

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



**Monday, February 03, 2025  
5:00 PM**

Notice is hereby given of a Special meeting of the Tomball City Council, to be held on Monday, February 03, 2025 at 5:00 PM, City Hall, 401 Market Street, Tomball, Texas 77375, for the purpose of considering the following agenda items. All agenda items are subject to action. The Tomball City Council reserves the right to meet in a closed session for consultation with attorney on any agenda item should the need arise and if applicable pursuant to authorization by Title 5, Chapter 551, of the Texas Government Code.

The public toll-free dial-in numbers to participate in the telephonic meeting are any one of the following (dial by your location): +1 312 626 6799 US (Chicago); +1 646 876 9923 US (New York); +1 301 715 8592 US; +1 346 248 7799 US (Houston); +1 408 638 0968 US (San Jose); +1 669 900 6833 US (San Jose); or +1 253 215 8782 US (Tahoma) - Meeting ID: 819 1932 6881 Passcode: 916846. The public will be permitted to offer public comments telephonically, as provided by the agenda and as permitted by the presiding officer during the meeting.

- A. Call to Order
- B. Public Comments and Receipt of Petitions
- C. General Discussion
  - 1. Presentation and discussion of the draft Drainage Master Plan.
- D. Proposed February 17, 2025, Agenda Items
  - 1. Workshop Discussion Only - Conditional Use Permit Case CUP25-02: Request by PRTI Well Services, Inc., represented by Pickleball Social LLC, for a Conditional Use Permit to allow the land use of "Amusement, commercial (indoor) and (outdoor)" within the City of Tomball's General Retail (GR) zoning district. This request affects approximately 2.25 acres of land legally described as being a tract of land containing 2.25 acres in the Joseph House League Survey, Abstract No. 34. The property is in the 14200 block (west side) of State Highway 249, within the City of Tomball, Harris County, Texas.

- 2. Workshop Discussion Only - Approve a service agreement amendment with B & C Constructors, LP through a 1 GPA Contract (Contract No. 24-06DP-01), in the amount of \$193,558 for a total contract amount not-to-exceed \$638,138, approve the expenditure of funds therefor, and authorize the City Manager to execute any and all documents related to the purchases. This expenditure is included in the Fiscal Year 2024-2025 Budget.
  - 3. Workshop Discussion Only - Approve a lease extension for one (1) year with Frank and Russell DeNina, for 3.547-acre tract, described as TR R10, Abstract 371 W. Hurd Survey, 0 Mechanic Street, for the daily worker's site.
- E. Future Workshop Items
- 1. Discuss Council ethics policy.
  - 2. Discuss Arts & Craft Market
  - 3. Discuss Council Rules & Procedures
- F. Adjournment

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

I hereby certify that the above notice of meeting was posted on the bulletin board of City Hall, City of Tomball, Texas, a place readily accessible to the general public at all times, on the 31st day of January 2025 by 5:00 PM, and remained posted for at least 72 continuous hours preceding the scheduled time of said meeting.

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Tracylynn Garcia, TRMC, MMC, CPM  
City Secretary

<p>This facility is wheelchair accessible and accessible parking spaces are available. Requests for accommodation or interpretive services must be made 48 hours prior to this meeting. Please contact the City Secretary's office at (281) 290-1019 for further information.</p>
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# City Council Meeting Agenda Item Data Sheet

Meeting Date: February 3, 2025

**Topic:**

Presentation and discussion of the draft Drainage Master Plan.

**Background:**

Funding was allocated in the FY 2022-2023 budget to compete a Drainage Master Plan for the City. This project has been an ongoing effort since May 2023 following Council approval for the Professional Services Agreement with Civil Systems Engineering, Inc. (RFQ 2023-08).

Staff and CSE have worked diligently to complete the Drainage Master Plan and identify recommendations to improve the drainage within the City. The final plan will also identify recommended drainage projects to be included in the Capital Improvement Plan.

Following discussion with City Council, staff will work with CSE to incorporate any changes to the draft master plan requested and will finalize the Drainage Master Plan to be presented to City Council for adoption by Resolution at the February 17, 2025 Regular City Council meeting.

**Origination:** Project Management

**Recommendation:**

n/a

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

**FUNDING (IF APPLICABLE)**

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

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

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

Signed Meagan Mageo  
Staff Member \_\_\_\_\_ Date \_\_\_\_\_

Approved by \_\_\_\_\_  
City Manager \_\_\_\_\_ Date \_\_\_\_\_

# City Council Agenda Item Data Sheet

Meeting Date: February 3, 2025

**Topic:**

Workshop Discussion Only - Conditional Use Permit Case CUP25-02: Request by PRTI Well Services, Inc., represented by Pickleball Social LLC, for a Conditional Use Permit to allow the land use of “Amusement, commercial (indoor) and (outdoor)” within the City of Tomball’s General Retail (GR) zoning district. This request affects approximately 2.25 acres of land legally described as being a tract of land containing 2.25 acres in the Joseph House League Survey, Abstract No. 34. The property is in the 14200 block (west side) of State Highway 249, within the City of Tomball, Harris County, Texas.

**Background:**

**Origination:**

PRTI Well Services, Inc., represented by Pickleball Social LLC

**Recommendation:**

Party(ies) responsible for placing this item on agenda: Craig T. Meyers, P.E.

**FUNDING (IF APPLICABLE)**

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

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

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

**Signed:** \_\_\_\_\_ **Approved by:** \_\_\_\_\_  
Staff Member Date City Manager Date



**APPLICATION FOR**  
**CONDITIONAL USE PERMIT**  
Planning Division

A conditional use is a land use which, because of its unique nature, is compatible with the permitted land uses in a given zoning district only upon a determination that the external effects of the use in relation to the existing and planned uses of adjoining property and the neighborhood can be mitigated through imposition of certain standards and conditions. This Section sets forth the standards used to evaluate proposed conditional uses and the procedures for approving conditional use permit (CUP) applications.

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

There is a \$1,000.00 application fee that must be paid at time of submission or the application will not be processed.

