

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



**Tuesday, January 11, 2022  
5:30 PM**

Notice is hereby given of a meeting of the Tomball Economic Development Corporation, to be held on Tuesday, January 11, 2022 at 5:30 PM, City Hall, 401 Market Street, Tomball, TX 77375, for the purpose of considering the following agenda items. All agenda items are subject to action. The Tomball Economic Development Corporation reserves the right to meet in a closed session for consultation with attorney on any agenda item should the need arise and if applicable pursuant to authorization by Title 5, Chapter 551, of the Texas Government Code.

**THE TOMBALL ECONOMIC DEVELOPMENT CORPORATION OF THE CITY OF TOMBALL, TEXAS, WILL CONDUCT THE MEETING SCHEDULED FOR JANUARY 11, 2022, 5:30 PM, AT 401 MARKET STREET, TOMBALL, TEXAS, 77375. THIS MEETING AGENDA AND THE AGENDA PACKET ARE POSTED ONLINE AT:**

**[HTTPS://TOMBALLTX.GOV/ARCHIVE.ASPX?AMID=38](https://tomballtx.gov/archive.aspx?amid=38)**

- A. Call to Order
- B. Invocation
- C. Pledges
- D. Public Comments and Receipt of Petitions; *[At this time, anyone will be allowed to speak on any matter other than personnel matters or matters under litigation, for length of time not to exceed three minutes. No Council/Board discussion or action may take place on a matter until such matter has been placed on an agenda and posted in accordance with law - GC, 551.042.]*
- E. Reports and Announcements
- F. Reports by TEDC Staff:
  - 1. Quarterly Newsletter – December 2021.
  - 2. Tori Gleason, EDC Coordinator earns PCED certification.

## Regular Tomball Economic Development Corporation Meeting

January 11, 2022 | Agenda

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### G. Approval of Minutes

- [3.](#) Special Joint Tomball EDC and Tomball B&TP Property Owners Association Meeting of November 9, 2021.

### H. New Business

- [4.](#) Consideration and possible action by Tomball EDC to approve, as a Project of the Corporation, an agreement with Decatur Professional Development, LLC, to make direct incentives to, or expenditures for, rental assistance for new or expanded business enterprise to be located at 1431 Graham Drive, Suites 262-265, Tomball, Texas 77375. The estimated amount of expenditures for such Project is \$6,600.00.

- Public Hearing

- [5.](#) Consideration and possible action by Tomball EDC to ratify approval of a commercial real estate contract – unimproved property between the Corporation as Seller and Charles G. Nickson and/or assigns as purchaser and authorize the execution of contracts and documentation by the EDC Executive Director relating to approximately 3.92 gross acres of land identified as Lot 15 of the Tomball Business and Technology Park Lot 9 Replat Subdivision.

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

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

- Section 551.087, - Deliberation regarding Economic Development negotiations. - Project Hanks

- [7.](#) Consideration and possible action by Tomball EDC to approve, as a Project of the Corporation, an agreement with Project Hanks to make direct incentives to, or expenditures for, the creation or retention of primary jobs associated with the development of a 900,000 square foot distribution facility to be located at 14000 Boudreaux Rd, Tomball, Texas 77377. The estimated amount of expenditures for such Project is \$580,864.00.

- Public Hearing

### I. Adjournment

## CERTIFICATION

## **Regular Tomball Economic Development Corporation Meeting**

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I hereby certify that the above notice of meeting was posted on the bulletin board of City Hall, City of Tomball, Texas, a place readily accessible to the general public at all times, on the 7th day of JANUARY 2022 by 5:30 PM, and remained posted for at least 72 continuous hours preceding the scheduled time of said meeting.

Kelly Violette  
Executive Director

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

AGENDAS MAY BE VIEWED ONLINE AT [www.ci.tomball.tx.us](http://www.ci.tomball.tx.us).

# Regular Tomball EDC Agenda Item Data Sheet

**Meeting Date:** January 11, 2022

**Topic:**

Quarterly Newsletter – December 2021

**Background:**

**Origination:**

**Recommendation:**

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

**FUNDING (IF APPLICABLE)**

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

Yes: \_\_\_\_\_ No: \_\_\_\_\_ If yes, specify Account Number: # \_\_\_\_\_

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

Signed \_\_\_\_\_

Staff Member-TEDC

Date

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

Executive Director-TEDC

Date



WISHING YOU  
A SEASON FILLED WITH JOY AND HOPE

# *happiest* HOLIDAYS

*with gratitude,*  
TOMBALL ECONOMIC DEVELOPMENT CORPORATION



# Paradigm Brewing Co.

[CLICK TO READ MORE](#)

# Beefy Marketing

[CLICK TO READ MORE](#)

# Aloha Beauty

[CLICK TO READ MORE](#)

## TEDC ADDS NEW ADMINISTRATIVE ASSISTANT TO THE TEAM

Jessica



Irwin

[CLICK TO READ MORE](#)



TEDC STAFF CONTINUE PROFESSIONAL EDUCATION,  
EARN CERTIFICATION

Item 1.



[CLICK TO READ MORE](#)

IEDC AWARDS SILVER, BRONZE EXCELLENCE AWARDS TO  
TOMBALL ECONOMIC DEVELOPMENT CORPORATION



[CLICK TO READ MORE](#)

TEDC  
Staff



*Kelly Violette*  
CEO, PCED, AICP  
EXECUTIVE DIRECTOR



*Tiffani Wooten*  
CEO  
ASSISTANT DIRECTOR



*Tori Gleason*  
PCED  
ECONOMIC DEVELOPMENT  
COORDINATOR



*Jessica Irwin*  
ADMINISTRATIVE  
ASSISTANT



The Tomball Economic Development Corporation (TEDC) focuses on attracting new businesses & industry, promoting business retention and expansion, and coordinating economic development efforts in Tomball, the region, and the state. These principles create a foundation for the organization to strengthen the overall economic environment of Tomball.

The TEDC is a non-profit Type B Corporation created pursuant to the Texas Development Corporation Act of 1979. The TEDC was formed in November 1994, after citizens of Tomball voted to pass a 1/2 cent sales tax dedicated to economic development. The TEDC is governed by a seven-member Board of Directors appointed by the Tomball City Council.



Tomball Economic Development Corporation | 29201 Quinn Rd. Suite B, Tomball, TX 77375

[Unsubscribe tgleason@tomballtxedc.org](mailto:tgleason@tomballtxedc.org)

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# Regular Tomball EDC Agenda Item Data Sheet

**Meeting Date:** January 11, 2022

**Topic:**

Tori Gleason, EDC Coordinator earns PCED certification.

**Background:**

**Origination:**

**Recommendation:**

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

**FUNDING (IF APPLICABLE)**

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

Yes: \_\_\_\_\_ No: \_\_\_\_\_ If yes, specify Account Number: # \_\_\_\_\_

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

Signed \_\_\_\_\_

Staff Member-TEDC

Date

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

Executive Director-TEDC

Date

### **Gleason Earns PCED Certification**



TEDC Economic Development Coordinator, Tori Gleason, passed the Professional Community and Economic Developer certification exam on November 12. Gleason trained for the exam by participating in Community Development Institute (CDI) Texas and was eligible after completing all three years of CDI training.

The Professional Community and Economic Developer exam measures the understanding of community development content and the ability to apply appropriate methods and tools to specific community situations. The certification qualifies Gleason to use the professionally accredited letters “PCED” behind her name. Gleason joins Executive Director, Kelly Violette, as a Professional Community and Economic Developer.

The PCED exam content is based on the Community Development Handbook, which provides comprehensive, current, and applicable information for community development practitioners. The exam includes questions to measure both the understanding of content and the ability to apply the appropriate methods and tools to specific community situations.

PCED re-certification is required every three years. A minimum of eight points earned after the date of applicant's most recent certification and within the past three years are required for re-certification. Re-certification points can be achieved through professional education, contributions to the profession, service, and participation in community development meetings and programs.

The team’s commitment to professional growth continues to positively impact economic development in Tomball, as new skills and techniques are used to help recruit and retain businesses. Completion of CDI Texas and PCED certification ensures that Gleason will effectively meet the needs of existing and prospective businesses in Tomball.

# Regular Tomball EDC Agenda Item Data Sheet

**Meeting Date:** January 11, 2022

**Topic:**

Special Joint Tomball EDC and Tomball B&TP Property Owners Association Meeting of November 9, 2021

**Background:**

**Origination:** Kelly Violette, Executive Director

**Recommendation:**

Approval of the Minutes for the Meeting of November 9, 2021.

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

**FUNDING (IF APPLICABLE)**

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

Yes: \_\_\_\_\_ No: \_\_\_\_\_ If yes, specify Account Number: # \_\_\_\_\_

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

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

**NOTICE OF SPECIAL JOINT TOMBALL EDC AND TOMBALL B&TP  
PROPERTY OWNERS ASSOCIATION INC. MEETING**



**Tuesday, November 09, 2021  
5:30 PM**

Notice is hereby given of a meeting of the Tomball Economic Development Corporation, to be held on Tuesday, November 09, 2021 at 5:30 PM, City Hall, 401 Market Street, Tomball, TX 77375, for the purpose of considering the following agenda items. All agenda items are subject to action. The Tomball Economic Development Corporation reserves the right to meet in a closed session for consultation with attorney on any agenda item should the need arise and if applicable pursuant to authorization by Title 5, Chapter 551, of the Texas Government Code.

**MEETING AGENDA AND AGENDA PACKET ARE POSTED ONLINE AT: <https://tomballtx.gov/Archive.aspx?AMID=38>; A RECORDING OF THE MEETING WILL BE MADE AND WILL BE AVAILABLE TO THE PUBLIC IN ACCORDANCE WITH THE OPEN MEETINGS ACT UPON WRITTEN REQUEST.**

**A. Call to Order**

President Fagan called the meeting to order at 5:38 p.m.

**PRESENT**

President Gretchen Fagan  
Secretary Bill Sumner  
Treasurer Richard Bruce  
Member Clete Jaeger  
Member Chad Degges  
Member Randy Parr

**ABSENT**

Vice President Steven Vaughan

**OTHERS PRESENT**

Kelly Violette  
Tiffani Wooten  
Tori Gleason  
Kyle Bertrand



Tom Condon  
David Esquivel  
Jessica Rogers  
Warren Buehler  
Janna Hoglund  
Richard  
Ali Khan  
Kaela Olson (via Zoom)  
Caroline Harrelson (via Zoom)  
Brian Summers (via Zoom)  
Charlie Hoelscher (via Zoom)  
Brian Silver (via Zoom)  
281-517-5900 (via Zoom)

B. Invocation

Board Member Degges led the invocation.

C. Pledges

Kelly Violette led the pledge of allegiance to both flags.

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

President Fagan opened public comments at 5:40 p.m. No comments were received. Public comments were closed at 5:40 p.m.

E. Reports and Announcements

1. Engineer update on Persimmon Road/Medical Complex Drive Extension Project.

Kyle Bertrand provided an update.

Reports by TEDC Staff:

Tiffani Wooten provided an overview of the following:

1. Tomball Business & Technology Park – Ranked Among Top 10 in United States – *Business Facilities, 17th Annual Rankings Report.*

- 
2. *“Regions and Neighborhoods: Small-Town Charm with Big City Amenities in Tomball”* – Highlight Publication by Greater Houston Partnership.
  3. Tomball EDC Sponsored the Greater Tomball Area Chamber of Commerce’s First Friday Luncheon on September 3, 2021. Speaker Patrick Jankowski gave an Economic Outlook presentation.
  4. Milestone years for the TEDC Leadership:  
  
Kelly Violette, Executive Director - 10 Years at Tomball Economic Development Corporation  
  
Tiffani Wooten, Assistant Director – 20 Years in Economic Development  
  
Both were recognized at the September 3, 2021 GTACC First Friday Luncheon by Local, State, and Federal representatives.
  5. Tomball Together Hospitality Mix & Mingle Event hosted in partnership with the Greater Tomball Area Chamber of Commerce – September 21, 2021.
  6. International Economic Development Council Excellence in Economic Development Awards.
- F. Approval of Minutes
- Motion made by Secretary Sumner, Seconded by Member Degges to approve the minutes as mentioned below.
- Voting Yea: President Fagan, Secretary Sumner, Treasurer Bruce, Member Jaeger, Member Degges, Member Parr.
- The motion carried unanimously.
7. Regular Tomball EDC Meeting of July 13, 2021.
  8. Special Joint Tomball EDC and Tomball City Council Meeting of August 16, 2021.
- G. New Business
9. Consideration and possible action by the Tomball B&TP Property Owners Association Board of Directors to approve an amendment to the Declaration of Covenants, Restrictions and Conditions for the Tomball Business and Technology Park to change the Property Owners Association Assessment Calculation and Due Date.

Motion made by Member Parr, Seconded by Secretary Sumner.

Voting Yea: President Fagan, Secretary Sumner, Treasurer Bruce, Member Jaeger, Member Degges, Member Parr.

The motion carried unanimously.

10. Consideration and possible action by the Tomball B&TP Property Owners Association Board of Directors to approve the 2021-2022 Tomball B&TP POA Budget.

Motion made by Member Degges, Seconded by Member Jaeger.

Voting Yea: President Fagan, Secretary Sumner, Treasurer Bruce, Member Jaeger, Member Degges, Member Parr.

The motion carried unanimously.

11. Presentation by Jessica Rogers, Assistant City Manager, regarding the Tomball EDC 2020-2021 Fiscal Year End financial statements.

Jessica Rogers, Assistant City Manager, provided an overview of the financials.

Presentation item only; no Board action required.

12. Presentation by Aaron Farmer, President, The Retail Coach, regarding the Tomball Retail Market.

Caroline Harrison, The Retail Coach, provided an update of the Tomball Retail Market.

Presentation item only; no Board action required.

13. Presentation by Brian Summers, Senior Property Manager Industrial, Colliers International regarding the South Live Oak Business Park.

Brian Summers, Colliers International, provided an overview regarding South Live Oak Business Park.

Presentation item only; no Board action required.

14. Consideration and possible action by Tomball EDC to approve, as a Project of the Corporation, an agreement with Silver Accounting Group, LLC, to make direct incentives to, or expenditures for, rental assistance for new or expanded business enterprise to be located at 1431 Graham Drive, Suite 150, Tomball,

Texas 77375. The estimated amount of expenditures for such Project is \$8,236.00.

- Public Hearing

President Fagan opened the public hearing at 6:17 p.m. No comments were received. Public hearing was closed at 6:17 p.m.

Motion made by Member Parr, Seconded by Member Degges.

Voting Yea: President Fagan, Secretary Sumner, Treasurer Bruce, Member Jaeger, Member Degges, Member Parr.

The motion carried unanimously.

15. Consideration and possible action by Tomball EDC regarding a Project Agreement with the Friends of Tomball Community Library under Section 505.158 of the Development Corporation Act.

- Public Hearing

President Fagan opened the public hearing at 6:25 p.m. No comments were received. Public hearing was closed at 6:25 p.m.

Motion made by Secretary Sumner, Seconded by Member Jaeger.

Voting Yea: President Fagan, Secretary Sumner, Treasurer Bruce, Member Jaeger, Member Degges, Member Parr.

The motion carried unanimously.

16. Consideration and possible action by Tomball EDC to approve, as a Project of the Corporation, an agreement with GK Hospitality Development, LLC to make direct incentives to, or expenditures for, assistance with infrastructure costs required or suitable for the promotion of new or expanded business enterprise related to the construction of a 6,530 square foot commercial facility generally located near the northwest corner of SH 249 and FM 2920 Road, Tomball, Texas 77377. The estimated amount of expenditures for such Project is \$107,500.00.

- Public Hearing

President Fagan opened the public hearing at 6:34 p.m. No comments were received. Public hearing was closed at 6:34 p.m.

Motion made by Secretary Sumner, Seconded by Treasurer Bruce.

Voting Yea: President Fagan, Secretary Sumner, Treasurer Bruce, Member Jaeger, Member Degges, Member Parr.

The motion carried unanimously.

17. Consideration and possible action by Tomball EDC to approve an amendment to the Commercial Real Estate Listing Agreement with Colliers International for the sale of EDC owned property in the Tomball Business and Technology Park.

Motion made by Member Degges, Seconded by Secretary Sumner.

Voting Yea: President Fagan, Secretary Sumner, Treasurer Bruce, Member Jaeger, Member Degges, Member Parr.

The motion carried unanimously.

18. Consideration and possible action by Tomball EDC to approve an amendment to Exclusive Representation Agreement with Colliers International for real estate services related to the acquisition of property within the city limits of or ETJ of Tomball.

Motion made by Secretary Sumner, Seconded by Treasurer Parr.

Voting Yea: President Fagan, Secretary Sumner, Treasurer Bruce, Member Jaeger, Member Degges, Member Parr.

19. EXECUTIVE SESSION: The Tomball Economic Development Corporation Board will meet in Executive Session as authorized by Title 5, Chapter 551, Texas Government Code, The Texas Open Meetings Act, for the following purpose:
- Section 551.072, - Deliberations regarding real property: Deliberate the purchase, exchange, sale, lease, or value of real property.
  - Section 551.087, - Deliberation regarding Economic Development negotiations.

The Tomball Economic Development Corporation Board recessed at 6:38 p.m.

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

The Tomball Economic Development Corporation Board reconvened at 6:45 p.m.

21. Consideration and possible action by Tomball EDC to ratify approval of a commercial real estate contract – unimproved property between the Corporation as Seller and KTB Properties as purchaser and authorize the execution of contracts and documentation by the EDC Executive Director relating to approximately 2.5 gross acres of land identified as Lot 9 of the Tomball Business and Technology Park Lot 9 Replat Subdivision.

Motion made by Secretary Sumner, Seconded by Treasurer Parr.

Voting Yea: President Fagan, Secretary Sumner, Treasurer Bruce, Member Jaeger, Member Degges, Member Parr.

The motion carried unanimously.

22. Consideration and possible action by Tomball EDC to approve, as a Project of the Corporation, an agreement with Techsico to make direct incentives to, or expenditures for, the creation or retention of primary jobs associated with the relocation and development of a 20,000 square foot office/warehouse facility to be located on Lot 9 of the Tomball Business and Technology Park. The estimated amount of expenditures for such Project is \$20,529.00.

- Public Hearing

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

Motion made by Member Jaeger, Seconded by Member Degges.

