THE WOODLANDS TOWNSHIP

The Woodlands, TX

EXECUTIVE SUMMARY

MEETING DATE: April 27, 2011

SUBJECT MATTER: Homestead Exemptions for The Woodlands Township

BUDGET IMPACT: To be determined

FACTS/HISTORY:

At the March 17, 2011 Board Workshop, Director Campbell requested that discussion of a 3% homestead exemption be placed on the April Board agenda. At the April 21, 2011 Board Workshop, staff presented information regarding the 3% homestead exemption including the potential impact on the 2012 budget and related five-year business plan. Following the presentation, the Board requested that a financial analysis be presented at its Board meeting on April 27, 2011 that reflected the implementation of a 1% homestead exemption for the 2011 property tax year (2012 budget year), 2% for the 2012 property tax year (2013 budget year), and 3% for the 2013 property tax year and beyond (2014 and subsequent years' budgets).

Following is a summary of the effect of 1%, 2% and 3% homestead exemptions on The Woodlands Township's 2012 budget. Property value information related to the requested exemptions was obtained from Mr. Mark Castleschouldt, Chief Appraiser at the Montgomery Central Appraisal District.

	1%	**2%**	**3%**
Total residential property value exempt from taxation	$135.8 million	$188.9 million	$247.1 million
Total commercial property value exempt from taxation	$0	$0	$0
Total reduction in property tax revenue	$437,900	$618,500	$796,700
Property tax rate equivalent (based on current values and rate)	$0.0036	$0.0052	$0.0066
Annual reduction in property tax expense on an average home value of $300,000	$16.00	$20.00	$29.00

The granting of a homestead exemption reduces the Township's property tax revenue. With a 3% homestead exemption, the Township realizes $3.5 million less property tax revenue over budget years 2012 – 2015 than it would without the exemption. If a graduated 3% homestead exemption is implemented, the property tax revenue loss is $2.9 million for the same time period. In order to keep sources and uses of funds balanced in the Township's five-year business plan, monies from the capital reserve account were utilized to counter the lost property tax revenue. The effect on the **capital reserve balance** is summarized below.

	2011	**2012**	**2013**	**2014**	**2015**
No Homestead Exemption	$8,733,912	$8,797375	$7,125,671	$6,869,547	$3,534,406
1-3% Graduated Homestead	$8,733,912	$8,459,085	$6,211,948	$5,117,826	$839,177
3% Homestead Exemption	$8,733,912	$8,174,735	$5,667,980	$4,519,363	$231,737

If the Board wants to authorize a homestead exemption for the 2011 property tax year, it must inform the Montgomery County Tax Assessor and Collector's Office of its decision by June 30, 2011. Another option is to defer a decision regarding the homestead exemption until the 2012 property tax year. This option will allow the Board to consider the following items prior to making its decision:

- Results from the strategic planning meeting scheduled for June 23.
- Results from the Parks and Recreation Study
- Results from the Law Enforcement Study
- Results from the Reserve Study
- Detailed review of the 2012 budget and five-year plan currently being prepared for presentation in July/August

Additional information regarding homestead exemptions is included on the attached Power Point document that will be presented at the Board meeting.

RECOMMENDED BOARD ACTION:

Board motion as determined by the Board.

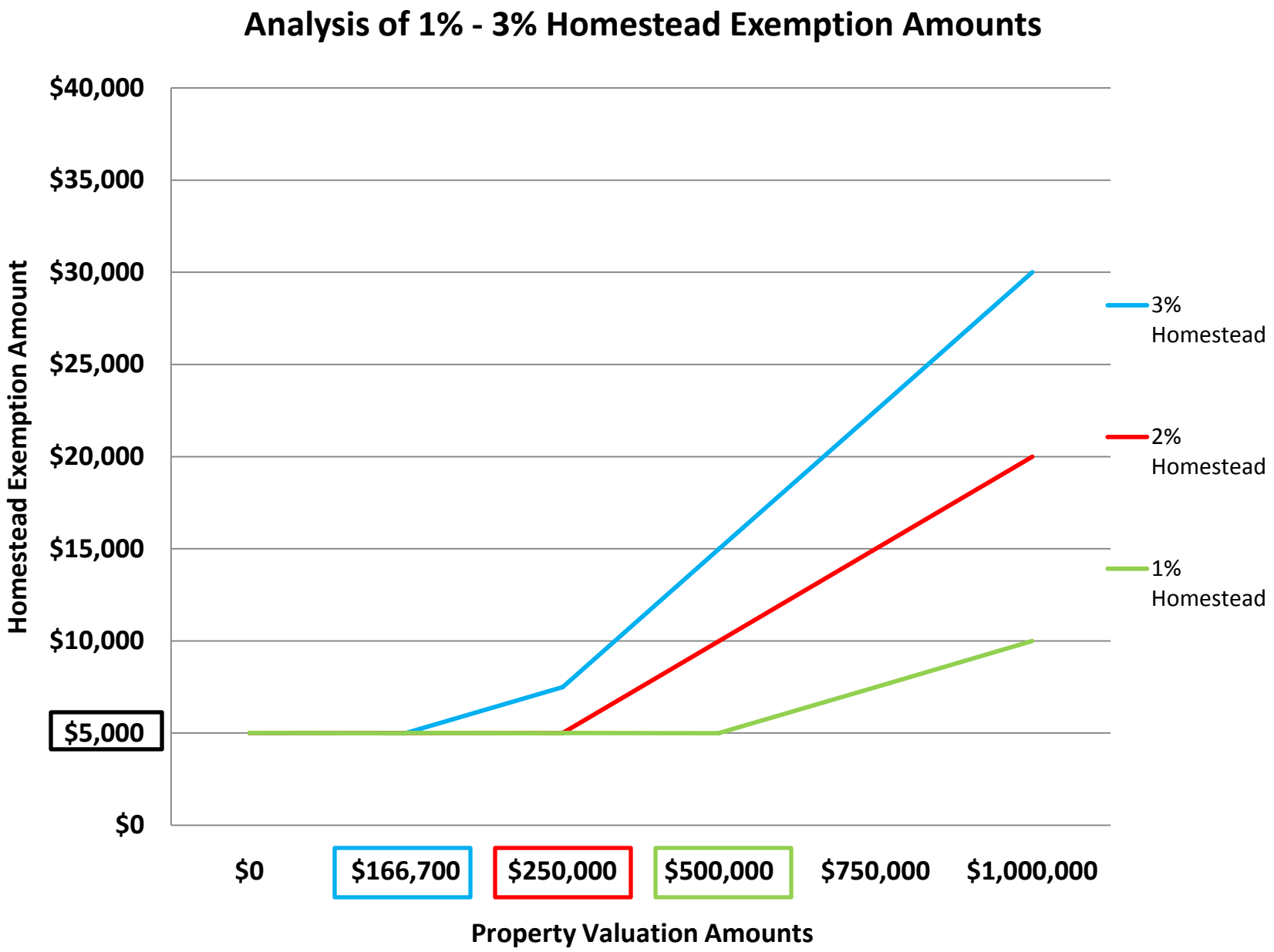
Financial Impact on Five-Year Plan of a Homestead Exemption

Presentation Date: April 27, 2011

Homestead Exemption

- Board Workshop
  - Implement a 3% homestead exemption for 2011 property tax year (2012 budget year) and maintain throughout the five-year plan

- Tonight
  - 1% exemption for 2011 property tax year (2012 budget)
  - Increase to 2% for 2012 property tax year (2013 budget)
  - Increase to 3% for 2013 and 2014 property tax years (2014/2015 budget)


Analysis of 1% - 3% Homestead Exemption Amounts
Homestead Exemption Amount
$40,000
$35,000
$30,000
$25,000
$20,000
$15,000
$10,000
$5,000
$0
$0
$166,700
$250,000
$500,000
$750,000
$1,000,000
Property Valuation Amounts
3% Homestead
2% Homestead
1% Homestead

Homestead Exemption

Impact on 2011 Property Tax (2012 Budget)

	1%	2%	3%
Total residential property value exempt from taxation	$135.8 m	$188.9 m	$247.1 m
Total commercial property value exempt from taxation	$0	$0	$0
Total reduction in property tax revenue	$437,900	$618,500	$796,700
Property tax rate equivalent (based on current values and rate)	$0.0036	$0.0052	$0.0066
Annual reduction in property tax expense on an average home value of $300,000	$16.00	$20.00	$29.00