**DIGITAL PLAN SUBMITTALS:**

PLEASE SUBMIT YOUR APPLICATIONS AND PLANS DIGITALLY IN A SINGLE PDF BY FOLLOWING THE WEBSITE BELOW:

**WEBSITE:** [tomballtx.gov/secure/send](http://tomballtx.gov/secure/send)  
**USERNAME:** tombalcedd  
**PASSWORD:** Tomball1

**Applicant**

Name: Pickleball Social Title: LLC  
Mailing Address: 1055 Conrad Sauer Dr. City: Houston State: TX  
Zip: 77043 Contact: Juan Carlos Flores  
Phone: (713-) 252- 4382 Email: jcflores@cenabuilders.com / ivan@pickleballsocialtx.com

**Owner**

Name: PRTI WELL SERVICES Title: INC  
Mailing Address: 16600 Park Row City: Houston State: TX  
Zip: 77084 Contact: \_\_\_\_\_  
Phone: (\_\_\_\_) \_\_\_\_\_ Email: \_\_\_\_\_

**Engineer/Surveyor (if applicable)**

Name: Frilans Partners Title: LLC (Architect)  
Mailing Address: 10902 Oasis Dr. City: Houston State: TX  
Zip: 77096 Contact: Luis Herrera Araujo  
Phone: (713 -) 805 -7683 Fax: (\_\_\_\_) \_\_\_\_\_ Email: luis@frilansestudio.com

Revised: 10/1/2022

Description of Proposed Project: Indoor & Outdoor Pickleball courts including exterior gathering patios for stands and family entertainment.

Physical Location of Property: 0 SH 249 (OFF) Tomball, Texas 77377 [ North of Lowe's ]  
[General Location – approximate distance to nearest existing street corner]

Legal Description of Property: TR 3D ABST 34 J HOUSE  
[Survey/Abstract No. and Tracts; or platted Subdivision Name with Lots/Block]

HCAD Identification Number: Tract 1: 0402700010049  
Tract 2: 1203850010008 Acreage: 2.98 AC Total

Current Use of Property: Vacant Lot

Proposed Use of Property: Commercial - Indoor/Outdoor Pickleball Facility

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

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

X JUAN C FLORES 12/28/24  
Signature of Applicant Date

X [Signature] 12/27/2024  
Signature of Owner Date

Revised: 10/1/2022

## Submittal Requirements

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

**Applications must be delivered to the City at least 40 calendar days prior to the City Planning and Zoning Commission hearing date.**

- Application Fee: \$1,000 (Non-Refundable)**
- Completed application form**
- \*Copy of Recorded/Final Plat**
- Concept/Site Plan**
- Letter stating reason for request and issues relating to request.**
- Metes & Bounds of property**
- Payment of all indebtedness attributed to subject property must be paid with application or an arrangement in accordance with Sec. 12.1 C of the Zoning Ordinance as cited below:**

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

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

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

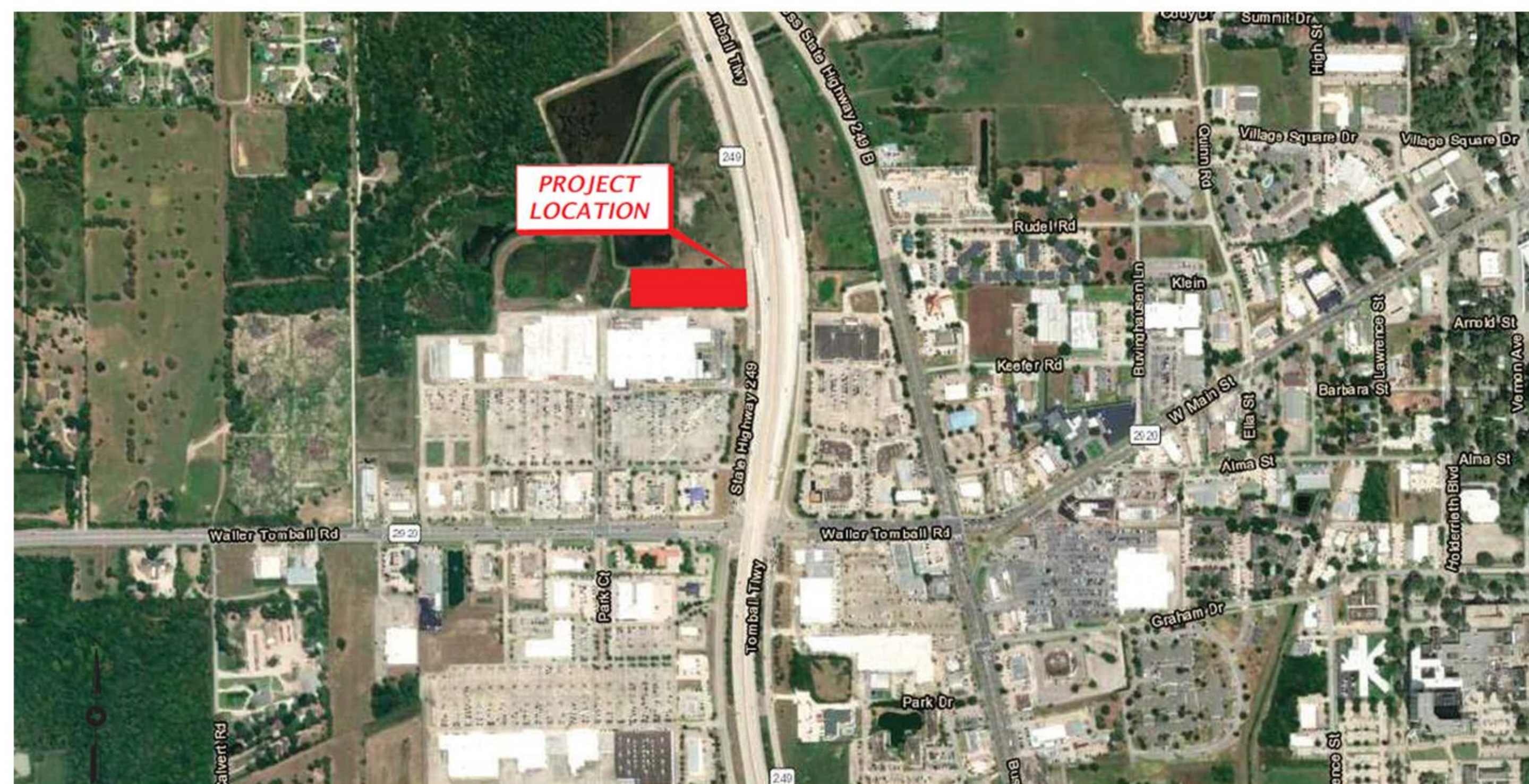
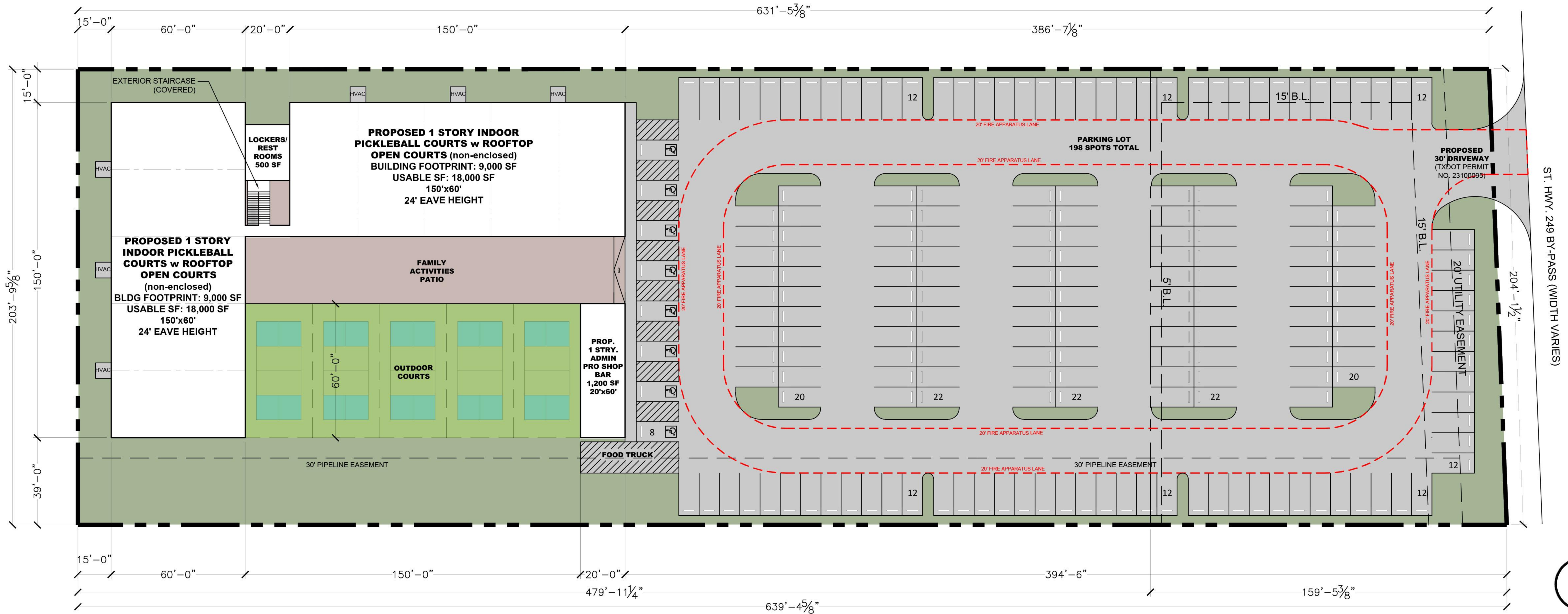