Voting Yea: President Fagan, Secretary Sumner, Treasurer Bruce, Member Jaeger, Member Degges, Member Parr.

The motion carried unanimously.

23. Consideration and possible action by Tomball EDC to ratify approval of a commercial real estate contract – unimproved property between the Corporation as Seller and Billiard Factory, Inc and/or assigns, as purchaser and authorize the execution of contracts and documentation by the EDC Executive Director relating to approximately 4.8226 gross acres of land, identified as Lot 3 on the Final Plat of the Tomball Business & Technology Park.

Motion made by Treasurer Bruce, Seconded by Member Degges.

Voting Yea: President Fagan, Secretary Sumner, Treasurer Bruce, Member Jaeger, Member Degges, Member Parr.

The motion carried unanimously.

24. Consideration and possible action by Tomball EDC to approve, a Resolution of which the caption reads:

“A RESOLUTION OF THE TOMBALL ECONOMIC DEVELOPMENT CORPORATION PROVIDING THE TIME AND PLACE OF THE REGULAR MEETINGS OF THE TOMBALL ECONOMIC DEVELOPMENT CORPORATION IN THE CITY OF TOMBALL, TEXAS FOR THE YEAR 2022.”

Motion made by Treasurer Bruce, Seconded by Secretary Sumner.

Voting Yea: President Fagan, Secretary Sumner, Treasurer Bruce, Member Jaeger, Member Degges, Member Parr.

The motion carried unanimously.

25. TEDC Quarterly update on 2021-2022 Strategic Work Plan.

Kelly Violette provided an update on the 2021-2022 Strategic Work Plan.

Presentation item only; no Board action required.

H. Adjournment

Motion made by Secretary Sumner, Seconded by Member Jaeger to adjourn the meeting at 7:04 p.m.

Voting Yea: President Fagan, Secretary Sumner, Treasurer Bruce, Member Jaeger, Member Degges, Member Parr.

The motion carried unanimously.

**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 5th day of NOVEMBER 2021 by 5:30 PM, and remained posted for at least 72 continuous hours preceding the scheduled time of said meeting.

Kelly Violette  
Executive Director

**Special Joint Tomball EDC and Tomball B&TP Property Owners Association Inc.  
Meeting**

November 09, 2021 | Minutes

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Item 3.

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

AGENDAS MAY BE VIEWED ONLINE AT [www.ci.tomball.tx.us](http://www.ci.tomball.tx.us).

PASSED AND APPROVED this the 11 th day of January 2022.

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President, Tomball EDC Board

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Secretary, Tomball EDC Board



# Regular Tomball EDC

## Agenda Item

### Data Sheet

**Meeting Date:** January 11, 2022

**Topic:**

Consideration and possible action by Tomball EDC to approve, as a Project of the Corporation, an agreement with Decatur Professional Development, LLC, to make direct incentives to, or expenditures for, rental assistance for new or expanded business enterprise to be located at 1431 Graham Drive, Suites 262-265, Tomball, Texas 77375. The estimated amount of expenditures for such Project is \$6,600.00

- Public Hearing

**Background:**

The Tomball Economic Development Corporation has received a request from Ken Hudspeth, General Manager of Decatur Professional Development, LLC, for funding assistance through the TEDC's Rental Incentive Program for a professional development firm.

Decatur Professional Development, LLC was established in 2003 and specializes in providing continuing education for licensed professional engineers offering online courses, webinars, and seminars.

The proposed location is an 800 square foot lease space located within the Bank of America building at 1431 Graham Drive.

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

The lease agreement that was submitted in conjunction with the request letter shows a three-year lease commitment with a monthly rent amount of \$2,200.00. The proposed grant amount is \$6,600, 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.

**Origination:** Ken Hudspeth, General Manager, Decatur Professional Development, LLC

**Recommendation:** Staff recommends approval of the proposed Performance Agreement with Decatur Professional Development, LLC.

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Kelly Violette

**FUNDING (IF APPLICABLE)**

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

If yes, specify Account Number: #Project Grants

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

Signed \_\_\_\_\_

Staff Member-TEDC                      Date

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

# DECATUR | PROFESSIONAL DEVELOPMENT

December 15, 2021

Kelly Violette  
Executive Director  
Tomball Economic Development Council

Good afternoon,

Decatur Professional Development, LLC (DPD) is a Texas-based company founded in 2003 to offer licensed professional engineers online continuing education courses to meet their state's continuing education mandate.

In 2006, we expanded our offerings to include online seminars. The purchases of two competitors closed in 2016 as we acquired the website PDHcourses from Professional Development Options and a live seminar business, Professional Development Seminars. Headquarters for both businesses were moved here to Houston. More recently, we established NoonPi.com, a new concept in engineering continuing education.

Our home has been northwest Harris County since we opened, and we consider ourselves stable in the community. Our last move was necessitated when the building in which we were leasing was destroyed in the Tax Day Flood of 2016 due to a roof failure. The need to quickly find a new space caused us to rethink our needs and our space requirements.

In a similar fashion, the COVID pandemic has also caused us to creatively reimagine our business processes and needs. Our move to Tomball will allow us to handle our current staffing needs in a blended office-based / remote environment. Additionally, we will have the opportunity to add more floor space as our staff grows. Although we've not disclosed it on our application as we're still in the planning phases, our hope is to hire an additional two salespeople in the next twelve months. A location in Tomball is favorable since it will allow us to be within a short distance of several key potential clients.

We are funding the move through our current operations and are requesting assistance from Tomball EDC's Business Rental Incentive Program as a means to allow us to expand our Tomball operations and staff quickly.

We appreciate your consideration.

Sincerely,



Ken Hudspeth  
General Manager  
Decatur Professional Development, LLC.

**Decatur Professional Development, LLC**  
7915 Cypress Creek Parkway, Suite 130, Houston, TX 77070  
1-877-PDHengineer (1-877-734-3644)

**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: Decatur Professional Development, LLC dba PDHengineer.comCurrent Business Physical Address: 7915 Cypress Creek Pkwy #130City, State & Zip Houston, TX 77070Mailing Address: (same)

City, State &amp; Zip \_\_\_\_\_

Business Phone: 281 671-1615Business Website: PDHengineer.comBusiness Owner Name: Edward Brunet, Jr., P.E., Managing DirectorApplicant's Name (if different): Ken HudspethPosition /Title: General ManagerPhone and Email: 832 776-2323 (mobile) or 281 671-1615 ken.hudspeth@PDHengineer.comNature of Business: Adult education: sale of continuing education products for professional engineers**Legal Form of Business**

- ☐ Sole Proprietor  
☐ Partnership Number of Partners \_\_\_\_\_  
☐ Corporation  
☒ Limited Liability Corp  
☐ Other \_\_\_\_\_

**Days and Hours of Operation**Days Open: Mon through FriHours Open: 8am - 5pmBusiness Start/Opening Date February 1, 2022

## Employees

Full Time Employees (40 hours per week): 7

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

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>new remodel</u>
Landlord Space Improvement (finish)	\$ <u>new remodel</u>
Equipment and Display	\$ <u>3,000</u>
Product Stock (for Opening)	\$ <u>0</u>
Marketing (First Year)	\$ <u>105,000</u>

### Sources of Funding for Move/Expansion

Funds invested by owner	\$ <u>4,000</u>
Funds from other sources*	\$ <u>0</u>
Total estimated cost to move/expand	\$ <u>4,000</u>

\* Source of Funding and Amounts \_\_\_\_\_

## New Lease Property Information

Address of space to be leased: 1431 Graham Dr. Suites 262, 263, 264, 265, Tomball 77375

Total amount of square feet to be leased and occupied: 800 +/-

Term of lease (minimum 3 years): 3 years

Gross rental rate \$ 2200 per month \$ \_\_\_\_\_ per s.f.

Additional lease terms and other monthly charges: n/a

Indicate any rate increases: n/a

**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.

Both rental costs and relocation costs play into a business decision regarding relocation of an existing business. Many businesses will remain in a less-than-desirable location simply due to the cost of relocation. As a smaller business, we are likely more affected than larger business with deeper pockets.

We are at lease-end at the current location, which really no longer fits our needs. However, we had given serious consideration to remaining because of the high cost of relocation. Proudly, we were able to keep 100% of our employees working without cuts through the pandemic, and were able to stay current on all of our obligations. But, not without putting a strain on our reserves.

This program will allow us to relocate into a desirable area by assisting with easing the overall costs associated with a move.

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:

We are a professional services business with a clientele of above average incomes. Our employees are skilled professionals with either technical or marketing expertise. Decatur Professional Development (DPD) is a locally owned business and has been in operation since 2003 and has experienced continued growth in that time. Our primary market is online continuing education for licensed professional engineers. However, as a growth-minded entrepreneurial endeavor, in the last several years we have purchased a live seminar company as well as a competitor operating in North Carolina, moving that business here to Texas. Our most recent endeavor, now operational, matches continuing education for engineers with vendors of products used by those engineers.

In short, DPD is an innovative, stable business that will complement other businesses in the Tomball community.





## 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: 1431 Graham Drive, Tomball, TX 77375

Property Owner of Record: Heggenwaters Tbo LLC

Mailing Address: 3308 Canal

City, State & Zip: Houston, TX 77003

Phone: 281 602 3600 Email: PETER@TQC-RE.COM

Name(s) of Authorized Signatories: Peter, Devin, Mark Lucita

Name of Management Company: TPL Real Estate

Name of Representative/Contact Person: PETER LUCITA

Management Company Address: 3308 Canal

City, State & Zip: Houston, TX 77003

Phone: 281 602 3600 Email: PETER@TPL-RE.COM

Name of proposed business at site:

Deceatur Professional Development LLC (PDHengineer, DBA)

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: 800 s.f. with load factor

Term of lease: 3 years

Gross rental rate \$ 2,200 per month \$ \_\_\_\_\_ per s.f.

Additional lease terms and other monthly charges: \_\_\_\_\_

Indicate any rate increases: \_\_\_\_\_

Is the subject space currently vacant? Yes ☒ No ☐

If yes, how long has the space been vacant? 5+ <sup>years</sup> months

Name of previous tenant: unknown

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.

PETER LIATA

Printed Name of Property Owner/Landlord

[Signature]

Signature

12-3-21

Date

## 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 **Decatur Professional Development, LLC** (the “Company”), 7915 Cypress Creek Parkway, Suite 130, Houston, TX 77070.

### 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 an 800 square foot existing office space located at 1431 Graham Drive, Suites 262, 263, 264, and 265, Tomball, Texas 77375 (the “Property”), and more particularly described in Exhibit “A,” attached hereto and made a part hereof; and

**WHEREAS**, the Company specializes in providing continuing education for licensed professional engineers offering online courses, webinars, and seminars; and

**WHEREAS**, the Company proposes to relocate seven (7) full-time jobs to Tomball in conjunction with the relocation; 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 twelve (12) consecutive months of

operation not to exceed Six Thousand Six Hundred Dollars (\$6,600.00), 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 seven (7) 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 twelve (12) consecutive months of operation not to exceed Six Thousand Six Hundred Dollars (\$6,600.00). 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:	Decatur Professional Development, LLC 1431 Graham Drive, Suite 262 Tomball TX 77375 Attn: Kent Hudspeth, General Manager
----------------	---

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 \_\_\_\_\_ 2022 (the “Effective Date”).

**DECATUR PROFESSIONAL DEVELOPMENT, LLC**

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

Name: Kent Hudspeth

Title: General Manager

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 \_\_\_\_\_ 2022, by Kent Hudspeth, General Manager of Decatur Professional Development, 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 \_11th\_\_\_\_ day of \_\_\_\_January\_\_\_\_ 2022, by Gretchen Fagan, President of the Board of Directors of the Tomball Economic Development Corporation, for and on behalf of said Corporation.

\_\_\_\_\_  
 Notary Public in and for the State of Texas

My Commission Expires: \_\_\_\_\_

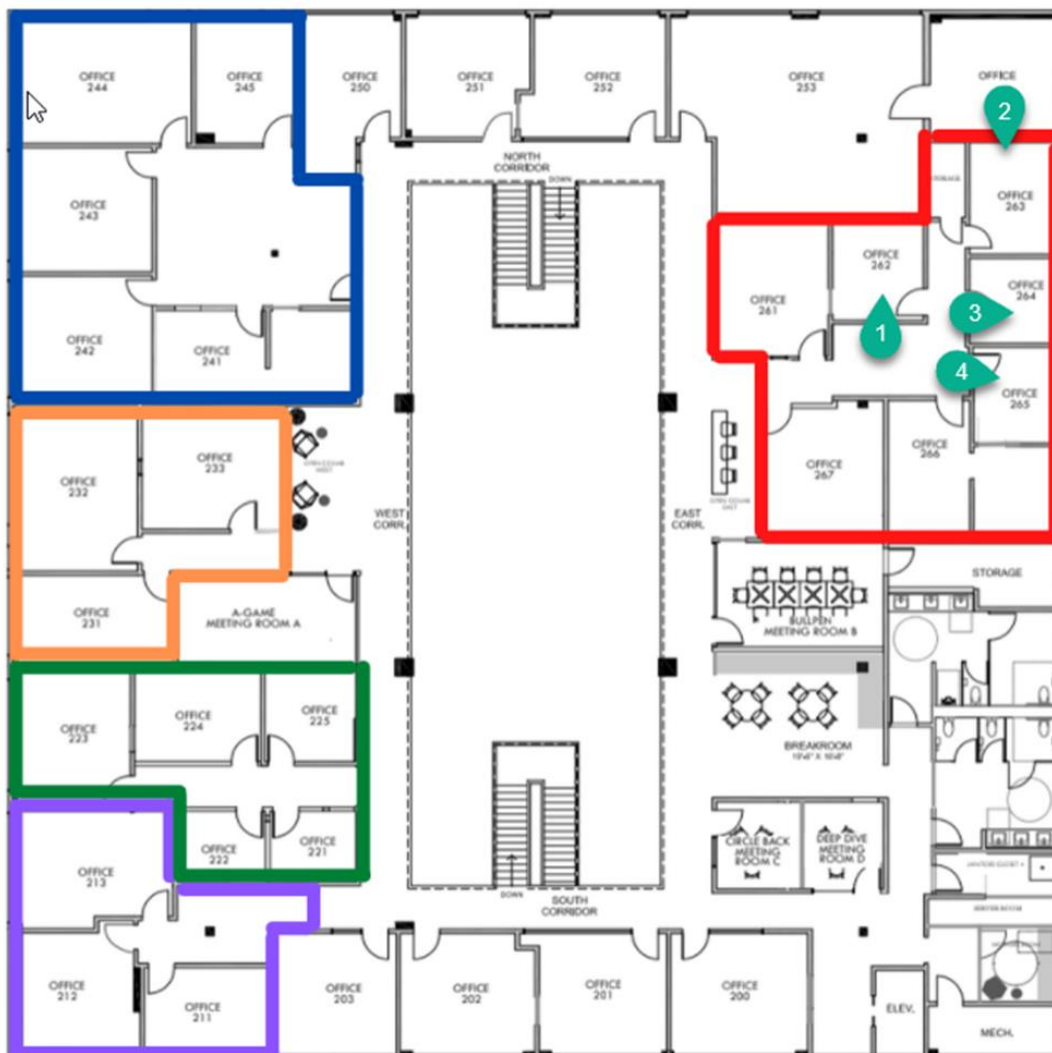
(SEAL)



**Exhibit "A"****Legal Description of Property**

Property Address: Headquarters Too, LLC Building, 1431 Graham Road, Suites 262, 263, 264, and 265, Tomball, TX 77375

Legal Description: A TRACT OR PARCEL CONTAINING 3.749 ACRES OR 163,311 SQUARE FEET OF LAND SITUATED IN THE J.M. HOOPER SURVEY, ABSTRACT NUMBER (NO.) 375 AND W. HURD SURVEY, ABSTRACT 378, HARRIS COUNTY, TEXAS, BEING ALL OF A CALLED 3.7512 ACRE TRACT AS DESCRIBED IN DEED TO GRAHAM ROAD INVESTMENTS, LTD AS RECORDED UNDER HARRIS COUNTY CLERK'S FILE (H.C.C.F.) NO V494896, WITH SAID 0.0000 ACRE TRACT BEING MORE PARTICULARLY COORDINATE SYSTEM SOUTH CENTRAL ZONE (NAD82):



# Regular Tomball EDC

## Agenda Item

### Data Sheet

**Meeting Date:** January 11, 2022

**Topic:**

Consideration and possible action by Tomball EDC to ratify approval of a commercial real estate contract – unimproved property between the Corporation as Seller and Charles G. Nickson and/or assigns as purchaser and authorize the execution of contracts and documentation by the EDC Executive Director relating to approximately 3.92 gross acres of land identified as Lot 15 of the Tomball Business and Technology Park Lot 9 Replat Subdivision.

**Background:**

The Tomball Economic Development Corporation has received an offer from Charles G. Nickson and/or assigns to purchase Lot 15 in the Tomball Business and Technology Park. The preliminary site plans submitted show the construction of an approximately 22,333 and 25,125 square foot office/warehouse buildings. The approximately 3.92-acre lot is located on the east side of Spell Circle, north of Spell Road.

Mr. Nickson owns Lots 12, 13, and 14 on Spell Circle in the Park.

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

Total acreage: 3.92 gross acres  
 Sales Price: ±\$623,171; based on \$3.65PSF of total area  
 Earnest Money: \$30,000  
 Feasibility Period: Waived by buyer  
 Closing: 90 days from the Effective Date of the Contract

**Origination:** Kelly Violette, Executive Director

**Recommendation:** Staff recommends approval of the proposed commercial real estate contract between the Corporation and Charles G. Nickson and/or assigns as presented.