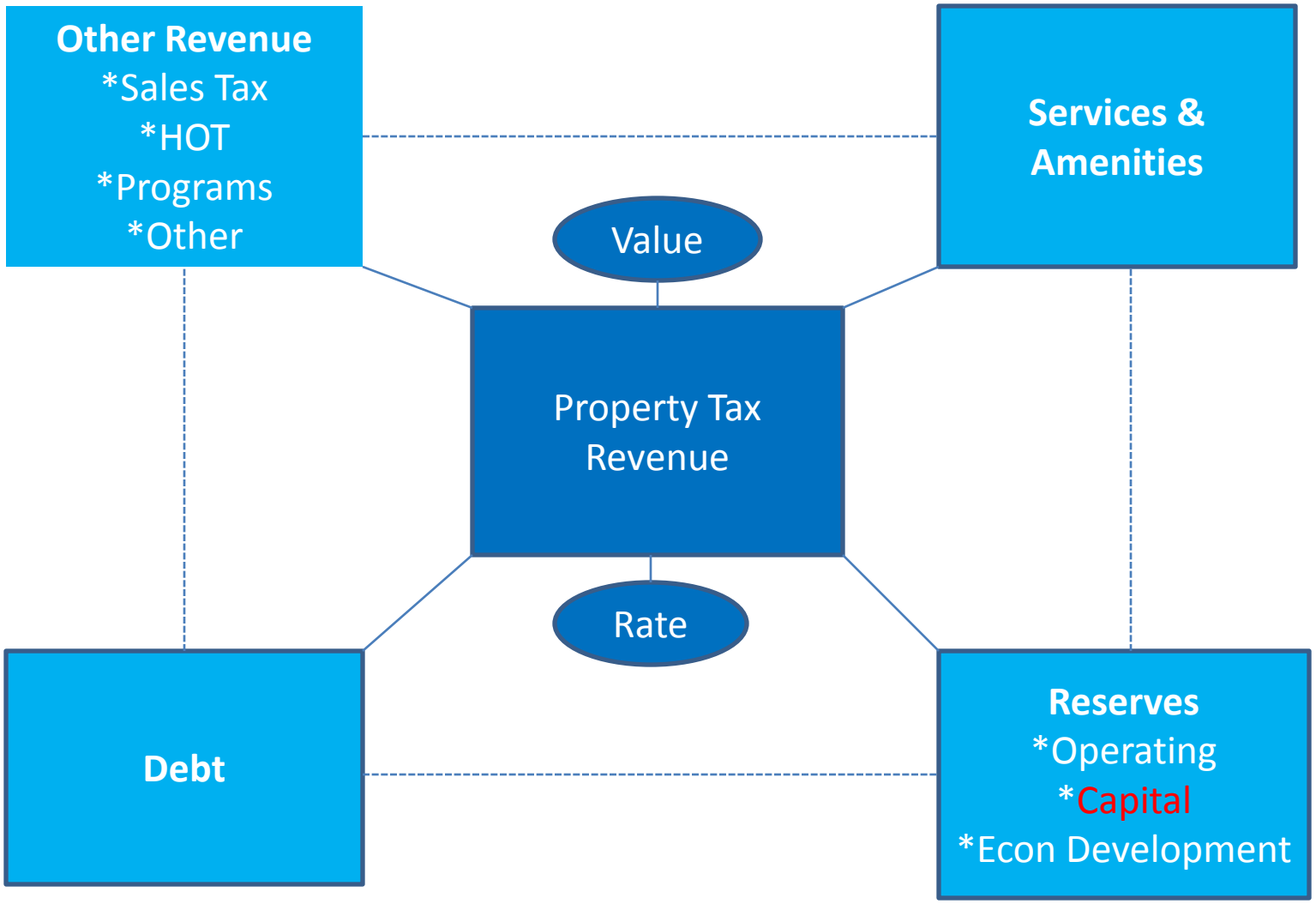
Five-Year Plan Assumptions

		2012	2013	2014	2015
Revaluation of Existing Homes		Preliminary	3.75%	3.75%	3.75%
Sales Tax Growth		4.0%	4.0%	4.0%	4.0%
HOT Tax Growth		1%	2%	3%	3%
Supplemental HOT		$500,000+1%	2%	3%	3%
Event Admissions Tax		2%	2%	2%	2%
Expiring Abatements		$22,128,000	$26,386,130	$13,796,310	0
Inflation		4%	4%	4%	4%
Property Tax Rate		$.3274	$.3274	$.3274	$.3274

What is not included in the five-year plan?

- Impact of decisions from upcoming June 23rd Board Budget Planning meeting
- Impact of decisions from Parks and Recreation Study currently under way
- Impact of decisions from Law Enforcement Study currently under way
- Impact of decisions from Reserve Study currently under way
- Impact of decisions from upcoming budget workshops
- Impact of potential changes in governance structure

Impact on Balanced Budget



The Woodlands Township
Consolidated Budget
2011 - 2015 Cost Analysis - Current

	2011	2012	2013	2014	2015
Revenue	80,628,013	84,177,183	88,239,082	92,438,675	96,275,669
Operating Expense	(66,831,346)	(70,506,909)	(74,539,241)	(78,585,423)	(82,767,902)
Debt Service	(7,796,632)	(8,915,155)	(9,573,984)	(9,546,394)	(9,526,220)
Subtotal	**6,000,035**	**4,755,119**	**4,125,857**	**4,306,859**	**3,981,547**
Bond Proceeds	0	12,195,000	0	0	0
Capital Expense	(17,680,493)	(16,037,068)	(7,877,153)	(5,833,961)	(7,118,107)
Revenue Over/(Under) Expenditures	**(11,680,458)**	**913,051**	**(3,751,295)**	**(1,527,102)**	**(3,136,560)**

The Woodlands Township
Consolidated Budget
2011 - 2015 Ending Fund Balance - Current

	2011	2012	2013	2014	2015
Operating Reserve	16,125,603	16,835,437	17,647,816	18,487,735	19,255,134
Health Insurance Reserve	800,000	800,000	800,000	800,000	800,000
Capital Carryover	3,155,989	3,860,489	1,540,489		
Capital Reserve	**8,733,912**	**8,797,375**	**7,125,671**	**6,869,547**	**3,534,406**
Economic Development Reserve	2,598,711	2,683,965	2,761,995	2,841,586	2,922,768
Debt Service Reserve	3,178,310	3,178,310	3,178,310	3,178,310	3,178,310
Debt Service	3,431,375	2,781,375	2,131,375	1,481,375	831,375
CVB	250,000	250,000	250,000	250,000	250,000
Total Ending Fund Balance	**38,273,900**	**39,186,951**	**35,435,656**	**33,908,553**	**30,771,993**

The Woodlands Township
Consolidated Budget
2011 - 2015 Ending Fund Balance with 1% 2% 3% Homestead

	2011	2012 (1%)	2013 (2%)	2014 (3%)	2015 (3%)
Operating Reserve	16,125,603	16,747,854	17,524,712	18,307,350	19,062,603
Health Insurance Reserve	800,000	800,000	800,000	800,000	800,000
Capital Carryover	3,155,989	3,860,489	1,540,489		
Capital Reserve	**8,733,912**	**8,459,085**	**6,211,948**	**5,117,826**	**839,177**
Economic Development Reserve	2,598,711	2,675,211	2,753,241	2,832,832	2,914,014
Debt Service Reserve	3,178,310	3,178,310	3,178,310	3,178,310	3,178,310
Debt Service	3,431,375	2,781,375	2,131,375	1,481,375	831,375
CVB	250,000	250,000	250,000	250,000	250,000
Total Ending Fund Balance	**38,273,900**	**38,752,324**	**34,390,075**	**31,967,693**	**27,875,478**

Revenue Comparison

	2011	2012	2013	2014	2015	Total
No Homestead Exemption	**80,628,013**	**84,177,183**	**88,239,082**	**92,438,675**	**96,275,669**	
3% Homestead Exemption	**80,628,013**	**83,380,471**	**87,386,567**	**91,527,877**	**95,304,010**	
Change	**0**	**(796,712)**	**(870,515)**	**(910,798)**	**(971,659)**	**(3,549,684)**

	2011	2012	2013	2014	2015	Total
No Homestead Exemption	**80,628,013**	**84,177,183**	**88,239,082**	**92,438,675**	**96,275,669**	
1% - 3% Homestead Exemption	**80,628,013**	**83,739,271**	**87,623,561**	**91,536,748**	**95,313,013**	
Change	**0**	**(437,912)**	**(615,521)**	**(901,927)**	**(962,656)**	**(2,918,016)**

Capital Reserve Comparison

	2011	2012	2013	2014	2015
No Homestead Exemption	**8,733,912**	**8,797,375**	**7,125,671**	**6,869,547**	**3,534,406**
1% - 3% Homestead Exemption	**8,733,912**	**8,459,085**	**6,211,948**	**5,117,826**	**839,177**
3% Homestead Exemption	**8,733,912**	**8,174,735**	**5,667,980**	**4,519,363**	**231,737**

Capital Reserves

- Purpose is to designate (Reserve) specific funds to pay for the replacement of capital that has reached the end of its useful life
- Allows for the steady and planned accumulation of resources to pay for the replacement of assets identified in The Township's reserve study
- Property owners who benefit from the assets contribute annually to their replacement cost
- Significantly reduces the need to finance replacement capital or have to fund with current year tax revenue

Capital Reserves

- Township currently owns assets with a net book value totaling approximately $155 million
- Assets for which capital reserves should be established:
  - Amenities in over 120 parks
  - Sports fields
  - 13 swimming pools
  - 185 miles of pathway
  - Waterway
  - 8 Fire Stations
  - Fire apparatus and equipment
  - Office Building
  - Parks and Recreation Building
  - Recreation Center
  - Emergency Training Center
  - Parking garage
  - Sports fields

Decision Points

- Authorize homestead exemption for 2011 tax year by 6/30/11 deadline

OR

- Defer decision regarding homestead exemption until the 2012 Budget process in July/August. This will allow the Board to:
  - Complete strategic planning meeting on June 23rd
  - Receive results from the Parks and Recreation Study
  - Receive results from the Law Enforcement Study
  - Receive results from the Reserve Study
  - Complete detailed review of the 2012 budget and five-year plan
  - Exemption would apply to the 2012 tax year

THE WOODLANDS TOWNSHIP

The Woodlands, TX

EXECUTIVE SUMMARY

MEETING DATE: April 27, 2011

SUBJECT MATTER: Estimated Facility Renovation Costs - 9012 New Trails

FACTS/HISTORY:

The final design phase for The Woodlands Township's office facility at 9012 New Trails is nearly complete. The Township retained the Kirksey Architecture for building design services and the PalermoBarr Firm for project management. Since January, these professional firms and staff have been working together to finalize the facility plans and develop the bid documents. On April 27th, the Township Board will consider authorizing staff to proceed with solicitation of construction bids. The final bid proposals are expected to be presented to the Board for consideration on May 25th.

