

NOTICE OF REGULAR CITY COUNCIL MEETING CITY OF TOMBALL, TEXAS



**Monday, February 19, 2024
6:00 PM**

Notice is hereby given of a Regular meeting of the Tomball City Council, to be held on Monday, February 19, 2024 at 6:00 PM, City Hall, 401 Market Street, Tomball, Texas 77375, for the purpose of considering the following agenda items. All agenda items are subject to action. The Tomball City Council reserves the right to meet in a closed session for consultation with attorney on any agenda item should the need arise and if applicable pursuant to authorization by Title 5, Chapter 551, of the Texas Government Code.

The public toll-free dial-in numbers to participate in the telephonic meeting are any one of the following (dial by your location): +1 312 626 6799 US (Chicago); +1 646 876 9923 US (New York); +1 301 715 8592 US; +1 346 248 7799 US (Houston); +1 408 638 0968 US (San Jose); +1 669 900 6833 US (San Jose); or +1 253 215 8782 US (Tahoma) - Meeting ID: 849 0184 9104 Passcode: 101230 . 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
 - 1. Presentation over the completion of the Helping Hands Program completed with grant funding provided by Southeast Texas Housing.

F. Reports and Announcements

1. Announcements

I. Upcoming Events:

- February 20, 2024 – Tomball Trail Ride (SHTR) 12:00 pm – 2:00 pm @ Depot
- March 9, 2024 – Second Saturday 5:00 pm – 9:00 pm @ Depot
- March 16, 2024 – Electric Tomball/Depot Disco 5:00 pm – 9:00 pm @ Depot
- March 22-24 – Tomball German Heritage Festival

II. Reports & Announcements by Mayor of City Council:

- Council Member Stoll – May 4, 2024, General Election
- Council Member Townsend Sr. – May 4, 2024, General Election

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. Approve, on Second Reading, Resolution No. 2024-03-TEDC, a Resolution of the City Council of the City of Tomball, Texas, authorizing and approving the Tomball Economic Development Corporation's Project to Expend Funds in accordance with an Economic Development Performance Agreement by and between the Corporation and LOMA Health & Wellness, PLLC to make direct incentives to, or expenditures for, rental assistance for new or expanded business enterprise to be located at 604 Baker Drive, Unit D, Tomball, Texas 77375. The estimated amount of expenditures for such Project is an amount not to exceed \$8,880.00.

2. Approve, on Second Reading, Resolution No. 2024-04-TEDC, a Resolution of the City Council of the City of Tomball, Texas, authorizing and approving the Tomball Economic Development Corporation's Project to Expend Funds in accordance with an Economic Development Performance Agreement by and between the Corporation and Della Casa Pasta, LLC to make direct incentives to, or expenditures for, rental assistance for new or expanded business enterprise to be located at 22525 Hufsmith-Kohrville Rd., Tomball, Texas 77375. The estimated amount of expenditures for such Project is an amount not to exceed \$10,000.00.

3. Approve, on Second Reading, Resolution No. 2024-05-TEDC, a Resolution of the City Council of the City of Tomball, Texas, authorizing and approving the Tomball Economic Development Corporation's Project to Expend Funds in accordance with an Economic Development Performance Agreement by and between the Corporation and the City of Tomball to make direct incentives to, or expenditures for, improvements to the North and South 100 Block and North 200 Block Alleyways located in the City of Tomball, Texas. The estimated amount of expenditures for such Project is an amount not to exceed \$1,188,834.00.
 4. Approve, on Second Reading, Resolution No. 2024-06-TEDC, a Resolution of the City Council of the City of Tomball, Texas, authorizing and approving the Tomball Economic Development Corporation's Project to Expend Funds for the Summer Youth Employment Program, that will, among other things, reimburse qualified business owners for certain employment costs related to employing young people in the City during the summer months, in order to promote new or expanded business development in and around the City.
 5. Adopt, on Second Reading, Ordinance No. 2023-55, an Ordinance of the City of Tomball, Texas, amending Chapter 50 – Article III (*District Regulations*) adding Section 50-75.1 – Neighborhood Retail District (NR) zoning classification and subsequent district standards. Modifying Section 50-82 (*Use regulations (charts)*). Modifying Section 50-112 (*Off Street Parking and Loading Requirements*) adding parking regulations within the Neighborhood Retail District. Modifying Section 50-113 (*Landscape Requirements*) specifying parking lot screening requirements. Modifying Section 50-115 (*Screening, Buffering and Fencing Requirements*) replacing subsection (b)(1) (*Screening of Non-Residential, Multifamily, and manufactured (mobile) home parks*) with new land use buffering standards; 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.
- 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 February 5, 2024, Regular City Council meeting and the February 9, 2024, Special City Council meeting.
 2. Approve an interlocal agreement with Harris County Public Health for the facilitation of a Closed Point of Distribution and authorize the City Manager any and all documents related to the agreement.

- [3.](#) Approve the purchase of vehicle upfitting from Dana Safety Supply, Inc. through a BuyBoard Cooperative Purchasing Network (Contract #698-23) for a not-to-exceed amount of \$196,400, 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 2023-2024 Budget.
- [4.](#) Approve a professional services agreement with Raba Kistner for annual groundwater monitoring for the closed landfill for a not-to-exceed amount of \$40,395, 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 2023-2024 Budget.
- [5.](#) Approve a professional services agreement with Raba Kistner for annual gas monitoring for the closed landfill for a not-to-exceed amount of \$20,495, 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 2023-2024 Budget.
- [6.](#) Approve contract renewal for Every-Bellies Catering, LLC to be the preferred beer and wine provider at six (6) city-sponsored festivals.

I. New Business

- [1.](#) Appoint/Reappoint Members to Positions 1, 4, and 7 of the Tourism Advisory Committee.
- [2.](#) Discussion and Approval of Change to the City Policy related to Vacation/Holiday Hours
- [3.](#) Receive a presentation, hold a discussion, and give staff direction regarding the utility rate study and debt forecast.
- [4.](#) Discussion and possible action regarding liens imposed by the City of Tomball at 0 Clayton Street.
- [5.](#) Consideration to Approve **Zoning Case Z24-01**: Request by ESP Enterprises Inc., represented by Phlex Properties LLC. to amend Chapter 50 (*Zoning*) of the Tomball Code of Ordinances, by rezoning approximately 6.87 acres of land legally described as being a portion of the W Hurd Survey, Abstract 378 from Agricultural (AG) to Office (O) zoning. The property is located within the 100 block (west side) of School Street, within the City of Tomball, Harris County, Texas.

Conduct Public Hearing on **Zoning Case Z24-01**

Adopt, on First Reading, Ordinance No. 2024-03, an Ordinance of the City of Tomball, Texas, amending Chapter 50 (Zoning) of the Tomball Code of Ordinances by rezoning approximately 6.87 acres of land legally described as being a portion of the W Hurd Survey, Abstract 378 from Agricultural (AG) to Office (O) zoning. The property is located within the 100 block (west side) of School Street, within the City of Tomball, Harris County, Texas; 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.

- [6.](#) Adopt, on First Reading, Ordinance 2024-05, an Ordinance of the City of Tomball, Texas, Amending its Code of Ordinances, Section 44-164, Parking Restricted on Certain Streets, Division 2, prohibited. Restricted on certain streets, of Article V, stopping, standing and parking, of Chapter 44, Traffic and Vehicles, establishing a “No Parking, Stopping or Standing” zone along either side of Rudel Drive beginning at the intersection of SH 249 and Rudel Drive, extending east approximately 1725 feet to the intersection of Rudel Drive and Quinn Road; providing a penalty in the amount not to exceed \$200 for each violation hereof; making finding of fact; and providing for other related matters.
- [7.](#) Conduct a Public Hearing and Approve Resolution 2024-10, a Resolution of the City of Tomball, Texas, Establishing Guidelines and Criteria for Tax Abatements in the City of Tomball.
- [8.](#) Executive Session: The City Council will meet in Executive Session as Authorized by Title 5, Chapter 551, Government Code, the Texas Open Meetings Act, for the Following Purpose(s):
 - Sec. 551.071 – Consultation with the City Attorney regarding a matter which the Attorney’s duty requires to be discussed in closed session.

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 15th day of February 2024 by 6:00 PM, and remained posted for at least 72 continuous hours preceding the scheduled time of said meeting.

Tracylynn Garcia, TRMC, CMC, CPM
City Secretary

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

City Council Meeting

Agenda Item

Data Sheet

Meeting Date: February 19, 2024

Topic:

Presentation over the completion of the Helping Hands Program completed with grant funding provided by Southeast Texas Housing.

Background:

The City of Tomball received \$50,000 in grant funding from Southeast Texas Housing (SETH) in 2023 to be used for home renovations and repairs in the City. The City had previously received this funding and created the Helping Hands Program to provide assistance for home repairs and renovations to low-income homes within the city limits.

Applications were made available at the Administrative Services Building with notification about the program posted on social media, sent to local churches and non-profit organizations including TEAM and TOMAGWA Healthcare Ministries, and Tomball Independent School District. We received a total of 17 applications and were able to assist 11 homes.

In addition to the repairs and renovations, the Fire Department was able to install new smoke and carbon monoxide detectors in every home thanks to a donation from Lowe's.

Origination: Project Management

Recommendation:

n/a

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	<u>Meagan Mageo</u>	Approved by	_____
	Staff Member		City Manager
	Date		Date

City Council Meeting Agenda Item Data Sheet

Meeting Date: February 19, 2024

Topic:

Presentation Upcoming Events:

- February 20, 2024 – Tomball Trail Ride (SHTR) 12:00 pm – 2:00 pm @ Depot
- March 9, 2024 – Second Saturday 5:00 pm – 9:00 pm @ Depot
- March 16, 2024 – Electric Tomball/Depot Disco 5:00 pm – 9:00 pm @ Depot
- March 22-24 – Tomball German Heritage Festival

Reports & Announcements by Mayor of City Council:

- Council Member Stoll – May 4, 2024, General Election
- Council Member Townsend Sr. – May 4, 2024, General Election

Background:

Origination:

Recommendation:

n/a

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

FUNDING (IF APPLICABLE)

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

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

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

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

Regular City Council Agenda Item Data Sheet

Meeting Date: February 19, 2024

Topic:

Approve, on Second Reading, Resolution No. 2024-03-TEDC, a Resolution of the City Council of the City of Tomball, Texas, authorizing and approving the Tomball Economic Development Corporation's Project to Expend Funds in accordance with an Economic Development Performance Agreement by and between the Corporation and LOMA Health & Wellness, PLLC to make direct incentives to, or expenditures for, rental assistance for new or expanded business enterprise to be located at 604 Baker Drive, Unit D, Tomball, Texas 77375. The estimated amount of expenditures for such Project is an amount not to exceed \$8,880.00.

Background:

First Reading approved during the February 5, 2024, Regular City Council meeting.

On January 23, 2024, the Tomball Economic Development Corporation (TEDC) Board of Directors unanimously approved, as a Project of the Corporation, an economic development performance agreement with LOMA Health & Wellness, PLLC for rental assistance for new or expanded business enterprise. The Tomball City Council has final approval authority over all programs and expenditures of the Corporation.

Origination: Tomball Economic Development Corporation Board of Directors

Recommendation: Approval of Resolution No. 2024-03-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: ☒ No: ☐ If yes, specify Account Number: #Project Grants

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

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

RESOLUTION NO. 2024-03-TEDC

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

* * * * *

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

WHEREAS, the Board of Directors of the TEDC had adopted as a specific project the expenditure of the estimated amount of Eight Thousand Eight Hundred and Eighty Dollars (\$8,880.00), found by the Board to be required or suitable to promote a new business development by LOMA Health & Wellness, PLLC; and

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

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

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

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

Section 2. The City Council hereby authorizes and approves the adoption, by the Board of Directors of the Tomball Economic Development Corporation, as a specific project for the economic development of the City, an expenditure of the estimated amount of Eight Thousand Eight Hundred and Eighty Dollars (\$8,880.00), to LOMA Health & Wellness, PLLC, in accordance with an economic development agreement by and between the TEDC and LOMA Health & Wellness, PLLC to promote and develop a new or expanded business enterprise, to be located at 640 Baker Drive, Unit D, Tomball, Texas 77375.

Section 3. In the event any clause, phrase, provision, sentence, or part of this Resolution or the application of the same to any person or circumstance shall for any reason be adjudged

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

PASSED AND APPROVED on first reading this 5th day of February, 2024.

PASSED, APPROVED, AND RESOLVED on second and final reading this 19th day of February, 2024.

Lori Klein Quinn, Mayor

ATTEST:

Tracy Garcia, City Secretary

LOMA Health & Wellness, PLLC

December 2, 2023

Kelly Violette
Executive Director
Tomball Economic Development Council
29201 Quinn Rd., Suite B
Texas, Tomball 77375

Good afternoon,

I am writing to respectfully request the Tomball Economic Development Council's ("TEDC") consideration for the Renter's Incentive Grant for my new business, LOMA Health & Wellness, PLLC ("LOMA"). LOMA is a Tomball-based medical practice established in 2023, offering the local community a wellness-based medical practice. LOMA will provide the following services: Integrative Medicine, Hormone therapy, Weight loss, Nutrition therapy, Well Woman Exams, IV infusion therapy, and other various aesthetic procedures.

The goal with LOMA's practice is to help heal patients from the inside-out and equip them with the tools to make better lifestyle choices. With this type and approach to medicine, we hope to prevent chronic diseases, and help patients live their best life at their current age.

LOMA is opening on Baker Drive, just north of Main Street Tomball, as being in the heart of Tomball allows us to best serve the local community. We were fortunate to find a wonderful office that allows us the space to continue to grow over the next several years. The space will need to be completely outfitted as a medical practice, and we will be purchasing around \$20,000 worth of furnishings and equipment. We estimate an additional \$25,000 - \$50,000 in various other start-up costs, including marketing, website, accounting, software and legal fees.

This start-up business is self-funded, so we are grateful for any financial assistance to help offset the above-mentioned costs. We intend to utilize the grant funds to help purchase additional equipment, hire employees, and generally grow the business to better serve the practice and residents of Tomball.

Thank you in advance for TEDC's consideration of providing the Renter's Incentive Grant to LOMA Health & Wellness.

Kind Regards,

Christina Mapes, FNP-C
Owner, LOMA Health & Wellness, PLLC



TO: Honorable Mayor and City Council

FROM: Kelly Violette
Executive Director

MEETING DATE: February 5, 2024

SUBJECT: LOMA Health & Wellness, PLLC

ITEM TYPE: Action

The Tomball Economic Development Corporation has received a request from Christina Mapes, Owner of LOMA Health & Wellness for funding assistance through the TEDC's Rental Incentive Program.

LOMA Health & Wellness is a wellness based medical practice that was established in Tomball in 2023. The practice integrates western and holistic medicine with an aesthetic component. They specialize in hormone replacement therapy, weight loss management, integrative medicine, nutrition, and overall preventative medicine.

The proposed location is a 1,595 square foot lease space located at 640 Baker Drive, Unit D. This location provides ample space for the company to continue to grow over the next several years.

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

The lease agreement that was submitted in conjunction with the request letter shows a five-year lease commitment with a monthly rent amount of \$2,960.00 for the first 12 months. The proposed grant amount is \$8,880.00, payable after the first year of operation based on landlord verification of rents paid and meeting the performance agreement criteria.

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

AGREEMENT

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

This Agreement (the “Agreement”) is made and entered into by and between the **Tomball Economic Development Corporation**, an industrial development corporation created pursuant to Tex. Rev. Civ. Stat. Ann. Art. 5190.6, Section 4B, located in Harris County, Texas (the “TEDC”), and **LOMA Health & Wellness** (the “Company”), 33933 Deer Creek Way, Stagecoach, TX 77355

WITNESSETH:

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

WHEREAS, the Company proposes to lease a 1,595 square foot existing office space located at 640 Baker Drive, Unit D, Tomball, Texas 77375 (the “Property”), and more particularly described in Exhibit “A,” attached hereto and made a part hereof; and

WHEREAS, the Company currently provides a wellness based medical practice and proposes to expand its business operations by opening an office at the Property; and

WHEREAS, the Company proposes to create six (6) full-time jobs in Tomball in conjunction with the new location; and

WHEREAS, the TEDC agrees to provide to the Company an amount equal to twenty-five percent (25%) of the base monthly rent for the first 12 consecutive months of operation not to exceed Eight Thousand Eight Hundred and Eighty Dollars (\$8,880.00), in accordance with an established Rental Assistance Incentive; and

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

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

1.

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

2.

The Company also covenants and agrees that construction of the Improvements, the addition of the Six (6) new employees, and obtaining all necessary occupancy permits from the City shall occur within twelve (12) months from the Effective Date of this Agreement. Extensions of these deadlines, due to any extenuating circumstance or uncontrollable delay, may be granted at the sole discretion of the Board of Directors of the TEDC.

3.

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

4.

In consideration of the Company's representations, promises, and covenants, TEDC agrees to grant to the Company an amount equal to twenty-five percent (25%) of the base monthly rent for the first 12 consecutive months of operation not to exceed Eight Thousand Eight Hundred and Eighty Dollars (\$8,880.00). The TEDC agrees to distribute such funds to the Company within thirty (30) days of receipt of a letter from the Company requesting such payment, which letter shall also include: (a) a copy of the City's occupancy permit for the Property; (b) proof that the Company has added the number of employees indicated above to its business operations on the Property, as evidenced by copies of Texas Workforce Commission form C-3 or Internal Revenue Service Form 941; and, (c) an affidavit from the landlord of the Property stating that all rents have been paid in accordance with the terms of the lease agreement for the first twelve consecutive months of operation.

5.

It is understood and agreed by the parties that, in the event of a default by the Company on any of its obligations under this Agreement, the Company shall reimburse the TEDC the full amount paid to the Company by the TEDC, with interest at the rate equal to the 90-day Treasury Bill plus $\frac{1}{2}\%$ per annum, within thirty (30) days after the TEDC notifies the Company of the default. It is further understood and agreed by the parties that if the Company is convicted of a violation under 8 U.S.C. Section 1324a(f), the Company will reimburse the TEDC the full amount paid to the Company, with interest at the rate equal to the 90-day Treasury Bill plus $\frac{1}{2}\%$ per annum, within thirty (30) days after the TEDC notifies the Company of the violation.

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

6.

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

7.

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

If to City:

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

If to Company:

Loma Health & Wellness, PLLC
33933 Deer Creek Way
Stagecoach, TX 77355
Attn: Christina Mapes, Owner

8.

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

9.

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

10.

The failure of any party to insist in any one or more instances on the performance of any of the terms, covenants or conditions of this Agreement, or to exercise any of its rights, shall not be construed as a waiver or relinquishment of such term, covenant, or condition, or right with respect to further performance. This Agreement shall bind and benefit the respective Parties and their legal successors and shall not be assignable, in whole or in part, by any party without first obtaining written consent of the other party.

11.

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

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

LOMA HEALTH & WELLNESS, PLLC

By: _____

Name: Christina Mapes

Title: Owner

ATTEST:

By: _____

Name: _____

Title: _____

TOMBALL ECONOMIC DEVELOPMENT CORPORATION

By: _____

Name: Gretchen Fagan

Title: President, Board of Directors

ATTEST:

By: _____

Name: Bill Sumner Jr.

Title: Secretary, Board of Directors

ACKNOWLEDGMENT

THE STATE OF TEXAS §
 §
COUNTY OF HARRIS §

This instrument was acknowledged before me on the _____ day of _____
2024, by Christina Mapes, Owner of LOMA Health & Wellness, PLLC, for and on behalf of said
company.

Notary Public in and for the State of Texas

My Commission Expires: _____

(SEAL)

ACKNOWLEDGMENT

THE STATE OF TEXAS §
 §
COUNTY OF HARRIS §

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

Notary Public in and for the State of Texas

My Commission Expires: _____

(SEAL)

Exhibit “A”

Legal Description of Property

Legal Description: RES B BLK 1, BROWN HUFSMITH CHURCH,
2S AND Z INVESTMENTS LLC

Property Address: 640 Baker Drive, Unit D, Tomball, TX 77375

DRAFT



NEW BUSINESS RENTAL INCENTIVE PROGRAM

PART A –BUSINESS OWNER APPLICATION

The New Business Rental Incentive Program seeks to reduce area vacancies and facilitate the establishment of new businesses in previously underutilized areas of the City. The intent of the program is to facilitate business growth and expansion by assisting businesses in leasing space. All grant award decisions of the Tomball Economic Development Corporation (TEDC) Board of Directors are discretionary and final. Through the Program, the TEDC will provide up to 25% of the base monthly rent for the first year of operation only, not to exceed \$10,000 per business.

Business Owner Applicant Information

Name of Business: LOMA Health & Wellness

Current Business Physical Address: New business

City, State & Zip _____

Mailing Address: 33933 Deer Creek Way

City, State & Zip Stagecoach, TX 77355

Business Phone: 2149576221

Business Website: lomahealthtx.com

Business Owner Name: Christina Mapes

Applicant's Name (if different): _____

Position /Title: President/Nurse Practitioner

Phone and Email: 2149576221 christina@lomahealthtx.com

Nature of Business: Medical Wellness and Aesthetics Practice

NAICS Code: 621111

Legal Form of Business:

- ☐ Sole Proprietor
- ☐ Partnership Number of Partners 2
- ☐ Corporation
- ☐ Limited Liability Corp
- ☐ Other PLLC

Business Start/Opening Date January 2023

Days and Hours of Operation

Days Open: M-F

Hours Open: 9-5

Employees

Full Time Employees (40 hours per week): 2

Part Time Employees (less than 40 hours per week): 2

Does the Business Owner Have any Relationship to the Property Owner/Landlord?

No ☒ Yes ☐ (please explain)

Moving and Space Improvement Cost and Funding Information

Investment Data

Tenant Space Improvement (finish)	\$ <u>10000</u>
Landlord Space Improvement (finish)	\$ <u>0</u>
Equipment and Display	\$ <u>10000</u>
Product Stock (for Opening)	\$ <u>0</u>
Marketing (First Year)	\$ <u>20,400</u>

Sources of Funding for Move/Expansion

Funds invested by owner	\$ <u>75000</u>
Funds from other sources*	\$ <u>0</u>
Total estimated cost to move/expand	\$ <u>5000</u>

* Source of Funding and Amounts Business Owner

New Lease Property Information

Address of space to be leased: 640 Baker Dr. Unit D Tomball, TX 77375

Total amount of square feet to be leased and occupied: 1595

Term of lease (minimum 3 years): 5 years

Gross rental rate \$ 3520 per month \$ 2.20 per s.f.

Additional lease terms and other monthly charges: \$125/month triple net, \$200/month electric

Indicate any rate increases: 10% max after 3 year

LOMA Health & Wellness business venture requires the leasing and furnishing of a space, purchase of equipment and supplies, and hiring of employees. The medical equipment we plan on purchasing in the first year will cost between \$15,000-\$25,000. We are using our own funds to pay for all start up costs. An additional \$10,000 rental reimbursement will help pay for the purchased equipment or new equipment. Any financial assistance received will go right back into the practice, which in turn serves the people.

LOMA Health & Wellness will serve the local Tomball community by working with patients to be the best version of themselves, at any age. We believe in the importance of nutrition, exercise, hormonal balance, and overall health, starting from the inside out. The plan is to expand and hire a chiropractor/acupuncturist, aesthetician, and additional complimentary services. I would love to team up with local practitioners when hiring.

Certification

By signing below, the Business Owner of record (applicant) understands and agrees to the following:

1. All information contained in this application, the attached exhibits and other materials submitted in connection with this application are true and accurate to the best of the business owner's knowledge. Business owner understands and agrees that false or untruthful information may be grounds for the TEDC to stop processing this application or to withdraw any approval previously obtained based in whole or in part on such false or untruthful statements.
2. The TEDC is under no obligation to approve the request contained in the application. No promises of approval are conveyed with the acceptance of this application.
3. All tax obligations to the City of Tomball are current.
4. The business is currently in good standing with the City, and has no pending municipal code violations.
5. The business is not currently occupying the space with or without a lease in place.
6. The APPLICANT hereby certifies that the APPLICANT 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 under the law to be employed in that manner in the United States. APPLICANT understands and agrees that if, after receiving a Grant, APPLICANT is convicted of a violation under 8 U.S.C. Section 1324a(f), the APPLICANT shall be required to reimburse to the TEDC the grant amount received. Payments must be paid in full within thirty (30) days after the date of written notification by the TEDC. The form of such payment shall be a cashier's check or money order, made payable to the Tomball Economic Development Corporation. The TEDC has the right to recover court costs and reasonable attorney's fees as a result of any civil action required to recover such repayment.

Christina Mapes

Printed Name of Principal Owner



Signature

11/30/2023

Date

Please submit the completed application along with a copy of the Proposed Lease Agreement to:

Kelly Violette

Tomball Economic Development Corporation

29201 Quinn Road, Suite B

Tomball, TX 77375

For further questions about the Program, please contact Kelly Violette, Executive Director, at 281.401.4086 or kviolette@tomballtxedc.org.



NEW BUSINESS RENTAL INCENTIVE PROGRAM

PART B – PROPERTY OWNER/LANDLORD APPLICATION

Complete all items carefully and accurately to the best of your knowledge and return with a copy of Proof of Ownership to:

Kelly Violette
Tomball Economic Development Corporation
29201 Quinn Road, Suite B
Tomball, TX 77375

Property Address: 640 Baker Dr. Unit D Tomball, TX 77375

Property Owner of Record: Shan Ali

Mailing Address: 15110 Mintz Ln

City, State & Zip Houston, TX 77014

Phone: _____ Email: shanali1@icloud.com

Name(s) of Authorized Signatories: Shan Ali

Name of Management Company: _____

Name of Representative/Contact Person: _____

Management Company Address: _____

City, State & Zip _____

Phone: _____ Email: _____

Name of proposed business at site:

LOMA Health & Wellness

Name of business owner:

Christina Mapes

DOES THE BUSINESS OWNER OR THE BUSINESS HAVE ANY RELATIONSHIP TO THE
PROPERTY OWNER/LANDLORD? NO ☒ YES ☐ Please explain

SITE & LEASE INFORMATION

Total amount of square feet to be leased and occupied by business: 1595

Term of lease: 5 years

Gross rental rate \$3520 per month \$2.20 per s.f.

Additional lease terms and other monthly charges: _____

\$125/month triple net, tenant pays for electricity, internet, phones

Indicate any rate increases: 10% max after year 3

Is the subject space currently vacant? Yes ☒ No ☐

If yes, how long has the space been vacant? n/a months

Name of previous tenant: new build

Previous Rental Rate: \$n/a Per Month \$n/a Per Square Foot

CERTIFICATIONS

Are all real estate and personal property taxes due the City of Tomball paid in full?

Subject Property: YES ☒ NO ☐ (Please explain on supplemental sheet)

Other Properties: YES ☒ NO ☐ N/A ☐

Are all City of Tomball water and sewer bills due paid in full?

Subject Property: YES ☒ NO ☐ (Please explain on supplemental sheet)

Other Properties: YES ☒ NO ☐ N/A ☐

Have you been cited for any existing zoning, building or property maintenance code violations that remain uncorrected?

Subject Property: YES ☐ NO ☒ (Please explain on supplemental sheet)

Other Properties: YES ☐ NO ☒ N/A ☐

Are you involved in any litigation with the City of Tomball?

☐ YES (Please explain on supplemental sheet)

☒ NO

By signing below, the Landlord/Property Owner of record understands and agrees to the following:

1. All information contained in this application, the attached exhibits and other materials submitted in connection with this application are true and accurate to the best of the land owner's knowledge. Landowner understands and agrees that false or untruthful information may be grounds for the TEDC to stop processing this application or to withdraw any approval previously obtained based in whole or in part on such false or untruthful statements.
2. The TEDC is under no obligation to approve the request contained in the application. No promises of approval are conveyed with the acceptance of this application.
3. All tax obligations to the City of Tomball are current.
4. The property is currently in good standing with the City, and has no pending municipal code violations.
5. The business is not currently occupying the space with or without a lease in place.

Shan Ali

Printed Name of Property Owner/Landlord



Signature

12/1/23

Date



COMMERCIAL LEASE

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640 Baker Dr. D
CONCERNING THE LEASED PREMISES AT **Tomball, TX 77375**
between **2S&Z Investments LLC** (Landlord)
and **LOMA Health & Wellness, PLLC** (Tenant).

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ADDENDA & EXHIBITS (check all that apply)

- ☐ Exhibit _____
- ☐ Exhibit _____
- ☐ Exhibit _____
- ☐ Commercial Property Condition Statement (TXR-1408)
- ☐ Commercial Lease Addendum for Broker's Fee (TXR-2102)
- ☐ Commercial Lease Addendum for Option to Extend Term (TXR-2104)
- ☐ Commercial Lease Addendum for Tenant's Right of First Refusal (TXR-2105)
- ☐ Commercial Lease Addendum for Percentage Rent (TXR-2106)
- ☐ Commercial Lease Addendum for Parking (TXR-2107)
- ☐ Commercial Landlord's Rules and Regulations (TXR-2108)
- ☐ Commercial Lease Guaranty (TXR-2109)
- ☐ Commercial Lease Addendum for Tenant's Option for Additional Space (TXR-2110)
- ☐ Commercial Lease Construction Addendum (TXR-2111) or (TXR-2112)
- ☐ Commercial Lease Addendum for Contingencies (TXR-2119)
- ☐ Information About Brokerage Services (TXR-2501)
- ☐ _____
- ☐ _____
- ☐ _____
- ☐ _____

(TXR-2101) 07-08-22 Initialed for Identification by Landlord: _____, _____, and Tenant: _____, _____

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COMMERCIAL LEASE

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1. PARTIES: The parties to this lease are:

Landlord: 2S&Z Investments LLC dba 6319 Office Park
15110 Mintz Ln Houston, TX 77014; and

Tenant: LOMA Health & Wellness, PLLC (Christina A. Mapes and Gary A. Mapes)
33933 Deer Creek Way Stagecoach, TX 77355

2. LEASED PREMISES:

A. Landlord leases to Tenant the following described real property, known as the "leased premises," along with all its improvements (*Check only one box*):

☒ (1) Multiple-Tenant Property: Suite or Unit Number D containing approximately 1600+/- square feet of rentable area ("rsf") in Baker Office Condos (*project name*) at 640 Baker Dr. D (*address*) in Tomball (*city*), Harris (*county*), Texas, which is legally described on attached Exhibit _____ or as follows:

☐ (2) Single-Tenant Property: The real property containing approximately _____ square feet of rentable area ("rsf") at: _____ (*address*) in _____ (*city*), _____ (*county*), Texas, which is legally described on attached Exhibit _____ or as follows:

B. If Paragraph 2A(1) applies:

- (1) "Property" means the building or complex in which the leased premises are located, inclusive of any common areas, drives, parking areas, and walks; and
- (2) the parties agree that the rentable area of the leased premises may not equal the actual or useable area within the leased premises and may include an allocation of common areas in the Property. The rentable area ☐ will ☐ will not be adjusted if re-measured.

3. TERM:

A. Term: The term of this lease is 60 months and _____ days, commencing on: December 1, 2023 (Commencement Date) and ending on November 30, 2028 (Expiration Date).

B. Delay of Occupancy: If Tenant is unable to occupy the leased premises on the Commencement Date because of construction on the leased premises to be completed by Landlord that is not substantially complete or a prior tenant's holding over of the leased premises, Landlord will not be liable to Tenant

(TXR-2101) 07-08-22 Initialed for Identification by Landlord: _____, _____, and Tenant: _____, _____

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for such delay and this lease will remain enforceable. In the event of such a delay, the Commencement Date will automatically be extended to the date Tenant is able to occupy the Property and the Expiration Date will also be extended by a like number of days, so that the length of this lease remains unchanged. If Tenant is unable to occupy the leased premises after the 60 day after the Commencement Date because of construction on the leased premises to be completed by Landlord that is not substantially complete or a prior tenant's holding over of the leased premises, Tenant may terminate this lease by giving written notice to Landlord before the leased premises become available to be occupied by Tenant and Landlord will refund to Tenant any amounts paid to Landlord by Tenant. This Paragraph 3B does not apply to any delay in occupancy caused by cleaning or repairs.

- C. Certificate of Occupancy: Unless the parties agree otherwise, Tenant is responsible for obtaining a certificate of occupancy for the leased premises if required by a governmental body.

4. RENT AND EXPENSES:

- A. Base Monthly Rent: On or before the first day of each month during this lease, Tenant will pay Landlord base monthly rent as described on attached Exhibit _____ or as follows:

Dates		Rate per rentable square foot (optional)		Base Monthly Rent \$
From	To	\$ Monthly Rate	\$ Annual Rate	
12/01/2023	11/30/2026	1.85 / rsf / month	/ rsf / year	2,960.00
12/01/2026	11/30/2028	2.00 / rsf / month	/ rsf / year	3,200.00
		/ rsf / month	/ rsf / year	
		/ rsf / month	/ rsf / year	
		/ rsf / month	/ rsf / year	
		/ rsf / month	/ rsf / year	

- B. Additional Rent: In addition to the base monthly rent, Tenant will pay Landlord the expense reimbursement detailed in Paragraph 4J (if applicable) and all other amounts, as provided by the attached (*Check all that apply.*):

- ☐ (1) Commercial Lease Addendum for Percentage Rent (TXR-2106)
☐ (2) Commercial Lease Addendum for Parking (TXR-2107)
☐ (3) _____

All amounts payable under the applicable addenda are deemed to be "rent" for the purposes of this lease.

- C. First Full Month's Rent: The first full monthly rent is due on or before Dec 2023 or Jan 2024 Depending on landlord obtaining Certificate of Completion/ Compliance.
- D. Prorated Rent: If the Commencement Date is on a day other than the first day of a month, Tenant will pay Landlord as prorated rent, an amount equal to the base monthly rent multiplied by the following fraction: the number of days from the Commencement Date to the first day of the following month divided by the number of days in the month in which this lease commences. The prorated rent is due on or before the Commencement Date.
- E. Place of Payment: Tenant will remit all amounts due to Landlord under this lease to the following person at the place stated or to such other person or place as Landlord may later designate in writing:

Name: **2S&Z Investments LLC dba 6319 Office Park**

Address: **15110 Mintz Ln. Houston, TX 77014**

- F. Method of Payment: Tenant must pay all rent timely without demand, deduction, or offset, except as permitted by law or this lease. If Tenant fails to timely pay any amounts due under this lease or if any check of Tenant is returned to Landlord by the institution on which it was drawn, Landlord after providing written notice to Tenant may require Tenant to pay subsequent amounts that become due under this lease in certified funds. This paragraph does not limit Landlord from seeking other remedies under this lease for Tenant's failure to make timely payments with good funds.
- G. Late Charges: If Landlord does not actually receive a rent payment at the designated place of payment within 5 days after the date it is due, Tenant will pay Landlord a late charge equal to 10% of the amount due. In this paragraph, the mailbox is not the agent for receipt for Landlord. The late charge is a cost associated with the collection of rent and Landlord's acceptance of a late charge does not waive Landlord's right to exercise remedies under Paragraph 20.
- H. Returned Checks: Tenant will pay \$ 50.00 for each check Tenant tenders to Landlord which is returned by the institution on which it is drawn for any reason, plus any late charges until Landlord receives payment.
- I. Application of Funds: Regardless of any notation on a payment, Landlord may apply funds received from Tenant first to any non-rent obligations of Tenant, including but not limited to: late charges and returned check charges, repairs, brokerage fees, periodic utilities and thereafter to rent.

(Check box only if Tenant reimburses Landlord for some or all expenses. Do not check for "gross" leases.)

- ☒ J. Expense Reimbursement. In addition to base monthly rent stated in Paragraph 4A, Tenant will pay Landlord the expense reimbursement described in this Paragraph 4J. Tenant will pay the expense reimbursement as additional rent each month at the time the base-monthly rent is due. All amounts payable under this Paragraph 4J are deemed to be "rent" for the purposes of this lease.

- ☐ (1) Reimbursable Periods. Additional rent under this Paragraph 4J is due for all months listed in the chart in Paragraph 4A, even if the base monthly rent is zero.

(2) Definitions:

(a) "Tenant's pro rata share" is 16.700 %.

(b) "CAM" means all of Landlord's expenses reasonably incurred to maintain, repair, operate, manage, and secure the Property (for example, security, lighting, painting, cleaning, decorations, utilities, trash removal, pest control, promotional expenses, and other expenses reasonably related the Property's operations); including all expenses incurred by Landlord under Paragraph 15, but not including expenses for structural components and roof replacement; CAM does not include capital expenditures, interest, depreciation, tenant improvements, insurance, taxes, or brokers' leasing fees. Notwithstanding the foregoing, CAM does include the amortized costs incurred by Landlord in making capital improvements or other modifications to the Property to the extent such improvements or modifications reduce CAM overall. These costs will be amortized over the useful life of the improvement or modification on a straight-line basis; however, in no event will the charge for such amortization included in CAM exceed the actual reduction in CAM achieved by the improvements and modifications.

(c) "Insurance" means Landlord's costs to insure the leased premises and the Property including but not limited to insurance for casualty loss, general liability, and reasonable rent loss.

(d) "Taxes" means the real property ad valorem taxes assessed against the leased premises and Property inclusive of all general and special assessments and surcharges.

- (e) "Structural" means all of Landlord's expenses reasonably incurred to maintain, repair, and replace the roof, foundation, exterior walls, load bearing walls and other structural components of the Property.
- (f) "Roof" means all roofing components including, but not limited to decking, flashing, membrane, and skylights.
- (3) Method: The additional rent under this Paragraph 4J will be computed under the following method (Check only one box): Note: "CAM" does not include taxes and insurance costs.
- ☐ (a) Base-year expenses: Each month Tenant will pay Tenant's pro rata share of the projected monthly expenses for the Property that exceed the amount of the monthly base-year expenses for the calendar year ____ for: ☐ taxes; ☐ insurance; ☐ CAM; ☐ structural; and ☐ ____.
- ☐ (b) Expense-stop: Each month Tenant will pay Tenant's pro rata share of the projected monthly expenses for the Property that exceed \$ _____ per square foot per year for: ☐ taxes; ☐ insurance; ☐ CAM; ☐ structural; ☐ roof replacement; and ☐ ____.
- ☒ (c) Net: Each month Tenant will pay Tenant's pro rata share of the projected monthly expenses for the Property for: ☒ taxes; ☒ insurance; ☒ CAM; ☒ structural; ☒ roof replacement; and ☐ ____.
- (4) Projected Monthly Expenses: On or about December 31 of each calendar year, Landlord will project the applicable monthly expenses (those that Tenant is to pay under this lease) for the following calendar year and will notify Tenant of the projected expenses. The projected expenses are based on Landlord's estimates of such expenses. The actual expenses may vary.

Notice: The applicable projected expenses at the time the lease commences are shown in the table below. The total area of the Property presently used by Landlord for calculating expense reimbursements is 1600 rentable square feet (including any add on factor for common areas).

Projected Expenses	
\$ Monthly Rate	\$ Annual Rate
0.35 / rsf / month	/ rsf / year

- (5) Reconciliation: Within 120 days after the end of each calendar year, Landlord will notify Tenant of the actual costs of the applicable expenses (those that Tenant is to pay under this lease) for the previous year. If the actual costs of the applicable expenses exceed the amounts paid or owed by Tenant for the previous year, Tenant must pay the deficient amount to Landlord within 30 days after Landlord notifies Tenant of the deficient amount. If the actual costs of the applicable expenses are less than the amounts paid by Tenant for the previous year, Landlord will refund the excess to Tenant or will credit the excess to Tenant's next rent payment(s). Tenant may audit or examine those items in Landlord's records that relate to Tenant's obligations under this Paragraph 4J. Landlord will promptly refund to Tenant any overpayment revealed by an audit or examination. If the audit or examination reveals an error of more than 5% over the amounts Landlord collected in a calendar year from Tenant under this lease, Landlord will pay the reasonable cost of the audit or examination. Landlord may not seek a deficiency from Tenant under this paragraph if Landlord fails to timely provide the required notice.

5. SECURITY DEPOSIT:

- A. Upon execution of this lease, Tenant will pay \$ 3,760.00 to Landlord as a security deposit.
- B. Landlord may apply the security deposit to any amounts owed by Tenant under this lease. If Landlord applies any part of the security deposit during any time this lease is in effect to amounts owed by Tenant, Tenant must, within 10 days after receipt of notice from Landlord, restore the security deposit to the amount stated.
- C. Within 60 days after Tenant surrenders the leased premises and provides Landlord written notice of Tenant's forwarding address, Landlord will refund the security deposit less any amounts applied toward amounts owed by Tenant or other charges authorized by this lease.

- 6. TAXES:** Unless otherwise agreed by the parties, Landlord will pay all real property ad valorem taxes assessed against the leased premises. Tenant waives all rights to protest the appraised value of the leased premises and the Property, or appeal the same and all rights to receive notices of reappraisal set forth in sections 41.413 and 42.015 of the Texas Tax Code.

7. UTILITIES:

- A. The party designated below will pay for the following utility charges to the leased premises and any connection charges for the utilities. *(Check all that apply.)*

	<u>N/A</u>	<u>Landlord</u>	<u>Tenant</u>
(1) Water	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
(2) Sewer	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
(3) Electric	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
(4) Gas	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
(5) Telephone	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
(6) Internet	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
(7) Cable	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
(8) Trash	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
(9) _____	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
(10) All other utilities	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

- B. The party responsible for the charges under Paragraph 7A will pay the charges directly to the utility service provider. The responsible party may select the utility service provider, except that if Tenant selects the provider, any access or alterations to the Property or leased premises necessary for the utilities may be made only with Landlord's prior consent, which Landlord will not unreasonably withhold. If Landlord incurs any liability for utility or connection charges for which Tenant is responsible to pay and Landlord pays such amount, Tenant will immediately upon written notice from Landlord reimburse Landlord such amount.
- C. **Notice:** Tenant should determine if all necessary utilities are available to the leased premises and are adequate for Tenant's intended use.
- D. **After-Hours HVAC Charges:** "HVAC services" means heating, ventilating, and air conditioning of the leased premises. *(Check one box only.)*
- ☐ (1) Landlord is obligated to provide the HVAC services to the leased premises only during the Property's operating hours specified under Paragraph 9C.

- ☐ (2) Landlord will provide the HVAC services to the leased premises during the operating hours specified under Paragraph 9C for no additional charge and will, at Tenant's request, provide HVAC services to the leased premises during other hours for an additional charge of \$ _____ per hour. Tenant will pay Landlord the charges under this paragraph immediately upon receipt of Landlord's invoice. Hourly charges are charged on a half-hour basis. Any partial hour will be rounded up to the next half hour. Tenant will comply with Landlord's procedures to make a request to provide the additional HVAC services under this paragraph.
- ☒ (3) Tenant will pay for the HVAC services under this lease.

8. INSURANCE:

- A. During all times this lease is in effect, Tenant must, at Tenant's expense, maintain in full force and effect from an insurer authorized to operate in Texas:
- (1) commercial general liability insurance naming Landlord as an additional insured with policy limits on an occurrence basis in a minimum amount of: *(check only (a) or (b) below)*
- ☒ (a) \$1,000,000; or
- ☐ (b) \$2,000,000.
- If neither box is checked the minimum amount will be \$1,000,000.
- (2) personal property damage insurance for the business operations being conducted in the leased premises and contents in the leased premises in an amount sufficient to replace such contents after a casualty loss; and
- ☐ (3) business interruption insurance sufficient to pay 12 months of rent payments.
- B. Before the Commencement Date, Tenant must provide Landlord with a copy of insurance certificates evidencing the required coverage. If the insurance coverage is renewed or changes in any manner or degree at any time this lease is in effect, Tenant must, not later than 10 days after the renewal or change, provide Landlord a copy of an insurance certificate evidencing the renewal or change.
- C. If Tenant fails to maintain the required insurance in full force and effect at all times this lease is in effect, Landlord may:
- (1) purchase insurance that will provide Landlord the same coverage as the required insurance and Tenant must immediately reimburse Landlord for such expense; or
- (2) exercise Landlord's remedies under Paragraph 20.
- D. Unless the parties agree otherwise, Landlord will maintain in full force and effect insurance for: (1) fire and extended coverage in an amount to cover the reasonable replacement cost of the improvements of the Property; and (2) any commercial general liability insurance in an amount that Landlord determines reasonable and appropriate.
- E. If there is an increase in Landlord's insurance premiums for the leased premises or Property or its contents that is caused by Tenant, Tenant's use of the leased premises, or any improvements made by or for Tenant, Tenant will, for each year this lease is in effect, pay Landlord the increase immediately after Landlord notifies Tenant of the increase. Any charge to Tenant under this Paragraph 8E will be equal to the actual amount of the increase in Landlord's insurance premium.

9. USE AND HOURS:

- A. Tenant may use the leased premises for the following purpose and no other: Health and Wellness Medical Clinic

- B. Unless otherwise specified in this lease, Tenant will operate and conduct its business in the leased premises during business hours that are typical of the industry in which Tenant represents it operates.
- C. The Property maintains operating hours of *(specify hours, days of week, and if inclusive or exclusive of weekends and holidays)*: **9am-6pm Monday - Saturday w occasional exceptions**

10. LEGAL COMPLIANCE:

- A. Tenant may not use or permit any part of the leased premises or the Property to be used for:
- (1) any activity which is a nuisance or is offensive, noisy, or dangerous;
 - (2) any activity that interferes with any other tenant's normal business operations or Landlord's management of the Property;
 - (3) any activity that violates any applicable law, regulation, zoning ordinance, restrictive covenant, governmental order, owners' association rules, tenants' association rules, Landlord's rules or regulations, or this lease;
 - (4) any hazardous activity that would require any insurance premium on the Property or leased premises to increase or that would void any such insurance;
 - (5) any activity that violates any applicable federal, state, or local law, including but not limited to those laws related to air quality, water quality, hazardous materials, wastewater, waste disposal, air emissions, or other environmental matters;
 - (6) the permanent or temporary storage of any hazardous material; or
 - (7) _____
- B. "Hazardous material" means any pollutant, toxic substance, hazardous waste, hazardous material, hazardous substance, solvent, or oil as defined by any federal, state, or local environmental law, regulation, ordinance, or rule existing as of the date of this lease or later enacted.
- C. Landlord does not represent or warrant that the leased premises or Property conform to applicable restrictions, zoning ordinances, setback lines, parking requirements, impervious ground cover ratio requirements, and other matters that may relate to Tenant's intended use. Tenant must satisfy itself that the leased premises may be used as Tenant intends by independently investigating all matters related to the use of the leased premises or Property. Tenant agrees that it is not relying on any warranty or representation made by Landlord, Landlord's agent, or any broker concerning the use of the leased premises or Property.

11. SIGNS:

- A. Tenant may not post or paint any signs or place any decoration outside the leased premises or on the Property without Landlord's written consent. Landlord may remove any unauthorized sign or decorations, and Tenant will promptly reimburse Landlord for its cost to remove any unauthorized sign or decorations.
- B. Any authorized sign must comply with all laws, restrictions, zoning ordinances, and any governmental order relating to signs on the leased premises or Property. Landlord may temporarily remove any authorized sign to complete repairs or alterations to the leased premises or the Property.
- C. By providing written notice to Tenant before this lease ends, Landlord may require Tenant, upon move-out and at Tenant's expense, to remove, without damage to the Property or leased premises, any or all signs or decorations that were placed on the Property or leased premises by or at the request of Tenant. Any signs or decorations that Landlord does not require Tenant to remove and that are fixtures, become the property of the Landlord and must be surrendered to Landlord at the time this lease ends.

12. ACCESS BY LANDLORD:

- A. During Tenant's normal business hours Landlord may enter the leased premises for any reasonable purpose, including but not limited to purposes for repairs, maintenance, alterations, and showing the leased premises to prospective tenants or purchasers. Landlord may access the leased premises after Tenant's normal business hours if: (1) entry is made with Tenant's permission; or (2) entry is necessary to complete emergency repairs. Landlord will not unreasonably interfere with Tenant's business operations when accessing the leased premises.
- B. During the last 30 days of this lease, Landlord may place a "For Lease" or similarly worded sign on the leased premises.

13. MOVE-IN CONDITION: Tenant has inspected the leased premises and accepts it in its present (as-is) condition unless expressly noted otherwise in this lease or in an addendum. Landlord and any agent have made no express or implied warranties as to the condition or permitted use of the leased premises or Property.

14. MOVE-OUT CONDITION AND FORFEITURE OF TENANT'S PERSONAL PROPERTY:

- A. At the time this lease ends, Tenant will surrender the leased premises in the same condition as when received, except for normal wear and tear. Tenant will leave the leased premises in a clean condition free of all trash, debris, personal property, hazardous materials, and environmental contaminants.
- B. If Tenant leaves any personal property in the leased premises after Tenant surrenders possession of the leased premises, Landlord may: (1) require Tenant, at Tenant's expense, to remove the personal property by providing written notice to Tenant; or (2) retain such personal property as forfeited property to Landlord.
- C. "Surrender" means vacating the leased premises and returning all keys and access devices to Landlord. "Normal wear and tear" means deterioration that occurs without negligence, carelessness, accident, or abuse.
- D. By providing written notice to Tenant before this lease ends, Landlord may require Tenant, upon move-out and at Tenant's expense, to remove, without damage to the Property or leased premises, any or all fixtures that were placed on the Property or leased premises by or at the request of Tenant. Any fixtures that Landlord does not require Tenant to remove become the property of the Landlord and must be surrendered to Landlord at the time this lease ends.

15. MAINTENANCE AND REPAIRS:

- A. Cleaning: Tenant must keep the leased premises clean and sanitary and promptly dispose of all garbage in appropriate receptacles. ☐ Landlord ☒ Tenant will provide, at its expense, janitorial services to the leased premises that are customary and ordinary for the property type. Tenant will maintain any grease trap on the Property which Tenant uses, including but not limited to periodic emptying and cleaning, as well as making any modification to the grease trap that may be necessary to comply with any applicable law.
- B. Repairs of Conditions Caused by a Party: Each party must promptly repair a condition in need of repair that is caused, either intentionally or negligently, by that party or that party's guests, patrons, invitees, contractors or permitted subtenants.
- C. Repair and Maintenance Responsibility: Except as otherwise provided by this Paragraph 15, the party designated below, at its expense, is responsible to maintain and repair the following specified items in the leased premises (if any). The specified items must be maintained in clean and good operable

condition. If a governmental regulation or order requires a modification to any of the specified items, the party designated to maintain the item must complete and pay the expense of the modification. The specified items include and relate only to real property in the leased premises. Tenant is responsible for the repair and maintenance of its personal property. (Check all that apply.)

	N/A	Landlord	Tenant
(1) Foundation, exterior walls and other structural components	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
(2) Roof replacement	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
(3) Roof repair	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
(4) Glass and windows	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
(5) Fire protection equipment	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
(6) Fire sprinkler systems	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
(7) Exterior and overhead doors, including closure devices, molding, locks, and hardware	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
(8) Grounds maintenance, including landscaping and irrigation systems	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
(9) Interior doors, including closure devices, frames, molding, locks, and hardware	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
(10) Parking areas and walks	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
(11) Plumbing systems, drainage systems and sump pumps	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
(12) Electrical systems, mechanical systems	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
(13) Ballast and lamp replacement	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
(14) Heating, Ventilation and Air Conditioning (HVAC) systems	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
(15) HVAC system replacement	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
(16) Signs and lighting:	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
(a) Pylon	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
(b) Fascia	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
(c) Monument	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
(d) Door/Suite	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
(e) Directional	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
(f) Other:	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
(17) Extermination and pest control, excluding wood-destroying insects.	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
(18) Fences and Gates	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
(19) Storage yards and storage buildings	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
(20) Wood-destroying insect treatment and repairs	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
(21) Cranes and related systems	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
(22)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
(23)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
(24) All other items and systems.	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

D. Repair Persons: Repairs must be completed by trained, qualified, and insured repair persons.

E. HVAC Service Contract: If Tenant maintains the HVAC system under Paragraph 15C(14), Tenant ☒ is ☐ is not required to maintain, at its expense, a regularly scheduled maintenance and service contract for the HVAC system. The maintenance and service contract must be purchased from a HVAC maintenance company that regularly provides such contracts to similar properties. If Tenant fails to maintain a required HVAC maintenance and service contract in effect at all times during this lease, Landlord may do so and Tenant will reimburse Landlord for the expense of such maintenance and service contract or Landlord may exercise Landlord's remedies under Paragraph 20.

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- F. Common Areas: Landlord will maintain any common areas in the Property in a manner as Landlord determines to be in the best interest of the Property. Landlord will maintain any elevator and signs in the common area. Landlord may change the size, dimension, and location of any common areas, or allocate areas for short term or reserved parking for specific tenants, provided that such change does not materially impair Tenant's use and access to the leased premises. Tenant has the non-exclusive license to use the common areas in compliance with Landlord's rules and regulations. Tenant may not solicit any business in the common areas or interfere with any other person's right to use the common areas. This paragraph does not apply if Paragraph 2A(2) applies.
- G. Notice of Repairs: Tenant must promptly notify Landlord of any item that is in need of repair and that is Landlord's responsibility to repair. All requests for repairs to Landlord must be in writing.
- H. Failure to Repair: Landlord must make a repair for which Landlord is responsible within a reasonable period of time after Tenant provides Landlord written notice of the needed repair. If Tenant fails to repair or maintain an item for which Tenant is responsible within 10 days after Landlord provides Tenant written notice of the needed repair or maintenance, Landlord may: (1) repair or maintain the item, without liability for any damage or loss to Tenant, and Tenant must immediately reimburse Landlord for the cost to repair or maintain; or (2) exercise Landlord's remedies under Paragraph 20.

16. ALTERATIONS:

- A. Tenant may not alter (including making any penetrations to the roof, exterior walls or foundation), improve, or add to the Property or the leased premises without Landlord's written consent. Landlord will not unreasonably withhold consent for the Tenant to make reasonable non-structural alterations, modifications, or improvements to the leased premises.
- B. Tenant may not alter any locks or any security devices on the Property or the leased premises without Landlord's consent. If Landlord authorizes the changing, addition, or rekeying of any locks or other security devices, Tenant must immediately deliver the new keys and access devices to Landlord.
- C. If a governmental order requires alteration or modification to the leased premises, the party obligated to maintain and repair the item to be modified or altered as designated in Paragraph 15 will, at its expense, modify or alter the item in compliance with the order and in compliance with Paragraphs 16A and 17.
- D. Any alterations, improvements, fixtures or additions to the Property or leased premises installed by either party during the term of this lease will become Landlord's property and must be surrendered to Landlord at the time this lease ends, except for those fixtures Landlord requires Tenant to remove under Paragraph 11 or 14 or if the parties agree otherwise in writing.

17. LIENS: Tenant may not do anything that will cause the title of the Property or leased premises to be encumbered in any way. If Tenant causes a lien to be filed against the Property or leased premises, Tenant will within 20 days after receipt of Landlord's demand: (1) pay the lien and have the lien released of record; or (2) take action to discharge the lien. Tenant will provide Landlord a copy of any release Tenant obtains pursuant to this paragraph.

18. LIABILITY: To the extent permitted by law, Landlord is NOT responsible to Tenant or Tenant's employees, patrons, guests, or invitees for any damages, injuries, or losses to person or property caused by:

- A. an act, omission, or neglect of: Tenant; Tenant's agent; Tenant's guest; Tenant's employees; Tenant's patrons; Tenant's invitees; or any other tenant on the Property;

- B. fire, flood, water leaks, ice, snow, hail, winds, explosion, smoke, riot, strike, interruption of utilities, theft, burglary, robbery, assault, terrorism, vandalism, other persons, environmental contaminants, or other occurrences or casualty losses.

19. INDEMNITY: Each party will indemnify, defend, and hold the other party harmless from any property damage, personal injury, suits, actions, liabilities, damages, cost of repairs or service to the leased premises or Property, or any other loss caused, negligently or otherwise, by that party or that party's employees, patrons, guests, or invitees.

20. DEFAULT:

- A. If Landlord fails to comply with this lease within 30 days after Tenant notifies Landlord of Landlord's failure to comply, Landlord will be in default and Tenant may seek any remedy provided by law. If, however, Landlord's non-compliance reasonably requires more than 30 days to cure, Landlord will not be in default if the cure is commenced within the 30-day period and is diligently pursued.
- B. If Landlord does not actually receive at the place designated for payment any rent due under this lease within 5 days after it is due, Tenant will be in default. If Tenant fails to comply with this lease for any other reason within 20 days after Landlord notifies Tenant of its failure to comply, Tenant will be in default.
- C. If Tenant is in default, Landlord may, with at least 3 days written notice to Tenant: (i) terminate this lease, or (ii) terminate Tenant's right to occupy the leased premises without terminating this lease and may accelerate all rents which are payable during the remainder of this lease or any renewal period. Landlord will attempt to mitigate any damage or loss caused by Tenant's breach by using commercially reasonable means. If Tenant is in default, Tenant will be liable for:
- (1) any lost rent;
 - (2) Landlord's cost of reletting the leased premises, including brokerage fees, advertising fees, and other fees necessary to relet the leased premises;
 - (3) repairs to the leased premises for use beyond normal wear and tear;
 - (4) all Landlord's costs associated with eviction of Tenant, such as attorney's fees, court costs, and prejudgment interest;
 - (5) all Landlord's costs associated with collection of rent such as collection fees, late charges, and returned check charges;
 - (6) cost of removing any of Tenant's equipment or fixtures left on the leased premises or Property;
 - (7) cost to remove any trash, debris, personal property, hazardous materials, or environmental contaminants left by Tenant or Tenant's employees, patrons, guests, or invitees in the leased premises or Property;
 - (8) cost to replace any unreturned keys or access devices to the leased premises, parking areas, or Property; and
 - (9) any other recovery to which Landlord may be entitled under this lease or under law.

21. ABANDONMENT, INTERRUPTION OF UTILITIES, REMOVAL OF PROPERTY, AND LOCKOUT:

Chapter 93 of the Texas Property Code governs the rights and obligations of the parties with regard to: (a) abandonment of the leased premises; (b) interruption of utilities; (c) removal of Tenant's property; and (d) "lock-out" of Tenant.

22. HOLDOVER: If Tenant fails to vacate the leased premises at the time this lease ends, Tenant will become a tenant-at-will and must vacate the leased premises immediately upon receipt of demand from Landlord. No holding over by Tenant, with or without the consent of Landlord, will extend this lease. Tenant will indemnify Landlord and any prospective tenants for any and all damages caused by the holdover. Rent for

any holdover period will be 150% of the base monthly rent plus any additional rent calculated on a daily basis and will be immediately due and payable daily without notice or demand.

23. LANDLORD'S LIEN AND SECURITY INTEREST: To secure Tenant's performance under this lease, Tenant grants to Landlord a lien and security interest against all of Tenant's nonexempt personal property that is in the leased premises or on the Property. This lease is a security agreement for the purposes of the Uniform Commercial Code. Landlord may file a financing statement to perfect Landlord's security interest under the Uniform Commercial Code.

24. ASSIGNMENT AND SUBLETTING: Landlord may assign this lease to any subsequent owner of the Property. Tenant may not assign this lease or sublet any part of the leased premises without Landlord's written consent. An assignment of this lease or subletting of the leased premises without Landlord's written consent is voidable by Landlord. If Tenant assigns this lease or sublets any part of the leased premises, Tenant will remain liable for all of Tenant's obligations under this lease regardless if the assignment or sublease is made with or without the consent of Landlord.

25. RELOCATION:

- ☐ A. By providing Tenant with not less than 90 days advanced written notice, Landlord may require Tenant to relocate to another location in the Property, provided that the other location is equal in size or larger than the leased premises then occupied by Tenant and contains similar leasehold improvements. Landlord will pay Tenant's reasonable out-of-pocket moving expenses for moving to the other location. "Moving expenses" means reasonable expenses incurred by Tenant payable to professional movers, utility companies for connection and disconnection fees, wiring companies for connecting and disconnecting Tenant's office equipment required by the relocation, and printing companies for reprinting Tenant's stationary, business cards, and marketing materials containing Tenant's address. A relocation of Tenant will not change or affect any other provision of this lease that is then in effect, including rent and reimbursement amounts, except that the description of the suite or unit number will automatically be amended.
- ☒ B. Landlord may not require Tenant to relocate to another location in the Property without Tenant's prior consent.

26. SUBORDINATION:

- A. This lease and Tenant's leasehold interest are and will be subject, subordinate, and inferior to:
- (1) any lien, encumbrance, or ground lease now or hereafter placed on the leased premises or the Property that Landlord authorizes;
 - (2) all advances made under any such lien, encumbrance, or ground lease;
 - (3) the interest payable on any such lien or encumbrance;
 - (4) any and all renewals and extensions of any such lien, encumbrance, or ground lease;
 - (5) any restrictive covenant affecting the leased premises or the Property; and
 - (6) the rights of any owners' association affecting the leased premises or Property.
- B. Tenant must, on demand, execute a subordination, attornment, and non-disturbance agreement that Landlord may request that Tenant execute, provided that such agreement is made on the condition that this lease and Tenant's rights under this lease are recognized by the lien-holder.

27. ESTOPPEL CERTIFICATES AND FINANCIAL INFORMATION:

- A. Within 10 days after receipt of a written request from Landlord, Tenant will execute and deliver to Landlord an estoppel certificate that identifies the terms and conditions of this lease.

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- B. Within 30 days after receipt of a written request from Landlord, Tenant will provide to Landlord Tenant's current financial information (balance sheet and income statement). Landlord may request the financial information no more frequently than once every 12 months.

28. CASUALTY LOSS:

- A. Tenant must immediately notify Landlord of any casualty loss in the leased premises. Within 20 days after receipt of Tenant's notice of a casualty loss, Landlord will notify Tenant if the leased premises are less than or more than 50% unusable, on a per square foot basis, and if Landlord can substantially restore the leased premises within 120 days after Tenant notifies Landlord of the casualty loss.
- B. If the leased premises are less than 50% unusable and Landlord can substantially restore the leased premises within 120 days after Tenant notifies Landlord of the casualty, Landlord will restore the leased premises to substantially the same condition as before the casualty. If Landlord fails to substantially restore within the time required, Tenant may terminate this lease.
- C. If the leased premises are more than 50% unusable and Landlord can substantially restore the leased premises within 120 days after Tenant notifies Landlord of the casualty, Landlord may: (1) terminate this lease; or (2) restore the leased premises to substantially the same condition as before the casualty. If Landlord chooses to restore and does not substantially restore the leased premises within the time required, Tenant may terminate this lease.
- D. If Landlord notifies Tenant that Landlord cannot substantially restore the leased premises within 120 days after Tenant notifies Landlord of the casualty loss, Landlord may: (1) choose not to restore and terminate this lease; or (2) choose to restore, notify Tenant of the estimated time to restore, and give Tenant the option to terminate this lease by notifying Landlord within 10 days.
- E. If this lease does not terminate because of a casualty loss, rent will be reduced from the date Tenant notifies Landlord of the casualty loss to the date the leased premises are substantially restored by an amount proportionate to the extent the leased premises are unusable.

29. CONDEMNATION: If after a condemnation or purchase in lieu of condemnation the leased premises are totally unusable for the purposes stated in this lease, this lease will terminate. If after a condemnation or purchase in lieu of condemnation the leased premises or Property are partially unusable for the purposes of this lease, this lease will continue and rent will be reduced in an amount proportionate to the extent the leased premises are unusable. Any condemnation award or proceeds in lieu of condemnation are the property of Landlord and Tenant has no claim to such proceeds or award. Tenant may seek compensation from the condemning authority for its moving expenses and damages to Tenant's personal property.

30. ATTORNEY'S FEES: Any person who is a prevailing party in any legal proceeding brought under or related to the transaction described in this lease is entitled to recover prejudgment interest, reasonable attorney's fees, and all other costs of litigation from the nonprevailing party.

31. REPRESENTATIONS:

- A. Tenant's statements in this lease and any application for rental are material representations relied upon by Landlord. Each party signing this lease represents that he or she is of legal age to enter into a binding contract and is authorized to sign this lease. If Tenant makes any misrepresentation in this lease or in any application for rental, Tenant is in default.
- B. Landlord is not aware of any material defect on the Property that would affect the health and safety of an ordinary person or any environmental hazard on or affecting the Property that would affect the health or safety of an ordinary person, except: _____.

- C. Each party and each signatory to this lease represents that: (1) it is not a person named as a Specially Designated National and Blocked Person as defined in Presidential Executive Order 13224; (2) it is not acting, directly or indirectly, for or on behalf of a Specially Designated and Blocked Person; and (3) is not arranging or facilitating this lease or any transaction related to this lease for a Specially Designated and Blocked Person. Any party or any signatory to this lease who is a Specially Designated and Blocked person will indemnify and hold harmless any other person who relies on this representation and who suffers any claim, damage, loss, liability or expense as a result of this representation.

32. BROKERS:

- A. The brokers to this lease are:

Principal Broker: _____

N/AAgent: N/A

Address: _____

Phone & Fax: _____

E-mail: _____

License No.: _____

Cooperating Broker: _____

N/AAgent: N/A

Address: _____

Phone & Fax: _____

E-mail: _____

License No.: _____

Principal Broker: *(Check only one box)*☐ represents Landlord only.☐ represents Tenant only.☐ is an intermediary between Landlord and Tenant.

Cooperating Broker represents Tenant.

- B. Fees:

- ☐ (1) Principal Broker's fee will be paid according to: *(Check only one box)*.
- ☐ (a) a separate written commission agreement between Principal Broker and:
☐ Landlord ☐ Tenant.
- ☐ (b) the attached Commercial Lease Addendum for Broker's Fee (TXR-2102).

- ☐ (2) Cooperating Broker's fee will be paid according to: *(Check only one box)*.
- ☐ (a) a separate written commission agreement between Cooperating Broker and:
☐ Principal Broker ☐ Landlord ☐ Tenant.
- ☐ (b) the attached Commercial Lease Addendum for Broker's Fee (TXR-2102).

- 33. ADDENDA:** Incorporated into this lease are the addenda, exhibits and other information marked in the Addenda and Exhibit section of the Table of Contents. If Landlord's Rules and Regulations are made part of this lease, Tenant agrees to comply with the Rules and Regulations as Landlord may, at its discretion, amend from time to time.

- 34. NOTICES:** All notices under this lease must be in writing and are effective when hand-delivered, mailed by certified mail return receipt requested, sent by a national or regional overnight delivery service that provides a delivery receipt, or sent by confirmed facsimile transmission to:

Landlord at: 2S&Z Investments LLC, dba 6319 Office ParkAddress: 15110 Mintz Ln. Houston, TX 77014Attention: Shan Ali- 832-630-1758

Fax: _____

and a copy to: _____

Address: _____

Attention: _____

Fax: _____

☒ Landlord also consents to receive notices by e-mail at: shanali1@icloud.com

Tenant at the leased premises,

and to: LOMA Health & Wellness, PLLC ,

Address: 33933 Deer Creek Way Stagecoach, TX 77355

Attention: Christina Mapes 214-957-6221

Fax: _____

and a copy to: _____

Address: _____

Attention: _____

Fax: _____

☒ Tenant also consents to receive notices by e-mail at: Christina.mapes@gmail.com

35. SPECIAL PROVISIONS: The following special provisions apply and will control in the event of a conflict with other provisions of this lease. (If special provisions are contained in an addendum, identify the applicable addendum on the cover page of this lease.)

-Upon signing of the lease tenant will pay 1st month and last month (security deposit).

-Tenant is responsible to obtain Certificate of occupancy from City of Tomball.

-Tenant will be allowed one 3 year renewal option at market rent.

-Along with base rent and NNN charges:

Tenant will pay landlord Minimum \$125/month for water and trash.

-Landlord will complete the construction of the suite to the tenant specs.

Add 3 offices with doors and 1 sink in the File Room. Tenant will pay landlord for the cost of the cabinets in the file room \$3500.

- Without Landlord's prior written consent, Tenant may sublet any part of the leased premises to any individual or entity engaged in, or complimentary to, services in health and wellness.

36. AGREEMENT OF PARTIES:

A. Entire Agreement: This lease contains the entire agreement between Landlord and Tenant and may not be changed except by written agreement.

B. Binding Effect: This lease is binding upon and inures to the benefit of the parties and their respective heirs, executors, administrators, successors, and permitted assigns.

C. Joint and Several: All Tenants are jointly and severally liable for all provisions of this lease. Any act or notice to, or refund to, or signature of, any one or more of the Tenants regarding any term of this lease, its renewal, or its termination is binding on all Tenants.

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- D. Controlling Law: The laws of the State of Texas govern the interpretation, performance, and enforcement of this lease.
- E. Severable Clauses: If any clause in this lease is found invalid or unenforceable by a court of law, the remainder of this lease will not be affected and all other provisions of this lease will remain valid and enforceable.
- F. Waiver: Landlord's delay, waiver, or non-enforcement of acceleration, contractual or statutory lien, rental due date, or any other right will not be deemed a waiver of any other or subsequent breach by Tenant or any other term in this lease.
- G. Quiet Enjoyment: Provided that Tenant is not in default of this lease, Landlord covenants that Tenant will enjoy possession and use of the leased premises free from material interference.
- H. Force Majeure: If the performance of any party to this lease is delayed by strike, lock-out, shortage of material, governmental restriction, riot, war, epidemic, pandemic, quarantine, or by other cause, without fault and beyond the control of the party obligated (financial inability excepted), performance of such act will be abated for the period of the delay; provided, however, nothing in this paragraph excuses Tenant from the prompt payment of rent or other charge, nor will Tenant's inability to obtain governmental approval for its intended use of the leased premises excuse any of Tenant's obligations hereunder.
- I. Time: Time is of the essence. The parties require strict compliance with the times for performance.
- J. Counterparts: If this lease is executed in a number of identical counterparts, each counterpart is an original and all counterparts, collectively, constitute one agreement.

37. EFFECTIVE DATE: The effective date of this lease is the date the last party executes this lease and initials any changes.

38. LICENSE HOLDER DISCLOSURE: Texas law requires a real estate license holder who is a party to a transaction or acting on behalf of a spouse, parent, child, business entity in which the license holder owns more than 10%, or a trust for which the license holder acts as a trustee or of which the license holder or the license holder's spouse, parent or child is a beneficiary, to notify the other party in writing before entering into a contract of sale or rental agreement. Disclose if applicable: _____

Brokers are not qualified to render legal advice, property inspections, surveys, engineering studies, environmental assessments, tax advice, or compliance inspections. The parties should seek experts to render such services. READ THIS LEASE CAREFULLY. If you do not understand the effect of this Lease, consult your attorney BEFORE signing.

Landlord: 2S&Z Investments LLC dba 6319 Office Park

15110 Mintz Ln Houston, TX 77014

By: _____

By (signature): _____

Printed Name: Shan Ali

Title: Manager Date: _____

By: _____

By (signature): _____

Printed Name: _____

Title: _____ Date: _____

LOMA Health & Wellness, PLLC (Christina A.
Tenant: Mapes and Gary A. Mapes)

33933 Deer Creek Way Stagecoach, TX 77355

By: _____

By (signature): _____

Printed Name: Christina A Mapes

Title: Tenant Date: _____

By: _____

By (signature): _____

Printed Name: Gary A. Mapes

Title: Tenant Date: _____

Regular City Council Agenda Item Data Sheet

Meeting Date: February 19, 2024

Topic:

Approve, on Second Reading, Resolution No. 2024-04-TEDC, a Resolution of the City Council of the City of Tomball, Texas, authorizing and approving the Tomball Economic Development Corporation's Project to Expend Funds in accordance with an Economic Development Performance Agreement by and between the Corporation and Della Casa Pasta, LLC to make direct incentives to, or expenditures for, rental assistance for new or expanded business enterprise to be located at 22525 Hufsmith-Kohrville Rd., Tomball, Texas 77375. The estimated amount of expenditures for such Project is an amount not to exceed \$10,000.00.

Background:

First Reading approved during the February 5, 2024, Regular City Council meeting.

On January 23, 2024, the Tomball Economic Development Corporation (TEDC) Board of Directors unanimously approved, as a Project of the Corporation, an economic development performance agreement with Della Casa Pasta, LLC for rental assistance for new or expanded business enterprise. The Tomball City Council has final approval authority over all programs and expenditures of the Corporation.

Origination: Tomball Economic Development Corporation Board of Directors

Recommendation: Approval of Resolution No. 2024-04-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: ☒ No: ☐ If yes, specify Account Number: #Project Grants

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

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

RESOLUTION NO. 2024-04-TEDC

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

* * * * *

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

WHEREAS, the Board of Directors of the TEDC had adopted as a specific project the expenditure of the estimated amount of Ten Thousand Dollars (\$10,000.00), found by the Board to be required or suitable to promote a new business development by Della Casa Pasta, LLC; and

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

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

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

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

Section 2. The City Council hereby authorizes and approves the adoption, by the Board of Directors of the Tomball Economic Development Corporation, as a specific project for the economic development of the City, an expenditure of the estimated amount of Ten Thousand Dollars (\$10,000.00), to Della Casa Pasta, LLC, in accordance with an economic development agreement by and between the TEDC and Della Casa Pasta, LLC to promote and develop a new or expanded business enterprise, to be located at 22525 Hufsmith-Kohrville Rd., Tomball, Texas 77375.

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

be invalid or unconstitutional; and the City Council of the City of Tomball, Texas, declares that it would have passed each and every part of the same notwithstanding the omission of any such part thus declared to be invalid or unconstitutional, whether there be one or more parts.

PASSED AND APPROVED on first reading this 5th day of February, 2024.

PASSED, APPROVED, AND RESOLVED on second and final reading this 19th day of February, 2024.

Lori Klein Quinn, Mayor

ATTEST:

Tracy Garcia, City Secretary



January 8, 2024

Subject: Request for Support: Della Casa LLC Expansion Project

Dear Tiffany Wooten CEcD
Assistant Director
Tomball Economic Development Corporation,

I trust this message finds you well. I am writing on behalf of Della Casa LLC, a proud member of the Tomball, Texas business community since 2011. Specializing in the manufacturing and distribution of Fresh Pasta products, we currently supply over 150 food facilities across Houston, Dallas, Austin, and San Antonio.

Due to significant growth, we recently upgraded our industrial pasta machines to meet the rising demand for our products. However, our current facility no longer accommodates these expanded production needs. We are excited to share that we have secured a new location that not only addresses our manufacturing requirements but also incorporates a retail component.

With a secured 5-year lease, extendable for two additional 5-year terms, and a buying option, our goal is to eventually acquire the building. Our plans for the new location include constructing a state-of-the-art Pasta Manufacturing facility and adding 1200 square feet of retail space. This retail space will offer customers the opportunity to purchase our fresh pasta products, items from our kitchen, and imported goods that complement our concept. Additionally, we envision a multifunctional customer area for product purchases and observation of pasta production through an open space.

To maximize the potential of our expanded facility, we aim to implement marketing initiatives, including an Instagram-able wall and a demo room for chefs and visitors to sample our products. Internally, we plan to create office spaces, a warehouse, distribution center, and an employee break room.

Understanding the financial challenges associated with construction, especially in today's inflationary environment, we are reaching out to Tomball EDC to explore

potential financial support for our expansion. We firmly believe that our project aligns with the economic growth and community development goals of Tomball, and we are confident that the success of our venture will be mutually beneficial.

We sincerely appreciate your consideration of this request and look forward to the opportunity to discuss how our expansion aligns with the goals of Tomball EDC.

Thank you for your time and consideration.

Best regards,



Luisa Obando
CEO Della Casa LLC
713-498 5928
Luisa@dellacasapasta.com

AGREEMENT

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

This Agreement (the “Agreement”) is made and entered into by and between the **Tomball Economic Development Corporation**, an industrial development corporation created pursuant to Tex. Rev. Civ. Stat. Ann. Art. 5190.6, Section 4B, located in Harris County, Texas (the “TEDC”), and **Della Casa Pasta, LLC** (the “Company”), 1599 Hicks Street, Suite 3, Tomball, TX 77375

WITNESSETH:

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

WHEREAS, the Company proposes to lease a 6,350 square foot existing office warehouse space located at 22525 Hufsmith-Kohrville Rd, Tomball, Texas 77375 (the “Property”), and more particularly described in Exhibit “A,” attached hereto and made a part hereof; and

WHEREAS, the Company currently manufactures and distributes fresh pasta products and proposes to expand its business operations by opening an office warehouse at the Property; and

WHEREAS, the Company proposes to retain ten (10) full-time employees and create eight (8) full time jobs in Tomball in conjunction with the new location; and

WHEREAS, the TEDC agrees to provide to the Company an amount equal to twenty-five percent (25%) of the base monthly rent for the first 12 consecutive months of operation not

to exceed Ten Thousand Dollars (\$10,00.00), in accordance with an established Rental Assistance Incentive; and

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

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

1.

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

2.

The Company also covenants and agrees that construction of the Improvements, the addition of the eight (8) new employees, and obtaining all necessary occupancy permits from the City shall occur within twelve (12) months from the Effective Date of this Agreement. Extensions of these deadlines, due to any extenuating circumstance or uncontrollable delay, may be granted at the sole discretion of the Board of Directors of the TEDC.

3.

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

4.

In consideration of the Company's representations, promises, and covenants, TEDC agrees to grant to the Company an amount equal to twenty-five percent (25%) of the base monthly rent for the first 12 consecutive months of operation not to exceed Ten Thousand Dollars (\$10,000.00). The TEDC agrees to distribute such funds to the Company within thirty (30) days of receipt of a letter from the Company requesting such payment, which letter shall also include: (a) a copy of the City's occupancy permit for the Property; (b) proof that the Company has added the number of employees indicated above to its business operations on the Property, as evidenced by copies of Texas Workforce Commission form C-3 or Internal Revenue Service Form 941; and, (c) an affidavit from the landlord of the Property stating that all rents have been paid in accordance with the terms of the lease agreement for the first twelve consecutive months of operation.

5.

It is understood and agreed by the parties that, in the event of a default by the Company on any of its obligations under this Agreement, the Company shall reimburse the TEDC the full amount paid to the Company by the TEDC, with interest at the rate equal to the 90-day Treasury Bill plus ½% per annum, within thirty (30) days after the TEDC notifies the Company of the default. It is further understood and agreed by the parties that if the Company is convicted of a violation under 8 U.S.C. Section 1324a(f), the Company will reimburse the TEDC the full amount paid to the Company, with interest at the rate equal to the 90-day Treasury Bill plus ½% per annum, within thirty (30) days after the TEDC notifies the Company of the violation.

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

6.

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

7.

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

If to City:	Tomball Economic Development Corporation 401 W. Market Street Tomball, Texas 77375 Attn: President, Board of Directors
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If to Company:	Della Casa Pasta, LLC 1599 Hicks Street, Suite 3 Tomball, TX 77375 Attn: Luisa Obando, CEO and Owner
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8.

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

9.

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

10.

The failure of any party to insist in any one or more instances on the performance of any of the terms, covenants or conditions of this Agreement, or to exercise any of its rights, shall not be construed as a waiver or relinquishment of such term, covenant, or condition, or right with respect to further performance. This Agreement shall bind and benefit the respective Parties and their legal successors and shall not be assignable, in whole or in part, by any party without first obtaining written consent of the other party.

11.

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

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

DELLA CASA PASTA, LLC

By: _____

Name: Luisa Obando

Title: CEO and Owner

ATTEST:

By: _____

Name: _____

Title: _____

TOMBALL ECONOMIC DEVELOPMENT CORPORATION

By: _____

Name: Gretchen Fagan

Title: President, Board of Directors

ATTEST:

By: _____

Name: Bill Sumner Jr.

Title: Secretary, Board of Directors

ACKNOWLEDGMENT

THE STATE OF TEXAS §
 §
COUNTY OF HARRIS §

This instrument was acknowledged before me on the _____ day of _____ 2024, by Luisa Obando, CEO and Owner of Della Casa Pasta, LLC, for and on behalf of said company.

Notary Public in and for the State of Texas

My Commission Expires: _____

(SEAL)

ACKNOWLEDGMENT

THE STATE OF TEXAS §
 §
COUNTY OF HARRIS §

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

Notary Public in and for the State of Texas

My Commission Expires: _____

(SEAL)

Exhibit "A"

Legal Description of Property

Legal Description: Lot 2 Block 1-0 Hufsmith-Kohrville Road 3.78699 AC.
Tract, Hufsmith 2978 replat No.1, Film Code No. 693798

Property Address: 22525 Hufsmith-Kohrville Rd., TX 77375

DRAFT



TO: Honorable Mayor and City Council

FROM: Kelly Violette
Executive Director

MEETING DATE: February 5, 2024

SUBJECT: Della Casa Pasta, LLC

ITEM TYPE: Action

The Tomball Economic Development Corporation has received a request from Luisa Obando, Owner of Della Casa Pasta, for funding assistance through the TEDC's Rental Incentive Program for a food manufacturing wholesale company.

Della Casa Pasta was established in Tomball in 2011 and grew out of the Tomball Farmers Market. The company specializes in the manufacturing and distribution of fresh pasta products and supply over 150 food facilities across Houston, Dallas, Austin, and San Antonio. The company currently operates out of a 2,400 square foot lease space located at 1599 Hicks Street, Suite 3, Tomball, TX.

Per the request letter, their current facility is no longer able to accommodate their current production needs. The company has experienced significant growth and needs to relocate to a larger space that will allow the appropriate space needed for new machinery and retail space. The proposed location is a 6,350 square foot lease space located at 22525 Hufsmith-Kohrville Rd.

In July 2022, the TEDC Board of Directors did take formal action to approve a grant with Della Casa Pasta for rental assistance. Shortly after that meeting the landlord decided he would sell the building she was leasing. Mrs. Obando then applied for assistance through our Job Performance Grant program in November 2022 for the purchase of the building and additional equipment. Due to significant issues getting that building financed, Mrs. Obando had to look for a new location. At this time, both the Rental Incentive and the Job Performance Grant that have been previously approved are inactive and will come off the Active Project Grants Worksheet.

The goal of the TEDC's Rental Incentive Program is to assist in the establishment of new businesses in existing vacant spaces and to stimulate commercial investment in the City of Tomball. In accordance with the Rental Incentive Program Policy, the proposed performance agreement is for 25% of the base monthly rent for the first year of operation only, not to exceed \$10,000 per business.

The lease agreement that was submitted in conjunction with the request letter shows a five-year lease commitment with a monthly rent amount of \$11,050.00 for the first 12 months. The proposed grant amount is \$10,000.00, payable after the first year of operation based on landlord verification of rents paid and meeting the performance agreement criteria.

This project does create primary jobs, if approved, it will go to the Tomball City Council for final approval.



NEW BUSINESS RENTAL INCENTIVE PROGRAM

PART A –BUSINESS OWNER APPLICATION

The New Business Rental Incentive Program seeks to reduce area vacancies and facilitate the establishment of new businesses in previously underutilized areas of the City. The intent of the program is to facilitate business growth and expansion by assisting businesses in leasing space. All grant award decisions of the Tomball Economic Development Corporation (TEDC) Board of Directors are discretionary and final. Through the Program, the TEDC will provide up to 25% of the base monthly rent for the first year of operation only, not to exceed \$10,000 per business.

Business Owner Applicant Information

Name of Business: Della Casa LLC

Current Business Physical Address: 1599 Hicks St

City, State & Zip Tomball TX 77375

Mailing Address: _____

City, State & Zip _____

Business Phone: 7134985928

Business Website: www.dellacasapasta.com

Business Owner Name: Luisa Obandi

Applicant's Name (if different): _____

Position /Title: CEO

Phone and Email: 7134985928 Luisa@dellacasapasta.com

Nature of Business: Food Manufacturer

NAICS Code: 311412

Legal Form of Business:

- ☐ Sole Proprietor
- ☐ Partnership Number of Partners _____
- ☐ Corporation
- ☐ Limited Liability Corp
- ☐ Other _____

Days and Hours of Operation

Days Open: 5

Hours Open: 8 am to 5 pm

Business Start/Opening Date October 2011

Full Time Employees (40 hours per week): 10

Part Time Employees (less than 40 hours per week): 1

No ☐ Yes ☐ (please explain)

Investment Data

Tenant Space Improvement (finish)	\$ <u>692500</u>
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Landlord Space Improvement (finish)	\$	
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Equipment and Display	\$ 220000
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Product Stock (for Opening)	\$ 30000
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Marketing (First Year)	\$ 15000
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Funds invested by owner	\$ 157000
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Funds from other sources*	\$ 982287
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Total estimated cost to move/expand	\$ 1139287
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* Source of Funding and Amounts Landlord allowance, Frost Bank SBA Loan

Address of space to be leased: 22525 Hufsmith-Kohrville Road Tomball TX 77375

Total amount of square feet to be leased and occupied: **6350**

Term of lease (minimum 3 years): 5 years

Gross rental rate \$11050 per month \$1.74 per s.f.

Additional lease terms and other monthly charges: NNN, Purchase option, 5 years extension

Indicate any rate increases:

FINANCIAL NEED DEMONSTRATION: Acceptance into the Rental Incentive Program requires an acceptable explanation of financial need. Use the lines below to explain why and how the rent subsidy is an important factor in opening your business.

Our company is currently undergoing a significant expansion, involving a doubling of our space and the introduction of a retail store.

The funds requested will be primarily allocated to assist in covering rent expenses, ensuring financial stability during the first year if business.

Explain how your business will benefit and enhance the area in which you are locating and how your business will complement other businesses within the area:

Our new concept is poised to become a destination location, offering customers a unique and special food buying experience. Adjacent to our new establishment is Smitty's Smoke House, a renowned provider of meats, smoked and BBQ products, as well as local offerings. In contrast, our focus will be on fresh pasta products crafted in our food manufacturing facility, coupled with a selection of imported Italian goods.

The synergy between our two businesses is evident and will contribute to a distinctive food experience for customers seeking specialty items. Our innovative concept merges a food manufacturing facility with a retail space, allowing customers to witness the production process firsthand and purchase products directly. This integrated approach sets us apart and is sure to attract individuals from beyond the local area. Being situated next door to Smitty's Smoke House provides a strategic advantage, as our businesses complement each other seamlessly. The co-location promises increased foot traffic, benefiting both establishments and creating a dynamic culinary hub. We are confident that this collaborative and unique concept will draw patrons from far and wide, establishing our location as a prominent destination for those seeking an exceptional and immersive food experience.

Certification

By signing below, the Business Owner of record (applicant) understands and agrees to the following:

1. All information contained in this application, the attached exhibits and other materials submitted in connection with this application are true and accurate to the best of the business owner's knowledge. Business owner understands and agrees that false or untruthful information may be grounds for the TEDC to stop processing this application or to withdraw any approval previously obtained based in whole or in part on such false or untruthful statements.
2. The TEDC is under no obligation to approve the request contained in the application. No promises of approval are conveyed with the acceptance of this application.
3. All tax obligations to the City of Tomball are current.
4. The business is currently in good standing with the City, and has no pending municipal code violations.
5. The business is not currently occupying the space with or without a lease in place.
6. The APPLICANT hereby certifies that the APPLICANT 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 under the law to be employed in that manner in the United States. APPLICANT understands and agrees that if, after receiving a Grant, APPLICANT is convicted of a violation under 8 U.S.C. Section 1324a(f), the APPLICANT shall be required to reimburse to the TEDC the grant amount received. Payments must be paid in full within thirty (30) days after the date of written notification by the TEDC. The form of such payment shall be a cashier's check or money order, made payable to the Tomball Economic Development Corporation. The TEDC has the right to recover court costs and reasonable attorney's fees as a result of any civil action required to recover such repayment.

Luisa Obando

Printed Name of Principal Owner

Luisa Obando

Signature

January 16 2024

Date

Please submit the completed application along with a copy of the Proposed Lease Agreement to:

Kelly Violette

Tomball Economic Development Corporation

29201 Quinn Road, Suite B

Tomball, TX 77375

For further questions about the Program, please contact Kelly Violette, Executive Director, at 281.401.4086 or kviolette@tomballtxedc.org.



NEW BUSINESS RENTAL INCENTIVE PROGRAM

PART B – PROPERTY OWNER/LANDLORD APPLICATION

Complete all items carefully and accurately to the best of your knowledge and return with a copy of Proof of Ownership to:

Kelly Violette
Tomball Economic Development Corporation
29201 Quinn Road, Suite B
Tomball, TX 77375

Property Address: 22525 Hufsmith-Kohrville Road, Tomball, Texas 773375

Property Owner of Record: Hufsmith Kohrville Business Park LLC

Mailing Address: 16023 Rudgewick Lane

City, State & Zip Spring, TX 77379

Phone: (346) 241-1000

Email: hkbp@londstardevelopment.me

Name(s) of Authorized Signatories: William J. Lawrence

Name of Management Company: WJL Ltd.

Name of Representative/Contact Person: William J. Lawrence

Management Company Address: 16023 Rudgewick Lane

City, State & Zip Spring, TX 77379

Phone: (281) 401-9777

Email: admin@wjl.me

Name of proposed business at site:

Name of business owner:

DOES THE BUSINESS OWNER OR THE BUSINESS HAVE ANY RELATIONSHIP TO THE
PROPERTY OWNER/LANDLORD? NO ☒ YES ☐ Please explain

SITE & LEASE INFORMATION

Total amount of square feet to be leased and occupied by business: 6,356

Term of lease: 5 years

Gross rental rate \$_____ per month \$ 1.74 per s.f.

Additional lease terms and other monthly charges: This is a NNN lease. The tenant is responsible for their percentage of the CAM (common area maintenance) charges

Indicate any rate increases: 2% net increase per year

Is the subject space currently vacant? Yes ☐ No ☒

If yes, how long has the space been vacant? _____ months

Name of previous tenant: _____

Previous Rental Rate: \$_____ Per Month \$_____ Per Square Foot

CERTIFICATIONS

Are all real estate and personal property taxes due the City of Tomball paid in full?

Subject Property: YES ☒ NO ☐ (Please explain on supplemental sheet)

Other Properties: YES ☐ NO ☐ N/A ☒

Are all City of Tomball water and sewer bills due paid in full?

Subject Property: YES ☒ NO ☐ (Please explain on supplemental sheet)

Other Properties: YES ☐ NO ☐ N/A ☒

Have you been cited for any existing zoning, building or property maintenance code violations that remain uncorrected?

Subject Property: YES ☐ NO ☒ (Please explain on supplemental sheet)

Other Properties: YES ☐ NO ☐ N/A ☒

Are you involved in any litigation with the City of Tomball?

☐ YES (Please explain on supplemental sheet)

☒ NO

By signing below, the Landlord/Property Owner of record understands and agrees to the following:

1. All information contained in this application, the attached exhibits and other materials submitted in connection with this application are true and accurate to the best of the land owner's knowledge. Landowner understands and agrees that false or untruthful information may be grounds for the TEDC to stop processing this application or to withdraw any approval previously obtained based in whole or in part on such false or untruthful statements.
2. The TEDC is under no obligation to approve the request contained in the application. No promises of approval are conveyed with the acceptance of this application.
3. All tax obligations to the City of Tomball are current.
4. The property is currently in good standing with the City, and has no pending municipal code violations.
5. The business is not currently occupying the space with or without a lease in place.

2252 Hufsmith Kohrville Business Park LLC

Printed Name of Property Owner/Landlord



Signature

January 18th, 2024

Date

LEASE

BETWEEN

HUFSMITH – KOHRVILLE BUSINESS PARK, LLC,
a Texas limited liability company

and

DellaCasa, LLC
d/b/a Della Casa Pasta

for property located in:

Hufsmith – Kohrville Business Park

at 22525 Hufsmith-Kohrville Road, Tomball, Texas 77375

SUMMARY OF BASIC LEASE PROVISIONS

In addition to the terms which are defined elsewhere in this Lease, the following terms are used in this Lease:

DATE OF LEASE:	December 6th, 2023												
LANDLORD:	HUFSMITH – KOHRVILLE BUSINESS PARK LLC , a Texas limited liability company												
TENANT:	DellaCasa, LLC, a Texas limited liability company												
TENANT’S TRADE NAME	Della Casa Pasta												
BUILDING:	The approximately 11,098 square foot building with an address of 22525 Hufsmith-Kohrville Road, Tomball, Texas 77375 (“ Building 1 ”)												
LEASED PREMISES:	Approximately 6,356 square feet in Building 1 depicted on <u>Exhibit A</u> .												
TERM:	60 months.												
RENEWAL OPTION:	One (1) renewal option of 60 months.												
BASE RENT DURING TERM:	<table><tr><th><u>Period</u></th><th><u>Monthly Base Rent</u></th></tr><tr><td>Lease Months 1-12</td><td>\$11,050.00</td></tr><tr><td>Lease Months 13-24</td><td>\$11,271.00</td></tr><tr><td>Lease Months 25-36</td><td>\$11,496.00</td></tr><tr><td>Lease Months 37-48</td><td>\$11,726.00</td></tr><tr><td>Lease Months 49-60</td><td>\$11,961.00</td></tr></table>	<u>Period</u>	<u>Monthly Base Rent</u>	Lease Months 1-12	\$11,050.00	Lease Months 13-24	\$11,271.00	Lease Months 25-36	\$11,496.00	Lease Months 37-48	\$11,726.00	Lease Months 49-60	\$11,961.00
<u>Period</u>	<u>Monthly Base Rent</u>												
Lease Months 1-12	\$11,050.00												
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Lease Months 25-36	\$11,496.00												
Lease Months 37-48	\$11,726.00												
Lease Months 49-60	\$11,961.00												
BASE RENT DURING RENEWAL TERM:	<table><tr><td>Lease Months 61- 72</td><td>\$12,200.00</td></tr><tr><td>Lease Months 73-84</td><td>\$12,444.00</td></tr><tr><td>Lease Months 85-96</td><td>\$12,693.00</td></tr><tr><td>Lease Months 97-108</td><td>\$12,947.00</td></tr><tr><td>Lease Months 109-120</td><td>\$13,206.00</td></tr></table>	Lease Months 61- 72	\$12,200.00	Lease Months 73-84	\$12,444.00	Lease Months 85-96	\$12,693.00	Lease Months 97-108	\$12,947.00	Lease Months 109-120	\$13,206.00		
Lease Months 61- 72	\$12,200.00												
Lease Months 73-84	\$12,444.00												
Lease Months 85-96	\$12,693.00												
Lease Months 97-108	\$12,947.00												
Lease Months 109-120	\$13,206.00												

GUARANTOR:

Luisa Obando and any other party who guarantees Tenant's build-out financing with Frost Bank. Such party to be added as a guarantor.

BROKERS:

Landlord's Broker: N/A
Tenant's Broker: N/A

INTERPRETATION:

In the event of any conflict between this Summary of the Basic Lease Provisions ("**Summary**") and the balance of this Lease (including exhibits), the latter shall control. Each of the terms defined and set forth in this Summary shall be construed in conjunction with the remainder of this Lease, particularly the referenced portions thereof.

LEASE

This Lease (“**Lease**”) is entered into by **HUFSMITH-KOHRVILLE BUSINESS PARK LLC**, a Texas limited liability company, as “**Landlord**” or its assigns, and DellaCasa, LLC, a Texas limited liability company, doing business as Della Casa Pasta as “**Tenant**.”

SECTION 1. BUSINESS TERMS AND AGREED DEFINITIONS

The following terms shall have the indicated meanings when used in this Lease, unless the context otherwise clearly requires.

A. Buildings. Collectively, the four (4) buildings to be located on the Land, and the parking, drives and outside storage area (if any) which service the Buildings, as shown on the site plan attached hereto and made a part hereof as **Exhibit “B”**. The Buildings are located in the location shown on **Exhibit “B”** with minor variances, which commonly occur in connection with layouts of buildings and/or the pouring of foundations. The estimated aggregate square footage of the Building(s) is **11,098** square feet.

B. Land. The Land described on **Exhibit “A”**, which is attached hereto and made a part hereof.

C. Leased Premises. That portion of Building 1 comprising approximately 6,356 square feet, including office space and warehouse space (as described on **Exhibit “B”**, attached hereto and made a part hereof) located on the Land and known as Suite **1-D**.

D. Commencement Date. The earlier to occur of (a) 120 days after the Leased Premises are delivered to Tenant in accordance with the terms of this Lease and (b) the date upon which Tenant obtains Tenant’s Permits.

E. Term. The period that begins on the Commencement Date and ends if the Commencement Date is not the first day of the calendar month, on the last day of the sixtieth (60th) full calendar month following the Commencement Date, unless sooner terminated in accordance with the provisions of this Lease.

F. Base Rent. Base Rent shall be paid according to the following schedule, subject to the provisions of Section 4 hereof. As used herein, “**Lease Month**” shall refer to each full calendar month of the Term, commencing as of the Commencement Date. Notwithstanding the foregoing, in the event that the Commencement Date occurs on a day other than the first day of a calendar month, the first Lease Month shall commence the first day of the calendar month following the month in which the Commencement Date occurs.

PERIOD	ANNUAL BASE RENT	MONTHLY INSTALLMENTS OF BASE RENT
Lease Months 1-12	\$132,600.00	\$11,050.00
Lease Months 13-24	\$135,252.00	\$11,271.00
Lease Months 25-36	\$137,952.00	\$11,496.00
Lease Months 37-48	\$140,712.00	\$11,726.00

PERIOD	ANNUAL BASE RENT	MONTHLY INSTALLMENTS OF BASE RENT
Lease Months 49-60	\$143,532.00	\$11,961.00

Notwithstanding anything to the contrary contained herein, provided that no uncured Event of Default then exists beyond any applicable notice and cure period defined within this Lease, Base Rent will be abated for Lease Months 1, 2, and 18. If an Event of Default continues to exist beyond the applicable notice and cure period defined herein, then Landlord, in addition to all other remedies available to Landlord, may elect to terminate such abatement of Base Rent.