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

**FUNDING (IF APPLICABLE)**

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

Yes: \_\_\_\_\_ No: \_\_\_\_\_ If yes, specify Account Number: # \_\_\_\_\_

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

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

---

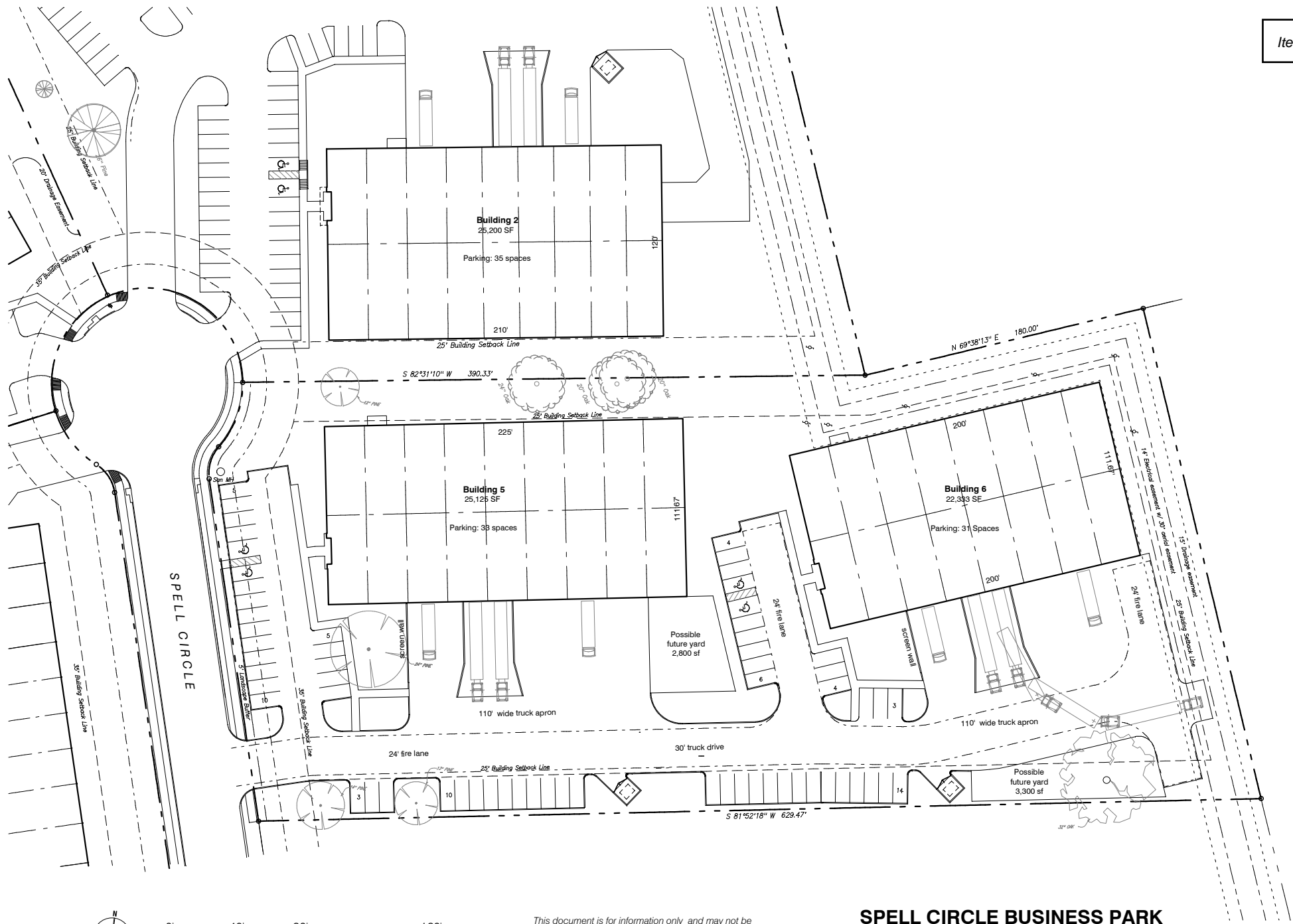
Staff Member-TEDC

Date

---

Executive Director-TEDC

Date



# For Sale

NWC Quadrant Holderrieth &  
Hufsmith-Kohrville  
Tomball, TX 77375

## Land Sites @ Tomball Business & Technology Park

- ±100 Acre Master Planned/Deed Restricted Business Park
- Light Industrial Zoning
- Low property taxes
- Economic Incentives/tax abatements available
- Easy access to SH 249, FM 2920 and the Grand Parkway
- Competitive land prices
- Surrounded by skilled labor force
- Fully served with all utilities & off-site detention



Project by: **TOMBALL**  
ECONOMIC DEVELOPMENT CORP.  
tomballtxedc.org

### Tom Condon, Jr.

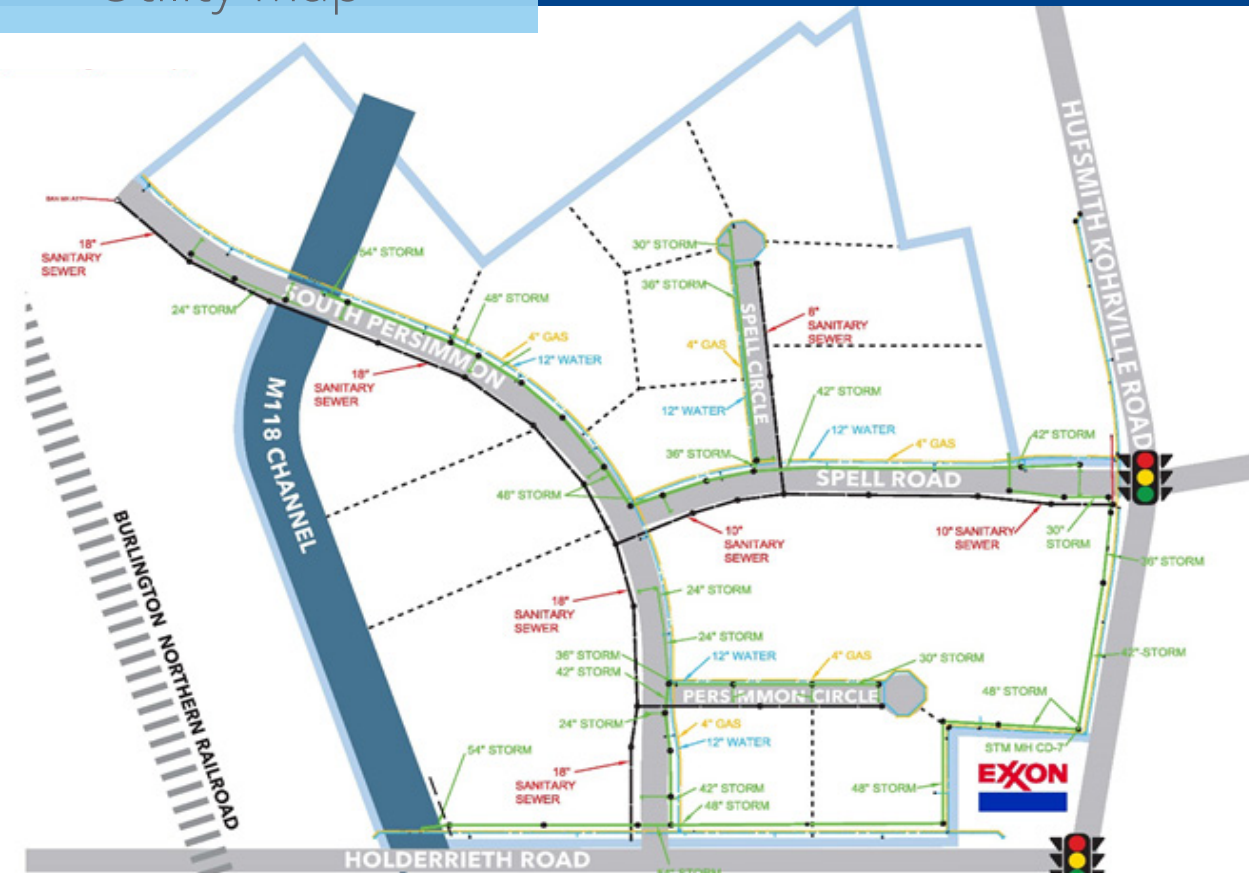
Principal  
+1713 830 4007  
tom.condon.jr@colliers.com

9950 Woodloch Forest Drive  
Suite 1225  
The Woodlands, TX 77380  
P: +1 713 830 4001  
colliers.com

Colliers



## Utility Map



## Project Features

- Ranked by Business Facilities as the #10 Best Industrial Parks in the Country in their 17th Annual Rankings Report
- Master Planned/Deed Restricted Business Park
- Off-site detention via M118 Channel
- Light Industrial Zoning
- Fully served with all utilities
- ±28.77 Usable Acres Still Available

## Highlights

- Tax abatements/Economic incentives available
- Easy access to SH 249, FM 2920 & the Grand Parkway
- Competitive land prices
- Skilled labor force
- Low property taxes
- Foreign Trade Zone #84

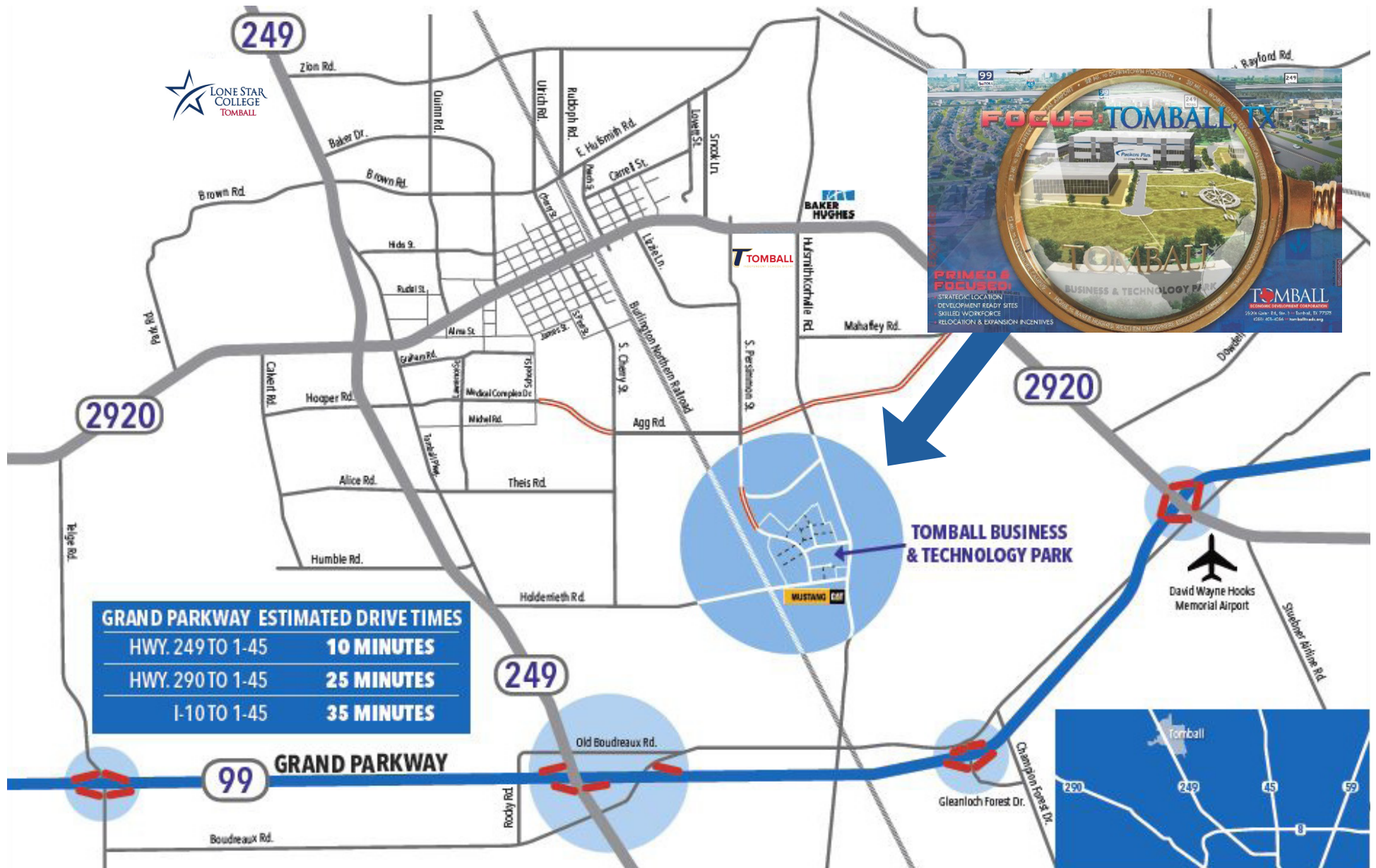
## Offering

- Pricing subject to lot size, configuration & location. Please inquire with Broker for details.
- Financial Incentives may be available from the TEDC. Click [here](#) for more information.



# Location

Item 5.

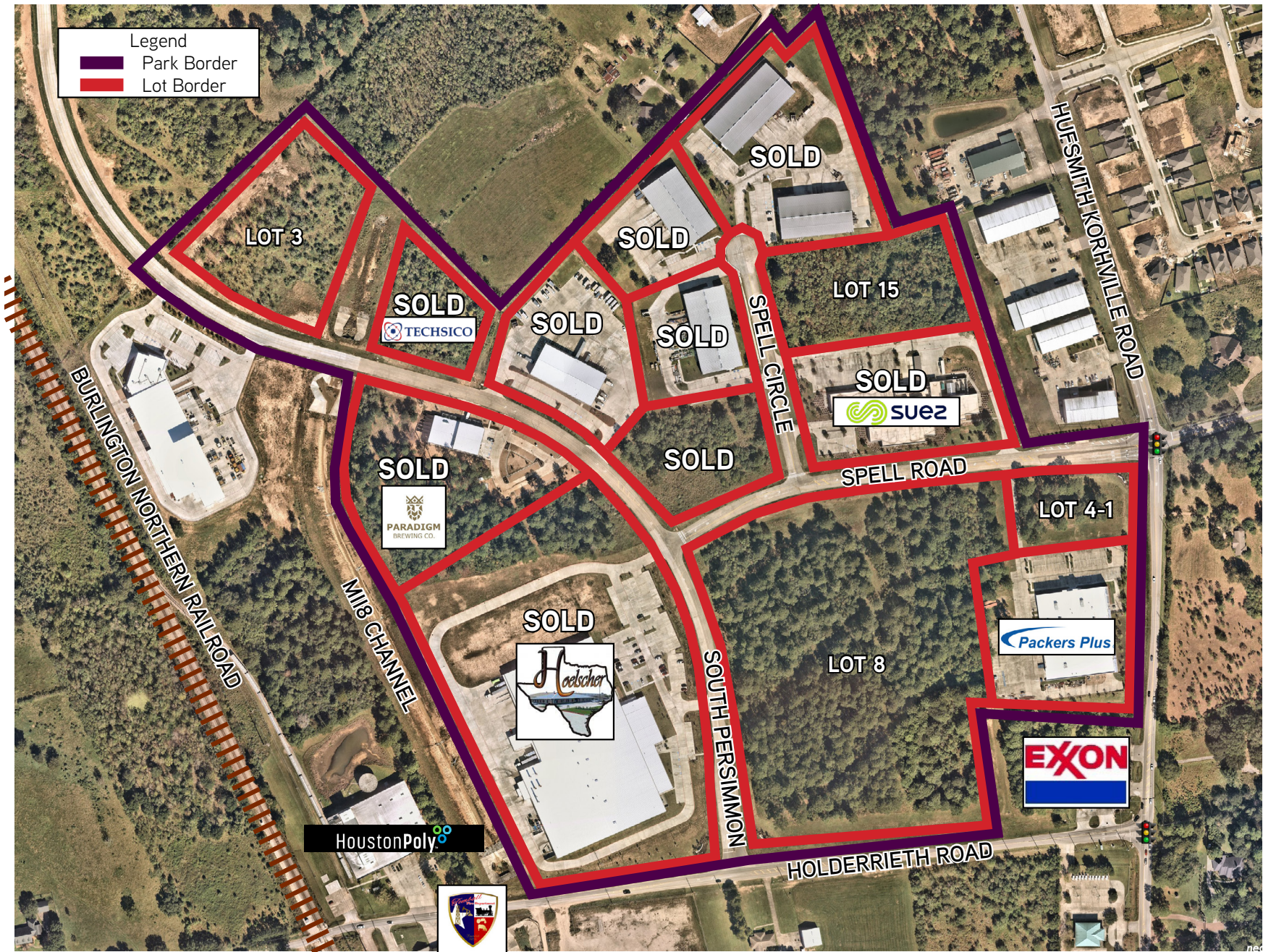


• 2.8 miles from D.W. Hooks Memorial Airport

• 24 miles from Bush Intercontinental Airport

• 42 miles from Port of Houston



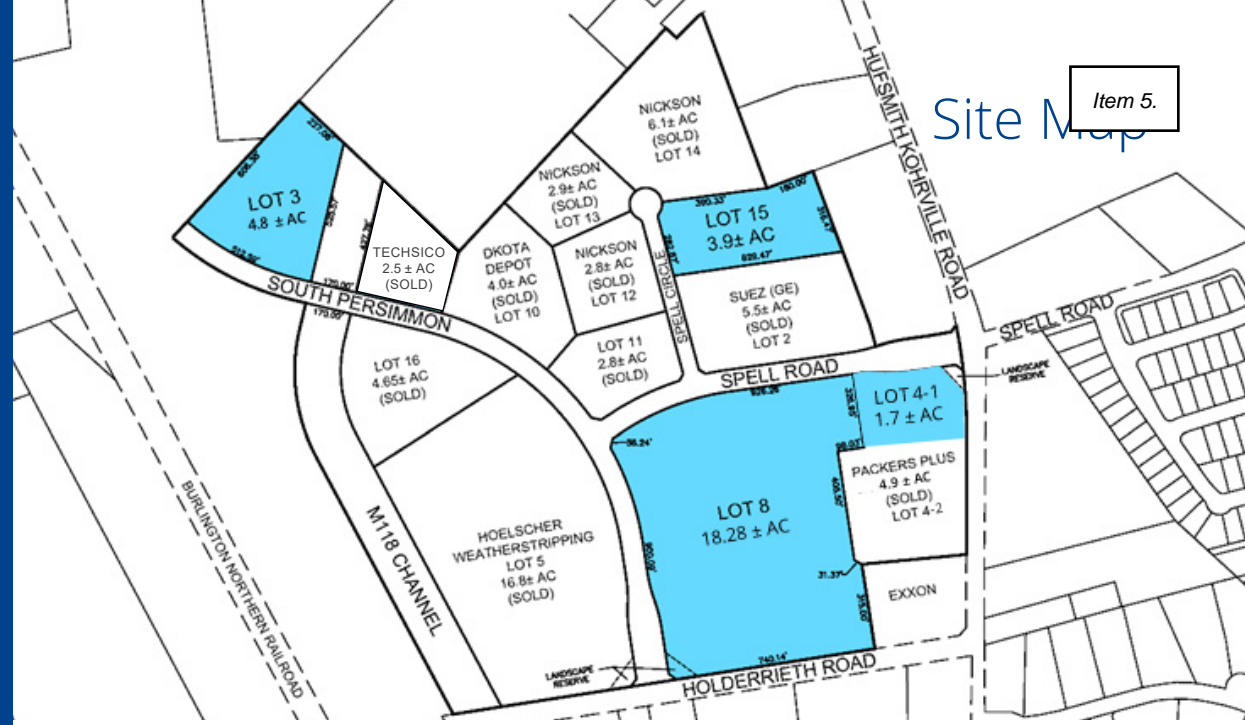






9950 Woodloch Forest Drive  
Suite 1225  
The Woodlands, TX 77380  
P: +1 713 830 4001  
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**Tom Condon, Jr.**  
Principal  
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tom.condon.jr@colliers.com



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# Information About Brokerage Services

Item 5.