To assure that the design proposals are within budget estimates, Mr. Palermo has worked with area contractors to develop an order of magnitude pricing for the proposed project. All of the renovation project areas have been extensively evaluated as part of this bid development process. Attached for your consideration is a summary financial report – *(Schedule A) Proposed Source and Use of Funds - 9012 New Trails Project*.

- ✓ **Renovation of Building:** This portion of the project includes the physical remodeling of the structure. The renovation of the building includes approximately 55,000 square feet of office space (the total building size is 68,800 sf). The project provides for the consolidation of three Township-leased office facilities along with the relocation of the Parks administrative and customer service operations into the 9012 New Trails office. Also included in the plan is a dedicated Board meeting room with seating for approximately 140, along with a number of meeting rooms and conference rooms that can be utilized by community groups.

- ✓ **Technology, Audio Visual (AV) Equipment, Information Technology (IT) Cabling:** The proposed financing plan includes AV equipment, IT equipment and IT cabling. The plan includes the outfitting of the Board Chambers and adjacent community conference facilities with AV equipment. This estimated cost also includes the rewiring of the building for IT needs and placement of security cameras on the exterior of the building.

- ✓ **Furniture and Miscellaneous:** An extensive collection of modular furniture was acquired as part of the building purchase. This modular furniture will be renovated and placed in service throughout the open office areas of the building. It will be necessary to acquire various new furniture pieces, however, most of the emphasis will be on the reuse of existing

furniture. For example, many of the existing chairs will be covered with new fabric and utilized throughout the office areas. Modular office cubicles will receive a fabric update and existing tables will receive new lamination and be reused at the facility. Some of the desks and furniture currently used at the three leased facilities will be moved and used in various office locations. The cost of renovating existing modular furniture and existing office furniture has been included in the estimated costs. A limited amount of new furniture purchases (primarily for common entry areas) has been included in the proposal. The estimated cost to move the three existing office locations into the 9012 facility has also been included. Other site improvement costs to enhance the site access, place monument signage and make exterior directional signage improvements have also been included in the estimate.

- ✓ **Contingency:** A contingency allowance of approximately 5% of the project cost is included in the estimated costs.

Attached for your review is a summary of the sources and uses of funds for this project (Schedule A). As you will note from the summary, most of the project financing will come from bond funding (2010 bond issue). The Township also budgeted capital funds in the 2011 budget to pay for other leasehold improvement, including IT costs, audio visual, furniture rehab and some of the soft costs associated with the project. Staff is also proposing that $100,000 of the existing 2011 General Fund contingency be used to support project costs.

The attached – *(Schedule B) Items Not Included in The Proposed Renovation Plan* - provides a list of projects components that are not included in the proposed 9012 New Trails building renovation plan at this time. These projects could possibly be funded at a later date but have not been included in the current funding estimates.

RECOMMENDED BOARD ACTION:

Authorize staff to proceed with the solicitation of bids in conjunction with the renovation of the 9012 New Trails Office facility.

Schedule A

Proposed Source and Use of Funds - 9012 New Trails Project

Source of Funds - 2011 Budget		
- Bond Proceeds	$	2,410,380
- IT / Leasehold Improvements		900,000
- Moving Costs		70,000
- Contingency funding		100,000
Total Source of funds	$	3,480,380
Use of Funds		
- General Contract / carpet, electrical, plumbing, carpentry, ect	$	2,329,134
- Design Costs / Architect / MEP / LEED		156,665
- IT Cabling		112,118
- AV Equipment		285,000
- Furniture Rehab / new		224,926
- Misc / moving / signage / curb cut		77,000
- Contingency (5%)		144,471
- Construction Mgt		151,066
	$	3,480,380

Items Not Included in Proposal

- EOC Construction / Back up Generator
- Carpet in Expansion area
- Replace Transformers

Schedule B

Items Not Included In The Proposed Renovation Plan

The estimated project financing did not include enough financial capacity to fund all of the desired project components. A number of improvements are not included in the proposed scope and are recommended to be considered at a later date. These improvements can be built as part of the Central Fire Station project or budgeted in future years by the Township.

Emergency Operations Center: Staff considered the possibility of locating the Fire Dispatch and Emergency Operations Center within the 9012 New Trails Office Facility. This project was not part of the original building remodeling plan but was considered in lieu of building this space into the new Central Fire Station. Locating the Fire Dispatch Center at 9012 New Trails site would have required the construction of a

communications tower on the site in excess of 145 feet in height. Because of certain site limitations, the placement of a communications tower at this site does not appear feasible. Staff then evaluated placing the Emergency Operations Center (EOC) at this site. The proposed EOC requires a "storm-hardened" facility where the Township and Emergency Service providers can direct and manage emergency operations during community emergency events. The "hardening" of this EOC area at the 9012 New Trails location would require the construction of internal masonry walls, flooring and the placement of movable storm shutters to cover all outside window areas. When we evaluated these potential costs against the cost of using mostly existing meeting rooms at the "new" Central Fire Station to provide our EOC needs (all of Central Fire Station will be hardened and will have back up generator power) building out an EOC at the Township office facility appears to be a more costly alternative. The WFD staff recommends that fire dispatch and the EOC be located at the "new" Central Fire Station.

Upgrade of Emergency Generator: The 9012 New Trails building has an existing 100 kv generator that will be maintained under this renovation project. This generator has the capacity to maintain IT functions during an emergency event but does not have the capacity to provide energy needs for some of the support staff service areas. Upgrading to a 200 kv generator is estimated to cost approximately $150,000. The 200 kv generator would have the capacity to maintain IT functions and provide additional power capacity to the 9012 New Trails facility during emergency events.

This project will be bid as an add alternative as part of this bid process. If funding is not available, the project could be budgeted in 2012 or later.

Placement of New Carpet in Expansion Area: The bid specifications include new carpet and flooring in the 55,000 square foot office and meeting room build out area. New carpet installation is not included in the future build out area. This can be purchased and installed at a later date when a build out of the excess office space is desired and necessary. The only concern is that the carpet used in the other portion of the building may not be available at a future date.

Replacement of Transformers: The engineers have proposed the replacement of all transformers presently used in the building's electrical system. Although the current transformers are in good working order, the recommendation is based on efficiency. The replacement of the transformers is projected to have a three year payback in terms of electrical cost savings. The cost to replace the transformers is approximately $75,000 and this cost can be included as a future budget item in 2012 or later.

THE WOODLANDS TOWNSHIP

The Woodlands, TX

EXECUTIVE SUMMARY

MEETING DATE: April 21, 2011

SUBJECT MATTER: Veterans' Memorial Construction and Donation Agreement

BUDGET IMPACT: No funds are requested for the development of the Memorial. The agreement provides for $50,000 to be provided to the Township for a perpetual care fund.

FACTS/HISTORY: A proposal to erect a Veterans Memorial Sculpture titled "The Way Home" in Town Green Park was presented to the Board in October of 2010. The Greater Woodlands Public Art Foundation (GWPAF) has been created to advance the project and an agreement for the construction and donation of the project has been prepared – attached.

The agreement defines the timing of the project and milestones for plans and financial assurances. It also provides that the GWPAF make a one-time payment of $50,000 for ongoing maintenance. In the event GWPAF fails to meet the deadlines specified in the agreement, the Township has the right to terminate.

RECOMMENDED BOARD ACTION: It is recommended to approve the agreement and authorize the President/General Manager to execute the agreement.

TOWN GREEN PARK
VETERAN'S MEMORIAL CONSTRUCTION AND DONATION AGREEMENT

This Veteran's Memorial Construction and Donation Agreement is dated this ___ day of April, 2011, by and between Greater Woodlands Public Art Foundation The Way Home Project, a non-profit organization ("Donor") and THE WOODLAND TOWNSHIP, a political subdivision of the State of Texas, duly created and operating pursuant to Chapter 289, Acts of the 73rd Texas Legislature, Regular Session, 1993, as amended ("Donee"). (Donor and Donee are collectively referred to as the "Parties").

