report signed and sealed by the P.E., describing inspection methods and findings and offering associated recommendations (and with supporting documentation attached), will be prepared and submitted to the CoT for placement in the FACILITY operating files. The report will include a description of the FACILITY and inspection methods; inspection findings documented on (i) the inspection report form, (ii) a FACILITY map, and (iii) photographs provided as attachments; in addition to associated engineering recommendations.

It is possible that the TCEQ may elect to independently inspect the FACILITY at some point during the 2025 post-closure care period. If requested by the CoT or TCEQ in conjunction with a FACILITY inspection, copies of the 2024 inspection report will also be submitted to the TCEQ Municipal Solid Waste Permits Section and/or Region 12 offices.

COST AND SCHEDULE

RKI will provide the above scope of services for a **LUMP SUM FEE of \$40,895.00**. In the event that additional services are requested by CLIENT and/or necessary to comply with TCEQ directives, **RKI** will provide a cost estimate under separate cover and solicit authorization from CLIENT before proceeding with additional work. Authorized additional costs will be billed in accordance with our standard fees for professional services and at the unit rates for equipment shown on the attached Schedules of Fees for Professional Services.

Pending CLIENT approval, semiannual groundwater monitoring activities described above will be conducted in June and December 2025, with annual report delivery to CLIENT and submittal to the TCEQ during the first quarter of 2026. In a manner similar to the 2024 post-closure care program, the annual landfill inspection will be conducted in March or June 2025.

ASSUMPTIONS

The following assumptions were made regarding the proposed scope of services and associated costs:

- Upon scheduling notification provided by **RKI**, CLIENT will provide access to the FACILITY, its surroundings and the CoT wastewater treatment plant as necessary to perform the groundwater monitoring activities described above. It is assumed that weather conditions and/or other health and safety or FACILITY considerations during the scheduled monitoring events will not preclude or inhibit the effective execution of the proposed scope of services.
- Costs for analytical testing are predicated a standard (10 business day) turnaround time.

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- Costs assume that additional directives pertaining to the FACILITY groundwater monitoring program involving additional groundwater sampling, testing or reporting will not be forthcoming as a result of TCEQ MSW Permits Section review of the 2024 Annual Groundwater Monitoring Report.

ACCEPTANCE

We appreciate the opportunity to submit this proposal and look forward to working with you on this project. This proposal and the attachments listed below constitute the contract between us. Please sign below as your acceptance of this contract and to authorize **RKI** to proceed with the project scope.

<u>Attachment</u>	<u>Description</u>
I	Standard Terms and Conditions
II	Schedule of Fees for Professional Services

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

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

Very truly yours,

RABA KISTNER, INC.

Anthony J. Krupa, GIT
Environmental Geologist

Richard V. Klar, P.G.
Vice President
Geosciences Practice Leader

Accepted By _____
(Signature)

(Typed or Printed Name)

(Title)

Date _____

AJK/RVK/law

Attachments:

- I – Standard Terms and Conditions
- II – Schedule of Fees for Professional Services

Copies Submitted: Above (1 Electronic PDF Copy)
Ms. Meagan Mageo – City of Tomball (1 Electronic PDF Copy)



STANDARD TERMS AND CONDITIONS

1. **DEFINITIONS.**

1.1 **RK.** Raba Kistner, Inc., and / or one of its subsidiaries (Project Control of Texas, Inc. or PC Sports, Inc.) that is being engaged to provide the services to CLIENT in connection with the delivery of the proposal to which these Standard Terms and Conditions relate.

1.2 **CLIENT.** Person, entity or organization for which RK is rendering services regarding the Project.

1.3 **PROJECT.** The activity, venture, plan, building, site or investigation for which CLIENT has engaged RK to provide professional services.

1.4 **CONTRACTOR.** Person, entity or organization providing construction services, including labor and material for the Project.

1.5 **SERVICES.** The professional services to be performed by RK as set forth in the proposal or Agreement to which the Standard Terms and Conditions are attached.

1.6 **AGREEMENT.** RK's proposal accepted by CLIENT and these Standard Terms and Conditions which are incorporated into and made a part of the Agreement.

2. **SERVICES.** RK is being engaged by the CLIENT to render professional services ("Services") involving only RK's advice, judgment and opinion. RK may subcontract all or a portion of the Services performed hereunder. RK shall apply professional judgment in determining the extent to which RK complies with any given standard identified in RK's instruments of professional services. CLIENT expressly acknowledges that RK makes no warranties or guarantees, expressed or implied, regarding the Services.

3. **INFORMATION PROVIDED BY CLIENT.** CLIENT may provide or direct RK to utilize or rely upon certain information ("CLIENT Information") in the performance of RK's services. RK shall be entitled to rely upon such CLIENT Information. RK will not conduct an independent evaluation of the accuracy or completeness of such CLIENT Information and shall not be responsible for any errors or omissions in such information. RK's report, as well as any recommendations, findings, and conclusions made by RK, are dependent on information received from CLIENT. Changes or modifications to the information provided by CLIENT can affect RK's evaluation, recommendations, findings and conclusions, and CLIENT agrees—as a material term of this Agreement—to notify RK immediately, in writing, if CLIENT becomes aware of any such changes or modifications, including changes to the size, scope, location, or other material characteristics of CLIENT's project. The CLIENT shall be responsible for providing

the location of all underground utilities and other structures in the vicinity of RK borings or excavations. RK will not accept responsibility and will not be liable for affecting or damaging any underground utility, underground storage tank, or other subsurface condition not previously identified and located, or improperly located, by the CLIENT, a utility, or a utility locating agency.

4. **SITE ACCESS AND SITE SAFETY.** CLIENT shall provide right-of-entry to the buildings and sites which are the subjects of RK's services. CLIENT represents that it possesses authority for such right-of-entry and that the building/site operator(s) possess the necessary permits and licenses for current activities at the site. RK shall be responsible for supervision and site safety measures of its own employees and subconsultants, but shall not be responsible for the supervision or health and safety precautions of any other parties, including CLIENT, CLIENT's contractors, subcontractors, or other parties present at the site.

5. **SUBSURFACE EXPLORATIONS.** Subsurface conditions throughout the site may vary from those depicted on logs of discrete borings, test pits, or other exploratory services. CLIENT understands RK's layout of boring and test locations is approximate and that RK may deviate a reasonable distance from those locations. RK will take reasonable precautions to reduce damage to the site when performing services; however, CLIENT accepts that invasive services such as drilling, or sampling may damage or alter the site. Site restoration is not provided unless specifically included in the scope of services.

6. **CHANGED CONDITIONS.** If, during the term of this Agreement, circumstances or conditions that were not originally contemplated by or known to RK are uncovered or revealed, to the extent that they affect the scope of services, compensation, schedule, allocation of risks or other material terms of this Agreement, RK may require renegotiation of appropriate portions of this Agreement. RK shall notify the CLIENT of the changed conditions necessitating renegotiation, and RK and the CLIENT shall promptly and in good faith attempt to renegotiate the terms of the agreement affected by the changed conditions. If changes cannot be agreed to with respect to the changed conditions, the parties shall utilize the Dispute Resolution/Litigation procedures in this Agreement.

7. **TESTING AND OBSERVATIONS.** CLIENT understands that testing and observation are discrete sampling procedures, and that such procedures indicate conditions only at the depths, locations, and times the procedures were performed. RK will provide test results and opinions based on tests and field observations only for the work tested. CLIENT understands that testing and observation are not continuous or exhaustive and are conducted to reduce – not eliminate – project risk. CLIENT agrees to the level or amount of testing performed and the associated risk. CLIENT is responsible (even if CLIENT delegates such responsibility to Contractor) for notifying and scheduling RK to perform these services. RK shall not be responsible for the quality and completeness of contractor's work or Contractor's adherence to the project plans, specifications and other related documents. RK's performance of testing and observation services shall not relieve Contractor in any way from responsibility for defects discovered in Contractor's work or create a

warranty or guarantee on the part of RK. CLIENT acknowledges that RK will not supervise or direct the work performed by Contractor or its subcontractors and is not responsible for their means and methods.

8. **ESTIMATE OF FEES FOR SERVICES.** If included as part of RK's proposal, RK will, to the best of its ability, perform the scope of services within the proposed fee estimate provided by RK. RK's proposal fees are based upon an estimate of the services required to meet the specifications for the project and following generally accepted engineering practices. The CLIENT recognizes that unforeseen circumstances along with changes in scope and project/contractor's schedules can influence the successful completion of the scope of services within the estimated proposed fees. Because Contractor has sole control over the project and determines the means and methods used to build/construct the project, RK's service fees are estimates and not lump sum or guaranteed maximum fees. The CLIENT is fully responsible for payment for all services provided, including retests of areas or samples that failed to meet Project specifications. The Estimate of Fees is valid for a period of 60 days after RK's proposal is submitted to CLIENT. If RK's proposal is not accepted by CLIENT within 60 days after it is submitted to CLIENT, RK may modify the Estimate of Fees.
9. **REPORTS.** RK may provide CLIENT with written reports in connection with the Services performed. Such reports will present such findings and conclusions as RK may reasonably make with the information gathered while performing its services and provided by CLIENT. The reports may be copied for inclusion in other documents related to the project provided they are reproduced in their entirety. Reports and other instruments of service are prepared for, and made available for, the sole use of the CLIENT, and the contents thereof may not be used or relied upon by others without the express written authorization of RK. Any unauthorized use or distribution of RK's reports shall be at the CLIENT's sole risk and without liability to RK.
10. **TOXIC AND HAZARDOUS MATERIALS.** CLIENT shall provide RK with all information within CLIENT's possession or knowledge related to the potential or presence of toxic or hazardous materials or pollutants at the Project site. CLIENT agrees that RK neither created nor contributed to the creation or existence of any toxic or hazardous materials or pollutants. In no event shall RK be required to sign a hazardous waste manifest or take ownership of any toxic or hazardous materials or pollutants. If unanticipated toxic or hazardous materials or pollutants are encountered while RK is performing its services, RK reserves the right to stop field operations and notify CLIENT and CLIENT assumes responsibility to notify appropriate regulatory agencies. RK and CLIENT must mutually agree to remobilize.
11. **NO THIRD-PARTY BENEFICIARIES.** The services and any report(s) prepared under this Agreement are for the sole benefit and sole use of CLIENT and are not for the use of any other party or person. Only CLIENT may rely upon the services and any report or work product. Nothing in this Agreement, or any subsequent amendments or modifications, or in any report issued under this Agreement, shall create a contractual relationship with

or a cause of action in the favor of any third party against either RK or CLIENT. If CLIENT provides a copy of any report prepared by RK to others, it shall advise the recipient that the information contained in the report is provided for information only and is not to be relied upon by third parties.

