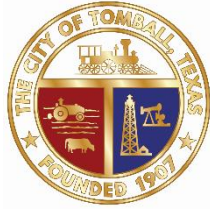


**NOTICE OF REGULAR COUNCIL MEETING
CITY OF TOMBALL, TEXAS**



**Monday, November 21, 2022
6:00 PM**

Notice is hereby given of a Regular meeting of the Tomball City Council, to be held on Monday, November 21, 2022 at 6:00 PM, City Hall, 401 Market Street, Tomball, Texas 77375, for the purpose of considering the following agenda items. All agenda items are subject to action. The Tomball City Council reserves the right to meet in a closed session for consultation with attorney on any agenda item should the need arise and if applicable pursuant to authorization by Title 5, Chapter 551, of the Texas Government Code.

THE CITY COUNCIL OF THE CITY OF TOMBALL, TEXAS, WILL CONDUCT THE MEETING SCHEDULED FOR NOVEMBER 21, 2022, 6:00 PM, AT 401 MARKET STREET, TOMBALL, TEXAS, 77375. THIS MEETING AGENDA AND THE AGENDA PACKET ARE POSTED ONLINE AT:

<HTTPS://TOMBALLTX.GOV/ARCHIVE.ASPX?AMID=38>

A RECORDING OF THE MEETING WILL BE MADE AND WILL BE AVAILABLE TO THE PUBLIC IN ACCORDANCE WITH THE OPEN MEETINGS ACT UPON WRITTEN REQUEST.

The public toll-free dial-in numbers to participate in the telephonic meeting are any one of the following (dial by your location): +1 312 626 6799 US (Chicago); +1 646 876 9923 US (New York); +1 301 715 8592 US; +1 346 248 7799 US (Houston); +1 408 638 0968 US (San Jose); +1 669 900 6833 US (San Jose); or +1 253 215 8782 US (Tahoma) - Meeting ID: 882 5810 4061, Passcode: 615310. The public will be permitted to offer public comments telephonically, as provided by the agenda and as permitted by the presiding officer during the meeting.

- A. Call to Order
- B. Invocation - Led by Pastor David Hinkle – Tomball Bible Church
- C. Pledges to U.S. and Texas Flags
- D. Public Comments and Receipt of Petitions; *[At this time, anyone will be allowed to speak on any matter other than personnel matters or matters under litigation, for length of time not to exceed three minutes. No Council/Board discussion or action may take place on a matter until such matter has been placed on an agenda and posted in accordance with law - GC, 551.042.]*

E. Presentations

- Presentation by Al Gerhardt, Tomball Lions Club - \$1000.00 donation each to Fire and Police Departments for annual Christmas Programs
- Presentation by Hyacinth Battery Energy Storage

F. Reports and Announcements

1. Announcements

- I. November 24-25, 2022 – **Thanksgiving Holidays** – City offices closed
- II. December 3, 2022 – **“Holiday Heroes”** – hosted by members of the Tomball Police, Fire and Public Works Department, in collaboration with Northwest Community Health (EMS) – Breakfast and One-on-One Shopping for the Christmas Holiday – 8:00 a.m. at the Community Center
- III. December 3, 2022 – **Deck the Depot** – Depot Plaza – 10:00 a.m.-2:00 p.m.
- IV. December 9 and 10, 2022 – Spring Creek County Historical Association’s **Annual Candlelight Tour** and **Holiday Open House** – 6:00 p.m.-9:00 p.m. at the Tomball Museum Center
- V. December 9-11, 2022 – **German Christmas Market** – Depot Plaza and Market Street
- VI. December 23 and December 26, 2022 – **Christmas Holidays** – City offices closed
- VII. January 2, 2023 – **New Year’s Day Holiday** – City offices closed

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

- I. Sasha Smith – Report on the Success of the **Depot Day** and the **Light it Up! Tree Lighting** at the Depot

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

1. Adopt, on Second Reading, Ordinance No. 2022-20, an ordinance of the City of Tomball, Texas, amending Chapter 50 (Zoning) of the Tomball Code of Ordinances by changing the Zoning District Classification of approximately 25.87

acres of land legally described as Reserve “A” in Maple Group Subdivision, from Planned Development District 8 (PD-8) to Commercial (C). The property is generally located at the northeast corner of the intersection of Holderrieth Road and State Highway 249 frontage road, providing for severability; providing for a penalty of an amount not to exceed \$2,000 for each day of violation of any provision hereof, making findings of fact; and providing for other related matters.

2. Adopt, on Second Reading, Ordinance No. 2022-38, an ordinance of the City of Tomball, Texas, amending Chapter 50 (Zoning) of the Tomball Code of Ordinances by changing the Zoning District Classification of approximately 17.08 acres of land legally described as being all of lots 1, 2, 3, and 4 of Tomball Business and Technology Park from Single Family Residential -20 (SF-20) to Light Industrial (LI). The property is located within the 1900 block of S. Persimmon Street (east and west sides), providing for severability; providing for a penalty of an amount not to exceed \$2,000 for each day of violation of any provision hereof, making findings of fact; and providing for other related matters.

3. Approve, on Second Reading, Resolution No. 2022-50-TEDC, a Resolution of the City Council of the City of Tomball, Texas Authorizing and Approving, as a Project of the Tomball Economic Development Corporation, an Economic Development Incentive between the City of Tomball (the “City”), Tomball Economic Development Corporation (the “TEDC”), and Costco Wholesale Corporation (“Costco”), to Expend Funds in Accordance with an Economic Development Incentive Agreement to promote new and expanded business development associated with the construction of a Costco retail facility and fueling station on approximately 25.88 acres of land situation at the northeast corner of the intersection of Holderrieth Road and State Highway 249 Frontage Road in the City of Tomball, Texas; Containing other Provisions relating to the Subject; and Providing for Severability.

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

1. Approve the Minutes of the following Meetings:

- November 7, 2022 Special Tomball City Council Meeting
- November 7, 2022 Special Joint Tomball City Council-TEDC Meeting
- November 7, 2022 Special Tomball City Council Meeting

2. Approve a Professional Services Agreement with Engineered Utility Solutions, Inc. for Project Number 2022-10011, Gas Master Plan, for a not-to-exceed amount of \$115,000, authorize the expenditure of funds therefor, and authorize

the City Manager to execute the agreement. This amount is included in the FY 2022-2023 budget.

3. Approve a Professional Services Agreement with Mosaic Public Partners for executive search services for the position of Human Resources Director for the not-to-exceed amount of \$27,000, authorize the expenditure of funds therefor, and authorize the City Manager to execute the agreement. This amount was included in the FY 2022-2023 budget.
4. Approve the purchase of two (2) Ford F-250 Crew Cab Trucks from Rush Truck Center through the Buyboard purchasing cooperative contract (Contract #601-19) for a not-to-exceed amount of \$102,052.00, approve the expenditure of funds therefor, and authorize the City Manager to execute any and all documents related to the purchase. These purchases are included in the FY 2022-2023 Budget.
5. Approve an agreement with Shane Griffin Power & Electrical Services, LLC for electrical contractor services for Fiscal Year 2023, for a not-to-exceed amount of \$75,000 (RFP 2022-10R), authorize the expenditure of funds therefor, and authorize the City Manager to execute the agreement. This amount is included in the FY 2022-2023 budget.
6. Approve the expenditure of \$56,700 for Incode software support and maintenance from Tyler Technologies, Inc. and authorize the City Manager to execute any and all documents related to the expenditure. This expenditure is included in the FY 2022-2023 Budget.
7. Approve the expenditure of \$52,350 for computer aided dispatch software support from CentralSquare Technologies, LLC and authorize the City Manager to execute any and all documents related to the expenditure. This expenditure is included in the FY 2022-2023 Budget.

I. New Business

1. Receive a presentation on iChoosr regarding the Texas Power Switch Program, and provide staff direction.
2. Consideration to Approve Case P22-354: Request by the City of Tomball to amend Section(s) 50-116 (*Supplemental Regulations*) of the Tomball Code of Ordinances by revising standards pertaining to subsection (j) (*Site Development Standards for Mobile Food Courts*).
 - * Conduct Public Hearing on **Zoning Case P22-354**
 - * Adopt, on First Reading, Ordinance No. 2022-40, an ordinance of the City of Tomball, Texas, amending Section(s) 50-116(j) (*Site Development*

Standards - Mobile Food Courts) Chapter 50 (Zoning) of the Tomball Code of Ordinances by revising the standards governing mobile food vendors located within mobile food courts, providing for severability; providing for a penalty of an amount not to exceed \$2,000 for each day of violation of any provision hereof, making findings of fact; and providing for other related matters.

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

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

J. Adjournment

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

I hereby certify that the above notice of meeting was posted on the bulletin board of City Hall, City of Tomball, Texas, a place readily accessible to the general public at all times, on the 17th day of November 2022 by 5:00 PM, and remained posted for at least 72 continuous hours preceding the scheduled time of said meeting.

Doris Speer, City Secretary, TRMC, MMC

This facility is wheelchair accessible and accessible parking spaces are available. Requests for accommodations or interpretive services must be made 48 hours prior to this meeting. Please contact the City Secretary’s office at (281) 290-1002 or FAX (281) 351-6256 for further information.

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

City Council Meeting Agenda Item Data Sheet

Meeting Date: November 21, 2022

Topic:

- Presentation by Al Gerhardt, Tomball Lions Club - \$1000.00 donation each to Fire and Police Departments for annual Christmas Programs
- Presentation by Hyacinth Battery Energy Storage

Background:

Origination:

Recommendation:

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

FUNDING (IF APPLICABLE)

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

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

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

Signed Doris Speer 11-15-2022 Approved by _____
Staff Member Date City Manager Date

City Council Meeting Agenda Item Data Sheet

Meeting Date: November 21, 2022

Topic:

November 24-25, 2022 – **Thanksgiving Holidays** – City offices closed

Background:

Origination:

Recommendation:

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

FUNDING (IF APPLICABLE)

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

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

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

Signed	<u>Doris Speer</u>	<u>11-1-22</u>	Approved by	_____
	Staff Member	Date		City Manager
				Date

City Council Meeting Agenda Item Data Sheet

Meeting Date: November 21, 2022

Topic:

December 3, 2022 – *“Holiday Heroes”* – hosted by members of the Tomball Police, Fire and Public Works Department, in collaboration with Northwest Community Health (EMS) – Breakfast and One-on-One Shopping for the Christmas Holiday – 8:00 a.m. at the Community Center

Background:

Origination:

Recommendation:

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

FUNDING (IF APPLICABLE)

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

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

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

Signed	<u>Doris Speer</u>	<u>11-1-22</u>	Approved by	_____
	Staff Member	Date		City Manager
				Date

City Council Meeting Agenda Item Data Sheet

Meeting Date: November 21, 2022

Topic:

December 3, 2022 – *Deck the Depot* – Depot Plaza – 10:00 a.m.-2:00 p.m.

Background:

Origination:

Recommendation:

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

FUNDING (IF APPLICABLE)

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

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

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

Signed Doris Speer 9-28-2022 Approved by _____
Staff Member Date City Manager Date

City Council Meeting Agenda Item Data Sheet

Meeting Date: November 21, 2022

Topic:

December 9 and 10, 2022 – Spring Creek County Historical Association’s *Annual Candlelight Tour* and *Holiday Open House* – 6:00 p.m.-9:00 p.m. at the Tomball Museum Center

Background:

Origination:

Recommendation:

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

FUNDING (IF APPLICABLE)

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

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

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

Signed	<u>Doris Speer</u>	<u>11-8-2022</u>	Approved by	_____
	Staff Member	Date		City Manager
				Date



TOMBALL MUSEUM CENTER
ANNUAL

Candlelight Tour



DECEMBER 9 & 10, 2022
6:00 PM-9:00 PM



TOMBALLMUSEUMCENTER.COM
SPRING CREEK COUNTY HISTORICAL ASSOCIATION

City Council Meeting Agenda Item Data Sheet

Meeting Date: November 21, 2022

Topic:

December 9-11, 2022 – **German Christmas Market** – Depot Plaza and Market Street

Background:

Origination:

Recommendation:

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

FUNDING (IF APPLICABLE)

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

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

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

Signed	<u>Doris Speer</u>	<u>11-1-22</u>	Approved by	_____	
	Staff Member	Date		City Manager	Date

City Council Meeting Agenda Item Data Sheet

Meeting Date: November 21, 2022

Topic:

December 23 and December 26, 2022 – **Christmas Holidays** – City offices closed

Background:

Origination:

Recommendation:

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

FUNDING (IF APPLICABLE)

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

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

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

Signed	<u>Doris Speer</u>	<u>11-1-22</u>	Approved by	_____
	Staff Member	Date		City Manager
				Date

City Council Meeting Agenda Item Data Sheet

Meeting Date: November 21, 2022

Topic:

January 2, 2023 – **New Year’s Day Holiday** – City offices closed

Background:

Origination:

Recommendation:

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

FUNDING (IF APPLICABLE)

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

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

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

Signed	<u>Doris Speer</u>	<u>11-1-22</u>	Approved by	_____
	Staff Member	Date		City Manager
				Date

City Council Meeting Agenda Item Data Sheet

Meeting Date: November 21, 2022

Topic:

- Sasha Smith – Report on the Success of the *Depot Day* and the *Light it Up! Tree Lighting* at the Depot

Background:

Origination:

Recommendation:

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

FUNDING (IF APPLICABLE)

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

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

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

Signed Doris Speer 11/15/22 Approved by _____
Staff Member Date City Manager Date

City Council Meeting Agenda Item Data Sheet

Meeting Date: November 21, 2022

Topic:

Adopt, on Second Reading, Ordinance No. 2022-20, an ordinance of the City of Tomball, Texas, amending Chapter 50 (Zoning) of the Tomball Code of Ordinances by changing the Zoning District Classification of approximately 25.87 acres of land legally described as Reserve "A" in Maple Group Subdivision, from Planned Development District 8 (PD-8) to Commercial (C). The property is generally located at the northeast corner of the intersection of Holderrieth Road and State Highway 249 frontage road, providing for severability; providing for a penalty of an amount not to exceed \$2,000 for each day of violation of any provision hereof, making findings of fact; and providing for other related matters.

Background:

City Staff recommends approval. Planning & Zoning Commission recommends APPROVAL (4 Vote Aye, 0 Votes Nay)

Origination: Maple Group, LTD represented by Cross Engineering

Recommendation:

Approval

Party(ies) responsible for placing this item on agenda: Nathan Dietrich, Community Development Director

FUNDING (IF APPLICABLE)

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

Yes: _____ No: _____ If yes, specify Account Number: # _____
If no, funds will be transferred from account # _____ To account # _____

Signed _____ Approved by _____
Staff Member Date City Manager Date

ORDINANCE NO. 2022-20

AN ORDINANCE OF THE CITY OF TOMBALL, TEXAS, AMENDING CHAPTER 50 (ZONING) OF THE TOMBALL CODE OF ORDINANCES BY CHANGING THE ZONING DISTRICT CLASSIFICATION OF APPROXIMATELY 25.87 ACRES OF LAND BEING ALL OF RESERVE “A” IN MAPLE GROUP SUBDIVISION FROM THE PLANNED DEVELOPMENT DISTRICT #8 (PD-8) TO THE COMMERCIAL (C) DISTRICT, BEING GENERALLY LOCATED AT THE NORTHEAST CORNER OF THE INTERSECTION OF HOLDERRIETH ROAD AND STATE HIGHWAY 249 FRONTAGE ROAD; 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, Maple Group LTD, has requested that approximately 25.87 acres of land legally described as being Reserve “A” in Maple Group Subdivision, located at the northeast corner of the intersection of Holderrieth Road and the State Highway 249 frontage road, within the City of Tomball, Harris County, Texas, (the “Property”), be rezoned; and

Whereas, at least fifteen (15) days after publication in the official newspaper of the City of the time and place of a public hearing and at least ten (10) days after written notice of that hearing was mailed to the owners of land within two hundred feet of the Property in the manner required by law, the Planning & Zoning Commission held a public hearing on the requested rezoning; and

Whereas, the public hearing was held before the Planning & Zoning Commission at least forty (40) calendar days after the City’s receipt of the requested rezoning; and

Whereas, the Planning & Zoning Commission recommended in its final report that City Council approve the requested rezoning of the Commercial District; and

Whereas, at least fifteen (15) days after publication in the official newspaper of the City of the time and place of a public hearing for the requested rezoning, the City Council held the public hearing for the requested rezoning and the City Council considered the final report of the Planning & Zoning Commission; and

Whereas, the City Council deems it appropriate to grant the requested rezoning.

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

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

Section 2. The zoning classification of the Property is hereby changed from the Planned Development District #8 to the Commercial subject to the regulations, restrictions, and conditions hereafter set forth.

Section 3. The Official Zoning Map of the City of Tomball, Texas shall be revised and amended to show the designation of the Property as Commercial District, with the appropriate reference thereon to the number and effective date of this Ordinance and a brief description of the nature of the change.

Section 4. This Ordinance shall in no manner amend, change, supplement, or revise any provision of any ordinance of the City of Tomball, save and except the change in zoning classification for the Property to the Commercial District as described above.

Section 5. In the event any section, paragraph, subdivision, clause, phrase, provision, sentence, or part of this Ordinance or the application of the same to any person or circumstance shall for any reason be adjudged invalid or held unconstitutional by a court of competent jurisdiction, it shall not affect, impair, or invalidate this Ordinance as a whole or any part or provision hereof other any part or provision hereof other than the part declared to be invalid or unconstitutional; and the City Council of Tomball, Texas, declares that it would have passed each and every part of the same notwithstanding the omission of any and every part of the same notwithstanding the omission of any such part thus declared to be invalid or unconstitutional, or whether there be one or more parts.

Section 6. Any person who shall violate any provision of this Ordinance shall be deemed guilty of a misdemeanor and upon conviction, shall be fined in an amount not to exceed \$2,000. Each day of violation shall constitute a separate offense.

FIRST READING:

READ, PASSED AND APPROVED AS SET OUT BELOW AT THE MEETING OF THE CITY COUNCIL OF THE CITY OF TOMBALL HELD ON THE 19TH DAY OF SEPTEMBER 2022.

COUNCILMAN FORD	<u>AYE</u>
COUNCILMAN STOLL	<u>AYE</u>
COUNCILMAN DUNAGIN	<u>AYE</u>
COUNCILMAN TOWNSEND	<u>AYE</u>
COUNCILMAN PARR	<u>AYE</u>

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 21ST DAY OF NOVEMBER 2022.

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

Lori Klein Quinn, Mayor

ATTEST:

DORIS SPEER, City Secretary

EXHIBIT “A”



Location: Reserve “A” of Maple Group Subdivision

**NOTICE OF PUBLIC HEARING
CITY OF TOMBALL
PLANNING & ZONING COMMISSION (P&Z)
AUGUST 8, 2022
&
CITY COUNCIL
AUGUST 15, 2022**



Notice is Hereby Given that a Public Hearing will be held by the P&Z of the City of Tomball on **Monday, August 8, 2022 at 6:00 P.M.** and by the City Council of the City of Tomball on **Monday, August 15, 2022 at 6:00 P.M.** at City Hall, 401 Market Street, Tomball Texas. On such dates, the P&Z and City Council will consider the following:

Zoning Case P22-213: Request from Yuna Holdings, LLC to amend Chapter 50 (Zoning) of the Tomball Code of Ordinance by rezoning approximately 1.44 acres of land legally described as being Lot 1, Block 1 of JTS Subdivision from General Retail (GR) to the Commercial (C) District. The property is located at the southwest corner of the intersection of Medical Complex Drive and the State Highway 249 frontage road, within the City of Tomball, Harris County, Texas.

Zoning Case P22-222: Request from DeLisa Kik to amend Chapter 50 (Zoning) of the Tomball Code of Ordinance by rezoning approximately 0.40 acres of land legally described as being all of Lots 11, 12 and the north ½ of Lot 10 in Block 2 of Main Street Tomball from Single Family Residential (SF-6) to Old Town & Mixed Use (OT&MU). The property is located 201 Holderrieth Boulevard, within the City of Tomball, Harris County, Texas.

Zoning Case P22-226: Request from Maple Group, LTD represented by Cross Engineering to amend Chapter 50 (Zoning) of the Tomball Code of Ordinance by rezoning approximately 25.87 acres of land legally described as Reserve "A" in Maple Group Subdivision, from Planned Development District 8 (PD-8) to Commercial (C). The property is generally located at the northeast corner of the intersection of Holderrieth Road and State Highway 249 frontage road, within the City of Tomball, Harris County, Texas.

At the public hearings, parties of interest and citizens will have the opportunity to be heard. All citizens of the City of Tomball, and any other interested parties, are invited to attend. Applications are available for public inspection Monday through Friday, except holidays, at the Public Works Building, located at 501 James Street, Tomball, TX 77375. Further information may be obtained by contacting the City Planner, Jared Smith, at (281) 290-1491 or at jasmith@tomballtx.gov.

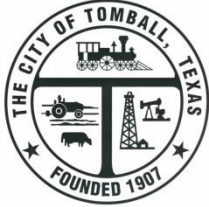
CERTIFICATION

I hereby certify that the above notice of meeting was posted on the bulletin board of City Hall; City of Tomball, Texas, a place readily accessible to the general public at all times, on the **5th** day of **August 2022** by 5:00 p.m., and remained posted for at least 72 continuous hours preceding the scheduled time of said meeting.

Jared Smith

Jared Smith
City Planner

This facility is wheelchair accessible and accessible parking spaces are available. Requests for accommodations or interpretive services must be made 48 hours prior to this meeting. Please feel free to contact the City Secretary's office at (281) 290-1002 or FAX (281) 351-6256 for further information. AGENDAS MAY ALSO BE VIEWED ONLINE AT www.tomballtx.gov.



Notice of Public Hearing

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

CASE NUMBER: P22-226

APPLICANT/OWNER: Maple Group, LTD
represented by Cross Engineering

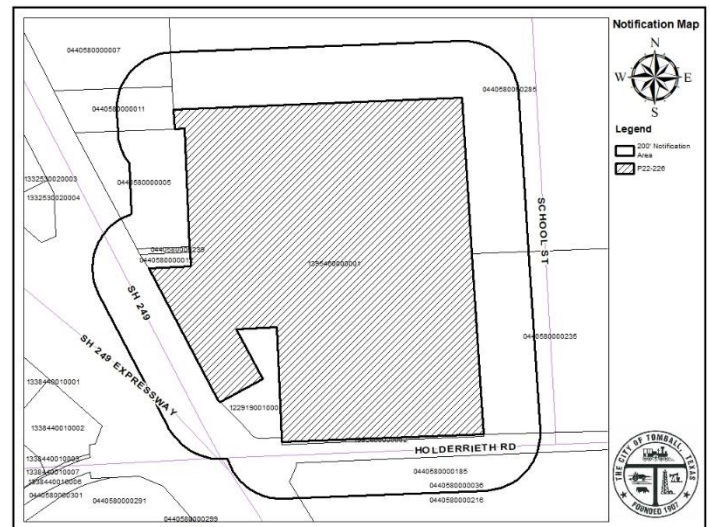
LOCATION: The property is generally located at the northeast corner of the intersection of Holderrieth Road and State Highway 249 frontage road, within the City of Tomball, Harris County, Texas.

PROPOSAL: A Rezoning to amend Chapter 50 (Zoning) of the Tomball Code of Ordinance by rezoning approximately 25.87 acres of land legally described as Reserve "A" in Maple Group Subdivision, from Planned Development District 8 (PD-8) to Commercial (C).

CONTACT: Jared Smith, City Planner
PHONE: (281) 290-1491
E-MAIL: jasmith@tomballtx.gov

Interested parties may contact the City of Tomball between 8:00 a.m. and 5:00 p.m. Monday through Friday for further information. The application is available for public review Monday through Friday, except holidays, between the hours of 8:00 a.m. and 5:00 p.m. in the Community Development Department office, located at 501 James Street, Tomball, TX 77375. The staff report will be available no later than 4:00 p.m. on the Friday preceding the meeting.

This notice is being mailed to all owners of real property within 200 feet of the request as such ownership appears on the last approved Harris County Appraisal District tax roll.



**Planning & Zoning Commission
Public Hearing:
Monday, August 8, 2022 @ 6:00 PM**

**City Council Public Hearing:
*Monday, August 15, 2022 @ 6:00 PM**

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

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



Public Comment Form

(Please type or use black ink)

All submitted forms will become a part of the public record.

Please return to:

City of Tomball
Attn: Jared Smith
501 James Street
Tomball, TX 77375

Name: Stuart A. Rathe

(please print)

Address: 917 Franklin St., Ste. 550
Houston, Tx 77002

Signature: *Stuart A. Rathe*

Date: July 27, 2022

X

I am **FOR** the requested Rezoning as explained on the attached public notice for **Zoning Case P22-226. (Please state reasons below)**

I am **AGAINST** the requested Rezoning as explained on the attached public notice for **Zoning Case P22-226. (Please state reasons below)**

Date, Location & Time of **Planning & Zoning Commission** meeting:

Monday, August 8, 2022 @ 6:00 PM

City Council Chambers of the City of Tomball, City Hall
401 Market Street, Tomball, Texas

Date, Location & Time of **City Council** meeting:

Monday, August 15, 2022 @ 6:00 PM

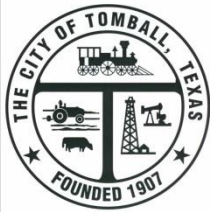
City Council Chambers of the City of Tomball, City Hall
401 Market Street, Tomball, Texas

COMMENTS:

You may also comment via email to jasmith@tomballtx.gov.

Please reference the case number in the subject line.

For questions regarding this request please call Jared Smith @ 281-290-1491.



**Rezoning
Staff Report**

Planning & Zoning Commission Public Hearing Date: August 8, 2022
City Council Public Hearing Date: August 15, 2022

Rezoning Case: P22-226
Property Owner(s): Maple Group, LTD
Applicant(s): Cross Engineering
Legal Description: Reserve "A", in Maple Group
Location: Northeast corner of the intersection of Holderrieth Road and the State Highway 249 frontage road. (Exhibit "A")
Area: 25.87 acres
Comp Plan Designation: Corridor Commercial (Exhibit "B")
Present Zoning and Use: Planned Development (PD# 8) (Exhibit "C") / Vacant (Exhibit "D")
Request: Rezone to the Commercial District
Adjacent Zoning & Land Uses:
North: Planned Development (PD #14)/Single-Family Residential Subdivision
South: N/A (ETJ)/Vacant Land
West: Commercial (C) & Planned Development (PD #8)/Retail, Office, and Martial Arts
East: Commercial (C) & Planned Development (PD #14)/Single-Family Residential Subdivision & Vacant Land

BACKGROUND

The subject property has been within the city limits since 1960 (Ordinance#1960-01) and has remained vacant since that time. The property was rezoned from Commercial to Planned Development District #8 in 2014 (Ordinance #2014-39). This planned development was intended to promote a mixed-use development that would include multi-family apartments along with commercial land uses along the State Highway 249 frontage road and Holderrieth Road. Although this planned development was adopted by ordinance the site has remained undeveloped. The applicant is requesting to rezone the property back to its original Commercial zoning classification to allow the construction of a large retail store on the subject property.

ANALYSIS

The subject property is approximately 25.87 acres, located at the northeast corner of the intersection of Holderrieth Road and State Highway 249. Property north and northeast of the subject site is located within Planned Development District #14. In June of 2022, the City of Tomball Planning & Zoning Commission approved the Final Plat of Wood Leaf Reserve, Section 2, a subdivision comprised of single-family detached homes within this segment of Planned Development #14. East of the subject property is vacant land that is within a Commercial zoning district. West of the subject site are properties that are located within Commercial zoning and are occupied by retail and office land uses. Southeast of the site is a property that is within Planned Development #8, which is occupied by buildings that predate this Planned Development; the site is occupied by a martial arts facility. South of the subject property on the south side of Holderrieth Road is vacant land that is outside the limits of the City of Tomball.

Comprehensive Plan Recommendation:

The Future Land Use Map within the Comprehensive Plan designates the subject property as “Corridor Commercial.” According to the Comprehensive Plan, this Corridor Commercial land use category is intended for predominantly nonresidential uses along high-traffic, regionally serving thoroughfares. This land use category typically is comprised of varying lot sizes and intensities predominately serving the automobile. While these areas will likely always be auto-oriented, there is opportunity to improve bicycle/pedestrian accommodations.

The Comprehensive Plan identifies regional commercial, personal service offices, multi-family, retail, entertainment, dining, hotels, and brew pub/distilleries to be appropriate land uses within the Corridor Commercial land use.

According to the Comprehensive Plan, Office, General Retail, Commercial, Mixed Use, Multi-Family, and Planned Developments are considered appropriate zoning districts within the Corridor Commercial land use category.

In making decisions regarding the neighborhood commercial land use category the following items should be considered: “Development should gain primary access from an arterial street. Pedestrian enhancements should be a focus with comfort and safety taking priority. New development should include improved standards for building form and architecture, buffering, landscaping, and signage.”

Staff Review Comments:

The request to rezone the subject property to Commercial is in accordance with the Corridor Commercial land use identified on the Future Land Use Map. According to the Comprehensive Plan this land use category is intended for nonresidential uses along high-traffic, regionally serving thoroughfares. Further, the City of Tomball Code of Ordinance states that convenient access to major thoroughfares is a primary consideration for Commercial zoning districts. The subject site is located at the intersection of Medical Complex Drive (minor arterial) and State Highway 249 (expressway). Commercial land uses are often located at intersections such as this because they provide convenient access and exposure to higher volumes of traffic. Lastly, this change in zoning may promote the Comprehensive Plans goal of promoting development that creates complimentary relationships between differing land uses. According to the Comprehensive Plan, locating commercial services within and near existing and proposed neighborhoods has the potential to be mutually beneficial.

PUBLIC COMMENT

A Notice of Public Hearing was published in the paper and property owners within 200 feet of the project site were mailed notification of this proposal on July 25, 2022. Any public comment forms will be provided in the Planning & Zoning Commission and City Council packets or during the public hearing.

STAFF RECOMMENDATION:

Based on the findings outlined in the analysis section of this staff report, the City staff recommends approval of Zoning Case P22-226.

P&Z RECOMMENDATION:

Approval (4 Vote Aye, 0 Vote Nay)

EXHIBITS

- A. Aerial Location Map
- B. Future Land Use Plan Map
- C. Zoning Map
- D. Site Photo
- E. Zoning District Permitted Use Comparison Chart
- F. Planned Development District #8 Ordinance
- G. Rezoning Application

Exhibit "A"
Aerial Location Map

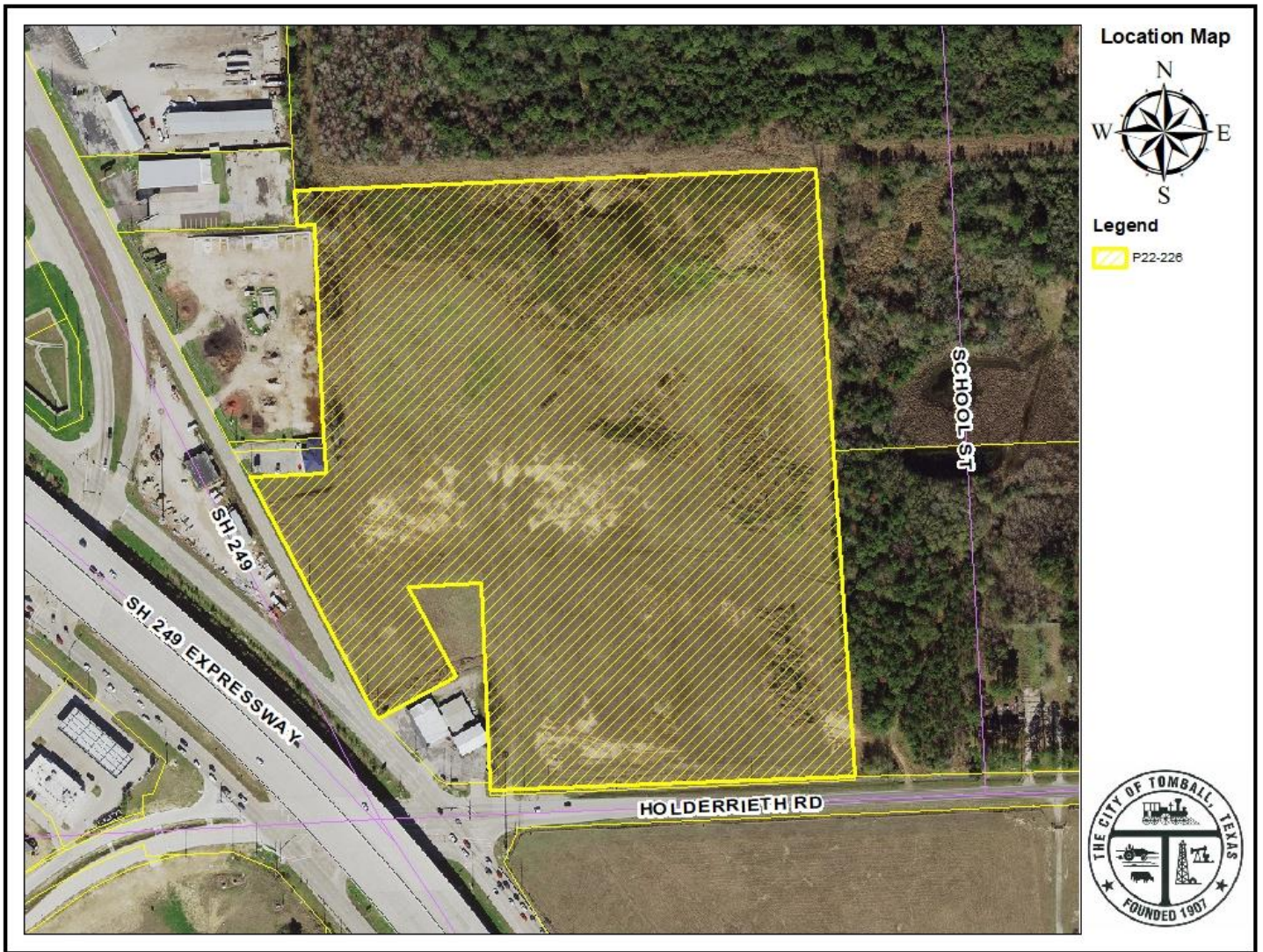


Exhibit "B"
Future Land Use Plan Map

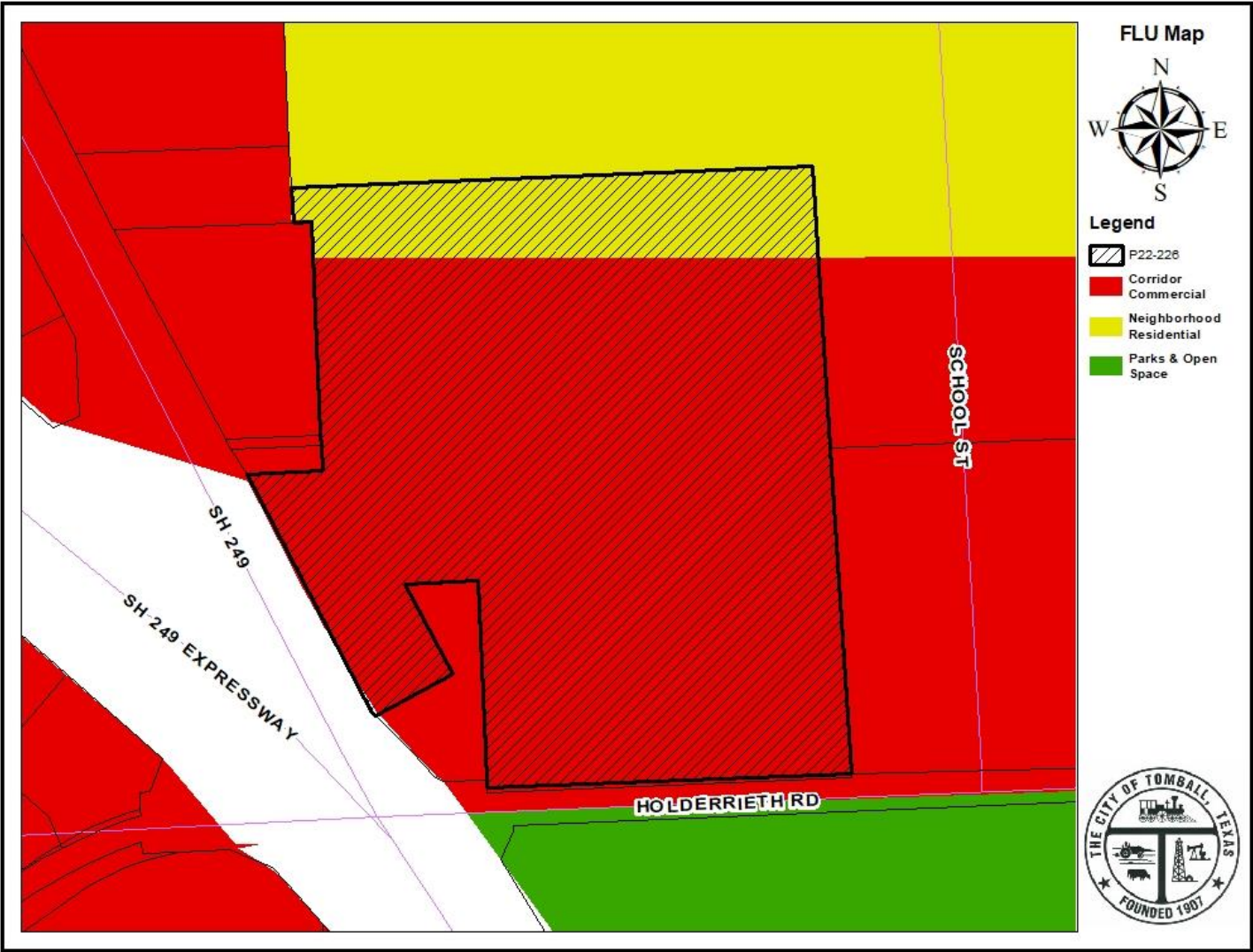


Exhibit "C" Zoning Map

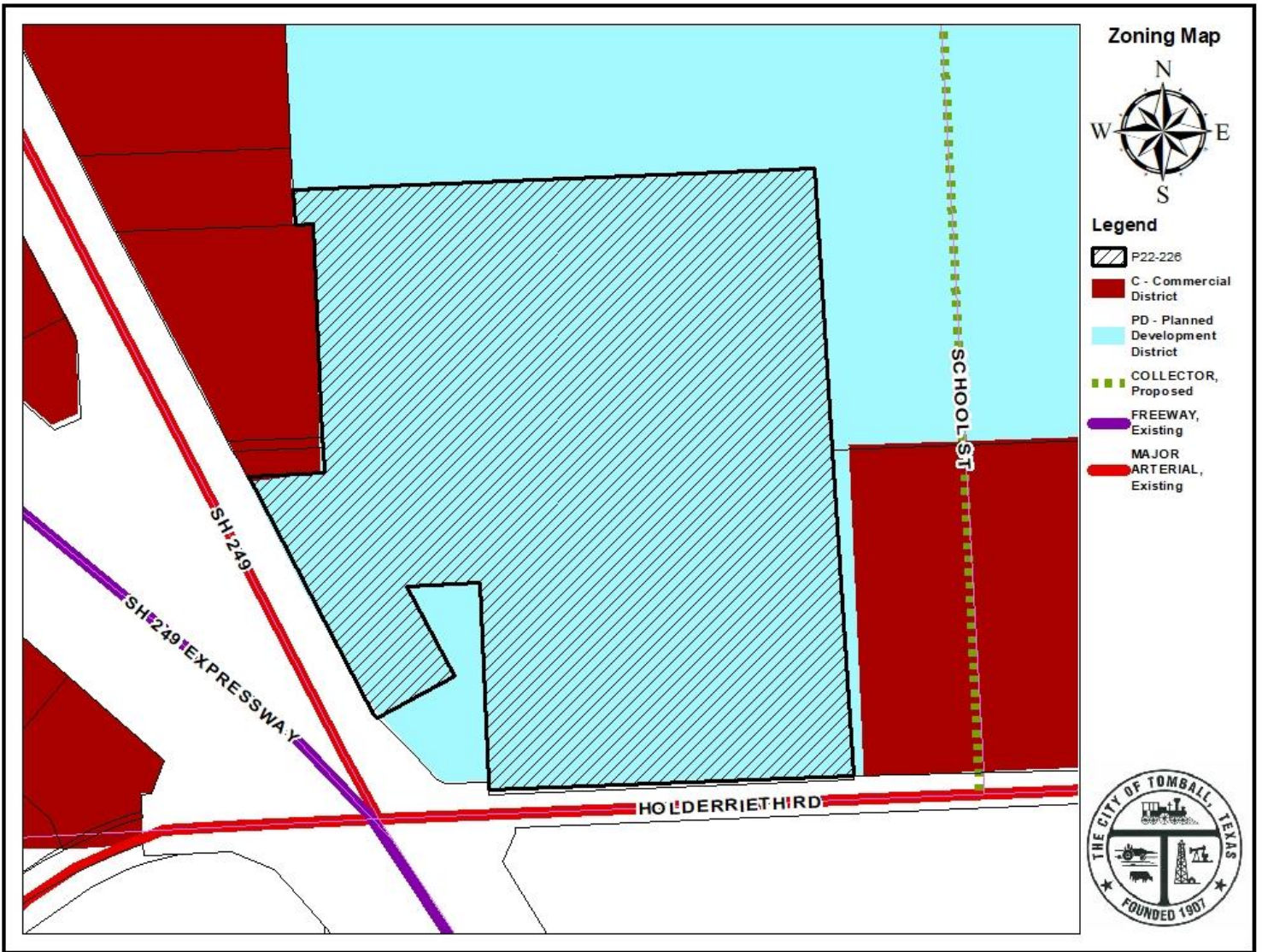


Exhibit "D"
Site Photo(s)



Exhibit “E”
Zoning District Permitted Use Comparison Chart

TYPES OF LAND USES	Zoning Districts		Parking Ratio
	GR	C	
Agriculture			
Bulk Grain and/or feed storage		C	1 space per 1,000 square feet
Farm (ranch, garden, crops, livestock, or orchard) ‡	P	P	None
Feed and grain store/farm supply store ‡	C	P	1 space per 500 square feet
Flour and other grain mills			1 space per 1,000 square feet
Livestock, wholesale/auction			None
Livestock sales/auction			None
Stable, commercial			1 space per 1,000 square feet
Stables (private, principal or accessory use) ‡			None
Residential			
Accessory building/structure (business or industry) ‡	P	P	None
Accessory building/structure (residential) ‡			None
Accessory dwelling			None
Garage/accessory dwelling ‡			None
Caretaker's, guard's residence ‡	P	P	1 space per caretaker/guard
Dwelling, four-family (quadrplex) (defined under Multiple-family dwelling) ‡			2 spaces per dwelling
Dwelling, HUD code-manufactured home ‡			2 spaces per dwelling
Dwelling, industrialized home ‡			2 spaces per dwelling
Dwelling, multiple-family ‡			2 spaces per dwelling
Dwelling, single-family attached ‡			2 spaces per dwelling
Dwelling—Single-family detached ‡			2 spaces per dwelling
Dwelling, two-family, duplex or duplex townhome ‡			2 spaces per dwelling
Dwelling, zero-lot line/patio home ‡			2 spaces per dwelling
Home occupation ‡	P	P	None
Residential use ‡	C	C	2 spaces per dwelling
Private street subdivision	C	C	None
Office			
Clinic, emergency care	P	P	1 space per 150 square feet
Clinic, medical and/or dental	P	P	1 space per 300 square feet
Credit agency	P	P	1 space per 300 square feet

TYPES OF LAND USES	Zoning Districts		Parking Ratio
	GR	C	
Bank, savings and loan, or credit union (no motor bank services)	P	P	1 space per 300 square feet
Bank, savings and loan, or credit union (with motor bank services)	P	P	1 space per 300 square feet
Office, professional and general business ‡	P	P	1 space per 300 square feet
Office, parole-probation	P	P	1 space per 300 square feet
Office showroom/warehouse ‡	C	P	1 space per 300 square feet
Security monitoring company (no outside storage)	P	P	1 space per 300 square feet
Telemarketing agency	C	C	1 space per 250 square feet
Telephone exchange/switching station ‡	P	P	1 space per 500 square feet
Temporary real estate field office	P	P	4 spaces
Model home (including sales office)	P	C	2 spaces per model
Personal and Business			
Ambulance service	C	P	1 space per 500 square feet
Automobile driving school (including defensive driving)	P	P	1 space per classroom seat
Barber/beauty shop (no related school/college)	P	P	1 space per 200 square feet
Bed and breakfast inn ‡	P	P	2 spaces plus one per guest room
Check cashing service	C	C	1 space per 100 square feet
Dance hall/dancing facility ‡	C	C	1 space per 100 square feet
Dance/drama/music schools (performing arts, martial arts)	P	P	1 space per 100 square feet
Fortunetelling and similar activities ‡			1 space per 300 square feet
Funeral home ‡	C	P	See Section 50-112
Greenhouse (non-retail/hobby)			None
Health club (indoor)	P	P	1 space per 300 square feet
Health club (outdoor)	P	P	1 space per 300 square feet
Hotel‡	P	P	See Section 50-112
Motel‡		C	See Section 50-112
Laundromat/washateria/self-service ‡	P	P	1 space per 200 square feet
Laundry/dry cleaning (retail only, drop off/pick up) ‡	P	P	1 space per 200 square feet
Loan service (payday/auto title)	C	C	1 space per 100 square feet
Mailing service (private)	P	P	1 space per 200 square feet

TYPES OF LAND USES	Zoning Districts		Parking Ratio
	GR	C	
Pharmacy (retail only)	P	P	1 space per 200 square feet
Reception venue	P	P	1 space: 4 seats
Recreational vehicle park			
Rehabilitation care facility (halfway house) ‡	P	P	Greater of 1 per three beds or 1.5 spaces per dwelling
Rehabilitation care institution (business) ‡	P	P	Greater of 1 per three beds or 1.5 spaces per dwelling
Seamstress, dressmaker or tailor (retail only)	P	P	1 space per 200 square feet
Sexually oriented business			
Tattoo or body piercing studio ‡		C	1 space per 200 square feet
Wedding chapel	P	P	1 space per four seats
Retail			
Antique shop (no outside sales or storage) ‡	P	P	1 space per 500 square feet
Antique shop (with outside storage)	C	P	1 space per 500 square feet
Apparel shop	P	P	1 space per 200 square feet
Art gallery/museum/dealer ‡	P	P	1 space per 500 square feet
Artist or photography studio	P	P	1 space per 500 square feet
Bakery, retail (eating establishment, no drive-through) ‡	P	P	1 space per 200 square feet
Bakery, retail (with drive-through)	P	P	1 space per 200 square feet
Bakery (wholesale) ‡		P	1 space per 500 square feet
Bird and pet shops (retail only)	P	P	1 space per 200 square feet
Book/stationery shop (retail only) ‡	P	P	1 space per 200 square feet
Brewpub	P	P	1 space per 1,000 square feet for the brewing of beer, ale, etc. plus 1 space per 100 square feet for associated eating or drinking establishments.
Building material sales/lumber yard ‡	C	P	1 space per 1,000 square feet
Carpenter shop	C	P	1 space per 500 square feet
Catering service	P	P	1 space per 500 square feet
Consignment shop	C	P	1 space per 300 square feet
Convenience store (with or without gasoline sales) ‡	P	P	See Section 50-112

TYPES OF LAND USES	Zoning Districts		Parking Ratio
	GR	C	
Copy shop ‡	P	P	1 space per 200 square feet
Drinking establishment	P	P	
Drug store (retail only)	P	P	1 space per 200 square feet
Eating establishment (with drive-in service) ‡	C	P	Whichever is greater: 1 per 100 square feet; 1 per 3 seats based on max seating capacity or; 1 per 12 spaces
Eating establishment (with no drive through service) ‡	P	P	
Eating establishment (with drive-through service) ‡	C	P	
Electronic goods (retail only)	P	P	1 space per 200 square feet
Florist shop (retail only) ‡	P	P	1 space per 200 square feet
Food or grocery store	P	P	1 space per 500 square feet
Furniture and appliance store (retail only) ‡	P	P	1 space per 500 square feet
Furniture store (new and used) ‡	P	P	1 space per 200 square feet
General retail stores (no outside storage)	P	P	1 space per 200 square feet
Gift or card shop (retail only)	P	P	1 space per 200 square feet
Hardware store	P	P	1 space per 400 square feet
Hobby and crafts store (retail only)	P	P	1 space per 200 square feet
Home improvement center	P	P	1 space per 400 square feet plus one per 1,000 square feet of warehouse area
Jewelry store	P	P	1 space per 200 square feet
Market, open air, flea		C	1 space per 200 square feet
Meat and fish market (retail only)	P	P	1 space per 200 square feet
Mobile Food Court ‡	C	C	Whichever is greater: 1 per 100 square feet of seating area or 2 per mobile food vendor
Motion picture studios, commercial films	C	P	1 space per 300 square feet
Motion picture theater (indoors)	P	P	See Section 50-112
Nursery ‡	P	P	1 space per 1,000 square feet of sales area
Garden shop ‡	P	P	1 space per 200 square feet
Painting and refinishing shop	C	P	1 space per 500 square feet

TYPES OF LAND USES	Zoning Districts		Parking Ratio
	GR	C	
Piano and musical instruments (retail only)	P	P	1 space per 200 square feet
Shoe repair shop (retail only)	P	P	1 space per 200 square feet
Sign shop (small scale, such as a storefront; includes sign and banner making for retail sale only; no outside storage)	P	P	1 space per 300 square feet
Stone monuments and gravestones, engraving and retail sales only	C	P	1 space per 500 square feet
Trophy engraving	P	P	1 space per 300 square feet
Upholstery shop (nonauto)	P	P	1 space per 200 square feet
Used merchandise	P	P	1 space per 200 square feet
Video rental/sales	P	P	1 space per 200 square feet
Transportation and Auto Services			
Airport or landing field ‡			1 space per 500 square feet
All-terrain vehicle (go-carts) dealer/sales (w/outdoor sales, storage, and display)	P	P	1 space per 300 square feet
All-terrain vehicle (go-carts) dealer/sales (w/no outdoor sales, storage, and display)	P	P	1 space per 300 square feet
Auto accessories (retail sales only)	P	P	1 space per 200 square feet
Auto body repair/painting	C	P	1 space per 200 square feet
Auto dealer (new, auto servicing and used auto sales as accessory uses only, w/outdoor sales, storage, and display) ‡	P	P	See Section 50-112
Auto dealer (new, auto servicing and used auto sales as accessory uses only, w/no outdoor sales, storage, and display)	P	P	See Section 50-112
Auto dealer, primarily used auto sales w/outdoor sales, storage, and display ‡	C	P	See Section 50-112
Auto dealer, primarily used auto sales w/no outdoor sales, storage, and display	C	P	See Section 50-112
Auto glass repair/tinting	P	P	1 space per 200 square feet
Auto interior shop/upholstery	C	P	1 space per 200 square feet
Auto muffler shop	C	P	1 space per 200 square feet

TYPES OF LAND USES	Zoning Districts		Parking Ratio
	GR	C	
Auto paint shop	C	P	1 space per 200 square feet
Auto parts sale (new or rebuilt; no outside storage, no outside display, no repair)	P	P	1 space per 200 square feet
Auto parts sale (new or rebuilt; with outside storage or display)	C	P	1 space per 200 square feet
Auto rental	P	P	1 space per 200 square feet
Auto repair (major) ‡	C	P	1 space per 200 square feet
Auto repair (minor) ‡	P	P	1 space per 200 square feet
Auto storage or auto auction ‡		C	1 space per 1,000 square feet
Auto tire sales (indoor)	P	P	1 space per 200 square feet
Auto wrecker service		P	1 space per 200 square feet
Automobile assembly			1 space per 1,000 square feet
Automobile parts manufacturing		C	1 space per 1,000 square feet
Automobile wash (full service/detail shop) ‡	P	P	3 spaces per washing capacity of module
Automobile wash (self-service) ‡	C	P	3 spaces per washing capacity of module
Bike sales and/or repair	P	C	1 space per 500 square feet
Bus or truck storage		P	1 space per 1,000 square feet
Gasoline station	P	P	See Section 50-112
Motor freight transportation, storage, and terminal		P	See Section 50-112
Motorcycle sales/dealer w/outdoor sales, storage, and display ‡	P	P	See Section 50-112
Motorcycle sales/dealer w/no outdoor sales, storage, and display	P	P	See Section 50-112
Parking lot or garage for passenger cars and trucks of less than one-ton capacity ‡	P	P	None
Personal watercraft sales (new/repair) w/outdoor sales, storage, and display	P	P	See Section 50-112
Personal watercraft sales (new/repair) w/no outdoor sales, storage, and display	P	P	See Section 50-112
Railroad team tracks, unloading docks, and spurs		P	None
Railroad yards, round house or shop		C	1 space per 1,000 square feet

TYPES OF LAND USES	Zoning Districts		Parking Ratio
	GR	C	
Taxi/limousine service	C	P	1 space per 1.5 automobiles in service
Tire sales (indoors, no outside storage) ‡		P	1 space per 1,000 square feet
Tire sales (outdoors, with outside storage) ‡		C	1 space per 1,000 square feet
Transfer station (refuse/pick-up) ‡		C	1 space per 500 square feet
Transit terminal ‡		P	See Section 50-112
Truck and bus leasing ‡		P	1 space per 1,000 square feet
Truck sales and services (heavy trucks) ‡		P	1 space per 1,000 square feet
Truck stop ‡		C	1 space per 1,000 square feet
Truck terminal ‡		P	See Section 50-112
Amusement and Recreation			
Amusement, commercial (indoor) ‡	C	P	1 space per 100 square feet
Amusement, commercial (outdoor) ‡	C	P	10 spaces plus 1 per 500 square feet over 5,000 square feet of building and recreation area
Amusement, commercial, temporary, (e.g., carnival, haunted house). (Note: Allowed by building official for up to 10 days) ‡		C	Determined by P & Z
Amusement devices/arcade (4 or more devices, indoors only) ‡	C	P	1 space per game table plus one per amusement device
Billiard/pool Facility (4 or more tables)	C	P	1 space per 200 square feet
Bingo facility	C	P	1 space per 200 square feet
Bowling alley (air conditioned and soundproofed)	P	P	4 spaces per lane
Dinner theatre	P	P	1 space per three seats or bench seating space
Drive-in theater		C	1 space per speaker
Golf driving range	C	P	See Section 50-112
Golf course (private) ‡	C	C	6 spaces per hole
Golf course (publicly owned) ‡	P	P	6 spaces per hole
Playfield or stadium (private)	C	P	1 space per three seats
Recreational vehicle park/campground ‡		C	1.5 per RV pad
Skating rink	P	P	1 space per 200 square feet, plus 1 per 3 seats based on max capacity
Swimming pool, private (use by membership) ‡	P	P	1 space for each 100 square feet of gross water surface and deck area