RECITALS

WHEREAS, Donor wishes to donate to the Donee, and permanently place on Donee's property, the sculpture created by Edd Hayes know as "The Way Home" sculpture, such sculpture to measure approximately 14 ft in height, 5 ft in width and 10 ft in depth, a depiction of the sculpture being attached hereto as Exhibit "A" (the "Sculpture"); and

WHEREAS, Donor wishes to construct a permanent placement location for the Sculpture in an area that is approximately 800 square feet in the north east corner of Town Green Park as shown on Exhibit "B" hereto in order to honor those who have served from all branches of the Armed Forces of the United States, Town Green Park being owned by Donee (the "Sculpture Placement Area");

WHEREAS, Donee wishes to accept the donation of the Sculpture and provide for the placement of the Sculpture and the construction and maintenance of the Sculpture Placement Area, on terms and conditions as provided in this Agreement;

NOW THEREFORE, for and in consideration of the mutual covenants, benefits and agreements hereinafter set forth, the parties contract and agree as follows:

TERMS

ARTICLE I: GENERAL

1.1 Timing: Donor and Donee agree to the following deadlines for performance under this Agreement:

a. Groundbreaking – Donor shall hold a formal groundbreaking at the Sculpture Placement Area on Memorial Day 2012;
b. Evidence of Adequate Plans and Financial Assurance – On or prior to July 31, 2012, and prior to construction commencing, Donor shall provide to Donee each of the following:
    i. Construction Costs – Evidence of Donor having a written construction contract with a general contractor approved by the Donee (the "General Contractor") and Donee having enough cash in hand to pay the entire amount due the General Contractor upon completion all the required

construction within the Sculpture Placement Area in accordance with the Plans and Specifications (as defined below).

ii. Plans and Specifications – Detailed plans and specifications for all construction within the Sculpture Placement Area shall be provided to the Donee for approval prior to commencing any work (the "Plans and Specifications").

iii. Payment For Ongoing Maintenance – A one-time cash payment from the Donor to the Donee in the amount of $50,000 in full and final consideration for ongoing maintenance of the Sculpture and the Sculpture Placement Area by Donee following donation of such items to the Donee (the "Ongoing Maintenance Payment").

c. Finalization of Construction and Donation – On or prior to November 11, 2012, the Donor shall deliver to Donee such written documentation as determined by Donee to be adequate for evidencing the donation the Sculpture and the improvements locations with the Sculpture Placement Area to the Donee, and further providing Donor having waived any and all ongoing property rights to the Sculpture and improvements in the Sculpture Placement Area (the "Donation Date"). The only ongoing obligation following the Donation Date on the part of Donee shall be to maintain the Sculpture and improvements in the Sculpture Placement Area in the same manner in which the Donee maintains like improvements elsewhere within Town Green Park. Following the Donation Date, the Donor shall have no ongoing rights other than those of the general public with regard to the Sculpture and/or the Sculpture Placement Area.

1.2 Failure to Meet Deadlines: In the event that Donor fails to provide any of the dates for delivery of the items outlined above in Section 1.1 above when required, the Donee shall have the right to immediately terminate this Agreement, require that Donor immediately cease all activity in any manner associated with this Agreement and that Donor immediately return the Sculpture Placement Area to the condition it was in prior to commencement of this Agreement (unless otherwise directed by the Donee to deliver the area differently, provided that the cost thereof shall not exceed the reasonable cost of returning the area to its prior condition). In the event of the failure of Donor to restore the area to the condition directed by Donee within thirty (30) days of written demand to do so, Donor shall have the right to use all or any portion of the Ongoing Maintenance Payment to perform such work on behalf of Donor, and refund the remainder (if any) of such payment to Donor. Upon termination of this Agreement pursuant to this Section 1.2, Donor's rights under this Agreement shall immediately cease with regard to the Sculpture Placement Area.

ARTICLE II: DONOR'S OBLIGATIONS AND REPRESENTATIONS

2.1 Construction, Permits and Approval: Donor shall be solely responsible for the cost and expense of all construction in the Sculpture Placement Area in accordance with the Plans and Specifications and for all action required to obtain, at its sole cost and expense, any and all permits, licenses and approvals required in order to complete the work to be performed under this Agreement.

2.2 Donor's Representations and Warranties: Donor represents and warrants to

Donee that: a) it is familiar with the nature and extent of the Agreement, the locality, with all local conditions and federal, state and local laws, rules and regulations including, but not limited to all rules, regulations and the restrictive covenants governing the land within the jurisdiction of The Woodlands Township, that in any manner affect the cost, progress or performance of the work hereunder; b) that it has the right and capacity to enter into this Agreement and fully perform all of its obligations hereunder; c) that it shall use all commercially reasonable efforts to perform the obligations hereunder; d) that all obligations produced shall be fit for their intended purpose and of industry standard quality and workmanship; e) that no liens shall be attached to the Donee's property as a result of the work to be performed under this Agreement; and f) that Donor has procured all rights to the Sculpture and its public display into perpetuity.

ARTICLE III: ACCESS, CONTRACTING AND ASSIGNMENT

3.1 Access. Donor is hereby granted reasonable access to the Sculpture Placement Area and that portion of Town Green Park as is reasonably required in order to complete the work within the Sculpture Placement Area in accordance with the Plans and Specifications. Donor and its contractors shall take all reasonable and necessary steps to minimize the impact on the use of, and any damage to, the remainder of the park, and shall be required to pay immediately to the Donee any and all costs to remedy of any damage to any property within the park damaged as a result of construction activities. Donor shall secure the construction area at all times during construction in a manner to assure the health and safety of the park and persons using the park.

3.2 Contractors: Donor shall obtain the prior approval of Donee, in writing, of any and all contractors planned to be used by Donor in constructing the improvements under this Agreement and shall not use any contractor or other person without the prior written consent of Donee. Additionally, Donor shall be fully responsible for all acts and omissions of its contractors, and of all persons directly or indirectly employed by them. Nothing in this Agreement shall create any contractual relationship between Donee and any subcontractor of Donor.

3.3 Assignment: Donee may assign this Agreement in part or in whole, including all rights and obligations, at its sole discretion and without prior consent from Donor. Upon any such assignment by Donee, this Agreement shall remain a valid and enforceable agreement and the original terms and conditions contained herein, or any properly amended terms and conditions shall remain valid and enforceable. Donor shall not assign this Agreement, in whole or in part, without the prior written consent of Donee, which consent shall be provided or withheld as determined is Donee's sole discretion.

ARTICLE IV: INDEMNIFICATION

4.1 Release, Defense, and Indemnity: Donee and its agents, contractors, employees, directors, officers, attorneys, successors and assigns (the "Donee Parties") shall not be liable for, and Donor, agrees to release, protect, indemnify, and hold harmless Donee and Donee Parties from and against any and all claims (including claims or third parties and claims of spouses,

heirs, survivors or legal representatives successors and assigns of Donor for personal injury, illness, death, property (whether real or personal, owned or leased) damage), loss, reasonable attorneys' fees and court costs, out of pocket expenses, damages (including compensatory and punitive damages) and liabilities arising out of or resulting from Donor's performance (or lack thereof) under this Agreement, Donor's negligence, willful misconduct or intentional acts, and/or Donor's failure to discharge their obligations under this Agreement **EVEN IF THE CLAIMS ARE CONTRIBUTED TO OR CAUSED BY THE JOINT, COMPARATIVE, CONCURRENT, ACTIVE OR PASSIVE NEGLIGENCE OF ANY MEMBERS OF DONEE.** The release, protection, defense, indemnity and hold harmless obligations assumed by Donor and the limitations afforded Donee in this paragraph include any liability for employment discrimination, medical, compensation, or other benefits owed employees of Donor or Donor's contactors as a result of the direct employment relationship of such individuals even if such individuals are determined to be borrowed or statutory employee of any member(s) of Donee. The indemnities in the preceding paragraph shall only be effective to the maximum extent permitted by the applicable law, either legislative enactment or a controlling judicial decision. If such existing or future law limits in any way the extent to which indemnification may be provided to an indemnity that is negligent, solely negligent, or otherwise at fault and, notwithstanding the choice of law provisions set forth herein, such law is applicable to interpretation of this Agreement, then this Agreement shall automatically be amended to provide that the indemnification provided hereunder shall extend only to the maximum extent permitted by such law. For purposes of this Article IV, the phrase "arising from or resulting from the performance of this Agreement" shall be broadly construed to include, but not be limited to, not only formal work, but also any occurrences at the work site, including transportation to and from the work (other than personal or public transportation to the work site, breaks of all kinds, including, without limitation, breaks for meals and/or rest, horseplay of all kinds, or volunteering of all kinds to assist others in their work). **THIS indemnification provision shall survive the expiration or termination of this agreement.**

4.2 Limitation on Damages: Donor agrees that Donee shall not be responsible for and specifically agrees to release, indemnify, and hold harmless Donee, its directors, employees, and agents from any and all liability for direct, special, incidental, consequential, punitive or exemplary damages suffered by any members of Donor.

ARTICLE V: INSURANCE

5.1 Insurance Coverage: Prior to commencing the work provided for under this Agreement, Donor, or Donor's general contractor, shall obtain and maintain during the term of this Agreement insurance coverages in accordance with the requirements specified in Exhibit "C" attached hereto and incorporated by reference. Donor shall provide Donee a copy of the declarations page from all such policies required under this Agreement within thirty (30) days of the Effective Date hereof.

5.2 Insurance Endorsements and Provisions: Prior to commencing the work provided for under this Agreement, Donor shall obtain a waiver of subrogation from its insurers on the policies required herein in favor of Donee. Furthermore, all such insurance coverage required under this Agreement shall:

(a) Have such policies contain or be endorsed to contain a severability of interest provision so that each insured shall be treated separately under the policy so that the insurer may not deny enforcement based on the conduct or omission of another insured; provided, however, this provision shall not cause any insurer or underwriter to pay more than the limits of the insurance coverage provided;

(b) Be primary over any insurance coverage maintained by Donee;

(c) Be maintained in full force and effect during the term of this Agreement; and

(d) Contain provisions stating that such policies may not be materially changed or cancelled without thirty (30) days prior written notice having first been furnished to Donee.