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

## TYPES OF REAL ESTATE LICENSE HOLDERS:

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

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

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

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

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

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

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

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

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

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

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

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

### Colliers International

#### Houston, Inc.

Licensed Broker/Broker Firm Name or  
Primary Assumed Business Name

29114

License No.

[houston.info@colliers.com](mailto:houston.info@colliers.com)

Email

(713) 222-2111

Phone

### Gary Mabray

Designated Broker of Firm

138207

License No.

[gary.mabray@colliers.com](mailto:gary.mabray@colliers.com)

Email

(713) 830-2104

Phone

### Patrick Duffy, MCR

Licensed Supervisor of Sales Agent/  
Associate

604308

License No.

[patrick.duffy@colliers.com](mailto:patrick.duffy@colliers.com)

Email

(713) 830-2112

Phone

### Tom Condon, Jr.

Sales Agent/Associate's Name

419324

License No.

[tom.condon.jr@colliers.com](mailto:tom.condon.jr@colliers.com)

Email

(713) 830-2407

Phone

\_\_\_\_\_  
Buyer/Tenant/Seller/Landlord Initials

\_\_\_\_\_  
Date





## COMMERCIAL CONTRACT - UNIMPROVED PROPERTY

USE OF THIS FORM BY PERSONS WHO ARE NOT MEMBERS OF THE TEXAS ASSOCIATION OF REALTORS®, INC. IS NOT AUTHORIZED.  
©Texas Association of REALTORS®, Inc. 2021

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

Seller: **Tomball Economic Development Corporation**

Address: **P.O. Box 820, Tomball, TX 77377**

Phone: **(281)401-4086**

Fax: **(281)351-7223**

E-mail: **KVioletta@tomballtxedc.org**

Other:

Buyer: **Charles G. Nickson and/or Assigns**

Address: **2807 Eastgrove Lane, Houston, TX 77027**

Phone: **(713)961-4400**

Fax: **(713)961-1031**

E-mail: **cnickson@msn.com**

Other:

### 2. PROPERTY:

- A. "Property" means that real property situated in **Harris** County, Texas at **East Side of Spell Circle, north of Spell Road, Tomball** (address) and that is ~~legally described on the attached Exhibit~~ **being approximately 3.92 gross acres of land, more or less, described as Lot 15, of the Tomball Business and Technology Park Lot 9 Replat Subdivision, Tomball, Harris County, Texas as depicted on the Site Map attached hereto as Exhibit "A" and incorporated herein.** ~~or as follows:~~

- B. Seller will sell and convey the Property together with:

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

(Describe any exceptions, reservations, or restrictions in Paragraph 12 or an addendum.)

(If mineral rights are to be reserved an appropriate addendum should be attached.)

### 3. SALES PRICE:

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

- |   |    |                   |
|---|----|-------------------|
| (1) Cash portion payable by Buyer at closing .....      | \$ | <b>623,171.80</b> |
| (2) Sum of all financing described in Paragraph 4 ..... | \$ |                   |
| (3) Sales price (sum of 3A(1) and 3A(2)) .....          | \$ | <b>623,171.80</b> |

(TXR-1802) 09-01-21

Initialed for Identification by Seller

DS  
KV

and Buyer

DS  
CGN

Page 1 of 14

Colliers International - Corporate, 1233 West Loop South, Suite 900 Houston, TX 77027  
Tom Condon

Phone: 713-322-3111 Fax: 713-830-2118  
Produced with Lone Wolf Transactions (zipForm Edition) 231 Shearson Cr. Cambridge, Ontario, Canada N1T 1J5 www.lwlf.com

Nickson TR 15

Commercial Contract - Unimproved Property concerning East Side of Spell Circle, north of Spell Road, Tomball

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

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

(a) The sales price is calculated on the basis of \$ 3.65 per:

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

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

- ☐ (i) public roadways;  
☐ (ii) rights-of-way and easements other than those that directly provide utility services to the Property; and  
☐ (iii) \_\_\_\_\_

(c) If the sales price is adjusted by more than 10.000 % of the stated sales price, either party may terminate this contract by providing written notice to the other party within 10 days after the terminating party receives the survey. If neither party terminates this contract or if the variance is less than the stated percentage, the adjustment to the sales price will be made to the cash portion of the sales price payable by Buyer.

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

- ☒ A. **Third Party Financing:** One or more third party loans in the total amount of \$ 0.00. This contract:  
☒ (1) is not contingent upon Buyer obtaining third party financing.  
☐ (2) is contingent upon Buyer obtaining third party financing in accordance with the attached Commercial Contract Financing Addendum (TXR-1931).  
☐ B. **Assumption:** In accordance with the attached Commercial Contract Financing Addendum (TXR-1931), Buyer will assume the existing promissory note secured by the Property, which balance at closing will be \$ \_\_\_\_\_.  
☐ C. **Seller Financing:** The delivery of a promissory note and deed of trust to Seller under the terms of the attached Commercial Contract Financing Addendum (TXR-1931) in the amount of \$ \_\_\_\_\_.

**5. EARNEST MONEY:**

A. Not later than 3 days after the effective date, Buyer must deposit \$ \$30,000.00 as earnest money with Stewart Title - Tomball (title company) at 14080 FM 2920, Ste E, Tomball, TX 77377 (address) Jane Mathews (closer). If Buyer fails to timely deposit the earnest money, Seller may terminate this contract or exercise any of Seller's other remedies under Paragraph 15 by providing written notice to Buyer before Buyer deposits the earnest money.

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

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

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

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

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## 6. TITLE POLICY AND SURVEY:

A. Title Policy:

- (1) Seller, at Seller's expense, will furnish Buyer an Owner's Policy of Title Insurance (the title policy) issued by any underwriter of the title company in the amount of the sales price, dated at or after closing, insuring Buyer against loss under the title policy, subject only to:
- (a) those title exceptions permitted by this contract or as may be approved by Buyer in writing; and
- (b) the standard printed exceptions contained in the promulgated form of title policy unless this contract provides otherwise.
- (2) The standard printed exception as to discrepancies, conflicts, or shortages in area and boundary lines, or any encroachments or protrusions, or any overlapping improvements:
- ☐ (a) will not be amended or deleted from the title policy.
- ☒ (b) <sup>may</sup> will be amended to read "shortages in areas" at the expense of ☒ Buyer ☐ Seller.
- (3) Within 20 days after the effective date, Seller will furnish Buyer a commitment for title insurance (the commitment) including legible copies of recorded documents evidencing title exceptions. Seller authorizes the title company to deliver the commitment and related documents to Buyer at Buyer's address.

B. Survey: Within 30 days after the effective date:

- ☐ (1) Buyer will obtain a survey of the Property at Buyer's expense and deliver a copy of the survey to Seller. The survey must be made in accordance with the: (i) ALTA/NSPS Land Title Survey standards, or (ii) Texas Society of Professional Surveyors' standards for a Category 1A survey under the appropriate condition. Seller will reimburse Buyer \_\_\_\_\_ (insert amount) of the cost of the survey at closing, if closing occurs.
- ☐ (2) Seller, at Seller's expense, will furnish Buyer a survey of the Property dated after the effective date. The survey must be made in accordance with the: (i) ALTA/NSPS Land Title Survey standards, or (ii) Texas Society of Professional Surveyors' standards for a Category 1A survey under the appropriate condition.
- ☒ (3) Seller will deliver to Buyer and the title company a true and correct copy of Seller's most recent survey of the Property along with an affidavit required by the title company for approval of the existing survey. If the existing survey is not acceptable to the title company, ☒ Seller ☐ Buyer (updating party), will, at the updating party's expense, obtain a new or updated survey acceptable to the title company and deliver the acceptable survey to the other party and the title company within 20 days after the title company notifies the parties that the existing survey is not acceptable to the title company. ~~The closing date will be extended daily up to 20 days if necessary for the updating party to deliver an acceptable survey within the time required. The other party will reimburse the updating party \_\_\_\_\_ (insert amount or percentage) of the cost of the new or updated survey at closing, if closing occurs.~~

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

- (1) Within 10 days after Buyer receives the last of the commitment, copies of the documents evidencing the title exceptions, and any required survey, Buyer may object in writing to matters disclosed in the items if: (a) the matters disclosed are a restriction upon the Property or constitute a defect or encumbrance to title other than those permitted by this contract or liens that Seller will satisfy at closing or Buyer will assume at closing; or (b) the items show that any part of the Property lies in a special flood hazard area (an "A" or "V" zone as defined by FEMA). If the commitment or survey is revised or any new document evidencing a title exception is delivered, Buyer may object to any new matter revealed in such revision or new document. Buyer's objection must be made within the same number of days stated in this paragraph, beginning when the revision or new



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document is delivered to Buyer. If Paragraph 6B(1) applies, Buyer is deemed to receive the survey on the earlier of: (i) the date of Buyer's actual receipt of the survey; or (ii) of the deadline specified in Paragraph 6B.

(2) Seller may, but is not obligated to, cure Buyer's timely objections within 15 days after Seller receives the objections. The closing date will be extended as necessary to provide such time to cure the objections. If Seller fails to cure the objections by the time required, Buyer may terminate this contract by providing written notice to Seller within 5 days after the time by which Seller must cure the objections. If Buyer terminates, the earnest money, less any independent consideration under Paragraph 7B(1), will be refunded to Buyer.

(3) Buyer's failure to timely object or terminate under this Paragraph 6C is a waiver of Buyer's right to object except that Buyer will not waive the requirements in Schedule C of the commitment.

## 7. PROPERTY CONDITION:

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

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

B. Feasibility Period: <sup>at Buyer's determination, WAIVES any Feasibility Period.</sup> Buyer may terminate this contract for any reason within \_\_\_\_\_ days after the effective date (feasibility period) by providing Seller written notice of termination.

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

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

☐ (b) Not later than 3 days after the effective date, Buyer must pay Seller \$ \_\_\_\_\_ as independent consideration for Buyer's right to terminate by tendering such amount to Seller or Seller's agent. If Buyer terminates under this Paragraph 7B, the earnest money will be refunded to Buyer and Seller will retain the independent consideration. The independent consideration will be credited to the sales price only upon closing of the sale. If no dollar amount is stated in this Paragraph 7B(2) or if Buyer fails to pay the independent consideration, Buyer will not have the right to terminate under this Paragraph 7B.

(2) Feasibility Period Extension: Prior to the expiration of the initial feasibility period, Buyer may extend the feasibility period for a single period of an additional \_\_\_\_\_ days by depositing additional earnest money in the amount of \$ \_\_\_\_\_ with the title company. If no dollar amount is stated in this Paragraph or if Buyer fails to timely deposit the additional earnest money, the extension of the feasibility period will not be effective.

C. Inspections, Studies, or Assessments:

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

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(2) ~~Buyer must:~~

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

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

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

D. Property Information:

- (1) Delivery of Property Information: Within 10 days after the effective date, Seller will deliver to Buyer: *(Check all that apply.)*

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

- (2) Return of Property Information: If this contract terminates for any reason, Buyer will, not later than 10 days after the termination date: *(Check all that apply.)*

- ☒ (a) return to Seller all those items described in Paragraph 7D(1) that Seller delivered to Buyer in other than an electronic format and all copies that Buyer made of those items;
- ☒ (b) delete or destroy all electronic versions of those items described in Paragraph 7D(1) that Seller delivered to Buyer or Buyer copied in any format; and
- ☒ (c) deliver to Seller copies of all inspection and assessment reports related to the Property that Buyer completed or caused to be completed.

This Paragraph 7D(2) survives termination of this contract.

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

8. LEASES: NONE IN EFFECT.

- A. ~~Each written lease Seller is to assign to Buyer under this contract must be in full force and effect according to its terms. Seller may not enter into any new lease, fail to comply with any existing lease, or make any amendment or modification to any existing lease without Buyer's written consent. Seller~~

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must disclose, in writing, if any of the following exist at the time Seller provides the leases to the Buyer or subsequently occur before closing:

- (1) any failure by Seller to comply with Seller's obligations under the leases;
- (2) any circumstances under any lease that entitle the tenant to terminate the lease or seek any offsets or damages;
- (3) any advance sums paid by a tenant under any lease;
- (4) any concessions, bonuses, free rents, rebates, brokerage commissions, or other matters that affect any lease; and
- (5) any amounts payable under the leases that have been assigned or encumbered, except as security for loan(s) assumed or taken subject to under this contract.

B. ~~Estoppel Certificates:~~ Within            days after the effective date, Seller will deliver to Buyer estoppel certificates signed not earlier than            by each tenant that leases space in the Property. The estoppel certificates must include the certifications contained in the current version of TXR Form 1038 - Commercial Tenant Estoppel Certificate and any additional information requested by a third party lender providing financing under Paragraph 4 if the third party lender requests such additional information at least 10 days prior to the earliest date that Seller may deliver the signed estoppel certificates.

## 9. BROKERS:

A. The brokers to this sale are:

Principal Broker: Colliers International Houston, Inc.

Cooperating Broker: ACC Realty, LLC

Agent: Tom Condon, Jr.

Agent: Charlene Nickson

Address: 9950 Woodloch Forest Drive, Suite 1225

Address: 2807 Eastgrove Lane

The Woodlands, TX 77380

Houston, TX 77027

Phone & Fax: (713)830-4007 (713)830-4057

Phone & Fax: (713)961-4400 (713)961-1031

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

E-mail: charlene@accrealty.com

License No.: 0029114

License No.: 0468161

Principal Broker: (Check only one box)

- ☒ represents Seller only.  
☐ represents Buyer only.  
☐ is an intermediary between Seller and Buyer.

Cooperating Broker represents Buyer.

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

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

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

☒ (2) Only upon and funding At the closing of this sale, Seller will pay:

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

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

The cash fees will be paid in Harris County, Texas. Seller authorizes the title company to pay the brokers from the Seller's proceeds at closing.

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**NOTICE:** Chapter 62, Texas Property Code, authorizes a broker to secure an earned commission with a lien against the Property.

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

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**11. POSSESSION:** Seller will deliver possession of the Property to Buyer upon closing and funding of this sale in its present condition with any repairs Seller is obligated to complete under this contract, ordinary wear and tear excepted. Any possession by Buyer before closing or by Seller after closing that is not authorized by a separate written lease agreement is a landlord-tenant at sufferance relationship between the parties.

**12. SPECIAL PROVISIONS:** The following special provisions apply and will control in the event of a conflict with other provisions of this contract. (If special provisions are contained in an Addendum, identify the Addendum here and reference the Addendum in Paragraph 22D.)

This contract is subject to the terms and conditions of the Special Provisions Addendum attached hereto and incorporated herein.

### 13. SALES EXPENSES:

A. Seller's Expenses: Seller will pay for the following at or before closing:

- (1) releases of existing liens, other than those liens assumed by Buyer, including prepayment penalties and recording fees;
- (2) release of Seller's loan liability, if applicable;
- (3) tax statements or certificates;
- (4) preparation of the deed;
- (5) one-half of any escrow fee;
- (6) costs to record any documents to cure title objections that Seller must cure; and
- (7) other expenses that Seller will pay under other provisions of this contract.

B. Buyer's Expenses: Buyer will pay for the following at or before closing:

- (1) all loan expenses and fees;
- (2) preparation of any deed of trust;
- (3) recording fees for the deed and any deed of trust;
- (4) premiums for flood insurance as may be required by Buyer's lender;
- (5) one-half of any escrow fee;
- (6) other expenses that Buyer will pay under other provisions of this contract.

### 14. PRORATIONS:

A. Prorations:

- (1) Interest on any assumed loan, taxes, rents, and any expense reimbursements from tenants will be prorated through the closing date.
- (2) If the amount of ad valorem taxes for the year in which the sale closes is not available on the closing date, taxes will be prorated on the basis of taxes assessed in the previous year. If the taxes for the year in which the sale closes vary from the amount prorated at closing, the parties will adjust the prorations when the tax statements for the year in which the sale closes become available. This Paragraph 14A(2) survives closing.
- (3) If Buyer assumes a loan or is taking the Property subject to an existing lien, Seller will transfer all reserve deposits held by the lender for the payment of taxes, insurance premiums, and other charges to Buyer at closing and Buyer will reimburse such amounts to Seller by an appropriate adjustment at closing.

B. Rollback Taxes: If Seller's use or change in use of the Property before closing results in the assessment of additional taxes, penalties, or interest (assessments) for periods before closing, the assessments will be the obligation of the Seller. If this sale or Buyer's use of the Property after closing results in additional assessments for periods before closing, the assessments will be the obligation of Buyer. This Paragraph 14B survives closing.

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- C. **Rent and Security Deposits:** At closing, Seller will tender to Buyer all security deposits and the following advance payments received by Seller for periods after closing: prepaid expenses, advance rental payments, and other advance payments paid by tenants. Rents prorated to one party but received by the other party will be remitted by the recipient to the party to whom it was prorated within 5 days after the rent is received. This Paragraph 14C survives closing.