## Application Process

1. The official filing date is the date the application and fee are received by the City.
2. The City will review the application for completeness and will notify the applicant in writing within 10 days if the application is deemed incomplete.
3. Property owners within two-hundred (300) feet of the project site will be notified by letter within 10 calendar days prior to the public hearing date and legal notice will appear in the official newspaper of the City before the eighth calendar day prior to the date of the hearing.
4. A public hearing will be held by the Planning and Zoning Commission at 6:00 p.m. in the City Council chambers, unless otherwise noted. The Planning and Zoning Commission meetings are scheduled on the second Monday of the month. The purpose of the public hearing is to allow the Planning and Zoning Commission to conduct a fact finding process. The staff will review the request with the Commission and after staff presentations the chair will open the public hearing. The applicant will have ten (10) minutes to present the request. The chair will then allow those present in favor of the request and those in opposition to the request to speak. The Commission may then ask staff or anyone present additional questions, after which the Commission may close or table the public hearing. The Commission may then vote to recommend approval or denial to the City Council. The Commission may also table the request to a future date before a recommendation is sent to the City Council.
5. A second public hearing will be scheduled before the City Council after fifteen (15) days of legal notice. The Council meetings are held on the first (1<sup>st</sup>) and third (3<sup>rd</sup>) Mondays of the month at 6:00 p.m. in the City Council chambers (401 Market Street, Tomball, Texas, 77375).
6. The City Council will conduct a public hearing on the request in the same manor as the Planning and Zoning Commission. In the event there has been filed with the City Secretary a petition of twenty percent (20%) of the adjoining property owners in opposition to the subject zoning request, it will require a three fourths (3/4) vote of the full Council to approve the request. Upon approval of the request by the City Council, an amended ordinance shall be prepared and adopted.

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





The proposed 2.97-acre pickleball facility in Tomball, TX, features two 9,000 SF buildings with indoor pickleball courts and open-air rooftop courts. It includes outdoor courts, a family activities patio, a food truck area, a pro shop, office and admin spaces, and 198 parking spots (8 ADA-compliant). Designed to meet local landscape and zoning requirements, the facility offers a comprehensive recreational experience for all ages.

**25+** Pickleball Courts      **198** Parking Spots      **6-80+** Pickleball Players Age Range





# City Council Meeting

## Agenda Item

### Data Sheet

**Meeting Date:** February 3, 2024

#### **Topic:**

Workshop Discussion Only - Approve a service agreement amendment with B & C Constructors, LP through a 1 GPA Contract (Contract No. 24-06DP-01), in the amount of \$193,558 for a total contract amount not-to-exceed \$638,138, approve the expenditure of funds therefor, and authorize the City Manager to execute any and all documents related to the purchases. This expenditure is included in the Fiscal Year 2024-2025 Budget.

#### **Background:**

B&C Constructors, LP is a general contractor company located in Magnolia, Texas. B & C Constructors operates a construction company specializing in a wide range of skills including new construction and renovation of government buildings, schools, universities, retail shops and other construction type components.