5.3 Certificate of Insurance: Donor agrees that prior to commencing the work under this Agreement; it shall have its insurance carrier furnish Donee a certificate or certificates evidencing insurance coverage in accordance to the requirements identified in Exhibit "C". Acceptance by Donee of a certificate or certificates if insurance showing coverage not in compliance with the insurance requirements of this Agreement shall not relieve Donor from its obligations under this Agreement.

5.4 Severability: If any part of this article contravenes any applicable statutes, regulations, rules, or common law requirements, then, to the extent and only to the extent of such contravention, such part shall be severed from this Article and deemed non-binding while all other parts of this Article shall remain binding.

ARTICLE VI: GENERAL PROVISIONS

6.1 Force Majeure: The obligations of Donee under this Agreement shall be excused in whole or in part, as necessitated based on the circumstances, by acts of God such as fires, storms, rain, cold, water quality or conditions, lightening, or floods; confiscations or restraints of government (civil or military, including but not limited to inability to have access to roads or pathways); strikes or labor disputes; civil disturbance; or any other cause or combination thereof that is not within the reasonable control of Donee, and not otherwise due to any negligence or willful misconduct by Donee (a "Force Majeure").

6.2 Waiver: Except as provided for specifically herein, no delay or omission by any party hereto to exercise any right or power hereunder shall impair such right or power or be construed to be a waiver thereof. Waiver of any breach of any provision of this Agreement shall not constitute or operate as a waiver of any other breach of such provision or of any other provision, unless such a waiver is expressly executed by all parties in writing.

6.3 Severability: If any part of this Agreement contravenes any applicable statutes, regulation, rules or common law requirement, then, to the extent and only to the extent of such contravention, such part shall be severed from this Agreement and deemed non-binding while all other parts of this Agreement shall remain binding, so long as the material purposes of this Agreement can be determined and effectuated.

6.4 Independent Contractor: The parties agree that Donor is an independent contractor with regard to all services provided under this Agreement. Therefore, Donor shall not have the authority to incur or assume any debt, obligation, expense, or liability against Donee. Furthermore, no party shall hold itself out as an employee or agent of the other party. No party has any authority to enter into any contract on behalf of the other, except as expressly provided herein.

6.5 Governing Law and Venue: This Agreement shall be governed by, construed, and enforced in accordance with the laws of the State of Texas. The Agreement is performable in Montgomery County, Texas, and the Parties agree that venue for any legal dispute under the Agreement shall be Montgomery County, Texas. Any Party, who is the prevailing party in any legal proceeding brought under or in relation to The Agreement shall be entitled to recover court costs and reasonable attorneys' fees from the non-prevailing party.

6.6 Miscellaneous: All of Donor's rights are subject to any federal, state, and local laws and ordinances applicable to and during the Event. Donee and Donor agree to comply with all such laws and ordinances.

6.7 Entirety of Agreement: This Agreement and any Exhibits attached hereto contain the entire understanding between the Parties and supersede any prior understanding or written or oral agreements between them respecting this subject matter. There are no representations, agreements, or understandings, oral or written, between the parties relating to the subject matter of this Agreement not fully expressed in this Agreement. Any modification or Amendment to this Agreement must be in writing and executed by all Parties.

6.8 Continuing the Work: Donor shall carry on and maintain the performance of the the Work during all disputes or disagreements with Donee, except upon default by Donee hereunder. Donor shall not delay construction pending resolution of any disputes or disagreements, except as the Parties may otherwise agree in writing.

6.9 Provisions Surviving Termination: In the event of Termination of this Agreement, the terms and conditions, if any, which expressly survive termination of this Agreement and those dealing with warranty, indemnities, audit, confidentiality, insurance, arbitration, disclaimer of consequential damages and any limitation of liability, shall survive termination and remain in full force and effect.

6.10 Signatures: This Agreement may be signed in any number of counterparts with the same effect as if the signatures thereon were upon the same instrument.

6.11 Section Headings: Section Headings-are for reference purposes only and shall not affect the interpretation or meaning of this Agreement.

6.12 Singular and Plural: Reference to the singular includes reference to the plural and vice versa.

6.13 Notices: All notifications, requests, demands and other communications required or

authorized by this Agreement shall be in writing and shall be (a) delivered personally, (b) mailed by registered or certified mail , return receipt requested, (c) sent by facsimile, or (d) sent by email transmission, under this Agreement. If sent by mail, notifications must be sent to:

If to Donee:

10001 Woodloch Forest Dr., Suite 600
The Woodlands, TX 77381
FAX (281) 210-3499
Attn: Community Services

If to Donor:

Greater Woodlands Public Art Foundation
The Way Home Project
c/o Bill Wingo
11173 Cox Rd.
Conroe, TX 77385

SIGNED AND AGREED TO this ___ day of _____, 2011.

DONOR	**DONEE**
_____	**THE WOODLANDS TOWNSHIP**
_____	_____
Signature	Signature
_____	_____
Print Name	Print Name
_____	_____
Title	Title
_____	_____
Date	Date

Approved as to form only:
THE STRONG FIRM P.C.

By: _____
Bret L. Strong

Exhibit "A" – Sculpture
Exhibit "B" – Sculpture Placement Area
Exhibit "C" – Insurance Requirements

EXHIBIT “A”
SCULPTURE

EXHIBIT "B"
SCULPHURE PLACEMENT AREA

EXHIBIT "C"
INSURANCE REQUIREMENTS

Donor shall maintain and require its subcontractors to maintain at all times during the contract Term the following coverage at no less than the limits indicated:

Worker's Compensation Insurance	Statutory
Employers Liability	$100,000

Automobile Liability (Including Owned and Non-Owned autos)

Bodily Injury	$250,000 each person
	$500,000 each occurrence
Property Damage	$100,000 each occurrence

Commercial General Liability

Combined Single Limits for Bodily Injury and Property Damage:

Each occurrence for premises/operations:

Broad form CGL liability coverage	$1,000,000
Products/ Operations aggregate	$1,000,000
Advertising Injury	$1,000,000
General Aggregate	$2,000,000

Umbrella Liability	$1,000,000 each occurrence
	$1,000,000 annual aggregate
	$ 25,000 self insured retention

General Public Liability Insurance

Coverage of no less than $5,000,000 in respect of its operations and duties concerning the Waterway

Property Insurance

Coverage of at least to the same extent that similar insurance is normally and customarily carried by other political subdivisions in Texas for similar properties and improvements, and for such additional amounts and coverages as may from time to time be reasonably deemed advisable by Donee or The Woodlands Land Development Company, L.P. and The Woodlands Operating Company, L.P.

The General Public Liability Insurance and Property Insurance required herein shall:

(a) Be issued by an insurer admitted to engage in the business of insurance in the State of Texas and having a "General Liability Policy Rating" of "A-VIII" or better, as set forth in the most current issue of the Best Key Rating Guide;
(b) Name The Woodlands Land Development Company, L.P., and The Woodlands Operating Company, L.P. or subsequent Owner as additional insureds;
(c) Include a waiver of subrogation in favor of The Woodlands Land Development Company, L.P., and The Woodlands Operating Company, L.P. or subsequent Owner;

(d) Provide a primary/excess coverage declaration, "other insurance" excess provision, or endorsement stating that any coverage maintained by township shall be primary to any policy maintained by The Woodlands Land Development Company, L.P., and The Woodlands Operating Company, L.P. or subsequent Owners.
(e) Include a provision requiring thirty (30) days prior written notice to The Woodlands Development Company in the event of cancellation or material change in coverage Terms; and
(f) In instances where alcohol is being served, obtain appropriate endorsement, if necessary to provide coverage in such events, protecting against liability arising therefrom, if commercially available.

Additionally, Donor's coverage must be written on an Occurrence (not claims made) basis with companies acceptable to Donee (in accordance with (a) above), must stipulate that no take-out endorsements are included on the General Liability policy, and each policy providing coverage hereunder shall contain provisions that no cancellation or material reduction in coverage in the policy shall become effective except upon thirty (30) days prior written notice thereof to Donee, who shall be named as additional insured with respect to liability imposed upon it resulting from the performance of Work under this Agreement. There shall be no right of subrogation against Donee and this waiver of subrogation shall be endorsed upon the policies. Prior to the commencement of performance of the the Work, Donor shall furnish certificates which shall identify Donee, as an additional insured to Donee in duplicate, evidencing compliance with all requirements herein. **The limits of such insurance shall in no way be construed as limiting Donor's obligation to completely defend, indemnify and hold harmless Donee.**

ORDER NO. 010-11

ORDER AMENDING ORDER NO. 014-10 AND ORDER NO. 007-11 IMPOSING AN EVENT ADMISSIONS TAX

WHEREAS, the Board of Directors of The Woodlands Township has heretofore adopted Order No. 014-10, dated as of August 25, 2010, and Order No. 007-11, dated as of February 23, 2011 (collectively, the "Prior Order"), imposing an event admissions tax and containing other terms and provisions related to such event admissions tax; and

WHEREAS, the Board of Directors of The Woodlands Township has determined to amend the Prior Order to include additional definitions, terms and provisions; Now, Therefore,

BE IT ORDERED BY THE BOARD OF DIRECTORS OF THE WOODLANDS TOWNSHIP, THAT:

Section 1: The Prior Order is hereby revised and amended by repealing and replacing Sections 2, 3, 4 and 6 thereof to read as follows:

"Section 2: Definitions; Terms. For purposes of this Order:

A. The terms “cultural education”, “event”, “venue” and “venue user” shall have the meanings assigned by Section 7H of the Act.