12. **LEED PROJECTS.** Unless specifically addressed elsewhere in this agreement, RK has no responsibility or liability, including duty to defend or duty to indemnify, any party (including but not limited to CLIENT, owner, owner's agents, architects, engineers, contractors, construction managers, subcontractors) for the LEED certification process including: developing, producing, or retaining any documentation relating to the calculation of LEED points; and attainment of LEED certification points or LEED ratings.
13. **STANDARD OF CARE.** RK shall perform its professional services in accordance with the standard of care and diligence normally practiced by professional firms in performing services of a similar nature, in the same locality, under similar circumstances. CLIENT expressly acknowledges that RK makes no other warranties or guarantees, expressed or implied, regarding its professional services or its work product.
14. **RISK ALLOCATION.** RK will be responsible only for its own work, and that of its sub-consultants, and not for defects in the work designed or built by others.
15. **LIMITATION OF LIABILITY.** CLIENT AND RK HAVE EVALUATED THE RISKS AND REWARDS ASSOCIATED WITH THIS PROJECT, INCLUDING RK'S FEE RELATIVE TO THE RISKS ASSUMED, AND AGREE TO ALLOCATE CERTAIN OF THE RISKS SO, TO THE FULLEST EXTENT PERMITTED BY LAW, THE TOTAL AGGREGATE LIABILITY OF RK (AND ITS RELATED ENTITIES, EMPLOYEES, OWNERS, AGENTS, AND REPRESENTATIVES) TO CLIENT (AND THIRD PARTIES GRANTED RELIANCE ON RK'S WORK PRODUCT, OR OTHERWISE SEEKING RECOVERY UNDER THIS AGREEMENT) IS LIMITED TO THE GREATER OF \$100,000 OR THE FEE PAID RK UNDER THIS AGREEMENT, FOR ANY AND ALL INJURIES, DAMAGES, CLAIMS, LOSSES, OR EXPENSES (INCLUDING ATTORNEY AND EXPERT FEES) ARISING OUT OF RK'S SERVICES OR THIS AGREEMENT REGARDLESS OF CAUSE(S) OR THE THEORY OF LIABILITY.
16. **CONSEQUENTIAL DAMAGES.** Neither CLIENT nor RK will be liable to the other for any special, consequential, indirect, incidental or penal losses or damages of any kind, nor will CLIENT or RK be liable to the other for losses, damages, or claims, regardless of how defined, related to: lost profits; unavailability of property or facilities; shutdowns or service interruptions; loss of use, revenue, opportunity, or inventory; use charges, carrying costs, cost of substitute facilities, goods, or services; cost of capital, or claims of any other party and/or its customers.
17. **SUSPENSION OF SERVICES.** If CLIENT fails to make payments when due or otherwise is in breach of this Agreement, RK may suspend performance of services upon seven (7) calendar days' notice to CLIENT. RK shall have no liability whatsoever to CLIENT for any costs or damages as a result of such suspension. Upon payment in full by CLIENT, RK may resume services under this Agreement, and the time schedule and compensation shall be equitably adjusted to compensate for the period of suspension plus any other reasonable time and expense necessary for RK to resume performance. Payment of invoices shall not be subject to any discounts or set-offs by CLIENT unless agreed to in writing by RK. Payment to RK for services rendered and expenses incurred will be due and payable regardless of any subsequent suspension or termination of this Agreement by either party. CLIENT shall not make any changes to RK's banking and deposit information or payment instructions unless CLIENT

communicates the requested changes to RK orally and in writing and obtains written confirmation from an RK officer that the requested changes are legitimate and authorized by RK. If CLIENT makes a payment to a third party instead of to RK based on an unauthorized request to CLIENT for a change to RK's banking and deposit information or payment instructions and without obtaining written confirmation of the change from RK, CLIENT will remain liable to RK for payment of the amount of the unauthorized payment.

18. **WAIVER OF SUBROGATION.** To the extent damages are covered by property insurance, or any other available insurance coverage, CLIENT and RK waive all rights against each other and against the contractors, consultants, agents and employees of the other for damages. CLIENT agrees that CLIENT shall procure or cause to be procured builder's risk insurance or other property insurance for its project. RK and CLIENT waive all rights against each other and any of their consultants, contractors, subcontractors, sub-subcontractors, agents, and employees, for damages caused by fire, flood, or other causes of loss to the extent covered by CLIENT's or CLIENT's Contractor's builder's risk insurance, or other available insurance coverage. The policies shall provide waivers of subrogation by endorsement or otherwise. CLIENT shall require of its contractors, consultants, agents and employees similar waivers in favor of RK and its subconsultants. A waiver of subrogation shall be effective as to a person or entity even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, did not pay the insurance premium directly or indirectly, and whether or not the person or entity had an insurable interest in the property damaged.
19. **OWNERSHIP OF DOCUMENTS.** RK's reports, drawings, plans, specifications, and other documents and deliverables are instruments of professional service ("Instruments of Service") developed by RK in contemplation of a wide array of project-specific variables, including how the documents will be used and by whom. RK shall be the author, owner and custodian of the Instruments of Service, and shall retain all common law, statutory, and other reserved rights, including copyright. By execution of this Agreement, RK grants to CLIENT a limited, nonexclusive license to use the Instruments of Service for purposes of constructing, using, and maintaining the project for which the services are performed, provided CLIENT substantially performs its obligations, including prompt payment of all sums when due, under this agreement.

Upon completion of the services, and payment in full of all monies due RK, CLIENT may retain copies of all such documents. **THE INSTRUMENTS OF SERVICE ARE NOT INTENDED NOR REPRESENTED TO BE SUITABLE FOR REUSE ON EXTENSIONS, MODIFICATIONS, OR ADAPTATIONS OF THE PROJECT, OR ANY OTHER PROJECT. ANY REUSE OF SUCH DOCUMENTS, WITHOUT WRITTEN VERIFICATION OR ADAPTATION BY RK FOR THE SPECIFIC PURPOSE INTENDED, WILL BE AT CLIENT'S SOLE RISK WITHOUT LIABILITY OR LEGAL EXPOSURE TO RK. CLIENT AGREES, TO THE FULLEST EXTENT PERMITTED BY LAW, TO INDEMNIFY, DEFEND, AND HOLD HARMLESS RK, ITS OFFICERS, DIRECTORS, EMPLOYEES, AND CONSULTANTS AGAINST ALL CLAIMS,**

DAMAGES, LOSSES, AND EXPENSES (INCLUDING REASONABLE ATTORNEYS' FEES, DEFENSE COSTS, AND COURT COSTS) ARISING FROM, OR ALLEGEDLY ARISING FROM, OR IN ANY WAY CONNECTED WITH, THE UNAUTHORIZED REUSE OR MODIFICATION OF THE DOCUMENTS BY CLIENT OR ANY PERSON OR ENTITY THAT ACQUIRES OR OBTAINS THE DOCUMENTS FROM OR THROUGH CLIENT WITHOUT THE WRITTEN AUTHORIZATION OF RK REGARDLESS OF WHETHER SUCH CLAIMS, DEMANDS, OR ACTIONS ARE FOUNDED IN WHOLE OR IN PART UPON ALLEGED NEGLIGENCE OF RK, ITS OFFICERS, DIRECTORS, EMPLOYEES, OR CONSULTANTS.

- Parties other than CLIENT and RK may apply to use an instrument, using a form prepared by RK for that purpose. Others' use of an instrument shall be permitted only when CLIENT and RK both so agree; either shall have the right to forbid use by others. In addition, RK shall make its permission contingent upon the satisfaction of certain conditions when, in RK's professional judgment, such a contingency is necessary.
20. **DISPUTE RESOLUTION/LITIGATION.** All claims, disputes, and other controversies between RK and CLIENT arising out of, or in any way related to, the services provided by RK shall be submitted to mediation, before and as a condition precedent to, other remedies provided by law. Any litigation related to the Agreement or RK's performance of its professional services shall be commenced in a court in Bexar County, Texas. CLIENT consents to personal jurisdiction in the State of Texas and agrees that venue of any litigation shall be in Bexar County, the county where RK's principal place of business is located. CLIENT waives any objection to personal jurisdiction in Texas or to venue in Bexar County. The prevailing party in such litigation will be entitled to recover all court costs, attorneys' fees, and other legally recoverable claim-related expenses. As a condition precedent to mediation and / or litigation related to any claim arising out of the services provided under this Agreement, CLIENT shall obtain a written affidavit from a registered, independent, and reputable professional engineer describing any error, omission or other act by RK that allegedly failed to comply with the professional standard of care applicable to RK's performance of services and provide such affidavit to RK. The affidavit shall comply with the requirements of Texas Civil Practice & Remedies Code Chapter 150.
21. **TERMINATION OF CONTRACT.** CLIENT and RK may terminate RK's services at any time upon ten (10) calendar days' written notice. In the event of termination, CLIENT agrees to fully compensate RK for services performed including reimbursable expenses through the termination date, as well as reasonable demobilization expenses. RK will terminate its services without waiving any claims against or incurring any liability to CLIENT.
22. **STATUTE OF LIMITATIONS.** Any applicable statute of limitations will commence to run and any cause of action shall be deemed to have accrued not later than the earlier of the following: (1) the date of the report issued by RK giving rise to the cause of action; (2) the date on which RK issues its last report under this Agreement; or (3) if RK is retained to perform construction observation, the date of substantial completion of the project.
23. **FORCE MAJEURE.** Neither party shall be liable in damages or have the right to terminate this Agreement for any delay or default in performing hereunder if such delay or default is caused by conditions beyond its control ("Force Majeure") including, but not limited to Acts of God, Government restrictions (including the denial or cancellation of any export or other necessary license), wars, insurrections and/or any other cause beyond the reasonable control of the party whose performance is affected. Force Majeure may not be claimed as a cause for delay in payment of money due and payable hereunder.

24. **NO ASSIGNMENT.** Neither RK nor CLIENT shall assign or transfer its interest in this Agreement without the express written consent of the other.

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

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



SCHEDULE OF FEES FOR PROFESSIONAL SERVICES

PERSONNEL:

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

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

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

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

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

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

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

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

City Council Meeting

Agenda Item

Data Sheet

Meeting Date: February 17, 2025

Topic:

Workshop Discussion Only – Approve a services agreement renewal with Water Utility Services, Inc. for water sampling and laboratory services for a total not-to-exceed amount of \$175,000, approve the expenditure of funds therefor, and authorize the City Manager to execute any and all documents related to the purchase. This expenditure is included in the Fiscal Year 2024-2025 Budget.

Background:

Water Utility Services, Inc. is a Spring-based lab specializing in sampling and analysis of drinking water and provides proprietary blends of chemicals used in the water and wastewater treatment process.

Water Utility Services performs sampling and analysis required by the Environmental Protection Agency (EPA) and Texas Commission on Environmental Quality (TCEQ) for the City of Tomball’s drinking water and distribution system and groundwater treatment plants to remain within EPA and TCEQ compliance. Water Utility Services also provides proprietary blends of chemicals needed in the treatment process for the City of Tomball’s groundwater treatment (polyphosphate) and wastewater treatment (magnesium hydroxide).

The original services agreement was executed in June 2023 with four additional one-year renewals. We utilized the first renewal in 2024 and staff is requesting to exercise the option to utilize the second renewal term. Based on the City’s adopted Procurement Policy, staff is requesting a services agreement renewal with Water Utility Services, Inc. to perform the required water sampling and lab analysis and provide the necessary water and wastewater treatment chemicals for a not-to-exceed amount of \$175,000.

This procurement is exempt from the competitive bidding requirements under Local Government Code 252.022(2) which does not require procurement for services or chemicals that preserve or protect the public health or safety of a municipality’s residents.

Origination: Project Management

Recommendation:

Staff recommends approving a services agreement renewal with Water Utility Services, Inc. to perform the required water sampling and lab analysis and provide the necessary water and wastewater treatment chemicals for a not-to-exceed amount of \$175,000.

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: No:

If yes, specify Account Number: #600-613-6361

#600-613-6110

#600-614-6110

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

Signed Meagan Mageo
Staff Member _____ Date _____

Approved by _____
City Manager _____ Date _____

**CITY OF TOMBALL
SERVICES AGREEMENT RENEWAL**

THE STATE OF TEXAS §

COUNTY OF HARRIS §

Description of Services: Chemical Products and Bacteriological Sampling & Analysis

This Renewal is made and entered into by the **City of Tomball** (referred to as the “City”), with an office at 501 James Street, Tomball, TX and, **Water Utility Services, Inc.** (the “Company”), with an office at **21615 Rhodes Rd, Spring, Texas 77388**. City hereby engages the services of Company as an independent contract for meter reading services, upon the following terms and conditions.

1. SCOPE OF AGREEMENT RENEWAL

- 1.1. The City hereby agrees to employ Company and Company agrees to perform the necessary services as set forth in Exhibit A – Scope of Work and Contract Pricing, attached hereto and incorporated herein for all purposes.
- 1.2. In the event of a conflict among the terms of this Agreement and the Exhibit A, the term most favorable to the City, in the City’s sole discretion, shall control.

2. TERM OF AGREEMENT RENEWAL; TERMINATION

- 2.1. This Agreement Renewal shall be effective upon proper execution by the City. It shall be effective from **February 14, 2025 through February 13, 2026**, with **Two (2) additional one-year renewal options remaining**. The City reserves the right to withdraw from the Agreement immediately if its governing body fails to appropriate funds necessary for the satisfaction of its contractual obligations. ***Either party may terminate this Agreement for any reason with Thirty days (30) written notice to the other party.***
- 2.2. The City’s obligations under this Agreement shall not constitute a general obligation of the City or indebtedness under the constitution or laws of the State of Texas. Nothing contained herein shall ever be construed so as to require City to create a sinking fund or to assess, levy and collect any tax to fund its obligations under this Agreement.
- 2.3. The City reserves the right to enforce the performance of this Agreement in any manner prescribed by law or deemed to be in the best interest of the City in the event of breach or default of any provision of this Agreement, including immediate termination of this Agreement.