B & C was awarded a contract at the November 18, 2024 Regular City Council Meeting for a not-to-exceed amount of \$445,000 to complete proposed improvements at Jerry Matheson Park, as well as miscellaneous projects included in the City's adopted budget. Following the approval of the general contractor services agreement, staff has identified two additional projects to be completed by the contractor: Police Department Restroom Renovation and Flax Court Drainage Improvements.

As part of the fiscal year 2024-2025 budget process, funding was requested to complete a renovation of the restrooms at the Police Department to include upgrading all faucets and toilets, new epoxy flooring, and adding an additional shower to each restroom to allow for two showers in the men's and women's. Staff worked with our contractor, B & C Constructors, to obtain a quote for the work to be completed. The renovation was budgeted for \$140,000 and the quote received is for \$129,743. The quote includes any mechanical, electrical and plumbing work required for the completion of the renovation.

As part of the drainage improvements along E. Hufsmith, staff has worked with the County and identified drainage improvements that can be completed to provide localized flooding relief to Flax Court. The project will include installation of two catch basins with culverts on both sides of new paved road, installation of 24" HDPE cross over culverts, re-grading the front ditch for positive drainage, and pouring new 6" paving to transition from E. Hufsmith to existing pavement. Staff worked with B & C to obtain a quote for the work to be completed for a total amount of \$63,815. The proposed project will be paid from the Streets and Drainage base budget for system maintenance.

A full breakdown of the original awarded projects and project additions is reflected in the table below.

Project	Estimated Amount
Fencing – Jerry Matheson Park	\$40,755
Fencing – Pickleball & Basketball Court	\$28,825
Concrete Drainage Repairs (Anna Street)	\$140,000
Office Remodels	\$45,000
Marketing Pergola	\$30,000
HVAC (Depot & City Hall)	\$80,000
Miscellaneous Projects – Facilities	\$25,000
Miscellaneous Projects – Parks	\$25,000
<b>Original Anticipated Expenditures for FY 24-25</b>	<b>\$444,580</b>
Police Department Restroom Renovation	\$129,743
Flax Court Drainage Improvements	\$63,815
<b>Total Additional Expenditures for FY 24-25</b>	<b>\$193,558</b>
<b>Total Amended Expenditures for FY 24-25</b>	<b>\$638,138</b>

This item authorizes a services agreement amendment with B & C Constructors, LP for a not-to-exceed amount of \$193,558, for a total contract amount not-to-exceed \$638,138.

**Origination:** Project Management

**Recommendation:**

Staff recommends approving a services agreement amendment with B & C Constructors, LP for a not-to-exceed amount of \$193,558, for a total contract amount not-to-exceed \$638,138.

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

**FUNDING (IF APPLICABLE)**

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

Yes: \_\_\_\_\_ No: \_\_\_\_\_ If yes, specify Account Number: #100-157-6406

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

Signed Meagan Mageo  
Staff Member \_\_\_\_\_ Date \_\_\_\_\_

Approved by \_\_\_\_\_  
City Manager \_\_\_\_\_ Date \_\_\_\_\_

**CITY OF TOMBALL  
SERVICES AGREEMENT AMENDMENT**

**THE STATE OF TEXAS** §

**COUNTY OF HARRIS** §

**Description of Services: General Contractor Services**

This Renewal is made and entered into by the **City of Tomball** (referred to as the “City”), with an office at 501 James Street, Tomball, TX and, **B & C Constructors, LP** (the “Company”), with an office at **27835 FM 2978 Road, Magnolia, TX 77354** City hereby engages the services of Company as an independent contract for General Contractor services, upon the following terms and conditions.

**1. SCOPE OF AGREEMENT AMENDMENT**

- 1.1. The City hereby agrees to employ Company and Company agrees to perform the necessary services as set forth in Exhibit A – Scope of Work and Exhibit B – Services Agreement, attached hereto and incorporated herein for all purposes.
- 1.2. In the event of a conflict among the terms of this Agreement and the Exhibit A, the term most favorable to the City, in the City’s sole discretion, shall control.
- 1.3. The Contractor shall not commence any work under this Agreement without receiving a written Work Authorization from the City. Each Work Authorization must include a detailed scope of work, timeline, and budget, which must be approved in writing by the City prior to the start of any work. Any work performed outside of an approved Work Authorization, or without explicit written approval, shall not be compensated and shall be considered unauthorized.

**2. TERM OF AGREEMENT AMENDMENT; TERMINATION**

- 2.1. This Agreement Amendment shall be effective upon proper execution by the City. It shall be effective from **October 1, 2024 through September 30, 2025**, as stated in the Services Agreement attached as Exhibit B – Executed Services Agreement. The City reserves the right to withdraw from the Agreement immediately if its governing body fails to appropriate funds necessary for the satisfaction of its contractual obligations. ***Either party may terminate this Agreement for any reason with ninety days (90) written notice to the other party.***
- 2.2. The City’s obligations under this Amendment shall not constitute a general obligation of the City or indebtedness under the constitution or laws of the State of Texas. Nothing contained herein shall ever be construed so as to require City to create a sinking fund or to assess, levy and collect any tax to fund its obligations under this Agreement.
- 2.3. The City reserves the right to enforce the performance of this Amendment in any manner prescribed by law or deemed to be in the best interest of the City in the event of breach or default of any provision of this Agreement, including immediate termination of this Agreement.

**3. ENTIRE AGREEMENT AMENDMENT**

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

#### 4. ASSIGNMENT

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

#### 5. COMPENSATION

For and in consideration of the services rendered by the Company pursuant to this Agreement, the City shall pay the Company only for the actual work performed under the Scope of Work, on the basis set forth in Exhibit A – Executed Services Agreement, up to an amount not-to-exceed **\$193,558**, for a total contract amount not-to-exceed **\$638,138**.