B. The term “price of a ticket sold as admission” means the amount which must be paid at a condition to be admitted to an event, including, without limitation:

a. a charge made for season tickets or subscriptions;

b. a charge made for the reservation or guarantee of particular seats, boxes, tables or other similar accommodations;

c. a cover charge, handling fee, convenience charge or charge made for the use of seats, boxes, tables or other similar accommodations; and

d. a charge made for food, refreshments, parking or additional benefits, privileges or accommodations that is not optional and without payment for which admission cannot be gained.

Such term does not include any amount paid for federal, state or local taxes on the price of a ticket sold as admission”

“Section 3: Rate of Tax. Unless and until repealed, increased or decreased by subsequent order of the Board of Directors of the Township, the rate of such Event

Admissions Tax shall be five percent (5%) of the price of a ticket sold as admission to an event held at venue."

"Section 4: Exemptions and Exclusions. The Event Admissions Tax imposed by this order does not apply to complimentary or gratuitous tickets for admission to an event in quantities not to exceed two percent (2%) of the seating capacity for such event, or to an owner, lessee, operator or other user of a venue that is a governmental entity or that presents four (4) or fewer events in a calendar year."

"Section 6: Reports and Payments. A person required to collect the Event Admissions Tax imposed by this Order shall hold such collections in trust for the benefit of the Township and shall pay to the Township within (30) days after the end of each calendar month following the effective date of such Event Admissions Tax, the amount of the Event Admissions Tax collected by such person during the preceding calendar month, without retainage for the costs of collection of same, and at the same time, shall file with the Township a written report, on a form provided by the Township, stating (i) the total number of events presented by such venue user during the preceding calendar month, (ii) the amount of the Event Admissions Tax collected by such person during the preceding calendar month, and (iii) such other information that the Township may reasonably require to be included in such report."

Section 2: Except as amended hereby, all of the terms, provisions and conditions of the Prior Order shall continue in full force and effect.

Section 3: This Order shall be and remain in full force and effect from and after May 1, 2011 and shall apply to all tickets sold as admission to an event from and after such effective date. The Event Admission Tax applicable to tickets sold as admission to an event prior to such effective date shall be governed by the terms of the Prior Order.

PASSED and APPROVED this 27th day of April, 2011.

/s/ Bruce Tough

Chairman, Board of Directors

/s/ Claude Hunter

Secretary, Board of Directors

(SEAL)

THE WOODLANDS TOWNSHIP

The Woodlands, TX

EXECUTIVE SUMMARY

MEETING DATE: April 27, 2011

SUBJECT MATTER: Amendment to Order No. 014-10 imposing an events admission tax

FACTS/HISTORY:
The previous orders adopted by the Board of Directors imposing the Event Admissions Tax required that the tax apply "to the purchase price of a ticket for admission to an event". In discussions with representatives of the Pavilion, there has been a difference in approach on how to apply the tax where there are handling fees, season ticket or premier seating upcharges, or special privileges associated with the ticket. The Pavilion is very sensitive to price increases resulting from simply adding the tax on top of the total sales price and had been to this point collecting the tax on the net ticket price after deducting box office or handling fees charges or markups for other privileges, including season tickets and premier seating upcharges. After considerable research on the application of the event admissions tax by other local governments, we have found that only the Houston Harris County Sports Authority is currently imposing a similar tax in Texas. By telephone, we were advised that it is their practice to apply the tax to the total price paid for admission, including any handling charges, box office fees or similar charges, but excluding any other taxes. They also meet annually with the promoters to set ticket prices in round or whole dollar numbers, inclusive of the tax, for the convenience of patrons. HHCSA declined to send us a copy of their internal guidelines documenting their practices.

We found similar practices in Roanoke, Virginia and in a special district setting in Spokane, Washington. The Spokane ordinance is quite specific is defining the price of admission to include all items that are not optional and are required to be paid in order to gain admission, including food or drink benefits, parking privileges, season ticket upcharges and handling charges. They also meet with the promoters to round off ticket prices. Staff proposes to use the Spokane model where the tax is applied to the total amount paid for admission and all other non-optional privileges and benefits. To put these clarifying changes into effect, staff is proposing to amend the previous orders to add further definitional language on the price of a ticket sold as admission, to correct one minor typographical error, to exempt complimentary tickets from the tax and to clarify that the taxes collected by a venue operator are held in trust for the Township until remitted. The amended order will become effective as to tickets sold on or after May 1, 2011.

RECOMMENDED BOARD ACTION:

Adoption Order No. 010-11 amending the previous orders imposing the event admissions tax.

THE WOODLANDS TOWNSHIP

The Woodlands, TX

EXECUTIVE SUMMARY

MEETING DATE: April 27, 2011

SUBJECT MATTER: Agreement with the Center for the Performing Arts at the Woodlands relating to funding of cultural education events

FACTS/HISTORY:

The Township and the Center for the Performing Arts at The Woodlands entered into a memorandum of understanding on May 29, 2009, supporting legislation to grant the Township a 5% maximum event admissions tax, so long as the proceeds are used to support cultural education events, and expressing the intent of the parties to enter into a 20-year agreement dedicating to the Pavilion 90% of the tax proceeds collected by the Pavilion on all events to support the costs of cultural education events, as defined and permitted in the legislation. By adopting Order No. 010-11, the Board has clearly established the amount and application of the tax, the times for collection and remittance to the Township and the penalties for failure to do so. This leaves for mutual agreement between the Township and the Pavilion the matters of contractually dedicating the 90% portion of the collected tax to the Pavilion to support the costs of cultural education events; when and how often will funds be made available to the Pavilion for such purposes; what periodic reporting and accounting for the funds will be made to the Township; what access to Pavilion records will be made available for verification; what remedies apply in the event of a default; what additional consideration and agreements should be made between the parties; and what provision should be made for termination of the previous MOU. A draft agreement has been prepared for the Board's consideration and action on these subjects. Neither Order 010-11 nor this draft agreement has yet been provided to the Pavilion representatives.

RECOMMENDED BOARD ACTION:

Approve the agreement between the Center for the Performing Arts at The Woodlands and The Woodlands Township relating to funding of cultural education events and authorize the President/General Manager to execute the agreement in substantially the form presented.

DRAFT
04/27/11

AGREEMENT

THE STATE OF TEXAS §

COUNTY OF MONTGOMERY §

THIS AGREEMENT is entered into by and between The Woodlands Township (the "Township"), a political subdivision of the State of Texas, and THE CENTER FOR THE PERFORMING ARTS AT THE WOODLANDS (the "Center"), a Texas non-profit corporation.

RECITALS

WHEREAS, Section 7H of the Township's enabling legislation (the "Act") authorizes the Township to impose an event admissions tax (the "Event Admissions Tax") on the price of admission to certain events in the Township; and

WHEREAS, pursuant to Order No. 014-10, dated as of August 25, 2010, as amended by Order No. 007-11, dated as of February 23, 2011, and Order No. 010-11, dated as of April 27, 2011 (collectively, and together with any subsequent amendments, revisions or additions to same, the "Order"), the Board of Directors of the Township has heretofore imposed the Event Admissions Tax upon and subject to the terms and conditions set forth in the Order; and

WHEREAS, the Center owns and operates the Cynthia Woods Mitchell Pavilion (the "Pavilion") within the Township which presents multiple cultural education events each calendar year, as well as other events, that are subject to the Event Admissions Tax; and

WHEREAS, in anticipation of enactment of the Act, the Township and the Center entered into a Memorandum of Agreement, dated as of May 29, 2009 (the "MOU"), setting forth the intention of the parties to enter into a definitive written agreement, as authorized by the Act, relating to the application of a designated portion of the net proceeds of such Event Admissions Tax to the funding of cultural education events at the Pavilion; and

WHEREAS, the parties have determined to enter into this Agreement for such purposes; Now, therefore,

AGREEMENT

Section 1: With respect to events presented or conducted at the Pavilion, the parties agree that the Event Admissions Tax shall be imposed, applied, collected, reported and remitted at the rate, at the times and upon the terms and conditions set forth in the Order and this Agreement.

Section 2: The parties agree, so long as the Center remains in compliance with the provisions of this Agreement and the Order, that within thirty (30) days after each monthly

remittance to the Township of the Event Admissions Tax by the Center, the Township shall deposit into a special account to be created and maintained by the Center (the "Cultural Education Fund") an amount equal to ninety percent (90%) of the net proceeds of the Event Admissions Tax remitted by the Center to the Township for the preceding monthly reporting period, which shall be used by the Center solely for defraying the costs of operations, maintenance, management, financing, funding development, capital costs, debt service or other actual costs of production, promotion or presentation of cultural education events, as defined in the Order and the Act, at the Pavilion. The remaining net proceeds of such Event Admissions Tax shall be used by the Township, in its sole discretion, for the promotion, funding or support of cultural education events elsewhere in the Township, as required by the Act.