3. ENTIRE AGREEMENT RENEWAL

This Agreement Renewal represents the entire agreement between Company and the City and no prior or contemporaneous oral or written Agreements or representations shall be construed to alter its terms. No additional terms shall become part of this Agreement without the written consent of both parties and compliance with relevant state law. This Agreement supersedes all other prior agreements either oral or in writing.

4. ASSIGNMENT

Company shall not assign or subcontract its obligations under this Agreement without the prior written consent of the City.

5. COMPENSATION

For and in consideration of the services rendered by the Company pursuant to this Agreement, the City shall pay the Company only for the actual work performed under the Scope of Work, on the basis set forth in Attachment B, up to an amount not-to-exceed \$175,000.

6. IDEMNITY

6.1. DEFINITIONS

For the purpose of this section the following definitions apply:

- a. "City" shall mean all officers, agents and employees of the City of Tomball.
- b. "Claims" shall mean all claims, liens, suits, demands, accusations, allegations, assertions, complaints, petitions, proceedings and causes of action of every kind and description brought for damages.
- c. "Company" includes the corporation, company, partnership, or other entity, its owners, officers, and/or partners, and their agents, successors, and assigns.
- d. "Company's employees" shall mean any employees, officers, agents, subcontractors, licensees and invitees of Company.
- e. "Damages" shall mean each and every injury, wound, hurt, harm, fee, damage, cost, expense, outlay, expenditure or loss of any and every nature, including but not limited to:
 - i. injury or damage to any property or right
 - ii. injury, damage, or death to any person or entity
 - iii. attorneys' fees, witness fees, expert witness fees and expenses,
 - iv. any settlement amounts; and
 - v. all other costs and expenses of litigation
- f. "Premise Defects" shall mean any defect, real or alleged, which now exists or which may hereafter arise upon the premises.

6.2. Indemnity

COMPANY AGREES TO INDEMNIFY, HOLD HARMLESS, AND DEFEND THE CITY FROM AND AGAINST LIABILITY FOR ANY CLAIMS FOR DAMAGES ARISING OUT OF THE COMPANY'S WORK AND ACTIVITIES CONDUCTED IN CONNECTION WITH THIS AGREEMENT.

COMPANY IS AN INDEPENDENT CONTRACTOR AND IS NOT, WITH RESPECT TO ITS ACTS OR OMISSIONS, AN AGENT OR EMPLOYEE OF THE CITY.

COMPANY MUST AT ALL TIMES EXERCISE REASONABLE PRECAUTIONS ON BEHALF OF, AND BE SOLELY RESPONSIBLE FOR, THE SAFETY OF COMPANY'S EMPLOYEES WHILE IN THE VICINITY WHERE THE WORK IS BEING DONE. THE CITY IS NOT LIABLE OR RESPONSIBLE FOR THE NEGLIGENCE OR INTENTIONAL ACTS OR OMISSIONS OF COMPANY OR COMPANY'S EMPLOYEES.

THE CITY ASSUMES NO RESPONSIBILITY OR LIABILITY FOR DAMAGES WHICH ARE DIRECTLY OR INDIRECTLY ATTRIBUTABLE TO PREMISE DEFECTS.

THE CITY AND COMPANY MUST PROVIDE THE OTHER PROMPT AND TIMELY NOTICE OF ANY COVERED EVENT WHICH IN ANY WAY AFFECTS OR MIGHT AFFECT THE COMPANY OR CITY. THE CITY HAS THE RIGHT TO COMPROMISE AND DEFEND THE SAME TO THE EXTENT OF ITS OWN INTERESTS.

THE INDEMNITY OBLIGATIONS HEREIN SHALL SURVIVE THE TERMINATION OF THE AGREEMENT FOR ANY REASON AND SHALL SURVIVE THE COMPLETION OF THE WORK.

7. INSURANCE

7.1. AMOUNTS OF INSURANCE

Company agrees to provide and to maintain the following types and amounts of insurance, for the term of this Contract:

TYPE	AMOUNT
(a) Workers Compensation	(where required – Statutory by State Law)
Employer’s Liability	\$100,000 per occurrence

- (b) Commercial (Public) Liability, including but not limited to:
 - a. Premises/ Operations Combined Single Limit
 - b. Independent Contractors
 - c. Personal Injury
 - d. Products/Completed Operations
 - e. Contractual Liability (insuring above indemnity provisions)

All insured at combined single limits for bodily injury and property damage at \$500,000 per occurrence.

- (c) Comprehensive Automobile Liability, in include coverage for:
 - a. Owned/Leased Automobiles
 - b. Non-owned Automobiles
 - c. Hired Cars

All insured at combined single limits for bodily injury and property damage for \$500,000 per occurrence.

7.2. OTHER INSURANCE REQUIREMENTS

Company understands that it is its sole responsibility to provide the required Certificates and that failure to timely comply with the requirements of this article shall be a cause for termination of this Contract.

Insurance required herein shall be issued by a company or companies of sound and adequate financial responsibility and authorized to do business in the State of Texas. All policies shall be subject to examination and approval by the City Attorney's Office for their adequacy as to form, content, form of protection, and providing company.

Insurance required by this Contract for the City as additional insured shall be primary insurance and not contributing with any other insurance available to City, under any third party liability policy.

Company further agrees that with respect to the above required liability insurances, the City shall:

- a. Be named as an additional insured;
- b. Be provided with a waiver of subrogation, in favor of the City,
- c. Be provided with 30 days advance written notice of cancellation, nonrenewal, or reduction in coverage (all "endeavor to" and similar language of reservation stricken from cancellation section of certificate); and
- d. Prior to execution of this Agreement, be provided through the office of the City Attorney with their original Certificate of Insurance evidencing the above requirement.

The insurance requirements set out in this section are independent from all other obligations of Company under this Agreement and apply whether or not required by any other provision of this Agreement.

8. PAYMENT AND PERFORMANCE

Payment for services described in this Agreement will be made in accordance with the Texas Prompt Payment Act, Chapter 2251 of the Texas Government Code, or as subsequently amended.

9. VENUE; RECOVERY OF FEES; DISPUTE RESOLUTION; CHOICE OF LAW

Any suit or claim or cause of action regarding this Agreement shall be brought in Harris County, Texas, as the choice of venue and jurisdiction and site of performance by the parties. If the City is the prevailing party in any such action, the City may recover reasonable costs, including costs of court, attorney's fees, expert witnesses' fees, and trial consultants' fees. The parties further agree that the law of the State of Texas shall govern any interpretation of the terms of this Agreement.

10. COMPANY CERTIFICATIONS

Company certifies that neither it, nor any of its agents or employees, have or will offer or accept gifts or anything of value, or enter into any business arrangement, with any employee, official, or agent of the City.

Company certifies, pursuant to Texas Government Code Chapter 2270, that it does not boycott Israel and will not boycott Israel during the term of this Agreement. Company further certifies, pursuant to Texas Government Code Chapter 2252, Subchapter F, that it does not engage in business with Iran, Sudan, or a foreign terrorist organization as may be designated by the United States Secretary of State pursuant to his authorization in 8 U.S.C. Section 1189.

11. NO WAIVER OF IMMUNITY

The City does not waive any statutory or common law right to sovereign immunity by virtue of the execution of this Agreement.

12. NOTICES

Any written notice provided under this Agreement or required by law shall be deemed to have been given and received on the next day after such notice has been deposited by Registered or Certified Mail with sufficient postage affixed thereto and addressed to the other party to the Agreement; provided, that this shall not prevent the giving of actual notice in any manner.

Notice to Company may be sent to the following address:

P.O. Box 2628
Spring, TX 77383

13. CONTRACT ADMINISTRATOR

This Agreement shall be administered on the City's behalf by the Project Manager, and all notices, questions, or documentation, arising under this Agreement shall be addressed to the Project Manager at:

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

AGREED to and ACCPETED this 5 day of February, 2025.

Water Utility Services, Inc.
Company

[Signature]
Signature

Steve Grychka
Print Name

President
Title

AGREED to and ACCPETED this ___ day of _____, 2025.

City of Tomball

David Esquivel, PE
City Manager

Attest:

Tracylynn Garcia
City Secretary

EXHIBIT A

Item 7.

Water Utility Services, Inc.

**P.O. Box 2628
Spring, Texas 77383
281-290-0704**

City of Tomball

Chemical	2025 Cost/gallon
Aquamag 9100	\$12.00
Thioguard	\$5.20
Chemical	Cost/unit
Calcium Hypochlorite 100 lb	\$295.00

Water Utility Services, Inc.

P.O. Box 2628
 Spring, Texas 77383
 281-290-0704

Bacteriological Sampling & Analysis 2025 Pricing

Routine:

Quantity	Price \$
1	63.00
2	97.00
3	121.00
4	147.00
5	178.50
6	244.00
7	269.00
8	294.00
9	325.50
10	357.00
11	415.00
12	441.00
13	478.00
14	507.00
15	535.50
20	714.00
25	892.50

Specials:

Quantity	Price \$ Each
1	68.00
Same Day	100.00
16hr Rush	168.00
Fees	Price
After-Hours Fee	200.00
Holiday Fee	300.00

Nitrification Sampling & Analysis

Price \$ Each
110.00

Routine Samples Note:

Samples quantities are based per trip, should a system require 6 samples on the same day each sample will be \$36.00 each.

Specials Sample Note:

* Pricing is for first initial sample each additional sample is \$60.00 per sample.

**Any results requiring weekend or holiday notification will be charged at the appropriate rate on a daily basis.

City Council Meeting Agenda Item Data Sheet

Meeting Date: February 17, 2025

Topic:

Workshop Discussion Only – Approve an agreement extension with Tomball Little League for the maintenance and operation of the baseball fields and facilities located at Wayne Stovall Sports Complex.

Background:

The City entered into an agreement with Tomball Little League (TLL) in March 2020 for a five (5) year term for the maintenance and operation of the baseball fields and facilities located at Wayne Stovall Sports Complex.

Tomball Little League is an organized sports program recognized by Little League International. TLL has been running the little league program at Wayne Stovall for over ten (10) years and staff has developed a trusted relationship with their board and maintenance crew.

The agreement with TLL expires on March 2, 2025, and staff is requesting to renew the agreement for an additional five (5) years. The agreed amendment will be based on the same terms and conditions, with no changes. Pursuant to the agreement, Tomball Little League will be responsible for providing all equipment necessary for operation and necessary maintenance of the fields to ensure they are kept in good operating condition. As part of this agreement, TLL is responsible for all electricity cost for the complex and utilities in excess of \$25,000 for water and wastewater.

Origination: Project Management

Recommendation:

Staff recommends approving an agreement extension for five (5) years with Tomball Little League for the maintenance and operation of the baseball fields and facilities located at Wayne Stovall Sports Complex.

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
Staff Member _____ Date _____

Approved by _____
City Manager _____ Date _____

AMENDING AGREEMENT

THIS AMENDING AGREEMENT dated March 3, 2025

BETWEEN:

Tomball Little League

-AND-

The City of Tomball

Background

1. Tomball Little League (“Licensee”) and the City of Tomball (“Licensor”) entered into a License Agreement (the “Agreement”) dated March 2, 2020, for the maintenance and operation of the baseball fields and facilities at Wayne Stovall Sports Complex.
2. The Parties desired to amend the Contract on the terms and conditions set forth in this Amending Agreement (the “Agreement”).
3. This Agreement is the first amendment to the Agreement.
4. References in this Amending Agreement are reflected in the Amendment as attached in Exhibit A.

IN CONSIDERATION OF the Parties agreeing to amend their obligations in the existing Agreement, and other valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree to keep, perform, and fulfill the promises, conditions, and agreements below:

Amendments

The Agreement is amended as follows:

1. The Amending Agreement will extend the term of the Agreement five (5) years beginning March 3, 2025, and expiring March 2, 2030.
2. Removes the following language from 2(a):
 “It is the responsibility of the Tomball Little League to initiate any and all upward modifications to the utility reimbursement sum for changes in the Consumer Price Index (CPI). The City will consider a modification no more than once per year during the term of the Agreement Year. Tomball Little League shall submit a request for a CPI adjustment to the utilities reimbursement sum by June 1st of each year. Tomball Little League must receive approval from the City for the increase, which approval shall not be unreasonably held.”