G. Additional Rent: (Monthly). In addition to Base Rent, Tenant shall be responsible for Tenant's Proportionate Share of Operating Costs as set forth in Section 5 below. The **initial estimate** of Tenant's Proportionate Share of Operating Costs is \$2,224.00 per month. Notwithstanding the abatement of Base Rent for Lease Months 1, 9, and 18 provided for in Section 1.F. above, there will be no abatement of Additional Rent.

H. Pre-Payment of Security Deposit. Attached to this Lease is a check in the amount of \$27,440.00 (the "Security Deposit").

I. Permitted Use. Office, distribution and warehouse use; kitchen operations; food preparation and distribution; food storage; pasta and food manufacturing; education and pasta school; wine tasting and demonstrations; preparation and cooking of pasta products; sales including retail sales of food products including but not limited to pasta products, food items, dinners, family meals, wine, spirits, beer, gifts, tabletop items, catered meals, bread, desserts, cheeses, grab and go items, imported food items, and various items associated with food and gift markets; and a fast-casual café including serving wine, food and gift market. Notwithstanding the foregoing, any classes, schools, demonstrations, networking events and vendor-related activities shall only occur after 5:00 p.m. and on weekends. Further, Landlord reserves the right to prohibit such events to the extent such events cause parking issues, traffic flow issues or is deemed by Landlord, in Landlord's sole discretion, a nuisance to the Commercial Park. Tenant may not use the Leased Premises or any portion thereof for any of the uses described on **Exhibit "G"** ("**Prohibited Uses**"). Not more than once per year and subject to Landlord's approval of the time, date, location and signage, Tenant may host curbside events, food markets, and special sale days with outdoor and temporary signage outside the building.

J. Tenant's Address. Tenant's address for notice purposes per Section 18 is:

Tenant Name: DellaCasa, LLC
Attention: Luisa Obando
Address: 10 Waterfall Way
City, State, and Zip: Tomball, Texas 77375
Email: luisa@dellacasapasta.com

K. Commissions. N/A

L. Landlord's Address. Landlord's address for notice purposes per Section 18 is:

Hufsmith – Kohrville Business Park LLC
Attn: William J. Lawrence

16023 Rudgewick Lane
Spring, Texas 77379
Email: admin@wjl.me

M. Reserved

N. Commercial Park. The Leased Premises is part of a commercial park known as Hufsmith – Kohrville Business Park (the “**Commercial Park**”). The Commercial Park consists of the Land, any existing or future buildings and common areas located thereon.

O. Tenant’s Proportionate Share. Shall initially mean 14.41%, or the percent derived by dividing the square footage of the Leased Premises by the total number of square feet of rentable space within the Buildings. If Landlord constructs additional buildings, or adds on to any of the buildings, on the Land, Tenant’s Proportionate Share set forth in this section shall be adjusted to reflect that Landlord has modified the square footage of the buildings on the Land.

P. Guarantor. Guarantor shall mean Luisa Obando and any other party that guarantees Tenant’s build-out financing with Frost Bank. Such party to be added as a guarantor of this Lease. Failure to add such party as a guarantor of this Lease shall be an immediate of Event of Default hereunder.

SECTION 2. LEASED PREMISES; COMMON AREAS; PARKING; INSPECTION PERIOD.

A. Landlord hereby leases the Leased Premises to Tenant and Tenant hereby leases the Leased Premises from Landlord.

B. The Leased Premises shall be leased by Landlord to Tenant in its existing condition and state of repair, on an “**AS-IS**,” “**WHERE-IS**” basis and Landlord makes no warranty of any kind, express or implied, with respect to the Leased Premises, the Buildings or the Common Areas (without limitation, Landlord makes no warranty as to the habitability or fitness for a particular purpose or use of the Leased Premises). Except for Landlord’s Work, Landlord shall have no obligation to perform any construction work at the Leased Premises. Landlord will, however, be responsible for Landlord’s repair obligations described in Section 10.

C. Tenant’s construction of its initial improvements or alterations for its initial occupancy within the Leased Premises (“**Tenant’s Work**”) shall comply with the terms of **Exhibit “C”** attached hereto. Landlord will reimburse Tenant up to \$158,900 (herein, the “**Allowance**”) for Tenant’s Work. The Allowance will be paid directly by Landlord to Tenant’s contractors and/or vendors in monthly draws. The payment of such draws shall be conditioned upon Landlord’s receipt of partial and/or final lien waivers with respect thereto for the work completed to date, in form and substance reasonably satisfactory to Landlord.

D. Common Areas. Landlord hereby grants to Tenant during the term of this Lease, a license to use, in common with the others entitled to such use, the Common Areas as they from time to time exist, subject to the rights, powers and privileges herein reserved to Landlord. The term “**Common Areas**” as used herein will include all areas and facilities outside the Leased Premises that are provided and designated for general use and convenience of Tenant and other tenants within the Buildings and Land. Common Areas may include but are not limited to pedestrian sidewalks, landscaped areas, roadways, parking areas, and rights of way, if any. All Common Areas and other facilities in or about the Buildings provided by Landlord shall be subject to the exclusive control and management of Landlord.

E. Parking. Tenant shall be entitled to park in common with other Building tenants of Landlord and shall be entitled to utilize at least fifteen (15) assigned tenant parking spaces, which parking

spaces are shown on **Exhibit “B-1”** attached hereto (“**Tenant’s Exclusive Parking Spaces**”), but leaving a corridor for the passage of other vehicles. In addition, Tenant shall have the right to utilize five (5) unassigned parking spaces in the Common Areas. Tenant shall be responsible for all signage for Tenant’s Exclusive Parking Spaces. Further, Tenant shall be solely responsible for managing and monitoring Tenant’s Exclusive Parking Spaces and shall have the right to have cars parked in Tenant’s Exclusive Parking Spaces towed from such spaces. No Tenants may park within any common drives. Tenant agrees not to overburden the parking facilities and agrees to cooperate with Landlord and other tenants of the Building in the use of parking facilities. Landlord reserves the right in its absolute discretion to determine whether parking facilities are becoming crowded and, in such event, to allocate parking spaces among Tenant and other tenants of the Building. Landlord may designate parking spaces in the Common Areas for the handicapped visitors to the Building and other tenants. Spaces directly in front of Tenant business shall be designated for Tenant use. Tenant shall be allowed to park its branded vans in front of the building.

G. **Inspection Period.** Tenant shall have forty-five (45) days after the Date of Lease (the “**Inspection Period**”), in which to inspect and investigate the Leased Premises and to review and evaluate any other matter relating to Tenant’s anticipated use of the Leased Premises. Tenant may terminate the Lease by written notice given to Landlord on or before 5:00 p.m. of the last day of the Inspection Period for any reason, in which event the parties shall have no further rights or liabilities thereunder. Upon any such termination, Landlord will promptly reimburse Tenant’s Security Deposit.

SECTION 3. DELIVERY DATE AND CONDITIONS

Landlord will tender possession of the Leased Premises upon Landlord’s receipt of a certificate of completion or compliance from the applicable governing body for Building 1 (the “**Delivery Date**”). Tenant shall execute a Commencement Date Agreement in the form attached hereto as **Exhibit “I”** acknowledging the Commencement Date of this Lease; provided, however, that failure by Tenant to execute the same shall in no manner affect or delay the actual Commencement Date of this Lease.

If the Delivery Date has not occurred on or before February 29, 2024, other than as a result of acts of God, force majeure (as defined in Section 24.N of this Lease) or delays caused by Tenant (the “**Outside Tender Date**”), Base Rent will be abated one (1) days for each day that the Delivery Date occurs after the Outside Tender Date. Notwithstanding the previous sentence, if the Delivery Date has not occurred within sixty (60) days after the Outside Tender Date, other than as a result of acts of God, force majeure (as defined in Section 24.N of this Lease) or delays caused by Tenant then Tenant may terminate this Lease upon thirty (30) days’ advance written notice to Landlord; provided, however, that if the Tender Date occurs during such 30-day period, such termination shall be deemed rescinded and this Lease will continue in full force and effect. The Term of this Lease shall be extended for each day that Base Rent is abated under this Section 3.

SECTION 4. RENT.

All sums required to be paid by Tenant under this Lease constitute “rent.” The term “rent” or “rental”, when used in this Lease, includes Base Rent, Additional Rent and all other sums payable hereunder. Tenant must pay all rent by utilizing Landlord’s online payment portal. If Tenant fails to timely pay any amounts due under this Lease when due or if any payment of Tenant is returned to Landlord by the institution on which it was drawn, Landlord after providing written notice to Tenant may require Tenant to pay subsequent amounts that become due under this Lease in certified funds. This paragraph does not limit Landlord from seeking other remedies under this Lease, at law, or in equity for Tenant’s failure to make timely payments of rent with good funds. No payment made by Tenant or received by Landlord in an amount less than the amount herein stipulated shall be deemed to be other than a partial payment, nor shall any endorsement or statement on any check or any letter accompanying any check or payment as rent or

any other sum payable hereunder be deemed an accord and satisfaction, and Landlord may accept any such check or payment without prejudice to Landlord's right to recover the balance of such amount from Tenant or to pursue any other remedy in this Lease or by law provided.

Beginning with the Commencement Date and continuing thereafter until the expiration of the Term (as the same may be extended), Tenant agrees to pay Landlord the rent provided above in advance, without notice or demand, on the first (1st) day of every month during the Term of this Lease. Time is of the essence in payment of all rent and other amounts due to Landlord hereunder. If any monthly rent payment is not received by Landlord by the fifth (5th) day of the month in which such rent payment was due, Tenant shall pay, as Additional Rent, five percent (5%) of such amount due, and such late charge shall be due upon receipt of Landlord's written demand. Tenant shall also pay to Landlord, upon demand, \$500.00 for each check tendered to Landlord in payment of rent or any other payment due Landlord hereunder, which is returned uncollected to Landlord. All rent shall be prorated for any partial month.

SECTION 5. ADDITIONAL RENT.

A. Tenant's Obligation. This Lease is what is commonly called a "Net, Net, Net Lease", it being understood that Landlord shall receive the Base Rent provided for herein free and clear of any Operating Costs (defined below). Tenant shall pay to Landlord in addition to Base Rent, the following, which shall be collectively referred to herein as "**Additional Rent**":

1. Operating Costs.

(a) Prior to the commencement of the Term of this Lease, and prior to the commencement of each calendar year during the Term of this Lease, Landlord may, at its option, provide Tenant with a then current estimate of Operating Costs for the upcoming calendar year, and thereafter Tenant shall pay, as Additional Rent, in monthly installments in accordance with this Section 5, Tenant's Proportionate Share of the Landlord's estimate of the Operating Costs for the calendar year in question. Payments of Tenant's Proportionate Share of the Landlord's estimate of the Operating Costs shall be due and payable at the same time as Base Rent in accordance with Section 4 of this Lease. Landlord reserves the right to revise its estimate of Operating Costs from time to time during the calendar year by giving Tenant written notice to that effect. Thereafter, Tenant shall pay Additional Rent, in each of the remaining months of that year, in accordance with the revised estimate. The failure of Landlord to estimate Operating Costs and bill Tenant on a monthly basis shall in no event relieve Tenant of its obligation to pay the Tenant's Proportionate Share of Operating Costs. "**Operating Costs**" means the aggregate of all expenses paid or incurred by or on behalf of Landlord, whether structural, non-structural, foreseen or unforeseen, relating to the ownership, maintenance, repair, management and operation of the Buildings and Land and any sidewalks or any other areas related to the Buildings and Land which Landlord has a repair or maintenance obligation, determined on an accrual basis in accordance with generally accepted industry accounting standards, including, but not limited to, the following:

1) Wages and salaries of all employees engaged in the operation and maintenance of the Buildings and Land, including taxes, insurance and benefits relating thereto; provided, however, to the extent that such employees are engaged in the operation or maintenance of other projects, the wages and salaries of such employees shall be equitably allocated among all such projects such that only that portion of the wages and salaries of such employees allocable to the Buildings shall be included for purposes of calculating Operating Costs;

2) Costs of all supplies and materials used in the operation, maintenance, repair and management of the Buildings and Land; provided, however, to the extent that such supplies and materials are used in the operation or maintenance of other projects, the cost of such supplies and materials shall be equitably allocated among all such projects such that only that portion of the cost of the supplies and materials allocable to the Buildings shall be included for purposes of calculating Operating Costs;

3) Costs of water, sewage, power, heating, lighting, air conditioning, ventilating, and other utilities furnished in connection with the operation of the Buildings and Land (excluding any costs billed to specific tenants);

4) Costs of all maintenance and service agreements for the Buildings and Land, including, but not limited to, security service, alarm service, window cleaning service, janitorial service, landscape maintenance, pest control and elevator maintenance;

5) Costs to maintain and repair the Structural Members (as defined in Section 10.A.) of the Buildings as well as the common elements of the Building;

6) Costs of all insurance carried by Landlord relating to the Buildings and Land, including, but not limited to, fire and extended coverage insurance, rental interruption insurance and liability insurance applicable to the Buildings and Land and Landlord's personal property used in connection therewith, together with any deductibles thereon, if applicable, together with any costs incurred by Landlord to recover insurance proceeds or settle insurance claims. In the event that during any operating year all or any part of such coverage is written under a "blanket policy" or otherwise in such manner that Landlord was not charged a specific insurance premium applicable solely to the Buildings and Land, then in such event, the amount considered to be the insurance premiums with respect to such coverage for such operating year shall be determined in good faith by Landlord. If the insurance policies maintained by Landlord with respect to the Property contain a deductible, then Tenant, in the event of a loss, shall pay to Landlord Tenant's Proportionate Share thereof, based upon the amount of such deductible. Tenant's Share of such deductible amount shall be payable to Landlord within ten (10) days following receipt from Landlord of a statement therefor and payment thereof by Tenant shall be a condition precedent to Landlord's obligations to repair or restore the Leased Premises.

7) Costs of repairs and maintenance of the parking facilities and landscaping of the Buildings and Land;

8) Management fees not to exceed six percent (6%) of the gross rent generated by the Buildings ("**Management Fees**");

9) All net expenses properly allocable to any operating year for any capital improvement or structural repair incurred to reduce or limit increases in Operating Cost, or by any change in the laws, rules, regulations or orders of any governmental or quasi-governmental authority having jurisdiction or expenses resulting from normal repair or maintenance, which expenses shall be repaid in equal monthly installments together with interest at applicable rates over the lesser of the useful capital life of the capital improvement or structural repair or the operational savings payback period;

10) All Taxes relating to the Buildings and Land. For purposes hereof, the term “**Taxes**” means all taxes, impositions, assessments and all other governmental charges, if any, which are levied, assessed or imposed upon or become due and payable in connection with, or a lien upon, the Buildings or Land, or the operation thereof, (excepting federal and state taxes on income) including taxes levied by present or future taxing authorities and all taxes of whatsoever nature that are imposed in substitution for, or in lieu of, any of the taxes, impositions, assessments or other charges included in this definition of Taxes and including without limitation, any tax on rents, or other tax levied against Landlord or the Leased Premises in lieu of supplementing all or any portion of the foregoing taxes. Notwithstanding the foregoing, however, if in lieu of the whole or any part of any taxes or assessments levied, assessed or imposed on real estate and the improvements thereon, there shall be levied, assessed or imposed on Landlord or the Leased Premises a capital levy or other tax directly on the rents received therefrom and/or a franchise tax, assessment, levy or charge measured by or based, in whole or in part, upon such rents, then all such taxes, assessments, levies or charges, or the part thereof so measured or based, shall be deemed to be included within the term “Taxes” for the purpose hereof. However, Taxes excludes the portion, if any, of ad valorem taxes against the Leased Premises that is paid by tenants as a separate charge pursuant to Section 5.A.2 of this Lease.

11) Any charges incurred by Landlord as Owner of the Land under any declaration of covenants, conditions and restrictions covering the Commercial Park (“**POA Charges**”). Notwithstanding anything to the contrary contained herein, Landlord shall have the right to cause Tenant’s Proportionate Share of the POA Charges to be collected directly from the Tenant by the POA on an annual basis; and

12) Legal and accounting expenses incurred with respect to the Buildings and Land, but excluding legal expenses related to the collection of rent or the sale, leasing or financing of the Buildings and Land.

(b) Expressly excluded from the definition of the term Operating Costs are:

1) Any and all collection costs, including legal fees and bad debt losses or reserves;

2) Replacement of capital investment items (other than those set forth in Section 5.A.1(a)(8) above);

3) Costs actually reimbursed by insurance proceeds;

4) Rent and similar commissions, excluding Management Fees set forth in 5.A.1(a)(7) above, advertising, and legal expenses related to negotiating and enforcing leases;

5) The cost of any repair made by Landlord because of the total or partial destruction of the Leased Premises or Buildings or the condemnation of a portion of the Leased Premises or Buildings;

6) Specific costs billed to and paid by specific tenants;

- 7) Depreciation;
- 8) Principal, interest, and other costs directly related to financing; and
- 9) Landlord's general corporate overhead and general administrative expenses.

(c) Within five (5) months after the end of each calendar year during the Term of this Lease, Landlord shall send a statement to Tenant setting forth the Operating Costs in reasonable detail for that year. If Tenant's Proportionate Share of Operating Costs exceeds the installments paid by Tenant under this Section 5.A.1, Tenant shall pay to Landlord the difference between Tenant's Proportionate Share of Operating Costs for that year and the aggregate amount paid by Tenant on account of Tenant's Proportionate Share for that year. The payment shall be made within thirty (30) days after Landlord renders the statement. If the installments paid by Tenant under this section exceed Tenant's Proportionate Share of Operating Costs, Landlord shall credit any excess to Tenant's next calendar year estimated payments.

(d) Notwithstanding the foregoing, commencing with the first full calendar year after the first anniversary of the Commencement Date, Tenant's Proportionate Share of Controllable Expenses (defined below) shall not increase by more than eight percent (8%) over Tenant's Proportionate Share of Controllable Expenses in the previous calendar year, on a cumulative and compounded basis. The term "Controllable Expenses" means all Operating Costs but excludes all expenses relating to the cost of utilities, security expenses, insurance, real estate taxes and assessments, and other expenses that are deemed by industry standards to be uncontrollable to the extent same constitute Operating Costs.

2. Other Taxes. Additionally, Tenant shall pay the full amount of all taxes, assessments, impositions, levies, charges, excises, fees, licenses and other sums levied, assessed, charged or imposed by any governmental authority or other taxing authority upon Tenant's leasehold interest under this Lease and all alterations, additions, fixtures, including Removable Trade Fixtures (hereafter defined), inventory and other property installed or placed or permitted at the Leased Premises by Tenant. Within thirty (30) days after notice from Landlord, Tenant shall furnish Landlord a true copy of receipts received by Tenant from the governmental authority or other taxing authority assessing such charge evidencing such payment.

3. Audit. Within 30 days after Landlord furnishes its statement of actual Operating Costs for any calendar year, Tenant may, at its expense, elect to audit Landlord's Operating Costs, subject to the following conditions: (1) there is no uncured Event of Default under this Lease; (2) the audit shall be prepared by an independent certified public accounting of recognized national or regional standing; (3) in no event shall any audit be performed by a firm retained on a "contingency fee" basis; (4) the audit shall commence within 10 days after Landlord makes Landlord's books and records available to Tenant's auditor and shall conclude within 10 days after commencement; (5) the audit shall be conducted during Landlord's normal business hours at the location where Landlord maintains its books and records and shall not unreasonably interfere with the conduct of Landlord's business; (6) Tenant and its audit firm shall treat any audit in a confidential manner and shall each execute Landlord's confidentiality agreement for Landlord's benefit prior to commencing the audit; and (7) the audit firm's audit report shall, at no charge to Landlord, be submitted in draft form for Landlord's review and comment before the final approved audit report is delivered to Landlord, and any reasonable comments by Landlord shall be incorporated into the final audit report. This paragraph shall not be construed to limit, suspend, or abate Tenant's obligation to pay Rent when due, including Additional Rent. Landlord shall credit any overpayment determined by the final approved audit report against the next rent due and owing by Tenant or, if no further rent is due, refund such overpayment directly to Tenant within 30 days of determination. Likewise, Tenant shall pay Landlord

any underpayment determined by the final approved audit report within 30 days of determination. The foregoing obligations shall survive the expiration or termination of this Lease. The right to audit granted hereunder is personal to the initial Tenant named in this Lease and shall not be available to any subtenant under a sublease of the Leased Premises. If the audit proves that Landlord's calculation of Operating Costs for the calendar year under inspection was overstated by more than 10%, then, after verification, Landlord shall pay Tenant's actual reasonable out-of-pocket audit and inspection fees not to exceed \$2,500.00 (but specifically excluding any travel and lodging expenses) applicable to the review of said calendar year statement within 30 days after receipt of Tenant's invoice therefor.

SECTION 6. SECURITY DEPOSIT

Tenant shall deposit the Security Deposit with Landlord to secure Tenant's faithful performance of all of Tenant's obligations under this Lease, in the amount shown in Section 1.H. The Security Deposit shall be retained by Landlord throughout the Term of this Lease. Tenant agrees that if it should fail to pay rent when it is due, the Security Deposit may be applied by Landlord to the unpaid rent. Also, if Tenant fails to comply with any of the other obligations of Tenant under the Lease, Landlord may apply the Security Deposit to damages suffered by Landlord resulting from Tenant's noncompliance. Landlord shall not be obligated to apply the Security Deposit in the manner stated above, but may do so in addition to pursuing any of the other remedies available to Landlord under the Lease and the law on account of Tenant's noncompliance with Tenant's obligations. If Landlord should apply some or all of the Security Deposit to damages suffered by Landlord resulting from Tenant's noncompliance with its obligations, Tenant agrees to restore the Security Deposit upon receipt of Landlord's written demand. No interest shall accrue on the Security Deposit. Landlord may commingle the Security Deposit with other funds. If Tenant complies with all of Tenant's obligations, the Security Deposit shall be returned to Tenant within thirty (30) days after the end of the Term or any Renewal Term, less any amounts that may then be due from Tenant to Landlord as set forth in an itemized list to be provided by Landlord describing the reasons for withholding any portion of the Security Deposit.

SECTION 7. SERVICES AND UTILITIES.

A. Services. Landlord shall at Landlord's expense (except as otherwise provided herein) maintain the Common Areas so that they are clean and free from accumulations of debris, filth, rubbish and garbage. The manner in which such Common Areas shall be so maintained, and the expenditures for such maintenance, shall be at the sole discretion of Landlord.

Landlord reserves the right from time to time to (a) make changes in the shape, size, location, number and extent of the land and improvements which constitute the Common Areas, provided that Landlord shall not impair the Tenant's ability to operate its business, except temporary impairments required by said changes; (b) make such improvements, alterations and repairs to the Common Areas as may be required by governmental authorities or by utility companies servicing the Buildings; and (c) construct, maintain and operate lighting and other facilities on all said areas and improvements and to police the same.

The use of the Common Areas shall be subject to such reasonable regulations and changes therein as Landlord shall make from time to time, including (but not by way of limitation) the right to close from time to time, if necessary, all or any portion of the Common Areas to such extent as may be legally sufficient, in the opinion of Landlord's counsel, to prevent a dedication thereof or the accrual of rights of any person or of the public therein; provided, however, Landlord shall do so at such times and in such manner as shall minimize any disruption to Tenant. **Landlord shall have no liability to Tenant, its employees, agents, contractors, invitees, or licensees for losses due to theft or burglary, or for damages done by unauthorized persons in the Leased Premises or in or at the Building EVEN IF THE SAME RESULTS FROM THE NEGLIGENCE (BUT NOT THE GROSS NEGLIGENCE OR WILLFUL MISCONDUCT) OF LANDLORD.**

B. Utilities. Tenant shall pay all costs incidental to rubbish removal, water, sewer, heat, air conditioning and electric service for the Leased Premises directly to the service provider; provided, however, in the event such utilities are not separately metered by the service provider, Landlord reserves the right to install sub-meters and bill Tenant directly for the utilities utilized by Tenant in an equitable manner, either on a monthly basis, or in such other manner as Landlord may reasonably determine. Tenant shall maintain all lighting fixtures in the Leased Premises and shall replace all bulbs and ballasts.

C. Access to Premises. Landlord reserves and shall at all times have the right to enter the Leased Premises at all reasonable times after reasonable prior notice to inspect same, to supply any service to be provided by Landlord to Tenant hereunder, to show the Leased Premises to prospective purchasers, mortgagees or tenants, and to alter, improve or repair the Leased Premises and any portion of the Buildings, without abatement of Base Rent or Additional Rent, and may for that purpose erect, use and maintain, scaffolding, pipes, conduits and other necessary structures in and through the Leased Premises where reasonably required by the character of the work to be performed, provided that the entrance to the Leased Premises shall not be blocked thereby, and further provided that the business of Tenant shall not be interfered with unreasonably. Tenant hereby waives any claim for damages for any injury or inconvenience to or interference with Tenant's business, any loss of occupancy or quiet enjoyment of the Leased Premises or any other loss occasioned thereby. For each of the aforesaid purposes, Landlord shall at all times have and retain a key with which to unlock all of the doors in, upon and about the Leased Premises, excluding Tenant's vaults and safes, or special security areas (designated in advance), and Landlord shall have the right to use any and all means that Landlord may deem necessary or proper to open said doors in an emergency, in order to obtain entry to any portion of the Leased Premises.

D. Interruption of Services. Landlord shall not be liable for any interruption in or failure to furnish any services or utilities, and Tenant shall not be entitled to any damages resulting from such failure nor shall such failure relieve Tenant of the obligation to pay the Base Rent and Additional Rent reserved hereunder or constitute or be construed as a constructive or other eviction of Tenant. Notwithstanding the foregoing, or anything to the contrary contained in this Lease, in the event of any interruption in or failure to furnish any services or utilities, the restoration of which is within Landlord's reasonable control, and provided such interruption is through no fault of Tenant, Tenant's agents, representatives, successors, assigns, shareholders, employees, contractors, directors or officers, and such failure (i) renders the Leased Premises untenable (i.e., Tenant cannot reasonably conduct its business in its ordinary course therein), and (ii) continues for more than ten (10) consecutive business days after written notice from Tenant, then Base Rent hereunder shall be abated until such services or utilities are restored or the Leased Premises are otherwise rendered tenable again. In the event any governmental entity promulgates or revises any statute, ordinance or building, fire or other code or imposes mandatory or voluntary controls or guidelines on Landlord or the Building or any part thereof, relating to the use or conservation of energy, water, gas, light or electricity or the reduction of automobile or other emissions or the provision of any other utility or service provided with respect to this Lease or in the event Landlord is required or elects to make alterations to any part of the Building in order to comply with such mandatory or voluntary controls or guidelines, Landlord

may, in its sole discretion, comply with such mandatory or voluntary controls or guidelines or make such alterations to the Building. Such compliance and the making of such alterations shall in no event entitle Tenant to any damages, relieve Tenant of the obligation to pay the full Base Rent and Additional Rent reserved hereunder or constitute or be construed as a constructive or other eviction of Tenant.

E. No Eviction. Landlord and its agents and representatives shall have the right to enter upon the Leased Premises for any and all of the purposes set forth in this Section and may exercise any and all of the foregoing rights without being deemed guilty of a forcible or unlawful entry into, or a detainer of, the Leased Premises, or an eviction, actual or constructive of Tenant from the Leased Premises, or any portion thereof, and without incurring, any liability to Tenant therefor.

SECTION 8. USE.

Tenant shall use the Leased Premises solely for the Permitted Use, as defined herein. Tenant shall not use the Leased Premises, or permit their use, for any other purpose, or for any Prohibited Use described in **Exhibit "G"**, without Landlord's express written consent. Tenant shall obtain, at its own cost and expense, any and all licenses and permits necessary for such use, including a Certificate of Occupancy for the Leased Premises ("**Tenant's Permits**"). Tenant shall comply with all restrictions and easements applicable to the Leased Premises, and with all federal, state, municipal, and other laws, ordinances, rules and regulations of any governmental authority that apply to the use, construction, renovation, repair, operation, or occupancy of the Leased Premises, or to Tenant's business, or which pertain to health or the environment. Outside storage, other than within slatted fenced areas, is prohibited without Landlord's prior written consent. Tenant shall not install, remove or alter the fixtures, equipment and facilities located in the Leased Premises and shall pay the cost of alterations to the Leased Premises that may be required to comply with all such restrictions, easements, laws, ordinances, rules and regulations. Without limiting the generality of the foregoing, Tenant shall fully comply with the provisions relating to "Hazardous Substances" set forth in **Exhibit "F"** and Prohibited Uses set forth in **Exhibit "G"**. Tenant shall not engage in any activity or permit any nature of construction by Tenant or any other condition at the Leased Premises which would cause Landlord's fire and extended coverage insurance to be canceled, or the rate therefor increased or cause the disallowance of any sprinkler credits, if the Buildings are sprinkled. Tenant shall comply with such safety recommendations and reasonable loss prevention and loss reduction recommendations as Landlord or Landlord's insurance carriers (or both) may, from time to time, request; and Tenant shall not make any unlawful use of the Leased Premises or permit any unlawful use thereof; and Tenant shall not commit any act which is a significant public nuisance or unreasonable annoyance to Landlord or to other tenants or occupants of the Buildings or Commercial Park, or which might in the good faith judgment of Landlord, injure or depreciate the Leased Premises.

SECTION 9. SIGNS.

Tenant shall be responsible for the purchase, installation, and maintenance (in accordance with standards determined by Landlord from time to time) of any sign in the Leased Premises or on the exterior of the Leased Premises; provided, Tenant shall not install or maintain any sign on the exterior of the Leased Premises, or which may be viewed from the outside of the Leased Premises, without first obtaining Landlord's written consent, which shall not be unreasonably withheld. Subject to Landlord's prior written consent, including the style, size, graphics and messages to be shown thereon, Tenant may use decals to cover the Leased Premises' front and side windows. Any sign (or decal) erected or affixed upon the Leased Premises must advertise and relate to occupants of the Leased Premises and not any other parties. Tenant shall be responsible for the removal of all signs upon termination of Tenant's rights to possession hereunder, all installations and removal of signs shall be made in such a manner as to avoid injury or defacement of any building or other improvement, and Tenant shall be responsible for repair of any injury or defacement (including without limitation, discoloration caused by such installation and/or removal).

SECTION 10. REPAIRS

A. Landlord's Obligations. Landlord will maintain all structural components ("Structural Members") of the Buildings, including, without limitation, the roof (but specifically excluding the roof membrane), foundation, exterior load-bearing walls, if any (excluding exterior windows and doors), the structural floor slabs, plumbing and sewer systems outside the Building and not serving the Leased Premises exclusively, and all other structural elements of the Leased Premises, as well as the common elements of the Buildings, in good repair, reasonable wear and use excepted. Maintenance and repair expenses caused by acts or omissions of Tenant or Tenant's agents, employees, invitees, on contractors, shall be paid directly to Landlord by Tenant upon demand plus an administrative charge in an amount equal to ten percent (10%) of such costs, and shall not constitute an Operating Cost. Landlord shall not be liable for and, except as expressly otherwise provided Section 11 and Section 12 hereof, there shall be no abatement of Base Rent or Additional Rent with respect to any injury to or interference with Tenant's business arising from any repairs, maintenance, alteration or improvement in or to any portion of the Buildings, including the Leased Premises, or in or to the fixtures, appurtenances and equipment therein.

B. Tenant's Obligations. Tenant shall repair and maintain in good repair and order (other than those items which are Landlord's responsibility as set forth in Section 10.A above) and keep clean and orderly all portions of the Leased Premises, including, without limitation: window and door glass in the Leased Premises; loading docks; interior partition walls; doors; windows; floor coverings; interior side of structural walls; lights; overhead doors, including the painting thereof; internal cranes and equipment, electrical system and equipment; plumbing systems and equipment; heating ventilating and air conditioning systems and equipment ("HVAC"); fire protection systems and equipment; sprinkler systems and other systems and equipment used in connection with the Leased Premises. Without limiting the generality of the foregoing, Tenant shall keep the Leased Premises, service ways, and loading areas on the Leased Premises neat, clean, and free from dirt or rubbish at all times, and shall carefully store in an orderly manner all trash and refuse within the areas to be specified by Landlord and in addition to any other remedies available to Landlord, Landlord shall have the right to perform any obligations of Tenant under this Section 10.B if Tenant fails to perform any such obligation for a period of five (5) business days after Landlord has given Tenant written notice thereof (unless Tenant commences to cure and diligently pursues the curing of the same) and Tenant shall pay to Landlord the reasonable cost thereof plus an administrative fee equal to ten percent (10%) of Landlord's cost to perform such obligation. Landlord shall not be required to give notice if an emergency exists. An emergency shall exist if a condition or circumstance exists which if not remedied could result in possible damage to the Buildings or Leased Premises or property of others in excess of \$10,000.00 or impair the operations of the mechanical, electrical or plumbing systems of the Leased Premises, or if the life, health or safety of any person could be endangered thereby. Notwithstanding anything to the contrary contained herein, any contractor or subcontractor performing repair and maintenance services on behalf of Tenant hereunder shall be approved in writing by Landlord.

Tenant shall, at its own cost and expense enter into a regularly scheduled preventative maintenance/service contract with a maintenance contractor for serving heating and air conditioning systems within the Leased Premises. The service contract must include all services suggested by the equipment manufacturer within the operation/maintenance manual and must become effective (and a copy thereof delivered to Landlord) within thirty (30) days of the date Tenant takes possession of the Leased Premises. In the event Tenant fails to enter into or maintain such a contract during the Term, Landlord shall, in addition to any other remedies available to Landlord, have the option to enter into a regularly scheduled preventative maintenance/service contract on items for and on behalf of Tenant. In the event Landlord elects such option, Tenant shall reimburse to Landlord, as Additional Rent, all of Landlord's costs in connection with said contract, as well as Landlord's actual costs of repair and maintenance of the HVAC system. Tenant shall arrange for the regular pick-up of trash and refuse at Tenant's expense (unless notified

that Landlord has elected to take over such responsibility, in which event such charges shall become a part of the Operating Costs) and regular extermination services. Tenant shall repair, maintain, and replace such construction (other than the Structural Members) and the devices and equipment installed therein and, if necessary, install additional devices and equipment (including, without limitation, any grease and oil traps and/or grease and oil receptors which the city or any other governmental entity having jurisdiction over the Leased Premises deems necessary to handle any liquid waste, grease, and oil produced at the Leased Premises), in a good and workmanlike manner and in accordance with all applicable laws and regulations governing such construction, devices, and equipment.

Upon the termination of this Lease or upon the termination of Tenant's right to possession of the Leased Premises, Tenant shall surrender and deliver up to Landlord the Leased Premises broom-clean and in the same condition in which they existed on the Commencement Date, ordinary wear and tear excepted; however, such exception for ordinary wear and tear shall in no way relieve Tenant of its above-described obligations for repair, replacement and maintenance during the term of this Lease. Prior to the end of the Term or upon the termination of Tenant's right to possession of the Leased Premises or termination of this Lease, but subject to the lien and security interest and other rights of Landlord referred to in Section 15, Tenant shall remove Removable Trade Fixtures (hereinafter defined) (excluding, however, ducts, conduits, wiring, pipes, paneling or other wall coverings or floor coverings), and, in addition to other applicable provisions of this Lease regarding such removal, the following shall apply: Tenant must not be in default of any obligation or covenant under this Lease at the time of such removal; and such removal must be effected without material damage to the Leased Premises and Tenant must promptly repair all damage caused by such removal. For the purposes hereof, the phrase "Removable Trade Fixtures" means the following: all of Tenant's signs, counters, tables, chairs, desks, racks, merchandisers and displayers, standards, wall brackets, hang rods, shelves, mirrors, cash registers and other business machines, wall brackets, pasta production machines, unattached kitchen equipment, fire suppressant systems, shelving, unattached cooking equipment, refrigeration equipment and other equipment used by Tenant in its business operations that can be removed without materially damaging the Leased Premises. Removable Trade Fixtures shall not include, for purposes of Tenant's right to remove, items originally furnished by Landlord or replacements of such items. Unless Tenant shall have, at the time of the alteration, requested in writing and obtained Landlord's approval in writing of any item Tenant desires to remain on the Leased Premises after the termination of the Lease, Tenant shall at the expiration or termination of the Lease, if requested by Landlord in writing prior to the termination or expiration of the Term of this Lease, remove any or all alterations, additions, fixtures, equipment (including refrigeration equipment) and other property installed or placed by Tenant or any sublessee or assignee (as herein permitted) (regardless of whether Landlord's consent was obtained with respect to same) in the Leased Premises, and shall repair any damage caused by such removal and restore the Leased Premises to the condition thereof at the time of the commencement of the Term of this Lease, excepting only ordinary wear and tear, and damage hereunder not otherwise required to be repaired by Tenant.

If Tenant fails to remove any Removable Trade Fixtures or if Landlord requests in writing that Tenant remove any or all alterations, additions, fixtures, equipment and property installed or placed by it or any such sublessee or assignee in the Leased Premises and Tenant fails to comply with such request prior to the expiration or termination of the Term of this Lease, or if Tenant fails to repair any damage to the Leased Premises and/or the Buildings caused by its removal of any of the aforesaid, then Landlord shall have the right (but shall not be obligated) to remove such Removable Trade Fixtures and/or such other alterations, additions, fixtures, equipment or property installed or placed by Tenant in the Leased Premises (Tenant hereby waiving any damage caused thereby) or repair any such damage to the Leased Premises and/or Buildings as a part, and thereupon Tenant shall, at Landlord's election, on demand pay (or reimburse Landlord for) the reasonable cost of such removal and the reasonable cost of transportation and storage on any Removable Trade Fixtures (or other alterations, additions, fixtures, equipment and property installed or placed by Tenant in the Leased Premises) which Landlord elects to store pending disposition

thereof, and the reasonable cost of repairing any such damage to the Leased Premises and/or Buildings, and, in addition, Tenant shall pay Landlord upon demand interest on all such sums at twelve percent (12%) per annum.

All plumbing or electrical wiring connections exposed as a result of the removal of Tenant's Removable Trade Fixtures, or other alterations, additions, fixtures, equipment and property installed or placed by it in the Leased Premises (if such removal is so requested by Landlord) shall be capped by Tenant in a safe and workmanlike manner. Use by Tenant in advertising, letterheads, or otherwise of any trade name or trademark used by Landlord shall be subject to such restrictions and regulations as Landlord may reasonably prescribe from time to time.

SECTION 11. CASUALTY DAMAGE.

A. Repairs. In the event of a fire or other casualty in the Leased Premises, Tenant shall immediately give notice thereof to Landlord. Except as otherwise provided below, Landlord shall use its reasonable efforts after receipt of insurance proceeds to cause the necessary repairs to the Leased Premises to be made with due diligence and reasonable dispatch; provided, however, that Landlord shall not be required to repair or replace furnishings, furniture, or other personal property which Tenant may be entitled to remove from the Leased Premises or any property improvement constructed and installed by or for Tenant other than what was originally built by Landlord as part of Landlord's Work or Additional Work. Subject to Landlord receiving insurance proceeds, Landlord shall make reasonable efforts to commence making the required repairs to the Leased Premises within thirty (30) days following the date of the casualty or other damage and thereafter prosecute the repairs with due diligence and reasonable dispatch. If the Leased Premises, or any portion thereof, shall be partially destroyed by fire or other casualty so as to render the Leased Premises, or any portion thereof, untenable and such portion is not actually used by Tenant, the rent shall proportionately abate thereafter until such time as the Leased Premises, or any portion thereof, are made tenantable; provided, however, there shall be no abatement of rent and/or any abatement of rental shall cease as to any portion of the Leased Premises actually used by Tenant. If Landlord has elected to repair and reconstruct the Leased Premises, which election and notice of such election to Tenant must occur within thirty (30) days after the date of the casualty (or within sixty (60) days after such casualty if the event causes 50% or more of the Leased Premises to be untenable) this Lease shall continue in full force and effect and such repairs, except in the event of a major casualty as set forth in Section 11.B below, will be made as soon as reasonably practicable thereafter, but not later than 180 days after the date of the casualty or other damage, subject to Excusable Delays; provided, however, that Landlord shall use reasonable efforts to not unreasonably interfere with Tenant's use and occupancy of any portion of the Leased Premises not destroyed or damaged. Except as otherwise expressly provided above, in no event shall Landlord be required to commence the restoration or repair of the Buildings until Landlord receives the insurance proceeds therefore. No damages, compensation, or claims shall be payable by Landlord for any inconvenience, loss of business, or annoyance arising from such repair and reconstruction. Tenant and Landlord agree that the Term of this Lease shall be extended by a period of time equal to the period of such repair and reconstruction. Notwithstanding the foregoing, if such repairs are not completed within 180 days after the date of the casualty (subject to force majeure) Tenant shall have the right to terminate this Lease by providing written notice of such termination to Landlord. No damages, compensation, or claims shall be payable by Landlord for any inconvenience, loss of business, or annoyance arising from such repair and reconstruction.

B. Termination in the Event of Major Casualty. In the event (i) such destruction results in thirty percent (30%) or more of the Leased Premises being untenable for a period, reasonably estimated by a responsible contractor selected by Landlord, to be 180 days or longer after the date of the destructive event, or (ii) more than twenty percent (20%) of the insurance proceeds are retained by the holder of any mortgage on the Buildings or Land or are otherwise unavailable to Landlord to rebuild or repair the

Buildings or Leased Premises and Landlord elects not to repair or rebuild, the Landlord shall so notify Tenant promptly in writing within the time periods described in this Section 11.B. Landlord shall select a responsible contractor and deliver to Tenant the results of the responsible contractor's analysis ("Damage Analysis") within thirty (30) days of the destructive event. If Landlord is entitled to terminate this Lease, Landlord shall give to Tenant within thirty (30) days following Landlord's delivery to Tenant of the Damage Analysis written notice of whether or not Landlord is electing to terminate this Lease pursuant to the foregoing provisions of this Section 11. If Landlord does not so terminate this Lease, then such written notice shall also advise Tenant of Tenant's right to elect to terminate this Lease pursuant to the foregoing provisions of this Section 11, and Tenant must exercise such right of termination, if at all, by giving written notice thereof to Landlord within not more than ten (10) business days after receipt of said written notice from Landlord to Tenant.

C. Rent. Upon termination, in the event that Landlord shall elect not to restore the Leased Premises or Tenant elects to exercise its right to terminate this Lease, then all rent owed up to the time of such destruction or termination, as set forth in Section 11, shall be paid by Tenant and thenceforth this Lease shall cease and come to an end. In the event that this Lease is terminated as herein permitted, Landlord shall refund to Tenant any prepaid rent, and the Security Deposit, if applicable, less any sum then owing or which would thereafter become owing to Landlord by Tenant, including any amounts payable to Landlord under the provisions of Section 5 of this Lease.

SECTION 12. CONDEMNATION.

If ten percent (10%) or more of the Leased Premises is condemned (or conveyed to a governmental authority in lieu of condemnation), then Landlord or Tenant may elect to terminate this Lease, by written notice to the other party within sixty (60) days following receipt of notice of such condemnation, in which event the Term shall terminate on the date that possession of such portion of the Leased Premises is taken by the governmental authority. All condemnation awards for a taking of either the Leased Premises or the Buildings shall belong to Landlord; provided, however that Tenant may seek and retain such compensation as may be separately awarded to Tenant in Tenant's own name and right on account of all damage to Tenant's business by reason of such condemnation. If neither Landlord nor Tenant timely elect to exercise their above right to terminate this Lease, the Lease shall remain in full force and effect and the Base Rent, will be reduced in proportion to the square footage of the Leased Premises that has been taken.

SECTION 13. INSURANCE AND INDEMNITY

A. Tenant's Insurance. Tenant agrees to maintain the insurance set forth on Exhibit "K" attached hereto and incorporated herein by reference.

In addition to the insurance set forth on Exhibit "K", Tenant agrees to maintain Liquor Legal Liability or "Dram Shop" Insurance with policy limits of \$1,000,000 per each common cause and \$2,000,000 aggregate, either as an endorsement to its Commercial General Liability Insurance or as a separate policy. SUCH INSURANCE SHALL NAME LANDLORD AS AN ADDITIONAL INSURED UNDER ENDORSEMENT CG3401 12 19 OR SIMILAR ENDORSEMENT. THE POLICY SHALL BE ENDORSED TO WAIVE SUBROGATION AGAINST LANDLORD. Tenant shall provide Landlord with evidence of same prior to selling or serving alcoholic beverages at or from the Leased Premises, and shall maintain current evidence of insurance on file with Landlord at all times during the Term. In the event Tenant fails to obtain or to continue such coverage, Tenant shall immediately discontinue selling and serving alcoholic beverages from the Leased Premises.

TENANT AGREES TO USE AND OCCUPY THE LEASED PREMISES AND PLACE ITS FIXTURES, EQUIPMENT, MERCHANDISE, AND OTHER PROPERTY AT TENANT'S OWN RISK AND HEREBY WAIVES AND RELEASES ALL RIGHTS OF RECOVERY AGAINST

LANDLORD AND THE LANDLORD INDEMNITEES (HEREAFTER DEFINED) FOR ANY RISK COVERED BY ANY POLICY OF PROPERTY INSURANCE COVERING THE LEASED PREMISES AND MAINTAINED OR REQUIRED TO BE MAINTAINED (WHETHER OR NOT ACTUALLY MAINTAINED) BY EITHER LANDLORD OR TENANT IN ACCORDANCE WITH SECTION 13 HEREOF, TO THE FULLEST EXTENT PERMITTED BY LAW, WHETHER THE SAME IS CAUSED BY FIRE OR OTHER CASUALTY OR THE CONDITION OF THE LEASED PREMISES, REGARDLESS OF THE CAUSE OF THE LOSS, EXCEPT TO THE EXTENT THE CAUSE OF THE LOSS IS DUE TO THE GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF LANDLORD OR LANDLORD INDEMNITEES. THIS WAIVER AND RELEASE APPLIES EVEN IF THE LOSS IS CAUSED BY THE ACTS OR OMISSIONS OF LANDLORD OR THE LANDLORD INDEMNITEES, WHETHER OR NOT NEGLIGENT (BUT EXPRESSLY EXCLUDES THE GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF LANDLORD OR THE LANDLORD INDEMNITEES), AND SHALL BAR RECOVERY AGAINST LANDLORD OR THE INDEMNITEES BY ANY THIRD PARTY (INCLUDING, WITHOUT LIMITATION, ANY INSURER) BY WAY OF SUBROGATION OR ASSIGNMENT. TENANT'S WAIVER AND RELEASE OF LANDLORD AND THE INDEMNITEES SHALL BIND TENANT'S PERMITTED ASSIGNEES AND SUBTENANTS. TENANT SHALL ALSO PROVIDE EVIDENCE OF TENANT'S INSURER'S WAIVER OF SUBROGATION IN FAVOR OF LANDLORD FOR LOSS OR DAMAGE CAUSED BY LANDLORD TO TENANT PROPERTY.

For the purposes of this Lease, the "Landlord Indemnitees" shall mean and refer to Landlord and Landlord's directors, officers, managers, shareholders, partners, joint venturers, members, employees, agents, customers or invitees, contractors, affiliates, attorneys, and their respective heirs, legal representatives, successors and assigns.

TENANT SHALL DEFEND, INDEMNIFY AND HOLD HARMLESS LANDLORD AND THE LANDLORD INDEMNITEES FROM ALL LOSSES, CLAIMS, SUITS, ACTIONS, DAMAGES AND LIABILITY, INCLUDING DEFENSE COSTS, INVESTIGATIVE COSTS AND FEES OF EXPERTS (COLLECTIVELY, "CLAIMS") THAT ARISE OR ALLEGEDLY ARISE FROM ANY OF THE FOLLOWING CIRCUMSTANCES: (I) ANY ACTS OR OMISSIONS OF TENANT OR TENANT'S AGENTS, EMPLOYEES, CONTRACTORS, SUBCONTRACTORS, CUSTOMERS OR INVITEES (OR ANY OF THEIR EMPLOYEES); (II) ANY FAILURE OF TENANT OR TENANT'S AGENTS AND/OR EMPLOYEES TO COMPLY WITH LAWS, ORDINANCES OR REGULATIONS OF ANY GOVERNMENTAL AUTHORITY PERTAINING TO THE USE OR OCCUPANCY OF THE LEASED PREMISES OR PERTAINING TO TENANT'S BUSINESS; AND (III) ANY BODILY INJURY, DEATH OR PROPERTY DAMAGE SUFFERED BY ANY PERSON THAT OCCURS WITHIN THE LEASED PREMISES WHICH IS CAUSED BY TENANT OR TENANT'S AGENTS, EMPLOYEES, CUSTOMERS OR INVITEES. Tenant's obligations include: (i) **THE OBLIGATION TO DEFEND LANDLORD AND THE LANDLORD INDEMNITEES AGAINST ALL SUCH CLAIMS, INCLUDING CLAIMS FOR LANDLORD'S ACTS, OMISSIONS OR NEGLIGENCE (BUT EXPRESSLY EXCLUDING THE SOLE NEGLIGENCE, GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF LANDLORD OR THE LANDLORD INDEMNITEES)**; (ii) the obligation to pay Tenant's proportionate share of any settlement reached by Tenant with respect to the Claim; and (iii) the obligation to pay the full amount of any damages that are awarded against Tenant with respect to the Claim.

B. Landlord's Insurance.

1. Landlord's Property Insurance and Waivers of Subrogation. Landlord agrees to take out and maintain a policy of Special Causes of Loss (formerly called "All Risk of Physical Loss") Property Insurance on the Buildings and other Landlord property at the Leased Premises. Such policy must be in effect as of the Commencement Date and must be maintained at all times during Tenant's occupancy of the

Leased Premises and during the Term. Such policy shall satisfy any co-insurance requirements and must contain a replacement cost endorsement.

LANDLORD AGREES TO LEASE TO TENANT THE LEASED PREMISES AND OTHER LANDLORD PROPERTY AT LANDLORD'S OWN RISK AND HEREBY WAIVES AND RELEASES ALL RIGHTS OF RECOVERY AGAINST TENANT AND THE TENANT INDEMNITEES (HEREAFTER DEFINED) FOR ANY RISK COVERED BY ANY POLICY OF PROPERTY INSURANCE COVERING THE LEASED PREMISES AND MAINTAINED OR REQUIRED TO BE MAINTAINED (WHETHER OR NOT ACTUALLY MAINTAINED) BY EITHER LANDLORD OR TENANT IN ACCORDANCE WITH SECTION 13 HEREOF, TO THE FULLEST EXTENT PERMITTED BY LAW, WHETHER THE SAME IS CAUSED BY FIRE OR OTHER CASUALTY, REGARDLESS OF THE CAUSE OF THE LOSS, EXCEPT TO THE EXTENT THE CAUSE OF THE LOSS IS DUE TO THE GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF TENANT OR TENANT INDEMNITEES. THIS WAIVER AND RELEASE APPLIES EVEN IF THE LOSS IS CAUSED BY ACTS OR OMISSIONS OF TENANT OR THE TENANT INDEMNITEES, WHETHER OR NOT NEGLIGENT (BUT EXPRESSLY EXCLUDES THE GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF TENANT OR THE TENANT INDEMNITEES), AND SHALL BAR RECOVERY AGAINST TENANT OR THE TENANT INDEMNITEES BY ANY THIRD PARTY (INCLUDING, WITHOUT LIMITATION, ANY INSURER) BY WAY OF SUBROGATION OR ASSIGNMENT. LANDLORD'S WAIVER AND RELEASE OF TENANT AND THE TENANT INDEMNITEES SHALL BIND LANDLORD'S PERMITTED ASSIGNEES AND SUBTENANTS. LANDLORD SHALL ALSO PROVIDE EVIDENCE OF LANDLORD'S INSURER'S WAIVER OF SUBROGATION IN FAVOR OF TENANT FOR LOSS OR DAMAGE CAUSED BY TENANT TO LANDLORD PROPERTY.

For purposes of this Lease, the "Tenant Indemnitees" shall mean Tenant and Tenant's directors, officers, managers, shareholders, partners, joint venturers, members, employees, agents, customers or invitees, contractors, affiliates, attorneys and their respective heirs, legal representatives, successors, and assigns.

2. Landlord's General Liability Insurance and Other Insurance. Landlord shall maintain Standard Commercial General Liability Insurance coverage, which shall be in a minimum amount of \$1,000,000 per occurrence, \$2,000,000 policy aggregate, including coverage for bodily injury and property damage and products liability coverage; and contractual liability coverage insuring the indemnity obligations of Landlord under this Lease. Landlord may also maintain business interruption insurance in favor of Landlord in an amount sufficient to pay for at least twelve (12) months of all Rent payable under the terms of this Lease. Such policies must be in effect as of the Commencement Date and must be maintained at all times during Tenant's occupancy of the Leased Premises and during the Term. At the request of Tenant, a certificate evidencing all insurance policies required to be maintained by Landlord shall be deposited with Tenant following the Commencement Date and current certificates shall be deposited with Tenant at all times during Tenant's occupancy of the Lease Premises and during the renewal term of each policy.

SECTION 14. ASSIGNMENT AND SUBLETTING.

A. Transfers. Tenant shall not, without the prior written consent of Landlord, (1) assign, transfer or encumber this Lease or any estate or interest herein, whether directly or by operation of law, (2) sublet any portion of the Leased Premises, (3) grant any license, concession or other right of occupancy of any portion of the Leased Premises, or (4) permit the occupation of the Leased Premises by any parties other than Tenant (any of the foregoing events being a "**Transfer**").

B. Consent Standards. Landlord shall not unreasonably withhold, condition, or delay its consent to any assignment or subletting of the Leased Premises, provided that the proposed transferee: (1) is, in the Landlord's reasonable determination and opinion, an acceptable credit risk, and (2) will use the Leased Premises for the Permitted Use. It shall not be unreasonable for Landlord to withhold its consent to any assignment or subletting while an Event of Default exists and is continuing. Notwithstanding the foregoing, Landlord's consent will not be required with respect to any assignment or subletting to any Affiliate, of Tenant, provided Tenant provides Landlord with prior written notice of such assignment or subletting. As used herein, "Affiliate" shall mean an entity that controls, is controlled by, or under common control with Tenant.

C. Request for Consent. If Tenant requests Landlord's consent to a Transfer, then, at least thirty (30) days prior to the effective date of the proposed Transfer, Tenant shall provide Landlord with a written description of all material terms and conditions of the proposed Transfer, copies of the proposed transfer documentation, and the following information about the proposed transferee: (1) name and address of the proposed transferee; (2) its proposed use of the Leased Premises; and (3) such financial information as Landlord may reasonably request to enable Landlord to determine the proposed transferee's creditworthiness.

D. Conditions to Consent. If Landlord consents to a proposed Transfer, then the proposed transferee shall deliver to Landlord a written agreement whereby it expressly assumes Tenant's obligations hereunder arising on or after the transfer date. Any attempt by Tenant or a proposed transferee, in any Transfer, to release Tenant from its obligations under this Lease without Landlord's consent shall be void. Landlord's consent to any Transfer shall not waive Landlord's rights as to any subsequent Transfers. Tenant and Guarantor shall remain liable for the performance of all of the obligations of Tenant hereunder notwithstanding any Transfer. If an Event of Default occurs while the Leased Premises or any part thereof are subject to a Transfer, then Landlord, in addition to its other remedies, may collect directly from such transferee all rents and other amounts becoming due to Tenant and apply such amounts against Base Rent. As part of the Tenant's Transfer, Tenant shall direct and authorize its transferees to make payments of rents and other amounts due under such Transfer directly to Landlord upon receipt of notice from Landlord to do so following the occurrence of an Event of Default hereunder. Tenant shall pay for the cost of any demising walls or other improvements necessitated by a proposed subletting or assignment.

E. Additional Compensation. So long as no Event of Default exists and is continuing, Tenant shall pay to Landlord, immediately upon receipt thereof, fifty percent (50%) of the excess of (1) all compensation received by Tenant for a Transfer (other than a Permitted Transfer) over (2) the Base Rent allocable to the portion of the Leased Premises covered thereby. While any Event of Default exists and is continuing, Tenant shall pay to Landlord, immediately upon receipt thereof, one hundred percent (100%) of the excess of (a) all compensation received by Tenant for a Transfer over (b) the Base Rent allocable to the portion of the Leased Premises covered thereby.

F. Landlord Assignment. Landlord may assign, convey or otherwise transfer its rights, title and interest hereunder and/or in the Leased Premises, or any portion thereof, without the consent of Tenant. The term "Landlord" so far as covenants or obligations on the part of Landlord are concerned shall be limited to mean only the owner of the Leased Premises at the time in question. Upon any transfer of the title thereto, former Landlord automatically shall be relieved from all liability with respect to any obligation on the part of Landlord thereafter to be performed, provided former Landlord shall render to the transferee any funds it then holds in which Tenant has an interest. Any right, title or interest of Landlord assigned hereunder may be assigned and reassigned in like manner by any assignee thereof.

G. Short-Term Licenses. Tenant shall be allowed to license by the hour its kitchen and/or preparation area. Landlord may revoke Tenant's right to license to extent such licenses do not comply with

Rules and Regulations attached hereto as **Exhibit “E”** or otherwise deemed a nuisance to the Commercial Park, as determined by Landlord in Landlord’s sole and absolute discretion. TENANT SHALL DEFEND, INDEMNIFY AND HOLD HARMLESS LANDLORD AND THE LANDLORD INDEMNITEES FROM ALL LOSSES, CLAIMS, SUITS, ACTIONS, DAMAGES AND LIABILITY, INCLUDING DEFENSE COSTS, INVESTIGATIVE COSTS AND FEES OF EXPERTS (COLLECTIVELY, “CLAIMS”) THAT ARISE OR ALLEGEDLY ARISE FROM OR OTHERWISE RELATE TO SUCH LICENSES. Tenant’s obligations include: (i) **THE OBLIGATION TO DEFEND LANDLORD AND THE LANDLORD INDEMNITEES AGAINST ALL SUCH CLAIMS, INCLUDING CLAIMS FOR LANDLORD’S ACTS, OMISSIONS OR NEGLIGENCE (BUT EXPRESSLY EXCLUDING GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF LANDLORD OR THE LANDLORD INDEMNITEES).**

SECTION 15. LANDLORD’S LIEN.

If Landlord shall have taken possession of the Leased Premises pursuant to the authority hereinafter granted in connection with an Event of Default or for any other lawful reason, Landlord shall have the right to keep in place and use all of the furniture, fixtures and equipment at the Leased Premises, including that which is owned or leased to Tenant, at the times prior to any foreclosure thereon by Landlord or repossession thereof by any lessor thereof or third party having a lien thereon. Landlord shall have the right to remove from the Leased Premises (without the necessity of obtaining a distress warrant, writ of sequestration or other legal process) all or any portion of Tenant’s furniture, fixtures, equipment and other property located thereon and place same in storage at any premises within Harris County, Texas; or dispose of same in any manner acceptable to Landlord; and in such event, Tenant shall be liable to Landlord for reasonable costs incurred by Landlord in connection with such removal, storage and/or disposal and shall indemnify, defend, and hold Landlord and the Landlord Indemnitees harmless from all loss, damage, cost, expense and liability in connection with such removal, storage and/or disposal. Tenant stipulates and agrees that the rights herein granted Landlord are commercially reasonable. Tenant shall not mortgage, pledge or otherwise encumber its interest in this Lease or in the Leased Premises, nor may such interest be transferred by operation of law. Any attempt to do any of the foregoing shall be void and of no effect.

SECTION 16. DEFAULT; REMEDIES.

A. Events of Default. Each of the following acts of Tenant constitutes an event of default (“**Event of Default**”) under this Lease: (i) Tenant’s failure to pay the required amount of rent when due or the required amount of any other monetary sum when due under this Lease, which failure continues for five (5) days after written notice, provided that notice shall not be required more than two (2) times in any twelve (12) month period; (ii) Tenant’s failure to comply with any covenant, duty or obligation of Tenant under this Lease (other than those referred to in clause (i) above) that is not cured within thirty (30) days after Tenant receives a written notice of such failure from Landlord, provided that if such default is not capable of being cured within such thirty (30) day period and Tenant commences curing within such thirty (30) day period and diligently pursues curing of the same thereafter, the same shall not be a default so long as Tenant is diligently pursuing the curing of such default; (iii) any voluntary petition or similar pleading under any bankruptcy act or under any law seeking reorganization or an arrangement with creditors or adjustment of debts, is filed by or against Tenant, or if any such petition or pleading is involuntary, and it is not adjudicated favorably to Tenant within sixty (60) days; (iv) the leasehold of Tenant is levied upon or attached by process of law and Tenant does not vigorously contest same by appropriate proceedings and remove or vacate the same within sixty (60) days from the date of its creation, service or filing; (v) Tenant admits in writing its inability to pay its debts, or if a receiver, trustee or other court appointee is appointed for all or a substantial part of Tenant’s property; (vi) Tenant makes an assignment for the benefit of creditors, or if any proceedings are filed by or against tenant to declare Tenant insolvent or unable to meet its debts; and (vii) a receiver or

similar type of appointment or court appointee or nominee of any name or character is made for Tenant or its property and Tenant does not vigorously contest the same by appropriate proceedings and remove or vacate same within sixty (60) days from the date of appointment.

B. Landlord's Remedies. If an Event of Default should occur under this Lease, then Landlord may do any of the following (in conjunction with or in addition to pursuing any or all of the other rights and remedies provided to Landlord under this Lease, by law or in equity):

- (i) terminate this Lease by sending a written termination notice to Tenant at the address stated above (in which event, Tenant will immediately surrender possession of the Leased Premises to Landlord);
- (ii) enter upon and take possession of the Leased Premises and expel or remove Tenant and any other occupant therefrom and terminate Tenant's right to possession of the Leased Premises with or without terminating this Lease (in which event, Tenant shall immediately surrender possession of the Leased Premises to Landlord);
- (iii) remedy the Event of Default on behalf of Tenant (in which event, Tenant must pay to Landlord all of Landlord's reasonable costs and expenses so incurred immediately upon receipt of Landlord's invoice); and/or
- (iv) recover all amounts then owing (and, after the passage of time, that become owing) under the Lease without terminating this Lease or Tenant's right to possession of the Leased Premises.

Landlord's exercise of any of the remedies available to Landlord under this Lease shall not constitute Landlord's acceptance of surrender of the Leased Premises by Tenant, whether by agreement or by operation of law, it being understood that such surrender can be effected only by the written agreement of Landlord and Tenant. Tenant hereby acknowledges that Landlord shall have the right, after an Event of Default which involves a failure to timely pay any rent, without any notice to Tenant (to the extent allowed by law), to alter locks and other security devices at the Leased Premises, remove Tenant's property and the property of others located within the Leased Premises, and post a "For Lease" and/or "For Sale" sign on the Property. Landlord may require full payment of the rent then due to Landlord under this Lease as a condition to Tenant's entitlement to a key to new or altered locks that Landlord may have placed on the Leased Premises after an Event of Default which involves a failure to pay rent. If Landlord exercises its rights to alter the locks at the Leased Premises, Landlord or its agents shall place a written notice on Tenant's front door of the Leased Premises stating the name, address and phone number of the individual or company from which the new key may be obtained. Landlord shall only be required to provide Tenant with a new key during Landlord's regular business hours which are agreed to be 8:00 a.m. to 5:00 p.m. Monday through Friday except for holidays; provided that in no event shall Landlord be required to provide Tenant a new key until such time as Tenant pays all rent due under this Lease. No such alteration of locks or other security devices and no removal or other exercise of dominion by Landlord over the property of Tenant or others at the Leased Premises shall be deemed unauthorized or to constitute a conversion, Tenant hereby consenting, after any Event of Default, to the aforesaid exercise of dominion over Tenant's property within the Leased Premises. **ALL CLAIMS FOR DAMAGES (INCLUDING CLAIMS FOR DAMAGES BASED UPON NEGLIGENT OR WILLFUL MISCONDUCT ACTIONS OF LANDLORD OR LANDLORD'S AGENTS OR CONTRACTORS)** by reason of such lawful reentry and/or repossession are hereby waived. Further, all claims for damages by reason of such lawful alteration of locks or other security devices are hereby waived, as are all claims for damages by reason of any distress warrant, forcible detainer proceedings, sequestration proceedings or other legal process. Tenant agrees that any reentry by Landlord may be pursuant to a judgment obtained in forcible detainer proceedings or other legal proceedings or without any legal proceedings, as Landlord may elect; and Landlord shall not be liable in

trespass or otherwise. To the extent of any inconsistency between this Lease and the provisions of Section 93.002 of the Texas Property Code (as it may be hereafter amended or recodified), it is the agreement of the parties that this Lease shall prevail.

Notwithstanding the foregoing, if Landlord has theretofore formally and permanently repossessed the Leased Premises or terminated this Lease pursuant to Sections 16.B.(i) or (ii), above, or if Tenant's defaults are not reasonably subject to cure (such as early abandonment or vacating of the Leased Premises), then Landlord shall not be obligated to provide the new key(s) to Tenant under any circumstances, regardless of Tenant's payment of past-due rent or other past-due amounts, damages or other payments or amounts of any nature or kind whatsoever. The provisions of this paragraph are intended to override and supersede any conflicting provisions of the Texas Property Code (including, without limitation, Section 93.002 thereof, and any amendments or successor statutes thereto), and of any other law, to the maximum extent permitted by applicable law.

If Landlord elects to terminate the Lease by reason of an Event of Default, or if Landlord elects to terminate Tenant's right to possession of the Leased Premises without terminating this Lease, or if Landlord exercises any other remedy, Landlord may hold Tenant liable for all Base Rent, Taxes, Insurance Premiums and other indebtedness accrued to the date of such termination (or other remedy exercised), plus such Base Rent, Taxes, Insurance Premiums and other indebtedness as would otherwise have been required to be paid by Tenant to Landlord during the period following termination of the Term (or Tenant's right to possession of the Leased Premises or other remedy exercised, as the case may be) measured from the date of such termination by Landlord until the date which would have been the date of expiration of the Term as stated in Section 1.E (had Landlord not elected to terminate the Lease or Tenant's right to possession on account of such Event of Default) diminished by any net sums (if any) thereafter received by Landlord through re-letting the Leased Premises during said period (after deducting expenses incurred by Landlord as provided in the succeeding paragraph). Following the date of notice of termination of this Lease or the termination of Tenant's right to possession, without the termination of this Lease, Landlord shall make reasonable commercial attempts to relet the Leased Premises or portions thereof. As used herein, "reasonable commercial attempts to relet" shall mean (a) listing the Leased Premises for lease with a licensed real estate broker, which may be an affiliate of Landlord, (b) entertaining but not necessarily accepting offers to lease, and (c) to the extent allowed by law or applicable deed restrictions, placing "For Lease" signs on the Leased Premises. In no event shall Landlord be obligated to accept an assignee or sublessee who desires to use the Leased Premises for one of the Prohibited Uses. Actions to collect amounts due by Tenant provided for in this paragraph of Section 16 may be brought from time to time by Landlord during the aforesaid period, on one or more occasions, without the necessity of Landlord's waiting until expiration of such period; and in no event shall Tenant be entitled to any excess of rent (or rent plus other sums) obtained by re-letting over and above the rent herein reserved.

In addition to all other amounts and other obligations for which Tenant is liable upon an Event of Default, in case of an Event of Default, Tenant shall also be liable for and shall pay to Landlord, in addition to any sums provided to be paid above: reasonable broker's fees and all other reasonable costs and fees incurred by Landlord in connection with re-letting, or attempting to re-let, the whole or any part of the Leased Premises; the reasonable costs of removing and storing Tenant's or other occupant's property; the reasonable costs of repairing, altering, remodeling or otherwise putting the Leased Premises into a condition acceptable to a new tenant or tenants; reasonable costs associated with the execution of any lease with a new tenant or tenants (including, without limitation, reasonable attorneys' fees); and all expenses incurred by Landlord in enforcing Landlord's remedies (including, without limitation, reasonable attorneys' fees). Past due rent and other past due payments shall bear interest from maturity until paid at the lesser of: (i) the highest non-usurious rate permitted by law or (ii) eighteen percent (18%) per annum.

C. **Landlord's Default.** If Landlord should fail to perform any of its obligations under this Lease, Tenant's exclusive remedy is the institution of a suit for damages (Tenant hereby waiving the benefit of any laws granting it a lien on the property of Landlord), which shall be subject to the provisions of Section 19 below. Prior to instituting such a suit, Tenant must supply Landlord with notice of such failure. Landlord shall then have a reasonable period of time, but not less than thirty (30) days following Landlord's receipt of Tenant's notice except in case of emergency, in which to commence curative action. Tenant may not institute such a suit during such thirty (30) day period or thereafter during the period in which Landlord is diligently attempting to cure such default. In no event shall Tenant have the right to offset any sum owing, or allegedly owing, by Landlord to Tenant against any sum otherwise owing by Tenant to Landlord.

D. **Waiver of Consequential Damages.** Notwithstanding anything contained herein to the contrary, Tenant hereby waives any right of recovery against Landlord for any special, indirect, punitive or consequential damages, which shall be caused by, arise out of, occasioned by, or in any way attributable to, this Lease and/or the transaction contemplated by this Lease.

SECTION 17. HOLDOVER.

If Tenant should remain in possession of the Leased Premises after the end of the Term, then Tenant shall be occupying the Leased Premises as a tenant-at-sufferance, under all of the terms and conditions of this Lease, except that the Base Rent payable during the holdover period shall be equal to one hundred fifty percent (150%) of the Base Rent last applicable during the Term.

SECTION 18. NOTICE.

Any notice given under this Lease must be in writing and delivered by U. S. certified mail, return receipt requested, by recognized national overnight delivery service, such as Federal Express or UPS, or by hand. Notices given to Landlord by U. S. certified mail or overnight delivery must be sent to Landlord at Landlord's address stated above; and notices given to Tenant by U. S. certified mail or overnight delivery must be sent to Tenant at Tenant's address stated above in Section 1.J. Either party may change its address by giving the other party notice of such change. A signed return receipt shall be conclusive evidence that the notice was delivered in the due course of mail. Notice that is properly addressed, with adequate postage prepaid and mailed by certified mail, return receipt requested, shall be deemed received upon the earlier of actual receipt, as indicated on the signed, returned receipt card; or three days after appropriate posting (whether or not actually received or accepted). Notice given by overnight delivery service will be deemed received on the business day when the delivery service's records indicate that delivery was affected. Notice given by hand shall be effectively given wherever the intended recipient is found and shall be deemed received upon the date of delivery or on the date of attempted delivery if delivery is refused. No change of address of either party shall be binding on the other party until notice of such change of address is given to the other party.

SECTION 19. LIMITATION OF LANDLORD'S LIABILITY.

Tenant waives and relinquishes all rights to claim any nature of lien against rent. All liability of Landlord for damages for breach of any covenant, duty or obligation of Landlord hereunder may be satisfied only out of the interest of Landlord in the Buildings and Land existing at the time the events occurred which gave rise to Landlord's liability. The term "Landlord" shall mean only the owner for the time being of the Leased Premises, and in the event of the transfer by such owner of its interest in the Leased Premises, such owner shall thereupon be released and discharged from all covenants and obligations of Landlord thereafter accruing, but such covenants and obligations shall be binding during the lease term upon each new owner for the duration of such owner's ownership.

SECTION 20. INSPECTION AND ACCESS TO LEASED PREMISES.

Landlord and any mortgagee shall have the right to enter upon the Leased Premises at any reasonable time after notice for the purpose of evaluating Tenant's performance under this Lease, inspecting the same, making repairs or additions to the Leased Premises or showing the Leased Premises to prospective purchasers, lessees, or lenders. Landlord shall be required to give no notice in connection with making repairs or additions to the Leased Premises if an emergency exists. An emergency shall be deemed to exist if a condition or circumstance exists which, if left unchanged, could damage the Leased Premises, or the property of any person or entity in an amount in excess of \$10,000.00, impair any mechanical, electrical and plumbing systems of the Buildings, or endanger the life, health or safety of any person at the Leased Premises. Landlord may place "for lease" notices upon the Leased Premises during the last six (6) months of the Term. In any circumstances where Landlord is permitted to enter upon the Leased Premises during the Term, no such entry shall constitute an eviction or disturbance of Tenant's use and possession of the Leased Premises or a breach by Landlord of any of its obligations hereunder or render Landlord liable for damages for loss of business or otherwise or entitle Tenant to be relieved from any of its obligations hereunder or grant Tenant any right of set-off or recoupment or other remedy, and in connection with any such entry incident to performance of repairs, replacements, maintenance or construction, all of the aforesaid provisions shall be applicable notwithstanding that Landlord may elect to take building materials in, to or upon the Leased Premises that may be required or utilized in connection with such entry by Landlord.

SECTION 21. MORTGAGE.

Tenant agrees that its interest under this Lease shall be subordinate to any present or future mortgage, deed of trust or similar encumbrance placed upon the Leased Premises; and that Tenant will subordinate its rights under this Lease to the lien thereof and to all advances made or hereafter to be made upon the security thereof, and, that within ten (10) business days of a request by Landlord from time to time, Tenant shall execute and deliver to Landlord a subordination, non-disturbance and attornment agreement ("SNDA") in the form reasonably required by Landlord or Landlord's mortgagee; provided, however, if requested by Tenant, as a condition of any subordination requested by the holder of a mortgage executed after the date hereof, the holder of any such mortgage, Tenant, and Landlord shall enter into an SNDA recognizing Tenant's rights under this Lease. All instruments and agreements to be executed under this Section shall be in form reasonably acceptable to the parties thereto. Notwithstanding the foregoing, a lender holding a mortgage encumbering the property of which the Leased Premises is a part or the purchaser at a foreclosure sale shall have the right and option to make this Lease superior. If in connection with Landlord obtaining financing for the property of which the Leased Premises is a part, from time to time, such lender shall request reasonable modifications in this Lease as a condition of providing Landlord such financing, then Tenant shall not unreasonably withhold, delay, or defer its consent thereto; provided, that such modifications do not increase the obligations of Tenant hereunder or materially affect the leasehold interest created hereby or increase the Base Rent or Additional Rent due hereunder. No amendment or modification of this Lease occurring after the date of any mortgage shall be binding on any Landlord's mortgagee unless such amendment or modification is expressly approved in writing by such mortgagee.

SECTION 22. NON-LIABILITY.

Without limiting the generality of the waiver contained in Section 13, Landlord and the Landlord Indemnitees shall not be liable to Tenant for any injury or death to person or damage or destruction to property sustained by Tenant or any person claiming through Tenant resulting from the Leased Premises becoming out of repair or by defect in or failure of equipment, pipes or wiring, or by broken glass, or by the backing up of drains, or by gas, water, steam, electricity, or oil leaking, escaping or flowing into the Leased Premises; provided, however, that Landlord shall remain liable for the performance of its repair

obligations pursuant to Section 10; nor shall Landlord or the Landlord Indemnitees be liable to Tenant for any loss or damage that may be occasioned by or through the acts or omissions of any persons whomsoever.

SECTION 23. MISCELLANEOUS.

A. Independent Covenants. The obligation of Tenant to pay rent and perform Tenant's other covenants and duties under this Lease are independent, unconditional obligations that are to be performed at all times provided for in this Lease.

B. Waiver. Tenant waives and relinquishes any right to assert that Landlord is bound to perform (or is liable for nonperformance of) any implied covenants or duties of Landlord that are not stated in this Lease. Tenant agrees that Landlord shall incur no liability to Tenant due to any apparent or latent defect in the Leased Premises, but Landlord shall remain liable for its warranty obligations pursuant to Section 2.C(8) and its repair obligations pursuant to Section 10. Except as expressly provided herein, Landlord makes no express or implied warranty regarding the condition or any other feature of the Leased Premises, including the Buildings, or this Lease, and Tenant hereby waives all such warranties.

C. Entire Agreement. It is expressly agreed by Tenant, as a material consideration for the execution of this Lease, that this Lease, with the specific references to written extrinsic documents, is the entire agreement of the parties, that there are, and were, no verbal representations, warranties, understandings, stipulations, agreements or promises pertaining to this Lease or to the expressly mentioned written extrinsic documents not incorporated in writing in this Lease.

D. Estoppel Certificate and Financial Statements.

(1) Tenant shall execute and return to Landlord estoppel certificates in the form attached hereto as **Exhibit "D"** and made part hereof or such other form that may be reasonably requested by Landlord or by any current or prospective purchaser of the Leased Premises or any part thereof or lienholder within ten (10) business days following such request. Tenant's failure to deliver such statement within such time shall be conclusive upon Tenant (i) that this Lease is in full force and effect, without modification except as may be represented by Landlord, (ii) that there are no uncured defaults in Landlord's performance, and (iii) that not more than one (1) month's rent has been paid in advance.

(2) If Landlord advises Tenant in writing of the existence of a lien on the Leased Premises, Tenant shall allow such lienholder to exercise all of Landlord's entry and curative rights under this Lease, but the lienholder shall have thirty (30) days following written notice from Tenant in which to attempt to cure Landlord's default, but shall be under no obligation to do so or such longer period as agreed to by Tenant in any nondisturbance, subordination and attornment agreement entered into with the lienholder.

(3) Within thirty (30) days after Landlord's request, not more than once per year, Tenant will furnish Tenant's most recent audited financial statements (and notes to them, if any) as may have been prepared by an independent certified public accountant or, failing those, internally prepared financial statements. Landlord will not disclose any aspect of such financial statements except (1) to Landlord's mortgagee or prospective mortgagees or purchasers of the Buildings to the extent such parties are bound by a confidentiality agreement similar in all material respects to the one created by this Section 22.D., (2) in the event of litigation between Landlord and Tenant, or (3) if required by court order. Tenant shall not be required to deliver the financial statements required under this Section more than once in any twelve (12) month period unless requested by Landlord's mortgagee, or a prospective buyer, or lender of the Buildings or an Event of Default occurs.

E. Time is of the Essence. Time is of the essence of this Lease. If any date for performance of any term, condition or provision hereof shall fall on a Saturday, Sunday or legal holiday, then the time of such performance shall be extended to the next business day.

F. Binding Effect. This document shall bind and inure to the benefit of the respective heirs, executors, administrators, successors and permitted assigns of the parties (without altering the provisions of this Lease regarding assignment and subletting).

G. Non-Waiver. Neither acceptance of any rent nor any other amount by Landlord nor failure by Landlord or Tenant to complain of any action, non-action or default of Tenant or Landlord, as applicable, shall constitute a waiver as to any breach of any covenant or condition of Tenant or Landlord, as applicable, contained herein nor a waiver of any of Landlord's or Tenant's rights hereunder, as applicable. Waiver by Landlord of any right for any default of Tenant shall not constitute a waiver of any right for either a prior or subsequent default of the same obligation or for any prior or subsequent default of any other obligation. Waiver by Tenant of any right for any default of Landlord shall not constitute a waiver of any right for either a prior or subsequent default of the same obligation or for any prior or subsequent default of any other obligation. No right or remedy of Landlord or Tenant hereunder or covenant, duty or obligation of Tenant or Landlord hereunder shall be deemed waived by Landlord or Tenant unless such waiver is in writing and signed by Landlord or Tenant, as applicable.

H. Relationship. The relation created by this Lease is that of Landlord and Tenant. No provision of this Lease shall be construed in such a way as to constitute Landlord and Tenant joint venturers or co-partners or to make Tenant the agent of Landlord or to make Landlord liable for the debts of Tenant.

I. Captions. The captions used in this Lease are for convenience only and do not in any way limit or amplify the terms and provisions hereof.

J. Venue and Choice of Law. All obligations of Landlord and Tenant under the terms of this Lease shall be payable and performable in Tomball, Harris County, Texas. The laws of the State of Texas (not any Texas choice of law rule making applicable the law of some other jurisdiction) shall govern the construction, interpretation, validity, performance, and enforcement of this Lease.

K. Severability. If any provision of this Lease should be held to be invalid or unenforceable, the validity and enforceability of the remaining provisions of this Lease shall not be affected thereby.

L. Gender. With respect to terminology in this Lease, each number (singular or plural) shall include all numbers, and each gender (male, female or neuter) shall include all genders.

M. Broker. Except as stated in Section 1.K each of the parties represents to the other that no brokerage commission will be due as a result of such party's acts in connection with this transaction, and each party agrees to indemnify, defend and hold harmless the other party from and against any and all liabilities or expenses arising out of claims for commissions or fees from such party's acts.

N. Acts of God and Force Majeure. Landlord and Tenant, as applicable, shall not be required to perform any non-financial covenant or obligation in this Lease, or be liable in damages to the other party, so long as the performance or non-performance of the covenant or obligation is delayed, caused by or prevented by an act of God or force majeure. For purposes of this Lease, an "act of God" or "force majeure" is defined as strikes, material or labor shortages, or restrictions on material or labor by any governmental authority, riots, floods, explosions, earthquakes, fire, storms, weather (including wet grounds or inclement weather which prevents construction), acts of the public enemy, wars, insurrections, delays

caused by third parties and any other cause not reasonably within the control of Landlord or Tenant, as applicable.

O. No Recordation. Tenant shall not record this Lease without the prior written consent of Landlord.

P. DTPA Waiver. TENANT WAIVES ITS RIGHTS UNDER THE DECEPTIVE TRADE PRACTICES – CONSUMER PROTECTION ACT, SECTION 17.41 ET SEQ., BUSINESS & COMMERCE CODE, A LAW THAT GIVES CONSUMERS SPECIAL RIGHTS AND PROTECTIONS. AFTER CONSULTATION WITH AN ATTORNEY OF TENANT’S OWN SELECTION, TENANT VOLUNTARILY CONSENTS TO THIS WAIVER WITH RESPECT TO THIS LEASE AND THE PROPERTY LEASED UNDER THIS LEASE. TENANT IS VOLUNTARILY AGREEING TO THE WAIVER OF CONSUMER RIGHTS PROVISION AND CONSIDERS IT BINDING AND ENFORCEABLE; NO STATEMENT OR REPRESENTATION BY LANDLORD, OR ANY ATTORNEY OR OTHER REPRESENTATIVE ACTING ON ITS BEHALF, HAS INFLUENCED OR INDUCED TENANT TO AGREE TO THE WAIVER OF CONSUMER RIGHTS PROVISION.

Q. Construction of Lease. Tenant declares that Tenant has read and understands all parts of this Lease, including all printed parts hereof. It is agreed that, in the construction and interpretation of the terms of this Lease, the rule of construction that a document is to be construed most strictly against the party who prepared the same will not be applied, it being agreed that both parties hereto have participated in the preparation of the final form of this Lease. Wherever in this Lease provision is made for liquidated damages, it is because the parties hereto acknowledge and agree that the determination of actual damages (of which such liquidated damages are in lieu) is speculative and difficult to determine; the parties agree that liquidated damages herein are not a penalty.

R. Limitation of Warranties. LANDLORD AND TENANT EXPRESSLY AGREE THAT THERE ARE NO IMPLIED WARRANTIES OF MERCHANTABILITY, HABITABILITY, AND FITNESS FOR A PARTICULAR PURPOSE OR OF ANY OTHER KIND ARISING OUT OF THIS LEASE, AND THERE ARE NO WARRANTIES, WHICH EXTEND BEYOND THOSE EXPRESSLY SET FORTH IN THIS LEASE.

S. Waiver of Jury Trial. LANDLORD AND TENANT HEREBY AGREE NOT TO ELECT A TRIAL BY JURY OF ANY ISSUE TRIABLE OF RIGHT BY JURY, AND WAIVES ANY RIGHT TO TRIAL BY JURY FULLY TO THE EXTENT THAT ANY SUCH RIGHT NOW OR HEREAFTER EXISTS WITH REGARD TO THIS LEASE. THIS WAIVER OF RIGHT TO TRIAL BY JURY IS GIVEN KNOWINGLY AND VOLUNTARILY BY LANDLORD AND TENANT, AND IS INTENDED TO ENCOMPASS INDIVIDUALLY EACH INSTANCE AND EACH ISSUE AS TO WHICH THE RIGHT TO A TRIAL BY JURY WOULD OTHERWISE ACCRUE. LANDLORD OR TENANT IS HEREBY AUTHORIZED TO FILE A COPY OF THIS PARAGRAPH IN ANY PROCEEDING AS CONCLUSIVE EVIDENCE OF THIS WAIVER.

T. Renewal Option. Tenant shall have the right to extend the term of this Lease for the respective Renewal Term (hereafter defined) upon and subject to the following terms and conditions: so long as there are no current Events of Default, Tenant may extend this Lease for one (1) additional term (“**Renewal Term**”) of sixty (60) months by Tenant giving written notice thereof (“**Renewal Notice**”) to Landlord, no later than nine (9) months prior to the expiration of the initial Term. The Base Rent during the Renewal Term shall be as stated on the Summary of Basic Lease Provisions.

U. **Method of Calculation.** Tenant is knowledgeable and experienced in commercial transactions and does hereby acknowledge and agree that the provisions of this Lease for determining charges and amounts payable by Tenant are commercially reasonable and valid and constitute satisfactory methods for determining such charges and amounts as required by Section 93.012 of the Texas Property Code. **TENANT FURTHER VOLUNTARILY AND KNOWINGLY WAIVES (TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW) ALL RIGHTS AND BENEFITS OF TENANT UNDER SUCH SECTION, AS IT NOW EXISTS OR AS IT MAY BE HEREAFTER AMENDED OR SUCCEEDED.**

V. **Prohibited Persons and Transactions.** Tenant represents to Landlord: (i) that neither Tenant nor any person or entity that directly owns a 10% or greater equity interest in it, nor any of its officers, directors or managing members, is a person or entity with whom U.S. persons or entities are restricted from doing business under regulations of the Office of Foreign Asset Control ("OFAC") of the Department of the Treasury (including those named on OFAC's Specially Designated and Blocked Persons List) or under Executive Order 13224 (the "Executive Order") signed on September 24, 2001, and entitled "Blocking Property and Prohibiting Transactions with Persons Who Commit, Threaten to Commit, or Support Terrorism", or other Laws (each such person, a "Prohibited Person"), (ii) that Tenant's activities do not violate the International Money Laundering Abatement and Anti-Terrorist Financing Act of 2001, or the regulations or orders promulgated thereunder, as they may be amended from time to time, or other anti-money laundering Laws (the "Anti-Money Laundering Laws"), and (iii) that throughout the Term of this Lease Tenant shall comply with the Executive Order and with the Anti-Money Laundering Laws.

W. **Tax Waiver.** Tenant waives all rights pursuant to all laws to contest any taxes or other levies or protest appraised values or receive notice of reappraisal regarding the Property (including Landlord's personalty), irrespective of whether Landlord contests same.

X. **Guaranty.** Concurrent with the execution and delivery of this Lease by Tenant, Tenant shall cause Luisa Obando and any co-guarantor required under the Summary of Basic Lease Provisions to execute and deliver to Landlord a guaranty in the same form as **Exhibit "J"**.

Z. **Exclusive Use.** Provided that there is no Event of Default on the part of Tenant hereunder, and Tenant is actually and continuously using and occupying the Leased Premises for the Permitted Use, Landlord agrees that Landlord shall not hereafter lease any space in Building 1 to a retailer whose principal and primary business is selling Italian grocery items (the "**Exclusive Use**"). For purposes of this Section 23.Z., "principal and primary business" shall mean that more than twenty percent (20%) of such tenant's gross revenues are derived from selling Italian grocery items. Notwithstanding any provision to the contrary contained herein, in the event another tenant in Building 1 utilizes its premises for the Exclusive Use in violation of the terms hereof, and such use is in violation of such tenant's own lease agreement (a "**Rogue Tenant**"), then such use by such Rogue Tenant shall not constitute a default by Landlord hereunder so long as Landlord is diligently attempting to enforce the prohibitions against the Exclusive Use contained in such Rogue Tenant's lease. Moreover, in the event that a court of competent jurisdiction determines that the granting by Landlord of the Exclusive Use to Tenant is not enforceable against such Rogue Tenant, then Landlord's failure to enforce such covenant against the Rogue Tenant shall not be a default by Landlord hereunder. Tenant shall indemnify and hold Landlord harmless from and against any and all claims, demands or causes of action asserted by third parties with respect to the Exclusive Use granted by the provisions of this Section 23.Z.

AA. **Right of First Refusal.** If, during the Term of this Lease, Landlord desires to lease any space within a Building in the Commercial Park to a third party (a "**Third Party Tenant**"), Landlord shall obtain from the Third Party Tenant a bona fide written offer to lease such space in the applicable Building that Landlord is willing to accept, stating the terms and conditions upon which the lease is to be made and the consideration offered therefor ("**Third Party Offer**"). Provided that no Event of Default on the part of

Tenant has occurred under this Lease that is then continuing, Landlord shall give Tenant written notice (“**Notice of Lease**”) by certified mail or personal delivery, of Landlord’s intention to lease space in a Building within the Commercial Park to the Third Party Tenant, together with notice of the terms of the Third Party Offer. For the avoidance of doubt, Landlord shall not be subject to the right of first refusal described in this Section 23.AA if an Event of Default by Tenant is ongoing. Tenant shall have the option (the “**ROFR Lease Option**”) to lease such space in such Building upon the terms and conditions contained in the Third Party Offer. The ROFR Lease Option may be exercised by Tenant by delivering written notice (“**ROFR Lease Notice**”) to Landlord within two (2) days after receiving the Notice of Lease (“**ROFR Exercise Period**”). If Tenant fails to exercise its ROFR Lease Option during the ROFR Exercise Period, the ROFR Lease Option shall terminate, and Landlord may consummate the lease of such space in such Building to the Third Party Tenant (or an affiliate thereof) upon terms that are materially no less favorable to Landlord than those set forth in the Third Party Offer. If Landlord fails to Lease such space in such Building to the Third Party Tenant (or affiliate thereof), then the ROFR Lease Option shall be reinstated. If Tenant exercises the ROFR Lease Option as provided above, Tenant and Landlord will enter into a lease for such space in such Building pursuant to the terms set forth in the Notice of Lease. For the avoidance of doubt, the ROFR Lease Option shall terminate and be of no further force or effect and shall not transfer to any third party in the event of a Transfer by Tenant.

BB. Purchase Option.

(1) During the Purchase Option Period (as hereinafter defined) and provided no Event of Default has occurred under this Lease that is then continuing and Building 1 is at least 95% leased, in consideration of Ten and No/100 Dollars, the rents and other amounts payable hereunder by Tenant to Landlord, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged by Landlord, Landlord hereby does grant to Tenant the exclusive right and option to purchase and obtain (the “**Purchase Option**”) either directly, or through a new entity formed by Tenant (the “**New Entity**”), at Tenant’s option, a one hundred percent (100%) fee ownership interest in Building 1 for the Exercise Price (as defined below) upon the terms and conditions hereinafter set forth.

(2) The Purchase Option shall begin the first year of the Renewal Term and continue until the expiration of the Renewal Term of this Lease (such period, the “**Purchase Option Period**”). In the event the Lease is terminated by Landlord due to an Event of Default, the Purchase Option contained herein shall also terminate. For the avoidance of doubt, the Purchase Option shall terminate and be of no further force or effect and shall not transfer to any third party in the event of a Transfer by Tenant.

(3) In the event Tenant exercises the Purchase Option, the exercise price payable by the Tenant at the Closing for Building 1 shall be based on a 6.5% cap rate on the net operating income of Building 1 (the “**Exercise Price**”). The Exercise Price shall be paid by Tenant at Closing, as provided herein, in cash or by wired funds.

(4) The Purchase Option shall be subject to Landlord obtaining its lender’s consent to Tenant’s exercise of the Purchase Option. To the extent Landlord’s lender will not agree to a partial release of its lien covering Building 1, then Landlord shall notify Tenant thereof and Tenant’s exercise of the Purchase Option shall be deemed rescinded.

(5) Tenant and Landlord shall each be responsible for their respective attorney’s fees and other costs and expenses incurred by each such party in connection with Tenant’s exercise of the Purchase Option, the performance of their respective obligations under this Section 23.BB., and the Closing. Tenant shall be responsible for all costs and expenses related to any replat of Building 1 that

may be required by the applicable governing authorities in connection with Tenant's purchase of Building 1. At the Closing: (i) Landlord shall cause the Title Company to issue an owner's title insurance policy, with such modifications and endorsements thereto as are required by Tenant (the "**Title Policy**"), to Tenant (or Tenant's designee) in the amount of the Exercise Price; (ii) the cost of the Title Policy without any endorsements shall be paid by Landlord; (iii) the cost any endorsements to the Title Policy and the cost of any new or updated survey of Building 1 obtained by the Tenant in connection with the exercise of the Purchase Option and the acquisition of Building 1 (a "**Survey**"), shall be paid by Tenant; (iii) the Title Company's escrow fee and any other expenses of Closing shall be split equally between Landlord and Tenant, and (iv) rents paid by tenant of Building 1 (including rents paid by Tenant) for the month of Closing shall be prorated between Landlord and any new owner of Building 1 based on their respective periods of ownership.

(6) Closing of the purchase of Building 1 hereunder, as described in this Section 23.BB. (the "**Closing**") shall take place within forty-five (45) days following the exercise of the Purchase Option, at which time the Exercise Price shall be paid as herein provided and the closing of the purchase and sale of Building 1 shall be completed. Closing shall take place through an escrow closing with a title company selected by Landlord (the "**Title Company**"), on or prior to the expiration of such forty-five (45) day period or at such other time as mutually agreed to by Landlord and Tenant. If the Closing occurs after the expiration of the Renewal Term of this Lease, this Lease shall continue and Tenant shall pay Base Rent equal to the holdover rent set forth in Section 17 of this Lease.

(7) At Closing, Landlord shall make, execute, and deliver a special warranty deed in fee simple and in form reasonably acceptable to Tenant, conveying to Tenant (or Tenant's designee) good and indefeasible title to Building 1, free and clear of all liens and encumbrances on the direct and indirect interests in Building 1 being conveyed or assigned, respectively, but subject to any easements of record and in place, restrictions of record, taxes for the current year not yet due and payable, and any other non-monetary encumbrances existing as of the date of this Lease. Monetary liens and monetary encumbrances on Building 1 will be paid in full and released of record by Landlord or Landlord's owners, as applicable, at Closing, and will, at all times, be kept current by Landlord and Landlord's owners, as applicable, during the Term of this Lease.

(8) In the event Building 1 is damaged or destroyed by fire or other casualty or are taken by condemnation during such period, Tenant shall have the right either to rescind Tenant's exercise of the Purchase Option (in which case the Purchase Option shall be deemed terminated and of no further force or effect, or to proceed to Closing, and receive at Closing the entire insurance proceeds directly or indirectly associated with Building 1 (expressly including the proceeds of any casualty insurance policy being maintained by Tenant or Landlord in accordance with the terms of this Lease or otherwise), and any condemnation award directly or indirectly associated with Building 1 or any award for a conveyance in lieu thereof. Landlord is not required to repair any damages from any casualty and condemnation occurring after Tenant's exercise of the Purchase Option so long as Tenant does not elect to rescind the exercise of the Purchase Option as provided above, but Landlord agrees to execute and deliver all such instruments as may be reasonably necessary to assign and transfer Landlord's rights to any and all applicable insurance proceeds and condemnation award or award for a conveyance in lieu thereof at the Closing of the Purchase Option, and to permit Tenant full power and authority to negotiate and collect the same with and from the respective insurers and/or condemning authorities. In the event Tenant rescinds the exercise of the Purchase Option, Landlord's obligations regarding any condemnation or repairing any damages from any casualty shall be controlled by the provisions in this Lease dealing with casualty and/or condemnation events.

(9) The exercise of the Purchase Option shall be by written notice from Tenant to


Landlord pursuant to the notice provisions provided contained herein, which notice shall also specify the date of Closing within the 45-day period described in Section 23.BB(5). During the 45-day period described in Section 23.BB(5) above, Landlord, Landlord's owners and Tenant, as applicable, shall negotiate in good faith and execute and deliver a purchase and sale agreement, as applicable, and related closing documentation, incorporating and implementing all of the terms of this Section 23.BB. and otherwise containing standard and appropriate representations, warranties and covenants by such parties relating to the transactions described in this Section 23.BB.

(10) Notwithstanding any exercise of the Purchase Option by Tenant, this Lease shall remain in full force and effect in accordance with its existing terms and provisions. Further, nothing contained in this Section 23.BB. shall diminish, impair, or waive Tenant's other rights under this Lease.

EXECUTED in multiple counterparts, each having the force and effect of an original, on
December 6, 2023.

LANDLORD:

HUFSMITH – KOHRVILLE BUSINESS PARK LLC,
a Texas limited liability company

By: 
Name: William Lawrence
Title: Partner

TENANT:

DELLACASA, LLC,
a Texas limited liability company


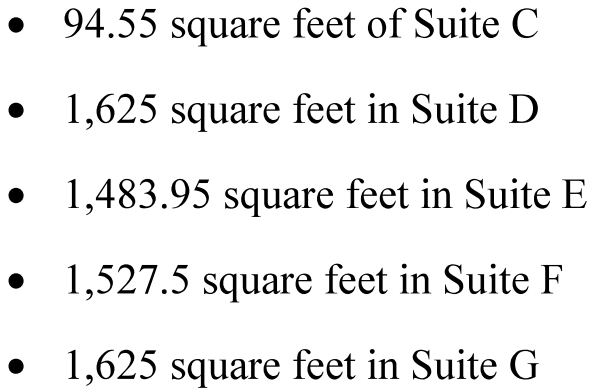
By: 
Name: Luisa Obando
Title: CEO

EXHIBIT "A"

LEGAL DESCRIPTION OF LAND

Lot 2, Block 1, HUFFSMITH-2978 REPLAT NO. 1, a subdivision in Harris County, Texas, according to the map or plat thereof recorded under Film Code Number 693798 of the Map Records of Harris County, Texas.