#### 6. IDEMNITY

##### 6.1. DEFINITIONS

For the purpose of this section the following definitions apply:

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

##### 6.2. Indemnity

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

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

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

**NEGLIGENCE OR INTENTIONAL ACTS OR OMISSIONS OF COMPANY OR COMPANY’S EMPLOYEES.**

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

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

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

**7. INSURANCE**

**7.1. AMOUNTS OF INSURANCE**

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

TYPE	AMOUNT
(a) Workers Compensation Employer’s Liability	(where required – Statutory by State Law) \$100,000 per occurrence
(b) Commercial (Public) Liability, including but not limited to:	
a. Premises/ Operations	Combined Single Limit
b. Independent Contractors	
c. Personal Injury	
d. Products/Completed Operations	
e. Contractual Liability (insuring above indemnity provisions)	

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

(c) Comprehensive Automobile Liability, in include coverage for:

- a. Owned/Leased Automobiles
- b. Non-owned Automobiles
- c. Hired Cars

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

**7.2. OTHER INSURANCE REQUIREMENTS**

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

Insurance required herein shall be issued by a company or companies of sound and adequate financial responsibility and authorized to do business in the State of Texas. All policies shall be



subject to examination and approval by the City Attorney's Office for their adequacy as to form, content, form of protection, and providing company.

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

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

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

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

#### 8. PAYMENT AND PERFORMANCE

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

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

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

#### 10. COMPANY CERTIFICATIONS

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

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

#### 11. NO WAIVER OF IMMUNITY

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

12. NOTICES

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

Notice to Company may be sent to the following address:

27835 FM 2978 Rd, Magnolia, TX 77354

13. CONTRACT ADMINISTRATOR

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

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

AGREED to and ACCPETED this \_\_\_ day of \_\_\_\_\_, 2025.

\_\_\_\_\_  
Company

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Title

AGREED to and ACCPETED this \_\_\_\_ day of \_\_\_\_\_, 2025.

City of Tomball

\_\_\_\_\_  
David Esquivel, PE  
City Manager

**Attest:**

\_\_\_\_\_  
Tracylynn Garcia  
City Secretary

**EXHIBIT A**  
**PROPOSED SCOPE OF WORK & ESTIMATED PRICING**

The Contractor shall not commence any work under this Agreement without receiving a written Work Authorization from the City. Each Work Authorization must include a detailed scope of work, timeline, and budget, which must be approved in writing by the City prior to the start of any work. Any work performed outside of an approved Work Authorization, or without explicit written approval, shall not be compensated and shall be considered unauthorized.

1. Fencing – Jerry Matheson Park - **\$40,755**
  - a. Pickleball Fencing – **\$34,310**
    - i. Remove and replace existing pickleball court fence and gates and replace with commercial grade black power coated posts and hardware with commercial grade vinyl coated mesh, gates welded, and powder coated.
  - b. Splashpad Equipment Fencing - **\$6,445**
    - i. Install cedar fence around the splashpad recirculating equipment.
2. Concrete Drainage Repairs (Anna Street) - **\$131,800**
  - a. Sawcut and demo existing concrete or asphalt driveways and replace and remove and replace culverts along Anna Street (total of 14 addresses).
3. Fencing – Pickleball & Basketball Court - **\$28,825**
  - a. Install 6’ black chain link fence around basketball court at Juergens Park.
  - b. Replace existing fabric, ties, and tension wire around pickleball court at Juergens Park.
4. Office Remodels - **\$45,000** (estimated)
  - a. City Hall Office - **\$13,485**
    - i. Install a dividing wall in office with required electrical and HVAC.
  - b. City Hall Storage Remodel - **\$20,000** (estimated)
    - i. Remodel storage closet to create more secure property storage.
5. Marketing Pergola - **\$30,000** (estimated)
  - a. Remove and replace wooden structure at rear of building.
6. HVAC Replacement - **\$80,000**
  - a. City Hall – **\$20,000** (estimate)
    - i. Replacing one (1) 5-ton unit.
  - b. Fire Station #1 - **\$20,000** (estimate)
    - i. Adding one (1) additional heater for bay
  - c. Fire Station #2 - **\$40,000** (estimate)
    - i. Replacing one (1) 10-ton unit.

7. Miscellaneous Facilities Projects - **\$25,000** (estimate)
  - a. Depot HVAC Replacement - **\$15,515**
    - i. Remove existing 5-ton A/C unit in Train Depot and replace it with new system due to failure.
  - b. Identified repairs and/or new projects for facilities – not-to-exceed amount of **\$25,000**
8. Miscellaneous Parks Projects - **\$25,000** (estimate)
  - a. Identified repairs and/or new projects for parks – not-to-exceed amount of **\$25,000**
9. Miscellaneous Streets Projects - **\$30,000** (estimate)
  - a. Improvements to parking lot for the Farmers Market - **\$9,410**
  - b. Identified repairs and/or new projects for streets and drainage as identified during the fiscal year – not-to-exceed amount of **\$20,590**

Project	Estimated Amount
Fencing – Jerry Matheson Park	\$40,755
Concrete Drainage Repairs (Anna Street)	\$140,000
Fencing – Pickleball & Basketball Court	\$28,825
Office Remodels	\$45,000
Marketing Pergola	\$30,000
HVAC Replacement	\$80,000
Miscellaneous Projects – Facilities	\$25,000
Miscellaneous Projects – Parks	\$25,000
Miscellaneous Projects – Streets	\$30,000
<b>Total Anticipated Expenditures for FY 24-25</b>	<b>\$444,580</b>



# Proposal

Magnolia, Texas 77354  
713.932.9400 - o  
713.932.9443 - f

**DATE:** January 14, 2025

**PROJECT:** COT PD R/R renovation  
1GPA Contract #24-06DP-01

City of Tomball  
501 James St.  
Tomball, TX 77375

ATT: Justin Pruitt

DESCRIPTION	AMOUNT
General Conditions / Supervision / Temporary Conditions	\$ 18,250.00
Remove existing tile, plumbing fixtures, partitions and renovate existing shower areas to accommodate 2 new showers for men and women restrooms. Install epoxy floor covering at restrooms and common area between. Replace all fixtures and partitions	\$ 69,835.00
MEP retrofit per renovation including saw-cut / pour back and re-route	\$ 41,658.00
<b>TOTAL AMOUNT</b>	\$ 129,743.00

Jared Cochran, Project Manager

THANK YOU FOR YOUR BUSINESS!