Tomball Little League's request for an adjustment in utilities reimbursement sum for the CPI shall be calculated as follows:

- i. Tomball Little League shall first calculate the percentage of change in the Consumer Price Index, Houston, Texas; All Items Less Energy, Base Period 1982-84=100, Not Seasonally Adjusted, published by the United States Bureau of Labor Statistics, Consumer Price Index (the "CPI") between the published final June CPI index of then current year and the published final June CPI index of the immediately preceding year (the "CPI Component");
- ii. The CPI Component multiplied by the then current utilities reimbursement sum to determine the adjustment commencing October 1 of the current Agreement Year, such adjustment shall not exceed five percent (5%) in any given year, nor shall the adjustment be adjusted downward from the then current rate(s) in place. In any year where the adjustment would result in a downward adjustment, the adjustment shall be zero percent (0%).

No Other Changes

Except as otherwise expressly provided in this Agreement, all the terms and conditions of the Agreement remain unchanged and in full force and effect.

Governing Law

Subject to the terms of the Agreement, it is the intention of the Parties that this Agreement, and all suits and special proceedings under this Agreement, be constructed in accordance with and governed, to the exclusion of the law of any other forum, by the laws of the State of Texas, without regard to the jurisdiction in which any action or special proceeding may be instituted.

IN WITNESS WHEREOF the Parties have duly affixed their signatures under hand and seal on the ____ February, 2025.

Witness: _____

Date: _____

Signed: Jeanne Foster, President

Date: _____

Attest: Tracylynn Garcia, City Secretary

Date: _____

Signed: David Esquivel, City Manager

Date: _____

EXHIBIT A

LICENSE AGREEMENT
BETWEEN
THE
CITY OF TOMBALL
AND
TOMBALL LITTLE LEAGUE

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

THIS LICENSE AGREEMENT is entered into on the date as hereinafter written above the signatures and is effective on the 2nd day of March, 2020, between the CITY OF TOMBALL, TEXAS herein called "Licensor", and TOMBALL LITTLE LEAGUE, an organization existing and operating pursuant to a constitution issued by Little League International, herein called "Licensee." Licensee is permitted to occupy and use for the playing of Little League baseball and for no other use without express written permission from the Licensor, the following real estate located in the City of Tomball, State of Texas, which real estate is that particular area which is commonly known as the Wayne Stovall Sports Complex, and the area around Wayne Stovall Sports Complex necessary for Licensee to operate said fields for the playing of Little League baseball (Exhibit A).

TERM

The primary term of this License Agreement shall be for a period of sixty (60) months, commencing from the effective date of this License Agreement as heretofore set forth. Either party may cancel this License Agreement by giving notice of cancellation to the other party, which cancellation shall take effect thirty (30) days after the date of the notice. **The City of Tomball and Tomball Little League further agree that this License Agreement shall terminate immediately, without the need for any form of notice from either party, upon the cancellation or the failure by Tomball Little League to obtain or maintain liability insurance as required by this License Agreement.**

EQUIPMENT

It is the agreement of the Licensor and Licensee facilities that the Licensee shall provide all equipment necessary to operate said Wayne Stovall Sports Complex. Licensee shall provide lights, poles, fences, concession stands, parking facilities, baseball diamonds, and all other facilities which are necessary for the operation of said fields. No major modifications may be made to building or additions of fixed structures without City of Tomball approval.

LICENSE PAYMENTS

The license payments to be paid by the Licensee under the terms and conditions of this License Agreement, shall be the performance of the covenants and conditions set forth herein.

In consideration for this License Agreement, the Licensee agrees to perform the following services and to accept the following obligations during the term of this License Agreement:

1. The Tomball Little League shall perform necessary maintenance on the fields that is commiserate with the demands of the operations of the fields and that is necessary in order to keep the fields in good condition and operating for the purpose for which they were intended. Maintenance shall include the responsibility for maintaining in good working condition all of the facilities currently located at the Wayne Stovall Sports Complex and to be added thereto. This shall also include mowing the fields and the contiguous ditches during the off season, repairing and replacing lights.
2. Utilities:
 - a. The City of Tomball will pay up to a total each year of \$25,000.00 toward all of the City utilities used at the Wayne Stovall Sports Complex. This \$25,000.00 shall be paid towards the water, sewer and trash. The year referred to is the fiscal year of the City of Tomball, from October 1 of each year through September 30 of the following year. All of the utilities shall be placed in the name of the City of Tomball; the City of Tomball will then bill the Tomball Little League for any excess usage. The billing will be done at the end of each fiscal year and the payment is due from the Tomball Little League to the City of Tomball within 90 days of the end of the fiscal year.

It is the responsibility of the Tomball Little League to initiate any and all upward modifications to the utility reimbursement sum for changes in the Consumer Price Index (CPI). The City will consider a modification no more than once per year during the term of the Agreement, during the month of October of each Agreement Year. Tomball Little League shall submit a request for a CPI adjustment to the utilities reimbursement sum by June 1st of each year. Tomball Little League must receive approval from the City for the increase, which approval shall not be unreasonably withheld.

Tomball Little League's request for an adjustment in utilities reimbursement sum for the CPI shall be calculated as follows:

- i. Tomball Little League shall first calculate the percentage of change in the Consumer Price Index, Houston, Texas; All Items Less Energy; Base Period 1982-84=100, Not Seasonally Adjusted, published by the United States

Bureau of Labor Statistics, Consumer Price Index (the "CPI") between the published final June CPI index of the then current year and the published final June CPI index of the immediately preceding year (the "CPI Component");

- ii. The CPI Component multiplied by the then current utilities reimbursement sum to determine the adjustment commencing October 1 of the current Agreement Year, such adjustment shall not exceed five percent (5%) in any given year, nor shall the adjustment be adjusted downward from the then current rate(s) in place. In any year where the adjustment would result in a downward adjustment, the adjustment shall be zero percent (0%).

- b. The Tomball Little League will be responsible to pay for all electricity used at the Wayne Stovall Sports Complex.

- 3. The Tomball Little League shall have the exclusive right to operate the fields in support of the Tomball Little League Program.

Licensee shall agree to abide by, and enforce during the term of this License Agreement, all rules and regulations of the Little League baseball association, both local and/or state, and/or national level.

AUTHORITY

Tomball Little League exists and operates pursuant to a constitution issued by Little League International. A true and correct copy of such constitution is attached hereto as Exhibit "B." Accordingly, Tomball Little League warrants and represents that it has the authority to enter into this License Agreement and that all approvals of the Board of Directors of Tomball Little League have been obtained.

INSPECTION

The City of Tomball shall have the right to inspect all facilities subject to the License Agreement on an annual basis upon reasonable notice to Tomball Little League.

MONTHLY REPORTS; EXAMINATION OF RECORDS

All contracts, paper, correspondence, copies, books, accounts and other information relating to operation of Little League programs on the property subject to this License Agreement shall be subject to inspection and examination by an authorized representative of the City of Tomball at all reasonable times. Additionally, Tomball Little League shall provide a complete accounting of all funds received and all funds disbursed to the City of Tomball on a monthly basis. This report shall be provided no later than the 15th day of the month and such report shall detail the activities of the previous month. Additionally, Tomball Little League shall

provide to the City a complete copy of the minutes of each meeting of the Tomball Little League’s Board of Directors. The copy of these minutes shall be submitted to the City no later than ten (10) days after such meeting.

INSURANCE

The Licensee shall maintain insurance to cover its activities upon the premises and any and all of its occupants of said premises and name the City of Tomball as an additional insured. A copy of such insurance policy shall be provided to the City of Tomball. All insurance policies required herein shall also provide that such insurance shall not be canceled or materially changed without a minimum of thirty (30) days written notice to the City. In the event that Licensee is self-insured, the Licensee shall provide the City of Tomball the same proof of financial responsibility which is necessary to be provided to the State of Texas for someone who is self-insured in the State of Texas.

INDEMNIFICATION

Tomball Little League agrees to indemnify, defend, protect, and hold harmless the City of Tomball, its officers, agents, representatives, and employees from and against any and all claims, losses, demands, and expenses, including costs of court and reasonable attorneys’ fees on account of illness or injury to persons, including death, or loss of or damage to property which may in any way result from, grow out of, or arise in connection with the use of Wayne Stovall Sports Complex under this License Agreement where such injury, illness, death, loss or damage is caused, or alleged to have been caused, in whole or in part by the negligent act or omission or any willful wrongdoing of the Tomball Little League, its officers, directors, agents, representatives, or employees.

TERMINATION

As heretofore set forth, either party hereto may terminate this License Agreement or all agreements contained herein, without cause, upon thirty (30) days’ written notice to the other party hereto.

NOTICE

Any notice required or permitted to be given by the Licensor to the Licensee under this agreement must be given by certified or registered U.S. Mail, postage prepaid, return receipt requested, addressed to:

Licensor: City of Tomball
City Manager
401 Market Street,
Tomball, Texas 77375

Licensee: Tomball Little League
PO Box 1416
Tomball, Texas 77375

Notices mailed as aforesaid shall be deemed given upon deposit in the U.S. Mail.

ENTIRE AGREEMENT

This License Agreement constitutes the sole and only agreement among the Licensor, Licensee and any agreements or representations respecting said Wayne Stovall Sports Complex and the License thereof not expressly set forth in this License Agreement are null and void.

ASSIGNMENT OF LICENSE AGREEMENT

This License Agreement shall not be assignable and shall not inure to the benefit of any others, other than the named Licensee herein.

LAW GOVERNING AGREEMENT


This agreement shall be governed by and construed in accordance with the laws of the State of Texas and any action on this agreement shall be in the courts of Harris County, Texas.

REPRESENTATION OF OWNERSHIP

The City of Tomball, as Licensor, is not claiming to have good and indefeasible title, but is in fact denying good and indefeasible title to the licensed premises. Licensor alleges that Licensor has the right to license said premises due to Licensor owning the majority interest in said premises and Licensor having acquired said premises in its entirety by a deed which was obtained through use and possession. In the event of a suit alleging ownership of said land in the form of a suit to quiet title or trespass to try title suit, then Licensor shall defend title to said premises. If Licensor does not prevail, then Licensor shall be relieved from any further obligation pursuant to this License Agreement.

WITNESS OUR HANDS, this 2nd Day of March, 2020.

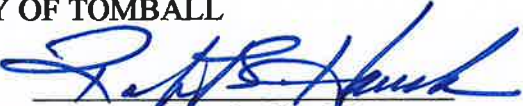
LICENSEE:
TOMBALL LITTLE LEAGUE

By: 
Title: Tomball Little League President

ATTEST:


By: Melissa Cardo
Title: Secretary

LICENSOR:
CITY OF TOMBALL

By: 
Robert S. Hauck, City Manager

ATTEST:



By: Doris Speer
Title: City Secretary

City Council Meeting

Agenda Item

Data Sheet

Meeting Date: February 17, 2025

Topic:

Workshop discussion only - Approve a purchase with Axon Enterprise, Inc., as a sole source vendor, for the purchase of replacement tasers for the Police Department for a total contract amount of \$225,653.44 for a total of five years beginning May 1, 2025 and expiring April 3, 2029, for an annual not-to-exceed payment amount of \$47,663.36, authorize the expenditure of funds therefor, and authorize the City Manager to execute any and all documents related to the expenditure. This amount was included in the FY 2024-2025 budget to be paid from grant funds received.

Background:

Axon Enterprises, Inc. has supplied tasers to the Police Department for the last 20 years. Our current tasers series seven have had multiple issues reported resulting in them being removed from the market requiring replacement for the safety of the officers. As of 2024, the current tasers series seven are no longer eligible for repairs or maintenance. Taser series ten is the current model being issued all over the United States.

The proposed purchase will include replacement for all 46 tasers currently in use with required training, cartridges, holsters, and battery packs for a total not-to-exceed amount of \$225,653.44 over a five-year term.

The total cost of the contract has been financed for a 60-month term with the first-year payment reduced to \$35,000. The first-year payment will be made utilizing excess grant funds from the SRT Grant received in 2021 for the purchase of body cameras. In order to utilize the remaining grant funds the termination date was extended to December 2025 and staff was able to confirm tasers to be an eligible expense for reimbursement.

Based on the City's adopted Procurement Policy, staff is requesting approval of the purchase financed over a five-year term, beginning May 1, 2025, and expiring April 30, 2029. The table below identifies the annual contract amount to be included in the Police Department annual operating budget.

Annual Contract Amounts				
Contract Year One May 1, 2025	Contract Year Two April 1, 2026	Contract Year Three April 1, 2027	Contract Year Four April 1, 2028	Contract Year Five April 1, 2028
\$35,000	\$47,663.36	\$47,663.36	\$47,663.36	\$47,663.36

The purchase with Axon Enterprises, Inc. will be for a total not-to-exceed contract amount of \$225,653.44 over the five-year contract term.