TYPES OF LAND USES	Zoning Districts		Parking Ratio
	GR	C	
Swimming pool, commercial ‡	P	P	1 space per 100 square feet of gross water surface and deck area
Tennis court (private/not lighted)	P	P	2 spaces per court
Tennis court (private/lighted)	C	C	2 spaces per court
Institutional/Governmental			
Adult day care (business)			
Antenna (commercial)			
Antenna (noncommercial)			
Armed services recruiting center	P	P	1 space per 300 square feet
Assisted living facility (continuing care retirement community) ‡	P	P	1.5 spaces per dwelling unit plus any additional space for accessory uses
Auction house	C	P	1 space per 100 square feet
Broadcast station (with tower)			
Broadcast towers (commercial)			
Cellular communications tower/PCS			
Cemetery and/or mausoleum ‡	C	C	1 space per 5,000 square feet of land
Child day care center (business) ‡	P	P	1 space per three children
Church/temple/place of worship ‡	P	P	1 space per four seats in sanctuary
Civic center (municipal) ‡	P	P	10 spaces plus 1 per 300 square feet above 2,000 square feet
Civic club	P	P	See Section 50-112
Community center (public)	P	P	See Section 50-112
Community home ‡			1 space per 300 square feet
Community or social buildings ‡	P	P	1 space per 300 square feet
Country club (private) ‡	C	C	10 spaces plus 1 per 300 square feet above 2,000 square feet
Earth satellite dish (private, less than 3 feet in diameter)			
Electric power plant		C	1 space per 1,000 square feet
Electrical substation ‡	C	C	1 space per 1,000 square feet
Exhibition hall ‡	C	P	1 space per 100 square feet
Fair ground or rodeo ‡		C	1 space per 1,000 square feet of land area
Family home (child care in place of residence) ‡	P	P	1 space per 10 children plus 1 space per teacher

TYPES OF LAND USES	Zoning Districts		Parking Ratio
	GR	C	
Fraternal organization ‡	P	P	10 spaces plus 1 per 300 square feet above 2,000 square feet
Fraternity or sorority house ‡	C	C	2 spaces per bedroom
Governmental building or use (county, state or federal) ‡	P	P	1 space per 300 square feet
Heliport ‡	C	C	3 spaces
Helistop	C	C	3 spaces
Hospital ‡	P	P	1 space per bed
Household care facility ‡			1 space per 6 clients
Household care institution	P	P	1 space per 6 clients
Institution for alcoholic, narcotic, or psychiatric patients ‡	C	C	1 space per 200 square feet
Institution of religious, educational or philanthropic nature	P	P	1 space per 200 square feet
Municipal facility or use ‡	P	P	1 space per 300 square feet
Museum	P	P	See Section 50-112
Park and/or playground (private) ‡	P	P	
Park and/or playground (public, municipal) ‡	P	P	
Penal or correctional institutions		P	1 space per 500 square feet
Post office (governmental)	P	P	10 plus 1 per 200 square feet
Non-city public assembly (auditorium, gymnasium, stadiums, meeting halls, etc.)	P	P	1 space per 4 seats
Radio, television and communications towers			
Rectory/parsonage	P	P	5 spaces, plus 1 per bedroom
Retirement housing for the elderly ‡			
Riding academy	C	C	1 space per five stalls
Sanitary landfill (private)			1 space per ten acres
School, business (e.g., barber/beauty/cosmetology)	P	P	1 space per three students, based on design
School, college or university	P	P	10 per classroom plus 2 per office
School, commercial trade (vocational) ‡	P	P	1 space per student
School, public or denominational ‡	P	P	See Section 50-112
School, other than public or denominational ‡	P	P	
Sheltered care facility ‡	C	C	1 space per three beds or 1.5 per dwelling
Sign, all types (defined within the referenced section) ‡			

TYPES OF LAND USES	Zoning Districts		Parking Ratio
	GR	C	
Skilled nursing facility ‡	C	P	See Section 50-112
Studio for radio and/or television (no towers) ‡	P	P	1 space per 200 square feet
Commercial and Wholesale Trade			
Animal kennel (outdoor pens)		C	1 space per 500 square feet
Appliance repair	P	P	1 space per 500 square feet
Book binding		P	1 space per 500 square feet
Carpet and rug cleaning plant	C	P	1 space per 1,000 square feet
Cattle, swine, or poultry feedlot (CAFO)			1 space per 5,000 square feet of land
Cleaning plant (commercial laundry) ‡	C	P	1 space per 1,000 square feet
Communication equipment sales/service (installation and/or repair, no outdoor sales or storage or towers/antennae)	P	P	1 space per 1,000 square feet
Construction contractor with storage yard		P	1 space per 1,000 square feet of land
Contractor's office/sales, no outside storage including vehicles	P	P	1 space per 1,000 square feet of land
Contractor's temporary on-site construction office (only with permit from building official)	P	P	None
Distribution center ‡		P	1 space per 1,000 square feet
Electric repair, (domestic equipment and autos)	P	P	1 space per 1,000 square feet
Electronic assembly		P	1 space per 1,000 square feet
Electro-plating/electro-typing		P	1 space per 1,000 square feet
Exterminator service/company (no outdoor sales or storage)	P	P	1 space per 300 square feet
Fix-it shops, small engine, saw filing, mower sharpening	C	P	1 space per 500 square feet
Fur/hide tanning and finishing			1 space per 1,000 square feet
Heating and air conditioning sales/services	C	P	1 space per 1,000 square feet
Iron works (ornamental)		C	1 space per 1,000 square feet
Lawnmower repair and/or sales	C	P	1 space per 500 square feet
Loading or storage tracks		P	None
Locksmith	P	P	1 space per 500 square feet
Machine shop		P	1 space per 1,000 square feet

TYPES OF LAND USES	Zoning Districts		Parking Ratio
	GR	C	
Maintenance and repair service for buildings/janitorial	C	P	1 space per 500 square feet
Manufactured home display or sales (new or used) ‡		C	1 space per 1,000 square feet
Mattress, making and renovating		P	1 space per 1,000 square feet
Milk depot, wholesale		P	1 space per 1,000 square feet
Mini-warehouse/self storage ‡	C	P	See Section 50-112
Mortuary	C	P	See Section 50-112
Moving and storage company		P	1 space per 1,000 square feet
News printing		P	1 space per 1,000 square feet
Outdoor sales as a primary use ‡	C	P	1 space per 5,000 square feet of land area
Pawn shop ‡		P	1 space per 200 square feet
Pet and animal grooming shop (no outside kennels) ‡	P	P	1 space per 200 square feet
Plumbing shop	C	P	1 space per 200 square feet
Printing equipment, supplies and repairs	C	P	1 space per 500 square feet
Propane sales filling (retail)	C	P	1 space per 200 square feet
Publishing and printing company	C	P	1 space per 500 square feet
Quick lube/oil change/minor inspection	P	P	1 space per 200 square feet
Salvage storage yard ‡			5 per acre
Scientific and industrial research laboratories (hazardous) ‡		C	1 space per 300 square feet
Scientific and industrial research laboratories (nonhazardous) ‡	C	P	1 space per 300 square feet
Scrap metal storage yard			5 space per acre
Security systems installation company	C	P	1 space per 300 square feet
Sheet metal shop		P	1 space per 1,000 square feet
Storage of cement, sands and gravel		C	1 space per 5,000 square feet of storage area
Storage of used lumber and building materials		C	1 space per 5,000 square feet of storage area
Taxicab storage and repair		P	1 space per 500 square feet
Taxidermist	C	P	1 space per 500 square feet
Tool and machinery rental (indoor storage only) ‡	P	P	1 space per 200 square feet
Tool and machinery rental (with outdoor storage) ‡	C	P	1 space per 200 square feet

TYPES OF LAND USES	Zoning Districts		Parking Ratio
	GR	C	
Vacuum cleaner sales and repair ‡	P	P	1 space per 200 square feet
Veterinarian clinic (indoor kennels) ‡	P	P	1 space per 500 square feet
Veterinarian clinic (outdoor kennels or pens) ‡		C	1 space per 500 square feet
Warehouse (defined under storage or wholesale warehouse) ‡	C	P	1 space per 1,000 square feet
Welding shop	C	P	1 space per 1,000 square feet
Wholesale trade, nondurable goods	C	P	1 space per 1,000 square feet
Woodworking shops	C	P	1 space per 1,000 square feet
Wrecking materials yard ‡			1 space per 1,000 square feet
Light and Heavy Manufacturing/Industrial			
Acid manufacture			1 space per 1,000 square feet
Adhesives and sealants manufacture		C	1 space per 1,000 square feet
Aircraft parts manufacture			1 space per 1,000 square feet
Airplane repair and manufacturing			1 space per 1,000 square feet
Animal processing and slaughter		C	1 space per 1,000 square feet
Any manufacture or industrial process not listed and not prohibited by law		C	1 space per 1,000 square feet
Artificial flower manufacture	C	P	1 space per 1,000 square feet
Asphalt paving and roofing material manufacture			1 space per 1,000 square feet
Awning manufacture, cloth, metal and wood		P	1 space per 1,000 square feet
Bag manufacturing		P	1 space per 1,000 square feet
Battery manufacture			1 space per 1,000 square feet
Bleaching/chorine powder manufacture			2 spaces per 1,000 square feet
Boiler manufacture and repair			1 space per 1,000 square feet
Bottling works		P	1 space per 1,000 square feet
Broom manufacture		P	1 space per 1,000 square feet
Candy and other confectionary products manufacture	C	P	1 space per 1,000 square feet
Canning and preserving factory		C	1 space per 1,000 square feet

TYPES OF LAND USES	Zoning Districts		Parking Ratio
	GR	C	
Canvas and related products manufacture		P	1 space per 1,000 square feet
Casein manufacture			1 space per 1,000 square feet
Celluloid and similar cellulose manufacture			1 space per 1,000 square feet
Cement manufacture			1 space per 1,000 square feet
Ceramic products manufacture	C	P	1 space per 500 square feet
Chalk manufacture			1 space per 1,000 square feet
Chemicals (agricultural) manufacture			1 space per 1,000 square feet
Chemicals (industrial) manufacture			1 space per 1,000 square feet
Clothing manufacture		P	1 space per 500 square feet
Coffee roasting		C	
Coffin manufacture		C	1 space per 1,000 square feet
Cold storage plants/locker		P	1 space per 1,000 square feet
Concrete or asphalt mixing/batching plant (permanent) ‡			1 space per 5,000 square feet of land
Concrete or asphalt mixing/batching plant (temporary) ‡	C	P	1 space per 5,000 square feet of land
Crematory			1 space per 1,000 square feet
Culvert manufacture			1 space per 1,000 square feet
Cutlery, handtools and general hardware manufacture		C	1 space per 1,000 square feet
Dairy products manufacture		C	1 space per 1,000 square feet
Distillation of liquors, spirits, etc. (brewery)			1 space per 1,000 square feet
Dye manufacture			1 space per 1,000 square feet
Dyeing plant		C	1 space per 1,000 square feet
Electric lamp manufacture		C	1 space per 1,000 square feet
Elevator manufacture			1 space per 1,000 square feet
Enameling and painting		C	1 space per 1,000 square feet
Engraving plant		P	1 space per 1,000 square feet
Envelope manufacture		P	1 space per 1,000 square feet

TYPES OF LAND USES	Zoning Districts		Parking Ratio
	GR	C	
Farm/garden machinery and equipment manufacture		C	1 space per 1,000 square feet
Fats and oils (animal) manufacture			1 space per 1,000 square feet
Feed manufacture		C	1 space per 500 square feet
Felt manufacture			1 space per 1,000 square feet
Food processing ‡		C	1 space per 1,000 square feet
Footwear manufacture		C	1 space per 500 square feet
Foundry, all types			1 space per 1,000 square feet
Furnace manufacture			1 space per 1,000 square feet
Fixtures manufacture		C	1 space per 1,000 square feet
Furniture manufacture		C	1 space per 1,000 square feet
Gases (industrial) manufacture			1 space per 1,000 square feet
Glucose manufacture			1 space per 1,000 square feet
Hair products factory (other than human)			1 space per 1,000 square feet
Heavy machinery sales and storage ‡		C	1 space per 1,000 square feet
Ice cream/ice manufacture		P	1 space per 1,000 square feet
Kerosene manufacture or storage			1 space per 1,000 square feet
Laboratory equipment manufacturing ‡			1 space per 1,000 square feet
Leather products manufacture		C	1 space per 1,000 square feet
Lumber mill/yard			1 space per 1,000 square feet
Machinery manufacture		C	1 space per 1,000 square feet
Marble working and finishing		C	1 space per 1,000 square feet
Meat packing plant			1 space per 1,000 square feet
Metal cans and shipping containers manufacture		C	1 space per 1,000 square feet
Metal products, stamping and manufacture		C	1 space per 1,000 square feet
Mirror resilvering		C	1 space per 200 square feet
Office equipment manufacture		P	1 space per 1,000 square feet

TYPES OF LAND USES	Zoning Districts		Parking Ratio
	GR	C	
Oil compounding and barreling			1 space per 1,000 square feet
Oilcloth manufacture			1 space per 1,000 square feet
Orthopedic, prosthetic, surgical appliances and supplies manufacture		P	1 space per 1,000 square feet
Paint manufacture and/or mixing		C	1 space per 1,000 square feet
Paper and paper pulp manufacture			1 space per 1,000 square feet
Paper products and paper box manufacture		P	1 space per 1,000 square feet
Pecan processing		C	1 space per 1,000 square feet
Petroleum and petroleum products refining			1 space per 1,000 square feet
Petroleum distribution/storage ‡		C	1 space per 1,000 square feet
Plastic products, molding, casting and shaping		P	1 space per 1,000 square feet
Poultry hatchery			1 space per 1,000 square feet
Poultry slaughtering and processing			1 space per 1,000 square feet
Printing ink manufacture			1 space per 1,000 square feet
Reduction of fats, ores, metals, garbage, offal, etc.; rendering plant			1 space per 1,000 square feet
Rock quarries, sand, gravel and earth excavations or extractions			1 space per acre
Rug and carpet manufacture		C	1 space per 1,000 square feet
Sand, gravel, or stone storage (including sales) ‡		C	1 space per 1.5 employees, plus five per acre
Shellac and varnish manufacture			1 space per 1,000 square feet
Sign manufacturing (no outside storage)		C	1 space per 1,000 square feet
Sign manufacturing (with outside storage)		C	1 space per 1,000 square feet
Snuff manufacture			1 space per 1,000 square feet
Soap, detergents, cleaning preparations manufacture			1 space per 1,000 square feet
Starch manufacture			1 space per 1,000 square feet
Steel works, blast furnaces and rolling mills			1 space per 1,000 square feet
Stone cutting or crushing			1 space per 5,000 square feet of land area

TYPES OF LAND USES	Zoning Districts		Parking Ratio
	GR	C	
Stone, clay, glass and concrete Products (other than handicrafts) manufacture			1 space per 1,000 square feet
Textile products manufacture		C	1 space per 1,000 square feet
Tire retreading and recapping		C	1 space per 1,000 square feet
Truck manufacture			1 space per 1,000 square feet
Waste paper products manufacture			1 space per 1,000 square feet
Water distillation		P	1 space per 1,000 square feet
White lead manufacture			1 space per 1,000 square feet
Wood container manufacture		C	1 space per 1,000 square feet
Wood distillation (manufacture of tar, charcoal, turpentine and similar			1 space per 1,000 square feet
Wood preserving manufacture and treatment			1 space per 1,000 square feet
Wood products manufacture		C	1 space per 1,000 square feet

); Ord. No. 2012-18, § 2, 7-2-2012; Ord. No. 2013-23, § 2, 2-2-2013; Ord. No. 2013-19, § 2, 11-4-2013)

Exhibit “F”
Planned Development #8

ORDINANCE NO. 2014-39

AN ORDINANCE OF THE CITY OF TOMBALL, TEXAS, AMENDING ITS ZONING ORDINANCE, BY APPROVING A PLANNED DEVELOPMENT DISTRICT OF APPROXIMATELY 27.16 ACRES OF LAND, LEGALLY DESCRIBED AS TRACTS 2M & 4N, ABSTRACT 632, C.V. PILLOT AND RESERVE A, BLOCK 1, KENNETH LEE; WITHIN THE CITY OF TOMBALL, HARRIS COUNTY, TEXAS; AMENDING THE OFFICIAL ZONING MAP OF THE CITY TO REFLECT THE PLANNED DEVELOPMENT DISTRICT TO BE KNOWN AS PLANNED DEVELOPMENT – 8 (PD-8) DISTRICT; ADOPTING A CONCEPT PLAN AND REGULATIONS APPLICABLE TO PD-8 DISTRICT; PROVIDING FOR SEVERABILITY; PROVIDING FOR A PENALTY OF AN AMOUNT NOT TO EXCEED \$2,000 FOR EACH DAY OF VIOLATION OF ANY PROVISION HEREOF, MAKING FINDINGS OF FACT; AND PROVIDING FOR OTHER RELATED MATTERS.

* * * * *

Whereas, the property owners have requested that approximately 27.16 acres of land, legally described as Tracts 2M & 4N, Abstract 632, C.V. Pillot and Reserve A, Block 1, Kenneth Lee, generally located north of Holderrieth Road, east of State Highway 249 Business, in the City of Tomball, Harris County, Texas, (the "Property"), be rezoned; and

Whereas, the property owners have presented an application to the City for a Planned Development District to allow the construction of a mixed use development; and

Whereas, the Planned Development application consists of an application for Planned Development District (Exhibit “A”); request letter (Exhibit “B”); and concept plan (Exhibit “C”) attached to and made a part of this Ordinance; and

Whereas, at least fifteen (15) days after publication in the official newspaper of the City of the time and place of a public hearing and at least ten (10) days after written notice of that hearing was mailed to the owners of land within two hundred feet of the Property in the manner required by law, the Planning & Zoning Commission held a public hearing on the requested rezoning; and

Whereas, the public hearing was held before the Planning & Zoning Commission at least forty (40) calendar days after the City’s receipt of the requested rezoning; and

Whereas, the Planning & Zoning Commission recommended in its final report that City Council approve the requested rezoning; and

Whereas, at least fifteen (15) days after publication in the official newspaper of the City of the time and place of a public hearing for the requested rezoning, the City Council held the public hearing for the requested rezoning and the City Council considered the final report of the Planning & Zoning Commission; and

Whereas, the City Council deems it appropriate to grant the requested rezoning.

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

Section 1. The City Council finds that the facts and matters set forth in the preamble of this Ordinance are true and correct.

Section 2. The zoning classification of the Property is hereby changed from the Commercial District to the PD-8 District subject to the regulations, restrictions, and conditions hereafter set forth.

Section 3. The Official Zoning Map of the City of Tomball shall be revised and amended to show the designation of the Property as PD-8 District, with the appropriate reference thereon to the number and effective date of this Ordinance and a brief description of the nature of the change.

Section 4. This Ordinance shall in no manner amend, change, supplement, or revise any provision of any ordinance of the City of Tomball, save and except the change in zoning classification of the Property, to PD-8 District as described above.

Section 5. PD-8 shall be subject to the following additional limitations, restrictions, and covenants:

- A. Compliance with Application and Concept Plan. The granting of the PD District shall be conditioned upon the proposed improvements and land uses being located, constructed, and conducted upon the Property in substantial compliance with the application for PD District (Exhibit "A"), request letter (Exhibit "B"), and concept plan (Exhibit "C") made a part hereof for all purposes.
- B. Tracts A, B, C, & D:
 - 1. Permitted Uses: Any use permitted by right in the General Retail District
 - 2. Maximum Height:
 - i. Main Building: 3-stories, not to exceed 45-feet
 - ii. Accessory Building: 1-story, not to exceed 15-feet
 - 3. Minimum Lot Size:
 - i. Area: 6,000 square feet
 - ii. Width: 60-feet

- iii. Depth: 100-feet
- 4. Minimum Building Setback:
 - i. Front: 25-feet; 35-feet when adjacent to arterial street
 - ii. Side:
 - 1. Main Building: 5-feet; 25-feet when adjacent to property zoned for single-family residential purposes; 15-feet when adjacent to non-arterial street; 25-feet when adjacent to arterial street
 - 2. Accessory Building: 5-feet; 15-feet when adjacent to non-arterial street; 25-feet when adjacent to arterial street
 - iii. Rear:
 - 1. Main Building: 5-feet; 60-feet when adjacent to single-family, Duplex (Two-Family), patio home, or single-family attached district
 - 2. Accessory Building: 5-feet; 30-feet when adjacent to single-family, Duplex (Two-Family), patio home, or single-family attached district
- 5. Maximum Lot Coverage: 50 percent
- 6. Maximum Impervious Coverage: 80 percent
- 7. Minimum Screening, Buffering, and Fencing:
 - i. All screening, buffering, and fencing shall adhere to Section 50-115 of Tomball Code of Ordinances.
 - ii. All refuse containers shall be screened on four sides.
- 8. Minimum Off-Street Parking and Loading:
 - i. All off-street parking and loading areas shall adhere to Section 50-112 of the Tomball Code of Ordinances.
 - ii. The minimum number of off-street parking stalls and loading areas shall be per Sections 50-82 and 50-112 of the Tomball Code of Ordinances.

9. Minimum Landscaping:

- i. Landscaping shall be provided per Section 50-113 of the Tomball Code of Ordinances.

10. Additional Requirements: Articles 1; 2; Sections 50-63, 50-64, 50-65, 50-66, and 50-67; and Article 4, Tomball Code of Ordinances.

C. Tract E (Multi-Family):

1. Permitted Uses: Multiple-family dwellings and accessory structures.

2. Maximum Height:

- i. Main Building: 3-stories, not to exceed 45-feet
- ii. Accessory Building: 1-story, not to exceed 15-feet
- iii. Clubhouse: 2-stories, not to exceed 27-feet

3. Maximum Dwelling Units Per Acre: 20; 26 when all parking spaces are constructed as covered or enclosed spaces

4. Minimum Lot Size:

- i. Area: 10 acres
- ii. Width: 120-feet
- iii. Depth: 200-feet

5. Minimum Building Setback:

- i. Front: 25-feet; 35-feet when adjacent to arterial street
- ii. Side:
 - 1. Main Building: 5-feet; 50-feet when adjacent to property zoned for single-family residential purposes; 15-feet when adjacent to non-arterial street; 25-feet when adjacent to arterial street
 - 2. Accessory Building: 5-feet; 15-feet when adjacent to non-arterial street; 25-feet when adjacent to arterial street

- iii. Rear:
 - 1. Main Building: 15-feet; 50-feet when adjacent to single-family, Duplex (Two-Family), patio home, or single-family attached district
 - 2. Accessory Building: 5-feet; 30-feet when adjacent to single-family, Duplex (Two-Family), patio home, or single-family attached district
- 6. Minimum Building Separation:
 - i. 1-Story Building: 15-feet for buildings without openings; 20-feet for buildings with openings
 - ii. 2-Story Building: 20-feet for buildings without openings; 30-feet for buildings with openings
 - iii. Over 2-Story Building: 30-feet
 - iv. Between Main and Accessory Buildings: 10-feet
- 7. Minimum Floor Area Per Dwelling Unit:
 - i. Efficiency: 500 square feet
 - ii. 1-Bedroom: 670 square feet
 - iii. 2 or More Bedroom: 800 square feet plus 125 square feet for every bedroom over two
- 8. Maximum Lot Coverage: 50 percent
- 9. Maximum Impervious Coverage: 50 percent
- 10. Minimum Percent of Lot Area Dedicated to Green Space and Recreational Area: 50 percent
- 11. Minimum Screening, Buffering, and Fencing:
 - i. All screening, buffering, and fencing shall adhere to Section 50-115 of Tomball Code of Ordinances.
 - ii. A minimum 6-foot tall solid fence, wall, or opaque screening device shall be constructed on the side/rear of any multi-family dwelling complex adjacent to a single-family zoned property

- iii. All refuse containers shall be screened on four sides.

12. Minimum Off-Street Parking and Loading:

- i. All off-street parking and loading areas shall adhere to Section 50-112 of the Tomball Code of Ordinances.
- ii. 1 off-street parking stall shall be provided per bedroom

13. Minimum Landscaping:

- i. Landscaping shall be provided per Section 50-113 of the Tomball Code of Ordinances.

14. Additional Requirements:

- i. Articles 1; 2; Sections 50-63, 50-64, 50-65, 50-66, and 50-67; and Article 4, Tomball Code of Ordinances.
- ii. Walkways: A four-foot-wide paved walkway shall connect the front door of each ground floor unit to a parking area. The minimum width of any sidewalk adjacent to head-in parking spaces shall be six feet to accommodate a two-foot bumper overhang for vehicles. Sidewalks of concrete cement or other masonry construction shall be provided between the dwelling units and all community facilities provided for residents in accordance with applicable city standards and specifications. All walks shall be lighted at night with a minimum intensity of two footcandles' illumination.
- iii. Building length: Buildings shall not exceed 200 feet in length.
- iv. Oversized parking areas: Boats, campers, trailers and other recreational vehicles shall be prohibited unless oversize parking areas are provided and approved by the City. This parking area shall not be used to meet the minimum parking requirements and shall not be visible from a public street.
- v. Signage: Address numbers. All buildings containing residential units shall provide signage which clearly identifies the numbers (i.e., addresses) of the units within each building. Signage shall be visible from entrances into the complex and/or from vehicular drive aisles within the complex such that each individual unit is easy to locate by visitors, delivery persons, and/or emergency personnel.

- vi. Lighting: All parking areas shall have appropriate lighting and shall be positioned such that lights are shielded and do not adversely impact adjacent residential areas.
- vii. Gated/secured entrances: Gated/secured entrances shall be in accordance with the design standards for gated/secured entrances on private streets as adopted.
- viii. Streets or driveways: Each multifamily dwelling complex shall have driveways constructed of concrete cement or hot mixed asphalt, shall be curbed and guttered in accordance with existing requirements of the city, and shall be at least 28 feet in width throughout. All driveways shall be lighted at night with a minimum intensity of two foot-candles' illumination.

Section 6. In the event any section, paragraph, subdivision, clause, phrase, provision, sentence, or part of this Ordinance or the application of the same to any person or circumstance shall for any reason be adjudged invalid or held unconstitutional by a court of competent jurisdiction, it shall not affect, impair, or invalidate this Ordinance as a whole or any part or provision hereof other any part or provision hereof other than the part declared to be invalid or unconstitutional; and the City Council of Tomball, Texas, declares that it would have passed each and every part of the same notwithstanding the omission of any and every part of the same notwithstanding the omission of any such part thus declared to be invalid or unconstitutional, or whether there be one or more parts.

Section 7. Any person who shall violate any provision of this Ordinance shall be deemed guilty of a misdemeanor and upon conviction, shall be fined in an amount not to exceed \$2,000. Each day of violation shall constitute a separate offense.

Section 8. City Council finds and determines that the meeting at which this ordinance is passed was open to the public as required and that public notice of the time, place, and purpose of said meeting was given as required by the Texas Open Meetings Act, Tex.Gov't. Code ch. 551.

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 17TH DAY OF NOVEMBER 2014.

COUNCILMAN HUDGENS	<u>AYE</u>
COUNCILMAN STOLL	<u>AYE</u>
COUNCILMAN DEGGES	<u>AYE</u>
COUNCILMAN TOWNSEND	<u>NAY</u>
COUNCILMAN QUINN	<u>AYE</u>

SECOND READING:

READ, PASSED AND APPROVED AS SET OUT BELOW AT THE MEETING OF THE CITY COUNCIL OF THE CITY OF TOMBALL HELD ON THE 1ST DAY OF DECEMBER 2014.

COUNCILMAN HUDGENS	<u>AYE</u>
COUNCILMAN STOLL	<u>AYE</u>
COUNCILMAN DEGGES	<u>AYE</u>
COUNCILMAN TOWNSEND	<u>NAY</u>
COUNCILMAN QUINN	<u>AYE</u>



Gretchen Fagan, Mayor

ATTEST:



Doris Speer, City Secretary

Exhibit "G"
Rezoning Application

Revised: 4/13/2020



APPLICATION FOR RE-ZONING
Community Development Department
Planning Division

APPLICATION SUBMITTAL: Applications will be *conditionally* accepted on the presumption that the information, materials and signatures are complete and accurate. If the application is incomplete or inaccurate, your project may be delayed until corrections or additions are received.

Applicant

Name: CROSS ENGINEERING Title: PRESIDENT
Mailing Address: 1955 RAYMOND DRIVE City: NORTHBROOK State: IL
Zip: 60062 Contact: STEPHEN CROSS
Phone: (847) 4980800 Email: SCROSS@CROSSENGINEERING.NET

Owner

Name: MAPLE GROUP, LTD Title: PARTNER
Mailing Address: 917 FRANKLIN ST City: HOUSTON State: TX
Zip: 77002 Contact: STUART RATHE
Phone: (713) 236 1800 Email: SRATHE@MAPLEDEVELOPMENT.COM

Engineer/Surveyor (if applicable)

Name: WINKELMANN & ASSOCIATES, INC Title: PRESIDENT
Mailing Address: 6750 HILLCREST PLAZA DR #215 City: DALLAS State: TX
Zip: 75230 Contact: MICHAEL CLARK
Phone: (214) 801 7216 Fax: () Email: MCLARK@WINKELMANN.COM

Description of Proposed Project: COMMERCIAL WHOLESALE WAREHOUSE / FUEL CENTER

Physical Location of Property: NEC HOLDERRIETH ROAD @ TOMBALL FWY
[General Location - approximate distance to nearest existing street corner]

Legal Description of Property: SEE ATTACHED - RESERVE A MAPLE GROUP
[Survey/Abstract No. and Tracts; or platted Subdivision Name with Lots/Block]

Current Zoning District: PD. (B)

Current Use of Property: VACANT

Proposed Zoning District: C (COMMERCIAL)

Proposed Use of Property: WHOLESALE WAREHOUSE / FUEL CENTER

HCAID Identification Number: 683989 Acreage: 25.876

City of Tomball, Texas 501 James Street, Tomball, Texas 77375 Phone: 281-290-1405 www.tomballtx.gov

Please note: A courtesy notification sign will be placed on the subject property during the public hearing process and will be removed when the case has been processed.

This is to certify that the information on this form is COMPLETE, TRUE, and CORRECT and the under signed is authorized to make this application. I understand that submitting this application does not constitute approval, and incomplete applications will result in delays and possible denial.

<input checked="" type="checkbox"/>	<u>Stephen Kline</u>	<u>6/28/22</u>
	Signature of Applicant	Date
<input checked="" type="checkbox"/>	<u>John R. Kline</u>	<u>6/28/22</u>
	Signature of Owner	Date

Submittal Requirements

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

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

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

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

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

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

Application Process

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

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

TAX CERTIFICATE

ANN HARRIS BENNETT
HARRIS COUNTY TAX ASSESSOR-COLLECTOR
1001 PRESTON, SUITE 100
HOUSTON, TEXAS 77002

Issued To: MAPLE GROUP LTD A TEXAS LTD PARTNERSHIP 917 FRANKLIN ST STE 550 HOUSTON, TX 77002-1741	Legal Description: TR5 2M & AN ADPT 632 C V PILEOT
Parcel Address: 0 HOLDENBRIETH RD	Legal Acres: 25.9589

Account Number: **044-058-000-0272**

Certificate No: 1210192
Certificate Fee: \$10.00

Print Date: 01/24/2018
Paid Date: 02/26/2018
Operator ID: 0000101

TAX CERTIFICATES ARE ISSUED WITH THE MOST CURRENT INFORMATION AVAILABLE. ALL ACCOUNTS ARE SUBJECT TO CHANGE PER SECTION 231.02 OF THE TEXAS PROPERTY TAX CODE. THIS IS TO CERTIFY THAT ALL TAXES DUE ON THE ABOVE DESCRIBED PROPERTY HAVE BEEN EXAMINED UP TO AND INCLUDING THE YEAR 2017. ALL TAXES ARE PAID IN FULL.

Exemptions:

Certified Owner:
MAPLE GROUP LTD A TEXAS LTD PARTNERSHIP
917 FRANKLIN ST STE 550
HOUSTON, TX 77002-1741

Certified Tax Units:

2017 Value:	3,391,146	41 Texas County
2017 Levy:	500,141.76	41 Harris County Flood Control Dist
2017 Levy Balance:	30.00	41 Port of Houston Authority
Prior Year Levy Balance:	50.00	41 Harris County Hospital District
Total Levy Due:	30.00	44 Harris County Dept. of Education
P&I - Attorney Fee:	30.00	42 Lone Star College System
Total Amount Due:	30.00	41 City of Houston
		679 Emergency Services Unit P (H.M.S.)

OFFICE OF
STAN STANART
COUNTY CLERK, HARRIS COUNTY, TEXAS
MAP RECORDS OF COUNTY CLERK
683900
FILM CODE
MAPLE GROUP
THIS IS PAGE 8 OF 8 PAGES
SCANNER Control IQ4400

Referenced (C) No. [Signature]
Issued to:
ANN HARRIS BENNETT
HARRIS COUNTY TAX ASSESSOR-COLLECTOR

53.1.00

TAX CERTIFICATE FROM ACCOUNT: 0440580000272 PAGE 1 OF 1

AD NUMBER: 0440580000272
DP NUMBER: 0440580000272
CERTIFICATE NO: 220947

DATE: 1/24/2018
FEE: \$10.00

PROPERTY DESCRIPTION
TR5 2M & AN ADPT 632 C V PILEOT

COLLECTING AGENCY
King Williams
PO Box 276
Tomball TX 77377-0276

000000 HOLDENBRIETH RD
25.95 ACRES

REQUESTED BY
LJA ENGINEERING

PROPERTY OWNER
MAPLE GROUP LTD A TEXAS LTD PAR
917 FRANKLIN ST STE 550
HOUSTON TX 77002-1741

TX

THIS IS TO CERTIFY THAT THE AD VALOREM RECORDS OF THE TOMBALL IED TAX ASSESSOR-COLLECTOR REFLECT THE TAX, INTEREST, AND OTHER STATUTORY FEES THAT HAVE BEEN ASSESSED AND ARE NOW DUE TO THE TAXING ENTITIES AND FOR THE YEARS SET OUT BELOW FOR THE DESCRIBED PROPERTY HEREIN. THE TAX ASSESSOR-COLLECTOR MAKES NO CERTIFICATION AS TO THE AMOUNT OF TAX, PENALTY, INTEREST, OR OTHER FEES ASSESSED BY OR DUE ANY TAXING ENTITY FOR THE YEAR OR YEARS FOR WHICH THE TAX ASSESSOR-COLLECTOR DOES NOT HAVE THE STATUTORY AUTHORITY TO COLLECT OR KEEP RECORDS OF SUCH COLLECTION. ADDITIONAL TAXES MAY BECOME DUE ON THE DESCRIBED PROPERTY, WHICH ARE NOT REFLECTED HEREIN, IF THE SAID DESCRIBED PROPERTY HAS OR IS RECEIVING ANY SPECIAL STATUTORY VALUATIONS THAT MAY THROUGH TAX COLLECTOR PROVISIONS, THIS CERTIFICATE APPLIES TO AD VALOREM TAXES ONLY AND DOES NOT APPLY TO ANY SPECIAL ASSESSMENT LEVELS.

CURRENT VALUES							
ANNUAL VALUE:	3,391,146	IMPROVEMENT	0	DEFERRED	0	LIMITED VALUE:	0
AD VALOREM VALUE:	3,391,146	DEFERRED	0	DEFERRED	0	DEFERRED	0

YEAR	TAX UNIT	LEVY	PEN	INT	DEF INT	ATTY	AMOUNT DUE
2017	TOMBALL I.S.D.	0.00	0.00	0.00	0.00	0.00	0.00
2017 SUB TOTAL							30.00

TOTAL CERTIFIED TAX DUE 1/2018: \$ 0.00

ISSUED TO: LJA ENGINEERING
ASSIGNMENT NUMBER: 0440580000272

CERTIFIED BY: [Signature] TOMBALL I.S.D.

This is a statement from the Tax Collector of Tomball I.S.D., indicating that the taxes to be imposed by Tomball Independent School District for the 2018 tax year have not been calculated as of the above date.

PROPERTY DESCRIPTION

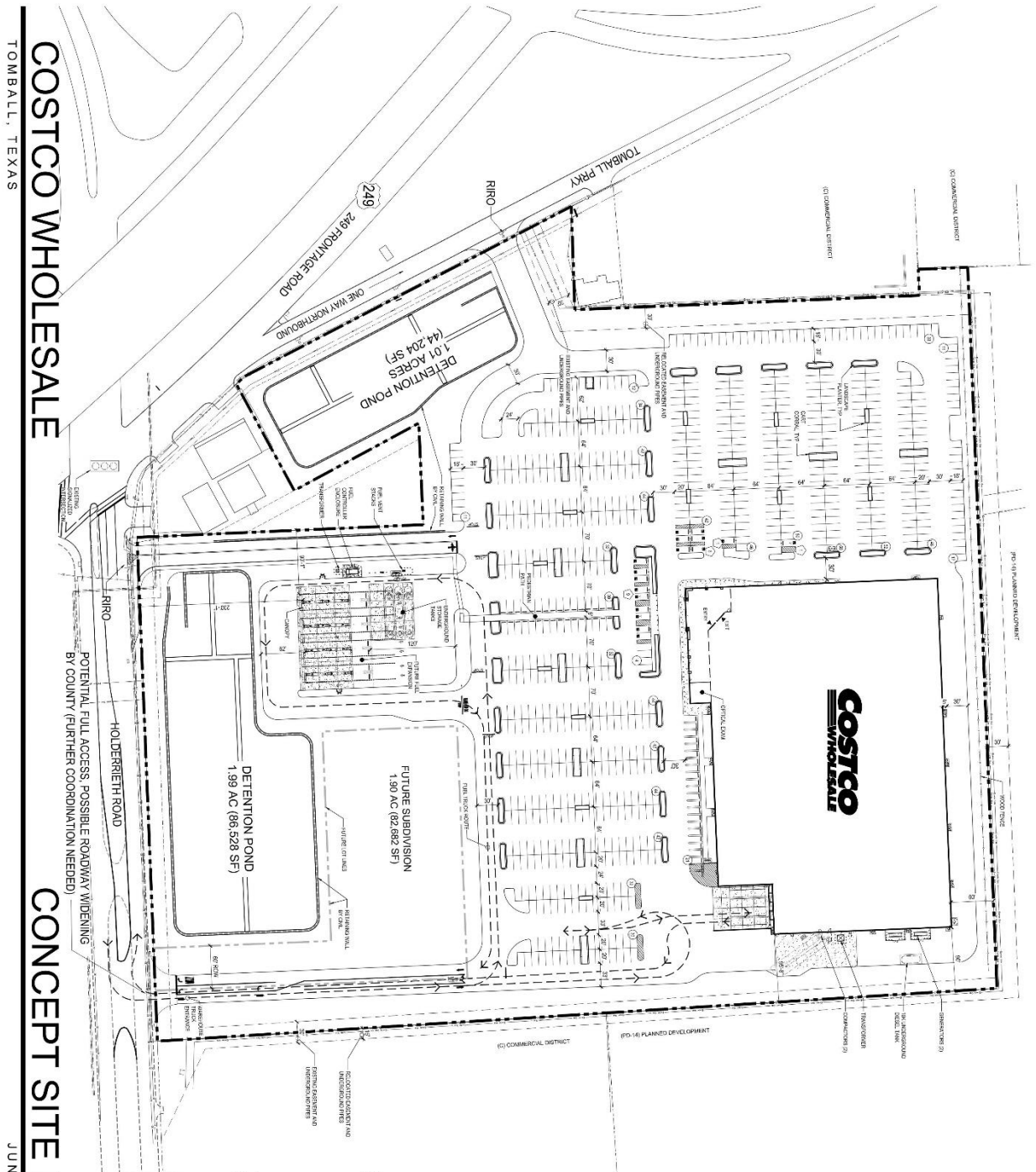
STATE OF TEXAS

COUNTY OF HARRIS

BEING all of Reserve "A" of Maple Group, an addition to the City of Tomball, Harris County, Texas, according to the plat thereof recorded in Film Code No. 683989, Map Records, Harris County, Texas.

CONTAINING 25.876 acres or 1,127,139 square feet of land, more or less.

Bearings shown hereon are based upon an on-the-ground Survey performed in the field on the 14th day of January, 2022, utilizing a G.P.S. bearing related to the Texas Coordinate System, South Central Texas Zone (4204), NAD 83, grid values from the GeoShack VRS network.



COSTCO WHOLESALE

TOMBALL, TEXAS

CONCEPT SITE PLAN

JUNE 28, 2022

PROJECT DATA
 CLIENT: COSTCO WHOLESALE
 999 LAKE DRIVE
 ISSAQUAH, WA 98027
 PROJECT ADDRESS: 11000 TOMBALL PKWY
 HUNTSVILLE, TX 77340
 TOMBALL, TX

SITE DATA:
 TOTAL COSTCO SITE AREA: 25.88 ACRES (1,127,119 SF)
 INCLUDES:
 WAREHOUSE SITE AREA: 20.88 ACRES (913,705 SF)
 DETENTION POND: 1.01 ACRES (44,204 SF)
 FUTURE SUBDIVISION: 1.99 ACRES (86,528 SF)

JURISDICTION: CITY OF TOMBALL
 ZONING: COMMERCIAL
 SETBACKS: FRONT: 75'
 SIDE: 00'
 REAR: 00'

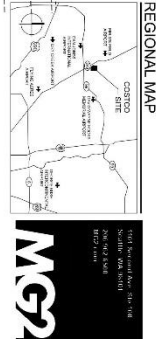
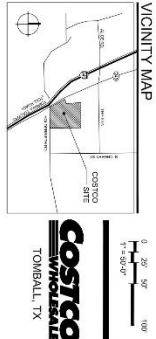
FUEL FACILITY: FRONT: 230'
 SIDE: 90'

BOUNDARIES: THIS PLAN HAS BEEN PREPARED BY USING CIVIL ALTA SURVEY BY WINDELMANN DATED 02/22/2022

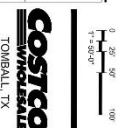
BUILDING DATA:
 TOTAL WAREHOUSE FOOTPRINT AREA: 161,119 SF
 INCLUDES:
 NET SALES FLOOR: 151,466 SF
 NET MECHANICAL / FIRE: 2,429 SF
 NET OPEN VESTIBULE: 4,834 SF
 BUILDING ENVELOPE: 2,680 SF
 WAREHOUSE HEIGHT: 33'-0"
 TOTAL FUEL CANOPY AREA: 8,127 SF
 TOTAL FUEL ENCLOSURE AREA: 192 SF
 FUEL ENCLOSURE HEIGHT: 9'-0"

PARKING DATA:
 TOTAL PARKING: 861 STALLS
 INCLUDES:
 10' WIDE STALLS: 844 STALLS
 ACCESSIBLE STALLS: 17 STALLS
 NUMBER OF STALLS PER 1000 SF OF BUILDING AREA: 5.35 STALLS

NOTES:
 EXISTING CONDITIONS TO BE FIELD VERIFIED



22-2597-01
 JUNE 28, 2022
 CONCEPT SITE PLAN
 DD11-04



City Council Meeting Agenda Item Data Sheet

Meeting Date: November 7, 2022

Topic:

Adopt, on Second Reading, Ordinance No. 2022-38, an ordinance of the City of Tomball, Texas, amending Chapter 50 (Zoning) of the Tomball Code of Ordinances by changing the Zoning District Classification of approximately 17.08 acres of land legally described as being all of lots 1,2,3, and 4 of Tomball Business and Technology Park from Single Family Residential -20 (SF-20) to Light Industrial (LI). The property is located within the 1900 block of S. Persimmon Street (east and west sides), providing for severability; providing for a penalty of an amount not to exceed \$2,000 for each day of violation of any provision hereof, making findings of fact; and providing for other related matters.

Background:

City Staff recommends approval. Planning & Zoning Commission recommends DENIAL (2 Vote Aye, 2 Votes Nay)

Origination: Tomball Economic Development Corporation and Tortuga Operating Company

Recommendation:

Approval

Party(ies) responsible for placing this item on agenda: Nathan Dietrich, Community Development Director

FUNDING (IF APPLICABLE)

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

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

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

Signed _____
Staff Member Date

Approved by _____
City Manager Date

ORDINANCE NO. 2022-38

AN ORDINANCE OF THE CITY OF TOMBALL, TEXAS, AMENDING CHAPTER 50 (ZONING) OF THE TOMBALL CODE OF ORDINANCES BY CHANGING THE ZONING DISTRICT CLASSIFICATION OF APPROXIMATELY 17.08 ACRES OF LAND LEGALLY DESCRIBED AS BEING LOTS 1, 2, 3, AND 4 OF TOMBALL BUSINESS & TECHNOLOGY PARK FROM THE SINGLE FAMILY RESIDENTIAL - 20 (SF-20) DISTRICT TO THE LIHT INDUSTRIAL (LI) DISTRICT, BEING LOCATED WITHIN THE 1900 BLOCK OF S. PERSIMMON STREET (EAST AND WEST SIDE), PROVIDING FOR SEVERABILITY; PROVIDING FOR A PENALTY OF AN AMOUNT NOT TO EXCEED \$2,000 FOR EACH DAY OF VIOLATION OF ANY PROVISION HEREOF, MAKING FINDINGS OF FACT; AND PROVIDING FOR OTHER RELATED MATTERS.

* * * * *

Whereas, Tomball Economic Development Corporation and Tortuga Operating Company has requested that approximately 17.08 acres of land legally described as being Lots 1, 2, 3, and 4 of Tomball Business and Technology Park, Section 2, located in the 1900 block of S. Persimmon Street, within the City of Tomball, Harris County, Texas, (the “Property”), be rezoned; and

Whereas, at least fifteen (15) days after publication in the official newspaper of the City of the time and place of a public hearing and at least ten (10) days after written notice of that hearing was mailed to the owners of land within two hundred feet of the Property in the manner required by law, the Planning & Zoning Commission held a public hearing on the requested rezoning; and

Whereas, the public hearing was held before the Planning & Zoning Commission at least forty (40) calendar days after the City’s receipt of the requested rezoning; and

Whereas, the Planning & Zoning Commission recommended in its final report that City Council approve the requested rezoning of the Light Industrial District; and

Whereas, at least fifteen (15) days after publication in the official newspaper of the City of the time and place of a public hearing for the requested rezoning, the City Council held the public hearing for the requested rezoning and the City Council considered the final report of the Planning & Zoning Commission; and

Whereas, the City Council deems it appropriate to grant the requested rezoning.

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

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

Section 2. The zoning classification of the Property is hereby changed from the Single Family Residential - 20 District to the Light Industrial subject to the regulations, restrictions, and conditions hereafter set forth.

Section 3. The Official Zoning Map of the City of Tomball, Texas shall be revised and amended to show the designation of the Property as Light Industrial District, with the appropriate reference thereon to the number and effective date of this Ordinance and a brief description of the nature of the change.

Section 4. This Ordinance shall in no manner amend, change, supplement, or revise any provision of any ordinance of the City of Tomball, save and except the change in zoning classification for the Property to the Commercial District as described above.

Section 5. In the event any section, paragraph, subdivision, clause, phrase, provision, sentence, or part of this Ordinance or the application of the same to any person or circumstance shall for any reason be adjudged invalid or held unconstitutional by a court of competent jurisdiction, it shall not affect, impair, or invalidate this Ordinance as a whole or any part or provision hereof other than the part declared to be invalid or unconstitutional; and the City Council of Tomball, Texas, declares that it would have passed each and every part of the same notwithstanding the omission of any and every part of the same notwithstanding the omission of any such part thus declared to be invalid or unconstitutional, or whether there be one or more parts.

Section 6. Any person who shall violate any provision of this Ordinance shall be deemed guilty of a misdemeanor and upon conviction, shall be fined in an amount not to exceed \$2,000. Each day of violation shall constitute a separate offense.

FIRST READING:

READ, PASSED, AND APPROVED AS SET OUT BELOW AT THE MEETING OF THE CITY COUNCIL OF THE CITY OF TOMBALL HELD ON THE 1ST DAY OF NOVEMBER 2022.

COUNCILMAN FORD	<u>AYE</u>
COUNCILMAN STOLL	<u>AYE</u>
COUNCILMAN DUNAGIN	<u>AYE</u>
COUNCILMAN TOWNSEND	<u>ABSENT</u>
COUNCILMAN PARR	<u>AYE</u>

SECOND READING:

READ, PASSED, AND APPROVED AS SET OUT BELOW AT THE MEETING OF THE CITY COUNCIL OF THE CITY OF TOMBALL HELD ON THE 7th DAY OF NOVEMBER 2022.

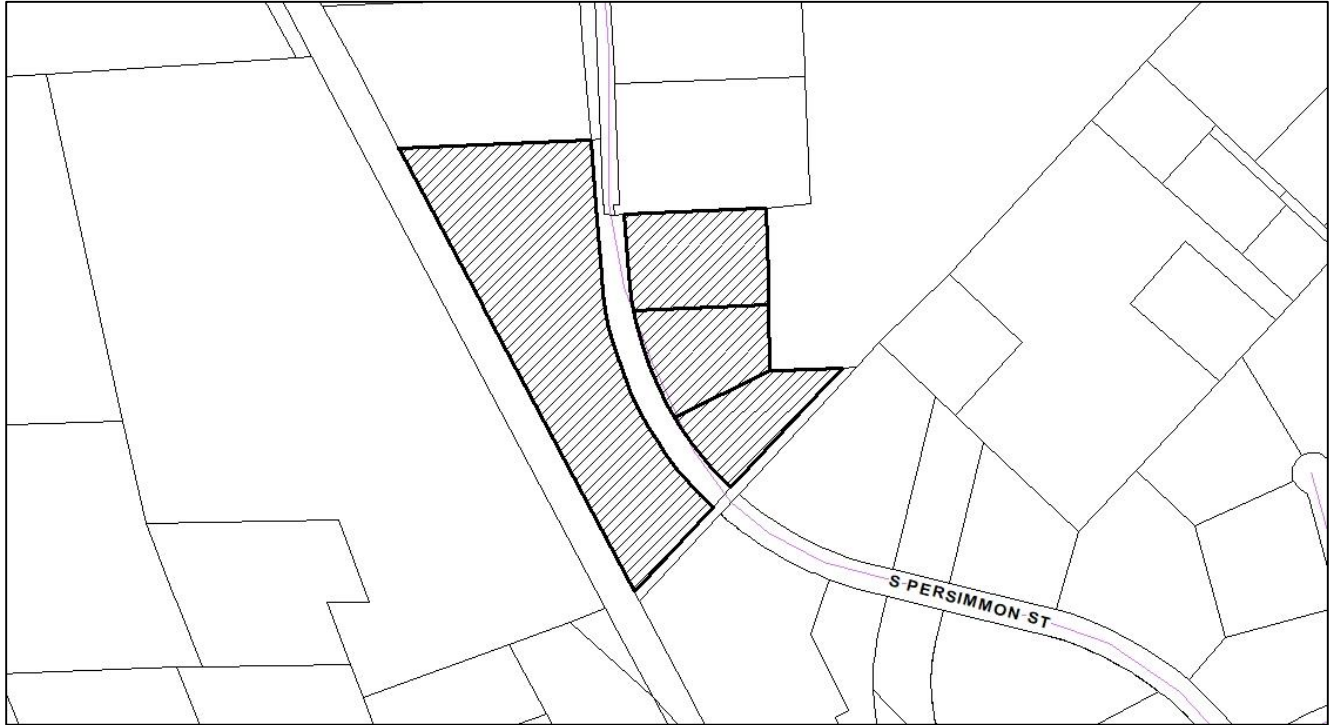
COUNCILMAN FORD	_____
COUNCILMAN STOLL	_____
COUNCILMAN DUNAGIN	_____
COUNCILMAN TOWNSEND	_____
COUNCILMAN PARR	_____

Lori Klein Quinn, Mayor

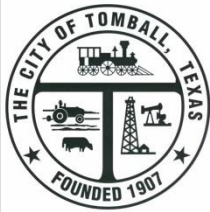
ATTEST:

Doris Speer, City Secretary

Exhibit "A"



Location: Lots 1, 2, 3, and 4 of Tomball Business and Technology Park, Section 2



**Rezoning
Staff Report**

Planning & Zoning Commission Public Hearing Date: October 10, 2022
City Council Public Hearing Date: October 17, 2022

Rezoning Case: P22-309
Property Owner(s): Tomball Economic Development Corporation & Tortuga Operating Company
Applicant(s): Tomball Economic Development Corporation
Legal Description: Lots 1, 2, 3, and 4 in Tomball Business & Technology Park, Sec. 2
Location: 1900 block of S. Persimmon St. (east & west side) (Exhibit “A”)
Area: 17.08 acres
Comp Plan Designation: Business Park and Industrial (Exhibit “B”)
Present Zoning and Use: Single Family Residential – 20 (SF-20) (Exhibit “C”) / Vacant (Exhibit “D”)
Request: Rezone to the Light Industrial (LI) District
Adjacent Zoning & Land Uses:
North: Single Family Residential - 20 / Vacant
South: Light Industrial / Warehousing
West: Single Family Residential - 20 / Vacant
East: Single Family Residential – 20 / Vacant

BACKGROUND

The subject properties have been within the city limits since 1909. The properties have remained vacant since that time. The properties has been located within the Single Family Residential – 20 zoning district since 2008 when the City of Tomball adopted zoning. According to information provided by the applicant, the zone change request is to allow for additional expansion of the Tomball Business & Technology Park immediately south of the subject properties.

ANALYSIS

The subject properties comprise approximately 17.08 acres, located along S. Persimmon Street midway between Medical Complex Drive and Holderrieth Road. Properties north, east, and west of the subject site are within Single Family Residential – 20 zoning districts and are presently vacant. The properties south of the subject properties are within Light Industrial zoning and are currently utilized warehousing/distribution purposes.