# Proposal

Magnolia, Texas 77354  
713.932.9400 - o  
713.932.9443 - f

**DATE:** January 20, 2025

**PROJECT:** COT Flax St. Paving  
1GPA Contract #24-06DP-01

City of Tomball  
501 James St.  
Tomball, TX 77375

ATT: Justin Pruitt

DESCRIPTION	AMOUNT
Mobilization - two separate times to complete half at each time, saw cut / demo roadway and remove spoils, traffic cones / barricade as needed	\$ 13,450.00
Installation of 2 catch basins with 18" HDPE to new front ditch with culverts on both sides of new paved road, install 24" HDPE cross over culverts with 18" tie-in from curb inlet, re-grade front ditch for positive drainage with compacted stabilized sand	\$ 21,560.00
Import fill for grades and stabilize road sub-grade to 6" depth with Trublend compacted	\$ 9,985.00
Pour new 6" paving to transition from East Hufsmith to existing pavement (approx 40" from road) with #4 @ 18" o/c 3,000 psi concrete, pour curbs to match, saw cut as needed, final dress slopes	\$ 18,820.00
<b>TOTAL AMOUNT</b>	\$ 63,815.00

Jared Cochran, Project Manager

THANK YOU FOR YOUR BUSINESS!



**CITY OF TOMBALL  
SERVICES AGREEMENT**

THE STATE OF TEXAS §

COUNTY OF HARRIS §

**Description of Services: General Contractor Services**

This Agreement is made and entered into by the **City of Tomball** (referred to as the “City”), with an office at 501 James Street, Tomball, TX and, **B & C Constructors, LP** (the “Company”), with an office at **27835 FM 2978 Road, Magnolia, Texas 77354**, City hereby engages the services of Company as an independent contract for General Contractor Services, upon the following terms and conditions.

**1. SCOPE OF AGREEMENT**

- 1.1. The City hereby agrees to employ Company and Company agrees to perform the necessary services as requested by the City based on Exhibit A – Proposed Scope of Work.
- 1.2. In the event of a conflict among the terms of this Agreement, the term most favorable to the City, in the City’s sole discretion, shall control.
- 1.3. The Contractor shall not commence any work under this Agreement without receiving a written Work Authorization from the City. Each Work Authorization must include a detailed scope of work, timeline, and budget, which must be approved in writing by the City prior to the start of any work. Any work performed outside of an approved Work Authorization, or without explicit written approval, shall not be compensated and shall be considered unauthorized.

**2. TERM OF AGREEMENT; TERMINATION**

- 2.1. This Agreement shall be effective upon proper execution by the City. It shall be effective from **October 1, 2024 through September 30, 2025**. The City reserves the right to withdraw from the Agreement immediately if its governing body fails to appropriate funds necessary for the satisfaction of its contractual obligations. ***Either party may terminate this Agreement for any reason with ninety days (90) written notice to the other party.***
- 2.2. The City’s obligations under this Agreement shall not constitute a general obligation of the City or indebtedness under the constitution or laws of the State of Texas. Nothing contained herein shall ever be construed so as to require City to create a sinking fund or to assess, levy and collect any tax to fund its obligations under this Agreement.
- 2.3. The City reserves the right to enforce the performance of this Agreement in any manner prescribed by law or deemed to be in the best interest of the City in the event of breach or default of any provision of this Agreement, including immediate termination of this Agreement.

**3. ENTIRE AGREEMENT**

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

**4. ASSIGNMENT**

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

## 5. COMPENSATION

For and in consideration of the services rendered by the Company pursuant to this Agreement, the City shall pay the Company only for the actual work performed in Exhibit A – Proposed Scope of Work, on the basis set forth in Attachment B, up to an amount not-to-exceed **\$444,580**.

## 6. IDEMNITY

### 6.1. DEFINITIONS

For the purpose of this section the following definitions apply:

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

**6.2. Indemnity**

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

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

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

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

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

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

**7. INSURANCE**

**7.1. AMOUNTS OF INSURANCE**

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

TYPE	AMOUNT
(a) Workers Compensation	(where required – Statutory by State Law)
Employer's Liability	\$100,000 per occurrence
(b) Commercial (Public) Liability, including but not limited to:	
a. Premises/ Operations	Combined Single Limit
b. Independent Contractors	
c. Personal Injury	
d. Products/Completed Operations	
e. Contractual Liability (insuring above indemnity provisions)	

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

(c) Comprehensive Automobile Liability, in include coverage for:

- a. Owned/Leased Automobiles
- b. Non-owned Automobiles
- c. Hired Cars

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

## 7.2. OTHER INSURANCE REQUIREMENTS

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

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

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

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

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

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

## 8. PAYMENT AND PERFORMANCE

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

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

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

## 10. COMPANY CERTIFICATIONS

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

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

11. NO WAIVER OF IMMUNITY

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

12. NOTICES

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

Notice to Company may be sent to the following address:

27835 FM 2978 Rd Magnolia TX 77354

13. CONTRACT ADMINISTRATOR

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

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

AGREED to and ACCPETED this 9th day of December, 2024.

B&C Constructors L.P.  
Company  
Jared Cochran  
Signature  
Jared Cochran  
Print Name  
Project Manager  
Title

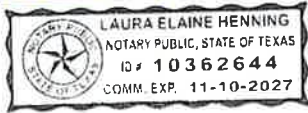
THE STATE OF TEXAS

§

COUNTY OF HARRIS

§

This instrument was acknowledged before me on this 9th day of December, 2024, by Jared Cochran, on behalf of said entity.



Laura E. Henning  
Notary Public, State of Texas

AGREED to and ACCPETED this 9th day of December, 2024.

City of Tomball  
David Esquivel  
David Esquivel, PE  
City Manager

Attest: [Signature]  
Tracylynn Garcia  
City Secretary

**EXHIBIT A  
PROPOSED SCOPE OF WORK & ESTIMATED PRICING**

The Contractor shall not commence any work under this Agreement without receiving a written Work Authorization from the City. Each Work Authorization must include a detailed scope of work, timeline, and budget, which must be approved in writing by the City prior to the start of any work. Any work performed outside of an approved Work Authorization, or without explicit written approval, shall not be compensated and shall be considered unauthorized.