Origination: Police Department

Recommendation:

Staff recommends approving the purchase of tasers with Axon Enterprises, Inc. for a total contract amount of \$225,653.44, for an annual not-to-exceed payment amount of \$47,663.36.

Party(ies) responsible for placing this item on agenda: Brandon Patin, Captain

FUNDING (IF APPLICABLE)

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

Yes: No: X If yes, specify Account Number: #100-121-6106

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

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



Axon Enterprise, Inc.
 17800 N 85th St.
 Scottsdale, Arizona 85255
 United States
 VAT: 86-0741227
 Domestic: (800) 978-2737
 International: +1.800.978.2737

Q-649783-45695 Item 9.

Issued: 02/06/2025

Quote Expiration: 03/14/2025

Estimated Contract Start Date: 06/15/2025

Account Number: 106442
 Payment Terms: N30
 Delivery Method:

SHIP TO	BILL TO
Tomball Police Dept. - TX 400 Fannin St Tomball, TX 77375-4618 USA	Tomball Police Dept. - TX 401 Market St Tomball TX 77375-4645 USA Email:

SALES REPRESENTATIVE	PRIMARY CONTACT
John Sholl Phone: Email: jsholl@axon.com Fax:	Brandon Patin Phone: (832) 745-2891 Email: bpatin@tomballtx.gov Fax:

Quote Summary

Program Length	60 Months
TOTAL COST	\$225,860.29
ESTIMATED TOTAL W/ TAX	\$225,860.29

Discount Summary

Average Savings Per Year	\$13,442.18
TOTAL SAVINGS	\$67,210.91

Payment Summary

Date	Subtotal	Tax	Total
May 2025	\$35,000.00	\$0.00	\$35,000.00
May 2026	\$47,714.29	\$0.00	\$47,714.29
May 2027	\$47,715.00	\$0.00	\$47,715.00
May 2028	\$47,715.00	\$0.00	\$47,715.00
May 2029	\$47,716.00	\$0.00	\$47,716.00
Total	\$225,860.29	\$0.00	\$225,860.29

Quote Unbundled Price:

\$293, Item 9.

Quote List Price:

\$246,399.60

Quote Subtotal:

\$225,860.29

Pricing

All deliverables are detailed in Delivery Schedules section lower in proposal

Item	Description	Qty	Term	Unbundled	List Price	Net Price	Subtotal	Tax	Total
Program									
100553	TRANSFER CREDIT - SOFTWARE AND SERVICES	1			\$1.00	(\$2,388.98)	(\$2,388.98)	\$0.00	(\$2,388.98)
100552	TRANSFER CREDIT - GOODS	1			\$1.00	\$5,804.87	\$5,804.87	\$0.00	\$5,804.87
C00024	BUNDLE - TASER 10 CERTIFICATION STANDARD	46	60	\$103.57	\$86.66	\$80.44	\$222,014.40	\$0.00	\$222,014.40
A la Carte Hardware									
100616	AXON TASER 10 - HOLSTER - BLACKHAWK - RH	5			\$86.00	\$86.00	\$430.00	\$0.00	\$430.00
A la Carte Services									
85149	AXON TASER - 2 DAY PRODUCT SPECIFIC INSTRUCTOR COURSE	1			\$6,786.00	\$0.00	\$0.00	\$0.00	\$0.00
Total							\$225,860.29	\$0.00	\$225,860.29

Delivery Schedule

Hardware

Bundle	Item	Description	QTY	Shipping Location	Estimated Delivery Date
BUNDLE - TASER 10 CERTIFICATION STANDARD	100126	AXON VR - TACTICAL BAG	1	1	05/15/2025
BUNDLE - TASER 10 CERTIFICATION STANDARD	100390	AXON TASER 10 - HANDLE - YELLOW CLASS 3R	1	2	05/15/2025
BUNDLE - TASER 10 CERTIFICATION STANDARD	100390	AXON TASER 10 - HANDLE - YELLOW CLASS 3R	46	2	05/15/2025
BUNDLE - TASER 10 CERTIFICATION STANDARD	100393	AXON TASER 10 - MAGAZINE - LIVE DUTY BLACK	1	1	05/15/2025
BUNDLE - TASER 10 CERTIFICATION STANDARD	100393	AXON TASER 10 - MAGAZINE - LIVE DUTY BLACK	46	1	05/15/2025
BUNDLE - TASER 10 CERTIFICATION STANDARD	100394	AXON TASER 10 - MAGAZINE - HALT TRAINING BLUE	4	1	05/15/2025
BUNDLE - TASER 10 CERTIFICATION STANDARD	100395	AXON TASER 10 - MAGAZINE - LIVE TRAINING PURPLE	3	1	05/15/2025
BUNDLE - TASER 10 CERTIFICATION STANDARD	100396	AXON TASER 10 - MAGAZINE - INERT RED	1	1	05/15/2025
BUNDLE - TASER 10 CERTIFICATION STANDARD	100399	AXON TASER 10 - CARTRIDGE - LIVE	690	1	05/15/2025
BUNDLE - TASER 10 CERTIFICATION STANDARD	100400	AXON TASER 10 - CARTRIDGE - HALT	330	1	05/15/2025
BUNDLE - TASER 10 CERTIFICATION STANDARD	100401	AXON TASER 10 - CARTRIDGE - INERT	20	1	05/15/2025
BUNDLE - TASER 10 CERTIFICATION STANDARD	100591	AXON TASER - CLEANING KIT	1	1	05/15/2025
BUNDLE - TASER 10 CERTIFICATION STANDARD	100616	AXON TASER 10 - HOLSTER - BLACKHAWK - RH	41	1	05/15/2025
BUNDLE - TASER 10 CERTIFICATION STANDARD	100617	AXON TASER 10 - HOLSTER - BLACKHAWK - LH	5	1	05/15/2025
BUNDLE - TASER 10 CERTIFICATION STANDARD	100623	AXON TASER - TRAINING - ENHANCED HALT SUIT V2	1	1	05/15/2025
BUNDLE - TASER 10 CERTIFICATION STANDARD	100748	AXON VR - CONTROLLER - TASER 10	1	1	05/15/2025
BUNDLE - TASER 10 CERTIFICATION STANDARD	101122	AXON VR - HOLSTER - T10 SAFARILAND GRAY - RH	1	1	05/15/2025
BUNDLE - TASER 10 CERTIFICATION STANDARD	101455	AXON TASER 10 - REPLACEMENT TOOL KIT - INTERPOSER BUCKET	1	1	05/15/2025
BUNDLE - TASER 10 CERTIFICATION STANDARD	101456	AXON TASER 10 - REPLACEMENT INTERPOSER BUCKET	1	1	05/15/2025
BUNDLE - TASER 10 CERTIFICATION STANDARD	20018	AXON TASER - BATTERY PACK - TACTICAL	1	1	05/15/2025
BUNDLE - TASER 10 CERTIFICATION STANDARD	20018	AXON TASER - BATTERY PACK - TACTICAL	46	1	05/15/2025
BUNDLE - TASER 10 CERTIFICATION STANDARD	20018	AXON TASER - BATTERY PACK - TACTICAL	10	1	05/15/2025

Hardware

Bundle	Item	Description	QTY	Shipping Location	Estimated Delivery Date
BUNDLE - TASER 10 CERTIFICATION STANDARD	20378	AXON VR - HEADSET - HTC FOCUS 3	1	1	05/15/2025
BUNDLE - TASER 10 CERTIFICATION STANDARD	70033	AXON - DOCK WALL MOUNT - BRACKET ASSY	1	1	05/15/2025
BUNDLE - TASER 10 CERTIFICATION STANDARD	71019	AXON BODY - DOCK POWERCORD - NORTH AMERICA	1	1	05/15/2025
BUNDLE - TASER 10 CERTIFICATION STANDARD	74200	AXON TASER - DOCK - SIX BAY PLUS CORE	1	1	05/15/2025
BUNDLE - TASER 10 CERTIFICATION STANDARD	80087	AXON TASER - TARGET - CONDUCTIVE PROFESSIONAL RUGGEDIZED	1	1	05/15/2025
BUNDLE - TASER 10 CERTIFICATION STANDARD	80090	AXON TASER - TARGET FRAME - PROFESSIONAL 27.5 IN X 75 IN	1	1	05/15/2025
A la Carte	100616	AXON TASER 10 - HOLSTER - BLACKHAWK - RH	5	1	05/15/2025
BUNDLE - TASER 10 CERTIFICATION STANDARD	100400	AXON TASER 10 - CARTRIDGE - HALT	230	1	05/15/2026
BUNDLE - TASER 10 CERTIFICATION STANDARD	100400	AXON TASER 10 - CARTRIDGE - HALT	230	1	05/15/2027
BUNDLE - TASER 10 CERTIFICATION STANDARD	101012	AXON VR - TAP REFRESH 1 - CONTROLLER	1	1	11/15/2027
BUNDLE - TASER 10 CERTIFICATION STANDARD	20373	AXON VR - TAP REFRESH 1 - HEADSET	1	1	11/15/2027
BUNDLE - TASER 10 CERTIFICATION STANDARD	100400	AXON TASER 10 - CARTRIDGE - HALT	230	1	05/15/2028
BUNDLE - TASER 10 CERTIFICATION STANDARD	100400	AXON TASER 10 - CARTRIDGE - HALT	230	1	05/15/2029

Software

Bundle	Item	Description	QTY	Estimated Start Date	Estimated End Date
BUNDLE - TASER 10 CERTIFICATION STANDARD	101180	AXON TASER - DATA SCIENCE PROGRAM	46	06/15/2025	06/14/2030
BUNDLE - TASER 10 CERTIFICATION STANDARD	101703	AXON VR - USER ACCESS - TASER SKILLS	46	06/15/2025	06/14/2030
BUNDLE - TASER 10 CERTIFICATION STANDARD	20248	AXON TASER - EVIDENCE.COM LICENSE	46	06/15/2025	06/14/2030
BUNDLE - TASER 10 CERTIFICATION STANDARD	20248	AXON TASER - EVIDENCE.COM LICENSE	1	06/15/2025	06/14/2030

Services

Bundle	Item	Description	QTY
BUNDLE - TASER 10 CERTIFICATION STANDARD	100751	AXON TASER 10 - REPLACEMENT ACCESS PROGRAM - DUTY CARTRIDGE	46
BUNDLE - TASER 10 CERTIFICATION STANDARD	101193	AXON TASER - ON DEMAND CERTIFICATION	1
A la Carte	85149	AXON TASER - 2 DAY PRODUCT SPECIFIC INSTRUCTOR COURSE	1

Warranties

Bundle	Item	Description	QTY	Estimated Start Date	Estimated End Date
BUNDLE - TASER 10 CERTIFICATION STANDARD	100197	AXON VR - EXT WARRANTY - HEADSET	1	05/15/2026	06/14/2030
BUNDLE - TASER 10 CERTIFICATION STANDARD	100704	AXON TASER 10 - EXT WARRANTY - HANDLE	1	05/15/2026	06/14/2030
BUNDLE - TASER 10 CERTIFICATION STANDARD	100704	AXON TASER 10 - EXT WARRANTY - HANDLE	46	05/15/2026	06/14/2030
BUNDLE - TASER 10 CERTIFICATION STANDARD	101007	AXON VR - EXT WARRANTY - CONTROLLER	1	05/15/2026	06/14/2030
BUNDLE - TASER 10 CERTIFICATION STANDARD	80374	AXON TASER - EXT WARRANTY - BATTERY PACK T7/T10	46	05/15/2026	06/14/2030
BUNDLE - TASER 10 CERTIFICATION STANDARD	80374	AXON TASER - EXT WARRANTY - BATTERY PACK T7/T10	1	05/15/2026	06/14/2030
BUNDLE - TASER 10 CERTIFICATION STANDARD	80374	AXON TASER - EXT WARRANTY - BATTERY PACK T7/T10	10	05/15/2026	06/14/2030
BUNDLE - TASER 10 CERTIFICATION STANDARD	80396	AXON TASER - EXT WARRANTY - DOCK SIX BAY T7/T10	1	05/15/2026	06/14/2030

Shipping Locations

Item 9.