Comprehensive Plan Recommendation:

The Future Land Use Map within the Comprehensive Plan designates the subject property as “Business Park and Industrial.” According to the Comprehensive Plan, this Business Park and Industrial land use category is intended to create opportunities for employment, and should be located near or along adequate thoroughfares that provide convenient access for vehicular traffic including freight.

The Comprehensive Plan identifies office, warehousing, light manufacturing (with indoor operations), breweries/distilleries, equipment sales, contractor services, and corporate campuses to be appropriate land uses within the Business Park and Industrial land use.

According to the Comprehensive Plan, Light Industrial, Commercial, Office, and Planned Developments are considered appropriate zoning districts within the Business Park and Industrial land use category.

In making decisions regarding the neighborhood commercial land use category the following items should be considered: “New development should include landscape buffers between any property that is zoned to a non-business park & industrial district. Outdoor storage should be designed in a manner that screens materials and equipment from public rights-of-way. New business park & industrial development should be designed in a manner which orients loading docks and bays away from the front property line or public rights-of-way.”

Staff Review Comments:

The request to rezone the subject property to Light Industrial is in accordance with the Business Park and Industrial land use identified on the Future Land Use Map. This zone change request will achieve the Comprehensive Plans goal of working with the Tomball Economic Development Corporation (TEDC) to support local businesses and increase employment opportunities. The Comprehensive Plan states that maintaining and encouraging the expansion of existing businesses is an essential component of economic development, and as such, should continue to be supported on an ongoing bases. The approval of this zone change request will promote the Comprehensive Plans goal of economic development, specifically by encouraging the continued growth of the Tomball Business and Technology Park. Lastly, according to the City of Tomball Code of Ordinance, Light Industrial zoning requires accessibility to major thoroughfares. The subject properties are located along a S. Persimmon Street (a minor arterial) with convenient access to two regionally serving major arterial streets (Medical Complex Drive and Holderrieth Road). Roadways such as these are designed to provide ample access to high volumes of traffic to include freight traffic.

PUBLIC COMMENT

A Notice of Public Hearing was published in the paper and property owners within 300 feet of the project site were mailed notification of this proposal on September 27, 2022. Any public comment forms will be provided in the Planning & Zoning Commission and City Council packets or during the public hearing.

STAFF RECOMMENDATION:

Based on the findings outlined in the analysis section of this staff report, the City staff recommends approval of Zoning Case P22-309.

P&Z RECOMMENDATION:

Denial (2 Vote Aye, 2 Vote Nay)

- Discussion Items:
 - Concerns about residential land use north of the subject site(s) on the east side of S. Persimmon St.

EXHIBITS

- A. Aerial Location Map
- B. Future Land Use Plan Map
- C. Zoning Map
- D. Site Photo(s)
- E. Light Industrial Permitted Use Chart
- F. Rezoning Application

**Exhibit "A"
Aerial Map**

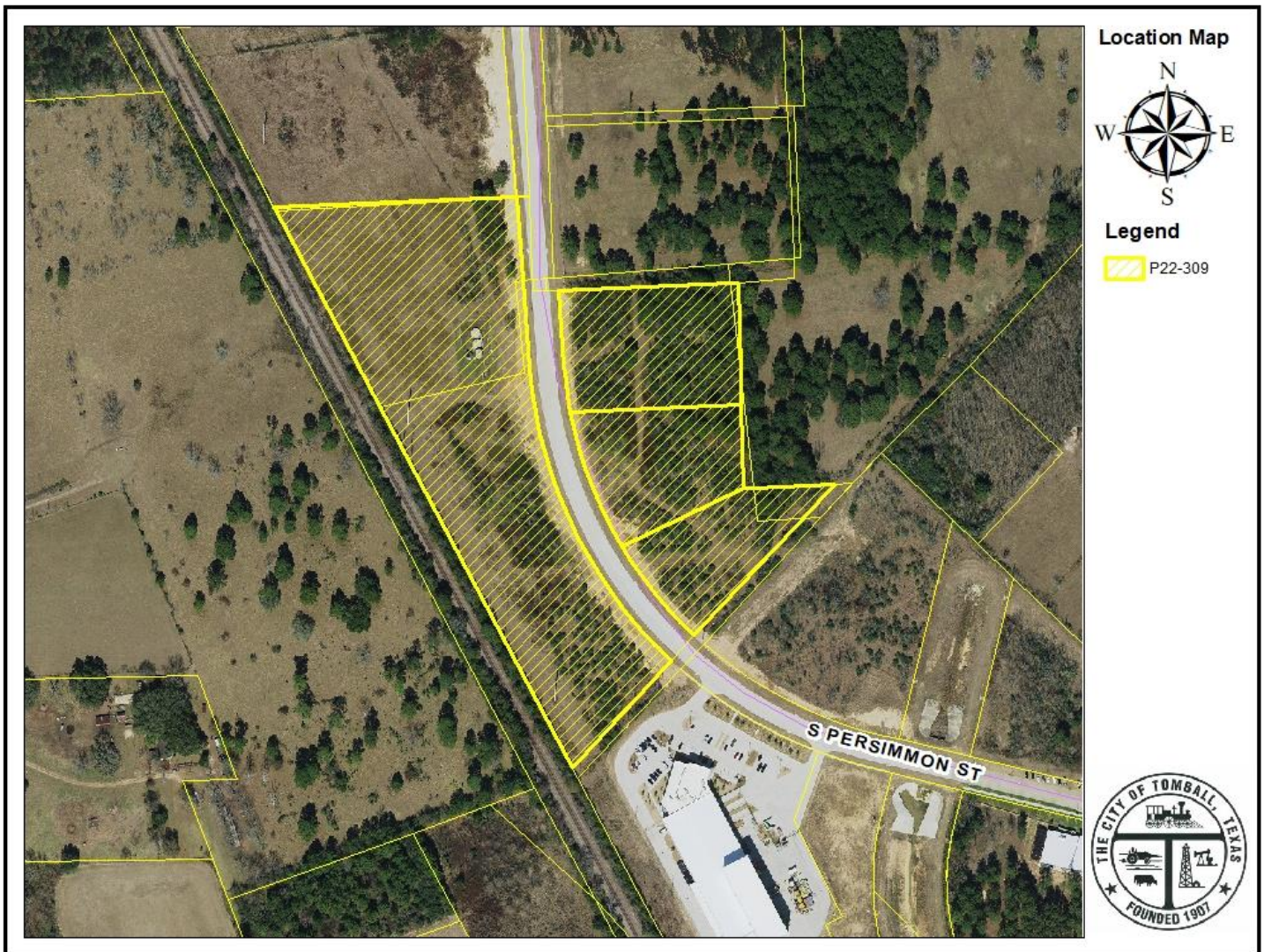


Exhibit "B"
Future Land Use Map

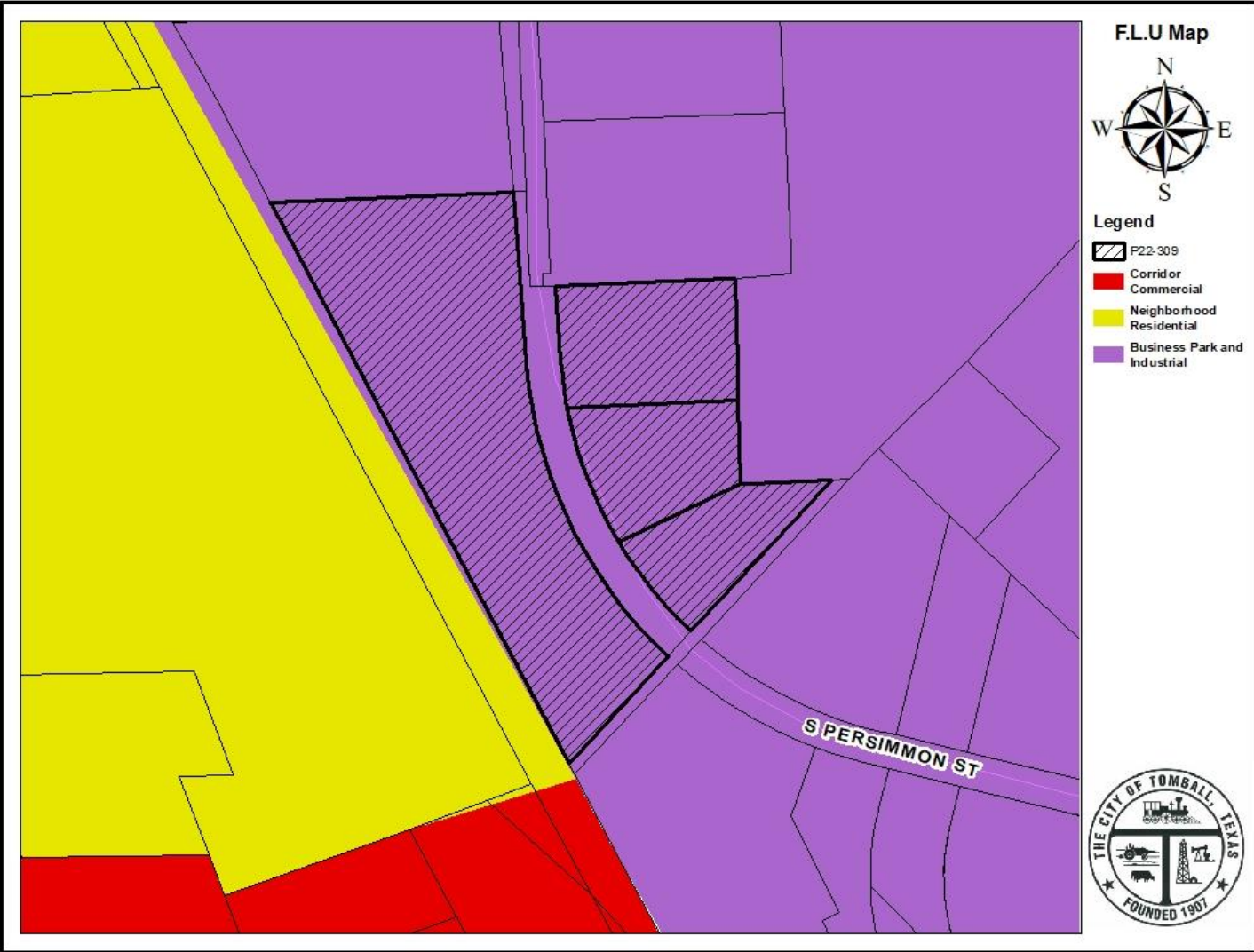
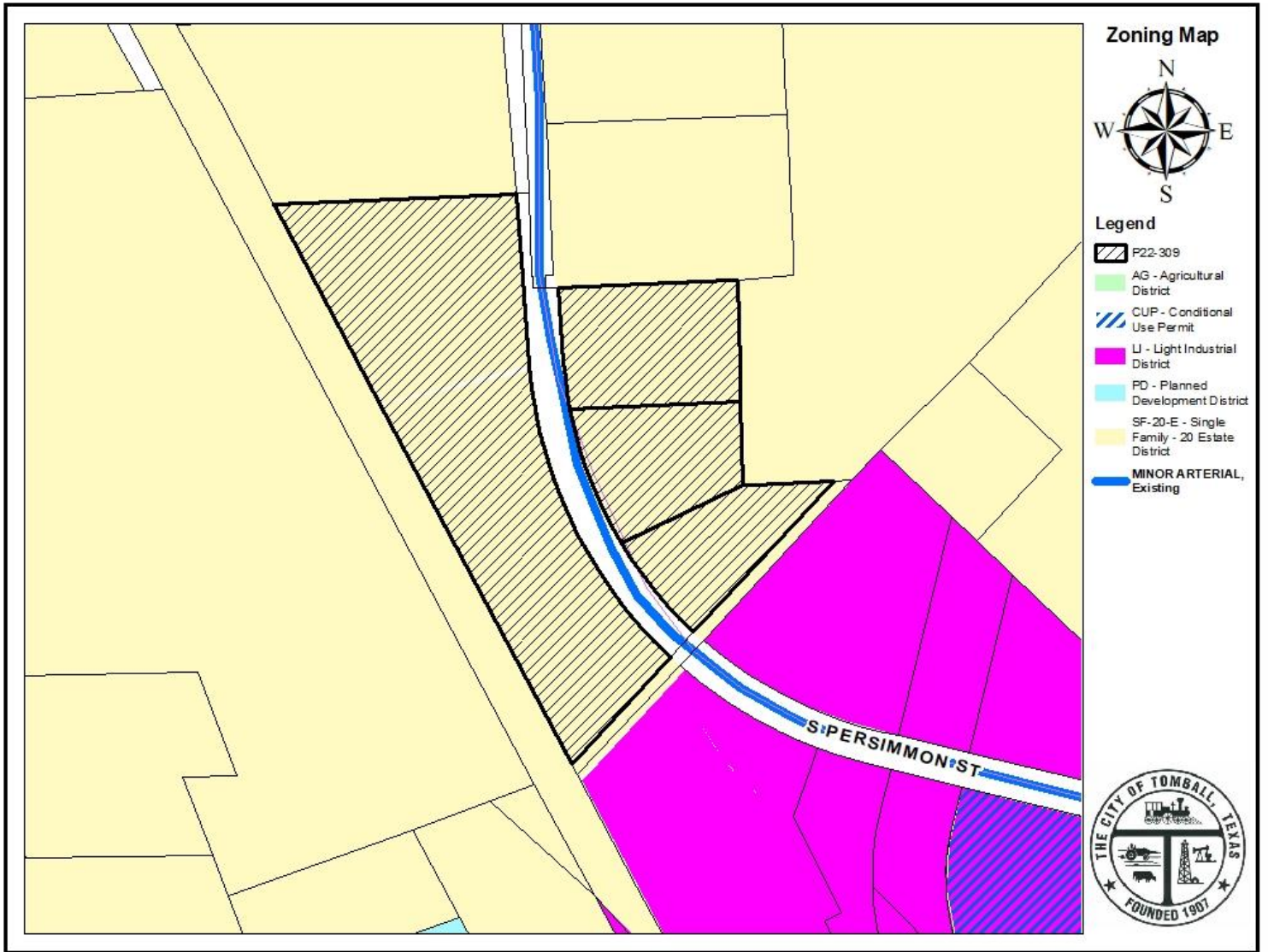


Exhibit "C" Zoning Map



**Exhibit “D”
Site Photo**





**Exhibit “E”
Light Industrial Permitted Use Chart**

TYPES OF LAND USES	Zoning District	Parking Ratio
	LI	
Agriculture		
Bulk Grain and/or feed storage	CUP Required (Learn More)	1 space per 1,000 square feet
Farm (ranch, garden, crops, livestock, or orchard) ‡	Permitted	None
Feed and grain store/farm supply store ‡	Permitted	1 space per 500 square feet
Flour and other grain mills	Permitted	1 space per 1,000 square feet
Stable, commercial	CUP Required (Learn More)	1 space per 1,000 square feet
Residential		
Accessory building/structure (business or industry) ‡	Permitted	None
Caretaker's, guard's residence ‡	Permitted	1 space per caretaker/guard
Home occupation ‡	Permitted	None
Office		
Clinic, emergency care	Permitted	1 space per 150 square feet
Clinic, medical and/or dental	Permitted	1 space per 300 square feet
Credit agency	Permitted	1 space per 300 square feet
Bank, savings and loan, or credit union (no motor bank services)	Permitted	1 space per 300 square feet
Bank, savings and loan, or credit union (with motor bank services)	Permitted	1 space per 300 square feet
Office, professional and general business ‡	Permitted	1 space per 300 square feet
Office, parole-probation	Permitted	1 space per 300 square feet
Office showroom/warehouse ‡	Permitted	1 space per 300 square feet
Security monitoring company (no outside storage)	Permitted	1 space per 300 square feet
Telemarketing agency	Permitted	1 space per 250 square feet

TYPES OF LAND USES	Zoning District	Parking Ratio
	LI	
Telephone exchange/switching station ‡	Permitted	1 space per 500 square feet
Temporary real estate field office	Permitted	4 spaces
Model home (including sales office)	CUP Required (Learn More)	2 spaces per model
Personal and Business		
Ambulance service	Permitted	1 space per 500 square feet
Automobile driving school (including defensive driving)	Permitted	1 space per classroom seat
Barber/beauty shop (no related school/college)	Permitted	1 space per 200 square feet
Dance/drama/music schools (performing arts, martial arts)	Permitted	1 space per 100 square feet
Fortunetelling and similar activities ‡	CUP Required (Learn More)	1 space per 300 square feet
Funeral home ‡	Permitted	See Section 50-112
Health club (indoor)	Permitted	1 space per 300 square feet
Health club (outdoor)	Permitted	1 space per 300 square feet
Laundromat/washateria/self-service ‡	Permitted	1 space per 200 square feet
Laundry/dry cleaning (retail only, drop off/pick up) ‡	Permitted	1 space per 200 square feet
Mailing service (private)	Permitted	1 space per 200 square feet
Pharmacy (retail only)	Permitted	1 space per 200 square feet
Reception venue	Permitted	1 space: 4 seats
Rehabilitation care facility (halfway house) ‡	Permitted	Greater of 1 per three beds or 1.5 spaces per dwelling
Rehabilitation care institution (business) ‡	Permitted	Greater of 1 per three beds or 1.5 spaces per dwelling
Seamstress, dressmaker or tailor (retail only)	Permitted	1 space per 200 square feet
Sexually oriented business	CUP Required (Learn More)	

TYPES OF LAND USES	Zoning District	Parking Ratio
	LI	
Wedding chapel	Permitted	1 space per four seats
Retail		
Antique shop (no outside sales or storage) ‡	Permitted	1 space per 500 square feet
Antique shop (with outside storage)	Permitted	1 space per 500 square feet
Apparel shop	Permitted	1 space per 200 square feet
Art gallery/museum/dealer ‡	Permitted	1 space per 500 square feet
Artist or photography studio	Permitted	1 space per 500 square feet
Bakery, retail (eating establishment, no drive-through) ‡	Permitted	1 space per 200 square feet
Bakery, retail (with drive-through)	Permitted	1 space per 200 square feet
Bakery (wholesale) ‡	Permitted	1 space per 500 square feet
Bird and pet shops (retail only)	Permitted	1 space per 200 square feet
Book/stationery shop (retail only) ‡	Permitted	1 space per 200 square feet
Brewpub	Permitted	1 space per 1,000 square feet for the brewing of beer, ale, etc. plus 1 space per 100 square feet for associated eating or drinking establishments.
Building material sales/lumber yard ‡	Permitted	1 space per 1,000 square feet
Carpenter shop	Permitted	1 space per 500 square feet
Catering service	Permitted	1 space per 500 square feet
Consignment shop	Permitted	1 space per 300 square feet
Convenience store (with or without gasoline sales) ‡	Permitted	See Section 50-112
Copy shop ‡	Permitted	1 space per 200 square feet

TYPES OF LAND USES	Zoning District	Parking Ratio
	LI	
Drinking establishment	Permitted	
Drug store (retail only)	Permitted	1 space per 200 square feet
Eating establishment (with drive-in service) ‡	Permitted	Whichever is greater: 1 per 100 square feet; 1 per 3 seats based on max seating capacity or; 1 per 12 spaces
Eating establishment (with no drive-through service) ‡	Permitted	
Eating establishment (with drive-through service) ‡	Permitted	
Electronic goods (retail only)	Permitted	1 space per 200 square feet
Florist shop (retail only) ‡	Permitted	1 space per 200 square feet
Food or grocery store	Permitted	1 space per 500 square feet
Furniture and appliance store (retail only) ‡	Permitted	1 space per 500 square feet
Furniture store (new and used) ‡	Permitted	1 space per 200 square feet
General retail stores (no outside storage)	Permitted	1 space per 200 square feet
Gift or card shop (retail only)	Permitted	1 space per 200 square feet
Hardware store	Permitted	1 space per 400 square feet
Hobby and crafts store (retail only)	Permitted	1 space per 200 square feet
Home improvement center	Permitted	1 space per 400 square feet plus one per 1,000 square feet of warehouse area
Jewelry store	Permitted	1 space per 200 square feet
Market, open air, flea	Permitted	1 space per 200 square feet
Meat and fish market (retail only)	Permitted	1 space per 200 square feet
Mobile Food Court ‡	CUP Required (Learn More)	Whichever is greater: 1 per 100 square feet of seating area or 2 per mobile food vendor

TYPES OF LAND USES	Zoning District	Parking Ratio
	LI	
Motion picture studios, commercial films	Permitted	1 space per 300 square feet
Motion picture theater (indoors)	Permitted	See Section 50-112
Nursery ‡	Permitted	1 space per 1,000 square feet of sales area
Garden shop ‡	Permitted	1 space per 200 square feet
Painting and refinishing shop	Permitted	1 space per 500 square feet
Piano and musical instruments (retail only)	Permitted	1 space per 200 square feet
Shoe repair shop (retail only)	Permitted	1 space per 200 square feet
Sign shop (small scale, such as a storefront; includes sign and banner making for retail sale only; no outside storage)	Permitted	1 space per 300 square feet
Stone monuments and gravestones, engraving and retail sales only	Permitted	1 space per 500 square feet
Upholstery shop (nonauto)	Permitted	1 space per 200 square feet
Used merchandise	Permitted	1 space per 200 square feet
Video rental/sales	Permitted	1 space per 200 square feet
Transportation and Auto Services		
Airport or landing field ‡	CUP Required (Learn More)	1 space per 500 square feet
All-terrain vehicle (go-carts) dealer/sales (w/outdoor sales, storage, and display)	Permitted	1 space per 300 square feet
All-terrain vehicle (go-carts) dealer/sales (w/no outdoor sales, storage, and display)	Permitted	1 space per 300 square feet
Auto accessories (retail sales only)	Permitted	1 space per 200 square feet
Auto body repair/painting	Permitted	1 space per 200 square feet

TYPES OF LAND USES	Zoning District	Parking Ratio
	LI	
Auto dealer (new, auto servicing and used auto sales as accessory uses only, w/outdoor sales, storage, and display) ‡	Permitted	See Section 50-112
Auto dealer (new, auto servicing and used auto sales as accessory uses only, w/no outdoor sales, storage, and display)	Permitted	See Section 50-112
Auto dealer, primarily used auto sales w/outdoor sales, storage, and display ‡	Permitted	See Section 50-112
Auto dealer, primarily used auto sales w/no outdoor sales, storage, and display	Permitted	See Section 50-112
Auto glass repair/tinting	Permitted	1 space per 200 square feet
Auto interior shop/upholstery	Permitted	1 space per 200 square feet
Auto muffler shop	Permitted	1 space per 200 square feet
Auto paint shop	Permitted	1 space per 200 square feet
Auto parts sale (new or rebuilt; no outside storage, no outside display, no repair)	Permitted	1 space per 200 square feet
Auto parts sale (new or rebuilt; with outside storage or display)	Permitted	1 space per 200 square feet
Auto rental	Permitted	1 space per 200 square feet
Auto repair (major) ‡	Permitted	1 space per 200 square feet
Auto repair (minor) ‡	Permitted	1 space per 200 square feet
Auto storage or auto auction ‡	Permitted	1 space per 1,000 square feet
Auto tire sales (indoor)	Permitted	1 space per 200 square feet
Auto wrecker service	Permitted	1 space per 200 square feet

TYPES OF LAND USES	Zoning District	Parking Ratio
	LI	
Automobile assembly	Permitted	1 space per 1,000 square feet
Automobile parts manufacturing	Permitted	1 space per 1,000 square feet
Automobile wash (full service/detail shop) ‡	Permitted	3 spaces per washing capacity of module
Automobile wash (self-service) ‡	Permitted	3 spaces per washing capacity of module
Bike sales and/or repair	Permitted	1 space per 500 square feet
Bus or truck storage	Permitted	1 space per 1,000 square feet
Gasoline station	Permitted	See Section 50-112
Motor freight transportation, storage, and terminal	Permitted	See Section 50-112
Motorcycle sales/dealer w/outdoor sales, storage, and display ‡	Permitted	See Section 50-112
Motorcycle sales/dealer w/no outdoor sales, storage, and display	Permitted	See Section 50-112
Parking lot or garage for passenger cars and trucks of less than one-ton capacity ‡	Permitted	None
Personal watercraft sales (new/repair) w/outdoor sales, storage, and display	Permitted	See Section 50-112
Personal watercraft sales (new/repair) w/no outdoor sales, storage, and display	Permitted	See Section 50-112
Railroad team tracks, unloading docks, and spurs	Permitted	None
Railroad yards, round house or shop	Permitted	1 space per 1,000 square feet
Taxi/limousine service	Permitted	1 space per 1.5 automobiles in service
Tire sales (indoors, no outside storage) ‡	Permitted	1 space per 1,000 square feet
Tire sales (outdoors, with outside storage) ‡	Permitted	1 space per 1,000 square feet

TYPES OF LAND USES	Zoning District	Parking Ratio
	LI	
Transfer station (refuse/pick-up) ‡	CUP Required (Learn More)	1 space per 500 square feet
Transit terminal ‡	Permitted	See Section 50-112
Truck and bus leasing ‡	Permitted	1 space per 1,000 square feet
Truck sales and services (heavy trucks) ‡	Permitted	1 space per 1,000 square feet
Truck stop ‡	Permitted	1 space per 1,000 square feet
Truck terminal ‡	Permitted	See Section 50-112
Amusement and Recreation		
Amusement, commercial (indoor) ‡	Permitted	1 space per 100 square feet
Amusement, commercial (outdoor) ‡	Permitted	10 spaces plus 1 per 500 square feet over 5,000 square feet of building and recreation area
Amusement, commercial, temporary, (e.g., carnival, haunted house). (Note: Allowed by building official for up to 10 days) ‡	Permitted	Determined by P & Z
Amusement devices/arcade (4 or more devices, indoors only) ‡	Permitted	1 space per game table plus one per amusement device
Billiard/pool Facility (4 or more tables)	Permitted	1 space per 200 square feet
Bingo facility	Permitted	1 space per 200 square feet
Bowling alley (air conditioned and soundproofed)	Permitted	4 spaces per lane
Dinner theatre	Permitted	1 space per three seats or bench seating space
Drive-in theater	CUP Required (Learn More)	1 space per speaker
Golf driving range	Permitted	See Section 50-112
Golf course (private) ‡	CUP Required (Learn More)	6 spaces per hole
Golf course (publicly owned) ‡	Permitted	6 spaces per hole
Playfield or stadium (private)	Permitted	1 space per three seats
Recreational vehicle park/campground ‡	Permitted	1.5 per RV pad

TYPES OF LAND USES	Zoning District	Parking Ratio
	LI	
Skating rink	Permitted	1 space per 200 square feet, plus 1 per 3 seats based on max capacity
Swimming pool, private (use by membership) ‡	Permitted	1 space for each 100 square feet of gross water surface and deck area
Swimming pool, commercial ‡	Permitted	1 space per 100 square feet of gross water surface and deck area
Tennis court (private/not lighted)	Permitted	2 spaces per court
Tennis court (private/lighted)	CUP Required (Learn More)	2 spaces per court
Institutional/Governmental		
Adult day care (business)	See Section 50-116	
Antenna (commercial)	See Section 50-116	
Antenna (noncommercial)	See Section 50-116	
Armed services recruiting center	Permitted	1 space per 300 square feet
Auction house	Permitted	1 space per 100 square feet
Broadcast station (with tower)	See Section 50-116	
Broadcast towers (commercial)	See Section 50-116	
Cellular communications tower/PCS	See Section 50-116	
Cemetery and/or mausoleum ‡	CUP Required (Learn More)	1 space per 5,000 square feet of land
Church/temple/place of worship ‡	Permitted	1 space per four seats in sanctuary
Civic center (municipal) ‡	Permitted	10 spaces plus 1 per 300 square feet above 2,000 square feet
Civic club	Permitted	See Section 50-112
Community center (public)	Permitted	See Section 50-112
Community or social buildings ‡	Permitted	1 space per 300 square feet
Country club (private) ‡	CUP Required (Learn More)	10 spaces plus 1 per 300 square feet above 2,000 square feet

TYPES OF LAND USES	Zoning District	Parking Ratio
	LI	
Earth satellite dish (private, less than 3 feet in diameter)	See Section 50-116	
Electric power plant	Permitted	1 space per 1,000 square feet
Electrical substation ‡	CUP Required (Learn More)	1 space per 1,000 square feet
Exhibition hall ‡	Permitted	1 space per 100 square feet
Fair ground or rodeo ‡	CUP Required (Learn More)	1 space per 1,000 square feet of land area
Fraternal organization ‡	Permitted	10 spaces plus 1 per 300 square feet above 2,000 square feet
Governmental building or use (county, state or federal) ‡	Permitted	1 space per 300 square feet
Heliport ‡	CUP Required (Learn More)	3 spaces
Helistop	CUP Required (Learn More)	3 spaces
Hospital ‡	Permitted	1 space per bed
Household care institution	Permitted	1 space per 6 clients
Institution for alcoholic, narcotic, or psychiatric patients ‡	Permitted	1 space per 200 square feet
Institution of religious, educational or philanthropic nature	Permitted	1 space per 200 square feet
Municipal facility or use ‡	Permitted	1 space per 300 square feet
Museum	Permitted	See Section 50-112
Park and/or playground (private) ‡	Permitted	
Park and/or playground (public, municipal) ‡	Permitted	
Penal or correctional institutions	Permitted	1 space per 500 square feet
Post office (governmental)	Permitted	10 plus 1 per 200 square feet
Non-city public assembly (auditorium, gymnasium, stadiums, meeting halls, etc.)	Permitted	1 space per 4 seats
Radio, television and communications towers	See Section 50-116	

TYPES OF LAND USES	Zoning District	Parking Ratio
	LI	
Rectory/parsonage	Permitted	5 spaces, plus 1 per bedroom
Retirement housing for the elderly ‡	See assisted living facility	
Riding academy	Permitted	1 space per five stalls
Sanitary landfill (private)	CUP Required (Learn More)	1 space per ten acres
School, business (e.g., barber/beauty/cosmetology)	Permitted	1 space per three students, based on design
School, college or university	Permitted	10 per classroom plus 2 per office
School, commercial trade (vocational) ‡	Permitted	1 space per student
School, public or denominational ‡	Permitted	See Section 50-112
School, other than public or denominational ‡	Permitted	
Sheltered care facility ‡	CUP Required (Learn More)	1 space per three beds or 1.5 per dwelling
Sign, all types (defined within the referenced section) ‡	See Ch. 34 of this Code	
Studio for radio and/or television (no towers) ‡	Permitted	1 space per 200 square feet
Commercial and Wholesale Trade		
Animal kennel (outdoor pens)	Permitted	1 space per 500 square feet
Appliance repair	Permitted	1 space per 500 square feet
Book binding	Permitted	1 space per 500 square feet
Carpet and rug cleaning plant	Permitted	1 space per 1,000 square feet
Cattle, swine, or poultry feedlot (CAFO)	CUP Required (Learn More)	1 space per 5,000 square feet of land
Cleaning plant (commercial laundry) ‡	Permitted	1 space per 1,000 square feet
Communication equipment sales/service (installation and/or repair, no outdoor sales or storage or towers/antennae)	Permitted	1 space per 1,000 square feet

TYPES OF LAND USES	Zoning District	Parking Ratio
	LI	
Construction contractor with storage yard	Permitted	1 space per 1,000 square feet of land
Contractor's office/sales, no outside storage including vehicles	Permitted	1 space per 1,000 square feet of land
Contractor's temporary on-site construction office (only with permit from building official.)	Permitted	None
Distribution center ‡	Permitted	1 space per 1,000 square feet
Electric repair, (domestic equipment and autos)	Permitted	1 space per 1,000 square feet
Electronic assembly	Permitted	1 space per 1,000 square feet
Electro-plating/electro-typing	Permitted	1 space per 1,000 square feet
Exterminator service/company (no outdoor sales or storage)	Permitted	1 space per 300 square feet
Fix-it shops, small engine, saw filing, mower sharpening	Permitted	1 space per 500 square feet
Fur/hide tanning and finishing	CUP Required (Learn More)	1 space per 1,000 square feet
Heating and air conditioning sales/services	Permitted	1 space per 1,000 square feet
Iron works (ornamental)	Permitted	1 space per 1,000 square feet
Lawnmower repair and/or sales	Permitted	1 space per 500 square feet
Loading or storage tracks	Permitted	None
Locksmith	Permitted	1 space per 500 square feet
Machine shop	Permitted	1 space per 1,000 square feet
Maintenance and repair service for buildings/janitorial	Permitted	1 space per 500 square feet
Manufactured home display or sales (new or used) ‡	Permitted	1 space per 1,000 square feet
Mattress, making and renovating	Permitted	1 space per 1,000 square feet

TYPES OF LAND USES	Zoning District	Parking Ratio
	LI	
Milk depot, wholesale	Permitted	1 space per 1,000 square feet
Mini-warehouse/self storage ‡	Permitted	See Section 50-112
Mortuary	Permitted	See Section 50-112
Moving and storage company	Permitted	1 space per 1,000 square feet
News printing	Permitted	1 space per 1,000 square feet
Outdoor sales as a primary use ‡	Permitted	1 space per 5,000 square feet of land area
Pawn shop ‡	Permitted	1 space per 200 square feet
Pet and animal grooming shop (no outside kennels) ‡	Permitted	1 space per 200 square feet
Plumbing shop	Permitted	1 space per 200 square feet
Printing equipment, supplies and repairs	Permitted	1 space per 500 square feet
Propane sales filling (retail)	Permitted	1 space per 200 square feet
Publishing and printing company	Permitted	1 space per 500 square feet
Quick lube/oil change/minor inspection	Permitted	1 space per 200 square feet
Salvage storage yard ‡	CUP Required (Learn More)	5 per acre
Scientific and industrial research laboratories (hazardous) ‡	Permitted	1 space per 300 square feet
Scientific and industrial research laboratories (nonhazardous) ‡	Permitted	1 space per 300 square feet
Scrap metal storage yard	CUP Required (Learn More)	5 space per acre
Security systems installation company	Permitted	1 space per 300 square feet
Sheet metal shop	Permitted	1 space per 1,000 square feet
Storage of cement, sands and gravel	Permitted	1 space per 5,000 square feet of storage area
Storage of used lumber and building materials	Permitted	1 space per 5,000 square feet of storage area

TYPES OF LAND USES	Zoning District	Parking Ratio
	LI	
Taxicab storage and repair	Permitted	1 space per 500 square feet
Taxidermist	Permitted	1 space per 500 square feet
Tool and machinery rental (indoor storage only) ‡	Permitted	1 space per 200 square feet
Tool and machinery rental (with outdoor storage) ‡	Permitted	1 space per 200 square feet
Vacuum cleaner sales and repair ‡	Permitted	1 space per 200 square feet
Veterinarian clinic (indoor kennels) ‡	Permitted	1 space per 500 square feet
Veterinarian clinic (outdoor kennels or pens) ‡	Permitted	1 space per 500 square feet
Warehouse (defined under storage or wholesale warehouse) ‡	Permitted	1 space per 1,000 square feet
Welding shop	Permitted	1 space per 1,000 square feet
Wholesale trade, nondurable goods	Permitted	1 space per 1,000 square feet
Woodworking shops	Permitted	1 space per 1,000 square feet
Wrecking materials yard ‡	CUP Required (Learn More)	1 space per 1,000 square feet
Light and Heavy Manufacturing/Industrial		
Acid manufacture	CUP Required (Learn More)	1 space per 1,000 square feet
Adhesives and sealants manufacture	CUP Required (Learn More)	1 space per 1,000 square feet
Aircraft parts manufacture	Permitted	1 space per 1,000 square feet
Airplane repair and manufacturing	Permitted	1 space per 1,000 square feet
Animal processing and slaughter	CUP Required (Learn More)	1 space per 1,000 square feet
Any manufacture or industrial process not listed and not prohibited by law	CUP Required (Learn More)	1 space per 1,000 square feet
Artificial flower manufacture	Permitted	1 space per 1,000 square feet
Asphalt paving and roofing material manufacture	CUP Required (Learn More)	1 space per 1,000 square feet

TYPES OF LAND USES	Zoning District	Parking Ratio
	LI	
Awning manufacture, cloth, metal and wood	Permitted	1 space per 1,000 square feet
Bag manufacturing	Permitted	1 space per 1,000 square feet
Battery manufacture	CUP Required (Learn More)	1 space per 1,000 square feet
Bleaching/chorine powder manufacture	CUP Required (Learn More)	2 spaces per 1,000 square feet
Boiler manufacture and repair	Permitted	1 space per 1,000 square feet
Bottling works	Permitted	1 space per 1,000 square feet
Broom manufacture	Permitted	1 space per 1,000 square feet
Candy and other confectionary products manufacture	Permitted	1 space per 1,000 square feet
Canning and preserving factory	Permitted	1 space per 1,000 square feet
Canvas and related products manufacture	Permitted	1 space per 1,000 square feet
Casein manufacture	CUP Required (Learn More)	1 space per 1,000 square feet
Celluloid and similar cellulose manufacture	CUP Required (Learn More)	1 space per 1,000 square feet
Cement manufacture	CUP Required (Learn More)	1 space per 1,000 square feet
Ceramic products manufacture	Permitted	1 space per 500 square feet
Chalk manufacture	CUP Required (Learn More)	1 space per 1,000 square feet
Chemicals (agricultural) manufacture	CUP Required (Learn More)	1 space per 1,000 square feet
Chemicals (industrial) manufacture	CUP Required (Learn More)	1 space per 1,000 square feet
Clothing manufacture	Permitted	1 space per 500 square feet
Coffee roasting	Permitted	
Coffin manufacture	Permitted	1 space per 1,000 square feet
Cold storage plants/locker	Permitted	1 space per 1,000 square feet
Concrete or asphalt mixing/batching plant (permanent) ‡	CUP Required (Learn More)	1 space per 5,000 square feet of land

TYPES OF LAND USES	Zoning District	Parking Ratio
	LI	
Concrete or asphalt mixing/batching plant (temporary) ‡	Permitted	1 space per 5,000 square feet of land
Crematory	CUP Required (Learn More)	1 space per 1,000 square feet
Culvert manufacture	CUP Required (Learn More)	1 space per 1,000 square feet
Cutlery, handtools and general hardware manufacture	Permitted	1 space per 1,000 square feet
Dairy products manufacture	Permitted	1 space per 1,000 square feet
Distillation of liquors, spirits, etc. (brewery)	CUP Required (Learn More)	1 space per 1,000 square feet
Dye manufacture	CUP Required (Learn More)	1 space per 1,000 square feet
Dyeing plant	Permitted	1 space per 1,000 square feet
Electric lamp manufacture	Permitted	1 space per 1,000 square feet
Elevator manufacture	Permitted	1 space per 1,000 square feet
Enameling and painting	Permitted	1 space per 1,000 square feet
Engraving plant	Permitted	1 space per 1,000 square feet
Envelope manufacture	Permitted	1 space per 1,000 square feet
Farm/garden machinery and equipment manufacture	Permitted	1 space per 1,000 square feet
Feed manufacture	CUP Required (Learn More)	1 space per 500 square feet
Felt manufacture	CUP Required (Learn More)	1 space per 1,000 square feet
Food processing ‡	Permitted	1 space per 1,000 square feet
Footwear manufacture	Permitted	1 space per 500 square feet
Furnace manufacture	CUP Required (Learn More)	1 space per 1,000 square feet
Fixtures manufacture	Permitted	1 space per 1,000 square feet
Furniture manufacture	Permitted	1 space per 1,000 square feet

TYPES OF LAND USES	Zoning District	Parking Ratio
	LI	
Gases (industrial) manufacture	CUP Required (Learn More)	1 space per 1,000 square feet
Glucose manufacture	CUP Required (Learn More)	1 space per 1,000 square feet
Hair products factory (other than human)	CUP Required (Learn More)	1 space per 1,000 square feet
Heavy machinery sales and storage ‡	Permitted	1 space per 1,000 square feet
Ice cream/ice manufacture	Permitted	1 space per 1,000 square feet
Kerosene manufacture or storage	CUP Required (Learn More)	1 space per 1,000 square feet
Laboratory equipment manufacturing ‡	CUP Required (Learn More)	1 space per 1,000 square feet
Leather products manufacture	CUP Required (Learn More)	1 space per 1,000 square feet
Lumber mill/yard	CUP Required (Learn More)	1 space per 1,000 square feet
Machinery manufacture	Permitted	1 space per 1,000 square feet
Marble working and finishing	Permitted	1 space per 1,000 square feet
Meat packing plant	CUP Required (Learn More)	1 space per 1,000 square feet
Metal cans and shipping containers manufacture	Permitted	1 space per 1,000 square feet
Metal products, stamping and manufacture	Permitted	1 space per 1,000 square feet
Mirror resilvering	Permitted	1 space per 200 square feet
Office equipment manufacture	Permitted	1 space per 1,000 square feet
Oil compounding and barreling	CUP Required (Learn More)	1 space per 1,000 square feet
Oilcloth manufacture	CUP Required (Learn More)	1 space per 1,000 square feet
Orthopedic, prosthetic, surgical appliances and supplies manufacture	Permitted	1 space per 1,000 square feet
Paint manufacture and/or mixing	Permitted	1 space per 1,000 square feet
Paper and paper pulp manufacture	CUP Required (Learn More)	1 space per 1,000 square feet
Paper products and paper box manufacture	Permitted	1 space per 1,000 square feet

TYPES OF LAND USES	Zoning District	Parking Ratio
	LI	
Pecan processing	Permitted	1 space per 1,000 square feet
Petroleum distribution/storage ‡	Permitted	1 space per 1,000 square feet
Plastic products, molding, casting and shaping	Permitted	1 space per 1,000 square feet
Printing ink manufacture	Permitted	1 space per 1,000 square feet
Rock quarries, sand, gravel and earth excavations or extractions	CUP Required (Learn More)	1 space per acre
Rug and carpet manufacture	Permitted	1 space per 1,000 square feet
Sand, gravel, or stone storage (including sales) ‡	Permitted	1 space per 1.5 employees, plus five per acre
Shellac and varnish manufacture	CUP Required (Learn More)	1 space per 1,000 square feet
Sign manufacturing (no outside storage)	Permitted	1 space per 1,000 square feet
Sign manufacturing (with outside storage)	Permitted	1 space per 1,000 square feet
Snuff manufacture	CUP Required (Learn More)	1 space per 1,000 square feet
Soap, detergents, cleaning preparations manufacture	CUP Required (Learn More)	1 space per 1,000 square feet
Starch manufacture	CUP Required (Learn More)	1 space per 1,000 square feet
Steel works, blast furnaces and rolling mills	CUP Required (Learn More)	1 space per 1,000 square feet
Stone cutting or crushing	CUP Required (Learn More)	1 space per 5,000 square feet of land area
Stone, clay, glass and concrete Products (other than handicrafts) manufacture	CUP Required (Learn More)	1 space per 1,000 square feet
Textile products manufacture	Permitted	1 space per 1,000 square feet
Tire retreading and recapping	Permitted	1 space per 1,000 square feet
Truck manufacture	Permitted	1 space per 1,000 square feet
Waste paper products manufacture	Permitted	1 space per 1,000 square feet

TYPES OF LAND USES	Zoning District	Parking Ratio
	LI	
Water distillation	Permitted	1 space per 1,000 square feet
White lead manufacture	CUP Required (Learn More)	1 space per 1,000 square feet
Wood container manufacture	Permitted	1 space per 1,000 square feet
Wood distillation (manufacture of tar, charcoal, turpentine and similar)	CUP Required (Learn More)	1 space per 1,000 square feet
Wood preserving manufacture and treatment	CUP Required (Learn More)	1 space per 1,000 square feet
Wood products manufacture	Permitted	1 space per 1,000 square feet

; Ord. No. 2012-18, § 2, 7-2-2012; Ord. No. 2013-23, § 2, 2-2-2013; Ord. No. 2013-19, § 2, 11-4-2013)

Exhibit "E"
Rezoning Application

RECEIVED (KC)
08/31/2022

Revised: 4/13/2020
P&Z #22-309



APPLICATION FOR RE-ZONING
Community Development Department
Planning Division

APPLICATION SUBMITTAL: Applications will be *conditionally* accepted on the presumption that the information, materials and signatures are complete and accurate. If the application is incomplete or inaccurate, your project may be delayed until corrections or additions are received.

Applicant

Name: Tomball Economic Development Corporation Title: Owner
Mailing Address: 29201 Quinn Rd., Suite B City: Tomball State: TX
Zip: 77375 Contact: Kelly Violette, Executive Director
Phone: (281) 401-4086 Email: kviolette@tomballtxedc.org

Owner Tomball Economic Development Corporation - Same Info as Applicant
Name: & Tortuga Operating Company Title: Owner

Mailing Address: 7412 Shady Villa Lane City: Houston State: TX
Zip: 77055 Contact: Peter Turbett, President
Phone: (713) 401-4086 Email: tortugaturbett@comcast.net

Engineer/Surveyor (if applicable)

Name: Gunda Corporation (Ardurra) Title: North Branch Manager
Mailing Address: 32731 Egypt Lane, Suite 501 City: Magnolia State: TX
Zip: 77354 Contact: Kyle Bertrand
Phone: (281) 680-3600 Fax: () Email: KBertrand@ardurra.com

Description of Proposed Project: Tomball Business and Technology Park Sec. 2, Lots 1-4

Physical Location of Property: S. Persimmon Street, North of Spell Rd Intersection
[General Location – approximate distance to nearest existing street corner]

Legal Description of Property: Tomball Business and Technology Park Sec. 2, Lots 1-4
[Survey/Abstract No. and Tracts; or platted Subdivision Name with Lots/Block]

Current Zoning District: SF-20-E, Single-Family 20 Estate District

Current Use of Property: Undeveloped and existing wells

Proposed Zoning District: LI - Light Industrial District

Proposed Use of Property: Proposed to be consistent with uses in Tomball Business and Technology Park Sec 1.

HCAD Identification Number:	<u>1452440010004</u>	Acres:	<u>10.4422 acres</u>
	<u>1452440010003</u>		<u>1.7911 acres</u>
City of Tomball, Texas	<u>501 James Street, Tomball, Texas 77375</u>	Phone:	<u>281-290-1405</u>
	<u>1452440010002</u>		<u>2.1790 acres</u>
	<u>1452440010001</u>		<u>2.6727 acres</u>

www.tomballtx.gov

This is to certify that the information on this form is **COMPLETE, TRUE, and CORRECT** and the under signed is authorized to make this application. I understand that submitting this application does not constitute approval, and incomplete applications will result in delays and possible denial.

Kelly Violette Digitally signed by Kelly Violette
Date: 2022.08.30 12:41:03
-0500' August 29, 2022
Signature of Applicant Kelly Violette, Executive Director - TEDC Date

Kelly Violette Digitally signed by Kelly Violette
Date: 2022.08.30 12:41:12
-0500' August 29, 2022
Signature of Owner Kelly Violette, Executive Director - TEDC Date

Peter Turbett Digitally signed by Peter Turbett
Date: 2022.08.29 14:52:14
-0500' August 29, 2022
Signature of Owner Peter Turbett, President
Tortuga Operating Company Date



August 29, 2022

Mr. Nathan Dietrich
Community Development Director
City of Tomball - Community Development Department
501 James Street
Tomball, TX 77375

RE: Rezoning request for approximately 17.09 acres of land described as Lots 1-4 of the Tomball Business and Technology Park Section 2 Replat

Dear Mr. Dietrich,

For the second consecutive year, the Tomball Business & Technology Park was named a top industrial park in the United States by Business Facilities. The publication ranked the Tomball Business & Technology Park the 10th best industrial park in the country in its 18th Annual Rankings Report.

Operated by the Tomball Economic Development Corporation (TEDC), the 99.5-acre Tomball Business & Technology Park is lauded for its location, amenities, and infrastructure. The success of the Park is evidenced by the demand for business creation and relocation. As of August 2022, more than 551,701 square-feet has been constructed in the Park, generating over \$47 million in private capital investment and bringing over 575 jobs to Tomball.

In order to meet the demand, the TEDC works closely with its partners to manage infrastructure in and around the Park. The TEDC and the City of Tomball partnered together to extend South Persimmon Street from FM 2920 through the Park. Additionally, we partnered to extend Medical Complex Drive from South Persimmon to Hufsmith-Kohrville Road.

As part of the South Persimmon extension project the TEDC purchased 18.9 acres immediately north of the Tomball Business and Technology Park. We dedicated the right-of-way and easements necessary for the road to be constructed and coordinated the relocation of pipelines and easements with two pipeline companies. The resulting Replat created 4 Lots; two of which are currently owned by the TEDC (Lots 1 and 3) and two are owned by Tortuga Operating Company (Lots 2 and 4).

The requested rezoning is consistent with the Future Land Use Plan Map designation of Business Park and Industrial and will provide consistency with the remainder of the Business & Technology Park property.

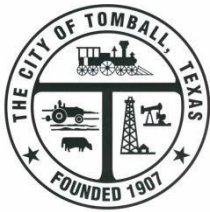
Please don't hesitate to contact me at (281) 401-4086 should you have any questions.

Sincerely,

A handwritten signature in black ink that reads "Kelly Violette". The signature is fluid and cursive.

Kelly Violette
Executive Director

281.401.4086 ★ fax 281.351.7223 ★ PO Box 820 ★ Tomball, Texas 77377-0820 ★ www.TomballTXedc.org



Notice of Public Hearing

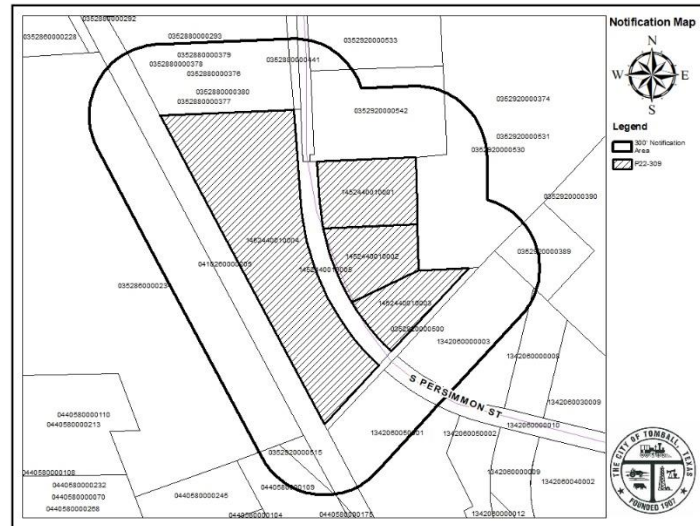
YOU ARE INVITED TO ATTEND the Public Hearing before the **PLANNING & ZONING COMMISSION** and **CITY COUNCIL** of the City of Tomball regarding the following item:

CASE NUMBER: P22-309

APPLICANT/OWNER: Tomball Economic Development Corporation & Tortuga Operating Company

LOCATION: The properties are located within the 1900 block of S. Persimmon Street (East and West side), within the City of Tomball, Harris County, Texas.

PROPOSAL: A Rezoning to amend Chapter 50 (Zoning) of the Tomball Code of Ordinance by rezoning approximately 17.08 acres of land legally described as being all of Lots 1, 2, 3, and 4 of Tomball Business and Technology Park, Section 2 from Single Family Residential – 20 (SF-20) to Light Industrial (LI).



CONTACT: Jared Smith, City Planner

PHONE: (281) 290-1491

E-MAIL: jasmith@tomballtx.gov

Interested parties may contact the City of Tomball between 8:00 a.m. and 5:00 p.m. Monday through Friday for further information. The application is available for public review Monday through Friday, except holidays, between the hours of 8:00 a.m. and 5:00 p.m. in the Community Development Department office, located at 501 James Street, Tomball, TX 77375. The staff report will be available no later than 4:00 p.m. on the Friday preceding the meeting.

This notice is being mailed to all owners of real property within 300 feet of the request as such ownership appears on the last approved Harris County Appraisal District tax roll.

**Planning & Zoning Commission
Public Hearing:
Monday, October 10, 2022 @ 6:00 PM**

**City Council Public Hearing:
*Monday, October 17, 2022 @ 6:00 PM**

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

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

**NOTICE OF PUBLIC HEARING
CITY OF TOMBALL
PLANNING & ZONING COMMISSION (P&Z)
OCTOBER 10, 2022
&
CITY COUNCIL
OCTOBER 17, 2022**



Notice is Hereby Given that a Public Hearing will be held by the P&Z of the City of Tomball on **Monday, October 10, 2022 at 6:00 P.M.** and by the City Council of the City of Tomball on **Monday, October 17, 2022 at 6:00 P.M.** at City Hall, 401 Market Street, Tomball Texas. On such dates, the P&Z and City Council will consider the following:

Zoning Case P22-309: Request from Tomball Economic Development Corporation and Tortuga Operating Company to amend Chapter 50 (Zoning) of the Tomball Code of Ordinance by rezoning approximately 17.08 acres of land legally described as being all of Lots 1, 2, 3, and 4 of Tomball Business and Technology Park, Section 2 from Single Family Residential – 20 (SF-20) to Light Industrial (LI). The properties are located within the 1900 block of S. Persimmon Street (East and West side), within the City of Tomball, Harris County, Texas.

Case P22-310: Request by 28121 Calvert, LLC, represented by Louis Smith to amend the City of Tomball’s Comprehensive Plan to update the Major Thoroughfare Plan Map. Removing the proposed east-west extension of Medical Complex Drive which is currently designated as a minor arterial from the Major Thoroughfare Plan Map. Specifically being the segment that is planned to extend approximately 1.05 miles from the western right-of-way boundary of Calvert Road to the southeastern right-of-way boundary of FM 2920 Road, within Harris County, Texas.

At the public hearings, parties of interest and citizens will have the opportunity to be heard. All citizens of the City of Tomball, and any other interested parties, are invited to attend. Applications are available for public inspection Monday through Friday, except holidays, at the Public Works Building, located at 501 James Street, Tomball, TX 77375. Further information may be obtained by contacting the City Planner, Jared Smith, at (281) 290-1491 or at jasmith@tomballtx.gov.

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

I hereby certify that the above notice of meeting was posted on the bulletin board of City Hall; City of Tomball, Texas, a place readily accessible to the general public at all times, on the **7th** day of **October 2022** by 5:00 p.m., and remained posted for at least 72 continuous hours preceding the scheduled time of said meeting.