SITE PLAN FOR LEASED PREMISES



Combined total of 6,356 square feet

EXHIBIT "B-1"

TENANT'S EXCLUSIVE PARKING SPACES

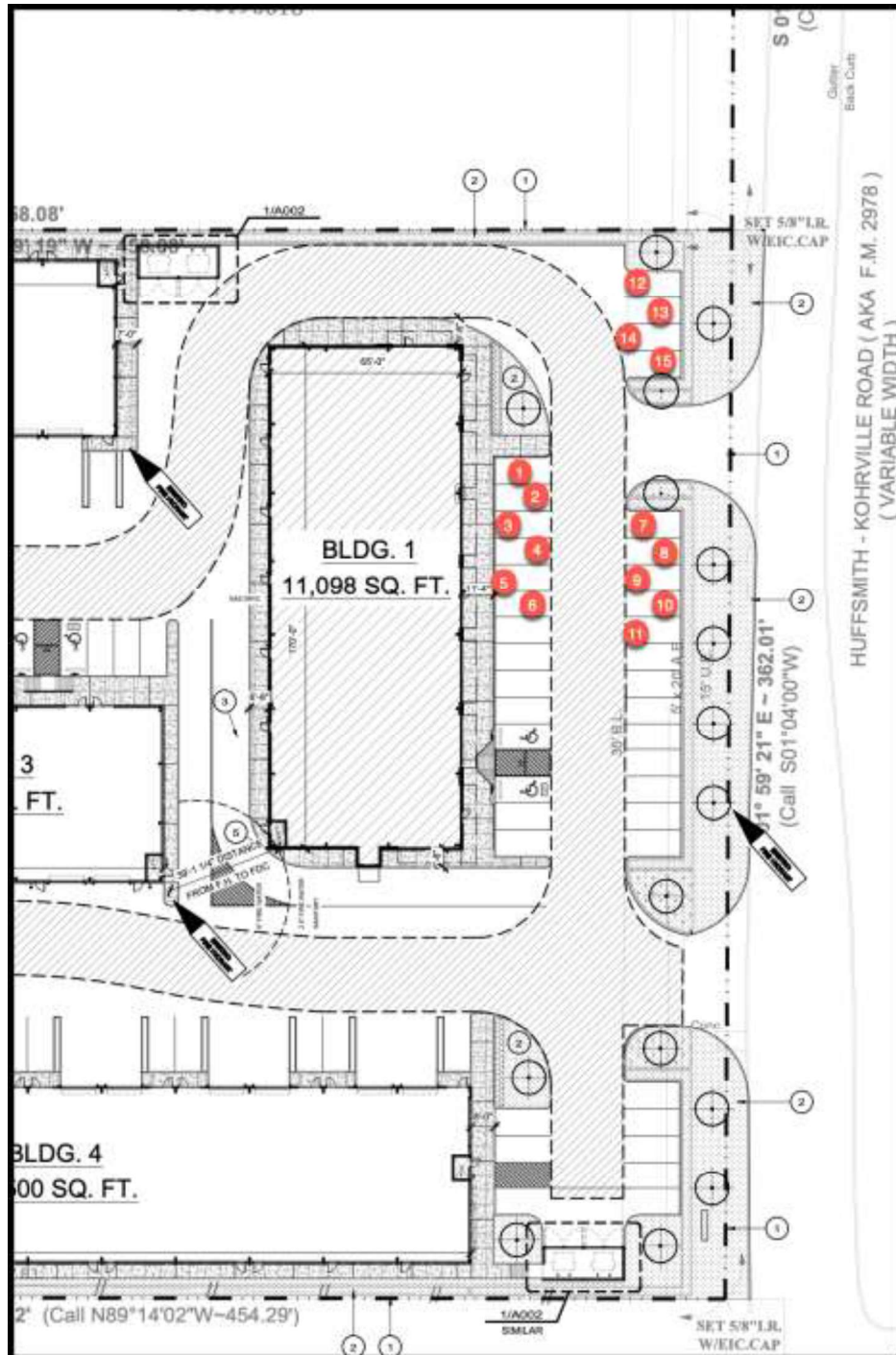


EXHIBIT "C"

CONSTRUCTION RIDER

This Construction Rider is attached as an Exhibit to that certain Lease (the "***Lease***"), dated December ____, 2023, by and between Hufsmith-Kohrville Business Park, LLC, as Landlord, and DellaCasa, LLC, as Tenant. Unless otherwise specified, all capitalized terms used in this Construction Rider shall have the same meanings as in the Lease. In the event of any conflict between the Lease and this Construction Rider, the latter shall control.

All work performed by or on behalf of Tenant for (i) initial leasehold improvements and (ii) any alterations to the Leased Premises (throughout the Term) which require Landlord's approval, shall be subject to the provisions of this **Exhibit "C"**.

1. **Plans.** All Tenant work governed by this **Exhibit "C"** (the "***Tenant Work***") shall be performed in a lien-free and good and workmanlike manner in and upon the Leased Premises, at Tenant's sole cost and expense, and in accordance with plans and specifications approved by Landlord. Tenant shall submit, within 15 days after the Delivery Date, to Landlord for Landlord's approval (such approval not to be unreasonably withheld, conditioned or delayed) complete plans and specifications, prepared by a licensed architect for the construction of the Tenant Work ("***Tenant's Plans***"). Within ten (10) business days after receipt of Tenant's Plans, Landlord shall review and respond to Tenant's Plans. If Landlord disapproves Tenant's Plans, or any portion thereof, Landlord shall notify Tenant thereof and of the revisions Landlord requires before Landlord will approve Tenant's Plans. If Landlord fails to respond within such time period, Tenant shall have the right to send a second request for approval to Landlord and if Landlord fails to respond within ten (10) days after receipt of such second request, Tenant's Plans shall be deemed approved. The final plans and specifications approved by Landlord are hereinafter referred to as the "***Approved Construction Documents***". Landlord's approval of the Approved Construction Documents shall not be deemed a representation or warranty regarding compliance with applicable Laws, nor of the accuracy, adequacy, appropriateness, functionality or quality of the improvements to be made according to the Approved Construction Documents. Tenant's contractor and all sub-contractors are required to comply with all shell building specifications, which are available upon request from Landlord.

2. **Commencement.** Prior to commencement of any Tenant Work, Tenant will provide to Landlord the following:

- a. A complete list of all proposed contractors, subcontractors, and suppliers.
- b. A copy of the building permit for the Tenant's work, as applicable
- c. A copy of the Tenant's construction schedule.
- d. The name and phone number, including emergency phone numbers, of persons authorized to represent the Tenant, Tenant's Contractor, subcontractors, and/or suppliers in regards to the Tenant Work.
- e. Insurance Certificates in amounts shown below for each of Tenant's contractors and subcontractors.

3. **Completion.**

- (a) Tenant acknowledges that Tenant is responsible to cause the design, construction and

installation of the Tenant Work to conform to the requirements of all applicable Laws, including building, plumbing and electrical codes and the requirements of any authority having jurisdiction over, or with respect to, such Tenant Work. Any Tenant Work that does not conform to industry standard codes or adversely affects the Building or the operation thereof will be remedied by the Tenant's contractor's expense. Landlord has the right to inspect construction of the Tenant Work from time to time. If any work is found that does not comply with the requirements of this **Exhibit "C"**, Tenant's Contractor will be responsible for making the necessary changes in order to comply. Any such changes that are made will be at Tenant's (or Tenant's Contractor's) expense.

(b) Within 10 days following substantial completion of the Tenant Work, Landlord and Tenant will inspect the Leased Premises and develop a "punch list" of any items which were not properly completed or are in need of repair. Tenant will complete (or repair, as the case may be) the items listed on the punch list promptly thereafter and notify Landlord in writing upon completion of such items.

(c) Within thirty (30) days following substantial completion of the Tenant Work, Tenant shall provide the following to Landlord:

(i) A sworn certificate from Tenant's architect, contractor or engineer, as applicable, stating that the Tenant Work has been completed in strict compliance with this **Exhibit "C"** and the Approved Construction Documents; and

(ii) Full and final lien waivers, in form and substance reasonably satisfactory to Landlord, from Tenant's general contractor and all other material contractors and suppliers that provided labor or materials as part of the Tenant Work.

4. **Contractors.** Tenant will employ only experienced, licensed contractors, architects, engineers and other consultants, as applicable, to perform the Tenant Work. The general contractor for the Tenant Work ("***Tenant's Contractor***") shall be subject to Landlord's prior written approval, not to be unreasonably withheld, conditioned or delayed. At all times during any construction at the Leased Premises (including, without limitation, the Tenant Work) all contractors or other parties shall keep in full force the following:

(a) Workers Compensation - Statutory Amount in the state where the Land is located;

(b) Employer's Liability - \$500,000 or such other higher limits imposed in accordance with the requirement, if any, of the Laws of the state where the Land is located;

(c) Commercial General Liability - Unless otherwise approved in writing by Owner, in the amount of \$1,000,000 per occurrence, \$2,000,000 general aggregate with Products/Completed Operations coverage (with evidence of Products/Completed Operations Coverage shown for a minimum of two years following completion of the work described in the contract);

(d) Business Auto Liability including hired and non-owned auto coverage - \$1,000,000 combined single limit;

(e) Umbrella/Excess - \$5,000,000 per occurrence; and

(f) "All-Risk" form of Builder's Risk Insurance on a completed value form, with

full replacement cost coverage, in an amount not less than the total improvement cost with a maximum deductible of \$1,000.00, and with appropriate coverage permitting occupancy prior to full completion and appropriate coverage for the cost of debris removal from the Land.

Landlord, its property manager and its mortgagee shall be named as additional insureds on each of said policies (excluding the worker's compensation policy). Prior to its entry upon the Land, or the commencement of any of the Tenant Work, Tenant shall provide true and correct certificates of insurance evidencing such policies, and neither Tenant (nor any of its contractors or agents) shall not be entitled to enter upon the Leased Premises until it has provided such certificates.

5. Assumption of Risk and Waiver.

(a) To the fullest extent permitted by law, Tenant's Contractor will indemnify and hold the Landlord and their agents and employees harmless from and against liability claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of, resulting from, and in any way related to the performance of work pursuant to Tenant Contractor's contract with Tenant or the presence of Tenant's Contractor, its subcontractors, or persons directly or indirectly employed by any of them on or about the project site, provided that such liability, claim, damage, loss or expense is attributable to bodily injury sickness, disease or death of any person (including Tenant Contractor's employees), or injury to or destruction of tangible property, including the loss of use resulting there from. Tenant's Contractor's aforesaid indemnity and hold harmless agreement shall apply to any acts or omission, willful misconduct, or negligent conduct, whether active or passive, including Tenant's Contractor's agents, subcontractors, or employees, except that said agreement shall not be applicable to injury, death, or damage to property arising from the sole negligence or willful misconduct of Landlord or their officers, agents, and servants. Tenant Contractor's aforesaid indemnity and hold harmless agreement shall not be construed to negate, abridge, or otherwise reduce and other right or obligation of indemnity which would otherwise exist as to any party or person described in this Paragraph (a).

(b) In any and all claims against Landlord, or any of their agents or employees by any employee of Tenant's Contractor, any of its subcontractors, anyone directly or indirectly employed by any of them, or anyone for whose acts any of them may be liable, the indemnification obligation set forth in Paragraph (b) shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for Tenant's Contractor or any of its subcontractors under workers' or workman's compensation acts, disability benefits acts, or other employees benefit acts.

EXHIBIT "D"

ESTOPPEL CERTIFICATE FOR PROSPECTIVE PURCHASER OR LENDER

Re: Lease between _____ ("Landlord") and
_____ ("Tenant") dated _____, 20____, with respect to the land and
building located at _____ in _____, Texas (the
"Premises")

Gentlemen:

We, the undersigned Tenant, under the Lease described above (the "Lease"), certify to
_____ ("Purchaser") and its successors and assigns as the prospective purchaser of the
Premises, the following:

1. Attached hereto as Exhibit "A" is a true, correct, and complete copy of the Lease, including all amendments, exhibits, and addenda thereto.
2. There has not been a cancellation, modification, assignment, renewal, extension, or amendment to the Lease, except the following (true and correct copies of all of which are attached hereto and initialed by Tenant): _____

_____.
3. All of the current Base Rent (in the amount of \$_____) and Initial Estimate of Monthly Taxes and Insurance Payment (in the amount of \$_____) provided for in the Lease is paid through _____, 20____. A Security Deposit in the amount of \$_____ has been paid to Landlord.
4. Other than the Lease, there are no other agreements, written or oral, between Landlord and Tenant regarding the Premises or Tenant's obligation to pay rentals under the Lease, and Tenant does not claim a right to any concessions, free rent, or rental abatement other than as set forth in the Lease, except as follows:
_____.
5. Tenant currently pays for all utilities used in the Premises.
6. The Lease commenced on _____, 20____, and the rent commenced on _____, 20____. The Lease terminates on _____, 20____, and the Tenant is not entitled to any renewal options except _____ options to extend, of _____ (____) months each.
7. The interest of Tenant in the Lease has not been assigned or encumbered, and not part of the Premises has been sublet. Landlord has satisfied all operating covenants of Landlord under the Lease.
8. The Lease is in full force and effect and Tenant is not aware of any presently existing claims against Landlord or any offsets against rent due under the Lease. There are no (i) defaults of Landlord or Tenant under the Lease, (ii) existing circumstances which with the passage of time, or notice or both, would give rise to a default by Landlord or Tenant under the Lease, (iii) existing rights to abate, reduce or offset sums against the rent or terminate this Lease because of any other condition, or (iv) existing

circumstances which with the passage of time, or notice, or both, would give rise to a right to abate, reduce or offset sums against rent or terminate the Lease.

9. The Premises have been completed and accepted and are in conformity with the terms of the Lease, subject to the (i) Landlord's warranty and repair obligation contained in the Lease solely with respect to the roof, foundation and load-bearing walls supporting the roof of the building, (ii) general contractor's warranty obligations to the Tenant (if any) and (iii) liability of the architect and any engineers to the Tenant (if any) for design defects. Tenant has been paid all sums (if any) owed by Landlord with respect to allowances for construction performed at the Premises by Tenant.

10. The Tenant has not filed a petition in bankruptcy that has not been dismissed as of the date hereof, has not been subject to an involuntary petition in bankruptcy which has not been dismissed, has not made an assignment for the benefit of any creditor(s), or has not been adjudged to be bankrupt or insolvent by a court of competent jurisdiction.

11. The Tenant has not received any option to purchase any portion of the Premises, except as follows: _____.

12. Any notices which may or shall be given to Tenant under the terms of the Lease are not to be sent to Tenant at the following address: _____.

13. The undersigned has all requisite authority to execute this Estoppel Certificate on behalf of Tenant. The undersigned acknowledges that Purchaser has requested the information contained herein for purposes of confirming and clarifying certain provisions of the Lease and is relying (and will rely) on the truth and accuracy of the representations made herein and upon the authority of the undersigned to execute this Estoppel Certificate on behalf of Tenant, in connection with Purchaser's decision to purchase (or not to purchase) the Premises. This Estoppel Certificate may only be relied upon by Purchaser and Purchaser's lender in connection with the acquisition and financing of the Premises, and no other person or entity shall be entitled to be a third-party beneficiary of this Estoppel Certificate.

14. Tenant acknowledges and consents to the fact that Landlord may assign and transfer or has assigned and transferred the Landlord's interest under the Lease to Purchaser and Tenant agrees to attorn to Purchaser and to perform all of Tenant's obligations as the tenant under the Lease (including, without limitation, the payment of rent) directly to Purchaser, its successors and assigns, as the new Landlord under the Lease from and after the effective date of such assignment and transfer of the Lease by Landlord to Purchaser. Purchaser shall not be liable for any act or omission of any prior Landlord under the Lease, which act or omission shall have occurred prior to the date Purchaser acquires Landlord's interest in the Lease.

15. So long as the Earnest Money Contract ("Contract") between Landlord and Purchaser is pending, Tenant understands and agrees that the Lease may not be modified or amended in any respect without the prior written consent of Purchaser.

Very truly yours,

(Tenant)

By: _____

Name: _____

Title: _____

Date: _____, 20____

EXHIBIT "E"

RULES & REGULATIONS

1. All floor areas and other improvements in or on the Leased Premises (including, without limitation, entrances and returns, doors, fixtures, windows, aisles, and displays) shall be maintained in a safe, neat, clean, and attractive condition.
2. No person shall use the parking areas except for ingress and egress and for the parking of motor vehicles during the period of time such persons or the occupants of such vehicles. No sidewalks, walkways, or halls shall be used other than for pedestrian travel. No roadways, walkways, sidewalks, halls, parking areas, or other open areas shall be used by skateboards, roller blades, roller skates, or other moveable contrivances, except for or by handicapped persons.
3. All motor vehicles shall be parked in an orderly manner within the painted lines defining the individual parking spaces, except that trucks may be parked elsewhere on the Leased Premises in an orderly manner.
4. No person shall do any of the following:
 - A. Throw, discard, or deposit any paper, glass, or extraneous matter of any kind, except in designated receptacles, or create litter or hazards of any kind on or in any part of the Leased Premises;
 - B. Deface, damage, or demolish any sign, light standard or fixture, landscaping material, or other improvement within the Leased Premises.
5. No sign or covering shall be inscribed, displayed, printed, affixed, or hung on or to, or placed in or used in connection with, any window or door located on or within the Leased Premises without the prior written consent of Landlord. Landlord shall have the right to remove any such sign or covering that violates this provision without notice to and at the expense of Tenant.
6. Landlord reserves the right to exclude or expel from the Leased Premises, any person who, in Landlord's judgment, is or appears to be intoxicated or under the influence of liquor or drugs, or is in violation of any of these Rules and Regulations.
7. Tenant shall comply with all commercially reasonable safety, fire protection, and evacuation procedures and regulations established by Landlord, its insurance carriers, or any governmental agency.
8. Landlord reserves the right to restrict the use of all electrical extension cords. At no time shall more than two electrical devices be connected to any single electrical outlet. Multiple adapters are prohibited. Any extension cord used must be a two-wire cord with a ground, and must be sized according to the power draw on the circuit.
9. The plumbing fixtures shall be used only for the purposes, for which they are designed, and no sweepings, rubbish, rags, or other unsuitable materials shall be disposed into them. Without the prior written consent of Landlord, Tenant shall not use the Leased Premises for washing clothes, lodging, or for any improper, objectionable, or immoral purposes.

10. Neither Tenant nor its employees, agents, contractors, subcontractors, or invitees shall go upon the roof of the Leased Premises without Landlord's prior written consent.
11. Landlord utilizes the **BEST/STANLEY** door lock/hardware system. All exterior and interior locks, padlocks or other means of securing the Leased Premises shall be supplied by Landlord's security provider (currently RAE Security) and in accordance with the numbering/organization scheme maintained by RAE. Landlord will provide Tenant with new cores for all exterior doors/padlocks and will provide tenant with four (4) keys to exterior doors. Additional keys must be ordered through Landlord or RAE Security. Landlord may make a reasonable charge for any additional keys. Tenant shall not alter any lock or install a new or additional lock or bolt on any door of its Leased Premises. Tenant, upon the termination of its tenancy, shall deliver to Landlord all keys to doors and other areas in the Leased Premises.
12. The Leased Premises shall be used only for the purposes set forth in the Lease.
13. Tenant shall store all its trash and garbage within its Leased Premises or in dumpsters or other contained areas in the Leased Premises. No material shall be placed in the trashcans or receptacles if such material is of such nature that it may not be disposed of in the ordinary and customary manner of removing and disposing of trash and garbage in the area, without being in violation of any law or ordinance governing such disposal. All garbage and refuse disposal shall be made only through entryways provided for such purpose and at such times as Landlord shall designate. Large containers and any non-compactable trash shall be kept in the Leased Premises until such time as Tenant has made suitable arrangements for its removal. In no event shall Tenant's trash be visible to the general public or constitute any health, fire hazard, or nuisance to the public. No burning of trash, refuse, or waste shall be permitted.
14. These Rules and Regulations are in addition to, and shall not be construed to in any way modify, alter, or amend, in whole or in part, the terms, covenants, agreements, and conditions of the Lease to which these Rules and Regulations are attached. Landlord reserves the right to rescind or waive any of the rules and regulations set forth herein (as to an individual tenant or as to all the tenants) and to make such other and further rules and regulations as in its reasonable judgment shall, from time to time, be required for the safety and protection, care, and cleanliness of the Leased Premises, the operation thereof, the preservation of good order therein, or the protection and comfort of the Tenant and their agents, employees, and invitees. Such rules and regulations, when made and written notice thereof is given to a tenant, shall be binding upon it in like manner as if originally herein prescribed.

EXHIBIT "F"

HAZARDOUS SUBSTANCES

1. Tenant shall not cause or permit any Hazardous Substance (as hereinafter defined) to be brought upon, generated, manufactured, refined, produced, processed, kept, stored, discharged, disposed of, leaked, emitted, or used (collectively herein called "Processed and Stored") in, or about the Leased Premises, except for such Hazardous Substances as are necessary or useful to Tenant's business and the use of which is expressly approved by Landlord in writing. Landlord shall have no obligation to grant any such approval.
2. If Landlord consents as provided in paragraph 1 above, any Hazardous Substance permitted on the Leased Premises, and all containers therefor, shall be Processed and Stored in a manner that complies with all Governmental Laws (as hereinafter defined) applicable to Hazardous Substances.
3. Tenant shall not cause or permit any material or substance to be Processed or Stored in, on or about the Leased Premises, or the atmosphere, ground, sewer system, or any body of water, if that material (as is reasonably determined by the Landlord, or any governmental authority) does or may pollute or contaminate the same, or may adversely affect (a) the health, welfare, or safety of persons, whether located on the Leased Premises, or elsewhere, or (b) the condition, use, or enjoyment of the Building or any other real or personal property.
4. Tenant shall not cause or permit to occur any violation of any governmental law on, in, under, or about the Leased Premises, arising from Tenant's use, occupancy, or possession of the Leased Premises, including, but not limited to, soil and ground water conditions.
5. As used herein, the term "Hazardous Substance" means (a) any "hazardous waste" as defined by the Resource Conservation and Recovery Act of 1976, as amended from time to time, and regulations promulgated thereunder; (b) any "hazardous substance" as defined by the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended from time to time, and regulations promulgated thereunder; (c) any oil, petroleum products, and their by-products (d) any substance that is or becomes regulated by a federal, state or local governmental authority; (e) any other ignitable, reactive, corrosive, hazardous, toxic, flammable, explosive, radioactive material, asbestos, asbestos containing material, polychlorinated biphenyl, chemical known or suspected to cause cancer or reproductive toxicity, pollutants, contaminants, hazardous wastes, controlled drugs or substances (except prescription drugs pursuant to existing prescriptions), (f) any substance or material declared to be hazardous or toxic under any statute, law, regulation, code, ordination rule or governmental pronouncement now or hereafter enacted or promulgated by any governmental authority (herein called "Governmental Laws") or (g) dangerous substance or material.
6. Tenant shall, at Tenant's own expense, comply with Governmental Laws relating to or regulating the bringing upon, generating, manufacturing, refining, producing, processing, keeping, storing, discharging, disposing of, leaking, emitting, or using (collectively herein called "Processing and Storing") of Hazardous Substances that occur during the term of the Lease.
7. Tenant shall, at Tenant's own expense, make all submissions to, provide all information required by, and comply with all requirements of any governmental authority (the "Authority") under the Governmental Laws.

8. Should any Authority or any third party demand that a clean-up plan be prepared and that a clean-up be undertaken because of the Processing and Storing of Hazardous Substances by Tenant that occurs during the term of this Lease, at or from the Leased Premises, or which arises at any time from Tenant's use or occupancy of the Leased Premises, then Tenant shall, at Tenant's own expense, prepare and submit the required plans and all related bonds and other financial assurances; and Tenant shall carry out all such clean-up plans.
9. Tenant shall promptly provide all information regarding the Processing and Storing of Hazardous Substances that is requested by Landlord.
10. If Tenant fails to fulfill any duty imposed under this Exhibit "F" within a reasonable time, not less than thirty (30) days after receipt of written notice, Landlord may do so; and in such case, Tenant shall reasonably cooperate with Landlord in order to prepare all documents Landlord reasonably deems necessary or appropriate to determine the applicability of the Governmental Laws to the Premises and Tenant's use, occupancy or possession thereof, and for compliance therewith, the Tenant shall execute all such documents promptly upon Landlord's request. No such action by Landlord and no attempt made by Landlord to mitigate damages under any law shall constitute a waiver of any of Tenant's obligations under this Exhibit "F".
11. Tenant hereby agrees that it shall be fully liable for all costs and expenses related to any Processing and Storage of Hazardous Substances by Tenant in, on, under or about the Leased Premises and the Tenant shall give immediate notice to the Landlord of any violation or potential violation of the provisions of Exhibit "F" or any Governmental Laws. Tenant shall defend, indemnify, and hold harmless Landlord, its agents, employees and managers, and their respective partners, agents, employees, officers, directors, beneficiaries, shareholders, partners, consultants and advisers from and against all claims, demands, penalties, fines, suits, causes of action, liabilities, settlements, damages, costs, expenses (including, without limitation, attorneys and consultants fees, court costs, and litigation expenses), or losses (including, without limitation, a decrease in value of the Leased Premises or usable space) of whatever kind or nature, known or unknown, contingent or otherwise, arising out of or in any way related to, arising out of or in connection with or which is alleged to have arisen out of or in connection with any violation or alleged violation by Tenant of any covenant contained in this Exhibit "F".
12. In the event of a violation by Tenant of any covenant contained in this Exhibit "F" after this Lease has expired or otherwise terminated, and Landlord is not able to lease the Leased Premises as a result of such violation or alleged violation, then in addition to its obligations under Section 11 of this Exhibit "F", Tenant shall also reimburse Landlord for the Base Rent (at the applicable Market Rate) that Landlord would have received for the Leased Premises from the expiration of this Lease until such time that Tenant has complied with the terms of this Exhibit "F".
13. The provisions of this Exhibit "F" shall be in addition to any other obligations and liabilities Tenant may have to Landlord at law or equity and shall survive the transactions contemplated herein and shall survive the termination of this Lease.

EXHIBIT "G"

PROHIBITED USES

General Restrictions on Use. Unless otherwise approved by Landlord in writing, no portion of the Leased Premises shall be used, leased, subleased, or operated for:

- (1) automotive repair, car wash, gasoline sales, or tire or battery sales;
- (2) the renting, leasing, sale or display of any, truck, trailer, recreational vehicle or boats which are on premises; however, nothing shall prevent any such renting, leasing, or sale if the vehicles, trucks, trailers or boats are located at another site;
- (3) any use which emits an obnoxious odor, or excessive noise or sound which can be heard or smelled outside of any building located in on the Land or which creates unusual fire, explosive or other risks to any portion of the Land provided, however, that any odors from Tenant's food preparation which emanate outside the Building and then permeate space occupied by other tenants shall not be deemed to violate this rule.
- (4) any mobile home park, trailer park, labor camp, or junkyard (except this provision shall not prohibit the temporary use of construction trailers during periods of construction, reconstruction or maintenance);
- (5) any dumping, disposing, incinerating or reduction of garbage (exclusive of garbage compactors located near the rear of any building) except any recycle centers required by governmental regulations;
- (6) any living quarters, sleeping apartments or lodging rooms;
- (7) any veterinary hospital or animal raising facility;
- (8) any mortuary or funeral home;
- (9) any church, school or day-care;
- (10) any establishment whose primary business is the sale or rental or display of sexual materials or drug related paraphernalia or whose primary business is providing any adult only or sexually oriented service or product including, but not limited to, massage parlors, brothels, topless establishments, any "sex" shop, "peep show", any "adult" bookstore or "adult" movie theater;
- (11) any flea market, amusement park, video arcade, pool or billiard hall;
- (12) any gaming facility or operation including, but not limited to, off-track or sports betting parlor, table games such as blackjack, poker, slot machines, video poker, blackjack, keno machines or similar devices or bingo hall;
- (13) any central laundry, dry cleaning plant or Laundromat; provided, however, this prohibition shall not be applicable to a laundry which is an ultimate consumer pickup and delivery site, provided no cleaning actually takes place upon the Land;

- (14) the operation, establishment or maintenance of a movie theatre, children's playground, night club, bowling alley, skating or roller rink, health spa, a second hand or pawn shop type of business or other entertainment facilities, or any use in violation of applicable zoning and other governmental laws and regulations;
- (15) any use which is public or private nuisance;
- (16) distilling, refining, smelting, agricultural, animal raising or boarding or mining operation; or
- (17) any place for public assembly (such as a church or meeting hall).

EXHIBIT “H”

[RESERVED]

EXHIBIT "I"

COMMENCEMENT DATE AGREEMENT

1. Landlord: Hufsmith – Kohrville Business Park LLC,
a Texas limited liability company
2. Tenant: {Name of Tenant} _____,
a _____ (entity) _____
(state of incorporation)
3. Leased Premises: Approximately 6,356 sq. ft. of space within the building commonly known
as 22525 Hufsmith-Kohrville Road, Tomball, Harris County, Texas
77375.
4. Date of Lease: December _____ 6th _____, 2023
5. Commencement Date: The Commencement Date of the Lease is _____, 2023.
The initial term of the Lease is for sixty (60) months as set forth in Section
one (1) of the Lease. If the Commencement Date specified above is not the
first date of a calendar month then a period of time equal to the partial month
beginning with the Commencement Date shall be added to the term so that
the term shall expire on the last day of a calendar month. Therefore, the
Lease shall expire on _____, 20__.

LANDLORD:

HUFSMITH – KOHRVILLE BUSINESS PARK,
a Texas limited liability company

By: _____ Date: _____
Nam: _____
Title: _____

TENANT:

(Name of Tenant)

By: _____ Date: _____
Nam: _____
Title: _____

EXHIBIT "J"

GUARANTY OF LEASE

THIS GUARANTY is made among **LUISA OBANDO** (collectively, "**Guarantor**"), and **HUFSMITH – KOHRVILLE BUSINESS PARK LLC**, a Texas limited liability company ("**Landlord**"), and DellaCasa, LLC ("**Tenant**"), who represent and agree as follows:

1. Tenant has executed a lease (the "**Lease**"), dated the 6th day of December 2023, for approximately 6,356 square feet of space in the Hufsmith – Kohrville Road Business Park, Building 1 with an address of 22525 Hufsmith – Kohrville Road, Tomball, Texas 77375, all as more particularly described in the Lease (collectively, the "**Leased Premises**").
2. This Guaranty is given by Guarantor to induce Landlord to enter into the Lease with Tenant, and the parties understand that Landlord would not enter into the Lease without this Guaranty. It is expressly understood that if this Guaranty is signed after the execution of the Lease, Landlord would not have entered into the Lease without the prior commitment by Guarantor to execute this Guaranty. Guarantor hereby acknowledges and confirms that this Guaranty is supported by adequate consideration.
3. Guarantor hereby, jointly and severally, unconditionally and irrevocably guarantees to Landlord the full, faithful, prompt and complete payment and performance by Tenant of each and every obligation, condition and provision to be paid or performed by Tenant, and any assignee of Tenant, under the Lease.
4. Provided no Event of Default has occurred under this Lease during the initial Term, this Guaranty shall not extend to any renewals or extensions of the Lease. This Guaranty, however, shall include any assignments and any and all modifications of the Lease or amendments thereto at any time made by Tenant and Landlord. Landlord and Tenant shall have no obligation to obtain Guarantor's approval prior to executing or making any renewals, extensions, modifications or other amendments to the Lease, and the failure by Landlord and Tenant to obtain such approval shall not in any way affect or diminish the validity and enforceability of this Guaranty.
5. Guarantor further agrees to indemnify, save and hold harmless Landlord from any and all loss, damage, liability, costs and expense in any way resulting from or arising out of the failure of Tenant to perform fully, faithfully and completely any one or more of the duties, liabilities and/or obligations under the Lease, as the same may be modified, amended, renewed and/or extended. In the event of a default by Tenant, Landlord may commence any action or proceeding against Guarantor, or may otherwise exercise any remedy available at law or in equity to enforce the provisions of this Guaranty. Landlord may maintain successive actions for successive defaults. Landlord's rights hereunder shall not be exhausted by Landlord's exercise of any of its rights or remedies or by any such action or by any number of successive actions, until and unless all obligations hereby guaranteed have been paid and fully performed.
6. No waiver or delay by Landlord of the enforcement of any of its rights and/or remedies under the Lease shall affect the obligations of Guarantor under this Guaranty.
7. The obligation of Guarantor hereunder is joint and several with Tenant. Landlord may proceed to enforce this obligation of Guarantor against Guarantor and Tenant, or either of them, without first proceeding against the other. The right of Landlord to enforce the obligations of Guarantor shall not be postponed, delayed or otherwise prejudiced by the commencement of proceedings (whether voluntary or involuntary) to have Tenant named as a debtor under the Federal Bankruptcy Code, or under any similar state or federal law. If Tenant becomes insolvent or is adjudicated a bankrupt or files a petition for reorganization, arrangement or similar relief under any present or future provisions of the Federal

Bankruptcy Code, or similar state or federal law, or if such a petition filed by creditors of Tenant shall be approved by a court, or if Tenant shall seek a judicial readjustment of the rights of its creditors under any present or future federal or state law, or if a receiver of all or any part of Tenant's property is appointed by any state or federal court:

7.1 If the Lease is terminated or rejected, or the obligations of Tenant thereunder are modified, Landlord shall have the right to recover from Guarantor that which Landlord would be entitled to recover from Tenant under the Lease in the event of a default under the Lease by Tenant; and

7.2 If any obligation under the Lease is performed by Tenant, and all or any part of such performance is avoided or recovered from Landlord as a preference, fraudulent transfer or otherwise, in any bankruptcy, insolvency, liquidation, reorganization or other proceeding involving Tenant, the liability of Guarantor under this Guaranty shall remain in full force and effect for any part of the performance which is so avoided or recovered.

8. Tenant agrees to notify Guarantor of any defaults, or declared defaults, under the Lease, and Landlord may, but shall have no obligation to provide notice of any such defaults to Guarantor. Any notice or notices given by Landlord to Guarantor shall be deemed to be for convenience only, and shall not release Tenant of its obligation to give notice of any defaults or declared defaults to Guarantor. The failure of Landlord to give notice of any such defaults shall in no way prejudice Landlord's right to enforce this Guaranty.

9. This Guaranty shall be binding upon the parties hereto, their heirs, successors, representatives and assigns.

10. If any portion of this Guaranty is deemed to be unenforceable by a court of competent jurisdiction, this Guaranty shall be deemed to be modified only to the extent necessary to comply with applicable law.

11. Guarantor specifically understands and agrees that if Landlord enforces any of its rights hereunder as a result of any default under the Lease, Guarantor shall be liable to pay all reasonable attorneys' fees and costs incurred by Landlord as a result of the default.

12. If there is more than one Guarantor or more than one Tenant or Landlord, the singular shall also be deemed to mean the plural. If there is more than one Guarantor, the obligations of the Guarantors shall be joint and several. The release of any one or more Tenant(s) and/or Guarantor(s) shall not reduce the obligation of the remaining Tenant(s) and Guarantor(s) for all amounts due or to become due under the Lease.

13. This Agreement shall be construed according to the laws of the State of Texas.

14. If Landlord has any interest in any collateral to secure all or any portion of Tenant's obligation under the Lease, or to secure any other obligations of Tenant to Landlord, such interest shall be deemed to be held for the benefit of Landlord only and shall not inure at any time to or for the benefit of Guarantor. Landlord shall have no obligation to record, maintain or otherwise enforce any such security interest, and Landlord's failure to do so shall neither diminish the enforceability of this Guaranty nor create any claim or right of Guarantor against Landlord.

15. Nothing in this Guaranty shall be deemed to grant or allow Guarantor any right of possession of the Leased Premises, whether before or after any payment by Guarantor under the Lease.

16. To the extent permitted by applicable laws, Guarantor waives and agrees not to assert or take

advantage of: (a) all rights, remedies, claims and defenses based upon or related to §§ 51.003, 51.004 and 51.005 of the Texas Property Code (as the same may be amended from time to time), to the extent that the same pertain or may pertain to any enforcement of this Guaranty Agreement, Rule 31 of Texas Rules of Civil Procedure (as the same may be amended from time to time), § 17.001 of the Texas Civil Practice and Remedies Code (as the same may be amended from time to time), Chapter 43 of the Texas Civil Practice and Remedies Code (as the same may be amended from time to time) and any similar or analogous statutory or common laws or procedural rules of any jurisdiction relevant to guarantors, indemnitors, sureties, co-makers or accommodation parties; (b) any right to require Landlord to proceed against Tenant or any other person or entity, or to pursue any other remedy in Landlord's power before proceeding against Guarantor; (c) any defense of any statute of limitations or laches which may be asserted by Tenant; (d) any defense that may arise by reason of incapacity, lack of authority, dissolution or termination of, involvement in any bankruptcy or reorganization proceeding (including any rejection or disaffirmance of the Lease in such proceeding) by, or other similar occurrence with respect to Tenant or any successor in interest to Tenant; or (e) any right to receive any demand or any notice, including any notice of any default under the Lease.

17. The liability of the Guarantor hereunder shall in no way be affected by, and Guarantor expressly waives any defenses that may arise by reason of: (a) the release or discharge of Tenant in any creditors' workout, receivership, bankruptcy or other proceedings; (b) the impairment, limitation or modification of the liability of Tenant or the estate of Tenant in bankruptcy, or of any remedy for the enforcement of Tenant's liability under the Lease which results from the operation of any present or future provision of the Federal Bankruptcy Code or other statute, or from the decision in any court; (c) the rejection or disaffirmance of the Lease in any such proceeding; (d) the modification, assignment or transfer of the Lease by Tenant; (e) any disability or other defense of Tenant; or (f) the cessation from any cause whatsoever of the liability of Tenant, other than full compliance therewith by Tenant.

18. No payment by Guarantor shall entitle Guarantor under any obligations owed by Tenant to Guarantor, by subrogation or otherwise, to any payment by Tenant under or out of the property of Tenant, including but not limited to, the revenues derived from the Leased Premises, except after payment in full to Landlord of all amounts due and payable by Tenant to Landlord pursuant to the Lease. Guarantor hereby assigns to Landlord all of Guarantor's rights to any payments or distributions to which Guarantor may be entitled from Tenant out of any bankruptcy or similar state or federal proceeding in which filing of claims is required, and Guarantor hereby directs all applicable persons to make such distributions to Landlord, and not to Guarantor, until such time as all amounts due under the Lease to Landlord have been fully paid.


19. This Guaranty shall be enforced in accordance with the laws of the State of Texas, and the parties agree that venue of any disputes hereunder shall be in Harris County, Texas.

*[The Remainder of this Page was Intentionally Left Blank
Signature Page Follows]*

IN WITNESS WHEREOF, the parties have signed this Guaranty on the dates indicated below.


LANDLORD:

HUFSMITH – KOHRVILLE BUSINESS PARK LLC,
a Texas limited liability company

By: 
Name: William Lawrence
Title: Partner

TENANT:

DELLACASA, LLC,
a Texas limited liability company

By: 
Luisa Obando (Dec 6, 2023 16:57 CST)
Printed Name: Luisa Obando
Title: CEO

GUARANTOR:


Luisa Obando (Dec 6, 2023 16:57 CST)

LUISA OBANDO

Address for Notice:

10 Waterfall Way
Tomball, TX 77375

EXHIBIT "K"
Tenant's Insurance Requirements

1. Specific Insurance Requirements

The following insurance shall be maintained in effect with limits not less than those set forth below at all times during the term of this Agreement and thereafter as required:

Insurance	Coverage/Limits	Other Requirements
Commercial General Liability (Occurrence Basis)	<ul style="list-style-type: none"> ▪ \$1,000,000 Per Occurrence ▪ \$2,000,000 General Aggregate ▪ \$2,000,000 Products/Completed Operations Aggregate ▪ \$1,000,000 Personal And Advertising Injury ▪ Designated Location(s) General Aggregate Limit 	<ul style="list-style-type: none"> ▪ Current ISO edition of CG 00 01 ▪ The personal injury contractual liability exclusion shall be deleted. ▪ Landlord shall be included as an insured under the CGL policy for liability arising out of Tenant's maintenance, use or occupancy of the Leased Premises under this Agreement. Such coverage shall be written on ISO form CG 20 11 04 13. ▪ This coverage shall be endorsed to provide primary and non-contributing liability coverage. It is the intent of the parties to this Agreement that all insurance coverage required herein shall be primary to and shall seek no contribution from all insurance available to Landlord Parties, with Landlord Parties' insurance being excess, secondary and non-contributing. ▪ The following exclusions/limitations (or their equivalent(s), are prohibited: <ul style="list-style-type: none"> ○ Contractual Liability Limitation CG 21 39 ○ Amendment of Insured Contract Definition CG 24 26 ○ Any endorsement modifying the Employer's Liability exclusion or deleting the exception to it ○ Any "Insured vs. Insured" exclusion except Named Insured vs. Named Insured ○ Any Punitive, Exemplary or Multiplied Damages exclusion
Business Auto Liability	\$1,000,000 Per Accident	<ul style="list-style-type: none"> ▪ Current ISO edition of CA 00 01 ▪ Arising out of any auto (Symbol 1), including owned, hired and nonowned
Workers' Compensation and Employer's Liability	<ul style="list-style-type: none"> ▪ Statutory Limits ▪ \$1,000,000 Each Accident and Disease ▪ USL&H must be provided where such exposure exists. 	<ul style="list-style-type: none"> ▪ The State in which work is to be performed must listed under Item 3.A. on the Information Page ▪ Such insurance shall cover liability arising out of the Tenant's employment of workers and anyone for whom the Tenant may be liable for workers' compensation claims. Workers' compensation insurance

		<p>is required, and no “alternative” forms of insurance shall be permitted.</p> <ul style="list-style-type: none"> Where a Professional Employer Organization (PEO) or “leased employees” are utilized, Tenant shall require its leasing company to provide Workers’ Compensation insurance for said workers and such policy shall be endorsed to provide an Alternate Employer endorsement in favor of Landlord.
Excess Liability (Occurrence Basis)	\$2,000,000 Each Occurrence	<ul style="list-style-type: none"> Such insurance shall be excess over and be no less broad than all coverages described above. Drop-down coverage shall be provided for reduction and/or exhaustion of underlying aggregate limits and shall include a duty to defend any insured.
Environmental Liability	<ul style="list-style-type: none"> \$1,000,000 Each Occurrence Such insurance must provide third party liability coverage for bodily injury, property damage, clean up expenses, and defense arising from the operations of Tenant. All coverage provided in the policy shall apply to operations and completed operations of the firm without separate restrictions for either of these time frames. Mold and/or microbial matter and/or fungus and/or biological substance shall be specifically included within the definition of Pollutants in the policy. 	<ul style="list-style-type: none"> This insurance is not permitted to include any type of exclusion or limitation of coverage applicable to claims arising from: <ul style="list-style-type: none"> asbestos or lead contractual assumption of liability impaired property that has not been physically injured materials supplied or handled by the named insured. However, exclusions for the sale and manufacture of products are allowed. Exclusionary language pertaining to materials supplied by the insured shall be reviewed by the certificate holder for approval. punitive, exemplary or multiplied damages
Property	<ul style="list-style-type: none"> Coverage shall be provided In an amount not less than 100% of the full replacement cost thereof and in compliance with all laws, regulations or ordinances affecting such property at any time during the Lease 	<ul style="list-style-type: none"> ISO Special Form, including theft Flood coverage shall be included Replacement Cost, Agreed Value basis Such insurance shall cover all buildings, piers, docks and other Tenant leasehold improvements, Tenant’s business personal property, HVAC, trade fixtures and signs from time to time in, on, adjacent to or upon the Leased Premises, and all alterations, additions, or changes made by Tenant pursuant to the terms of this Lease, and shall not be subject to coinsurance
Business Income and Extra Expense	<ul style="list-style-type: none"> Coverage shall be provided on all operations at the described Leased Premises 	<ul style="list-style-type: none"> ISO Special Form, including theft Flood coverage shall be included Agreed Value basis

	<ul style="list-style-type: none"> ▪ Coverage shall be provided in an amount of not less than 80% of Tenant's gross annual income at the described Leased Premises less non-continuing expenses 	
Boiler & Machinery	<ul style="list-style-type: none"> ▪ Coverage shall be provided on all operations at the described Leased Premises 	<ul style="list-style-type: none"> ▪ Comprehensive Form or its equivalent, including Business Income ▪ Replacement Cost, Agreed Value basis
j		

2. General Insurance Requirements

A. Definitions. For purposes of this Agreement:

- i. "ISO" means Insurance Services Office.
- ii. "Tenant" shall include lessees of any tier.
- iii. "Landlord Parties" means (a) Hufsmith – Kohrville Business Park LLC, a Texas limited liability company ("**Landlord**"), (b) its shareholders, members, partners, joint venturers, affiliates, subsidiaries, successors and assigns, (c) any directors, officers, employees, or agents, and (d) others as required by the Lease Documents.

B. Policies.

- i. All policies must:
 - a. Be written through insurance companies authorized to do business in the State in which the work is to be performed and rated no less than A-: VII in the most current edition of A. M. Best's Key Rating Guide at all times during this Agreement.
 - b. Provide a waiver of subrogation in favor of Landlord Parties on all insurance coverage carried by Tenant, whether required herein or not
 - c. Contain an endorsement providing for thirty (30) days prior written notice to Landlord of cancellation.
 - d. Be provided to the Landlord Parties in compliance with the requirements herein and shall contain no endorsements that restrict, limit, or exclude coverage required herein in any manner without the prior express written approval of the Landlord.
- ii. Failure of any Landlord Party to demand such certificate or other evidence of full compliance with these insurance requirements or failure of any Landlord Party to identify a deficiency from evidence that is provided shall not be construed as a waiver of the Tenant's obligation to maintain such insurance.
- iii. Tenant shall provide to the Landlord a certified copy of all insurance policies required herein within ten (10) days of any such request. Renewal policies, if necessary, shall be delivered to the Landlord prior to the expiration of the previous policy.
- iv. Commencement of occupancy without provision of the required certificate of insurance, evidence of insurance or required endorsements, or without compliance with any other provision of this Agreement, shall not constitute a waiver by any Landlord Party of any rights. The Landlord shall have the right, but not the obligation, of prohibiting the Tenant from utilizing the Leased Premises in any manner until such certificate of insurance, evidence of insurance or required endorsements are received and approved by the Landlord.

C. Limits, Deductibles and Retentions

- i. The limits of liability may be provided by a single policy of insurance or by a combination of primary and excess policies, but in no event shall the total limits of liability available for any one occurrence or accident be less than the amount required herein.

- ii. No deductible or self-insured retention shall exceed \$25,000 without prior written approval of the Landlord, except as otherwise specified herein. All deductibles and/or retentions shall be paid by, assumed by, for the account of, and at the Tenant's sole risk. The Tenant shall not be reimbursed for same

D. Forms

- i. If the forms of policies, endorsements, certificates or evidence of insurance required by this Exhibit are superseded or discontinued, Landlord will have the right to require other equivalent forms.
- ii. Any policy or endorsement form other than a form specified in this Exhibit must be approved in advance by Landlord.

E. Evidence of Insurance. Insurance must be evidenced as follows:

- i. ACORD Form 25 Certificate of Liability Insurance for liability coverages.
- ii. ACORD Form 28 Evidence of Commercial Property Insurance for property coverages.
- iii. Evidence shall be provided to Landlord prior to commencing Work and prior to the expiration of any required coverage.
- iv. ACORD Forms specify:
 - a. Landlord as certificate holder at Landlord's mailing address;
 - b. Insured's name, which must match that on this Agreement;
 - c. Insurance companies producing each coverage and the policy number and policy date of each coverage;
 - d. Producer of the certificate with correct address and phone number and have the signature of the authorized representative of the producer;
 - e. Additional Insured status in favor of Landlord Parties;
 - f. Amount of any deductible or self-insured retention in excess of \$25,000;
 - g. Designated Location(s) General Aggregate Limit;
 - h. Personal Injury Contractual Liability;
 - i. Primary and non-contributory status;
 - j. Waivers of subrogation; and
 - k. All exclusions and limitations added by endorsement to the General Liability coverage. This can be achieved by attachment of the Schedule of Forms and Endorsements page.
- v. Copies of the following General Liability endorsements shall also be provided:
 - a. Additional insured endorsement
 - b. 30 Day Notice of Cancellation
 - c. Schedule of Forms and Endorsements

F. Tenant Insurance Representations to Landlord Parties

- i. It is expressly understood and agreed that the insurance coverages required herein (a) represent Landlord Parties' minimum requirements and are not to be construed to void or limit the Tenant's indemnity obligations as contained in this Agreement nor represent in any manner a determination of the insurance coverages the Tenant should or should not maintain for its own protection; and (b) are being, or have been, obtained by the Tenant in support of the Tenant's liability and indemnity obligations under this Agreement. Irrespective of the requirements as to insurance to be carried as provided for herein, the insolvency, bankruptcy or failure of any insurance company carrying insurance of the Tenant, or the failure of any insurance company to pay claims accruing, shall not be held to affect, negate or waive any of the provisions of this Agreement.
- ii. Failure to obtain and maintain the required insurance shall constitute a material breach of, and default under, this Agreement. If the Tenant shall fail to remedy such breach within five (5) business days after notice by the Landlord, the Tenant will be liable for any and all costs, liabilities, damages and penalties resulting to the Landlord Parties from such breach, unless a written waiver of the specific insurance requirement(s) is provided to the Tenant by the Landlord. In the event of any failure by the Tenant to

comply with the provisions of this Agreement, the Landlord may, without in any way compromising or waiving any right or remedy at law or in equity, on notice to the Tenant, purchase such insurance, at the Tenant's expense, provided that the Landlord shall have no obligation to do so and if the Landlord shall do so, the Tenant shall not be relieved of or excused from the obligation to obtain and maintain such insurance amounts and coverages.

- iii. This Exhibit is an independent contract provision and shall survive the termination or expiration of the Lease.

G. Release and Waiver

The Tenant hereby releases the Landlord Parties from any and all claims or causes of action whatsoever which the Tenant might otherwise now or hereafter possess resulting in or from or in any way connected with any loss covered by insurance, whether required herein or not, or which should have been covered by insurance required herein, including the deductible and/or uninsured portion thereof, maintained or required to be maintained by the Tenant pursuant to this Agreement. **THE FOREGOING RELEASE AND WAIVER APPLY EVEN IF THE LOSS OR DAMAGE IS CAUSED IN WHOLE OR IN PART BY THE FAULT OR NEGLIGENCE OR STRICT LIABILITY OF THE LANDLORD PARTIES.**

H. Self-Insurance, Large Deductibles and/or Retentions

- i. If Tenant elects to self-insure or to maintain insurance required herein subject to deductibles and/or retentions exceeding \$25,000.00, Landlord and Tenant shall maintain all rights and obligations between themselves as if Tenant maintained the insurance with a commercial insurer including any Additional Insured status, Primary and Non-Contributory Liability, Waivers of Rights of Recovery, Other Insurance Clauses, and any other extensions of coverage required herein. Tenant shall pay from its assets the costs, expenses, damages, claims, losses and liabilities, including attorney's fees and necessary litigation expenses at least to the extent that an insurance company would have been obligated to pay those amounts if Tenant had maintained the insurance pursuant to this Exhibit.
- ii. All deductibles, retentions, and/or uninsured amounts shall be paid by, assumed by, for the account of, and at Tenant's sole risk. Landlord shall not be responsible for payment of any deductible or self-insured retention or uninsured amount.
- iii. The Tenant's right to self-insure shall terminate at any time (1) Tenant's net worth, as reported in its latest annual report, or audited financial statement prepared in accordance with GAAP, drops below two hundred fifty million dollars (\$250,000,000.00), (2) Tenant's Moody's rating on its long-term debt drops below investment grade, or (3) Tenant fails to maintain adequate loss reserves to fund its self-insurance obligations.

2023.12.06 Della Casa Pasta lease-final for signature

Final Audit Report

2023-12-06

Created:	2023-12-06
By:	William Lawrence (Bill@wjl.me)
Status:	Signed
Transaction ID:	CBJCHBCAABAAAFoRzFt1vaAOturmP5NdGge4nZhFjjQ1

"2023.12.06 Della Casa Pasta lease-final for signature" History









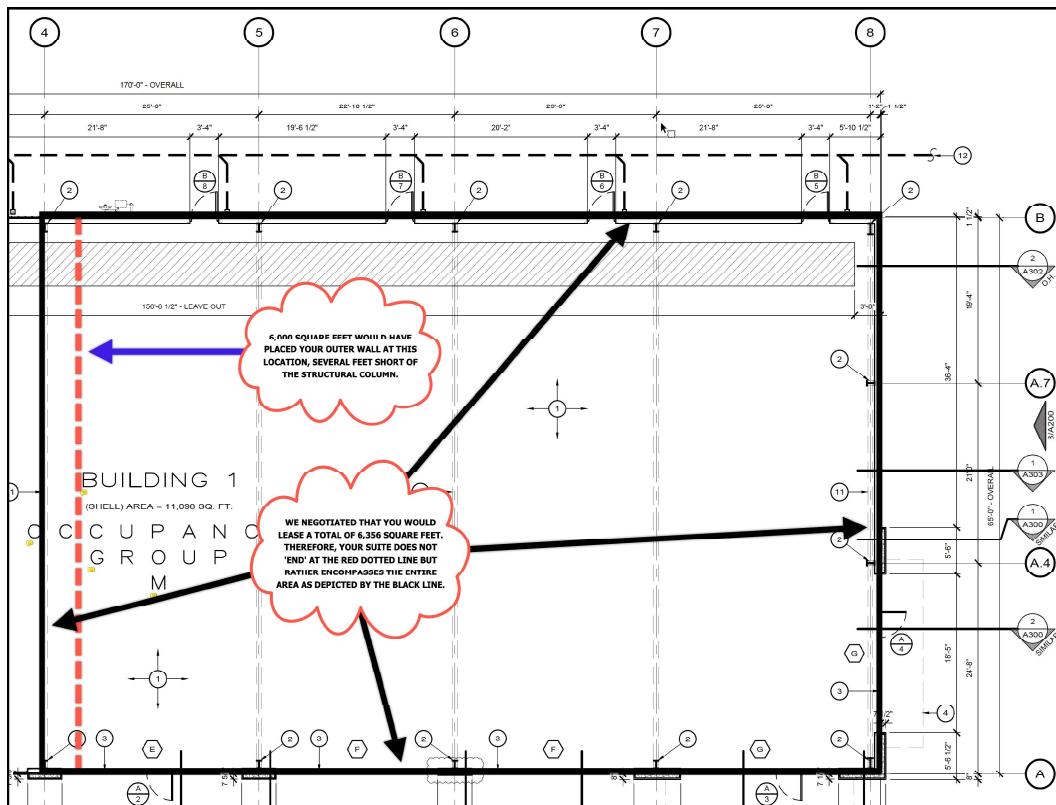
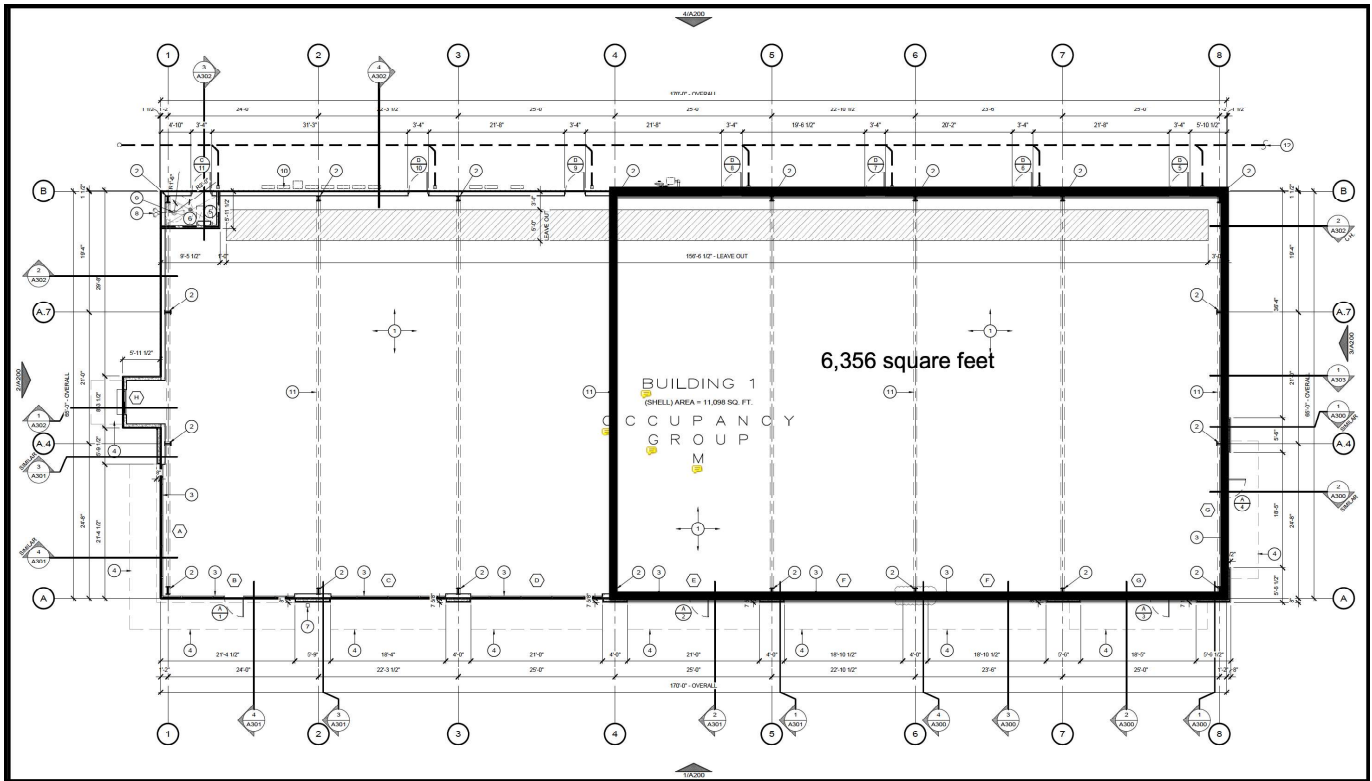
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2023-12-06 - 11:35:56 PM GMT

EXHIBIT "B"

SITE PLAN FOR LEASED PREMISES














2023.12.06 Della Casa Pasta lease-page 36

Final Audit Report

2023-12-13

Created:	2023-12-07
By:	William Lawrence (Bill@wjl.me)
Status:	Signed
Transaction ID:	CBJCHBCAABAAWmUVJmhYgQhABv4gnPOTPMjDI12dBZP9

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Document e-signed by William Lawrence (Bill@wjl.me)

Signature Date: 2023-12-13 - 4:23:53 PM GMT - Time Source: server- IP address: 108.210.128.153



Agreement completed.

2023-12-13 - 4:23:53 PM GMT



Regular City Council Agenda Item Data Sheet

Meeting Date: February 19, 2024

Topic:

Approve, on Second Reading, Resolution No. 2024-05-TEDC, a Resolution of the City Council of the City of Tomball, Texas, authorizing and approving the Tomball Economic Development Corporation's Project to Expend Funds in accordance with an Economic Development Performance Agreement by and between the Corporation and the City of Tomball to make direct incentives to, or expenditures for, improvements to the North and South 100 Block and North 200 Block Alleyways located in the City of Tomball, Texas. The estimated amount of expenditures for such Project is an amount not to exceed \$1,188,834.00.

Background:

First Reading approved during the February 5, 2024, Regular City Council meeting.

On January 23, 2024, the Tomball Economic Development Corporation (TEDC) Board of Directors unanimously approved, as a Project of the Corporation, an economic development performance agreement with the City of Tomball for improvements to the North and South 100 Block and North 200 Block Alleyways located in the City of Tomball, Texas. The Tomball City Council has final approval authority over all programs and expenditures of the Corporation.

Origination: Tomball Economic Development Corporation Board of Directors

Recommendation: Approval of Resolution No. 2024-05-TEDC

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

FUNDING (IF APPLICABLE)

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

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

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

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

RESOLUTION NO. 2024-05-TEDC

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF TOMBALL, TEXAS, AUTHORIZING AND APPROVING THE TOMBALL ECONOMIC DEVELOPMENT CORPORATION'S PROJECT TO EXPEND FUNDS TO THE CITY OF TOMBALL FOR IMPROVEMENTS TO THE NORTH AND SOUTH 100 BLOCK AND NORTH 200 BLOCK ALLEYWAYS; 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 to enhance economic development and improve the quality of life within the City; and

WHEREAS, City Council has approved the Livable Centers Downtown Plan to address improvements necessary to develop the downtown public realm to preserve, promote, and enhance the Tomball "sense of place" as the identifiable physical, social, and cultural heart of Tomball; and

WHEREAS, such improvements will assist in the revitalization of Downtown by fostering economic development, promoting tourism, and enhancing the aesthetic appeal of the community; and

WHEREAS, the Board of Directors of the TEDC had adopted as a specific project the expenditure of the estimated amount of One Million One Hundred and Eighty Eight Thousand Eight Hundred and Thirty Four Dollars (\$1,188,834.00) found by the Board to be required or suitable for, improvements to the North and South 100 Block and North 200 Block Alleyways located in the City Limits of Tomball; and

WHEREAS, alleyways were identified in the Livable Centers Downtown Plan to enhance the aesthetic character of Old Town Tomball; 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 is authorized by Section 505.152 of the Act; now, therefore,

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

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

Section 2. The City Council hereby authorizes and approves the adoption, by the Board of Directors of the Tomball Economic Development Corporation, as a specific project for the

economic development of the City, an expenditure of the estimated amount of One Million One Hundred and Eighty Eight Thousand Eight Hundred and Thirty Four Dollars (\$1,188,834.00) to the City of Tomball, in accordance with an economic development agreement by and between the TEDC and the City of Tomball, to make direct incentives to, or expenditures for, to the North and South 100 Block and North 200 Block Alleyways located 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 5th day of February, 2024.

PASSED, APPROVED, AND RESOLVED on second and final reading this 19th day of February, 2024.

Lori Klein Quinn, Mayor

ATTEST:

Tracy Garcia, City Secretary



TO: Honorable Mayor and City Council

FROM: Kelly Violette
Executive Director

MEETING DATE: February 5, 2024

SUBJECT: City of Tomball – Alleyway Improvements

ITEM TYPE: Action

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

The Alley Improvement Project consists of two phases: a civil package and an amenities package. The civil package was bid last year and includes paving, utility relocations, communication and electrical conduits, dumpster pads, and a public restroom.

The TEDC has funded the design of the amenities package which includes:

- a. Entry Arch Gateways
- b. Decorative String Lights
- c. Masonry Seatwalls
- d. Lighted Entry Markers
- e. Planter pots, soil, flowers and drip irrigation
- f. Lighting and Electrical:
 - Power drop, meter and controls
 - Pedestrian light fixtures mounted on Center Point poles

The estimated construction cost for all three alleys is \$1,188,834.00. This agreement outlines the responsibilities of each party and confirms that the City will be responsible for bidding and construction management services for this project. This is a budgeted TEDC expense for FY2024.

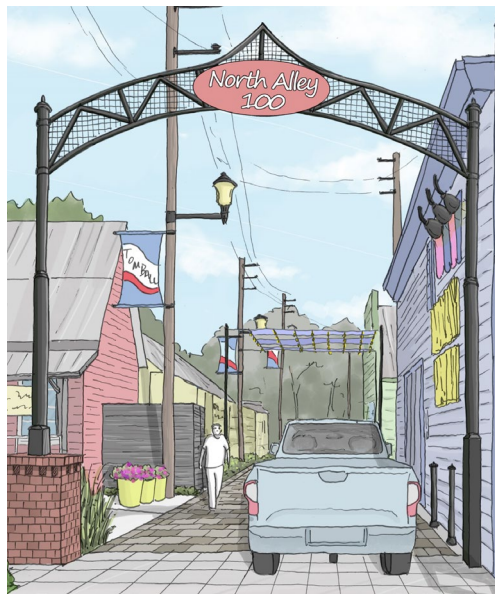


TOMBALL

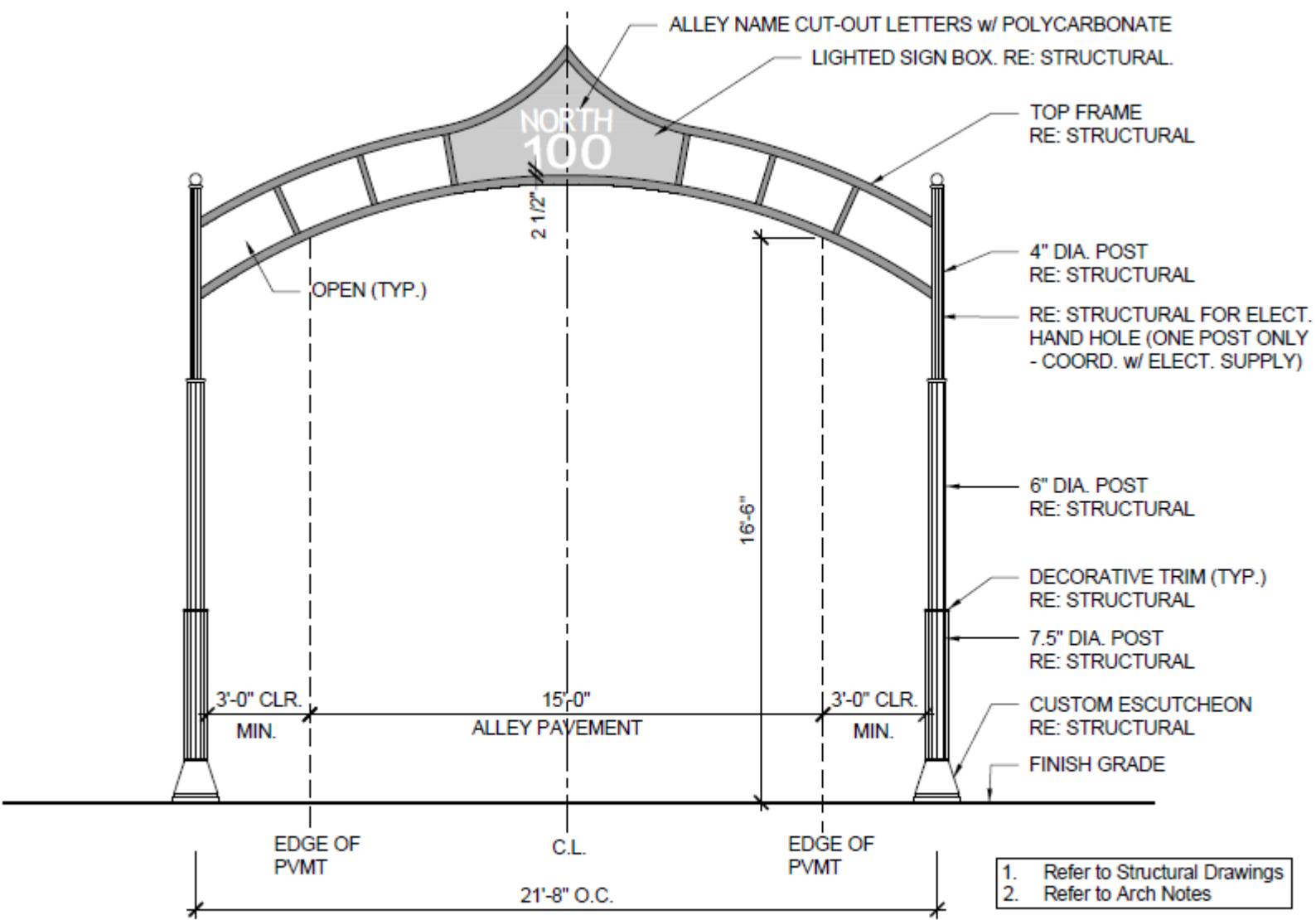
ECONOMIC DEVELOPMENT CORP.

Alley Pedestrian Enhancements

January 19, 2024



Concept Sketch January 2023

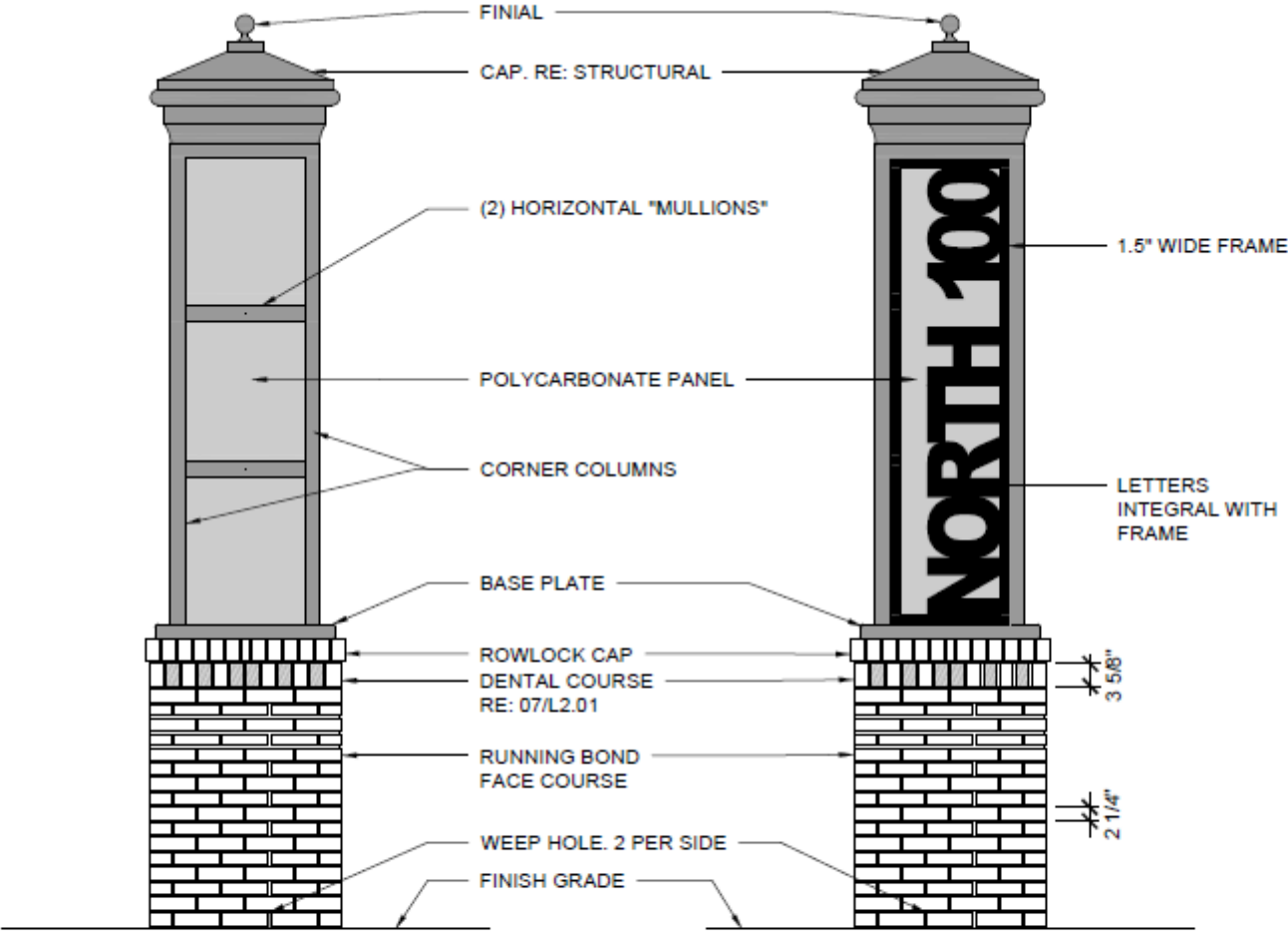


01 ELEVATION: ENTRY ARCH

SCALE: 1/4" = 1'-0"



Concept Sketch January 2023



MULLION FRAME PANEL SIDE (TWO SIDES)
ONE SIDE REMOVABLE ACCESS PANEL
RE: STRUCTURAL

ALLEY NAME SIDE (TWO SIDES)

Refer to Notes and Structural Drawings.

06

ELEVATION: LIGHTED MONUMENT

SCALE: 1/2"=1'-0"



South 100 Alley Amenities

Pavement & Flatwork	\$15,387
Masonry Structures	\$30,811
Metal Fabrication & Banners	\$163,530
Lighting & Electrical	\$104,880
Planting & Lawn	\$32,728
<u>General Items</u>	<u>\$48,627</u>
Total South 100	\$395,963

North 100 Alley Amenities

Pavement & Flatwork	\$16,450
Masonry Structures	\$42,297
Metal Fabrication & Banners	\$163,530
Lighting & Electrical	\$121,785
Planting & Lawn	\$32,728
<u>General Items</u>	<u>\$52,750</u>
Total North 100	\$429,540

North 200 Alley Amenities

Pavement & Flatwork	\$11,958
Masonry Structures	\$16,311
Metal Fabrication & Banners	\$149,730
Lighting & Electrical	\$107,985
Planting & Lawn	\$32,728
<u>General Items</u>	<u>\$44,620</u>
Total North 200	\$363,331

Estimated Total Construction Cost: \$1,188,834

AGREEMENT REGARDING THE CONSTRUCTION OF IMPROVEMENTS

This Agreement Regarding the Construction of Improvements (the “Agreement”) is entered into as of the ____ day of _____, 2024, between the City of Tomball, a State of Texas home rule municipality situated in Harris and Montgomery Counties (the “City”) and the Tomball Economic Development Corporation, a State of Texas Type B non-profit economic development corporation (the “Corporation”) (with the City and the Corporation each being a “Party” and together the “Parties”), and is entered into by each Party’s governing body through the execution of this Agreement by each Party’s duly authorized representative.

RECITALS

WHEREAS, at an election held within the City on January 15, 1994, the voters approved a proposition authorizing the levy and collection of a sales and use tax within the City at the rate of one-half of one percent (0.5%) (the “Additional Sales Tax”) as authorized by the Development Corporation Act found in Chapters 501-505 of the Texas Local Government Code (the “Act”) for economic development purposes; and

WHEREAS, the Corporation was formed pursuant to the Act for the purpose, among others, of financing projects authorized by the Act, and pursuant to the provisions of the Act, the City collects the Additional Sales Tax and pays it to the Corporation; and

WHEREAS, the City has a population of less than twenty thousand (20,000); and

WHEREAS, having complied with the legal prerequisites for undertaking the following project under the Act, the Parties now wish to proceed with: alleyway enhancements, including the installation of entryway monuments and related features, lighting and electrical, and pavement and flatwork (collectively, the “Project”); and

WHEREAS, the Corporation hereby finds, determines, and declares that the Project is an authorized project of the Corporation under the Act that will promote or develop new or expanded business enterprises that create or retain primary jobs; and

WHEREAS, the Parties have determined that the most economical means of financing and managing the Project is for the City to be the entity to bid the Project and manage the construction and maintenance of the Project, and for the Corporation to be the entity that provides all funding to the City related to the costs of the Project; and

WHEREAS, the Corporation hereby finds that this Agreement is for the benefit of the Corporation and that all payments made hereunder are for authorized project costs under the Act; and

WHEREAS, the Parties hereby find, determine, and declare that the respective meetings of the City Council of the City (the “Council”) and the Board of Directors of the Corporation (the “Board”) at which this Agreement was approved, were open to the public and public notice of the time, place, and subject matter of the public business to be considered and acted upon at said

meeting, including this Agreement, was given, all as required by the applicable provisions of Chapter 551, Texas Government Code, as amended.; and **NOW THEREFORE,**

FOR AND IN CONSIDERATION OF THE RESPECTIVE PROMISES AND MUTUAL COVENANTS AND BENEFITS HEREINAFTER SET FORTH, THE PARTIES AGREE AS FOLLOWS:

AGREEMENT

SECTION 1. Definitions, Declarations, Findings and Determinations.

The definitions, declarations, determinations, and findings contained in the Recitals to this Agreement are hereby found to be true and correct and are incorporated into this Agreement for all intents and purposes.

SECTION 2. Construction of the Project.

(a) The Corporation agrees to prepare, or cause to be prepared, all plans and specifications required for the construction of the Project.

(b) The City agrees to contract with all individuals or entities necessary to complete the Project in accordance with the plans, specifications, and other construction documents. The City will provide all construction and contract management services in connection with the construction of the Project. The public infrastructure improvements will be owned and maintained by the City.

(c) The Corporation agrees to pay all invoices received by the City related to the Project after the City has had reasonable time to review and approve such invoices.

(d) The Corporation agrees that it will maintain an unencumbered fund balance of not less than one million dollars (\$1,000,000) at all times during the term of this Agreement.

SECTION 3. Representations and Warranties of the City.

(a) The City hereby confirms the earlier levy by the City of the Additional Sales Tax, and hereby warrants and represents that the City has duly and lawfully ordered the imposition and collection of the Additional Sales Tax upon all sales, uses, and transactions as are permitted by and described in the Act throughout the boundaries of the City as such boundaries existed on the date of said election and as they may be expanded from time to time pursuant to applicable law.

(b) The City agrees to take and pursue all action permissible under applicable law to cause the Additional Sales Tax to be collected and remitted and deposited with the Corporation as required by the Act, at the earliest and most frequent times permitted by applicable law.

(c) The City agrees to do and perform, or cause to be done and performed, all acts and things required to be done or performed by or on behalf of the City under this Agreement.

SECTION 4. Representations and Warranties of the Corporation.

(a) The Corporation represents and warrants that it is and will be authorized by applicable law and by its articles of incorporation and bylaws to enter into this Agreement and make the payments to the City in the manner and to the extent provided in this Agreement.

(b) The Corporation represents and warrants that the Project is an authorized project of the Corporation under the Act, and that the Corporation has taken all action and obtained all approvals required by law and the Corporation's bylaws in order to proceed with this Project and to undertake its obligations under this Agreement.

(c) The Corporation agrees to do and perform, or cause to be done and performed, all acts and things required to be done or performed by or on behalf of the Corporation under this Agreement.

(d) The Corporation represents and warrants that this Agreement constitutes a valid, legal, and binding obligation of the Corporation enforceable in accordance with its terms, subject to bankruptcy, insolvency, reorganization, moratorium, and other similar laws and principles of equity relating to or affecting creditors' rights, and that the execution and delivery of this Agreement will not conflict with or constitute a material breach of or a default under any agreement or instrument to which the Corporation is a Party.

SECTION 5. Term.

This Agreement shall be in force and effect from the date of execution of this Agreement by the Parties below until the date on which all invoices or expenses related to the Project are paid in full by the Corporation.

SECTION 6. Amendments and Supplements.

This Agreement may be amended, supplemented, or extended by mutual agreement of the Parties.

SECTION 7. Merger.

This Agreement embodies the entire understanding between the Parties and there are no prior effective representations, warranties, or agreements between the Parties.

SECTION 8. Multiple Counterparts.

This Agreement may be executed in one or more counterparts, each of which will be deemed to be an original instrument, and each will have the force and effect of an original and all of which together constitute, and will be deemed to constitute, one and the same instrument.

SECTION 9. Governing Law.

This Agreement shall be governed by and construed in accordance with the laws of the State of Texas, and shall be enforceable in a court of competent jurisdiction in Harris County, Texas.

SECTION 10. Severability.

The provisions of this Agreement are severable, and if any provision or part of this Agreement or the application hereof to any person or circumstance shall ever be held by any court of competent jurisdiction to be invalid or unconstitutional for any reason, the remainder of this Agreement and the application of such provision or part of this Agreement to other persons or circumstances shall not be affected thereby.

[SIGNATURES ON FOLLOWING PAGE]

APPROVED BY THE PARTIES AS OF _____, 2024.

SIGNATURES

FOR THE CITY:

FOR THE CORPORATION:

Lori Klein Quinn, Mayor

Kelly Violette, Executive Director

ATTEST:

ATTEST:

Tracy Garcia, City Secretary

Bill Sumner, Jr., Board Secretary

Regular City Council Agenda Item Data Sheet

Meeting Date: February 19, 2024

Topic:

Approve, on Second Reading, Resolution No. 2024-06-TEDC, a Resolution of the City Council of the City of Tomball, Texas, authorizing and approving the Tomball Economic Development Corporation's Project to Expend Funds for the Summer Youth Employment Program, that will, among other things, reimburse qualified business owners for certain employment costs related to employing young people in the City during the summer months, in order to promote new or expanded business development in and around the City.

Background:

First Reading approved during the February 5, 2024, Regular City Council meeting.

On January 23, 2024, the Tomball Economic Development Corporation (TEDC) Board of Directors unanimously approved, as a Project of the Corporation, the creation of a Summer Youth Employment Program. The Tomball City Council has final approval authority over all programs and expenditures of the Corporation.

Origination: Tomball Economic Development Corporation Board of Directors

Recommendation: Approval of Resolution No. 2024-06-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 _____	Executive Director-TEDC _____
Date _____	Date _____



TO: Honorable Mayor and City Council

FROM: Kelly Violette
Executive Director

MEETING DATE: February 5, 2024

SUBJECT: Summer Youth Employment Program

ITEM TYPE: Action

In accordance with Goal 4 of the TEDC 2023-2024 Strategic Work Plan, the attached Draft Guidelines and Criteria for the Summer Youth Employment Program is intended to encourage and incentivize companies to enhance career awareness and readiness of our young adults.

The program aims to provide meaningful, paid summer employment opportunities in a variety of industries, giving hands-on-experience and a taste of real-world work environments. Tomball companies would be eligible for up to \$4,000 in grant funds to hire up to two summer interns over a 7-week period not to exceed 140 hours of pay. Ultimately, this program will help create a talent pipeline between our businesses and future workforce.

The Program will be made available to young adults aged 16-20 who attend high school or college within the City Limits of Tomball or the TISD jurisdiction. Successful candidates will have an opportunity to improve their skills as well as gain experience working in a business environment closely related to their field of study.

All grants are reimbursement grants and will only be funded after completion of the 7-week program.

This project promotes the development and expansion of business enterprise, which is considered a permissible project as outlined in Texas Economic Development Legislation. If this project is approved, it will go to the Tomball City Council for final approval by resolution at two separate readings.

Tomball Economic Development Corporation (TEDC)

Summer Youth Employment Program (SYEP)

Guidelines and Criteria

The purpose of this program is to create a talent pipeline and workforce development initiative for the youth within the City of Tomball, Texas (the “City”), and enhance career awareness and readiness of our young adults. This program aims to provide meaningful, paid summer employment opportunities in a variety of industries, giving hands-on experience and a taste of real-world work environments.

Eligibility

The TEDC Youth Employment Program will be made available to young adults aged 16-20 who attend high school or college within the City of Tomball or the TISD jurisdiction. Must be eligible to work in the United States.

Program Requirements

1. **Residency and School Enrollment:** Must reside and/or attend school in the City Limits of Tomball or within the TISD jurisdiction.
2. **Age Requirement:** Must be 16 years old by April 1 of the applicable year.
3. **Proof of Current School Enrollment and Attendance:** Present a valid Student ID or a current Report Card.
4. **Identification:** Provide a Social Security Card.
5. **Full Session Commitment:** Must commit to completing the entire 7-week session.

Application Process and Deadline

To apply for the current employment session, please click the link below (<https://tomballtxedc.org/youth-employment-program>) The program application will be titled TEDC Summer Youth Employment Program.

The application window will open on March 18, 2024, and will remain open until April 19, 2024. Early submissions are highly encouraged.

Duration of Employment

There are no uniform start dates for employment assignments. Employment will be made available starting June 1, 2024, and will last a maximum of 7 weeks. All employment will end on or before August 15, 2024.

Wages

Wages will be \$15.00 per hour and will be limited to 20 hours per week not to exceed 140 hours during the 7-week program. Any hours worked over the 140 project hours must be agreed upon between both the business and intern and will be paid by the participating business.

For more information, please visit <https://tomballtxedc.org/youth-employment-program> or call 281.401.4086.

SUMMER YOUTH EMPLOYMENT PROGRAM



MORE INFO!

TOMBALL
ECONOMIC DEVELOPMENT CORP.

The SYEP program aims to provide meaningful, paid summer employment opportunities in a variety of industries, giving hands-on-experience and a taste of real-world work environments. Businesses located within the City Limits of Tomball are eligible for up to \$4,000 in grant funds to hire up to two summer interns over a 7-week period not to exceed 140 hours of pay.

TIMELINE

Application Window
March 18 - April 19

Interview
April 29 - May 24

Offer Letter
by May 31

7 Week Session
between
June 1 - August 15



DATES

Businesses choose when the 7 week session starts and ends between June 1st and August 15th.



BENEFITS

Create a talent pipeline between your business and our future workforce.



CONTACT

Tiffani Wooten
281-401-4086
twooten@tomballtxedc.org

Preparation Checklist for Applicants

Before you start your application for the Summer Youth Employment Program (SYEP), it's important to gather the necessary documents and information. Also, allocate about 30-45 minutes to complete your application.

Required Documents and Information:

- **Social Security Card:** Keep a copy of your Social Security card at hand.
- **Proof of School Enrollment:** This could be your current school ID or a recent report card.
- **Valid Email Address:** Ensure you have a working email address for communications. Please do not use your school email address.
- **Resume or Cover Letter:** Please provide either a resume or a cover letter. If you lack work or volunteer experience to showcase in a resume, a cover letter detailing why you should be selected for the SYEP is an excellent alternative.
- **Program Capacity:** The SYEP has a limited number of spots available; therefore, the selection process will be highly competitive.
- **Interviews:** A interview will be a part of the selection process.

Application Tips

1. **Show Your Best Self:** We encourage you to put your best foot forward. Thoroughly answer each question, demonstrating your unique qualities and eagerness for the program.
2. **Reach Out for Help:** If you encounter any issues, please contact us at 281-401-4086 or twooten@tomballtxedc.org. We're here to assist you throughout the process.

This application is your gateway to an enriching summer experience. We're excited to discover more about you and your career aspirations!

Summer 2024 Youth Employment Application

Fill out the information below and attach any required documentation.

Eligibility To Work

Please note that eligibility for the Summer Youth Employment Program (SYEP) requires applicants to be authorized to work in the United States. If you are not authorized to work in the United States, unfortunately, you cannot continue with this application.

*Date of Application: _____ *Social Security Number: _____

*Name: _____
Last First Middle

*Address: _____
Street (Apt) City, State, Zip

*Phone Number: _____

*Email: _____

*Date of Birth: _____

*Sex: ☐ Male ☐ Female

*Do you identify as an individual with a disability? ☐ Yes ☐ No

*Ethnic Origin: ☐ White (Not Hispanic or Latino)
☐ Hispanic or Latino
☐ Black or African American (Not Hispanic or Latino)
☐ American Indian or Alaska Native (Not Hispanic or Latino)
☐ Native Hawaiian or other Pacific Islander (Not Hispanic or Latino)
☐ Two or More Races (Not Hispanic or Latino)

*Do you speak any other language, besides English? ☐ Yes ☐ No

*If yes, to the question above please list the languages you are proficient in and indicate your level of fluency (e.g., basic, intermediate, advanced).

--

Education Record

*Name of school enrolled in as of September 1, 2024: _____

*Year: ☐ Freshman

☐ Sophomore

☐ Junior

☐ Senior

☐ Other: _____

*Do you plan to attend college in the Fall? ☐ Yes ☐ No ☐ Not Applicable

*Please list your areas of highest proficiency, special skills or other items that may contribute to your abilities as a participant in the youth employment program.

--

Youth Employment/Volunteer Experience

Previous experience (Please list most recent first)

*Please attach a copy of your resume when submitting your application. If you don't have previous work experience, please attach a cover letter to this application that details what classes, programs, and/or special activities that you have been involved with that shows your interest/ability to handle the job you are applying for.

*Company Name: _____

*Start Date: _____ *End Date: _____

*Company Address: _____
Street (Apt/Ste) City, State, Zip

*Role/Title: _____

*Job Notes, Tasks Performed and Reason for Leaving:

*Company Name: _____

*Start Date: _____ *End Date: _____

*Company Address: _____
Street (Apt/Ste) City, State, Zip

*Role/Title: _____

*Job Notes, Tasks Performed and Reason for Leaving:

*Company Name: _____

*Start Date: _____ *End Date: _____

*Company Address: _____
Street (Apt/Ste) City, State, Zip

*Role/Title: _____

*Job Notes, Tasks Performed and Reason for Leaving:

Career Interest to Explore

If selected for the 2024 SYEP, the following list of industries will assist us in locating a placement for you. We will do our best to place you in your area of interest however, placement depends on availability.

*Pick at least 3 areas of interest:

- ☐ Automotive
- ☐ Construction and Trades
- ☐ Distribution
- ☐ E-commerce
- ☐ Financial services
- ☐ Healthcare
- ☐ Law and legal
- ☐ Media and Entertainment
- ☐ Manufacturing
- ☐ Wholesale
- ☐ Other: _____

Certification: I certify that the information on this application and its attachments is true and correct to the best of my knowledge and that there is no intent on my part to defraud. I authorize inquires as to the validity of this information. The data may be distributed to employers and social services agencies for the purpose of obtaining training and/or employment. I understand that providing false information on this application and it's attachments can result in me being declared ineligible for participation or terminated, if already enrolled, and I may be subject to prosecution under the law. I further certify that I fully understand the foregoing.

Applicant's Legal Signature

Date

Signature of referring Teacher and Title

*Proof of School Enrollment:

📁 FILE UPLOAD

*Resume or Cover Letter:

📁 FILE UPLOAD

Employer Application for Summer Youth Employment Program

The Summer Youth Employment Grant Program is available to any business located within the City Limits of Tomball, Texas. The SYEP grant program is a reimbursement of wages for a summer intern(s) paid at \$15 an hour up to 20 hours per week not to exceed 140 hours of pay during employment. After completion of the 140 hours the company can submit for reimbursement by showing proof of hours worked, proof of paystubs, and a brief description of intern(s) performance and duties accomplished. The Company is responsible for any hours worked over the 20 hours a week or over the 140 program hours.

*1. Name of Business/Organization:

*2. Name of Business/Organization representative (name of person completing this form):

*3. Email address of representative:

*4. Phone number of representative:

*5. Business/Organization address (where your intern(s) will report to):

*6. Please provide the name of the supervisor working directly with the intern(s) during the summer:

*7. Email address of supervisor:

*8. Phone number of supervisor:

*9. Please indicate the category that best describes this Business/Organization:

- ☐ Automotive
- ☐ Construction and Trades
- ☐ Distribution
- ☐ E-commerce
- ☐ Financial services
- ☐ Healthcare
- ☐ Law and legal
- ☐ Media and entertainment
- ☐ Manufacturing
- ☐ Wholesale
- ☐ Other: _____

*10. How many interns is your Business/Organization able to host this summer? (max 2)

*11. What shift hours can intern(s) expect to work during their summer internship at your workplace?

- ☐ 8:00 AM - 12:00 PM
- ☐ 1:00 PM - 5:00 PM
- ☐ 9:00 AM - 1:00 PM
- ☐ Other: _____

*12. Please provide a brief description of what your Business/Organization does and products that the intern will learn about if applicable.

*13. Please provide a brief description of the internship opportunity. Please include potential tasks and projects for intern(s).

*14. Would you like assistance in planning and structuring the task and activities for the interns during their internship?

☐ Yes

☐ No

*15. Are there specific skills or qualifications you're seeking in potential interns that would align with the task and responsibilities of this internship?

*16. Anything that you would like to share with our team?

The application window for students to apply is March 18th thru April 19th, 2024. The TEDC will send the Students applications to the businesses to review by April 22nd. It is the businesses responsibility to schedule interviews between April 29th and May 24th. Interviews may need to be scheduled during late afternoon to coordinate with he student's school schedule. Once the participating business selects their intern(s) they will need to notify the TEDC to obtain a Pre Drafted Job Offer Letter. This letter will certify the approval of the TEDC grant funds for the intern(s) hired.

For more information, feel free to email me at twooten@tomballtxedc.org or call us at 281-401-4086

*Please attach a copy of the Business/Organization logo:



Certification

[I/We], the undersigned APPLICANT, certifies that all the information furnished to the Tomball Economic Development Corporation (the “TEDC”) associated with this application has been furnished freely by the APPLICANT, and the APPLICANT further acknowledges that the APPLICANT has no rights or privileges to be relied on as part of any application submitted to the TEDC. In addition, the APPLICANT acknowledges that the TEDC, in its sole discretion, may or may not grant the Summer Youth Employment Grant (the “Grant”) contemplated in this application, and that the APPLICANT has no legal right to rely on any previous action taken by the TEDC in this or any similar application. The APPLICANT additionally acknowledges that if a Grant is issued to the APPLICANT, then the TEDC, in its sole discretion, may take appropriate actions to recapture the Grant amount if the APPLICANT does not satisfy all applicable terms of the Grant program.

Signed and submitted to the Tomball Economic Development Corporation on this _____ day of _____ 2024.

Applicant

Signature

Phone No.:



WHO WE SERVE:

- ✓ Young adults aged 16-20 who attend high school or college within the City Limits of Tomball or the TISD jurisdiction.
- ✓ Youth with disabilities are eligible to participate up to age 22.

ELIGIBILITY:

- 1 Must reside and/or attend school in the City Limits of Tomball or within the TISD jurisdiction.
- 2 Must be 16 years old by April 1 of the applicable year.
- 3 Present a valid Student ID or a current Report Card.
- 4 Provide a Social Security Card.
- 5 Must commit to completing the entire 7-week session.

HOW IT WORKS:

- Participants complete the application between March 18th - April 19th.
- Youth selected are matched with jobs based on their interest and availability.
- Companies will schedule in person interviews between April 29th - May 24th.

Wages will be \$15.00 per hour and will be limited to 20 hours per week not to exceed 140 hours during the 7-week program. Any hours worked over the 140 project hours must be agreed upon between both the business and intern and will be paid by the participating business.



CONSTRUCTION &
TRADES....

MANUFACTURING...

AND MORE!



SUMMER YOUTH EMPLOYMENT PROGRAM



QUESTIONS?

Tomball Economic Development Corporation is partnering with a **variety of employers** who are accepting summer interns.

HOW TO REACH US:

Tiffani Wooten

281-401-4086

Twooten@tomballtxedc.org



MORE INFO!

- ✓ CAREER AWARENESS
- ✓ CAREER READINESS
- ✓ TRAINING OPPORTUNITIES
- ✓ PAID INTERNSHIPS

RESOLUTION NO. 2024-06-TEDC

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

* * * * *

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

WHEREAS, the Council finds that the TEDC’s proposed project creating the Summer Youth Employment Program, that will, among other things, reimburse qualified business owners for certain employment costs related to employing young people in the City during the summer months, in order to promote new or expanded business development in and around the City (the “Project”), and

WHEREAS, the Council supports the TEDC’s involvement with the Project and supports the actions that the TEDC Board of Directors may take to effectuate the Project; and **NOW THEREFORE**,

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

THAT the City Council of the City of Tomball hereby finds and approves the Tomball Economic Development Corporation’s (the “TEDC”) project creating the Summer Youth Employment Program, that will, among other things, reimburse qualified business owners for certain employment costs related to employing young people in the City during the summer months, in order to promote new or expanded business development in and around the City (the “Project”), with the Project being more particularly described in Exhibit A attached to and incorporated into this Resolution for all purposes.

PASSED, APPROVED, and RESOLVED on first reading on this 5th day of February, 2024.

PASSED, APPROVED, and RESOLVED on second reading on this 19th day of February, 2024.

ATTEST:

LORI KLEIN QUINN, MAYOR

Tracy Garcia, City Secretary

City Council Agenda Item Data Sheet

Meeting Date: February 19, 2024

Topic:

Adopt, on Second Reading, Ordinance No. 2023-55, an Ordinance of the City of Tomball, Texas, amending Chapter 50 – Article III (*District Regulations*) adding Section 50-75.1 – Neighborhood Retail District (NR) zoning classification and subsequent district standards. Modifying Section 50-82 (*Use regulations (charts)*). Modifying Section 50-112 (*Off Street Parking and Loading Requirements*) adding parking regulations within the Neighborhood Retail District. Modifying Section 50-113 (*Landscape Requirements*) specifying parking lot screening requirements. Modifying Section 50-115 (*Screening, Buffering and Fencing Requirements*) replacing subsection (b)(1) (*Screening of Non-Residential, Multifamily, and manufactured (mobile) home parks*) with new land use buffering standards; 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:

Public Hearing was held, and First Reading was adopted during the Regular City Council meeting on 02/05/2024.

Origination: Community Development Department

Recommendation:

City staff recommends approval of **Ordinance Amendment OAM23-03**. Planning and Zoning Commission recommends Approval (Unanimously).