Location Number	Street	City	State	Zip	Country
1	400 Fannin St	Tomball	TX	77375-4618	USA
2	400 Fannin St	Tomball	TX	77375-4618	USA

Payment Details

May 2025						
Invoice Plan	Item	Description	Qty	Subtotal	Tax	Total
Year 1	100552	TRANSFER CREDIT - GOODS	1	\$899.54	\$0.00	\$899.54
Year 1	100553	TRANSFER CREDIT - SOFTWARE AND SERVICES	1	(\$370.20)	\$0.00	(\$370.20)
Year 1	100616	AXON TASER 10 - HOLSTER - BLACKHAWK - RH	5	\$66.63	\$0.00	\$66.63
Year 1	85149	AXON TASER - 2 DAY PRODUCT SPECIFIC INSTRUCTOR COURSE	1	\$0.00	\$0.00	\$0.00
Year 1	C00024	BUNDLE - TASER 10 CERTIFICATION STANDARD	46	\$34,404.03	\$0.00	\$34,404.03
Total				\$35,000.00	\$0.00	\$35,000.00

May 2026						
Invoice Plan	Item	Description	Qty	Subtotal	Tax	Total
Year 2	100552	TRANSFER CREDIT - GOODS	1	\$1,226.31	\$0.00	\$1,226.31
Year 2	100553	TRANSFER CREDIT - SOFTWARE AND SERVICES	1	(\$504.69)	\$0.00	(\$504.69)
Year 2	100616	AXON TASER 10 - HOLSTER - BLACKHAWK - RH	5	\$90.84	\$0.00	\$90.84
Year 2	85149	AXON TASER - 2 DAY PRODUCT SPECIFIC INSTRUCTOR COURSE	1	\$0.00	\$0.00	\$0.00
Year 2	C00024	BUNDLE - TASER 10 CERTIFICATION STANDARD	46	\$46,901.83	\$0.00	\$46,901.83
Total				\$47,714.29	\$0.00	\$47,714.29

May 2027						
Invoice Plan	Item	Description	Qty	Subtotal	Tax	Total
Year 3	100552	TRANSFER CREDIT - GOODS	1	\$1,226.33	\$0.00	\$1,226.33
Year 3	100553	TRANSFER CREDIT - SOFTWARE AND SERVICES	1	(\$504.69)	\$0.00	(\$504.69)
Year 3	100616	AXON TASER 10 - HOLSTER - BLACKHAWK - RH	5	\$90.84	\$0.00	\$90.84
Year 3	85149	AXON TASER - 2 DAY PRODUCT SPECIFIC INSTRUCTOR COURSE	1	\$0.00	\$0.00	\$0.00
Year 3	C00024	BUNDLE - TASER 10 CERTIFICATION STANDARD	46	\$46,902.52	\$0.00	\$46,902.52
Total				\$47,715.00	\$0.00	\$47,715.00

May 2028						
Invoice Plan	Item	Description	Qty	Subtotal	Tax	Total
Year 4	100552	TRANSFER CREDIT - GOODS	1	\$1,226.33	\$0.00	\$1,226.33
Year 4	100553	TRANSFER CREDIT - SOFTWARE AND SERVICES	1	(\$504.69)	\$0.00	(\$504.69)
Year 4	100616	AXON TASER 10 - HOLSTER - BLACKHAWK - RH	5	\$90.84	\$0.00	\$90.84
Year 4	85149	AXON TASER - 2 DAY PRODUCT SPECIFIC INSTRUCTOR COURSE	1	\$0.00	\$0.00	\$0.00
Year 4	C00024	BUNDLE - TASER 10 CERTIFICATION STANDARD	46	\$46,902.52	\$0.00	\$46,902.52
Total				\$47,715.00	\$0.00	\$47,715.00

May 2029

Invoice Plan	Item	Description	Qty	Subtotal	Tax	Total
Year 5	100552	TRANSFER CREDIT - GOODS	1	\$1,226.36	\$0.00	\$1,226.36
Year 5	100553	TRANSFER CREDIT - SOFTWARE AND SERVICES	1	(\$504.70)	\$0.00	(\$504.70)
Year 5	100616	AXON TASER 10 - HOLSTER - BLACKHAWK - RH	5	\$90.84	\$0.00	\$90.84
Year 5	85149	AXON TASER - 2 DAY PRODUCT SPECIFIC INSTRUCTOR COURSE	1	\$0.00	\$0.00	\$0.00
Year 5	C00024	BUNDLE - TASER 10 CERTIFICATION STANDARD	46	\$46,903.50	\$0.00	\$46,903.50
Total				\$47,716.00	\$0.00	\$47,716.00

Tax is estimated based on rates applicable at date of quote and subject to change at time of invoicing. If a tax exemption certificate should be applied, please submit prior to invoicing.

Standard Terms and Conditions

Axon Enterprise Inc. Sales Terms and Conditions

Axon Master Services and Purchasing Agreement:

This Quote is limited to and conditional upon your acceptance of the provisions set forth herein and Axon's Master Services and Purchasing Agreement (posted at <https://www.axon.com/sales-terms-and-conditions>), as well as the attached Statement of Work (SOW) for Axon Fleet and/or Axon Interview Room purchase, if applicable. In the event you and Axon have entered into a prior agreement to govern all future purchases, that agreement shall govern to the extent it includes the products and services being purchased and does not conflict with the Axon Customer Experience Improvement Program Appendix as described below.

ACEIP:

The Axon Customer Experience Improvement Program Appendix, which includes the sharing of de-identified segments of Agency Content with Axon to develop new products and improve your product experience (posted at www.axon.com/legal/sales-terms-and-conditions), is incorporated herein by reference. By signing below, you agree to the terms of the Axon Customer Experience Improvement Program.

Acceptance of Terms:

Any purchase order issued in response to this Quote is subject solely to the above referenced terms and conditions. By signing below, you represent that you are lawfully able to enter into contracts. If you are signing on behalf of an entity (including but not limited to the company, municipality, or government agency for whom you work), you represent to Axon that you have legal authority to bind that entity. If you do not have this authority, please do not sign this Quote.

Exceptions to Standard Terms and Conditions

**Agency has existing contract(s)
originated via Quote(s):**

Q-317044, Q-342820, Q-358096, Q-503615

Agency is terminating those contracts effective 6/15/2025 Any changes in this date will result in modification of the program value which may result in additional fees or credits due to or from Axon.

The parties agree that Axon is applying a Net Transfer Debit of \$3,415.89

Any credits contained in this quote are contingent upon payment in full of the following amounts:

INUS284992 - \$2,762.78 - 10/1/2024

Signature

Date Signed

2/6/2025



City Council Meeting Agenda Item Data Sheet

Meeting Date: February 17, 2025

Topic:

Discuss Council Ethics and Rules & Procedures

Background:

Origination:

Recommendation:

n/a

Party(ies) responsible for placing this item on agenda: David Esquivel, PE

FUNDING (IF APPLICABLE)

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

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

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

Signed _____
Staff Member Date

Approved by _____
City Manager Date

CITY COUNCIL RULES AND ORDER OF BUSINESS ("RULES")
City of Tomball, Texas
Resolution No.2025-xx

ORGANIZATION

The governing body of the City shall consist of the Mayor and five (5) council members ("Council"). The Mayor is elected in the City at large, and the Council members are elected at large by positions 1, 2, 3, 4, and 5. The Mayor shall be the presiding officer for Council meetings and, pursuant the City's Charter, shall only vote in the event of a tie vote. These Rules shall serve as guidelines for the organization and conduct of Council to ensure that the City is governed in an orderly and consistent manner.

1. REGULAR MEETINGS

The Council shall hold no less than two regular meetings per month in accordance with Section 6.12 of the City Charter. Regular meetings shall be held at dates and times adopted by City Council and shall generally be on the 1st and 3rd Monday of each month at 6:00 P.M. Unless designated otherwise, meetings of the City Council shall take place in the Council Chambers of City Hall, and the public is invited to attend the meetings. If the Council meets at a place or time other than its regular meeting place, then public notice to such effect shall be posted in accordance with the Texas Open Meetings Act.

2. SPECIAL MEETINGS

A special meeting may be held upon the written request of the Mayor or any two (2) council members. Notice of special meetings must be posted in accordance with the Texas Open Meetings Act.

3. JOINT MEETINGS

The Council may hold Joint Meetings with various Boards, Commissions, and/or various governmental entities that share a community interest with the City. Such meetings shall be scheduled for a specific purpose or goal, agreed to by the City and the other board or entity prior to the meeting and posted in accordance with the Texas Open Meetings Act.

4. EXECUTIVE SESSIONS

Pursuant to the Texas Open Meetings Act, the Council may conduct closed meetings that are not open to the public when the following matters are considered:

- A. Consultation with an attorney regarding pending or contemplated litigation; a settlement offer; or to receive advice on legal matters not associated with litigation.
- B. Deliberations associated with the sale, purchase or exchange of real property.
- C. Personnel matters.

D. Deliberations regarding security matters.

E. Deliberations regarding economic development negotiations.

The purpose of an executive session shall be stated in the motion to call the closed session. Any action taken on a matter discussed in executive session shall occur in an open meeting following the deliberation in closed session.

5. ATTENDANCE

Serving on the City Council is a privilege that carries with it the responsibility to represent constituents through participation in Council meetings. Attendance at council meetings is critical to fulfillment of this responsibility and accountability to public. Therefore, Council members unable to attend a Council meeting shall be required to contact the City Secretary's Office no less than two (2) hours prior to the meeting, stating the reason for such absence. The City Secretary shall inform the Council of the reason for the member's absence prior to the City Council meeting. For Regular meetings of the City Council, an agenda item shall be placed on the next Regular meeting agenda following the Council members absence for City Council to consider whether the absence is excused or unexcused. Failure to comply with the notification provisions of this section, except in cases of emergency, may result in an unexcused absence.

6. AGENDA

The City Manager and the City Secretary shall prepare an agenda for business to be considered at each regular Council meeting. It shall be the practice of the City to include on any regular Council meeting agenda all items that are deemed appropriate by the City Manager, the Mayor, or any two (2) Councilmembers.

Councilmembers desiring to make individual presentations or share information, outside of material provided in the agenda packet, regarding any posted agenda items shall submit the additional presentation material to the City Manager and the City Secretary by noon on the day of the meeting. The City Manager shall share the information with the entire City Council body no less than four hours prior to the start of the posted public meeting.

For the Mayor or any two (2) Councilmembers to have an item placed on the regular meeting agenda, the request shall be in writing and shall be filed with the City Secretary no later than noon on the Monday the week before the regular meeting at which it is requested for consideration. Agenda items requested by the Mayor or Councilmembers shall be placed on the Mayor/Councilmember reports & announcements portion of the agenda. If the filing is later than noon on the Monday before the regular meeting, the item shall be placed on the agenda of the next regular meeting, unless the Mayor and/or City Manager determine that delaying the requested item would be contrary to the City's best interest. The Agenda for the City Council Regular Meetings shall be developed by the City Manager and published by the City Secretary in the manner generally prescribed as follows:

A. Call to Order

B. Invocation

- C. Pledge of Allegiance to the United States of America flag and Texas flag
- D. Public Comments and Receipt of Petitions
- E. Presentations
- F. Reports & Announcements
- G. Old Business Consent
- H. Old Business Agenda
- I. New Business Consent Agenda-
- J. New Business
- K. Executive Session (if required)
- L. Adjournment

***At the discretion of the Mayor, special presentations may be presented prior to the Call to Order for a City Council meeting.**

7. PUBLIC COMMENT RULES

- A. All members of the audience addressing the Council ("Speaker") shall direct their remarks to the person in charge of the meeting ("Chair").
- B. No Speaker shall address the Council unless recognized by the Chair for that purpose.
- C. Remarks shall be limited to those pertaining to matters before the City Council, to City business or policy, or to issues of community concern or interest. Profane, vulgar or abusive language or personal attacks will not be tolerated.
- D. No Speaker shall continue to address the Council after being informed by the Chair that the Speaker's time for addressing the Council has expired.
- E. The Speaker shall be limited to 3 minutes to address the Council. If a single individual has been designated, on behalf of a larger group, to speak for the group, then such individual shall be allowed a maximum of 5 minutes to speak. The Chair has the authority to grant additional time, if requested by a Speaker, for good cause. At the end of the Speaker's allotted time, the Chair shall direct the Speaker to wrap up and the Speaker shall not exceed 1 additional minute of speaking time.
- F. Council shall not respond to Speakers.

8. QUORUM

Four (4) members of the Council, including the Mayor, shall constitute a quorum for conducting business, unless otherwise prescribed by law. A quorum for conducting business can be achieved with the presence of the Mayor and three (3) councilmembers; or, in the absence of the Mayor, four (4) councilmembers.