Jared Smith

Jared Smith
City Planner

This facility is wheelchair accessible and accessible parking spaces are available. Requests for accommodations or interpretive services must be made 48 hours prior to this meeting. Please feel free to contact the City Secretary's office at (281) 290-1002 or FAX (281) 351-6256 for further information. AGENDAS MAY ALSO BE VIEWED ONLINE AT www.tomballtx.gov.

Special Joint Agenda Item Data Sheet

Meeting Date: November 21, 2022

Topic:

Approve, on Second Reading, Resolution No. 2022-50-TEDC, a Resolution of the City Council of the City of Tomball, Texas Authorizing and Approving, as a Project of the Tomball Economic Development Corporation, an Economic Development Incentive between the City of Tomball (the “City”), Tomball Economic Development Corporation (the “TEDC”), and Costco Wholesale Corporation (“Costco”), to Expend Funds in Accordance with an Economic Development Incentive Agreement to promote new and expanded business development associated with the construction of a Costco retail facility and fueling station on approximately 25.88 acres of land situation at the northeast corner of the intersection of Holderrieth Road and State Highway 249 Frontage Road in the City of Tomball, Texas; Containing other Provisions relating to the Subject; and Providing for Severability.

Background:

Origination: Tomball Economic Development Corporation Board of Directors

Recommendation: Approval of the First Reading, Resolution No. 2022-50-TEDC.

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

FUNDING (IF APPLICABLE)

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

Yes: X No: _____ If yes, specify Account Number: # Project Grants

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

Signed _____ Approved by _____
Staff Member-TEDC Date Executive Director-TEDC Date

RESOLUTION NO. 2022-50-TEDC

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF TOMBALL, TEXAS, AUTHORIZING AND APPROVING THE TOMBALL ECONOMIC DEVELOPMENT CORPORATION’S PROJECT TO EXPEND FUNDS IN ACCORDANCE WITH AN ECONOMIC DEVELOPMENT AGREEMENT BETWEEN THE CITY OF TOMBALL (THE “CITY”), TOMBALL ECONOMIC DEVELOPMENT CORPORATION (THE “TEDC”), AND COSTCO WHOLESALE CORPORATION (“COSTCO”) TO PROMOTE AND DEVELOP NEW OR EXPANDED BUSINESS ENTERPRISE; CONTAINING OTHER PROVISIONS RELATING TO THE SUBJECT; AND PROVIDING FOR SEVERABILITY.

* * * * *

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

WHEREAS, the Board of Directors of the TEDC had adopted as a specific project a grant in an amount equal to a portion of the new incremental sales tax revenues associated with the development of a new Costco retail facility and fueling station on approximately 25.88 acres of land situated at the northeast corner of the intersection of Holderrieth Road and State Highway 249 Frontage Road in the City of Tomball, Texas; and

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

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

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

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

Section 2. The City Council hereby authorizes and approves the adoption, by the Board of Directors of the Tomball Economic Development Corporation, as a specific project for the economic development of the City, an expenditure in an amount equal to a portion of the new incremental sales tax to COSTCO WHOLESALE CORPORATION a Washington corporation, in accordance with an economic development agreement by and between the CITY, the TEDC and COSTCO WHOLESALE CORPORATION, to promote and develop new or expanded business enterprise, to be located at the northeast corner the intersection of Holderrieth Road and State Highway 249 Frontage Road in the City of Tomball, Texas.

Section 3. In the event any clause, phrase, provision, sentence, or part of this Resolution or the application of the same to any person or circumstance shall for any reason be adjudged invalid or held unconstitutional by a court of competent jurisdiction, it shall not affect, impair, or invalidate this Resolution as a whole or any part or provision hereof other than the part declared to be invalid or unconstitutional; and the City Council of the City of Tomball, Texas, declares that it would have passed each and every part of the same notwithstanding the omission of any such part thus declared to be invalid or unconstitutional, whether there be one or more parts.

PASSED AND APPROVED on first reading this ____ day of _____, 2022.

PASSED, APPROVED, AND RESOLVED on second and final reading this ____ day of _____, 2022.

Lori Klein Quinn, Mayor

ATTEST:

Doris Speer, City Secretary

ECONOMIC DEVELOPMENT AGREEMENT

This Economic Development Agreement (this “Agreement”) is made by and between the City of Tomball, a State of Texas home rule city (the “City”), the Tomball Economic Development Corporation, a State of Texas Type B economic development corporation (the “TEDC”), and Costco Wholesale Corporation, a Washington corporation (“Costco”) (with the City, the TEDC, and Costco each being a “Party”, and collectively the “Parties”), and is entered into by the Parties as of the Effective Date as defined in Section 3 below.

RECITALS

WHEREAS, Chapter 380 of the Texas Local Government Code (“Chapter 380”) allows the City to make grants of public funds for the public purposes of promoting local economic development and stimulating business and commercial activity within the City, which the City memorializes in an economic development agreement to a grantee (a “380 Agreement”); and

WHEREAS, the City has taken all necessary legal action to adopt an economic development program or programs in satisfaction with Chapter 380; and

WHEREAS, the TEDC has established programs in accordance with Chapters 501, 502 and 505 of the Texas Local Government Code to promote local economic development and stimulate business and commercial activity within the City, and when such programs involve a direct incentive to a company, Chapter 501 of the Texas Local Government Code requires the TEDC to memorialize such incentive in a performance agreement with the company (a “Performance Agreement”); and

WHEREAS, the City and the TEDC have concluded and hereby find that this Agreement promotes economic development in the City and, as such this Agreement is intended to be both a 380 Agreement, providing for the City’s grant of public funds to Costco, and a Performance Agreement, providing for the TEDC’s provision of a direct incentive to Costco; and

WHEREAS, to ensure that the grant of the City and the direct incentive of the TEDC provided under this Agreement are utilized in a manner consistent with Chapters 380, 501, 502, and 505 of the Texas Local Government Code, Costco has agreed to comply with certain conditions for receiving the City’s grant and the TEDC’s direct incentive, as provided herein; and

WHEREAS, Costco has entered into an agreement to purchase approximately 25.88 acres of land situated at the northeast corner of Tomball Parkway and Holderrieth Road in the boundaries of the City (the “Property”), with the Property being more particularly depicted and described in the attached Exhibit “A”; and

WHEREAS, the City’s grant and the TEDC’s direct incentive are intended to enable Costco to develop, construct, open, operate, and maintain a wholesale and retail general merchandise facility on the Property (the “Costco Facility”), with the development of the Property and the Costco Facility adding significant new revenue to the City’s tax base and will create jobs, which will help stimulate the overall local economy; and **NOW, THEREFORE:**

IN CONSIDERATION OF THE MUTUAL BENEFITS DESCRIBED IN THIS AGREEMENT, AND FOR OTHER GOOD AND VALUABLE CONSIDERATION, THE RECEIPT AND SUFFICIENCY OF WHICH ARE HEREBY ACKNOWLEDGED, THE PARTIES AGREE AS FOLLOWS:

AGREEMENT

SECTION 1. RECITALS

The facts and statements included in the Recitals to this Agreement are hereby incorporated into this Agreement for all intents and purposes.

SECTION 2. AUTHORITY

A. The City’s participation in this Agreement is authorized by Chapter 380 of the Texas Local Government Code. The City finds that the grants of public funds for the public purposes of promoting local economic development and stimulating business and commercial activity within the City contemplated in this Agreement satisfy Chapter 380 of the Texas Local Government.

B. The TEDC’s participation in this Agreement is authorized by Chapters 501, 502, and 505 of the Texas Local Government Code. At a meeting of the Board of Directors of the TEDC (the “Board”) on November 1, 2022, the Board determined that the development of the Costco Facility constitutes a “project”, as the term is defined in Section 501 of the Texas Local Government Code, and authorized the TEDC to offer a direct incentive to Costco. This Agreement satisfies Chapters 501, 502, and 505 of the Texas Local Government Code and serves as a Performance Agreement reflecting the obligations of the TEDC and Costco regarding the direct incentive.

C. The City and the TEDC have each taken all necessary actions and obtained all necessary approvals to enter into this Agreement. The City Council of the City approved this Agreement by resolution on _____ 2022, a copy of which is attached to this Agreement as “Exhibit E”.

D. The City and the TEDC acknowledge that Costco’s participation in this Agreement and Costco’s decision to commit substantial resources and money to acquire and develop the Property are made in reliance upon the City’s and TEDC’s performance of their obligations under this Agreement and is subject to Costco’s performance of its obligations under this Agreement.

SECTION 3. DEFINITIONS

In addition to the terms defined in the Recitals or elsewhere in this Agreement, as used in this Agreement, the following words or phrases shall have the following meanings:

(1) “Acquisition Deadline” shall mean December 31, 2023

(2) “Certificate of Occupancy” shall mean a certificate of occupancy issued by the City, indicating that the Costco Facility complies with the applicable provisions of the building codes and laws of the City, including, if applicable, a temporary certificate of occupancy under which Costco is permitted to Open for Business within the Costco Facility. A Certificate of

Occupancy shall not include a certificate issued in error, by mistake, or based upon a misrepresentation of facts by Costco or its agent.

(3) “Conditions Satisfaction Deadline” shall mean the date that is thirty-six (36) months after the date of the Property Closing, unless extended by delays caused by Force Majeure.

(4) “Economic Development Grant Payment(s)” means the amount(s) to be paid to Costco by the City and the TEDC to Costco herein.

(5) “Effective Date” means the last date this Agreement is signed by all Parties.

(6) “Force Majeure” means any contingency or cause beyond the reasonable control of a Party including, without limitation: war, riots, acts of terrorism, acts of the public enemy, insurrections, civil commotion; labor disputes, a general inability to obtain labor or materials or reasonable substitutes for either, unusual delay in transportation, strikes, slowdowns or work stoppages; acts of God, casualties, explosions, floods, fire, earthquake, tornado, hurricane or other severe and adverse weather conditions; pandemics, epidemics, infectious disease outbreaks, public health emergencies, health and safety circumstances that require individual isolation, quarantine or quarantine-like restrictions; delays caused by actions or inactions, or other acts or omissions on the part of any public utility or local, state, or federal government (or de facto governmental entity), government official or their respective agents or employees (including, but not limited to, any government-mandated or suggested work stoppages or slowdowns (such as, by way of example and not limitation, any reduction in the number of workers allowed to work at one time, or any limitation on the allowable working hours) and/or the closing or slowing of governmental offices or procedures (such as, by way of example and not limitation, any significant change in the time required to file or obtain permits or record documents); and, delays caused by governmental restrictions, regulations or controls, including without limitation, any moratoriums (i.e. zoning, platting, building or similar moratoriums). An inability to obtain funds shall not be considered Force Majeure (unless directly caused by one of the events specifically described above).

(7) “Open for Business” means that the space under roof and air-conditioned and heated is open for full-time business operations as a wholesale and retail general merchandise facility with a full line of products and services under the business name “Costco” or “Costco Wholesale”.

(8) “Property Closing” shall mean the closing of the sale of the Property to Costco as evidenced by the recordation of the deed conveying the Property to Costco.

(9) “Sales Tax Effective Date” means the first day of the month next following the date that is one hundred eighty (180) days after the Certificate of Occupancy is issued to Costco for the Costco Facility and Costco is Open for Business (subject to its membership policies) for at least one (1) day.

(10) “Sales Tax Revenues” means the amount of sales/use tax that the City receives for transactions arising from and within the Property resulting from the imposition of a municipal sales tax, being the two percent (2%) sales/use tax currently in effect pursuant to the Texas Tax Code. The City’s two percent (2%) sales/use tax is composed of the following portions: one

percent (1%) is dedicated to the City’s General Fund and is available for all lawful purposes; one-half percent (½%) is dedicated for economic development purposes to be used by the TEDC; and, one-half percent (½%) is dedicated to property tax reduction, and may be used by the City for the limited purpose of property tax reduction. In calculating the Economic Development Grant Payment, the Sales Tax Revenues contemplated by this Agreement will not include the one-half percent (½%) of the City’s sales/use tax dedicated to property tax relief. *[For example: If the Property produces one million dollars (\$1,000,000) of Sales Tax Revenue in any applicable period, then the portion of the Sales Tax Revenue applicable to this Agreement is seven hundred fifty thousand dollars (\$750,000). (One million dollars (\$1,000,000) minus the two hundred fifty thousand dollars (\$250,000) portion of the revenue dedicated to property tax relief.)]*

(11) “Term of Twenty Years” means a twenty (20) year period commencing on the Sales Tax Effective Date and continuing for each consecutive year for twenty (20) years.

SECTION 4. TERM

A. This Agreement shall become enforceable upon the Effective Date and will terminate on the first to occur upon the:

- (1) Term of Twenty Years;
- (2) receipt by Costco of Economic Development Grant Payments of six million dollars (\$6,000,000); or,
- (3) termination of this Agreement as provided for herein (the “Term”).

B. In recognition of the fact that the Economic Development Grant Payments are based solely upon receipt by the City of Sales Tax Revenues, and thus, by necessity, are calculated and paid after sales taxes have been levied by and paid to the City and, therefore, will always be paid in arrears, the Term shall be deemed extended until any Economic Development Grant Payments relating to Sales Tax Revenues levied during the Term have been paid by the City to Costco. Notwithstanding anything to the contrary set forth in this Agreement, if Costco has not closed on the acquisition of the Property by the Acquisition Deadline, this Agreement shall automatically terminate and be of no further force or effect as of such date and the Parties shall have no further rights or obligations hereunder.

SECTION 5. COSTCO’S PERFORMANCE CRITERIA

A. Costco must satisfy all of the following conditions precedent by no later than the Conditions Satisfaction Deadline in order to receive any Economic Development Grant Payments hereunder:

- (1) Completion of construction of the Costco Facility on the Property containing at least one hundred fifty thousand (150,000) square feet of space. This condition shall be satisfied by delivery to the City of a certificate from a licensed architect certifying the same.
- (2) Costco shall have made a capital investment of not less than ten million dollars (\$10,000,000) in the Costco Facility, including, without limitation, the costs of acquiring the Property, hard and soft construction costs relating to the Costco Facility, including any

necessary off-site improvements, and the costs of equipping the Costco Facility. This condition shall be satisfied by delivery from Costco to the City of a certificate in the form attached hereto as Exhibit “B” certifying that Costco has made a total of at least ten million dollars (\$10,000,000) in capital investment.

(3) Costco shall have created at least one hundred twenty-five (125) jobs associated with the Costco Facility. For the purposes of this Agreement, a “job” shall be any employment associated with Costco that requires at least twenty (20) hours of work per week for an employee. This condition shall be satisfied by delivery from Costco to the City of a certificate in the form attached hereto as Exhibit “B” certifying that Costco has created at least one hundred twenty-five (125) jobs associated with the Costco Facility.

(4) A Certificate of Occupancy shall have been issued for the Costco Facility.

(5) The Costco Facility shall have been built in substantial accordance with all applicable City codes and other applicable laws. This condition shall be satisfied by the issuance of a Certificate of Occupancy by the City to Costco.

(6) The Costco Facility shall be Open for Business (subject to Costco’s membership policies) for at least one (1) day.

(7) All development associated with the Costco Facility must meet the drainage requirements of Atlas 14. This condition shall be satisfied by the City's approval of the site plan and stormwater plan for the Costco Facility.

(8) A failure by Costco to satisfy all of the foregoing performance criteria by the Conditions Satisfaction Date shall not constitute a Costco Default under this Agreement, but as a result of such failure, the City shall have no obligation to pay any Economic Development Grant Payments to Costco under this Agreement and this Agreement shall be terminated and the Parties shall have no further obligations under this Agreement.

B. Notwithstanding anything to the contrary contained in this Agreement, Costco shall have no obligation to occupy or operate the Costco Facility, and if Costco fails or ceases to operate for business in the Costco Facility it shall not constitute a Costco Default under this Agreement. However, if at any time from and after the date that Costco opens for business to the public (subject to Costco’s membership policies) in the Costco Facility, Costco ceases to occupy and operate the Costco Facility open to the public (subject to Costco’s membership policies) for hours of operation consistent with Costco’s other facilities in the State of Texas for a continuous period of one hundred eighty (180) days, except in connection with, and to the extent of, a Permitted Closure as defined below, then the City shall have the right to give written notice to Costco of the City’s intent to exercise the City’s rights under this Section (the “First Notice”) and if Costco fails to re-open to the public, subject to Costco’s membership policies, in the Costco Facility within ninety (90) days after the First Notice, then at any time after such ninety (90) day period, the City shall have the right, via written notice (the “Election Notice”) to Costco to either:

(1) cease payment of all or any of the Economic Development Grant Payments to Costco under this Agreement from the one hundred eighty first (181st) day of such cessation of occupation or operation until Costco re-opens for business to the public (subject to Costco’s membership

policies) in the Costco Facility, without any obligation for the City to pay any Economic Development Grant Payments which would or may have accrued during such period of ceased occupation or operation; or,

(2) terminate this Agreement with respect to Costco, with such termination being effective as of the ninety first (91st) day after delivery of the First Notice.

C. Further, if at any time from and after the date that Costco opens for business to the public (subject to Costco’s membership policies) in the Costco Facility, Costco ceases to occupy and operate the Costco Facility open to the public (subject to Costco’s membership policies) for hours of operation consistent with Costco’s other facilities in the State of Texas pursuant to a Permitted Closure, as defined below, for a period of more than three hundred sixty-five (365) days, then at any time after such three hundred sixty-five (365) day period, the City shall have the right, via written notice to Costco to cease payment of all or any of the Economic Development Grant Payments to Costco under this Agreement from the three hundred sixty-sixth (366th) day of such cessation of occupation or operation until Costco re-opens for business to the public (subject to Costco’s membership policies) in the Costco Facility, without any obligation for the City to pay any Economic Development Grant Payments which would or may have accrued during such period of ceased occupation or operation.

D. “Permitted Closure” shall mean any period in which the Costco Facility is not open for business to the public (subject to Costco’s membership policies) for hours of operation consistent with Costco’s other facilities in the State of Texas as:

(1) a result of a fire, earthquake, flood or similar casualty that renders the Costco Facility unfit for the intended purpose, as determined by Costco in its reasonably exercised judgment;

(2) a result of an event of Force Majeure;

(3) a result of a condemnation or other exercise by a governmental authority of the power of eminent domain, to the extent necessary to as determined by Costco in its reasonably exercised judgment for repair and restoration of the Costco Facility;

(4) a result of any repairs, renovations, alterations or modifications to the Costco Facility made by Costco with the intention of recommencing operations in the Costco Facility; or,

(5) required by law, to the extent, and only to the extent, that the necessity of compliance is not the result of Costco’s action, inaction, or failure to timely fulfill its obligations under this Agreement.

SECTION 6. ECONOMIC DEVELOPMENT GRANT PAYMENTS

A. Subject to Costco’s satisfaction of the performance criteria set forth in Section 5.A above, the City and the TEDC shall be obligated to reimburse to Costco a portion of the Sales Tax Revenues as provided herein, in an amount up to but not to exceed a cumulative total amount of six million dollars (\$6,000,000) over a period not to exceed the Term of Twenty Years. In no event shall the City or the TEDC be required to make any Economic Development Grant Payments to Costco except as provided herein, and subject to satisfaction of the conditions set forth above. The

Economic Development Grant Payment obligations contained in this Agreement shall cease upon payment in full to Costco of six million dollars (\$6,000,000), or the expiration of the Term, whichever occurs first.

B. Commencing after the satisfaction of all of the conditions set forth in Section 5.A above, the City and the TEDC shall reimburse Costco annual payments in the amount of fifty percent (50%) of the Sales Tax Revenues arising from and within the Property as received by the City from the Texas Comptroller for the previous calendar year, and as reconciled with the sales and use tax information provided by the Texas Comptroller's office to the City. The City and the TEDC shall make such payments annually by March 31st, commencing with the March 31st next following the satisfaction of all of the conditions set forth in Section 5.A above. The payments shall be for sales tax-generating transactions in and on the Property that occurred from January 1 to December 31 of the prior calendar year. The obligation to reimburse Costco contemplated herein shall cease upon Costco's receipt of Economic Development Grant Payments totaling of six million dollars (\$6,000,000) in the aggregate, or the expiration of the Term, whichever occurs first. The City and the TEDC shall be required to issue only one (1) check or wire transfer (per wiring instructions provided by Costco) for each annual payment to Costco or Costco's designee.

C. A delay in the payment of the Economic Development Grant Payment by either the City or the TEDC due to a delay in receiving the Sales Tax Revenues or sales and use tax information from the Texas Comptroller shall not be considered a default on the part of the City or the TEDC so long as the City and the TEDC use reasonable efforts to obtain the Sales Tax Revenues or sales and use tax information and make the annual payment to Costco within thirty (30) days after receipt of such Sales Tax Revenues or sales and use tax information.

D. As a condition to obtaining any Economic Development Grant Payment based upon Sales Tax Revenues, Costco shall sign (and shall cause any affiliate, tenant, licensee, or other party generating Sales Tax Revenues from the Costco Facility which Costco desires to be included for purposes of determining any such Economic Development Grant Payment to sign) and submit to the City and the TEDC and maintain during the Term, the Waiver of Sales Tax Confidentiality form attached as Exhibit "C", or other similar form required by the Texas Comptroller as may be required from time to time during the Term to permit the release of sales tax information relating to the Costco Facility to the City and the TEDC.

E. The Economic Development Grant Payment made by the City and the TEDC to Costco shall be composed of fifty percent (50%) of the City's portion of the Sales Tax Revenue and one hundred percent (100%) of the TEDC's portion of the Sales Tax Revenue. As an example of how the Sales Tax Revenues shall be calculated by the City and the TEDC under this Agreement to satisfy the Economic Development Grant Payment obligations to Costco contemplated herein, the Parties shall consider the following:

If the Property produces one million dollars (\$1,000,000) in Sales Tax Revenue in any given year of the Term, then Costco should receive five hundred thousand dollars (\$500,000) as an Economic Development Grant Payment, which is a reimbursement of fifty percent (50%) of the Sales Tax Revenues generated at the Property. Of the one million dollars (\$1,000,000) in Sales Tax Revenue generated at the Property, two hundred fifty thousand dollars (\$250,000) shall be allotted by the City for property tax relief and is not applicable to this Agreement, which would leave a remaining seven hundred fifty thousand dollars (\$750,000) that is applicable to this Agreement. Five hundred

thousand dollars (\$500,000) of the remaining seven hundred fifty thousand dollars (\$750,000) of the Sales Tax Revenue is directed to the City's General Fund for any lawful purpose. Two hundred fifty thousand dollars (\$250,000) of the remaining seven hundred fifty thousand dollars (\$750,000) of the Sales Tax Revenue is dedicated for the economic development purposes of the TEDC. In this example, and for the purposes of this Agreement, the TEDC would provide two hundred fifty thousand dollars (\$250,000), or one hundred percent (100%), of its portion of the Sales Tax Revenue to Costco as the TEDC's portion of the Economic Development Grant Payment. In this example, and for the purposes of this Agreement, the City would provide two hundred fifty thousand dollars (\$250,000), or fifty percent (50%), of its portion of the Sales Tax Revenue to Costco as the City's portion of the Economic Development Grant Payment. By the City providing fifty percent (50%) and the TEDC providing one hundred percent (100%) of their applicable portions of the Sales Tax Revenue, the five hundred thousand dollar (\$500,000) Economic Development Grant Payment to Costco is satisfied.

SECTION 7. COSTCO'S COVENANTS, WARRANTIES, AND OBLIGATIONS

Costco hereby makes the following covenants and warranties to the City and the TEDC, and agrees, to timely and fully perform the following obligations and duties:

- (1)** Costco is authorized to do business and is in good standing in the State of Texas and shall remain in good standing in the State of Texas during the Term of this Agreement.
- (2)** The execution of this Agreement has been duly authorized by Costco, and the corporate officer signing this Agreement is an officer of Costco, empowered to execute this Agreement and bind Costco, said authorization, signing and binding effect is not in contravention of any law, rule or regulation, or of the provisions of Costco's articles of incorporation, bylaws, or of any agreement or instrument to which Costco is a party or by which it may be bound.
- (3)** The execution and performance of this Agreement by Costco constitutes its valid and binding obligation, subject to the terms and conditions set forth in this Agreement.
- (4)** As of the date of this Agreement, no litigation or governmental proceeding is pending or, to the knowledge of Costco, threatened against or affecting Costco that may result in any material adverse change in Costco's business, properties or operation. No consent, approval or authorization of or registration or declaration within any governmental authority is required in connection with the execution of this Agreement or the transactions contemplated hereby.
- (5)** There are no bankruptcy proceedings or other proceedings currently pending or contemplated, and Costco has not been informed of any potential involuntary bankruptcy proceedings.
- (6)** Costco shall pay all state and local taxes due and owing by Costco to all taxing authorities having jurisdiction over the Property prior to delinquency (provided, however, Costco retains the right to timely and properly protest and contest any such taxes and so long as Costco is timely and properly protesting or contesting the same it shall not constitute a Costco Default). A failure by Costco to satisfy the performance criteria by set forth in this subsection shall not constitute a Costco Default under this Agreement, but as a result of such failure, the City shall have no obligation to pay any Economic Development Grant Payments to Costco due during the year in which Costco is delinquent in any state and local taxes due and owing by Costco.

(7) In the event of bankruptcy, receivership, or closure or cessation of operations at the Costco Facility, Costco shall maintain the Costco Facility in good condition and in compliance with applicable building and property maintenance codes and ordinances.

(8) Costco shall not discriminate against any person on the basis of race, color, national origin, sex, or by reason of being disabled, and shall refrain from violating any applicable local, state, and federal law which may have a material adverse effect on the City's or the TEDC's reputation by virtue of the City's or the TEDC's relationship with Costco.

(9) Costco acknowledges that for contracts needing City Council or TEDC Board of Directors approval, that the City or the TEDC may not accept or enter into a contract until it has received from Costco a completed, signed, and notarized Texas Ethics Commission (the "TEC") Form 1295 from Costco complete with a certificate number assigned by the TEC, pursuant to Texas Government Code §2252.908 and the rules promulgated thereunder by the TEC. Attached hereto as Exhibit "D" is a copy of the TEC Form 1295 filed by Costco to be attached upon receipt by Costco.

(10) Pursuant to Chapter 2264 of the Texas Government Code, Costco certifies that as of the Effective Date of this Agreement and throughout the Term, Costco's business, or a branch, division, or department thereof, does not and will not knowingly employ an undocumented worker (as defined in §2264.001 of the Texas Government Code), and if Costco's business, or a branch, division, or department thereof, is convicted of a violation of 8 U.S.C. §1324a(f) occurring during the Term of this Agreement, Costco shall repay to City and the TEDC the total amount of Economic Development Grant Payments paid to Costco under this Agreement, plus interest at Agreed Rate (as hereinafter defined), not later than the one hundred twentieth (120th) day after the date City or the TEDC notifies Costco of the violation. It is agreed that for purposes of this subsection, but only if permissible under Chapter 2264 of the Texas Government Code, that:

(a) For the purposes of this Section, "Costco's business" shall be limited to Costco's business in Tomball, Texas;

(b) Costco shall not be liable for a violation of Chapter 2264 of the Texas Government Code by a person or entity with whom Costco contracts;

(c) neither Costco nor its business, or branch, division, or department thereof, shall be deemed to have been "convicted of a violation" until all appeals have been exhausted and/or the time for all appeals has expired; and,

(d) the date that "City notifies Costco of the violation" may not be earlier than the date that Costco has been "convicted of a violation" as provided in the immediately preceding subsection.

(11) For purposes of this Section "Agreed Rate" shall mean the lesser of:

(a) the Wall Street Journal prime rate announced by and as quoted in Wall Street Journal, from time to time, as its prime commercial rate or, if the Wall Street Journal prime rate

ceases to be made available by the publisher, or any successor to the publisher, a similar reference interest rate based on the interest large United States money center commercial banks charge on short term uninsured loans to their most creditworthy borrowers, or

(b) the highest lawful rate.

SECTION 8. DEFAULT

A. The following shall constitute a “Costco Default” under this Agreement:

- (1) The appointment of a receiver of Costco, or of all or any substantial part of its property, and the failure of such receiver to be discharged within ninety (90) days thereafter.
- (2) The adjudication of Costco as bankrupt.
- (3) The filing by Costco of a petition or an answer seeking bankruptcy, receivership, reorganization, or admitting the material allegations of a petition filed against it in any bankruptcy or reorganization proceeding.
- (4) Upon the expiration of the notice and cure period set forth below, a breach of a material representation under this Agreement by Costco.
- (5) Upon the expiration of the notice and cure period set forth below, a breach of any material covenant set forth herein.

B. The following shall constitute a “Tomball Default” under this Agreement:

- (1) The appointment of a receiver of the City or the TEDC, or of all or any substantial part of its property, and the failure of such receiver to be discharged within ninety (90) days thereafter.
- (2) The adjudication of the City or the TEDC as bankrupt.
- (3) The filing by the City or the TEDC of a petition or an answer seeking bankruptcy, receivership, reorganization, or admitting the material allegations of a petition filed against it in any bankruptcy or reorganization proceeding.
- (4) Upon the expiration of the notice and cure period set forth below, a breach of a material representation under this Agreement by the City or the TEDC.
- (5) Upon the expiration of the notice and cure period set forth below, the City’s failure to pay by the City or TEDC any Economic Development Grant Payment to Costco in accordance with this Agreement.
- (6) Upon the expiration of the notice and cure period set forth below, a breach of the City’s or the TEDC’s obligations set forth in this Agreement.

C. In the event of the occurrence of a breach or default by a Party under this Agreement, as applicable, the non-defaulting Party shall give written notice to the other Parties of such default, and the defaulting Party shall have sixty (60) days thereafter to cure said default or if the defaulting

Party is diligently pursuing the cure of such default but such default is not reasonably curable within sixty (60) days, then the defaulting Party shall have such additional amount of time as is reasonably necessary to cure such default but no more than one hundred twenty (120) additional days. Should a default or breach as described herein, remain uncured after such cure period it shall constitute a Costco Default or Tomball Default, as applicable, and the non-defaulting Party shall have the right to exercise the remedies set forth below.

SECTION 9. REMEDIES.

A. Upon the occurrence of a Costco Default, the City and the TEDC shall have the right to terminate this Agreement by written notice to Costco, in which event the City and the TEDC shall have no obligation to make any future Economic Development Grant Payments to Costco under this Agreement.

B. Upon the occurrence of a Tomball Default, Costco shall have the right to terminate this Agreement by written notice to the City and the TEDC, in which event Costco shall have no further obligations under this Agreement.

C. In addition, and without terminating this Agreement, any Party shall further have the power to enforce specific performance to collect amounts owing by the other Parties under this Agreement or to otherwise compel the other Parties to perform their obligations under this Agreement. Further, any Party shall have the right to bring an action for a declaratory judgment.

D. The City and the TEDC shall not be entitled to a refund of any portion of or all Economic Development Grant Payments made to Costco, except as otherwise provided in Section 7(10) hereof, and further provided that the City and the TEDC shall be entitled to recapture any portion of or all Economic Development Grant Payments which were made based upon materially false or fraudulent information certified to or provided by Costco and for which Costco would not otherwise have been entitled. No action shall lie for damages against Costco except that the City and the TEDC shall be entitled to any action to recover any amounts owed by Costco as provided in the foregoing sentence.

E. Upon the occurrence of a Tomball Default, Costco has the right to bring any action to recover any amounts owed to it under this Agreement. In addition, Costco shall have the right to seek a judicial declaration of the appropriate amount of Economic Development Grant Payments owing to Costco by the City or the TEDC under this Agreement.

F. IF AND TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAWS, THE CITY VOLUNTARILY WAIVES ITS RIGHT TO ASSERT SOVEREIGN IMMUNITY FROM SUIT OR LIABILITY IN RESPONSE TO AN ACTION BY COSTCO SEEKING ONLY THE REMEDIES SPECIFIED IN THIS AGREEMENT; IT BEING UNDERSTOOD THAT THIS WAIVER IS A LIMITED AND NOT A GENERAL WAIVER, AND THAT ITS EFFECT IS LIMITED TO SPECIFIC CLAIMS UNDER THIS AGREEMENT. EXCEPT AS EXPRESSLY PROVIDED IN THE FOREGOING SENTENCE, NEITHER THE CITY NOR THE TEDC OTHERWISE WAIVE ANY GOVERNMENTAL IMMUNITIES THAT EITHER MAY HAVE AS NOW EXIST OR MAY BE CREATED UNDER ANY APPLICABLE LAW OR JUDGEMENT.

G. If any legal action or proceeding is commenced by any Party to enforce the provisions of this

Agreement or to recover any damages permitted under this Agreement from the breaching Party, each Party shall pay their own legal fees and costs of court.

H. The sole and exclusive remedies of Costco for a breach by the City or the TEDC under this Agreement, and the City's and the TEDC's sole and exclusive remedies for a breach by Costco under this Agreement, shall be those expressly provided for in this Section 9 and elsewhere in this Agreement and Costco, the City and the TEDC each hereby waives any other remedies under law or in equity.

I. A Party shall not be deemed to be in default of this Agreement if performance of this Agreement is delayed, disrupted, or becomes impossible because of an event of Force Majeure, but only for so long as the event of Force Majeure reasonably delays, disrupts or prevents performance.

J. Any delay for any amount of time by a Party in providing notice of default to the other Party shall in no event be deemed or constitute a waiver of such default by such non-defaulting Party of any of its rights and remedies available in law or in equity.

K. Any waiver granted by one Party to another Party shall not be deemed or constitute a waiver of any other existing or future default by such Party or of a subsequent default of the same act or event.

SECTION 10. LIABILITY LIMITATIONS OF THE CITY AND THE TEDC

The City and the TEDC are making payments under this Agreement solely and exclusively from the Sales Tax Revenues each receives from the Texas Comptroller related to the Property and such funds are not financed and will not be financed or otherwise paid from any other source. Under no circumstances shall the obligations of the City or the TEDC hereunder be deemed to create any debt within the meaning of any constitutional or statutory provision. No public official or employee shall be personally responsible for any liability arising under or growing out of this Agreement.

SECTION 11. ADDITIONAL REPRESENTATIONS AND WARRANTIES

The City agrees to cooperate with Costco to expeditiously and in good faith process permits, plat applications, and other approvals as required for the Property and Costco Facility. This Section does not waive any requirements of the City's Code of Ordinances as they apply to Costco. All normal fees from the City shall apply to Costco, including, but not limited to, traffic impact analysis fees, water fees, and wastewater impact fees.

SECTION 12. MISCELLANEOUS PROVISIONS

A. Changes in Law. If, during the Term, State law applicable to municipal sales taxes changes and, as a result, the Economic Development Grant Payments differ from the amount which would have been paid to Costco under the laws in effect as of the Effective Date, then the City and the TEDC, in their sole discretion, may adjust the Economic Development Grant Payments utilizing whatever discretionary taxes and revenues are legally available to be allocated to the Economic Development Grant Payments. The foregoing does not require the City or the TEDC to use funds from sources which are not allocable to the Property in order to achieve the same economic benefits to Costco, which would have resulted if the law had not changed. Should any other legal impediment arise during the Term, including without limitation a change in law, that prevents or

prohibits the City or the TEDC from complying with or making any payments under this Agreement, the Parties agree to terminate this Agreement; provided, however, that, to the extent feasible and permitted by applicable law, the Parties agree to work together in good faith to modify this Agreement or enter into a new agreement or otherwise provide Costco with a remedy or reasonably equivalent value to otherwise accomplish the purpose of this Agreement.

B. Binding Effect. This Agreement will be binding on and inure to the benefit of the Parties and their respective successors and assigns.

C. Assignment. Except as provided below, Costco may not assign all or part of its rights under this Agreement to a third party without the prior written approval of the City and the TEDC, which approval will not be unreasonably withheld or delayed. In the event either Costco is sold or merged into, or transfers substantially all of its then owned assets to another entity, the City and the TEDC hereby consent to such sale, merger, or transfer and consents to any assignment of the sold, merged, or transferred entity's rights and obligations under this Agreement to such receiving entity as a result of such sale, merger, or transfer. Costco shall provide the City and the TEDC with written notice of any such assignment.

D. Notice. Notice shall be effective upon receipt or refusal of delivery by the Party to be notified. Any notice or other communication ("Notice") given under this Agreement shall be in writing, and may be given:

- (1) by depositing the Notice in the United States Mail, postage paid, certified, and addressed to the Party to be notified with return receipt requested;
- (2) by personal delivery of the Notice to the Party;
- (3) by depositing the notice with Federal Express or another nationally recognized courier service for next day delivery; or,
- (4) by confirmed facsimile, provided that a copy of the Notice is also given in one of the manners specified in (i), (ii), or (iii).

E. Notice Contact Information. For the purposes of Notice, unless changed as provided in writing to all Parties, as provided in Section 12.D above, the contact information of the Parties is as follows:

For the City:
City of Tomball
Attn: City Manager
401 Market Street
Tomball, Texas 77375

For the TEDC:
Tomball Economic Development Corp.
Attn: Executive Director
29201 Quinn Road, Ste. B
Tomball, Texas 77375

For Costco:
Costco Wholesale Corp.
Attn: Property Management Dept.
999 Lake Drive
Issaquah, Washington 98027

With Copy To:
Holland & Knight, LLP
Attn: Ray T. Khirallah
One Arts Plaza
1722 Routh Street, Suite 1500
Dallas, Texas 75201

F. Interpretation. Each of the Parties has been represented by counsel of its choosing in the negotiation and preparation of this Agreement. In the event of any dispute regarding the interpretation of this Agreement, this Agreement will be interpreted fairly and reasonably and neither more strongly for or against, either Party based on draftsmanship.

G. Relationship of the Parties. This Agreement shall not be construed as establishing a partnership or joint venture, joint enterprise, express or implied agency, or employer-employee relationship between the Parties. Neither the City, the TEDC, nor either's past, present, or future elected officials, officers, directors, employees, or agents, assume any responsibility or liability to any third party in connection with the development of the Property or the design, construction, or operation of any portion of the Property.

H. Applicable Law and Venue. This Agreement is made, and will be construed and interpreted, under the laws of the State of Texas without regard to any conflicts of law provision, and venue will lie in a state district court in Harris County, Texas. The Parties consent to, and waive any objection to, in person jurisdiction in Harris County, Texas.

I. Severability. If any provision of this Agreement is held to be illegal, invalid, or unenforceable in any respect under present or future laws, the remainder of this Agreement shall not be affected so long as the intent, purpose, and benefits of this Agreement are not affected in any manner materially adverse to either Party hereto. This Agreement shall be construed as if such invalid, illegal, or unenforceable provision had never been contained herein, and in lieu of each provision that is found to be illegal, invalid or unenforceable, a provision shall be added to this Agreement which is legal, valid and enforceable, is as similar in terms as possible to the provision found to be illegal, invalid or unenforceable, and effects the intent, purpose, and benefits of this Agreement.

J. Paragraph Headings. The paragraph headings contained in this Agreement are for convenience only and will in no way enlarge or limit the scope or meaning of the paragraphs.

K. No Third-Party Beneficiaries. This Agreement is not intended to confer any rights, privileges, or causes of action upon any third party.

L. Counterparts. This Agreement may be executed simultaneously in two (2) or more counterparts, each of which will be deemed an original, but all of which will constitute the same instrument. A signature transmitted by facsimile or email will be deemed to be an original signature for all purposes. As used in this Section, "signature" means a manually signed document by a natural person, as opposed to an electronic signature.

M. Exhibits. The following exhibits are attached to and incorporated into this Agreement and made a part of this Agreement for all purposes as if they were set forth herein in their entirety: Exhibit A – Description of Property; Exhibit B – Certificate Regarding Capital Investment and Jobs; Exhibit C – Disclosure of Confidential Information; Exhibit D – Form 1295; Exhibit E – Resolution.

N. Entire Agreement. This Agreement embodies the complete agreement of the Parties, superseding all oral or written, previous and contemporary, agreements between the Parties relating to matters in this Agreement; and, except as otherwise provided herein, this Agreement cannot be modified or amended without a written agreement of the Parties.

Confidentiality. This Agreement is subject to the Texas Public Information Act and will be considered “public information” after consideration by the City or the TEDC at a posted meeting by either body. However, the City and the TEDC will use all appropriate measures to keep the information contained in and related to this Agreement confidential until such time as the Texas Public Information Act requires the City or the TEDC to disclose the applicable contents of this Agreement. To the maximum extent permitted by law, the City and the TEDC and their respective elected officials, officers, directors, and employees, and agents or contractors retained to perform economic development services for either the City or the TEDC (the “City Related Parties”): (i) shall use all appropriate measures to maintain the confidentiality of all sales tax information filed by Costco and/or its respective tenants, subtenants and/or licensees, as applicable, with the State of Texas and all other information regarding the Sales Tax Revenue generated by the Property; (ii) shall treat as confidential any other proprietary or financial information of Costco and/or its respective tenants, subtenants, and/or licensees and shall not release any of the foregoing information to the public, unless required by law or court order. The City and the TEDC shall notify Costco as a third-party under the Texas Public Information Act of requests, Attorney General Opinions, and court orders to release such information pursuant to the Texas Public Information Act. The City and the TEDC shall be permitted to disclose the foregoing information to such of the City Related Parties as either of the City and the TEDC, in its reasonable discretion, deems appropriate in furtherance of the purposes of this Agreement, so long as such disclosure is made subject to compliance by such City Related Parties with the terms of this Section. This Section is not meant to prevent the City or the TEDC from complying with the Texas Public Information Act, as it may be amended.

SIGNATURES ON THE FOLLOWING PAGES:

**SIGNATURE PAGE TO
 ECONOMIC DEVELOPMENT AGREEMENT MADE BY AND AMONG
 THE CITY OF TOMBALL,
 THE TOMBALL ECONOMIC DEVELOPMENT CORPORATION,
 AND COSTCO WHOLESALE CORPORATION**

IN WITNESS WHEREOF, the undersigned signed and executed this Agreement effective as of the dates set forth below.

FOR: THE CITY

FOR: THE TEDC

 Name [Signature]

 Name [Signature]

 Name [Printed]

 Name [Printed]

 Title

 Title

 Date

 Date

FOR THE TEDC

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

This instrument was acknowledged before me on the _____ day of _____ 2022,
Day Month
 by _____, _____ of _____,
Name Position/Title Entity Name
 for and on behalf of said Entity.

(SEAL)

 Notary Public in and for the State of Texas

My Commission Expires: _____

**SIGNATURE PAGE TO
ECONOMIC DEVELOPMENT AGREEMENT MADE BY AND AMONG
THE CITY OF TOMBALL,
THE TOMBALL ECONOMIC DEVELOPMENT CORPORATION,
AND COSTCO WHOLESALE CORPORATION**

IN WITNESS WHEREOF, the undersigned signed and executed this Agreement effective as of the dates set forth below.

FOR: COSTCO

Name [Signature]

Name [Printed]

Title

Date

THE STATE OF _____ §

COUNTY OF _____ §

This instrument was acknowledged before me on the _____ day of _____ 2022,
by _____, the _____ of COSTCO WHOLESALE CORPORATION, a Washington corporation, for and on behalf of said corporation.

Notary Public in and for the State of _____

(SEAL)

My Commission Expires: _____

EXHIBIT A – DESCRIPTION OF PROPERTY

All of Reserve “A” of Maple Group, an addition to the City of Tomball, Harris County, Texas, according to the plat thereof recorded in Film Code No. 683989, Map Records, Harris County, Texas

EXHIBIT B – CAPITAL INVESTMENT AND JOBS CERTIFICATION

Re: ECONOMIC DEVELOPMENT AGREEMENT MADE BY AND AMONG THE CITY OF TOMBALL, THE TOMBALL ECONOMIC DEVELOPMENT CORPORATION, AND COSTCO WHOLESALE CORPORATION

This Capital Investment Certification is being delivered by Costco Wholesale Corporation (“Costco”) in connection with that certain Economic Development Agreement made by and among the City of Tomball (the “City”), the Tomball Economic Development Corporation (the “TEDC”), and Costco effective as of _____, 2022 (the “Agreement”). All terms used herein have the meanings ascribed to them in the Agreement unless otherwise defined herein.

The undersigned authorized officer of Costco hereby certifies to the City and the TEDC that:

- 1. Costco has made a capital investment of not less than Ten Million Dollars (\$10,000,000) in the Costco Facility, including, without limitation, the costs of acquiring the Property, hard and soft construction costs relating to the Costco Facility, including any necessary off-site improvements, and the costs of equipping the Costco Facility (but excluding inventory).
- 2. Costco has created at least one hundred twenty-five (125) jobs associated with the Costco Facility. (A “job” meaning any employment associated with Costco that requires at least twenty (20) hours of work per week for an employee).

The undersigned hereby certifies that I am a duly authorized representative of Costco and am duly authorized to execute this Cost Certification.

COSTCO WHOLESALE CORPORATION

BY: _____

NAME – SIGNATURE

NAME – PRINTED

TITLE

DATE _____ 20__

STATE OF _____

COUNTY OF _____

Sworn to and subscribed to before me on the ___ day of _____,
20_____, by _____.

NOTARY NAME

**EXHIBIT C – DISCLOSURE OF CONFIDENTIAL TAX INFORMATION
AGREEMENT FOR DISCLOSURE OF CONFIDENTIAL TAX INFORMATION**

This Agreement for Disclosure of Confidential Tax Information (this “Agreement”) is entered into by and among the City of Tomball (the “City”), the Tomball Economic Development Corporation (the “TEDC”; the City and the TEDC are collectively referred to as the “City Parties”), and Costco Wholesale Corporation, a Washington corporation (hereafter the “Taxpayer”) for the purposes indicated herein.

The undersigned Taxpayer hereby authorizes the Texas Comptroller’s Office to release and disclose to the City any and all sales and use tax information pertaining to Taxpayer’s business in the Costco wholesale/retail facility located situated at the northeast corner of Tomball Parkway and Holderrieth Road in the boundaries of the City of Tomball. This waiver applies only to the Costco wholesale/retail facility located on the northeast corner of Tomball Parkway and Holderrieth Road in Tomball, Texas.

The undersigned Taxpayer understands and agrees that this release will be made by the Texas Comptroller’s Office to the City on an ongoing monthly basis beginning on the date this Agreement is executed. Taxpayer waives any and all rights of confidentiality of tax information under Sections 111.006, 151.027 of the Texas Tax Code to the extent, and only to the extent, necessary to permit the Texas Comptroller’s Office to release and disclose Taxpayer’s sales and use tax information as provided in this Agreement.

The City Parties each agree that the City Parties will use the sales and use tax information disclosed by the Texas Comptroller pursuant to this Agreement solely and exclusively for the purposes under that certain Economic Development Agreement by and among the City Parties and Costco dated _____, 2022, and subject to the terms thereof.

This Agreement is entered into in the State of Texas, and Texas law will apply to its interpretation and enforcement.

SIGNED AND AGREED TO on this ____ day of _____, 202__

Name of Taxpayer Listed on Texas Sales Tax Permit

Name Under Which Taxpayer is Doing Business (d/b/a or Outlet Name)

Taxpayer Mailing Address

Physical Location of Business Permitted for Sales Tax

SIGNATURE PAGE TO DISCLOSURE OF CONFIDENTIAL TAX INFORMATION
AGREEMENT FOR DISCLOSURE OF CONFIDENTIAL TAX INFORMATION

THE CITY

THE TEDC

Name [Signature]

Name [Signature]

Name [Printed]

Name [Printed]

Title

Title

Date

Date

EXHIBIT D – FORM 1295

TO BE ATTACHED

**EXHIBIT E – RESOLUTION
TO BE ATTACHED**

City Council Meeting Agenda Item Data Sheet

Meeting Date: November 21, 2022

Topic:

Approve the Minutes of the following Meetings:

- November 7, 2022 Special Tomball City Council Meeting
- November 7, 2022 Special Joint Tomball City Council-TEDC Meeting
- November 7, 2022 Special Tomball City Council Meeting

Background:

Origination: City Secretary

Recommendation:

Approve

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

FUNDING (IF APPLICABLE)

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

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

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

Signed Doris Speer 11-15-2022 Approved by _____
Staff Member Date City Manager Date

**MINUTES OF SPECIAL JOINT TOMBALL CITY COUNCIL AND
TOMBALL ECONOMIC DEVELOPMENT CORPORATION MEETING
CITY OF TOMBALL, TEXAS**



**Monday, November 7, 2022
6:00 PM**

The City Council of the City of Tomball, Texas, conducted the meeting scheduled for Monday, November 7, 2022 at 6:00 PM, City Hall, 401 Market Street, Tomball, Texas 77375, via physical attendance and video/telephone participation/access.

A. Mayor Klein Quinn called the meeting of the Tomball City Council to order at 7:26 p.m.

PRESENT

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

OTHERS PRESENT

City Manager – David Esquivel
Assistant City Manager – Jessica Rogers
City Secretary – Doris Speer
Assistant City Secretary – Tracylynn Garcia
City Attorney – Justin Pruitt
Director of Community Development – Nathan Dietrich
Director of Public Works – Drew Huffman
Finance Director – Katherine Tapscott
Police Chief – Jeff Bert
Police Captain-Patrol – Brandon Patin
Project Manager - Meagan Mageo

TEDC President Fagan called the special meeting of the Tomball Economic Development Corporation to order at 6:00 p.m.

PRESENT:

TEDC President, Fagan
TEDC Board Member Degges
TEDC Board Member Bruce

TEDC Board Member Covington

OTHERS PRESENT (TEDC):
Executive Director-TEDC – Kelly Violette

- B. No public comments were received.
- C. New Business
1. Presentation regarding Economic Development Incentive Agreement with Costco Wholesale Corporation associated with the construction of a Costco retail facility and fueling station on approximately 25.88 acres of land situated at the northeast corner of the intersection of Holderrieth Road and State Highway 249 Frontage Road in the City of Tomball, Texas was given by Kelly Violette.
 2. Mayor Klein Quinn called the TEDC Public Hearing to approve, as a Project of the Corporation, an Economic Development Incentive Agreement with Costco Wholesale Corporation, to promote new and expanded business development associated with the construction of a Costco retail facility and fueling station on approximately 25.88 acres of land situation at the northeast corner of the intersection of Holderrieth Road and State Highway 249 Frontage Road in the City of Tomball, Texas at 7:30 p.m.

Receiving no public comments, Mayor Klein Quinn closed the Public Hearing at 7:31 p.m.

Motion made by TEDC Board Member Degges, seconded by TEDC Board Member Bruce to approve as a project, an Economic Development Incentive Agreement with Costco Wholesale Corporation.

Motion carried unanimously.
 3. Motion made by Council 3 Dunagin, Seconded by Council 4 Townsend, Sr., to approve, on First Reading, Resolution No. 2022-50-TEDC, a Resolution of the City Council of the City of Tomball, Texas Authorizing and Approving, as a Project of the Tomball Economic Development Corporation, an Economic Development Incentive between the City of Tomball (the “City”), Tomball Economic Development Corporation (the “TEDC”), and Costco Wholesale Corporation (“Costco”), to Expend Funds in Accordance with an Economic Development Incentive Agreement to promote new and expanded business development associated with the construction of a Costco retail facility and fueling station on approximately 25.88 acres of land situation at the northeast corner of the intersection of Holderrieth Road and State Highway 249 Frontage Road in the City

of Tomball, Texas; Containing other Provisions relating to the Subject; and Providing for Severability.

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

Motion carried unanimously.

D. Adjournment

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

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

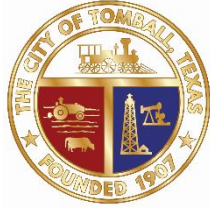
Motion carried unanimously, meeting adjourned at 7:34pm.

PASSED AND APPROVED this the 21st day of November 2022.

Doris Speer
City Secretary, TRMC, MMC

Lori Klein Quinn
Mayor

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



**Monday, November 7, 2022
4:00 PM**

The City Council of the City of Tomball, Texas, conducted the meeting scheduled for Monday, November 7, 2022 at 4:00 PM, City Hall, 401 Market Street, Tomball, Texas 77375, via physical attendance and video/telephone participation/access.

A. Mayor Klein Quinn called the meeting of the Tomball City Council to order at 4:04 p.m.

PRESENT

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

OTHERS PRESENT

City Manager – David Esquivel
Assistant City Manager – Jessica Rogers
City Secretary – Doris Speer
Assistant City Secretary – Tracylynn Garcia
City Attorney – Justin Pruitt
Director of Community Development – Nathan Dietrich
Director of Public Works – Drew Huffman
Finance Director – Katherine Tapscott
Police Chief – Jeff Bert
Police Captain-Patrol – Brandon Patin
Project Manager - Meagan Mageo
Marketing Manager – Sasha Smith

B. No public comments were received.

C. Workshop

1. The Tomball City Council and City Staff entered into a Workshop to receive presentation, hold discussion and provide staff direction for the following purposes:

- * Homeless Encampments – Jeff Bert, Barry Hart, Executive Director-Tomball Emergency Assistance Ministries (TEAM), and Robert Marmelstein, Chief Executive Director-HCA Healthcare-Tomball
- * Public Improvement Districts and Potential Amendments to Administrative Policy No. 18, Development Policy for Special Financing Districts – Jessica Rogers
- * Open Air Markets – Nathan Dietrich
Michael Pierce, 13607 Arcott – support for open air market
- * Mobile Food Courts – Nathan Dietrich
- * TML regarding Legislative – Mayor Klein Quinn
- * Request to hear all agenda items in a prior workshop – Mayor Klein Quinn
- * Downtown Public Restrooms (Northside of 2920) – Mayor Klein Quinn

D. Motion by Council 5 Townsend, Seconded by Council 1 Ford, to adjourn.

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

Motion carried unanimously.

Meeting adjourned at 7:16 p.m.

PASSED AND APPROVED this the 21st day of November 2022.

Doris Speer
City Secretary, TRMC, MMC

Lori Klein Quinn
Mayor

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



**Monday, November 7, 2022
6:00 PM**

The City Council of the City of Tomball, Texas, conducted the meeting scheduled for November 7, 2022, 6:00 PM, at 401 Market Street, Tomball, Texas 77375, via video/telephone conference.