Party(ies) responsible for placing this item on agenda: Community Development Department

FUNDING (IF APPLICABLE)

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

Yes: _____ No: _____

If yes, specify Account Number: # _____

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

Signed: _____

Staff Member

Date

Approved by: _____

City Manager

Date

ORDINANCE NO. 2023-55

AN ORDINANCE OF THE CITY OF TOMBALL, TEXAS, AMENDING ITS CODE OF ORDINANCES BY AMENDING CHAPTER 50 – ARTICLE III (DISTRICT REGULATIONS) ADDING SECTION 50-75.1 (NEIGHBORHOOD RETAIL DISTRICT (NR)), AMENDING SECTION 50-82 (USE REGULATIONS (CHARTS)), AMENDING SECTION 50-112 (OFF STREET PARKING AND LOADING REQUIREMENTS), AMENDING SECTION 50-113 (LANDSCAPE REQUIREMENTS), AMENDING SECTION 50-115 (SCREENING, BUFFERING & FENCING REQUIREMENTS), SUBSECTION (b)(1) (SCREENING OF NON-RESIDENTIAL, MULTI-FAMILY, AND MANUFACTURED (MOBILE) HOME PARKS); PROVIDING FOR A PENALTY OF AN AMOUNT NOT TO EXCEED \$2,000 FOR EACH DAY OF VIOLATION OF ANY PROVISION HEREOF; MAKING FINDINGS OF FACT; AND PROVIDING FOR OTHER RELATED MATTERS.

WHEREAS, the City of Tomball has requested an amendment to the code of ordinances, amending Chapter 50 – Article III (*District Regulations*) adding Section 50-75.1 – Neighborhood Retail District (NR) zoning classification and subsequent district standards. Modifying Section 50-82 (*Use regulations (charts)*). Modifying Section 50-112 (*Off Street Parking and Loading Requirements*) adding parking regulations within the Neighborhood Retail District. Modifying Section 50-113 (*Landscape Requirements*) specifying parking lot screening requirements. Modifying Section 50-115 (*Screening, Buffering and Fencing Requirements*) replacing subsection (b)(1) (*Screening of Non-Residential, Multifamily, and manufactured (mobile) home parks*) with new land use buffering standards; and

WHEREAS, at least fifteen (15) days after publication in the official newspaper of the City of the time and place of a public hearing, the Planning & Zoning Commission held a public hearing on the requested text amendment; and

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

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

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

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

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

Section 2. Article III, District Regulations and 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 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 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 5th DAY OF FEBRUARY 2024.

COUNCILMAN FORD	<u>YEA</u>
COUNCILMAN STOLL	<u>YEA</u>
COUNCILMAN DUNAGIN	<u>YEA</u>
COUNCILMAN TOWNSEND	<u>YEA</u>
COUNCILMAN PARR	<u>YEA</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 19th DAY OF FEBRUARY 2024.

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

LORI KLEIN QUINN, Mayor

ATTEST:

TRACYLYNN GARCIA, City Secretary

AMEND: Chapter 50 – Article III (*District Regulations*)

ADD: Sec 50-75.1 – Neighborhood Retail District (NR)

- (a) General purpose and description – The Neighborhood Retail District is intended to accommodate a limited range of retail trade, services and office activities that are needed to serve a neighborhood area. The district is to be utilized as a transition district between residential uses and more intense non-residential uses. The district is to incorporate elevated landscaping and buffering standards to facilitate seamless integration alongside residential districts. Development within the district should be similar in scale as residential uses and adjacent properties. Architectural principles should be incorporated within site development to actively engage streetscapes and create pedestrian oriented environments. Uses within this district should not include uses that create excessive traffic, noise, trash, or late-night business operations. This district is ideally suited for intersections of major thoroughfares or at the intersection of a major thoroughfare and primary entrances to residential subdivisions and/or multi-family developments.
- (b) Permitted uses. Those uses listed for the Neighborhood Retail (NR) District in the use charts (section 50-82) as “P” or “C” are authorized uses permitted by right or conditionally permitted uses, respectively.
- (c) Height regulations. Maximum height:
 - 1) Forty feet (40’); also see setback requirements related to height (d)(2)(b.2) of this section.
 - 2) One story for accessory buildings
- (d) Area regulations
 - 1) Size of lots
 - a. Minimum lot area: 6,000 square feet.
 - b. Minimum lot width: 60 feet.
 - c. Minimum lot depth: 100 feet.
 - 2) Size of yards and setbacks
 - a. Minimum front yard: 15 feet. Where a lot faces a designated arterial street, the front yard shall be a minimum of 25 feet.
 - b. Minimum side yard.
 1. Interior: 5 feet
 2. Interior: If adjacent to a single-family, duplex, patio home or single-family attached district, then side and rear setbacks (within which parking is permitted) shall be according to the height of the primary structure as follows:
 - a. Setbacks shall be measured at a ratio of five feet in horizontal setback distance for every three feet of building height.
 3. Side yard adjacent to a street: 15 feet.
 4. Side yard adjacent to a designated arterial: 25 feet
 - c. Minimum rear yard: 15 feet. If adjacent to a single-family, duplex (two-family), patio home or single-family attached district, then minimum rear yard (within which parking is permitted) shall be 60 feet, unless separated by an alley in which case the minimum shall be 20 feet. When adjacent to an arterial, minimum rear yard shall be 25 feet.
 - d. Zero lot line exception: notwithstanding the requirements of this section, except where an interior side yard or rear yard is adjacent to property zoned for or restricted by a duly recorded subdivision plat to, or primarily use for, single-family residential purposes, there shall be no required interior side or rear yard if the wall adjoining such interior side or rear lot line, as applicable, is constructed with materials giving it a four-hour firewall rating. Yards adjacent to street or alley right-of-way are excluded from this provision.

- e. Minimum underground setback: any underground building structure shall be setback from any lot line by a minimum of 15 feet.
 - f. Minimum pavement setback: all paving, except driveways and sidewalks, shall be setback from any public street right-of-way by a minimum of 15 feet.
- 3) Maximum lot coverage. Maximum lot coverage is 50 percent of the net site area (after right-of-way dedication) for the gross ground floor area of all building structures, including main and accessory buildings.
 - 4) Maximum floor area. Maximum floor area ratio (FAR) is 1:1
 - 5) *Outdoor sales*: Outdoor sales are prohibited.
 - 6) *Outdoor storage*: Outdoor storage is prohibited.
 - 7) *Hours of Operation*: Except for uses permitted within a residential zoning district, no use shall operate before 6:00 a.m. nor after 11:00 p.m. on any day of the week.
 - 8) Façade Orientation Standards
 - a. Facades of primary building(s) immediately adjacent to street right-of-way(s) shall be front and/or side facades only. Rear facades of buildings shall be prohibited from facing street right-of-way(s).
 - 9) *Parking Standards* Refer to Section 50-112 (c)(1.1) – Parking regulations for the NR District

AMEND: Chapter 50 – Article IV (*Development Standards*), Section 50-112 (*Off Street Parking & Loading Requirements*), (c) (*Nonresidential and MF Districts; off-street parking provisions*)

ADD: (1.1) Parking regulations for the NR District

- a. Parking areas must be located to the side or rear of primary buildings. No parking shall be located between the front and/or side facades of primary buildings and street right-of-way(s) unless otherwise specified by the following:
 - a. One-way Vehicle drive-through lanes for overall circulation as well as drive-through and pickup/drop off services shall be exempt from this standard.
 - b. A maximum of one, one-way aisle of parallel and/or angled parking stalls shall be permitted between street rights-of-way(s) and facades of primary buildings.
- b. All parking and vehicle maneuvering areas shall be screened from streets by a solid row of hedges. As prescribed by Section 50-113 (f)(3)(f)
 - a. **EXCEPTION:** Vehicle visibility triangles shall be clear of hedges utilized for screening as prescribed by Section 38-34 – Obstructions prohibited in visibility triangle.
- c. No parking area may be located closer than 10 feet from property lines for properties zoned for Single-Family Residential uses.

AMEND: Chapter 50 – Article IV (*Development Standards*), Section 50-113 (*Landscape Requirements*), (f)(3) (*Requirements for landscaping in and around parking lots*)

ADD: (f) Parking lots, driving lanes, loading areas, or other similar areas of vehicular access shall be screened from residentially zoned property, whether adjacent or across a street, by a continuous hedge, planter, berm, fence, wall, or combination of these, with a minimum height of 36 inches. This requirement shall not be required along state highways.

- 1. Shrubs utilized for screening parking areas shall be a minimum 3-gallon planting size spaced 36-inches on center.

AMEND: Chapter 50 – Article IV (Development Standards), Section 50-115 (Screening, buffering and fencing requirements), (b) (*Screening of nonresidential, multifamily areas and manufactured (mobile) home parks*)

DELETE:

- ~~(1) An opaque screening wall of not less than six feet, nor more than eight feet, in height shall be erected on the property line separating zoning districts in the following cases:~~
- ~~a. When a multifamily use, nonresidential use, or manufactured (mobile) home park sides or backs upon a single-family, two-family or residential PD District;~~
 - ~~b. When any nonresidential use is on a tract, lot or parcel that is less than 15 acres and the nonresidential use sides or backs upon a multiple-family district; and~~
 - ~~c. When a commercial or industrial use is established on a building site located adjacent to any residential area, a ten-foot side landscaped open-space buffer shall be installed and maintained by the owner, developer, or operator of the commercial or industrial property between it and the adjacent residential area. The provisions of this section shall not apply where the residential area is separated by a public street, drainage ditch, or canal with a minimum easement of 30 feet. With written approval of the planning and zoning commission, and otherwise full compliance with landscaping standards, a required buffer may include a stormwater detention area. In no event, however, shall the following uses be allowed in buffers: playfields, stables, swimming pools, tennis courts, or similar active recreation uses.~~

ADD:

- (1) Land use buffering shall be provided along property lines separating zoning districts as prescribed below:
- a. When non-residential, multi-family residential, or manufactured (mobile) home park zoning shares a common boundary with single-family residential, two-family residential, residential planned developments or agricultural zoning districts.
 - b. Required land use buffers must consist of a minimum 10-foot-wide vegetative buffer yard and 7-foot opaque wooden fence plus at least 25 points based on the following criteria:
 - i. Points:
 1. Opaque masonry wall with 6-foot minimum height in lieu of providing opaque wooden fence = 10 points
 2. Each additional 5 feet of buffer yard = 5 points (maximum of 10 points)
 3. ONE (1) tree with a mature height of at least 20-feet and height of at least 8-feet and caliper size of 4-inches (measured 12-inches above ground level) at the time of planting per 25 lineal feet of buffer yard = 15 points
 4. THREE (3) smaller trees with a height of at least 8-feet and caliper size of 2-inches (measured 12-inches above ground level) at the time of planting per 25 lineal feet of buffer yard = 15 points
 - c. Trees planted to accommodate required land use buffering shall be in addition to the required trees prescribed within Section 50-113 (Land Use Buffering Requirements).

- d. Preservation of existing trees: Each tree preserved to accommodate the required land use buffer shall count as one tree toward the overall land use buffering requirement regardless of size. Trees planned to be preserved must be on the City of Tomball approved planting list.
- e. For purposes of interpreting this section, mixed use zoning shall be considered nonresidential.
- f. Buffer yards are required between adjacent uses as indicated. For purposes of this section adjacent includes properties separated by an alley but does not include properties separated by a street.
- g. Parking lots, driving lanes, loading areas, or other similar areas of vehicular access shall be screened from residentially zoned property, whether adjacent or across a street, by a continuous hedge, planter, berm, fence, wall, or combination of these, with a minimum height of 36 inches. This requirement shall not be required along state highways.
- h. Open space in buffer yards shall be planted in grass or other vegetative ground cover.
- i. Alternative buffering may be permitted by the Director of Community Development or their designee during the site plan review process so long as the buffering and aesthetic intent of these requirements are met.

ADD:

(6) Mechanical equipment, including roof-mounted equipment, must be screened from the view from streets, parking lots, parks, and residential districts with materials consistent with the principal structure, opaque fencing, masonry walls, and/or landscaping. Wall mounted electrical panels are exempt from this standard.

AMEND: Chapter 50 – Article III (*District Regulations*), Section 50-82 (*Use Regulations (Charts)*), (b) (*Use charts*)

ADD: “NR” District and Subsequent Use Standards

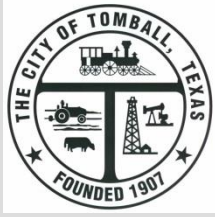
Types of Land Uses	Residential Zoning Districts							Nonresidential Zoning Districts							OT&MU	Parking ratio (Also see section 50-112)			
	AG	SF-20-E	SF-9	SF-6		D		MF		MHP	O		NR	GR				C	LI
Agriculture																			
Bulk grain and/or feed storage	P															C	C		1 space per 1,000 square feet
Farm (ranch, garden, crops, livestock, or orchard) ‡	P	P	P	P		P		P		P	P		P	P		P	P	P	None
Feed and grain store/farm supply store ‡	C													C		P	P	C	1 space per 500 square feet
Flour and other grain mills																	P		1 space per 1,000 square feet
Livestock, wholesale/auction	C																		None
Livestock sales/auction	C																		None
Stable, commercial	C																C		1 space per 1,000 square feet
Stables (private, principal or accessory use) ‡	P			C															None
Residential																			
Accessory building/structure (business or industry) ‡										P			P	P		P	P	P	None
Accessory building/structure (residential) ‡	P	P	P	P		P		P										P	None
Accessory dwelling	P	P	P	C		C		C										P	None
Garage/accessory dwelling ‡	P	P	P	C		C		C										P	None
Caretaker's, guard's residence ‡	P	C						P		P			P	P		P	P	P	1 space per caretaker/guard
Dwelling, four-family (quadraplex) (defined under Multiple-family dwelling) ‡								P										P	2 spaces per dwelling
Dwelling, HUD code-manufactured home ‡									P									C	2 spaces per dwelling
Dwelling, industrialized home ‡	P	P	P	P		P		P		P								C	2 spaces per dwelling
Dwelling, multiple-family ‡								P										P	2 spaces per dwelling

Dwelling, single-family attached ‡								P		P								P		2 spaces per dwelling
Dwelling—Single-family detached ‡	P	P	P	P				P		P								P		2 spaces per dwelling
Dwelling, two-family, duplex or duplex townhome ‡								P		P								P		2 spaces per dwelling
Dwelling, zero-lot line/patio home ‡								P		P								P		2 spaces per dwelling
Home occupation ‡	P	P	P	P				P		P					P		P	P		None
Residential use ‡	P	P	P	P				P		P		P	C		C			C		2 spaces per dwelling
Private street subdivision	P	P	P	P				P		P					C			C		None
Office																				
Clinic, emergency care															P			P	P	1 space per 150 square feet
Clinic, medical and/or dental										P		P			P			P	P	1 space per 300 square feet
Credit agency										P		P			P			P	P	1 space per 300 square feet
Bank, savings and loan, or credit union (no motor bank services)										P		P			P			P	P	1 space per 300 square feet
Bank, savings and loan, or credit union (with motor bank services)										C		P			P			P	P	1 space per 300 square feet
Office, professional and general business ‡										P		P			P			P	P	1 space per 300 square feet
Office, parole-probation												P			P			P	P	1 space per 300 square feet
Office showroom/warehouse ‡										C		C			P			P	P	1 space per 300 square feet
Security monitoring company (no outside storage)										P		P			P			P	P	1 space per 300 square feet
Telemarketing agency										C		C			C			C	P	1 space per 250 square feet
Telephone exchange/switching station ‡	C									P		P			P			P	P	1 space per 500 square feet
Temporary real estate field office	P	P	P	P				P		P		P			P			P	P	4 spaces
Model home (including sales office)	P	P	P	P				P		P		P			P			C	C	2 spaces per model
Personal and Business																				
Ambulance service															C			P	P	1 space per 500 square feet
Automobile driving school (including defensive driving)										C		P			P			P	P	1 space per classroom seat
Barber/beauty shop (no related school/college)										C		P			P			P	P	1 space per 200 square feet
Bed and breakfast inn ‡	P	C	C	C			C		C		C	C			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)	C	C	C	C			C		C		C	C			P			P	P	1 space per 100 square feet
Fortunetelling and similar activities ‡																		C		1 space per 300 square feet
Funeral home ‡															C			P	P	See section 50-112
Greenhouse (non-retail/hobby)	P	P	P	P			P		P		P									None
Health club (indoor)										C		P			P			P	P	One space per 300 square feet
Health club (outdoor)												C			P			P	P	One space per 300 square feet
Hotel ‡															P			P		See section 50-112
Laundromat/washateria/self-service ‡															P			P	P	1 space per 200 square feet
Laundry/dry cleaning (retail only, drop off/pick up) ‡										C		P			P			P	P	1 space per 200 square feet
Loan services (payday/auto title)															C			C		1 space per 100 square feet
Mailing service (private)															P			P	P	1 space per 200 square feet
Motel ‡																		C		See section 50-112
Pharmacy (retail only)										C		P			P			P	P	1 space per 200 square feet
Reception venue	C	C								C		C			P			P	P	1 space: 4 seats
Recreational vehicle park																				
Rehabilitation care facility (halfway house) ‡	C	C	C	C			C		C		C	C			C			P	P	Greater of 1 per three beds or 1.5 spaces per dwelling
Rehabilitation care institution (business) ‡	C	C	C	C			C		C		C	C			C			P	P	Greater of 1 per three beds or 1.5 spaces per dwelling
Seamstress, dressmaker or tailor (retail only)												C			P			P	P	1 per 200 square feet
Sexually oriented business																		C		
Tattoo or body piercing studio ‡																		C		1 space per 200 square feet
Wedding chapel															P			P	P	1 per four seats
Retail																				
Antique shop (no outside sales or storage) ‡															P			P	P	1 space per 500 square feet
Antique shop (with outside storage)																		C		1 space per 500 square feet
Apparel shop															P			P	P	1 space per 200 square feet
Art gallery/museum/dealer ‡												C			P			P	P	1 space per 500 square feet
Artist or photography studio												C			P			P	P	1 space per 500 square feet
Bakery, retail (eating establishment, no drive-through) ‡												C			P			P	P	1 space per 200 square feet
Bakery, retail (with drive-through)															C			P	P	1 space per 200 square feet

Auto dealer (new, auto servicing and used auto sales as accessory uses only, w/no outdoor sales, storage, and display)															P			P	P		C		See section 50-112
Auto dealer, primarily used auto sales w/outdoor sales, storage, and display ‡															C			P	P				See section 50-112
Auto dealer, primarily used auto sales w/no outdoor sales, storage, and display															C			P	P		C		See section 50-112
Auto glass repair/ tinting															P			P	P		P		1 space per 200 square feet
Auto interior shop/upholstery															C			P	P		P		1 space per 200 square feet
Auto muffler shop															C			P	P		P		1 space per 200 square feet
Auto paint shop															C			P	P		P		One per 200 square feet
Auto parts sale (new or rebuilt, no outside storage, no outside display, no repair)															P			P	P		P		1 space per 200 square feet
Auto parts sale (new or rebuilt, with outside storage or display)															C			P	P				1 space per 200 square feet
Auto rental															P			P	P		C		1 space per 200 square feet
Auto repair (major) ‡															C			P	P		C		1 space per 200 square feet
Auto repair (minor) ‡															P			P	P		P		1 space per 200 square feet
Auto storage or auto auction ‡																		C	P				1 space per 1,000 square feet
Auto tire sales (indoor)															P			P	P		P		1 space per 200 square feet
Auto wrecker service																		P	P		C		1 space per 200 square feet
Automobile assembly																			P		C		1 space per 1,000 square feet
Automobile parts manufacturing																		C	P		C		1 space per 1,000 square feet
Automobile wash (full service/detail shop) ‡															P			P	P		P		3 space per washing capacity of module
Automobile wash (self-service) ‡															C			P	P		P		3 space per washing capacity of module
Bike sales and/or repair															P			C	P		P		1 space per 500 square feet
Bus or truck storage																		P	P				1 space per 1,000 square feet
Gasoline station															P			P	P				See section 50-112
Motor freight transportation, storage, and terminal																		P	P		C		See section 50-112
Motorcycle sales/dealer w/outdoor sales, storage, and display ‡															P			P	P				See section 50-112
Motorcycle sales/dealer w/no outdoor sales, storage, and display															P			P	P		C		See section 50-112
Parking lot or garage for passenger cars and trucks of less than one-ton capacity ‡	C		C	C		C				C					C			P		P	P	C	None
Personal watercraft sales (new/repair) w/outdoor sales, storage, and display															P			P	P				See section 50-112
Personal watercraft sales (new/repair) w/no outdoor sales, storage, and display															P			P	P		C		See section 50-112
Railroad team tracks, unloading docks, and spurs																		P	P		C		None
Railroad yards, round house or shop																		C	P		C		1 space per 1,000 square feet
Taxi/limousine service															C			P	P		C		1 space per 1.5 automobiles in service
Tire sales (indoors, no outside storage) ‡																		P	P		P		1 space per 1,000 square feet
Tire sales (outdoors, with outside storage) ‡																		C	P				1 space per 1,000 square feet
Transfer station (refuse/pick-up) ‡	C																	C	C				1 space per 500 square feet
Transit terminal ‡																		P	P		C		See section 50-112
Truck and bus leasing ‡																		P	P				1 space per 1,000 square feet
Truck sales and services (heavy trucks) ‡																		P	P				1 space per 1,000 square feet
Truck stop ‡																		C	P		C		1 space per 1,000 square feet
Truck terminal ‡																		P	P				See section 50-112
Amusement and Recreation																							
Amusement, commercial (indoor) ‡															C	C		C	P	P		C	1 space per 100 square feet
Amusement, commercial (outdoor) ‡																C			P	P		C	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	P		C	Determined by P and Z
Amusement devices/arcade (4 or more devices, indoors only) ‡															C	C			P	P		C	1 space per game table plus one per amusement device
Billiard/pool facility (4 or more tables)															C	C			P	P		C	1 space per 200 square feet
Bingo facility															C	C			P	P		P	1 space per 200 square feet
Bowling alley (air conditioned and soundproofed)															C	P			P	P		C	4 spaces per lane
Dinner theatre																P			P	P		P	1 space per three seats or bench seating space

Penal or correctional institutions	C															P	P		C	1 space per 500 square feet
Post office (governmental)	P	P	P	P			P		P			P				P	P		P	10 plus 1 per 200 square feet
Non-city public assembly (auditorium, gymnasium, stadiums, meeting halls, etc.)																P		P	C	1 space per 4 seats
Radio, television and communications towers																				
Rectory/parsonage	P	P	P	P			P		P			P				P	P		P	5 spaces, plus 1 per bedroom
Retirement housing for the elderly ‡																				See Assisted living facility
Riding academy	P	C	C	C			C		C			C				C	C		C	1 space per five stalls
Sanitary landfill (private)																		C		1 space per ten acres
School, business (e.g., barber/beauty/cosmetology)																C	P		P	1 space per three students, based on design
School, college or university	C	C	C	C			C		C			C				C	P		P	10 per classroom plus 2 per office
School, commercial trade (vocational) ‡												C				C	P		P	1 space per student
School, public or denominational ‡	P	P	P	P			P		P			P				P	P		P	See section 50-112
School, other than public or denominational ‡												C				C	P		P	
Sheltered care facility ‡									C								C	C	C	1 space per three beds or 1.5 per dwelling
Sign, all types (defined within the referenced section) ‡																				See ch. 34 of this Code
Skilled nursing facility ‡									P			C				C	C		C	See section 50-112
Studio for radio and/or television (no towers) ‡												P				P	P		P	1 space per 200 square feet
Commercial and Wholesale Trade																				
Animal kennel (outdoor pens)	P																C	P		1 space per 500 square feet
Appliance repair																P		P	P	1 space per 500 square feet
Book binding																		P	P	1 space per 500 square feet
Carpet and rug cleaning plant																	C	P	P	1 space per 1,000 square feet
Cattle, swine, or poultry feedlot (CAFO)	C																	C		1 space per 5,000 square feet of land
Cleaning plant (commercial laundry) ‡																	C	P	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		P	1 space per 1,000 square feet
Construction contractor with storage yard	C																	P	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	P	P			P		P			P				P	P		P	None
Distribution center ‡																		P	P	1 space per 1,000 square feet
Electric repair, (domestic equipment and autos)												C				C	P		P	1 space per 1,000 square feet
Electronic assembly																		P	P	1 space per 1,000 square feet
Electro-plating/electro-typing																		P	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	P	1 space per 500 square feet
Fur/hide tanning and finishing																			C	1 space per 1,000 square feet
Heating and air conditioning sales/services																	C	P	P	1 space per 1,000 square feet
Iron works (ornamental)																		C	P	1 space per 1,000 square feet
Lawnmower repair and/or sales																	C	P	P	1 space per 500 square feet
Loading or storage tracks																		P	P	None
Locksmith																	P	P		1 space per 500 square feet
Machine shop																		P	P	1 space per 1,000 square feet
Maintenance and repair service for buildings/janitorial																	C		P	1 space per 500 square feet
Manufactured home display or sales (new or used) ‡																		C	P	1 space per 1,000 square feet
Mattress, making and renovating																		P	P	1 space per 1,000 square feet
Milk depot, wholesale																		P	P	1 space per 1,000 square feet
Mini-warehouse/self storage ‡																	C	P	P	See section 50-112
Mortuary																	C	P	P	See section 50-112
Moving and storage company																		P	P	1 space per 1,000 square feet
News printing																		P	P	1 space per 1,000 square feet
Outdoor sales as a primary use ‡																	C	P	P	1 space per 5,000 square feet of land area
Pawn shop ‡																		P	P	1 space per 200 square feet
Pet and animal grooming shop (no outside kennels) ‡																	C	P		1 space per 200 square feet

Cold storage plants/locker																	P	P					1 space per 1,000 square feet
Concrete or asphalt mixing/batching plant (permanent) ‡																		C					1 space per 5,000 square feet of land
Concrete or asphalt mixing/batching plant (temporary) ‡																	C	P	P				1 space per 5,000 square feet of land
Crematory																		C					1 space per 1,000 square feet
Culvert manufacture																		C					1 space per 1,000 square feet
Cutlery, handtools and general hardware manufacture																	C	P					1 space per 1,000 square feet
Dairy products manufacture																	C	P					1 space per 1,000 square feet
Distillation of liquors, spirits, etc. (brewery)																		C					1 space per 1,000 square feet
Dye manufacture																		C					1 space per 1,000 square feet
Dyeing plant																	C	P					1 space per 1,000 square feet
Electric lamp manufacture																	C	P					One per 1,000 square feet
Elevator manufacture																		P					1 space per 1,000 square feet
Enameling and painting																	C	P					1 space per 1,000 square feet
Engraving plant																	P	P					1 space per 1,000 square feet
Envelope manufacture																	P	P					1 space per 1,000 square feet
Farm/garden machinery and equipment manufacture																	C	P					1 space per 1,000 square feet
Fats and oils (animal) manufacture																							1 space per 1,000 square feet
Feed manufacture																	C	C					1 space per 500 square feet
Felt manufacture																		C					1 space per 1,000 square feet
Food processing ‡																	C	P					1 space per 1,000 square feet
Footwear manufacture																	C	P					1 space per 500 square feet
Foundry, all types																							1 space per 1,000 square feet
Furnace manufacture																		C					1 space per 1,000 square feet
Fixtures manufacture																	C	P					1 space per 1,000 square feet
Furniture manufacture																	C	P					1 space per 1,000 square feet
Gases (industrial) manufacture																		C					1 space per 1,000 square feet
Glucose manufacture																		C					1 space per 1,000 square feet
Hair products factory (other than human)																		C					1 space per 1,000 square feet
Heavy machinery sales and storage ‡																	C	P					1 space per 1,000 square feet
Ice cream/ice manufacture																	P	P					1 space 1,000 square feet
Kerosene manufacture or storage																		C					1 space per 1,000 square feet
Laboratory equipment manufacturing ‡																		C					1 space per 1,000 square feet
Leather products manufacture																	C	C					1 space per 1,000 square feet
Lumber mill/yard																		C					1 space per 1,000 square feet
Machinery manufacture																	C	P					1 space per 1,000 square feet
Marble working and finishing																	C	P					1 space per 1,000 square feet
Meat packing plant																		C					1 space per 1,000 square feet
Metal cans and shipping containers manufacture																	C	P					1 space per 1,000 square feet
Metal products, stamping and manufacture																	C	P					1 space per 1,000 square feet
Mirror resilvering																	C	P					1 space per 200 square feet
Office equipment manufacture																	P	P					1 space per 1,000 square feet
Oil compounding and barreling																		C					1 space per 1,000 square feet
Oilcloth manufacture																		C					1 space per 1,000 square feet
Orthopedic, prosthetic, surgical appliances and supplies manufacture																	P	P					1 space per 1,000 square feet
Paint manufacture and/or mixing																	C	P					1 space per 1,000 square feet
Paper and paper pulp manufacture																		C					1 space per 1,000 square feet
Paper products and paper box manufacture																	P	P					1 space per 1,000 square feet
Pecan processing																	C	P					1 space per 1,000 square feet
Petroleum and petroleum products refining																							1 space per 1,000 square feet
Petroleum distribution/storage ‡																	C	P					1 space per 1,000 square feet
Plastic products, molding, casting and shaping																	P	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																		P					1 space per 1,000 square feet



Ordinance Amendment Staff Report

Planning & Zoning Commission Public Hearing Date: December 11, 2023
City Council Public Hearing Date: December 18, 2023

Case: OAM23-03

Applicant(s): City of Tomball

Section(s): ADD: Section 50-75.1 (*Neighborhood Retail – NR District*)
MODIFY: Section 50- 82 (*Use Regulations Chart*)
MODIFY: Section 50-112 (*Off Street Parking*)
MODIFY: Section 50-113 (*Landscaping*)
MODIFY: Section 50-115 (*Screening, Buffering & Fencing*)

Subject: Add “Neighborhood Retail – NR” Zoning District and subsequent development & land use standards. Including specific standards governing parking, landscaping, and land use buffering/screening.

BACKGROUND

Over the course of the past several months, the City of Tomball has been approached by property owners and perspective developers requesting rezoning of properties to allow nonresidential commercial uses, often near existing and/or planned residential land uses or at the intersections of major thoroughfares. In many instances, these requests are in alignment with the goals and objectives of the Comprehensive Plan and Future Land Use Plan. However, the current nonresidential zoning districts of General Retail (GR), Commercial (C), & Light Industrial (LI) often allow a range of uses that may be considered incompatible with nearby residential land uses or undesirable at certain intersections of high traffic major thoroughfare. In these instances, the Planning & Zoning Commission and/or City Council have approved downgrading rezoning requests to Office (O) zoning. Although this has been a suitable alternative in certain areas, often the Office (O) zoning district is considered overly stringent to accommodate many developments and planned land uses. In efforts to better accommodate these requests for nonresidential zoning near existing and/or planned residential land uses or intersections of major thoroughfares the City of Tomball is recommending the creation of a new zoning district hereby referred to as “Neighborhood Retail (NR)” zoning. The intent of this Neighborhood Retail district is to accommodate a limited range of retail trade, services and office activities that are needed to serve a neighborhood area. The land uses promoted by this district are intended to be a middle ground between the existing Office (O) and General Retail (GR) zoning districts. This zoning district is to be utilized as a transition district between residential uses and more intense non-residential uses. The overall goal of this ordinance amendment is to create a zoning designation that will promote pedestrian oriented neighborhood level commercial developments, while increasing landscaping, buffering & screening standards to better protect nearby residential land uses when located next to nonresidential zoning districts.

NOTICE OF PUBLIC HEARING:

A public hearing notice was published in the Potpourii on November 29, 2023.

PROPOSED ORDINANCE AMENDMENT(s):

Code of Ordinance Section(s):

Chapter 50 - Article III. – District Regulations

ADD: Sec 50-75.1 – Neighborhood Retail District (NR)

- (a) General purpose and description – The Neighborhood Retail District is intended to accommodate a limited range of retail trade, services and office activities that are needed to serve a neighborhood area. The district is to be utilized as a transition district between residential uses and more intense non-residential uses. The district is to incorporate elevated landscaping and buffering standards to facilitate seamless integration alongside residential districts. Development within the district should be similar in scale as residential uses and adjacent properties. Architectural principles should be incorporated within site development to actively engage streetscapes and create pedestrian oriented environments. Uses within this district should not include uses that create excessive traffic, noise, trash, or late-night business operations. This district is ideally suited for intersections of major thoroughfares or at the intersection of a major thoroughfare and primary entrances to residential subdivisions and/or multi-family developments.
- (b) Permitted uses. Those uses listed for the Neighborhood Retail (NR) District in the use charts (section 50-82) as “P” or “C” are authorized uses permitted by right or conditionally permitted uses, respectively.
- (c) Height regulations. Maximum height:
 - 1) Forty feet (40’); also see setback requirements related to height (d)(2)(b.2) of this section.
 - 2) One story for accessory buildings
- (d) Area regulations
 - 1) Size of lots
 - a. Minimum lot area: 6,000 square feet.
 - b. Minimum lot width: 60 feet.
 - c. Minimum lot depth: 100 feet.
 - 2) Size of yards and setbacks
 - a. Minimum front yard: 15 feet. Where a lot faces a designated arterial street, the front yard shall be a minimum of 25 feet.
 - b. Minimum side yard.
 1. Interior: 5 feet
 2. Interior: If adjacent to a single-family, duplex, patio home or single-family attached district, then side and rear setbacks (within which parking is permitted) shall be according to the height of the primary structure as follows:
 - a. Setbacks shall be measured at a ratio of five feet in horizontal setback distance for every three feet of building height.
 3. Side yard adjacent to a street: 15 feet.
 4. Side yard adjacent to a designated arterial: 25 feet
 - c. Minimum rear yard: 15 feet. If adjacent to a single-family, duplex (two-family), patio home or single-family attached district, then minimum rear yard (within which parking is permitted) shall be 60 feet, unless separated by an alley in which case the minimum shall be 20 feet. When adjacent to an arterial, minimum rear yard shall be 25 feet.
 - d. Zero lot line exception: notwithstanding the requirements of this section, except where an interior side yard or rear yard is adjacent to property zoned for or restricted by a duly recorded subdivision plat to, or primarily use for, single-family residential purposes, there shall be no required interior side or rear yard if the wall adjoining such interior side or rear lot line, as applicable, is constructed with materials giving it a four-hour firewall rating. Yards adjacent to street or alley right-of-way are excluded from this provision.
 - e. Minimum underground setback: any underground building structure shall be setback from any lot line by a minimum of 15 feet.

- f. Minimum pavement setback: all paving, except driveways and sidewalks, shall be setback from any public street right-of-way by a minimum of 15 feet.
- 3) Maximum lot coverage. Maximum lot coverage is 50 percent of the net site area (after right-of-way dedication) for the gross ground floor area of all building structures, including main and accessory buildings.
- 4) Maximum floor area. Maximum floor area ratio (FAR) is 1:1
- 5) *Outdoor sales*: Outdoor sales are prohibited.
- 6) *Outdoor storage*: Outdoor storage is prohibited.
- 7) *Hours of Operation*: Except for uses permitted within a residential zoning district, no use shall operate before 6:00 a.m. nor after 11:00 p.m. on any day of the week.
- 8) Façade Orientation Standards
 - a. Facades of primary building(s) immediately adjacent to street right-of-way(s) shall be front and/or side facades only. Rear facades of buildings shall be prohibited from facing street right-of-way(s).
- 9) *Parking Standards* Refer to Section 50-112 (c)(1.1) – Parking regulations for the NR District

Chapter 50 - Article IV. – DEVELOPMENT STANDARDS - Section 50-112 – Off Street Parking and Loading Requirements

MODIFY: (c) Nonresidential and MF Districts; off-street parking provisions.

ADD: (1.1) Parking regulations for the NR District

- a. Parking areas must be located to the side or rear of primary buildings. No parking shall be located between the front and/or side facades of primary buildings and street right-of-way(s) unless otherwise specified by the following:
 - a. One-way Vehicle drive-through lanes for overall circulation as well as drive-through and pickup/drop off services shall be exempt from this standard.
 - b. A maximum of one, one-way aisle of parallel and/or angled parking stalls shall be permitted between street rights-of-way(s) and facades of primary buildings.
- b. All parking and vehicle maneuvering areas shall be screened from streets by a solid row of hedges. As prescribed by Section 50-113 (f)(3)(f)
 - a. EXCEPTION: Vehicle visibility triangles shall be clear of hedges utilized for screening as prescribed by Section 38-34 – Obstructions prohibited in visibility triangle.
- c. No parking area may be located closer than 10 feet from property lines for properties zoned for Single-Family Residential uses.

Chapter 50 - Article IV. – DEVELOPMENT STANDARDS - Section 50-113 – Landscape requirements

MODIFY: (f)(3) Requirements for landscaping in and around parking lots

ADD: (f) Parking lots, driving lanes, loading areas, or other similar areas of vehicular access shall be screened from residentially zoned property, whether adjacent or across a street, by a continuous hedge, planter, berm, fence, wall, or combination of these, with a minimum height of 36 inches. This requirement shall not be required along state highways.

- 1. Shrubs utilized for screening parking areas shall be a minimum 3-gallon planting size spaced 36-inches on center.

Chapter 50 - Article IV. – DEVELOPMENT STANDARDS - Section 50-115 – Screening, buffering and fencing requirements

MODIFY: (b) screening of non-residential, multifamily areas and manufactured (mobile) home parks. The following provisions shall apply to screening of nonresidential, multi-family areas and manufactured (mobile) home parks:

DELETE:

- ~~(1) An opaque screening wall of not less than six feet, nor more than eight feet, in height shall be erected on the property line separating zoning districts in the following cases:~~

- ~~a. When a multifamily use, nonresidential use, or manufactured (mobile) home park sides or backs upon a single family, two family or residential PD District;~~
- ~~b. When any nonresidential use is on a tract, lot or parcel that is less than 15 acres and the nonresidential use sides or backs upon a multiple family district; and~~
- ~~c. When a commercial or industrial use is established on a building site located adjacent to any residential area, a ten foot side landscaped open-space buffer shall be installed and maintained by the owner, developer, or operator of the commercial or industrial property between it and the adjacent residential area. The provisions of this section shall not apply where the residential area is separated by a public street, drainage ditch, or canal with a minimum easement of 30 feet. With written approval of the planning and zoning commission, and otherwise full compliance with landscaping standards, a required buffer may include a stormwater detention area. In no event, however, shall the following uses be allowed in buffers: playfields, stables, swimming pools, tennis courts, or similar active recreation uses.~~

ADD:

- (1) Land use buffering shall be provided along property lines separating zoning districts as prescribed below:
 - a. When non-residential, multi-family residential, or manufactured (mobile) home park zoning shares a common boundary with single-family residential, two-family residential, residential planned developments or agricultural zoning districts.
 - b. Required land use buffers must consist of a minimum 10-foot-wide vegetative buffer yard and 7-foot opaque wooden fence plus at least 25 points based on the following criteria:
 - i. Points:
 - 1. Opaque masonry wall with 6-foot minimum height in lieu of providing opaque wooden fence = 10 points
 - 2. Each additional 5 feet of buffer yard = 5 points (maximum of 10 points)
 - 3. ONE (1) tree with a mature height of at least 20-feet and height of at least 8-feet and caliper size of 4-inches (measured 12-inches above ground level) at the time of planting per 25 lineal feet of buffer yard = 15 points
 - 4. THREE (3) smaller trees with a height of at least 8-feet and caliper size of 2-inches (measured 12-inches above ground level) at the time of planting per 25 lineal feet of buffer yard = 15 points
 - c. Trees planted to accommodate required land use buffering shall be in addition to the required trees prescribed within Section 50-113 (Landscaping Requirements).
 - d. Preservation of existing trees: Each tree preserved to accommodate the required land use buffer shall count as one tree toward the overall land use buffering requirement regardless of size. Trees planned to be preserved must be on the City of Tomball approved planting list.
 - e. For purposes of interpreting this section, mixed use zoning shall be considered nonresidential.
 - f. Buffer yards are required between adjacent uses as indicated. For purposes of this section adjacent includes properties separated by an alley but does not include properties separated by a street.
 - g. Parking lots, driving lanes, loading areas, or other similar areas of vehicular access shall be screened from residentially zoned property, whether adjacent or across a street, by a continuous hedge, planter, berm, fence, wall, or

combination of these, with a minimum height of 36 inches. This requirement shall not be required along state highways.

- h. Open space in buffer yards shall be planted in grass or other vegetative ground cover.
- i. Alternative buffering may be permitted by the Director of Community Development or their designee during the site plan review process so long as the buffering and aesthetic intent of these requirements are met.

ADD:

(5) Mechanical equipment, including roof-mounted equipment, must be screened from the view from streets, parking lots, parks, and residential districts with materials consistent with the principal structure, opaque fencing, masonry walls, and/or landscaping. Wall mounted electrical panels are exempt from this standard.

Chapter 50 - Article III. – District Regulations - Section 50-82 – Use Regulations (charts)

MODIFY:

Types of Land Uses	Residential Zoning Districts							Nonresidential Zoning Districts										OT&MU	Parking ratio [Also see section 50-112]	
	AG	SF-20-E	SF-9	SF-6		D		MF		MHP	O		NR	GR						
Agriculture																				
Bulk grain and/or feed storage	P															C	C			1 space per 1,000 square feet
Farm (ranch, garden, crops, livestock, or orchard) ‡	P	P	P	P		P		P	P			P	P			P	P	P		None
Feed and grain store/farm supply store ‡	C												C			P	P	C		1 space per 500 square feet
Flour and other grain mills																	P			1 space per 1,000 square feet
Livestock, wholesale/auction	C																			None
Livestock sales/auction	C																			None
Stable, commercial	C																C			1 space per 1,000 square feet
Stables (private, principal or accessory use) ‡	P			C																None
Residential																				
Accessory building/structure (business or industry) ‡										P			P			P	P	P		None
Accessory building/structure (residential) ‡	P	P	P	P		P		P										P		None
Accessory dwelling	P	P	P	C		C		C										P		None
Garage/accessory dwelling ‡	P	P	P	C		C		C										P		None
Caretaker's, guard's residence ‡	P	C						P		P			P	P		P	P	P		1 space per caretaker/guard
Dwelling, four-family (quadraplex) (defined under Multiple-family dwelling) ‡								P										P		2 spaces per dwelling
Dwelling, HUD code-manufactured home ‡										P								C		2 spaces per dwelling
Dwelling, industrialized home ‡	P	P	P	P		P		P		P								C		2 spaces per dwelling
Dwelling, multiple-family ‡								P										P		2 spaces per dwelling

Dwelling, single-family attached ‡							P	P										P	2 spaces per dwelling
Dwelling—Single-family detached ‡	P	P	P	P			P	P										P	2 spaces per dwelling
Dwelling, two-family, duplex or duplex townhome ‡							P	P										P	2 spaces per dwelling
Dwelling, zero-lot line/patio home ‡							P	P										P	2 spaces per dwelling
Home occupation ‡	P	P	P	P			P	P					P			P	P	P	None
Residential use ‡	P	P	P	P			P	P		P	C	C			C			P	2 spaces per dwelling
Private street subdivision	P	P	P	P			P	P				C			C			P	None
Office																			
Clinic, emergency care													P			P	P	C	1 space per 150 square feet
Clinic, medical and/or dental									P		P	P			P	P		P	1 space per 300 square feet
Credit agency									P		P	P			P	P		P	1 space per 300 square feet
Bank, savings and loan, or credit union (no motor bank services)									P		P	P			P	P		P	1 space per 300 square feet
Bank, savings and loan, or credit union (with motor bank services)									C		P	P			P	P		P	1 space per 300 square feet
Office, professional and general business ‡									P		P	P			P	P		P	1 space per 300 square feet
Office, parole-probation												P			P	P		C	1 space per 300 square feet
Office showroom/warehouse ‡									C			C			P	P		P	1 space per 300 square feet
Security monitoring company (no outside storage)									P			P			P	P		P	1 space per 300 square feet
Telemarketing agency									C			C			C	P		C	1 space per 250 square feet
Telephone exchange/switching station ‡	C								P			P			P	P		C	1 space per 500 square feet
Temporary real estate field office	P	P	P	P			P	P		P	P	P			P	P		P	4 spaces
Model home (including sales office)	P	P	P	P			P	P		P	P	P			C	C		P	2 spaces per model
Personal and Business																			
Ambulance service													C			P	P	C	1 space per 500 square feet
Automobile driving school (including defensive driving)									C			P	P		P	P		P	1 space per classroom seat
Barber/beauty shop (no related school/college)									C			P	P		P	P		P	1 space per 200 square feet
Bed and breakfast inn ‡	P	C	C	C			C	C			C	C	P			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		P	1 space per 100 square feet
Dance/drama/music schools (performing arts, martial arts)	C	C	C	C			C	C			C	C	P			P	P	P	1 space per 100 square feet
Fortunetelling and similar activities ‡																	C		1 space per 300 square feet
Funeral home ‡															C		P	P	C
Greenhouse (non-retail/hobby)	P	P	P	P			P	P		P								P	None
Health club (indoor)										C		P	P			P	P	P	One space per 300 square feet
Health club (outdoor)													C			P	P	P	One space per 300 square feet
Hotel ‡													P			P		C	See section 50-112
Laundromat/washateria/self-service ‡													P			P	P	P	1 space per 200 square feet
Laundry/dry cleaning (retail only, drop off/pick up) ‡									C			P	P			P	P	P	1 space per 200 square feet
Loan services (payday/auto title)													C			C			1 space per 100 square feet
Mailing service (private)													P			P	P	P	1 space per 200 square feet
Motel ‡																C		C	See section 50-112
Pharmacy (retail only)										C		P	P			P	P	P	1 space per 200 square feet
Reception venue	C	C								C		C	P			P	P	P	1 space: 4 seats
Recreational vehicle park									C										
Rehabilitation care facility (halfway house) ‡	C	C	C	C			C	C			C	C	C	P		P	P	C	Greater of 1 per three beds or 1.5 spaces per dwelling
Rehabilitation care institution (business) ‡	C	C	C	C			C	C			C		C	P		P	P	P	Greater of 1 per three beds or 1.5 spaces per dwelling
Seamstress, dressmaker or tailor (retail only)										C		P	P			P	P	P	1 per 200 square feet
Sexually oriented business																	C		
Tattoo or body piercing studio ‡																C			1 space per 200 square feet
Wedding chapel													P			P	P	P	1 per four seats
Retail																			
Antique shop (no outside sales or storage) ‡													P	P		P	P	P	1 space per 500 square feet
Antique shop (with outside storage)														C		P	P	P	1 space per 500 square feet
Apparel shop													P	P		P	P	P	1 space per 200 square feet
Art gallery/museum/dealer ‡										C		P	P			P	P	P	1 space per 500 square feet
Artist or photography studio										C		P	P			P	P	P	1 space per 500 square feet
Bakery, retail (eating establishment, no drive-through) ‡										C		P	P			P	P	P	1 space per 200 square feet
Bakery, retail (with drive-through)												C	P			P	P	P	1 space per 200 square feet

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Auto dealer (new, auto servicing and used auto sales as accessory uses only, w/no outdoor sales, storage, and display)																		P		P	P		C		See section 50-112	
Auto dealer, primarily used auto sales w/outdoor sales, storage, and display ‡																		C		P	P				See section 50-112	
Auto dealer, primarily used auto sales w/no outdoor sales, storage, and display																		C		P	P		C		See section 50-112	
Auto glass repair/tinting																		P		P	P		P		1 space per 200 square feet	
Auto interior shop/upholstery																		C		P	P		P		1 space per 200 square feet	
Auto muffler shop																		C		P	P		P		1 space per 200 square feet	
Auto paint shop																		C		P	P		P		One per 200 square feet	
Auto parts sale (new or rebuilt, no outside storage, no outside display, no repair)																		P		P	P		P		1 space per 200 square feet	
Auto parts sale (new or rebuilt, with outside storage or display)																		C		P	P				1 space per 200 square feet	
Auto rental																		P		P	P		C		1 space per 200 square feet	
Auto repair (major) ‡																		C		P	P		C		1 space per 200 square feet	
Auto repair (minor) ‡																		P		P	P		P		1 space per 200 square feet	
Auto storage or auto auction ‡																				C	P				1 space per 1,000 square feet	
Auto tire sales (indoor)																		P		P	P		P		1 space per 200 square feet	
Auto wrecker service																				P	P		C		1 space per 200 square feet	
Automobile assembly																					P		C		1 space per 1,000 square feet	
Automobile parts manufacturing																				C	P		C		1 space per 1,000 square feet	
Automobile wash (full service/detail shop) ‡																		P		P	P		P		3 space per washing capacity of module	
Automobile wash (self-service) ‡																		C		P	P		P		3 space per washing capacity of module	
Bike sales and/or repair																		P		C	P		P		1 space per 500 square feet	
Bus or truck storage																				P	P				1 space per 1,000 square feet	
Gasoline station																		P		P	P				See section 50-112	
Motor freight transportation, storage, and terminal																				P	P		C		See section 50-112	
Motorcycle sales/dealer w/outdoor sales, storage, and display ‡																		P		P	P				See section 50-112	
Motorcycle sales/dealer w/no outdoor sales, storage, and display																		P		P	P		C		See section 50-112	
Parking lot or garage for passenger cars and trucks of less than one-ton capacity ‡	C				C			C										C		P	P	P	C		None	
Personal watercraft sales (new/repair) w/outdoor sales, storage, and display																				P	P	P			See section 50-112	
Personal watercraft sales (new/repair) w/no outdoor sales, storage, and display																				P	P	P	C		See section 50-112	
Railroad team tracks, unloading docks, and spurs																					P	P		C	None	
Railroad yards, round house or shop																					C	P		C	1 space per 1,000 square feet	
Taxi/limousine service																		C		P	P		C		1 space per 1.5 automobiles in service	
Tire sales (indoors, no outside storage) ‡																				P	P		P		1 space per 1,000 square feet	
Tire sales (outdoors, with outside storage) ‡																				C	P				1 space per 1,000 square feet	
Transfer station (refuse/pick-up) ‡	C																			C	C				1 space per 500 square feet	
Transit terminal ‡																				P	P		C		See section 50-112	
Truck and bus leasing ‡																				P	P				1 space per 1,000 square feet	
Truck sales and services (heavy trucks) ‡																				P	P				1 space per 1,000 square feet	
Truck stop ‡																				C	P		C		1 space per 1,000 square feet	
Truck terminal ‡																					P	P			See section 50-112	
Amusement and Recreation																										
Amusement, commercial (indoor) ‡																		C	C		C	P	P		C	1 space per 100 square feet
Amusement, commercial (outdoor) ‡																			C		P	P		C	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	P		C	Determined by P and Z	
Amusement devices/arcade (4 or more devices, indoors only) ‡																		C	C			P	P		C	1 space per game table plus one per amusement device
Billiard/pool facility (4 or more tables)																		C	C			P	P		C	1 space per 200 square feet
Bingo facility																		C	C			P	P		P	1 space per 200 square feet
Bowling alley (air conditioned and soundproofed)																		C	P			P	P		C	4 spaces per lane
Dinner theatre																			P			P	P		P	1 space per three seats or bench seating space

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Plumbing shop																C			P	P		C	1 space per 200 square feet
Printing equipment, supplies and repairs																C			P	P		C	1 space per 500 square feet
Propane sales filling (retail)																C			P	P		C	1 space per 200 square feet
Publishing and printing company																C			P	P		P	1 space per 500 square feet
Quick lube/oil change/minor inspection																P			P	P		P	1 space per 200 square feet
Salvage storage yard ‡																				C			5 per acre
Scientific and industrial research laboratories (hazardous) ‡																			C	P			1 space per 300 square feet
Scientific and industrial research laboratories (nonhazardous) ‡													P			C			P	P		P	1 space per 300 square feet
Scrap metal storage yard																				C			5 space per acre
Security systems installation company																C			P	P		C	1 space per 300 square feet
Sheet metal shop																			P	P			1 space per 1,000 square feet
Storage of cement, sands and gravel	C																		C	P			1 space per 5,000 square feet of storage area
Storage of used lumber and building materials																			C	P			1 space per 5,000 square feet of storage area
Taxicab storage and repair																			P	P			1 space per 500 square feet
Taxidermist	C															C			P	P			1 space per 500 square feet
Tool and machinery rental (indoor storage only) ‡																P			P	P		P	1 space per 200 square feet
Tool and machinery rental (with outdoor storage) ‡																C			P	P		C	1 space per 200 square feet
Vacuum cleaner sales and repair ‡																P			P	P		P	1 space per 200 square feet
Veterinarian clinic (indoor kennels) ‡	P															C			P	P		P	1 space per 500 square feet
Veterinarian clinic (outdoor kennels or pens) ‡	C																		C	P			1 space per 500 square feet
Warehouse (defined under storage or wholesale warehouse) ‡																C			P	P		C	1 space per 1,000 square feet
Welding shop																C			P	P		C	1 space per 1,000 square feet
Wholesale trade, nondurable goods																C			P	P		C	1 space per 1,000 square feet
Woodworking shops																C			P	P		C	1 space per 1,000 square feet
Wrecking materials yard ‡																				C			1 space per 1,000 square feet
Light and Heavy Manufacturing/Industrial																							
Acid manufacture																				C			1 space per 1,000 square feet
Adhesives and sealants manufacture																			C	C			1 space per 1,000 square feet
Aircraft parts manufacture																				P			1 space per 1,000 square feet
Airplane repair and manufacturing																				P			1 space per 1,000 square feet
Animal processing and slaughter																			C	C			1 space per 1,000 square feet
Any manufacture or industrial process not listed and not prohibited by law																			C	C			1 space per 1,000 square feet
Artificial flower manufacture																C			P	P			1 space per 1,000 square feet
Asphalt paving and roofing material manufacture																				C			1 space per 1,000 square feet
Awning manufacture, cloth, metal and wood																			P	P			1 space per 1,000 square feet
Bag manufacturing																			P	P			1 space per 1,000 square feet
Battery manufacture																				C			1 space per 1,000 square feet
Bleaching/chorine powder manufacture																				C			2 space per 1,000 square feet
Boiler manufacture and repair																				P			1 space per 1,000 square feet
Bottling works																			P	P			1 space per 1,000 square feet
Broom manufacture																			P	P			1 space per 1,000 square feet
Candy and other confectionary products manufacture																C			P	P			1 space per 1,000 square feet
Canning and preserving factory																			C	P			1 space per 1,000 square feet
Canvas and related products manufacture																			P	P			1 space per 1,000 square feet
Casein manufacture																				C			1 space per 1,000 square feet
Celluloid and similar cellulose manufacture																				C			1 space per 1,000 square feet
Cement manufacture																				C			1 space per 1,000 square feet
Ceramic products manufacture																C			P	P			1 space per 500 square feet
Chalk manufacture																				C			1 space per 1,000 square feet
Chemicals (agricultural) manufacture																				C			1 space per 1,000 square feet
Chemicals (industrial) manufacture																				C			1 space per 1,000 square feet
Clothing manufacture																			P	P			1 space per 500 square feet
Coffin manufacture																			C	P			1 space per 1,000 square feet

City Council Meeting Agenda Item Data Sheet

Meeting Date: February 19, 2024

Topic:

Approve the Minutes of the February 5, 2024, Regular City Council meeting and the February 9, 2024, Special City Council meeting.

Background:

Origination: City Staff

Recommendation:

Approve Minutes

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

FUNDING (IF APPLICABLE)

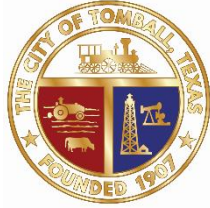
Are funds specifically designated in the current budget for the full amount required for this purpose?

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

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

Signed	<u>Sasha Luna</u>	Approved by	_____
	Staff Member		City Manager
	Date		Date

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



**Friday, February 09, 2024
5:00 PM**

- A. Mayor Klein Quinn called the meeting of the City of Tomball Council to order at 5:00 p.m.

PRESENT

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

OTHERS PRESENT

City Manager - David Esquivel
City Attorney - Loren Smith
Assistant City Manager - Jessica Rogers
Assistant City Secretary - Sasha Luna

- B. Public Comments and Receipt of Petitions

Chad Degges - Term limits
29602 Imperial Creek Dr.
Tomball, Texas

- C. Old Business

1. Adopt, on Second Reading, Ordinance No. 2024-02, An Ordinance Of The City Of Tomball, Texas Calling A Special Election To Be Held On May 4, 2024, For The Purpose Of Submitting To The Voters Propositions To Amend The City Of Tomball Charter Regarding: (A) Amending Sections 3.07, 4.01, 5.07, 6.03, 6.12, 6.13, 7.07, 7.08, 9.03, And 10.2 To Correct Non-Substantive Issues; (B) Amending Section 1.05 To Update To Language Used To Clarify Between Sex And Gender Based Pronouns; (C) Amending Section 2.03 To Update Annexation Procedures In Line With Changes In Texas Law; (D) Amending Section 5.01 Relating To The Publication Of Elections And The Dates Of Elections; (E) Amending Section 5.03 Relating To Forms Required For Municipal Office Application; (F) Amending Section 6.02 Relating To Term Limits; (G) Amending

Sections 6.08 And 7.01 Relating To The Powers Of Mayor And City Manager; (H) Amending Section 6.10 Relating To The Role Of Council In Selecting City Administrative Personnel; (I) Amending Section 6.14 Relating To The Physical Publishing Of Ordinances And Relating To Reading Ordinances At Council Meetings; (J) Amending Article Vi And Article X By Removing Part Of Section 10.01 And Adding Section 6.17 Relating To Council Liaison On Boards And Commissions; (K) Amending Sections 6.02, 6.03, 6.04, 6.06, 6.08, And 6.13 Relating To The Term Councilmember; (L) Section 7.01 Relating To The Next Charter Review Written Report; (M) Amending Section 7.08 Relating To The Term And Removal Of Municipal Judge; (N) Amending Section 8.06 Relating To Public Hearing On Budget; (O) Amending Section 8.14 Relating To Classifications Of Accounting Standards; (P) Amending 8.17 Relating To Countersigning Of Checks, Vouchers Or Warrants By Assistant City Manager; (Q) Amending Section 10.01 Relating To The Planning And Zoning Commission Powers To Approve Final Plats, To Recommend Building Code Adoption And Revision, To Recommend Capital Improvement Plans; And To The Planning And Zoning Commission Notice Of Meeting Change; And (R) Amending Sections 6.02, 6.03, 6.07, 6.08, 6.14, 7.01, 7.02, 7.03, 7.04, 7.05, 7.06, 7.07, 7.08, 11.03, 11.04, 11.05, 11.07, 11.11, 11.12, And 12.02 Relating To The Office Or Title Language; Providing For Ballots; Designating The Time And Place For Holding Such Elections; Providing For Notices; Providing For Publication; Providing For Severability; And, Providing An Effective Date.

Motion made by Council 4 Townsend, Sr., Seconded by Council 2 Stoll to amend for proposition F. to be removed to be voted on separately and voting on the Other amendments and for them to be renumbered.

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

Motion carried unanimously.

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

Voting Yea: Council 3 Dunagin

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

Motion failed 1 vote yea, 4 votes nay.

D. Adjournment

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

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

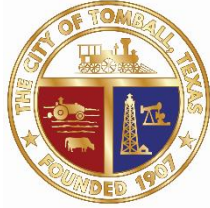
Motion carried unanimously.

PASSED AND APPROVED this 19th day of February 2024.

Tracylynn Garcia
City Secretary, TRMC, CMC, CPM

Lori Klein Quinn
Mayor

MINUTES OF REGULAR CITY COUNCIL MEETING CITY OF TOMBALL, TEXAS



**Monday, February 05, 2024
6:00 PM**

- A. Mayor L. Klein-Quinn called the meeting of the City of Tomball Council to order at 6:03 p.m.

PRESENT

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

City Staff Present:

City Manager - David Esquivel
Assistant City Manager - Jessica Rogers
City Attorney - Loren Smith
City Secretary - Tracylynn Garcia
Assistant City Secretary - Sasha Luna
Finance Director - Katherine Tapscott
Public Works Director - Drew Huffman
Director of Marketing & Tourism - Chrislord Templonuevo
Director of Community Development - Craig Meyers
Fire Chief - Joe Sykora
Police Chief - Jeff Bert
Project Manager - Meagan Mageo
IT Support - Tom Wilson
TEDC Executive Director - Kelly Violette
TEDC Assistant Director – Tiffani Wooten

- B. Invocation - Led by Pastor Adam McIntosh with St. David's Reformed Church
- C. Pledges to U.S. and Texas Flags Fire Chief J. Sykora
- D. Public Comments and Receipt of Petitions; *[At this time, anyone will be allowed to speak on any matter other than personnel matters or matters under litigation, for length of time not to exceed three minutes. No Council/Board discussion or action may take place on a*

matter until such matter has been placed on an agenda and posted in accordance with law - GC, 551.042.]

Tana Ross 30722 Country Meadows Dr. Tomball 77375	-	Comments regarding CRC
William Sumner 12321 Zion Rd. Tomball 77375	-	TEDC Board appt. Paul Garcia
David Martin 13319 Spring Hall Dr. Tomball 77375 -	-	Charter (website, amendments, term limits)
Anshu Yedavelli 114 North Stage Sparrow Circle Spring, Tx	-	Tomball High School (stem job/programs)
Angie Johnson 30614 Quinn Rd. Tomball 77375	-	Comments regarding CRC (term limits)
Richard Anderson 11307 Wallstreet Rd. Tomball	-	Term limits

E. Presentations

1. J. Klein - Tomball Regional Health Foundation presented Tomball Fire Department a check in the amount of \$10,200.00 for the purchase of Cyanokits.

J. Klein also presented L. Shannon a plaque for her 20 years of service the Foundation.

F. Reports and Announcements

1. Announcements

I. Upcoming Events:

February 8, 2024 – Mayor’s Kaffeeklatsch 8:30 am – 10 am @
Community Center Room A

February 16, 2024 - Last day to apply for place on ballot for the May 4, 2024 General Election

February 20, 2024 – Tomball Trail Ride (SHTR) 12:00 pm – 2:00 pm @ Depot

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

March 16, 2024 – Electric Tomball/Depot Disco 5:00 pm – 9:00 pm @ Depot

2. Reports by City staff and members of council about items of community interest on which no action will be taken:
 - I. Katherine Tapscott presented - Quarterly Financial Update for Period Ending December 31, 2023
 - II. Katherine Tapscott presented - Quarterly Investment Report for Period Ending December 31, 2023. 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.

G. Old Business

1. Approve, on Second Reading, Ordinance No. 2024-01, an Ordinance of the City of Tomball, Texas, finding and determining that public convenience and necessity no longer require the continued existence of an unimproved right-of-way between Barbara Street and Alma Street, all situated in the Northwest Houston Heart Center Plat as recorded in Volume 621, Page 269 of the Map Records of Harris County, Texas; vacating, abandoning, and closing said portion of such unimproved right-of-way; authorizing the City Manager to execute and the City Secretary to attest a quitclaim deed quitclaiming the City's interest in said unimproved right-of-way; and containing other provisions relating to the subject.

Motion made by Council 3 Dunagin, Seconded by Council 5 Parr.

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

Motion carried unanimously.

- 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.]

Items 2, 3 were removed.

Motion made by Council 4 Townsend, Sr., Seconded by Council 3 Dunagin for items 1, 4-9

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

Motion carried unanimously

1. Approve the Minutes of the January 22, 2024, Special City Council meeting and the January 29, 2024, Special Joint City Council and Charter Review Commission meeting.
4. Approve a Professional Services Agreement with Oller Engineering, Inc. for the design of a water line extension along E. Hufsmith (from the drainage channel to N. Cherry Street/Ulrich Road), Project Number 2024-10002, for a not-to-exceed amount of \$346,382, authorize the expenditure of funds therefor, and authorize the City Manager to execute the agreement. This project was included in the FY 2023-2024 capital budget.
5. Approve a services agreement renewal with Accurate Utility Supply, LLC for water, wastewater, and drainage supplies and services through a BuyBoard Contract (Contract No. 626-20) for a not-to-exceed amount of \$262,500, approve the expenditure of funds therefor, and authorize the City Manager to execute any and all documents related to the purchases. These expenditures are included in the Fiscal Year 2023-2024 Budget.
6. Approve a services agreement renewal with North Water District Laboratory, Services, Inc. for wastewater sampling and laboratory services for a total not-to-exceed amount of \$100,000, approve the expenditure of funds therefor, and authorize the City Manager to execute any and all documents related to the purchase. This expenditure is included in the Fiscal Year 2023-2024 Budget.
7. Approve a services agreement renewal with Source Point Solutions, LLC to provide vector services and regular maintenance of sewer components for a total not-to-exceed amount of \$60,000, approve the expenditure of funds therefor, and authorize the City Manager to execute any and all documents related to the purchase. This expenditure is included in the Fiscal Year 2023-2024 Budget.

8. Approve a services agreement renewal with Water Utility Services, Inc. for water sampling and laboratory services for a total not-to-exceed amount of \$175,000, approve the expenditure of funds therefor, and authorize the City Manager to execute any and all documents related to the purchase. This expenditure is included in the Fiscal Year 2023-2024 Budget.
9. Approve a services agreement with Sprint Waste of Texas, LP DBA GFL Environmental for sludge hauling and disposal for Fiscal Year 2024, for a not-to-exceed amount of \$140,000 (Bid No. 2024-06), approve the expenditure of funds therefor, and authorize the City Manager to execute any and all documents related to the purchases. These expenditures are included in the fiscal year 2023-2024 budget.

Motion made by Council 4 Townsend, Sr., Seconded by Council 3 Dunagin for items 1, 4-9

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

Motion carried unanimously.

2. Approve the expenditure of \$135,065.08 for Sales Tax Compliance Review Services for October 1 -December 31, 2023 from Avenu Insights & Analytics and authorize the City Manager to execute any and all documents related to the expenditure.

Motion made by Council 5 Parr, Seconded by Council 2 Stoll.

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

Voting Abstaining: Mayor Klein Quinn

3. 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 \$327,750, authorize the expenditure of funds therefor, and authorize the City Manager to execute the agreement. This amount is included in the FY 2023-2024 budget.

Motion made by Council 2 Stoll, Seconded by Council 5 Parr.

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

Motion carried unanimously.

I. New Business

1. Appoint a Member to Fill Vacancy and Complete the Unexpired Term on the Tomball Economic Development Corporation Board of Directors expiring 5/31/2024.

Motion made by Council 2 Stoll, Seconded by Council 5 Parr Brock Henderson to fill vacancy on EDC Board of Directors

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

Motion carried unanimously.

2. Consideration and possible action to approve, as a Project of the Tomball Economic Development Corporation, an agreement with Billiard Factory to make direct incentives to, or expenditures for, the creation or retention of primary jobs associated with the development of its corporate distribution facility to be located at 2013 S. Persimmon Street, Tomball, Texas 77375. The estimated amount of expenditures for such Project is and amount not to exceed \$95,909.00.

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

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

Motion carried unanimously.

3. Approve, on Second Reading, Resolution No. 2024-03-TEDC, a Resolution of the City Council of the City of Tomball, Texas, authorizing and approving the Tomball Economic Development Corporation's Project to Expend Funds in accordance with an Economic Development Performance Agreement by and between the Corporation and LOMA Health & Wellness, PLLC to make direct incentives to, or expenditures for, rental assistance for new or expanded business enterprise to be located at 604 Baker Drive, Unit D, Tomball, Texas 77375. The estimated amount of expenditures for such Project is an amount not to exceed \$8,880.00.

Motion made by Council 2 Stoll, Seconded by Council 1 Ford.

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

Motion carried unanimously.

4. Approve, on First Reading, Resolution No. 2024-04-TEDC, a Resolution of the City Council of the City of Tomball, Texas, authorizing and approving the Tomball Economic Development Corporation's Project to Expend Funds in accordance with an Economic Development Performance Agreement by and between the Corporation and Della Casa Pasta, LLC to make direct incentives to, or expenditures for, rental assistance for new or expanded business enterprise to be located at 22525 Hufsmith-Kohrville Rd., Tomball, Texas 77375. The estimated amount of expenditures for such Project is an amount not to exceed \$10,000.00.

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

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

Motion carried unanimously.

5. Approve, on First Reading, Resolution No. 2024-05-TEDC, a Resolution of the City Council of the City of Tomball, Texas, authorizing and approving the Tomball Economic Development Corporation's Project to Expend Funds in accordance with an Economic Development Performance Agreement by and between the Corporation and the City of Tomball to make direct incentives to, or expenditures for, improvements to the North and South 100 Block and North 200 Block Alleyways located in the City of Tomball, Texas. The estimated amount of expenditures for such Project is an amount not to exceed \$1,188,834.00.

Motion made by Council 4 Townsend, Sr., Seconded by Council 3 Dunagin
Amended motion - City manager to execute all agreements.

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

Motion carried unanimously.

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

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

Motion carried unanimously.

6. Approve, on First Reading, Resolution No. 2024-06-TEDC, a Resolution of the City Council of the City of Tomball, Texas, authorizing and approving the Tomball Economic Development Corporation's Project to Expend Funds for the Summer Youth Employment Program, that will, among other things, reimburse qualified business owners for certain employment costs related to employing young people in the City during the summer months, in order to promote new or expanded business development in and around the City.

Motion made by Council 2 Stoll, Seconded by Council 1 Ford.

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

Motion carried unanimously.

7. Consideration to approve the Tomball Police Department Annual Data Capture Report – 2023 and authorize the posting of the information as required by Senate Bill 1074.

Motion made by Council 2 Stoll, Seconded by Council 5 Parr.

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

Motion carried unanimously.

8. Council received a Presentation and discussion and provide staff direction regarding the draft City of Tomball Parks, Recreation, and Trails System Master Plan.

No action was taken.

9. Approve Resolution Number 2024-09, a Resolution of the City Council of the City of Tomball, Texas approving a Reimbursement Agreement relating to the Wood Leaf Public Improvement District Number 11 – Improvement Area #2 (IA2).

Motion made by Council 2 Stoll, Seconded by Council 5 Parr.

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.

10. Consideration to Approve **Ordinance Amendment OAM23-03**: Request by the City of Tomball to amend Chapter 50 – Article III (*District Regulations*) adding Section 50-75.1 – Neighborhood Retail District (NR) zoning classification and subsequent district standards. Modifying Section 50-82 (*Use regulations (charts)*). Modifying Section 50-112 (*Off Street Parking and Loading Requirements*) adding parking regulations within the Neighborhood Retail District. Modifying Section 50-113 (*Landscape Requirements*) specifying parking lot screening requirements. Modifying Section 50-115 (*Screening, Buffering and Fencing Requirements*) replacing subsection (b)(1) (*Screening of Non-Residential, Multifamily, and manufactured (mobile) home parks*) with new land use buffering standards.

Conduct Public Hearing on **Ordinance Amendment OAM23-03**

- Mayor Klein Quinn called the PH to order at 8:28 pm

Ron Brooks (Chesmar Homes) spoke about the development.

- Hearing no further comments the Mayor closed the PH at 8:29 pm

Adopt, on First Reading, Ordinance No. 2023-55, an Ordinance of the City of Tomball, Texas, amending Chapter 50 – Article III (*District Regulations*) adding Section 50-75.1 – Neighborhood Retail District (NR) zoning classification and subsequent district standards. Modifying Section 50-82 (*Use regulations (charts)*). Modifying Section 50-112 (*Off Street Parking and Loading Requirements*) adding parking regulations within the Neighborhood Retail District. Modifying Section 50-113 (*Landscape Requirements*) specifying parking lot screening requirements. Modifying Section 50-115 (*Screening, Buffering and Fencing Requirements*) replacing subsection (b)(1) (*Screening of Non-Residential, Multifamily, and manufactured (mobile) home parks*) with new land use buffering standards; 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.

Motion made by Council 5 Parr, Seconded by Council 2 Stoll to read by caption only Ordinance No. 2023-55.

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

Motion carried unanimously.

Motion made by Council 2 Stoll, Seconded by Council 5 Parr to amend the motion to add rv parks

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

Motion carried unanimously.

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

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

Voting Abstaining: Mayor Klein Quinn

11. Adopt, on Second Reading, Ordinance No. 2024-02, An Ordinance Of The City Of Tomball, Texas Calling A Special Election To Be Held On May 4, 2024, For The Purpose Of Submitting To The Voters Propositions To Amend The City Of Tomball Charter Regarding: (A) Amending Sections 3.07, 4.01, 5.07, 6.03, 6.12, 6.13, 7.07, 7.08, 9.03, And 10.2 To Correct Non-Substantive Issues; (B) Amending Section 1.05 To Update To Language Used To Clarify Between Sex And Gender Based Pronouns; (C) Amending Section 2.03 To Update Annexation Procedures In Line With Changes In Texas Law; (D) Amending Section 5.01 Relating To The Publication Of Elections And The Dates Of Elections; (E) Amending Section 5.03 Relating To Forms Required For Municipal Office Application; (F) Amending Section 6.02 Relating To Term Limits; (G) Amending Sections 6.08 And 7.01 Relating To The Powers Of Mayor And City Manager; (H) Amending Section 6.10 Relating To The Role Of Council In Selecting City Administrative Personnel; (I) Amending Section 6.14 Relating To The Physical Publishing Of Ordinances And Relating To Reading Ordinances At Council Meetings; (J) Amending Article Vi And Article X By Removing Part Of Section 10.01 And Adding Section 6.17 Relating To Council Liaison On Boards And Commissions; (K) Amending Sections 6.02, 6.03, 6.04, 6.06, 6.08, And 6.13 Relating To The Term Councilmember; (L) Section 7.01 Relating To The Next Charter Review Written Report; (M) Amending Section 7.08 Relating To The

Term And Removal Of Municipal Judge; (N) Amending Section 8.06 Relating To Public Hearing On Budget; (O) Amending Section 8.14 Relating To Classifications Of Accounting Standards; (P) Amending 8.17 Relating To Countersigning Of Checks, Vouchers Or Warrants By Assistant City Manager; (Q) Amending Section 10.01 Relating To The Planning And Zoning Commission Powers To Approve Final Plats, To Recommend Building Code Adoption And Revision, To Recommend Capital Improvement Plans; And To The Planning And Zoning Commission Notice Of Meeting Change; And (R) Amending Sections 6.02, 6.03, 6.07, 6.08, 6.14, 7.01, 7.02, 7.03, 7.04, 7.05, 7.06, 7.07, 7.08, 11.03, 11.04, 11.05, 11.07, 11.11, 11.12, And 12.02 Relating To The Office Or Title Language; Providing For Ballots; Designating The Time And Place For Holding Such Elections; Providing For Notices; Providing For Publication; Providing For Severability; And, Providing An Effective Date.

- Mayor Klein Quinn called the PH to order at 8:45 pm
- Hearing no public comments Mayor Klein Quinn closed the PH at 8:46 pm

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

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

Motion carried unanimously.

Motion made by Council 2 Stoll, Seconded by Council 4 Townsend, Sr.. Amend motion to strike F - term limits, remove portion of quorum portion, re-letter proposition

Voting Yea: Council 1 Ford, Council 2 Stoll

Voting Nay: Council 3 Dunagin, Council 5 Parr

Voting Abstaining: Council 4 Townsend, Sr.

Motion failed 2 votes yea, 3 votes nay.

Motion made by Council 2 Stoll, Seconded by Council 4 Townsend, Sr.. Amend motion to change term limits to one year, remove portion of quorum portion re-letter propositions.

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

Motion carried unanimously.

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

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

Motion carried unanimously.

12. Discussion and possible action to schedule a Special City Council for the Second Reading of Ordinance No. 2024-02

Motion made by Council 1 Ford, Seconded by Council 4 Townsend, Sr. calling a Special Meeting for February 9, 2024 at 5pm.

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

Motion carried unanimously.

13. Discussion and possible action to schedule a City Council retreat for strategic planning sessions

April 3 5pm -10pm

April 4 5pm - 10pm

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

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

Sec. 551.072 – Deliberations regarding Real Property

Executive session started: 9:50 PM

Executive session ended: 10:21 PM

J. Adjournment

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

Voting Yea: Council 1 Ford, Council 2 Stoll, Council 3 Dunagin, Council 5 Parr

Motion carried unanimously.

Tracylynn Garcia
City Secretary, TRMC, CMC, CPM

Lori Klein Quinn
Mayor

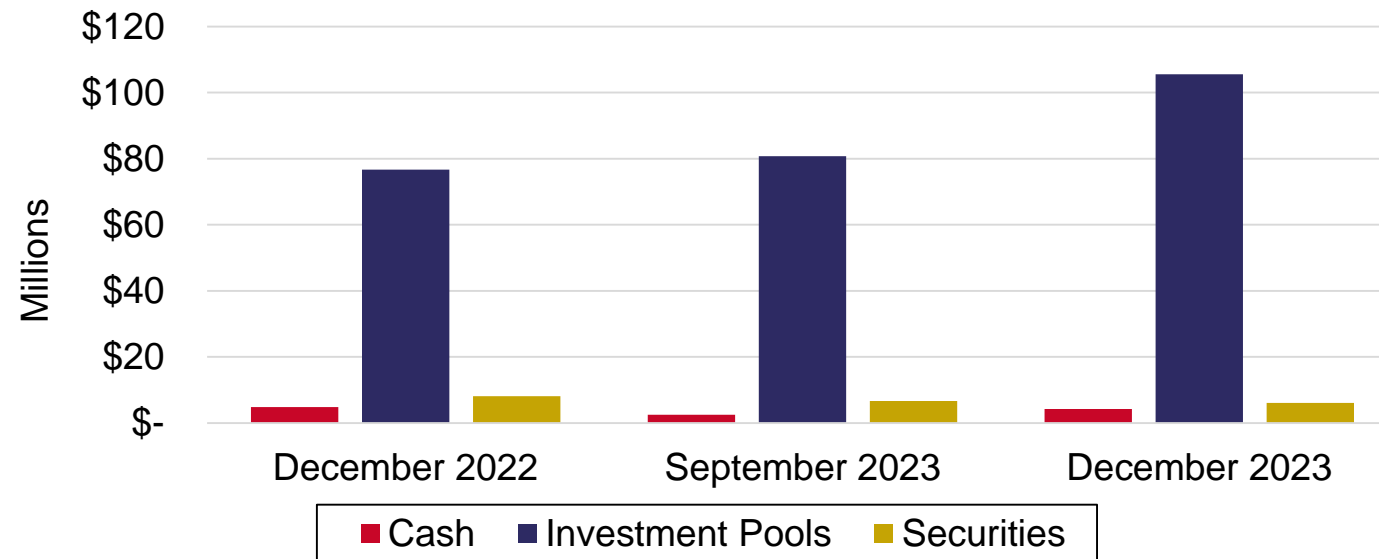
Quarterly Investment Report

Quarter Ending December 31, 2023



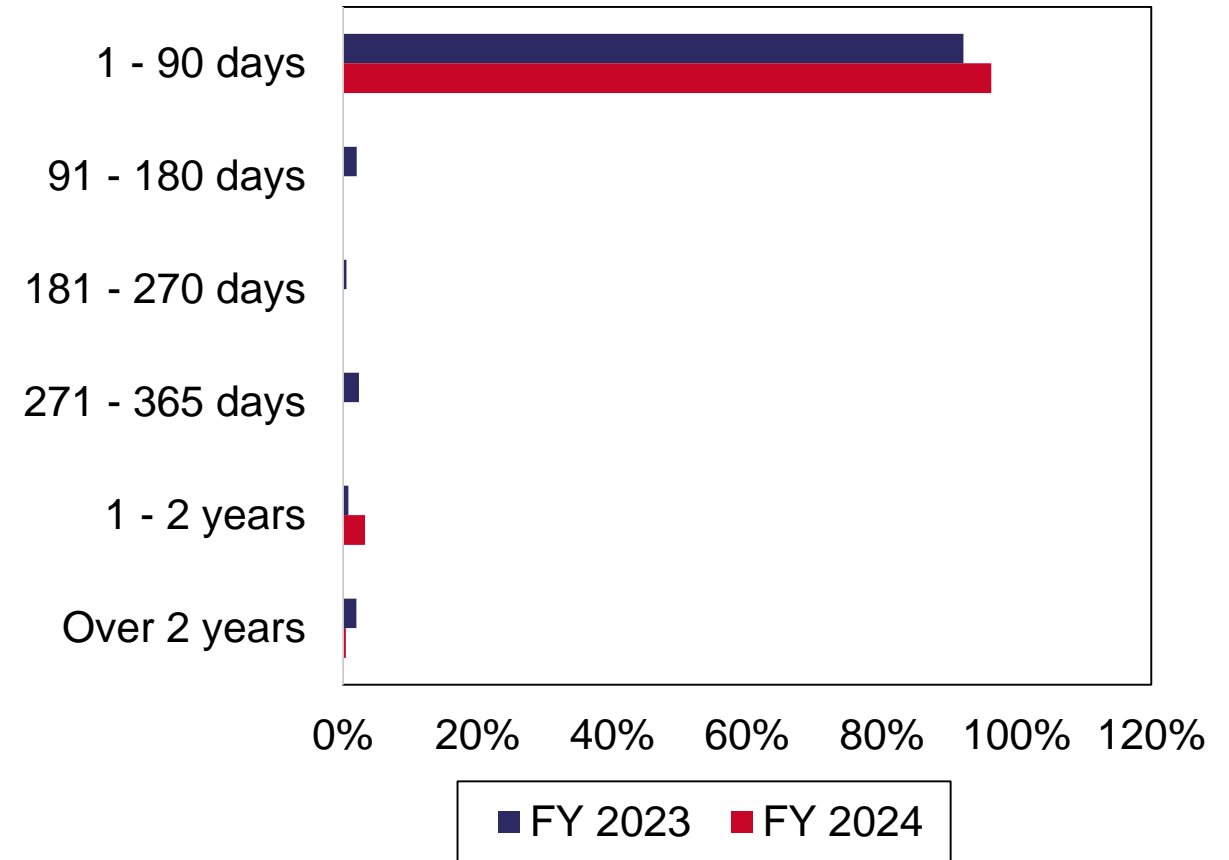
Investment Portfolio Summary

	December 31, 2022	September 30, 2023	December 31, 2023
Cash	\$4,864,181	\$2,535,000	\$4,286,650
Investment Pools	\$76,655,598	\$80,704,207	\$105,534,305
Securities	\$8,157,131	\$6,735,144	\$6,090,051
TOTAL	\$89,676,910	\$89,974,351	\$115,911,006



Maturity Diversification

	Current Market Value	Percent Portfolio
1 - 90 days	\$111,574,405	96.3%
91 - 180 days	-	0%
181 - 270 days	-	0%
271 - 365 days	-	0%
1 - 2 years	3,840,995	3.3%
Over 2 years	495,605	0.4%
TOTAL PORTFOLIO	\$115,911,006	



Questions?



Quarterly Financial Update

Fiscal Year 2023-2024

Quarter Ending December 31, 2023



FY 2023-2024 Highlights

Sales Tax

- Compared to prior year, sales tax increased by \$96k or 7.0%
- Due to the timing lag in sales tax receipts, one (1) month of revenue was collected as of December 31st

Property Tax

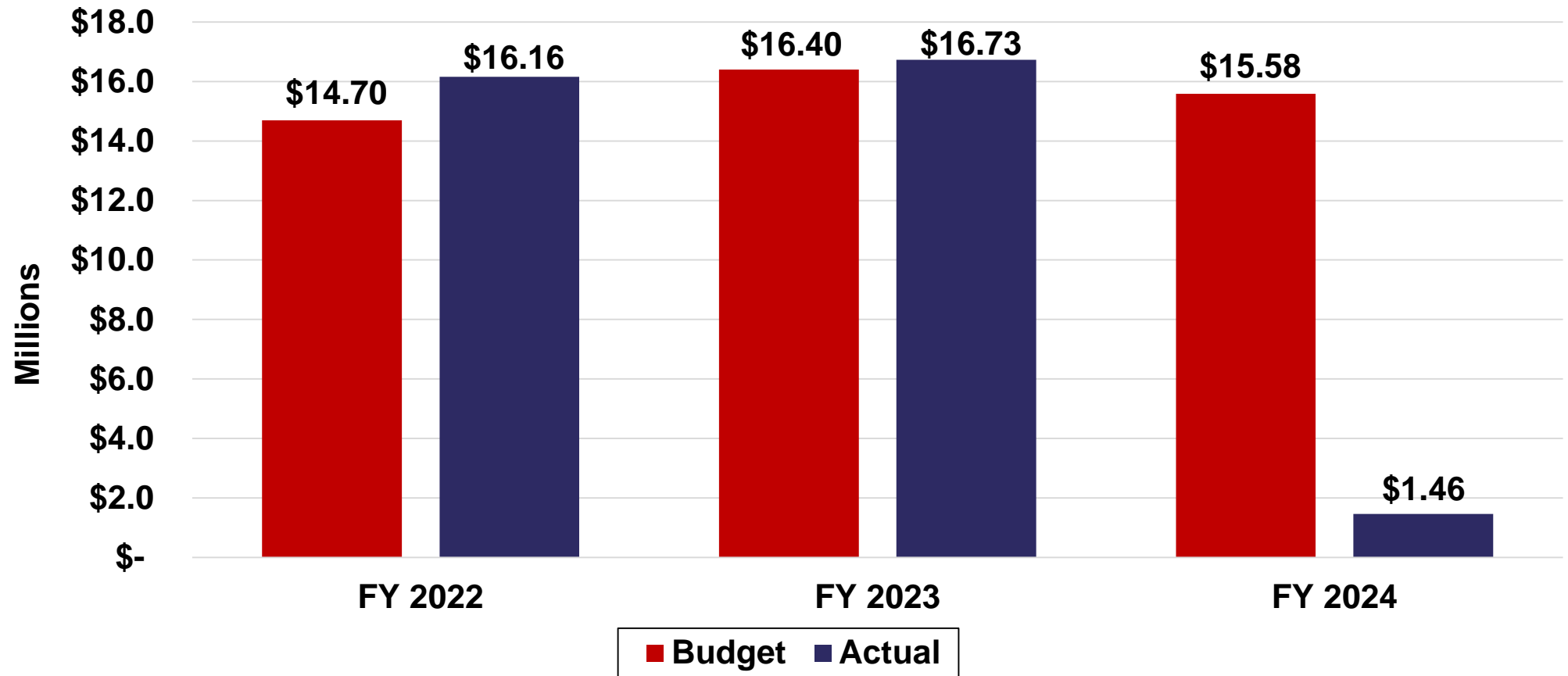
- Collected \$1.48M or 17.2% of current year budgeted property tax
- Collections will be substantially complete by March 31st

Expenditures

- General Fund expenditures totaled 24.8% of the annual budget
- Enterprise Fund expenditures totaled 26.5% of the annual budget



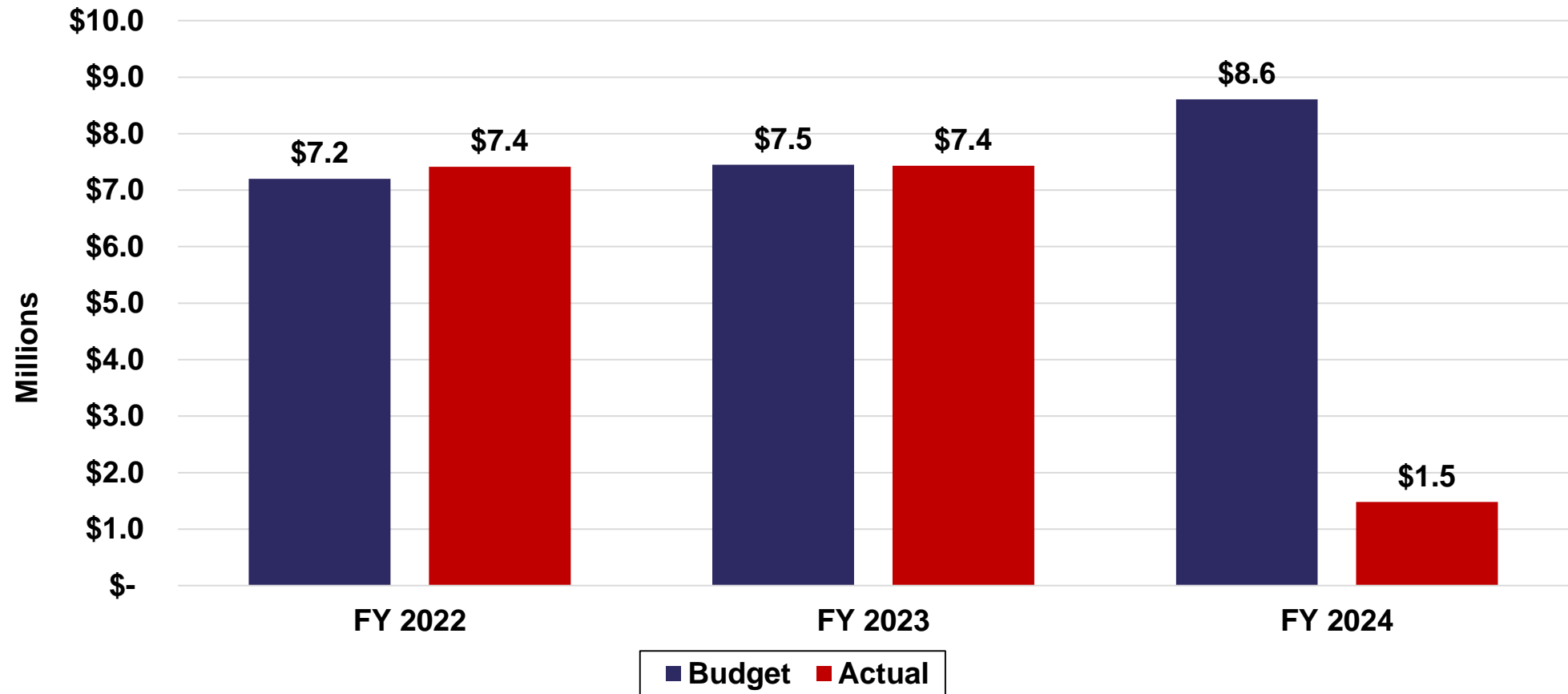
Sales Tax Collections



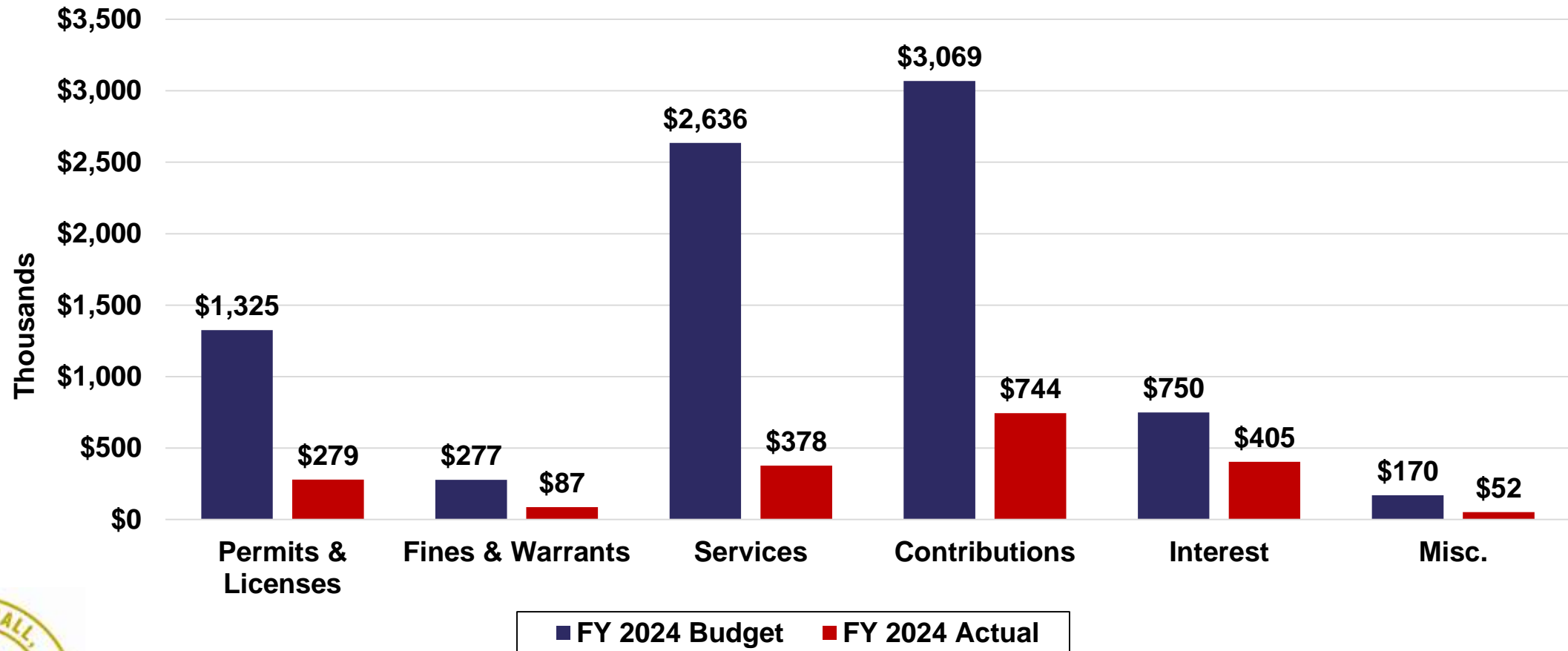
Note: Represents City's portion of sales tax collections



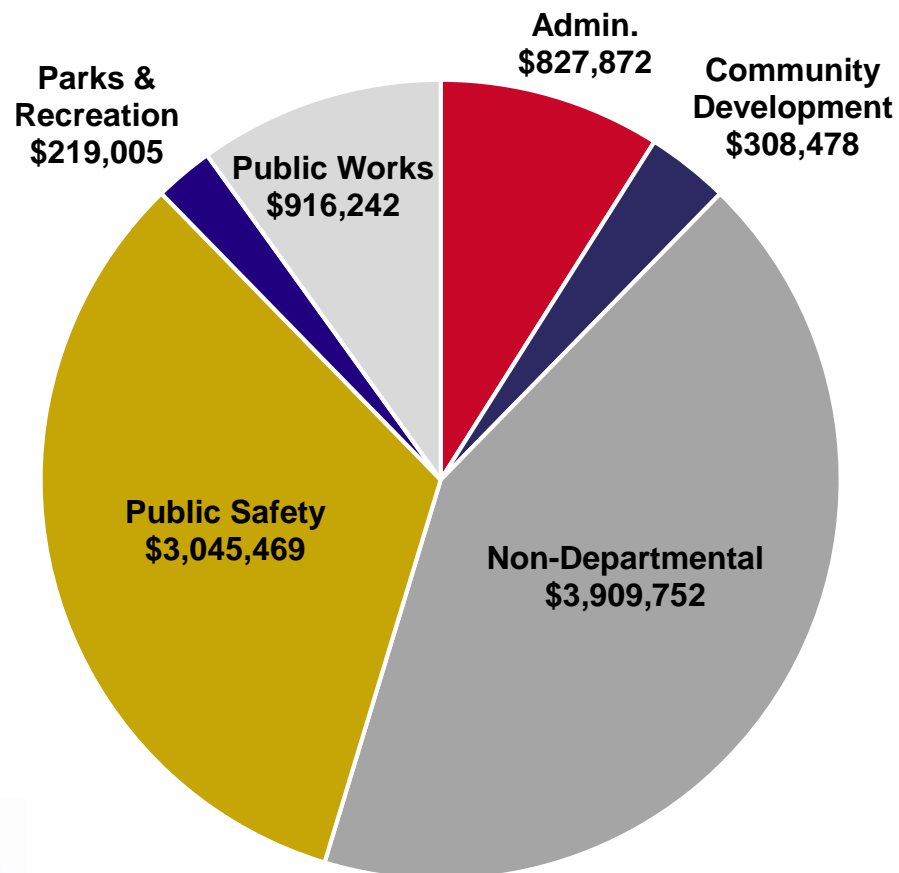
Property Tax Collections



General Fund Other Revenue



General Fund Expenditures



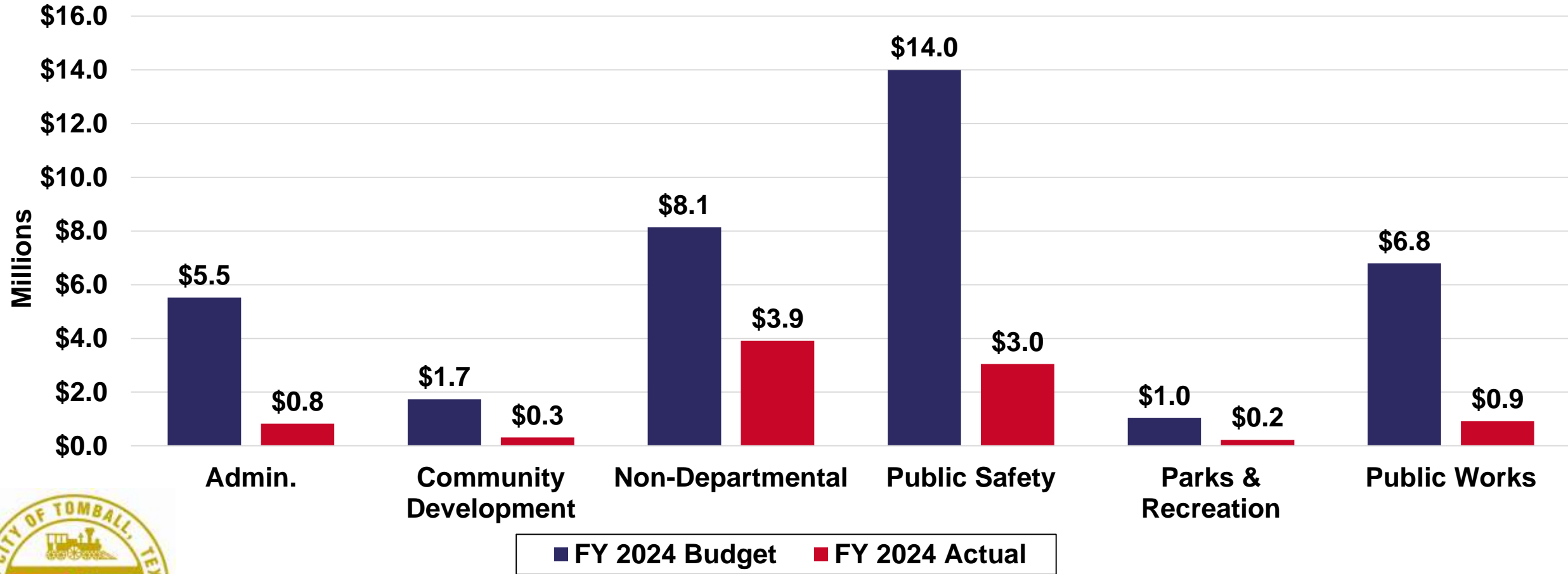
FY 2023-2024 Actuals: \$9,226,817

FY 2023-2024 Budget: \$37,230,420

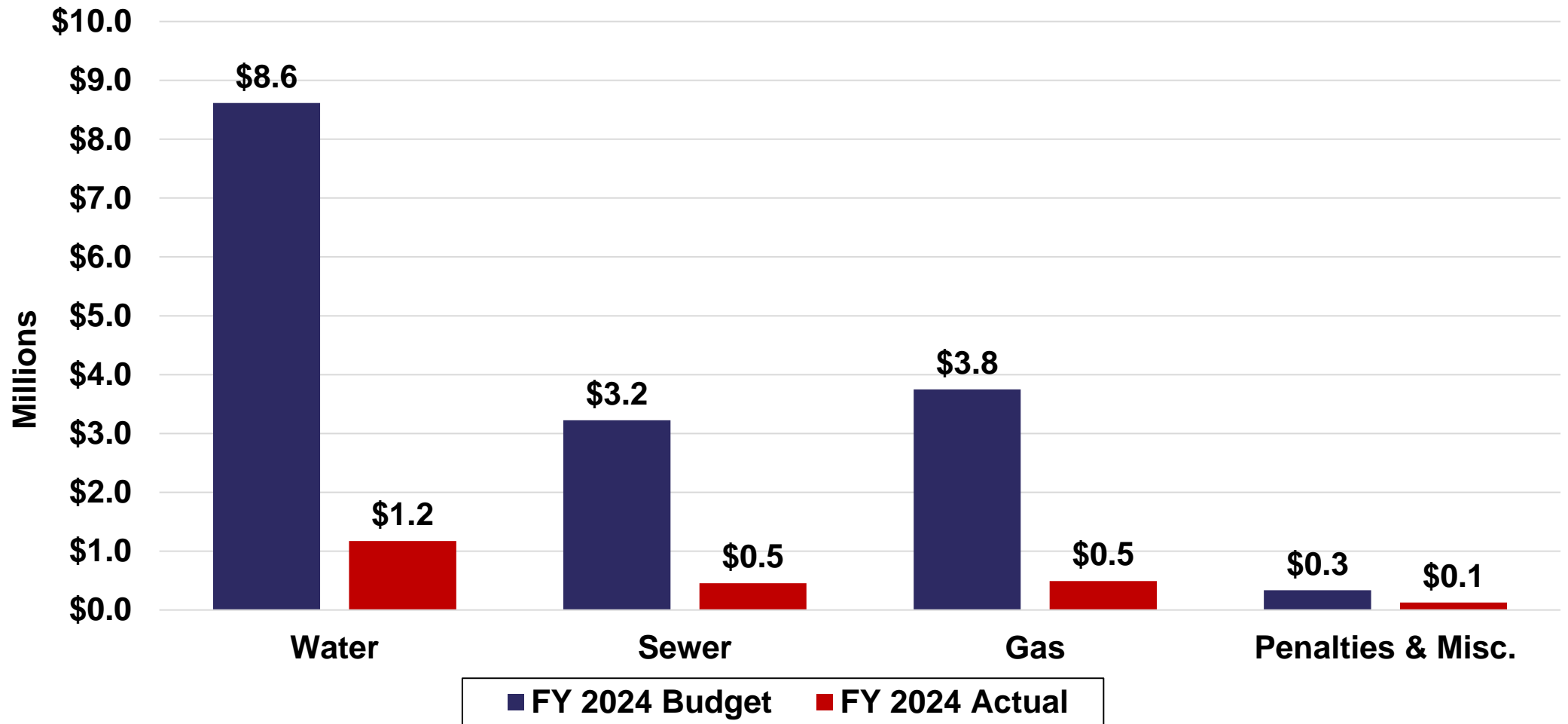
24.8% of the budgeted General Fund expenditures have been expended



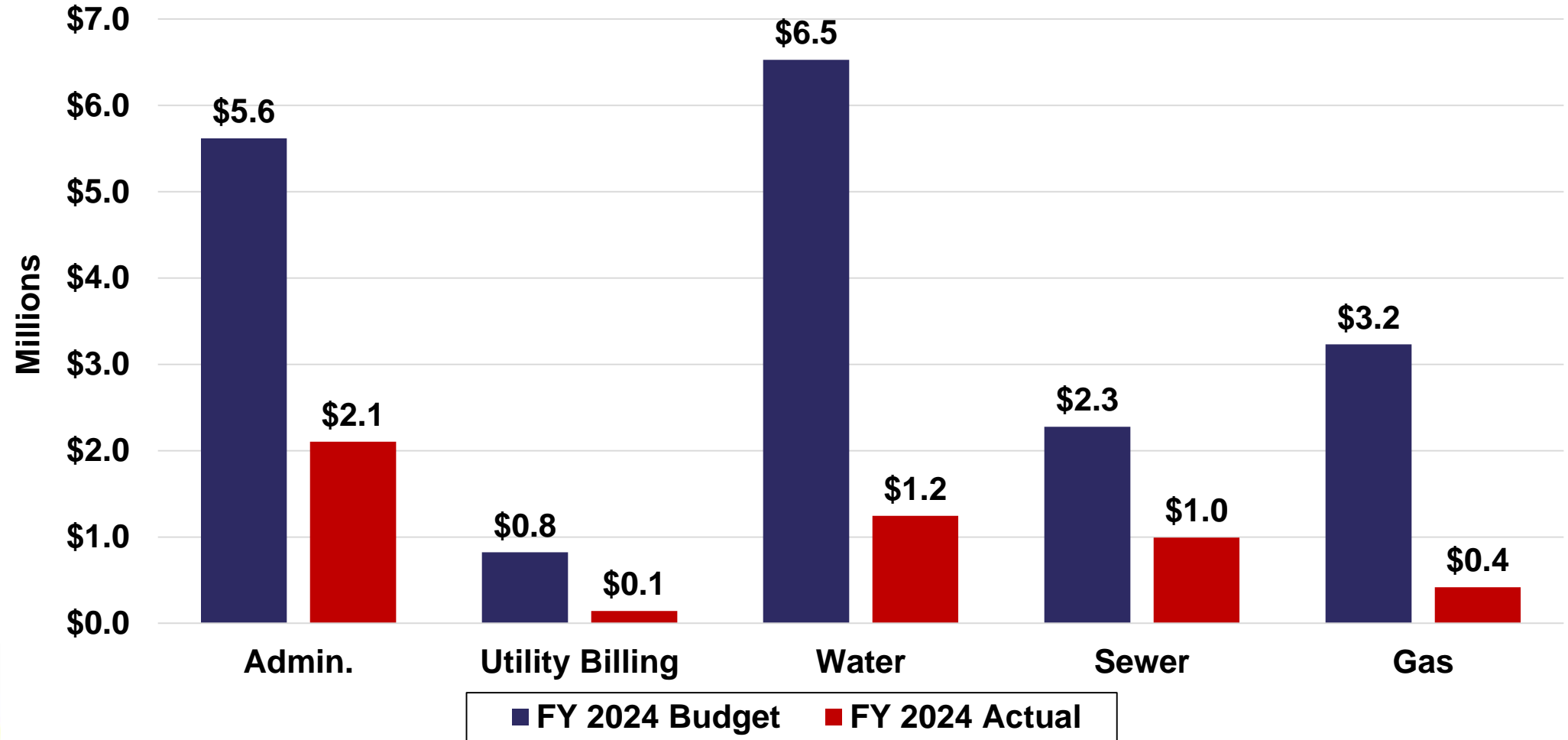
General Fund Expenditures



Enterprise Fund Revenue



Enterprise Fund Expenditures



Questions?