1. Fencing – Jerry Matheson Park - **\$40,755**
  - a. Pickleball Fencing – **\$34,310**
    - i. Remove and replace existing pickleball court fence and gates and replace with commercial grade black power coated posts and hardware with commercial grade vinyl coated mesh, gates welded, and powder coated.
  - b. Splashpad Equipment Fencing - **\$6,445**
    - i. Install cedar fence around the splashpad recirculating equipment.
2. Concrete Drainage Repairs (Anna Street) - **\$131,800**
  - a. Sawcut and demo existing concrete or asphalt driveways and replace and remove and replace culverts along Anna Street (total of 14 addresses).
3. Fencing – Pickleball & Basketball Court - **\$28,825**
  - a. Install 6' black chain link fence around basketball court at Juergens Park.
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  - a. Remove and replace wooden structure at rear of building.
6. HVAC Replacement - **\$80,000**
  - a. City Hall – **\$20,000** (estimate)
    - i. Replacing one (1) 5-ton unit.
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    - i. Adding one (1) additional heater for bay
  - c. Fire Station #2 - **\$40,000** (estimate)
    - i. Replacing one (1) 10-ton unit.



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  - a. Depot HVAC Replacement - **\$15,515**
    - i. Remove existing 5-ton A/C unit in Train Depot and replace it with new system due to failure.
  - b. Identified repairs and/or new projects for facilities – not-to-exceed amount of **\$25,000**
8. Miscellaneous Parks Projects - **\$25,000** (estimate)
  - a. Identified repairs and/or new projects for parks – not-to-exceed amount of **\$25,000**
9. Miscellaneous Streets Projects - **\$30,000** (estimate)
  - a. Improvements to parking lot for the Farmers Market - **\$9,410**
  - b. Identified repairs and/or new projects for streets and drainage as identified during the fiscal year – not-to-exceed amount of **\$20,590**

Project	Estimated Amount
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Miscellaneous Projects – Streets	\$30,000
<b>Total Anticipated Expenditures for FY 24-25</b>	<b>\$444,580</b>

# City Council Meeting Agenda Item Data Sheet

Meeting Date: February 3, 2024

**Topic:**

Workshop Discussion Only - Approve a lease extension for one (1) year with Frank and Russell DeNina, for 3.547-acre tract, described as TR R10, Abstract 371 W. Hurd Survey, 0 Mechanic Street, for the daily worker’s site.

**Background:**

The City entered in a contract with Frank and Russell DeNina in 2000 for the property located on Mechanic Street. The property is used as a day labor site to provide a designated safe, and organized location for individuals seeking temporary employment opportunities. The site provides a controlled environment where workers and employers can meet and communicate.

The original contract term with Frank and Russell DeNina expired on December 31, 2023 and on February 20, 2023, City Council approved a two-year lease extension for the referenced property expiring on February 20, 2025. The agreed extension stipulated substantially the same terms in the original agreement but raised the not-to-exceed lease payment amount to \$7,000 annually based on the total ad valorem taxes.

Based on discussions with the property owner and City Council, staff is recommending approving a one-year lease extension with Frank and Russell DeNina for the property and leaving the not-to-exceed lease payment amount at \$7,000 annually.

**Origination:** Project Management

**Recommendation:**

Staff recommends approving a one-year lease extension with Frank and Russell DeNina for the property described as 0 Mechanic Street for the daily worker’s site.

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

**FUNDING (IF APPLICABLE)**

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

Yes: \_\_\_\_\_ No: \_\_\_\_\_ If yes, specify Account Number: #100-119-6329

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

Signed Meagan Mageo  
Staff Member \_\_\_\_\_  
Date \_\_\_\_\_

Approved by \_\_\_\_\_  
City Manager \_\_\_\_\_  
Date \_\_\_\_\_

## AMENDING AGREEMENT

**THIS AMENDING AGREEMENT** dated February 21, 2025

**BETWEEN:**

Frank DeNina and Russell DeNina

-AND-

The City of Tomball

### Background

1. Frank DeNina and Russell DeNina and the City of Tomball (the “Parties”) entered into a contract (the “Contract”) dated April 1, 2017, for the purposes of the Lease of 3.547-acre tract of land.
2. The Parties desired to amend the Contract on the terms and conditions set forth in this Amending Agreement (the “Agreement”).
3. This Agreement is the second amendment to the Contract, the first amendment is attached as Exhibit B.
4. References in this Agreement to the Contract are to the Contract as previously amended or varied, and attached as Exhibit A.

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

### Amendments

The Contract is amended as follows:

1. Section 2 of the Contract is amended to extend the Contract one additional year, as permitted in Section 2.
2. Section 3 of the Contract is amended by increasing the annual lease payment to a not-to-exceed amount of \$7,000 annually.

### No Other Changes

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

**Governing Law**

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

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

\_\_\_\_\_

Witness: \_\_\_\_\_

Date: \_\_\_\_\_

\_\_\_\_\_

Signed: Frank DeNina

Date: \_\_\_\_\_

\_\_\_\_\_

Attest: Tracylynn Garcia, City Secretary

Date: \_\_\_\_\_

\_\_\_\_\_

Signed: David Esquivel, City Manager

Date: \_\_\_\_\_

COPY

**EXHIBIT A**

**LEASE AGREEMENT**

Sent 2 originals to  
M-Mageo for signature.  
2/28/23 TJ.

Item 4.

This Lease Agreement (the "Lease") is made and entered as of the 1st day of April, 2017, by and between Frank DeNina and Russell DeNina, individuals, whose principal address is 27100 Tomball Parkway, Tomball, TX 77375 ("Lessor"), and the City of Tomball, a home rule municipal corporation located in Harris County, Texas, having its City Hall located at 401 W. Market Street, Tomball, TX 77375 (the "City").

Whereas, Lessor is the owner of a certain 3.547 acre tract of land, more or less, located within the City of Tomball, Harris County, Texas; and

Whereas, the City desires to lease said 3.547 acre tract from Lessor for use by the City as a day worker's assembly and collection facility; and

Whereas, Lessor is willing to lease said 3.547 acre tract to the City subject to the terms and conditions contained herein; now therefore

For and in consideration of the mutual obligations and benefits to be derived hereunder, Lessor and the City do hereby agree as follows:

**Section 1.** Lessor agrees to lease to the City, and the City agrees to lease from Lessor, all of that certain 3.547 acre tract of land, more or less, located in the City of Tomball, Harris County, Texas, said 3.547 acre tract being more particularly described and depicted in Exhibit "A" attached hereto and for all things, made a part hereof (the "Property").