Section 3: Upon request by the Township, but not more frequently than quarterly and not less frequently than annually, the Center shall prepare and furnish to the Township a written accounting for such reporting period, setting forth in reasonable detail the amounts received into the Cultural Education Fund from the Township, including any interest earnings or investment profits thereon, and the amounts expended from such fund for the purposes authorized in Section 2 of this Agreement. Upon request by the Township, the Center shall provide to the Township such additional details, justifications, explanations and supporting invoices or materials as may reasonably be necessary to ascertain compliance with the terms and provisions of this Agreement, the Order and the Act.

Section 4: The Township, or its agents, accounting representatives or auditors, shall have the right, upon reasonable notice to the Center and during normal business hours of the Center, to inspect the books and records of the Center relating to the Cultural Education Fund and to make and retain such copies of materials relating to the use of such fund as may be deemed necessary by the Township. The Center also acknowledges and agrees that the records and accounts of the Center relating to the Cultural Education Fund are deemed to be open to public inspection pursuant to the Texas Open Records Act, Chapter 552, Texas Government Code, and the Center agrees to establish procedures and records retention practices consistent with the Texas Open Records Act so as to facilitate full and timely compliance with same to the same extent as if such records were the records of the Township. Nothing herein shall be deemed or construed to require the Center to disclose or make available to the Township or to the public any other records or accounts of the Center not deemed to be public records under the Texas Open Records Act or the Open Records Decisions of the Texas Attorney General issued thereunder or any final judicial decision relating thereto.

Section 5: If requested to do so, the Township agrees to consult and cooperate with the Center from time to time on establishing ticket prices for Pavilion events that include the applicable Event Admissions Tax in order to facilitate ticket sales at prices with round or whole dollar numbers, so long as a legend is clearly printed on each ticket to the effect that such tax is included in the amount paid for such ticket.

Section 6: In consideration of the financial support for cultural education events provided by the Township to the Center hereunder, the Center agrees that the advertising and promotional materials for each such cultural education event shall contain a tasteful and

appropriate statement or acknowledgement of such financial support for such event by the Township.

Section 7: In any instance of a default or failure of compliance by the Center with the terms and provisions of this Agreement, the Order or the Act which comes to the attention of the Township, notice of such same shall be given in writing by the Township to the Center, and the Center shall have a reasonable time, but not more than thirty (30) days from the date of such notice, to cure such default to the reasonable satisfaction of the Township. Failure to fully and timely cure such default shall be grounds for suspension by the Township of further deposits into the Cultural Education Fund. Failure to fully and timely cure such default within ninety (90) days of the date of such notice shall be grounds for termination of this Agreement by the Township. Upon termination for default by the Center, any remaining amounts on deposit to the credit of the Cultural Education Fund shall be promptly returned by the Center to the Township. The failure of the Township to give notice to the Center of any event of default shall not, by the passage of time, constitute a waiver of such default by the Township, and any waiver by the Township of an event of default by the Center shall not constitute a waiver of any subsequent event of default by the Center.

Section 8: Subject to the provisions of Section 9 hereof, and further subject to early termination hereof pursuant to Section 7 hereof, this Agreement shall be and remain in full force and effect from and after January 1, 2011 until December 31, 2030, unless renewed, extended or modified by mutual written agreement of the parties hereto.

Section 9: The parties acknowledge and agree that a bona fide dispute exists between the parties concerning the proper application of the Event Admissions Tax from January 1, 2011 until April 30, 2011, and that the passage of time has resulted in there being no effective means for the Center to adjust the Event Admissions Tax collections on tickets sold during such period. In order to amicably resolve such dispute, the Township agrees that the amount of Event Admissions Tax proceeds actually collected during such time period by the Center shall be deemed to be correct under the terms of this Agreement, the Order and the Act, and the Center agrees to apply, collect and remit the Event Admissions Tax pursuant to the strict terms and provisions of the Order, as amended by Order No. 010-11 adopted by the Board of Directors of the Township on April 27, 2011, with respect to tickets sold by the Center on and after May 1, 2011.

Section 10: Upon the date of execution of this Agreement, the MOU shall be terminated and of no further force and effect.

IN WITNESS WHEREOF, the parties have entered into this Agreement in multiple counterparts, each of which shall be deemed to be an original, as of the latest date of signature shown below, but effective as January 1, 2011.

THE WOODLANDS TOWNSHIP

By: _____

Title: _____

Date: _____

THE CENTER FOR THE PERFORMING ARTS AT THE WOODLANDS

By: _____

Title: _____

Date: _____

THE WOODLANDS TOWNSHIP

The Woodlands, TX

EXECUTIVE SUMMARY

MEETING DATE: March 21, 2011

SUBJECT MATTER: Consider providing financial or other support to Montgomery County and/or the Lone Star Groundwater Conservation District in opposition to the TexCom Gulf LLC applications for injection well permits in Montgomery County

BUDGET IMPACT: To be determined

FACTS/HISTORY:

On January 26, 2011, the three Commissioners of The Texas Commission on Environmental Quality (TCEQ) reviewed the State Office of Administrative Hearings (SOAH) Administrative Law Judge (ALJ) recommendation to deny the TexCom Gulf, LLC injection well permits and voted, in a 2-1 decision, to issue the five permits sought by the TexCom group for their industrial waste and injection well project in Montgomery County.

The SOAH ALJs concluded after a rehearing directed by the TCEQ on the injection well dispute in November 2008, if TexCom implemented its waste injection program as setout in the five applications for permits, there is no assurance that movement of the injected waste into the underwater aquifers that provide water to the region would not occur. This finding resulted in an ALJ recommendation to the TCEQ that the permits be denied. Upon review of the ALJ recommendation, the TCEQ Commissioners voted to override the ALJ recommendation and issue the permits.

The parties to the January TCEQ hearing were provided a 23 day period after receipt of the TCEQ Order to determine if they would file a Motion for Rehearing of the Commission's decision. The TCEQ written decision was issued to the parties on February 22nd. The period for filing a Motion for Rehearing ended on March 16, 2011. Montgomery County timely filed a Motion For Rehearing with TCEQ.

On April 8, 2011 TCEQ issued a Revised Order regarding the Order issued on January 26th. The Commission stated that corrections were made to the record because of clerical errors in the Order that were not consistent with the Commission's deliberation. Because of the reissue of the Order, the clock for a Motion for Rehearing (MFR) started again, based on the April 8, 2011 date of the TCEQ letter. The new deadline to file a MFR is April 30th. Montgomery County will file for a Motion for Rehearing regarding the April 8th TCEQ Revised Order.

The Texas Railroad Commission (RRC) held a hearing on August 18, 2010 regarding approval of the TexCom injection project based on a request of Denbury Onshore who owns the Conroe Oil Field mineral interests. Denbury asked the RRC to rescind "no harm" letters issued to TexCom in September 2005 because of their belief the TexCom injection well project would harm their efforts to recover additional quantities of oil from the Conroe Oil Field. Resulting from the August hearing, in early January 2011, the RRC rescinded the "no harm" letter ruling the RRC had previously issued (and needed by TexCom to move the project forward in the TCEQ proceeding).

Subsequent to the TCEQ action in January 2011, granting the injection well permits, TexCom approached the Railroad Commission seeking a rehearing regarding the action taken by the RRC to rescind the "no harm" letter ruling. The TexCom rehearing request was granted at the RRC meeting of March 8th by a 2-1 vote of the Commissioners and will be set for a future meeting of the RRC for farther hearing. Without approval of the RRC, it is possible that TexCom will not be able to move forward with their project in Montgomery County. However, that will likely be a matter for the Court to decide.

Representatives of Montgomery County, Lone Star Groundwater Conservation District, Woodlands Joint Powers Agency and San Jacinto River Authority met on March 29th to discuss possible next steps in opposing the proposed TexCom waste disposal project. Staff attended the meeting on behalf of the Township.

County Attorney David Walker updated meeting attendees on actions he will recommend to the County Commissioners. The county had filed a Motion For Rehearing with TCEQ. At that point there had been no response from TCEQ regarding the motion. However, before the TCEQ decision and Order became final on April 11th, the Commission issued a revised Order on April 8th that replaced the initial Order and started the clock running for a 23 day period in which to file a Motion for Rehearing. Denbury Resources (mineral interest owner and operator of the Conroe Field) has asked TCEQ to rehear the decision to issue the permits.

Mr. Walker addressed the TexCom project proceeding before the Railroad Commission (RRC). At the request of Denbury, the RRC rescinded a "no harm" letter ruling that TexCom had gained from the RRC as a required part of the TCEQ permit process. Even though the RRC rescinded the no harm letter before the January 2011 TCEQ meeting, TCEQ moved forward and issued the permits. Denbury is asking the RRC to not issue a no harm letter when the RRC again addresses the issue at a future hearing date.

Mr. Walker spoke with the Kemp Smith law firm in Austin that specializes in litigating administrative law and commission issues and the firm estimates it will cost in the range of $80,000 – $120,000 to File a Motion For Rehearing with TCEQ and then pursue litigation to overturn the TCEQ permits in District Court. Mr. Walker suggested that the LSGCD, JPA, SJRA and Township each fund $20,000, to continue the cooperative effort to stop the TexCom project. While the City of Conroe did not have a representative at the meeting, the Conroe City council subsequently voted to join Montgomery County in the effort to stop the TexCom project. It is believed that the amount authorized by Conroe is $10,000.