A. Mayor Klein Quinn called the meeting of the Tomball City Council to order at 7:38 p.m.

PRESENT

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

OTHERS PRESENT

City Manager – David Esquivel
Assistant City Manager – Jessica Rogers
City Secretary – Doris Speer
Assistant City Secretary – Tracylynn Garcia
City Attorney – Justin Pruitt
Director of Community Development – Nathan Dietrich
Director of Public Works – Drew Huffman
Finance Director – Katherine Tapscott
Police Chief – Jeff Bert
Police Captain-Patrol – Brandon Patin
Project Manager - Meagan Mageo
Marketing Manager – Sasha Smith
Marketing Communications Specialist – Chrislord Templonuevo
Community Center Manager – Rosalie Dillon
TEDC President Fagan
TEDC Board Member Covington
Executive Director-TEDC – Kelly Violette
Economic Development Coordinator-TEDC – Tori Gleason

B. Invocation - Led by Council 4 Derek Townsend Sr.

- C. Pledges to U.S. and Texas Flags- Led by Council 1 John Ford
- D. No public comments were received.
- E. Reports and Announcements
 - 1. Announcements
 - I. November 12, 2022 – **Depot Day – a *National Model Railroad Month Event*** – 10:00 a.m.-4:00 p.m.
 - II. November 12, 2022 – **2nd Saturday at the Depot** – 5:45 p.m.-7:35 p.m.
 - III. November 18, 2022 – ***Light it Up! Tree Lighting – 7:00 p.m.-9:00 p.m.,*** at the Depot
 - IV. November 19, 2022 – ***Holiday Parade*** – Downtown – Sponsored by the Greater Tomball Area Chamber of Commerce; 2023 Miss Tomball Event in the Evening – 10:00 a.m.-Noon
 - V. December 3, 2022 – ***Deck the Depot*** – Depot Plaza – 10:00 a.m.-2:00 p.m.
 - VI. December 9-11, 2022 – **German Christmas Market** – Depot Plaza and Market Street
 - 2. Reports by City staff and members of council about items of community interest on which no action will be taken:
 - I. Katherine Tapscott - Quarterly Investment Report for Period Ending September 30, 2022. The Public Funds Investment Act requires that a report of the City’s cash and investments be presented to City Council on a quarterly basis. As of September 30, 2022, the City’s cash and investment balances totaled \$67,314,441.
 - II. Chrislord Templonuevo – Report on the Success of the **Spooktacular 2nd Saturday at the Depot**

Sasha Smith – Report on the Success of the **Tomball Bluegrass Fall Fest 2022**
- F. Old Business
 - 1. Motion made by Council 4 Townsend, Sr., Seconded by Council 1 Ford to adopt, on Second Reading, Ordinance No. 2022-18, an ordinance of the City of Tomball, Texas, amending Chapter 50 (Zoning) of the Tomball Code of Ordinances by

changing the Zoning District Classification of approximately 1.44 acres of land legally described as being Lot 1, Block 1 of JTS Subdivision from General Retail (GR) to the Commercial (C) District. The property is located at the southwest corner of the intersection of Medical Complex Drive and the State Highway 249 frontage road, providing for severability; providing for a penalty of an amount not to exceed \$2,000 for each day of violation of any provision hereof, making findings of fact; and providing for other related matters.

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

Motion carried unanimously.

2. Adopt, on Second Reading, Ordinance No. 2022-38, an ordinance of the City of Tomball, Texas, amending Chapter 50 (Zoning) of the Tomball Code of Ordinances by changing the Zoning District Classification of approximately 17.08 acres of land legally described as being all of lots 1, 2, 3, and 4 of Tomball Business and Technology Park from Single Family Residential -20 (SF-20) to Light Industrial (LI). The property is located within the 1900 block of S. Persimmon Street (east and west sides), providing for severability; providing for a penalty of an amount not to exceed \$2,000 for each day of violation of any provision hereof, making findings of fact; and providing for other related matters.

No action was taken.

3. Motion made by Council 5 Parr, Seconded by Council 1 Ford to adopt, on Second Reading, Ordinance No. 2022-39, an ordinance of the City of Tomball, Texas, amending the City of Tomball's Comprehensive Plan to update the Major Thoroughfare Plan Map. Removing the proposed east-west extension of Medical Complex Drive which is currently designated as a minor arterial from the Major Thoroughfare Plan Map. Specifically being the segment that is planned to extend approximately 1.05 miles from the western right-of-way boundary of Calvert Road to the southeastern right-of-way boundary of FM 2920 Road, providing for severability; providing for a penalty of an amount not to exceed \$2,000 for each day of violation of any provision hereof, making findings of fact; and providing for other related matters.

Kyle Bertrand - 102 Sage Tone Ct., Montgomery, Texas

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

Motion carried unanimously.

G. Motion made by Council 2 Stoll, Seconded by Council 1 Ford.to approve New Business Consent Agenda Items 1-13:

1. Approve the Minutes of the following Meetings:
 - * October 17, 2022 Regular Tomball City Council Meeting
 - * November 1, 2022 Special Tomball City Council Meeting
2. Approve the purchase of budget software from Questica Ltd. for a not-to-exceed amount of \$112,874.81 over a five (5) year term, approve the expenditure of funds therefor, and authorize the City Manager to execute any and all documents related to the purchase. The purchase is included in the FY 2022-2023 Budget.
3. Approve the purchase of four (4) Ford F-150 Crew Cab Trucks from Silsbee Ford through the TIPS USA Automobiles Contract (Contract No. 210907) for a not-to-exceed amount of \$176,841.00, approve the expenditure of funds therefor, and authorize the City Manager to execute any and all documents related to the purchase. These purchases are included in the FY 2022-2023 Budget.
4. Approve the purchase of one (1) Ford F-150 Crew Cab Truck and two (2) Ford Police Interceptors from Silsbee Ford through the TIPS USA (Contract No. 210907) for a not-to-exceed amount of \$130,945.50, approve the expenditure of funds therefor, and authorize the City Manager to execute any and all documents related to the purchase. These purchases are included in the FY 2022-2023 Budget.
5. Approve the purchase of public safety uniforms from Impact Promotional Services, d.b.a Got You Covered Workwear and Uniforms through the BuyBoard Cooperative Purchasing Network (Contract #670-22) for a not-to-exceed amount of \$125,000.00, 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 2022-2023 Budget.
6. Approve Supplemental Number One to Gunda Corporation, LLC. for Project Number 2018-10041, Jerry Matheson Park Rebuild for an amount of \$113,530 (total not-to-exceed contract amount of \$147,630), approve the expenditure of funds therefor, and authorize the City Manager to execute the agreement. This project was included in the FY 2022-2023 budget.
7. Approve a Professional Services Agreement with Oller Engineering, Inc. for Project Number 2023-10004, design of the Pine Street elevated storage tank rehabilitation for the City of Tomball, for the not-to-exceed amount of \$73,943,

approve the expenditure of funds therefor, and authorize the City Manager to execute the agreement. This project was included in the FY 2022-2023 budget.

8. Approve a Professional Services Agreement with Freese & Nichols, Inc. for Project Number 2023-10010, East Water Plant design for the City of Tomball, for the not-to-exceed amount of \$2,606,076, approve the expenditure of funds therefor, and authorize the City Manager to execute the agreement. This project was included in the FY 2022-2023 budget.
9. Approve a Professional Services Agreement with Freese & Nichols, Inc. for Project Number 2019-10008, FM 2920 Lift Station Improvements for the City of Tomball, for the not-to-exceed amount of \$2,206,200, approve the expenditure of funds therefor, and authorize the City Manager to execute the agreement. This project was included in the FY 2022-2023 budget.
10. Approve a Professional Services Agreement with Freese & Nichols, Inc. for Project Number 2023-10003, the preliminary design of the South Wastewater Treatment Plant expansion and associated improvements to the South Wastewater Treatment Plant, for the not-to-exceed amount of \$506,085; approve the expenditure of funds therefor, and authorize the City Manager to execute the agreement. This project was included in the FY 2022-2023 budget.
11. Approve a Professional Services Agreement with Gunda Corporation, Inc. for Project Number 2014-10031, FM 2920 Improvement Project for the City of Tomball, for the not-to-exceed amount of \$65,000, approve the expenditure of funds therefor, and authorize the City Manager to execute the agreement. This project was included in the FY 2022-2023 budget.
12. Approve an Interlocal Agreement with Harris County for Project Number 2023-10009, Telge Easement Acquisition, for a total amount of \$1,379,163.19, approve the expenditure of funds therefor, and authorize the City Manager to execute the agreement. This project was included in the FY 2022-2023 budget as part of the Certificate of Obligation issuance.
13. Repeal Administrative Policy No. 6, “Auctions Conducted to Dispose of City Property,” and Administrative Policy No. 16, “Master Service or Commodity Contracts, Professional Service Contracts, and Change Orders”

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

Motion carried unanimously.

H. New Business

1. Motion made by Council 1 Ford, Seconded by Council 5 Parr to approve amendments to Administrative Policy No. 18, Development Policy for Special Financing Districts.

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

Motion carried unanimously.

2. Motion made by Council 4 Townsend, Sr., Seconded by Council 3 Dunagin to approve amendments to Administrative Policy No. 24, Sports Court Reservation Policy option #2.

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

Voting Nay: Council 2 Stoll

Motion carried, 4 votes Yea, 1 vote Nay.

3. Motion made by Council 3 Dunagin, Seconded by Council 4 Townsend, Sr., to accept Resignation of Becky Loving, Resident Member 1, of the Tourism Advisory Committee

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

Motion carried unanimously.

4. Executive Session: The City Council recessed at 8:30 p.m. to meet in Executive Session as Authorized by Title 5, Chapter 551, Government Code, the Texas Open Meetings Act, for the Following Purpose(s):

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

Upon reconvening into session at 9:08 p.m., no action was taken.

I. Motion made by Council 5 Parr, Seconded by Council 2 Stoll to adjourn.

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

Motion carried unanimously

PASSED AND APPROVED this the 21st day of November 2022.

Doris Speer
City Secretary, TRMC, MMC

Lori Klein Quinn
Mayor

City Council Meeting Agenda Item Data Sheet

Meeting Date: November 21, 2022

Topic:

Approve a Professional Services Agreement with Engineered Utility Solutions, Inc. for Project Number 2022-10011, Gas Master Plan, for a not-to-exceed amount of \$115,000, authorize the expenditure of funds therefor, and authorize the City Manager to execute the agreement. This amount is included in the FY 2022-2023 budget.

Background:

The proposed professional services agreement with Engineered Utility Solutions, Inc. includes a scope of work to begin creating a gas master plan for the City of Tomball by creating a baseline natural gas hydraulic model. The complete scope of work will include modeling the existing natural gas system and enhancing the City's GIS database to include all active natural gas customers, including geographic location, size of the service line, and the make/model of the gas meter, pipe information including material and thickness.

This contract is for the initial phase of the gas master plan, and additional phases will be proposed in the budget request for fiscal year 2023-2024. The final phases of the master plan will include development of capital improvement plans (CIP) for 5-year, 10-year, and 25-year planning periods.

Engineered Utility Solutions, Inc. was selected through the Request for Qualifications process (RFQ 2022-09). Two firms submitted statements of qualifications, with Engineered Utility Solutions being selected as the most highly qualified respondent, and after such selection, staff engaged in discussions with Engineered Utility Solutions to determine fair and reasonable rates for the professional service. The selection and discussions were held in accordance with the City's adopted Procurement Policy and Manual and state procurement law.

Commented [JR1]: Correct if needed

Funds for completing the proposed project were allocated in the Fiscal Year 2022-2023 budget.

Origination: Project Management

Recommendation:

Staff recommends awarding a Professional Services Agreement to Engineered Utility Solutions, Inc. for the creation of a Gas Master Plan for a total amount not to exceed \$115,000.00

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

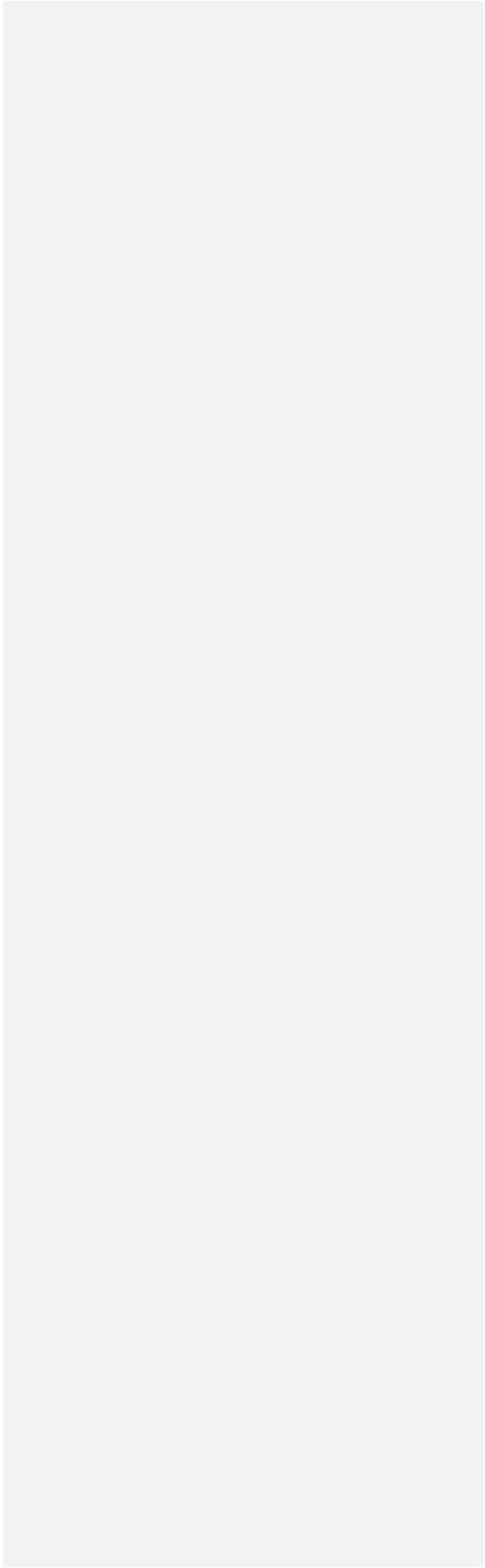
FUNDING (IF APPLICABLE)

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

Yes: X No: _____ If yes, specify Account Number: # 600-615-6302

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

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



**PROFESSIONAL SERVICES AGREEMENT
FOR
ENGINEERING SERVICES
RELATED TO
ENGINEERING & PLANNING PROJECT NO. 2022-10011
CITY OF TOMBALL
GAS MASTER PLAN**

**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 Engineered Utility Solutions, Inc. ("Engineer").

WITNESSETH:

WHEREAS, the City desires to complete a Natural Gas Master Plan for the City of Tomball (the "Project"); and

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

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

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

**SECTION I.
SCOPE OF AGREEMENT**

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

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

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

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

SECTION III. OWNERSHIP OF WORK PRODUCT

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

SECTION IV. TIME FOR PERFORMANCE

The time for performance is an estimated 365 calendar day duration beginning from the execution date of this Agreement. Upon written request of the Engineer, the City may grant time extensions to the extent of any delays caused by the City or other agencies with which the work must be coordinated and over which Engineer has no control.

SECTION V. COMPLIANCE AND STANDARDS

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

SECTION VI. INDEMNIFICATION

To the fullest extent permitted by Texas Local Government Code Section 271.904, Engineer shall and does hereby agree to indemnify,

hold harmless and defend the City, its officers, agents, and employees against liability for damage caused by or resulting from an act of negligence, intentional tort, intellectual property infringement, or failure to pay a subcontractor or supplier committed by the Engineer, the Engineer's agent, consultant under contract, or another entity over which the Engineer exercises control.

**SECTION VII.
ENGINEER'S COMPENSATION**

For and in consideration of the services rendered by Consultant pursuant to this Agreement, the City shall pay Engineer only for the actual work performed under the Scope of Work, on the basis set forth in Exhibit "A," up to an amount not to exceed \$115,000.00, including reimbursable expenses as identified in Exhibit "A".

**SECTION VIII.
INSURANCE**

Engineer shall procure and maintain insurance in accordance with the terms and conditions set forth in Exhibit "B," for protection from workers' compensation claims, claims for damages because of bodily injury, including personal injury, sickness, disease, or death, claims or damages because of injury to or destruction of property, including loss of use resulting therefrom, and claims of errors and omissions.

**SECTION IX.
TERMINATION**

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

**SECTION X.
ADDRESSES, NOTICES AND COMMUNICATIONS**

All notices and communications under this Agreement shall be mailed by certified

mail, return receipt requested, to Consultant at the following address:

Engineered Utility Solutions, Inc.
Attn: Diana Perossa, PE
8603 Crossriver Lane
Houston, Texas 77095

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

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

SECTION XI. LIMIT OF APPROPRIATION

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

SECTION XII. SUCCESSORS AND ASSIGNS

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

SECTION XIII. DISCLOSURE OF INFORMATION

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

**SECTION XIV.
MODIFICATIONS**

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

**SECTION XV.
ADDITIONAL SERVICES OF ENGINEER**

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

**SECTION XVI.
CONFLICTS OF INTEREST**

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

**SECTION XVII.
PAYMENT TO ENGINEER FOR SERVICES AND
REIMBURSABLE EXPENSES**

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

**XVIII.
MISCELLANEOUS PROVISIONS**

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

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

C. This Agreement is for sole benefit of the City and Engineer, and no provision

of this Agreement shall be interpreted to grant or convey to any other person any benefits or rights.

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

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

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

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

EXECUTED on this 10th day of November, 2022.

Company Name: Engineered Utility Solutions, Inc.



Name: Diana Perossa, PE
Title: President & Sr. Project Manager

CITY OF TOMBALL, TEXAS

David Esquivel, City Manager

ATTEST:

Doris Speer, City Secretary

EXHIBIT A



November 4, 2022

VIA EMAIL ONLY

City of Tomball
Meagan Mageo, Project Manager
501 James Street
Tomball, Texas 77375

Re: Services for Natural Gas Baseline Hydraulic Model – Proposal Scope and Fee

Dear Ms. Mageo:

Engineered Utility Solutions, Inc. (EUSI) in partnership with Cornerstone Energy Services, Inc (Cornerstone) is pleased to provide this proposal for providing general natural gas distribution engineering services for the preparation of a Natural Gas Baseline Hydraulic Model to the City of Tomball. Our team is exceptionally qualified to provide engineering and design services to the City of Tomball (City) and render a scope of work that provides value.

This document has been prepared based on our review and understanding of information provided during the recent RFQ process, knowledge of the project scope and location as well as our experience on similar projects for natural gas operators in Texas, throughout the US and eastern Canada.

Our team's objectives for providing general natural gas engineering services for the Baseline Natural Gas Hydraulic Model to the City include the following:

- Enhance the City's GIS Database by appending it to include all active natural gas customers, including their geographic location, size of their service line, and the make/model of their gas meter.
- Append the City's GIS Database piping information with piping material and wall thickness, SDR as appropriate, to be used for modeling purposes.
- Develop a baseline hydraulic model the existing natural gas system

It is understood this scope does not include verification of any information contained within the existing GIS database. While we recognize the need to verify all asset information already included in the existing GIS database, it is our understanding the City requires a cost-effective baseline model to improve their understanding of the existing natural gas distribution system and strategically plan system improvements. For this reason, all parties have agreed to rely solely on the existing information the City has on hand; with the understanding that a future phase verifying all assets and updating baseline model is necessary to ensure an accurate understanding of the natural gas distribution system and establish a tool for the City's strategic master planning of the natural gas system.

We intend to collaborate closely with the City throughout the performance of the scope of work (detailed below) to provide a strategic and effective solution for the City's concerns. Based on our analysis of the City's current GIS, our understanding of the City's natural gas system operations, compliance concerns and general need for technical & strategic planning, our

Natural Gas Baseline Model Cont'd

team has developed the following Project Execution Plan that delineates our project approach which follows:

Phase 1 Scope—GIS Database Enhancements

We will start by polishing the existing GIS database as our first step. This requires researching the City's customer records and appending the GIS database with additional critical information not already in the GIS database. This pertinent information can then be imported to the GASWorkS 10.0 hydraulic modeling software. This saves time and costs associated with model development. We intend to collaborate closely with the city and their Gas Operations personnel throughout this initial phase, thus ensuring a more complete database of records that can be used by the city, and by EUSI during subsequent efforts in the overall Gas Master Plan effort.

Tasks

- Cross reference customer location and load information from City service database with current GIS database.
- Gather existing load information regarding residential, industrial, commercial, and agricultural/seasonal max loads.
- Document assumptions for piping and load conditions for all information that is not readily available for use by the EUSI and Cornerstone team.

Deliverables

1. Upgraded GIS Shapefiles for City use.

Assumptions

- Piping found in the current GIS database is comprehensive and complete to date, outside of missing material and wall thickness.
- The city does not have As-built documentation readily available for their piping. To complete the GIS database and get it to a point where it is useful for hydraulic modeling, the city will provide piping specifications to be assigned to each line within the system. This will result in all 2in PE piping having the same SDR, all 4in PE piping having the same SDR, etc.
- The city will provide a master list of all active customers to EUSI, which includes customer type (residential, small commercial, large commercial/industrial, agricultural/seasonal), location (either coordinates or street address), service size (if available) and meter make/model (if available)
- Residential customers identified in the database will have the number of dwelling units the meter serves (if available)

Phase 2 Scope—Hydraulic Model Development

Once completed, the GIS database will be imported into GASWorkS to create the “bones” of the hydraulic model. The model will be screened to address any continuity issues that arise during importing that is typically experienced at branch connections and valves/fittings. To complete the model, gas loading will be applied at the customer locations based on criteria established for the various customer classes. The model can then be run to establish preliminary results.

Tasks

- Pressure Study/Modeling – Generate baseline natural gas system hydraulic model

Natural Gas Baseline Model Cont'd

- Identify strategic locations for field measurements for performance comparison to the model since at this time the City does not monitor any strategic locations other than the City Gates and South Regulator Station.
- Capital Improvement Forecast for FY 2024 – in coordination with the City, we will estimate design and construction costs to resolve top 3 “system weaknesses” based on the hydraulic modeling results from the City’s existing GIS database. Also, we will work with the City to identify growth objectives that are needed in FY 2024.

Deliverables

1. Functioning Baseline Hydraulic Model in GasWorks based solely on existing GIS native database with City approved assumptions
2. Baseline Hydraulic Modeling Report
 - a. Outlines assumptions made for the model based on records found, discussions with operations, and describes the results/performance of the baseline model including weak points.
3. Strategic Check Points for the City to field verify pressures on peak days to validate baseline model results. Note: this is usually an iterative process to calibrate the baseline against real world peak load conditions; however, currently, the City does not have historical performance data for any locations on the system other than stations.
4. Capital Improvement Forecast 2024
 - a. Preliminary based on known data and meeting with City personnel
 - b. Project cost estimate for Engineering, Procurement, and Construction

Assumptions

- Baseline model results after Phase 2 will be sent to the City for review. It is expected that if there is no pressure data or pressure logs to be used to calibrate the model, the City will use these initial modeling results as a comparison to the system performance that operations personnel experience in the real world.
- Schedule and Estimated Costs noted below are based on kick-off of this project no later than 11/11/2022.
- The City will provide or make available all applicable records and data required to support our efforts.
- The following will be supplied by City:
 - Native GIS files for existing database system
 - All customer load and consumption information
 - City planning information for 2024 that could affect the natural gas system such as future developments, zoning changes, growth trends, plans for annexation, etc.
- City records are readily available with discernable information in a format that transfers easily into our processes.
- FY 2024 Capital Improvement Forecast accounts for the development of a list of up to three (3) projects to address weaknesses in the system as it stands today, complete with conceptual designs, cost estimates, and schedules.

Estimated Costs - \$115,000.00

Schedule – Efforts described above will within 12 weeks from notice to proceed.

Natural Gas Baseline Model Cont'd

It is our intent to conduct recurring status meetings with the City PM and designated Gas Department Personnel. Additionally, our PM & Deputy PM will participate in routine project management meetings and report formal progress updates. Urgent requests for same day in-person meetings do not pose an issue considering our PM's base of operations is in the Cypress region of Houston. We anticipate working closely with the City to complete this scope of work. The above noted fees account for our status meetings, progress updates, project management meetings and the anticipated close collaboration that will require both on-line meetings and in-person interactions on a routine basis.

It should be noted that our team has made every effort to account for the City's needs while balancing the scope and fee so as to render cost-effective, affordable deliverables. While our scope has a finite duration, the tools we develop can continue to serve the City as their new resources for the planning and operation of their natural gas system. For example, maintaining the GIS mapping current by incorporating all changes to the natural gas system and updating the hydraulic model on a regular basis would enable the City to respond quicker to any new customer request for large loads.

Our team painstakingly determined what scope elements were essential to meet the objective of this scope and fee. Any additional scope elements that should be treated as secondary have not been included in this proposal. We recognize the City is placing considerable trust in our team and we want to make sure the City receives every possible benefit of our industry expertise as we help the City meet their goals while stretching their dollars as effectively as possible.

We appreciate the opportunity to propose this scope and fee to the City of Tomball. Every effort has been made to detail this scope and fee to ensure a full understanding of our planned approach and deliverables. We recognize this is a detailed proposal and are available meet to discuss any information contained herein should you have any questions.

Sincerely,



Diana Perossa, PE

EUSI President & Sr. Project Manager

Tel: (832) 674-4667

dperossa@eutilsolutions.com

c: Drew Huffman
Steve Sawyer
Travis Cushman, PE
Jeff Rogers, PE

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer any rights to the certificate holder in lieu of such endorsement(s).


PRODUCER USI Southwest 9811 Katy Freeway, Suite 500 Houston, TX 77024 713 490-4600	CONTACT NAME: Michelle Weweh													
	PHONE (A/C, No, Ext): 972 737-6261													
INSURED Engineered Utility Solutions Inc. 8603 Crossriver Ln Houston, TX 77095	E-MAIL ADDRESS: usi.certrequest@usi.com													
	<table border="1"> <thead> <tr> <th>INSURER(S) AFFORDING COVERAGE</th> <th>NAIC #</th> </tr> </thead> <tbody> <tr> <td>INSURER A : Twin City Fire Insurance Company</td> <td>29459</td> </tr> <tr> <td>INSURER B : Trumbull Insurance Company</td> <td>27120</td> </tr> <tr> <td>INSURER C : XL Specialty Insurance Company</td> <td>37885</td> </tr> <tr> <td>INSURER D :</td> <td></td> </tr> <tr> <td>INSURER E :</td> <td></td> </tr> <tr> <td>INSURER F :</td> <td></td> </tr> </tbody> </table>	INSURER(S) AFFORDING COVERAGE	NAIC #	INSURER A : Twin City Fire Insurance Company	29459	INSURER B : Trumbull Insurance Company	27120	INSURER C : XL Specialty Insurance Company	37885	INSURER D :		INSURER E :		INSURER F :
INSURER(S) AFFORDING COVERAGE	NAIC #													
INSURER A : Twin City Fire Insurance Company	29459													
INSURER B : Trumbull Insurance Company	27120													
INSURER C : XL Specialty Insurance Company	37885													
INSURER D :														
INSURER E :														
INSURER F :														

COVERAGES CERTIFICATE NUMBER: REVISION NUMBER:

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSR	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input checked="" type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC OTHER:			61SBABE4415	03/19/2022	03/19/2023	EACH OCCURRENCE \$1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$1,000,000 MED EXP (Any one person) \$10,000 PERSONAL & ADV INJURY \$1,000,000 GENERAL AGGREGATE \$2,000,000 PRODUCTS - COMP/OP AGG \$2,000,000 \$
A	AUTOMOBILE LIABILITY <input type="checkbox"/> ANY AUTO OWNED AUTOS ONLY <input checked="" type="checkbox"/> HIRED AUTOS ONLY <input type="checkbox"/> SCHEDULED AUTOS NON-OWNED AUTOS ONLY			61SBABE4415	03/19/2022	03/19/2023	COMBINED SINGLE LIMIT (Ea accident) \$1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ \$
A	<input checked="" type="checkbox"/> UMBRELLA LIAB <input type="checkbox"/> EXCESS LIAB <input checked="" type="checkbox"/> OCCUR <input type="checkbox"/> CLAIMS-MADE DED <input checked="" type="checkbox"/> RETENTION \$10000			61SBABE4415	03/19/2022	03/19/2023	EACH OCCURRENCE \$1,000,000 AGGREGATE \$1,000,000 \$
B	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? <input type="checkbox"/> Y <input checked="" type="checkbox"/> N (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below		N/A	61WBCAC9SKL	03/19/2022	03/19/2023	<input checked="" type="checkbox"/> PER STATUTE <input type="checkbox"/> OTH-ER E.L. EACH ACCIDENT \$1,000,000 E.L. DISEASE - EA EMPLOYEE \$1,000,000 E.L. DISEASE - POLICY LIMIT \$1,000,000
C	Professional Liability			DPS9979200	06/03/2022	06/03/2023	\$2,000,000 per claim \$2,000,000 annl aggr.

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)
 All policies except Professional Liability and Workers Compensation, include an automatic Additional Insured endorsement that provides Additional Insured status to the Certificate holder, only when there is a written contract or written agreement between the named insured and the certificate holder that requires such status, and only with regard to work performed on behalf of the named insured. All policies provide a Blanket Waiver of Subrogation when required by written contract, except as prohibited by law. The General (See Attached Descriptions)

CERTIFICATE HOLDER City of Tomball Attn: Meagan Mageo 501 James Street Tomball, TX 77375	CANCELLATION SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS. AUTHORIZED REPRESENTATIVE 
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DESCRIPTIONS (Continued from Page 1)

Liability policy contains "Primary and Noncontributory" wording with respects to the sole negligence of the named insured, as required by written contract

City Council Meeting

Agenda Item

Data Sheet

Meeting Date: November 21, 2022

Topic:

Approve a Professional Services Agreement with Mosaic Public Partners for executive search services for the position of Human Resources Director for the not-to-exceed amount of \$27,000, authorize the expenditure of funds therefor, and authorize the City Manager to execute the agreement. This amount was included in the FY 2022-2023 budget.

Background:

The City of Tomball has been using the services of an interim HR Director since July 2022. After the City’s initial search for a permanent hire in September 2022 was unsuccessful, the City Manager’s Office desires to use the services of an executive recruiting firm.

Mosaic Public Partners is a public sector executive search firm, led by to former public sector executives. The firm has led more than 150 successful executive searches, including for the cities of Austin, Lewisville, Burleson, San Marcos and many more.

The professional services agreement with Mosaic Public Partners for the HR Director search will include assisting the City in preparation of a position analysis, recruitment strategy, advertising campaign, resume reviews and recommendations, interviews, and reference checks. This will be the second contract the City of Tomball has entered into with Mosaic Public Partners as they are currently leading the search for the city engineer position.

Origination: City Manager’s Office

Recommendation:

Staff recommends approval of the Professional Services Agreement with Mosaic Public Partners.

Party(ies) responsible for placing this item on agenda: Jessica Rogers, Asst. City Manager

FUNDING (IF APPLICABLE)

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

Yes: No: If yes, specify Account Number: # 100-115-6304

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

Signed	<u>Jessica Rogers</u>	<u>11-14-2022</u>	Approved by	_____
	Staff Member	Date		City Manager
				Date



Professional Services Agreement

This Agreement is made by and between the City of Tomball (“the Client”), and Mosaic Public Partners (“the Consultant”).

1. **Search Engagement.** The Client agrees to engage the Consultant to perform those services described below, for completion of the project described as follows: Human Resources Director Executive Search Services (“the Search”).
2. **Services.** The Consultant agrees to perform certain services necessary for completion of the Search, which services shall include, without limitation, the following:
 - a) Kickoff Meetings, Position Analysis and Consultation
 - b) Candidate Profile Development to include client and stakeholder meetings via videoconference
 - c) Advertising Campaign
 - d) Candidate Identification and Recruitment
 - e) Candidate Screening Interviews and Assessment
 - f) Resume Review and Recommendations
 - g) Facilitation of Interviews
 - h) Client/Finalist Interviews
 - i) Final Interview Assistance
 - j) Background Investigation and Detailed Reference Checks
 - k) Assist with Negotiations
 - l) Follow-up Correspondence
3. **Relationship.** The Consultant is an independent contractor and is not to be considered an agent or employee of the Client.
4. **Compensation.** As full compensation for the Consultant’s professional services performed hereunder, the Client shall pay the Consultant the flat amount of \$27,000 (Twenty-Seven Thousand Dollars) (“flat fee”). Expenses included in the flat fee include such items as advertising, clerical, graphics, research, background and public records searches, education verification and credit checks. Included in the flat fee is one consultant trip to facilitate candidate interviews. All other meetings and interviews will be conducted by videoconferencing unless otherwise stated in this agreement. All work products provided to the client will be electronically transmitted.

5. **Compensation for Additional Services.** In the event the Client requires services in addition to those described in Paragraph 2, the Consultant shall be compensated at the Consultant's standard hourly rates for professional services plus reimbursement of expenses as follows:

- Onsite community, staff or stakeholder forums: \$1,500 per day/per consultant, plus expenses
- Additional on-site meeting days: \$1,500 per day/per consultant, plus expenses
- Additional background checks: \$250/candidate
- Additional reference checks: \$750/candidate
- Other services: \$250/hour or \$1,500 per day/per consultant plus applicable expenses

6. **Method of Payment.** The Client will be invoiced in 4 (four) payments as follows:

- Upon Execution of this Agreement – \$8,100 (Eight Thousand One Hundred Dollars)
- After Presentation of Candidates – \$8,100 (Eight Thousand One Hundred Dollars)
- After Candidate Interviews – \$8,100 (Eight Thousand One Hundred Dollars)
- Upon Accepted Offer of Employment – \$2,700 (Two Thousand Seven Hundred Dollars)

Invoices shall be submitted to the following individual or department in the Client organization:

Invoicing/Billing Contact:

Alison Ashbury, Senior HR Specialist

ashbury@tomballtx.gov

281-290-1001

- **Term.** The term of this agreement shall commence on October 5, 2022, at which time the Consultant shall begin work on the Search and shall continue, subject to the termination provisions of Paragraph 9, until the date that the Consultant completes the Search. The time of completion of the Search is estimated to be 75 to 90 days (seventy-five to ninety days) from project initiation.

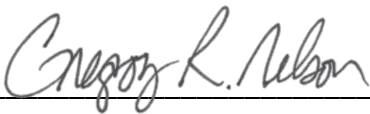
- **Guarantee.** If, during the first year of employment, the new Human Resources Director resigns or is dismissed for cause by the Client, the Consultant agrees to perform another search for a Human Resources Director for no professional services fee. The Consultant shall be entitled to reimbursement of expenses described above and incurred during such search. Should the initial outreach efforts not result in a successful placement, the Consultant will conduct a second outreach effort with no charge for professional services. The Client would be expected to pay for all incurred expenses.
- **Termination.** This agreement may be terminated: (a) by either party at any time for failure of the other party to comply with the terms and conditions of this Agreement; (b) by either party upon 10 days prior written notice to the other party; or (c) upon mutual written agreement of both parties. In the event of termination, the Consultant shall stop work immediately and shall be entitled to compensation for professional service fees and for expense reimbursement to the date of termination.
- **Insurance.** The Consultant shall maintain in force during the term of the agreement, Comprehensive General Liability Insurance with the General Commercial Liability, including Personal Injury; Automobile Liability Insurance, including Non-Owned and Hired Liability; and Workers' Compensation and Employers' Liability Insurance. Such insurance shall be in amounts reasonably satisfactory to the Client.
- **Hold Harmless.** The Consultant shall be responsible for its acts of negligence, and the Client shall be responsible for its acts of negligence. The Consultant agrees to indemnify and hold the Client harmless from any and all claims, demands, actions and causes of action to the extent caused by the negligent acts of the Consultant, its officers, agents and employees, by reason of the performance of this agreement. This indemnity shall not be construed to require indemnification of others.
- **Miscellaneous.**
 - The entire agreement between the parties with respect to the subject matter hereunder is contained in this agreement.
 - Neither this agreement nor any rights or obligations hereunder shall be assigned or delegated by the Consultant without the prior written consent of the Client.
 - This agreement shall be modified only by a written agreement duly executed by the Client and the Consultant.
 - Should any of the provisions hereunder be found to be invalid, void or voidable by a court, the remaining provisions shall remain in full force and effect.

- This agreement shall be governed by and construed in accordance with the laws of the State of Texas.
- All notices required or permitted under this agreement shall be deemed to have been given if and when deposited in the United States mail, properly stamped and addressed to the party for whom intended at such party's address listed below, or when delivered personally to such party. A party may change its address for notice hereunder by giving written notice to the other party.

APPROVED:

Mosaic Public Partners

City of Tomball

By: 

By: _____

Name Printed: Greg Nelson

Name Printed: _____

Title: Founder and Managing Partner

Title: _____

Date: October 3, 2022

Date: _____

200 Gateway Drive #1908
 Lincoln, California 95648
 (916) 550-4100
 Website: www.mosaicpublic.com

401 Market Street
 Tomball, Texas 77375
 (281) 351-5484
 Website: tomballtx.gov

City Council Meeting

Agenda Item

Data Sheet

Meeting Date: November 21, 2022

Topic:

Approve the purchase of two (2) Ford F-250 Crew Cab Trucks from Rush Truck Center through the Buyboard purchasing cooperative contract (Contract #601-19) for a not-to-exceed amount of \$102,052.00, approve the expenditure of funds therefor, and authorize the City Manager to execute any and all documents related to the purchase. These purchases are included in the FY 2022-2023 Budget.

Background:

The purchases are being made through the Buyboard purchasing cooperative contract and will be funded from allocated appropriations as part of the adopted Fiscal Year 2022-2023 Budget. These purchases are for the replacement of two (2) existing vehicles that are needed for daily operations. Once approved, these vehicles will be purchased from Rush Truck Center for a total amount of \$102,052.00.

Due to supply chain issues, vehicles are being purchased through different providers based on price and availability.

Description	Amount	Department	Purchase Type	Current Vehicle
2022 F-250 4x2 Crew Cab	\$51,026.00	Streets	Replacement	Chevy Silverado 3500 4x2 crew cab
2022 F-250 4x2 Crew Cab	\$51,026.00	Wastewater	Replacement	Chevy Silverado 3500 4x2 crew cab
TOTAL	\$102,052.00			

Origination: Public Works Department

Recommendation:

Staff recommends approving the purchase of two (2) Ford F-250 Crew Cab Trucks from Rush Truck Center as appropriated in the Fiscal Year 2022-2023 Budget.

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

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: # Multiple

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

Signed Drew Huffman 11/15/2022
Staff Member Date

Approved by _____
City Manager Date

TEXAS LOCAL GOVERNMENT PURCHASING COOPERATIVE--BUYBOARD

Remit P.O.'s To: munisales@rushenterprises.com

Vendor: RUSH TRUCK CENTER	Date Prepared: 11/9/2022
Contact for Vendor: Drew Neubauer	Phone: (830) 320-5254
End User: City of Tomball	
End User Contact:	Phone/Fax:
Product Description: Ford F-250	

A: Base Price in Bid/Proposal Number: 601-19		Series: F-250	\$ 20,150.00
B: Published Options(<i>Itemize Below</i>)			
	DESCRIPTION	AMOUNT	
Ford	Crew Cab (W2A)	\$ 6,980.00	
Ford	3.73 Elocking / LT245	\$ 555.00	
Ford	Power Equipment Group	\$ 1,125.00	
Ford	Roof Lights, Upfitter swtch	\$ 260.00	
Ford	Trailer Brake Controller	\$ 270.00	
Ford	Back up ALM, Day lights	\$ 195.00	
Subtotal Column 1: \$ 9,385.00		Subtotal Column 2: \$ 12,720.00	
Published Options added to Base Price(<i>Subtotal of "Col 1" & "Col 2"</i>)			\$ 22,105.00

C: Subtotal of A + B		\$ 42,255.00
D: Non Published Options		
General Knap Service Body Options	\$ 3,492.00	
Subtotal Column 1: \$ 3,492.00		Subtotal Column 2: \$ -

Unpublished Options added to Base price (<i>Subtotal "Col 1 + Col 2"</i>)	\$ 3,492.00
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E: Contract Price Adjustment (<i>If any, explain here</i>)		
Ford Model Year 2022 P225	\$ 4,279.00	\$ 4,279.00

F: Total of C + D +/- E	\$ 50,026.00
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G: Quantity ordered Units: <u>2.00</u> x	\$ 100,052.00
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H: BUYBOARD Administrative Fee	\$ 400.00
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I: Non-Equipment Charges & Credits (<i>I.e.: Ext. Warranty, Trade-In, Delivery, etc.</i>)					
Freight surcharges	\$ 800.00	x	2	\$ 1,600.00	
					\$ 1,600.00

J: TOTAL PURCHASE PRICE INCLUDING (G+H+I)	\$ 102,052.00
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City Council Meeting

Agenda Item

Data Sheet

Meeting Date: November 21, 2022

Topic:

Approve an agreement with Shane Griffin Power & Electrical Services, LLC for electrical contractor services for Fiscal Year 2023, for a not-to-exceed amount of \$75,000 (RFP 2022-10R), authorize the expenditure of funds therefor, and authorize the City Manager to execute the agreement. This amount is included in the FY 2022-2023 budget.

Background:

The proposed services agreement with Shane Griffin Power & Electrical Services, LLC includes a scope of work to perform electrical contractor services for the City on an as-needed basis that may include repair, replacement, upgrade, new construction and alteration of existing electrical services for City facilities and infrastructure.

This contract is for one year beginning November 22, 2022 and expiring at fiscal year-end (September 30, 2023), and has three additional one-year renewal options.

Shane Griffin Power & Electrical Services, LLC was selected through the Request for Proposals process (RFP 2022-10R). Three firms submitted sealed proposals, with Shane Griffin Power & Electrical Services, LLC being selected as offering the best value to the City based on the proposed scope of work. The selection and discussions were held in accordance with the City's adopted Procurement Policy and Manual and state procurement law.

Funds for electrical contract services were allocated in the Fiscal Year 2022-2023 budget.

Origination: Project Management

Recommendation:

Staff recommends awarding a Services Agreement to Shane Griffin Power & Electrical Services, LLC for electrical contractor services for a total amount not to exceed \$75,000

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

FUNDING (IF APPLICABLE)

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

Yes: X No: _____ If yes, specify Account Number: # 100-157-6206

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

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

**CITY OF TOMBALL
SERVICES AGREEMENT**

THE STATE OF TEXAS §

COUNTY OF HARRIS §

Description of Services: Electrical Contractor Services

This Agreement 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, **Shane Griffin Power & Electrical Services, LLC.** (the “Company”), with an office at **19638 East Lake Drive, Magnolia, Texas 77355** 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

- 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 Exhibit B – 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; TERMINATION

- 2.1. This Agreement shall be effective upon proper execution by the City. It shall be effective from **November 22, 2022 through September 30, 2023, with three additional one-year renewal options.** 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 ninety days (90) 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

This Agreement 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 \$75,000.

6. MODIFICATION OF RATES

Base Rate adjustments for changes in the Consumer Price Index (CPI) will be considered by the City no more than once per year during the renewal term of the Contract, during the month of October of each Contract Year.

7. IDEMNITY

7.1. 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.

7.2. 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.

8. INSURANCE

8.1. 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 Employer's Liability	(where required – Statutory by State Law) \$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.

8.2. 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 poli

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.

9. 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.

10. 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.

11. 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.

12. 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.

13. 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:

19638 East Lake Drive, Magnolia, TX 77355


14. 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 15 day of November, 2022.

Shane Griffin Power and Electrical Services LLC
Company


Signature

Shane Griffin
Print Name

Owner
Title

THE STATE OF TEXAS §

COUNTY OF HARRIS §

This instrument was acknowledged before me on this ___ day of _____, 2022,
by _____, on behalf of said entity.

Notary Public, State of Texas

AGREED to and ACCPETED this ___ day of _____, 2022.

City of Tomball

David Esquivel, PE
City Manager

Attest:

City Secretary

RFP 2022-10R – ELECTRICAL CONTRACTOR SERVICES
EXHIBIT A – SCOPE OF WORK

I. PURPOSE

The intent of this document is to provide interested Contractors with sufficient information to enable them to prepare and submit proposals for consideration by the City of Tomball to furnish all labor, materials, tools, equipment, and supervision for electrical services (“Electrical Services”) for various City buildings and locations on an as needed basis to assist the City of Tomball with renovations, remodels and maintenance of existing facilities. All work shall be provided in a professional manner in accordance with all applicable laws, regulations and policies, including, but not limited to, all Federal, State and Local safety rules and regulations. The scope of services is to include but not limited to new installation and removal of equipment, and repairs.

II. SCOPE OF SERVICES

Electrical work may include, but not necessarily be limited to, repair, replacement, upgrade, new construction and alteration of existing electrical services, complete electrical systems, and other associated accessories and components. Scope of work will be but not limited to the following:

- a. Troubleshoots, repairs, installs and replaces building and equipment electrical and electronic systems and components
- b. Performs preventive maintenance utilizing multimeters and other specialty equipment to safely test, measure and then correct any observed deficiencies
- c. Generates material list and acquires materials for efficient work
- d. Keeps accurate records of materials used and maintains daily time reports to efficiently complete work and document details of the functions performed
- e. Performs electrical maintenance work accordance with established safety procedures
- f. Install new and repair existing electrical circuits
- g. Install and repair electrical fixtures of all types
- h. Replace and install electrical lighting, outdoor and indoor
- i. Install and replace metal and plastic conduits and associated pull boxes
- j. Install, repair and replace high / low voltage conductors
- k. Change, repair or install pad mounted transformers
- l. Install, repair or replace site building and pole lighting
- m. Interior electrical short repair
- n. Replace defective disconnects
- o. Emergency Call out

III. CITY HOURS AND OBSERVED HOLIDAYS

- a. Works Hours
 - i. Regular Hours: Monday through Friday, 7:00 a.m. – 5:00 p.m.
 - 1. Normally scheduled day hours. Paid for by the hour. Hourly rate shall include all items of cost, overhead, and profit. Work time on the job only.
- b. Weekend Hours: Saturday and Sunday, any hour, day or night

- i. Extra time beyond normal day work hours, needed to finish tasks in progress. Paid for by the hour. Hourly rate shall include all items of cost, overhead and profit. Work time on the job only.
- c. Holidays: any hour day or night per this listing:
 - i. New Year's Day (observed)
 - ii. MLK Day
 - iii. Memorial Day
 - iv. 4th of July
 - v. Labor Day
 - vi. Thanksgiving Day
 - vii. Day After Thanksgiving
 - viii. Christmas Eve (observed)
 - ix. Christmas Day (observed)

If a Legal Holiday falls on Saturday, it will be observed on the preceding Friday. If a Legal Holiday falls on Sunday, it will be observed on the following Monday. Holiday hours are extra time beyond normal day work hours, needed to finish tasks in progress. Paid for by the hour. Hourly rate shall include all items of cost, overhead and profit. Work time on the job only.

- d. Overtime Hours:
 - i. Monday through Friday, after regular hours.
 - ii. Extra time beyond normal day work hours, needed to finish tasks in progress. Paid for by the hour. Hourly rate shall include all items of cost, overhead and profit. Work time on the job only.
- e. Any Contractor desiring to respond to this RFP is required to do the following for Emergency Service:
 - i. The awarded Contractor must have a trained/qualified technician available 24 hours a day, 7 days a week, 365 days a year. Any responding technician must have the appropriate qualifications for the emergency and must report to the site with the necessary tools/equipment to effectively resolve the reported emergency issue within 30 minutes of the initial contact from City staff. (If the Contractor uses a third-party notification system, the responding technician is still responsible to be on site within the required 30 minutes.)

IV. SPECIFICATIONS

- a. Project Estimates
 - i. Contractor shall provide written "not to exceed" estimates on all projects except for emergencies. This estimate shall include the estimated number of hours, contract hourly rate, number and type of employees required, estimated material cost and project completion in number of days.
 - ii. Contractor shall respond to requests for estimates for nonemergency work within two (2) days and provide written estimates within five (5) days of first contact by the City. It shall be the Contractor's responsibility to ensure they have all information to prepare accurate estimates.
- b. Field Investigations
 - i. Review the existing materials, drawing reports, etc. prepared by City staff on the proposed project.

- ii. Review the proposed scope.
- iii. Review the existing infrastructure in the facility.
- iv. Locate, quote product and labor costs.
- c. Review material and Labor Options with City Staff
 - i. This phase will consist of review of quotes and materials options.
 - ii. This phase may also include detailed specifications and implementation schedule.
 - iii. Within 10 working days of the award of a project, the Contractor will submit to the City's project manager for approval, a work plan which includes the following.
 - iv. The Contractor's name and titles of personnel assigned to the project.
 - v. The project breakdown showing subprojects, cost and activities and tasks.
 - vi. The time-phased plan for completing the project.
- d. Non-emergency work shall only be performed with the City's written authorization by issuance of a Work Order from the Public Works Department. Actual work shall not exceed the Contractor's estimate without prior written authorization by the City.

V. WORK IN PROGRESS

- a. The Contractor will meet with selected representatives on a regular basis or as determined necessary by the Public Works Department Department staff/project manager to review progress and provide necessary guidance to the contractor in solving problems which may arise.
- b. Public Works Department project managers will meet as often as required with the Contractor's project manager for the purpose of reviewing progress and providing necessary guidance.
- c. The Contractor will, on a regular basis, submit brief written summaries of the work accomplished during the reporting period, work to be accomplished during the subsequent reporting period, real or anticipated problems and notification of any significant deviation from previously agreed upon work plans.
- d. All workmanship, materials, and equipment incorporated in the work must fully comply with Division 26 Electrical Technical – City of Tomball Specifications (Division 16 Pre-2004) "**Exhibit C.**"
- e. It shall be the responsibility of the Contractor performing services for this contract to safeguard their own materials, tools, and equipment. The City shall not assume any responsibility for vandalism and/or theft of materials, tools and/or equipment.
- f. The Contractor shall obtain the permission of a Public Works representative regarding any needed storage of materials and equipment. Such storage shall be done in such a manner as not to interfere with the schedule for that building. The City shall not accept responsibility for losses of material or equipment regardless of approval to store in any of the City's facilities or grounds.
- g. All work areas shall be kept in orderly condition, free of unnecessary material and equipment. All debris will be picked up and hauled away by the Contractor. No additional charge for hauling away debris shall be permitted under the contract.

VI. INVOICES

- a. Invoices will be required for verification of electrical materials.

- b. The Contractor's invoice shall clearly state actual hours worked at labor rates quoted, actual cost of materials, thereof, and a complete description of work performed, location, and date.
- c. Accompanying their invoices, Contractors must also include copies of their manufacturer's/Contractor's invoices for material used thereby providing verification of actual material costs and copies of all daily work orders listing each skill level of labor and their individual hours worked.
- d. Contractor shall not subcontract any portion of the electrical work required under this contract. All work must be performed by the Contractor's work forces.
- e. Materials incorporated into the work will be paid by the cost of materials multiplied by the contract mark-up.

VII. PROJECT ESTIMATES

- a. The contract price includes all items of cost including overhead and profit for preparing estimates for projects.

VIII. Equipment Rental

- a. Equipment that must be rented to complete the job (i.e., scissor lift). Paid for by the cost of materials multiplied by the contract mark-up

IX. Employees

- a. All employees of the Contractor shall be in a company uniform that clearly identifies the name of the company and the name of the employee. The uniforms shall be clean and neat in appearance. All employees working at City facilities will be required to obtain and display a visitor's pass from the Public Works Department.
- b. Contractors shall complete background checks and maintain an active policy on drugs and alcohol in the work place that supports a drug free environment and be prepared to submit such policy upon City request.
- c. Contractor's shall complete background checks and shall perform criminal background checks on all Assigned Employees prior to the assigned employee be eligible to perform duties for the City.
- d. Contractors shall follow all the most current EEOC guideline regarding the process for performing criminal background checks.
- e. Accordingly, Contractors shall exclude any possible Assigned Employee from working for the City based on job-related functions of the position and consistent with the City's business necessity.
- f. If any person employed on a project by the Contractor shall appear to the City to be incompetent or act in a disorderly or improper manner, such person shall be removed immediately on the request of the City, and shall not be re-employed on the same project except on written consent of the City.
- g. All work shall be performed according to the standards of the electrical code as adopted by the State of Texas and to the complete satisfaction of the City. The City will be responsible for any applicable fees associated with work requiring a local permit or inspection. The Contractor shall be responsible for advising the City when a permit or inspection is needed and will apply for and pick up permit. The contractor shall schedule any needed inspections.

- h. All work shall be done in a safe manner and comply with all governing regulations concerning safety. This shall include, but not limited to OSHA, MOSHA, etc. Adequate barricades shall be erected and maintained around all areas where equipment and materials are stored and used. All work being performed for and/or on City property shall fully conform to all local, state and federal safety regulations.

X. MINIMUM QUALIFICATIONS

- a. Commercial Experience:
 - i. The Contractor must have been in business at least 5 years.
- b. Company must have at least one Master Electrician Licensed in the State of Texas.
- c. Company must have at least four additional qualified electricians available to handle services at multiple City locations concurrently.
- d. Must provide list of number of employees and respective jobs titles and licenses.
- e. Licensed to do business in the State of Texas and provide a copy of Certification.

NOTE: The City of Tomball Staff selects brands/types of equipment/supplies.

EXHIBIT B
PROPOSAL SHEET

Electrician Services Compensation Proposal

Description	Regular Time: Monday-Friday 8am - 5pm	Overtime	Weekend	Holidays (as determined by State & Federal Govt)
Master Electrician	130	195	195	260
Journeyman Electrician	100	150	150	200
Apprentince Electrician	50	75	75	100
Laborer	30	45	45	60

Percentage Mark-up for Materials and Equipment	20%
Minimum Service Charge	\$125.00

Company Name: Shane Griffin Power & Electrical Services, LLC
 Address: 19638 East Lake Drive, Magnolia, TX 77355
 Telephone Number: 713-396-6960
 Name & Title: Shane Griffin , Owner
 Date: 11/1/2022

City Council Meeting Agenda Item Data Sheet

Meeting Date: November 21, 2022

Topic:

Approve the expenditure of \$56,700 for Incode software support and maintenance from Tyler Technologies, Inc. and authorize the City Manager to execute any and all documents related to the expenditure. This expenditure is included in the FY 2022-2023 Budget.