CITY OF TOMBALL

Parks, Recreation, and Trail System Master Plan



February 2024



Purpose & Vision

The purpose of this plan is to **establish a comprehensive and connected trail system of parks, recreation facilities, and trails that promotes public health, social well-being, and economic vitality**. This Master Plan will serve as a road map for the City **over the next 10 years**, guiding the development, expansion, and planning of parks and recreational facilities throughout the community.



Population Growth since 2010:

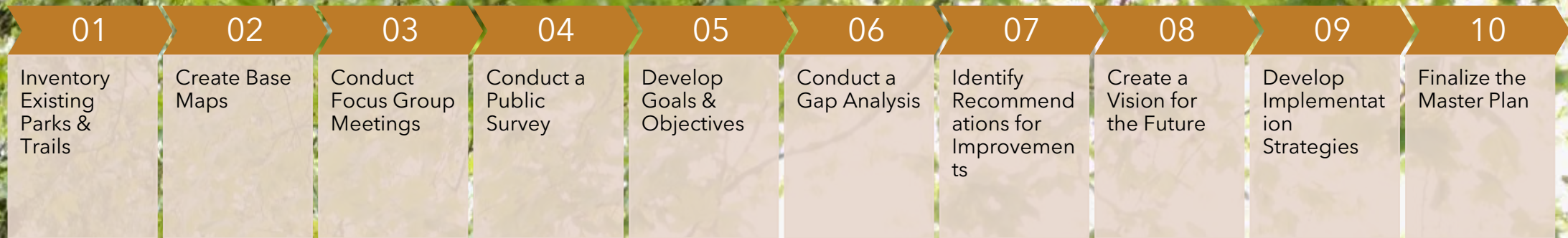
National: 7.3%
Texas: 16.2%
Tomball: 20.8%

Source: "U.S. Census Bureau QuickFacts: Texas." www.census.gov, www.census.gov/quickfacts/fact/table/TX

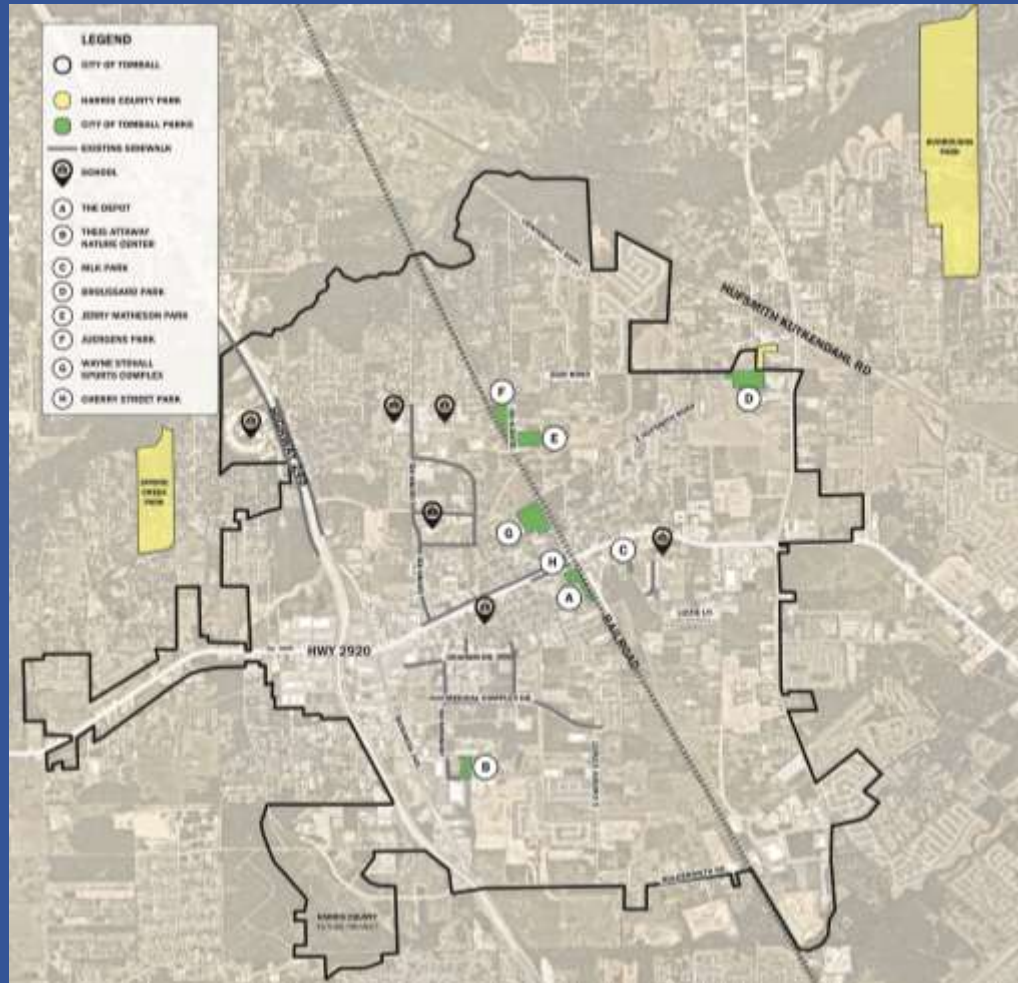
EVALUATING TOMBALL'S **PARK & REC SYSTEM**

- 1 What is the current condition of Tomball's Parks & Rec Facilities?**
- 2 What should high quality parks look like in Tomball?**
- 3 Does Tomball need new park facilities?**
- 4 How does Tomball get there?**
- 5 What are some Potential Funding Mechanisms?**

Methodology

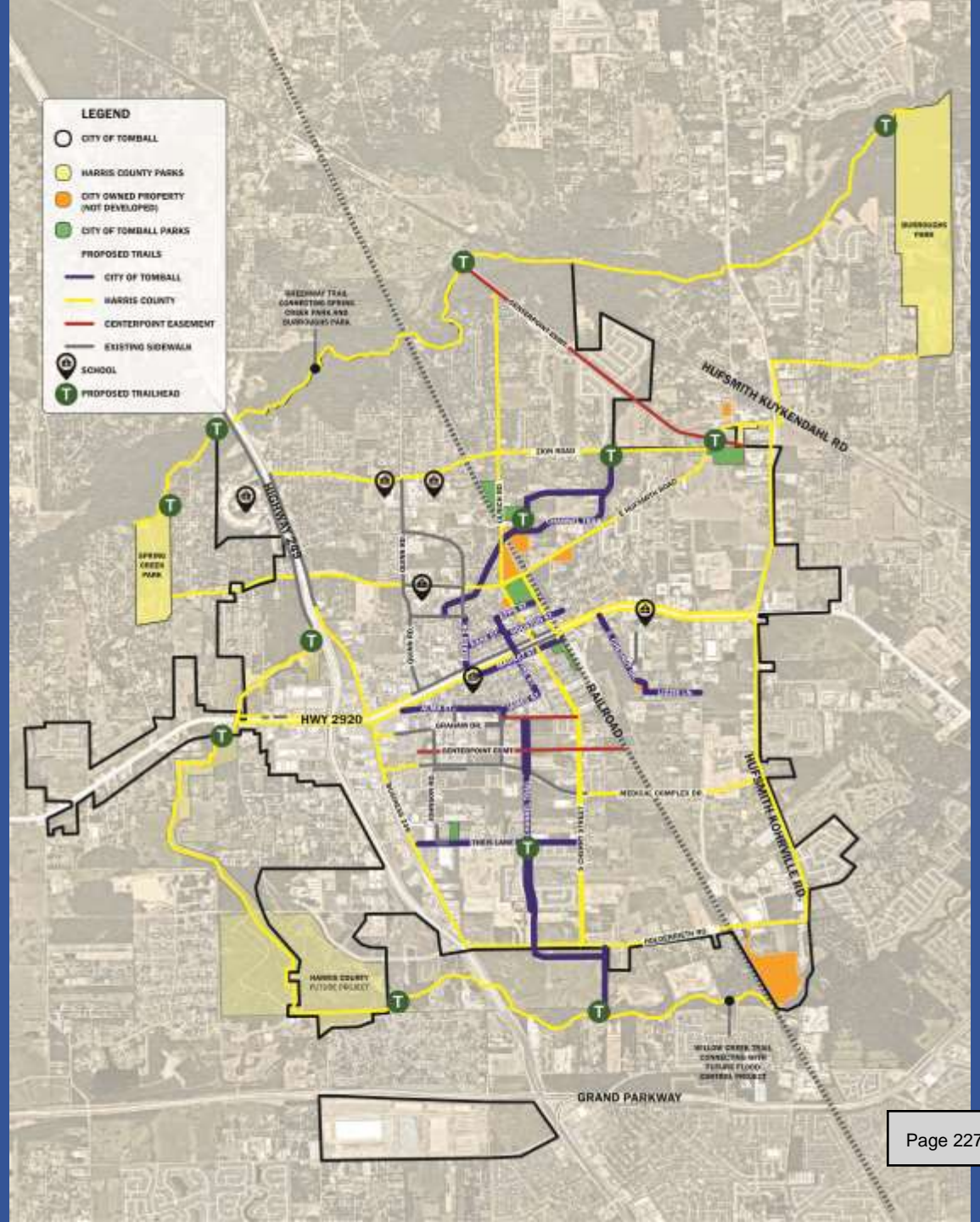


Existing Trails



Proposed Trails

Connectivity through trails is an essential component of a city's recreational and transportation infrastructure. Trails provide safe and accessible routes for pedestrians, cyclists, and other non-motorized modes of transportation, connecting people to various amenities and recreational activities throughout the city.



Goals for Tomball's Trail System

1. Create a comprehensive and **connected trail system** throughout Tomball. Aim to meet the national average (55%) for the "10-Minute Walk" Initiative by 2033
2. Increase accessibility to outdoor recreation for all members of the community.
3. Improve public health and wellness by encouraging physical activity through trail usage.
4. Create trail connections between existing Tomball parks.
5. Enhance connectivity between Downtown CBD, neighborhoods, parks, and other amenities in the city.
6. Improve walk-ability downtown.
7. Incorporate trails with wider widths to accommodate bicycle users.
8. **Set a minimum standard width of 8' for primary trails. Secondary trails or typical sidewalks where space is not available should have a minimum width of 5'.**
9. **Downtown sidewalks/ trails should have a minimum standard of 6' width and meet Texas Accessibility Standards.**
10. New drainage & utility projects should explore opportunities for recreation & trails.



Park Inventory

7

Existing C.O.T.
Tomball Parks

59

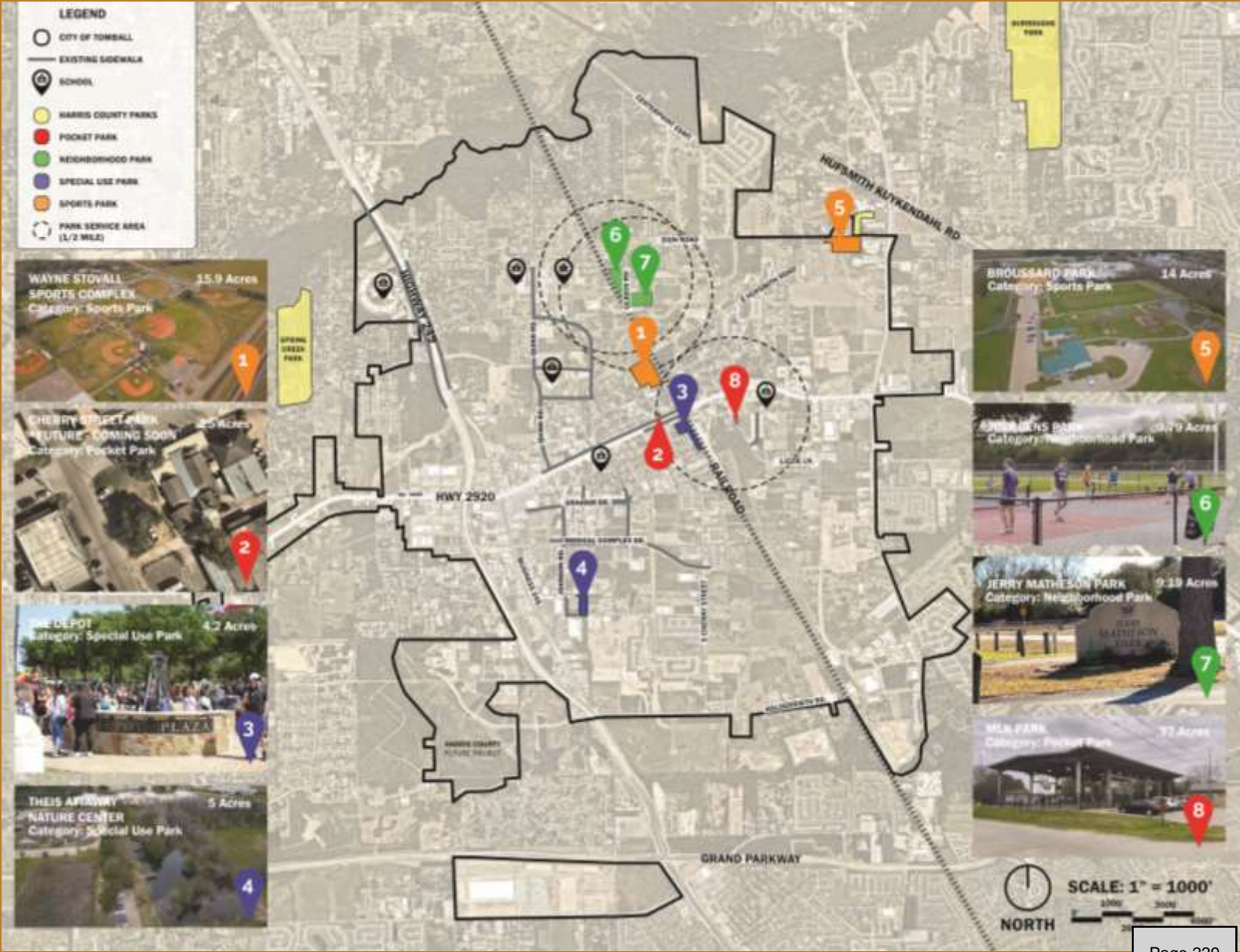
Acres of
Parkland

2
Special Use
Parks

2
Sports
Parks

1
Pocket
Park

2
Neighborhood
Parks



Existing Parks



Existing Parks



THEIS ATTAWAY NATURE CENTER



MARTIN LUTHER KING JR. PARK

Existing Parks



JUERGENS PARK



JERRY MATHESON PARK

Existing Parks



Master Plan

Goals & Objectives

Goal #1: Enhance the experience of both residents and visitors of the greater Tomball area. Specifically focusing on enhancing the downtown experience, festivals, parks, open spaces, recreation, and trails.

Goal #2: To elevate the community's quality of life, stimulate economic growth, and foster healthier lifestyles by leveraging the potential of parks, recreation, and the establishment of a city-wide trail system.

Goal #3: Provide safe, clean, and accessible parks, promoting healthy lifestyle choices for people in the community.

Goal #4: Explore opportunities for future expansion of Tomball's park system. Prioritize the integration of a park dedication ordinance for developers and incorporate provisions for parks and trails in upcoming infrastructure and drainage projects.

Goal #5: Acquire and retain dedicated City Staff to focus on Capital Improvement Projects (CIP), operations, and maintenance of Tomball's Parks.

Community Input

Staff conducted several focus group meetings with members appointed by City Council as part of the Parks and Recreation Master Plan.

We also gathered insights and feedback from various groups and organizations in the community.



Public Input

472

Survey Responses

Survey data collected between
April 1st – May 15th

WE NEED YOUR INPUT!

The City of Tomball is creating a comprehensive master plan for parks and recreational facilities, and **we want your help** to shape the future of our community.



TOMBALL PARKS



EXPLORE • PLAY • CONNECT

Please join us for an Open House on:

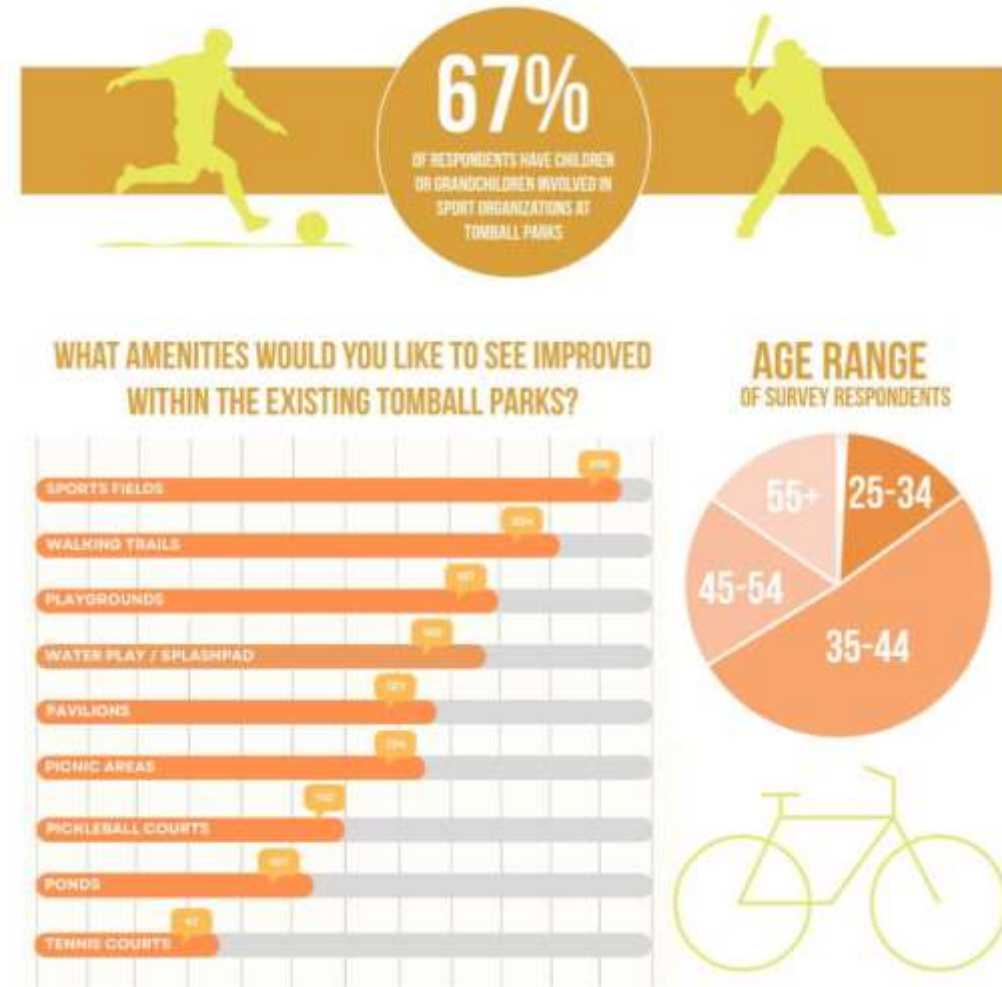
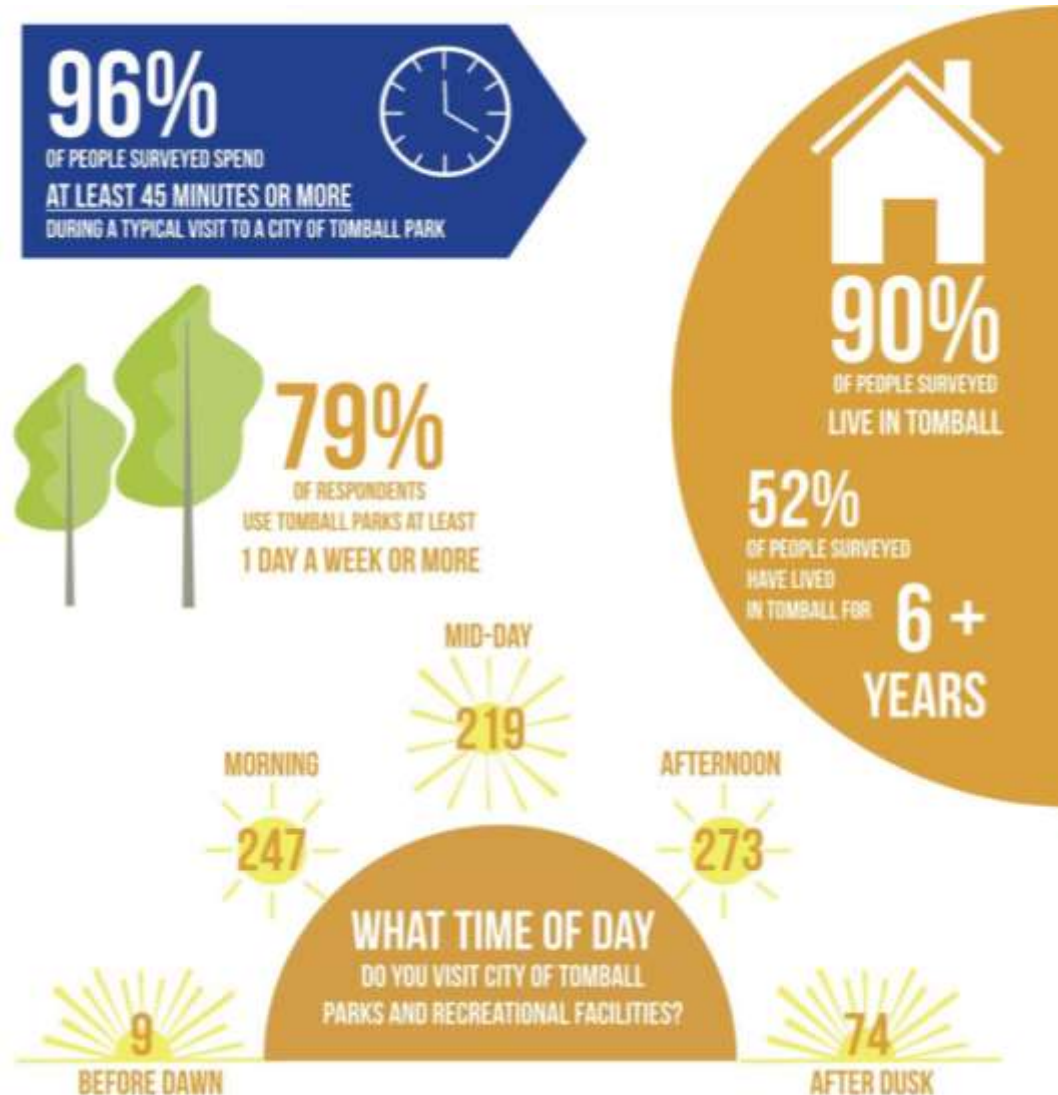
April 25, 2023
6pm-8pm

TOMBALL COMMUNITY CENTER
221 Market Street
Tomball, TX 77375



INFO CARDS WITH
SURVEY LINK

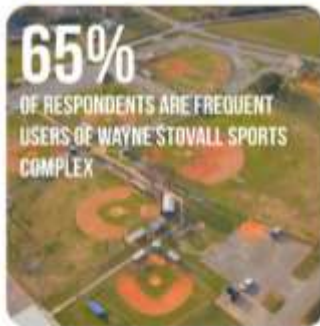
Public Survey Results



Public Survey Results

WHICH PARKS ARE PEOPLE USING?

TOP 3 MOST VISITED TOMBALL PARKS



LEAST VISITED TOMBALL PARKS



**67% of respondents have
never visited MLK Park**

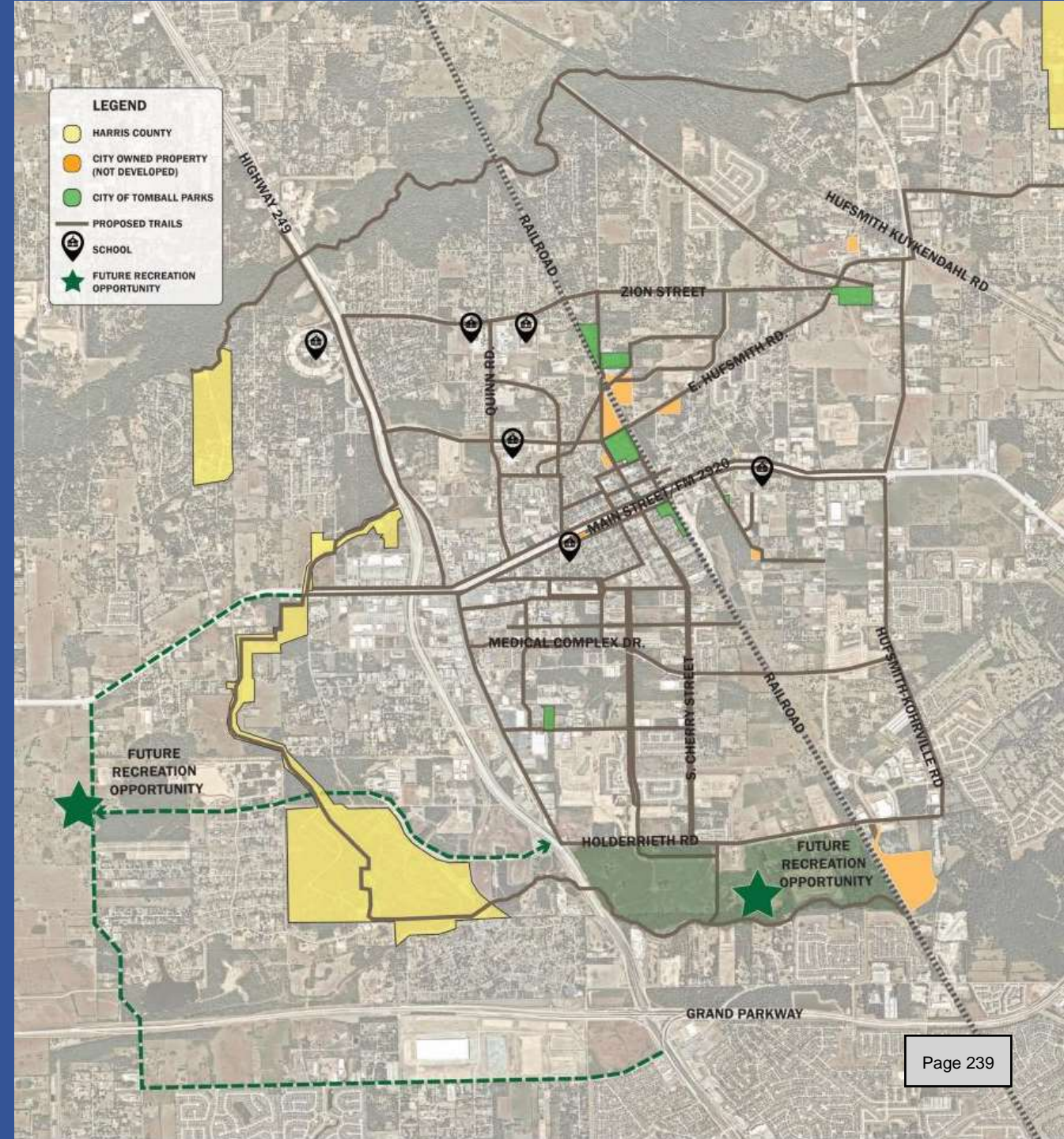


**52% of respondents have
never visited Theis Attaway
Nature Center**



Future Project Opportunities

City of Tomball Parks & Trails



NRPA Guidelines for Park Space Per Resident

City of Tomball has a population of about **12,000 residents** and the total acreage of amenitized park space currently owned by the city is approximately **59 acres** within the city limits. This puts Tomball at roughly **4.9 acres of parkland per 1,000 residents**. Based on NRPA (National Recreation and Park Association) guidelines, Tomball falls below the national average. See Chart below for comparison.

$$\begin{array}{ccc} 59 & \div & 12 = 4.9 \\ \text{acres of} & & \text{acres of} \\ \text{amenitized} & (12,000) & \text{parkland} \\ \text{park in COT} & \text{residents} & \text{per 1,000} \\ & & \text{residents} \end{array}$$

	All Agencies	Less Than 20,000	20,000 to 49,999	50,000 to 99,999	100,000 to 250,000	More Than 250,000
Median	10.8	13.0	11.3	11.2	8.9	10.1
Lower Quartile	5.3	6.0	5.9	5.0	4.5	5.2
Upper Quartile	18.4	21.1	17.9	17.3	17.1	17.4

Data Source:
2023 NRPA Agency Performance Review.
Figure 2: Acres of Parkland Per 1,000 Residents.
<https://www.nrpa.org/site-assets/nrpa-agency-performance-review.pdf>

10 Minute Walk

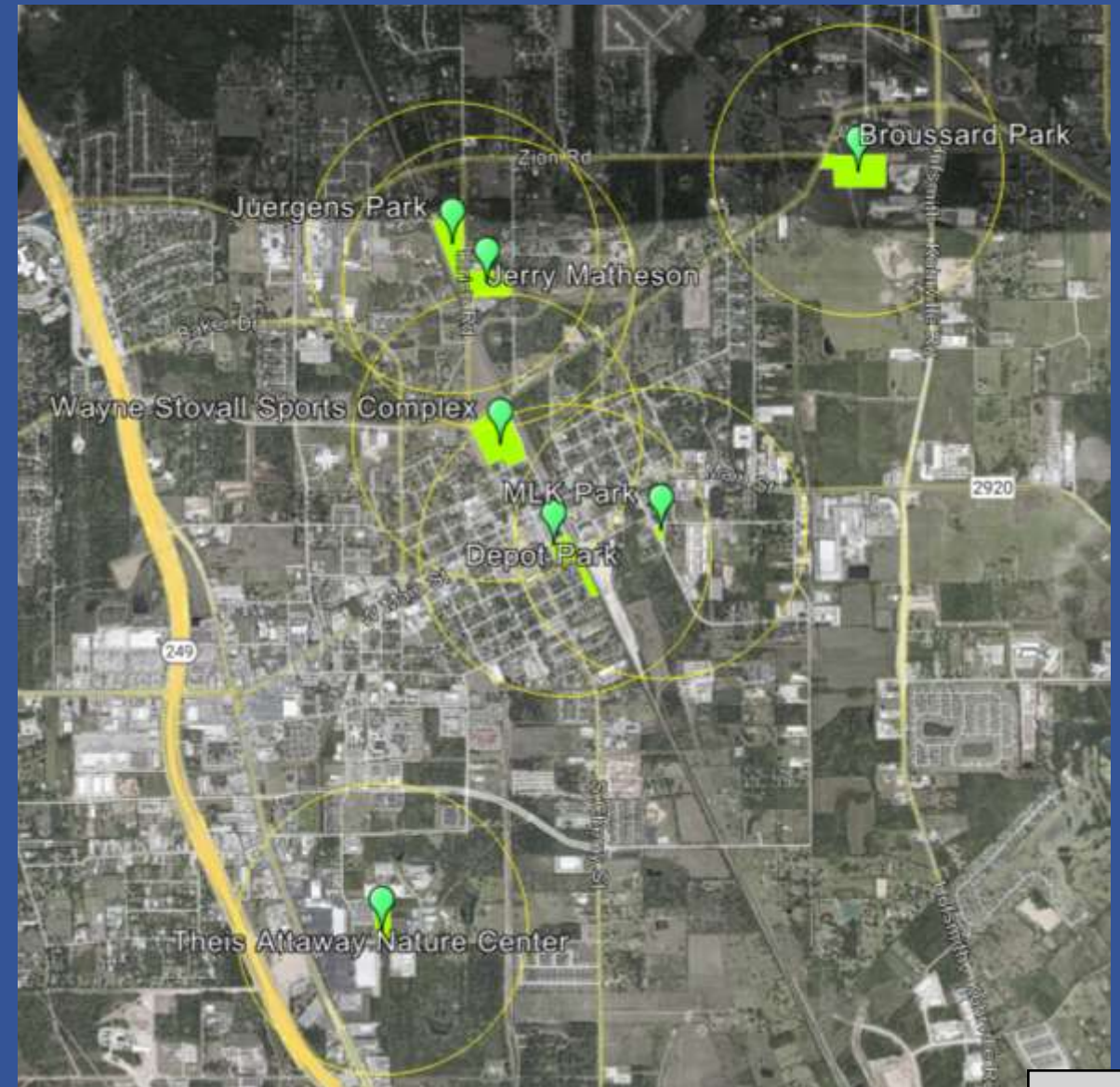
The 10-minute walk is an initiative led by the Trust for Public Land that aims to ensure that every person in an urban area has access to a quality park or green space within a 10-minute walk from their home.

½ mile = 10 mins.

22% of Tomball residents live within a 10-minute walk of a park. National Average 55%

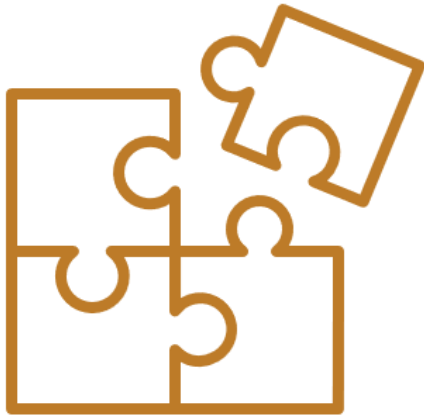
61% of Houston residents live within a 10-minute walk of a park.

Median City, 100 most populous U.S. cities: 74%
Median City, all urban cities and towns in U.S.: 55%



Potential Funding Sources

It's important for cities to research and explore a combination of funding sources that align with their specific needs and priorities. Additionally, leveraging multiple funding streams and engaging in community partnerships can enhance the financial feasibility of park projects and help ensure their successful implementation.



Local Government Funds



Grants: Texas Parks and Wildlife Department (TPWD)



Public-Private Partnerships



Other partnerships with Harris County, Harris County Flood Control District, and Centerpoint



Bond Issuance



Park Dedication & Development Fees



"Friends Of" Associations



Memorial Dedication Program

Goals for Tomball's Parks

1. Create a plan for revitalization of each Park with Goals, Funding options and use the community's input for amenity enhancements.
2. Increase accessibility to outdoor recreation for all members of the community.
3. Improve public health and wellness by encouraging physical activity through Parks and Open space usage.
4. Create a Park Dedication and Development Ordinance. Use funding for expansion of existing parks and creation of new parks.
5. Create Parks Standards Manual for design, development and maintenance of park.
6. Complete a new park signage plan to guide replacement of park system signage to have a consistent brand.
7. Integrate Crime Prevention Through Environmental Design (CPTED) strategies in the design, construction and maintenance of parks to ensure a safe environment for all.
8. To continue to partner with other public and private entities for the redevelopment and enhancements of parks.



CONCEPT SKETCH: Jurgens & Jerry Matheson Park

*Note: Drawing is conceptual & subject to change



CONCEPT SKETCH: Theis Attaway Nature Center

*Note: Drawing is conceptual & subject to change



CONCEPT SKETCH: Martin Luther King Jr. Park

*Note: Drawing is conceptual & subject to change



CONCEPT SKETCH: Wayne Stovall Sports Complex

*Note: Drawing is conceptual & subject to change



CONCEPT SKETCHES: The Depot

*Note: Drawing is conceptual & subject to change



Local Examples



Bear Branch Park



James Driver Park



Rob Fleming Park



Josie Lake - Bridgeland

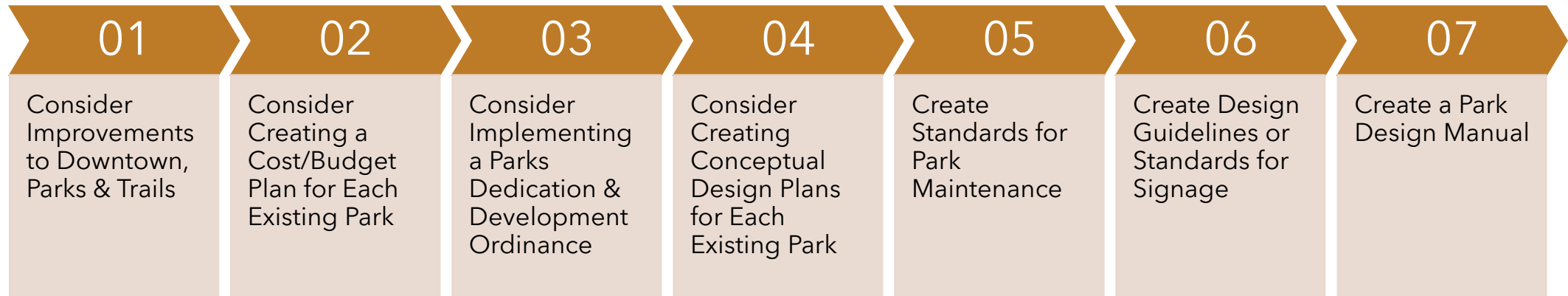


Harvest Green Park



The Groves

Conclusion



TOMBALL

P A R K S



EXPLORE • PLAY • CONNECT

Ordinance Amendment OAM23-03

- Request by the City of Tomball to amend Chapter 50 – Article III (District Regulations) adding Section 50-75.1 – Neighborhood Retail District (NR) zoning classification and subsequent district standards. Modifying Section 50-82 (Use regulations (charts)). Modifying Section 50-112 (Off Street Parking and Loading Requirements) adding parking regulations within the Neighborhood Retail District. Modifying Section 50-113 (Landscape Requirements) specifying parking lot screening requirements. Modifying Section 50-115 (Screening, Buffering and Fencing Requirements) replacing subsection (b)(1) (Screening of Non-Residential, Multifamily, and Manufactured (Mobile) Home Parks) with new land use buffering standards.



Neighborhood Retail (NR) District Goals

- Provides for convenient access to desirable goods and services.
- Incorporates architecture and site standards that encourage streetscapes.
- Provides for:
 - Reduction in street side setbacks pushing buildings closer to the street.
 - Increased width of landscaping strips along streets from 10 feet to 15 feet.
 - Requires planting of shrubs to screen parking areas.
 - Discourages placement of “seas of parking” between the front of building and street.
- Maximum building height of 40’, maximum building lot coverage of 50%, prohibition of outdoor sales and storage, and screening of roof equipment.



Neighborhood Retail (NR) District Goals

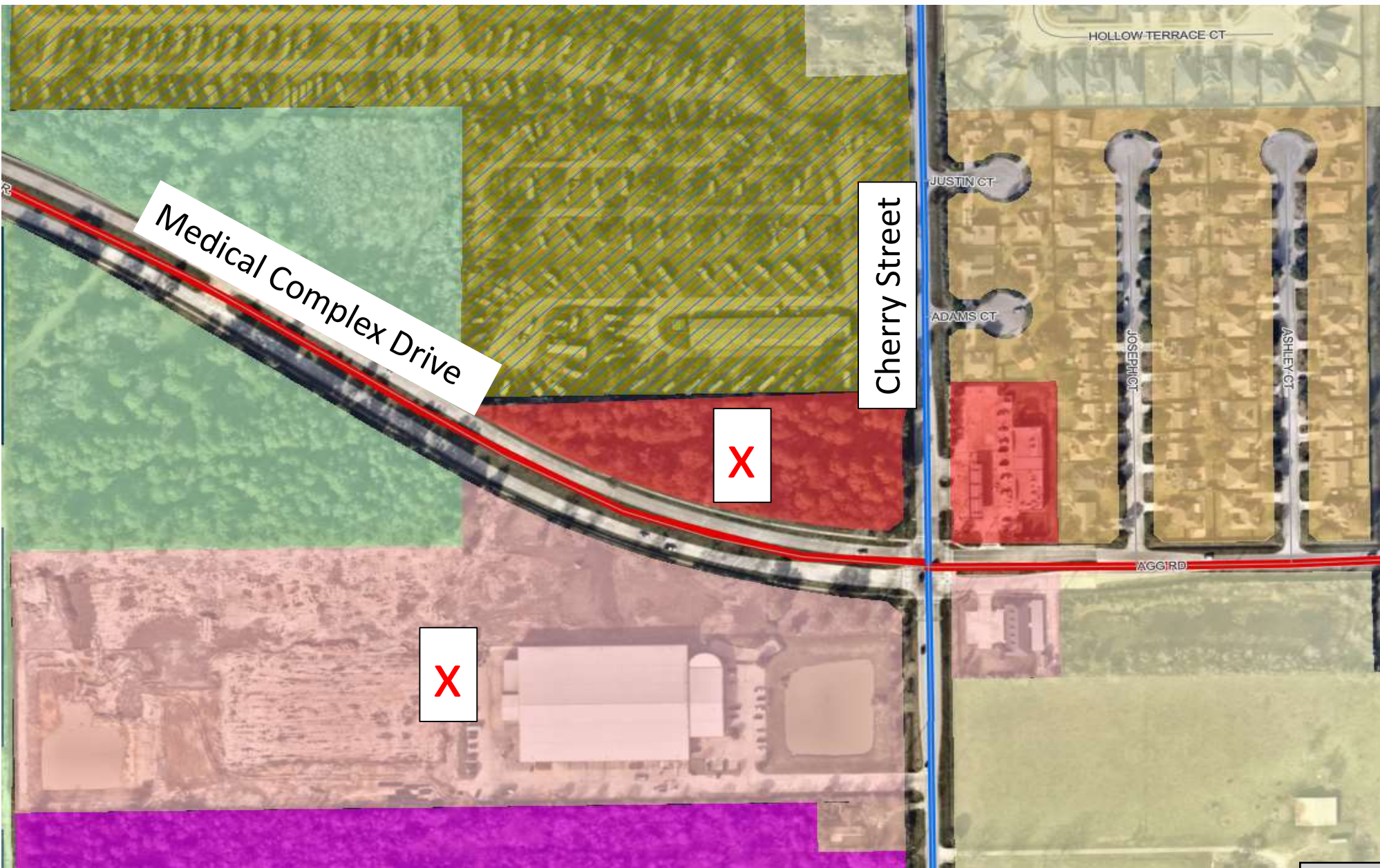
- NR District is meant to be a “middle ground” between the Office District and General Retail District.
- Encourages uses that serve residential areas.
- Prohibits uses that create excessive noise, trash, traffic, and late-night operations.
- Serves as a transitional district between residential uses and more intense non-residential uses.
- Ideal locations include areas near the entrances to residential subdivisions.

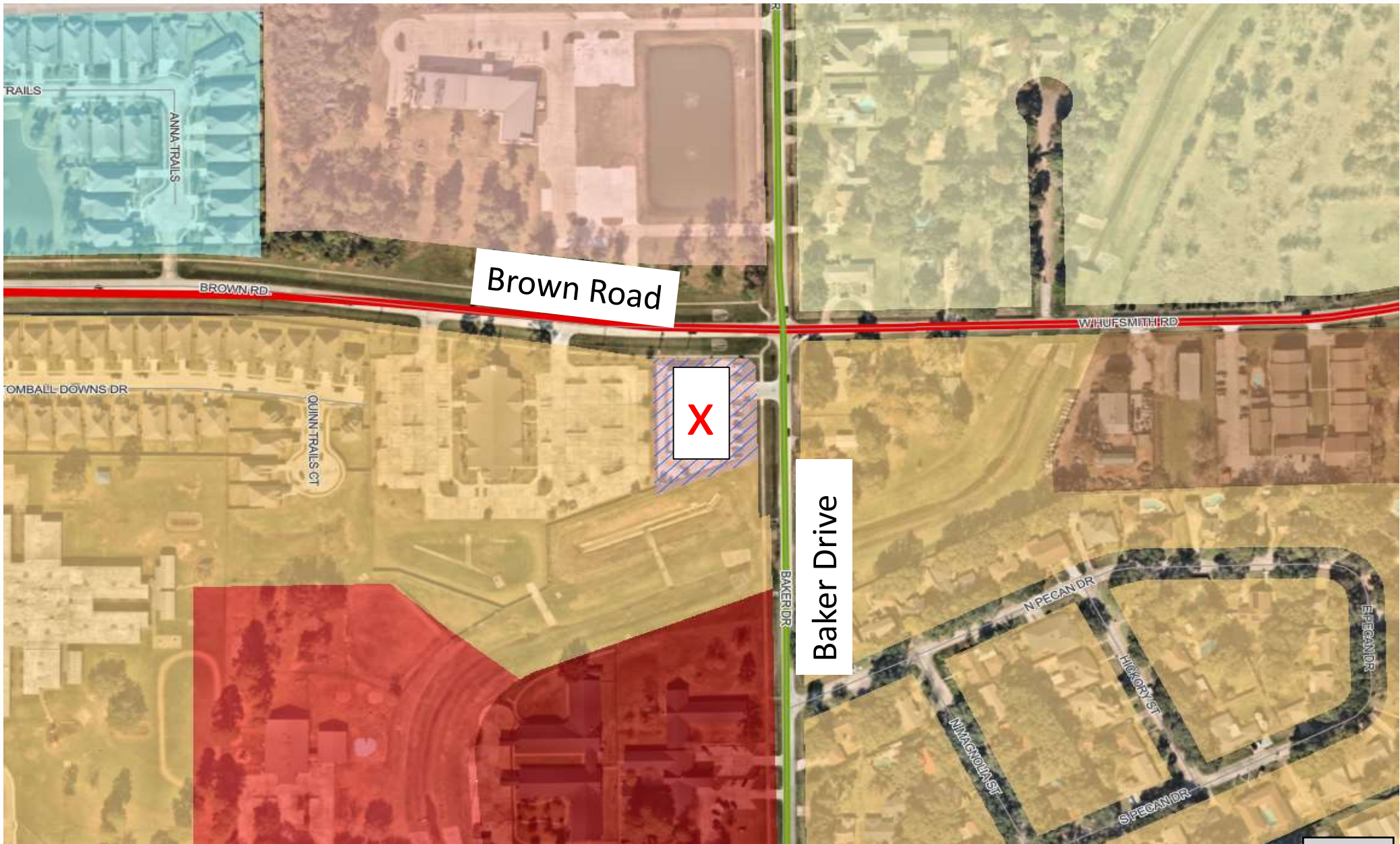


Example “Middle Ground” Land Uses

USE	Office (O)	Neighborhood Retail (NR)	General Retail (GR)
Child Day Care Center (Business)	CUP	PERMITTED	PERMITTED
Barber/Beauty Salon	CUP	PERMITTED	PERMITTED
Health Club (indoor)	CUP	PERMITTED	PERMITTED
Dance/Drama/Music School	CUP	PERMITTED	PERMITTED
Pharmacy	CUP	PERMITTED	PERMITTED
Eating Establishment (no drive-thru)	CUP	PERMITTED	PERMITTED
Food or Grocery Store	NOT PERMITTED	PERMITTED	PERMITTED
General Retail Stores (No Outside Storage)	NOT PERMITTED	PERMITTED	PERMITTED
Office/Warehouse	CUP	NOT PERMITTED	PERMITTED
Convenience Store (with/without gas)	CUP	NOT PERMITTED	PERMITTED
Automobile Dealership	NOT PERMITTED	NOT PERMITTED	PERMITTED
Automotive Repairs	NOT PERMITTED	NOT PERMITTED	PERMITTED
Auto Tire Sales	NOT PERMITTED	NOT PERMITTED	PERMITTED
Automobile Wash	NOT PERMITTED	NOT PERMITTED	PERMITTED
Quick Lube/Oil Change/Minor Inspections	NOT PERMITTED	NOT PERMITTED	PERMITTED
Tool & Machinery Rental	NOT PERMITTED	NOT PERMITTED	PERMITTED





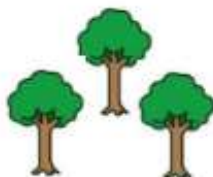




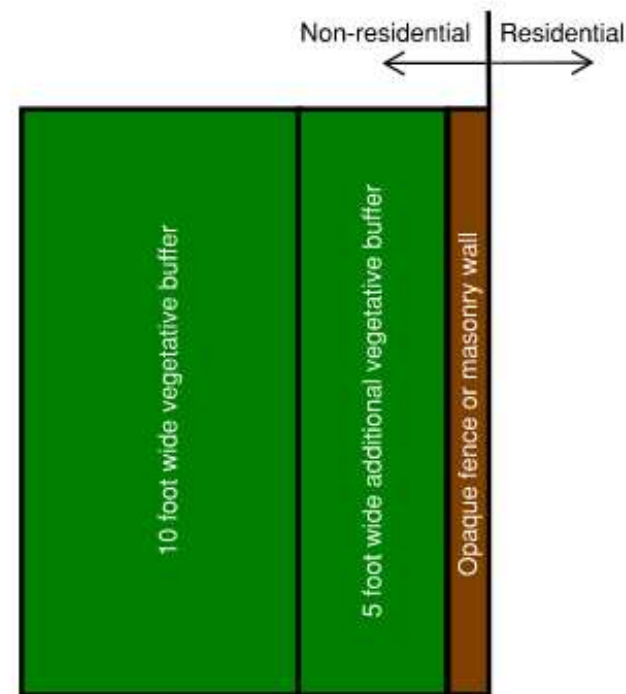
Screening and Land Use Buffering Point System 25 Points Required



1 large tree=**15 points**
Mature height of 20'
Height of 8" and 4" caliper at time of
planting (12" above ground)
Planted every 25' in buffer area



3 small trees=**15 points**
Height of 8' and 2" caliper at time of
planting (12" above ground)
Planted every 25' in buffer area



10' buffer (minimum
requirement)

Additional 5' buffer=**5 points**
(maximum of 10 points)

7' opaque wooden fence (minimum requirement)
6' opaque masonry wall=**10 points**



Recommendation

- Planning & Zoning Commission unanimously recommended approval.



INTERLOCAL AGREEMENT BETWEEN HARRIS COUNTY AND THE CITY OF TOMBALL

This Agreement is made and entered by **Harris County (“County”)**, a body corporate and politic under the laws of the State of Texas, and the **City of Tomball, Texas (“Tomball”)**, a home-rule municipality.

RECITALS:

Harris County, acting through **Harris County Public Health (“HCPH”)**, participates in the Strategic National Stockpile (“SNS”), which includes medications and medical supplies.

Harris County desires to collaborate with **Tomball** to enhance Harris County’s ability to respond to a catastrophic incident or other communicable threat.

Harris County and **Tomball** desire to enter into an agreement for a mass prophylaxis closed point of dispensing (“Closed Pod”) to dispense medications and supplies to identified **Tomball** employees, contractors and their immediate family members.

Harris County Commissioners Court finds that an agreement with **Tomball** for a Closed Pod serves a public purpose of Harris County.

NOW, THEREFORE, Harris County and Tomball in consideration of the premises, mutual covenants, provisions, and representations contained herein, constituting good and valuable consideration, and pursuant to Texas Government Code Chapter 791 (“Interlocal Cooperation Act”), hereto agree as follows:

TERMS:

I. Purpose

To establish a cooperative agreement between Harris County, acting through Harris County Public Health, and **Tomball** to provide employees, contractors, and their immediate families with prophylaxis, vaccinations, or other related medical supplies or services in the event of a public health emergency as defined by local, state or federal governments. Harris County, acting through Harris County Public Health, and **Tomball** agree to the following terms, conditions, and responsibilities expressed in this agreement. HCPH will follow federal or state guidelines for phased allocation of vaccines or oral medical countermeasures if directed by federal or state government due to limited supplies.

II. Definitions

Public Health Emergency: refers to any event, natural or manmade, that requires immediate public health intervention as defined by local, state or federal governments.

Mass prophylaxis: refers to the administration of health interventions including antibiotics, vaccines, and/or antidotes to large numbers of persons to provide protection against disease and/or to prevent the spread of disease in the community.

Critical Infrastructure/Employee/Volunteer: refers to a person in the service of **Tomball** either directly as an employee, volunteer, part of a government critical infrastructure **Tomball** that provides emergency services or supports government continuity of operation.

Immediate Family: refers to a direct / immediate member of the family living within the same household as the employee.

III. Responsibilities of Tomball

1. Mass dispenses to Employees/Contractors/Volunteers and their immediate family members during a public health emergency in **Tomball** at the Tomball, Texas site.
2. Attend Harris County Public Health planning meetings when requested at an agreed schedule and meeting place.
3. Attend Harris County Public Health training meetings and cooperate in training **Tomball** employees, when appropriate, to understand the contraindications, precautions, and administration of mass prophylaxis according to established Harris County Public Health protocol.
4. Provide and maintain an agency Primary Contact to oversee operations of the organization or entities Pharmaceutical Dispensing Plan.
5. Provide and maintain a Plan Contact to coordinate the dispensing operations at the organization or entity site as well as coordinate additional trainings, if needed, at the Tomball, Texas site.
6. Provide and maintain a Medical Contact (on staff at the Tomball, Texas site and available 24/7) who will organize, coordinate, and oversee the dispensing of medications at the Tomball, Texas site.
7. Ensure that all employees involved in the administration of medication will first be provided the treatment themselves, if indicated. Furthermore, the decision as to who will subsequently receive the medication is to be decided by **Tomball**; additionally, the method, manner, and order of treatment will be coordinated with Harris County Public Health Preparedness & Response Division and **Tomball**.
8. Maintain documentation of any labor, materials or supplies expended or consumed in this effort.

9. Return all unused portions of the supplies, chemoprophylaxis, and/or vaccines to Harris County, acting through Harris County Public Health.
10. Provide to Harris County Public Health a record of those individuals who received the medications and/or vaccinations. When appropriate Harris County Public Health will provide the necessary forms/software for tracking this information.

IV. Duration of the Agreement

This Agreement shall remain in place for twelve (12) months from the date of signing and automatically renew annually unless otherwise agreed in writing by both parties. This Agreement may be terminated at any time with or without cause, with sixty (60) days' advanced written notification by either party. This Agreement becomes effective when executed by **Tomball** and Harris County. This Agreement shall be of no force or effect until approved in writing by the Executive Director of Harris County Public Health and **Tomball** management.

V. Amendments

This Agreement may be amended by written agreement of both parties.

VI. Points of Contact

For Harris County Public Health:

Primary Contact: Michael "Mac" McClendon, Director
Public Health Preparedness & Response Division
1111 Fannin St.
Houston, Texas 77002
Phone: (832) 927-7524
E-Mail: michael.mcclendon@phs.hctx.net

For Tomball:

Primary Contact: Joe Sykora, Fire Chief
401 Market St.
Tomball, Texas 77375
Phone: (281) 290-1063
E-Mail: jsykora@tomballtx.gov

VII. Notice

All notices, requests, demands and other communications under this Agreement must be in writing and will be deemed to have been duly given (i) if delivered by hand and receipted for by

the Party to whom said notice or other communication will have been directed, or (ii) mailed by certified or registered mail with postage prepaid, to the parties at the following addresses:

TO THE COUNTY: Harris County Public Health
PHPR Division
1111 Fannin St.
Houston, Texas 77002
Attention: Mac McClendon

TO THE CITY OF TOMBALL, TEXAS:

City of Tomball, Texas
401 Market St.
Tomball, Texas 77375
Attention: David Esquivel, P.E., City Manager

These addresses may be changed upon giving prior written notice of the change.

VIII. Governing Law

This Agreement shall be interpreted under the laws of the State of Texas. Exclusive venue for any cause of action arising out of or in relation to this Agreement is in Harris County, Texas.

IX. No County Funds

Prior to execution of this Agreement, Harris County has advised **Tomball** that Harris County has certified no funds under this Agreement, and **Tomball** shall have no cause of action whatsoever for money against Harris County arising out of or in relation to this Agreement. Neither **Tomball** nor Harris County assumes liability for any claims, demands, expenses, liabilities, or losses arising out of or in relation to this Agreement.

[EXECUTION PAGE FOLLOWS]

IN WITNESS WHEREOF, this instrument has been executed on behalf of Harris County by a duly authorized representative of Harris County, and on behalf of **Tomball** by a duly authorized representative of **Tomball**.

HARRIS COUNTY

By: _____
Lina Hidalgo
County Judge
Date Signed: _____

Approved:

By: _____
Barbie L. Robinson, MPP, JD, CHC
Executive Director
Harris County Public Health

Date: _____


CITY OF TOMBALL, TEXAS

By: _____
David Esquivel, P.E.
City Manager
Date Signed: _____

By: _____

Date Signed: _____

APPROVED AS TO FORM:
CHRISTIAN D. MENEFE
COUNTY ATTORNEY

By:  _____
Kevin G. Markowski
Assistant County Attorney
CAO File: 24GEN0263

ORDER OF COMMISSIONERS COURT
Authorizing Interlocal Agreement

The Commissioners Court of Harris County, Texas, convened at a meeting of said Court at the Harris County Administration Building in the City of Houston, Texas, on _____, 2024 with all members present except _____.

A quorum was present. Among other business, the following was transacted:

**ORDER AUTHORIZING EXECUTION OF AN INTERLOCAL AGREEMENT
BETWEEN HARRIS COUNTY AND THE CITY OF TOMBALL, TEXAS**

Commissioner _____ introduced an order and moved that Commissioners Court adopt the order. Commissioner _____ seconded the motion for adoption of the order. The motion, carrying with it the adoption of the order prevailed by the following vote:

	Yes	No	Abstain
Judge Lina Hidalgo	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Comm. Rodney Ellis	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Comm. Adrian Garcia	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Comm. Tom S. Ramsey, P.E.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Comm. Lesley Briones	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

The County Judge thereupon announced that the motion had duly and lawfully carried and that the order had been duly and lawfully adopted. The order thus adopted is as follows:

IT IS ORDERED that the County Judge of Harris County is hereby authorized to execute, for and on behalf of Harris County, the Agreement between Harris County and the City of Tomball, Texas to provide a mass prophylaxis closed point of dispensing (“Closed Pod”) to dispense medications and supplies to identified Tomball employees, contractors, and their immediate family members. The Agreement is incorporated herein as though fully set forth word-for-word. All Harris County officials and employees are authorized to do any and all things necessary or convenient to accomplish the purposes of this order.

City Council Meeting Agenda Item Data Sheet

Meeting Date: February 19, 2024

Topic:

Approve an interlocal agreement with Harris County Public Health for the facilitation of a Closed Point of Distribution and authorize the City Manager any and all documents related to the agreement.

Background:

In a collaborative effort with Harris County Public Health this Interlocal Agreement allows the City to enhance our ability to respond to a catastrophic incident or other communicable threat. This Closed point of distribution will be facilitated by the Fire Department and Emergency Management personnel to distribute medications and supplies to City of Tomball Employees, Officers, Contractors and their immediate family members.

This interlocal aims to establish a comprehensive framework for responding to public health emergencies. In the event of such emergencies, the agreement outlines the responsibilities of the City, including the mass dispensing of prophylaxis, vaccinations, and medical services to its employees, contractors, and their immediate families.

The agreement underscores the collaborative nature of the response effort, emphasizing communication and coordination between Harris County Public Health and Tomball. It establishes clear guidelines for the roles and responsibilities of Tomball during public health emergencies, promoting a structured and organized approach to safeguard the health and well-being of the community. The document reflects a proactive strategy for preparedness, response, and recovery, with an emphasis on adherence to federal or state guidelines and close cooperation between the entities involved.

Origination: Fire Department

Recommendation: Approval

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

FUNDING (IF APPLICABLE)

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

Yes: No: X

If yes, specify Account Number: #

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

Signed: Joe Sykora

02/09/2024

Approved by:

Staff Member

Date

City Manager

Date

City Council Meeting

Agenda Item

Data Sheet

Meeting Date: February 19, 2024

Topic:

Approve the purchase of vehicle upfitting from Dana Safety Supply, Inc. through a BuyBoard Cooperative Purchasing Network (Contract #698-23) for a not-to-exceed amount of \$196,400, 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 2023-2024 Budget.

Background:

The requested purchases are being made through a BuyBoard cooperative purchasing contract and will be funded from allocated appropriations as part of the adopted Fiscal Year 2023-2024 Adopted Budget. The below table outlines the estimated expenditures for the new fleet (nine for the Police Department and seven for Public Works).

Vehicle	Amount
Police Department Upfit (9 vehicles)	\$149,000
Public Works Upfit Estimate (7 vehicles)	\$22,400
Additional Repairs, Maintenance & Expenses Estimate (as needed)	\$25,000
Total Expenditure (estimate)	\$196,400

Staff is requesting to approve the expenditure request of a not-to-exceed amount of \$196,400 for upfit and repairs for lighting for all City-owned vehicles for fiscal year 2023-2024.

Origination: Police Department

Recommendation:

Staff recommends approving the purchase of vehicle upfitting from Dana Safety Supply, Inc. through BuyBoard contract number #698-23 for a not-to-exceed amount of \$196,400.

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

Jeff Bert, Police Chief

FUNDING (IF APPLICABLE)

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

Yes: ☒ No: ☐

If yes, specify Account Number: # 100-121-6405

650-651-6405

650-652-6405

If no, funds will be transferred from account # _____

To account # _____

Signed Jeff Bert 02/05/2024

Staff Member

Date

Approved by _____

City Manager

Date

City Council Meeting

Agenda Item

Data Sheet

Meeting Date: February 19, 2024

Topic:

Approve a professional services agreement with Raba Kistner for annual groundwater monitoring for the closed landfill for a not-to-exceed amount of \$40,395, 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 2023-2024 Budget.

Background:

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

Administrative Policy No. 9 – Purchasing and Bidding Policy requires City Council approval for individual or aggregate vendor purchases exceeding \$50,000. The annual spend for the vendor, Raba Kistner, will exceed \$50,000 during fiscal year 2023-2024. To ensure compliance with the Purchasing and Bidding Policy, staff is requesting approval of the professional services agreements relating to the post-closure care and monitoring of the City of Tomball landfill.

Raba Kistner will provide both gas and groundwater monitoring and reporting related to the requirements of our TCEQ MSW permit for the closed landfill under two separate contracts. The total amount for both contracts is \$60,890.

Landfill Service	Amount
Gas Monitoring & Reporting	\$20,495.00
Groundwater Monitoring & Reporting	\$40,395.00
Total Annual Expenditure	\$60,890.00

Staff is requesting to approve the professional services agreement for the annual groundwater monitoring for a not-to-exceed amount of \$40,395.

Origination: Project Management

Recommendation:

Staff recommends approving the professional services agreement for the annual groundwater monitoring for the closed City of Tomball landfill for a not-to-exceed amount of \$40,395.

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

Meagan Mageo, Project Management

FUNDING (IF APPLICABLE)

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

Yes: X No: If yes, specify Account Number: #100-155-6304

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

Signed	Meagan Mageo		Approved by		
	Staff Member	Date		City Manager	Date

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

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

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

WITNESSETH:

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

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

**SECTION I.
SCOPE OF AGREEMENT**

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

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

Consultant shall do all things necessary to render the services and perform the Scope of Work in a manner consistent with the professional skill and care ordinarily provided by competent consultants practicing in the same or similar locality and under the same or similar circumstances and professional license. It is expressly understood and agreed that Consultant is an Independent Contractor in the performance of the services agreed to herein. It is further understood and agreed that Consultant shall not have the authority to obligate or bind the City, or make representations or commitments on behalf of the City or its officers or employees without the express prior approval of the City. The City shall be under no obligation to pay for services rendered not identified in Exhibit "A" without prior written authorization from the City.

SECTION III. OWNERSHIP OF WORK PRODUCT

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

SECTION IV. TIME FOR PERFORMANCE

The time for performance is as estimated in Exhibit A attached hereto. Upon written request of Consultant, the City may grant time extensions to the extent of any delays caused by the City or other agencies with which the work must be coordinated and over which Consultant has no control.

SECTION V. COMPLIANCE AND STANDARDS

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

SECTION VI. INDEMNIFICATION

To the fullest extent permitted by Texas Local Government Code Section 271.904, Engineer shall and does hereby agree to indemnify, hold harmless and defend the City, its officers, agents, and employees against liability for damage caused by or resulting from an act of negligence, intentional tort, intellectual property infringement, or failure to pay a subcontractor or supplier committed by the Engineer, the Engineer's agent, consultant under contract, or another entity over which the Engineer exercises control.

SECTION VII. ENGINEER'S COMPENSATION

For and in consideration of the services rendered by Consultant pursuant to this Agreement, the City shall pay Consultant only for the actual work performed under the Scope of Work, on the basis set forth in Exhibit "A," up to an amount not to exceed \$40,395, including reimbursable expenses.

SECTION VIII. INSURANCE

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

SECTION IX. TERMINATION

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

SECTION X. ADDRESSES, NOTICES AND COMMUNICATIONS

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

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

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

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

**SECTION XI.
LIMIT OF APPROPRIATION**

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

**SECTION XII.
SUCCESSORS AND ASSIGNS**

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

**SECTION XIII.
DISCLOSURE OF INFORMATION**

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

**SECTION XIV.
MODIFICATIONS**

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

**SECTION XV.
ADDITIONAL SERVICES OF ENGINEER**

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

**SECTION XVI.
CONFLICTS OF INTEREST**

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

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

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

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

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

**SECTION XIX.
MISCELLANEOUS PROVISIONS**

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

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

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

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

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

EXECUTED on this 6th day of February, 2024.

Raba Kistner:



Name: Richard V. Klar
Title: Vice President

CITY OF TOMBALL, TEXAS

David Esquivel, City Manager

ATTEST:

Tracy Garcia, City Secretary

Exhibit A

Proposal No. PSF23-366-00
February 2, 2024



12821 W. Golden Lane
San Antonio, TX 78249

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

PO Box 690287
San Antonio, TX 78269

P 210.699.9090
F 210.699.6426
TBPE Firm F-3257

WWW.RKCI.COM

**RE: Proposal for 2024 Groundwater Monitoring
Closed City of Tomball Landfill
Tomball, Harris County, Texas
MSW Permit No. 1140A
RN102120755/CN600667190**

Dear Mr. Huffman:

Raba Kistner, Inc. (RKI) is pleased to submit this proposal to the City of Tomball (CLIENT) to conduct semiannual post-closure groundwater monitoring at the City of Tomball Landfill, Municipal Solid Waste (MSW) Permit No. 1140A, located east of Rudolph Road and north of East Hufsmith Road within the City of Tomball, Harris County, Texas (hereinafter referred to as FACILITY). As described herein, following from recommendations developed in conjunction with the 2023 Annual Groundwater Monitoring Program, it is proposed that monitoring efforts be continued at 10 existing (permitted) monitoring wells (i.e., MW-2A, MW-3, MW-4, MW-5, MW-6, and MW-12 through MW-16) and four existing (assessment) wells (i.e., MW-7, MW-9, MW-10, and MW-11) in accordance with established post-closure monitoring requirements.

This proposal defines the scope of services, total project cost, and terms and conditions pertaining to the performance of continued semiannual groundwater monitoring and annual report preparation pursuant to Texas Commission on Environmental Quality (TCEQ) requirements for the 2024 post-closure monitoring program.

PROJECT DESCRIPTION

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

In a manner similar to the recently-completed 2023 program, **RKI** proposes to conduct semiannual groundwater monitoring and sampling activities at the FACILITY and coordinate the requisite analytical testing and results reporting as necessary to prepare an annual report of findings. Additionally, we will conduct and report on an annual inspection of the FACILITY in March or April 2024 by a Professional Engineer (P.E.) licensed in the State of Texas, as required by the TCEQ MSW Permits Section. The scope of work described herein was developed based upon our understanding of current FACILITY post-closure

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

TASK 1 – Groundwater Sampling Activities

RKI will conduct two semiannual groundwater monitoring events, which will be tentatively scheduled for June and December 2024. Field activities will include monitoring well inspection and water level gauging, groundwater purging, in addition to the collection of representative groundwater and quality assurance/quality control samples at a total of 14 existing monitoring wells in accordance with the FACILITY's TCEQ-approved *Groundwater Sampling Standard Operating Procedures, dated 1992*.

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

TASK 2 – Annual Groundwater Monitoring Reporting

Following receipt of laboratory-reported semiannual groundwater analytical results, **RKI** will prepare and submit to the TCEQ on behalf of CLIENT an annual report in the required format documenting 2024 groundwater monitoring activities, results, findings and recommendations. The annual groundwater monitoring report will include, at a minimum, the following primary elements:

- Site Plan indicating the existing FACILITY groundwater monitoring well network;
- Summary of historical and 2024 uppermost GBU groundwater elevation (gauging) data;
- Interpretive potentiometric surface maps for both semiannual groundwater monitoring events;
- Summary of historical and 2024 groundwater testing results;
- TCEQ MSW Permits Section Groundwater Sampling Reports for both semiannual events;
- Reports of laboratory analyses/chain-of-custody documentation for both monitoring events; and
- Recommendations for the FACILITY 2025 post-closure groundwater monitoring program.

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

TASK 3 – Annual Inspection and Reporting

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

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

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

It is possible that the TCEQ may elect to independently inspect the FACILITY at some point during the 2024 post-closure care period. If requested by the CoT or TCEQ in conjunction with a FACILITY inspection, copies of the 2023 inspection report will also be submitted to the TCEQ Municipal Solid Waste Permits Section and/or Region 12 offices.

COST AND SCHEDULE

RKI will provide the above scope of services for a **LUMP SUM FEE of \$40,395.00**. In the event that additional services are requested by CLIENT and/or necessary to comply with TCEQ directives, **RKI** will provide a cost estimate under separate cover and solicit authorization from CLIENT before proceeding with additional work. Authorized additional costs will be billed in accordance with our standard fees for professional services and at the unit rates for equipment shown on the attached Schedules of Fees for Professional Services.

Pending CLIENT approval, semiannual groundwater monitoring activities described above will be conducted in June and December 2024, with annual report delivery to CLIENT and submittal to the TCEQ during the first quarter of 2025. In a manner similar to the 2023 post-closure care program, the annual landfill inspection will be conducted in March or April 2024.

ASSUMPTIONS

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

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

- Costs assume that additional directives pertaining to the FACILITY groundwater monitoring program involving additional groundwater sampling, testing or reporting will not be forthcoming as a result of TCEQ MSW Permits Section review of the 2023 Annual Groundwater Monitoring Report.

ACCEPTANCE

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

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

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

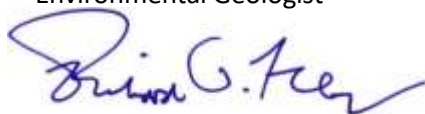
RKI considers the data and information contained in this proposal to be proprietary. This statement of qualifications and any information contained herein shall not be disclosed, and shall not be duplicated or used in whole or in part, for any purpose other than to evaluate this proposal.

Very truly yours,

RABA KISTNER, INC.



Paul M. Sak, P.G.
Environmental Geologist



Richard V. Klar, P.G.
Vice President

Accepted By _____
(Signature)

(Typed or Printed Name)

(Title)

Date _____

PMS/RVK/srw

Attachments:

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

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



STANDARD TERMS AND CONDITIONS

1. DEFINITIONS.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

24. **NO ASSIGNMENT.** Neither RK nor CLIENT shall assign or transfer its interest in this Agreement without the express written consent of the other.
25. **SEVERABILITY.** Each provision of this Agreement is intended to be severable. If any terms or provisions of this agreement shall be held to be invalid, illegal, or unenforceable for any reason whatsoever, the validity, legality, and enforceability of the remaining provisions hereof shall remain in full force and effect and shall not in any way be affected or impaired thereby. Moreover, to the maximum extent allowed by law, the Parties hereto stipulate that any offending provisions will be modified or altered, as necessary, so as to give such provisions the maximum permissible effect and application intended.
26. **ENTIRE AGREEMENT.** This Agreement, and all of its attachments, constitutes the entire, integrated Agreement between the Parties to it, and this Agreement supersedes all other Agreements, oral or written between the Parties, concerning the subject set forth in this Agreement. This Agreement may not be amended except in writing, with that amendment being signed by both Parties.



SCHEDULE OF FEES FOR PROFESSIONAL SERVICES

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

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

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

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

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

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

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

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

City Council Meeting

Agenda Item

Data Sheet

Meeting Date: February 19, 2024

Topic:

Approve a professional services agreement with Raba Kistner for annual gas monitoring for the closed landfill for a not-to-exceed amount of \$20,495, 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 2023-2024 Budget.

Background:

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

Administrative Policy No. 9 – Purchasing and Bidding Policy requires City Council approval for individual or aggregate vendor purchases exceeding \$50,000. The annual spend for the vendor, Raba Kistner, will exceed \$50,000 during fiscal year 2023-2024. To ensure compliance with the Purchasing and Bidding Policy, staff is requesting approval of the professional services agreements relating to the post-closure care and monitoring of the City of Tomball landfill.

Raba Kistner will provide both gas and groundwater monitoring and reporting related to the requirements of our TCEQ MSW permit for the closed landfill under two separate contracts. The total amount for both contracts is \$60,890.

Landfill Service	Amount
Gas Monitoring & Reporting	\$20,495.00
Groundwater Monitoring & Reporting	\$40,395.00
Total Annual Expenditure	\$60,890.00

Staff is requesting to approve the professional services agreement for the annual gas monitoring for a not-to-exceed amount of \$20,495.

Origination: Project Management

Recommendation:

Staff recommends approving the professional services agreement for the annual gas monitoring for the closed City of Tomball landfill for a not-to-exceed amount of \$20,495.

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

Meagan Mageo, Project Management

FUNDING (IF APPLICABLE)

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

Yes: X No: If yes, specify Account Number: #100-155-6304

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

Signed	Meagan Mageo		Approved by		
	Staff Member	Date		City Manager	Date

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

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

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

WITNESSETH:

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

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

**SECTION I.
SCOPE OF AGREEMENT**

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

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

Consultant shall do all things necessary to render the services and perform the Scope of Work in a manner consistent with the professional skill and care ordinarily provided by competent consultants practicing in the same or similar locality and under the same or similar circumstances and professional license. It is expressly understood and agreed that Consultant is an Independent Contractor in the performance of the services agreed to herein. It is further understood and agreed that Consultant shall not have the authority to obligate or bind the City, or make representations or commitments on behalf of the City or its officers or employees without the express prior approval of the City. The City shall be under no obligation to pay for services rendered not identified in Exhibit "A" without prior written authorization from the City.

SECTION III. OWNERSHIP OF WORK PRODUCT

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

SECTION IV. TIME FOR PERFORMANCE

The time for performance is as estimated in Exhibit A attached hereto. Upon written request of Consultant, the City may grant time extensions to the extent of any delays caused by the City or other agencies with which the work must be coordinated and over which Consultant has no control.

SECTION V. COMPLIANCE AND STANDARDS

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

SECTION VI. INDEMNIFICATION

To the fullest extent permitted by Texas Local Government Code Section 271.904, Engineer shall and does hereby agree to indemnify, hold harmless and defend the City, its officers, agents, and employees against liability for damage caused by or resulting from an act of negligence, intentional tort, intellectual property infringement, or failure to pay a subcontractor or supplier committed by the Engineer, the Engineer's agent, consultant under contract, or another entity over which the Engineer exercises control.

SECTION VII. ENGINEER'S COMPENSATION

For and in consideration of the services rendered by Consultant pursuant to this Agreement, the City shall pay Consultant only for the actual work performed under the Scope of Work, on the basis set forth in Exhibit "A," up to an amount not to exceed \$20,495, including reimbursable expenses.

SECTION VIII. INSURANCE

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

SECTION IX. TERMINATION

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

SECTION X. ADDRESSES, NOTICES AND COMMUNICATIONS

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

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

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

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

**SECTION XI.
LIMIT OF APPROPRIATION**

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

**SECTION XII.
SUCCESSORS AND ASSIGNS**

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

**SECTION XIII.
DISCLOSURE OF INFORMATION**

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

**SECTION XIV.
MODIFICATIONS**

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

**SECTION XV.
ADDITIONAL SERVICES OF ENGINEER**

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

**SECTION XVI.
CONFLICTS OF INTEREST**

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

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

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

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

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

**SECTION XIX.
MISCELLANEOUS PROVISIONS**

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

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

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

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

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

EXECUTED on this 6th day of February, 2024.

Raba Kistner:

A handwritten signature in blue ink that reads "Richard V. Klar". The signature is written in a cursive style and is positioned above a horizontal line.

Name: Richard V. Klar
Title: Vice President

CITY OF TOMBALL, TEXAS

David Esquivel, City Manager

ATTEST:

Tracy Garcia, City Secretary

Exhibit A

Proposal No. PSF23-367-00
February 2, 2024



12821 W. Golden Lane
San Antonio, TX 78249

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

PO Box 690287
San Antonio, TX 78269

P 210.699.9090
F 210.699.6426
TBPE Firm F-3257

WWW.RKCI.COM

**RE: Proposal for 2024 Landfill Gas Monitoring
Closed City of Tomball Landfill
Tomball, Harris County, Texas
MSW Permit No. 1140A
RN102120755/CN600667190**

Dear Mr. Huffman:

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

This proposal defines the scope of services, total project cost, and terms and conditions for the performance of quarterly LFG monitoring and annual reporting for both landfill gas monitoring to be conducted throughout the 2024 post-closure period.

SCOPE OF WORK

RKI proposes to conduct quarterly LFG monitoring activities to maintain compliance with the applicable regulatory requirements. In the absence of any non-compliance conditions throughout the program (e.g., methane exceedance at perimeter LGDP, which serve as regulatory points of compliance for the FACILITY), **RKI** will prepare and submit to the TCEQ MSW Permits Section on behalf of the City of Tomball an annual monitoring report presenting collective LFG data, monitoring findings, and recommendations pertaining to LFG management during execution of and following the completion of the 2024 LFG monitoring program.

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

TASK 1 – 2024 Landfill Gas Monitoring

The proposed 2024 LFG monitoring program will include the performance of field activities associated with four comprehensive quarterly LFG monitoring events. During each LFG monitoring event, LFG constituents (i.e., methane, hydrogen sulfide, carbon dioxide and oxygen) concentrations in air will be measured with pre-calibrated instruments at the tops of casings at the 43 landfill gas vents (LGVs), seven landfill gas detection probes (LGDPs) and 12 passive soil vapor extraction vents (SVEs), as well as at the 13 ambient air monitoring stations located within, at, and beyond the FACILITY permit boundaries. Landfill gas measurements will also be obtained at existing groundwater monitoring wells in a manner consistent with past monitoring programs for informational purposes only. LFG monitoring activities will be conducted in accordance with previously established procedures pursuant to above-referenced §330.371 (k) requirements and procedures called out in Section 6 of the Landfill Gas Management Plan.

For budgetary purposes, costs associated with the scope of services described herein were developed with the assumption that a total of four quarterly LFG monitoring events will be conducted at the FACILITY throughout 2024. In the event that methane gas concentrations exceeding 5% volume in air are measured at any of the seven perimeter LGDPs in conjunction with quarterly LFG monitoring efforts, RKI will prepare a scope of work and estimated costs under a separate cover for TCEQ, local authority and adjacent landowner notification, in addition to an increased (i.e., monthly) perimeter LFG monitoring frequency, as required by 30 TAC, §330.371 (k)(1).

TASK 2 – 2024 Landfill Gas Reporting

After completion of the 2024 LFG monitoring program, **RKI** will prepare and submit to the TCEQ on behalf of CLIENT an annual report documenting the LFG monitoring activities and findings. In a manner similar to previous LFG reporting, this annual report will additionally provide a summary of automated LGV leachate recovery and disposal activities. On the basis of collective LFG monitoring data and TCEQ directives, **RKI** will offer recommendations to the CoT for continued FACILITY perimeter methane gas management/control and/or remediation strategies, as applicable.

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

For budgetary purposes, costs associated with the scope of services described herein were developed with the assumption that quarterly perimeter LFG monitoring results will be provided in the annual 2024 landfill gas monitoring and leachate recovery report. In the event that methane gas concentrations exceeding 5% volume in air are measured at any of the seven perimeter LGDPs in conjunction with quarterly LFG monitoring efforts, RKI will prepare a scope of work and estimated costs under a separate cover for quarterly LFG monitoring reporting, if directed by the TCEQ.

COST AND SCHEDULE

RKI will provide the scope of services described above for a **LUMP SUM fee of \$20,495.⁰⁰**. Authorized additional costs, if requested by CLIENT and/or directed by the TCEQ, will be billed in accordance with our standard fees for professional services and at the unit rates for equipment shown on the attached Schedules of Fees for Professional Services. *To minimize project costs, to the extent practicable quarterly LFG monitoring activities in 2024 will be scheduled to coincide with other **RKI** post-closure field activities (e.g., semiannual groundwater monitoring).*

Pending CLIENT approval, the field activities described above will be performed quarterly with annual monitoring report delivery to CLIENT and submittal to the TCEQ in early 2024.

ASSUMPTIONS

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

- Upon scheduling notification provided to the CoT by **RKI**, CLIENT will provide access to the FACILITY and its surroundings as necessary to perform the monthly LFG monitoring activities described above. It is assumed that weather conditions and/or other health and safety or FACILITY considerations during the scheduled monitoring events will not preclude or inhibit the effective execution of the proposed scope of services.
- Additional TCEQ MSW Permits Section directives pertaining to the proposed 2024 LFG monitoring program are not addressed as part of the scope of services described herein. **RKI** will provide appropriate proposal(s) at CLIENT's request following receipt of TCEQ directives following their review of the 2023 Annual Landfill Gas Monitoring and Leachate Recovery Report.
- Costs provided assume a quarterly frequency of LFG monitoring events and that the number of LFG monitoring points proposed above will remain roughly constant throughout 2024.

ACCEPTANCE

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

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

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

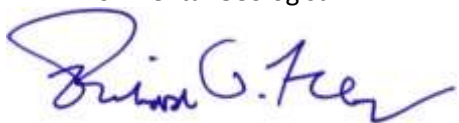
RKI considers the data and information contained in this proposal to be proprietary. This statement of qualifications and any information contained herein shall not be disclosed, and shall not be duplicated or used in whole or in part, for any purpose other than to evaluate this proposal.

Very truly yours,

RABA KISTNER, INC.



Paul M. Sak, P.G.
Environmental Geologist



Richard V. Klar, P.G.
Vice President

Accepted By _____
(Signature)

(Typed or Printed Name)

(Title)

Date _____

PMS/RVK/srw

Attachments:

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

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



STANDARD TERMS AND CONDITIONS

1. DEFINITIONS.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

24. **NO ASSIGNMENT.** Neither RK nor CLIENT shall assign or transfer its interest in this Agreement without the express written consent of the other.
25. **SEVERABILITY.** Each provision of this Agreement is intended to be severable. If any terms or provisions of this agreement shall be held to be invalid, illegal, or unenforceable for any reason whatsoever, the validity, legality, and enforceability of the remaining provisions hereof shall remain in full force and effect and shall not in any way be affected or impaired thereby. Moreover, to the maximum extent allowed by law, the Parties hereto stipulate that any offending provisions will be modified or altered, as necessary, so as to give such provisions the maximum permissible effect and application intended.
26. **ENTIRE AGREEMENT.** This Agreement, and all of its attachments, constitutes the entire, integrated Agreement between the Parties to it, and this Agreement supersedes all other Agreements, oral or written between the Parties, concerning the subject set forth in this Agreement. This Agreement may not be amended except in writing, with that amendment being signed by both Parties.



SCHEDULE OF FEES FOR PROFESSIONAL SERVICES

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

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

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

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

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

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

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

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



CITY OF TOMBALL

CONTRACT RENEWAL

This amendment by and between the Every- Bellies Catering, LLC and the City of Tomball defined below shall be effective as of the date this Amendment is fully executed. To the extent the contract requires the City to issue a Notice of Award Amendment for purposes of exercising the renewal option; this written document shall serve as such Notice of Award Amendment.

CITY OF TOMBALL RENEWAL CONTRACT	
Company Name:	Every-Bellies Catering, LLC
Contract No.:	N/A
Bid Number:	2022-02
Solicitation Title/Event Name:	Vendor to Sell Beer and Wine at City Festivals
Contract Award Date:	April 18, 2022
Current Contract Term:	Calendar Year- End Date December 31

WHEREAS, the Contract is in effect through the Current Contract Term as defined above; and

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties do hereby agree as follows:

1. **CONTRACT RENEWAL/EXTENSION.** The parties hereby agree that the contract will be renewed/extended for an additional period of time as follows:


NEW CONTRACT TERM	
Beginning Date of New Contract Term:	January 1, 2024
End Date of New Contract Term:	December 31, 2024

The parties agree the contract will expire at midnight on the date defined as the "End Date of the New Contract Term" unless the parties agree to renew/extend the contract for an additional period of time.

2. **SUCCESSORS AND ASSIGNS.** This Amendment shall be binding upon and inure to the benefit of the successors and permitted assigns of the parties hereto.
3. **ENTIRE AGREEMENT.** Except as expressly modified by this Amendment, the contract shall be and remain in full force and effect in accordance with its terms and shall constitute the legal, valid, binding and enforceable obligations to the parties. This Amendment and the contract (including any written amendments thereto), collectively, are the complete agreement of the parties and supersede any prior agreements or representations, whether oral or written, with respect thereto.
4. **PRICING.** It is agreed between both parties that the pricing will be held for one year, at the prices as reflected in EXHIBIT B to provide the services described in EXHIBIT A.
5. **STORM WATER MANAGEMENT PLAN.** When conducting activities for the City of Tomball, contractor will adhere to the City's Storm Water Management Plan and permit issued by the Texas Commission on Environmental Quality, if applicable.

IN WITNESS WHEREOF, the parties have caused this Amendment to be duly executed by their authorized representatives.

VENDOR

Company Name:	Every-Bellies Catering, LLC
Authorized Signature:	
Printed Name and Title of Person Signing:	Nicole Rich, Owner
Date:	2/13/24
Company Address:	106 Market Street, Tomball, Texas 77375

CITY OF TOMBALL

Authorized Signature:	
Printed Name and Title of Person Signing:	David Esquivel, PE City Manager
Date:	
Company Address:	501 James Street Tomball, Texas 77375

2. **SUCCESSORS AND ASSIGNS.** This Amendment shall be binding upon and inure to the benefit of the successors and permitted assigns of the parties hereto.
3. **ENTIRE AGREEMENT.** Except as expressly modified by this Amendment, the contract shall be and remain in full force and effect in accordance with its terms and shall constitute the legal, valid, binding and enforceable obligations to the parties. This Amendment and the contract (including any written amendments thereto), collectively, are the complete agreement of the parties and supersede any prior agreements or representations, whether oral or written, with respect thereto.
4. **PRICING.** It is agreed between both parties that the pricing will be held for one year, at the prices as reflected in EXHIBIT B to provide the services described in EXHIBIT A.
5. **STORM WATER MANAGEMENT PLAN.** When conducting activities for the City of Tomball, contractor will adhere to the City's Storm Water Management Plan and permit issued by the Texas Commission on Environmental Quality, if applicable.

IN WITNESS WHEREOF, the parties have caused this Amendment to be duly executed by their authorized representatives.

VENDOR

Company Name:	Every-Bellies Catering, LLC
Authorized Signature:	
Printed Name and Title of Person Signing:	Nicole Rich, Owner
Date:	
Company Address:	106 Market Street, Tomball, Texas 77375

CITY OF TOMBALL

Authorized Signature:	
Printed Name and Title of Person Signing:	David Esquivel, PE City Manager
Date:	
Company Address:	501 James Street Tomball, Texas 77375

STANDARD FORM OF AGREEMENT BETWEEN THE CITY OF TOMBALL AND THE VENDOR

This agreement is dated as of the 18 day of April in the year of 2022 by and between the City of Tomball, Texas (OWNER) and Every-Bellies Catering, LLC. from the City of Tomball, County of **Harris**, and State of **Texas**, hereinafter called VENDOR.

1. DEFINITIONS

- 1.1 City – shall be understood as referring to the City of Tomball or its designated representative.
- 1.2 Working Day – Shall refer to a calendar day, not including Saturday, Sunday, City Holidays, or days in which weather conditions prohibit work as determined by the City.
- 1.3 Vendor – shall refer to a person quoting for or awarded a project by the City.
- 1.4 Man, men, he – Shall refer to members of the human race and is not a reference to members of a specific gender
- 1.5 Certificate of Coverage (“Certificate”) – A copy of a certificate of insurance, a certificate of authority to self – insure issued by the commission, of a coverage agreement (TWCC-81, TWCC-82, TWCC-83, or TWCC-84), showing statutory workers’ compensation insurance coverage for the persons’ or entity’s employees (including those subject to a coverage agreement) providing services on a project, for the duration of the project.
- 1.6 Coverage – Workers’ compensation insurance meeting the statutory requirements of the Texas Labor Code, 401.011 (44).
- 1.7 Duration of the Project – Includes the time from the beginning of work on the project until the work on the project has been completed and accepted by the City of Tomball.

2. PROJECT WORK

- 2.1 VENDOR shall complete all Work as specified and indicated in the Contract Documents. The Work is generally described as follows:

Provide beer and wine sales at six (6) city-sponsored festivals (weather permitting)

- a) Honky Tonk Chili Challenge
- b) Rails and Tails Mudbug Festival
- c) Groovfest

- a) Disco at the Depot - March
- b) Rails & Tails Mudbug Fest - April
- c) July 4th Street Fest - July
- d) Groovfest - September
- e) Depot Day Fall Fest - November
- f) Tree Lighting - December

~~2023~~ 2024 events

- d) Bluegrass Festival
- e) Light It Up! Christmas Tree Lighting
- f) Deck the Depot

Need your approval

signature & date
↓

2.2 VENDOR shall complete all work as specified or indicated below or in attached documents:
As noted in the submitted Request for Proposals dated March 31, 2022

3. CONTRACT TIMES

3.1 CONTRACT must commence work on date agreement is fully executed. The contract will expire **on December 31, 2022**. At the City of Tomball's option and approval by the Vendor, the contract may be renewed for two (2) additional one (1) year periods.