9. VOTING

- A. Unless otherwise provided by City Charter, law or ordinance, the affirmative vote of the majority of those councilmembers present shall be necessary to adopt any item on an agenda. The vote on all ordinances and resolutions shall be taken by roll call and entered into the City's official record to reflect each councilmember's vote.
- B. It is the duty of each councilmember who has an opinion on an item presented for consideration and vote to express it by a vote to approve or deny the item. It is recognized that parliamentary procedure affords members of the City Council the right to abstain from voting on an item instead of voting to approve or deny the item. To maintain public transparency, any councilmember abstaining from a vote on an item shall state the purpose for the abstention which shall be entered into the City's official record.

10. DEBATE AND DECORUM

Robert's Rules of Order Newly Revised shall, to the extent feasible, govern the proceedings of Council. The City Attorney shall act as Parliamentarian for Council meetings.

11. ETHICAL STANDARDS

It is the official policy of the City that:

- A. City officials shall be independent, impartial, and responsible to the citizens of the City;
- B. City officials shall not have a financial interest, and shall not engage in any business, transaction, or professional activity, or incur any obligation that conflicts with the proper discharge of their duties for the city in the public interest;
- C. The principles of personal conduct and ethical behavior that should guide the behavior of city officials include:
1. A commitment to the public welfare
 2. Respect for the value and dignity of all individuals;
 3. Accountability to the citizens of the city;
 4. Truthfulness; and
 5. Fairness.
- D. Under such principles of conduct and ethical behavior, City officials should:

1. Conduct business with integrity and in a manner that

- merits the trust and support of the public;
 - 2. Be responsible stewards of the taxpayers' resources; and
 - 3. Take no official actions that would result in personal benefit in conflict with the best interests of the city.
- E. To implement the purpose and principles described herein, the Council has enacted rules of ethical conduct to govern city officials (City Ordinance No. 1993-06 as it may be amended from time to time).
- F. In order to adopt standards of disclosure and transparency in government, and to promote public trust in government, the City Council adopts the following guidelines regarding public disclosure of information related to Councilmember compliance with state and local law:
- 1. The City shall maintain a City Council Public Disclosure Webpage ("Public Disclosure Page"), with a direct link, visible from the City's homepage and individual Councilmember bio pages, containing public disclosure information for each City Councilmember; and
 - 2. Each Councilmember Disclosure Page shall include public disclosure of the following information:
 - (a) All campaign finance reports required by state law; and
 - (b) All conflicts or ethical disclosures required by state or local law; and
 - (c) A copy of awarded contracts for which the Councilmember was required, by local or state law, to file a conflicts affidavit and abstain from participation in discussion of and any vote related to the contract.

12.CITY COUNCIL CENSURE

- A. Policy: The City Council places value on the characteristics of honesty, integrity, confidentiality, respect, and transparency. In furtherance of these leadership qualities and public accountability, the City Council adopts a censure policy to allow for Council disapproval or criticism of any of its members for actions unbecoming of their position.
- B. Grounds: Council members may be subject to censure if they engage in the following:
- (1) conduct found to impugn the character of a member of the public, another Council member, or staff member;
 - (2) conduct found to violate the Charter, these Rules, state and local conflicts disclosure laws, and council confidentiality including, but not limited to, the release of confidential information to unauthorized parties without approval of the City Council; or
 - (3) conduct found to cause embarrassment or damage to the

reputation of the City.

C. Procedure: The following procedural rules shall apply to a censure request:

- (1) Any three (3) Councilmembers, including the Mayor, may place a censure request on a regular meeting agenda. The request shall be in writing and shall be filed with the City Secretary no later than noon on the Monday the week before the regular meeting at which it is requested for consideration.
- (2) All Council members shall be provided a copy a censure request on the same day the request is filed with the City Secretary.
- (3) A censure request shall include the name(s) of the alleged offending Council member(s) with a statement of the reasons for the censure.
- (4) All discussion shall be conducted in open session.
- (5) The alleged offending Council member(s) shall be provided an opportunity to respond to the allegations and present evidence in their defense except that City Council may proceed with the censure request in the absence of the alleged offending Council member(s); and
- (6) A two-thirds (2/3) vote of the City Council members present, excluding the Council member that is the subject of the Censure Request, shall be required to approve a censure request.

D. Consequences: If sustained, a censure request shall serve as an official public statement of disapproval or criticism of a Council member(s) conduct subject to the following actions:

- (1) Minutes of the City Council's censure action shall be entered into the public record;
- (2) The official minutes shall be posted on the Council member(s) Public Disclosure Page; and
- (3) The censured Council member(s) may be removed from committee assignments within the city or with intergovernmental agencies.

13. USE OF CITY COMPUTERS/TABLETS

The City shall make computers and/or electronic tablets ("Device") available to Council to be used for City business and City related purposes. Personal use of a City-owned Device is discouraged and should be limited to intended City related uses of the Device. The following rules shall apply to Council members using a City issued Device:

- A. The Device shall contain all associated hardware and software. Council members shall not install hardware or software on a Device without prior approval of the City's Information Technology Department.

- B. The Device will be equipped to allow internet access and e-mail capabilities; however, Council members shall refrain from using such features to communicate with other Council members during Council meetings.
- C. Council members shall have use of the Device during the member's term of office, and such right shall terminate at the same time the member's term of office ends, at which time the Device and all associated equipment shall be returned to the City.
- D. Council members shall be responsible for maintaining the Device in good condition, and to reasonably protect it from theft, loss or damage.
- E. Council Members may not use a Device in connection with election or re-election efforts or campaigning, either for the member or any candidate for public office.
- F. Council members shall not use the Device for any commercial or financial gain, and shall not use the Device to access, store or download inappropriate or obscene material.
- G. Council should recognize that most information contained on a Device is subject to the Texas Public Information Act or other means of discovery and that all public information shall be preserved in accordance with state law.
- H. Council members shall not use the Device in a manner that would violate the terms of the Texas Open Meetings Act or Public Information Act.

14. COUNCIL APPROVAL OF INDIVIDUAL COUNCIL MEMBER NON-ROUTINE REQUESTS FOR INFORMATION OR INVESTIGATIONS BY CITY STAFF

Any Council members' request to the City Manager for the Manager or City staff to create reports or other information, other than routine requests (i.e., requests for existing information or new research that can be answered under 30 minutes), shall be added to a Council meeting agenda in the manner prescribed under section 6 of these Rules, considered under the Mayor/Council Issues portion of the meeting, and thereafter considered for authorization to proceed by a majority of the Council.

15. NEW COUNCIL MEMBER ORIENTATION

Each new Council member shall, upon taking the oath of office, be provided various forms of vital information which shall include, but not be limited to, the following:

- A. City Charter
- B. Comprehensive Plan

- C. Current Budget
- D. Comprehensive Annual Financial Report for the last Fiscal Year
- E. Council rules and Order of Business (“Rules’)
- F. Public Information Act and Open Meetings Act Training

Each new member of Council shall be offered an opportunity by the City Manager to tour various City facilities (i.e., City Hall, Police/Fire stations, Park facilities, Public works facilities, etc.).

ORDINANCE NO. 93-06

AN ORDINANCE OF THE CITY OF TOMBALL, TEXAS, AMENDING THE CODE OF ORDINANCES BY ADDING A NEW ARTICLE III, DIVISION 4 TO CHAPTER 2 OF THE CODE TO ESTABLISH A CODE OF ETHICS FOR CITY OFFICERS AND EMPLOYEES; CONTAINING DEFINITIONS; PROVIDING A PENALTY IN AN AMOUNT OF \$500 PER OFFENSE, OR AS PROVIDED BY STATE LAW; DIRECTING PUBLICATION OF THE CAPTION OF THIS ORDINANCE; FINDING THAT THE MEETINGS AT WHICH THIS ORDINANCE IS CONSIDERED ARE OPEN TO THE PUBLIC; PROVIDING FOR SEVERABILITY AND THE REPEAL OF CONFLICTING ORDINANCES; AND PROVIDING OTHER DETAILS RELATING TO THE PASSAGE OF THIS ORDINANCE.

* * * * *

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

Section 1.0. That Chapter 2 of the Code of Ordinances of the City of Tomball, Texas, is hereby amended by adding a new Article III, Division 4, which provides as follows, and which shall be renumbered to conform to the numbering system of such Code:

**"CODE OF ETHICS OF
THE CITY OF TOMBALL, TEXAS"**

1.0. Declaration of Policy.

It is hereby determined by the City Council of the City of Tomball, Texas, that the proper operation of government requires that public officers and employees be independent and impartial; that the government's decisions and policies be made within the proper channels of the governmental structure; that a public office not be used for personal gain; and that the public have confidence in the integrity of its government and its governmental officials.

The purpose of this Code is to enumerate existing state laws which regulate the conduct and activities of City officers and employees, and to promulgate such additional minimum standards as are deemed necessary and appropriate to assure the faithful and impartial administration of the City's government.

**CODE OF ETHICS OF
THE CITY OF TOMBALL, TEXAS**

2.0. Definitions.

For the purposes of this Code of Ethics the following words, terms, and phrases shall have the meanings ascribed thereto:

- 2.01. **City Employee.** Any person employed by the City, including those individuals employed on a part-time basis.
- 2.02. **City Officer.** The Mayor, members of the City Council, the City Manager, City Secretary, Municipal Court Judge and Clerk, Alternate Judges, and Substitute Judges, and each member and alternate member of all of the City Boards, Commissions, and Committees.
- 2.03. **City Official.** A City officer or City employee.

3.0. Ethical Principals.

The following Code of Ethics for all City officers and employees is adopted. To further the objectives of this Code of Ethics, certain ethical principles shall govern the conduct of every officer or employee, who shall:

1. Be dedicated to the highest ideals of honor and integrity in all public and personal relationships in order to merit the respect and confidence of the citizens of Tomball;
2. Recognize that the chief function of local government at all times is to serve the best interests of all of the people;
3. Be dedicated to public service by being cooperative and constructive, and by making the best and most efficient use of available resources;
4. Refrain from any activity or action that may hinder one's ability to be objective and impartial on any matter coming before the council or the City. Do not seek or accept gifts or special favors; believe that personal gain by use of confidential information or by misuse of public funds or time is dishonest;
5. Recognize that public and political policy decisions, based on established values, are ultimately the responsibility of the City and City Council; and

6. Conduct business in open, duly noticed meetings in order to be directly accountable to the citizens of Tomball. It is recognized that certain exceptions are made by the State for executive sessions; however, any action as a result of that type of meeting will be handled later in open session.

4.0. Standards of Conduct.

In order to more fully effectuate the policy declared in this Code of Ethics, to assure that all City officials act and conduct themselves both inside and outside the City's service so as to give no occasion for distrust of their integrity, and to avoid even the appearance of impropriety by any City official, the following standards of conduct are adopted.

4.01. Grant of Special Consideration.

No City official shall grant any special consideration, treatment, or advantage to any citizen, individual, business organization, or group beyond that which is normally available to every other citizen, individual, business organization, or group. This shall not prevent special considerations authorized and granted by the City Council for the purpose of creating incentives necessary to secure or retain employees.

4.02. Appearances on Behalf of Private Interests.

No City official shall represent or appear on behalf of private interests of others before any agency of the City, or any City board, commission, committee, or City Council concerning any case, project, or matter over which the official exercises discretionary authority, nor shall a City official represent any private interest of others in any action or proceeding involving the City, nor voluntarily participate on behalf of others in any litigation to which the City is a party.

4.03. Appearances by Past Officials.

No City official, holding a position which involves decision-making, advisory, or supervisory responsibility, shall, within twelve (12) months following the end of service with the City, represent or appear on behalf of private interests of others before the City or any agency thereof concerning any case, project, or matter over which the official has exercised discretionary authority.

4.04. Securing Special Privileges.

No City official shall use his official position to secure special privilege or exemption for himself or others.

**CODE OF ETHICS OF
THE CITY OF TOMBALL, TEXAS**

4.05. Gifts.

No City official shall accept or solicit any gift or favor that could reasonably tend to influence that individual in the discharge of official duties or that the official knows or should know has been offered with the intent to influence or reward official conduct.

4.06. Disclosure or Use of Confidential Information.

No City official shall disclose any confidential information gained by reason of his office or employment with the City, concerning any property, operation, policy, or affair of the City, or use such confidential information to advance any personal interest, financial or otherwise, of such official or others.

4.07. Incompatible Outside Activities.

No City official shall engage in any outside activity which will conflict with, or be incompatible with, the City office or employment.