Background:

In 2008, the City entered into a software license agreement with Tyler Technologies, Inc. for Incode, which is an enterprise resource planning software. The agreement included the one-time implementation cost and recurring costs for support and maintenance. The Incode software provided by Tyler Technologies, Inc. includes modules for utility billing, finance, purchasing, personnel management, municipal court, permitting, and work orders. As part of the use of the software, the City pays for an annual support and maintenance from Tyler Technologies, Inc. The FY 2022-2023 cost is \$56,700.

Per the City's adopted Procurement and Policy Manual, City Council approval is required for any expenditure over \$50,000.

Origination: IT Director

Recommendation:

Staff recommends approving the expenditure for Incode annual support and maintenance in the amount of \$56,700 to Tyler Technologies, Inc. as appropriated in the FY 2022-2023 Budget.

Party(ies) responsible for placing this item on agenda: Doug Tippey, IT Director

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: # 100-117-6320

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

Signed	<u>Doug Tippey</u>	<u>11.17.2022</u>	Approved by	_____
	Staff Member	Date		City Manager
				Date

System Agreement Between

Tyler Technologies, Inc.

5808 4th Street
Lubbock, Texas 79416
(800) 646-2633
(806) 797-4849 Fax

AND

City of Tomball

401 W Market Street
Tomball, Texas 77375
Phone: 281.290.1417
Fax: 281.351.6256

tyler
TECHNOLOGIES

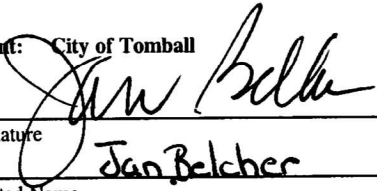
AGREEMENT

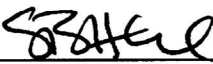
This agreement is entered into by and between Tyler Technologies, Inc., hereinafter referred to as COMPANY, located at 5808 4th Street, Lubbock, Texas 79416; and; City of Tomball, hereinafter referred to as CLIENT on, 3/25, 2008.

COMPANY and CLIENT agree as follows:

1. COMPANY shall furnish the products and services as described in this Agreement, and CLIENT shall pay the prices set forth in this Agreement
2. This Agreement consists of this Cover and the following Attachments and Exhibits:
Section A Investment Summary (A-E)
Section B COMPANY Agreement Terms and Conditions
3. The License Fees set forth in the Investment Summary are based on defined category levels. Placement within a category is based on the size of the organization serviced and measured by such factors as operating budget, number of employees, number of utility accounts, number of sworn officers, population of the entity, etc.

IN WITNESS WHEREOF, persons having been duly authorized and empowered to enter into this Agreement hereunto executed this Agreement effective as of the date last set forth below.

Client: City of Tomball
By: 
Signature
Jan Belcher
Printed Name
City Manager
Title
3/25/08
Date
74-6003588
Sales Tax Certificate Number

Tyler Technologies, Inc.:
By: 
Signature
S. Brett Cate
Printed Name
President, INCODE Solution
Title
3/24/08
Issue Date

Investment Summary

Prepared for: City of Tomball Contact Person: Monica Kohlenberg Address: 401 W Market Street Tomball, Texas 77375 Phone: 281.290.1417 Fax: 281.351.6256 Email: mkohlenberg@ci.tomball.tx.us	Contract ID # : 2008-0054
	Issue Date: 3/24/08
	Salesman: L.Midkiff/ S.Cleveland
	Tax Exempt: Yes / No

Product Service & Equipment	On Signature	On Delivery	As Verified	As Progress Occurs	Totals	Maintenance
Total Applications Software <i>License Fees</i>	3,655.00	8,772.00	2,193.00		14,620.00	3,655.00
Total Professional Services <i>On-Site Services</i>				7,250.00	7,250.00	
Estimated Travel <i>Estimated On-Site Services Travel Expense</i>				2,583.00	2,583.00	
Totals	3,655.00	8,772.00	2,193.00	9,833.00	24,453.00	3,655.00

	Initial Fees	Monthly Fees**
Total Monthly Services <i>Internet Services and Products</i> <small>**Please note this is not an Annual agreement, the fees listed herein are monthly fees.</small>	1,000	225
Totals	1,000	225

Software Licenses and Professional Services

Application Software	Pricing			INCODE - Implementation			
	QTY	License Fee	Conversion	Estimated Hours	Estimated Services	Total Cost	Annual Maintenance
INCODE Customer Relationship Management Applications							
Call Center	1	4,950		26	3,250	8,200	1,238
Office Exporter (per seat)	2	1,100		4	500	1,600	275
INCODE CRM Mobile Interface							
CRM Mobile Server Software	1	2,750				2,750	688
Building Projects Mobile Interface (per seat)	2	660		4	500	1,160	165
Call Center Mobile Interface (per seat)	2	660		4	500	1,160	165
INCODE Content Management							
Tyler Content Manager LE - Requires Microsoft SQL Server 2005/2000	1	4,500		20	2,500	7,000	1,125

INCODE Subtotal		14,620		58	7,250	21,870	3,655
INCODE System Software Subtotal							
Total		14,620		58	7,250	21,870	3,655

Accu4GL

Online Services and Products

Service	QTY	Charges	Initial Year	Annual Fee
INCODE Online Component Setup				
One Time Setup Fee - Hardware Configuration - DNS registration	1	1,000	1,000	
Monthly fee to support and host Web site		25 /month	300	300
INCODE Building Projects Online Component				
Monthly support/maintenance fee - Display of project status - Display of projects for payment - Schedule/Re-Schedule inspections - Security -- SSL (Secure Socket Layer) - Payment Processing - Credit Card • Payment packet is created to be imported to Building Project System <i>NOTE: Customer pays \$1.25 fee per transaction for payment on-line.</i>		100 /month	1,200	1,200
INCODE Call Center Online Component				
Monthly support/maintenance fee - Create code enforcement complaints online - View complaints (open, closed) - Security -- SSL (Secure Socket Layer)		100 /month	1,200	1,200
Total			3,700	2,700

Note: INCODE's Online modules support merchant accounts through ETS and Authorize.net.
 INCODE's Online modules utilize INCODE Web Services which require a dedicated public IP address (provided by Entity).

COMPANY AGREEMENT TERMS AND CONDITIONS

General Payment Terms

1. CLIENT will pay to COMPANY an initial deposit upon execution of this Agreement that equals 25% of the total amount as specified in this Agreement, not including Annual Software Maintenance, Third Party Software Maintenance, and/or Hardware Maintenance fees;
2. CLIENT will pay a second installment to COMPANY upon delivery of the software products that equals 60% of the Application Software License Fees and 75% of the System Software License Fees.
3. The remaining 15% balance of the total amount specified in this Agreement for all products and License fees shall be paid after (a) COMPANY's verification of the software products, (b) CLIENT's completion of its own validation process, or (c) CLIENT's live processing. In no case, shall this period exceed thirty (30) days from live processing or one hundred-eighty (180) days from installation of the software.
4. Services shall be billed as delivered plus expenses and are due and payable net 30 days.

Software License Agreement

1) Software Product License.

- a) Upon CLIENT's payment for the software products license fees set forth in the Investment Summary of this Agreement, COMPANY shall grant to CLIENT and CLIENT shall accept from COMPANY a non-exclusive, nontransferable, nonassignable license to use the software products and accompanying documentation for internal business purposes of CLIENT, subject to the conditions and limitations in this Software License Agreement.
- b) Ownership of the software products, accompanying documentation and related materials, and any modifications and enhancements to such software products and any related interfaces shall remain with COMPANY.
- c) The software products are not licensed to perform functions or processing for subdivisions or entities that were not

considered by COMPANY at the time COMPANY issued this Agreement.

d) The right to transfer this license to a replacement hardware system is included in this Software License Agreement. The cost for new media or any required technical assistance to accommodate the transfer would be billable charges to CLIENT. Advance written notice of any such transfer shall be provided to COMPANY.

e) CLIENT agrees that the software products, any modifications and enhancements and any related interfaces are proprietary to COMPANY and have been developed as a trade secret at COMPANY's expense. To the extent permitted by law, CLIENT agrees to keep the software products confidential and use its best efforts to prevent any misuse, unauthorized use or unauthorized disclosures by any party of any or all of the software products or accompanying documentation.

f) If CLIENT has made modifications to the software products, COMPANY will not support or correct errors in the modified software products, unless modifications were specifically authorized in writing by COMPANY.

g) CLIENT may make copies of the software products for archive purposes only. CLIENT will repeat any proprietary notice on the copy of the software products. The documentation accompanying the software products may not be copied except for internal use.

h) The term of the license granted by this Section shall be perpetual.

i) COMPANY maintains an escrow agreement with an Escrow Services Company under which COMPANY places the source code of each major release. At CLIENT's request, COMPANY will add CLIENT as a beneficiary on its escrow account. CLIENT will be invoiced the annual beneficiary fee by COMPANY and is solely responsible for maintaining its status as a beneficiary.

2) License Fees.

- a) CLIENT agrees to pay COMPANY, and COMPANY agrees to accept from CLIENT

COMPANY AGREEMENT TERMS AND CONDITIONS

as payment in full for the license herein, the total sum of the COMPANY license fees set forth in the Investment Summary.

b) The license fees listed in the Investment Summary do not include any tax or other governmental impositions including, without limitation, sales, use or excise tax. All applicable sales tax, use tax or excise tax shall be paid by CLIENT and shall be paid over to the proper authorities by CLIENT or reimbursed by CLIENT to COMPANY on demand in the event that COMPANY is responsible or demand is made on COMPANY for the payment thereof. If tax-exempt, CLIENT must provide COMPANY with CLIENT's tax-exempt number or form.

c) In the event of any disputed invoice, CLIENT shall provide written notice of such disputed invoice to Attention: COMPANY Controller at the address listed on the cover of this Agreement. Such written notice shall be provided to COMPANY within fifteen (15) days. An additional fifteen (15) days is allowed for the CLIENT to provide written clarification and details for the disputed invoice. COMPANY shall provide a written response to CLIENT that shall include either a justification of the invoice or an explanation of an adjustment to the invoice and an action plan that will outline the reasonable steps needed to be taken by COMPANY and CLIENT to resolve any issues presented in CLIENT's notification to COMPANY. CLIENT may withhold payment of only the amount actually in dispute until COMPANY provides the required written response, and full payment shall be remitted to COMPANY upon COMPANY's completion of all material action steps required to remedy the disputed matter. Notwithstanding the foregoing sentence, if COMPANY is unable to complete all material action steps required to remedy the disputed matter because CLIENT has not completed the action steps required of them, CLIENT shall remit full payment of the invoice.

d) Any invoice not disputed as described above shall be deemed accepted by the CLIENT. If payment of any invoice that is

not disputed as described above is not made within sixty (60) calendar days, COMPANY reserves the right to suspend delivery of all services under the Investment Summary, this Software License Agreement, the Professional Services Agreement, the Maintenance Agreement and, if applicable, the Third Party Product Agreement.

3) Verification of the Software Products.

a) At the CLIENT's request, within thirty (30) days after the software products have been installed on CLIENT's system, COMPANY will test the software products in accordance with COMPANY's standard verification test procedure. Demonstration shall constitute CLIENT's verification that the software products substantially comply with COMPANY's current specifications for the most current version of the software products and functional descriptions of the software found in COMPANY's written proposal to CLIENT. Upon such verification, CLIENT shall pay the remaining balance in accordance with the payment terms listed in Section General Payment Terms or amended in any attached addendum.

b) At its option, CLIENT may perform CLIENT's own defined internal validation process to test the software to substantially comply with COMPANY's current specifications for the most current version of the software products and functional descriptions of the software found in COMPANY's written proposal to CLIENT. Such validation test shall constitute CLIENT's verification. Upon such validation, CLIENT shall pay the remaining balance in accordance with the payment terms listed in Section General Payment Terms or amended in any attached addendum.

c) Notwithstanding anything contrary herein, CLIENT's use of the software products for its intended purpose, shall constitute CLIENT's verification of the software products, without exception and for all purposes.

d) Verification or validation, by CLIENT, that the software products substantially

COMPANY AGREEMENT TERMS AND CONDITIONS

comply with COMPANY's current specifications for the most current version of the software products and functional descriptions of the software found in COMPANY's written proposal to CLIENT shall be final and conclusive except for latent defect, fraud, and such gross mistakes that amount to fraud and the operation of any provision of this Agreement which specifically survives verification. In the event said verification becomes other than final, or becomes inconclusive, pursuant to this paragraph, CLIENT's sole right and remedy against COMPANY shall be to require COMPANY to correct the cause thereof.

e) COMPANY shall correct any functions of the software products which failed the standard verification testing or failed to comply with COMPANY's current specifications for the most current version of the software products and functional descriptions of the software found in COMPANY's written proposal to CLIENT. If CLIENT has made modifications to the software programs, COMPANY will not make such corrections, unless such modifications were specifically authorized in writing by COMPANY.

4) Schedule of Verification. COMPANY will install the software products and cause the same to be verified within sixty (60) days after CLIENT makes available to COMPANY the equipment into which the software product is to be loaded. COMPANY shall exercise reasonable efforts to cause the software products to be verified according to the schedule set forth in this paragraph, but COMPANY shall not be liable for failure to meet said schedule if, and to the extent, said failure is due to causes beyond the control and without the fault of COMPANY.

5) Limited Warranty. COMPANY warrants that the then current, unmodified version of the COMPANY Software Products will substantially conform to the then current version of its published current specifications. If the Software Products do not perform as warranted, COMPANY's

obligation will be to use reasonable efforts, consistent with industry standards, to cure the defect. Should COMPANY be unable to cure the defect or provide a TYLER replacement product, CLIENT shall be entitled to a refund for the license fee paid for application. THIS WARRANTY IS IN LIEU OF ALL OTHER WARRANTIES. TO THE MAXIMUM EXTENT PERMITTED UNDER APPLICABLE LAW, ALL OTHER WARRANTIES, CONDITIONS AND REPRESENTATIONS, WHETHER EXPRESS, IMPLIED OR VERBAL, STATUTORY OR OTHERWISE, AND WHETHER ARISING UNDER THIS AGREEMENT OR OTHERWISE ARE HEREBY EXCLUDED, INCLUDING, WITHOUT LIMITATION, THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

6) Limitation of Liability.

(a) In the event that the software products are determined to infringe upon any existing United States patent copyright or trademark rights held by any other person or entity, COMPANY shall defend and hold harmless CLIENT and its officers, agents and employees from any claim or proceedings brought against CLIENT and from any cost damages and expenses finally awarded against CLIENT which arise as a result of any claim that is based on an assertion that CLIENT's use of the software products under this Software License Agreement constitutes an infringement of any United States patent, copyright or trademark provided that CLIENT notifies COMPANY promptly of any such claim or proceeding and gives COMPANY full and complete authority, information and assistance to defend such claim or proceeding and further provided that COMPANY shall have sole control of the defense of any claim or proceeding and all negotiations for its compromise or settlement provided that COMPANY shall consult with CLIENT regarding such defense. In the event that the software products are finally held to be

COMPANY AGREEMENT TERMS AND CONDITIONS

infringing and its use by CLIENT is enjoined, COMPANY shall, at its election; (1) procure for CLIENT the right to continue use of the software products; (2) modify or replace the software products so that it becomes non-infringing; or (3) if procurement of the right to use or modification or replacement can not be completed by COMPANY, terminate the license for the infringing software product, and upon termination, refund the license fees paid for the infringing software product as depreciated on a straight-line basis over a period of seven (7) years with such depreciation to commence on the execution of this Agreement. COMPANY shall have no liability hereunder if CLIENT modified the software products in any manner without the prior written consent of COMPANY and such modification is determined by a court of competent jurisdiction to be a contributing cause of the infringement or if the infringement would have been avoided by CLIENT's use of the most current revision of the software products. The foregoing states COMPANY's entire liability and CLIENT's exclusive remedy with respect to any claims of infringement of any copyright, patent, trademark, or any property interest rights by the software products, any part thereof, or use thereof.

b) THE RIGHTS AND REMEDIES SET FORTH IN THIS SOFTWARE LICENSE AGREEMENT ARE EXCLUSIVE AND IN LIEU OF ALL OTHER RIGHTS AND REMEDIES OR WARRANTIES EXPRESSED, IMPLIED OR STATUTORY, INCLUDING WITHOUT LIMITATION THE WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND SYSTEM INTEGRATION.

c) In no event shall COMPANY be liable for special, indirect, incidental, consequential or exemplary damages, including without limitation any damages resulting from loss of use, loss of data, interruption of business activities or failure to realize savings arising out of or in connection with the use of the software products. COMPANY's liability for

damages arising out of this Software License Agreement, whether based on a theory of contract or tort, including negligence and strict liability shall be limited to the COMPANY license fees identified in the Investment Summary. The license fees set forth in the Investment Summary reflect and are set in reliance upon this allocation of risk and the exclusion of such damages as set forth in this Software License Agreement.

7) Dispute Resolution. In the event of a dispute between the parties under this Software License Agreement pertaining to pecuniary damages or losses, the matter shall be settled by arbitration in accordance with the then prevailing rules of the American Arbitration Association.

8) No Intended Third Party Beneficiaries. This agreement is entered into solely for the benefit of COMPANY and CLIENT. No third party shall be deemed a beneficiary of this agreement, and no third party shall have the right to make any claim or assert any right under this agreement.

9) Governing Law. This Software License Agreement shall be governed by and construed in accordance with the laws of CLIENT's state of domicile.

10) Entire Agreement.

a) This Software License Agreement, including the functional description of the software products found in COMPANY's written proposal to CLIENT, represents the entire agreement of CLIENT and COMPANY with respect to the software products and supersedes any prior agreements, understandings and representations, whether written, oral, expressed, implied, or statutory. CLIENT hereby acknowledges that in entering into this agreement it did not rely on any representations or warranties other than those explicitly set forth in this Software License Agreement and the functional description of the software products found in COMPANY's written proposal to CLIENT.

b) If any term or provision of this Software License Agreement or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable,

COMPANY AGREEMENT TERMS AND CONDITIONS

the remainder of this Software License Agreement or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable shall not be affected thereby, and each term and provision of this Software License Agreement shall be valid and enforced to the fullest extent permitted by law.

c) This Software License Agreement may only be amended, modified or changed by written instrument signed by both parties.

d) CLIENT should return an executed copy of this Agreement to COMPANY. If the Agreement is not returned to COMPANY within 90 days from the issue date, then such Agreement is subject to be voided and prices are subject to change.

11) Cancellation or Termination. In the event of cancellation or termination of this Software License Agreement, CLIENT will make payment to COMPANY for all software products, services and expenses delivered or incurred prior to the termination or cancellation of this Software License Agreement.

12) Approval of Governing Body. CLIENT represents and warrants to COMPANY that this Software License Agreement has been approved by its governing body and is a binding obligation upon CLIENT. CLIENT represents and warrants that funds are appropriated and/or arrangements have been made with a third party financier.

Professional Services Agreement

1) Services Provided. COMPANY shall provide some or all of the following services to CLIENT, as evidenced in the attached Investment Summary:

a) Installation as described in the Investment Summary;

b) Conversion of CLIENT's existing data as set forth in the Investment Summary. CLIENT is responsible for reading and complying with COMPANY's Conversion Statement.

c) Training/Implementation as set forth in the Investment Summary;

d) Consulting/Analysis as set forth in the Investment Summary; and

e) Verification Testing as described in the Software License Agreement.

2) Professional Services Fees.

a) Notwithstanding specific prices to the contrary identified in the Investment Summary, all services will be invoiced in hourly increments as delivered, plus travel and other expenses, plus a 10% travel processing fee. CLIENT agrees to pay COMPANY for the actual amount of training provided. The quantity in the Investment Summary represents only an estimate of time required to complete all phases of this Agreement.

b) Upon the completion of each service day, or group of days, COMPANY will present a Daily Log. CLIENT will sign the report indicating acceptance of the service day and its subsequent billing, or noting reasons for CLIENT's non-acceptance of such. This acceptance is final.

c) CLIENT is not charged for travel time to and from the CLIENT's site. Only time spent on-site is billed as training time; excluding those cases in which the CLIENT requires the COMPANY trainer(s) to travel on the weekend, in which case CLIENT will be billed for weekend travel time at a rate of \$500 per weekend day.

d) If CLIENT travels to COMPANY location for training, then CLIENT agrees to pay all expenses related to transportation of CLIENT's employees.

e) All requests for supporting documentation shall be made within thirty (30) calendar days of invoice delivery. Such documentation will consist of quoted internet rates within 7 days from the date the request is received by the COMPANY and not actual receipts. Such quotes will be deemed acceptable documentation if price is within 25% of actual amounts charged to CLIENT, adjusted by unusual or seasonal travel circumstances.

f) The rates for Verification Testing shall be the same as the Training/Implementation rates set forth in the Investment Summary.

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g) The rates listed in the Investment Summary do not include any tax or other governmental impositions including, without limitation, sales, use or excise tax. All applicable sales tax, use tax or excise tax shall be paid by CLIENT and shall be paid over to the proper authorities by CLIENT or reimbursed by CLIENT to COMPANY on demand in the event that COMPANY is responsible or demand is made on COMPANY for the payment thereof. If tax-exempt, CLIENT must provide COMPANY with CLIENT's tax-exempt number or form.

h) Payment is due within thirty (30) calendar days of invoice.

i) In the event of any disputed invoice, CLIENT shall provide written notice of such disputed invoice to Attention: COMPANY Controller at the address listed on the cover of this Agreement. Such written notice shall be provided to COMPANY within fifteen (15) calendar days of CLIENT's receipt of the invoice. An additional fifteen (15) days is allowed for the CLIENT to provide written clarification and details for the disputed invoice. COMPANY shall provide a written response to CLIENT that shall include either a justification of the invoice or an explanation of an adjustment to the invoice and an action plan that will outline the reasonable steps needed to be taken by COMPANY and CLIENT to resolve any issues presented in CLIENT's notification to COMPANY. CLIENT may withhold payment of only the amount actually in dispute until COMPANY provides the required written response, and full payment shall be remitted to COMPANY upon COMPANY's completion of all material action steps required to remedy the disputed matter. Notwithstanding the foregoing sentence, if COMPANY is unable to complete all material action steps required to remedy the disputed matter because CLIENT has not completed the action steps required of them, CLIENT shall remit full payment of the invoice.

j) Any invoice not disputed as described above shall be deemed accepted by the CLIENT. If payment of any invoice that is

not disputed as described above is not made within sixty (60) calendar days, COMPANY reserves the right to suspend delivery of all services under the Investment Summary, the Software License Agreement, this Professional Services Agreement, the Maintenance Agreement and, if applicable, the Third Party Product Agreement.

3) Training Environment. If training is being conducted at the CLIENT's site, the CLIENT is responsible for providing a productive environment to conduct training. COMPANY is not responsible for its inability to conduct training or for inadequate training arising due to interruptions and/or unavailability of CLIENT personnel to be trained. Time spent on-site by COMPANY that results in non-productive training time beyond COMPANY's control will be billed as training time. COMPANY will make reasonable efforts to schedule training on dates requested by the CLIENT. Trainers will be on-site approximately noon Monday through noon Friday. This allows appropriate travel time to and from the CLIENT's site.

4) Additional Services. Services utilized in excess of those set forth in the Investment Summary and additional related services not set forth in the Investment Summary will be billed at COMPANY's then current market rate for the service as they are incurred. Travel and other expenses, plus a 10% travel processing fee will be billed as delivered.

5) Limitation of Liability. COMPANY shall not be liable for inaccurate data in COMPANY's application software which is the result of conversion of inaccurate data from the previous system. COMPANY's liability for damages arising out of this Professional Services Agreement, whether based on a theory of contract or tort, including negligence and strict liability, shall be limited to the professional service fees identified in the Investment Summary. The CLIENT shall not in any event be entitled to, and COMPANY shall not be liable for, indirect, special, incidental, consequential or exemplary damages of any

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nature. The professional service fees set forth in the Investment Summary reflect and are set in reliance upon this allocation of risk and the exclusion of such damages as set forth in this Professional Services Agreement.

6) Dispute Resolution. In the event of a dispute between the parties under this Professional Services Agreement pertaining to pecuniary damages or losses, the matter shall be settled by arbitration in accordance with the then prevailing rules of the American Arbitration Association.

7) No Intended Third Party Beneficiaries. This Professional Services Agreement is entered into solely for the benefit of COMPANY and CLIENT. No third party shall be deemed a beneficiary of this Professional Services Agreement, and no third party shall have the right to make any claim or assert any right under this Professional Services Agreement.

8) Governing Law. This Professional Services Agreement shall be governed by and construed in accordance with the laws of CLIENT's state of domicile.

9) Cancellation or Termination. In the event of cancellation or termination of this Professional Services Agreement, CLIENT will make payment to COMPANY for all services and expenses delivered or incurred prior to the termination or cancellation of this Professional Services Agreement.

10) Entire Agreement.

a) This Professional Services Agreement represents the entire agreement of CLIENT and COMPANY with respect to the professional services and supersedes any prior agreements, understandings and representations, whether written, oral, expressed, implied, or statutory. CLIENT hereby acknowledges that in entering into this agreement it did not rely on any representations or warranties other than those explicitly set forth in this Professional Services Agreement.

b) If any term or provision of this Professional Service Agreement or the application thereof to any person or circumstance shall, to any extent, be invalid

or unenforceable, the remainder of this Professional Services Agreement or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable shall not be affected thereby, and each term and provision of this Professional Services Agreement shall be valid and enforced to the fullest extent permitted by law.

c) This Professional Services Agreement may only be amended, modified or changed by written instrument signed by both parties.

d) CLIENT should return an executed copy of this Agreement to COMPANY. If the Agreement is not returned to COMPANY within 90 days from the issue date, then such Agreement is subject to be voided and prices are subject to change.

11) Approval of Governing Body. CLIENT represents and warrants to COMPANY that this Professional Services Agreement has been approved by its governing body and is a binding obligation upon CLIENT. CLIENT represents and warrants that funds are appropriated and/or arrangements have been made with a third party financier.

Annual Software Maintenance Agreement

1) Scope of Agreement. The CLIENT agrees to purchase and COMPANY agrees to provide services for the software products listed in the Investment Summary of this Agreement in accordance with the following terms and conditions. Both parties acknowledge that this Annual Software Maintenance Agreement covers both Support for the software products listed in the Investment Summary of this Agreement and Licensing of updates of such installed software products.

2) Term of Agreement. This Annual Software Maintenance Agreement is effective on the date executed by an officer of COMPANY and shall have a term beginning upon the first of the month six months after the installation of the COMPANY Software and ending upon the

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last day of the month one year following that date.

a) This Annual Software Maintenance Agreement will automatically renew for subsequent one-year terms unless either party gives the other party at least thirty days prior written notice of its intent not to renew. Fees for subsequent years are subject to change.

b) If CLIENT has not elected to participate in the COMPANY Annual Software Maintenance Agreement, or elects not to renew the Agreement, the CLIENT shall acquire Software maintenance in accordance to the Section entitled "Support Terms for CLIENTs Not Participating in the Annual Software Maintenance Agreement".

3) Payment.

a) CLIENT agrees to pay COMPANY the amount identified in the Investment Summary for licensing and support services, as described below. The licensing fee of the COMPANY Software includes six month's maintenance from the time the Software is installed. The annual amount identified in the Investment Summary will become due the first of the month following six months after the installation of the COMPANY software. This payment is due and payable in accordance with Section General Payment Terms or amended in any attached addendum.

b) Additional Charges. Any maintenance performed by COMPANY for the CLIENT, which is not covered by this Annual Software Maintenance Agreement, will be charged at COMPANY's then current market rates. All materials supplied in connection with such non-covered maintenance or support plus expenses will be charged to CLIENT.

c) Support and services will be suspended whenever CLIENT's account is thirty (30) calendar days overdue. Support and services will be reinstated when CLIENT's account is made current.

4) Terms and Conditions for Licensing of Updates of the Installed Software Products.

a) CLIENT is hereby granted the non-exclusive and nontransferable license and

right to use the additional versions of the installed software products listed in the Investment Summary of this Agreement which COMPANY may release during the term of this Annual Software Maintenance Agreement. COMPANY agrees to extend and CLIENT agrees to accept a license subject to the terms and conditions contained herein for the installed software products.

b) The installed software products listed are licensed for use only for the benefit of CLIENT listed in the Investment Summary of this Agreement. The software products are not licensed to perform functions or processing for subdivisions or entities that were not considered by COMPANY when COMPANY placed CLIENT in the categories listed on the cover of this Agreement.

c) As long as a current Annual Software Maintenance Agreement is in place, this License may be transferred to another hardware system used for the benefit of CLIENT. CLIENT agrees to notify COMPANY prior to transferring the licensed products to any other system. The cost for new media or any required technical assistance to accommodate the transfer would be billable charges to the CLIENT.

d) CLIENT agrees that the software products are proprietary to COMPANY and have been developed as a trade secret at COMPANY's expense. To the extent permitted by law, CLIENT agrees to keep the software products confidential and use its best efforts to prevent any misuse, unauthorized use or unauthorized disclosures by any party of any or all of the software products or accompanying documentation.

e) If CLIENT has made modifications to the software products, COMPANY will not support the modified software products, unless modifications were specifically authorized in writing by COMPANY.

f) CLIENT may make copies of the licensed software products for archive purposes only. The CLIENT will repeat any proprietary notice on the copy of the software products.

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The documentation accompanying the product may not be copied except for internal use.

g) For as long as a current Annual Software Maintenance Agreement is in place, COMPANY shall promptly correct any functions of the software products which fail to substantially comply with COMPANY's current specifications for the most current version of the software products. If CLIENT has made modifications to the software products, COMPANY will not make such corrections, unless modifications were specifically authorized in writing by COMPANY.

h) COMPANY reserves the right to change the functionality of future releases of its software and CLIENT understands that COMPANY is not obligated to include specific functionality in future releases unless provided for herein.

5) Terms and Conditions for Support.

a) COMPANY shall provide software related CLIENT support during standard support hours. Currently, standard support hours are from 7:00am to 7:00pm Central Standard Time, Monday thru Friday, excluding holidays. COMPANY reserves the right to modify these support hours as COMPANY sees fit in order to better serve its CLIENT. Assistance and support requests which require special assistance from COMPANY's development group will be taken and directed by support personnel.

b) COMPANY will maintain staff that is appropriately trained to be familiar with the software products in order to render assistance, should it be required.

c) COMPANY will provide CLIENT with all updates that COMPANY may make to the then current version of the installed software products covered in this Agreement.

d) CLIENT acknowledges that the updates/enhancements may not be compatible with CLIENT's particular hardware configuration or operating system. CLIENT acknowledges that additional hardware and software may be required at

the CLIENT's expense in order to utilize the updates/enhancements.

e) COMPANY will make available appropriately trained personnel to provide CLIENT additional training, program changes, analysis, consultation, recovery of data, conversion, non-coverage maintenance service, etc., billable at the current per diem rate plus expenses. *COMPANY employs many CPAs but is not a board registered CPA firm.*

COMPANY shall provide CLIENT with on-line support through the use of communications modem and software through the use of secure connection over the internet via Citrix GotoAssist.

6) Support Terms for CLIENTs Not Participating in the Annual Software Maintenance Agreement. The Software License Agreement includes six months free maintenance. If CLIENT elects not to participate in the COMPANY Annual Software Maintenance Agreement, CLIENT shall receive support on a Time and Materials basis following six months after the COMPANY Software is installed in accordance with the following terms:

a) CLIENTs not on Software Support Maintenance will receive the lowest priority for Software Support.

b) CLIENTs not on Software Support Maintenance will be required to purchase new releases of the Software. New Releases will include fixes, enhancements and updates, such as, Tax Tables, W/2 reporting formats, 1099 changes, etc.

c) CLIENTs not on Software Support Maintenance will be charged \$175 per hour with a one-hour minimum for all software support calls.

d) CLIENTs not on Software Support Maintenance will not be granted access to COMPANY's software support web-site.

e) CLIENTs not on Software Support Maintenance are subject to higher rates for training and continuing education performed by COMPANY employees. This is due to the fact that the CLIENT may not be utilizing the most current version of our software.

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f) COMPANY will not guarantee a program fix to a documented bug for software versions that are not the currently released version. Since every CLIENT is on Software Support Maintenance, often times, bug fixes are rolled into the latest release and then sites are upgraded to the latest release of the software.

g) If a CLIENT decides to discontinue Software Support Maintenance and later chooses to reinstate Software Support Maintenance, the CLIENT will be required to pay the portion of annual software support maintenance fees for the Enhancement and Software Updates (27%), dating back to the date when the CLIENT discontinued Software Support Maintenance. Once again, COMPANY feels any CLIENT not on Software Support Maintenance will not be satisfied with the level of support they will receive, which in turn, makes a dissatisfied CLIENT. COMPANY prides itself on customer satisfaction, which is why we strongly encourage every CLIENT to purchase Software Support Maintenance.

7) Additional Services. The Services listed below are not included in the COMPANY Software Maintenance Agreement. These services shall be provided at COMPANY's discretion and will be billed on a Time and Materials basis at COMPANY's current rates.

- a) Changes to print programs.
- b) Software modifications.
- c) Software Training.
- d) Responding to problems caused by bad data.
- e) Responding to problems caused by hardware.
- f) Responding to problems caused by operator error.
- g) Responding to problems caused by software that is not COMPANY software.
- h) Responding to problems resulting from misuse, accidents, CLIENT neglect, fire, or any other cause not within COMPANY's reasonable control.
- i) Changes made to the COMPANY Software by someone other than COMPANY personnel.

j) Any other services performed by COMPANY not otherwise specifically provided for in this Agreement, including but not limited to, bank reconciliation, reconciling out of balance reports, balancing segments of the system, etc.

8) Limitations and Exclusions. The support and services of this Maintenance Agreement do not include the following:

- a) Support service does not include the installation of the software products, onsite support, application design, and other consulting services, support of an operating system or hardware, or any support requested outside of standard support hours.
- b) CLIENT shall be responsible for implementing at its expense, all changes to the current version. CLIENT understands that changes furnished by COMPANY for the current version are for implementation in the current installed software products version, as it exists without customization or CLIENT alteration.

9) CLIENT Responsibilities.

a) CLIENT shall provide, at no charge to COMPANY, full and free access to the programs covered hereunder: working space; adequate facilities within a reasonable distance from the equipment; and use of machines, attachments, features, or other equipment necessary to provide the specified support and maintenance service. Such environment includes, but is not limited to; use of the appropriate operating system at the version and release levels specified by COMPANY and additionally specifies that the environment for any COMPANY software application requires the CLIENT to have e-mail and Internet access. CLIENT will be responsible for all additional costs incurred to the extent such hardware and software does not conform to COMPANY's current specifications. The acquisitions of necessary hardware and software meeting the requirements then in effect shall be sole responsibility of the CLIENT.

b) CLIENT shall maintain IP or VPN connection through Microsoft Terminal Services. COMPANY shall use the

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connection to assist with problem diagnosis and resolution.

c) CLIENT must maintain an active e-mail address capable of receiving a 5 MB attachment. This e-mail account must be accessible from a PC connected to the server hosting the COMPANY software applications.

d) CLIENT must open firewall ports to enable access to COMPANY's FTP server for program updates via Live Update.

10) Non-Assignability. The CLIENT shall not have the right to assign or transfer its rights hereunder to any party.

11) Force Majeure. COMPANY shall not be responsible for delays in servicing the products covered by this Annual Software Maintenance Agreement caused by strikes, lockouts, riots, epidemic, war, government regulations, fire, power failure, acts of God, or other causes beyond its control.

12) Limitation of Liability. The liability of COMPANY is hereby limited to a claim for a money judgment not exceeding the fees paid by the CLIENT for services under this Annual Software Maintenance Agreement. The CLIENT shall not in any event be entitled to, and COMPANY shall not be liable for, indirect, special, incidental, consequential or exemplary damages of any nature.

13) Governing Law. This Annual Software Maintenance Agreement shall be governed by and construed in accordance with the laws of CLIENT's state of domicile.

14) Entire Agreement.

a) This Annual Software Maintenance Agreement represents the entire agreement of CLIENT and COMPANY with respect to the maintenance of the software products and supersedes any prior agreements, understandings and representations, whether written, oral, expressed, implied, or statutory. CLIENT hereby acknowledges that in entering into this agreement it did not rely on any representations or warranties other than those explicitly set forth in this Annual Software Maintenance Agreement.

b) If any term or provision of this Agreement or the application thereof to any

person or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Annual Software Maintenance Agreement or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable shall not be affected thereby, and each term and provision of this Annual Software Maintenance Agreement shall be valid and enforced to the fullest extent permitted by law.

c) This Annual Software Maintenance Agreement may only be amended, modified or changed by written instrument signed by both parties.

d) CLIENT should return an executed copy of this Agreement to COMPANY. If the Agreement is not returned to COMPANY within 90 days from the issue date, then such Agreement is subject to be voided and prices are subject to change.

Hardware and System Software Agreement

1) Agreement to License or Sell Hardware. For the price set forth in the Investment Summary (Hardware & System Software), COMPANY agrees to license or sell and deliver to CLIENT, and CLIENT agrees to accept from COMPANY the hardware and system software products set forth in the Investment Summary.

2) License of Hardware.

a) Upon CLIENT's payment for the hardware listed in the Investment Summary, for the license fees set forth in the Investment Summary, COMPANY shall grant to CLIENT and CLIENT shall accept from COMPANY a non-exclusive, nontransferable, non-assignable license to the hardware and system software products and accompanying documentation and related materials for internal business purposes of CLIENT, subject to the conditions and limitations in this section.

3) Price. CLIENT agrees to pay COMPANY and COMPANY agrees to accept from CLIENT as payment in full for the hardware and system software products,

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the price set forth in the Investment Summary at the following manner:

- a) Twenty-five percent (25%) of the price of all hardware and system software products listed in the Investment Summary upon execution of this Agreement; and
- b) The remaining balance of the price of each item delivered to CLIENT upon delivery of each product.
- c) In the event of any disputed invoice, CLIENT shall provide written notice of such disputed invoice to Attention: COMPANY Controller at the address listed on the cover of this Agreement. Such written notice shall be provided to COMPANY within fifteen (15) calendar days of CLIENT's receipt of the invoice. An additional fifteen (15) days is allowed for the CLIENT to provide written clarification and details for the disputed invoice. COMPANY shall provide a written response to CLIENT that shall include either a justification of the invoice or an explanation of an adjustment to the invoice and an action plan that will outline the reasonable steps needed to be taken by COMPANY and CLIENT to resolve any issues presented in CLIENT's notification to COMPANY. CLIENT may withhold payment of only the amount actually in dispute until COMPANY provides the required written response, and full payment shall be remitted to COMPANY upon COMPANY's completion of all material action steps required to remedy the disputed matter. Notwithstanding the foregoing sentence, if COMPANY is unable to complete all material action steps required to remedy the disputed matter because CLIENT has not completed the action steps required of them, CLIENT shall remit full payment of the invoice.
- d) Any invoice not disputed as described above shall be deemed accepted by the CLIENT. If payment of any invoice that is not disputed as described above is not made within sixty (60) calendar days, COMPANY reserves the right to suspend delivery of all services under the Investment Summary, the Software License Agreement, the Professional Services Agreement, the

Maintenance Agreement and this Hardware and System Software Agreement.

4) Costs and Taxes.

a) Unless otherwise indicated in the Investment Summary, the price includes costs for shipment of and insurance while in transit for the hardware and system software products from the supplier's place of manufacture to CLIENT's site.

b) The price listed in the Investment Summary does not include any tax or other governmental impositions including, without limitation, sales, use or excise tax. All applicable sales tax, use tax or excise tax shall be paid by CLIENT and shall be paid over to the proper authorities by CLIENT or reimbursed by CLIENT to COMPANY on demand in the event that COMPANY is responsible or demand is made on COMPANY for the payment thereof. If tax-exempt, CLIENT must provide COMPANY with CLIENT's tax-exempt number or form.

5) F.O.B. Point. Delivery of each hardware and system software product shall be F.O.B. CLIENT's site.

6) Schedule of Delivery. Delivery of each hardware and system software product shall take place according to mutually agreeable schedule, but COMPANY shall not be liable for failure to meet the agreed upon schedule if, and to the extent, said failure is due to causes beyond the control and without the fault of COMPANY.

7) CLIENT Delays. If any act or failure to act by the CLIENT delays COMPANY's performance, COMPANY shall be excused from performance for an amount of time commensurate with the delay caused by CLIENT. CLIENT acknowledges that its delay may excuse COMPANY from performance for an amount of time greater than the delay caused by CLIENT. Such delays by CLIENT that may cause COMPANY to delay performance include, but are not limited to failure to have prepared any data in the form and format requested by COMPANY, on or before the date specified by COMPANY or to have verified such data for accuracy, submission of erroneous data to COMPANY or CLIENT's failure to have

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completely prepared the Hardware's installation site prior to the Hardware's actual delivery including, but not limited to, failure to have all electrical work and cable installation completed.

8) Installation and Verification. If itemized in the Investment Summary, the price includes installation of the hardware and system software products. Upon the completion of installation, CLIENT shall obtain from the installer a certification of completion, or similar document, which certification or similar document shall constitute CLIENT's acceptance of the hardware and system software products. Such acceptance shall be final and conclusive except for latent defects, fraud, and such gross mistakes as amount to fraud and rights and remedies available to CLIENT under the paragraph hercof entitled Warranties.

9) Site Requirements. CLIENT shall prepare the installation site prior to the delivery of the hardware and system software. CLIENT is solely responsible for and will furnish all necessary labor and material to install all associated electrical lines, CRT cables, and telephone lines for communication modems. CLIENT is responsible for installing all required cables.

10) Warranties.

ALL WARRANTIES RELATING TO THE HARDWARE AND SYSTEM SOFTWARE ARE PROVIDED DIRECTLY FROM THE HARDWARE MANUFACTURERS AND/OR SOFTWARE PUBLISHERS UNDER THE TERMS AND CONDITIONS OF THEIR RESPECTIVE WARRANTIES. THE WARRANTIES SET FORTH IN THIS HARDWARE AND SYSTEM SOFTWARE AGREEMENT ARE EXCLUSIVE AND IN LIEU OF ALL OTHER RIGHTS AND REMEDIES REPRESENTATIONS OR WARRANTIES EXPRESSED, IMPLIED OR STATUTORY, INCLUDING WITHOUT LIMITATION THE WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND SYSTEM INTEGRATION.

11) Maintenance. There is no hardware maintenance provided pursuant to this Agreement. Hardware warranty and/or maintenance are typically provided by the manufacturer or a Third Party. In situations where COMPANY and the CLIENT agree that COMPANY will provide hardware maintenance, such hardware maintenance shall be governed by the terms of COMPANY's Annual Hardware Maintenance agreement.

12) Limitation of Liability. CLIENT expressly assumes sole responsibility for the selection and use of the hardware and system software. In no event shall COMPANY be liable for special, indirect, incidental, consequential or exemplary damages, including without limitation any damages resulting from loss of use, loss of data, interruption of business activities or failure to realize savings arising out of or in connection with the use of the hardware and system software products. COMPANY's liability for damages arising out of this Hardware and System Software Agreement, whether based on a theory of contract or tort, including negligence and strict liability shall be limited to the price of the hardware and system software products set forth in the Investment Summary. The prices set forth in the Investment Summary reflect and are set in reliance upon this allocation of risk and the exclusion of such damages as set forth in this Hardware and System Software Agreement.

13) Dispute Resolution. In the event of a dispute between the parties under this Hardware and System Software Agreement pertaining to pecuniary damages or losses, the matter shall be settled by arbitration in accordance with the then prevailing rules of the American Arbitration Association.

14) Governing Law. This Hardware and System Software Agreement shall be governed by and construed in accordance with the laws of CLIENT's state of domicile.

15) Cancellation or Termination. In the event of cancellation or termination of this Hardware and System Software Agreement, CLIENT will make payment to COMPANY

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for all products and related services and expenses delivered or incurred prior to the termination or cancellation of this Hardware and System Software Agreement. CLIENT may also be responsible for restocking fees.

16) Entire Agreement.

a) This Hardware and System Software Agreement represents the entire agreement of CLIENT and COMPANY with respect to the hardware and system software products and supersedes any prior agreements, understandings and representations, whether written, oral, expressed, implied, or statutory. CLIENT hereby acknowledges that in entering into this agreement it did not rely on any representations or warranties other than those explicitly set forth in this Hardware and System Software Agreement.

b) If any term or provision of this Hardware and System Software Agreement or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Hardware and System Software Agreement or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable shall not be affected thereby, and each term and provision of this Hardware and System Software Agreement shall be valid and enforced to the fullest extent permitted by law.

c) This Hardware and System Software Agreement may only be amended, modified or changed by written instrument signed by both parties.

d) CLIENT should return an executed copy of this Agreement to COMPANY. If the Agreement is not returned to COMPANY within 90 days from the issue date, then such Agreement is subject to be voided and prices are subject to change.

17) Approval of Governing Body.

CLIENT represents and warrants to COMPANY that this Hardware and System Software Agreement has been approved by its governing body and is a binding obligation upon CLIENT. CLIENT represents and warrants that funds are

appropriated and/or arrangements have been made with a third party financier.

Annual Hardware Maintenance Agreement

1) Scope of Agreement. For the prices set forth in the Investment Summary, CLIENT requests to cover and COMPANY agrees to cover the equipment specified on the cover of this agreement in accordance with the following terms and conditions. COMPANY requires all like-kind hardware to be covered (i.e. ALL cash drawers, ALL receipt printers, etc.).

2) Price. The CLIENT agrees to pay the Annual Hardware Maintenance fee specified in this Agreement. COMPANY guarantees this fee for the term of the Annual Hardware Maintenance Agreement. However, fees for subsequent years are subject to change.

3) Payment. CLIENT agrees to pay the Annual Hardware Maintenance Agreement fee in accordance with the following terms:

a) The CLIENT will be invoiced 12 months after the initial installation of the hardware.

b) In order for equipment to be eligible to be covered under this Annual Hardware Maintenance Agreement, the equipment must be covered beginning 12 months after the installation date of the equipment and must remain under continuous coverage on the Annual Hardware Maintenance Agreement

4) Equipment Maintenance Program Terms. COMPANY agrees to provide the maintenance on the equipment specified under this agreement in accordance to the following terms:

a) In the event of equipment failure, COMPANY will repair the defective equipment and provide the CLIENT with "like or near like" equipment while the defective equipment is being repaired.

b) CLIENT shall notify COMPANY of equipment failure. Upon notification, COMPANY will ship via over-night service to the CLIENT the appropriate loaner equipment. The CLIENT shall package the

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defective equipment in its original container and ship the equipment to COMPANY.

c) Once the equipment is repaired, it will be shipped to the CLIENT. Upon receipt of the repaired equipment the CLIENT shall ship the loaner equipment back to COMPANY. The loaner equipment should be shipped back to COMPANY within two days of receiving the repaired equipment. The CLIENT agrees to pay daily rental fees to COMPANY if the loaner equipment is not shipped back to COMPANY within the time frame specified.

d) The CLIENT is responsible for shipping cost related to shipping equipment to COMPANY. COMPANY is responsible for shipping cost related to shipping equipment to the CLIENT.

5) Definitions. The following definitions apply to the terms of this Annual Hardware Maintenance Agreement:

a) **Loaner Equipment.** Equipment loaned to the CLIENT by COMPANY for use while the CLIENT's equipment is being repaired.

b) **Like or Near-Like Equipment.** Equipment compatible with the CLIENT's computer system and capable of performing the tasks performed by the equipment being repaired.

6) Limitation of Liability. The liability of COMPANY is hereby limited to that claim for the money judgment not exceeding the fees paid by the CLIENT for services under this Annual Hardware Maintenance Agreement. The CLIENT shall not in any event be entitled to, and COMPANY shall not be liable for, indirect, special, incidental, consequential or exemplary damages of any nature.

7) Governing Law. This Annual Hardware Maintenance Agreement shall be governed by and construed in accordance with the laws of CLIENT's state of domicile.

8) Entire Agreement.

a) This Annual Hardware Maintenance Agreement represents the entire agreement of CLIENT and COMPANY with respect to the maintenance of the hardware and system software products and supersedes any prior

agreements, understandings and representations, whether written, oral, expressed, implied, or statutory. CLIENT hereby acknowledges that in entering into this agreement it did not rely on any representations or warranties other than those explicitly set forth in this Annual Hardware Maintenance Agreement.

b) If any term or provision of this Agreement or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Annual Hardware Maintenance Agreement or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable shall not be affected thereby, and each term and provision of this Annual Hardware Maintenance Agreement shall be valid and enforced to the fullest extent permitted by law.

c) This Annual Hardware Maintenance Agreement may only be amended, modified or changed by written instrument signed by both parties.

d) CLIENT should return an executed copy of this Agreement to COMPANY. If the Agreement is not returned to COMPANY within 90 days from the issue date, then such Agreement is subject to be voided and prices are subject to change.

Third Party Product Agreement

1) Agreement to License or Sell Third Party Products. For the price set forth in the Investment Summary (Hardware & System Software), COMPANY agrees to license or sell and deliver to CLIENT, and CLIENT agrees to accept from COMPANY the third party products set forth in the Investment Summary.

2) License of Third Party Software Products.

a) Upon CLIENT's payment for the third party software products listed in the Investment Summary, for the license fees set forth in the Investment Summary, COMPANY shall grant to CLIENT and CLIENT shall accept from COMPANY a non-exclusive, nontransferable, non-

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assignable license to use the third party software products and accompanying documentation and related materials for internal business purposes of CLIENT, subject to the conditions and limitations in this section.

b) Ownership of the third party software products, accompanying documentation and related materials, shall remain with the third party manufacturer or supplier.

c) The right to transfer this license to a replacement hardware system is governed by the Third Party. The cost for new media or any required technical assistance to accommodate the transfer would be billable charges to CLIENT. Advance written notice of any such transfer shall be provided to COMPANY.

d) CLIENT agrees that the third party software products are proprietary to the third party manufacturer or supplier and have been developed as a trade secret at the third-party's expense. To the extent permitted by law, CLIENT agrees to keep the software products confidential and use its best efforts to prevent any misuse, unauthorized use or unauthorized disclosures by any party of any or all of the third party software products or accompanying documentation.

e) CLIENT shall not perform decompilation, disassembly, translation or other reverse engineering on the software products.

f) CLIENT may make copies of the software products for archive purposes only. CLIENT will repeat any proprietary notice on the copy of the software products. The documentation accompanying the software products may not be copied except for internal use.

3) Price. CLIENT agrees to pay COMPANY and COMPANY agrees to accept from CLIENT as payment in full for the third party products, the price set forth in the Investment Summary at the following manner:

a) Twenty-five percent (25%) of the price of all third party products listed in the Investment Summary upon execution of this Agreement; and

b) The remaining balance of the price of each item delivered to CLIENT upon delivery of each product.

c) In the event of any disputed invoice, CLIENT shall provide written notice of such disputed invoice to Attention: COMPANY Controller at the address listed on the cover of this Agreement. Such written notice shall be provided to COMPANY within fifteen (15) calendar days of CLIENT's receipt of the invoice. An additional fifteen (15) days is allowed for the CLIENT to provide written clarification and details for the disputed invoice. COMPANY shall provide a written response to CLIENT that shall include either a justification of the invoice or an explanation of an adjustment to the invoice and an action plan that will outline the reasonable steps needed to be taken by COMPANY and CLIENT to resolve any issues presented in CLIENT's notification to COMPANY. CLIENT may withhold payment of only the amount actually in dispute until COMPANY provides the required written response, and full payment shall be remitted to COMPANY upon COMPANY's completion of all material action steps required to remedy the disputed matter. Notwithstanding the foregoing sentence, if COMPANY is unable to complete all material action steps required to remedy the disputed matter because CLIENT has not completed the action steps required of them, CLIENT shall remit full payment of the invoice.

d) Any invoice not disputed as described above shall be deemed accepted by the CLIENT. If payment of any invoice that is not disputed as described above is not made within sixty (60) calendar days, COMPANY reserves the right to suspend delivery of all services under the Investment Summary, the Software License Agreement, the Professional Services Agreement, the Maintenance Agreement and this Third Party Product Agreement.

4) Costs and Taxes.

a) Unless otherwise indicated in the Investment Summary, the price includes costs for shipment of and insurance while in

COMPANY AGREEMENT TERMS AND CONDITIONS

transit for the third party products from the supplier's place of manufacture to CLIENT's site.

b) The price listed in the Investment Summary does not include any tax or other governmental impositions including, without limitation, sales, use or excise tax. All applicable sales tax, use tax or excise tax shall be paid by CLIENT and shall be paid over to the proper authorities by CLIENT or reimbursed by CLIENT to COMPANY on demand in the event that COMPANY is responsible or demand is made on COMPANY for the payment thereof. If tax-exempt, CLIENT must provide COMPANY with CLIENT's tax-exempt number or form.

5) F.O.B. Point. Delivery of each third party product shall be F.O.B. CLIENT's site.

6) Schedule of Delivery. Delivery of each third party product shall take place according to mutually agreeable schedule, but COMPANY shall not be liable for failure to meet the agreed upon schedule if, and to the extent, said failure is due to causes beyond the control and without the fault of COMPANY.

7) Installation and Verification.

a) If itemized in the Investment Summary, the price includes installation of the third party products. Upon the completion of installation, CLIENT shall obtain from the installer a certification of completion, or similar document, which certification or similar document shall constitute CLIENT's acceptance of the third party products. Such acceptance shall be final and conclusive except for latent defects, fraud, and such gross mistakes as amount to fraud and rights and remedies available to CLIENT under the paragraph hereof entitled Warranties.

8) Site Requirements. CLIENT shall provide:

a) a suitable environment, location and space for the installation and operation of the third party products;

b) sufficient and adequate electrical circuits for the third party products; and

c) installation of all required cables.

9) Warranties.

a) COMPANY is authorized by the manufacturer or supplier of all third party software products listed in the Investment Summary to grant licenses or sublicenses to such products.

b) Unless otherwise noted in any attached addendum, COMPANY warrants that each third party product shall be new and unused, and if CLIENT fully and faithfully performs each and every obligation required of it under the Third Party Product Agreement, CLIENT's title or license to each third party product shall be free and clear of all liens and encumbrances arising through COMPANY.

c) The parties understand and agree that COMPANY is not the manufacturer of the third party products. As such, COMPANY does not warrant or guarantee the condition of the third party products or the operation characteristics of the third party products. d) THE WARRANTIES SET FORTH IN THIS THIRD PARTY PRODUCT AGREEMENT ARE EXCLUSIVE AND IN LIEU OF ALL OTHER RIGHTS AND REMEDIES REPRESENTATIONS OR WARRANTIES EXPRESSED, IMPLIED OR STATUTORY, INCLUDING WITHOUT LIMITATION THE WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND SYSTEM INTEGRATION.