**Section 2.** The primary term of this lease shall be for a period of five (5) years, commencing on the effective date written above, which primary five (5) year term may be extended for an additional period of two (2) years (the "Renewal Term") upon effective notice thereof to Lessor not less than (90) days prior to the expiration of the Primary Term. Notwithstanding the foregoing, Lessor shall have the right at any time ~~to terminate this Lease, upon thirty (30) days advance written notice thereof.~~ to terminate this Lease, upon thirty (30) days advance written notice thereof. The City shall have the right, at any time, to terminate this lease upon thirty (30) days advance written notice thereof.

**Section 3.** The City shall pay to Lessor, as its annual lease payment, an amount that equals the total ad valorem taxes, not to exceed \$6,000 dollars, that may become due and payable on the Property during the Term or any Renewal Term hereof, including, but not limited to, ad valorem taxes levied by any school district, county, city, conservation reclamation district, hospital district, or any other lawfully constituted taxing unit for that year. Rental shall be due and payable on or before December 15 of each calendar year. For any year of the Primary Term or and Renewal Term that includes less than a full calendar year, the lease payment shall be prorated based upon the portion of the year during which this lease agreement is in effect. It is expressly recognized and agreed between Lessor and the City that the value of the leasehold interest being obtained by the City hereunder exceeds the rental as provided by this Section. The City agrees to cooperate with Lessor, at request of Lessor, with establishing a fair market value of such leasehold estate for the purpose of determining the value of the contribution made by Lessor to the City hereunder.

## LEASE AGREEMENT

**Section 4.** The City shall be authorized to construct and place fixtures and other improvements on the Property as reasonably necessary to provide for the safe and healthful assemblage of day workers and employers. Such improvements may include, but shall not be limited to, perimeter fencing, lighting, portable water facilities, sanitary sewer facilities, including portable toilets, seating, designated vehicular and bicycle parking areas, and shelters. All such improvements constructed or placed on the Property shall be approved by Lessor, which approval shall not be unreasonably withheld.

**Section 5.** The City agrees to maintain the Property in accordance with the same standards applicable to maintenance of other similar properties of the City. At a minimum, such maintenance shall include regular policing of the grounds and trash removal. The City shall not use, or permit the use of, the Property in any manner that results in waste.

**Section 6.** The City agrees to maintain policies of liability insurance, insuring against personal injury property damage arising from use of the Property, such policies to provide coverage in amounts not less than those carried for other similar properties by the City. The City shall maintain such policies of insurance at all times during the Term or Renewal Term of this Lease.

**Section 7.** The City shall return the Property at the termination of the lease in a comparable condition to that which existed on the effective date hereof, normal wear and tear expected. Notwithstanding the foregoing, the City shall not be required to remove fixtures attached to the Property by the City during the Term hereof unless any such fixture shall constitute an attractive nuisance. The City shall not allow attractive nuisance to exist on the Property, nor shall the City return the Property to Lessor at the termination hereof with any attractive nuisance existing on the Property.

**Section 8.** The City shall be authorized to use the Property as a day laborer assembly and collection site and if agreed upon in writing by both the Lessor and the City for any other lawful municipal purposes.

**Section 9.** If the City defaults in performing any covenant or term of this Lease and does not correct the default within thirty (30) days after receipt of written notice from Lessor to the City to do so, the City shall be deemed in default hereunder and Lessor shall be entitled to terminate this Lease.

**Section 10.** Lessor warrants that they own the Property in fee simple.

**Section 11.** Lessor covenants that as long as the City pays the rental and other charges under this Lease and observes the covenants and terms of this Lease, the City will lawfully hold, occupy, and enjoy the Property during the lease Term and any Renewal Term hereof without being disturbed by Lessor or any person claiming under Lessor, except for any portion of the Property taken under the power of eminent domain. In the event of any such taking by eminent domain, the City shall be entitled to a

## AMENDING AGREEMENT

**THIS AMENDING AGREEMENT** dated February 21, 2023

**BETWEEN:**

Frank DeNina and Russell DeNina

-AND-

The City of Tomball

### **Background**

1. Frank DeNina and Russell DeNina and the City of Tomball (the "Parties") entered into a contract (the "Contract") dated April 1, 2017, for the purpose of the Lease of 3.547-acre tract of land.
2. The Parties desire to amend the Contract on the terms and conditions set forth in this Amending Agreement (the "Agreement").
3. This Agreement is the first amendment to the Contract.
4. References in this Agreement to the Contract are to the Contract as previously amended or varied, and attached as Exhibit A.

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

### **Amendments**

The Contract is amended as follows:

1. Section 2 of the Contract is amended to extend the Contract two additional years, as permitted in Section 2.
2. Section 3 of the Contract is amended by increasing the annual lease payment to a not-to-exceed amount of \$7,000 annually.

### **No Other Changes**

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



**Governing Law**

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

IN WITNESS WHEREOF the Parties have duly affixed their signatures under hand and seal on the 1 day of ~~February~~ <sup>March</sup> 2023.

Meagan Mageo  
Witness: Meagan Mageo  
Date: 3/1/2023

Frank DeNina  
Frank DeNina  
Date: 3/1/23

Doris Speer  
Attest: Doris Speer, City Secretary  
Date: 2/20/2023

David Esquivel  
David Esquivel, City Manager  
Date: 02/20/23

(SEAL)

# City Council Meeting Agenda Item Data Sheet

Meeting Date: February 3, 2025

**Topic:**

Discuss Council ethics policy.

**Background:**

**Origination:**

**Recommendation:**

n/a

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

**FUNDING (IF APPLICABLE)**

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

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

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

Signed \_\_\_\_\_  
Staff Member Date

Approved by \_\_\_\_\_  
City Manager Date

# City Council Meeting Agenda Item Data Sheet

Meeting Date: February 3, 2025

**Topic:**

Discuss Arts & Craft Market

**Background:**

**Origination:** City Council

**Recommendation:**

n/a

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

**FUNDING (IF APPLICABLE)**

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

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

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

Signed \_\_\_\_\_  
Staff Member Date

Approved by \_\_\_\_\_  
City Manager Date

# City Council Meeting Agenda Item Data Sheet

Meeting Date: February 3, 2025

**Topic:**

Discuss Council Rules & Procedures

**Background:**

**Origination:**

**Recommendation:**

n/a

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

**FUNDING (IF APPLICABLE)**

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

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

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

Signed \_\_\_\_\_ Approved by \_\_\_\_\_  
Staff Member Date City Manager Date