4.08. Incompatible Employment.

No City official shall accept outside employment which is incompatible with the full and proper discharge of his or her duties and responsibilities with the City, or which might impair his or her independent judgment in the performance of his or her public duty.

4.09. Use of City Property for Personal Use.

No City official shall use City supplies, equipment, vehicles, or facilities for any purpose other than the conduct of official City business, unless otherwise specifically provided for by law, ordinance, or City policy.

5.0. State Laws Governing Conduct.

5.01. Conflicts of Interest.

- 5.01.01. Pursuant to § 171.001 et seq., Texas Local Government Code, a local public official having a substantial interest in a business entity or piece of real property must file, before any vote or decision is made on any matter affecting the business entity or real property, an affidavit stating the nature and extent of the interest. The official must file the affidavit with the City Secretary, and is required to abstain from any further participation in the matter if (1) the proposed action would have a special economic effect on the business entity that is distinguishable from the effect on the public, or (2) it is reasonably foreseeable that the action would have a special economic effect on the value of the real property which is distinguishable from its effect on the public. An exception to the abstention rule is provided in cases where a majority of members of the entity are likewise required to and do file affidavits.
- 5.01.02. A substantial interest in a business entity exists when the official (a) owns ten percent (10%) or more of the voting stock or shares of the business entity, or (2) owns ten percent (10%) or more or \$5,000 or more of the fair market value of the business entity, or (3) has received from the business entity funds which exceed ten percent (10%) of the official's gross income for the prior year.
- 5.01.03. A substantial interest in real property exists when the official has an equitable or legal interest in such property which has a fair market value of \$2,500 or more.
- 5.01.04. A local public official means a member of the City Council or other official of the City, paid or unpaid, who exercises responsibilities which are more than advisory only. A business entity means any entity recognized by law.
- 5.01.05. It is an offense for a local public official to act as a surety for a business entity that is contracting with the City, or to act a surety on any official bond required of an officer of the City. §171.003.
- 5.01.06. A local public official is considered to have a substantial interest if a person related to the official in the first degree by consanguinity or affinity has a substantial interest. §171.002(c).
- 5.01.07. The provisions of §171.001 et seq., are IN ADDITION to any other municipal charter provisions or municipal ordinances defining and prohibiting conflicts of interest.

**CODE OF ETHICS OF
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5.02. Bribery.

It is unlawful for a City official to accept or agree to accept (1) any benefit as consideration for a decision, opinion, recommendation, vote, or other exercise of discretion as a public servant or (2) any benefit as consideration for a decision, vote, recommendation, or other exercise of official discretion in a judicial or administrative proceeding, or (3) any benefit as consideration for a violation of a duty imposed by law on a public servant. §36.02, Penal Code.

5.03. Gifts to Public Servants.

5.03.01. It is unlawful for a City official to solicit, accept, or agree to accept any benefit from a person the official knows is subject to regulation, inspection, or investigation by the official or the City. §36.08(a), Penal Code.

5.03.02. In the event of litigation involving the City, it is unlawful for any City official to solicit, accept, or agree to accept any benefit from a person against whom the official knows litigation is pending or contemplated by the official or the City. §36.08(c), Penal Code.

5.03.03. It is unlawful for a City official who exercises discretion in connection with contracts, purchases, payments, claims, or other pecuniary transactions of government to solicit, accept, or agree to accept any benefit from a person the official knows is interested in or likely to become interested in any contract, purchase, payment, claim, or transaction involving the exercise of his discretion. §36.08(d), Penal Code.

5.03.04. It is unlawful for a City official who has judicial or administrative authority, is employed by or in a tribunal having judicial or administrative authority, or who participates in the enforcement of the tribunal's decision, to solicit, accept, or agree to accept any benefit from a person the official knows is interested in or likely to become interested in any matter before the official or tribunal. §36.08(e), Penal Code.

5.03.05. Exceptions to Gifts to Public Servants.

The provisions of §36.08, Penal Code, described above, do not apply to (1) fees prescribed by law to be received by the public official or any other benefit to which the official is lawfully entitled and for which the official has given legitimate consideration; (2) gifts or other benefits conferred on account of kinship or personal, professional, or business relationships independent of the official's status with the City; (3) certain honorariums in consideration of legitimate services; (4) benefits consisting of food, lodging, transportation, or entertainment accepted as a guest and reported as required by law; or (5) benefits for which statements must be filed pursuant to §251.011 and §251.012, Texas Election Code, if the benefit and source of any benefit exceeding fifty dollars (\$50.00) is reported and the benefit is used solely to defray expenses which accrue in the performance of duties or activities in connection with the office which are nonreimbursable by the City. §36.10, Penal Code.

5.04. Tampering with Governmental Records.

It is unlawful for any person to knowingly make a false entry in, or false alteration of, a governmental record, or to make, present, or use any record, document, or thing with knowledge of its falsity with the intent that it be taken as a genuine governmental record, or to intentionally destroy, conceal, remove, or otherwise impair the verity, legibility, or availability of a governmental record. §37.10, Penal Code.

5.05. Impersonating Public Servant.

It is unlawful for any person to impersonate a City official with intent to induce another to submit to his pretended official authority or to rely on his pretended official acts. §37.11, Penal Code.

5.06. Misuse of Official Information.

It is unlawful for a City official, in reliance on information to which he has access as a result of his office and which has not been made public, to acquire or aid another in acquiring a pecuniary interest in any property, transaction, or enterprise that may be affected by the information or to speculate or aid another in speculating on the basis of the information. §39.03, Penal Code.

5.07. Disrupting Meeting or Procession.

It is unlawful for any person, with intent to prevent or disrupt a lawful meeting, to obstruct or interfere with the meeting by physical action or verbal utterance. §42.05, Penal Code.

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5.08. Official Oppression.

It is unlawful for a City official to intentionally subject another to mistreatment or to arrest, detention, search, seizure, dispossession, assessment, or lien that he knows is unlawful, to intentionally deny or impede another in the exercise or enjoyment of any right, privilege, power, or immunity, knowing his conduct is unlawful, or to intentionally subject another to sexual harassment. §39.02, Penal Code.

5.09. Official Misconduct.

It is unlawful for a City official, with intent to obtain a benefit or with intent to harm another, to intentionally or knowingly violate a law relating to his office or employment or to misapply any thing of value belonging to the government that has come into his custody or possession by virtue of his office or employment. §39.01, Penal Code.

5.10. Nepotism.

It is unlawful for any City official to appoint, or vote for the appointment, to any office, employment or duty, of any person related within the second degree by affinity or within the third degree by consanguinity to the person so appointing or so voting, or to any other member of a board or governing body to which the person so voting or appointing may be a member, when the salary, fees, or compensation of such appointee is to be paid out of public funds. An exception is provided for persons who have been continuously employed in such office, employment or duty for the following periods prior to the election or appointment, as applicable, of the officer or member related to such employee in the prohibited degree: (1) at least thirty (30) days, if the officer or member is appointed, or (2) at least six (6) months, if the officer or member is elected.

When a person is allowed to continue in an office, position, or duty because of an exception above, the officer who is related to such person in the prohibited degree shall not participate in the deliberation or voting upon the appointment, reappointment, employment, confirmation, reemployment, change in status, compensation, or dismissal of such person, if such action applies only to such person and is not taken with respect to a bona fide class or category of employees. Art. 5996a, Tex. Rev. Civ. Stat. Ann.

5.11. Disclosure of Interest in Property.

It is unlawful for a City official, or a person elected, appointed, or employed as a City official but for which office such person has not yet qualified, to fail to make public disclosure of any legal or equitable interest he may have in property which is acquired with public funds, provided such official has actual notice of the acquisition or intended acquisition. The public disclosure required is the filing of an affidavit with the county clerks of all counties in which the property is located and wherein the official resides at least ten (10) days prior to the acquisition. Art. 6252-9e, Tex. Rev. Civ. Stat. Ann.

6.0. Violations.

- 6.01. Any person violating any standard contained in Article 4.0 above shall be deemed guilty of a misdemeanor and, upon conviction thereof shall be fined in an amount not to exceed \$500. Each day of violation shall constitute a separate offense.
- 6.02. Penalties for violations of conduct described in Article 5.0 above are as set forth in the applicable statutory provision.

Section 7.0. Publication; Effective Date; Open Meetings.

The City Secretary of the City of Tomball, Texas, is hereby directed to publish this Ordinance in the official newspaper of the City of Tomball, Texas, in compliance with the provisions of Section 6.14(A) of the City Charter, which publication shall be sufficient if it contains the caption of this Ordinance. This Ordinance shall be effective after the publication requirement of the City Charter is satisfied.

It is found and determined that the meetings at which this Ordinance was considered were open to the public, as required by Article 6252-17, V.A.T.C.S., and that advance public notice of the time, place, and purpose of the meetings was given.

Section 8.0. **Severability.** In the event any section, paragraph, subdivision,

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clause, phrase, provision, sentence, or part of this Ordinance or the application of the same to any person or circumstance shall for any reason be adjudged invalid or held unconstitutional by a court of competent jurisdiction, it shall not affect, impair, or invalidate this Ordinance as a whole or any part or provision hereof other than the part declared to be invalid or unconstitutional, and the City Council of the City of Tomball, Texas, declares that it would have passed each and every part of the same notwithstanding the omission of any such part thus declared to be invalid or unconstitutional, or whether there be one of more parts.

Section 9.0. Rights and Remedies; Repeal; Code of Ordinances.

All rights and remedies which have accrued in favor of the City under this chapter and its amendments shall be and are preserved for the benefit of the City.

All ordinances in force when this Ordinance becomes effective and which ordinances are inconsistent herewith or in conflict with this Ordinance are hereby repealed, insofar as said ordinances are inconsistent or in conflict with this Ordinance.

The provisions of this Ordinance shall be included and incorporated as an amendment to the Code of Ordinances of the City of Tomball, Texas, and shall be appropriately renumbered to conform to the uniform numbering system of the Code.

FIRST READING:

READ, PASSED, AND APPROVED AS SET OUT BELOW AT THE MEETING OF THE CITY COUNCIL OF THE CITY OF TOMBALL, HELD ON THE 3rd DAY OF May, 1993.

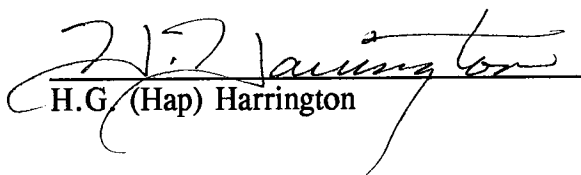
**CODE OF ETHICS OF
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COUNCILMAN FORD	<u>AYE</u>
COUNCILMAN WILEY	<u>AYE</u>
COUNCILMAN MATHESON	<u>AYE</u>
COUNCILMAN OLDHAM	<u>AYE</u>
COUNCILMAN WOOD	<u>AYE</u>

SECOND READING:

READ, PASSED, APPROVED, AND ADOPTED AS SET OUT BELOW AT THE MEETING OF THE CITY COUNCIL OF THE CITY OF TOMBALL, HELD ON THE 17th DAY OF May, 1993.

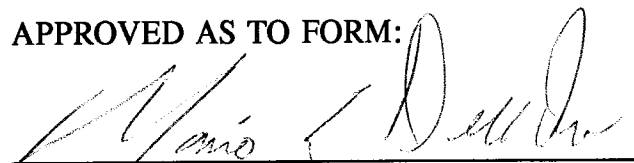
COUNCILMAN FORD	<u>AYE</u>
COUNCILMAN WILEY	<u>AYE</u>
COUNCILMAN MATHESON	<u>ABSENT</u>
COUNCILMAN OLDHAM	<u>AYE</u>
COUNCILMAN WOOD	<u>AYE</u>


 H.G. (Hap) Harrington

ATTEST:


 Mary Reagan, City Secretary

APPROVED AS TO FORM:


 Mario L. Dell'Osso
 Olson & Olson
 Attorneys For The City of Tomball

CODE OF ETHICS OF THE CITY OF TOMBALL, TEXAS

City Council Meeting Agenda Item Data Sheet

Meeting Date: February 17, 2025

Topic:

Discuss Arts & Craft Market

Background:

Origination: City Council

Recommendation:

n/a

Party(ies) responsible for placing this item on agenda: David Esquivel, PE

FUNDING (IF APPLICABLE)

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

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

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

Signed _____
Staff Member Date

Approved by _____
City Manager Date