10) Maintenance. It shall be the responsibility of CLIENT to repair and maintain the third party products after acceptance. Support for Third Party Application Software is not provided by COMPANY unless otherwise specified in this Agreement. COMPANY's responsibility is limited to delivering the Third Party Application Software and installing the software if installation services are provided in this Agreement.

11) Limitation of Liability. CLIENT expressly assumes sole responsibility for the selection and use of the Third Party Application Software. In no event shall COMPANY be liable for special, indirect,

COMPANY AGREEMENT TERMS AND CONDITIONS

incidental, consequential or exemplary damages, including without limitation any damages resulting from loss of use, loss of data, interruption of business activities or failure to realize savings arising out of or in connection with the use of the third party products. COMPANY's liability for damages arising out of this Third Party Product Agreement, whether based on a theory of contract or tort, including negligence and strict liability shall be limited to the price of the third party products set forth in the Investment Summary. The prices set forth in the Investment Summary reflect and are set in reliance upon this allocation of risk and the exclusion of such damages as set forth in this Third Party Product Agreement.

12) Dispute Resolution. In the event of a dispute between the parties under this Third Party Product Agreement pertaining to pecuniary damages or losses, the matter shall be settled by arbitration in accordance with the then prevailing rules of the American Arbitration Association.

13) Governing Law. This Third Party Product Agreement shall be governed by and construed in accordance with the laws of CLIENT's state of domicile.

14) Cancellation or Termination. In the event of cancellation or termination of this Third Party Product Agreement, CLIENT will make payment to COMPANY for all products and related services and expenses delivered or incurred prior to the termination or cancellation of this Third Party Product Agreement.

15) Entire Agreement.

a) This Third Party Product Agreement represents the entire agreement of CLIENT and COMPANY with respect to the third party products and supersedes any prior agreements, understandings and representations, whether written, oral, expressed, implied, or statutory. CLIENT hereby acknowledges that in entering into this agreement it did not rely on any representations or warranties other than those explicitly set forth in this Third Party Product Agreement.

b) If any term or provision of this Third Party Product Agreement or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Third Party Product Agreement or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable shall not be affected thereby, and each term and provision of this Third Party Product Agreement shall be valid and enforced to the fullest extent permitted by law.

c) This Third Party Product Agreement may only be amended, modified or changed by written instrument signed by both parties.

d) CLIENT should return an executed copy of this Agreement to COMPANY. If the Agreement is not returned to COMPANY within 90 days from the issue date, then such Agreement is subject to be voided and prices are subject to change.

16) Approval of Governing Body. CLIENT represents and warrants to COMPANY that this Third Party Product Agreement has been approved by its governing body and is a binding obligation upon CLIENT. CLIENT represents and warrants that funds are appropriated and/or arrangements have been made with a third party financier.

General Return Merchandise Authorization (RMA) Policy.

a) In order to return or replace any product ordered from COMPANY, CLIENT will need to request and obtain an RMA number from appropriate COMPANY personnel. RMA numbers will be issued at the discretion of COMPANY and products returned without an RMA number may be refused by COMPANY. COMPANY reserves the right to refuse the return of any product or to refuse the issuance of an RMA number.

b) All shipping costs are the responsibility of the CLIENT. COMPANY recommends the use of a traceable and insurable shipping source. COMPANY will not be responsible

COMPANY AGREEMENT TERMS AND CONDITIONS

for lost or damaged products as a result of the shipping process.

c) Qualifying products must be returned unopened with original packaging and materials unless otherwise agreed upon by COMPANY. The following situations will result in the refusal of an RMA number and credit will not be issued to client:

- Opened inkjet or laser jet printers
- Opened Third Party Software
- Damaged products as a result of irregular use of mishandling by customer

d) Products may only be returned to COMPANY for account credit after an RMA number has been issued by COMPANY. All returns are subject to a restocking fee of 20% of original purchase price. Failure to comply with this policy will result in a refusal of credit and future product placement.

COMPANY WEB SERVICES - INTERNET BASED PRODUCTS SUBSCRIPTION AGREEMENT TERMS AND CONDITIONS

THIS AGREEMENT is effective as of the date of acceptance set forth at the end hereof, and is by and between Tyler Technologies, Inc., hereinafter referred to as COMPANY and the party signing this agreement as the "SUBSCRIBER".

DEFINITIONS

COMPANY Web Services. COMPANY Web Services are designed to enable SUBSCRIBER to easily establish a presence on the Internet. COMPANY Web Hosting and Design is composed of the COMPANY Web Hosting and Design Publishing Component and other miscellaneous components. These components may be used independently or in conjunction with each other.

COMPANY Web Hosting and Design Publishing Component. The COMPANY Web Hosting and Design Publishing Component (IWPC) provides a simple avenue for the SUBSCRIBER to publish a sophisticated Web Site that is easy for them to maintain. The IWPC contains the central Web Site menuing system and smart directories. These smart directories allow the SUBSCRIBER to simply copy or FTP Web compatible documents (HTML) to COMPANY's Web Server for publication. As long as the documents are copied to the proper directories, the IWPC will automatically catalog, organize and publish the documents to the SUBSCRIBER's IWPC Web Site. If the SUBSCRIBER has a unique domain name, COMPANY can seamlessly point it to COMPANY's web server.

COMPANY Utility Billing On-Line The COMPANY Utility Billing On-Line Component allows the SUBSCRIBER to make available certain information from their COMPANY Utility Billing System to citizens with Internet access. Information is transferred from SUBSCRIBER to COMPANY daily. This information is posted to SUBSCRIBER's web site, which is hosted on COMPANY's web server. With the proper security clearance, citizens with Internet access have access to the data which can include: Consumption information, service level information, requests for service, accounting information and the opportunity to pay their Utility Bill over the Internet using a credit card.

COMPANY Court On-Line The COMPANY Court On-Line Component provides the ability for municipal court fines to be paid by credit card or electronic check via the Internet. Since it was designed by COMPANY, this system interfaces seamlessly with COMPANY's InCourt Municipal Court System.

AGREEMENTS

- 1) **TERM.** SUBSCRIBER must return an executed copy of this Agreement to COMPANY within 90 days from the issue date. Thereafter, the Agreement will be voided and is subject to change. Subject to the limitations of this Section 1, and unless otherwise provided for in this Agreement, the term of this Agreement shall commence as of the effective date and shall continue for three (3) years. The term shall thereafter be automatically extended in separate consecutive periods of twelve (12) months duration unless either party gives written notice to terminate. Notice to terminate must provide at least sixty (60) days notice of said intent. In the event that the SUBSCRIBER fails to pay any amount payable to COMPANY hereunder, when due, or fails to comply with any other provision of this Agreement, COMPANY may terminate the SUBSCRIBER's rights by written notice to that effect to the SUBSCRIBER. COMPANY may, by written notice to the SUBSCRIBER, terminate its obligations under this Agreement in the event that COMPANY, for whatever reason, ceases to host SUBSCRIBER's Web Site. A termination of the SUBSCRIBER's rights under this Agreement shall not terminate any of the parties' rights under this Agreement to receive or hold amounts rightfully owing to the respective party pursuant to the terms of this agreement or to enforce the intellectual and proprietary rights in the COMPANY concept, web site, software, and technology. Upon termination or non-renewal of this agreement, the parties shall each promptly account for all due but unpaid amounts hereunder. If SUBSCRIBER wishes to terminate before the stated term expires, SUBSCRIBER must give sixty (60) days written notice in order not to incur termination costs of \$675.00. Please also see section entitled "**TERMINATION**" in this Agreement.
- 2) **NATURE OF WEB SITE.** COMPANY shall maintain a web site accessible over the Internet, for SUBSCRIBER. This web site shall contain both static information pages, non-static interactive pages as well as payment function pages. The web site shall allow a citizen with Internet access to view relevant data provided by SUBSCRIBER. This data may include certain data elements from SUBSCRIBER's Utility Billing System and Municipal Court System. This web site shall be equipped to accept payment of amounts owed to SUBSCRIBER, via Secured Socket Layer (SSL) encryption and credit card or debit card charge.

COMPANY WEB SERVICES - INTERNET BASED PRODUCTS SUBSCRIPTION AGREEMENT TERMS AND CONDITIONS

- 3) **DATA PROCUREMENT.** COMPANY requires the following items for the Publishing Component of InSite. The SUBSCRIBER will need to provide COMPANY the documents to be published in an HTML format. It is the responsibility of the SUBSCRIBER to obtain, install and be familiar with the operation of software capable of producing the HTML documents. Unless specified elsewhere in this Agreement, these pages will be static (no interaction between site and user). The SUBSCRIBER is responsible for the content of the page (COMPANY will only provide the framework for publishing the information). COMPANY must host the components and services listed in the Investment Summary of this Agreement. The SUBSCRIBER will be required to setup a merchant account with Electronic Transaction System Corporation for the sole use of COMPANY Web Service transactions. The merchant account must be setup to fund to the SUBSCRIBER bank account. All fees for the merchant account will be paid by SUBSCRIBER.

COMPANY Utility Billing On-Line and COMPANY Court On-Line require daily updates to and from the SUBSCRIBER's primary software. COMPANY will assume responsibility for transferring the necessary data from the SUBSCRIBER's primary software system, to COMPANY's web server. This transfer will occur on a daily basis. Additionally, certain information, such as payment information, must be conveyed to SUBSCRIBER. COMPANY will assume responsibility for transferring such information back to SUBSCRIBER on a regular basis.

- 4) **LICENSED SOFTWARE OWNERSHIP.** SUBSCRIBER agrees that COMPANY possesses exclusive title to and ownership of the COMPANY Software.
- a) SUBSCRIBER agrees that SUBSCRIBER acquires neither ownership nor any other interest in the COMPANY Software, except for the right to use and possess the COMPANY Software in accordance with the terms and conditions of this Agreement.
 - b) All rights not expressly granted to SUBSCRIBER in this Agreement are retained by COMPANY.
 - c) SUBSCRIBER agrees that COMPANY Software including, but not limited to, systems designs, programs in source and/or object code format, applications, techniques, ideas, and/or know-how utilized and/or developed by COMPANY are and shall remain the exclusive property of COMPANY. SUBSCRIBER agrees that the COMPANY Software consists of COMPANY's trade secrets. COMPANY shall retain all copyrights in the COMPANY Software, whether published or unpublished.
 - d) COMPANY agrees that all data provided to COMPANY for the purposes of generating the web site shall remain the property of SUBSCRIBER. Should SUBSCRIBER terminate the Internet Services in good standing and in accordance with the termination provisions of this Agreement, COMPANY agrees to return to SUBSCRIBER, all graphics, text documents, and data files held by COMPANY.
- 5) **SUBSCRIBER MEMBERSHIP FEES.** For establishing new COMPANY Web Services, the SUBSCRIBER shall pay to COMPANY the following amounts as stated in Initial Fees.
- 6) **NOT ASSIGNABLE.** The rights of the SUBSCRIBER under this Agreement are not assignable without the prior written consent of COMPANY. Any attempt to sublicense, assign, encumber or transfer any of the rights, duties or obligations under this Agreement by the SUBSCRIBER is void. Subject to the foregoing, this Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective permitted assigns and successors.
- 7) **SOFTWARE MAINTENANCE.** This SUBSCRIPTION AGREEMENT includes unlimited telephone support, support by communication modem, and all software upgrades, enhancements and new releases. COMPANY reserves the right to change the functionality of future releases of its software and CLIENT understands that COMPANY is not obligated to include specific functionality in future releases unless provided for herein.
- 8) **PARTIAL INVALIDITY.** Should any provision or clause of this Agreement be held to be invalid, such invalidity shall not affect any other provision or clause hereof, which can be given effect without such invalid provision or clause.
- 9) **RESPONSIBILITY OF DATA.** COMPANY will assume responsibility for all data transfer, but not responsible for data accuracy.

COMPANY WEB SERVICES - INTERNET BASED PRODUCTS SUBSCRIPTION AGREEMENT TERMS AND CONDITIONS

- 10) **PROPRIETARY INFORMATION.**
- a) Distribution of COMPANY Software. SUBSCRIBER may not sell, assign, transfer, disclose, or otherwise make available, either directly or indirectly, any object code, documentation or other material relating to the Software, in whole or in part, or any copy of the same in any form, to any other person or entity.
 - b) Software as Trade Secret. SUBSCRIBER shall maintain the confidentiality of the Software and unless specifically authorized by COMPANY or except for ordinary and necessary backup purposes, SUBSCRIBER may not make or have made any copies of the Software or any part thereof. SUBSCRIBER shall include COMPANY's proprietary notice or other legend on any copies made by SUBSCRIBER as permitted hereunder.
- 11) **WARRANTY, DISCLAIMER, LIMITATION ON LIABILITY.** COMPANY warrants that the Software will substantially conform to current specifications delivered by COMPANY to SUBSCRIBER pursuant to this Agreement, including COMPANY's response to the Request for Proposal for six (6) months following installation; provided, however, that COMPANY's warranty hereunder shall not cover or apply to any software, or part thereof, that is not developed or designed by COMPANY. In the event that the Software is found to be defective in such respect and SUBSCRIBER notifies COMPANY in writing within six (6) months after its receipt of the Software of any substantial non-conformity of the Software with such specifications, COMPANY's sole obligation under this warranty is to remedy such defect within a reasonable time. THE FOREGOING WARRANTY IS EXCLUSIVE AND IS MADE IN LIEU OF ALL OTHER WARRANTIES OR REPRESENTATIONS, WHETHER EXPRESS OR IMPLIED, IN FACT OR IN LAW, INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. COMPANY SHALL IN NO EVENT BE LIABLE FOR DAMAGES THAT EXCEED THE AMOUNT OF THE CHARGES PAID BY SUBSCRIBER HEREUNDER FOR THE DEVELOPMENT AND LICENSE OF THE SOFTWARE. IN NO EVENT SHALL COMPANY BE LIABLE FOR SPECIAL, INCIDENTAL, EXEMPLARY, INDIRECT OR CONSEQUENTIAL DAMAGES OR FOR LOSS OF PROFITS, REVENUES OR DATA, EVEN IF COMPANY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.
- 12) **HOLD HARMLESS.** SUBSCRIBER agrees that it will hold COMPANY harmless against any claims, damages, liabilities, costs and expenses, including reasonable attorneys' fees, arising out of or relating to
- a) SUBSCRIBER's failure to implement any corrections, improvements and new releases relating to the Software, or any part thereof,
 - b) SUBSCRIBER's unauthorized alterations to or use of the Software, or
 - c) SUBSCRIBER's breach of any of its obligations to maintain the confidentiality of the Software or SUBSCRIBER's unauthorized copying thereof.
- 13) **TERMINATION.** This Agreement or any license referenced hereunder may be terminated by COMPANY upon written notice to SUBSCRIBER if SUBSCRIBER performs any breach of the terms of this Agreement. At the date of termination of this Agreement, SUBSCRIBER shall promptly return to COMPANY any Software, related documentation, materials and other property of COMPANY then in its possession, and any copies thereof wherever located. Notwithstanding the foregoing, all provisions hereof relating to confidentiality of the Software shall survive the termination of this Agreement.
- 14) **GENERAL.**
- a) This Agreement shall be governed by the laws of SUBSCRIBER's state of domicile and constitutes the entire Agreement between the parties hereto with respect to the Software described herein, and shall supersede all previous or contemporaneous negotiations, commitments and writings with respect to the matters set forth herein.
 - b) All acceptances by COMPANY of purchase orders and all sales by COMPANY are expressly limited to and made on the basis of the terms and conditions set forth herein, notwithstanding receipt or acknowledgment of SUBSCRIBER's order forms or specifications containing additional or different provisions, or conflicting oral representations by an agent, representative or employee of COMPANY. Any such additional or different terms are hereby objected to. All acceptances by COMPANY are expressly conditional on SUBSCRIBER's assent to the additional or different terms and conditions set forth in this Agreement. If these terms and conditions are not acceptable, SUBSCRIBER should notify COMPANY at once.



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Yarmouth, ME 04096

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www.tylertech.com

November 3, 2022

Doug Tippey
City of Tomball
401 Market Street; Suite C
Tomball, TX 77375

RE: Tyler Technologies software and support

Dear Mr. Tippey:

Please accept this letter as confirmation that Tyler Technologies, Inc. is the sole provider of the Tyler Financial, Customer Relationship, Court, and Content Management software. Additionally, Tyler is the only party authorized to support, and update or modify the software.

Tyler is the sole developer and implementer of the software listed above.

Please let me know if you have any additional questions.

Regards,

A handwritten signature in blue ink, appearing to read "Robert Kennedy-Jensen".

Robert Kennedy-Jensen
Group General Counsel

City Council Meeting Agenda Item Data Sheet

Meeting Date: November 21, 2022

Topic:

Approve the expenditure of \$52,350 for computer aided dispatch software support from CentralSquare Technologies, LLC and authorize the City Manager to execute any and all documents related to the expenditure. This expenditure is included in the FY 2022-2023 Budget.

Background:

Staff evaluated computer aided dispatch systems three years ago and selected Zuercher from CentralSquare Technologies, LLC. The software was approved, budgeted for, and implemented. As part of the use of the software, the City pays for an annual subscription, maintenance, and support from CentralSquare Technologies, LLC. The Year 4 (FY 2022-2023) cost is \$52,350.

Per the City's adopted Procurement and Policy Manual, City Council approval is required for any expenditure over \$50,000.

Origination: IT Director

Recommendation:

Staff recommends approving the expenditure for CAD software support and maintenance in the amount of \$52,350 to CentralSquare Technologies, LLC as appropriated in the FY 2022-2023 Budget.

Party(ies) responsible for placing this item on agenda: Doug Tippet, IT Director

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: # 100-117-6320

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

Signed Doug Tippet 11.16.2022 Approved by _____
Staff Member Date City Manager Date

ZUERCHER

Software License and Service Agreement

Tomball Police Department

This Software License and Service Agreement (this “Agreement”) entered into as of this ____ day of _____ 20__ by and between City of Tomball Police Department (“Customer”), having its principal place of business at 400 Fannin Street, Tomball, TX 77375, and Zuercher Technologies LLC (“Zuercher”), having its principal place of business at 4509 West 58th Street, Sioux Falls, South Dakota 57108. Customer and Zuercher may also be referred to herein individually as a “Party” or collectively as the “Parties”.

This Agreement details the responsibilities of Zuercher and Customer with regard to the public safety software, hardware, and related services to be provided by Zuercher under this Agreement.

Now, therefore, in consideration of the mutual covenants and promises contained in this Agreement, the Parties agree as follows:

1.0 Exhibits and Order of Precedence

The following Exhibits are incorporated into this Agreement:

1. Exhibit A: Statement of Work
2. Exhibit B: Pricing Detail
3. Exhibit C: Payment Schedule
4. Exhibit D: Maintenance Agreement
5. Exhibit E: Community Data Platform Membership Agreement

In the event of any inconsistency among the various documents that comprise this Agreement, the order of precedence shall be as follows: (i) the Agreement, followed by (ii) the Exhibits to the Agreement in the order in which they appear in 1.0, *Exhibits and Order of Precedence*.

2.0 License

2.1 Grant of the License

In consideration of Customer’s payment of the license fees set forth in *Exhibit B: Pricing Detail*, and subject to the terms and conditions set forth herein, Zuercher hereby grants to Customer, and Customer accepts, a perpetual, non-transferable and non-exclusive license to use certain Zuercher software (the “Software”) identified in *Exhibit B: Pricing Detail* only for Customer’s own business purposes in object code format.

2.2 Copies and Modifications

Customer may make a copy of the Software solely for backup or archival purposes. No Zuercher identifying marks, copyright or proprietary right notices may be deleted from any copies of the Software made by Customer. Customer shall not decompile, or create by reverse engineering or otherwise, the source codes from the object code supplied hereunder, or adapt the Software in any way or use it to create a derivative work. Zuercher shall not be responsible in any way for Software performance if the Software has been modified, except as modified by Zuercher.

2.3 Restrictions on Usage

Customer shall not allow any party, other than Zuercher, to add, update, or delete database records or

file system objects directly to or on the server or database except as provided for in the Zuercher Documentation.

Customer shall not access any Server Hardware except as provided in the Zuercher Documentation or cause any software except the Software provided under this Agreement to be installed on or executed on the Server Hardware.

2.4 Infringement

Zuercher will at its expense defend against any claim, action or proceeding by a third party ("Action" herein) for infringement by the Zuercher Software of copyright or trade secrets, provided that Customer immediately notifies Zuercher in writing of such Action and cooperates fully with Zuercher and its legal counsel in the defense thereof. Zuercher may in its discretion (i) contest, (ii) settle, (iii) procure for Customer the right to continue using the Zuercher Software, or (iv) modify or replace the Zuercher Software so that it no longer infringes (as long as the functionality and performance described in the Specifications substantially remains following such modification or replacement.) Customer may participate in the defense of such Action at its own expense. If Zuercher concludes in its sole judgment that none of the foregoing options are commercially reasonable, and Customer's use of the Zuercher Software is permanently enjoined as a result of a judgment of a court of competent jurisdiction in such Action, then Zuercher will return to Customer the Zuercher Software license fee(s) paid by Customer under this Agreement less a prorated portion of said fee(s) for Customer's use of the Zuercher Software (calculated by multiplying the ratio of the number of months of actual use in live operations to thirty-six (36) months times the license fees paid) and the licenses granted in this Agreement shall terminate. In addition, in the event such Action results in a money judgment against Customer which does not arise, wholly or in part, from the actions or omissions of Customer, its officers, directors, employees, contractors, agents, or elected officials, or a third party, Zuercher will, subject to Section 5.0 herein, indemnify Customer therefrom.

Notwithstanding the above, Zuercher shall have no duty under this Section 2.4 with respect to any claim, action or proceeding arising from or related to infringements (i) by Third Party Software, including operating system software, or hardware, (ii) arising out of modifications to the Zuercher Software and/or Documentation not made by Zuercher, (iii) resulting from use of the Zuercher Software to practice any method or process which does not occur wholly within the Zuercher Software, or (iv) resulting from modifications to the Zuercher Software or Documentation prepared pursuant to specifications or other material furnished by or on behalf of Customer. This Section 2.4 states the entire obligation of Zuercher regarding infringement of intellectual property rights, and it will survive the termination of this Agreement.

3.0 Delivery, Fees and Payments

3.1 Delivery of Software to Customer

The Software shall be delivered in executable object code form only. Zuercher shall initially deliver and install copies of the Software as set forth in *Exhibit A: Statement of Work*, in the quantities set forth in

Exhibit B: Pricing Detail. Except as stated in *Exhibit D: Maintenance Agreement*, Zuercher shall not be responsible for providing any updates, enhancements, modifications, revisions, additions, replacements, conversions or maintenance to the Software.

3.2 Delivery of Hardware to Customer

Zuercher shall ship Hardware provided under this Agreement as set forth in *Exhibit B: Pricing Detail* to Customer's location at a mutually agreeable time in the project timeline. Items shipped via commercial carrier are FOB destination at the fixed price stated in *Exhibit B: Pricing Detail*. It shall be Customer's responsibility to install all Hardware and to perform proper facility preparation (such as appropriate uninterrupted power, air conditioning, space, electrical drops, security, network equipment, network drops, etc.) not specified in this Agreement as being provided by Zuercher, but necessary to accommodate equipment as specified in the Statement of Work before, during, and/or after installation.

3.3 Delivery of Services to Customer

Zuercher will provide Services as set forth in *Exhibit A: Statement of Work*.

3.4 Fees

Customer will pay Zuercher the fees, without deduction or offset, on the dates set forth in *Exhibit C: Payment Schedule*.

3.5 Late Payment

If Customer fails to pay any amount due within thirty (30) days of invoice date, Customer shall pay late charges of one and one half percent (1.5%) or the highest allowed by law, whichever is lower, per month on such balance, together with all of Zuercher's expenses, collection costs and reasonable attorneys' fees incurred in enforcing this Agreement.

3.6 System Acceptance

Customer acknowledges that the System shall be deemed accepted on the date of Go Live. In the event that a Customer notifies Zuercher of a material non-conformity in the Software as compared with the Statement of Work, Zuercher shall use commercially reasonable efforts to correct the reported non-conformity in accordance with the support provisions set forth in *Exhibit D: Maintenance Agreement*.

3.7 Additional Components

Other components (hardware and/or software, collectively "Third Party Components") may be desired for use with the System. Zuercher assumes no responsibility under this Agreement for obtaining and/or supporting any Third Party Components except as expressly agreed herein. This includes, but is not limited to, networking equipment, workstations, servers for third-party systems, mobile networking equipment, and mobile workstations, laptops, or tablets.

3.8 Third-Party Costs

Except as expressly agreed herein, Zuercher assumes no responsibility for any third-party costs related to

implementation of the System. This includes, but is not limited to, any third-party costs associated with the implementation of Interfaces as defined in *Exhibit A: Statement of Work*.

4.0 Rights and Obligations

4.1 Proprietary Rights

Zuercher represents that it is the owner of or otherwise has the rights to the Software and that it has the right to grant the License. Zuercher retains title to the Software and its associated Documentation, including, without limitation, all copies and audiovisual aspects thereof and all rights to patents, copyrights, trademarks, trade secrets and other intellectual property rights inherent therein and appurtenant thereto. Customer shall not, by virtue of this Agreement or otherwise, acquire any proprietary rights whatsoever in the Software or its associated Documentation, which shall be confidential information of Zuercher and the sole and exclusive property of Zuercher. Zuercher hereby expressly reserves any right not expressly granted to Customer by this Agreement. No identifying marks, copyright or proprietary right notices may be deleted from any copy of the Software provided to or made by Customer. All right and title to any third party software provided by Zuercher under this Agreement shall remain with the applicable vendor thereof. Nothing in this Agreement shall be construed as conveying title in the Software, its associated Documentation, or any third party software to Customer.

4.2 Trademarks and Trade Names

Any and all trademarks and trade names, which Zuercher uses in connection with the License granted hereunder, are and shall remain the exclusive property of Zuercher. Nothing contained in this Agreement shall be deemed to give Customer any right, title or interest in any trademark or trade name of Zuercher.

4.3 Confidentiality

Except as otherwise provided in this Agreement, Customer shall not sell, transfer, publish, disclose or otherwise make available any portion of the Software or its associated Documentation to others. Customer shall use its reasonable best efforts to cooperate with and assist Zuercher in identifying and preventing any unauthorized use, copying or disclosure of the Software or any portion thereof or any of the algorithms or logic contained therein or any other deliverables.

4.3.1 Zuercher agrees to maintain Customer's confidential business information and confidential data, including patient identifying data, to which Zuercher gains access in confidence and to not disclose such information except as required to perform hereunder or as required by law. Customer will use reasonable efforts to identify or designate information or data as confidential at or within five (5) business days of disclosure. Notwithstanding the above, Zuercher shall own the copyrights, trade secrets, patent rights and other proprietary rights in and may use without restriction knowledge, information, ideas, methods, know-how, and copyrightable expression learned or acquired (including without limitation any feedback, suggestions, or other information or materials) as a result of or in connection with this Agreement to make modifications and enhancements to the Zuercher Software or Documentation. Customer shall acquire no intellectual property ownership rights to the Zuercher Software or Documentation as a result of such use, whether as author, joint author, or

otherwise. Confidential information does not include any information which (a) is generally available to the public or becomes generally known to the public through no act or omission of Zuercher or any violation of confidentiality; (b) is disclosed to Zuercher by third parties without breach of confidentiality obligations; (c) is already in the lawful or rightful possession of Zuercher prior to receipt of the confidential information or (d) is developed independently by Zuercher without use of the confidential information.

4.3.1.1 Zuercher maintains a security program for managing access to customer data – particularly HIPAA and CJIS information (“Security Approved Personnel”). This includes 1) a pre-employment background check; 2) security training required by Federal CJIS regulations; and 3) criminal background checks/fingerprints required by Federal or State regulations. Zuercher will work with the Customer to provide reasonably required documentation (such as the CJIS Security Addendum Certification form and VPN documents).

4.3.1.2 If required by the Customer, Zuercher will provide paper fingerprint cards for such Security Approved personnel with the fingerprinting performed in the state of the Zuercher staff’s job assignment. If the Customer requires fingerprints submitted in a form other than paper prints (such as Live Scan) or that such fingerprints be performed at the Customer’s site, the Customer will reimburse Zuercher for the cost of Zuercher Security Approved Personnel traveling to the Customer’s site or for a vendor (such as Live Scan) to travel to the applicable Zuercher office location. This provision will apply during the installation of the Project and for the duration of the Customer’s Maintenance Agreement.

4.4 Termination for Breach

Zuercher may immediately terminate this Agreement, including all license rights granted herein, in the event Customer breaches any of its material confidentiality obligations regarding the Software and its associated Documentation.

4.5 Non-Confidential Information

Confidentiality obligations of the Parties shall not extend to information that:

- (a) is, as of the time of its disclosure, or thereafter becomes part of the public domain through a source other than the receiving party;
- (b) was known to the receiving party at the time of its disclosure and such knowledge can be proven by documentation;
- (c) is independently developed by the receiving party;
- (d) is subsequently learned from a third party not under a confidentiality obligation to the providing party; or
- (e) is required to be disclosed pursuant to court order, subpoena, or government authority, whereupon the receiving party shall provide notice to the other party prior to such disclosure.

4.6 Limited Warranties

4.6.1 Software Warranties

Zuercher warrants that: (i) it owns or otherwise has the rights in the Software and has the right to license the Software as described in this Agreement. Zuercher further warrants that for a period of twelve (12) months from the date of Go Live (the "Warranty Period"), the Zuercher Software will perform in conformance with the Zuercher Documentation and any applicable specifications set forth in *Exhibit A: Statement of Work*. Zuercher's sole obligation or liability during the Warranty Period shall be to use commercially reasonable efforts to correct the Software upon receipt of written notice of a warranty defect from Customer, in a reasonable time in accordance with the provisions of *Exhibit D: Maintenance Agreement*. In the event Zuercher fails to remedy material defects in the Software under this warranty, Customer's sole remedy and Zuercher's sole liability shall be to receive a refund of any fee paid hereunder for the portion of the Software, if any, which contains an uncorrected material defect.

4.6.1.1 Wireless Service Limitations

Problems in the Zuercher software or transmission of data caused by wireless services, including cell phone carriers, cell phone devices and operating systems, and any personal settings on the devices are not warranted by Zuercher, or covered under the terms of this Agreement. The Customer's use of services provided by wireless service providers or carrier, or transmission of data from cell phone carriers, cell phones and operating systems, and the security, privacy, or accuracy of any data provided via such services is at the Customer's sole risk.

4.6.2 Hardware and Third-Party Software Warranties

Zuercher warrants that, at the time of delivery, the Hardware will be new and unused. In addition, Zuercher warrants that upon payment of the applicable fees, Customer will acquire good and clear title to the Hardware, free and clear of all liens and encumbrances.

All Hardware and Third-Party Software warranties provided by the manufacturer will be passed through to Customer. Zuercher will be solely responsible for processing and managing of all Hardware and Third-Party Software warranty claims that may be necessary during the term of this Agreement.

ZUERCHER EXPRESSLY DISCLAIMS, AND CUSTOMER HEREBY EXPRESSLY WAIVES, ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

4.7 Legal Relationship

It is expressly understood by Customer and Zuercher that Zuercher shall not be construed to be, and is not, an employee of Customer. Zuercher shall provide services to Customer as an independent contractor with control over the time, means and methods for accomplishing the services outlined in this Agreement. Zuercher further acknowledges that it is not entitled to such benefits as holiday time, vacation time, sick leave, retirement benefits, health benefits, or other benefits usually associated with employment.

4.8 Insurance Provision

Zuercher, at all times during the term of this Agreement, shall obtain and maintain in force insurance

coverage of the types and with the limits as follows:

- (a) **Commercial General Liability Insurance:** Commercial general liability insurance with a limit of \$1,000,000 for each occurrence; \$2,000,000 in the aggregate.
- (b) **Professional Liability Insurance:** Professional liability insurance with a limit of \$5,000,000 each claim; \$5,000,000 in the aggregate.
- (c) **Business Automobile Liability Insurance:** Business automobile liability insurance or equivalent form with a limit of not less than \$1,000,000 for each accident. Such insurance shall include coverage for owned, hired and non-owned vehicles.

At Customer's request, Zuercher shall provide properly executed Certificates of Insurance which shall clearly evidence all insurance required in this Agreement and which provide that such insurance may not be canceled, except on 30 days prior written notice to Customer.

5.0 Indemnification and Limitation of Liability

Zuercher shall indemnify, defend and hold harmless Customer from any and all claims, lawsuits or liability, including attorneys' fees and costs, allegedly arising out of, in connection with, or incident to any loss, damage or injury to persons or property or arising from a wrongful or negligent act, error or omission of Zuercher, its employees, agents, contractors, or any subcontractor as a result of Zuercher's or any subcontractor's performance pursuant to this Agreement; however, Zuercher shall not be required to indemnify Customer for any claims or actions caused to the extent of the negligence or wrongful act of Customer, its employees, agents, or contractors. Notwithstanding anything to the contrary in the foregoing, if a claim, lawsuit or liability results from or is contributed to by the actions or omissions of Customer, or its employees, agents or contractors, Zuercher's obligations under this provision shall be reduced to the extent of such actions or omissions based upon the principle of comparative fault.

Notwithstanding the foregoing, the aggregate liability of Zuercher for any reason and upon any cause of action of claim, including, without limitation, Zuercher's obligation to indemnify and hold harmless under this agreement, shall be limited to direct damages which shall not exceed (i) the amount of the fees paid for the portion of the System giving rise to such claims in the aggregate, including, without limitation, breach of contract, breach of warranty, indemnity, negligence, strict liability, misrepresentations, and other torts; or (ii) for claims arising under annual maintenance, the amount of the maintenance fees paid for the term in which the claim arises.

IN NO EVENT SHALL ZUERCHER, ITS SUBCONTRACTORS OR SUPPLIERS BE LIABLE WHETHER IN CONTRACT OR IN TORT FOR LOST PROFITS, LOST SAVINGS, LOST DATA, LOST OR DAMAGED SOFTWARE, OR ANY OTHER CONSEQUENTIAL OR INCIDENTAL DAMAGES ARISING OUT OF, OR OTHERWISE RELATED TO THIS AGREEMENT, REGARDLESS OF WHETHER ZUERCHER HAS NOTICE OF THE POSSIBILITY OF ANY SUCH LOSS OR DAMAGE.

6.0 Termination

6.1 By Zuercher for Cause

In addition to various other express rights of Zuercher to terminate this Agreement set forth herein, Zuercher shall also have the right to terminate this Agreement upon thirty (30) day's prior written notice and cancel any unfulfilled portion of it by written notice to Customer due to Customer's failure to comply with any material terms or conditions of this Agreement, or in other cases if: (i) Customer becomes bankrupt or insolvent or enters into any arrangement or composition with its creditors or if a receiver is appointed to direct the business of Customer, or (ii) Customer sells or assigns its rights, duties or obligations under this Agreement to any person or entity, in whole or in part, whether by assignment, merger, transfer or assets, sale of stock, operation of law or otherwise, without the express written permission of Zuercher or (iii) upon Customer's breach of the License or confidentiality and nondisclosure provisions contained herein, or (iv) upon a violation of Zuercher's proprietary rights hereunder. The termination of this Agreement shall automatically terminate and extinguish the License.

Zuercher may exercise any rights available to it under Texas State law to terminate for cause upon the failure of Customer to comply with the terms and conditions of this Agreement; provided that Zuercher shall give Customer written notice specifying Customer's failure and a reasonable opportunity for Customer to cure the defect.

6.2 By Customer for Cause

Customer may terminate this Agreement for cause based upon the failure of Zuercher to comply with any material terms and/or conditions of the Agreement, provided that Customer shall give Zuercher thirty (30) days' written notice specifying Zuercher's failure. If within thirty (30) days after receipt of such notice, Zuercher shall not have either corrected such failure or, in the case of failure which cannot be corrected in thirty (30) days, begun in good faith to correct said failure and thereafter proceeded diligently to complete such correction, then Customer may, at its option, place Zuercher in default and the Agreement shall terminate on the date specified in such notice.

6.3 Termination without Cause

After the fifth anniversary of the System Go Live date, this Agreement and the Software license granted herein may be terminated by either party by providing notice one-hundred eighty (180) days prior to the date the next annual maintenance payment is due.

6.4 Post-Termination Obligations

All provisions hereof relating to Zuercher's proprietary rights, confidentiality, non-disclosure and non-solicitation shall survive the termination or expiration of this Agreement. Any fees due as per *Exhibit C: Payment Schedule* for work completed prior to termination shall still be paid by Customer. In the event of termination of this Agreement prior to implementation of the Zuercher Software, or termination due to Customer's breach of Zuercher's intellectual property rights, the license to the Zuercher Software granted under this Agreement shall also terminate and Customer shall remove all Zuercher Software from its

computer system and at Zuercher's direction, either return or destroy the Software and its associated Documentation.

7.0 Customer Responsibilities

Customer shall provide one primary Project Manager to be the main point of contact for Zuercher. Duties of the Project Manager are outlined in *Exhibit A: Statement of Work*.

8.0 Miscellaneous

8.1 Force Majeure

Neither party shall be liable to the other for any delay or failure to perform any of the services or obligations set forth in this Agreement due to causes beyond its reasonable control. Performance times shall be considered extended for a period of time equivalent to the time lost because of such delay.

8.2 Governing Law

This Agreement and performance hereunder shall be governed by the law of the State of Texas, without giving effect to the principles of conflict of law of such state or international treaties.

8.3 Forum Selection

The Parties hereby submit to the exclusive jurisdiction and venue of Texas State, or federal courts with respect to any action between the Parties relating to this Agreement.

8.4 Assignment

This Agreement shall apply to, inure to the benefit of, and be binding upon the Parties hereto and upon their permitted successors in interest and permitted assigns. Customer may not assign, without the prior written consent of Zuercher, which consent shall not be unreasonably withheld, Customer's rights, duties or obligations under this Agreement to any person or entity, in whole or in part, whether by assignment, merger, transfer of assets, sale of stock, operation of law or otherwise, and any attempt to do so shall be deemed a material breach of this Agreement.

8.5 Notice

Any notice provided pursuant to this Agreement, if specified to be in writing, shall be in writing and shall be deemed given (i) if by hand delivery, upon receipt hereof; (ii) if mailed, 7 days after deposit in the U.S. mails, postage prepaid, certified mail, return receipt requested. All notices shall be addressed to the Parties at the addresses set forth on the first page hereof.

8.6 Survival

All provisions of this Agreement relating to proprietary rights, confidentiality, non-disclosure and to payment of fees by Customer shall survive the termination of this Agreement.

8.7 No Waiver

The waiver or failure of either party to exercise any right in any respect provided for herein shall not be

deemed a waiver of any further right hereunder.

8.8 Enforceability

If for any reason a court of competent jurisdiction finds any provision of this Agreement, or portion thereof, to be unenforceable, that provision shall be enforced to the maximum extent permissible so as to affect the intent of the Parties, and the remainder of this Agreement shall continue in full force and effect.

8.9 Remedies

Unless otherwise specified herein, the rights and remedies of the Parties set forth in this Agreement are not exclusive and are in addition to any other rights and remedies available at law or in equity.

8.10 Headings

The headings of the sections of this Agreement are inserted for convenience only and shall not constitute a part hereof or affect in any way the meaning or interpretation of this Agreement.

8.11 No Third-Party Beneficiaries

The Parties agree that this Agreement is for the benefit of the Parties hereto and is not intended to confer any rights or benefits on any third party, and that there are no third-party beneficiaries as to this Agreement or any part or specific provision of this Agreement.

8.12 Limitation of Actions

No action, regardless of form, arising out of or relating to this Agreement or the subject matter hereof may be brought by either party more than two (2) years after the cause of action has initially arisen, with the exception of either Party's breach of its confidentiality or non-disclosure obligations herein or Customer's violation of Zuercher's proprietary rights in the Software or any other software owned or licensed by Zuercher.

8.13 Taxes

Customer shall, in addition to the payments required hereunder, pay all applicable sales, use, transfer or other taxes and all duties, whether international, national, state or local, however designated, which are levied or imposed by reason of the transactions contemplated hereby, excluding, however, income taxes on net profits which may be levied against Zuercher. Customer shall reimburse Zuercher for the amount of any such taxes or duties paid or accrued directly by Zuercher as a result of this transaction. If Customer is a tax-exempt organization, Customer will provide Zuercher with documentation required by the taxing authority to support such exemption at the time of Execution of this Agreement.

8.14 Non-Discrimination

Zuercher agrees to abide by the requirements of the following as applicable: Title VI of the Civil Rights Act of 1964 and Title VII of the Civil Rights Act of 1964, as amended by the Equal Employment Opportunity Act of 1972, Federal Executive Order 11246 as amended, the Rehabilitation Act of 1973, as amended, the

Vietnam Era Veteran's Readjustment Assistance Act of 1974, Title IX of the Education Amendments of 1972, the Age Discrimination Act of 1975, the Fair Housing Act of 1968 as amended, and Zuercher agrees to abide by the requirements of the Americans with Disabilities Act of 1990. Zuercher agrees not to discriminate in its employment practices, and will render services under this Agreement without regard to race, color, religion, sex, national origin, veteran status, political affiliation, disabilities, or because of an individual's sexual orientation. Any act of discrimination committed by Zuercher, or failure to comply with these obligations when applicable shall be grounds for termination of this Agreement.

8.15 Change Orders

Change orders and out-of-scope work will be defined by written agreement.

8.16 Entire Agreement

This Agreement, and any Exhibits specifically incorporated therein by reference, constitutes the entire agreement between the Parties with respect to the subject matter. These documents supersede and merge all previous proposals of sale, communications, representations, understandings and agreements, whether oral or written, between the Parties with respect to the subject hereof.

This Agreement may not be modified except by a writing subscribed to by authorized representatives of both Parties.

9.0 Definitions

- (a) **Documentation:** All written, electronic, or recorded end user and system administrator documentation and functional descriptions therein that describe the uses, features, and functional capabilities of the System, and that are published or provided to Customer by Zuercher.
- (b) **Executable Object Code:** Software code which has been compiled for use by the computer and is no longer directly readable or modifiable by humans.
- (c) **Execution of Agreement:** Date Agreement is signed by all enumerated Parties.
- (d) **Hardware:** All hardware, equipment, and other tangible non-Software items supplied to Customer by Zuercher under this Agreement.
- (e) **Go Live:** The use of the System as a live, non-test-bed system. This can be exhibited by events such as the completion of the first real-world booking, the taking of the first real-world call for service, the entry of the first real-world case report, or a similar event dealing with real-world use.
- (f) **Software:** Any computer programs in object code form and any updates, enhancements, modifications, revisions, additions, replacements or conversions thereof owned by Zuercher and set forth or identified in *Exhibit B: Pricing Detail* or subsequently licensed to Customer. Software specifically excludes any Third-Party Software.
- (g) **Server Hardware:** All hardware, equipment, and other tangible non-Software items supplied to Customer by Zuercher under this Agreement listed as "Server Hardware" in *Exhibit B:*

Pricing Detail.

- (h) **Services:** All project management, training, data conversion, and other services to be provided by Zuercher under this Agreement.
- (i) **SSH:** Secure Shell. A cryptographic protocol for securing data which it transmitted over an insecure network.
- (j) **System:** The collective whole of all Software, Hardware, and Services to be purchased, developed, licensed, supplied, installed, configured, or implemented by Zuercher under this Agreement.
- (k) **Third-Party Software:** Any software to be supplied by Zuercher under this agreement that is purchased or licensed from any source external to Zuercher for use with or integration into the System.

Tomball Police Department
Zuercher Suite Contract

ZUERCHER

EACH PARTY'S ACCEPTANCE HEREOF IS EXPRESSLY LIMITED TO THE TERMS OF THIS AGREEMENT, INCLUDING ITS EXHIBITS, AND NO DIFFERENT OR ADDITIONAL TERMS CONTAINED IN ANY PURCHASE ORDER, CONFIRMATION OR OTHER WRITING SHALL HAVE ANY FORCE OR EFFECT UNLESS EXPRESSLY AGREED TO IN WRITING BY THE PARTIES.

City of Tomball Police Department

Signer's Name: *Robert Hancock*
Signer's Title: *CITY MANAGER*

Robert Hancock
Signature

12/4/18
Date

Zuercher Technologies, LLC

~~NAME~~ Roxanne Lerner
~~CEO~~ Director of Contracts

Roxanne Lerner
Signature

12/6/18
Date

Exhibit A: Statement of Work

Zuercher will provide Software, Hardware and Services substantially similar to those outlined below, in the quantities specified in *Exhibit B: Pricing Detail*.

1.0 Software

The software detailed in the following sections includes, but is not limited to, the listed functionality.

Zuercher Suite Base	<ul style="list-style-type: none"> • Operating system software • Database software • Master name index • Master address index • Master vehicle index 	<ul style="list-style-type: none"> • Secure intra-Customer messaging • Configurable dashboard • Web address links • No duplicate data entry • Authentication
Administration (Core)	<ul style="list-style-type: none"> • Equipment • Fleet Management • Inventory Management • Purchase Requisitions 	<ul style="list-style-type: none"> • Service Dogs • Policy Manual • Full audit trail • Custom Forms
CAD (Core)	<ul style="list-style-type: none"> • Command-line entry • Bulletins • Configurable CAD Windows • Inactivity Alarms • Rip and Run • Full audit trail 	<ul style="list-style-type: none"> • Command Log • Triple I • Custom CAD Commands • Unit Alarms • ANI/ALI
CAD (Advanced)	<ul style="list-style-type: none"> • Alarm Billing • Alarm Calls • Nurse Calls • Scheduled and Recurring Scheduled Calls • Tow Calls • Custom Forms 	<ul style="list-style-type: none"> • NCIC Automation • Basic Paging • Run Cards and Unit Recommendation • Unit Specialties • Web windows

Mapping (Core) – Server Based	<ul style="list-style-type: none"> • Command-line entry • Drag and drop commands • Visual status alerts • User-configurable map layers • GIS functions with map window closed • Quickest path unit recommendation 	<ul style="list-style-type: none"> • Active calls for service • Call for service click-through • Custom map markers • Address verification • Faster map functions (compared with non-server version) • Required for 15 or more AVL units
Mapping AVL	<ul style="list-style-type: none"> • Vehicle locations on map 	<ul style="list-style-type: none"> • Call for service integration
Mapping AVL Playback	<ul style="list-style-type: none"> • Displays on the map • View by time, by unit, by CFS 	<ul style="list-style-type: none"> • Print or export playback data
Jail (Short Term Holding Only)	<ul style="list-style-type: none"> • Booking and Release Wizard • Cell Occupancy Log • Activities • Basic Bank • Issued Property • Medicine 	<ul style="list-style-type: none"> • Inmate Property • Victim Notification • Visitor logging • Jail Log • Shift Log • Full audit trail
Mobile Core	<ul style="list-style-type: none"> • Grants access to the Zuercher Mobile application 	
Mobile AVL	<ul style="list-style-type: none"> • Vehicles shown on map 	<ul style="list-style-type: none"> • Call for service integration
Mobile CAD	<ul style="list-style-type: none"> • User-configurable layouts • Day/Night mode • Instant messaging 	<ul style="list-style-type: none"> • Silent dispatch • Bulletins/BOLOS • NCIC queries
Mobile Mapping	<ul style="list-style-type: none"> • Active calls for service • Map Markers • Visual status alerts 	<ul style="list-style-type: none"> • User configurable map layers • Route from current location to CFS location

Mobile Records	<ul style="list-style-type: none"> • Cases • Warrants 	<ul style="list-style-type: none"> • Master index access (including mug shots and alerts)
Personnel (Core)	<ul style="list-style-type: none"> • Personnel Log 	<ul style="list-style-type: none"> • Full audit trail
Personnel (Advanced)	<ul style="list-style-type: none"> • Commendations • Disciplinary Actions • Positions • Promotions 	<ul style="list-style-type: none"> • Service History • Training • Citizen Feedback
Personnel – Agency Site Licenses	<ul style="list-style-type: none"> • Allows agencies named herein to access and use Customer’s Zuercher Personnel system 	

Note: Many items are configurable by agency. All other configuration must be agreed upon between Customer and Additional Agency.

Portal (Community Involvement)	<ul style="list-style-type: none"> • Read-only access • Public access to Inmates, Sex Offenders, Warrants, Civil Papers, and Calls for Service • Agency-defined permissions 	<ul style="list-style-type: none"> • Data sharing with other Customers • Media reports • Extra Patrol requests • Public tip submission
Portal (Remote CFS View)	<ul style="list-style-type: none"> • Read-only access • Web access to CFS Data 	<ul style="list-style-type: none"> • Agency-defined permissions
Portal (Attorney Case View)	<ul style="list-style-type: none"> • Web access to Case Report data for attorneys 	<ul style="list-style-type: none"> • Agency-defined permissions
Records (Core)	<ul style="list-style-type: none"> • Case Reports • NIBRS/UCR Submission • Master Record Notes • Protection Orders • Warrants • Juvenile Referral List 	<ul style="list-style-type: none"> • Pawn Property • Pistol Permits • Citations and Warnings • Sex Offenders • Full audit trail

Records (Advanced)	<ul style="list-style-type: none">• Field Identifications• Expungement• Intelligence Cases• Investigative Leads• Form Requirements	<ul style="list-style-type: none">• Tow Calls• Basic Accident Reports• Bicycle Registrations• Parking Tickets• Custom Forms
Reporting (Core)	<ul style="list-style-type: none">• Pre-defined reports• Custom reports• Ad-hoc reports• Drag and drop report building• Export to PDF, XLS, XML, TXT	<ul style="list-style-type: none">• Custom data filters• Statistical analysis• Scheduled reports• COMSTAT compatible• Emailed reports
Community Data Platform (CDP)	<ul style="list-style-type: none">• Search engine for Zuercher Suite CAD and RMS Data• Up to 10 concurrent users supported	<ul style="list-style-type: none">• National data sharing with IQ Search• Includes IQ Crimemapping.com supported

1.1 Interfaces

All costs related to Zuercher's implementation of the following interfaces is represented in *Exhibit B: Pricing Detail*. Any third-party costs or charges incurred related to the implementation of the following Interfaces will be the responsibility of Customer.

Any interfaces that cannot be deployed as part of System go-live due to Customer or a third-party vendor not being ready for deployment shall not delay System Acceptance.

Customer shall not allow any party, other than Zuercher, to add, update, or delete database records or file system objects directly to or on the server or database except as provided for in the Zuercher Documentation.

Customer shall not access any Server Hardware except as provided in the Zuercher Documentation or cause any software except the Software provided under this Agreement to be installed on or executed on the Server Hardware.

Refer to *Exhibit A: Statement of Work: 3.2 Implementation Process* overview for interface implementation information.

1.1.1 CAD – Basic Paging Interface (SMTP/Email) (Export)

This is a one-way interface from Zuercher CAD. Pages are sent via email, SMTP, and/or CAP codes from Zuercher CAD. Zuercher enables the paging functionality in CAD.

Customer is responsible for configuring paging groups, templates, and trigger events for this interface.

1.1.2 CAD – E911 (ANI/ALI) Interface (Import)

This is a one-way interface from the 911 service provider to Zuercher CAD. It prepopulates calls for service by parsing raw spill data from the 911 service and importing it.

Customer is responsible for ensuring that:

- (a) 911 service provider sets up the serial connection from the 911 controller to Zuercher CAD.*
- (b) 911 spill data can be pushed to Zuercher CAD at a decided upon frequency.*
- (c) ALI data meets NENA standards*
- (a) ALI data meets NENA standards*

1.1.3 CAD – EvenTide Voice Recorder Interface

This is a two-way interface between the voice recorder system and Zuercher CAD. Zuercher Suite sends call for service (CFS) data to the Voice Recorder system via an API provided by EvenTide. The Voice Recorder system assigns the CFS data to the recording. Assigned voice recordings may be accessed with a link in the CFS screen which calls the EvenTide API for the recording. Playback is handled in accordance with workstation settings for the audio player.

1.1.4 CAD – FIREHOUSE RMS Interface (Export)

This is a one-way interface from Zuercher CAD to Firehouse. Upon completion of a call for service (CFS) in CAD, an XML file is written to a network file share which is watched by the Firehouse CAD Monitor. In addition, users may send current CFS information to the network share by using a custom command in

CAD regardless of whether the call has been completed or not. Information is then imported into Firehouse via a process managed entirely by that application. Zuercher sets up the export of data from CAD to the network file share.

Customer is required to have Firehouse CAD Monitor for this interface.

1.1.5 CAD – ProQA Platinum-Certified Interface (Import and Export)

This is a two-way interface between Zuercher CAD and ProQA. From a call for service (CFS) in CAD, the ProQA application is launched manually or automatically from configured incident codes. CAD sends CFS data to ProQA. CAD users select the appropriate ProQA discipline (Law, Fire, or Medical), and follow the scripted call dialog within ProQA. When triggered by ProQA, CAD imports the call details, including the Responder Summary, to the CFS and updates the incident code if necessary.

1.1.6 CAD – Rip and Run Interface (Fax/Email)

This is a one-way interface from CAD to fax and email services. Completed Calls for Service (CFS) from CAD are output (printed) to the services. Zuercher provides the connection from Zuercher Suite to the SMTP server.

Customer will provide Zuercher with SMTP information for setup and will manage all user configurations.

1.1.7 CAD – Data Export Interface (First IN)

This is a one-way interface from Zuercher CAD to export a CSV, XML, or JSON file with specified completed calls for service (CFS) data via a RESTful interface. First IN will then access the data provided through the interface and import into its system via a process completely external to Zuercher Suite.

1.1.8 Jail – Livescan/AFIS Interface (Export)

This is a one-way interface from Zuercher Jail to the AFIS network. When an inmate is booked into Jail, a NIST file is sent to the AFIS Livescan device. Zuercher Technologies creates the web service which sends the NIST file to AFIS.

1.1.9 Records – eCitations Interface (Import) (Brazos)

This is a one-way interface from Brazos eCitations to Zuercher Records. Brazos will export eCitations data as XML to a network share hosted by Contractor, using the Zuercher XML schema for the exported eCitations data. eCitations data will be imported automatically into Zuercher Records via a process which requires review and approval of each eCitations by a user before the eCitations data is saved to the master citations list in Records.