On April 4th, Mike Page, Bob Stout, Jim Stinson and Miles McKinney met to discuss potential Township participation in the united county effort to oppose the TexCom project. It was decided to have Bob Stout determine if a lobby effort would be helpful in Austin. As a part of his effort, Bob approached Denbury Resources to determine their level of lobby effort in the Legislature on the issue. Denbury's representative indicated that a lobby effort would not likely be helpful at this point. Bob recommends no lobby action be taken in the Legislature at this time, but adds that the Montgomery County legislative delegation is aware of the situation and continues to oppose issuance of the permits to TexCom.

The Texas Department of Transportation will have to approve a TexCom Permit to Construct Access Driveway Facilities on Highway Right of Way for TexCom to build the driveway necessary to provide access for truck traffic entering/exiting on FM 3083 adjacent to TexCom's injection site.

RECOMMENDED BOARD ACTION:

Staff recommends that an amount of $20,000 be approved by the Board of Directors to be used to join Montgomery County, Lone Star Groundwater Conservation District, San Jacinto River Authority, Woodlands Joint Powers Agency, City of Conroe and/or other political subdivision parties in actions to oppose issuance of permits for the TexCom project in Montgomery County.

Staff further recommends that funding contribution(s), up to $20,000 total, be approved by the Chairman of The Board as requested to support hearings of the injection well matter before the TCEQ, Railroad Commission, Texas Department of Transportation or litigation in court, as determined by the parties.

THE WOODLANDS TOWNSHIP

The Woodlands, TX

EXECUTIVE SUMMARY

MEETING DATE: April 27, 2011

SUBJECT MATTER: First Amendment to the Host Venue Agreement with World Triathlon Corporation

BUDGET IMPACT:

FACTS/HISTORY:

The Woodlands Township, The Woodlands Convention and Visitors Bureau and World Triathlon Corporation (WTC) entered into a Host Venue Sponsorship Agreement on June 23, 2010. The agreement provides that WTC will conduct and the Township and CVB will host an annual Ironman event in and around The Woodlands in 2011, 2012, 2013, 2014 and 2015. Earlier this year, after WTC conducted an economic impact study, the State Comptroller determined that the event was eligible for a grant from the State of Texas' Events Trust Fund. Local matching funds are required in order to receive the grant. The First Amendment to the Host Venue Agreement outlines how the local match will be paid and how the grant funds will be distributed between the parties to the Host Venue Agreement.

All other agreement terms remain unchanged.

RECOMMENDED BOARD ACTION:

Approve First Amendment to Host Venue Agreement with World Triathlon Corporation and authorize President/General Manager to execute the Agreement on behalf of The Woodlands Township.

FIRST AMENDMENT TO HOST VENUE SPONSORSHIP AGREEMENT

THIS FIRST AMENDMENT TO HOST VENUE SPONSORSHIP AGREEMENT (this "Amendment"), dated effective as of _____, 2011 (the "Effective Date"), is by and between **WORLD TRIATHLON CORPORATION** ("WTC"), a Florida corporation, whose primary business address is 2701 North Rocky Point Drive, Suite 1250, Tampa, Florida and **THE WOODLANDS TOWNSHIP** ("The Township"), a political subdivision of the State of Texas, with offices at 10001 Woodloch Forest Drive, Suite 600, The Woodlands, Texas 77380 and **THE WOODLANDS CONVENTION AND VISITORS BUREAU** ("TWCVB"), a Texas non-profit corporation, with offices at 10001 Woodloch Forest Drive, Suite 600, The Woodlands, Texas 77380 (The Township and TWCVB hereafter referred to collectively as "Host") (WTC and HOST are referred to herein individually as "Party" and collectively as the "Parties").

RECITALS:

WHEREAS, The Township, TWCVB and WTC are parties to that certain Host Venue Sponsorship Agreement, dated June 23, 2010 (the "Original Agreement").

WHEREAS pursuant to the Original Agreement, WTC agrees to conduct and The Township and TWCVB agree to host an annual IRONMAN event located in or around The Woodlands, Texas (The "Event"). The Event is to be held on or about the following dates: May 21, 2011, May 19, 2012, May 18, 2013, May 17, 2014, and May 16, 2015.

WHEREAS pursuant to the February 22, 2011 letter to the Host from Martin A. Hubert, Deputy Comptroller of the Texas Comptroller of Public Accounts, the Deputy Comptroller determined that in 2011 the state of Texas will realize an incremental increase in tax revenue of $327,692 as a result of the Event. This amount, if matched by $52,431 as a local contribution to the State of Texas' Events Trust Fund (the "Events Trust Fund") by The Township will result in a total contribution of $380,123 in 2011 to the Events Trust Fund ("2011 Local Event Total Contribution").

WHEREAS the Host commissioned an economic impact study of the Event determining that funding from the Events Trust Fund, pursuant to §5(c) of Article 65190.14 Vernon's Texas Civil Statutes, could be a critical source of funding to assist Host with the funds required to defray the cost of hosting the Event.

WHEREAS WTC desires to contribute $52,431 to The Township (the "Initial WTC Contribution"), and The Township desires to utilize the Initial WTC Contribution in part or full to submit a local contribution to the Events Trust Fund. WTC and The Township desire to continue similarly each year with the amount of the Township Local Contribution to be determined annually by the Texas Comptroller.

WHEREAS, the Parties now desire to amend the Original Agreement to memorialize the agreement of the parties as to the Initial WTC Contributions and any subsequent WTC contributions, The Township's utilization of those contributions, and other covenants by and between the Parties.

WHEREAS, the Parties desire to continue performance under this Amendment throughout the term of the Original Agreement, or as subsequently renewed, revised or extended as long as funding from the Events Trust Fund are available during this five (5) year period.

NOW, THEREFORE, in consideration of the foregoing, the mutual promises and covenants hereinafter set forth, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. **WTC Contribution**. Within five (5) days from the Event, WTC shall make the Initial WTC Contribution, being $52,431.00 for 2011, to The Township in immediately available US funds. Annually thereafter, on or about _____ of each year, for as long as the Original Agreement and this Amendment are in place and Event Trust Fund is available, WTC shall make a contribution to The Township equal to the amount determined by the Texas Comptroller to be the local or matching contribution for that year's Event ("Subsequent Annual WTC Contribution"). The Initial WTC Contribution and the Subsequent Annual WTC Contribution shall collectively be referred to at the "WTC Contribution".

2. **The Township's local contribution to the Events Trust Fund**. Within sixty (60) business days after the May 21, 2011 Event, or sooner if required by the applicable provisions of the Event Trust Fund, The Township will submit to the Texas Comptroller a local contribution to the Events Trust Fund in an amount of up to the Initial WTC Contribution. Annually thereafter, within thirty (30) days after each annual Event, or sooner if required by the applicable provisions of the Event Trust Fund, The Township shall make a contribution to the Event Trust Fund in an amount up to the Subsequent WTC Contribution. At the sole determination of The Township, said contribution this year and annually thereafter, may be in an amount less than the WTC Contribution.

3. **Annual submission of receipts from the Event**. Annually, within thirty (30) days following the Event, The Township will submit to The Texas Comptroller applicable receipts for expenditures related to the Event for review and verification by the Texas Comptroller. Following such submission, each year the Township shall receive verification from the Texas Comptroller of the determination of the estimated realization of incremental increase in tax revenue as a result of the Event (the "Annual Incremental Tax Revenue"), the local match requirement (being the "Subsequent Annual WTC Contribution"), and thereby calculate the total local contribution to the State of Texas' Events Trust Fund (being the "Annual Local Event Total Contribution").

4. **Distribution and use of Events Trust Funds**. Annually, within thirty (30) days from receipt by The Township of any funds from the Event Trust Fund ("Fund Payment to The Township"), The Township shall send to WTC a payment in an amount equal to (a) all of the WTC Contribution for such year received by The Township; plus (b) 0.90 (ninety percent) times (i) the Fund Payment to The Township; minus (ii) of the WTC Contribution for such year received by The Township. Accordingly, an amount equal to 0.10 (ten percent) times (i) of the Fund Payment to Township; minus (ii) the WTC Contribution received that year, shall be retained annually by The Township to offset The Township's direct and indirect costs and expenses in hosting the Event each year. The Township will utilize said retained funds to purchase equipment, supplies and services to support or enhance each year's Events. Any such equipment, supplies and services shall be and shall remain the sole property of The Township.

5. **Original Agreement and terms contained herein.** Unless otherwise modified herein, the Original Agreement shall remain unchanged and in full force and effect. Terms not otherwise defined herein shall have the same meaning and effect as in the Original Agreement.

6. **Multiple signatures.** For the convenience of the Parties, this Amendment may be executed in multiple counterparts, which when taken together, shall constitute a single whole document binding on all parties.

IN WITNESS WHEREOF, the Parties have duly executed this Amendment as of the day and year last written below as mutually acceptable of the terms, conditions and consideration contained herein and to be effective as the Effective Date cited herein.

WORLD TRIATHLON CORPORATION,
a Florida corporation,

By _____
Steve Meckfessel
Chief Operations Officer

Date Signed: _____

THE WOODLANDS TOWNSHIP,
a political subdivision of the State of Texas,

By _____
Don Norrell
President

Date Signed: _____

THE WOODLANDS CONVENTION AND VISITORS BUREAU
a Texas non-profit corporation

By _____
Nick Wolda
President

Date Signed: _____