#### 15. DEFAULT:

- A. If Buyer fails to comply with this contract, Buyer is in default and Seller, as Seller's sole remedy(ies), may terminate this contract and receive the earnest money, as liquidated damages for Buyer's failure except for any damages resulting from Buyer's inspections, studies or assessments in accordance with Paragraph 7C(3) which Seller may pursue; ~~or~~  
(Check if applicable)  
☐ ~~enforce specific performance, or seek such other relief as may be provided by law.~~
- B. If, without fault, Seller is unable within the time allowed to deliver the ~~estoppel certificates~~, survey or the commitment, Buyer may:  
(1) terminate this contract and receive the earnest money, less any independent consideration under Paragraph 7B(1), as liquidated damages and as Buyer's sole remedy; or  
(2) extend the time for performance up to 15 days and the closing will be extended as necessary.
- C. Except as provided in Paragraph 15B, if Seller fails to comply with this contract, Seller is in default and Buyer may:  
(1) terminate this contract and receive the earnest money, less any independent consideration under Paragraph 7B(1), as liquidated damages and as Buyer's sole remedy; or  
(2) ~~enforce specific performance, or seek such other relief as may be provided by law, or both.~~

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

- A. terminate this contract by providing written notice to Seller within 15 days after Buyer is advised of the condemnation proceedings and the earnest money, less any independent consideration paid under Paragraph 7B(1), will be refunded to Buyer; or
- B. appear and defend in the condemnation proceedings and any award will, at Buyer's election, belong to:  
(1) Seller and the sales price will be reduced by the same amount; or  
(2) Buyer and the sales price will not be reduced.

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

#### 18. ESCROW:

- A. At closing, the earnest money will be applied first to any cash down payment, then to Buyer's closing costs, and any excess will be refunded to Buyer. If no closing occurs, the title company may require payment of unpaid expenses incurred on behalf of the parties and a written release of liability of the title company from all parties.
- B. If one party makes written demand for the earnest money, the title company will give notice of the demand by providing to the other party a copy of the demand. If the title company does not receive written objection to the demand from the other party within 15 days after the date the title company sent the demand to the other party, the title company may disburse the earnest money to the party making demand, reduced by the amount of unpaid expenses incurred on behalf of the party receiving the earnest money and the title company may pay the same to the creditors.

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- C. The title company will deduct any independent consideration under Paragraph 7B(1) before disbursing any earnest money to Buyer and will pay the independent consideration to Seller.
- D. If the title company complies with this Paragraph 18, each party hereby releases the title company from all claims related to the disbursement of the earnest money.
- E. Notices under this Paragraph 18 must be sent by certified mail, return receipt requested. Notices to the title company are effective upon receipt by the title company.
- F. Any party who wrongfully fails or refuses to sign a release acceptable to the title company within 7 days after receipt of the request will be liable to the other party for: (i) damages; (ii) the earnest money; (iii) reasonable attorney's fees; and (iv) all costs of suit.
- G. ☐ Seller ☐ Buyer intend(s) to complete this transaction as a part of an exchange of like-kind properties in accordance with Section 1031 of the Internal Revenue Code, as amended. All expenses in connection with the contemplated exchange will be paid by the exchanging party. The other party will not incur any expense or liability with respect to the exchange. The parties agree to cooperate fully and in good faith to arrange and consummate the exchange so as to comply to the maximum extent feasible with the provisions of Section 1031 of the Internal Revenue Code. The other provisions of this contract will not be affected in the event the contemplated exchange fails to occur.

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

- ☐ A. Seller is not aware of any material defects to the Property except as stated in the attached Commercial Property Condition Statement (TXR-1408).
- ☒ B. Except as otherwise provided in this contract, Seller is not aware of:
  - (1) any subsurface: structures, pits, waste, springs, or improvements;
  - (2) any pending or threatened litigation, condemnation, or assessment affecting the Property;
  - (3) any environmental hazards or conditions that materially affect the Property;
  - (4) whether the Property is or has been used for the storage or disposal of hazardous materials or toxic waste, a dump site or landfill, or any underground tanks or containers;
  - (5) whether radon, asbestos containing materials, urea-formaldehyde foam insulation, lead-based paint, toxic mold (to the extent that it adversely affects the health of ordinary occupants), or other pollutants or contaminants of any nature now exist or ever existed on the Property;
  - (6) any wetlands, as defined by federal or state law or regulation, on the Property;
  - (7) any threatened or endangered species or their habitat on the Property;
  - (8) any present or past infestation of wood-destroying insects in the Property's improvements;
  - (9) any contemplated material changes to the Property or surrounding area that would materially and detrimentally affect the ordinary use of the Property;
  - (10) any condition on the Property that violates any law or ordinance.

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

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

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

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

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## 22. AGREEMENT OF THE PARTIES:

- A. This contract is binding on the parties, their heirs, executors, representatives, successors, and permitted assigns. This contract is to be construed in accordance with the laws of the State of Texas. If any term or condition of this contract shall be held to be invalid or unenforceable, the remainder of this contract shall not be affected thereby.
- B. This contract contains the entire agreement of the parties and may not be changed except in writing.
- C. If this contract is executed in a number of identical counterparts, each counterpart is an original and all counterparts, collectively, constitute one agreement.

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

- ☒ (1) Property Description Exhibit identified in Paragraph 2;
- ☐ (2) Commercial Contract Financing Addendum (TXR-1931);
- ☐ (3) Commercial Property Condition Statement (TXR-1408);
- ☐ (4) Commercial Contract Addendum for Special Provisions (TXR-1940);
- ☐ (5) Notice to Purchaser of Real Property in a Water District (MUD);
- ☐ (6) Addendum for Coastal Area Property (TXR-1915);
- ☒ (7) Addendum for Property Located Seaward of the Gulf Intracoastal Waterway (TXR-1916);
- ☒ (8) Information About Brokerage Services (TXR-2501);
- ☐ (9) Information About Mineral Clauses in Contract Forms (TXR-2509);
- ☐ (10) Notice of Obligation to Pay Improvement District Assessment (TXR-1955, PID); and
- ☒ (11) Special Provisions Addendum

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

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

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

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

## 25. ADDITIONAL NOTICES:

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

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Commercial Contract - Unimproved Property concerning East Side of Spell Circle, north of Spell Road, Tomball

necessary to provide water or sewer service to your property. You are advised to determine if the property is in a certificated area and contact the utility service provider to determine the cost that you will be required to pay and the period, if any, that is required to provide water or sewer service to your property. The undersigned purchaser hereby acknowledges receipt of the foregoing notice at or before the execution of a binding contract for the purchase of the real property described in the notice or at closing of purchase of the real property." The real property is described in Paragraph 2 of this contract.

- D. If the Property adjoins or shares a common boundary with the tidally influenced submerged lands of the state, §33.135 of the Texas Natural Resources Code requires a notice regarding coastal area property to be included as part of this contract (*the Addendum for Coastal Area Property (TXR-1915) may be used*).
- E. If the Property is located seaward of the Gulf Intracoastal Waterway, §61.025, Texas Natural Resources Code, requires a notice regarding the seaward location of the Property to be included as part of this contract (*the Addendum for Property Located Seaward of the Gulf Intracoastal Waterway (TXR-1916) may be used*).
- F. If the Property is located outside the limits of a municipality, the Property may now or later be included in the extra-territorial jurisdiction (ETJ) of a municipality and may now or later be subject to annexation by the municipality. Each municipality maintains a map that depicts its boundaries and ETJ. To determine if the Property is located within a municipality's ETJ, Buyer should contact all municipalities located in the general proximity of the Property for further information.
- G. Brokers are not qualified to perform property inspections, surveys, engineering studies, environmental assessments, or inspections to determine compliance with zoning, governmental regulations, or laws. Buyer should seek experts to perform such services. Buyer should review local building codes, ordinances and other applicable laws to determine their effect on the Property. Selection of experts, inspectors, and repairmen is the responsibility of Buyer and not the brokers. Brokers are not qualified to determine the credit worthiness of the parties.
- H. **NOTICE OF WATER LEVEL FLUCTUATIONS:** If the Property adjoins an impoundment of water, including a reservoir or lake, constructed and maintained under Chapter 11, Water Code, that has a storage capacity of at least 5,000 acre-feet at the impoundment's normal operating level, Seller hereby notifies Buyer: "The water level of the impoundment of water adjoining the Property fluctuates for various reasons, including as a result of: (1) an entity lawfully exercising its right to use the water stored in the impoundment; or (2) drought or flood conditions."
- I. **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. Disclose if applicable: \_\_\_\_\_
- J. **PUBLIC IMPROVEMENT DISTRICTS:** If the Property is in a public improvement district, Seller must give Buyer written notice as required by §5.014, Property Code. An addendum containing the required notice shall be attached to this contract.

**26. CONTRACT AS OFFER:** The execution of this contract by the first party constitutes an offer to buy or sell the Property. Unless the other party accepts the offer by 5:00 p.m., in the time zone in which the Property is located, on December 17, 2021, the offer will lapse and become null and void.

(TXR-1802) 09-01-21

Initialed for Identification by Seller

DS  
KV

and Buyer

DS  
LGN

Page 12 of 14

Commercial Contract - Unimproved Property concerning East Side of Spell Circle, north of Spell Road, Tomball

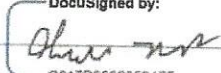
**READ THIS CONTRACT CAREFULLY.** The brokers and agents make no representation or recommendation as to the legal sufficiency, legal effect, or tax consequences of this document or transaction. **CONSULT** your attorney **BEFORE** signing.

**Seller:** Tomball Economic Development Corporation

**Buyer:** Charles G. Nickson and/or Assigns

By:   
By (signature): 258EC51BE10C4DB  
Printed Name: Kelly Violette  
Title: Executive Director

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

By:   
By (signature): C847B066829534F5  
Printed Name: Charles G. Nickson  
Title: Manager

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



Commercial Contract -Unimproved Property concerning East Side of Spell Circle, north of Spell Road, Tomball

## AGREEMENT BETWEEN BROKERS

~~(use only if Paragraph 9B(1) is effective)~~

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

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

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

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

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

## ATTORNEYS

**Seller's attorney:** Justin Pruitt  
Olson & Olson, L.L.P.

Address: 2727 Allen Parkway, Ste. 600  
Houston TX 77019

Phone &amp; Fax: (713) 533-3878 (713) 533-3888

E-mail: [jpruitt@olsonlp.com](mailto:jpruitt@olsonlp.com)

**Seller's attorney requests copies of documents, notices, and other information:**

☒ the title company sends to Seller.  
☒ Buyer sends to Seller.

**Buyer's attorney:** \_\_\_\_\_

**Address:** \_\_\_\_\_

**Phone & Fax:**

E-mail: \_\_\_\_\_

**Buyer's attorney requests copies of documents, notices, and other information:**

☐ the title company sends to Buyer.  
☐ Seller sends to Buyer.

## ESCROW RECEIPT

**The title company acknowledges receipt of:**

☒ A. the contract on this day December 17, 2021 (effective date);

B. earnest money in the amount of \$ 30,000 - in the form of Business check  
on December 20, 2021 - STEWART TITLE CO.

Title company: Skware Title

By: Muse

Assigned file number (GF#): #1527352

STEWART TITLE CO.

Address: 14080 FM 2920 #E  
TOMBALL, TEXAS 77377

Phone & Fax: 281) 357-8277

E-mail: Jane.Mathews@stewart.com

(TXR-1802) 09-01-21



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

This Special Provisions Addendum to Commercial Contract - Unimproved Property ("Addendum") is entered into between **TOMBALL ECONOMIC DEVELOPMENT CORPORATION** ("Seller") and **CHARLES G NICKSON and/or Assigns** ("Buyer") in order to amend the terms of a Commercial Contract - Unimproved Property contract ("Contract") entered into contemporaneously with the execution of this Addendum with respect to the approximately 3.92 acres of land described as LOT 15 (the "Property").

Seller and Buyer agree as follows:

1. Due Diligence Reports. Buyer acknowledges receipt of the following "Due Diligence Reports" prepared by Tolunay-Wong Engineers, Inc.: Phase I Environmental Site Assessment dated September, 2011 (TWE Project No. 11.12.031), Phase II Environmental Site Assessment dated February, 2013 (TWE Project No. 11.12.031-02), Phase II Geologic Fault Study dated January 25, 2013 (TWE Project No. 11.12.031.003), and Geotechnical Study dated April 8, 2013 (TWE Project No. 13.13.007), which Seller represents are all such reports in Seller's possession pertaining to the Property.
2. Commencement of Post-Closing Construction. Buyer shall have eighteen (18) months from closing to Commence Construction of a proposed building. The inclusion of the Site Map as Exhibit "A" to this Contract does not imply approval thereof by any regulatory authority. As used herein, the term "Commence Construction" shall mean that Buyer shall have (i) obtained any and all permits, authorizations, or other approvals required for the building construction, and (ii) actually commenced construction of the building. If Buyer fails to commence construction within the aforementioned time frame then Buyer shall be in default and Seller shall have the right to repurchase the Property at the same per square foot price as it was acquired by Buyer. The provisions of this Section 2 shall survive Closing.
3. Assignment. Buyer has the right to assign the Contract at any time without the consent of Seller to a related entity in which Buyer has a controlling interest that exceeds 50%, so long as written notice is provided to Seller at least ten (10) days prior to Closing, the new buyer assumes all of the obligations of the Buyer under the terms of this Contract and the original Buyer is not relieved of any obligation under the Contract. Any other assignment requires Seller's prior written approval, which such approval shall not be unreasonably withheld.
4. Right of Access Agreement. Simultaneous with the Effective Date of the Contract, Seller shall provide Buyer with a "Right of Access" Agreement, which upon Buyer's execution of same will allow Buyer and his consultants to perform Due Diligence studies, tests and reports, including the limited clearing of underbrush, on the Property.
5. Signatures. Facsimile and/or electronic signatures shall be deemed same as originals for purposes of formation hereunder.
6. Terms. Defined and capitalized terms in this Addendum will have the same meaning as in the Contract, unless otherwise indicated.
7. Ratification. Except as amended, the Contract is ratified and affirmed.

DS DS  
CGN KV

8. Merger. All prior oral agreements of the parties are merged into the terms of the Contract and this Addendum.
9. Conflict. In the event of a direct conflict between the terms of this Addendum and the Contract, the terms of this Addendum will control.

**BUYER:**

DocuSigned by:



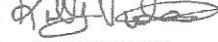
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**CHARLES G. NICKSON**

**SELLER:**

**TOMBALL ECONOMIC DEVELOPMENT CORPORATION**

DocuSigned by:



By:

258EC51BE10C4DB

**Kelly Violette,**  
Executive Director





## Information About Brokerage Services

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

### TYPES OF REAL ESTATE LICENSE HOLDERS:

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

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

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

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

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

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

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

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

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

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

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

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

**Colliers International  
Houston, Inc.**

Licensed Broker/Broker Firm Name or  
Primary Assumed Business Name

**29114**

License No.

**houston.info@colliers.com**

Email

**(713) 222-2111**

Phone

**Gary Mabray**

Designated Broker of Firm

**138207**

License No.

**gary.mabray@colliers.com**

Email

**(713) 830-2104**

Phone

**Patrick Duffy, MCR**

Licensed Supervisor of Sales Agent/  
Associate

**604308**

License No.

**patrick.duffy@colliers.com**

Email

**(713) 830-2112**

Phone

**Tom Condon, Jr.**

Sales Agent/Associate's Name

DS

**419324**

License No.

**tom.condon.jr@colliers.com**

Email

**(713) 830-2407**

Phone

RV

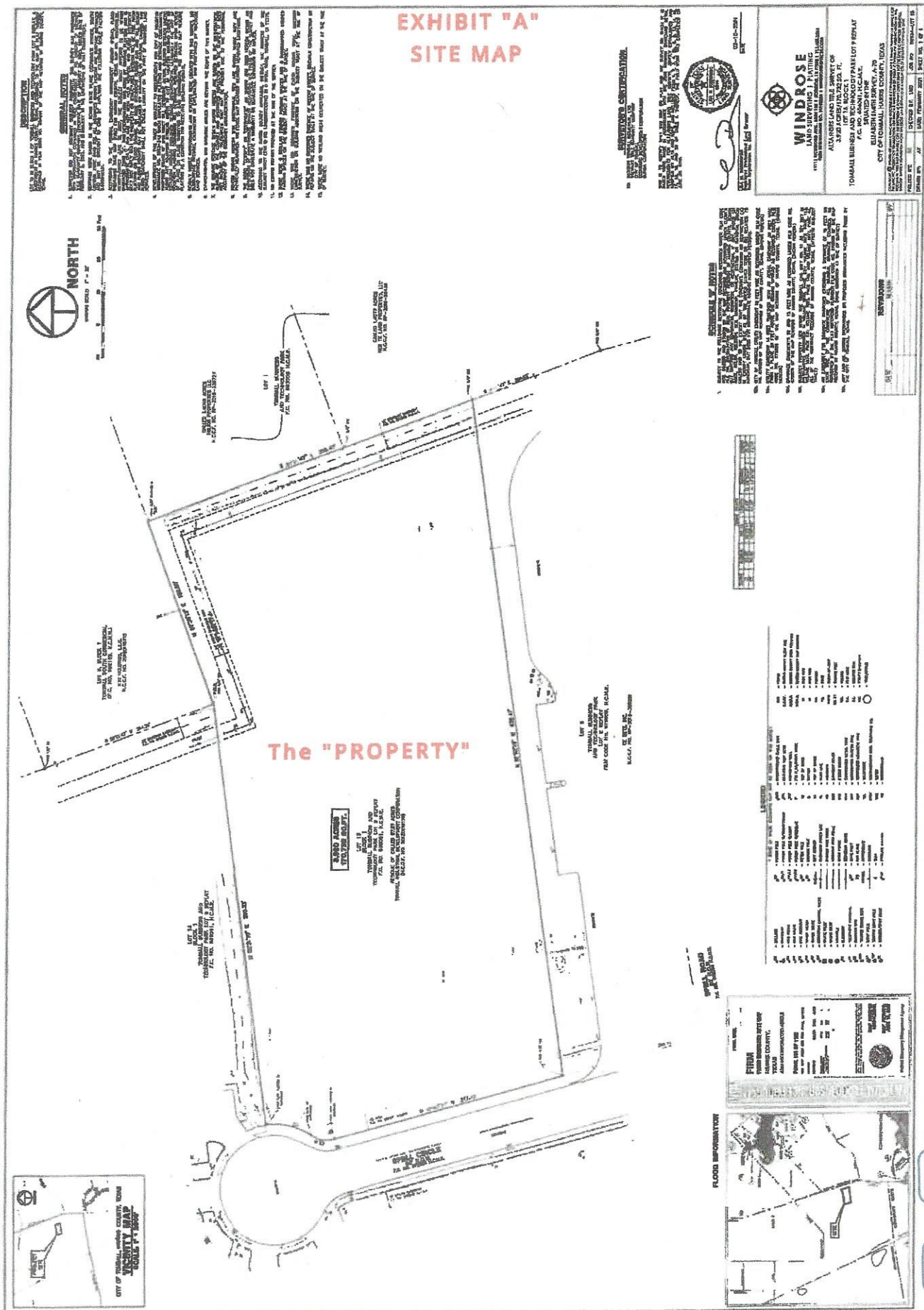
12/16/2021

CGN

12/17/2021

Buyer/Tenant/Seller/Landlord Initials

Date



# Regular Tomball EDC Agenda Item Data Sheet

**Meeting Date:** January 11, 2022

**Topic:**

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

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

**Background:**

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

**Recommendation:**

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

**FUNDING (IF APPLICABLE)**

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

Yes: \_\_\_\_\_ No: \_\_\_\_\_ If yes, specify Account Number: # \_\_\_\_\_

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

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



# Regular Tomball EDC

## Agenda Item

### Data Sheet

**Meeting Date:** January 11, 2022

**Topic:**

Consideration and possible action by Tomball EDC to approve, as a Project of the Corporation, an agreement with Project Hanks to make direct incentives to, or expenditures for, the creation or retention of primary jobs associated with the development of a 900,000 square foot distribution facility to be located at 14000 Boudreaux Rd, Tomball, Texas 77377. The estimated amount of expenditures for such Project is \$580,864.00.