4. CONTRACT PRICE

4.1 VENDOR shall pay CITY a percentage of gross festival revenue in accordance with the Contract Documents per the submitted Request for Proposals (EXHIBIT A), hereto attached and accepted by the CITY. The total revenue for this contract are as follows: 20% of gross festival revenue, after the first \$1,000 of revenue, will be paid to CITY.

5. PAYMENT PROCEDURES

5.1 VENDOR shall submit Payment to the CITY within fourteen (14) days of the festival and shall be accompanied by reports detailing gross sales, as outlined in EXHIBIT B – Request for Proposals.

6. ASSIGNMENT

6.1 VENDOR'S right and duties awarded by this agreement may not be assigned to another without written consent of the CITY signed by the CITY's authorized agent. Such consent shall not relieve the assignee of the liability in the event of default by the assignee.

7. INDEMNITY

7.1 Vendor covenants and agrees to indemnify, hold harmless and defend the CITY, its officers, agents, servants and employees, from and against any and all claims or suits for property damage or loss and/or personal injury, including death, to and all persons, of whatsoever kind or character, whether real or asserted, (including, without limitation, reasonable fees and expenses of attorneys, expert witnesses and other consultants), arising out of or in connection with, directly or indirectly, the Vendor's performance of this agreement, and shall further be liable for injury or damage to city property, arising out of or in connection with and all acts or omissions of Vendor, its officers, agents, servants, employees, Vendors, sub-vendors, licensees, invitees or trespassers. Vendor's obligation under this section shall survive the termination of this agreement.

8. INSURANCE

- 8.1 VENDOR, performing as an independent VENDOR hereunder, shall be fully responsible for providing Workman's Compensation with Employer's Liability, Commercial General Liability, and Automobile Liability coverage as required by the State of Texas.
- 8.2 The insurance coverages or plan shall name the CITY, its officials, employees and volunteers (collectively, the "City") as an additional insured. VENDOR shall furnish a certificate of insurance or other evidence of the required coverage prior to commencement of work under the agreement.

(THE CITY OF TOMBALL INSURANCE REQUIREMENT AFFIDAVIT MUST BE RETURNED WITH VENDOR PACKET.)

- 8.3 VENDOR by signing this agreement or causing to be provided a certificate of coverage, the person signing this agreement is representing to the CITY that all employees of the person signing this agreement who will provide services on the project will be covered by Workers' Compensation coverage for the duration of the project, that the coverage will be based on proper reporting of classification codes and payroll amounts, and that all coverage amounts will be filed with the appropriate insurance carrier or, in the case of a self-insured, with the commission's Division of Self-Insurance Regulation. Providing false or misleading information may subject VENDOR to administrative penalties, criminal penalties, civil penalties, or other civil compensation coverage to the City prior to beginning work on the project. VENDOR will also provide the City, prior to the end of the coverage, if the coverage period shown on the VENDORS' current certificate of coverage ends during the duration of the project.
- 8.4 VENDOR shall:
- a) Obtain from each person providing services on a project, and provide to the CITY:
 - i. A certificate of coverage, prior to that person beginning work on the project, so the CITY will have on file certificate of coverage showing coverage for all persons providing services on the project; and
 - ii. No later than seven (7) days after receipt by the Vendor, a new certificate of coverage showing extension of coverage, if the coverage period shown on the current certificate of coverage ends during the duration of the project
 - iii. Retain all required certificates of coverage on file for the duration of the project and for one (1) year thereafter;
 - iv. Notify the CITY in writing by certified mail or personal delivery, within ten (10) days after VENDOR knew or should have known, of any change that materially affects the provisions of coverage of any person providing services on the project;

- b) Post a notice on each project site informing all persons providing services on the project that they are required to be covered, and stating how a person may verify current coverage and report failure to provide coverage. This notice must be printed with a **title** in a least thirty (30) point bold type and **text** in at least nineteen (19) point normal type, and shall be in both English and Spanish and any other language common to the worker population. The text for the notice shall be the following text in Figure 1 provided by the commission on the sample notice, without any additional words or changes:

(Figure 1)

REQUIRED WORKERS' COMPENSATION COVERAGE

"The law requires that each person working on this site or providing services related to this construction project must be covered by workers' compensation insurance. This includes persons providing, hauling, or delivering equipment of materials, or providing labor or transportation or other service related to the project, regardless of the identity of their employer or status as an employee."

"Call the Texas Workers' Compensation Commission at 512-440-3789 to receive information on the legal requirement for coverage, to verify whether your employer has provided the required coverage, or to report an employer's failure to provide coverage."

- c) Contractually require each person with whom it contacts to provide services on a project, to:
 - i. Provide coverage based on proper reporting of classification codes and payroll amounts and filing of any coverage agreements for all of its employees providing services on the project, for the duration of the project;
 - ii. Provide a certificate of coverage to VENDOR prior to that person beginning work of the project;
 - iii. Include in all contracts to provide services on the project the language in subsection 8.4 -d of this rule;
 - iv. Provide VENDOR, prior to the end of the coverage period, a new certificate of coverage showing extension of coverage, if the coverage period shown on the current certificate of coverage ends during the duration of the project;
 - v. Obtain from each other person with whom it contracts, and provides to VENDOR:
 - i. A certificate of coverage, prior to the other person beginning work on the project; and
 - ii. Prior to the end of the coverage period, a new certificate of coverage showing extension of the coverage period, if the coverage period shown

- on the current certificate of coverage ends during the duration of the project;
- vi. Retain all required certificates of coverage on file for the duration of the project and for one (1) year thereafter;
- vii. Notify the City in writing by certified mail or personal delivery, within ten (10) days after the person knew or should have known, of any change that materially affects the provision of coverage of any person providing services on the project; and
- viii. Contractually require each other person with whom it contracts, to perform as required by paragraphs (A)-(E) of section 8.4, with the certificate of coverage to be provided by the person for whom they are providing services.

8.5 VENDOR shall contractually require each person with whom it contracts to provide services on project, to:

- a) provide coverage, based on proper reporting of classification codes and payroll amounts and filing of any coverage agreements, which meets the statutory requirements of Texas Labor Code, Section 401.011 (44) for all of its employees providing services on the project, for the duration of the project;
- b) provide to VENDOR, prior to that person beginning work on the project, a certificate of coverage showing that coverage is being provided for all employees of the person providing services on the project, for the duration of the project;
- c) provide VENDOR, prior to the end of the coverage period, a new certificate of coverage showing extension of coverage, if the coverage period shown on the current certificate of coverage ends during the duration of the project;
- d) obtain from each other person with whom it contracts, and provide to VENDOR:
 - i. a certificate of coverage, prior to the other person beginning work on the project; and
 - ii. a new certificate of coverage showing extension of coverage, prior to the end of the coverage period, if the coverage period shown on the current certificate of coverage ends during the duration of the project;
- e) retain all required certificates of coverage on file for the duration of the project and for one year thereafter;
- f) notify the City in writing by certified mail or personal delivery, within ten (10) days after the person know or should have known, of any change that materially affects the provision of coverage of any person providing services on the project; and
- g) contractually require each person with whom it contracts, to perform as required by paragraphs (A)-(F) of section 8.5, with the certificates of coverage to be provided to the person for whom they are providing services.

8.6 The VENDORS failure to comply with any of these provisions is a breach of agreement by the VENDOR which entitles the City of Tomball to declare the agreement void if the VENDOR does not remedy the breach within ten (10) days after receipt of notice of breach from the CITY.

Certifications should be submitted to:

City of Tomball
Marketing Manager
401 Market Street
Tomball, Texas 77375

- 8.7 The VENDORS liability insurance policies shall contain provisions that specify that the policies are primary and will apply without consideration of other policies separately carried, and will state that each insured is provided coverage as though a separate policy has been issued to each, except that insurer's liability will not be increased beyond the amount of which the insurer would have been liable had only one insured been covered. Coverage shall be primary and non-contributory with any of the City's policies.

9. Licensing

- 9.1 VENDOR shall display TABC Certifications for each server working festivals.

10. SPECIFICATIONS

- 10.1 Please refer to EXHIBIT B – Request for Proposals for all requirements not specified in this Contract. The Request for Proposal will delegate responsibilities of the Vendor not addressed in the Contract.

11. TERMINATION

- 11.1 City may terminate this agreement, or any part hereof, at any time for the City's convenience and without cause, by giving written notice to the VENDOR of such termination which shall specifying the effective date thereof, which notice must be delivered to VENDOR at least three (3) days before the effective date of such termination.

12. VENDOR'S DUTIES

- 12.1 The VENDOR shall provide and pay for all supervision, labor, material, utilities and other equipment and services necessary for the proper execution and completion of the work.
- 12.2 Secure and pay for, as necessary, all fees, permits and licenses for proper execution and completion of the work, and as applicable to then time of receipt of bids.
- 12.3 Comply with codes, ordinances, rules, regulations, orders and other legal requirements of public authorities which bear any performance of other work. Reference to the standards of any technical society, organization, or association or to codes of local and state authorities shall mean the latest standard, code specification, or tentative specification adopted and published at the date of taking bids, unless specifically stated otherwise.
- 12.4 Employ only competent and certified individuals for the sale of beer and wine at festivals, and all work performed at events shall be performed under direct supervision of a supervisor or owner.
- 12.5 VENDOR shall arrange for a suitable storage of the materials necessary for events. The City will not be responsible for storing any items, and will not be responsible for lost or stolen items.

12.6 VENDOR shall remove any rubbish and debris at the end of each festival near or around the sell locations and dispose of legally.

12.7 The City has the authority to observe, inspect, approve, reject, and accept all work.

12.8 VENDOR must be thoroughly familiar with all aspects and requirements required in this Contract and EXHIBIT B – Request for Proposals. The City may make such investigations and inquires as it deems necessary to determine the qualifications of any vendor to perform the work outlined. VENDOR shall furnish to the City all information and data for this purpose as the City might request.

13. MISCELLANEOUS

13.1 VENDOR stipulates that the City is a political subdivision of the State of Texas, and, as such, may enjoy immunities from suit and liability under the Constitution and laws of the State of Texas. By entering into this Agreement, City does not waive any of its immunities from suit and/or liability, except as otherwise specifically provided herein and as specifically authorized by law.

13.2 It is distinctly understood that by virtue of this Contract, no mechanic, Vendor, materialmen, artisan, laborer, or subvendor, whether skilled or unskilled, shall ever in any manner have, claim, or acquire any lien upon the project of whatever nature or kind so erected or to be erected by virtue of this Contract, nor upon any of the land upon which said improvements are so erected, built, or situated, such property being public property belonging to a political subdivision of the State of Texas.

13.3 This agreement shall be governed by the laws of the State of Texas, and mandatory and exclusive venue for any dispute shall be in State District Court in the county in which the City's main administrative office is located.

13.4 This agreement and the work are subject to all applicable Federal and State laws, rules, and regulations. Invalidity of any portion of their Agreement under the laws of the State of Texas or of the United State shall not affect the validity of the remainder of this Agreement.

13.5 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 company covenants and agrees that it: (1) does not boycott Israel; and (2) will not boycott Israel during the term of the contract. Furthermore, the Vendor is prohibited from engaging in business with Iran, Sudan or Foreign Terrorist Organizations.

13.6 When conducting activities for the City of Tomball, Vendor will adhere to the City's Storm Water Management Plan and permit issued by the Texas Commission on Environmental Quality.

14 AUTHORITY

THE CITY OF TOMBALL, TEXAS AND VENDOR have signed this agreement:

This agreement will be effective on the 10 day of April, 2022

CITY OF TOMBALL, TEXAS
501 JAMES STREET
TOMBALL, TX 77375

David Esquivel
Signature

David Esquivel
Printed Name & Title

04/20/22
Date

VENDOR
Every-Bellies Catering, LLC

Nicole Rich
Signature

Nicole Rich
Printed Name & Title

4/26/22
Date

706 Market St.
Address

Tomball
City

TX
State

77375
Zip Code

346-418-7001
Telephone Number

x Nicole Cole 1/30/24
346-418-7001



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

2/12/2024

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 rights to the certificate holder in lieu of such endorsement(s).

PRODUCER Greenwood Insurance Group, Inc. 2700 Research Forest Dr. Suite 124 The Woodlands TX 77381	CONTACT NAME: Mike Jackson PHONE (A/C, No. Ext): 281-397-7844 x1117 FAX (A/C, No): 346-202-1949 E-MAIL ADDRESS: mike@greenwoodinsurance.net
INSURED Every-Bellies, LLC 106 Market Street Tomball TX 77375	INSURER(S) AFFORDING COVERAGE INSURER A : Travelers Casualty Insurance Company of America INSURER B : INSURER C : INSURER D : INSURER E : INSURER F :

COVERAGES**CERTIFICATE NUMBER:** 1703185889**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 INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	COMMERCIAL GENERAL LIABILITY <input checked="" type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC OTHER:			6800K667485	7/10/2023	7/10/2024	EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 300,000 MED EXP (Any one person) \$ 5,000 PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 2,000,000 PRODUCTS - COMP/OP AGG \$ 2,000,000 \$
	AUTOMOBILE LIABILITY <input type="checkbox"/> ANY AUTO <input type="checkbox"/> OWNED AUTOS ONLY <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> HIRED AUTOS ONLY <input type="checkbox"/> NON-OWNED AUTOS ONLY						COMBINED SINGLE LIMIT (Ea accident) \$ BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ \$
	UMBRELLA LIAB <input type="checkbox"/> OCCUR EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE DED <input type="checkbox"/> RETENTION \$						EACH OCCURRENCE \$ AGGREGATE \$ \$
	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						PER STATUTE <input type="checkbox"/> OTH-ER <input type="checkbox"/> E.L. EACH ACCIDENT \$ E.L. DISEASE - EA EMPLOYEE \$ E.L. DISEASE - POLICY LIMIT \$

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

CERTIFICATE HOLDER**CANCELLATION**City of Tomball
401 Market Street
Tomball TX 77375

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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City Council Meeting

Agenda Item

Data Sheet

Meeting Date: February 19, 2024

Topic:

Approve contract renewal for Every-Bellies Catering, LLC to be the preferred beer and wine provider at six (6) city-sponsored festivals.

Background:

Every-Bellies Catering, LLC has provided beer and wine at all City festivals since April 18, 2022. They would like to continue into their final renewal year before the City goes to bid in 2025.

Origination: Every-Bellies Catering, LLC has been the City's beer and wine provider since April 18, 2022.

Recommendation:

To approve their final renewal year as they are keen on the beer and wine needs of community participants. Their speedy service, proximity, and engagement with the participants allow for an overall successful event experience.

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

FUNDING (IF APPLICABLE)

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

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

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

Signed _____ Approved by _____
Staff Member Date City Manager Date

City Council Meeting

Agenda Item

Data Sheet

Meeting Date: September 18, 2023

Topic:

Discussion and Approval of Change to the City Policy related to Vacation/Holiday Hours

Background:

The existing City policy related to overtime does not count holiday hours as “hours worked” for the purpose of calculating overtime. Also, the current policy dictates that employees cannot use leave/vacation hours in excess of their regular schedule. As such, this has created challenges in getting employees to volunteer for special shifts when holidays are scheduled in the same week/pay period. The proposed policy change will treat holiday hours as “hours worked” and allow for employees to either a): “Flex” time by electing to have vacation time returned to their leave bank when there is any vacation used beyond regular schedule or b): Receive straight pay for any vacation time used beyond regular schedule.

Origination:

Recommendation:

Approval

Party(ies) responsible for placing this item on agenda: Kristie Lewis, HR 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		City Manager
	Date		Date

Proposed Changes to Vacation/Holiday Hours

City Council Meeting
February 19, 2024



Proposed Policy Changes

- Holiday Hours
 - Current Policy: Holiday hours DO NOT count as “hours worked” for the purpose of calculating overtime.
 - Proposed Policy: Holiday hours DO count as “hours worked” for the purpose of calculating overtime.
- Vacation Hours
 - Current Policy: Employees cannot use leave/vacation hours in excess of their regular schedule (e.g. an employee cannot use vacation to record more than 40 hours per week for employees or 106 hours per 14-day cycle for shift firefighters)
 - Proposed Policy: Employees have a choice...
 - Flex time: any vacation used beyond regular schedule will be returned to leave bank
 - Regular time +: any vacation time used beyond regular schedule will be paid at straight time



Holiday Hours: Why the Change?

- Employees may be required to work hours beyond their regular schedule on short weeks due to less work hours to complete the same tasks (e.g. City Council meetings on Tuesdays after holidays).
- Special events/extra shifts occur on weeks coinciding with holidays (e.g. Holiday Parade/Thanksgiving, July 4th occurs in middle of the week).
- Challenges getting employees to volunteer for special shifts when holidays are scheduled in same week/pay period.



Example: Holiday Hours

Jane works a 40-hour per week schedule as a non-exempt employee and earns \$15 per hour. Monday is a holiday and Jane gets 8 hours of time. Jane then works 32 hours Tuesday through Friday and comes in on Saturday for 4 hours to work a special event.

	Current Policy	Proposed Policy
Holiday Pay	8 hours x \$15 per hour = \$120	8 hours x \$15 per hour = \$120
Regular Pay	36 hours x \$15 per hour = \$540	32 hours x \$15 per hour = \$480
Overtime Pay	0 hours x \$15 per hour = \$0	4 hours x \$22.50 per hour = \$90
Total Pay for Week	\$120 + \$540 = \$660	\$120 + \$480 + \$90 = \$690



Vacation Hours: Why the Change?

- Allows employees more control over what happens with vacation time, while still keeping use/lose policy in place to encourage employees to take leave.
- Alleviates issues when an employee takes vacation and is called back for a shift in the same work period.
 - Issue in public safety operations.
- Retention tool to assist employees get value of allowed leave instead of cycling time back to leave bank.
- More clarity in payroll process.



Example: Vacation Hours

Thomas works a 40-hour per week schedule as a non-exempt employee and earns \$25 per hour. Thomas takes off Monday and uses 8 hours of vacation time. Thomas then works 35 hours Tuesday through Friday.

Timecard Hours		8 hours Vacation <u>35 hours Regular Time</u> Total Hours Recorded: 43 hours
Current Policy		
Paid Vacation Time	5 hours Vacation	
Flexed Vacation Time	3 hours returned to Leave Bank	
Total Pay for Week	Vacation Time: 5 hours Vacation x \$25 per hour = \$125 Regular Time: 35 hours Regular x \$25 per hour = \$875 Total pay: \$125 + \$875 = \$1,000	
Proposed Policy		
Option 1:	Flex time as Current Policy	
Option 2:		
Paid Vacation Time	8 hours Vacation	
Flexed Vacation Time	0 hours returned to Leave Bank	
Total Pay for Week	Vacation Time: 8 hours Vacation x \$25 per hour = \$200 Regular Time: 35 hours Regular x \$25 per hour = \$875 Total pay: \$200 + \$875 = \$1,075	



Questions?



City Council Meeting

Agenda Item

Data Sheet

Meeting Date: February 19, 2024

Topic:

Appoint/Reappoint Members to Position 1, 4 and 7 of the Tourism Advisory Committee.

Background:

The Tourism Advisory Committee Resident Position 1(Matthew Harris), Business Position 4 (Holly Cook), and Hotel Position 7 (Melanie Sutton) expired on December 5, 2023.

The city has received new applications from the following individuals who have expressed an interest in serving on the TAC:

Katelyn Whisler – resident / Hotel
Brock Hendrickson - resident

The Tourism Advisory Committee unanimously recommend reappointments during February 13, 2024, Special Meeting for both Resident Position 1 (M. Harris), and Hotel Position 7 (M. Sutton). Business Position 4 (H. Cook) who no longer wishes to serve on the Board remains vacant.

Neither applicant meets the criteria for Business Position No. 4, and City of Tomball has posted on social media that we are seeking applications to fill this position.

Origination: CSO

Recommendation:

Approve Minutes

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

FUNDING (IF APPLICABLE)

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

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

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

TOMBALL TOURISM ADVISORY COMMITTEE – 3-Year Terms

Resident Positions

Matthew Harris – Position 1
(Apptd. 2022)

term expired: 12-5-2023

Angie Johnson – Position 2
(Apptd. 2022)

term expires: 12-5-2024

Jeffie Cappadonna – Position 3
(Apptd. 2010/2013/2016/2019/2022)

term expires: 12-5-2025

Business Positions

(Chair) Holly Cook – Position 4
(Apptd. 2010/2011/2014/2017/2020)

term expired: 12-5-2023

Kailey Moore – Position 5
(Apptd. 2021)

term expires: 12-05-2024

Ted Mielke – Position 6
(Apptd. 2018/2021/2022)

term expires: 12-5-2025

Hotel Positions

Melanie Sutton – Position 7
(Apptd. 2018/2020)

term expired: 12-5-2023

(Vice Chair) Raymond Francois – Position 8
(Apptd. 2019, 2021)

term expires: 12-5-2024

Paige Cassel – Position 9
(Apptd. 4/20/2015, 2016, 2019/2022)

term expires: 12-5-2025

COUNCIL LIAISON

Mayor Klein Quinn
Alternate: Councilman Ford



CITY OF TOMBALL

APPLICATION FOR THE TOURISM ADVISORY COMMITTEE

As an Applicant for the **Tourism Advisory Committee**, your application will be public information. All appointments are made by the Tomball City Council. Incumbents whose terms expire may be considered for reappointment unless they indicate non-interest or have been appointed to two (2) consecutive terms. A member who is absent for more than 25% of called meetings in any twelve consecutive months or absent from more than two consecutive meetings, for other than medical reasons, will be automatically removed from service. Applicant must be a citizen of the United States and must reside within the city limits of Tomball unless otherwise stated in the position announcement. Applications will be kept on file for two years and will expire at the end of two years; for instance, an application dated in 2022 will expire on December 31, 2024.

Please Type or Print Clearly:

Date: 9/19/2022

Name: Matthew Harris

Phone: 281-731-4971

(Home)

Address:

Phone: 281-731-4971

(Work)

Email mwh32777@yahoo.com

I have lived in Tomball 1.5 years.

I am X am not a U.S. Citizen

I am applying as (please check all that apply):

 X

a Tomball Resident, residing within the city limits of Tomball

an Owner, Officer or Director of a business, other than a hotel or motel,

with offices within the city limits of Tomball

an Employee or Officer of a hotel or motel located in the
city limits of Tomball

Occupation: Senior Manager - Global Environmental, Health and Safety for Expeditors International

Professional and/or Community Activities: None currently

Additional Pertinent Information/References: _____

Please attach a short biography to this application.

Briefly tell us why you would like to be considered for appointment to a City of Tomball Board/Commission.

Growing up in the Spring area, i have always been an active member of my community. Five years ago,
my company transferred to Washington State, but when an opportunity presented itself to return to Texas
we were excited to do so. In Washington I was a member of our local HOA. I am looking for additional
opportunity to give back to my community through public service.

Please complete the attached Conflict of Interest Questionnaire (CIQ), Conflict of Interest Statement (CIS), Board Member Election on Disclosure, and Appendix D (page 33) Acknowledgment of Receipt and Understanding from the Boards, Commissions, and Committees Handbook.

Applications for the Tourism Advisory Committee will be kept on file in the City Secretary's office for two years.

I AM INTERESTED IN SERVING ON THE TOURISM ADVISORY COMMITTEE.



Matthew W Harris

Signature of Applicant
(Must be signed/signature typed in)

Please return this application to:

City Secretary
City of Tomball
401 Market Street
Tomball, TX 77375
cso@ci.tomball.tx.us
office: 281-290-1002
fax: 281-351-6256

Attachments: Conflict of Interest Questionnaire
Conflict of Interest Statement
Election on Disclosure
Acknowledgment of Receipt and Understanding (Page 33, Handbook)

CONFLICT OF INTEREST QUESTIONNAIRE
For vendor doing business with local governmental entity

FORM CIQ

This questionnaire reflects changes made to the law by H.B. 23, 84th Leg., Regular Session.

This questionnaire is being filed in accordance with Chapter 176, Local Government Code, by a vendor who has a business relationship as defined by Section 176.001(1)-(a) with a local governmental entity and the vendor meets requirements under Section 176.005(a).

By law this questionnaire must be filed with the records administrator of the local governmental entity not later than the 7th business day after the date the vendor becomes aware of facts that require the statement to be filed. See Section 176.005(a-1), Local Government Code.

A vendor commits an offense if the vendor knowingly violates Section 176.005, Local Government Code. An offense under this section is a misdemeanor.

OFFICE USE ONLY

Date Received

1 Name of vendor who has a business relationship with local governmental entity.

2 ☐ Check this box if you are filing an update to a previously filed questionnaire. (The law requires that you file an updated completed questionnaire with the appropriate filing authority not later than the 7th business day after the date on which you became aware that the originally filed questionnaire was incomplete or inaccurate.)

3 Name of local government officer about whom the information is being disclosed.

Name of Officer

4 Describe each employment or other business relationship with the local government officer, or a family member of the officer, as described by Section 176.003(a)(2)(A). Also describe any family relationship with the local government officer. Complete subparts A and B for each employment or business relationship described. Attach additional pages to this Form CIQ as necessary.

A. Is the local government officer or a family member of the officer receiving or likely to receive taxable income other than investment income from the vendor?

☐ Yes ☐ No

B. Is the vendor receiving or likely to receive taxable income, other than investment income, from or at the direction of the local government officer or a family member of the officer AND the taxable income is not received from the local governmental entity?

☐ Yes ☐ No

5 Describe each employment or business relationship that the vendor named in Section 1 maintains with a corporation or other business entity with respect to which the local government officer serves as an officer or director, or holds an ownership interest of one percent or more.

6 ☐ Check this box if the vendor has given the local government officer or a family member of the officer one or more gifts as described in Section 176.003(a)(2)(B), excluding gifts described in Section 176.003(a-1).

7

Signature of vendor doing business with the governmental entity

Date

LOCAL GOVERNMENT OFFICER CONFLICTS DISCLOSURE STATEMENT

FORM CIS

(Instructions for completing and filing this form are provided on the next page.)

<p>This questionnaire reflects changes made to the law by H.B. 23, 84th Leg., Regular Session.</p> <p>This is the notice to the appropriate local governmental entity that the following local government officer has become aware of facts that require the officer to file this statement in accordance with Chapter 176, Local Government Code.</p> <p>1 Name of Local Government Officer</p> <p>2 Office Held</p> <p>3 Name of vendor described by Sections 176.001(7) and 176.003(a), Local Government Code</p> <p>4 Description of the nature and extent of each employment or other business relationship and each family relationship with vendor named in item 3.</p> <p>5 List gifts accepted by the local government officer and any family member, if aggregate value of the gifts accepted from vendor named in item 3 exceeds \$100 during the 12-month period described by Section 176.003(a)(2)(B).</p> <p>Date Gift Accepted _____ Description of Gift _____</p> <p>Date Gift Accepted _____ Description of Gift _____</p> <p>Date Gift Accepted _____ Description of Gift _____</p> <p style="text-align: center;">(attach additional forms as necessary)</p> <p>6 SIGNATURE I swear under penalty of perjury that the above statement is true and correct. I acknowledge that the disclosure applies to each family member (as defined by Section 176.001(2), Local Government Code) of this local government officer. I also acknowledge that this statement covers the 12-month period described by Section 176.003(a)(2)(B), Local Government Code.</p> <p style="text-align: right;">_____ Signature of Local Government Officer</p> <p style="text-align: center;">Please complete either option below:</p> <p>(1) Affidavit</p> <p>NOTARY STAMP/SEAL</p> <p>Sworn to and subscribed before me by _____ this the _____ day of _____</p> <p>20_____, to certify which witness my hand and seal of office.</p> <p>Signature of officer administering oath _____ Printed name of officer administering oath _____ Title of officer administering oath _____</p> <p style="text-align: center;">OR</p> <p>(2) Unsworn Declaration</p> <p>My name is <u>Matthew Harris</u> and my date of birth is _____</p> <p>My address is _____ <u>Tomball</u> <u>TX</u> <u>77375</u> <u>USA</u></p> <p style="text-align: center;">(street) (city) (state) (zip code) (country)</p> <p>Executed in <u>Harris</u> County, State of <u>TX</u>, on the <u>19</u> day of <u>September</u>, <u>22</u></p> <p style="text-align: center;">(month) (year)</p> <p style="text-align: right;">_____ Signature of Local Government Officer (Declarant)</p>	<p style="text-align: center;">OFFICE USE ONLY</p> <p>Date Received _____</p>
--	--



Board Member Election on Disclosure

An elected/appointed Board Member may choose whether or not to allow public access to the information in the custody of the City relating to the Board Member's home address, home telephone number, cellular and pager numbers (if not paid for by City), emergency contact information, personal email address, and information that reveals whether the person has family members.

Each Board Member shall state his/her choice in writing to the City Secretary's Office. If a Board Member elects not to allow public access to this information, the information is protected by Sections 552.024 and 552.117 of the Public Information Act and rulings of the Texas Attorney General. If a Board Member fails to report his/her choice, the information may be subject to public access.

If during the course of their term a Board Member wishes to close or open public access to the information, the individual may request in writing to the City Secretary's Office to close or open access as the case may be. A Board Member may request to close or open public access to the information by submitting a written request to the City Secretary's Office. Only the City Secretary's Office is allowed to disclose the information listed above.

(Please strike through any information that you do not wish to be made accessible to the public)

**Please complete the information below and return
to the City Secretary's Office within fourteen days of receipt.**

☒ I **DO** elect public access to my: (please indicate items you would like available, if any)

☐ home address

☒ home telephone number

☒ personal email address

☐ cell or pager numbers not paid for by the City

☐ emergency contact information

☐ information that reveals whether I have family members.

☐ I **DO NOT** elect public access to my home address, home telephone number, cell or pager numbers, emergency contact information, or any information that reveals whether I have family members.


Board Member's Signature

9/19/2022

Date

Matthew W Harris

Board Member's Printed Name

Appendix D

Acknowledgment of Receipt and Understanding

I acknowledge that I have received a copy of the City of Tomball Boards, Commissions and Committees Handbook on 9/19/2022 (date).

I understand the eligibility requirements, policies, and procedures set forth in this Handbook.

I have read and understood the contents of this handbook and will act in accordance with these eligibility requirements, policies and procedures as a condition of my appointment to a board, commission, or committee.

I have read and understood the Standards of Conduct expected by the City of Tomball and I agree to act in accord with the Standards of Conduct as a condition of my appointment by the City of Tomball.

Finally, I understand that the contents of this Handbook are policies and guidelines established by the City Council of the City of Tomball and that the City Council may amend the Handbook at its discretion.

Please read this Handbook carefully to understand these conditions of appointment before you sign this document.



Signature of Applicant for Appointment

Matthew w Harris

Printed Name of Applicant

Date:

Matthew W Harris

I was born in Denver CO in 1977 and moved to Texas when I was 11 years old. My childhood was filled with wonderful family and lots of competitive sports. I attended Klein High School and later attended Stephen F Austin university. Like many young people, I proved to not be quite ready for the responsibilities of college and returned home in 1995. From there, I entered the workforce and started in with what was to be my first career. I worked at a local Tex-Mex restaurant and found my niche as both a server/bartender and later a manager. The company allowed me to formalize my passion and I later attended school where I received a Culinary degree. I continued to work within the company, steadily climbing the ladder. After steady employment with the same firm for 10 years, I left for an opportunity to open and operate my own restaurants. As you can imagine, this is relentless work and eventually it became too much and I left the hospitality field all together.

It was here where I entered my second career, vastly different than the first. I started working for a global logistics firm in their air export department. Fortunately for me, the company quickly took notice of my insatiable desire to perform well and I again started climbing the ladder. After four years, I was offered a senior level position located in our corporate headquarters in Seattle. After three years in Seattle, the opportunity presented itself to return to Texas which is where I find myself now.



CITY OF TOMBALL

APPLICATION FOR THE TOURISM ADVISORY COMMITTEE

As an Applicant for the **Tourism Advisory Committee**, your application will be public information. All appointments are made by the Tomball City Council. Incumbents whose terms expire may be considered for reappointment unless they indicate non-interest or have been appointed to two (2) consecutive terms. A member who is absent for more than 25% of called meetings in any twelve consecutive months or absent from more than two consecutive meetings, for other than medical reasons, will be automatically removed from service. Applicant must be a citizen of the United States and must reside within the city limits of Tomball unless otherwise stated in the position announcement. Applications will be kept on file for two years and will expire at the end of two years; for instance, an application dated in 2022 will expire on December 31, 2024.

Please Type or Print Clearly:

Date: 9/19/22

Name: Melanie Sutton

Phone: 281-726-1472

Address: 14303 Medical Complex Drive, Tomball, TX 77377

(Home)

Phone: 281-726-1472

(Work)

Email msutton@clarushotels.com

I have lived in Tomball 0 years.

I am x am not ___ a U.S. Citizen

I am applying as (please check all that apply):

- a Tomball Resident, residing within the city limits of Tomball
 an Owner, Officer or Director of a business, other than a hotel or motel,
with offices within the city limits of Tomball
 x an Employee or Officer of a hotel or motel located in the
city limits of Tomball

Occupation: Area Manager for Clarus Hotels, owner & management company of Residence Inn
by Marriott at 14303 Medical Complex Drive, Tomball, TX 77377

Professional and/or Community Activities: _____

Additional Pertinent Information/References: _____

Please attach a short biography to this application.

Briefly tell us why you would like to be considered for appointment to a City of Tomball Board/Commission.

I have been involved with the management and operations of the Residence Inn by Marriott in Tomball since 2016. Working with the TAC board has provided me the opportunity to work with other board members and community members to assist in working towards the increase of tourism and travel to the city of Tomball.

Please complete the attached Conflict of Interest Questionnaire (CIQ), Conflict of Interest Statement (CIS), Board Member Election on Disclosure, and Appendix D (page 33) Acknowledgment of Receipt and Understanding from the Boards, Commissions, and Committees Handbook.

Applications for the Tourism Advisory Committee will be kept on file in the City Secretary's office for two years.

I AM INTERESTED IN SERVING ON THE TOURISM ADVISORY COMMITTEE.

Melanie Sutton
Signature of Applicant
(Must be signed/signature typed in)

Please return this application to:

City Secretary
City of Tomball
401 Market Street
Tomball, TX 77375
cso@ci.tomball.tx.us
office: 281-290-1002
fax: 281-351-6256

Attachments: Conflict of Interest Questionnaire
Conflict of Interest Statement
Election on Disclosure
Acknowledgment of Receipt and Understanding (Page 33, Handbook)

CONFLICT OF INTEREST QUESTIONNAIRE
For vendor doing business with local governmental entity

FORM CIQ

This questionnaire reflects changes made to the law by H.B. 23, 84th Leg., Regular Session.

This questionnaire is being filed in accordance with Chapter 176, Local Government Code, by a vendor who has a business relationship as defined by Section 176.001(1-a) with a local governmental entity and the vendor meets requirements under Section 176.006(a).

By law this questionnaire must be filed with the records administrator of the local governmental entity not later than the 7th business day after the date the vendor becomes aware of facts that require the statement to be filed. See Section 176.006(a-1), Local Government Code.

A vendor commits an offense if the vendor knowingly violates Section 176.006, Local Government Code. An offense under this section is a misdemeanor.

OFFICE USE ONLY

Date Received

1 Name of vendor who has a business relationship with local governmental entity.

Melanie Sutton-Clarus Hotels

2 ☐ Check this box if you are filing an update to a previously filed questionnaire. (The law requires that you file an updated completed questionnaire with the appropriate filing authority not later than the 7th business day after the date on which you became aware that the originally filed questionnaire was incomplete or inaccurate.)

3 Name of local government officer about whom the information is being disclosed.

Melanie Sutton

Name of Officer

4 Describe each employment or other business relationship with the local government officer, or a family member of the officer, as described by Section 176.003(a)(2)(A). Also describe any family relationship with the local government officer. Complete subparts A and B for each employment or business relationship described. Attach additional pages to this Form CIQ as necessary.

Residence Inn by Marriott
14303 Medical Complex Drive
Tomball, TX 77377

A. Is the local government officer or a family member of the officer receiving or likely to receive taxable income, other than investment income, from the vendor?

☐

Yes

☒

No

B. Is the vendor receiving or likely to receive taxable income, other than investment income, from or at the direction of the local government officer or a family member of the officer AND the taxable income is not received from the local governmental entity?

☐

Yes

☒

No

5 Describe each employment or business relationship that the vendor named in Section 1 maintains with a corporation or other business entity with respect to which the local government officer serves as an officer or director, or holds an ownership interest of one percent or more.

Area Manager for Clarus Hotels, Residence Inn by Marriott Houston, Tomball

6 ☐ Check this box if the vendor has given the local government officer or a family member of the officer one or more gifts as described in Section 176.003(a)(2)(B), excluding gifts described in Section 176.003(a-1).

7 Melanie Sutton

Signature of vendor doing business with the governmental entity

9/19/22

Date

CONFLICT OF INTEREST QUESTIONNAIRE
For vendor doing business with local governmental entity

A complete copy of Chapter 176 of the Local Government Code may be found at <http://www.statutes.legis.state.tx.us/Docs/LG/htm/LG.176.htm>. For easy reference, below are some of the sections cited on this form.

Local Government Code § 176.001(1-a): "Business relationship" means a connection between two or more parties based on commercial activity of one of the parties. The term does not include a connection based on:

- (A) a transaction that is subject to rate or fee regulation by a federal, state, or local governmental entity or an agency of a federal, state, or local governmental entity;
- (B) a transaction conducted at a price and subject to terms available to the public; or
- (C) a purchase or lease of goods or services from a person that is chartered by a state or federal agency and that is subject to regular examination by, and reporting to, that agency.

Local Government Code § 176.003(a)(2)(A) and (B):

(a) A local government officer shall file a conflicts disclosure statement with respect to a vendor if:

(2) the vendor:

(A) has an employment or other business relationship with the local government officer or a family member of the officer that results in the officer or family member receiving taxable income, other than investment income, that exceeds \$2,500 during the 12-month period preceding the date that the officer becomes aware that

(i) a contract between the local governmental entity and vendor has been executed;

or

(ii) the local governmental entity is considering entering into a contract with the vendor;

(B) has given to the local government officer or a family member of the officer one or more gifts that have an aggregate value of more than \$100 in the 12-month period preceding the date the officer becomes aware that:

(i) a contract between the local governmental entity and vendor has been executed; or

(ii) the local governmental entity is considering entering into a contract with the vendor.

Local Government Code § 176.006(a) and (a-1)

(a) A vendor shall file a completed conflict of interest questionnaire if the vendor has a business relationship with a local governmental entity and:

(1) has an employment or other business relationship with a local government officer of that local governmental entity, or a family member of the officer, described by Section 176.003(a)(2)(A);

(2) has given a local government officer of that local governmental entity, or a family member of the officer, one or more gifts with the aggregate value specified by Section 176.003(a)(2)(B), excluding any gift described by Section 176.003(a-1); or

(3) has a family relationship with a local government officer of that local governmental entity.

(a-1) The completed conflict of interest questionnaire must be filed with the appropriate records administrator not later than the seventh business day after the later of:

(1) the date that the vendor:

(A) begins discussions or negotiations to enter into a contract with the local governmental entity; or

(B) submits to the local governmental entity an application, response to a request for proposals or bids, correspondence, or another writing related to a potential contract with the local governmental entity; or

(2) the date the vendor becomes aware:

(A) of an employment or other business relationship with a local government officer, or a family member of the officer, described by Subsection (a);

(B) that the vendor has given one or more gifts described by Subsection (a); or

(C) of a family relationship with a local government officer.

LOCAL GOVERNMENT OFFICER CONFLICTS DISCLOSURE STATEMENT

FORM CIS

(Instructions for completing and filing this form are provided on the next page.)

This questionnaire reflects changes made to the law by H.B. 23, 84th Leg., Regular Session.

This is the notice to the appropriate local governmental entity that the following local government officer has become aware of facts that require the officer to file this statement in accordance with Chapter 176, Local Government Code.

OFFICE USE ONLY

Date Received

1 Name of Local Government Officer

Melanie Sutton

2 Office Held

Tourism Advisory Council position #7

3 Name of vendor described by Sections 176.001(7) and 176.003(a), Local Government Code

4 Description of the nature and extent of each employment or other business relationship and each family relationship with vendor named in item 3.

5 List gifts accepted by the local government officer and any family member, if aggregate value of the gifts accepted from vendor named in item 3 exceeds \$100 during the 12-month period described by Section 176.003(a)(2)(B).

Date Gift Accepted _____ Description of Gift _____

Date Gift Accepted _____ Description of Gift _____

Date Gift Accepted _____ Description of Gift _____

(attach additional forms as necessary)

6 SIGNATURE

I swear under penalty of perjury that the above statement is true and correct. I acknowledge that the disclosure applies to each family member (as defined by Section 176.001(2), Local Government Code) of this local government officer. I also acknowledge that this statement covers the 12-month period described by Section 176.003(a)(2)(B), Local Government Code.

Melanie Sutton

Signature of Local Government Officer

Please complete either option below:

(1) Affidavit

NOTARY STAMP/SEAL

Sworn to and subscribed before me by _____ this the _____ day of _____

20_____, to certify which, witness my hand and seal of office.

Signature of officer administering oath

Printed name of officer administering oath

Title of officer administering oath

OR

(2) Unsworn Declaration

My name is Melanie Sutton and my date of birth is _____

My address is _____
(street) (city) (state) (zip code) (country)

Executed in _____ County, State of _____, on the _____ day of _____, 20_____
(month) (year)

Signature of Local Government Officer (Declarant)

LOCAL GOVERNMENT OFFICER CONFLICTS DISCLOSURE STATEMENT

Section 176.003 of the Local Government Code requires certain local government officers to file this form. A "local government officer" is defined as a member of the governing body of a local governmental entity; a director, superintendent, administrator, president, or other person designated as the executive officer of a local governmental entity; or an agent of a local governmental entity who exercises discretion in the planning, recommending, selecting, or contracting of a vendor. This form is required to be filed with the records administrator of the local governmental entity not later than 5 p.m. on the seventh business day after the date on which the officer becomes aware of the facts that require the filing of this statement.

A local government officer commits an offense if the officer knowingly violates Section 176.003, Local Government Code. An offense under this section is a misdemeanor.

Refer to chapter 176 of the Local Government Code for detailed information regarding the requirement to file this form.

INSTRUCTIONS FOR COMPLETING THIS FORM

The following numbers correspond to the numbered boxes on the other side.

- 1. Name of Local Government Officer.** Enter the name of the local government officer filing this statement.
- 2. Office Held.** Enter the name of the office held by the local government officer filing this statement.
- 3. Name of vendor described by Sections 176.001(7) and 176.003(a), Local Government Code.** Enter the name of the vendor described by Section 176.001(7), Local Government Code, if the vendor: a) has an employment or other business relationship with the local government officer or a family member of the officer as described by Section 176.003(a)(2)(A), Local Government Code; b) has given to the local government officer or a family member of the officer one or more gifts as described by Section 176.003(a)(2)(B), Local Government Code; or c) has a family relationship with the local government officer as defined by Section 176.001(2-a), Local Government Code.
- 4. Description of the nature and extent of each employment or other business relationship and each family relationship with vendor named in item 3.** Describe the nature and extent of the employment or other business relationship the vendor has with the local government officer or a family member of the officer as described by Section 176.003(a)(2)(A), Local Government Code, and each family relationship the vendor has with the local government officer as defined by Section 176.001(2-a), Local Government Code.
- 5. List gifts accepted, if the aggregate value of the gifts accepted from vendor named in item 3 exceeds \$100.** List gifts accepted during the 12-month period (described by Section 176.003(a)(2)(B), Local Government Code) by the local government officer or family member of the officer from the vendor named in item 3 that in the aggregate exceed \$100 in value.
- 6. Signature.** Signature of local government officer. Complete this section after you finish the rest of this report. You have the option to either: (1) take the completed form to a notary public where you will sign above the first line that says "Signature of Local Government Officer" (an electronic signature is not acceptable) and your signature will be notarized, or (2) sign above both lines that say "Signature of Local Government Officer (Declarant)" (an electronic signature is not acceptable), and fill out the unsworn declaration section.

Local Government Code § 176.001(2-a): "Family relationship" means a relationship between a person and another person within the third degree by consanguinity or the second degree by affinity, as those terms are defined by Subchapter B, Chapter 573, Government Code.

Local Government Code § 176.003(a)(2)(A):

- (a) A local government officer shall file a conflicts disclosure statement with respect to a vendor if:

- (2) the vendor:

(A) has an employment or other business relationship with the local government officer or a family member of the officer that results in the officer or family member receiving taxable income, other than investment income, that exceeds \$2,500 during the 12-month period preceding the date that the officer becomes aware that:

- (i) a contract between the local governmental entity and vendor has been executed; or
- (ii) the local governmental entity is considering entering into a contract with the vendor.



Board Member Election on Disclosure

An elected/appointed Board Member may choose whether or not to allow public access to the information in the custody of the City relating to the Board Member's home address, home telephone number, cellular and pager numbers (if not paid for by City), emergency contact information, personal email address, and information that reveals whether the person has family members.

Each Board Member shall state his/her choice in writing to the City Secretary's Office. If a Board Member elects not to allow public access to this information, the information is protected by Sections 552.024 and 552.117 of the Public Information Act and rulings of the Texas Attorney General. If a Board Member fails to report his/her choice, the information may be subject to public access.

If during the course of their term a Board Member wishes to close or open public access to the information, the individual may request in writing to the City Secretary's Office to close or open access as the case may be. A Board Member may request to close or open public access to the information by submitting a written request to the City Secretary's Office. Only the City Secretary's Office is allowed to disclose the information listed above.

(Please strike through any information that you do not wish to be made accessible to the public)

Please complete the information below and return
to the City Secretary's Office within fourteen days of receipt.

☒ I **DO** elect public access to my: (please indicate items you would like available, if any)

☐ ~~home address~~

☒ home telephone number

☒ personal email address

☒ cell or pager numbers not paid for by the City

☐ ~~emergency contact information~~

☐ ~~information that reveals whether I have family members~~

☐ I **DO NOT** elect public access to my home address, home telephone number, cell or pager numbers, emergency contact information, or any information that reveals whether I have family members.

Melanie Sutton
Board Member's Signature

9/19/22
Date

Melanie Sutton
Board Member's Printed Name

Appendix D

Acknowledgment of Receipt and Understanding

I acknowledge that I have received a copy of the City of Tomball Boards, Commissions and Committees Handbook on 9/19/22 (date).

I understand the eligibility requirements, policies, and procedures set forth in this Handbook.

I have read and understood the contents of this handbook and will act in accordance with these eligibility requirements, policies and procedures as a condition of my appointment to a board, commission, or committee.

I have read and understood the Standards of Conduct expected by the City of Tomball and I agree to act in accord with the Standards of Conduct as a condition of my appointment by the City of Tomball.

Finally, I understand that the contents of this Handbook are policies and guidelines established by the City Council of the City of Tomball and that the City Council may amend the Handbook at its discretion.

Please read this Handbook carefully to understand these conditions of appointment before you sign this document.

Melanie Sutton

Signature of Applicant for Appointment

Melanie Sutton

Printed Name of Applicant

9/19/22

Date:

Melanie Sutton is Area Manager for Clarus Hotels. She opened the Residence Inn by Marriott in Tomball as General Manager in 2016 and led her team to the Marriott Platinum Award in 2018. With over 20 years of hotel operations experience, she now has a portfolio of four hotels with Clarus, including the Residence inn by Marriott in Tomball, that she supports. During her non-working hours Melanie



CITY OF TOMBALL

APPLICATION FOR THE TOURISM ADVISORY COMMITTEE

As an Applicant for the **Tourism Advisory Committee**, your application will be public information. All appointments are made by the Tomball City Council. Incumbents whose terms expire may be considered for reappointment unless they indicate non-interest or have been appointed to two (2) consecutive terms. A member who is absent for more than 25% of called meetings in any twelve consecutive months or absent from more than two consecutive meetings, for other than medical reasons, will be automatically removed from service. Applicant must be a citizen of the United States and must reside within the city limits of Tomball unless otherwise stated in the position announcement. Applications will be kept on file for two years and will expire at the end of two years; for instance, an application dated in 2022 will expire on December 31, 2024.

Please Type or Print Clearly:

Date: 2/5/24

Name: Katelyn Whisler

Phone: [REDACTED]

(Home)

Address: [REDACTED]

Phone:

(Work)

Email: [REDACTED]

I have lived in Tomball 7 years.

I am X am not a U.S. Citizen

I am applying as (please check all that apply):

- X a Tomball Resident, residing within the city limits of Tomball
 an Owner, Officer or Director of a business, other than a hotel or motel,
with offices within the city limits of Tomball
X an Employee or Officer of a hotel or motel located in the
city limits of Tomball

Occupation: I am co-owner of Maple Creek Bed and Breakfast, which opened in Tomball in 2016.

Professional and/or Community Activities: Organize annual toy drive for Texas Childrens Hospital.

Additional Pertinent Information/References: _____

Please attach a short biography to this application.

Briefly tell us why you would like to be considered for appointment to a City of Tomball Board/Commission.

I would like to know what our occupancy tax money is being used for. I would also like to learn how my business can help the tourism of Tomball, and how Tomball can help my business.

Please complete the attached Conflict of Interest Questionnaire (CIQ), Conflict of Interest Statement (CIS), Board Member Election on Disclosure, and Appendix D (page 33) Acknowledgment of Receipt and Understanding from the Boards, Commissions, and Committees Handbook.

Applications for the Tourism Advisory Committee will be kept on file in the City Secretary's office for two years.

I AM INTERESTED IN SERVING ON THE TOURISM ADVISORY COMMITTEE.

Katelyn Whisler
Signature of Applicant
(Must be signed/signature typed in)

Please return this application to:

City Secretary
City of Tomball
401 Market Street
Tomball, TX 77375
cs@ci.tomball.tx.us
office: 281-290-1002
fax: 281-351-6256

Attachments: Conflict of Interest Questionnaire
Conflict of Interest Statement
Election on Disclosure
Acknowledgment of Receipt and Understanding (Page 33, Handbook)

CONFLICT OF INTEREST QUESTIONNAIRE**FORM CIQ**

For vendor doing business with local governmental entity

<p>This questionnaire reflects changes made to the law by H.B. 23, 84th Leg., Regular Session.</p> <p>This questionnaire is being filed in accordance with Chapter 176, Local Government Code, by a vendor who has a business relationship as defined by Section 176.001(f-a) with a local governmental entity and the vendor meets requirements under Section 176.006(a).</p> <p>By law this questionnaire must be filed with the records administrator of the local governmental entity not later than the 7th business day after the date the vendor becomes aware of facts that require the statement to be filed. See Section 176.006(a-1), Local Government Code.</p> <p>A vendor commits an offense if the vendor knowingly violates Section 176.006, Local Government Code. An offense under this section is a misdemeanor.</p>	OFFICE USE ONLY Date Received
1 Name of vendor who has a business relationship with local governmental entity. Katelyn Whisler	
2 <input type="checkbox"/> Check this box if you are filing an update to a previously filed questionnaire. (The law requires that you file an updated completed questionnaire with the appropriate filing authority not later than the 7th business day after the date on which you became aware that the originally filed questionnaire was incomplete or inaccurate.)	
3 Name of local government officer about whom the information is being disclosed. _____ Name of Officer	
4 Describe each employment or other business relationship with the local government officer, or a family member of the officer, as described by Section 176.003(a)(2)(A). Also describe any family relationship with the local government officer. Complete subparts A and B for each employment or business relationship described. Attach additional pages to this Form CIQ as necessary. <p>A. Is the local government officer or a family member of the officer receiving or likely to receive taxable income, other than investment income, from the vendor?</p> <p><input type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>B. Is the vendor receiving or likely to receive taxable income, other than investment income, from or at the direction of the local government officer or a family member of the officer AND the taxable income is not received from the local governmental entity?</p> <p><input type="checkbox"/> Yes <input type="checkbox"/> No</p>	
5 Describe each employment or business relationship that the vendor named in Section 1 maintains with a corporation or other business entity with respect to which the local government officer serves as an officer or director, or holds an ownership interest of one percent or more. N/A	
6 <input type="checkbox"/> Check this box if the vendor has given the local government officer or a family member of the officer one or more gifts as described in Section 176.003(a)(2)(B), excluding gifts described in Section 176.003(a-1).	
7 <u>Katelyn Whisler</u> <u>2/5/20</u> Signature of vendor doing business with the governmental entity Date	

CONFLICT OF INTEREST QUESTIONNAIRE

For vendor doing business with local governmental entity

A complete copy of Chapter 176 of the Local Government Code may be found at <http://www.statutes.legis.state.tx.us/Docs/LG/hlm/LG.176.htm>. For easy reference, below are some of the sections cited on this form.

Local Government Code § 176.001(1-a): "Business relationship" means a connection between two or more parties based on commercial activity of one of the parties. The term does not include a connection based on:

- (A) a transaction that is subject to rate or fee regulation by a federal, state, or local governmental entity or an agency of a federal, state, or local governmental entity;
- (B) a transaction conducted at a price and subject to terms available to the public; or
- (C) a purchase or lease of goods or services from a person that is chartered by a state or federal agency and that is subject to regular examination by, and reporting to, that agency.

Local Government Code § 176.003(a)(2)(A) and (B):

- (a) A local government officer shall file a conflicts disclosure statement with respect to a vendor if:

(2) the vendor:

(A) has an employment or other business relationship with the local government officer or a family member of the officer that results in the officer or family member receiving taxable income, other than investment income, that exceeds \$2,500 during the 12-month period preceding the date that the officer becomes aware that

(i) a contract between the local governmental entity and vendor has been executed;

or

(ii) the local governmental entity is considering entering into a contract with the vendor;

(B) has given to the local government officer or a family member of the officer one or more gifts that have an aggregate value of more than \$100 in the 12-month period preceding the date the officer becomes aware that

(i) a contract between the local governmental entity and vendor has been executed; or

(ii) the local governmental entity is considering entering into a contract with the vendor.

Local Government Code § 176.006(a) and (a-1)

- (a) A vendor shall file a completed conflict of interest questionnaire if the vendor has a business relationship with a local governmental entity and:

(1) has an employment or other business relationship with a local government officer of that local governmental entity, or a family member of the officer, described by Section 176.003(a)(2)(A);

(2) has given a local government officer of that local governmental entity, or a family member of the officer, one or more gifts with the aggregate value specified by Section 176.003(a)(2)(B), excluding any gift described by Section 176.003(a-1); or

(3) has a family relationship with a local government officer of that local governmental entity.

- (a-1) The completed conflict of interest questionnaire must be filed with the appropriate records administrator not later than the seventh business day after the later of:

(1) the date that the vendor:

(A) begins discussions or negotiations to enter into a contract with the local governmental entity; or

(B) submits to the local governmental entity an application, response to a request for proposals or bids, correspondence, or another writing related to a potential contract with the local governmental entity; or

(2) the date the vendor becomes aware:

(A) of an employment or other business relationship with a local government officer, or a family member of the officer, described by Subsection (a);

(B) that the vendor has given one or more gifts described by Subsection (a); or

(C) of a family relationship with a local government officer.

**LOCAL GOVERNMENT OFFICER CONFLICTS
DISCLOSURE STATEMENT****FORM CIS**

(Instructions for completing and filling this form are provided on the next page.)

This questionnaire reflects changes made to the law by H.B. 23, 84th Leg., Regular Session.

This is the notice to the appropriate local governmental entity that the following local government officer has become aware of facts that require the officer to file this statement in accordance with Chapter 176, Local Government Code

OFFICE USE ONLY

Date Received

1 Name of Local Government Officer
Katelyn Whisler2 Office Held
Tourism Advisory Committee3 Name of vendor described by Sections 176.001(7) and 176.003(a), Local Government Code
N/A

4 Description of the nature and extent of each employment or other business relationship and each family relationship with vendor named in Item 3.

5 List gifts accepted by the local government officer and any family member, if aggregate value of the gifts accepted from vendor named in item 3 exceeds \$100 during the 12-month period described by Section 176.003(a)(2)(B).

Date Gift Accepted _____ Description of Gift _____

Date Gift Accepted _____ Description of Gift _____

Date Gift Accepted _____ Description of Gift _____

(attach additional forms as necessary)

6 **SIGNATURE** I swear under penalty of perjury that the above statement is true and correct. I acknowledge that the disclosure applies to each family member (as defined by Section 176.001(2), Local Government Code) of this local government officer. I also acknowledge that this statement covers the 12-month period described by Section 176.003(a)(2)(B), Local Government CodeKatelyn Whisler
Signature of Local Government Officer**Please complete either option below:**

(1) Affidavit

NOTARY STAMP/SEAL

Sworn to and subscribed before me by _____ this the _____ day of _____
20 _____, to certify which, witness my hand and seal of office.

Signature of officer administering oath

Printed name of officer administering oath

Title of officer administering oath

OR

(2) Unsworn Declaration

My name is Katelyn Whisler and my date of birth is 03/31/1993

My address is _____

Executed in Harris (street) County, State of Texas (city) on the 5th (state) (zip code) day of 20 (country)
(month) (year)

Signature of Local Government Officer (Declarant)

Form provided by Texas Ethics Commission

www.ethics.state.tx.us

Revised 8/17/2020

LOCAL GOVERNMENT OFFICER CONFLICTS DISCLOSURE STATEMENT

Section 176.003 of the Local Government Code requires certain local government officers to file this form. A "local government officer" is defined as a member of the governing body of a local governmental entity; a director, superintendent, administrator, president, or other person designated as the executive officer of a local governmental entity; or an agent of a local governmental entity who exercises discretion in the planning, recommending, selecting, or contracting of a vendor. This form is required to be filed with the records administrator of the local governmental entity not later than 5 p.m. on the seventh business day after the date on which the officer becomes aware of the facts that require the filing of this statement.

A local government officer commits an offense if the officer knowingly violates Section 176.003, Local Government Code. An offense under this section is a misdemeanor.

Refer to chapter 176 of the Local Government Code for detailed information regarding the requirement to file this form.

INSTRUCTIONS FOR COMPLETING THIS FORM

The following numbers correspond to the numbered boxes on the other side.

1. **Name of Local Government Officer.** Enter the name of the local government officer filing this statement.
2. **Office Held.** Enter the name of the office held by the local government officer filing this statement.
3. **Name of vendor described by Sections 176.001(7) and 176.003(a), Local Government Code.** Enter the name of the vendor described by Section 176.001(7), Local Government Code, if the vendor: a) has an employment or other business relationship with the local government officer or a family member of the officer as described by Section 176.003(a)(2)(A), Local Government Code; b) has given to the local government officer or a family member of the officer one or more gifts as described by Section 176.003(a)(2)(B), Local Government Code; or c) has a family relationship with the local government officer as defined by Section 176.001(2-a), Local Government Code.
4. **Description of the nature and extent of each employment or other business relationship and each family relationship with vendor named in Item 3.** Describe the nature and extent of the employment or other business relationship the vendor has with the local government officer or a family member of the officer as described by Section 176.003(a)(2)(A), Local Government Code, and each family relationship the vendor has with the local government officer as defined by Section 176.001(2-a), Local Government Code.
5. **List gifts accepted, if the aggregate value of the gifts accepted from vendor named in item 3 exceeds \$100.** List gifts accepted during the 12-month period (described by Section 176.003(a)(2)(B), Local Government Code) by the local government officer or family member of the officer from the vendor named in item 3 that in the aggregate exceed \$100 in value.
6. **Signature.** Signature of local government officer. Complete this section after you finish the rest of this report. You have the option to either: (1) take the completed form to a notary public where you will sign above the first line that says "Signature of Local Government Officer" (an electronic signature is not acceptable) and your signature will be notarized, or (2) sign above both lines that say "Signature of Local Government Officer (Declarant)" (an electronic signature is not acceptable), and fill out the unsworn declaration section.

Local Government Code § 176.001(2-a): "Family relationship" means a relationship between a person and another person within the third degree by consanguinity or the second degree by affinity, as those terms are defined by Subchapter B, Chapter 573, Government Code.

Local Government Code § 176.003(a)(2)(A):

- (a) A local government officer shall file a conflicts disclosure statement with respect to a vendor if:

...
(2) the vendor:

(A) has an employment or other business relationship with the local government officer or a family member of the officer that results in the officer or family member receiving taxable income, other than investment income, that exceeds \$2,500 during the 12-month period preceding the date that the officer becomes aware that:

- (i) a contract between the local governmental entity and vendor has been executed; or
- (ii) the local governmental entity is considering entering into a contract with the vendor.



Board Member Election on Disclosure

An elected/appointed Board Member may choose whether or not to allow public access to the information in the custody of the City relating to the Board Member's home address, home telephone number, cellular and pager numbers (if not paid for by City), emergency contact information, personal email address, and information that reveals whether the person has family members.

Each Board Member shall state his/her choice in writing to the City Secretary's Office. If a Board Member elects not to allow public access to this information, the information is protected by Sections 552.024 and 552.117 of the Public Information Act and rulings of the Texas Attorney General. If a Board Member fails to report his/her choice, the information may be subject to public access.

If during the course of their term a Board Member wishes to close or open public access to the information, the individual may request in writing to the City Secretary's Office to close or open access as the case may be. A Board Member may request to close or open public access to the information by submitting a written request to the City Secretary's Office. Only the City Secretary's Office is allowed to disclose the information listed above.

(Please strike through any information that you do not wish to be made accessible to the public)

Please complete the information below and return
to the City Secretary's Office within fourteen days of receipt.

☐ I **DO** elect public access to my: (please indicate items you would like available, if any)

___ home address

___ home telephone number

___ personal email address

___ cell or pager numbers not paid for by the City

___ emergency contact information

___ information that reveals whether I have family members.

☒ I **DO NOT** elect public access to my home address, home telephone number, cell or pager numbers, emergency contact information, or any information that reveals whether I have family members.

Katelyn Whisler
Board Member's Signature

02/5/2024
Date

Katelyn Whisler
Board Member's Printed Name

Appendix D

Acknowledgment of Receipt and Understanding

I acknowledge that I have received a copy of the City of Tomball Boards, Commissions and Committees Handbook on 2/5/24 (date).

I understand the eligibility requirements, policies, and procedures set forth in this Handbook.

I have read and understood the contents of this handbook and will act in accordance with these eligibility requirements, policies and procedures as a condition of my appointment to a board, commission, or committee.

I have read and understood the Standards of Conduct expected by the City of Tomball and I agree to act in accord with the Standards of Conduct as a condition of my appointment by the City of Tomball.

Finally, I understand that the contents of this Handbook are policies and guidelines established by the City Council of the City of Tomball and that the City Council may amend the Handbook at its discretion.

Please read this Handbook carefully to understand these conditions of appointment before you sign this document.

Katelyn Whisler
Signature of Applicant for Appointment

Katelyn Whisler
Printed Name of Applicant

2/5/24
Date:

Requested Biography of Katelyn Whisler

Hello! I was born in San Diego, California in 1993, but moved to Houston, Texas soon after once my father finished his time in the U.S. Navy. I grew up in the Spring area, and I graduated from Houston Baptist University with a double major in Business Marketing and Business Management in 2014. [REDACTED]

[REDACTED] Soon after graduation, I started working at HR&P as a Customer Relations Specialist and assisted in onboarding new clients onto the payroll system. [REDACTED]

[REDACTED] business, Maple Creek Bed and Breakfast, in Tomball. We've been successfully hosting guests from all over the world and have been a part of so many special memories for the last seven years. In my free time, I enjoy reading, cheering on the Astros. [REDACTED]



CITY OF TOMBALL

APPLICATION FOR THE TOURISM ADVISORY COMMITTEE

As an Applicant for the **Tourism Advisory Committee**, your application will be public information. All appointments are made by the Tomball City Council. Incumbents whose terms expire may be considered for reappointment unless they indicate non-interest or have been appointed to two (2) consecutive terms. A member who is absent for more than 25% of called meetings in any twelve consecutive months or absent from more than two consecutive meetings, for other than medical reasons, will be automatically removed from service. Applicant must be a citizen of the United States and must reside within the city limits of Tomball unless otherwise stated in the position announcement. **Applications will be kept on file for two years and will expire at the end of two years; for instance, an application dated in 2022 will expire on December 31, 2024.**

Please Type or Print Clearly:

Date: 12/6/23

Name: Randall Brock Hendrickson

Phone: [REDACTED]

(Home)

Address: [REDACTED]

Phone: [REDACTED]

(Work)

Email: [REDACTED]

I have lived in Tomball 12 years.

I am ☒ am not ☐ a U.S. Citizen

I am applying as (please check all that apply):

- ☒ a Tomball Resident, residing within the city limits of Tomball
☐ an Owner, Officer or Director of a business, other than a hotel or motel,
with offices within the city limits of Tomball
☐ an Employee or Officer of a hotel or motel located in the
city limits of Tomball

Occupation: Senior operations engineer for Citation Oil & Gas Corp (COGC) coordinating all drilling, completion, & production
operations in Indiana, NE Utah, & SE Illinois

Professional and/or Community Activities: Society of Petroleum Engineers - Four Corners Section - past President,
COGC college recruiting coordinator, Second Baptist Church deacon, [REDACTED] HOA President

Additional Pertinent Information/References: _____

Please attach a short biography to this application.

Briefly tell us why you would like to be considered for appointment to a City of Tomball Board/Commission.

At the request of Councilman Randy Parr, I served on the Charter Review Committee. I would like to continue to serve the community and aid
with any thoughts, ideas, or experiences in my life

Please complete the attached Conflict of Interest Questionnaire (CIQ), Conflict of Interest Statement (CIS), Board Member Election on Disclosure, and Appendix D (page 33) Acknowledgment of Receipt and Understanding from the Boards, Commissions, and Committees Handbook.

Applications for the Tourism Advisory Committee will be kept on file in the City Secretary's office for two years.

I AM INTERESTED IN SERVING ON THE TOURISM ADVISORY COMMITTEE.



Signature of Applicant
(Must be signed/signature typed in)

Please return this application to:

City Secretary
City of Tomball
401 Market Street
Tomball, TX 77375
cso@ci.tomball.tx.us
office: 281-290-1002
fax: 281-351-6256

Attachments: Conflict of Interest Questionnaire
Conflict of Interest Statement
Election on Disclosure
Acknowledgment of Receipt and Understanding (Page 33, Handbook)

**I AM INTERESTED IN SERVING ON THE ABOVE-INDICATED BOARDS, COMMISSIONS,
AND COMMITTEES.**



Signature of Applicant

(Must be signed/signature typed in)

Please return this application to:

City Secretary
City of Tomball
401 Market Street
Tomball, TX 77375
cso@tomballtx.gov
office: 281-351-5484
fax: 281-351-6256

Attachments: Conflict of Interest Questionnaire
Conflict of Interest Statement
Election on Disclosure
Acknowledgment of Receipt and Understanding (Page 33, Handbook)

City Council Meeting

Agenda Item

Data Sheet

Meeting Date: February 19, 2024

Topic:

Receive a presentation, hold a discussion, and give staff direction regarding the utility rate study and debt forecast.

Background:

On Nov. 20, 2023, consultants from Willdan provided a preliminary report and potential options regarding the utility rate study that had been conducted for the City's water, wastewater, and gas utility rates. Following that report, staff and the consultant worked to refine project costs and projections, as well as look at options to balance the utility CIP needs and debt issuances.

At the Council meeting, representatives from Willdan will provide an update to the utility rate study and discuss recommendations and options with Council. Staff will also provide an updated debt forecast to show how the rate study and CIP work together.

Origination: City Manager's Office

Recommendation:

None

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

FUNDING (IF APPLICABLE)

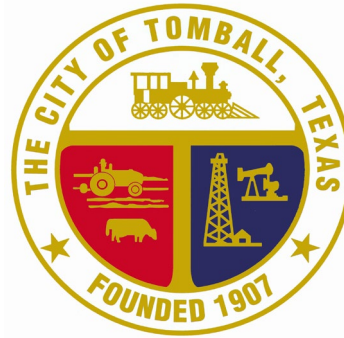
Are funds specifically designated in the current budget for the full amount required for this purpose?

Yes: _____ No: _____

If yes, specify Account Number: # _____

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

Signed:	<u>Jessica Rogers</u>	<u>2/14/2024</u>	Approved by:	_____
	Staff Member	Date		City Manager Date



**12/19/2023
PRESENTATION**

City of Tomball

2023 Water Wastewater and Gas Rate Study and Financial Forecast

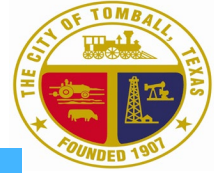
Preliminary Rate Recommendations Council Workshop



Water and Wastewater Utility Analysis and Recommendations

City of Tomball

Current Water and Wastewater Rates



Residential Water Monthly Rates

Base Rate

Small (0-10,000 Gallons)	\$	11.55
Medium (10,001-15,000 Gallons)		13.29
Large (15,001-Above Gallons)		15.29

Usage Charge (per 1,000 Gallons)

-	10,000	3.02
10,001	15,000	3.77
15,001	Above	4.72

Commercial Water Monthly Rates

Small (0-5,000 Gallons)	\$	19.56
Medium (5,001-51,000 Gallons)		31.48
Large (51,001-Above Gallons)		55.11

Usage Charge (per 1,000 Gallons)

-	5,000	3.66
5,001	51,000	4.58
51,001	Above	5.72

Bulk Water Sales

Base Rate	\$	92.27
Usage Charge (per 1,000 Gallons)		5.12

North Harris County Regional Water Authority Surcharge

The City collects additional surcharges, based on rates established by NHCRA, adjusted as surcharge increases

10/1/2023 Surcharge (per 1,000 Gallons)	\$	3.60
---	----	------

Customers Receiving Potable Water

Residential Rates

Base Rate	\$	10.23
Volume Rate (per 1,000 Gallons)		3.57

Commercial Rates

Base Rate	\$	24.91
-----------	----	-------

Usage Charge (per 1,000 Gallons)

Small (0-5,000 Gallons)	4.53
Medium (5,001-51,000 Gallons)	5.65
Large (51,001-Above Gallons)	7.07

Customers Not Receiving Potable Water

Residential Rates

Base Rate	\$	41.93
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Commercial Rates

Base Rate	\$	69.78
Drain Charge (in excess of 15)		2.78

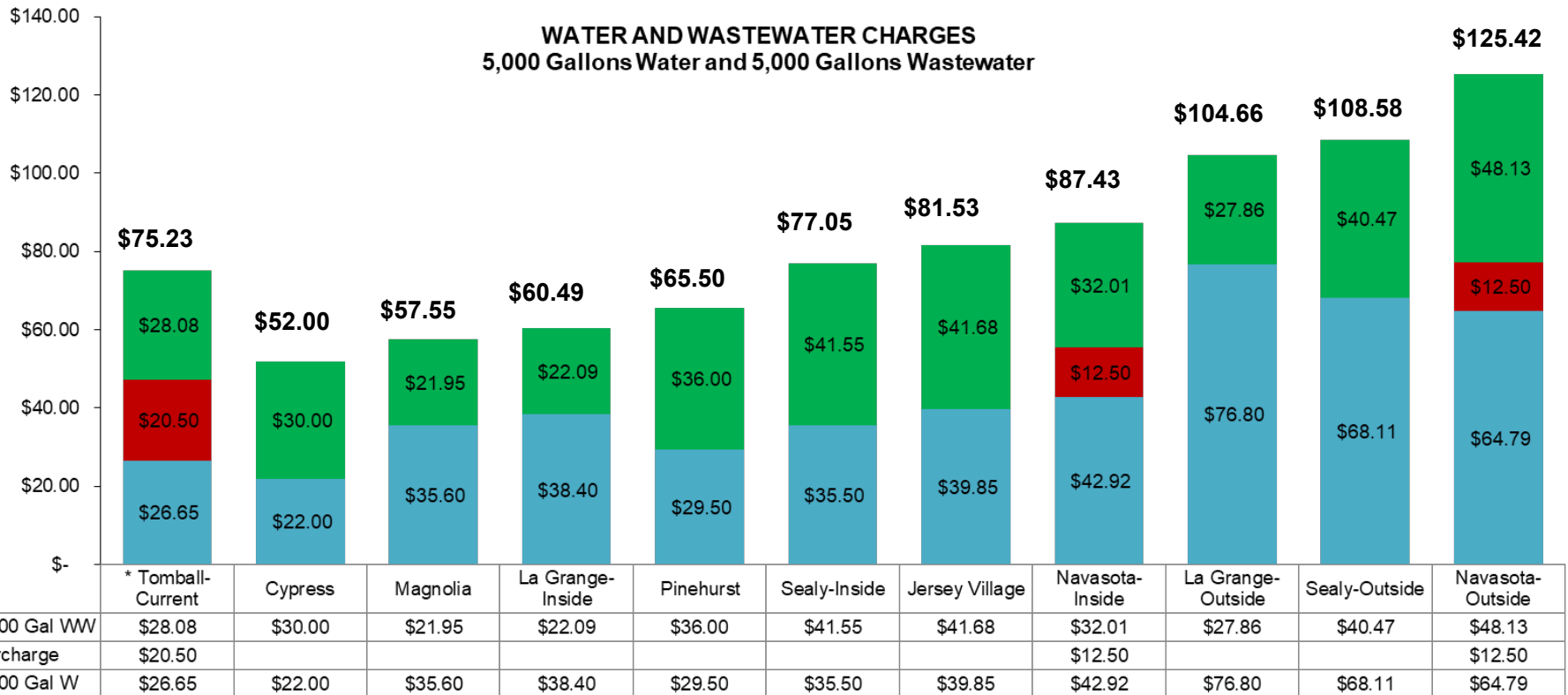
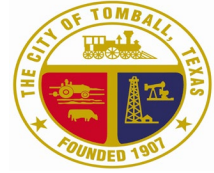
Note 1:

Residential Volumetric Charges are based on the average of water usage in the winter months of November - February

Note 2:

The City does not assess different rates for accounts of any rate class outside of City limits

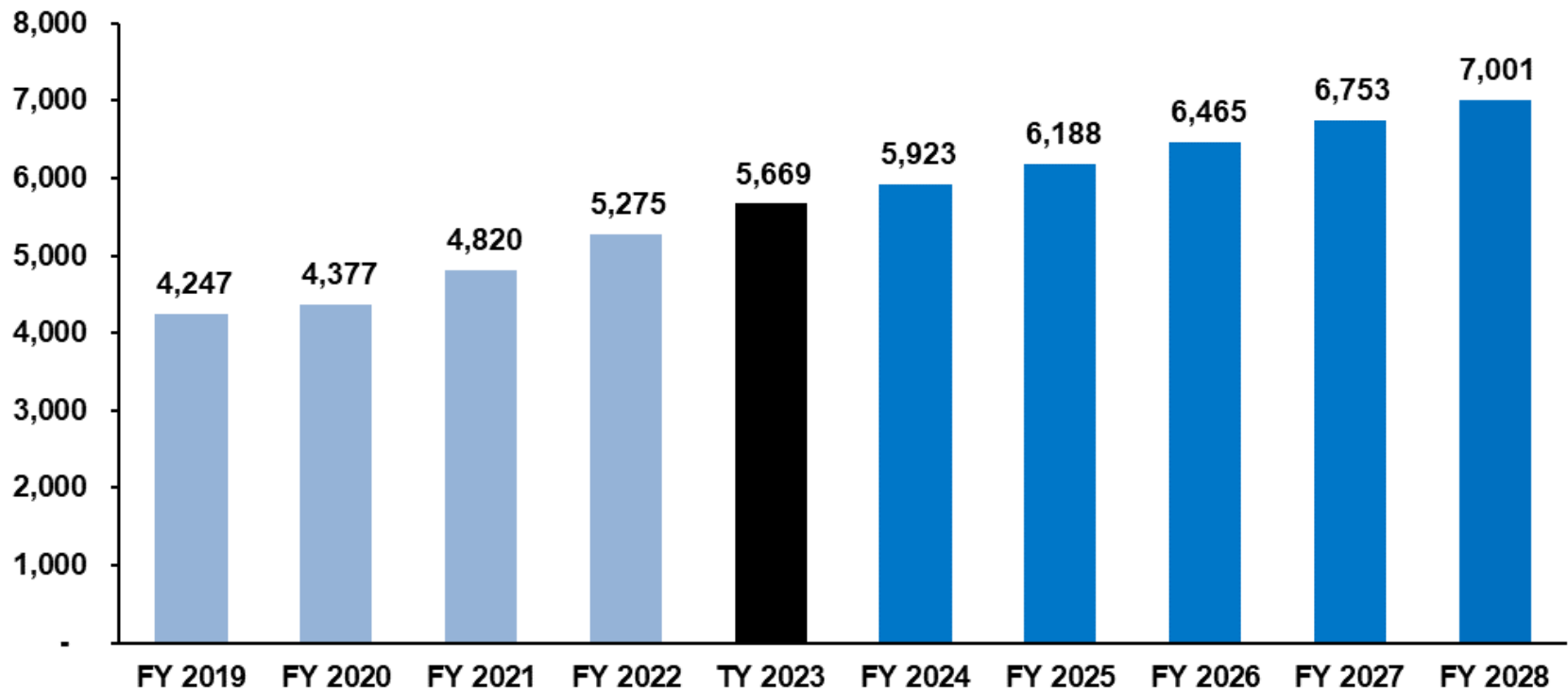
Total Monthly Residential Charge 5,000 Gallons Water & 5,000 Gallons WW



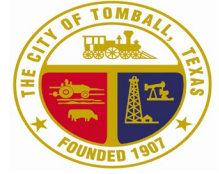
Historical and Forecast Total Water Accounts Through FY 2028



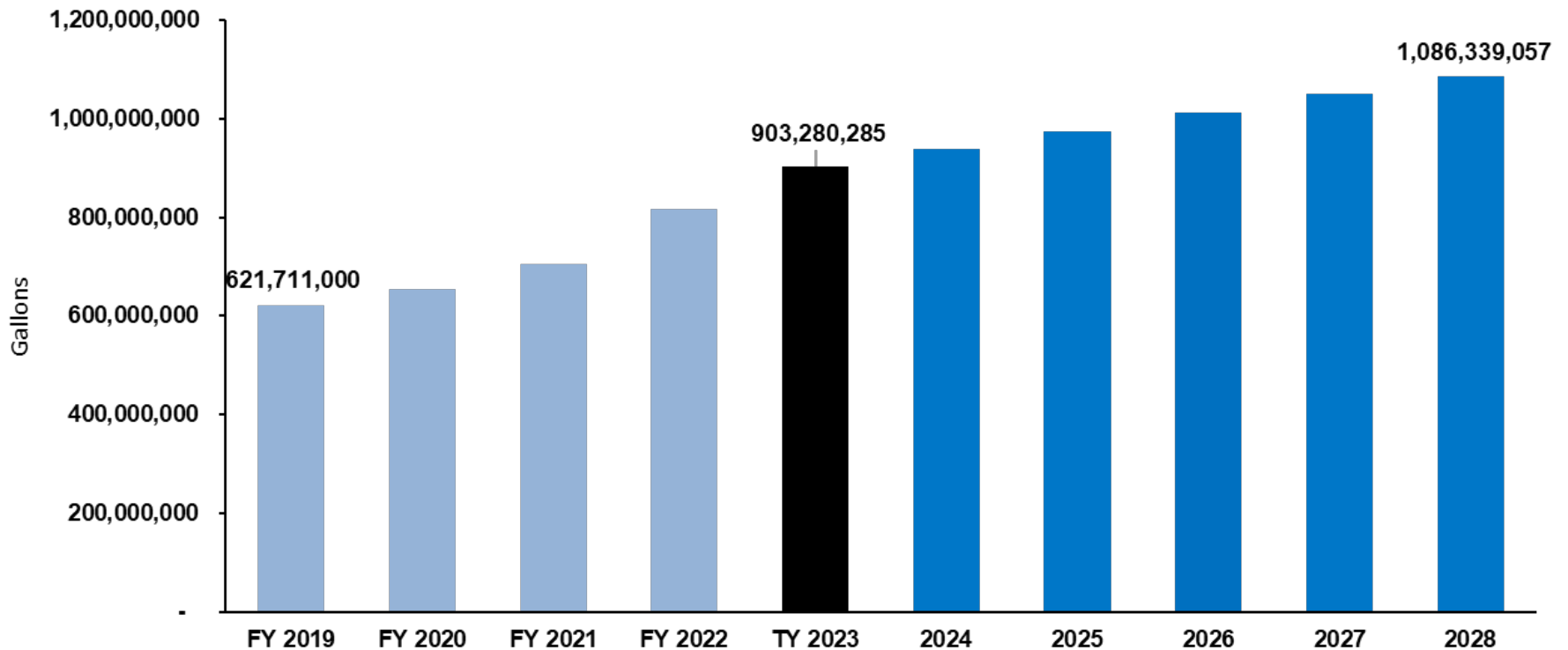
Average Annual Growth Rate FY2023 thru FY2028 = 3.6%



Forecast Water Consumption



Average Annual Growth Rate FY2023 thru FY2027 = 3.1%



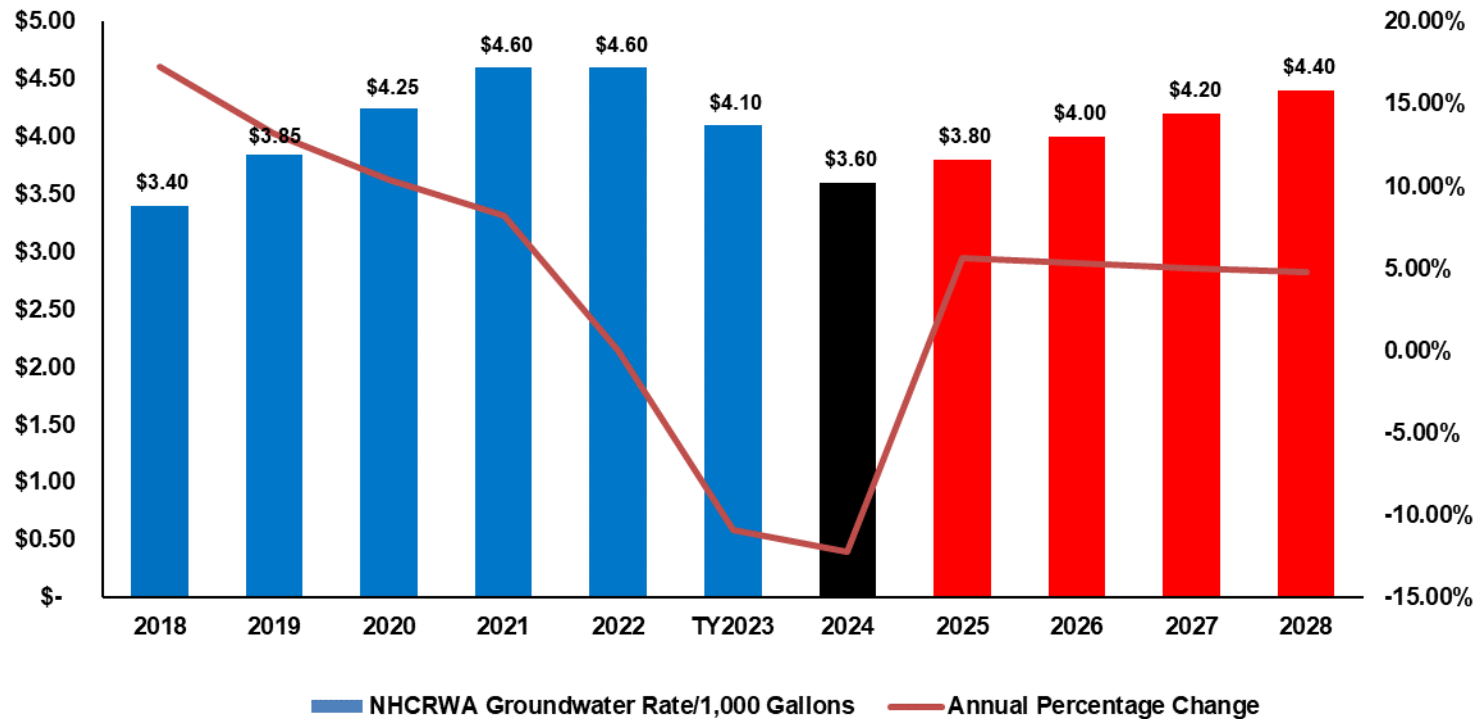
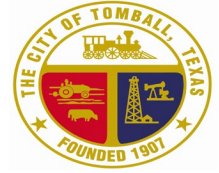
Key Assumptions Driving Financial Forecast and Rate Plan



- Most personnel and operating expenses forecast to increase 3 - 4% per year
- Certain expenses projected to increase at higher rates due to growth -- meters, vehicle expense, chemicals, etc.
- **Biggest impacts on rate plan:**
 - NHCRWA costs
 - \$138M in Debt required to fund CIP



NHCRWA Historical and Forecast Water Cost/1,000 Gal



Forecast Bond Issues 2023 -- 2028

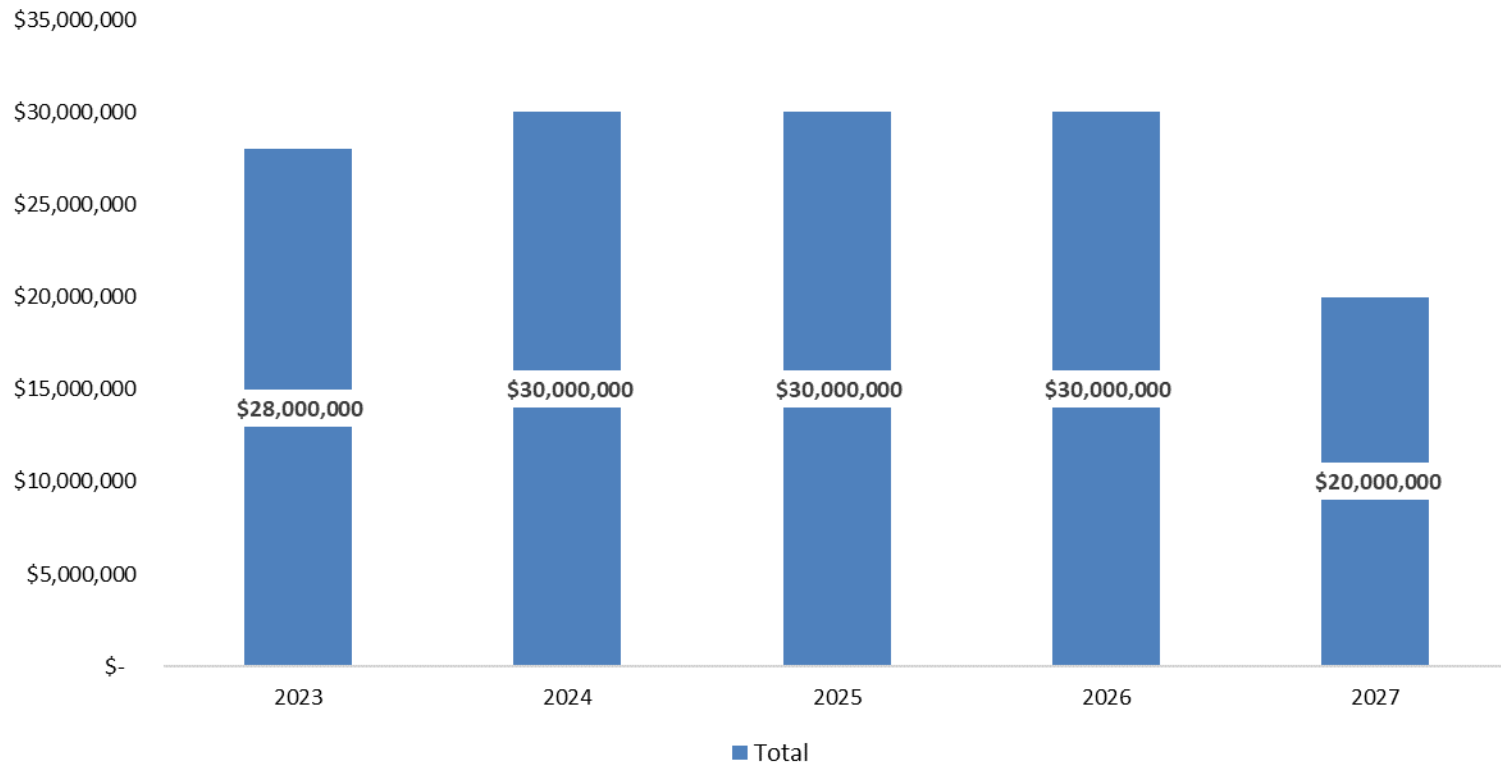


Total Debt = \$138,000,000

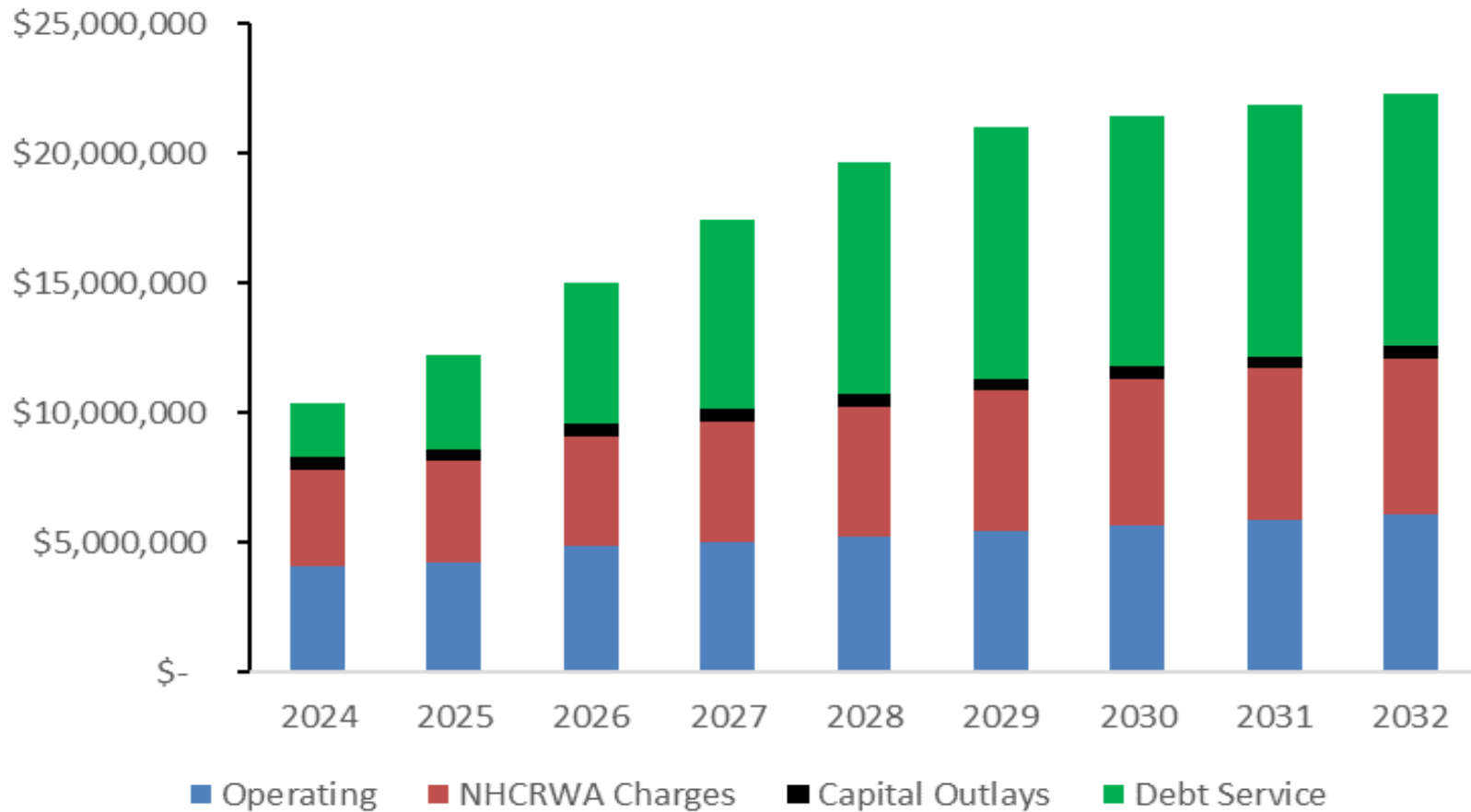
Term = 30 Years

Interest = 4.5%

Year 1 = Interest Only



Water and WW Cost of Service Forecast 2024 - 2028



Proposed Water/Wastewater Long Term Rate Plan – Scenario I and II

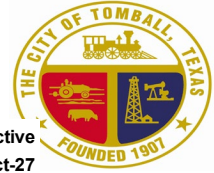


- 4-year rate plan with rate adjustments in October 2024 – October 2027
- Recommend standardizing minimum charges – at a future date implement meter equivalencies
- NHCRWA rate remains a pass-through
- Rate Plan Scenarios:
 - **Scenario I** -- Fully funds \$138M of new debt
 - **Scenario II** -- 50% of new debt service funded from tax revenue



Scenario I

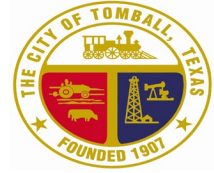
Proposed Water and Wastewater Rate Plan



		Current	Effective Oct-24	Effective Oct-25	Effective Oct-26	Effective Oct-27
WATER RATES - RESIDENTIAL						
Base Charge	Current					
-	10,000	\$ 11.55	\$ -	\$ -	\$ -	-
10,001	15,000	13.29	-	-	-	-
15,001	Above	15.29	-	-	-	-
	Uniform	-	12.85	13.65	14.50	15.40
Volume Rate Per 1,000 Gal						
-	10,000	3.02	3.20	3.39	3.60	3.81
10,001	15,000	3.77	4.00	4.24	4.49	4.76
15,001	Above	4.72	5.00	5.30	5.62	5.96
NHCRWA Surcharge Per 1,000 Gal		3.60	3.80	4.00	4.20	4.40
WATER RATES - COMMERCIAL						
Base Charge	Current					
-	5,000	19.56	-	-	-	-
5,001	50,000	31.48	-	-	-	-
51,001	Above	55.11	-	-	-	-
	Uniform	-	29.10	30.85	32.75	34.75
Volume Rate Per 1,000 Gal						
-	5,000	3.66	3.88	4.11	4.36	4.62
5,001	50,000	4.58	4.85	5.15	5.45	5.78
51,001	Above	5.72	6.06	6.43	6.81	7.22
NHCRWA Surcharge Per 1,000 Gal		3.60	3.80	4.00	4.20	4.40
WASTEWATER RATES - RESIDENTIAL						
Monthly Base Charge		\$ 10.23	\$ 13.15	\$ 16.85	\$ 21.60	\$ 25.95
Volume Rate Per 1,000 Gal -- Winter Avg		3.57	4.57	5.85	7.49	8.98
WASTEWATER RATES - COMMERCIAL						
Base Charge		24.91	31.95	40.90	52.40	62.90
Volume Rate Per 1,000 Gal						
-	5,000	4.53	5.80	7.42	9.50	11.40
5,001	51,000	5.65	7.23	9.26	11.85	14.22
51,001	Above	7.07	9.05	11.58	14.83	17.79

Scenario I

Impact on Monthly Charges



	Current	Effective Oct-24	Effective Oct-25	Effective Oct-26	Effective Oct-27
Residential Monthly Water/WW Charge					
5,000 Gallons W; 5,000 WW	\$ 54.73	\$ 64.85	\$ 76.71	\$ 91.52	\$ 105.33
NHCRWA Surcharge	18.00	19.01	20.02	21.02	22.02
Total	72.73	83.86	96.73	112.53	127.36
Dollar Inc		11.13	12.87	15.81	14.82
10,000 Gallons W; 5,000 WW	\$ 69.83	\$ 80.86	\$ 93.68	\$ 109.50	\$ 124.40
NHCRWA Surcharge	36.00	38.02	40.03	42.03	44.05
Total	105.83	118.88	133.71	151.54	168.45
Dollar Inc		13.05	14.83	17.83	16.91
Commercial Monthly Water/WW Charge					
20,000 Gallons W/ 20,000 WW	\$ 250.79	\$ 290.74	\$ 345.47	\$ 414.00	\$ 477.77
NHCRWA Surcharge	72.00	76.03	80.06	84.06	88.10
Total	322.79	366.77	425.53	498.07	565.87
Dollar Inc		43.98	58.76	72.54	67.80

Scenario II

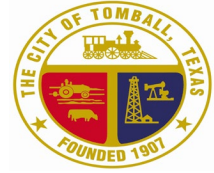
Proposed Water and Wastewater Rate Plan



		Current	Effective Oct-24	Effective Oct-25	Effective Oct-26	Effective Oct-27
WATER RATES - RESIDENTIAL						
Base Charge	Current					
-	10,000	\$ 11.55	\$ -	\$ -	\$ -	-
10,001	15,000	13.29	-	-	-	-
15,001	Above	15.29	-	-	-	-
	Uniform	-	12.50	12.90	13.30	13.70
Volume Rate Per 1,000 Gal						
-	10,000	3.02	3.11	3.20	3.30	3.40
10,001	15,000	3.77	3.88	4.00	4.12	4.24
15,001	Above	4.72	4.86	5.01	5.16	5.31
NHCRWA Surcharge Per 1,000 Gal		3.60	3.80	4.00	4.20	4.40
WATER RATES - COMMERCIAL						
Base Charge	Current					
-	5,000	19.56	-	-	-	-
5,001	50,000	31.48	-	-	-	-
51,001	Above	55.11	-	-	-	-
	Uniform	-	28.30	29.15	30.05	31.00
Volume Rate Per 1,000 Gal						
-	5,000	3.66	3.77	3.88	4.00	4.12
5,001	50,000	4.58	4.72	4.86	5.00	5.15
51,001	Above	5.72	5.89	6.07	6.25	6.44
NHCRWA Surcharge Per 1,000 Gal		3.60	3.80	4.00	4.20	4.40
WASTEWATER RATES- RESIDENTIAL						
Monthly Base Charge		\$ 10.23	\$ 12.30	\$ 14.80	\$ 17.80	19.60
Volume Rate Per 1,000 Gal – Winter Avg		3.57	4.28	5.14	6.17	6.79
WASTEWATER RATES - COMMERCIAL						
Base Charge		24.91	29.95	35.95	43.15	47.50
Volume Rate Per 1,000 Gal						
-	5,000	4.53	5.44	6.52	7.83	8.61
5,001	51,000	5.65	6.78	8.14	9.76	10.74
51,001	Above	7.07	8.48	10.18	12.22	13.44

Scenario II

Impact on Monthly Charges



	Current	Effective Oct-24	Effective Oct-25	Effective Oct-26	Effective Oct-27
Residential Monthly Water/WW Charge					
5,000 Gallons W; 5,000 WW	\$ 54.73	\$ 61.77	\$ 69.42	\$ 78.44	\$ 84.22
NHCRWA Surcharge	18.00	19.01	20.02	21.02	22.02
Total	72.73	80.78	89.44	99.46	106.25
Dollar Inc		8.05	8.66	10.02	6.79
10,000 Gallons W; 5,000 WW	\$ 69.83	\$ 77.33	\$ 85.44	\$ 94.95	\$ 101.22
NHCRWA Surcharge	36.00	38.02	40.03	42.03	44.05
Total	105.83	115.34	125.47	136.98	145.27
Dollar Inc		9.51	10.13	11.50	8.29
Commercial Monthly Water/WW Charge					
20,000 Gallons W/ 20,000 WW	\$ 250.79	\$ 276.74	\$ 312.05	\$ 353.85	\$ 380.57
NHCRWA Surcharge	72.00	76.03	80.06	84.06	88.10
Total	322.79	352.77	392.12	437.92	468.67
Dollar Inc		29.98	39.34	45.80	30.75

Gas Utility Analysis and Recommendations

Current Gas Rates Effective 2011



All Customers

Minimum Charge

\$ 11.75

Includes 1,000 Cubic Feet or
1 MCF

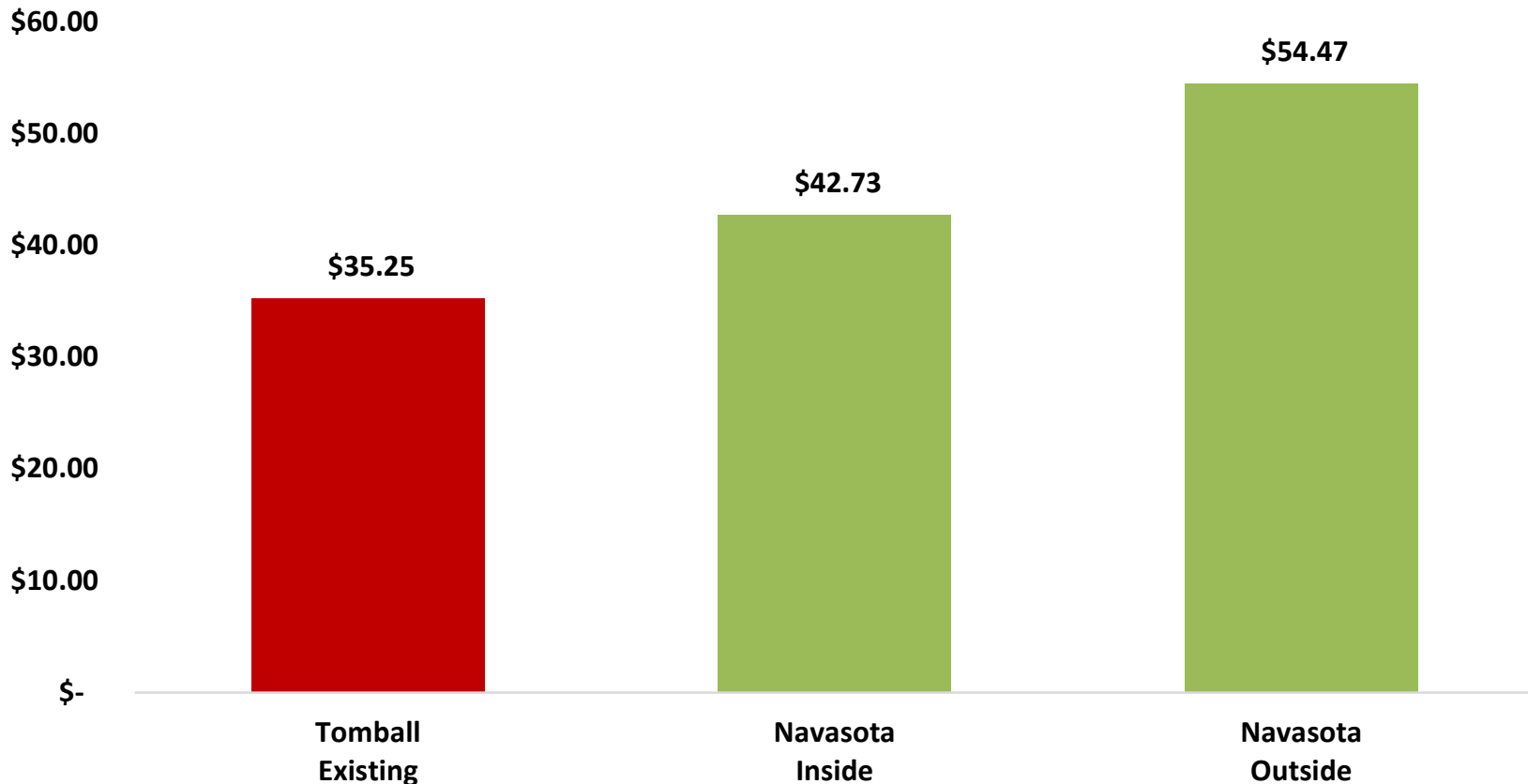
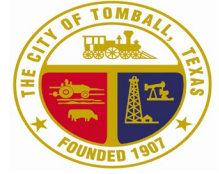
Usage Charge

\$ 11.75

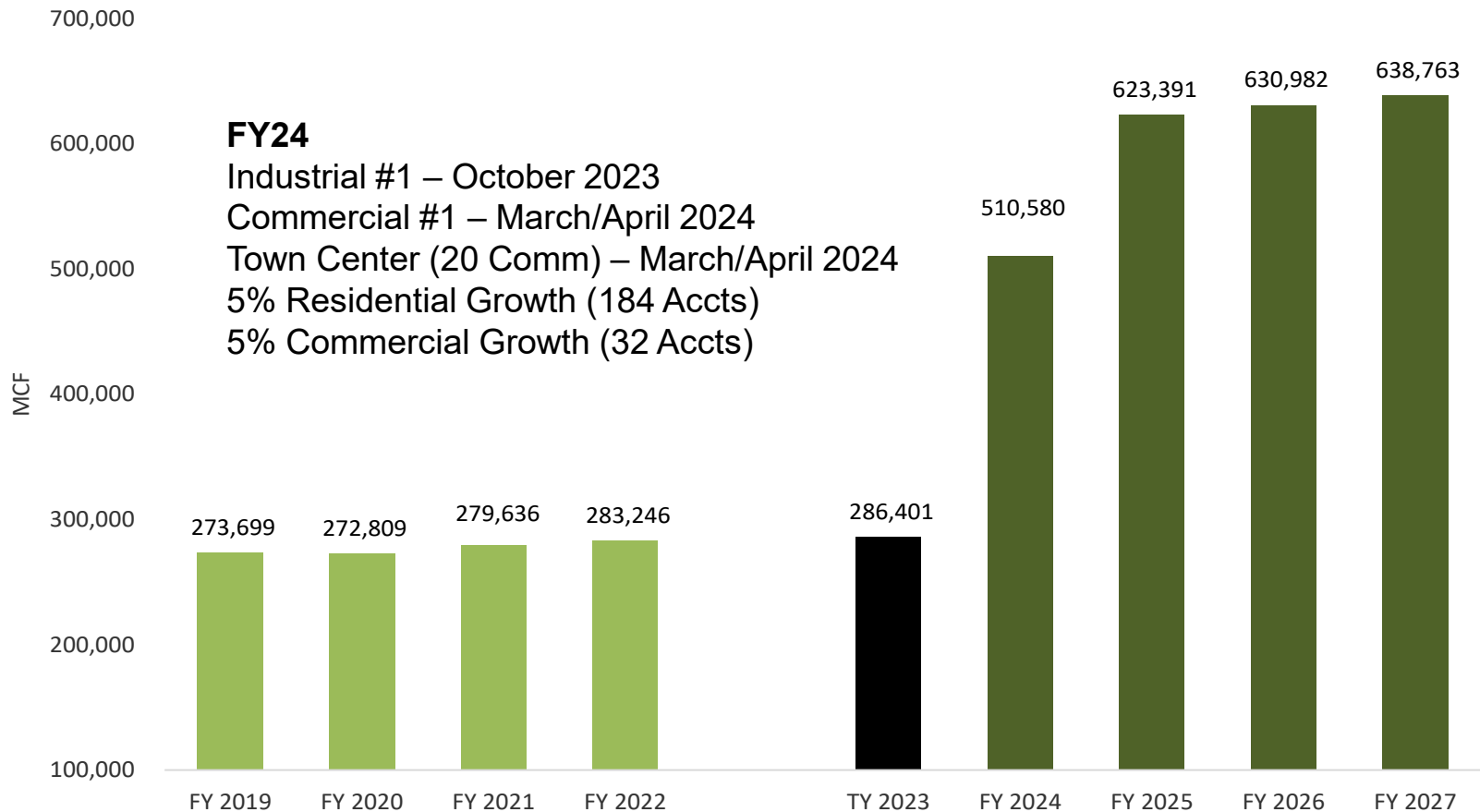
1,001 Cubic Feet or >1 MCF



Comparison of Average Residential Cost Per Month for 3 MCF

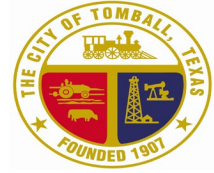


Historical and Forecast Natural Gas Sales



5% Annual Account Growth Plus New Commercial Customers

Natural Gas Alt 1 - Cost of Service Residential Rate Recommendation

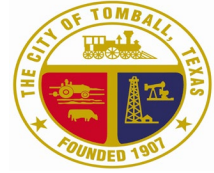


GAS	Current	Effective Dec-23	Effective Oct-24	Effective Oct-25	Effective Oct-26	Effective Oct-27
Residential						
Base Charge Includes 1 MCF	\$ 11.75	\$ 11.75	\$ 11.75	\$ 11.75	\$ 11.75	\$ 11.75
Usage Charge Per MCF	\$ 11.75	\$ 11.75	\$ 11.75	\$ 11.75	\$ 11.75	\$ 11.75
Commercial						
Base Charge Includes 1 MCF	\$ 11.75	\$ 11.75	\$ 11.75	\$ 11.75	\$ 11.75	\$ 11.75
Usage Charge Per MCF	\$ 11.75	\$ 11.75	\$ 11.75	\$ 11.75	\$ 11.75	\$ 11.75



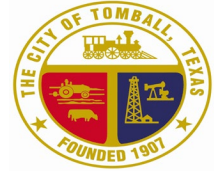
Presentation Summary

W & WW, Natural Gas Consolidated Residential Rate Impacts – Scen I



			Current	Effective Oct-24	Effective Oct-25	Effective Oct-26	Effective Oct-27
RESIDENTIAL Rates							
Water Rates							
10,000	Gallons	\$	41.75	\$ 44.86	\$ 47.58	\$ 50.47	\$ 53.53
NHCRWA	Surcharge		36.00	38.02	40.03	42.03	44.05
Wastewater Rates							
5,000	Gallons		28.08	36.00	46.10	59.03	70.87
Gas Rates							
3	MCF		35.25	35.25	35.25	35.25	36.25
TOTAL MONTHLY CHARGES			141.08	154.13	168.96	186.79	204.70
Difference - \$				13.05	14.83	17.83	17.91
Difference - %				8.5%	8.8%	9.5%	8.8%

W & WW, Natural Gas Consolidated Residential Rate Impacts – Scen II



			Current	Effective Oct-24	Effective Oct-25	Effective Oct-26	Effective Oct-27
RESIDENTIAL Rates							
Water Rates							
10,000	Gallons	\$	41.75	\$ 43.61	\$ 44.94	\$ 46.30	\$ 47.69
NHCRWA	Surcharge		36.00	38.02	40.03	42.03	44.05
Wastewater Rates							
5,000	Gallons		28.08	33.72	40.50	48.64	53.53
Gas Rates							
3	MCF		35.25	35.25	35.25	35.25	36.25
TOTAL MONTHLY CHARGES			141.08	150.59	160.72	172.23	181.52
Difference - \$				9.51	10.13	11.50	9.29
Difference - %				6.3%	6.3%	6.7%	5.1%

Presentation Summary

Benefits of Proposed Rate Plan

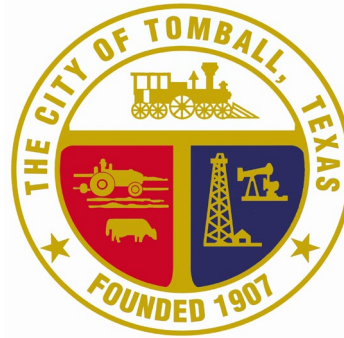


- No increase in gas costs over 5 years
- Will enable utility to recover all of its operating costs without subsidies from General Fund
- Will allow for \$60 -- \$120 million in investment in the future of the City
- Will result in a healthy utility fund that meets its financial goals





Questions?