1.1.10 Records – N-DEx Adapter (IA IEPD)

This is an adapter that produces XML that is conformant to the N-DEx Incident/Arrest (IA) IEPD. Zuercher Suite transmits data to the N-DEx web service via Zuercher's existing N-DEx WSDL. Data transmission does not include all fields defined in the IEPD.

1.1.11 Records – TX Crime Reporting (TIBRS) Interface

This is a one-way interface from Zuercher Records to TX NIBRS. Customer is able to select cases in Zuercher Records and manually export those cases to a text file on the local file system. From there, Customer provides the file to the state system. Zuercher creates functionality to support the text file export from Zuercher Records.

1.1.12 Records – Warrants Interface (Import) (Tyler Incode)

This is a one-way interface from Tyler Technologies' Incode system to Zuercher Records. Every 15 minutes, the Incode Court system will send new warrants and warrant status updates to a network share. Zuercher will process the files from this share and place them into Records. Master name records in Zuercher Suite with an exact match on first name, last name and date of birth will be selected for new warrants. If an exact match is not found, a new master name record will be created. The court's network share is maintained by the Court IT administrator. This interface is dependent on Tyler Technologies' ability to provide the specified functionality.

1.1.13 Zuercher Suite – TLETS/NCIC Interface (Basic Queries)

This is a two-way interface between Zuercher Suite and the Zuercher-provided NCIC server. The following basic queries will be generated by Zuercher Suite and passed to the NCIC server: QA (Article), QB (Boat), KQ (Driver History), QW (Driver's License), QG (Gun), QV (Vehicle Insurance), RQ (Vehicle Registration), and Data Mining (TX only). The Zuercher-provided NCIC server then sends the queries on to NCIC and collects the results. Those query results are then sent back to Zuercher Suite.

Customer is responsible for providing a network connection and the necessary authentication to the state message switch from the NCIC server. NCIC data mining results will only be returned for the state in which Customer is located.

1.1.14 Zuercher Suite – Time Synchronization Interface

This a one-way interface that uses NTP to keep all Zuercher server's clocks in sync.

1.2 Data Conversion

Zuercher will provide data conversion services for Customer's current GIS map data and from Customer's current software database vendors to Zuercher software. The contents of the data conversion will be determined by the Data Conversion Specification and GIS Specification documents.

Zuercher was not provided a data sample of Customer's current data sources requiring conversion. Therefore, Zuercher is unable to accurately estimate the level and scope of effort associated with the data conversion. Once provided a data sample, Zuercher will discuss with Customer any changes to the scope or price of this implementation.

The listed data conversion services and their associated costs are based on Zuercher's understanding of Customer's needs and current system. Any modules not explicitly listed in this section are not a part of the current project scope and will not be included in implementation. If additional module conversions are required, each one will come at an additional cost based on the scope of the work required for each.

Customer shall work with its existing vendors to obtain unencrypted data for conversion in one of the following compatible formats:

- (a) MS SQL .bak files with database version and credential information
- (b) MySQL .dump or .sql files with database version and credential information
- (c) PostgreSQL .sql files with database version and credential information
- (d) MS Access 2003 or newer .mdb files

- (e) CSV files with column headers and relationship mapping documentation
- (f) Oracle 10g or newer backup files

1.2.1 VisionAIR CAD

Data will be converted into the Zuercher CAD module from the VisionAIR CAD database and data will be provided in one of the formats listed above.

1.2.2 VisionAIR RMS

Data will be converted into the Zuercher Records module from the VisionAIR RMS database and data will be provided in one of the formats listed above.

1.2.3 GIS Data Conversion (One-time Set Up)

In Zuercher's efforts to make sure that Customer-supplied GIS data is working to the best of its abilities, Zuercher will run a series of tests to ensure that the GIS data is ready for first installation. In addition, the data will be set up with the proper configuration and loaded into an ArcGIS map document that is required for the software to operate. Address locator and network dataset files will be created and updated for proper geocoding and routing abilities.

A thorough GIS data review by Customer is imperative for an effective and organized Zuercher software Go Live.

Zuercher cannot make any guarantees for the spatial nor the tabular accuracy of Customer-supplied GIS data as it pertains to geocoding results, routing, and searching. Customer understands that there are several steps involved to make the GIS data sufficiently perform the abovementioned functions. If Customer is unable to make these corrections on its end, a GIS data contract can be set up with Zuercher to ensure the data is built according to the desired specifications.

2.0 Customer Hardware, Network and Power Requirements

Zuercher is not responsible for installation or networking of the computer hardware required for operating Zuercher Software.

Unless otherwise specified, Customer will be responsible for providing the following to meet the hardware, network and power requirements for the System.

2.1 Server Hardware

1. Two (2) rack-mount servers will be purchased by Customer as part of this agreement.
2. They will be configured as Zuercher Suite Servers as follows:
 - (a) One (1) Production Server with Lantronix remote access device
 - (b) One (1) Testing/Training server
3. The servers will be installed at Tomball Police Department.
4. In addition to the standard Zuercher Suite operating environment, the Production Server will have the capability of running the following on a virtual machine:
 - (a) One (1) virtual NCIC server (message switch)

(b) One (1) virtual GIS server

5. Ten (10) inches of rack space is required at the primary server location for one (1) Zuercher Suite Production rack-mounted server (3.5"), one (1) Zuercher Suite Testing/Training rack-mounted server (3.5"), and one (1) Lantronix remote access device (3.0").

2.2 Production and Testing/Training Server Network Requirements

1. Six (6) open Ethernet cables and ports to be used by one (1) Zuercher Suite Production rack-mounted server, one (1) Zuercher Suite Testing/Training rack-mounted server, and one (1) Lantronix remote access device.
2. Static IP addresses that include four (4) for the Zuercher Suite Production rack-mounted server, three (3) for the Zuercher Suite Testing/Training rack-mounted server, and one (1) for the Lantronix remote access device.
3. Network access that maintains low-latency and high bandwidth that includes a Virtual Private Network (VPN) to support remote users per the requirements that are set forth in the *Network Requirement Specifications* and *Server Requirement Specification* documents provided by Zuercher.

2.3 Production and Testing/Training Server Power Requirements

1. One (1) uninterrupted power supply (UPS) that support 1000 watts.
2. Power supply that will handle dual 720 watts for one (1) Zuercher Suite Production rack-mounted server, one (1) Zuercher Suite Testing/Training rack-mounted server, and one (1) Lantronix remote access device.
3. Server cooling that will ensure the appropriate temperatures for one (1) Zuercher Suite Production rack-mounted server, one (1) Zuercher Suite Testing/Training rack-mounted server, and one (1) Lantronix remote access device.

2.4 Peripheral Hardware

2.4.1 Jail – Mugshot Camera Package – TPD

This contract will provide for one (1) mugshot camera package that will include one (1) Canon EOS Rebel Body, one (1) EF-S 38-55mm lens, one (1) strap, one (1) video cable, one (1) USB interface cable, one (1) battery pack, one (1) battery charger, one (1) Canon AC Adapter Kit, and one (1) InPhoto ID SLR license.

2.4.2 Jail – Electronic Signature Pad (Topaz) – TPD

This contract will provide for one (1) electronic signature pad package that will include one (1) SignatureGem LCD 1x5 pad with attached pen and one (1) USB cord.

2.4.3 Mobile – GPS Receiver (Garmin) – TPD

This contract will provide for fifteen (15) GPS receivers. These GPS receivers are the Garmin 18x USB model.

2.4.4 Mobile – GPS Receiver (Garmin) – TFD

This contract will provide for ten (10) GPS receivers. These GPS receivers are the Garmin 18x USB model.

2.4.5 Records – Property & Evidence Barcode Scanner and Printer Package (Wasp) – TPD

This contract will provide for one (1) property and evidence barcode scanner and printer package that will include one (1) wireless Wasp WWS550i barcode scanner, one (1) Wasp WPL305 label printer, and four (4) rolls of labels.

2.4.6 Records – Electronic Signature Pad (Topaz) – TPD

This contract will provide for one (1) electronic signature pad package that will include one (1) SignatureGem LCD 1x5 pad with attached pen and one (1) USB cord.

3.0 Services

3.1 Project Management

3.1.1 Customer Project Manager

Customer shall provide one primary Project Manager to be the main point of contact for Zuercher.

A single, dedicated Project Manager will be assigned to manage the project for all Customers included in this installation.

Customer will identify a Zuercher Build Team. With assistance from Zuercher Implementation Analysts, Customer's Build Team is responsible for the configuration of Zuercher software. The Build Team should expect to devote 10-20% of each week of implementation to Zuercher configuration work.

Customer's Project Manager and Build Team will work within standard business hours (7:00 AM CST to 6:00 PM CST, Monday through Friday) to enable mutual availability to work with Zuercher on configuration and project activities.

Customer's Dedicated Project Manager

Doug Tippey
Office 281 290 1407
mobile 281 992 2209
dtippey@tomballtx.gov

3.1.1.1 Customer's Dedicated Project Manager Responsibilities

1. Have the authority to speak for Customer from a project perspective.
2. Designate people responsible for specific roles as needed, examples below:
 - (a) Module Subject Matter Experts (SMEs)
 - (b) Hardware Project Manager
 - (c) Zuercher Build Team Members
 - (d) Data Conversion Review Team Members
 - (e) Interface points of contact at Customer (assigned per interface)
3. Involve Customer decision makers when needed
4. Escalate issues to the Zuercher project manager
5. Eliminate roadblocks for completing project on schedule

6. Sign various project documents and ensuring signoff documents and deliverables are provided to Zuercher project manager in a timely manner
7. Organize training schedules, training rooms, and training equipment
8. Provide real world scenarios for testing and review

3.1.2 Zuercher Project Manager and Project Team

From the start of the project, a Zuercher project manager will work with Customer as the single point of contact for implementation of the Zuercher Suite system. The project manager will develop and manage the implementation schedule and will coordinate with Customer to keep the project on track and on schedule. The project manager will conduct weekly status meetings to provide Customer with project updates.

The Zuercher project team, under the direction of the project manager, will visit pertinent areas of Customer and will meet with key Customer personnel to understand Customer's operational needs and business rules. Team members will observe Customer's daily operations first-hand and use that information to identify how the Zuercher Suite system would best be configured to match and enhance Customer's workflows. The project team will train Customer system administrators on configuration options and code table setup.

3.2 Implementation Process Overview

Zuercher uses a multi-phase approach to ensure a successful implementation for each Customer. Trained and experienced members of the Zuercher implementation team move through the process with Customers to ensure successful outcomes. Timelines will be discussed with Customer's project manager and will be mutually agreed upon as part of the CMD Approval process to ensure a successful Go Live.

3.2.1 Kickoff Meeting

Upon contract signature, a kickoff meeting is scheduled to initiate the implementation process, setting up a statement work, server installations and scheduling the Business Practice Review (BPR).

3.2.2 Business Practice Review

During this meeting, the Zuercher project team works with Customer's build team to determine the contents of the Configuration Management Document (CMD). All product needs and requests are reviewed, and the Zuercher project team documents in the CMD how the software currently meets those needs or how Zuercher plans to develop additional functionality to fulfill them.

3.2.3 CMD Approval

After the CMD is composed, the Zuercher project team reviews it with Customer's project manager and build team and to ensure that all aspects of the initial proposal have been satisfied.

3.2.4 Configuration, Conversion, and Interfaces

After the CMD is approved and signed, work begins on the steps outlined in it, including the necessary configuration, data conversions, and interfaces.

3.2.4.1 Configuration

Customer plays a large part in the configuration and setup of the final system. Configuration of Zuercher

software is guided by Implementation Analysts, via in-person or remote online sessions, but is considered a Customer responsibility to complete.

3.2.4.2 Data Conversion and GIS Data Conversion

Data not contained in systems listed in *Exhibit A: Statement of Work: 1.2 Data Conversion* will not be converted. Code tables, data mapping, and other system configuration will be entered by Customer with the assistance of a Zuercher Implementation Analyst. Code tables will not be part of the converted data.

A major part of data conversion is review of data that has been converted to Zuercher software. Customer plays a key role in this data review.

A thorough data conversion review by Customer is imperative for an effective and organized Zuercher software Go Live. Customer should expect to devote 10-20% of each week of the data conversion process to Zuercher configuration work. Each module converted will require participation of SMEs.

See *Exhibit A: Statement of Work: 1.2 GIS Data Conversion* for information regarding the GIS data conversion process.

3.2.4.3 Interfaces

See *Exhibit A: Statement of Work: 1.1 Interfaces* for a list of included interfaces.

Customer tasks related to interfaces will start immediately after the initial Zuercher kickoff meeting. Customer will set up conference calls with Zuercher and each interface vendor within two weeks of contract signing or one week of kickoff call. Interfaces to and from Zuercher software are created and tested internally before being available for Customer testing.

Customer is responsible for initiating and facilitating the relationship(s) between Zuercher and the third-party interface vendor(s).

Zuercher software interface specifications must be clearly defined in the CMD and thoroughly tested by Customer before Go Live.

3.2.5 Final System Review

Throughout the project, implementation analysts from Zuercher will schedule sessions with Customer's Build Team and end users to review any questions or concerns.

3.2.6 Train-the-Trainer and/or End User Training

Zuercher offers several options for end user training. All of the training options provide hands-on use of the software with real-world examples. Class sizes are limited to ensure that each individual has sufficient time to practice using the system. When the go live date arrives, users are well-prepared to begin using the new software.

3.2.7 Go Live

Zuercher provides on-site and/or remote support the day that the new system goes live. Any questions that arise are addressed immediately by the team, ensuring that the first day(s) using the new system goes smoothly.

3.3 Training and Go Live Support

3.3.1 Training

Zuercher staff will provide on-site or remote training.

The number of days specified for 'on-site' services herein may include travel days in addition to actual days on site at Customer's location(s). Zuercher will make a good faith effort to minimize the travel time which is necessary for a project by working with Customer to most efficiently plan and schedule the delivery of on-site services.

3.3.1.1 System Configuration and Training

The first portion of training will be performed by the Zuercher project team. Team members will train and guide Customer's Build Team in configuring the Zuercher Suite system, setting up and maintaining code tables, managing users and user rights, among other options. Through Zuercher-guided configuration of the system, the Build Team becomes well versed in the Zuercher software system administration.

3.3.1.2 Train-the-Trainer and/or End User Training

Trainers will conduct detailed courses for each of Customer's user groups (such as dispatchers or officers). The content of each course will be tailored to the features and functionality in Zuercher software that each group needs to know and use.

3.3.1.3 Refresher Training

Zuercher will provide follow-up training (after successful implementation) to refresh existing personnel on best practices with regard to using Zuercher Suite.

3.3.2 Training Resources

Training will be scheduled within standard business hours (7:00 AM CST to 6:00 PM CST, Monday through Friday).

The training facilities and equipment will be provided by Customer based on the following:

3.3.2.1 Trainer Resources

1. One (1) computer with a network connection
2. Most recent Zuercher Suite version installed and tested (includes login)
3. Two (2) projectors and two (2) screens set up and tested
4. One (1) podium or desk for trainer

3.3.2.2 Trainee Resources

1. Five (5) to ten (10) computers with network connections two (2) monitors required (three (3) monitors are suggested)
2. One (1) supervisor will attend every class to address policy questions
3. No more than ten (10) trainees in each class
4. Most recent Zuercher Suite version installed and tested (includes login)
5. All third-party devices (i.e., printers, scanners, barcode reader, mugshot camera) connected and tested

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3.3.3 *Go Live Support*

Zuercher staff will assist users with questions that arise during Go Live and will reinforce skills learned during the training sessions. Zuercher staff will be on site or remote for Go Live.

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Exhibit B: Pricing Detail

Software and Servers	Comments	Unit	Qty	Price	Total
Zuercher Suite Production Server (Dell Server, OS, DBMS, Installation & Testing)	Includes up to 4TB of disk.		1	\$ 13,720	\$ 13,720
Zuercher Suite Training/Testing Server (Dell Server, OS, DBMS, Installation & Testing)	Includes up to 4TB of disk.		1	\$ 8,480	\$ 8,480
Zuercher Suite Production NCIC Server (Virtualized Server, OS, Installation & Testing)			1	Included	Included
Zuercher Suite Production GIS Server (Virtualized Server, OS, Software, Analytics, Installation & Testing)			1	Included	Included
Esri Server License (Esri ArcGIS for Server Workgroup Standard)			1	\$ 5,000	\$ 5,000
Esri Analyst License (Esri ArcGIS Network Analyst for Server)			1	\$ 5,000	\$ 5,000
Administration Core			1	\$ 4,000	\$ 4,000
Administration Core (Agency Site License)	Tomball PD		1	\$ 1,820	\$ 1,820
CAD Core			1	\$ 15,000	\$ 15,000
CAD Core (Agency Site License)	Tomball PD		1	\$ 16,875	\$ 16,875
CAD Advanced (Agency Site License)	Tomball PD		1	\$ 5,625	\$ 5,625
CAD - Basic Paging Interface (SMTP/Email)			1	Included	Included
CAD - E911 (ANI/ALI) Interface			1	Included	Included
CAD - EvenTide Voice Recorder Interface			1	\$ 9,500	\$ 9,500
CAD - FIREHOUSE RMS Interface (Export)			1	\$ 5,500	\$ 5,500
CAD - ProQA Platinum-Certified Interface (Import and Export)			1	\$ 14,000	\$ 14,000
CAD - Rip and Run (Fax/Email) Interface			1	Included	Included
CAD - Data Export Interface	First IN		1	\$ 7,500	\$ 7,500
Mapping Core			1	\$ 10,000	\$ 10,000
Mapping Core (Agency Site License) for Full-Time CAD Workstations	Tomball PD	Per Agency	1	\$ 7,500	\$ 7,500
Mapping AVL (Agency Site License) for Full-Time CAD Workstations	Tomball PD	Per Agency	1	\$ 7,500	\$ 7,500
Mapping AVL Playback (Agency Site License) for Full-Time CAD Workstations	Tomball PD	Per Agency	1	\$ 4,500	\$ 4,500
Jail Short Term Holding Only			1	\$ 10,000	\$ 10,000
Jail Short Term Holding Only (Agency Site License)	Tomball PD		1	\$ 788	\$ 788
Jail - Livescan/AFIS Interface (Export)			1	\$ 6,060	\$ 6,060
Mobile Core			1	\$ 5,000	\$ 5,000
Mobile AVL	Tomball PD	Per Unit	15	\$ 200	\$ 3,000
Mobile AVL	Tomball Fire Dpt	Per Unit	15	\$ 200	\$ 3,000
Mobile CAD	Tomball PD	Per Unit	15	\$ 450	\$ 6,750
Mobile CAD	Tomball Fire Dpt	Per Unit	10	\$ 450	\$ 4,500
Mobile Mapping	Tomball PD	Per Unit	15	\$ 550	\$ 8,250
Mobile Mapping	Tomball Fire Dpt	Per Unit	10	\$ 550	\$ 5,500
Mobile NCIC	Tomball PD	Per Unit	15	Included	Included
Mobile Records	Tomball PD	Per Unit	15	\$ 950	\$ 14,250
Personnel Core			1	Included	Included
Personnel Core (Agency Site License)	Tomball PD		1	Included	Included
Personnel Core (Agency Site License)	Tomball Fire Dpt		1	Included	Included
Personnel Advanced (Agency Site License)	Tomball PD		1	\$ 2,256	\$ 2,256

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Portal - Community Involvement Pack		1	\$	4,465	\$	4,465
Portal - Remote CFS View Pack		1	\$	4,465	\$	4,465
Portal - Attorney Case View		1	\$	4,465	\$	4,465
Records Core		1	\$	7,500	\$	7,500
Records Core (Agency Site License)	Tomball PD	1	\$	15,600	\$	15,600
Records Advanced (Agency Site License)	Tomball PD	1	\$	5,200	\$	5,200
Records - eCitations Interface (Import)	Brazos	1	\$	9,000	\$	9,000
Records - N-DEx Adapter (IA IEPD)		1		Included:		Included
Records - TX Crime Reporting (TIBRS) Interface		1		Included		Included
Records - Warrants Interface (Import)	Tyler Incode	1	\$	12,000	\$	12,000
Reporting Core		1		Included:		Included
Reporting Universal Interface Engine		1		Included		Included
Zuercher Suite - TLETS/NCIC Interface (Basic Queries)	Queries needed	1	\$	10,000	\$	10,000
Zuercher Suite - Time Synchronization Interface		1		Included		Included
Software and Servers Pre-Discount Subtotal				\$		283,569
Software and Servers Discount				\$		(124,909)
Software and Servers Total				\$		158,659
Subscriptions	Comments	Unit	Qty	Price	Total	
Community Data Platform Subscription	Includes Crimemapping.com		1	Included	Included	
Subscriptions Total				\$		-
Peripheral Hardware	Comments	Unit	Qty	Price	Total	
Jail - Mugshot Camera Package (Canon EOS Rebel)	Tomball PD		1	\$ 1,396	\$ 1,396	
Jail - Electronic Signature Pad (Topaz)	Tomball PD		1	\$ 403	\$ 403	
Mobile - GPS Receiver (Garmin)	Tomball PD		15	\$ 88	\$ 1,326	
Mobile - GPS Receiver (Garmin)	Tomball Fire Dpt		10	\$ 88	\$ 884	
Records - Property & Evidence Barcode Scanner and Printer Package (Wasp)	Tomball PD		1	\$ 949	\$ 949	
Records - Electronic Signature Pad (Topaz)	Tomball PD		1	\$ 403	\$ 403	
Peripheral Hardware Total				\$		5,361

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Services	Comments	Unit	Qty	Price	Total
Project Manager					
<i>3 round-trips anticipated</i>		Per Project	1	\$ 29,593	\$ 29,593
Configuration and Business Process Review (BPR)					
<i>2 round-trips anticipated</i>		Per Project	1	\$ 10,595	\$ 10,595
Training					
- Administration					
- CAD					
- Jail					
- Mobile					
- Records					
- Refresher					
<i>3 round-trips anticipated</i>		Per Project	1	\$ 15,098	\$ 15,098
Go-live Support					
<i>2 round-trips anticipated</i>		Per Project	1	\$ 9,005	\$ 9,005
Mapping - One-time GIS Data Set Up					
			1	\$ 4,500	\$ 4,500
Data Conversion	VisionAIR CAD	Per Module	1	\$ 7,500	\$ 7,500
Data Conversion	VisionAIR RMS	Per Module	1	\$ 7,500	\$ 7,500
Services Total					\$ 83,791
TOTALS					
Software and Servers Pre-Discount Subtotal					\$ 283,569
Software and Servers Discount					\$ (124,909)
Software and Servers Total					\$ 158,659
Subscriptions Total					\$ -
Peripheral Hardware Total					\$ 5,361
Services Total					\$ 83,791
TOTAL					\$ 247,811
Recurring (Subscriptions & Maintenance)					
Subscriptions (Year 1) Prepaid					
Subscriptions (Year 2) Included					
Subscriptions (Year 3) Included					
Subscriptions (Year 4) Included					
Subscriptions (Year 5) Included					
Maintenance & Support (Year 1) Included					
Maintenance & Support (Year 2) \$ 47,483					
Maintenance & Support (Year 3) \$ 49,857					
Maintenance & Support (Year 4) \$ 52,350					
Maintenance & Support (Year 5) \$ 54,967					
Taxes are not included in the pricing.					

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Exhibit C: Payment Schedule

The total amount of this contract is \$247,811.

The amounts due under this contract are as follows:

On October 1, 2018	\$150,000.00
On October 1, 2019 (pending project completion)	\$97,811.00

Commencing one year after the System reaches "Go Live," an annual maintenance fee of \$47,483 will be due. Thereafter, the annual maintenance fee shall increase by an amount not to exceed 5% from the prior year.

These amounts do not include any taxes. See Agreement section [8.13 Taxes](#) for more information.

Exhibit D: Maintenance Agreement

1.0 Term

The initial term of annual Maintenance under this Exhibit D begins on the date of Go Live and ends twelve (12) months thereafter. The fee for the initial term is included as a line item in the pricing set forth in *Exhibit B: Pricing Detail*. Maintenance is renewable on an annual basis upon payment of the applicable maintenance and support fee. Zuercher will invoice Customer prior to the end of each annual maintenance term.

2.0 Software Updates

While this Agreement has not expired, Zuercher will maintain the Software by providing software updates and enhancements to Customer. All software updates provided to Customer by Zuercher pursuant to the terms of this Agreement shall be subject to the terms and conditions of Section 2.0 License of this Agreement.

At a time mutually acceptable to both parties, Zuercher will install software updates remotely.

2.1 Included Updates

Updates will be provided on an as-available basis and include the items listed below:

1. Bug fixes;
2. Enhancements to products licensed by Customer under this Agreement;

2.2 Not-Included Updates

Updates do not include:

1. Platform extensions including product extensions to different hardware platforms, different windowing system platforms, or different operating system platforms
2. New functions such as new modules, components, products, or applications.

3.0 Support

3.1 General Support

Zuercher shall provide phone and email support for the Software licensed under this agreement and shall maintain a support center database to track any reported issues. No support will be provided for Software more than two versions back from the most recently released version.

Support does not include custom programming services or training.

Support is available 24 hours a day, seven days a week for Zuercher Suite customers.

3.2 Server Hardware Maintenance

Zuercher will maintain the Server Hardware necessary to host the Software. This does not include any Hardware except Server Hardware.

3.3 Customer Responsibilities

3.3.1 Access to Premises

Customer shall provide Zuercher with reasonable and timely access to the sites and personnel necessary for Zuercher to perform its obligations under this Agreement.

3.3.2 Zuercher Server Access

Customer will ensure that all Zuercher Suite servers are directly network accessible to Zuercher at all times via SSH. There shall be no additional authorization or equipment required except as requested by Zuercher.

3.3.3 System Administrator

Customer is responsible for naming one or more System Administrators to serve as a primary point of contact between Customer and Zuercher. At least one System Administrator must be available at all times. Customer will ensure that the System Administrators possesses the appropriate technology and public safety knowledge and skills to perform this role sufficiently.

3.3.4 Security

Customer is responsible for providing all physical security. The customer is responsible for securing their network.

3.3.5 System Updates

Customer shall work in good faith to allow Zuercher to install System updates as requested by Zuercher.

Exhibit E: Community Data Platform Membership Agreement

Client: Tomball Police Department

Membership

- A. TriTech offers qualifying Member Agencies access to IQ Search and CrimeMapping.com limited services (the Software and Services) as defined in this Agreement.
- B. Clients who wish to qualify as a Member Agency must:
 - a. Be a CJIS compliant Law Enforcement Agency
 - b. Agree to contribute data to the Community Data Platform including:
 - i. CAD
 - ii. RMS Incidents
 - iii. RMS Arrests
 - iv. RMS Warrants
 - v. RMS Master Names
 - c. Agree to allow TriTech to share their data with other Member Agencies and third parties as provided in this Agreement
- C. The Member Agency (also referred to herein as "Client") will receive the following benefits:

Free subscription to IQ Search for up to 10 Concurrent Users, limited to the following:			
	Your Contributed Data	Your State's Participating Agencies	National Participating Agencies
RMS Incidents			
<ul style="list-style-type: none"> • Quickview (Date of Occurrence, Location, Incident Type Description, Case Status, RMS Case Number, Agency) 	YES	YES	
CAD Call for Service			
<ul style="list-style-type: none"> • QuickView 	YES		

Free subscription to CrimeMapping.com
Public access to:
Radius searches of crime data from a specified location
Map-based summary of RMS Incident statistics based on crime type, description, location, agency, date
Register for alerts on RMS Incident activity within a certain radius of a location and/or crime type
Map-based citizen/public access to categorized RMS Incidents

A free 90-day trial to the national IQ Search service which includes full detailed searches.

- D. The Member Agency will receive up to 10 concurrent user licenses to the Community Data Platform.
- E. In consideration of the free subscription to IQ Search and CrimeMapping.com as defined above, Client understands and agrees that TriTech will process and anonymize data from the IQ Community Data Platform (the "Aggregate Data") to provide further commercial services for its clients and third parties as described below.
- F. Full search concurrent user licenses can be purchased to increase concurrent user access and search/query builder capabilities.

License

Membership includes a limited non-exclusive, non-transferable license to use the Software and Services, located on TriTech's servers, through Client's computer(s).

The Software and Services provide users an effective set of tools for conducting investigations, monitoring regional crime trends, and increasing transparency to the community.

Client is expressly prohibited from sublicensing, selling, renting, leasing, providing service bureau or timeshare services, distributing or otherwise making the Software and Services available to third parties.

Access and Passwords

- A. Access to IQ Search by Client's authorized end users ("Authorized Users") will require the use of a password. Client is responsible for management and control of passwords for its end users.
- B. Client acknowledges (i) that the protection of passwords issued to Authorized Users is an integral part of TriTech's security and data protection process and procedures and, (ii) that TriTech will rely on Client utilizing and maintaining proper password control obligations and procedures. In the event that Client has reasonable cause to believe that a password is being improperly used by an Authorized User or used by an unauthorized person, Client shall promptly notify TriTech. TriTech reserves the right to deactivate a compromised password immediately upon notice from Client without further notice to Client or the affected Authorized User. TriTech shall have the right, at its sole cost and expense, to utilize an independent certified accounting firm, to verify the number of passwords that have been issued for use by Authorized Users of the Client and use of these passwords within Client's organization in compliance with the terms of this Agreement.

Termination

- A. This Agreement may be terminated by TriTech upon thirty (30) days' written notice due to a material breach by Client.
- B. Either Party may terminate this Agreement for convenience upon thirty (30) days' written notice to the other Party.

Client Responsibilities

- A. Client will assign a Client Administrator to manage end user access and passwords.
- B. Client is responsible for providing hardware, operating system and browser software that meets TriTech's technical specifications, as well as providing and maintaining a fast, stable, high speed connection and remote connectivity for data contribution services as well as individual client user access.
- C. Client is solely responsible for the integrity of all data and information that is provided to TriTech under this Agreement (i.e., the Client Information), including completeness, accuracy, validity, authorization for use and integrity over time, regardless of form and format, and whether or not such data is used in conjunction with the Subscription Services.
- D. Client shall not attempt to decode, disassemble, copy, transmit, transfer or otherwise reverse engineer the Services, including, without limitation, the Software.
- E. Client is responsible for maintaining an active e-mail account for correspondence with TriTech.
- F. Client is responsible for proper firewall maintenance allowing for data to move from their on-premise data contributing system to the applicable IQ application.

Confidentiality

- A. In association with the execution of this Agreement and TriTech's participation in the use and support of the Software and Services, Client has obtained, will have access to, or will obtain confidential information regarding intellectual property of TriTech, the Software and Services and its contents, sales and marketing plans and other similar information (hereinafter referred to as "Confidential Information"). Client acknowledges that the Software and Services itself represents and embodies certain trade secrets and confidential information of TriTech. Client hereby agrees that, for itself and its shareholders, officers, directors, employees, and agents, Client shall not disclose any of TriTech's trade secrets or Confidential Information without TriTech's prior written consent for any such disclosure.
- B. In association with the execution of this Agreement and the participation of TriTech in the support of the Software and Services, TriTech has obtained or will obtain confidential information of Client regarding the business of Client or its customers ("Client Information"). TriTech shall not use any Client Information except as expressly set forth in this Agreement.
- C. Confidential Information of either Party shall not include any information that is (i) already known to the receiving Party at the time of the disclosure; (ii) publicly known at the time of the disclosure or becomes publicly known through no wrongful act or failure of the receiving Party; (iii) subsequently disclosed to receiving Party on a non-confidential basis by a third party not having a confidential relationship with the other Party hereto that rightfully acquired such information; (iv) communicated to a third party by receiving Party with the express written consent of the other Party hereto; or (v)

legally compelled to be disclosed pursuant to a subpoena, summons, order or other judicial or governmental process, provided the receiving Party provides prompt notice of any such subpoena, order, etc. to the other Party so that such Party will have the opportunity to obtain a protective order.

- D. Each Party agrees to restrict access to the Confidential Information or Client Information of the other Party to those employees or agents who require access in order to use or support the Software and Services, acknowledging that certain Confidential Information or Client Information of each Party may be disclosed to Authorized Users as a necessary function of the Software and Services; and, except as otherwise provided, neither Party shall make Confidential Information or Client Information available to any other person or entity without the prior written consent of the other Party.
- E. Notwithstanding the foregoing, Client understands and agrees that TriTech may transfer Client Information to a third party hosting entity for the purposes of providing the communications infrastructure, hosting services and/or related support and other operations necessary to deliver all or certain portions of the Services; provided that TriTech, in turn, binds such third party to confidentiality and non-disclosure terms that are at least as protective of TriTech's and Client's interests as the terms stated herein. In addition, TriTech may also access and use Client Information and results or data, in a de-identified form, for data or analysis purposes (including for the purpose of preparing the Aggregate data and for crime data reporting), and may distribute the results of such analysis or data summaries to other Member Agencies or third parties provided no personally identifying information in the Client Information is disclosed. Client acknowledges that TriTech shall have no responsibility or liability for unauthorized access to or dissemination of Client Information by Authorized Users or other third parties, whether as a result of breach of data security, misappropriation or misuse of passwords or any other cause.

Ownership and Rights

- A. TriTech owns all rights and title in and to the Software and Services. Further, Client agrees that the Software screens and any output of the Software, excepting the Client Information, are the property of TriTech and subject to United States and other patent, copyright, trademark, trade secret and other applicable laws and treaties and Client agrees that it shall not remove, alter or obstruct any ownership or use legends that TriTech places on any such screens or output of the Services. Nothing contained in this Agreement shall be construed as granting Client any rights in or to the Software and Services (including, without limitation, the Software and output of the Services), the deliverables from the implementation or additional services or related Confidential Information, other than the right to use the Software and Services and any applicable Confidential Information of TriTech during the Term, in accordance with this Agreement.
- B. Clients who elect to participate in the Membership Program contribute to a database of information utilized by members to conduct investigations, monitor regional crime trends, and increase transparency to their communities. Notwithstanding anything to the contrary herein, excluding CJIS data, or personally identifying data, Client agrees that TriTech has and retains all rights to use any data and information relating to the Software and Services that is uploaded, inputted, or otherwise submitted by Client for any commercial purposes during or after the term of this Agreement; and any

information that constitutes, or results in, an improvement or other modification to the Software and Services. TriTech shall retain all rights and ownership to the Aggregate Data.

- C. As between the parties, TriTech agrees that all Client Information provided to TriTech under this Agreement for TriTech's use in connection with the Software and Services is the property of Client; provided, however, TriTech shall have the right to retain Client Information in accordance with its obligations under the terms of this Agreement in the event that the return or the destruction of any Client Information is infeasible, and in any event may use and retain Client Information as provided in Section E of the "Confidentiality" section above.
- D. The term "Developments" shall mean all programs, upgrades, updates or other enhancements or modifications to the Software, if any, and all Documentation or other materials developed and/or delivered by TriTech in the course of providing technical support or otherwise, under this Agreement.
- E. Client will not have the ability to copy the Client Information entered onto the Software. Rather, TriTech shall retain the physical copy of the Software, title, right and interest in and to the Software, including upgrades, updates, and/or other enhancements or modifications to the Software in any medium, including but not limited to all copyrights, patents, trade secrets, trademarks, and other proprietary rights.
- F. TriTech reserves the right to provide free cloud storage only for those data items viewable as part of the Limited Search Capabilities. Additional data attached to contributions such as video, images, and other document types may induce optional storage fees for cloud retention.

Liability

- A. THE SERVICES, SOFTWARE AND ANY DOCUMENTATION ARE MADE AVAILABLE FOR CLIENT'S USE "AS IS" AND EXCEPT AS OTHERWISE SPECIFICALLY STATED HEREIN, WITHOUT WARRANTY OF ANY KIND, EITHER EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.
- B. TRITECH DOES NOT WARRANT THAT THE SOFTWARE WILL OPERATE UNINTERRUPTED OR ERROR-FREE. CLIENT AGREES TO INDEMNIFY TRITECH AGAINST ANY SUCH LIABILITY TO CLIENT, REGARDING THE CLIENT'S USE OF THE SERVICES, THE SOFTWARE AND ANY DOCUMENTATION OR OTHERWISE. IN NO EVENT SHALL TRITECH BE LIABLE TO CLIENT OR ANY THIRD PARTY, WHETHER IN CONTRACT, TORT, OR OTHERWISE FOR INCIDENTAL, SPECIAL, INDIRECT, GENERAL, OR CONSEQUENTIAL DAMAGE OR LOSS OF ANY NATURE, INCLUDING BUT NOT LIMITED TO LOSS OF BUSINESS PROFITS, INCOME, LOSS OR USE OF DATA, WHICH MAY ARISE IN CONNECTION WITH THIS AGREEMENT OR THE USE OF OR INABILITY TO USE THE SERVICES, SOFTWARE AND ANY DOCUMENTATION EVEN IF TRITECH HAD BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THIS CLAUSE SHALL SURVIVE

FAILURE OF AN EXCLUSIVE REMEDY.

- C. TRITECH DISCLAIMS ALL LIABILITY FOR THE ACCURACY AND/OR COMPLETENESS OF DATA, INCLUDING BUT NOT LIMITED TO DATA SUPPLIED WITH THE SOFTWARE OR AS ADDED OR MODIFIED BY CLIENT OR ANY THIRD PARTY, OR DATA AS PROCESSED ON CLIENT'S OR TRITECH'S COMPUTER NETWORK. CLIENT BEARS THE ENTIRE RESPONSIBILITY FOR ITS COMPUTER NETWORK, INCLUDING CLIENT'S USE OF THE SOFTWARE, THE PERFORMANCE OF THE SERVICES AND THE SOFTWARE AND THE BEHAVIOR OF THE DATA ON EITHER CLIENT'S OR TRITECH'S COMPUTER NETWORK.**

- D. TRITECH REPRESENTS AND WARRANTS TO CLIENT THAT, TO TRITECH'S CURRENT AND ACTUAL KNOWLEDGE, THE SOFTWARE, WHEN USED IN ACCORDANCE WITH THIS AGREEMENT, DOES NOT VIOLATE ANY EXISTING U.S. COPYRIGHTS, PATENTS, TRADEMARKS, OR OTHER INTELLECTUAL PROPERTY RIGHTS OF ANY THIRD PARTY AS OF THE DATE OF THIS AGREEMENT. TRITECH SHALL INDEMNIFY AND HOLD CLIENT HARMLESS FROM AND AGAINST ANY AND ALL ACTIONS, SUITS, PROCEEDINGS, CLAIMS, DEMANDS, LOSSES, LIABILITIES, COSTS AND EXPENSES, INCLUDING REASONABLE ATTORNEYS FEES, INCURRED BY CLIENT ARISING OUT OF ANY BREACH OF THIS WARRANTY ON THE PART OF TRITECH.**

- E. IN NO EVENT SHALL TRITECH'S TOTAL CUMULATIVE LIABILITY HEREUNDER, FROM ALL CAUSES OF ACTION OF ANY KIND, WHETHER ARISING UNDER CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, BREACH OF WARRANTY OR OTHERWISE, EXCEED THE VALUE OF ONE ANNUAL TERM OF THE SUBSCRIPTION FEES FOR IQ SEARCH AND CRIMEMAPPING.COM.**

Assignment

Client shall not transfer or assign any of its rights or obligations under this Agreement to any other person or entity without the express written permission of TriTech, which permission shall not be unreasonably withheld. Any assignment without such express written permission of TriTech shall result in the automatic termination of this Agreement.

Notices

Written notices required or permitted to be given under this Agreement shall be made to the parties at the following addresses and shall be presumed to have been received by the other party (i) (three) 3 days after mailing by the party when notices are sent by First Class Mail, postage prepaid; (ii) upon transmission (if sent via facsimile with a confirmed transmission report); or (iii) upon receipt (if sent by hand delivery or courier service).

To Client:		To TriTech:
City of Tomball Police Department		TriTech Software Systems
Attn:		Attn: Contracts
400 Fannin Street		9477 Waples Street, Suite 100
Tomball, TX 77375		San Diego, CA 92121

Tomball Police Department

Zuercher Suite Contract

ZUERCHER

Governing Law

Except to the extent that this Agreement is governed by the laws of the United States, this Agreement shall be governed, interpreted and enforced in accordance with the laws of the State of Texas, without regard to its conflict of law provisions.

Support Services

Support will be provided in accordance with Attachment A.

This Agreement does not include any other TriTech subscription services. Additional subscription services purchased by Client will be subject to applicable fees.

**CITY OF TOMBALL POLICE
DEPARTMENT**

TRITECH SOFTWARE SYSTEMS


Accepted By (Signature)


Accepted By (Signature)

ROBERT S. HAUCK
Printed Name

Roxanne Lerner
Printed Name

CITY MANAGER
Title

Director of Contracts
Title

12/4/18
Date

12/6/18
Date

Schedule A

TECHNICAL SUPPORT

This Schedule describes the terms and conditions relating to technical support that TriTech will provide to Client during the Term of the Agreement.

Technical Support Services:

Email Assistance. Client may contact TriTech via email for issues with IQ Search at: CH_ClientServicesTriage@tritech.com; and for CrimeMapping: omega-support@tritech.com during normal Customer Service hours, (between 7:30am and 7:30pm Central Time) on regular business days, excluding TriTech holidays, to consult with TriTech technical support staff concerning problem resolution, bug reporting, documentation clarification, and general technical guidance. Assistance may include remote connectivity, modem, or electronic bulletin board.

Software Problem Reporting. Client may submit requests to TriTech identifying potential problems in the Software. Requests should be in writing and directed to TriTech by e-mail. TriTech retains the right to determine in its sole discretion the final disposition of all requests, and will inform Client of the disposition of each request. If TriTech decides in its sole judgment to act upon a request, it will do so by providing a bug fix as described above.

Scheduled Maintenance. IQ applications may be unavailable periodically for system maintenance. Regular system maintenance includes installation of the IQ Updates, operating system updates/patches and updates to other third party applications as needed. Clients are notified of maintenance periods via an email message.

Exclusions from Technical Support Services:

TriTech shall have no support obligations with respect to any third party hardware or software product ("Nonqualified Product"). If TriTech provides support services for a problem caused by a Nonqualified Product, or if TriTech's service efforts are increased as a result of a Nonqualified Product, TriTech will charge time and materials for extra service at its current published rates for custom software services. If, in TriTech's opinion, performance of technical support is made more difficult or impaired because of a Nonqualified Product, TriTech shall so notify Client, and Client will immediately remove the Nonqualified Product at its own risk and expense during any efforts to render technical support under this Agreement. Client shall be solely responsible for the compatibility and functioning of Nonqualified Products with the Software.

Client Responsibilities:

In connection with TriTech's provision of technical support as described herein, Client acknowledges that Client has the responsibility to do each of the following:

- 1) Provide hardware, operating system and browser software that meets TriTech's technical specifications, as well as a fast, stable, high speed connection and remote connectivity.
- 2) Maintain the designated computer system and associated peripheral equipment in good working order in accordance with the manufacturers' specifications, and ensure that any problems reported to TriTech are not due to hardware malfunction;

- 3) Maintain the designated computer system at the latest code revision level deemed necessary by TriTech for proper operation of the Software;
- 4) Supply TriTech with access to and use of all information and facilities determined to be necessary by TriTech to render the technical support described herein;
- 5) Perform any test or procedures recommended by TriTech for the purpose of identifying and/or resolving any problems;
- 6) At all times follow routine operator procedures as specified in the Documentation or any policies of TriTech posted on the TriTech website;
- 7) Other than TriTech's confidentiality obligations with respect to Client Information as set forth in this Agreement, Client shall remain solely responsible at all times for the safeguarding of Client's proprietary, confidential, and classified information; and
- 8) Ensure that the designated computer system is isolated from any process links or anything else that could cause harm before requesting or receiving remote support assistance.



CentralSquare Technologies, LLC
1000 Business Center Drive
Lake Mary, FL 32746

November 4, 2022

Doug Tippey
IT Director
Tomball Police Department
400 Fannin Street
Tomball, TX 77375

Dear Mr. Tippey:

This letter is in response to the Tomball Police Department's request for a sole source letter from our company. This letter is to confirm that CentralSquare Advanced Public Safety, CryWolf, and Public Safety Pro Suite are sole source products, manufactured, sold, serviced, and distributed exclusively by CentralSquare Technologies, LLC (CentralSquare). These products must be purchased directly by institutions from CentralSquare at the address listed above. There are no agents or dealers authorized to resell this product. CentralSquare Advanced Public Safety, CryWolf, and Public Safety Pro Suite are sold only as a direct transaction between CentralSquare and end Clients.

Sincerely,

DocuSigned by:
A handwritten signature in cursive script that reads "Ron Anderson".

6769F1AD774045B
Ron A. Anderson

Acting Chief Revenue Officer
CentralSquare Technologies



City Council Meeting Agenda Item Data Sheet

Meeting Date: December 21, 2020

Topic:

Receive a presentation on iChoosr regarding the Texas Power Switch Program, and provide staff direction.

Background:

Receive presentation from Fred Wu, Director Customer Outreach, and Kelle Balch, Director Community Relations, of iChoosr regarding the Texas Power Switch program and the City of Tomball's opportunity to continue services with iChoosr.

Origination: Project Management

Recommendation:

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

FUNDING (IF APPLICABLE)

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

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

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

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

City Council Meeting Agenda Item Data Sheet

Meeting Date: November 21, 2022

Topic:

Consideration to Approve Case P22-354: Request by the City of Tomball to amend Section(s) 50-116 (*Supplemental Regulations*) of the Tomball Code of Ordinances by revising standards pertaining to subsection (j) (*Site Development Standards for Mobile Food Courts*).

Conduct Public Hearing on **Zoning Case P22-354**

Adopt, on First Reading, Ordinance No. 2022-40, an ordinance of the City of Tomball, Texas, amending Section(s) 50-116(j) (*Site Development Standards - Mobile Food Courts*) Chapter 50 (Zoning) of the Tomball Code of Ordinances by revising the standards governing mobile food vendors located within mobile food courts, providing for severability; providing for a penalty of an amount not to exceed \$2,000 for each day of violation of any provision hereof, making findings of fact; and providing for other related matters.

Background:

City staff recommends approval. Planning & Zoning Commission recommends APPROVAL (5 Vote Aye, 0 Votes Nay)

Origination: City of Tomball

Recommendation:

Approval

Party(ies) responsible for placing this item on agenda: Jared Smith, City Planner

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 Jared Smith
Staff Member _____
Date _____

Approved by _____
City Manager _____
Date _____

**NOTICE OF PUBLIC HEARING
CITY OF TOMBALL
PLANNING & ZONING COMMISSION (P&Z)
NOVEMBER 14, 2022
&
CITY COUNCIL
NOVEMBER 21, 2022**



Notice is Hereby Given that a Public Hearing will be held by the P&Z of the City of Tomball on **Monday, November 14, 2022 at 6:00 P.M.** and by the City Council of the City of Tomball on **Monday, November 21, 2022 at 6:00 P.M.** at City Hall, 401 Market Street, Tomball Texas. On such dates, the P&Z and City Council will consider the following:

Case P22-354: Request by the City of Tomball to amend Section(s) 50-116 (*Supplemental Regulations*) of the Tomball Code of Ordinances by revising standards pertaining to subsection (j) (*Site Development Standards for Mobile Food Courts*).

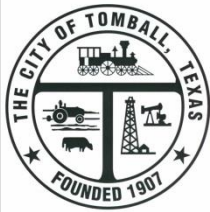
At the public hearings, parties of interest and citizens will have the opportunity to be heard. All citizens of the City of Tomball, and any other interested parties, are invited to attend. Applications are available for public inspection Monday through Friday, except holidays, at the Public Works Building, located at 501 James Street, Tomball, TX 77375. Further information may be obtained by contacting the City Planner, Jared Smith, at (281) 290-1491 or at jasmith@tomballtx.gov.

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

I hereby certify that the above notice of meeting was posted on the bulletin board of City Hall; City of Tomball, Texas, a place readily accessible to the general public at all times, on the **11th** day of **November 2022** by 5:00 p.m., and remained posted for at least 72 continuous hours preceding the scheduled time of said meeting.

Jared Smith
Jared Smith
City Planner

This facility is wheelchair accessible and accessible parking spaces are available. Requests for accommodations or interpretive services must be made 48 hours prior to this meeting. Please feel free to contact the City Secretary's office at (281) 290-1002 or FAX (281) 351-6256 for further information. AGENDAS MAY ALSO BE VIEWED ONLINE AT www.tomballtx.gov.



**Ordinance Amendment
Staff Report**

Planning & Zoning Commission Public Hearing Date: November 14, 2022
City Council Public Hearing Date: November 21, 2022

Case: P22-354
Section(s): Chapter 50, Article IV (50-116 *Supplemental Regulations*),
Subsection (j) (*Site Development Standards for Mobile Food
Courts*)
Subject: Revise Section 50-116, subsection (j)(9) (*Site development
standards for mobile food courts*)

BACKGROUND

The City of Tomball defines mobile food courts as being a parcel of land where two or more mobile food vendors congregate to offer food or beverages for sale to the public as the principal use of the land. Further, the definition clarifies that mobile food courts shall not be interpreted to include a congregation of mobile food vendors as a secondary, accessory use, and/or temporary use. The following development standards apply to mobile food courts:

(j) *Site development standards for mobile food courts.*

- (1) No mobile food vendor nor any associated seating areas shall be located in the required landscape buffer yard, access easement, surface drainage easement, driveway, and/or fire lane(s).
- (2) All activity must occur on private property, outside of the public right-of-way.
- (3) There shall be at least three feet of unobstructed clearance between all individual mobile food vendors and all permanent or accessory structures and at least ten feet of unobstructed clearance for mobile food vendors parked side-by-side.
- (4) Mobile food vendors shall not park in required parking stalls, rather they shall be located on a designated paved surface. Spaces for mobile food vendors shall meet the minimum parking requirements per Table 50-112-1.
- (5) Vehicular drive-thru service of food and/or beverages shall not be permitted.
- (6) Accessible restroom facilities shall be provided within a permanent structure. Temporary or portable toilet facilities are not permitted.
- (7) Electrical service may be provided to the mobile food vendors by a permitted electrical connection or on-board generators. When using on-board generators, sound absorbing devices shall be used.

(8) A designated seating area shall be provided for patrons.

(9) A mobile food vendor conducting business at a mobile food court shall not be located within the same mobile food court for a period in excess of 180 days. The same mobile food vendor shall not return to the same mobile food court for a period of 30 days.

(10) Mobile food vendors conducting business at a mobile food court shall have current vehicular registration and shall be in a suitable operating condition for transit.

(11) All mobile food vendors shall meet all other requirements per [chapter 32](#), peddlers and solicitors.

As identified above subsection (j)(9) establishes restrictions on the length of time that a mobile food vendor can be located on the premises of an approved mobile food court. City staff believes that because mobile food courts are viewed as the principal land use for a given site, so should the individual mobile food vendors. Subsequently, it is the opinion of city staff that food vendors within a mobile food court should not be subject to time limitation standards such as those applied to mobile food vendors that are an accessory to other principal land uses (i.e. convenience stores, retail centers, etc.).

NOTICE OF PUBLIC HEARING:

A public hearing notice was published in the Potpourri on November 2, 2022.

PROPOSED ORDINANCE AMENDMENT(s):

Code of Ordinance Section(s):

50-116 (j) – Site development standards for mobile food courts

DELETE:

~~(9) A mobile food vendor conducting business at a mobile food court shall not be located within the same mobile food court for a period in excess of 180 days. The same mobile food vendor shall not return to the same mobile food court for a period of 30 days.~~

ADD:

(9) Mobile food vendors conducting business operations within an approved mobile food court shall not be subject to restrictions on the length of time that they may be located at the mobile food court.

ORDINANCE NO. 2022-40

AN ORDINANCE OF THE CITY OF TOMBALL, TEXAS AMENDING ITS CODE OF ORDINANCES BY AMENDING SECTION 50-116 (J), SITE DEVELOPMENT STANDARDS FOR MOBILE FOOD COURTS, OF ARTICLE IV, DEVELOPMENT STANDARDS, OF CHAPTER 50, ZONING; PROVIDING FOR SEVERABILITY; PROVIDING FOR A PENALTY OF AN AMOUNT NOT TO EXCEED \$2,000 FOR EACH DAY OF VIOLATION OF ANY PROVISION HEREOF; MAKING FINDINGS OF FACT; AND PROVIDING FOR OTHER RELATED MATTERS.

* * * * *

WHEREAS, the City Staff presented the proposed text amendment regarding revisions to limitation on the time that a mobile food vendor may be located within a mobile food court to the Planning and Zoning Commission; and

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

WHEREAS, the Planning and Zoning Commission recommended in its final report that the City Council approve the requested text amendment; and

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

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

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

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

Section 2. Article IV, Development Standards, of Chapter 50, Zoning of the Code of Ordinances of the City of Tomball, Texas is hereby amended, as set out in Exhibit A, attached hereto and made a part of this Ordinance for all purposes.

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

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

Section 4. 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.

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 21st DAY OF NOVEMBER, 2022.

COUNCILMAN FORD _____
COUNCILMAN STOLL _____
COUNCILMAN DUNAGIN _____
COUNCILMAN TOWNSEND _____
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 5th DAY OF DECEMBER, 2022.

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

Lori Klein Quinn, Mayor

ATTEST:

DORIS SPEER, City Secretary

Exhibit "A"

AMEND: Section 50-116 (j) (*Site development standards for mobile food courts*)

REVISE: Delete and Add the following entries

DELETE:

(j) *Site Development Standards for Mobile Food Courts*

~~(9) A mobile food vendor conducting business at a mobile food court shall not be located within the same mobile food court for a period in excess of 180 days. The same mobile food vendor shall not return to the same mobile food court for a period of 30 days.~~

ADD:

(j) *Site Development Standards for Mobile Food Courts*

(9) Mobile food vendors conducting business operations within an approved mobile food court shall not be subject to restrictions on the length of time that a mobile food vendor may be located at the same location.

-END-

City Council Meeting Agenda Item Data Sheet

Meeting Date: November 21, 2022

Topic:

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

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

Background:

Origination: David Esquivel, City Manager

Recommendation:

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

FUNDING (IF APPLICABLE)

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

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

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

Signed Doris Speer 10/19/22 Approved by _____
Staff Member Date City Manager Date