- Public Hearing

**Background:**

This project is under a confidentiality agreement and will be discussed in executive session.

**Origination:** James McGraw Jr, President, KMK Consulting Company, LLC

**Recommendation:** Staff recommends approval of the proposed Performance Agreement with Project Hanks.

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

**FUNDING (IF APPLICABLE)**

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

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

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

Signed \_\_\_\_\_

Staff Member-TEDC

Date

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

Executive Director-TEDC

Date

**James J. McGraw Jr.**

D: 513.639.3968

jmcgraw@kmkclaw.com

January 7, 2022

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

Re: Project Hanks

Dear Kelly:

On behalf of our client, Project Hanks, we respectfully request the support of the Tomball Economic Development Corporation and Tomball City Council for the Company's new distribution center as you and I have discussed. This support is needed as part of our final decision to locate in the City. Our client is a Fortune 500 major national retailer with facilities across the country.

The Company is in the process of relocating its City of Houston distribution center to a much larger, more modern facility. The Company's site selection process has prioritized the City of Tomball as an ideal location for its distribution operations and its employees. We are in the final stages of negotiating a lease for 900,000 square feet, which will provide substantial opportunities for growth in future years. The property is located at 99 Pines Business Park, Grand Parkway & Highway 249, Lovett Industrial. The Company plans to utilize 500,000 square feet of the space to relocate all of its current Houston distribution operations, which focuses most heavily on furniture, bedding and also toy fulfillment during peak season to regional and other Texas retail stores. The Company anticipates a second phase expansion utilizing the additional 400,000 square feet in future years, which may include fulfillment capabilities for its .com business.

The Company plans to invest \$45 Million to accomplish this project over the next couple of years with \$31 Million dedicated to material handling equipment, \$7 Million for the building and \$1.8 Million for systems hardware. Construction and outfitting is anticipated to commence in the second quarter of 2022, targeting the launch of operations in June, 2023. The Company plans to initially employ 103 full time equivalent jobs with an average annual payroll of \$3.6 Million.

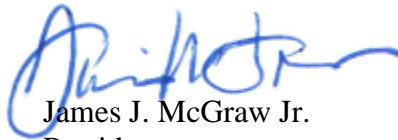
The Company is very excited about this opportunity with the City of Tomball and looks forward to a very meaningful partnership with the City for many years to come. As the

Company finalizes its decision, the Company is very grateful for the support and encouragement of the EDC and Council.

Thank you for your consideration of this request.

Sincerely,

KMK CONSULTING COMPANY, LLC

A handwritten signature in blue ink, appearing to read "J. McGraw Jr.", is positioned above the printed name.

James J. McGraw Jr.  
President

JJM:cmm

11415104.1



Purpose & Limitations

This report presents the results of an economic and fiscal analysis undertaken by Tomball EDC using Impact DashBoard, a customized web application developed by Impact DataSource, LLC.

Impact DashBoard utilizes estimates, assumptions, and other information developed by Impact DataSource from its independent research effort detailed in a custom user guide prepared for Tomball EDC.

This report, generated by the Impact DashBoard application, has been prepared by Tomball EDC to assist economic development stakeholders in making an evaluation of the economic and fiscal impact of business activity in the community. This report does not purport to contain all of the information that may be needed to conclude such an evaluation. This report is based on a variety of assumptions and contains forward-looking statements concerning the results of operations of the subject firm. Tomball EDC made reasonable efforts to ensure that the project-specific data entered into Impact DashBoard reflects realistic estimates of future activity. Estimates of future activity involve known and unknown risks and uncertainties that could cause actual results, performance, or events to differ materially from those expressed or implied in this report.

Tomball EDC and Impact DataSource make no representation or warranty as to the accuracy or completeness of the information contained herein, and expressly disclaim any and all liability based on or relating to any information contained in, or errors or omissions from, this information or based on or relating to the use of this information.

Introduction

This report presents the results of an economic impact analysis performed using Impact DashBoard, a model developed by Impact DataSource. The report estimates the impact that a potential project will have on the local economy and estimates the costs and benefits for local taxing districts over a 10-year period.

Economic Impact Overview

The table below summarizes the economic impact of the project over the first 10 years in terms of job creation, salaries paid to workers, and taxable sales.

SUMMARY OF ECONOMIC IMPACT OVER 10 YEARS IN CITY OF TOMBALL			
IMPACT	DIRECT	SPIN_OFF	TOTAL
Jobs	103.0	54.3	157.3
Annual Salaries/Wages	\$3,614,682	\$2,048,348	\$5,663,030
Salaries/Wages over 10 Years	\$39,579,759	\$22,428,840	\$62,008,600
Taxable Sales/Purchases in City of Tomball	\$3,948,363	\$280,361	\$4,228,723

Totals may not sum due to rounding

The Project may result in new residents moving to the community and potentially new residential properties being constructed as summarized below.

SUMMARY OF POPULATION IMPACT OVER 10 YEARS IN CITY OF TOMBALL			
IMPACT	DIRECT	SPIN_OFF	TOTAL
Workers who will move to City of Tomball	2.9	1.5	4.4
New residents in City of Tomball	7.5	4.0	11.5
New residential properties constructed in City of Tomball	0.4	0.2	0.7
New students to attend local school district	1.4	0.8	2.2

Totals may not sum due to rounding

The new taxable property to be supported by the Project over the next 10 years is summarized in the following table.

SUMMARY OF TAXABLE PROPERTY OVER THE FIRST 10 YEARS IN CITY OF TOMBALL							
YR.	NEW RESIDENTIAL PROPERTY	LAND	BUILDINGS, ...	FF&E	INVENTORIES	NON-RESIDENTIAL PROPERTY	TOTAL PROPERTY
1	\$139,853	\$0	\$4,440,000	\$30,378,500	\$4,500,000	\$39,318,500	\$39,458,353
2	\$142,650	\$0	\$4,528,800	\$30,533,650	\$4,590,000	\$39,652,450	\$39,795,100
3	\$145,503	\$0	\$4,619,376	\$28,971,500	\$4,681,800	\$38,272,676	\$38,418,179
4	\$148,413	\$0	\$4,711,764	\$25,434,850	\$4,775,436	\$34,922,050	\$35,070,463
5	\$151,381	\$0	\$4,805,999	\$21,898,200	\$4,870,945	\$31,575,144	\$31,726,525
6	\$154,409	\$0	\$4,902,119	\$18,361,550	\$4,968,364	\$28,232,032	\$28,386,441
7	\$157,497	\$0	\$5,000,161	\$14,824,900	\$5,067,731	\$24,892,792	\$25,050,289
8	\$160,647	\$0	\$5,100,164	\$11,288,250	\$5,169,086	\$21,557,500	\$21,718,147
9	\$163,860	\$0	\$5,202,168	\$7,751,600	\$5,272,467	\$18,226,235	\$18,390,095
10	\$167,137	\$0	\$5,306,211	\$7,252,800	\$5,377,917	\$17,936,928	\$18,104,065

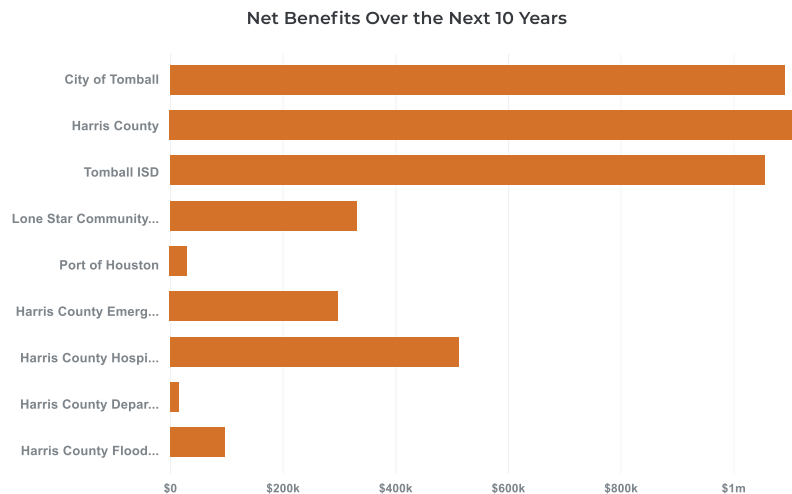
## Fiscal Impact Overview

The Project will generate additional benefits and costs, a summary of which is provided below. The source of specific benefits and costs are provided in greater detail for each taxing district on subsequent pages.

Item 7.

FISCAL NET BENEFITS OVER THE NEXT 10 YEARS				
	BENEFITS	COSTS	NET BENEFITS	PRESENT VALUE
City of Tomball	\$2,052,027	(\$961,313)	\$1,090,714	\$881,157
Harris County	\$1,318,414	(\$207,025)	\$1,111,389	\$892,004
Tomball ISD	\$3,939,668	(\$2,884,333)	\$1,055,335	\$844,746
Lone Star Community College	\$331,608	\$0	\$331,608	\$265,224
Port of Houston	\$30,485	\$0	\$30,485	\$24,382
Harris County Emergency Services District 8	\$298,386	\$0	\$298,386	\$238,652
Harris County Hospital District	\$512,824	\$0	\$512,824	\$410,162
Harris County Department of Education	\$15,359	\$0	\$15,359	\$12,284
Harris County Flood Control	\$96,652	\$0	\$96,652	\$77,304
<b>Total</b>	<b>\$8,595,423</b>	<b>(\$4,052,671)</b>	<b>\$4,542,752</b>	<b>\$3,645,916</b>

\*The Present Value of Net Benefits expresses the future stream of net benefits received over several years as a single value in today's dollars. Today's dollar and a dollar to be received at differing times in the future are not comparable because of the time value of money. The time value of money is the interest rate or each taxing entity's discount rate. This analysis uses a discount rate of 5.0% to make the dollars comparable.



## Public Support Overview

A summary of the total Public Support modeled in this analysis is shown below.

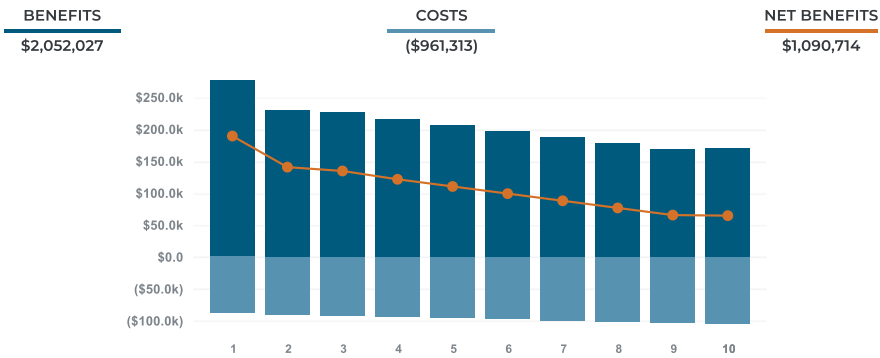
VALUE OF PUBLIC SUPPORT UNDER CONSIDERATION		
	NON-TAX INCENTIVE	TOTAL
City of Tomball	\$580,864	\$580,864
Harris County	\$0	\$0
Tomball ISD	\$0	\$0
Lone Star Community College	\$0	\$0
Port of Houston	\$0	\$0
Harris County Emergency Services District 8	\$0	\$0
Harris County Hospital District	\$0	\$0
Harris County Department of Education	\$0	\$0
Harris County Flood Control	\$0	\$0
<b>Total</b>	<b>\$580,864</b>	<b>\$580,864</b>

The table below displays the estimated additional benefits, costs, and net benefits to be received by City of Tomball over the next 10 years of the Project.

Item 7.

NET BENEFITS OVER 10 YEARS: CITY OF TOMBALL			
BENEFITS	PROJECT	HOUSEHOLDS	TOTAL
Sales Taxes	\$69,126	\$15,502	\$84,628
Real Property Taxes	\$164,258	\$0	\$164,258
FF&E Property Taxes	\$664,560	\$0	\$664,560
Inventory Property Taxes	\$166,477	\$0	\$166,477
New Residential Property Taxes	\$0	\$5,174	\$5,174
Hotel Occupancy Taxes	\$479	\$0	\$479
Building Permits and Fees	\$0	\$0	\$0
Utility Revenue	\$630,452	\$69,346	\$699,798
Utility Franchise Fees	\$39,474	\$4,340	\$43,814
Miscellaneous Taxes and User Fees	\$200,752	\$22,087	\$222,839
Benefits Subtotal	\$1,935,578	\$116,449	\$2,052,027
COSTS	PROJECT	HOUSEHOLDS	TOTAL
Cost of Government Services	(\$232,331)	(\$25,510)	(\$257,842)
Cost of Utility Services	(\$633,836)	(\$69,635)	(\$703,471)
Costs Subtotal	(\$866,167)	(\$95,146)	(\$961,313)
Net Benefits	\$1,069,411	\$21,303	\$1,090,714

Annual Fiscal Net Benefits for City of Tomball

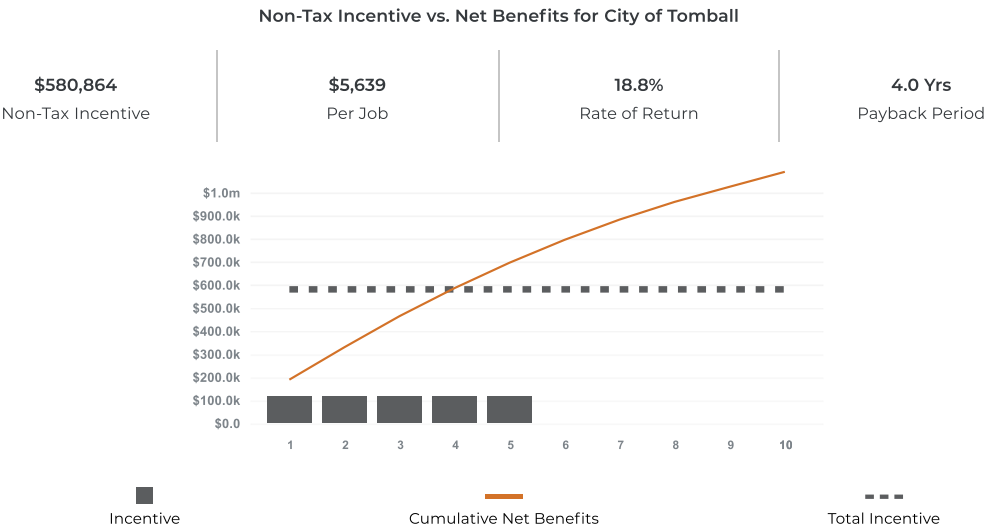


Non-Tax Incentives

City of Tomball is considering the following non-tax incentives for the Project.

NON-TAX INCENTIVES UNDER CONSIDERATION	
YEAR	NON-TAX INCENTIVE
1	\$116,173
2	\$116,173
3	\$116,172
4	\$116,172
5	\$116,174
Total	\$580,864

The graph below depicts the non-tax incentives modeled in this analysis versus the cumulative net benefits to City of Tomball. The intersection indicates the length of time until the incentives are paid back.

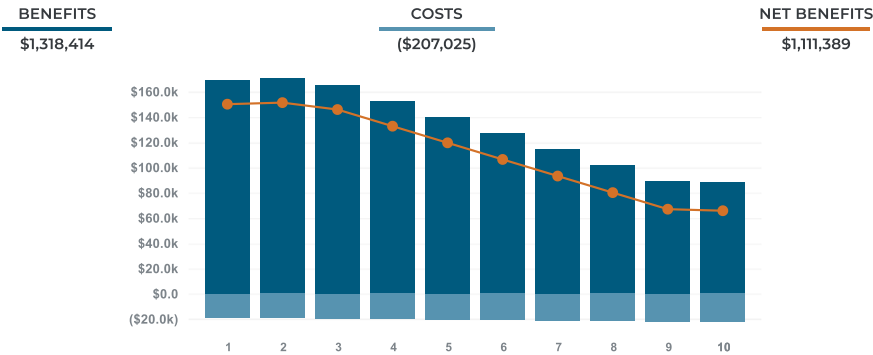


The table below displays the estimated additional benefits, costs, and net benefits to be received by Harris County over the next 10 years of the Project.

Item 7.