City of Tomball

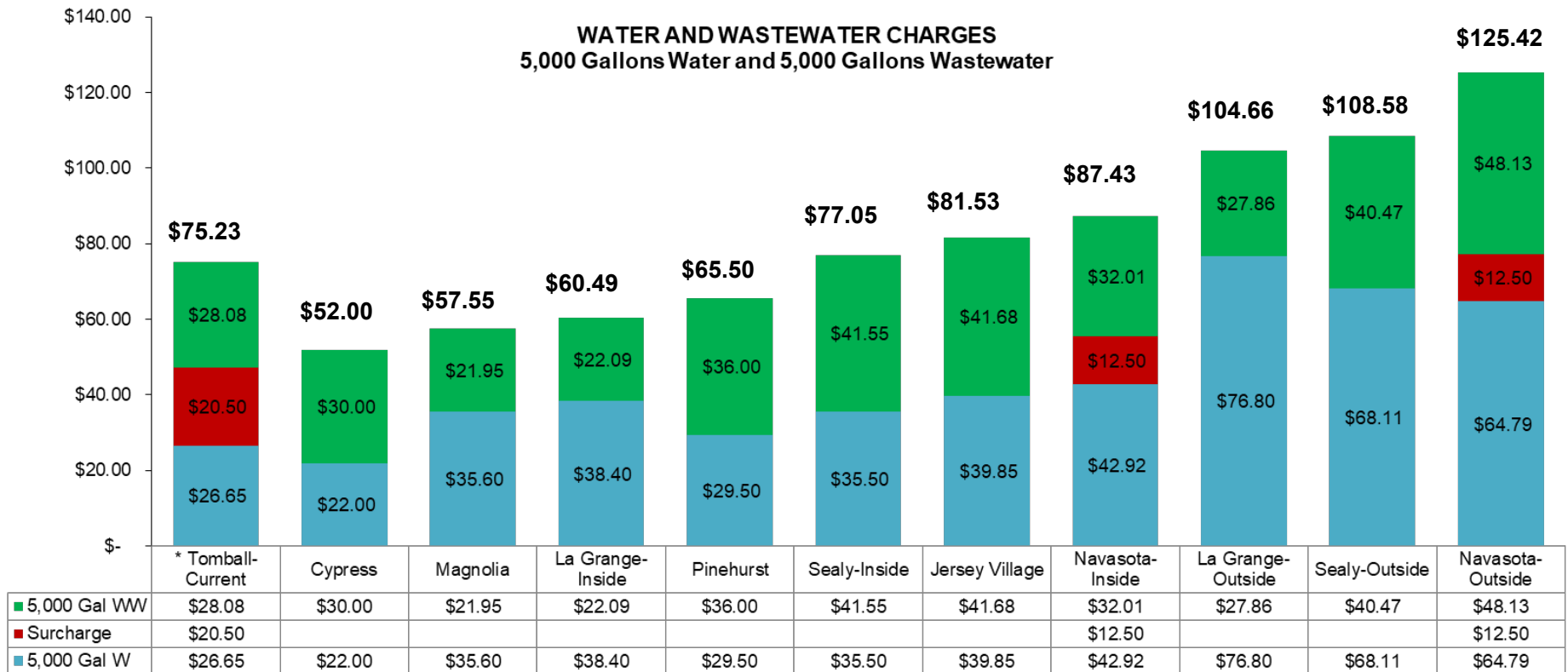
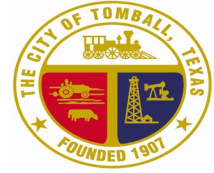
2023 Water Wastewater and Gas Rate Study and Financial Forecast

Council Presentation

Water and Wastewater Utility Analysis and Recommendations



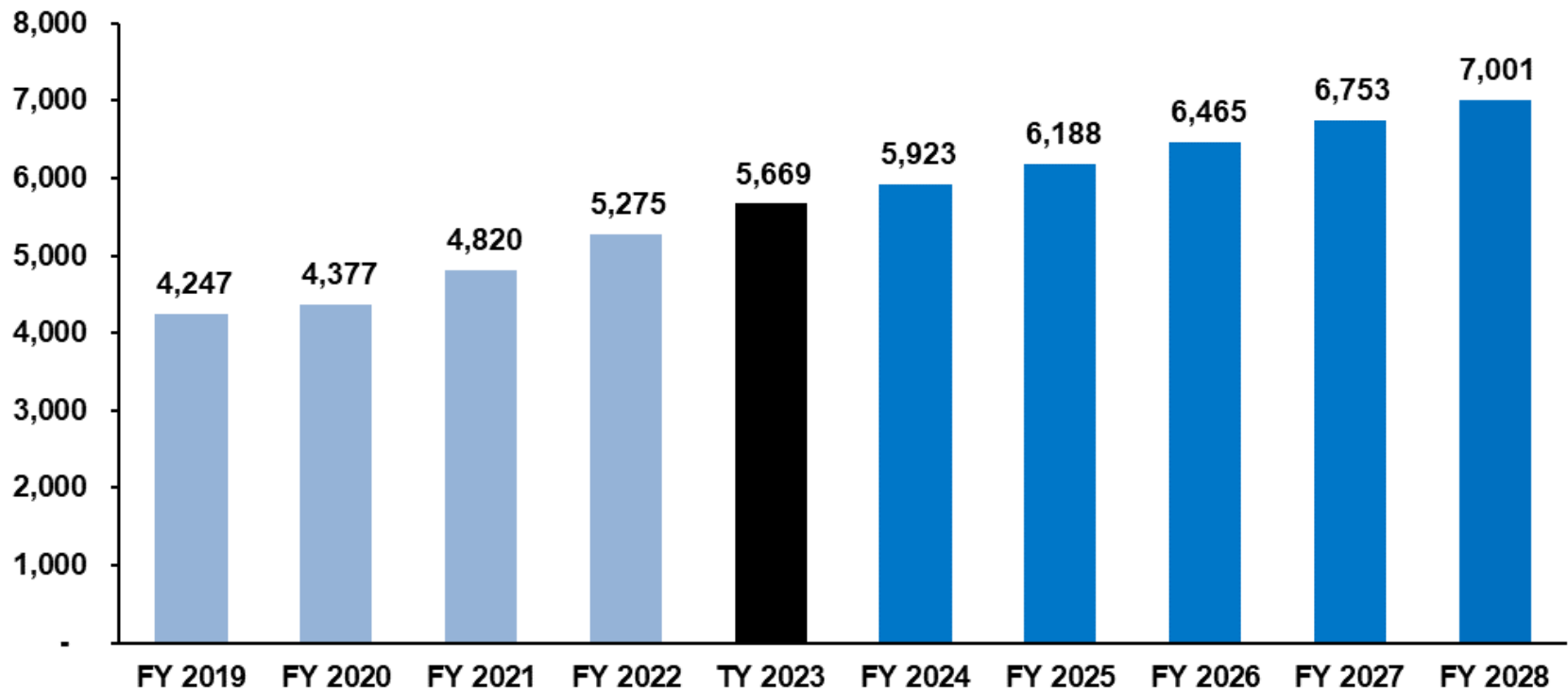
Total Monthly Residential Charge 5,000 Gallons Water & 5,000 Gallons WW



Historical and Forecast Total Water Accounts Through FY 2028



Average Annual Growth Rate FY2023 thru FY2028 = 3.6%



Key Assumptions Driving Financial Forecast and Rate Plan

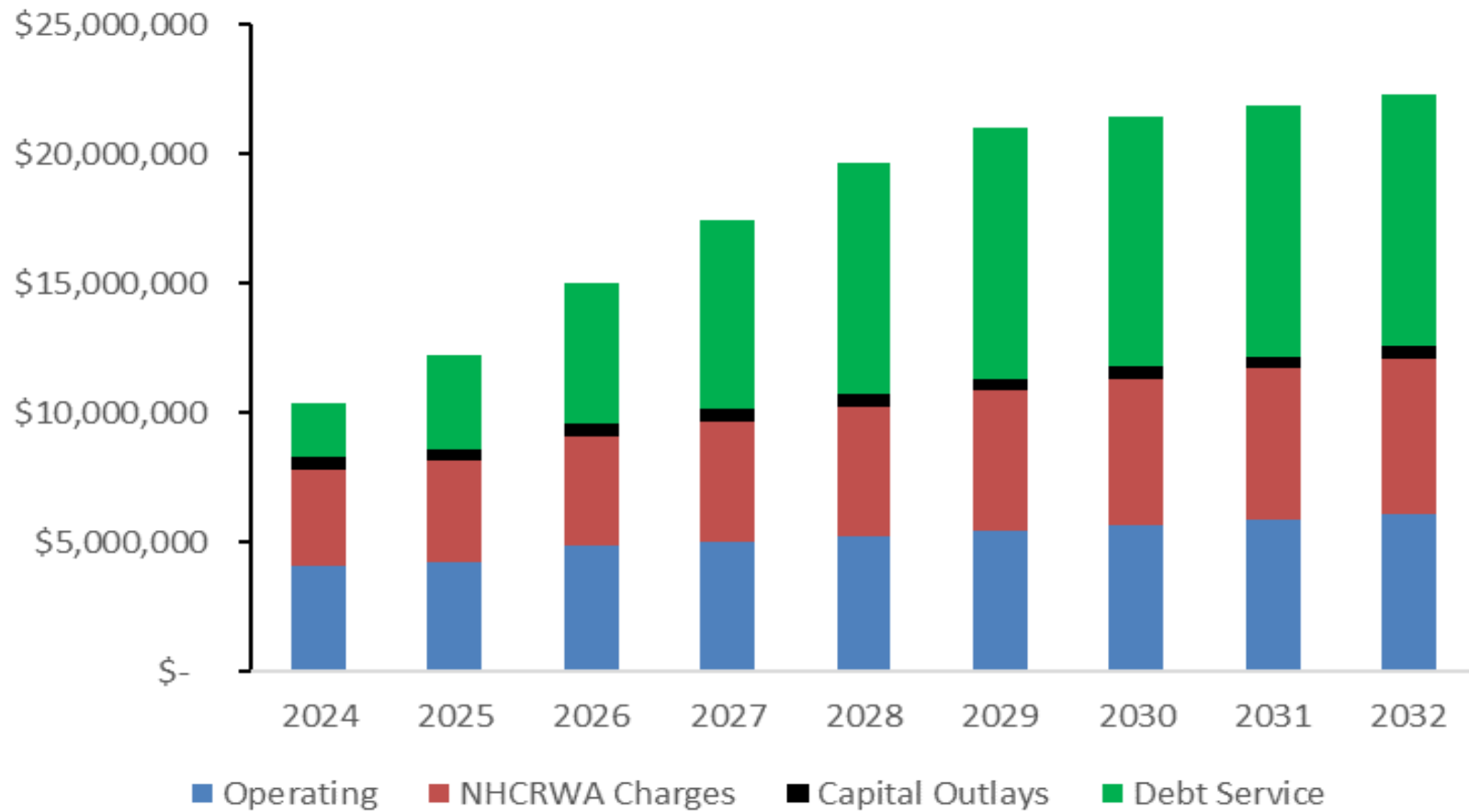


- Most personnel and operating expenses forecast to increase 3 - 4% per year
- Certain expenses projected to increase at higher rates due to growth -- meters, vehicle expense, chemicals, etc.
- **Biggest impacts on rate plan:**
 - NHCRWA costs
 - **\$138M** in Debt required to fund CIP





Water and WW Cost of Service Forecast 2024 - 2028



Proposed Water/Wastewater Long Term Rate Plan – Scenario I and II



- 4-year rate plan with rate adjustments in October 2024 – October 2027
- Recommend standardizing minimum charges – at a future date implement meter equivalencies
- NHCRWA rate remains a pass-through
- Rate Plan Scenarios:
 - **Scenario I** -- Fully funds \$138M of new debt
 - **Scenario II** -- 50% of new debt service funded from tax revenue



Scenario I

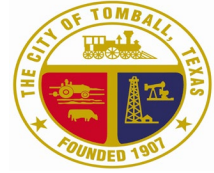
Proposed Water and Wastewater Rate Plan



		Current	Effective Oct-24	Effective Oct-25	Effective Oct-26	Effective Oct-27
WATER RATES - RESIDENTIAL						
Base Charge	Current					
-	10,000	\$ 11.55	\$ -	\$ -	\$ -	-
10,001	15,000	13.29	-	-	-	-
15,001	Above	15.29	-	-	-	-
	Uniform	-	12.85	13.65	14.50	15.40
Volume Rate Per 1,000 Gal						
-	10,000	3.02	3.20	3.39	3.60	3.81
10,001	15,000	3.77	4.00	4.24	4.49	4.76
15,001	Above	4.72	5.00	5.30	5.62	5.96
NHCRWA Surcharge Per 1,000 Gal		3.60	3.80	4.00	4.20	4.40
WATER RATES - COMMERCIAL						
Base Charge	Current					
-	5,000	19.56	-	-	-	-
5,001	50,000	31.48	-	-	-	-
51,001	Above	55.11	-	-	-	-
	Uniform	-	29.10	30.85	32.75	34.75
Volume Rate Per 1,000 Gal						
-	5,000	3.66	3.88	4.11	4.36	4.62
5,001	50,000	4.58	4.85	5.15	5.45	5.78
51,001	Above	5.72	6.06	6.43	6.81	7.22
NHCRWA Surcharge Per 1,000 Gal		3.60	3.80	4.00	4.20	4.40
WASTEWATER RATES - RESIDENTIAL						
Monthly Base Charge		\$ 10.23	\$ 13.15	\$ 16.85	\$ 21.60	\$ 25.95
Volume Rate Per 1,000 Gal -- Winter Avg		3.57	4.57	5.85	7.49	8.98
WASTEWATER RATES - COMMERCIAL						
Base Charge		24.91	31.95	40.90	52.40	62.90
Volume Rate Per 1,000 Gal						
-	5,000	4.53	5.80	7.42	9.50	11.40
5,001	51,000	5.65	7.23	9.26	11.85	14.22
51,001	Above	7.07	9.05	11.58	14.83	17.79

Scenario I

Impact on Monthly Charges



		Current		Effective Oct-24		Effective Oct-25		Effective Oct-26		Effective Oct-27	
Residential Monthly Water/WW Charge											
5,000 Gallons W; 5,000 WW		\$	54.73	\$	64.85	\$	76.71	\$	91.52	\$	105.33
NHCRWA Surcharge			18.00		19.01		20.02		21.02		22.02
Total			72.73		83.86		96.73		112.53		127.36
	Dollar Inc			\$	11.13	\$	12.87	\$	15.81	\$	14.82
	Percent Inc				15.3%		15.3%		16.3%		13.2%
10,000 Gallons W; 5,000 WW		\$	69.83	\$	80.86	\$	93.68	\$	109.50	\$	124.40
NHCRWA Surcharge			36.00		38.02		40.03		42.03		44.05
Total			105.83		118.88		133.71		151.54		168.45
	Dollar Inc			\$	13.05	\$	14.83	\$	17.83	\$	16.91
	Percent Inc				12.3%		12.5%		13.3%		11.2%
Commercial Monthly Water/WW Charge											
20,000 Gallons W/ 20,000 WW		\$	250.79	\$	290.74	\$	345.47	\$	414.00	\$	477.77
NHCRWA Surcharge			72.00		76.03		80.06		84.06		88.10
Total			322.79		366.77		425.53		498.07		565.87
	Dollar Inc			\$	43.98	\$	58.76	\$	72.54	\$	67.80
	Percent Inc				13.6%		16.0%		17.0%		13.6%

Scenario II

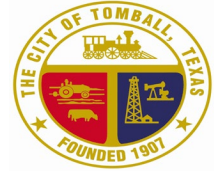
Proposed Water and Wastewater Rate Plan



		Current	Effective Oct-24	Effective Oct-25	Effective Oct-26	Effective Oct-27
WATER RATES - RESIDENTIAL						
Base Charge	Current					
-	10,000	\$ 11.55	\$ -	\$ -	\$ -	-
10,001	15,000	13.29	-	-	-	-
15,001	Above	15.29	-	-	-	-
	Uniform	-	12.50	12.90	13.30	13.70
Volume Rate Per 1,000 Gal						
-	10,000	3.02	3.11	3.20	3.30	3.40
10,001	15,000	3.77	3.88	4.00	4.12	4.24
15,001	Above	4.72	4.86	5.01	5.16	5.31
NHCRWA Surcharge Per 1,000 Gal		3.60	3.80	4.00	4.20	4.40
WATER RATES - COMMERCIAL						
Base Charge	Current					
-	5,000	19.56	-	-	-	-
5,001	50,000	31.48	-	-	-	-
51,001	Above	55.11	-	-	-	-
	Uniform	-	28.30	29.15	30.05	31.00
Volume Rate Per 1,000 Gal						
-	5,000	3.66	3.77	3.88	4.00	4.12
5,001	50,000	4.58	4.72	4.86	5.00	5.15
51,001	Above	5.72	5.89	6.07	6.25	6.44
NHCRWA Surcharge Per 1,000 Gal		3.60	3.80	4.00	4.20	4.40
WASTEWATER RATES - RESIDENTIAL						
Monthly Base Charge		\$ 10.23	\$ 12.30	\$ 14.80	\$ 17.80	19.60
Volume Rate Per 1,000 Gal – Winter Avg		3.57	4.28	5.14	6.17	6.79
WASTEWATER RATES - COMMERCIAL						
Base Charge		24.91	29.95	35.95	43.15	47.50
Volume Rate Per 1,000 Gal						
-	5,000	4.53	5.44	6.52	7.83	8.61
5,001	51,000	5.65	6.78	8.14	9.76	10.74
51,001	Above	7.07	8.48	10.18	12.22	13.44

Scenario II

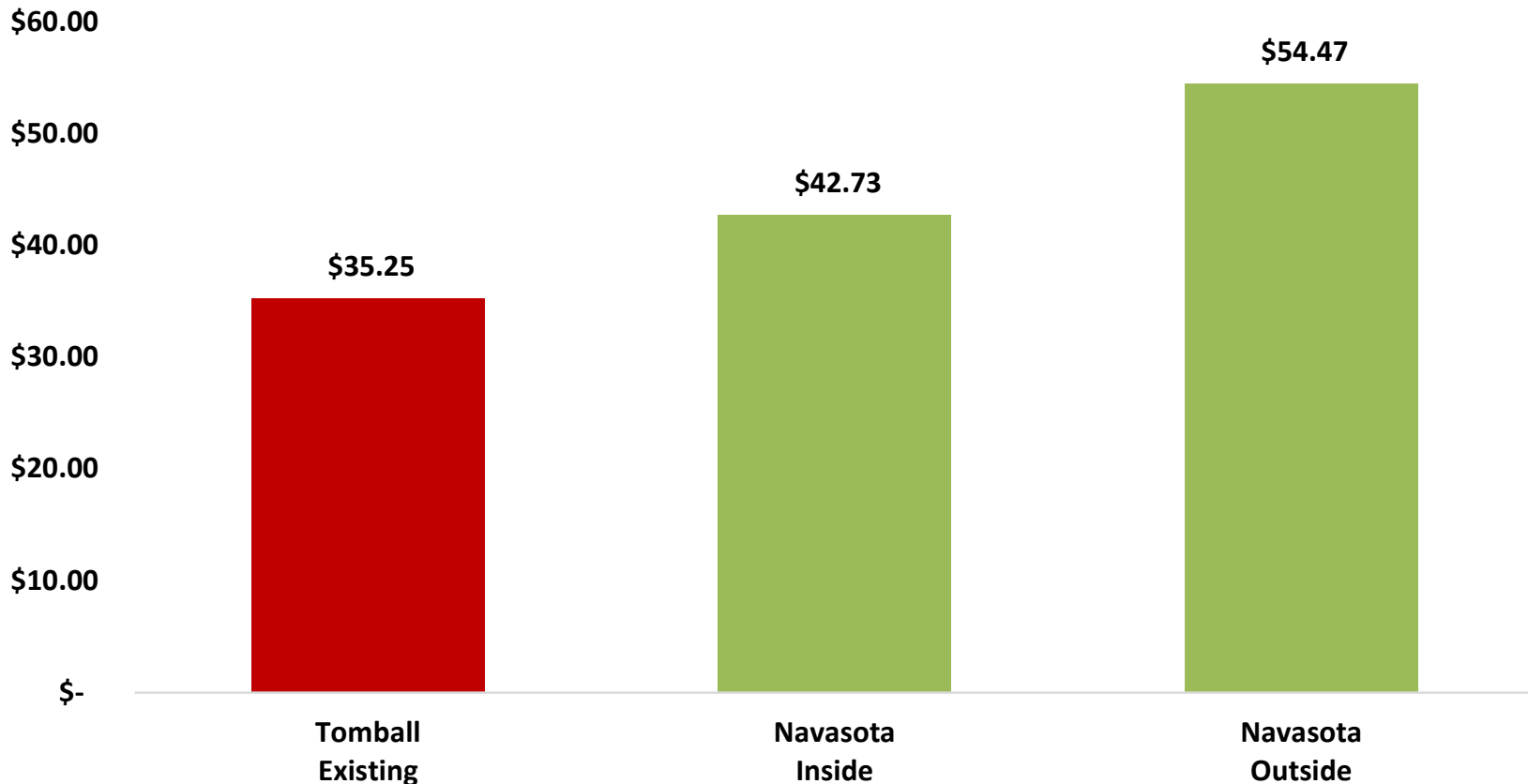
Impact on Monthly Charges



	Current	Effective Oct-24	Effective Oct-25	Effective Oct-26	Effective Oct-27
Residential Monthly Water/WW Charge					
5,000 Gallons W; 5,000 WW	\$ 54.73	\$ 61.77	\$ 69.42	\$ 78.44	\$ 84.22
NHCRWA Surcharge	18.00	19.01	20.02	21.02	22.02
Total	72.73	80.78	89.44	99.46	106.25
Dollar Inc		\$ 8.05	\$ 8.66	\$ 10.02	\$ 6.79
Percent Inc		11.1%	10.7%	11.2%	6.8%
10,000 Gallons W; 5,000 WW	\$ 69.83	\$ 77.33	\$ 85.44	\$ 94.95	\$ 101.22
NHCRWA Surcharge	36.00	38.02	40.03	42.03	44.05
Total	105.83	115.34	125.47	136.98	145.27
Dollar Inc		\$ 9.51	\$ 10.13	\$ 11.50	\$ 8.29
Percent Inc		9.0%	8.8%	9.2%	6.1%
Commercial Monthly Water/WW Charge					
20,000 Gallons W/ 20,000 WW	\$ 250.79	\$ 276.74	\$ 312.05	\$ 353.85	\$ 380.57
NHCRWA Surcharge	72.00	76.03	80.06	84.06	88.10
Total	322.79	352.77	392.12	437.92	468.67
Dollar Inc		\$ 29.98	\$ 39.34	\$ 45.80	\$ 30.75
Percent Inc		9.3%	11.2%	11.7%	7.0%

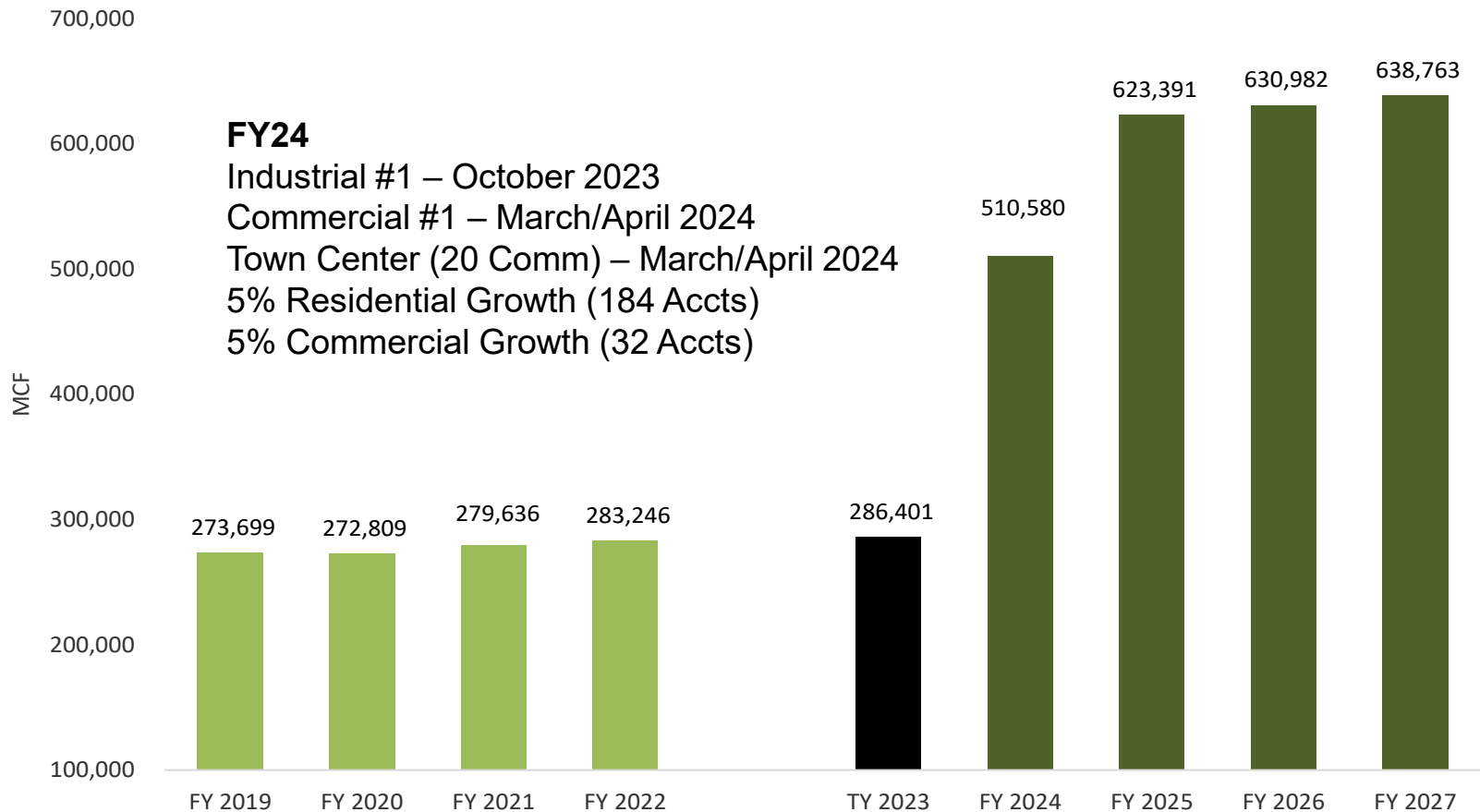
Gas Utility Analysis and Recommendations

Comparison of Average Residential Cost Per Month for 3 MCF





Historical and Forecast Natural Gas Sales



5% Annual Account Growth Plus New Commercial Customers

Natural Gas Alt 1 - Cost of Service Residential Rate Recommendation



GAS	Current	Effective Dec-23	Effective Oct-24	Effective Oct-25	Effective Oct-26	Effective Oct-27
Residential						
Base Charge Includes 1 MCF	\$ 11.75	\$ 11.75	\$ 11.75	\$ 11.75	\$ 11.75	\$ 11.75
Usage Charge Per MCF	\$ 11.75	\$ 11.75	\$ 11.75	\$ 11.75	\$ 11.75	\$ 11.75
Commercial						
Base Charge Includes 1 MCF	\$ 11.75	\$ 11.75	\$ 11.75	\$ 11.75	\$ 11.75	\$ 11.75
Usage Charge Per MCF	\$ 11.75	\$ 11.75	\$ 11.75	\$ 11.75	\$ 11.75	\$ 11.75



Presentation Summary

W & WW, Natural Gas Consolidated Residential Rate Impacts – Scen I



			Current	Effective Oct-24	Effective Oct-25	Effective Oct-26	Effective Oct-27
RESIDENTIAL Rates							
Water Rates							
10,000	Gallons	\$	41.75	\$ 44.86	\$ 47.58	\$ 50.47	\$ 53.53
NHCRWA	Surcharge		36.00	38.02	40.03	42.03	44.05
Wastewater Rates							
5,000	Gallons		28.08	36.00	46.10	59.03	70.87
Gas Rates							
3	MCF		35.25	35.25	35.25	35.25	36.25
TOTAL MONTHLY CHARGES			141.08	154.13	168.96	186.79	204.70
Difference - \$				13.05	14.83	17.83	17.91
Difference - %				8.5%	8.8%	9.5%	8.8%

W & WW, Natural Gas Consolidated Residential Rate Impacts – Scen II



			Current	Effective Oct-24	Effective Oct-25	Effective Oct-26	Effective Oct-27
RESIDENTIAL Rates							
Water Rates							
10,000	Gallons	\$	41.75	\$ 43.61	\$ 44.94	\$ 46.30	\$ 47.69
NHCRWA	Surcharge		36.00	38.02	40.03	42.03	44.05
Wastewater Rates							
5,000	Gallons		28.08	33.72	40.50	48.64	53.53
Gas Rates							
3	MCF		35.25	35.25	35.25	35.25	36.25
TOTAL MONTHLY CHARGES			141.08	150.59	160.72	172.23	181.52
Difference - \$				9.51	10.13	11.50	9.29
Difference - %				6.3%	6.3%	6.7%	5.1%

Presentation Summary

Benefits of Proposed Rate Plan



- No increase in gas costs over 5 years
- Will enable utility to recover all of its operating costs without subsidies from General Fund
- Will allow for \$60 -- \$120 million in investment in the future of the City
- Will result in a healthy utility fund that meets its financial goals

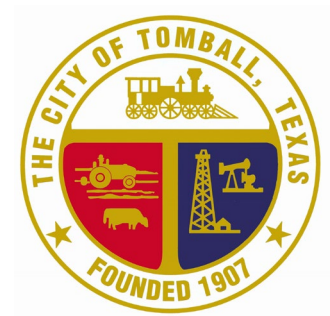




Questions?

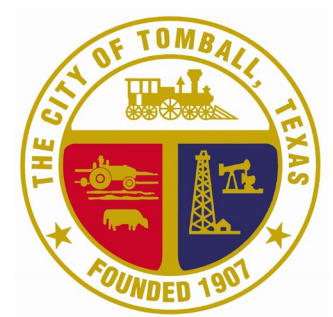
Debt Forecast & Utility Rate Impacts

City Council Meeting
February 19, 2024



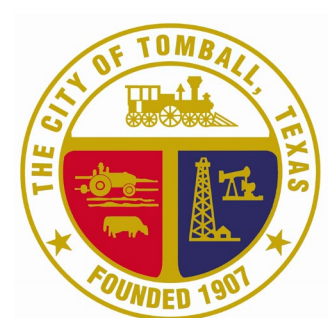
Outline

- Review of CIP
- Tax Rate Impact Scenarios
- Baseline Forecast
- Utility Scenario I
- Utility Scenario II
- Other Options



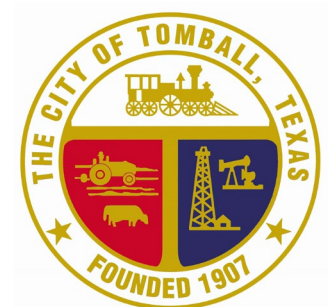
Capital Improvement Program – Recap

- Identified need of ~\$368 million; \$172M in 5-year CIP
- Critical needs take priority over other projects
- Funding:
 - Projects funded through a variety of sources: cash on hand, impact fees, general revenues, grants, contributions, and debt
 - Rolling debt program and need to issue new debt each year over the next few years
 - Potential impacts to tax and rate payers



5-Year Capital Improvement Program

	FY 2024	FY 2025	FY 2026	FY 2027	FY 2028
Police	\$150,000	-	-	-	-
Parks	\$1,794,795	\$650,000	-	-	-
Streets	\$4,695,100	\$4,650,000	\$2,500,000	-	-
Water	\$12,745,100	\$17,725,000	\$12,472,000	\$293,000	\$1,380,000
Wastewater	\$32,155,776	\$21,692,000	\$33,273,081	\$16,636,000	\$8,008,000
Combined Utility	\$692,000	-	-	-	-
Gas	\$820,000	-	-	-	-
Facilities	TBD				
TOTAL	\$53,052,771	\$44,717,000	\$48,245,081	\$16,929,000	\$9,388,000



High Priority Projects & New Debt

CO Issuance Schedule

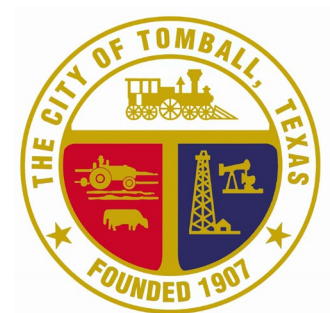
		FY 2023	FY 2024	FY 2025	FY 2026	FY 2027
Projects	Total Cost	2022 COs	2023 CO	2024 CO	2025 CO	2026 CO
Streets						
North Sycamore St. Parking	\$1,500,000		\$1,500,000			
Water						
Pine Street EST Rehabilitation	\$849,000	\$849,000				
East Water Plant	\$19,541,000	\$3,106,000		\$9,861,000	\$6,574,000	
Baker Drive Water Plant	\$10,179,000	\$5,541,276	\$4,637,724			
Telge Easement Acquisition	\$1,500,000	\$1,500,000				
Wastewater						
FM 2920 Lift Station Consolidation*	\$15,394,100	\$9,009,100	\$4,885,000			
South WWTP Expansion*	\$70,434,457		\$16,977,276	\$20,139,000	\$20,788,081	\$11,965,100
Planned CO Issuance		\$20,005,376	\$28,000,000	\$30,000,000	\$30,000,000	\$30,000,000
Assigned to Projects		\$20,005,376	\$28,000,000	\$30,000,000	\$27,362,081	\$11,965,100

*Additional funding from another source



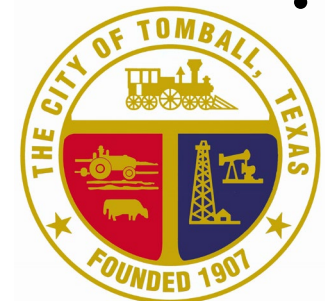
Ways to Mitigate Tax Rate Impacts

- Impact Fees fund Impact Fee eligible projects or contribute to debt service
- Utility rate increases to fund utility system projects
- Contributions from other sources
 - Grants
 - TEDC
- Consider General Obligation bond election for non-critical projects
 - Some facilities may require GO bonds



Tax Rate Impact Scenarios

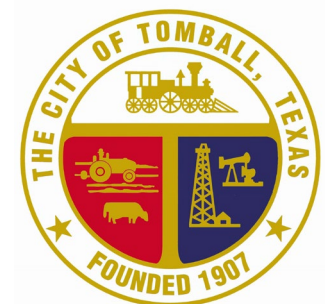
- Staff looked at 3 scenarios:
 - Baseline scenario: assumes all future debt is tax-supported debt.
 - Scenario I: Assumes Enterprise Fund supports 100% of utility debt issued in FY 2025, starting with 2023 CO issuance.
 - Scenario II: Assumes Enterprise Fund supports 50% of utility debt issued in FY 2025, starting with 2023 CO issuance.
- For all scenarios:
 - 6% taxable value growth
 - 30-year debt
 - Level debt service
 - ~4.5% interest rate
 - M&O set at voter approval rate
 - No additional contributions from other sources other than Enterprise Fund
 - **Only debt issued for priority water/wastewater projects is included**



Baseline Scenario

	FY 2023-2024	FY 2024-2025	FY 2025-2026	FY 2026-2027	FY 2027-2028
Tax Supported Debt Service Payment	4,957,595	6,425,969	8,206,090	10,016,836	11,602,732
Utility Supported Debt Service Payment	0	0	0	0	0
Total Debt Service Payment	\$4,957,595	\$6,425,969	\$8,206,090	\$10,016,836	\$11,602,732
Projected M&O Tax Rate	0.186777	0.182372	0.178071	0.173871	0.169770
Projected I&S Tax Rate	0.106544	0.166853	0.206915	0.242732	0.268282
Projected Total Tax Rate	0.293321	0.349225	0.384986	0.416603	0.438052
Average COT Tax Bill (\$300,000 value)	\$880	\$1,048	\$1,155	\$1,250	\$1,314
Projected Utility Rate Increase (%)	0.00%	0.00%	0.00%	0.00%	0.00%
Average COT W/WW Utility Bill (10,000 gal)*					
Monthly	\$106	\$106	\$106	\$106	\$106
Yearly	\$1,270	\$1,270	\$1,270	\$1,270	\$1,270
Total Tax Bill + W/WW Utility Bill	\$2,150	\$2,318	\$2,425	\$2,520	\$2,584

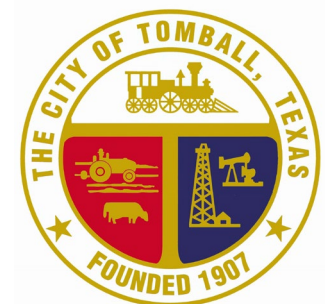
*Includes projected NHCRWA fee; does not include solid waste service or gas service charges



Scenario I

	FY 2023-2024	FY 2024-2025	FY 2025-2026	FY 2026-2027	FY 2027-2028
Tax Supported Debt Service Payment	4,957,595	4,215,696	4,155,964	4,123,189	4,091,748
Utility Supported Debt Service Payment	0	2,210,273	4,050,126	5,893,646	7,510,984
Total Debt Service Payment	\$4,957,595	\$6,425,969	\$8,206,090	\$10,016,836	\$11,602,732
Projected M&O Tax Rate	0.186777	0.182372	0.178071	0.173871	0.169770
Projected I&S Tax Rate	0.106544	0.101655	0.094208	0.088006	0.082257
Projected Total Tax Rate	0.293321	0.284026	0.272278	0.261877	0.252028
Average COT Tax Bill (\$300,000 value)	\$880	\$852	\$817	\$786	\$756
Projected Utility Rate Increase (%)	0.00%	12.30%	12.50%	13.30%	11.20%
Average COT W/WW Utility Bill (10,000 gal)					
Monthly	\$106	\$119	\$134	\$152	\$168
Yearly	\$1,270	\$1,427	\$1,605	\$1,818	\$2,021
Total Tax Bill + W/WW Utility Bill	\$2,150	\$2,279	\$2,421	\$2,604	\$2,777

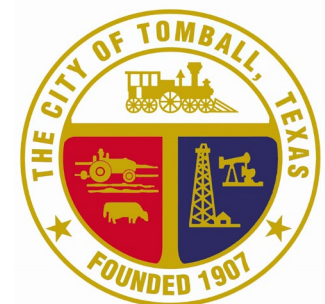
*Includes projected NHCRWA fee; does not include solid waste service or gas service charges



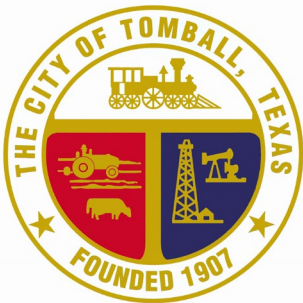
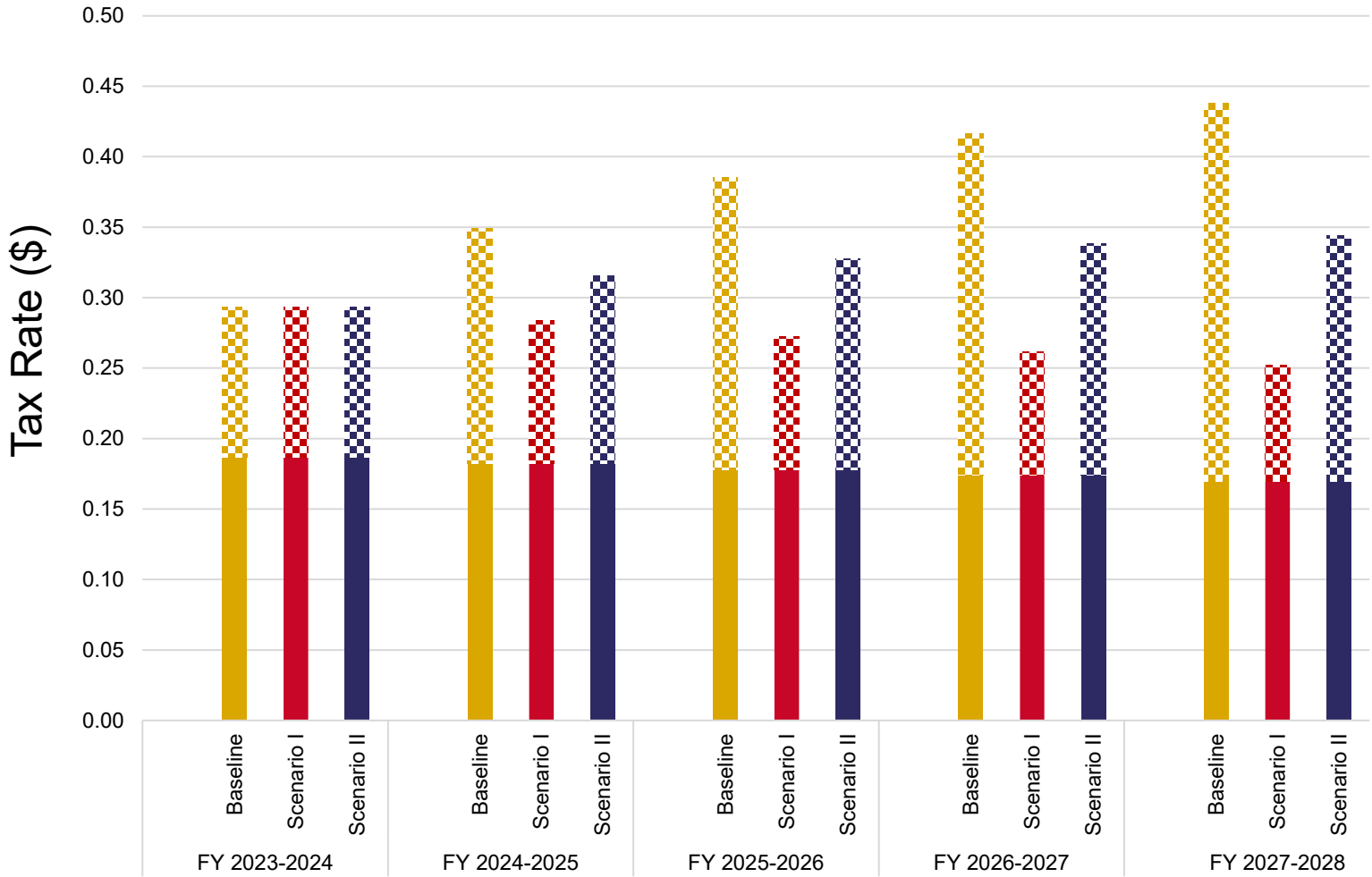
Scenario II

	FY 2023-2024	FY 2024-2025	FY 2025-2026	FY 2026-2027	FY 2027-2028
Tax Supported Debt Service Payment	4,957,595	5,277,381	6,137,629	7,026,565	7,803,775
Utility Supported Debt Service Payment	0	1,148,588	2,068,461	2,990,271	3,798,957
Total Debt Service Payment	\$4,957,595	\$6,425,969	\$8,206,090	\$10,016,836	\$11,602,732
Projected M&O Tax Rate	0.186777	0.182372	0.178071	0.173871	0.169770
Projected I&S Tax Rate	0.106544	0.132972	0.149354	0.164229	0.174193
Projected Total Tax Rate	0.293321	0.315344	0.327425	0.338099	0.343963
Average COT Tax Bill (\$300,000 value)	\$880	\$946	\$982	\$1,014	\$1,032
Projected Utility Rate Increase (%)	0.00%	9.00%	8.80%	9.20%	6.10%
Average COT W/WW Utility Bill (10,000 gal)					
Monthly	\$106	\$115	\$125	\$137	\$145
Yearly	\$1,270	\$1,384	\$1,506	\$1,644	\$1,743
Total Tax Bill + W/WW Utility Bill	\$2,150	\$2,330	\$2,488	\$2,658	\$2,775

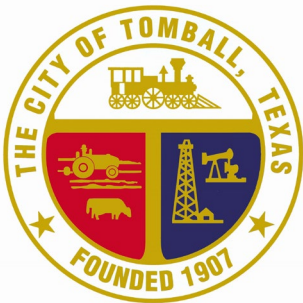
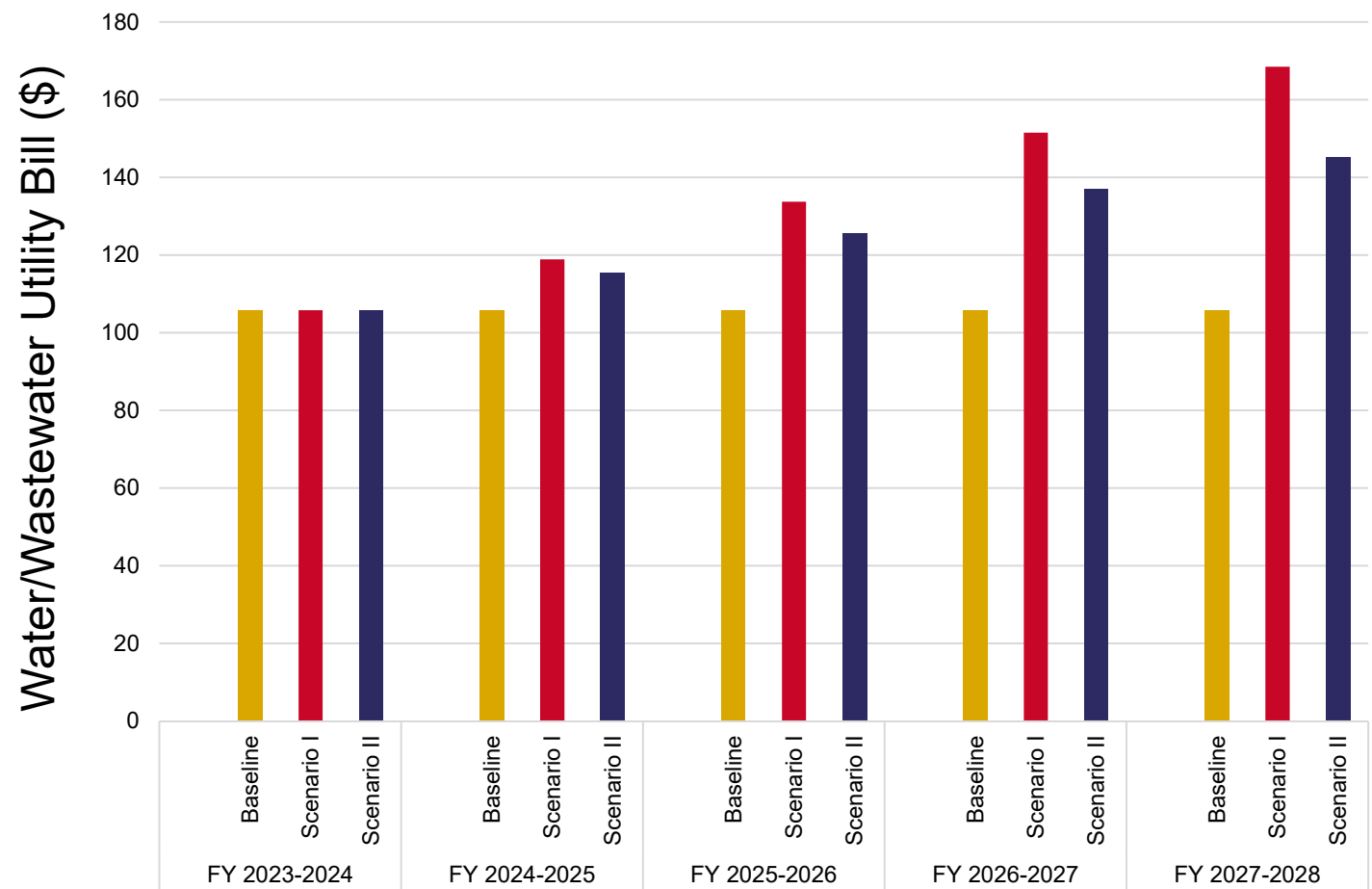
*Includes projected NHCRWA fee; does not include solid waste service or gas service charges



Tax Rate Impacts



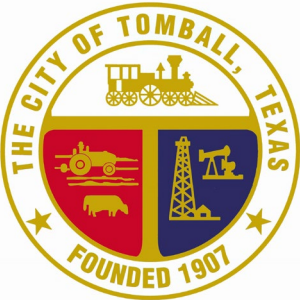
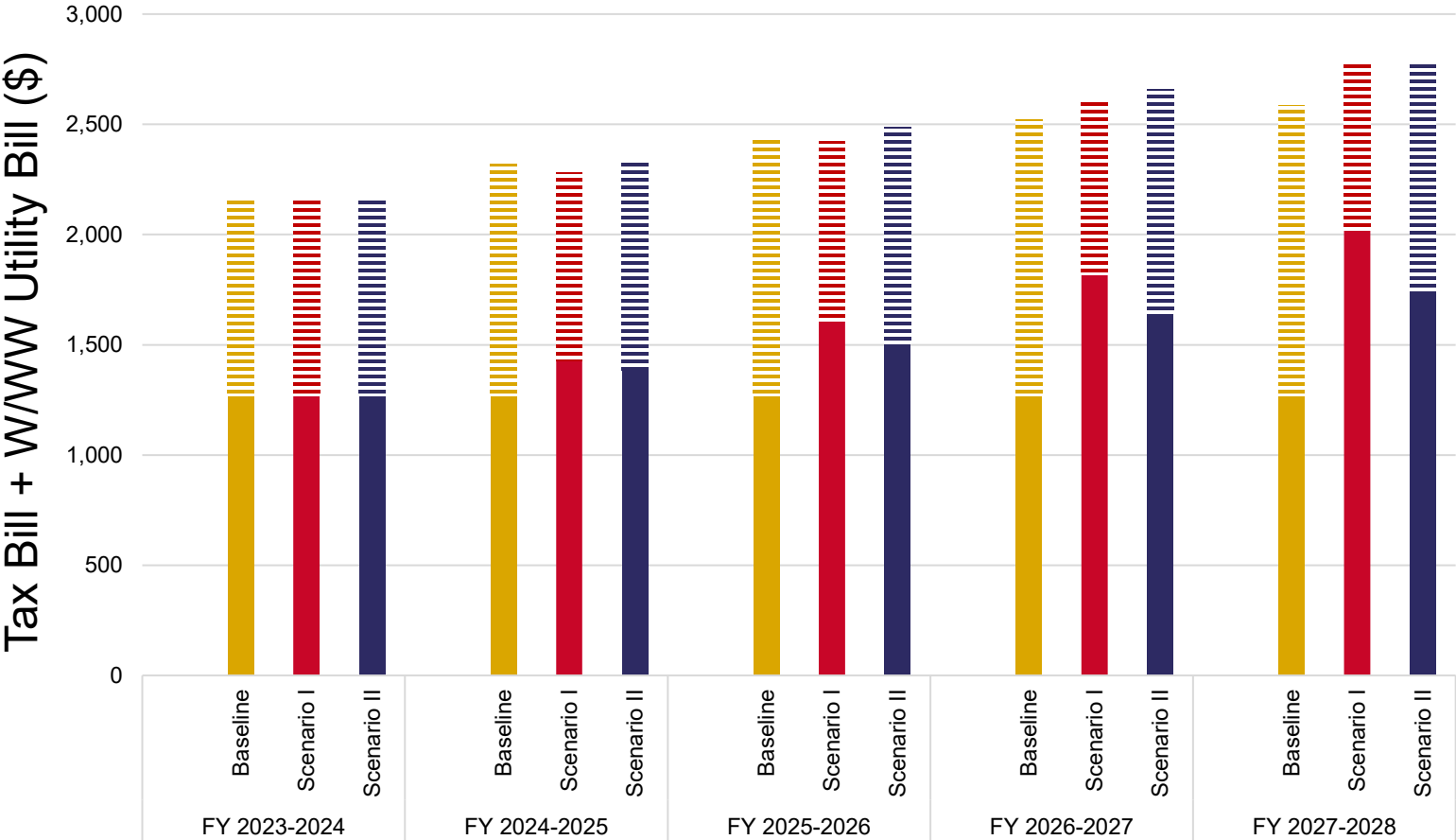
Monthly Utility Bill



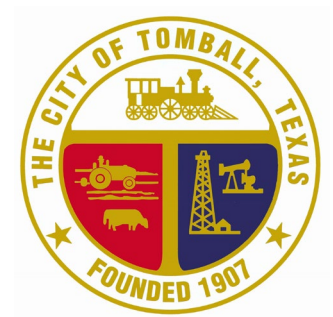
Total Estimated Annual Cost to Resident

Utility Bill

Property Taxes



Questions?



City Council Meeting Agenda Item Data Sheet

Meeting Date: 02/19/2024

Topic:

Discussion and possible action regarding liens imposed by the City of Tomball at 0 Clayton Street.

Background:

Mr. George Collins contacted the city secretary's office because he was not aware of liens that were placed on his property at 0 Clayton Street. The liens placed on the property were due to mowing expenses incurred at the vacant lot. Code Compliance ordered the lot to be mowed dating back from 2015 to 2019. Most of the mowing occurred during 2017. The total amount due includes the expenses from mowing, interest due, and lien release fees. The property owner states that he nor his father, George Collins Sr., never received notification of the mowing and is asking for council consideration to work with him on the owed balance.

Origination: City Management

Recommendation:

n/a

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

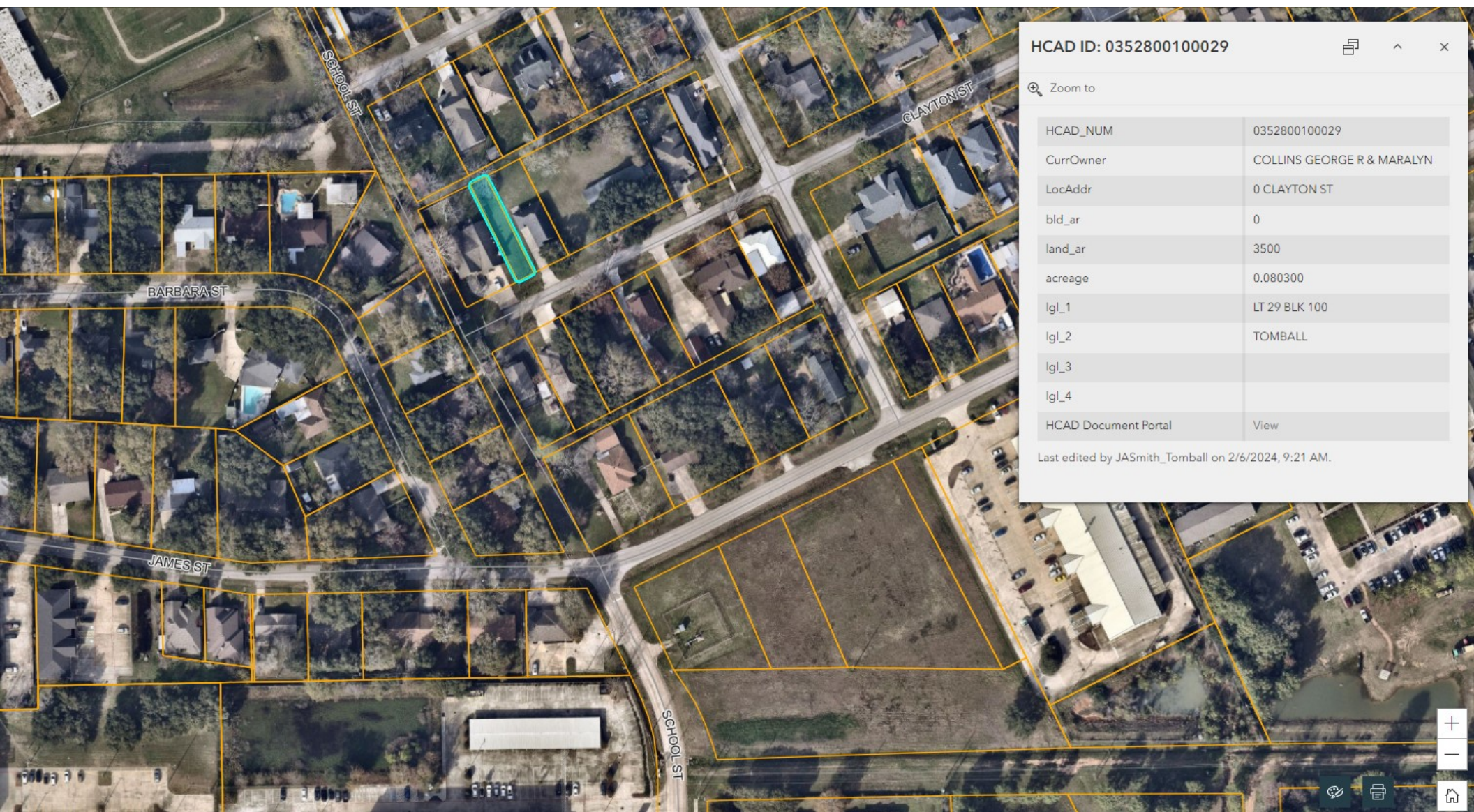
FUNDING (IF APPLICABLE)

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

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

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

Signed	_____	Approved by	<u>David Esquivel</u>	<u>02/14/2024</u>
	Staff Member		City Manager	Date



HCAD ID: 0352800100029

Zoom to

HCAD_NUM	0352800100029
CurrOwner	COLLINS GEORGE R & MARALYN
LocAddr	0 CLAYTON ST
bld_ar	0
land_ar	3500
acreage	0.080300
lgl_1	LT 29 BLK 100
lgl_2	TOMBALL
lgl_3	
lgl_4	
HCAD Document Portal	View

Last edited by JASmith_Tomball on 2/6/2024, 9:21 AM.

STATE OF TEXAS §
COUNTY OF HARRIS §

NOTICE OF LIEN

1. Notice is hereby given that the City of Tomball, Texas, has attached a lien against the property described in Exhibit "A";

Property Owner: GEORGE R. & MARALYN COLLINS
Address: 17413 FM 2920 RD. STE F2
TOMBALL, TX. 77377-6057

200

Property Description: LT 29, BLK 100 TOMBALL
O CLAYTON ST, TOMBALL TX. 77375

attached hereto and made a part hereof for all purposes. The said property is identified in such exhibit.

2. The City of Tomball, Texas, acting pursuant to the authority of state law and the ordinances of said City, did on the 10TH day of July, 2019, declare the existence on the described property of a public nuisance and a hazard to the health, safety, and welfare of the citizens, and did order the abatement of such nuisance and hazard after notice to the owner in accordance with state law and the ordinances of the City. The failure of the owner to abate such nuisance and hazard has resulted in the abatement thereof at the expense of the City, which expense has been assessed by the City on the land on which such nuisance and hazard existed.
3. DESCRIPTION. The property upon which such nuisance and hazard existed is in Harris County, Texas, and is within the City of Tomball, Texas. Said property is more particularly described in Exhibit "A".
4. ASSESSMENT OF EXPENSES. The City of Tomball incurred expenses in the amount of \$40, (\$) in abating such health hazard and public nuisance, for which sum said City makes claim against the property, and assesses such amount against the property described herein. The full amount described above remains due and owing.
5. I personally know the above statement to be true and correct and I am duly authorized to make this claim assessment, and notice.
6. Per Chapter 18 of the Code of Ordinances, the lien obtained by the city is security for the expenditures made with interest accruing at the rate of ten percent per annum on the amount due from the date of payment by the city.

CITY OF TOMBALL, TEXAS

121

By: 
Robert S. Hauck, City Manager

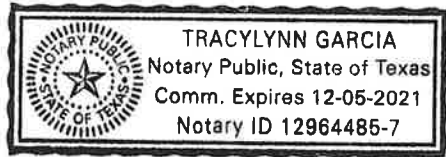
ACKNOWLEDGMENT

STATE OF TEXAS

§
§
§

COUNTY OF HARRIS

This instrument was acknowledged before me on the 15th day of January, 2021 by Robert S. Hauck, City Manager, of the City of Tomball, Texas on behalf of said City.





Notary Public in and for the State of Texas

My Commission expires: 12.05.2021

AFTER RECORDING RETURN TO:

Tracylynn Garcia
Assistant City Secretary
City of Tomball, Texas
401 Market Street
Tomball, Tx77375

EXHIBIT "A"

Address: 0 CLAYTON STREET, Tomball, Texas 77375

Property Description: LT 29, BLK 100 TOMBALL

Harris County Appraisal Account: 035-280-001-0029

12

RECORDER'S MEMORANDUM:

At the time of recordation, this instrument was found to be inadequate for the best photographic reproduction because of illegibility, carbon or photo copy, discolored paper, etc. All blockouts, additions and changes were present at the time the instrument was filed and recorded.

FILED FOR RECORD

8:00:00 AM

Monday, January 25, 2021



COUNTY CLERK, HARRIS COUNTY, TEXAS

ANY PROVISION HEREIN WHICH RESTRICTS THE SALE RENTAL, OR USE OF THE DESCRIBED REAL PROPERTY BECAUSE OF COLOR OR RACE IS INVALID AND UNENFORCEABLE UNDER FEDERAL LAW.

THE STATE OF TEXAS
COUNTY OF HARRIS

I hereby certify that this instrument was FILED in File Number Sequence on the date and at the time stamped hereon by me; and was duly RECORDED; in the Official Public Records of Real Property of Harris County Texas

Monday, January 25, 2021



COUNTY CLERK
HARRIS COUNTY, TEXAS

STATE OF TEXAS §
COUNTY OF HARRIS §

NOTICE OF LIEN

1. Notice is hereby given that the City of Tomball, Texas, has attached a lien against the property described in Exhibit "A";

Property Owner: GEORGE R. & MARALYN COLLINS
Address: 17413 FM 2920 RD. STE F2
TOMBALL, TX. 77377-6057


211

Property Description: LT 29, BLK 100 TOMBALL
O CLAYTON ST, TOMBALL TX. 77375

attached hereto and made a part hereof for all purposes. The said property is identified in such exhibit.

2. The City of Tomball, Texas, acting pursuant to the authority of state law and the ordinances of said City, did on the 2nd day of September, 2019, declare the existence on the described property of a public nuisance and a hazard to the health, safety, and welfare of the citizens, and did order the abatement of such nuisance and hazard after notice to the owner in accordance with state law and the ordinances of the City. The failure of the owner to abate such nuisance and hazard has resulted in the abatement thereof at the expense of the City, which expense has been assessed by the City on the land on which such nuisance and hazard existed.
3. DESCRIPTION. The property upon which such nuisance and hazard existed is in Harris County, Texas, and is within the City of Tomball, Texas. Said property is more particularly described in Exhibit "A".
4. ASSESSMENT OF EXPENSES. The City of Tomball incurred expenses in the amount of \$40, (\$) in abating such health hazard and public nuisance, for which sum said City makes claim against the property, and assesses such amount against the property described herein. The full amount described above remains due and owing.
5. I personally know the above statement to be true and correct and I am duly authorized to make this claim assessment, and notice.
6. Per Chapter 18 of the Code of Ordinances, the lien obtained by the city is security for the expenditures made with interest accruing at the rate of ten percent per annum on the amount due from the date of payment by the city.

CITY OF TOMBALL, TEXAS

By: 
Robert S. Hauck, City Manager

1072

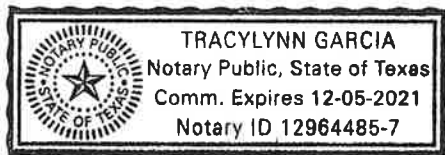
ACKNOWLEDGMENT

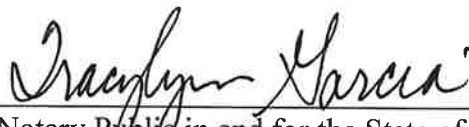
STATE OF TEXAS

§
§
§

COUNTY OF HARRIS

This instrument was acknowledged before me on the 15th day of January, 2021 by Robert S. Hauck, City Manager, of the City of Tomball, Texas on behalf of said City.





Notary Public in and for the State of Texas

My Commission expires: 12-05-2021

AFTER RECORDING RETURN TO:



Tracylynn Garcia
Assistant City Secretary
City of Tomball, Texas
401 Market Street
Tomball, Tx 77375

EXHIBIT "A"

Address: 0 CLAYTON STREET, Tomball, Texas 77375

Property Description: LT 29, BLK 100 TOMBALL

Harris County Appraisal Account: 035-280-001-0029





INVOICE

Neighborhood Lawn Service
24215 Spring Towne Drive
Spring, Texas 77373
United States

Phone: 713-805-0680
Mobile: 713-805-0680
rockbarras@yahoo.com

BILL TO
City of Tomball, Texas
Jeremy Williams

832-745-2004
JAWilliams@tomballtx.gov

Invoice Number: 12

Invoice Date: September 2, 2019

Payment Due: September 2, 2019

Amount Due (USD): \$40.00

Items	Quantity	Price	Amount
Code Compliance - mowing Mow 0 Clayton Street	1	\$40.00	\$40.00
Subtotal:			\$40.00
N/A 0%:			\$0.00
Total:			\$40.00
Amount Due (USD):			\$40.00

Notes

Make check payable to: Rock Barras

FILED FOR RECORD

8:00:00 AM

Monday, January 25, 2021



COUNTY CLERK, HARRIS COUNTY, TEXAS

ANY PROVISION HEREIN WHICH RESTRICTS THE SALE RENTAL, OR USE OF THE DESCRIBED REAL PROPERTY BECAUSE OF COLOR OR RACE IS INVALID AND UNENFORCEABLE UNDER FEDERAL LAW.

THE STATE OF TEXAS

COUNTY OF HARRIS

I hereby certify that this instrument was FILED in File Number Sequence on the date and at the time stamped hereon by me; and was duly RECORDED; in the Official Public Records of Real Property of Harris County Texas

Monday, January 25, 2021



COUNTY CLERK
HARRIS COUNTY, TEXAS

3.
Lien
7

STATE OF TEXAS §
COUNTY OF HARRIS §

NOTICE OF LIEN

1. Notice is hereby given that the City of Tomball, Texas, has attached a lien against the property described in Exhibit "A";

Property Owner: GEORGE R. & MARALYN COLLINS
Address: 17413 FM 2920 RD. STE F2
TOMBALL, TX. 77377-6057

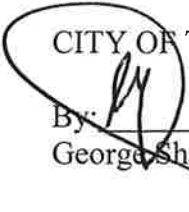
Property Description: LT 29, BLK 100 TOMBALL
O CLAYTON ST, TOMBALL TX. 77375

attached hereto and made a part hereof for all purposes. The said property is identified in such exhibit.

2. The City of Tomball, Texas, acting pursuant to the authority of state law and the ordinances of said City, did on the 12TH day of September, 2017, declare the existence on the described property of a public nuisance and a hazard to the health, safety, and welfare of the citizens, and did order the abatement of such nuisance and hazard after notice to the owner in accordance with state law and the ordinances of the City. The failure of the owner to abate such nuisance and hazard has resulted in the abatement thereof at the expense of the City, which expense has been assessed by the City on the land on which such nuisance and hazard existed.
3. DESCRIPTION. The property upon which such nuisance and hazard existed is in Harris County, Texas, and is within the City of Tomball, Texas. Said property is more particularly described in Exhibit "A".
4. ASSESSMENT OF EXPENSES. The City of Tomball incurred expenses in the amount of \$45, (\$) in abating such health hazard and public nuisance, for which sum said City makes claim against the property, and assesses such amount against the property described herein. The full amount described above remains due and owing.
5. I personally know the above statement to be true and correct and I am duly authorized to make this claim assessment, and notice.
6. Per Chapter 18 of the Code of Ordinances, the lien obtained by the city is security for the expenditures made with interest accruing at the rate of ten percent per annum on the amount due from the date of payment by the city.

for
see

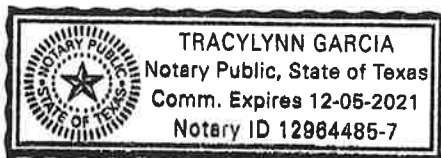
CITY OF TOMBALL, TEXAS

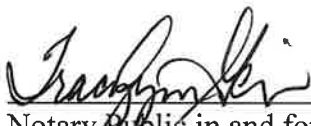
By: 
George Shackelford, City Manager

ACKNOWLEDGMENT

STATE OF TEXAS §
 §
COUNTY OF HARRIS §

This instrument was acknowledged before me on the 7th day of February, 2018 by George Shackelford, City Manager, of the City of Tomball, Texas on behalf of said City.




Notary Public in and for the State of Texas

My Commission expires: 12-05-2021

AFTER RECORDING RETURN TO:

Tracylynn Garcia
Assistant City Secretary
City of Tomball, Texas
401 Market Street
Tomball, Tx77375

EXHIBIT "A"

Address: 0 CLAYTON STREET, Tomball, Texas 77375

Property Description: LT 29, BLK 100 TOMBALL

HARRIS COUNTY

D

Harris County Appraisal Account: 035-280-001-0029

FILED FOR RECORD

3:44:24 PM

Thursday, February 22, 2018

Stan Stanert

COUNTY CLERK, HARRIS COUNTY, TEXAS

ANY PROVISION HEREIN WHICH RESTRICTS THE SALE RENTAL, OR USE OF THE DESCRIBED REAL PROPERTY BECAUSE OF COLOR OR RACE IS INVALID AND UNENFORCEABLE UNDER FEDERAL LAW.

THE STATE OF TEXAS

COUNTY OF HARRIS

I hereby certify that this instrument was FILED in File Number Sequence on the date and at the time stamped hereon by me; and was duly RECORDED; in the Official Public Records of Real Property of Harris County Texas

Thursday, February 22, 2018



Stan Stanert

COUNTY CLERK
HARRIS COUNTY, TEXAS

3
Lien
7
STATE OF TEXAS §
 §
COUNTY OF HARRIS §

NOTICE OF LIEN

1. Notice is hereby given that the City of Tomball, Texas, has attached a lien against the property described in Exhibit "A"; 16

Property Owner: GEORGE R. & MARALYN COLLINS
Address: 17413 FM 2920 RD. STE F2
TOMBALL, TX. 77377-6057 24

Property Description: LT 29, BLK 100 TOMBALL
O CLAYTON ST, TOMBALL TX. 77375

attached hereto and made a part hereof for all purposes. The said property is identified in such exhibit.

2. The City of Tomball, Texas, acting pursuant to the authority of state law and the ordinances of said City, did on the 22nd day of August, 2017, declare the existence on the described property of a public nuisance and a hazard to the health, safety, and welfare of the citizens, and did order the abatement of such nuisance and hazard after notice to the owner in accordance with state law and the ordinances of the City. The failure of the owner to abate such nuisance and hazard has resulted in the abatement thereof at the expense of the City, which expense has been assessed by the City on the land on which such nuisance and hazard existed.
3. DESCRIPTION. The property upon which such nuisance and hazard existed is in Harris County, Texas, and is within the City of Tomball, Texas. Said property is more particularly described in Exhibit "A".
4. ASSESSMENT OF EXPENSES. The City of Tomball incurred expenses in the amount of \$45, (\$) in abating such health hazard and public nuisance, for which sum said City makes claim against the property, and assesses such amount against the property described herein. The full amount described above remains due and owing.
5. I personally know the above statement to be true and correct and I am duly authorized to make this claim assessment, and notice.
6. Per Chapter 18 of the Code of Ordinances, the lien obtained by the city is security for the expenditures made with interest accruing at the rate of ten percent per annum on the amount due from the date of payment by the city.

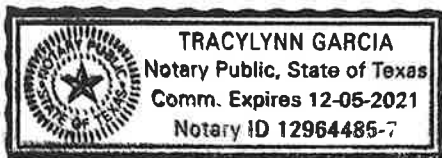
CITY OF TOMBALL, TEXAS

By: [Signature]
George Shackelford, City Manager

ACKNOWLEDGMENT

STATE OF TEXAS §
 §
COUNTY OF HARRIS §

This instrument was acknowledged before me on the 7th day of February, 2018 by George Shackelford, City Manager, of the City of Tomball, Texas on behalf of said City.



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

My Commission expires: 12-05-2021

AFTER RECORDING RETURN TO:

Tracylynn Garcia
Assistant City Secretary
City of Tomball, Texas
401 Market Street
Tomball, Tx 77375

EXHIBIT "A"

Address: 0 CLAYTON STREET, Tomball, Texas 77375

Property Description: LT 29, BLK 100 TOMBALL

Here is copy D

Harris County Appraisal Account: 035-280-001-0029

FILED FOR RECORD

3:44:24 PM

Thursday, February 22, 2018

Stan Stuart

COUNTY CLERK, HARRIS COUNTY, TEXAS

ANY PROVISION HEREIN WHICH RESTRICTS THE SALE RENTAL, OR USE OF THE DESCRIBED REAL PROPERTY BECAUSE OF COLOR OR RACE IS INVALID AND UNENFORCEABLE UNDER FEDERAL LAW.

THE STATE OF TEXAS
COUNTY OF HARRIS

I hereby certify that this instrument was FILED in File Number Sequence on the date and at the time stamped hereon by me; and was duly RECORDED; in the Official Public Records of Real Property of Harris County Texas

Thursday, February 22, 2018



Stan Stuart

COUNTY CLERK
HARRIS COUNTY, TEXAS

3
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STATE OF TEXAS §
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COUNTY OF HARRIS §

NOTICE OF LIEN

1. Notice is hereby given that the City of Tomball, Texas, has attached a lien against the property described in Exhibit "A";

Property Owner: GEORGE R. & MARALYN COLLINS
Address: 17413 FM 2920 RD. STE F2
TOMBALL, TX. 77377-6057


nee

Property Description: LT 29, BLK 100 TOMBALL
O CLAYTON ST, TOMBALL TX. 77375

attached hereto and made a part hereof for all purposes. The said property is identified in such exhibit.

2. The City of Tomball, Texas, acting pursuant to the authority of state law and the ordinances of said City, did on the 22nd day of August, 2017, declare the existence on the described property of a public nuisance and a hazard to the health, safety, and welfare of the citizens, and did order the abatement of such nuisance and hazard after notice to the owner in accordance with state law and the ordinances of the City. The failure of the owner to abate such nuisance and hazard has resulted in the abatement thereof at the expense of the City, which expense has been assessed by the City on the land on which such nuisance and hazard existed.
3. DESCRIPTION. The property upon which such nuisance and hazard existed is in Harris County, Texas, and is within the City of Tomball, Texas. Said property is more particularly described in Exhibit "A".
4. ASSESSMENT OF EXPENSES. The City of Tomball incurred expenses in the amount of \$45, (\$) in abating such health hazard and public nuisance, for which sum said City makes claim against the property, and assesses such amount against the property described herein. The full amount described above remains due and owing.
5. I personally know the above statement to be true and correct and I am duly authorized to make this claim assessment, and notice.
6. Per Chapter 18 of the Code of Ordinances, the lien obtained by the city is security for the expenditures made with interest accruing at the rate of ten percent per annum on the amount due from the date of payment by the city.

CITY OF TOMBALL, TEXAS

By: 
George Shackelford, City Manager


1012

ACKNOWLEDGMENT

STATE OF TEXAS §
 §
COUNTY OF HARRIS §

This instrument was acknowledged before me on the 21st day of December, 2017 by George Shackelford, City Manager, of the City of Tomball, Texas on behalf of said City.




Notary Public in and for the State of Texas

My Commission expires: 11.14.2021

AFTER RECORDING RETURN TO:



Tracylynn Garcia
Assistant City Secretary
City of Tomball, Texas
401 Market Street
Tomball, Tx 77375

EXHIBIT "A"

Address: 0 CLAYTON STREET, Tomball, Texas 77375

Property Description: LT 29, BLK 100 TOMBALL

Harris County Appraisal Account: 035-280-001-0029

FILED FOR RECORD

11:16:44 AM

Wednesday, December 27, 2017

Stan Stuart

COUNTY CLERK, HARRIS COUNTY, TEXAS

ANY PROVISION HEREIN WHICH RESTRICTS THE SALE RENTAL, OR USE OF THE DESCRIBED REAL PROPERTY BECAUSE OF COLOR OR RACE IS INVALID AND UNENFORCEABLE UNDER FEDERAL LAW.

THE STATE OF TEXAS
COUNTY OF HARRIS

I hereby certify that this instrument was FILED in File Number Sequence on the date and at the time stamped hereon by me; and was duly RECORDED; in the Official Public Records of Real Property of Harris County Texas

Wednesday, December 27, 2017



Stan Stuart
COUNTY CLERK
HARRIS COUNTY, TEXAS

STATE OF TEXAS §
 §
COUNTY OF HARRIS §

NOTICE OF LIEN

1. Notice is hereby given that the City of Tomball, Texas, has attached a lien against the property described in Exhibit "A";

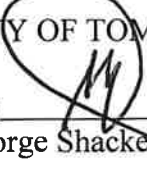
Property Owner: GEORGE R. & MARALYN COLLINS
Address: 17413 FM 2920 RD. STE F2
TOMBALL, TX. 77377-6057

Property Description: LT 29, BLK 100 TOMBALL
O CLAYTON ST, TOMBALL TX. 77375

attached hereto and made a part hereof for all purposes. The said property is identified in such exhibit.

2. The City of Tomball, Texas, acting pursuant to the authority of state law and the ordinances of said City, did on the 12th day of September, 2017, declare the existence on the described property of a public nuisance and a hazard to the health, safety, and welfare of the citizens, and did order the abatement of such nuisance and hazard after notice to the owner in accordance with state law and the ordinances of the City. The failure of the owner to abate such nuisance and hazard has resulted in the abatement thereof at the expense of the City, which expense has been assessed by the City on the land on which such nuisance and hazard existed.
3. DESCRIPTION. The property upon which such nuisance and hazard existed is in Harris County, Texas, and is within the City of Tomball, Texas. Said property is more particularly described in Exhibit "A".
4. ASSESSMENT OF EXPENSES. The City of Tomball incurred expenses in the amount of \$45, (\$) in abating such health hazard and public nuisance, for which sum said City makes claim against the property, and assesses such amount against the property described herein. The full amount described above remains due and owing.
5. I personally know the above statement to be true and correct and I am duly authorized to make this claim assessment, and notice.
6. Per Chapter 18 of the Code of Ordinances, the lien obtained by the city is security for the expenditures made with interest accruing at the rate of ten percent per annum on the amount due from the date of payment by the city.

CITY OF TOMBALL, TEXAS

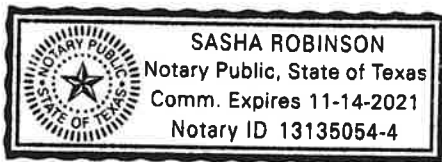
By: 
George Shackelford, City Manager

1012

ACKNOWLEDGMENT

STATE OF TEXAS §
 §
COUNTY OF HARRIS §

This instrument was acknowledged before me on the 21st day of December 21, 2017 by George Shackelford, City Manager, of the City of Tomball, Texas on behalf of said City.




Notary Public in and for the State of Texas

My Commission expires: 11.14.2021

AFTER RECORDING RETURN TO: 

Tracylynn Garcia
Assistant City Secretary
City of Tomball, Texas
401 Market Street
Tomball, Tx 77375

EXHIBIT "A"

Address: 0 CLAYTON STREET, Tomball, Texas 77375

Property Description: LT 29, BLK 100 TOMBALL

Harris County Appraisal Account: 035-280-001-0029

D

FILED FOR RECORD

11:16:44 AM

Wednesday, December 27, 2017

Stan Stuart

COUNTY CLERK, HARRIS COUNTY, TEXAS

ANY PROVISION HEREIN WHICH RESTRICTS THE SALE RENTAL, OR USE OF THE DESCRIBED REAL PROPERTY BECAUSE OF COLOR OR RACE IS INVALID AND UNENFORCEABLE UNDER FEDERAL LAW.

THE STATE OF TEXAS
COUNTY OF HARRIS

I hereby certify that this instrument was FILED in File Number Sequence on the date and at the time stamped hereon by me; and was duly RECORDED; in the Official Public Records of Real Property of Harris County Texas

Wednesday, December 27, 2017



Stan Stuart
COUNTY CLERK
HARRIS COUNTY, TEXAS

3
L/H
2

STATE OF TEXAS §
 §
COUNTY OF HARRIS §

NOTICE OF LIEN

1. Notice is hereby given that the City of Tomball, Texas, has attached a lien against the property described in Exhibit "A"; *for*

Property Owner: GEORGE R. & MARALYN COLLINS
Address: 17413 FM 2920 RD. STE F2
TOMBALL, TX. 77377-6057 *see*

Property Description: LT 29, BLK 100 TOMBALL
O CLAYTON ST, TOMBALL TX. 77375

attached hereto and made a part hereof for all purposes. The said property is identified in such exhibit.

2. The City of Tomball, Texas, acting pursuant to the authority of state law and the ordinances of said City, did on the 19 day of July, 2017, declare the existence on the described property of a public nuisance and a hazard to the health, safety, and welfare of the citizens, and did order the abatement of such nuisance and hazard after notice to the owner in accordance with state law and the ordinances of the City. The failure of the owner to abate such nuisance and hazard has resulted in the abatement thereof at the expense of the City, which expense has been assessed by the City on the land on which such nuisance and hazard existed.
3. DESCRIPTION. The property upon which such nuisance and hazard existed is in Harris County, Texas, and is within the City of Tomball, Texas. Said property is more particularly described in Exhibit "A".
4. ASSESSMENT OF EXPENSES. The City of Tomball incurred expenses in the amount of \$35 (\$) in abating such health hazard and public nuisance, for which sum said City makes claim against the property, and assesses such amount against the property described herein. The full amount described above remains due and owing.
5. I personally know the above statement to be true and correct and I am duly authorized to make this claim assessment, and notice.
6. Per Chapter 18 of the Code of Ordinances, the lien obtained by the city is security for the expenditures made with interest accruing at the rate of ten percent per annum on the amount due from the date of payment by the city.

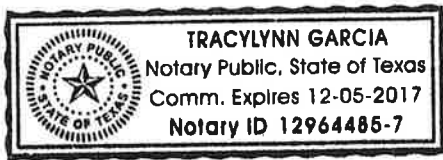
CITY OF TOMBALL, TEXAS

By: [Signature]
George Shackelford, City Manager

ACKNOWLEDGMENT

STATE OF TEXAS §
 §
COUNTY OF HARRIS §

This instrument was acknowledged before me on the 20 day of September, 2017
by George Shackelford, City Manager, of the City of Tomball, Texas on behalf of said City.



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

My Commission expires: 12-05-2017

AFTER RECORDING RETURN TO:

Tracylynn Garcia
Assistant City Secretary
City of Tomball, Texas
401 Market Street
Tomball, Tx 77375

EXHIBIT "A"

Address: 0 CLAYTON STREET, Tomball, Texas 77375

Property Description: LT 29, BLK 100 TOMBALL

Harris County

Harris County Appraisal Account: 035-280-001-0029

D

FILED FOR RECORD

1:23:51 PM

Wednesday, September 27, 2017

Stan Stuart

COUNTY CLERK, HARRIS COUNTY, TEXAS

ANY PROVISION HEREIN WHICH RESTRICTS THE SALE RENTAL, OR USE OF THE DESCRIBED REAL PROPERTY BECAUSE OF COLOR OR RACE IS INVALID AND UNENFORCEABLE UNDER FEDERAL LAW.