NET BENEFITS OVER 10 YEARS: HARRIS COUNTY			
BENEFITS	PROJECT	HOUSEHOLDS	TOTAL
Real Property Taxes	\$190,169	\$0	\$190,169
FF&E Property Taxes	\$769,395	\$0	\$769,395
Inventory Property Taxes	\$192,739	\$0	\$192,739
New Residential Property Taxes	\$0	\$50,960	\$50,960
Hotel Occupancy Taxes	\$137	\$0	\$137
Miscellaneous Taxes and User Fees	\$50,752	\$64,262	\$115,014
Benefits Subtotal	\$1,203,193	\$115,222	\$1,318,414
COSTS	PROJECT	HOUSEHOLDS	TOTAL
Cost of Government Services	(\$91,354)	(\$115,672)	(\$207,025)
Costs Subtotal	(\$91,354)	(\$115,672)	(\$207,025)
Net Benefits	\$1,111,839	(\$450)	\$1,111,389

Annual Fiscal Net Benefits for Harris County



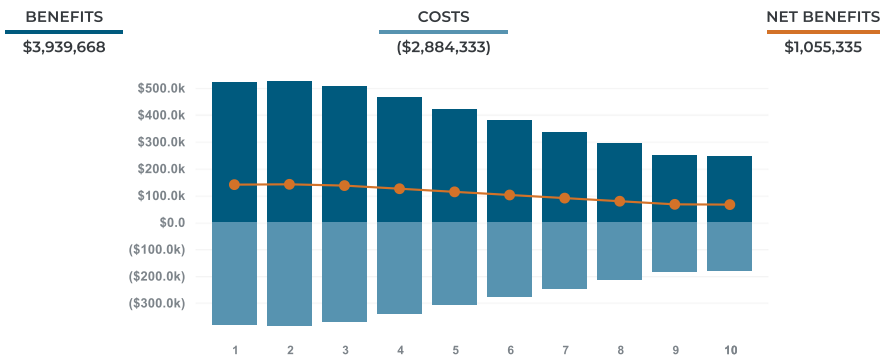
Tomball ISD Fiscal Impact

The table below displays the estimated additional benefits, costs, and net benefits to be received by Tomball ISD over the next 10 years of the Project.

Item 7.

NET BENEFITS OVER 10 YEARS: TOMBALL ISD			
BENEFITS	PROJECT	HOUSEHOLDS	TOTAL
Real Property Taxes	\$627,156	\$0	\$627,156
FF&E Property Taxes	\$2,537,376	\$0	\$2,537,376
Inventory Property Taxes	\$635,631	\$0	\$635,631
New Residential Property Taxes	\$0	\$62,738	\$62,738
Addtl. State & Federal School Funding	\$0	\$76,767	\$76,767
Benefits Subtotal	\$3,800,163	\$139,505	\$3,939,668
COSTS	PROJECT	HOUSEHOLDS	TOTAL
Cost to Educate New Students	\$0	(\$68,278)	(\$68,278)
Reduction in State School Funding	(\$2,770,319)	(\$45,736)	(\$2,816,055)
Costs Subtotal	(\$2,770,319)	(\$114,014)	(\$2,884,333)
Net Benefits	\$1,029,844	\$25,491	\$1,055,335

Annual Fiscal Net Benefits for Tomball ISD





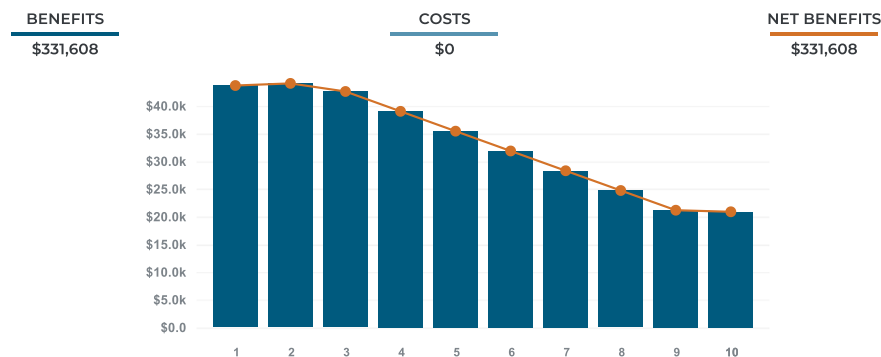
## Lone Star Community College Fiscal Impact

The table below displays the estimated additional benefits, costs, and net benefits to be received by Lone Star Community College over the next 10 years of the Project.

Item 7.

NET BENEFITS OVER 10 YEARS: LONE STAR COMMUNITY COLLEGE			
BENEFITS	PROJECT	HOUSEHOLDS	TOTAL
Real Property Taxes	\$52,409	\$0	\$52,409
FF&E Property Taxes	\$212,038	\$0	\$212,038
Inventory Property Taxes	\$53,117	\$0	\$53,117
New Residential Property Taxes	\$0	\$14,044	\$14,044
<b>Benefits Subtotal</b>	<b>\$317,564</b>	<b>\$14,044</b>	<b>\$331,608</b>
COSTS	PROJECT	HOUSEHOLDS	TOTAL
None Estimated	\$0	\$0	\$0
<b>Costs Subtotal</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
<b>Net Benefits</b>	<b>\$317,564</b>	<b>\$14,044</b>	<b>\$331,608</b>

Annual Fiscal Net Benefits for Lone Star Community College



## Port of Houston Fiscal Impact

The table below displays the estimated additional benefits, costs, and net benefits to be received by Port of Houston over the next 10 years of the Project.

NET BENEFITS OVER 10 YEARS: PORT OF HOUSTON			
BENEFITS	PROJECT	HOUSEHOLDS	TOTAL
Real Property Taxes	\$4,818	\$0	\$4,818
FF&E Property Taxes	\$19,493	\$0	\$19,493
Inventory Property Taxes	\$4,883	\$0	\$4,883
New Residential Property Taxes	\$0	\$1,291	\$1,291
<b>Benefits Subtotal</b>	<b>\$29,194</b>	<b>\$1,291</b>	<b>\$30,485</b>
COSTS	PROJECT	HOUSEHOLDS	TOTAL
None Estimated	\$0	\$0	\$0
<b>Costs Subtotal</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
<b>Net Benefits</b>	<b>\$29,194</b>	<b>\$1,291</b>	<b>\$30,485</b>

Annual Fiscal Net Benefits for Port of Houston



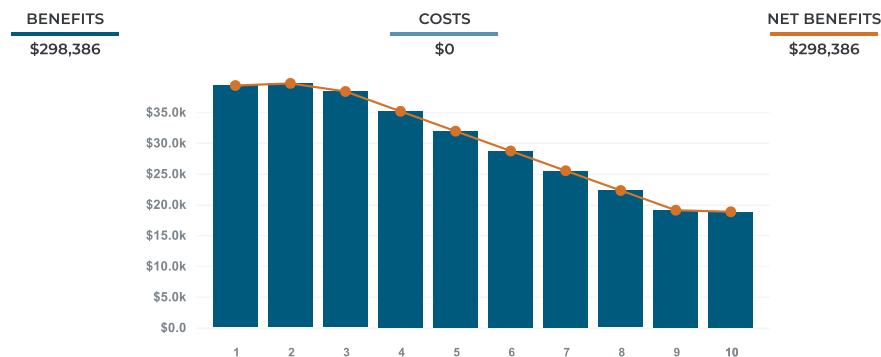
## Harris County Emergency Services District 8 Fiscal Impact

The table below displays the estimated additional benefits, costs, and net benefits to be received by Harris County Emergency Services District 8 over the next 10 years of the Project.

Item 7.

NET BENEFITS OVER 10 YEARS: HARRIS COUNTY EMERGENCY SERVICES DISTRICT 8			
BENEFITS	PROJECT	HOUSEHOLDS	TOTAL
Real Property Taxes	\$47,158	\$0	\$47,158
FF&E Property Taxes	\$190,795	\$0	\$190,795
Inventory Property Taxes	\$47,796	\$0	\$47,796
New Residential Property Taxes	\$0	\$12,637	\$12,637
<b>Benefits Subtotal</b>	<b>\$285,749</b>	<b>\$12,637</b>	<b>\$298,386</b>
COSTS	PROJECT	HOUSEHOLDS	TOTAL
None Estimated	\$0	\$0	\$0
<b>Costs Subtotal</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
<b>Net Benefits</b>	<b>\$285,749</b>	<b>\$12,637</b>	<b>\$298,386</b>

Annual Fiscal Net Benefits for Harris County Emergency Services District 8

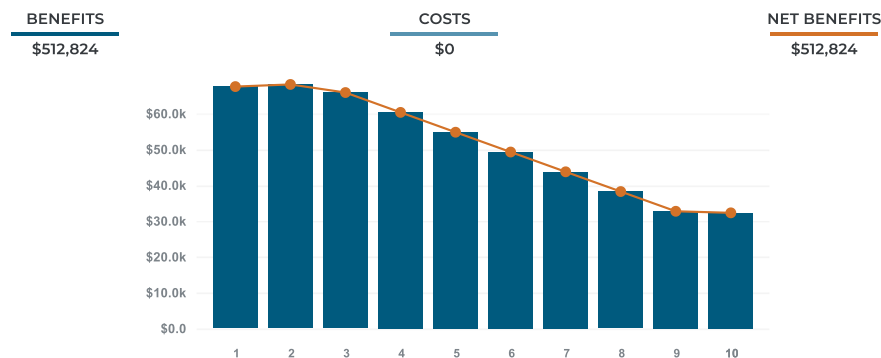


## Harris County Hospital District Fiscal Impact

The table below displays the estimated additional benefits, costs, and net benefits to be received by Harris County Hospital District over the next 10 years of the Project.

NET BENEFITS OVER 10 YEARS: HARRIS COUNTY HOSPITAL DISTRICT			
BENEFITS	PROJECT	HOUSEHOLDS	TOTAL
Real Property Taxes	\$81,049	\$0	\$81,049
FF&E Property Taxes	\$327,912	\$0	\$327,912
Inventory Property Taxes	\$82,144	\$0	\$82,144
New Residential Property Taxes	\$0	\$21,719	\$21,719
<b>Benefits Subtotal</b>	<b>\$491,105</b>	<b>\$21,719</b>	<b>\$512,824</b>
COSTS	PROJECT	HOUSEHOLDS	TOTAL
None Estimated	\$0	\$0	\$0
<b>Costs Subtotal</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
<b>Net Benefits</b>	<b>\$491,105</b>	<b>\$21,719</b>	<b>\$512,824</b>

Annual Fiscal Net Benefits for Harris County Hospital District



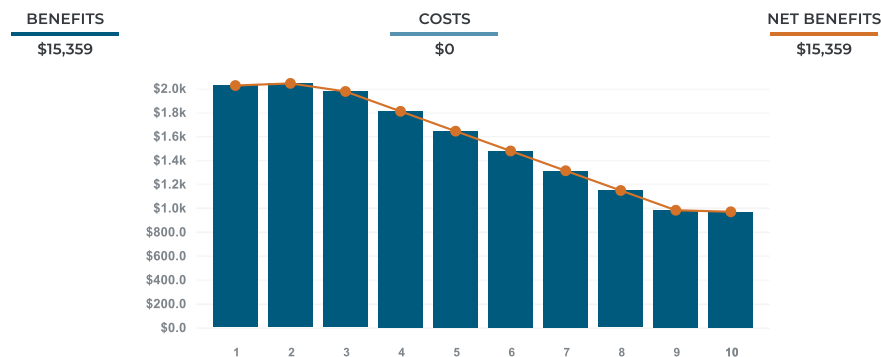
## Harris County Department of Education Fiscal Impact

The table below displays the estimated additional benefits, costs, and net benefits to be received by Harris County Department of Education over the next 10 years of the Project.

Item 7.

NET BENEFITS OVER 10 YEARS: HARRIS COUNTY DEPARTMENT OF EDUCATION			
BENEFITS	PROJECT	HOUSEHOLDS	TOTAL
Real Property Taxes	\$2,427	\$0	\$2,427
FF&E Property Taxes	\$9,821	\$0	\$9,821
Inventory Property Taxes	\$2,460	\$0	\$2,460
New Residential Property Taxes	\$0	\$650	\$650
<b>Benefits Subtotal</b>	<b>\$14,709</b>	<b>\$650</b>	<b>\$15,359</b>
COSTS	PROJECT	HOUSEHOLDS	TOTAL
None Estimated	\$0	\$0	\$0
<b>Costs Subtotal</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
<b>Net Benefits</b>	<b>\$14,709</b>	<b>\$650</b>	<b>\$15,359</b>

Annual Fiscal Net Benefits for Harris County Department of Education

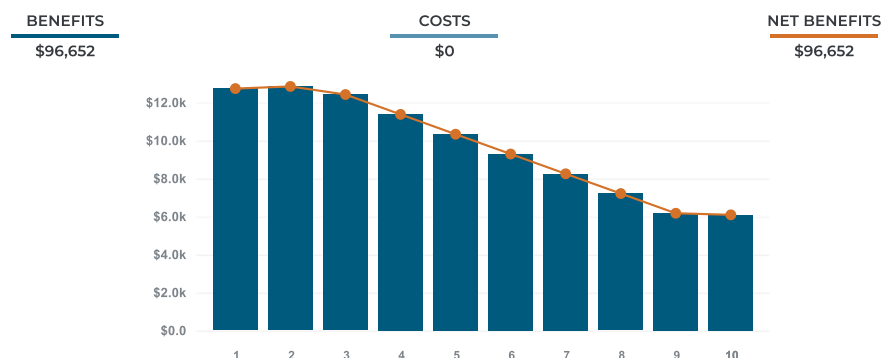


## Harris County Flood Control Fiscal Impact

The table below displays the estimated additional benefits, costs, and net benefits to be received by Harris County Flood Control over the next 10 years of the Project.

NET BENEFITS OVER 10 YEARS: HARRIS COUNTY FLOOD CONTROL			
BENEFITS	PROJECT	HOUSEHOLDS	TOTAL
Real Property Taxes	\$15,275	\$0	\$15,275
FF&E Property Taxes	\$61,802	\$0	\$61,802
Inventory Property Taxes	\$15,482	\$0	\$15,482
New Residential Property Taxes	\$0	\$4,093	\$4,093
<b>Benefits Subtotal</b>	<b>\$92,559</b>	<b>\$4,093</b>	<b>\$96,652</b>
COSTS	PROJECT	HOUSEHOLDS	TOTAL
None Estimated	\$0	\$0	\$0
<b>Costs Subtotal</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
<b>Net Benefits</b>	<b>\$92,559</b>	<b>\$4,093</b>	<b>\$96,652</b>

Annual Fiscal Net Benefits for Harris County Flood Control



## Overview of Methodology

The Impact DashBoard model combines project-specific attributes with community data, tax rates, and assumptions to estimate the economic impact of the Project and the fiscal impact for local taxing districts over a 10-year period.

The economic impact as calculated in this report can be categorized into two main types of impacts. First, the direct economic impacts are the jobs and payroll directly created by the Project. Second, this economic impact analysis calculates the spin-off or indirect and induced impacts that result from the Project. Indirect jobs and salaries are created in new or existing area firms, such as maintenance companies and service firms, that may supply goods and services for the Project. In addition, induced jobs and salaries are created in new or existing local businesses, such as retail stores, gas stations, banks, restaurants, and service companies that may supply goods and services to new workers and their families.

The economic impact estimates in this report are based on the Regional Input-Output Modeling System (RIMS II), a widely used regional input-output model developed by the U. S. Department of Commerce, Bureau of Economic Analysis. The RIMS II model is a standard tool used to estimate regional economic impacts. The economic impacts estimated using the RIMS II model are generally recognized as reasonable and plausible assuming the data input into the model is accurate or based on reasonable assumptions. Impact DataSource utilizes adjusted county-level multipliers to estimate the impact occurring at the sub-county level.

Two types of regional economic multipliers were used in this analysis: an employment multiplier and an earnings multiplier. An employment multiplier was used to estimate the number of indirect and induced jobs created or supported in the area. An earnings multiplier was used to estimate the amount of salaries to be paid to workers in these new indirect and induced jobs. The employment multiplier shows the estimated number of total jobs created for each direct job. The earnings multiplier shows the estimated amount of total salaries paid to these workers for every dollar paid to a direct worker. The multipliers used in this analysis are listed below:

49310 GENERAL WAREHOUSING AND STORAGE		CITY OF TOMBALL
Employment Multiplier	(Type II Direct Effect)	1.5271
Earnings Multiplier	(Type II Direct Effect)	1.5667

Most of the revenues estimated in this study result from calculations relying on (1) attributes of the Project, (2) assumptions to derive the value of associated taxable property or sales, and (3) local tax rates. In some cases, revenues are estimated on a per new household, per new worker, or per new school student basis.

The company or Project developer was not asked, nor could reasonably provide data for calculating some other revenues. For example, while the city will likely receive revenues from fines paid on speeding tickets given to new workers, the company does not know the propensity of its workers to speed. Therefore, some revenues are calculated using an average revenue approach.

This approach uses relies on two assumptions:

1. The taxing entity has two general revenue sources: revenues from residents and revenues from businesses.
2. The taxing entity will collect (a) about the same amount of miscellaneous taxes and user fees from each new household that results from the Project as it currently collects from existing households on average, and (b) the same amount of miscellaneous taxes and user fees from the new business (on a per worker basis) will be collected as it collects from existing businesses.

In the case of the school district, some additional state and federal revenues are estimated on a per new school student basis consistent with historical funding levels.

Additionally, this analysis sought to estimate the additional expenditures faced by local jurisdictions to provide services to new households and new businesses. A marginal cost approach was used to calculate these additional costs.

This approach relies on two assumptions:

1. The taxing entity spends money on services for two general groups: revenues from residents and revenues from businesses.
2. The taxing entity will spend slightly less than its current average cost to provide local government services (police, fire, EMS, etc.) to (a) new residents and (b) businesses on a per worker basis.

In the case of the school district, the marginal cost to educate new students was estimated based on a portion of the school's current expenditures per student and applied to the headcount of new school students resulting from the Project.

Additionally, this analysis seeks to calculate the impact on the school district's finances from the Project by generally, and at a summary level, mimicking the district's school funding formula.

According to the Texas Education Agency, any property added to local tax rolls, and the local taxes that this generates, reduces the amount of state funding equivalent to local taxes collected for maintenance and operations. The school district retains local taxes received for debt services and the corresponding state funding is not reduced. However, according to the Texas Education Agency, the school district will receive state aid for each new child that moves to the District. The additional revenues for the school district are calculated in this analysis.

## About Impact DataSource

Established in 1993, Impact DataSource is an Austin, Texas-based economic consulting firm. Impact DataSource provides high-quality economic research, specializing in economic and fiscal impact analyses. The company is highly focused on supporting economic development professionals and organizations through its consulting services and software. Impact DataSource has conducted thousands of economic impact analyses of new businesses, retention and expansion projects, developments, and activities in all industry groups throughout the U.S.