THE STATE OF TEXAS

COUNTY OF HARRIS

I hereby certify that this instrument was FILED in File Number Sequence on the date and at the time stamped hereon by me; and was duly RECORDED; in the Official Public Records of Real Property of Harris County Texas

Wednesday, September 27, 2017



Stan Stuart

COUNTY CLERK
HARRIS COUNTY, TEXAS

3
R
STATE OF TEXAS §
COUNTY OF HARRIS §

NOTICE OF LIEN

1. Notice is hereby given that the City of Tomball, Texas, has attached a lien against the property described in Exhibit "A";

Property Owner: GEORGE R. & MARALYN COLLINS
Address: 17413 FM 2920 RD. STE F2
TOMBALL, TX. 77377-6057

2ee

Property Description: LT 29, BLK 100 TOMBALL
O CLAYTON ST, TOMBALL TX. 77375

attached hereto and made a part hereof for all purposes. The said property is identified in such exhibit.

2. The City of Tomball, Texas, acting pursuant to the authority of state law and the ordinances of said City, did on the 12 day of June____, 2017, declare the existence on the described property of a public nuisance and a hazard to the health, safety, and welfare of the citizens, and did order the abatement of such nuisance and hazard after notice to the owner in accordance with state law and the ordinances of the City. The failure of the owner to abate such nuisance and hazard has resulted in the abatement thereof at the expense of the City, which expense has been assessed by the City on the land on which such nuisance and hazard existed.
3. DESCRIPTION. The property upon which such nuisance and hazard existed is in Harris County, Texas, and is within the City of Tomball, Texas. Said property is more particularly described in Exhibit "A".
4. ASSESSMENT OF EXPENSES. The City of Tomball incurred expenses in the amount of \$60.00 (\$) in abating such health hazard and public nuisance, for which sum said City makes claim against the property, and assesses such amount against the property described herein. The full amount described above remains due and owing.
5. I personally know the above statement to be true and correct and I am duly authorized to make this claim assessment, and notice.
6. Per Chapter 18 of the Code of Ordinances, the lien obtained by the city is security for the expenditures made with interest accruing at the rate of ten percent per annum on the amount due from the date of payment by the city.

EXHIBIT "A"

Address: 0 CLAYTON STREET, Tomball, Texas 77375

Property Description: LT 29, BLK 100 TOMBALL

Harris County Appraisal Account: 035-280-001-0029

D

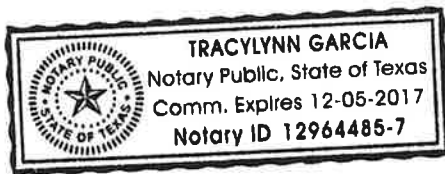
CITY OF TOMBALL, TEXAS

By: [Signature]
George Shackelford, City Manager

ACKNOWLEDGMENT

STATE OF TEXAS §
 §
COUNTY OF HARRIS §

This instrument was acknowledged before me on the 2 day of August, 2017
by George Shackelford, City Manager, of the City of Tomball, Texas on behalf of said City. 102



Tracylynn Garcia
Notary Public in and for the State of Texas

My Commission expires: 12-05-2017

AFTER RECORDING RETURN TO:

Tracylynn Garcia
Assistant City Secretary
City of Tomball, Texas
401 Market Street
Tomball, Tx 77375

[Signature]

RECORDER'S MEMORANDUM:

At the time of recordation, this instrument was found to be inadequate for the best photographic reproduction because of illegibility, carbon or photo copy, discolored paper, etc. All blockouts, additions and changes were present at the time the instrument was filed and recorded.

FILED FOR RECORD

2:18:21 PM

Friday, August 4, 2017

Stan Stuart

COUNTY CLERK, HARRIS COUNTY, TEXAS

ANY PROVISION HEREIN WHICH RESTRICTS THE SALE RENTAL, OR USE OF THE DESCRIBED REAL PROPERTY BECAUSE OF COLOR OR RACE IS INVALID AND UNENFORCEABLE UNDER FEDERAL LAW.

THE STATE OF TEXAS
COUNTY OF HARRIS

I hereby certify that this instrument was FILED in File Number Sequence on the date and at the time stamped hereon by me, and was duly RECORDED; in the Official Public Records of Real Property of Harris County Texas

Friday, August 4, 2017



Stan Stuart
COUNTY CLERK
HARRIS COUNTY, TEXAS

3
Lien
H

RP-2016-529493
11/23/2016 RP2 \$24.00

STATE OF TEXAS §
 §
COUNTY OF HARRIS §

NOTICE OF LIEN

1. Notice is hereby given that the City of Tomball, Texas, has attached a lien against the property described in Exhibit "A";

Property Owner: GEORGE R. & MARALYN COLLINS
Address: 17413 FM 2920 RD. STE F2
TOMBALL, TX. 77377-6057

2ll

Property Description: LT 29, BLK 100 TOMBALL
O CLAYTON ST, TOMBALL TX. 77375

attached hereto and made a part hereof for all purposes. The said property is identified in such exhibit.

2. The City of Tomball, Texas, acting pursuant to the authority of state law and the ordinances of said City, did on the 31 day of OCTOBER, 2016, declare the existence on the described property of a public nuisance and a hazard to the health, safety, and welfare of the citizens, and did order the abatement of such nuisance and hazard after notice to the owner in accordance with state law and the ordinances of the City. The failure of the owner to abate such nuisance and hazard has resulted in the abatement thereof at the expense of the City, which expense has been assessed by the City on the land on which such nuisance and hazard existed.
3. DESCRIPTION. The property upon which such nuisance and hazard existed is in Harris County, Texas, and is within the City of Tomball, Texas. Said property is more particularly described in Exhibit "A".
4. ASSESSMENT OF EXPENSES. The City of Tomball incurred expenses in the amount of \$50.00, (\$) in abating such health hazard and public nuisance, for which sum said City makes claim against the property, and assesses such amount against the property described herein. The full amount described above remains due and owing.
5. I personally know the above statement to be true and correct and I am duly authorized to make this claim assessment, and notice.
6. Per Chapter 18 of the Code of Ordinances, the lien obtained by the city is security for the expenditures made with interest accruing at the rate of ten percent per annum on the amount due from the date of payment by the city.

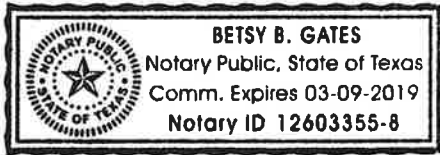
CITY OF TOMBALL, TEXAS

By: [Signature]
George Shackelford, City Manager

ACKNOWLEDGMENT

STATE OF TEXAS §
 §
COUNTY OF HARRIS §

This instrument was acknowledged before me on the 17 day of NOVEMBER 2016
by George Shackelford, City Manager, of the City of Tomball, Texas on behalf of said City.



Betsy B. Gates
Notary Public in and for the State of Texas

My Commission expires: 03-09-2019

AFTER RECORDING RETURN TO: ✓

Betsy Gates
Assistant City Secretary
City of Tomball, Texas
401 Market Street
Tomball, Tx 77375

EXHIBIT "A"

Address: 0 CLAYTON STREET, Tomball, Texas 77375

Property Description: LT 29, BLK 100 TOMBALL

Harris County Appraisal Account: 035-280-001-0029

D

FILED FOR RECORD

2:49:11 PM

Wednesday, November 23, 2016

Stan Stewart

COUNTY CLERK, HARRIS COUNTY, TEXAS

ANY PROVISION HEREIN WHICH RESTRICTS THE SALE RENTAL, OR USE OF THE DESCRIBED REAL PROPERTY BECAUSE OF COLOR OR RACE IS INVALID AND UNENFORCEABLE UNDER FEDERAL LAW.

THE STATE OF TEXAS
COUNTY OF HARRIS

I hereby certify that this instrument was FILED in File Number Sequence on the date and at the time stamped hereon by me, and was duly RECORDED; in the Official Public Records of Real Property of Harris County Texas

Wednesday, November 23, 2016



Stan Stewart
COUNTY CLERK
HARRIS COUNTY, TEXAS

3
lien
kit

STATE OF TEXAS §
 §
COUNTY OF HARRIS §

RP-2016-435893
09/27/2016 RP2 \$24.00

NOTICE OF LIEN

1. Notice is hereby given that the City of Tomball, Texas, has attached a lien against the property described in Exhibit "A"; 1m

Property Owner: GEORGE R. & MARALYN COLLINS
Address: 0 CLAYTON STREET
TOMBALL, TX. 77375 2m

Property Description: LT 29 BLK 100 TOMBALL

attached hereto and made a part hereof for all purposes. The said property is identified in such exhibit.

2. The City of Tomball, Texas, acting pursuant to the authority of state law and the ordinances of said City, did on the 09 day of AUGUST, 2016, declare the existence on the described property of a public nuisance and a hazard to the health, safety, and welfare of the citizens, and did order the abatement of such nuisance and hazard after notice to the owner in accordance with state law and the ordinances of the City. The failure of the owner to abate such nuisance and hazard has resulted in the abatement thereof at the expense of the City, which expense has been assessed by the City on the land on which such nuisance and hazard existed.
3. DESCRIPTION. The property upon which such nuisance and hazard existed is in Harris County, Texas, and is within the City of Tomball, Texas. Said property is more particularly described in Exhibit "A".
4. ASSESSMENT OF EXPENSES. The City of Tomball incurred expenses in the amount of \$45.00, (\$) in abating such health hazard and public nuisance, for which sum said City makes claim against the property, and assesses such amount against the property described herein. The full amount described above remains due and owing.
5. I personally know the above statement to be true and correct and I am duly authorized to make this claim assessment, and notice.
6. Per Chapter 18 of the Code of Ordinances, the lien obtained by the city is security for the expenditures made with interest accruing at the rate of ten percent per annum on the amount due from the date of payment by the city.

CITY OF TOMBALL, TEXAS

By: [Signature]
George Shackelford, City Manager

ACKNOWLEDGMENT

STATE OF TEXAS §
 §
COUNTY OF HARRIS §

This instrument was acknowledged before me on the 26 day of September, 2016
by George Shackelford, City Manager, of the City of Tomball, Texas on behalf of said City.



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

My Commission expires: 12-05-2017

AFTER RECORDING RETURN TO:

Betsy Gates
Assistant City Secretary
City of Tomball, Texas
401 Market Street
Tomball, Tx 77375

✓✓

EXHIBIT "A"

Address: 0 CLAYTON STREET, Tomball, Texas 77375

Property Description: LT 29 BLK 100 TOMBALL

Harris County Appraisal Account: 03528001000029

D

FILED

2016 SEP 27 PM 1:22

Stan Stewart
COUNTY CLERK
HARRIS COUNTY, TEXAS

ANY PROVISION HEREIN WHICH RESTRICTS THE SALE, RENTAL, OR USE OF THE DESCRIBED REAL
PROPERTY BECAUSE OF COLOR OR RACE IS INVALID AND UNENFORCEABLE UNDER FEDERAL LAW,
THE STATE OF TEXAS
COUNTY OF HARRIS

I hereby certify that this instrument was FILED in File Number Sequence on the date and at the time
stamped hereon by me, and was duly RECORDED, in the Official Public Records of Real Property of Harris
County, Texas

SEP 27 2016



Stan Stewart
COUNTY CLERK
HARRIS COUNTY, TEXAS

325

RP-2016-435893

Please find enclosed your instrument as recorded in the Office of the County Clerk. It has been a pleasure to serve you.

Stan Stanart

Stan Stanart
County Clerk
Harris County, Texas

CITY OF TOMBALL TEXAS
BETSY GATES ASSISTANT CITY SECRETARY
401 MARKET ST
TOMBALL, TX 77375

RP-2016-435893

3
Lien
7

STATE OF TEXAS §
COUNTY OF HARRIS §

NOTICE OF LIEN

1. Notice is hereby given that the City of Tomball, Texas, has attached a lien against the property described in Exhibit "A"; 102

Property Owner: GEORGE R. & MARALYN COLLINS
Address: 0 CLAYTON STREET
TOMBALL, TX. 77375 202

Property Description: LT 29 BLK 100 TOMBALL

attached hereto and made a part hereof for all purposes. The said property is identified in such exhibit.

2. The City of Tomball, Texas, acting pursuant to the authority of state law and the ordinances of said City, did on the 2 day of MAY, 2016, declare the existence on the described property of a public nuisance and a hazard to the health, safety, and welfare of the citizens, and did order the abatement of such nuisance and hazard after notice to the owner in accordance with state law and the ordinances of the City. The failure of the owner to abate such nuisance and hazard has resulted in the abatement thereof at the expense of the City, which expense has been assessed by the City on the land on which such nuisance and hazard existed.
3. DESCRIPTION. The property upon which such nuisance and hazard existed is in Harris County, Texas, and is within the City of Tomball, Texas. Said property is more particularly described in Exhibit "A".
4. ASSESSMENT OF EXPENSES. The City of Tomball incurred expenses in the amount of \$35.00, (\$) in abating such health hazard and public nuisance, for which sum said City makes claim against the property, and assesses such amount against the property described herein. The full amount described above remains due and owing.
5. I personally know the above statement to be true and correct and I am duly authorized to make this claim assessment, and notice.
6. Per Chapter 18 of the Code of Ordinances, the lien obtained by the city is security for the expenditures made with interest accruing at the rate of ten percent per annum on the amount due from the date of payment by the city.

CITY OF TOMBALL, TEXAS

By: George Shackelford, City Manager

ACKNOWLEDGMENT

STATE OF TEXAS

§
§
§

COUNTY OF HARRIS

This instrument was acknowledged before me on the 21 day of June, 2019⁶ by George Shackelford, City Manager, of the City of Tomball, Texas on behalf of said City. BG

Betsy B. Gates
Notary Public in and for the State of Texas

My Commission expires: 03-09-2019

AFTER RECORDING RETURN TO:

Betsy Gates 11
Assistant City Secretary
City of Tomball, Texas
401 Market Street
Tomball, Tx 77375

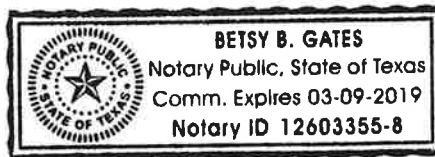


EXHIBIT "A"

Address: 0 CLAYTON STREET, Tomball, Texas 77375

Property Description: LT 29 BLK 100 TOMBALL

Harris County Appraisal Account: 03528001000029

D

RECORDER'S MEMORANDUM:

At the time of recordation, this instrument was found to be inadequate for the best photographic reproduction because of illegibility, carbon or photo copy, discolored paper, etc. All blockouts, additions and changes were present at the time the instrument was filed and recorded.

FILED

2016 JUN 23 PM 12:54

Stan Stant
COUNTY CLERK
HARRIS COUNTY, TEXAS

ANY PROVISION HEREIN WHICH RESTRICTS THE SALE, RENTAL, OR USE OF THE DESCRIBED REAL
PROPERTY BECAUSE OF COLOR OR RACE IS INVALID AND UNENFORCEABLE UNDER FEDERAL LAW.
THE STATE OF TEXAS
COUNTY OF HARRIS

I hereby certify that this instrument was FILED in File Number Sequence on the date and at the time
stamped hereon by me, and was duly RECORDED, in the Official Public Records of Real Property of Harris
County, Texas

JUN 23 2016



Stan Stant
COUNTY CLERK
HARRIS COUNTY, TEXAS



City of Tomball

Gretchen Fagan
Mayor

George Shackelford
City Manager

STATE OF TEXAS} §
COUNTY OF HARRIS §

20150382924
08/24/2015 RP1 \$24.00

NOTICE OF LIEN

1. Notice is hereby given that the City of Tomball, Texas, has attached a lien against the property described in Exhibit "A":

Property Owner: GEORGE R & MARALYN COLLINS
Address: CLAYTON St.

Property Description: LT 29 BLK 100 TOMBALL
2. The City of Tomball, Texas, acting pursuant to the authority of state law and the ordinances of said City, did on Aug. 07, 2015, declare the existence on the described property of a public nuisance and a hazard to the health, safety, and welfare of the citizens, and did order the abatement of such nuisance and hazard after notice to the owner in accordance with state law and the ordinances of the City. The failure of the owner to abate such nuisance and hazard has resulted in the abatement thereof at the expense of the City, which expense has been assessed by the City on the land on which such nuisance and hazard existed.
3. DESCRIPTION. The property upon which such nuisance and hazard existed is in Harris County, Texas, and is within the City of Tomball, Texas. Said property is more particularly described in Exhibit "A".
4. ASSESSMENT OF EXPENSES. The City of Tomball incurred expenses in the amount of 35.00, in abating such health hazard and public nuisance, for which sum said City makes claim against the property, and assesses such amount against the property described herein. The full amount described above remains due and owing.
5. I personally know the above statement to be true and correct and I am duly authorized to make this claim assessment, and notice.
6. Per Chapter 18 of the Code of Ordinances, the lien obtained by the city is security for the expenditures made with interest accruing at the rate of ten percent per annum on the amount due from the date of payment by the city.



City of Tomball

Gretchen Fagan
Mayor

George Shackelford
City Manager

CITY OF TOMBALL, TEXAS

By George Shackelford, City Manager

ACKNOWLEDGMENT

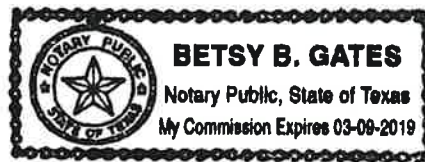
STATE OF TEXAS §
COUNTY OF HARRIS §

This instrument was acknowledged before me on the 19 day of August, 2015 by George Shackelford, City Manager, of the City of Tomball, Texas on behalf of said City.

Betsy B. Gates
Notary Public for the State of Texas
My Commission expires 03-09-2019

AFTER RECORDING RETURN
TO:

Assistant City Secretary ✓
City of Tomball, Texas
401 Market Street
Tomball, TX 77375





City of Tomball

Gretchen Fagan
Mayor

George Shackelford
City Manager

EXHIBIT "A"

Address: CLAYTON St., Tomball, Texas 77375

Property Description: LT 29 BLK 100 TOMBALL

Harris County Appraisal Account: 0352800100029

HARRIS COUNTY

0

15-00137-1847

FILED

2015 AUG 24 PM 1:51

Stan Stewart
COUNTY CLERK
HARRIS COUNTY, TEXAS

ANY PROVISION HEREIN WHICH RESTRICTS THE SALE, RENTAL, OR USE OF THE DESCRIBED REAL
PROPERTY BECAUSE OF COLOR OR RACE IS INVALID AND UNENFORCEABLE UNDER FEDERAL LAW.
THE STATE OF TEXAS
COUNTY OF HARRIS

I hereby certify that this instrument was FILED in File Number Sequence on the date and at the time
stamped hereon by me; and was duly RECORDED, in the Official Public Records of Real Property of Harris
County, Texas.

AUG 24 2015



Stan Stewart
COUNTY CLERK
HARRIS COUNTY, TEXAS

3
4
F

STATE OF TEXAS §
 §
COUNTY OF HARRIS §

NOTICE OF LIEN

1. Notice is hereby given that the City of Tomball, Texas, has attached a lien against the property described in Exhibit "A";

Property Owner: GEORGE R & MARALYN COLLINS
Address: 0 CLAYTON ST

2ll

Property Description: LT 29 BLK 100 TOMBALL

attached hereto and made a part hereof for all purposes. The said property is identified in such exhibit.

2. The City of Tomball, Texas, acting pursuant to the authority of state law and the ordinances of said City, did on the 7/2/2015, declare the existence on the described property of a public nuisance and a hazard to the health, safety, and welfare of the citizens, and did order the abatement of such nuisance and hazard after notice to the owner in accordance with state law and the ordinances of the City. The failure of the owner to abate such nuisance and hazard has resulted in the abatement thereof at the expense of the City, which expense has been assessed by the City on the land on which such nuisance and hazard existed.
3. DESCRIPTION. The property upon which such nuisance and hazard existed is in Harris County, Texas, and is within the City of Tomball, Texas. Said property is more particularly described in Exhibit "A".
4. ASSESSMENT OF EXPENSES. The City of Tomball incurred expenses in the amount of Thirty Five Dollars, (\$35.00) in abating such health hazard and public nuisance, for which sum said City makes claim against the property, and assesses such amount against the property described herein. The full amount described above remains due and owing.
5. I personally know the above statement to be true and correct and I am duly authorized to make this claim assessment, and notice.
6. Per Chapter 18 of the Code of Ordinances, the lien obtained by the city is security for the expenditures made with interest accruing at the rate of ten percent per annum on the amount due from the date of payment by the city.

CITY OF TOMBALL, TEXAS

10R

By: [Signature]
George Shackelford, City Manager

ACKNOWLEDGMENT

STATE OF TEXAS §
 §
COUNTY OF HARRIS §

This instrument was acknowledged before me on the 6 day of August, 2015
by George Shackelford, City Manager, of the City of Tomball, Texas on behalf of said City.

Betsy B. Gates
Notary Public in and for the State of Texas

My Commission expires: 03-09-2019

AFTER RECORDING RETURN TO:

Betsy Gates
Assistant City Secretary
City of Tomball, Texas
401 Market Street
Tomball, Tx 77375

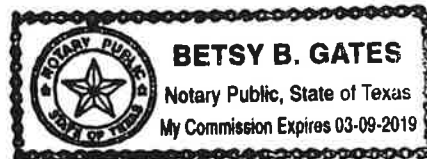


EXHIBIT "A"

Address: 0 CLAYTON ST, Tomball, Texas 77375

Property Description: LT 29 BLK 100 TOMBALL

Harris County Appraisal Account: 0352800100029

D

RT 095-44-2200

99-44-2291

FILED

2015 AUG 10 PM 3:19

Stan Stenart
COUNTY CLERK
HARRIS COUNTY, TEXAS

ANY PROVISION HEREIN WHICH RESTRICTS THE SALE, RENTAL, OR USE OF THE DESCRIBED REAL PROPERTY BECAUSE OF COLOR OR RACE IS INVALID AND UNENFORCEABLE UNDER FEDERAL LAW.
THE STATE OF TEXAS
COUNTY OF HARRIS

I hereby certify that this instrument was FILED in File Number Sequence on the date and at the time stamped hereon by me, and was duly RECORDED, in the Official Public Records of Real Property of Harris County, Texas.

AUG 10 2015



Stan Stenart
COUNTY CLERK
HARRIS COUNTY, TEXAS

David Esquivel

Subject: FW: George Collins
Attachments: Payoff Letter 0 Clayton St..pdf
Importance: High

From: Ray Collins (MS Distribution) <ray@msdistribution.com>
Sent: Tuesday, January 23, 2024 1:50 PM
To: John Ford <jford@tomballtx.gov>; Mark Stoll <mstoll@tomballtx.gov>; Dane Dunagin <ddunagin@tomballtx.gov>; Derek Townsend <dtownsend@tomballtx.gov>; Randy Parr <rparr@tomballtx.gov>; David Esquivel <desquivel@tomballtx.gov>
Cc: info@colleenpye.com
Subject: George Collins
Importance: High

Caution: This is an external email and may be malicious. Please take care when clicking links or opening attachments.

Dear City Council and City Manager,

I hope you are all staying dry!

I need your help on this, I was completely taken by surprise at the liens on my property for mowing. I was only contacted by a Jeremy Williams I believe in the summer of 2022. I made sure the lot was taken care since then. I have owned the lot for over 16 years and I believe my parents owned it a few years before that. My father George Collins, Sr nor myself, George Collins, Jr, were ever made aware that this was and ongoing issue. We received no letters or calls regarding this matter. When I was contacted, we made sure it was taken care of from that day forward.

I am asking for leniency on this issue at your earliest convenience as a sale is pending your review and hopefully clemency.

I am available for any questions.

Regards,

George Collins

City Council Agenda Item Data Sheet

Meeting Date: February 19, 2024

Topic:

Consideration to Approve **Zoning Case Z24-01**: Request by ESP Enterprises Inc., represented by Phlex Properties LLC. to amend Chapter 50 (*Zoning*) of the Tomball Code of Ordinances, by rezoning approximately 6.87 acres of land legally described as being a portion of the W Hurd Survey, Abstract 378 from Agricultural (AG) to Office (O) zoning. The property is located within the 100 block (west side) of School Street, within the City of Tomball, Harris County, Texas.

Conduct Public Hearing on **Zoning Case Z24-01**

Adopt, on First Reading, Ordinance No. 2024-03, an Ordinance of the City of Tomball, Texas, amending Chapter 50 (Zoning) of the Tomball Code of Ordinances by rezoning approximately 6.87 acres of land legally described as being a portion of the W Hurd Survey, Abstract 378 from Agricultural (AG) to Office (O) zoning. The property is located within the 100 block (west side) of School Street, within the City of Tomball, Harris County, Texas; 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:

Origination: ESP Enterprises Inc., represented by Phlex Properties LLC

Recommendation:

Approval

Party(ies) responsible for placing this item on agenda: Community Development Department

FUNDING (IF APPLICABLE)

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

Yes: _____ No: _____

If yes, specify Account Number: # _____

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

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

ORDINANCE NO. 2024-03

AN ORDINANCE OF THE CITY OF TOMBALL, TEXAS, AMENDING CHAPTER 50 (ZONING) OF THE TOMBALL CODE OF ORDINANCES BY CHANGING THE ZONING DISTRICT BOUNDARIES AFFECTING CERTAIN PROPERTIES (EXHIBIT “A”); FROM AGRICULTURAL (AG) TO OFFICE (O) DISTRICT; WITHIN THE CITY OF TOMBALL, HARRIS COUNTY, TEXAS; 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, ESP Enterprises Inc. represented by Phlex Properties LLC, has requested that approximately 6.87 acres of land legally described as being a portion of the W Hurd Survey, Abstract 378, being generally located in the 100 block (west side) of School 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 three hundred feet of the Property in the manner required by law, the Planning & Zoning Commission held a public hearing on the requested rezoning; and

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

Whereas, the 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 rezoning classification of the Property is hereby changed and is subject to the regulations, restrictions, and conditions hereafter set forth.

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

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

Section 5. In the event any section, paragraph, subdivision, clause, phrase, provision, sentence, or part of this Ordinance or the application of the same to any person or circumstance shall for any reason be adjudged invalid or held unconstitutional by a court of competent jurisdiction, it shall not affect, impair, or invalidate this Ordinance as a whole or any part or provision hereof other any part or provision other than the part declared to be invalid or unconstitutional; and the City Council of Tomball

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 _____ DAY OF _____ 2024.

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

SECOND READING:

READ, PASSED AND APPROVED AS SET OUT BELOW AT THE MEETING OF THE CITY COUNCIL OF THE CITY OF TOMBALL HELD ON _____ DAY OF _____ 2024.

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

LORI KLEIN QUINN, Mayor

ATTEST:

Tracylynn Garcia, City Secretary



DVJ
CIVIL ENGINEERING &
LAND SURVEYING

8118 Fry Road, Ste. 402, Cypress, Texas 77433 * (281) 213-2517
www.dvjlandsurveying.com * TBPELS Reg. No. 10194609

METES AND BOUNDS DESCRIPTION
6.8940 ACRES (300,302 SQUARE FEET)
WILLIAM HURD SURVEY, ABSTRACT 378
HARRIS COUNTY, TEXAS

Being a tract or parcel, containing 6.8940 acres (300,302 square feet) of land situated in the William Hurd Survey, Abstract Number 378, Harris County, Texas; Said 6.8940 acre tract being all of the remainder of a called 8.183 acre tract of record in the name of RYM Company, Ltd., in Harris County Clerk's File (H.C.C.F.) Number Y990591 and all of a called 0.5645 acre tract of record in the name of RYM Company, Ltd., in H.C.C.F. Number 20090143820; Save and Except a called 1.213 acre tract of record in the name of the City of Tomball in H.C.C.F. Number J819955, a called 0.5388 acre tract of record in the name of the City of Tomball in H.C.C.F. Number 20090143820 and a called 0.1273 acre tract dedicated to the public for Right-of-Way (R.O.W.) purposes of record in Film Code Number 694222, in the Map Records of Harris County (H.C.M.R.), Texas; Said 6.8940 acre tract being more particularly described by metes and bounds as follows (bearing referenced herein are based on the Texas Coordinate System, South Central Zone NAD83):

COMMENCING at a 5/8 inch iron rod found for the northwest corner of aforesaid 1.213 acre tract and the southwest corner of aforesaid 0.5388 acre tract, and being on the north R.O.W. line of Michel Road (80 feet wide)

THENCE, coincident the west line of aforesaid 1.213 acre tract and through and across aforesaid Michel Road, South 02 Degrees 32 Minutes 38 Seconds East, a distance of 80.00 feet to a 5/8 inch iron rod with "VILLA 6751" cap set for the northwest corner and **POINT OF BEGINNING** of the herein described tract and the northeast corner of the remainder of a called 15.891 acre tract of record in the name of Tortuga Operating Company in H.C.C.F. Number 20140565586, and being on the south R.O.W. line of said Michel Road;

THENCE, coincident the north line of the herein described tract and the south R.O.W. line of aforesaid Michel Road the following three (3) courses:

1. North 87 Degrees 26 Minutes 18 Seconds East, a distance of 100.00 feet to a 5/8 inch iron rod with "VILLA 6751" cap set;
2. North 02 Degrees 33 Minutes 42 Seconds West, a distance of 3.86 feet to a 5/8 inch iron rod with "VILLA 6751" cap set;
3. North 87 Degrees 26 Minutes 18 Seconds East, a distance of 460.02 feet to a 5/8 inch iron rod with "VILLA 6751" cap set for the northeast corner of the herein described tract and the southeast corner of aforesaid 0.5388 acre tract, being on the south R.O.W. line of said Michel Road and the west R.O.W. line of School Road (60 feet wide);

THENCE, coincident the east line of the herein described tract the following four (4) courses:

1. South 02 Degrees 42 Minutes 37 Seconds East, a distance of 131.29 feet to a 5/8 inch iron rod with "VILLA 6751" cap set for the southeast corner of aforesaid 0.5645 acre tract;
2. South 02 Degrees 46 Minutes 07 Seconds East, a distance of 187.49 feet to a 5/8 inch iron rod with "VILLA 6751" cap set for the southwesterly terminus of aforesaid School Road;
3. North 87 Degrees 15 Minutes 30 Seconds East, a distance of 30.19 feet to a 5/8 inch iron rod with "VILLA 6751" cap set for the northwest corner of Restricted Reserve "A" in SRP GECAP Tomball MOB, a subdivision duly of record in Film Code Number 694222, H.C.M.R.;
4. South 02 Degrees 40 Minutes 39 Seconds East, a distance of 206.25 feet to a 5/8 inch iron rod with "VILLA 6751" cap set for the southeast corner of the herein described tract and the northeast corner of Lot 7 in Tomball Industrial Park Final Plat, a subdivision duly of record in Film Code Number 437033, H.C.M.R., and being on the west line of aforesaid Reserve "A";



DVJ
CIVIL ENGINEERING &
LAND SURVEYING

8118 Fry Road, Ste. 402, Cypress, Texas 77433 * (281) 213-2517
www.dvjlandsurveying.com * TBPELS Reg. No. 10194609

THENCE, coincident the south line of the herein described tract and the north line of aforesaid Lot 7, South 87 Degrees 25 Minutes 33 Seconds West, a distance of 591.81 feet to a 5/8 inch iron rod with "VILLA 6751" cap set for the southwest corner of the herein described tract and the southeast corner of aforesaid 15.891 acre tract, and being on the north line of said Lot 7;

THENCE, coincident the west line of the herein described tract and the east line of aforesaid 15.891 acre tract, North 02 Degrees 32 Minutes 38 Seconds West, a distance of 521.20 feet to the **POINT OF BEGINNING** and containing 6.8940 acres (300,302 square feet) of land.

Compiled by: Chris Garcia
Checked by: Daniel Villa, Jr.
DVJ Land Surveying
8118 Fry Road, Ste. 402
Cypress, Texas 77433
February 1, 2023
Project Number 23-0059



Location: 100 block (west side) of School Street, being portions of W Hurd Survey, Abstract 378, City of Tomball, Harris County, Texas

**NOTICE OF PUBLIC HEARING
CITY OF TOMBALL
PLANNING & ZONING COMMISSION (P&Z)
FEBRUARY 12, 2024
&
CITY COUNCIL
FEBRUARY 19, 2024**



Notice is Hereby Given that a Public Hearing will be held by the P&Z of the City of Tomball on **Monday, February 12, 2024 at 6:00 P.M.** and by the City Council of the City of Tomball on **Monday, February 19, 2024 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 Z24-01: Request by ESP Enterprises Inc., represented by Phlex Properties LLC. to amend Chapter 50 (*Zoning*) of the Tomball Code of Ordinances, by rezoning approximately 6.87 acres of land legally described as being a portion of the W Hurd Survey, Abstract 378 from Agricultural (AG) to Office (O) zoning. The property is located within the 100 block (west side) of School Street, within the City of Tomball, Harris County, Texas.

Zoning Case Z24-02: Request by Peter Hildreth, represented by Quadros Migl & Crosby PLLC. to amend Chapter 50 (*Zoning*) of the Tomball Code of Ordinances, by rezoning property legally described as being Lots 43, 44, & 45 in Block 4 of Tomball Hills Addition from Single Family Residential – 9 (SF-9) to Commercial (C) zoning. The properties are located within the 28100 block of Camille Drive, within the City of Tomball, Harris County, Texas.

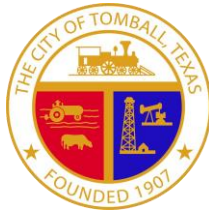
At the public hearings, parties of interest and citizens will have the opportunity to be heard. All citizens of the City of Tomball, and any other interested parties, are invited to attend. Applications are available for public inspection Monday through Friday, except holidays, at the Administrative Services 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 9th day of February 2024 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.



City of Tomball
Community Development Department

NOTICE OF PUBLIC HEARING

RE: Zone Change Case Number Z24-01

01/23/2024

The Planning & Zoning Commission will hold a public hearing on **February 12, 2024 at 6:00 PM**, in City Council Chambers at City Hall, 401 Market Street, Tomball, Texas to recommend approval or denial to City Council on a request by ESP Enterprises Inc., represented by Phlex Properties LLC. to amend Chapter 50 (*Zoning*) of the Tomball Code of Ordinances, by rezoning approximately 6.87 acres of land legally described as being a portion of the W Hurd Survey, Abstract 378 from Agricultural (AG) to Office (O) zoning. The property is located within the 100 block (west side) of School Street, within the City of Tomball, Harris County, Texas.

This hearing is open to any interested person. Opinions, objections and/or comments relative to this matter may be expressed in writing or in person at the hearing. At the bottom of this letter is a form that you may cut off, fill out, and mail. Comments are also accepted by email as listed below. All responses must be signed.

The attached map shows the area of this request. Only that area which is bounded by the cross-hatched line on the map is being considered for **rezoning**. The solid boundary line around the subject area is only a notification area. All owners of property within 300-feet of the subject property are required to be notified. Whether approved or denied by the Planning & Zoning Commission, this case will be heard by City Council for First Reading with public hearing on **February 19, 2024 at 6:00 PM** in City Council Chambers at City Hall, 401 Market Street, Tomball, Texas.

If you have any questions, please contact Jared Smith, City Planner at telephone 281-290-1491 or by email address jasmith@tomballtxgov

For the PLANNING & ZONING COMMISSION
Please call (281) 290-1491 if you have any questions about this notice.

CASE #: Z24-01

You may indicate your position on the above request by detaching this sheet at the dotted line and returning it to the address below. You may attach additional sheets if needed. You may also email your position to the email address listed below. All correspondence must include your name and address.

Mailing To: Community Development Department
501 James St., Tomball TX 77375

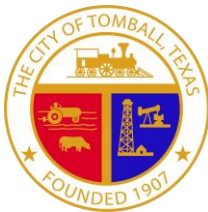
Name:
Parcel I.D.:
Address:

Email: jasmith@tomballtx.gov

I am in favor ☐
Additional Comments:

I am opposed ☐

Signature: _____

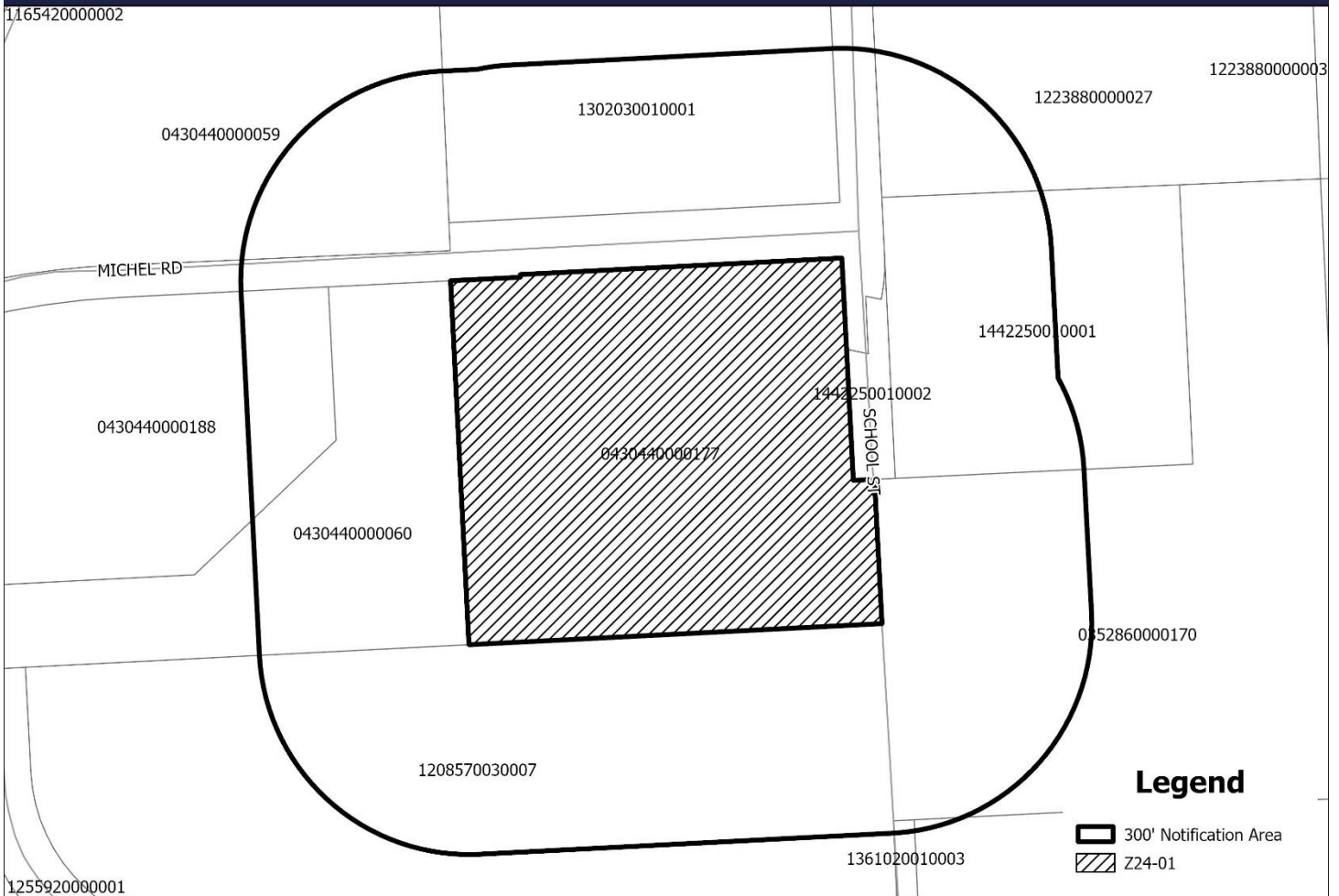


City of Tomball
Community Development Department

Z24-01



Notification Area



Jared Smith

From: Balbir Singh <docsingh@gmail.com>
Sent: Tuesday, February 6, 2024 8:11 PM
To: Jared Smith
Subject: Case# Z24-01

Caution: This is an external email and may be malicious. Please take care when clicking links or opening attachments.

I am in favor

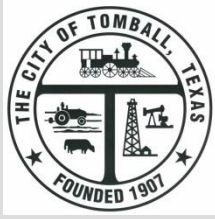
Michel Road 7.2 Partnership LP
7610 Raes Creek Dr, Spring, TX 77389

--
Thanks



Balbir Singh, M.D.
NW Houston Neurology, P.A.
C - 713-385-8983
DocSingh@gmail.com

The information contained in this message is privileged and confidential. Should you obtain this information in error, please call the number above or send a reply notifying the sender that you have received this email and then delete the email from your system immediately. You are hereby notified that any unauthorized distribution of this material to anyone other than the intended recipient is illegal and will be fully prosecuted under the LAW.



Rezoning Staff Report

Planning & Zoning Commission Public Hearing Date: February 12, 2024
City Council Public Hearing Date: February 19, 2024

Rezoning Case: Z24-01

Property Owner(s): ESP Enterprises Inc.

Applicant(s): Phlex Properties LLC.

Legal Description: Being approximately 6.87 acres out of the William Hurd Survey, Abstract 378

Location: Generally located within the 100 block (west side) of School Street, within the City of Tomball, Harris County, Texas. (Exhibit “A”)

Area: 6.87 acres

Comp Plan Designation: Medical District (Exhibit “B”)

Present Zoning: Agricultural (AG) (Exhibit “C”)

Request: Rezone from Agricultural (AG) to Office (O)

Adjacent Zoning & Land Uses:

North: Agricultural (AG) / Assisted Living Facility

South: Light Industrial (LI) / Metal Products, stamping and manufacture

West: Agricultural (AG) / Vacant

East: Commercial (C) / Office-General Professional

BACKGROUND

The subject property is currently vacant and undeveloped. The applicant’s request is to rezone the subject property to Office (O) to allow the development of an office complex that will be comprised of 10-20 office buildings which will have individual office suites within each building.

ANALYSIS

Description: The subject property comprises about 6.87 acres, generally located within the 100 block (west side) of School Street. The property is currently zoned Agricultural (AG) and has been within this zoning classification since the City of Tomball adopted zoning in 2008. Immediately

north of the subject property is an assisted living facility within AG zoning, east of the site is Commercial (C) zoning occupied by a professional office building. South of the subject property is zoned Light Industrial (LI) and is occupied by a metal manufacturer. West of the site is vacant land within AG zoning.

Comprehensive Plan Recommendation:

The subject property is designated as “Medical District” by the Comprehensive Plans Future Land Use Map (FLUM). This category is intended to provide an emphasis on healthcare and supporting services and further capitalize on a unique, regionally serving area of the city. The Tomball Regional Medical Center provides a significant physical and economic footprint in the community.

One of the guiding principles of the Comprehensive Plan is to create a Medical District with complimentary land uses. The Comprehensive Plan envisions a variety of uses to create a self-serving campus with active transportation connections to Old Town and Transitional Residential areas for this district. As per the Comprehensive Plan “Open space with a pedestrian focus should be a prominent component of the district”.

The Comprehensive Plan recommends the zoning districts of Planned Development (PD), General Retail (GR), Office (O), and Old Town & Mixed Use (OT & MU) for this designation.

As per the Comprehensive Plan, appropriate land uses include hospitals, clinics, offices, lodging, long-term care, retail, and restaurants. Appropriate secondary uses include private gathering spaces, local utility services, government facilities, and transportation uses.

The proposed zoning and uses are in conformance with the Comprehensive Plan recommendation.

Staff Review Comments:

The request to rezone the subject property to Office (O) supports new development which is consistent with the types of development pattern and character associated with the Future Land Use Plans goal and objective of establishing the Medical District land use category. Further, the requested rezoning will promote land use and development goals identified within the Comprehensive Plan, specifically by encouraging economic development through the continued growth and development of the Medical District while promoting a mixture of supportive uses within a walkable environment, particularly given that the property is near existing assisted living facilities and multi-family residential land uses. Lastly, this property is located at the intersection of Michel Road and School Street, two collector roadways. Intersections such as this are routinely considered appropriate for commercial services as they provide convenient vehicular access and exposure to high volumes of traffic often necessary for commercial businesses to succeed.

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 January 26, 2024. Any public comment forms will be provided in the Planning & Zoning Commission and City Council packets or during the public hearing.

RECOMMENDATION

Based on the findings outlined in the analysis section of this staff report, City staff recommends approval of Zoning Case Z24-01.

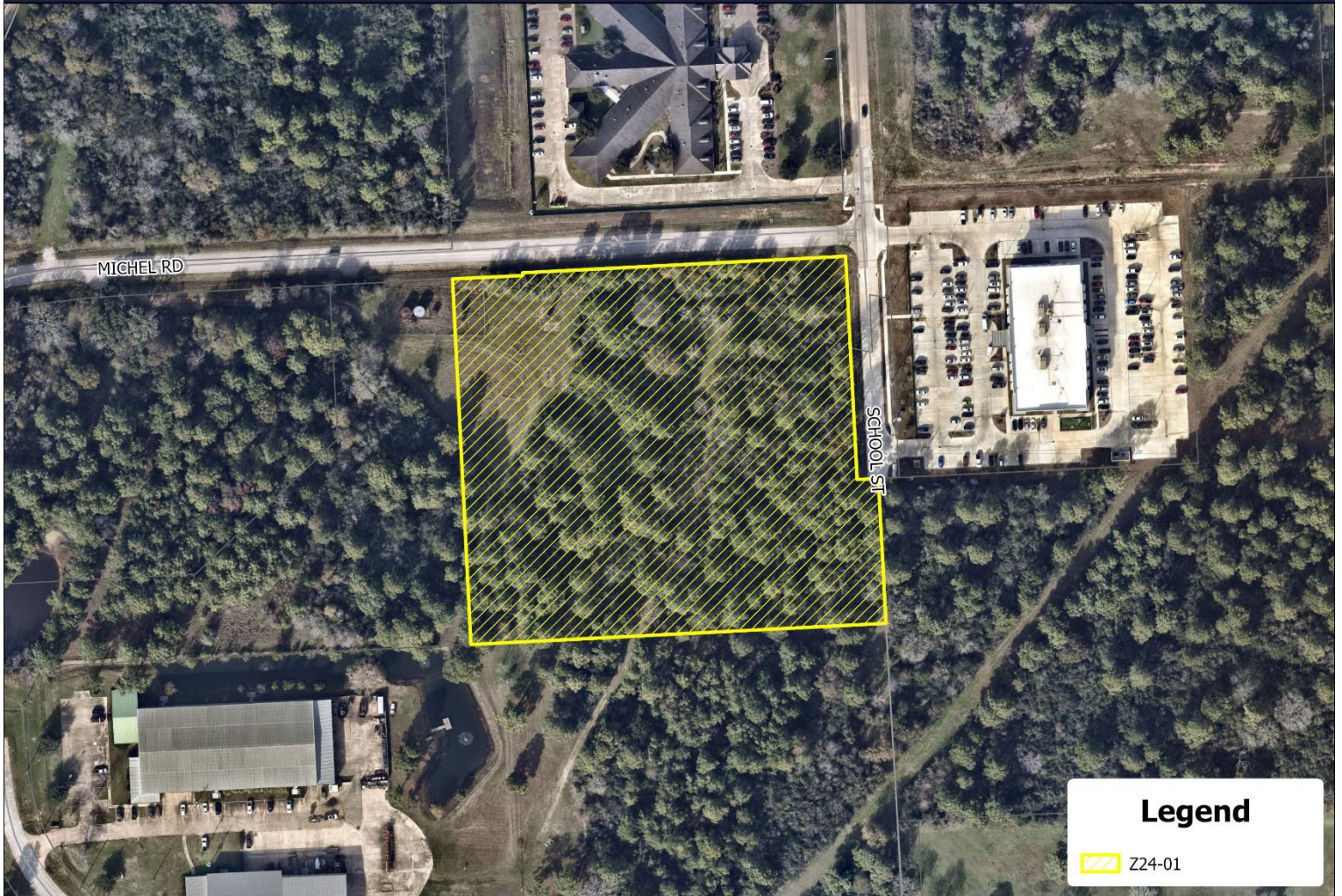
EXHIBITS

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

Exhibit "A"
Aerial Location Map



Location



Legend

 Z24-01

Exhibit "B"
Future Land Use Plan



Future Land Use

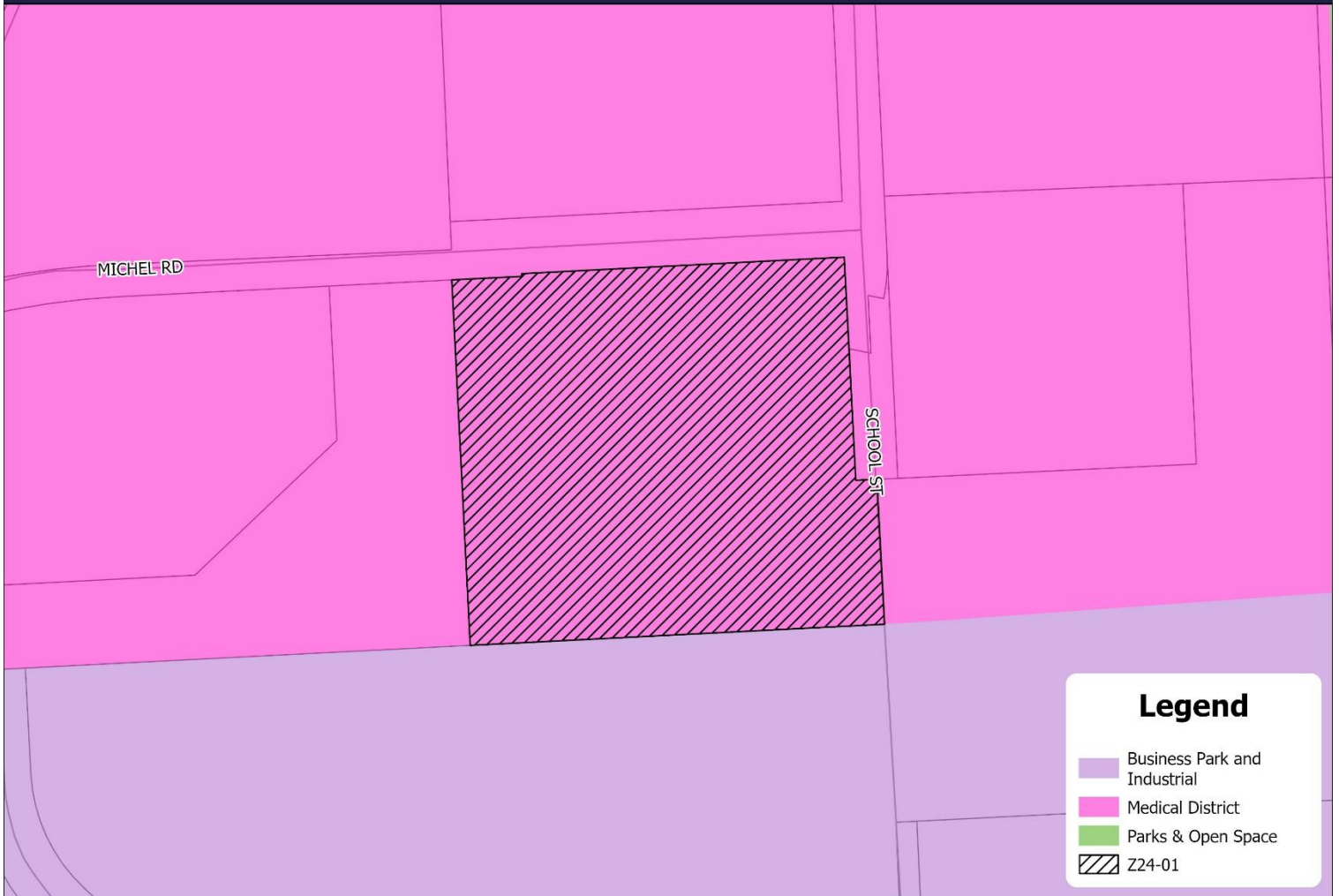


Exhibit "C"
Zoning Map



Zoning



**Exhibit “D”
Site Photo(s)**

Subject Site



Neighbor (West)



Neighbor (East)



Neighbor (North)



Neighbor (South)

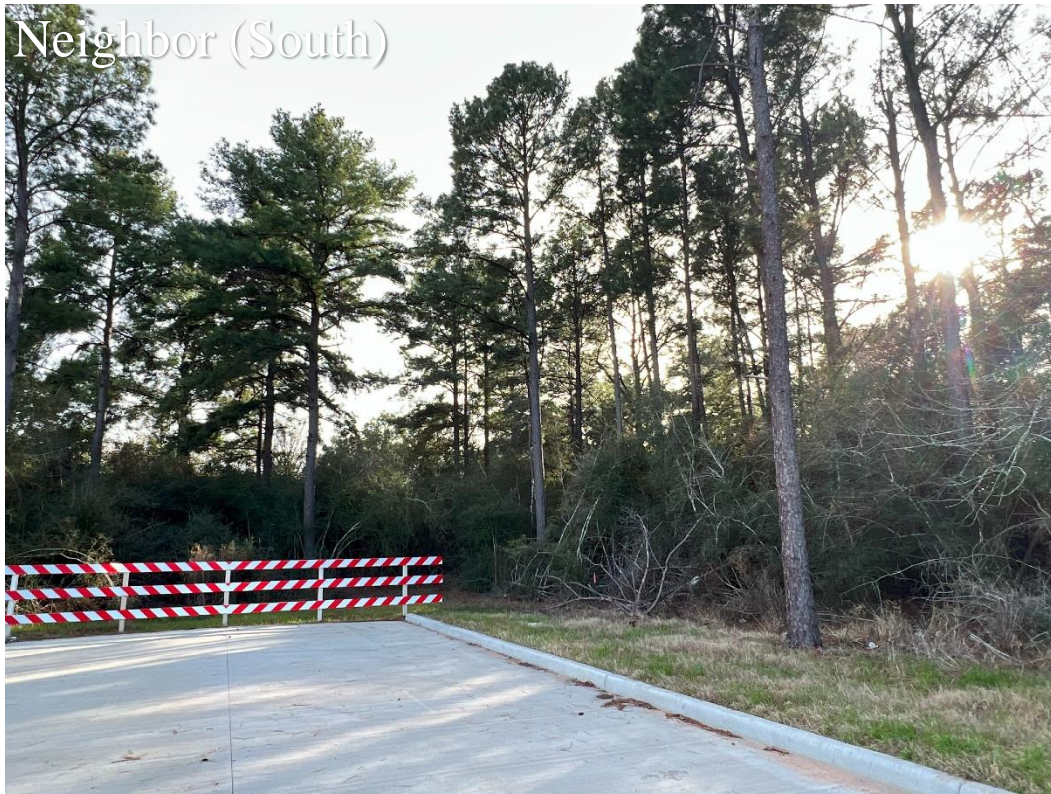


Exhibit "E"

Rezoning Application

Revised: 10/1/2022



APPLICATION FOR RE-ZONING

Community Development Department
Planning Division

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

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

DIGITAL PLAN SUBMITTALS:

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

WEBSITE: tomballtx.gov/securesend
USERNAME: [tombalcedd](#)
PASSWORD: [Tomball](#)

Applicant

Name: Phlex Properties LLC - Steve Phelan Title: President
Mailing Address: 13171 Misty Willow Drive City: Houston State: TX
Zip: 77070 Contact: _____
Phone: (713) 397-0735 Email: steve@phlexproperties.com

Owner

Name: ESP Enterprises Inc., Steve Phelan Title: President/Owner
Mailing Address: 13171 Misty Willow Drive City: Houston State: TX
Zip: 77070 Contact: Steve Phelan
Phone: (713) 397-0735 Email: steve@phlexproperties.com

Engineer/Surveyor (if applicable)

Name: RSG Engineering, Inc. - Hind Saad Title: Project Manager
Mailing Address: 13501 Katy Fwy, Suite 3180 City: Houston State: TX
Zip: 77079 Contact: Hind Saad
Phone: (713) 842-7069 Fax: () Email: hind@rsgcompanies.com

Description of Proposed Project: General Retail / Office Space

Physical Location of Property: 0 School Road Tomball, TX 77375
[General Location – approximate distance to nearest existing street corner]

Legal Description of Property: TR14 ABST 378 W HURD
[Survey/Abstract No. and Tracts; or platted Subdivision Name with Lots/Block]

Current Zoning District: Agriculture / Land



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

Revised: 10/1/2022

Current Use of Property: Agriculture / Land
Proposed Zoning District: Office
Proposed Use of Property: Professional office space
HCAD Identification Number: 0430440000177 Acreage: 6.87

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.

<u>X</u> 	<u>12/18/23</u>
Signature of Applicant	Date
<u>X</u> 	<u>12/18/23</u>
Signature of Owner	Date



DVJ
CIVIL ENGINEERING &
LAND SURVEYING

8118 Fry Road, Ste. 402, Cypress, Texas 77433 * (281) 213-2517
www.dvjlandsurveying.com * TBPELS Reg. No. 10194609

METES AND BOUNDS DESCRIPTION
6.8940 ACRES (300,302 SQUARE FEET)
WILLIAM HURD SURVEY, ABSTRACT 378
HARRIS COUNTY, TEXAS

Being a tract or parcel, containing 6.8940 acres (300,302 square feet) of land situated in the William Hurd Survey, Abstract Number 378, Harris County, Texas; Said 6.8940 acre tract being all of the remainder of a called 8.183 acre tract of record in the name of RYM Company, Ltd., in Harris County Clerk's File (H.C.C.F.) Number Y990591 and all of a called 0.5645 acre tract of record in the name of RYM Company, Ltd., in H.C.C.F. Number 20090143820; Save and Except a called 1.213 acre tract of record in the name of the City of Tomball in H.C.C.F. Number J819955, a called 0.5388 acre tract of record in the name of the City of Tomball in H.C.C.F. Number 20090143820 and a called 0.1273 acre tract dedicated to the public for Right-of-Way (R.O.W.) purposes of record in Film Code Number 694222, in the Map Records of Harris County (H.C.M.R.), Texas; Said 6.8940 acre tract being more particularly described by metes and bounds as follows (bearing referenced herein are based on the Texas Coordinate System, South Central Zone NAD83):

COMMENCING at a 5/8 inch iron rod found for the northwest corner of aforesaid 1.213 acre tract and the southwest corner of aforesaid 0.5388 acre tract, and being on the north R.O.W. line of Michel Road (80 feet wide)

THENCE, coincident the west line of aforesaid 1.213 acre tract and through and across aforesaid Michel Road, South 02 Degrees 32 Minutes 38 Seconds East, a distance of 80.00 feet to a 5/8 inch iron rod with "VILLA 6751" cap set for the northwest corner and **POINT OF BEGINNING** of the herein described tract and the northeast corner of the remainder of a called 15.891 acre tract of record in the name of Tortuga Operating Company in H.C.C.F. Number 20140565586, and being on the south R.O.W. line of said Michel Road;

THENCE, coincident the north line of the herein described tract and the south R.O.W. line of aforesaid Michel Road the following three (3) courses:

1. North 87 Degrees 26 Minutes 18 Seconds East, a distance of 100.00 feet to a 5/8 inch iron rod with "VILLA 6751" cap set;
2. North 02 Degrees 33 Minutes 42 Seconds West, a distance of 3.86 feet to a 5/8 inch iron rod with "VILLA 6751" cap set;
3. North 87 Degrees 26 Minutes 18 Seconds East, a distance of 460.02 feet to a 5/8 inch iron rod with "VILLA 6751" cap set for the northeast corner of the herein described tract and the southeast corner of aforesaid 0.5388 acre tract, being on the south R.O.W. line of said Michel Road and the west R.O.W. line of School Road (60 feet wide);

THENCE, coincident the east line of the herein described tract the following four (4) courses:

1. South 02 Degrees 42 Minutes 37 Seconds East, a distance of 131.29 feet to a 5/8 inch iron rod with "VILLA 6751" cap set for the southeast corner of aforesaid 0.5645 acre tract;
2. South 02 Degrees 46 Minutes 07 Seconds East, a distance of 187.49 feet to a 5/8 inch iron rod with "VILLA 6751" cap set for the southwesterly terminus of aforesaid School Road;
3. North 87 Degrees 15 Minutes 30 Seconds East, a distance of 30.19 feet to a 5/8 inch iron rod with "VILLA 6751" cap set for the northwest corner of Restricted Reserve "A" in SRP GECAP Tomball MOB, a subdivision duly of record in Film Code Number 694222, H.C.M.R.;
4. South 02 Degrees 40 Minutes 39 Seconds East, a distance of 206.25 feet to a 5/8 inch iron rod with "VILLA 6751" cap set for the southeast corner of the herein described tract and the northeast corner of Lot 7 in Tomball Industrial Park Final Plat, a subdivision duly of record in Film Code Number 437033, H.C.M.R., and being on the west line of aforesaid Reserve "A";



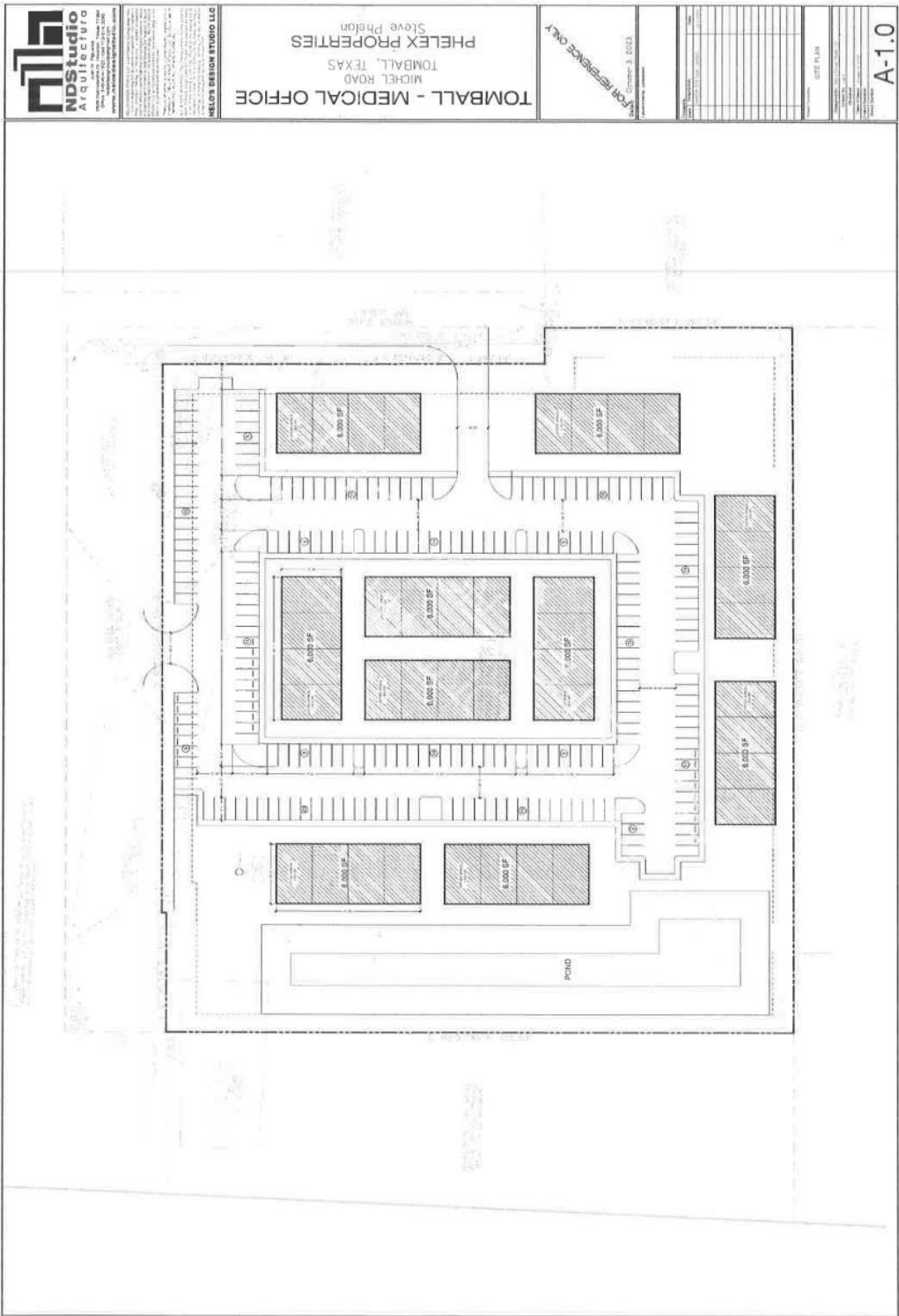
DVJ
CIVIL ENGINEERING &
LAND SURVEYING

8118 Fry Road, Ste. 402, Cypress, Texas 77433 * (281) 213-2517
www.dvjlandsurveying.com * TBPELS Reg. No. 10194609

THENCE, coincident the south line of the herein described tract and the north line of aforesaid Lot 7, South 87 Degrees 25 Minutes 33 Seconds West, a distance of 591.81 feet to a 5/8 inch iron rod with "VILLA 6751" cap set for the southwest corner of the herein described tract and the southeast corner of aforesaid 15.891 acre tract, and being on the north line of said Lot 7;

THENCE, coincident the west line of the herein described tract and the east line of aforesaid 15.891 acre tract, North 02 Degrees 32 Minutes 38 Seconds West, a distance of 521.20 feet to the **POINT OF BEGINNING** and containing 6.8940 acres (300,302 square feet) of land.

Compiled by: Chris Garcia
Checked by: Daniel Villa, Jr.
DVJ Land Surveying
8118 Fry Road, Ste. 402
Cypress, Texas 77433
February 1, 2023
Project Number 23-0059



NDStudio
Arquitectura
Arquitectos
10000 N. Loop West, Suite 1000
Houston, Texas 77067
Phone: 281.441.1111
Fax: 281.441.1112
www.ndstudio.com

MELO'S DESIGN STUDIO LLC
10000 N. Loop West, Suite 1000
Houston, Texas 77067
Phone: 281.441.1111
Fax: 281.441.1112
www.melosdesignstudio.com

TOMBALL - MEDICAL OFFICE
MICHEL ROAD
TOMBALL, TEXAS
PHELEX PROPERTIES
Steve Phelan

FOR REFERENCE ONLY
DATE: 10/10/2013
BY: [Signature]

NO.	REVISION	DATE
1	ISSUED FOR PERMIT	10/10/2013
2	REVISION	
3	REVISION	
4	REVISION	
5	REVISION	
6	REVISION	
7	REVISION	
8	REVISION	
9	REVISION	
10	REVISION	

SEE PLAN
A-1.0



December 18, 2023

Community Development Department
501 James St.
Tomball, TX 77375

Dear Jared Smith,

We would like to formally request a zoning change for the property located at 0 School Road, also identified as TR14 ABST 378 W HURD. The parcel, comprising approximately 6.87 acres, is currently zoned as Agriculture, and we propose a change to Office zoning.

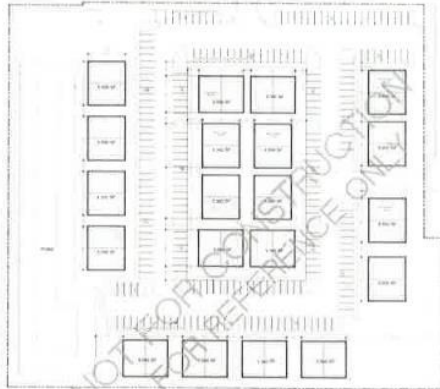
As illustrated in the attached existing zoning map, our vision for this site entails the development of 10-20 free-standing buildings, each serving as individual office suites. The current state of the lot is undeveloped, covered in grass, and our plan is to transform it into a professional office space that will significantly contribute to the enhancement of Tomball's Medical District.



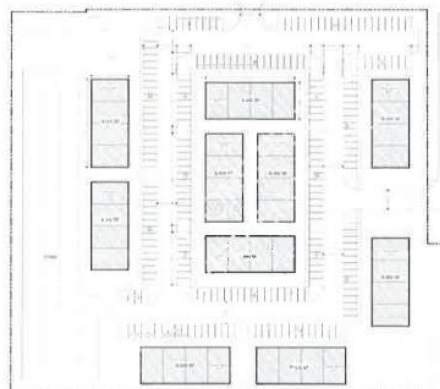


The key features of our proposed project include:

- 10 or 20 free-standing buildings (Please see illustrated models)
- Individual office suites within each building
- Utilization of 6.87 acres for professional office development



Proposed Option 1



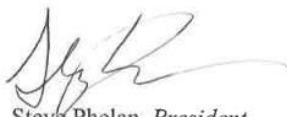
Proposed Option 2

This endeavor aligns with our commitment to fostering growth and development within the City of Tomball. The envisaged professional offices aim to not only elevate the aesthetic appeal of the area but also contribute positively to the economic and professional landscape.

Please do not hesitate to reach out to me at 281-456-3032 or lauren@phlexproperties.com. We highly value your time and consideration in reviewing this rezoning request.

Thank you for your attention to this matter, and we look forward to the possibility of contributing to the continued prosperity of Tomball's Medical District.

Sincerely,


Steve Phelan, *President*
Phlex Properties

City Council Meeting

Agenda Item

Data Sheet

Meeting Date: February 19, 2024

Topic:

Adopt, on First Reading, Ordinance 2024-05, an Ordinance of the City of Tomball, Texas, Amending its Code of Ordinances, Section 44-164, Parking Restricted on Certain Streets, Division 2, prohibited. Restricted on certain streets, of Article V, stopping, standing and parking, of Chapter 44, Traffic and Vehicles, establishing a “No Parking, Stopping or Standing” zone along either side of Rudel Drive beginning at the intersection of SH 249 and Rudel Drive, extending east approximately 1725 feet to the intersection of Rudel Drive and Quinn Road; providing a penalty in the amount not to exceed \$200 for each violation hereof; making finding of fact; and providing for other related matters.

Background:

We have received concerns regarding vehicles parking along either side of Rudel Drive between Business 249 and Quinn Road, during the week and weekends. Furthermore, parking along either side of Rudel Drive prevents emergency vehicles from safely traversing Rudel Drive as they restrict the view of emergency vehicle drivers, limit access to the full right-of-way, and slow the response times of emergency vehicles. These concerns have been evaluated by City staff and it was determined to be a safety hazard for vehicles turning either direction from Buvinghausen Street and optimal width for vehicle movement on east or west bound direction of travel.

Based on the traffic hazard being created, staff is recommending that a No Parking Zone be implemented along either side of Rudel Drive between SH 249 and Quinn Road in accordance with Section 545.302 of the Texas Transportation Code which prohibits stopping, standing, or parking within 30 feet on the approach to a flashing signal, stop sign, yield sign, or traffic-control signal located at the side of a roadway; or where an official sign prohibits stopping.

The recommended revisions to Section 44-164 are as follows:

It shall be unlawful for any person to park, stop or stand along either side of Rudel Drive, beginning at the intersection of SH 249 and Rudel Drive, extending east approximately 1725 feet to the intersection of Rudel Drive and Quinn Road.

Origination: Public Works

Recommendation:

Adopt, on First Reading, Ordinance Number 2024-05, authorizing a No Parking Zone along Rudel Drive.

Party(ies) responsible for placing this item on agenda: Drew Huffman, Public Work 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	Drew Huffman		Approved by		
	Staff Member	Date	City Manager	Date	

ORDINANCE NO. 2024-05

AN ORDINANCE OF THE CITY OF TOMBALL, TEXAS AMENDING ITS CODE OF ORDINANCES, SECTION 44-164, PARKING RESTRICTED ON CERTAIN STREETS, OF DIVISION 2, PROHIBITED. RESTRICTED ON CERTAIN STREETS, OF ARTICLE V, STOPPING, STANDING AND PARKING, OF CHAPTER 44, TRAFFIC AND VEHICLES, ESTABLISHING A “NO PARKING, STOPPING OR STANDING” ZONE ALONG EITHER SIDE OF RUDEL DRIVE BEGINNING AT THE INTERSECTION OF SH 249 AND RUDEL DRIVE, EXTENDING EAST APPROXIMATELY 1725 FEET TO THE INTERSECTION RUDEL DRIVE AND QUINN ROAD; PROVIDING A PENALTY IN AN AMOUNT NOT TO EXCEED \$200 FOR EACH VIOLATION HEREOF; MAKING FINDINGS OF FACT; AND PROVIDING FOR OTHER RELATED MATTERS.

* * * * *

WHEREAS, the City Council of the City of Tomball has determined that it is in the best interest of the health, safety and welfare of its citizens and the public as a whole, to establish the “No Parking, Stopping and Standing” zone specified in this ordinance; and

WHEREAS, the City desires to prohibit parking, stopping, or standing on street designated below; and

WHEREAS, the City Council wishes to effectuate the changes described in this ordinance as soon as possible; 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 of this Ordinance are hereby found to be true and correct.

Section 2. The City Council has determined that a “No Parking, Stopping or Standing” zone should be established along either side of Rudel Drive beginning at the intersection of SH 249 and Rudel Drive, extending east approximately 1725 feet to the intersection of Rudel Drive and Quinn Road and the necessary traffic control signage altered or implemented to effectuate the establishment of the “No Parking, Stopping or Standing” zone.

Section 3. The Code of Ordinances of the City of Tomball, Texas, Section 44-164 is amended by the addition of the language underscored below:

“Sec. 44-164. Parking restricted on certain streets.

It shall be unlawful for any person to park, stop, or stand along either side of Rudel Drive beginning at the intersection of SH 249 and Rudel Drive, extending east approximately 1275 feet to the intersection of Rudel Drive and Quinn Road.”

Section 4. The Director of Public Works is directed to erect and place signs designating the above area as a “No Parking, Stopping or Standing” area.

Section 5. Any person who shall intentionally, knowingly, recklessly, or with criminal negligence, violate any provision of this Ordinance, shall be deemed guilty of a misdemeanor and, upon conviction, shall be fined in an amount not to exceed \$200. Each violation shall constitute a separate offense.

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

Section 7. This Ordinance shall take effect immediately from and after its passage and the publication of the caption hereof, as provided by law.

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 FEBRUARY 2024.

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

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 19TH DAY OF FEBRUARY 2024.

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

ATTEST:

Lori Klein Quinn, Mayor

Tracylynn Garcia, City Secretary

City Council Meeting
Agenda Item
Data Sheet

Meeting Date: February 19, 2024

Topic:

Conduct a Public Hearing and Approve Resolution 2024-10, a Resolution of the City of Tomball, Texas, Establishing Guidelines and Criteria for Tax Abatements in the City of Tomball.

Background:

Chapter 312 of the Texas Tax Code requires that any governing body that wishes to participate in tax abatements, must have an adopted set of guidelines and criteria governing the tax abatement agreements that the governing body will consider. In addition, the taxing unit must also adopt a resolution stating that it elects to become eligible to participate in tax abatement. The guidelines and the resolution must be adopted every two years, following a public hearing to consider public feedback on the proposed guidelines.

The City of Tomball has previously adopted the resolution and proposed guidelines in previous years. This item would renew the existing policy for two years if approved, with the next consideration being in February 2026.

The approval of the guidelines does not obligate the City to authorize or approve any tax abatement request in the future.

Origination: Finance Department

Recommendation:

Conduct a Public Hearing and Approve Resolution 2024-10

Party(ies) responsible for placing this item on agenda: Katherine Tapscott, Finance Director

FUNDING (IF APPLICABLE)

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

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

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

Signed Katherine Tapscott 02/13/2024 Approved by
Staff Member Date City Manager Date

RESOLUTION NO. 2024-10

**A RESOLUTION OF THE CITY OF TOMBALL, TEXAS, STATING
THE CITY OF TOMBALL'S INTENT TO PARTICIPATE IN TAX
ABATEMENT AND ESTABLISHING THE GUIDELINES AND
CRITERIA FOR GRANTING TAX ABATEMENTS IN A
REINVESTMENT ZONE CREATED IN THE CITY OF TOMBALL.**

* * * * *

WHEREAS, the capital investment and the creation and retention of job opportunities are a community priority; and

WHEREAS, new jobs and investment will benefit the area economy, provide needed opportunities, strengthen the real estate market, and generate revenue to support local services; and

WHEREAS, the City of Tomball must compete with other localities currently offering tax inducements to attract new business and modernization projects; and

WHEREAS, the abatement of property taxes, when offered to attract new investment and primary jobs in industries which bring in money from outside a community instead of merely re-circulating dollars within a community, has been shown to be an effective method of enhancing and diversifying an area of economy; and

WHEREAS, Texas law requires any eligible taxing jurisdiction to establish guidelines and criteria regarding eligibility for tax abatement prior to granting of any future tax abatement, and said guidelines and criteria to be unchanged for a two-year period unless amended by a three-quarters (3/4) vote; and

WHEREAS, the City Council of the City of Tomball desires to adopt guidelines and criteria regarding eligibility for tax abatement from the City of Tomball;

NOW, THEREFORE, BE IT RESOLVED that, pursuant to the authority contained in Section 312.002 of the Texas Tax Code, the City of Tomball does hereby intend to participate in tax abatement and adopt the guidelines and criteria for granting tax abatements in reinvestment zones in the City of Tomball attached hereto as Exhibit "A" and incorporated herein as if set forth at length.

PASSED, APPROVED, AND RESOLVED this 19th day of February 2024.

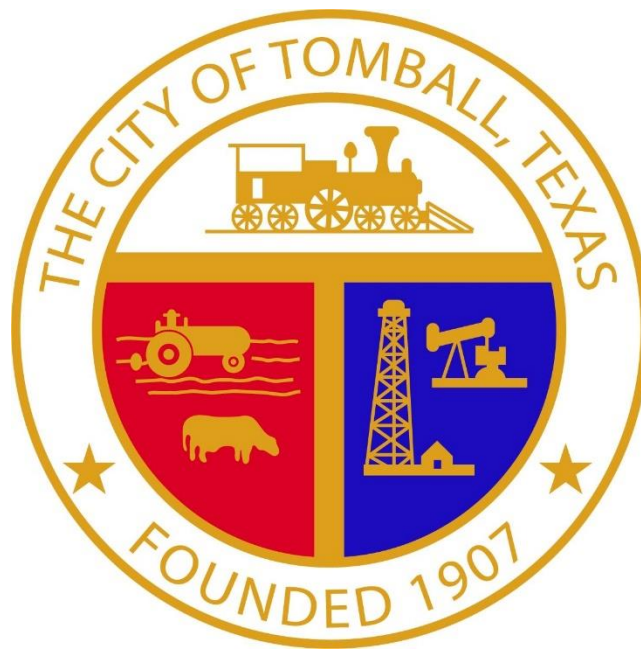
Lori Klein Quinn, Mayor

ATTEST:

Tracylynn Garcia, City Secretary

CITY OF TOMBALL, TEXAS

TAX ABATEMENT POLICY & GUIDELINES



February 19, 2024

TAX ABATEMENT GUIDELINES SUMMARY

TERMS

Up to 100% abatement for a period not to exceed 10 years. Each project is reviewed on a case-by-case basis. The amount of the abatement will be determined based on the merits of the project, including, but not limited to, location of the project, its size, total capital investment value, the number of temporary and permanent jobs created, the costs and benefits for the City, and the project's impact on Tomball's economy.

FACILITIES THAT QUALIFY

Corporate Headquarters Facility
Manufacturing Facility
Research Facility
Regional Distribution Facility
Regional Service Facility
Regional Entertainment/Tourism Facility
Other Basic Industry Facilities

AUTHORIZED INVESTMENTS

New Facilities
Expansions
Modernizations

ABATED

Buildings, structures, fixed machinery, equipment, personal property, site improvements, and related office space

ECONOMIC CRITERIA

New business: Minimum two million dollar (\$2,000,000) investment; create a minimum of twenty-five (25) jobs.

Expansions: Minimum one million dollar (\$1,000,000) investment; must prevent the loss of payroll or retain, increase, or create payroll on a permanent basis in the City of Tomball.

CITY OF TOMBALL, TEXAS TAX ABATEMENT POLICY

SECTION 1: GENERAL PURPOSE AND OBJECTIVES

The City of Tomball is committed both to the promotion of high quality development within the City and to the improvement in the quality of life of its citizens. In order to meet these goals, the City will, on a case-by-case basis, give consideration to providing tax abatement within designated reinvestment zones as stimulation for economic development in the City. The purpose of this tax abatement policy is to encourage the growth and establishment of industry and commercial enterprise in the City. Growth is measured by the capital investment in the City for buildings, machinery, and other capital goods that increases the Tomball workforce.

The City of Tomball will consider tax abatement for qualified business and property owners in accordance with the procedures and criteria outlined in this document. Nothing herein shall imply or suggest that the City is under any obligation to provide any incentive to any applicant. All applications shall be considered on a case-by-case basis.

All applications for tax abatement must be for commercial and/or industrial improvements. Tax abatement is available for both new facilities and for the expansion and modernization of existing facilities. No residential developments will be considered for tax abatement. Tax abatement will not be ordinarily considered for projects that would be developed without such incentives unless it is demonstrated that higher development standards or other community development goals will be achieved through the use of abatement.

SECTION 2: DEFINITIONS

- (a) **Abatement** means the full or partial exemption from ad valorem taxes of certain new improvements of real and/or personal property in a reinvestment zone designated for economic development purposes.
- (b) **Agreement** means a contractual agreement between the City of Tomball and a property owner and/or lessee for the purpose of tax abatement.
- (c) **Base Year Value** means the assessed value of eligible property on January 1 preceding the execution of the Agreement plus the agreed upon value of eligible property improvements made after January 1 but before the execution of the Agreement.
- (d) **Corporate Headquarters Facility** means the facility or portion of a facility where corporate staff employees are physically employed and where the majority of the company's financial, personnel, legal, planning or other headquarters related functions are handled either on a national, regional or division basis.
- (e) **Deferred Maintenance** means improvements necessary for continued operations, which do not improve productivity or alter the process technology.

- (f) **Economic life** means the number of years a property improvement is expected to be in service in a facility. Provided, however, that in no circumstance shall the number of years exceed the depreciation allowance specified in the United States Internal Revenue Code.
- (g) **Effective Date of Abatement** means the first (1st) day of January immediately following the date the Agreement is approved by the City Council of Tomball or at any other date specifically authorized by City Council.
- (h) **Eligible Jurisdiction** means the City of Tomball, Harris County and any school district or college district which levies ad valorem taxes upon, and provides services to, property located within the proposed or existing reinvestment zone.
- (i) **Expansion** means the addition of buildings, structures, fixed machinery, equipment, and personal property for the purpose of increasing production capacity.
- (j) **Facility** means property improvements completed or in the process of construction which together comprise an integral whole.
- (k) **Manufacturing Facility** means buildings, structures, fixed machinery, equipment and personal property, the primary purpose of which is or will be the manufacture of tangible goods or materials or the processing of such goods or materials by physical or chemical change.
- (l) **Modernization** means the upgrading of existing facilities, which increases the productive input or output, updates the technology or substantially lowers the unit cost of the operation; modernization may result from the construction, alternation, or installation of buildings, structures, fixed machinery, equipment and personal property. It shall not be for the purpose of reconditioning, refurbishing or repairing.
- (m) **New Facility** means a property, previously undeveloped, that is placed into service by means other than or in conjunction with expansion or modernization.
- (n) **New Machinery and Equipment** means tangible machinery, equipment, or personal property that is securely placed or fastened and stationary within a building or structure or permanently resides in the City of Tomball.
- (o) **Other Basic Industry Facility** means buildings and structures including fixed machinery, equipment, and personal property not elsewhere described, used or to be used for the production of products or services which primarily serve a market outside the City of Tomball and result in the creation of new permanent jobs and bring new wealth in to the City.
- (p) **Real Property** means the land on which a facility is placed.
- (q) **Regional Distribution Facility** means buildings and structures including fixed machinery, equipment, and personal property used or to be used primarily to receive, store, service or distribute goods or materials owned by the facility, from which a

majority of revenues generated by the activity at the facility are derived from outside the City of Tomball.

- (r) **Regional Entertainment/Tourism Facility** means buildings and structures, including fixed machinery, equipment, and personal property used or to be used to provide entertainment and/or tourism related services, from which a majority of revenues generated by activity at the facility are derived from outside the City of Tomball.
- (s) **Regional Service Facility** means buildings and structures, including fixed machinery, equipment, and personal property used or to be used to provide a service, from which a majority of revenues generated by activity at the facility are derived from outside the City of Tomball.
- (t) **Research Facility** means buildings and structures, including fixed machinery, equipment, and personal property used or to be used primarily for research or experimentation to improve or develop new tangible goods or materials or to improve or develop the production processes thereto.

SECTION 3: GUIDELINES AND CRITERIA

Minimum Standards for Tax Abatement

- (a) The project shall not have any negative environmental impacts on the community (e.g., significant pollution or hazardous waste).
- (b) The project should stimulate local employment and/or commercial activity and benefit existing business and not compete with existing businesses to the extent of being a detriment to the local economy as a whole.
- (c) **New Facilities:** The project will establish and maintain at least twenty-five (25) jobs in the City of Tomball and have a minimum capital investment of two million (\$2,000,000). (*The acquisition cost of the real property is not included in the project investment*).
- (d) **Expansion/Modernization:** The project must prevent the loss of payroll or retain, increase or create payroll on a permanent basis in the City of Tomball and have a minimum capital investment of one million (\$1,000,000). (*The acquisition cost of the real property is not included in the project investment*).
- (e) The City of Tomball may consider tax abatement for an investment less than the minimum amount required based upon City evaluation of economic development factors, including but not limited to:
 - (1) the location of taxable inventory on the property;
 - (2) the amount of sales tax that the project will generate for the City.
- (f) Tax abatement may only be granted for the additional tax value resulting from any of the following:
 - (1) construction of a new facility of any type as herein defined;

- (2) expansion of existing facilities of any type as herein defined; or
 - (3) modernization of existing facilities of any type as herein defined.
- (g) The project should have high visibility and image impact, or be a significantly higher level of development quality.
- (h) The project will serve as a catalyst or magnet to attract or retain other high quality industrial/business development.
- (i) The project will not solely and primarily have the effect of transferring employment from one part of the city to another.
- (j) The development must conform to the City's zoning ordinance.
- (k) The costs of city services required for the development should not exceed the amount of taxes generated if abatement is provided.

SECTION 4: ABATEMENT AUTHORIZED

- (a) **Authorized Tax Abatement Categories.** A facility may be eligible for tax abatement if it is a:

- Corporate Headquarters Facility
- Manufacturing Facility
- Research Facility
- Regional Distribution Facility
- Regional Service Facility
- Regional Entertainment/Tourism Facility, or
- Other Basic Industry Facility

- (b) **Authorized Date:** A facility shall be eligible for tax abatement if it has applied for such abatement prior to the commencement of construction.
- (c) **Creation of New Value:** Abatement may only be granted for the additional value of eligible property improvement made subsequent to and in an abatement agreement between the City of Tomball and the property owner and/or lessee, subject to such limitations as the City Council may require.
- (d) **Eligible Property:** Abatement may be extended to the value of buildings, structures, fixed machinery, equipment, personal property, site improvements plus that office space and related fixed improvements necessary to the operation and administration of the facility. The value of all property shall be the appraised value for each year, as finally determined by the applicable appraisal district.
- (e) **Ineligible Property:** The following types of property shall be generally be fully taxable and ineligible for abatement: land; inventories; supplies; tools; furnishings; and other forms of movable personal property; vehicles; vessels; aircraft; housing; hotel

accommodations; deferred maintenance investments; property to be rented or leased except as provided below; improvements for the generation or transmission of electrical energy not wholly consumed by a new facility or expansion; any improvements, including those to produce, store or distribute natural gas, fluids or gases, which are not integral to the operation of the facility; property which has an economic life of less than fifteen (15) years; property owned or used by the State of Texas or its political subdivision or by any organization owned, operated or directed by a political subdivision of the State of Texas, or any property exempted by local, state or federal law; and property owned or leased by a member of city council or a member of a zoning or planning commission of the City.

- (f) **Leased Facilities:** If a leased facility is granted abatement, the agreement shall be executed with the lessor and the lessee.
- (g) **Value and Term of Abatement:** Abatement shall be granted effective with the January 1 valuation date immediately following the date of execution of the agreement or at such other date specifically authorized by City Council. The value of the abatement will be determined based on the merits of the project, including, but not limited to, total capital investment value and added employment. Up to one hundred percent of the value of new eligible properties may be abated for a total term of abatement not to exceed ten years. However, a project must provide an extraordinary economic benefit to the City to be considered for one hundred percent abatement.

If a modernization project includes facility replacement, the abated value shall be the value of the new unit(s) less the value of the old unit (s).

- (h) **Taxability:** From the execution of the abatement to the end of the agreement, taxes shall be payable as follows:
- (1) The value of ineligible property as provided in Section 4(e) shall be fully taxable;
 - (2) The base year value of existing eligible property as determined each year shall be fully taxable; and,
 - (3) The additional value of new eligible property shall be taxable at the end of any abatement period.

SECTION 5: APPLICATION

- (a) Any present or potential owner of taxable property in the City of Tomball may request the creation of a reinvestment zone or tax abatement by filing a written application with the Finance Director of the City of Tomball.
- (b) The application shall consist of a completed application form accompanied by: a general description of the project/new improvements to be undertaken; a descriptive list of the improvements for which an abatement is requested; a list of the kind, number and location of all proposed improvements of the property; a list of the estimated value of

inventory and the location where the inventory will be stored; the projected employment number at the proposed facility and the estimated average salary; the estimated amount of annual sales subject to State Sales & Use Tax; a map and property description; and a time schedule for undertaking and completing the proposed improvements. The applicant shall also include information pertaining to the reasons the abatement is necessary in order to have the project undertaken in the City of Tomball. In the case of modernization, a statement of the assessed value of the facility separately stated for real and personal property shall be given for the tax year immediately preceding the application. The application form may require financial and other information as the Tomball City Council deems appropriate for evaluating the financial capacity and other factors of the applicant.

- (c) The applicant must certify that the applicant does not employ nor will it employ any undocumented workers (an individual who, at the time of employment, is not lawfully admitted for permanent residence to the United States or, authorized under law to be employed in that manner in the United States). The applicant must agree that if it is convicted of a violation under 8 U.S.C. Section 1324a(f) after receiving a tax abatement, applicant shall repay the amount of the tax abatement with interest, at the rate of 12% per annum, within 120 days after the City notifies the applicant of the violation. The City shall have the authority to bring a civil action to recover any amounts which the applicant must repay the City under this provision, and in such action may recover court costs and reasonable attorneys' fees.
- (d) The City of Tomball may request additional information as deemed appropriate for evaluating the financial capacity of the applicant and compatibility of the proposed improvements with these guidelines and criteria.
- (e) Upon receipt of a completed application, the City of Tomball shall notify in writing the presiding officer of the governing body of each eligible jurisdiction.
- (f) After receipt of a completed application, the City Council through its City Manager or his/her designee shall determine whether the application qualifies for abatement under the terms of these guidelines and criteria.
- (g) The City Manager or his/her designee shall prepare a fiscal impact analysis setting out the impact of the proposed reinvestment zone and tax abatement. The impact analysis study shall include, but not limited to, an estimate of the economic effect of the creation of the zone and the abatement of taxes and the benefit to the City of Tomball and the property to the included in the zone. The cost of city services to the development should not exceed the amount of taxes generated by the development
- (h) The City Council shall not establish a reinvestment zone or enter into an abatement agreement if it finds that the request for the abatement was filed after the commencement of construction, alteration, or installation of improvements related to a proposed new facility, expansion, or modernization. An applicant is ineligible for abatement if a decision to commence a new facility, expansion or modernization in the City of Tomball has been formally announced on or before the date of adoption of these guidelines.

SECTION 6: PUBLIC HEARING AND APPROVAL

- (a) The City Council may not adopt an ordinance designating a reinvestment zone until it has held a public hearing at which interested persons are entitled to speak and present evidence for or against the designation. Notice of the hearing must be published at least seven (7) days before the hearing in a newspaper of general circulation in the City. The presiding officers of eligible jurisdictions shall be notified in writing at least seven (7) days prior to the hearing.
- (b) Before the City Council may adopt, amend, repeal, or reauthorize guidelines and criteria, the City Council must hold a public hearing regarding the proposed adoption, amendment, repeal, or reauthorization at which members of the public are given the opportunity to be heard.
- (c) The agreements that are being considered must be published at least 30 days before the scheduled meeting date. The publication must include the name of the owner, the name/location of the reinvestment zone where the property will be, the nature of the improvements or repairs covered by the proposed agreement, and the estimated cost of the improvements or repair.
- (d) The City of Tomball will post the current version of the guidelines of the tax abatement.
- (e) In order to enter into a tax abatement agreement, the City Council must find that the terms of the proposed agreement meet these Guidelines and Criteria and that:

 - (1) There will be no substantial adverse effect on the provision of the City of Tomball's services or tax base; and
 - (2) The planned use of the property will not constitute a hazard to public safety, health or morals.

SECTION 7: AGREEMENT

- (a) After approval of a tax abatement application within a designated reinvestment zone, the Tomball City Council shall formally pass a resolution and execute an agreement with the owner of the facility and lessee as required, which shall include:

 - (1) Estimated value to be abated and the base year value;
 - (2) Percent of value to be abated each year;
 - (3) The commencement date and the termination date of abatement;
 - (4) The proposed use of the facility, nature of construction, time schedule for completion of the project, map, property description and improvement list;
 - (5) The contractual obligation in the event of default, violation of terms or conditions, delinquent taxes, recapture, administration and assignment, or other provisions that may be required for uniformity or compliance with state law;

- (6) Amount of investment, increase in assessed value and average number of job involved; and
- (7) A requirement that the applicant annually submit to the City, a January employee count of the abated facility which corresponds to the employment counts reported in the facility's Employer's Quarterly Report to the Texas Workforce Commission, and a separate notarized letter certifying the number of jobs created or retained as a direct result of the abated improvements and the number of employees in other facilities located within the City of Tomball. Submission shall be used to determine abatement eligibility for that year and shall be subject to audit if requested by the governing body. Failure to submit may result in the ineligibility to receive an abatement for that year and the termination of the tax abatement agreement and subject any abated taxes to recapture pursuant to Section 8 hereof.

Such agreement shall normally be executed within sixty (60) days after the applicant has forwarded all necessary information and documentation to the Tomball City Council.

- (b) The City Council may impose any other conditions in a tax abatement agreement that the City Council deems necessary to promote the purpose of these guidelines.

SECTION 8: RECAPTURE

- (a) In the event that the facility is completed and begins producing product or service, but subsequently discontinues producing product or service for any reason excepting fire, explosion or other casualty or accident or natural disaster for a period of one (1) year during the abatement period, then the agreement shall terminate and so shall the abatement of the taxes for the calendar year during which the facility no longer produces. The taxes otherwise abated for that calendar year shall be paid to the City of Tomball within sixty (60) days from the date of termination.
- (b) Should the City Council determine that the company or individual is in default according to the terms and conditions of its agreement, the City of Tomball shall notify the company or individual in writing at the address stated in the agreement, and if such is not cured within sixty (60) days from the date of such notice (the Cure Period), then the agreement may be terminated.
- (c) In the event that the company or individual allows its ad valorem taxes owed the City of Tomball to become delinquent and fails to timely and properly follow the legal procedures for their protest and/or contest, or violates any of the terms and conditions of the abatement agreement and fails to cure during the Cure Period, then the City may terminate the agreement and all taxes previously abated by virtue of the agreement will be recaptured and paid within sixty (60) days of the termination.

SECTION 9: ADMINISTRATION

- (a) Each year, the company or individual receiving abatement shall furnish the Chief Appraiser and the City of Tomball with such information as may be necessary for the abatement.

The agreement shall stipulate that employees and/or designated representatives of the City of Tomball will have access to the reinvestment zone during the term of the abatement to inspect the facility to determine if the terms and conditions of the agreement are being met. All inspections will be made only after the giving of twenty-four (24) hours prior notice and will only be conducted in such manner as to not unreasonably interfere with the construction and/or operation of the facility. All inspections will be made with one or more representatives of the company or individual and in accordance with its safety standards.

- (b) Upon completion of construction, the jurisdiction which created the zone shall annually evaluate each facility receiving abatement to ensure compliance with the agreement and report possible violations of the agreement to the City of Tomball and its attorney.
- (c) All documents related to tax abatements, including the annual certifications, will be kept on file with the City Secretary or other applicable City of Tomball department or office.

SECTION 10: ASSIGNMENT

An abatement may be assigned by the holder to a new owner or lessee of the same facility with the written consent of the Tomball City Council, which consent shall not be unreasonably withheld. Any assignment shall provide that the assignee shall irrevocably and unconditionally assume all the duties and obligations of the assignor upon the same terms and conditions as set out in the agreement. Any assignment of a tax abatement agreement shall be to an entity that contemplates the same improvements or repairs to the property, except to the extent such improvements or repairs have been completed. No assignment shall be approved if the assignor or the assignees are indebted to the City of Tomball for ad valorem taxes or other obligations.

SECTION 11: CONFIDENTIALITY OF PROPRIETARY INFORMATION

Subject to the provisions and limitations of Chapter 552 of the Texas Government Code, information that is provided to the City of Tomball in connection with an application or request for the creation of a reinvestment zone for the purposes of tax abatement in accordance with the above criteria and guidelines and which describes the specific process or business activities to be conducted or equipment or other property to be located on the property for which the tax abatement is sought is confidential and not subject to public disclosure until the tax abatement agreement is executed. The information in the custody of the City of Tomball after the agreement is executed will be treated as confidential to the extent allowed by law.

SECTION 12: SUNSET PROVISION

These Guidelines and Criteria are effective upon the date of their adoption and will remain in force for two (2) years, at which time all reinvestment zones and tax abatement contracts created pursuant to its provisions will be reviewed by the Tomball City Council to determine whether the goals have been achieved. Based on that review, the Guidelines and Criteria may be modified, renewed or eliminated.

City Council Meeting

Agenda Item

Data Sheet

Meeting Date: February 19, 2024

Topic:

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

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

Background:

Origination: David Esquivel, City Manager

Recommendation:

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