For more information on Impact DataSource, LLC and our product Impact DashBoard, please visit our website [www.impactdatasource.com](http://www.impactdatasource.com)



Scenario 1 with Client Data





## NON-DISCLOSURE AND CONFIDENTIALITY AGREEMENT

This Confidentiality Agreement (“**Agreement**”) is entered into as of 10/22/2021 (“**Effective Date**”) by and between Project Hanks (the “**Company**”) and Tomball Economic Development Corporation (“**TEDC**”). The parties wish to protect and preserve the confidential and/or proprietary nature of information and materials that may be disclosed or made available to TEDC in connection with certain discussions, negotiations or dealings between the parties relating to the Company requesting and securing available incentives from the TEDC (the “**Purpose**”). In consideration of the foregoing and the rights and obligations set forth herein, both parties hereby agree as follows:

1) **Confidential Information.** As used in this Agreement, “Confidential Information” means all information whether of a technical, business or other nature (including, without limitation, the Company’s name or other identity, trade secrets, know-how and information relating to the technology, customers, business plan, patents, promotional and marketing activities, finances and other business affairs) that is or may be disclosed or imparted by one party to the other. Confidential Information also includes the discussions between the parties hereto with respect to possible business growth, contraction, merger and/or acquisition, facility network strategy, location strategy, economic development incentives and all information concerning such plans for, or existence and progress of, such business growth, contraction, merger and/or acquisition, facility network strategy, location strategy, economic development incentives. Confidential Information may be in any written format, including an email transmission via electronic media and oral information.

2) **Use of Confidential Information:** The parties may use the Confidential Information exclusively for the purpose of business growth, contraction, merger and/or acquisition, facility network strategy, location strategy, economic development incentive projects. Except as expressly provided in this Agreement, the party receiving Confidential Information shall not use the Confidential Information in any manner or disclose the Confidential Information to any third party without prior written consent of the giving party.

3) **Exceptions.** Confidential Information shall not include any information that: (i) is publicly available to the receiving party without breach of this Agreement; (ii) is known by and in the possession of the receiving party as at the date of this Agreement; (iii) is rightfully received from a third party who did not acquire or disclose such information by a wrongful or tortuous act, or in breach of a confidentiality restriction or (iv) is required to be disclosed by applicable law, regulation, stock exchange rule or judicial process.

(b) Notwithstanding the provisions of Sections 2 and 3, a Party shall have the right to disclose Confidential Information of the other Party to the extent such disclosure is required to comply with applicable laws, regulations, court, judicial, or other government order, provided that the Party shall give the other Party reasonable notice prior to such disclosure, and shall comply with any applicable protective order, as well as to comply with any applicable code of attorney ethics. For avoidance of doubt, the Parties hereby expressly acknowledge and agree that nothing herein shall or shall be interpreted as altering, modifying, supplanting, or superseding any rights or obligations a Party may have under the applicable code of attorney ethics or judicial decisions interpreting or applying such code. **Further the Parties hereby acknowledge that this Agreement is Public Information, and that the TEDC is subject to the Texas Public Information Act.**

4) **Receiving Party Personnel.** The party receiving Confidential Information shall expressly restrict the possession, knowledge, development and use of Confidential Information to its partners, employees, consultants, professional advisors, agents, subcontractors and entities controlled by the receiving party or hired or engaged by the receiving party who have a legitimate need to know the Confidential Information. The TEDC represents that all such individuals and entities agree to be bound by the terms of this Confidentiality Agreement.

5) **Ownership of Confidential Information.** All Confidential Information shall remain the exclusive property of the party providing same and the receiving party will have no rights, by license or otherwise, to use or disseminate the Confidential Information except as expressly provided herein. No patent, copyright, trademark or other proprietary right is licensed, granted or otherwise conveyed by this Agreement.

6) **Return of Confidential Information.** The receiving party of the Confidential Information shall promptly return or destroy (and verify in writing its destruction), all tangible material embodying Confidential Information (in any form and including, without limitation, all summaries, copies and excerpts of Confidential Information and all electronic media or records containing or derived from Confidential Information) after the termination of the dealings between the parties hereto and upon written request by the providing party to the receiving party. Notwithstanding the foregoing, the receiving party of Confidential Information (the "Recipient") may retain such documents and records as are required to be maintained in order to satisfy any law, rule, regulation or bona fide document retention policy to which the Recipient is subject, and any such Confidential Information retained shall be kept subject to the terms of this Agreement. Notwithstanding the return of any Confidential Information, the Recipient will continue to hold in confidence all Confidential Information during the term of this Agreement.

7) **Term.** The term of this Agreement shall be for a period of one (2) years from the date hereof.

8) **No Representations.** Except as may be specifically provided hereafter in a definitive written agreement, neither Party is deemed to make or have made any representation or warranty, express or implied, as to the accuracy, utility, or completeness of any Confidential Information which is furnished hereunder, and neither Party will have liability to the other Party or its Representatives resulting from the use of any Confidential Information by such other Party or its Representatives.

9) **Limited Relationship.** Each Party acknowledges that the other Party may have considered, be considering, or consider in the future a transaction with a third party. This Agreement does not create, and may not be construed as creating, any sort of exclusive relationship between the Parties in any way whatsoever, whether related to a possible transaction or otherwise.

10) **Entire Agreement; Amendment.** This Agreement constitutes the entire agreement between the parties relating to the matters discussed herein and may be amended or modified only with the mutual written consent of the parties.

11) **Nonwaiver.** Any failure by either party to enforce the other party's strict performance of any provision of this Agreement shall not constitute a waiver of its right to subsequently enforce such provision or any other provision of this Agreement.

12) **General.**

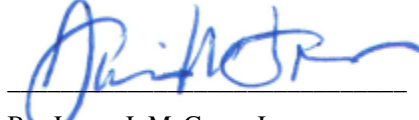
(a) This Agreement is neither intended to create, nor will it be construed as creating, a joint venture, partnership, or other form of business association between the Parties, nor an obligation to buy or sell products using or incorporating the Confidential Information.

(b) Both Parties understand and acknowledge that no license or other right is granted to or conferred upon either Party in this Agreement or by the disclosure of any Confidential Information by one Party to the other Party as contemplated hereunder, either expressly, by implication, inducement, estoppel, or otherwise, and that any license or other right must be express and in writing pursuant to a separate document.

(c) The failure of either Party to enforce any right resulting from breach of any provision of this Agreement by the other Party will not be deemed a waiver of any right relating to a subsequent breach of such provision or of any other right hereunder. **The TEDC hereby retains any and all of its governmental immunities that it now has or may have in the future.**

(d) Neither Party may assign any rights or delegate any obligations under this Agreement (directly, by operation of law, or otherwise) without the prior written consent of the other Party, which consent shall not be unreasonably withheld. Any attempted assignment or delegation in violation of this provision will be null and void. Notwithstanding any assignment or delegation of rights or obligations hereunder (including any for which consent may be provided), the Party making the assignment or delegation will thereafter remain bound, along with the transferee, by all of such Party's obligations of confidentiality hereunder. This Agreement is governed by the laws of the State of Texas without reference to conflict of laws principles, if any.

**PROJECT HANKS**



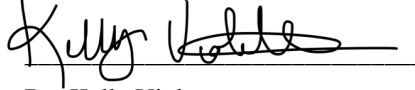
By: James J. McGraw, Jr.

As representative for the Company

President & CEO

KMK Consulting Company, LLC

**TOMBALL ECONOMIC DEVELOPMENT  
CORPORATION**



By: Kelly Violette

Title: Executive Director

11216801.1

## 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 [**PROJECT HANKS**] (the “Company”), [ADDRESS].

### WITNESSETH:

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

**WHEREAS**, the Company proposes to enter into a build-to-suit lease agreement for the construction of an approximately 900,000 square foot distribution facility to be located at 14000 Boudreaux Road, Tomball, Texas 77377, as described in Exhibit “A,” attached hereto and made a part hereof (the “Property”); and

**WHEREAS**, the Company intends to make an investment of at least Thirty-five million dollars (\$35,000,000.00) in building improvements, equipment, and inventory necessary to develop and operate a distribution facility on the Property, and

**WHEREAS**, material handling equipment and systems, including conveyors, forklifts and cranes will be purchased and utilized to handle and store bulk material at the distribution facility; and



**WHEREAS**, the TEDC agrees to provide to the Company the sum of up to Five Hundred Eighty Thousand Eight Hundred Sixty-Four Dollars (\$580,864.00) in the form of a sales tax reimbursement on the purchase of material handling equipment; and

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

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

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

1. Company Obligations.

a. The Company covenants and agrees that it will operate and maintain its business as set forth in this Agreement for a term of at least five (5) years and will create a minimum of one hundred and three (103) full-time jobs at the facility.

b. 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.

c. The construction and occupancy of the distribution facility shall occur within two (2) years of the Effective Date. Extensions of these deadlines may be granted by the Board of Directors of the TEDC due to any extenuating circumstance or uncontrollable delay.

d. The Company shall retain and provide records of all equipment handling purchases related to the development of the distribution facility, including proof of payment and verification of sales tax paid.

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

f. Company Reimbursement. If the TEDC terminates this Agreement because of the Company's breach of any provision as permitted by this Agreement, the Company will reimburse the TEDC for all payments the TEDC has made to the Company hereunder excluding any reimbursement payments previously made by the Company. Reimbursement shall be in accordance with the provisions set forth in Section 3 below relating to default.

## 2. TEDC Obligations.

a. Incentive Payment. In consideration of the Company's representations, promises, and covenants, TEDC agrees to grant to the Company the sum of up to Five Hundred Eighty Thousand Eight Hundred Sixty-Four Dollars (\$580,864.00) in the form of a sales tax reimbursement on the purchase of material handling equipment for the facility.

b. Reimbursement shall be based on Eighty Percent (80%) of the local Two Percent (2%) sales tax collections on eligible equipment purchases.

c. Incentive payments shall be made in annual installments over the term of the agreement. 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:

- (1) a copy of the City's Occupancy Permit for the Property;
- (2) proof that the Company has added the number of employees indicated above to the Property as evidenced by copies of Texas Workforce Commission form C-3 or Internal Revenue Service form 941;
- (3) records of all equipment handling purchases related to the Property, including proof of payment and verification of sales tax paid;
- (4) an affidavit stating that all contractors and subcontractors providing work and/or materials in the construction of the Improvements have been paid, and any and all liens and claims regarding such work have been released.

### 3. Default

a. It is understood and agreed by the parties that in the event of a default by the Company on any of its obligations under this Agreement, the Company shall reimburse the TEDC any amounts paid to the Company by the TEDC for jobs created but not thereafter maintained in accordance with the terms of this Agreement along with interest at the rate equal to the 90 day Treasury Bill plus ½% per annum, within 120 days after the TEDC notifies the Company of the default.

b. It is further understood and agreed by the parties that if the Company is convicted of a violation under 8 U.S.C. Section 1324a(f), the Company will reimburse the TEDC the full amount paid to the Company, with interest at the rate equal to the 90 day Treasury Bill plus ½% per annum, within 120 days after the TEDC notifies the Company of the violation.

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

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

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

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

#### 4. Termination.

a. Unless terminated earlier as allowed in this Agreement, this Agreement terminates five (5) years from the Effective Date.

b. This paragraph is required by Chapter 2264, Tex. Gov. Code and governs over any conflicting provisions of this Agreement. The Company will not knowingly employ undocumented workers as that term is defined in Section 2264.001, Tex. Gov. Code. If the Company is convicted of a violation under 8 U.S.C. Section 1324a (f), the conviction is a breach of this Agreement and the TEDC will send the Company written notice that the Company has violated this paragraph and that the Agreement terminates 30 days from the date of the notice. An "undocumented worker" shall mean an individual who, at the time of employment, is not (i) lawfully admitted for permanent residence to the United States; or (ii) authorized under the law to be employed in that manner in the United States.

c. Either party may terminate this Agreement during its term as provided in this paragraph if the other party fails to comply with its terms. The party alleging the default will give the other party notice of the default in writing. If the party in default fails to cure the default within 60 days



of the date of the notice, the party giving the notice may terminate this Agreement by written notice to the other party, specifying the date of termination.

d. No party may be deemed to be in default of this Agreement if performance of this Agreement is delayed, disrupted, or becomes impossible because of any act of God, war, earthquake, fire, strike, accident, civil commotion, epidemic, act of government, its agencies or offices, or any other cause beyond the control of the parties during the time, but only for so long as the event of force majeure reasonable prevents performance.

#### 5. Liability.

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

#### 6. Assignability.

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

#### 7. Notice.

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

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

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

If to Company:                      [COMPANY NAME]

#### 8. Miscellaneous.

a. Jurisdiction and Venue. 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.

b. Amendment. 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.

c. No waiver. 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.

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

IN TESTIMONY OF WHICH, THIS AGREEMENT has been executed by both parties on this  
 \_\_\_\_\_ day of \_\_\_\_\_ 2022 (the “Effective Date”).

**[COMPANY NAME]**

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

Name:

Title:

ATTEST:

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

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

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

**TOMBALL ECONOMIC DEVELOPMENT  
CORPORATION**

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

Name: Gretchen Fagan

Title: President, Board of Directors

ATTEST:

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

Name: William E. Sumner Jr.

Title: Secretary, Board of Directors

**ACKNOWLEDGMENT**

THE STATE OF TEXAS     §  
   §  
 COUNTY OF HARRIS     §

This instrument was acknowledged before me on the \_\_\_\_\_ day of \_\_\_\_\_  
 2022,           by \_\_\_\_\_, \_\_\_\_\_ of  
 \_\_\_\_\_ 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 \_\_\_\_\_  
 2022, 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: \_\_\_\_\_

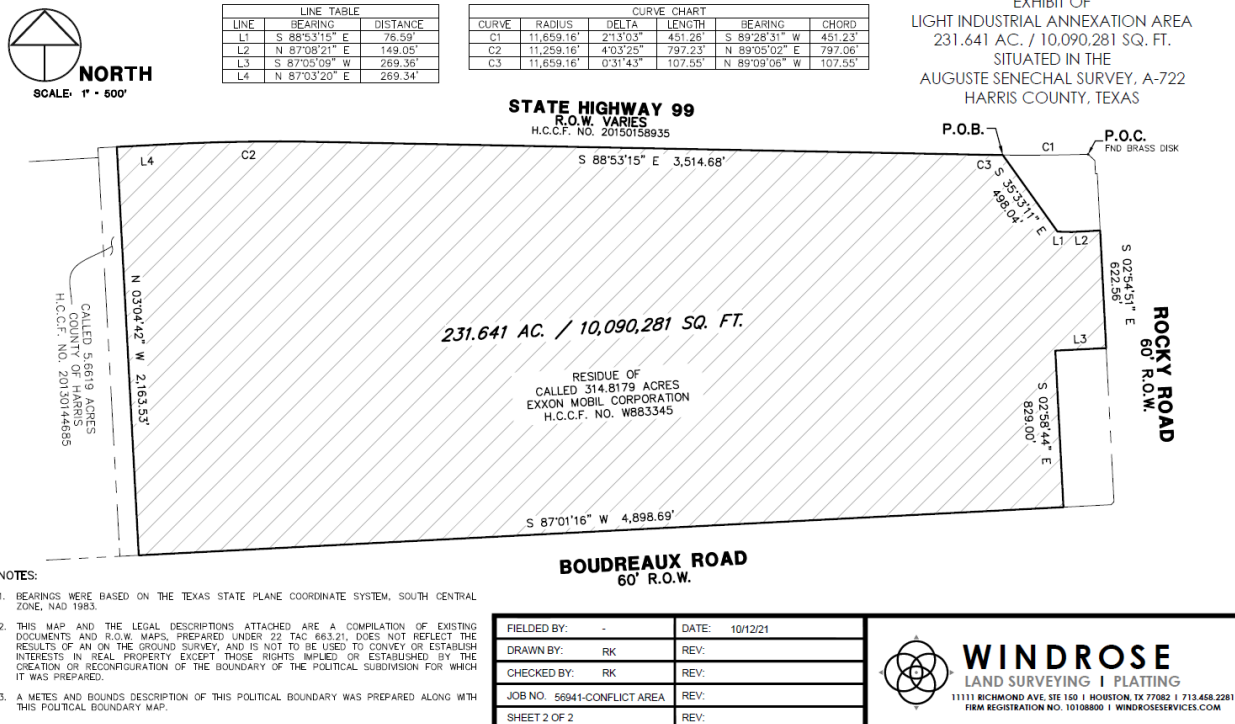
(SEAL)



## Exhibit A

### Description of Property

A TRACT OR PARCEL CONTAINING 231.641 ACRES OR 10,090,281 SQUARE FEET OF LAND SITUATED IN THE AUGUSTE SENERCHAL SURVEY, ABSTRACT NO. 722, HARRIS COUNTY, TEXAS, BEING A RESIDUE OF A CALLED 314.8179 ACRES DESCRIBED IN DEED TO EXXON MOBILE CORPORATION, AS RECORDED UNDER HARRIS COUNTY CLERK'S FILE (H.C.C.F.) NO. W883345



**NOTES:**

1. BEARINGS WERE BASED ON THE TEXAS STATE PLANE COORDINATE SYSTEM, SOUTH CENTRAL ZONE, NAD 1983.
2. THIS MAP AND THE LEGAL DESCRIPTIONS ATTACHED ARE A COMPILATION OF EXISTING DOCUMENTS AND R.O.W. MAPS, PREPARED UNDER 22 TAC §63.21, DOES NOT REFLECT THE RESULTS OF AN ON THE GROUND SURVEY, AND IS NOT TO BE USED TO CONVEY OR ESTABLISH INTERESTS IN REAL PROPERTY EXCEPT THOSE RIGHTS IMPLIED OR ESTABLISHED BY THE CREATION OR RECONFIGURATION OF THE BOUNDARY OF THE POLITICAL SUBDIVISION FOR WHICH IT WAS PREPARED.
3. A METES AND BOUNDS DESCRIPTION OF THIS POLITICAL BOUNDARY WAS PREPARED ALONG WITH THIS POLITICAL BOUNDARY MAP.



**WINDROSE**  
LAND SURVEYING | PLATTING  
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